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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM RICHLAND COUNTY
The Court of Common Pleas
The Honorable Tanya A. Gee, Circuit Court Judge

Case No. 2010-CP-40-7404

RECEIVED

JAN 26 2017

SC Court of Appeals

Reginald Todd Young,..... Appellant,

v.

Eric D. Powell and United Parcel Service, Inc..... Respondents.

RECORD ON APPEAL

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Katie M. Brown
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Attorneys for Respondent

3
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Eric D. Powell,

Plaintiff(s)

vs.

Reginald Todd Young,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 40- 7404

(Please Print)

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rule.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Label (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
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☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
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☐ Motion to Quash Subpoena in an Out-of-Country Action (660)
☐ Sexual Predator (510) | | | |

Submitting Party Signature:

Date: 10.21.10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.:

Eric D. Powell,

Plaintiff,

vs.

Reginald Todd Young,

Defendant.

SUMMONS
(JURY TRIAL REQUESTED)

JEANETTE W. MCBRIDE
C.C.P. & G.S.

2010 OCT 21 PM 3:30

FILED

TO: REGINALD TODD YOUNG, THE DEFENDANT, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said complaint upon the subscriber, at his office at 1510 Calhoun Street, Columbia, South Carolina 29211, within thirty (30) days after the service thereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

CHAPPELL, SMITH & ARDEN, P.A.

Mark D. Chappell
W. Hugh McAngus, Jr.
Attorneys for the Plaintiff
1510 Calhoun Street
Post Office Box 12330
Columbia, South Carolina 29211
(803) 929-3600
(803) 929-3604 (Fax)

October 21, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.:

Eric D. Powell,

Plaintiff,

vs.

Reginald Todd Young,

Defendant.

COMPLAINT
(JURY TRIAL REQUESTED)

JEANETTE W. McBRIDE
C.C.P. & G.S.
2010 OCT 21 PM 3:30
FILED

The Plaintiff would respectfully show unto the Court that:

1. The Plaintiff Eric D. Powell is a citizen and resident of the County of Lexington, State of South Carolina.
2. Upon information and belief, the Defendant Reginald Todd Young is a citizen and resident of the County of Richland, State of South Carolina.
3. On or about August 3, 2009, Plaintiff Eric Powell was traveling South on South Carolina Highway 769 when Defendant Young, who was traveling North on South Carolina Highway 769, crossed the center yellow double line and struck Plaintiff Eric Powell's vehicle, causing serious physical injuries and damages to Plaintiff Eric Powell.
4. As a result of the collision, Plaintiff Eric Powell suffered the following injuries and damages:
 - a. extensive pain, mental anguish, suffering and discomfort;
 - b. disability for a period of time, past and future;
 - c. money spent for medical care and treatment, past, present and future;
 - d. inability to carry on normal activities;
 - e. permanent injuries and partial disability;

- f. emotional trauma and distress;
- g. loss of enjoyment of life; and,
- h. time and wages lost from his job.

5. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

- a. in failing to apply the brakes of the vehicle and/or maintain them in proper working condition;
- b. in failing to steer or take other evasive action so as to avoid the collision;
- c. in failing to keep a proper lookout;
- d. in failing to stay in the designated lane as required by law;
- e. in crossing over the double yellow line to the other lane in violation of law;
- f. in operating the vehicle too fast for existing conditions;
- g. in failing to yield as required by law;
- h. in failing to observe the condition of the traffic; and
- i. as may be developed through discovery.

6. The Defendant's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the collision and resulting injuries and damages to the Plaintiff.

7. The Plaintiff is informed and believes he is entitled to judgment against the Defendant for actual and punitive damages in an appropriate amount.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for actual and punitive damages in an appropriate amount to be determined at trial, the costs of this action, and for such other and further relief as the Court may deem just and proper.

CHAPPELL, SMITH & ARDEN

Mark D. Chappell
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Attorneys for Plaintiff
1510 Calhoun Street
Post Office Box 12330
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(803) 929-3600
(803) 929-3604 (Fax)

October 21, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2010-CP-40-7404

ERIC D. POWELL,

Plaintiff(s),

vs.

PLAINTIFF'S INTERROGATORIES TO
DEFENDANT

REGINALD TODD YOUNG,

Defendant(s).

TO: REGINALD TODD YOUNG, DEFENDANT:

YOU WILL TAKE NOTICE that you are hereby required to answer, in writing, the following Interrogatories propounded by the Plaintiff pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure:

1. Give the names and addresses of persons known to the parties to be witnesses concerning the facts of the case and indicate whether or not recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in this case.
3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of this case, and for each such witness please provide a detailed statement of each and every opinion the expert(s) will testify upon at trial, all facts supporting each such opinion, a list of all documents or tangible things provided to or relied upon by the expert(s), and identify each and every treatise, publication, text, authority, regulation, law, or other document relied upon by each such expert.

4. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

5. Set forth the names and address of all insurance companies which have liability, excess, umbrella, medical payments, personal injury protection, underinsured or uninsured insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

6. Set forth the Defendant's criminal record.

7. Set forth a list all other motor-vehicle accidents in which the Defendant has been involved in the last 15 years. In answering this Interrogatory, please indicate the date of the accident, where the accident occurred, the circumstances under which the accident occurred, and whether or not the party was found to be at fault for the accident.

8. Please state whether the Defendant was cited or ticketed for any traffic violations arising from the accident that is the subject of this of lawsuit. In answering this Interrogatory, please specify the offense with which the Defendant was cited or ticketed and the disposition of any and all charges.

9. Had the Defendant consumed any alcoholic beverages, prescription drugs or non-prescription drugs within the 24 hour period prior to the accident that this subject of this lawsuit? If so, please state the type and amount of each such substance the address of each location where such substances were consumed, and the names and addresses of each and every person present when the Defendant was consuming such substances.

10. Set forth the Defendant's date of birth and Social Security number.

11. Identify the Defendant's employer at the time of the accident that is the subject of this lawsuit. In answering this Interrogatory, please provide the date upon which Defendant was hired, Defendant's position or job with this employer, the name of Defendant's immediate supervisor at the time of this accident, and, if Defendant has been terminated by said employer, the grounds upon which Defendant was terminated.

12. Was the Defendant acting within the scope and course of Defendant's employment at the time of this accident?

13. Please indicate whether or not the Defendant received any medical care or treatment following this accident. If answering in the affirmative, please provide the name of any and all facilities at which the Defendant was treated and describe the nature of the care and treatment provided to the Defendant.

14. Have the Defendant's driving privileges ever been revoked or suspended for any reason and, if so, please provide the nature, date and duration of the suspension or revocation.

15. Please list the names and addresses of each person over 18 years of age who resides in Richland County who is related to the Defendant by blood or marriage.

16. How fast was the Defendant traveling at the time of the accident that is the subject of this lawsuit?

17. Has the Defendant ever been a party to any other lawsuit, either as a plaintiff or defendant? If so, please provide nature of lawsuit, the date and place thereof and its outcome.

18. Where was the Defendant coming from immediately prior to this accident and what was Defendant's intended destination?

6. All documents obtained pursuant to Subpoena in this matter.
7. Any other documents and statements identified in Answer to First Set of Interrogatories.

Chappell, Smith & Arden, P.A.

Attorney for the Plaintiff
Post Office Box 12330
Columbia, South Carolina 29211
(803) 929-3600

October 25, 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE
FIFTH JUDICIAL CIRCUIT

Eric D. Powell,

Plaintiff,

v.

Reginald Todd Young,

Defendant.

Reginald Todd Young,

Third-Party Plaintiff,

v.

Eric D. Powell and United Parcel
Service, Inc.,

Third-Party Defendants

C/A NUMBER: 2010-CP-40-7404

**THIRD-PARTY
SUMMONS**

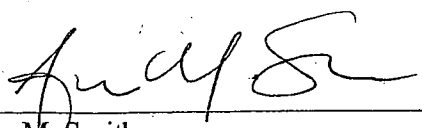
JEANETTE M. McBRIDE
C.C.P. & G.S.

2010 DEC 29 AM 9:55

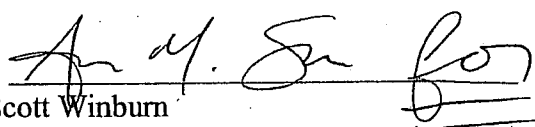
RICHLAND COUNTY
FILED

TO THE THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to appear and defend within thirty (30) days from the date of service hereof and to answer the Third-Party Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Third-Party Complaint upon the subscribers at their offices, 1501 Main Street, Fifth Floor, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, upon you, exclusive of the day of such service; and if you fail to appear and defend and answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

BY: 

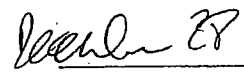
Austin M. Smith
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BY: 

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Columbia, South Carolina 29201
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ATTORNEYS FOR REGINALD YOUNG

Columbia, South Carolina

 2010

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE
FIFTH JUDICIAL CIRCUIT

Eric D. Powell,

Plaintiff,

v.

Reginald Todd Young,

Defendant.

Reginald Todd Young,

Third-Party Plaintiff,

v.

Eric D. Powell and United Parcel
Service, Inc.,

Third-Party Defendants

C/A NUMBER: 2010-CP-40-7404

**ANSWER AND COUNTERCLAIM TO
COMPLAINT
(Jury Trial Demanded)**

**THIRD PARTY COMPLAINT
(Jury Trial Demanded)**

FILED
2010 DEC 29 AM 9:55
JEANE L. McBRIDE
Clerk of Court
RICHLAND COUNTY

Defendant Reginald Todd Young ("Defendant"), answers the Complaint of Plaintiff Eric D. Powell ("Plaintiff"), herein as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Defendant denies each and every allegation of Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.
2. Paragraph 1 is admitted upon information and belief.
3. Paragraph 2 is admitted.

4. Paragraph 3 is admitted only to the extent that an accident occurred on or about August 3, 2009. The remainder of paragraph 3 is denied.

5. Defendant is currently without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4 and, therefore, denies same and demands strict proof thereof.

6. Paragraph 5 is denied.

7. Paragraph 6 is denied.

8. Paragraph 7 is denied.

FOR A SECOND DEFENSE
(Comparative Negligence)

9. Further answering Plaintiff's Complaint herein, Defendant reiterates all of the allegations set forth hereinabove as fully as if repeated herein.

10. Defendant alleges, upon information and belief, that any injuries or damages sustained by Plaintiff was due to Plaintiff's own negligent, careless, reckless and/or grossly negligent acts or omissions, which combined and concurred with any negligence, carelessness, recklessness and gross negligence on the part of Defendant, which are specifically denied, to produce such injuries or damages, if any, and without which such injuries or damages would not have occurred.

11. Such negligent, careless, reckless and/or grossly negligent acts or omissions on the part of Plaintiff being more particularly set forth as follows:

- i. in failing to maintain a proper lookout;
- ii. in failing to travel at an appropriate speed under the existing circumstances;

- iii. in failing to otherwise act as a reasonably prudent motorist would have acted under the same or similar circumstance; and
- iv. in other particulars as may be established by discovery and evidence in this case;

all of which were the direct and proximate cause of any injuries or damages sustained by Plaintiff.

12. Defendant pleads such negligence, carelessness, recklessness and gross negligence on the part of Plaintiff and would ask that this court compare the negligence or other conduct of Plaintiff and Defendant

13. If it is determined that Plaintiff's negligence, carelessness, recklessness and gross negligence was greater than the negligence, carelessness, recklessness and gross negligence of Defendant, which is specifically denied, then Plaintiff should be totally barred from recovering against Defendant.

14. If it is determined that Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of Defendant, then the amount of recovery available to Plaintiff should be reduced by the percentage of Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A THIRD DEFENSE
(Plaintiff's Sole Negligence/Gross Negligence/Recklessness)

15. Further answering Plaintiff's Complaint herein, Defendant reiterates all of the allegations set forth hereinabove as fully as if repeated herein.

16. Defendant would show that the injuries and damages sustained by Plaintiff, if any, were directly and proximately caused by Plaintiff's sole negligence/gross negligence/recklessness, for which reason Plaintiff's claims are barred.

FOR A FOURTH DEFENSE
(Negligence of Others)

17. Defendant would show that any injuries or damages sustained by Plaintiff were due to and caused by the sole negligence and acts or omissions of some persons or entities over whom Defendant exercised no authority or control for which reason Defendant is not liable to Plaintiff in any sum whatsoever.

FOR A FIFTH DEFENSE
(Unconstitutionality of Punitive Damages)

18. Further answering Plaintiff's Complaint herein, Defendant reiterates all of the allegations set forth hereinabove as fully as if repeated herein.

19. Defendant alleges that Plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina constitution in one or more of the following particulars:

- i. That the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.
- ii. That, even if a standard governing the award of punitive damages does exist, this standard is void for vagueness.
- iii. That the amount of punitive damages awarded is based upon the wealth of Defendant in violation of its right to equal protection of the laws.

RESERVATION OF DEFENSES

20. Defendant reserves the right to raise additional affirmative and other defenses as may be established by discovery and evidence in this case.

FOR A SIXTH DEFENSE, COUNTERCLAIM, AND THIRD PARTY- COMPLAINT (NEGLIGENCE-GROSS NEGLIGENCE)

21. Defendant repeats the above paragraphs 1-20.

22. Plaintiff was acting in the course and scope of employment and driving a vehicle owned, provided, and maintained by United Parcel Service at the time of the collision referenced herein.

23. United Parcel Service is a corporate entity appropriately licensed, registered, and authorized to do business in the State of South Carolina.

24. That on or about August 3, 2009, the Plaintiff (hereinafter Powell) was the driver of a UPS delivery truck owned by the Defendant UPS (hereinafter UPS) and Defendant (hereinafter Young) was the driver of a 1986 BMW in the County of Richland, State of South Carolina. Young was lawfully traveling in traffic when Powell, driving the UPS vehicle, crossed the center line and collided with Young.

25. That as a result of said collision, Young suffered great bodily injury, which caused Young, and will cause Young in the future, to incur medical expenses, to suffer tremendous pain and suffering, permanent injury and to lose time from work and lost wages, in addition to property damage.

26. That at the time and place mentioned above, Powell and UPS were negligent, grossly negligent, reckless, willful and wanton, in one or more of the following particulars, to wit:

- a. In operating the said motor vehicle at a rate of speed, which was excessive for the circumstances then prevailing;
- b. In failing to keep a proper lookout;
- c. In failing to maintain proper control over the aforesaid vehicle;
- d. In failing to yield the right of way;
- e. In driving too fast for conditions;
- f. In failing to take any evasive action, by any means, to avoid a collision with Plaintiff;
- g. In failing to train, manage, maintain and/or supervise as to Powell's use of the vehicle in question;
- h. In failing to act, or to not act, in such other manner as may be revealed in discovery;
- i. In failing to act as a reasonable person would under similar circumstances,

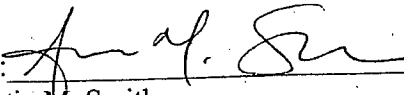
any or all of which were the direct and proximate cause of the injuries and damages suffered by Reginald Young, said acts being in violation of the laws of the State of South Carolina.

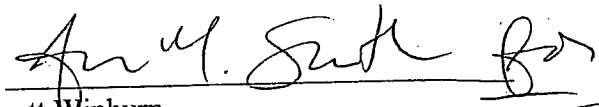
27. That as a further direct and proximate result of Powell's and/or UPS's negligence, recklessness, willfulness and wantonness, as aforesaid, Defendant was thrown about the vehicle and suffered bodily injury, which caused Defendant significant damage, to include but not limited to present and future medical expenses, to suffer tremendous pain and suffering, loss of income, employment and earning capacity, loss of enjoyment of life, permanent injuries and other such further and additional damages to be proven at trial.

28. Young is informed and does believe that he is entitled to judgment against Powell and/or UPS, jointly and/or severally, for actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

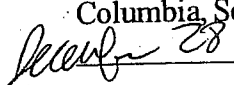
WHEREFORE, having fully answered the Complaint of Plaintiff, Defendant prays that the Complaint be dismissed with prejudice and for judgment against Powell and UPS

for damages in the amount justified by the evidence, recoverable attorney fees, the costs of this action and such other relief as this Court may deem just and proper.

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TEL: (803) 933-9800

ATTORNEYS FOR REGINALD YOUNG

Columbia, South Carolina
 28, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2010-CP-40-7404

Eric D. Powell,)
)
Plaintiff,)

vs.)

Reginald Todd Young,)
)
Defendant.)

Reginald Todd Young,)
)
Third-Party Plaintiff,)

vs.)

Eric D. Powell and United Parcel
Service, Inc.)
)
Third-Party Defendants.)

REPLY TO COUNTERCLAIM
AND
ANSWER TO THIRD-PARTY COMPLAINT
(JURY TRIAL REQUESTED)

FILED
2011 JAN -7 AM 9:30
JENNIFER C.C.P. & G.S.

The Third-Party Defendants, Eric D. Powell and United Parcel Service, Inc., answering the Counterclaim and Third-Party Complaint of Defendant/Third-Party Plaintiff would show unto the Court as follows:

FOR A FIRST DEFENSE

21. They reincorporate and reallege each and every paragraph set forth in their Answer as if fully repeated herein.

22. They admit the allegations contained in Paragraph 22 of the Complaint.

23. They admit the allegations contained in Paragraph 23 of the Complaint.

24. They admit only so much of the allegations contained in Paragraph 24 as can be construed to allege that the Third-Party Defendant Powell was operating a UPS delivery truck owned by the Third-Party Defendant UPS when on or about August 3, 2009, the Defendant, while operating a 1986 BMW in the County of Richland, State of South Carolina, crossed over

the centerline striking the UPS vehicle. They deny the remaining allegations contained in said Paragraph inconsistent with or in addition to the above admission.

25. They admit upon information and belief that the Defendant Young was injured as a result of the accident. They deny the remaining allegations contained in said Paragraph inconsistent with or in addition to the above admission.

26. They deny the allegations contained in Paragraph 26 of the Complaint, including all sub-parts.

27. They deny the allegations contained in Paragraph 27 of the Complaint.

28. They deny the allegations contained in Paragraph 28 of the Complaint.

29. They deny each and every allegation set forth in the Complaint not specifically admitted.

FOR A SECOND DEFENSE

30. They reincorporate and reallege each and every paragraph set forth above in their Answer as if fully repeated herein.

31. The Third-Party Defendants allege that if any injuries and damages were sustained by the Third-Party Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of said Plaintiff which exceeds the negligence and/or willfulness, if any, on the part of these Defendants, without which greater negligence and/or willfulness on the part of the Third-Party Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Third-Party Plaintiff is totally barred from recovery.

FOR A THIRD DEFENSE

32. They reincorporate and reallege each and every paragraph set forth above in their Answer as if fully repeated herein.

33. Alternatively, the Third-Party Defendants allege that if any injuries and damages were sustained by the Third-Party Plaintiff, said injuries and damages were caused by the

negligence and/or willfulness of said Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of these Defendants, and for that reason the recovery of the Third-Party Plaintiff, if any, shall be reduced in proportion to the amount of his negligence.

FOR A FOURTH DEFENSE

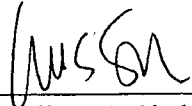
34. They reincorporate and reallege each and every paragraph set forth above in their Answer as if fully repeated herein.

35. The Third-Party Defendant, Eric D. Powell, alleges that at the time and place of the accident alleged in the Complaint, while operating his vehicle in a careful and prudent manner, through no fault of his own, he was put in an unexpected emergency and because of the unexpected emergency over which this Defendant had no control, the Defendant was required only to act as appeared to him best under the circumstances, considering the emergency in which he was placed. The Defendant acted in all respects in a careful and prudent manner, and as any reasonable and prudent person would have acted under similar circumstances, and thus is not liable to the Third-Party Plaintiff in any amount whatsoever.

WHEREFORE, having fully answered the Defendant/Third-Party Plaintiff's Counterclaim and Third-Party Complaint, these Defendants pray that the Counterclaim and Third-Party Complaint be dismissed with costs.

TURNER, PADGET, GRAHAM & LANEY, P.A.

BY: _____


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Greenville, South Carolina
January 5, 2011

Attorneys for the Third-Party Defendants,
Eric D. Powell and United Parcel Service, Inc.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Eric D. Powell,

Plaintiff,

v.

Reginald Todd Young,

Defendant.

Reginald Todd Young,

Third-Party Plaintiff,

vs.

Eric D. Powell and United Parcel Service,
Inc.,

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-7404

THIRD-PARTY COMPLAINT
(AMENDED)

21. Defendant repeats the above paragraphs 1-20.

22. Plaintiff was acting in the course and scope of employment and driving a vehicle owned, provided and maintained by United Parcel Service at the time of the collision referenced herein.

23. United Parcel Service is a corporate entity appropriately licensed, registered, and authorized to do business in the State of South Carolina.

24. That on or about August 3, 2009, the Plaintiff (hereinafter Powell) was the driver of a UPS delivery truck owned by the Defendant UPS (hereinafter UPS) and Defendant (hereinafter Young) was the driver of a 1986 BMW in the County of Richland, State of South Carolina. Young was lawfully traveling in traffic when Powell, driving the UPS vehicle, crossed the center line and collided with Young.

25. That as a result of said collision, Young suffered great bodily injury, which caused Young, and will cause Young in the future, to incur medical expenses, to suffer tremendous pain and suffering, permanent injury and to lose time from work and lost wages, in addition to property damage.

26. That at the time and place mentioned above, Powell and UPS were negligent, grossly negligent, reckless, willful and wanton, in one or more of the following particulars, to wit:

- a. In operating the said motor vehicle at a rate of speed, which was excessive for the circumstances then prevailing;
- b. In failing to keep a proper lookout;
- c. In failing to maintain proper control over the aforesaid vehicle;
- d. In failing to yield the right of way;
- e. In driving too fast for conditions;
- f. In failing to take any evasive action, by any means, to avoid a collision with Plaintiff;
- g. In failing to train, manage, maintain and/or supervise as to Powell's use of the vehicle in question;
- h. In failing to act, or not to act, in such other manner as may be revealed in discovery;
- i. In failing to act as a reasonable person would under similar circumstances,

any or all of which were the direct and proximate cause of the injuries and damages suffered by Reginald Young, said acts being in violation of the laws of the State of South Carolina.

27. That as a further direct and proximate result of Powell's and/or UPS's negligence, recklessness, willfulness and wantonness, as aforesaid, Defendant was thrown about the vehicle and suffered bodily injury, which caused Defendant significant damage, to include but not limited to present and future medical expenses, to suffer tremendous pain and suffering, loss of income, employment and earning capacity, loss of enjoyment of life, permanent injuries and other such further and additional damages to be proven at trial.

28. Young is informed and does believe that he is entitled to judgment against Powell and/or UPS, jointly and/or severally, for actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

29. Third-Party Defendant UPS owed Third-Party Plaintiff a duty of reasonable care and were grossly negligent, willful, wanton, reckless and careless and breached their duty of care by:

- a. failing to exercise reasonable care in the hiring of Powell;
- b. failing to exercise reasonable care in the supervision of Powell despite their ability to control this employee and their knowledge, or implied knowledge, that there was a necessity for exercising control over this employee;
- c. failing to exercise reasonable care in the retention of Powell;

- d. permitting Eric Powell to drive a UPS truck with the knowledge that Eric Powell based on his prior actions was likely to drive the UPS truck in a negligent and reckless manner (Negligent Entrustment);
- e. on such other and further particulars as the evidence may show.

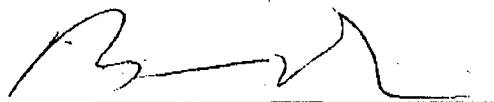
30. That the breach of this duty by Third-party Defendant UPS was a proximate cause of the injuries sustained by Third-party Plaintiff Young.

31. As a direct and proximate result of the breaches complained herein, Third-party Plaintiff suffered great bodily injury, which caused Young, and will cause Young in the future, to incur medical expenses, to suffer tremendous pain and suffering, permanent injury and to lose time from work and lost wages, in addition to property damage.

32. By reason of the foregoing, Third-party Plaintiff Young is entitled to recover damages for all general and special damages proximately caused by Third-party Defendant UPS's grossly negligent, willful, want, reckless and carless acts and/or omissions.

33. Young is informed and does believe that he is entitled to judgment against Powell and/or UPS, jointly and/or severally, for actual and punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

WHEREFORE, having fully answered the Complaint of Plaintiff, Defendant prays that the Complaint be dismissed with prejudice and for judgment against Powell and UPS for damages in the amount justified by the evidence, recoverable attorney fees, the costs of this action and such other relief as this Court may deem just and proper.



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April 20, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Reginald Todd Young,)
Third Party Plaintiff,)
vs.)
Eric D. Powell and United Parcel)
Service, Inc.,)
Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No. 2010-CP-40-7404

ANSWER OF THIRD PARTY
DEFENDANTS TO PLAINTIFF'S
THIRD PARTY COMPLAINT
(AMENDED)

(JURY TRIAL REQUESTED)

RICHLAND COUNTY
FILED
2015 AUG 10 AM 9:03
JEANNETTE W. HARRIS
C.C.P. & G.S.

The Third Party Defendants, answering the Third-Party Plaintiff's Amended Third-Party Complaint, would show unto the Court as follows:

FOR A FIRST DEFENSE

21. These Defendants replead and reallege their prior responses to Paragraphs 1-20 of the Third-Party Complaint.

22. They admit the allegations contained in Paragraph 22 of the Third-Party Complaint.

23. They admit the allegations contained in Paragraph 23 of the Third-Party Complaint.

24. They admit only so much of the allegations contained in Paragraph 24 as could be construed to allow that the Third-Party Defendant Eric Powell was operating a vehicle owned by the Third-Party Defendant UPS when the accident occurred between the UPS vehicle and the vehicle being driven by the Third-Party Plaintiff, Reginald Young. The Third-Party Defendants deny the remaining allegations contained in said Paragraph inconsistent or in addition to the above admissions.

25. They admit only so much of the allegations contained in Paragraph 25 as could be construed to allege that the Third-Party Plaintiff, Young, was injured as result of the accident. They deny the remaining allegations contained in said Paragraph inconsistent with or in addition to the above admission.

26. They deny the allegations contained in Paragraph 26 of the Third-Party Complaint, including all subparts.

27. They deny the allegations contained in Paragraph 27 of the Third-Party Complaint.

28. They deny the allegations contained in Paragraph 28 of the Third-Party Complaint.

29. They deny the allegations contained in Paragraph 29 of the Third-Party Complaint, including all subparts.

30. They deny the allegations contained in Paragraph 30 of the Third-Party Complaint.

31. They deny the allegations contained in Paragraph 31 of the Third-Party Complaint.

32. They deny the allegations contained in Paragraph 32 of the Third-Party Complaint.

33. They deny the allegations contained in Paragraph 33 of the Third-Party Complaint.

34. They deny each and every allegation set forth in the Third-Party Complaint not specifically admitted.

FOR A SECOND DEFENSE

35. They reincorporate and reallege each and every paragraph set forth above in their Answer as if fully repeated herein.

36. The Defendants allege that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the greater negligence and/or willfulness of the Plaintiff which exceeds the negligence and/or willfulness, if any, on the part of the Defendants, without which greater negligence and/or willfulness on the part of the Plaintiff, said alleged injury or damage would not have occurred or been sustained and for that reason, the Plaintiff is totally barred from recovery.

FOR A THIRD DEFENSE

37. They reincorporate and reallege each and every paragraph set forth above in their Answer as if fully repeated herein.

38. Alternatively, the Defendants alleges that if any injuries and damages were sustained by the Plaintiff, said injuries and damages were caused by the negligence and/or willfulness of the Plaintiff combining, concurring, and contributing with the negligence and/or willfulness, if any, on the part of the Defendants, and for that reason the recovery of the Plaintiff, if any, shall be reduced in proportion to the amount of his negligence.

PUNITIVE DAMAGES

39. The Third-Party Defendants would allege that an award of punitive damages would constitute an impermissible and excessive fine under the Eighth Amendment of the Constitution of the United States, and such damages would further be a violation of the due process and equal protection causes of the Fifth and Fourteenth Amendments, respectively, of the United States Constitution, as well as the applicable corresponding sections of the

Constitution of the State of South Carolina, Article 1, Section 3.

40. Third-Party Plaintiff's claim for punitive damages violates the Defendant's right to access to the Courts guaranteed by the Seventh and Fourteenth Amendments create the threat of an award of unlimited punitive damages chills the Third-Party Defendants' exercise of that right.

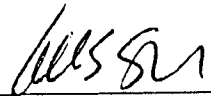
41. Third-Party Plaintiff's claim for punitive damages violates the due process and equal protection clauses of the Fourteenth Amendment for the following reasons;

(a) The standard or test for determining the requisite mental state of the Defendant for imposition of punitive damages is void for vagueness; and

(b) Insofar as punitive damages are not measured against actual injury to the Plaintiff and are left wholly to the discretion of the jury, there is no objective standard that limits the amount of such damages that may be awarded, and the amount of punitive damage that may be awarded is indeterminate at the time of the Defendant's alleged conduct.

WHEREFORE, having fully answered the Third-Party Plaintiff's Amended Complaint, the Third-Party Defendants pray that the Third-Party Amended Complaint be dismissed with costs.

WILLSON JONES CARTER & BAXLEY, P.A.

BY: 

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Attorneys for Third Party Defendants

Greenville, South Carolina

August 5, 2015

1 coverage of the accident to the Department of Motor
2 Vehicles. And on top of this form it says failure to
3 return this form to D.M.V. within 15 days could result
4 in suspension of your driver's license. But I stand
5 to be corrected if anyone has --

6 MR. GEORGE: I just don't think that form is
7 covered by 56-5-1290. If I'm incorrect I'm incorrect
8 Your Honor.

9 THE COURT: Okay.

10 MR. GEORGE: It won't be the first time.

11 THE COURT: It appears that the statute discusses
12 insurance and if you don't forward it that is prima
13 facie evidence the vehicle was uninsured.

14 All right. I find that this accident report is
15 required by Statute 56-5-1270 and therefore 56-5-1290
16 requires me to exclude it.

17 MR. GEORGE: Your Honor.

18 THE COURT: Yes, sir.

19 MR. GEORGE: When he takes the stand if he says
20 something about that this form will impeach him with
21 that's a different story. He can't be a fraud on the
22 Court by hiding behind this form.

23 THE COURT: Well, we will have to address that
24 when it comes up. What I know is section 1290 says
25 none of the reports may be evidence of the negligence

1 he could not keep proper control of his vehicle that
2 would show why he went in to the lane. People just
3 don't cross into another's lane for no reason. I can
4 understand why they do not want speed in it there
5 because the driver admits that he was speeding. He
6 was going over the speed limit.

7 We have two witnesses that have said he was off of
8 the road and then caused him to go into the other
9 lane, so it is very vital to our case and it's very
10 important evidence. I can understand him not wanting
11 to put it in, but ---

12 THE COURT: So you say there will be evidence that
13 -- or some witnesses will testify that he went off the
14 road to the right and then over corrected into the
15 center lane.

16 MR. GEORGE: Yes, ma'am.

17 THE COURT: Into the other lane of traffic.

18 MR. GEORGE: That is the first witness, Marshall
19 Brown.

20 THE COURT: All right. Well, I will deny this
21 motion In Limine. Evidence of speed may be necessary
22 to prove why the truck crossed the center line. It's
23 relevant and probative and while it may also be
24 prejudicial to the defense that any prejudice is
25 unfairly prejudicial under the circumstances.

1 to present pictures of the tires. This came out of
2 the truck. This is part of the evidence.

3 THE COURT: So are saying that this just shows the
4 condition of the truck after the evidence and you are
5 not going to be arguing that this indicates that the
6 truck necessarily was going 55-miles an hour.

7 MR. GEORGE: That's exactly right. That's what we
8 did last time.

9 THE COURT: All right. For that limited purpose
10 it would appear I would allow it in. This is a motion
11 In limine. It is all depends on how this arises
12 during the trial.

13 MR. GEORGE: We will not argue that the
14 speedometer shows that he was going 55 miles. We will
15 not argue that.

16 THE COURT: All right.

17 MR. GEORGE: And will not ask the man from MAT.

18 THE COURT: I do think it's admissible to show the
19 condition of the truck after the collision and so I
20 don't know if you have something more than that, but
21 that's all they want to put in.

22 MR. SHELDON: At the appropriate time, if I object
23 when it goes in --

24 THE COURT: Absolutely.

25 MR. SHELDON: -- or is presented I would ask the

1 accident. So if he is trying to --

2 THE COURT: But he was hired in 1991, isn't that
3 right, so negligent hiring wouldn't they have to be
4 some time before then.

5 MR. SHELDON: Yes, ma'am. I was going to argue
6 the hiring part. I was doing the negligent
7 entrustment part first. But you are correct.

8 If you go to the hiring part there is absolutely no
9 evidence that there was any knowledge of any habitual
10 speeding in 1991. He got hired as a loader out of
11 college. Went to South Carolina. And then he had
12 driven for 15 years. He only had one ticket five
13 years before and all the prior tickets that they want
14 to introduce are over five years old other than one.

15 MR. GEORGE: He testified in his deposition that
16 his license was suspended for speeding, for points for
17 too many speeding limits.

18 MR. SHELDON: Not in time of this. Not in the
19 time of this accident. Nowhere near this accident.
20 There's not habitual conduct occurring, leading up to
21 this accident at all. There's one ticket within five
22 years in the records that he has.

23 THE COURT: When was his license suspended?

24 MR. SHELDON: 1994 is what Eric said.

25 THE COURT: All right. Based on the language of

1 56-5-6160, which I find is not ambiguous it says, "No
2 evidence of conviction of any person or any violations
3 of the uniform act, regulations, traffic on highway
4 shall be admissible in any Court in any civil action",
5 therefore that very clearly and unambiguous language
6 requires me to grant the motion In Limine.

7 MR. SHELDON: Thank you.

8 MR. GEORGE: Is the position of the Court even if
9 he had 25 speeding tickets and they hired him that you
10 can not bring any of that in to show negligent
11 entrustment? That's the broad nature of -- that's how
12 you are interpreting that statute, that no civil case
13 of any kind can you bring a ticket in to show
14 anything. That statute bans any ticket in any civil
15 action, period.

16 THE COURT: That's my understanding.

17 MR. GEORGE: That's your interpretation?

18 THE COURT: Yes.

19 MR. GEORGE: Yes, ma'am. Thank you. Of course we
20 take exception to the ruling.

21 THE COURT: I understand that. I appreciate why
22 you take exception to it.

23 Go ahead.

24 MR. SHELDON: I am through. That concludes those
25 motions.

1 (Defendant's Exhibit 1-31, Photographs received
2 in evidence as of this date.)

3 THE COURT: All right. Well, it is 2:15 now. We
4 will be at ease until we get a jury and then if you
5 all need anything I will be back in chambers. I will
6 be happy to address anything that you need.

7 MR. SHELDON: Yes, ma'am. Thank you.

8 THE COURT: Thank you.

9 (WHEREUPON, court was in recess.)

10 THE COURT: All right. We have our jury strike
11 sheet and I understand Mr. George that you would like
12 to put something on the record.

13 MR. GEORGE: Yes, ma'am. In regards to the FR-10
14 form that we tried to enter into evidence and the
15 driving record that we wanted to put in the record and
16 also we would like to be able to enter into the record
17 this form from the MAIT team showing that they used
18 the driving record to come to that decision. We would
19 like that marked and that be a part of the record.
20 Your Honor, this is the FR-10 form that I showed to
21 you and we like this part of the record.

22 THE COURT: Yes, sir.

23 MR. GEORGE: And we would like to have the driving
24 record of the driver, of the defendant, Mr. Powell and
25 make it a part of the record and we like to make part

1 of the record the request for admissions sent to the
2 defendant and the answers to those admissions.

3 THE COURT: Okay. All of those will be part of
4 the record.

5 (Plaintiff's Exhibit 41, 42 and 43; FR-10 from MAIT
6 form and driving record were marked for identification
7 as of this date.)

8 MR. GEORGE: Yes, ma'am. Thank you, so much Your
9 Honor.

10 THE COURT: Yes, sir. You can hand me his past
11 driving record. I would like to see that. We had
12 talked about it but I haven't seen it.

13 MR. GEORGE: Let me get it for you. Here you are,
14 Your Honor. Thank you.

15 (WHEREUPON, a document was handed to the Court.)

16 THE COURT: All right. Do you all need a moment to
17 look at the jury strike sheet?

18 MR. GEORGE: Yes, ma'am, we do.

19 THE COURT: I will give you that time.

20 MR. GEORGE: We are going to step outside.

21 THE COURT: That's fine.

22 Are we ready to bring up the jury?

23 THE COURT: All right. If we bring up the jury
24 panel.

25 (Jury entering).

1 THE COURT: Isn't there other ways to show, poor
2 driving skills other than convictions for uniform
3 traffic offenses? Couldn't there be knowledge of
4 accidents or something other than convictions?

5 MR. GEORGE: Well -- I'm am not going to beat the
6 point to death.

7 THE COURT: Sure.

8 MR. GEORGE: But this case, the dicta states that a
9 driving record is admissible for negligent
10 entrustment, negligent hiring and so forth right in
11 this case. And that's all have I to say about it Your
12 Honor. And the statute has been on the books I think
13 since about 1940.

14 THE COURT: For a long time. That's right. All
15 right, Mr. Sheldon.

16 MR. SHELDON: Yes, ma'am. Actually the Court
17 would not allow negligent retention to be -- he tried
18 to many amend to add negligent retention. It was in
19 the original pleadings, and then at the last trial they
20 withdrew. The judge at the motion to amend would not
21 allow that. So we are not dealing with negligent
22 retention. So it has to be separated from some of
23 these cases that combine all three theories.
24 Negligent hiring, he was hired in 1991. Regardless of
25 the argument, there is obviously no evidence that I

1 know of that UPS was negligent in the hiring of Eric.
2 Okay.

3 Next is negligence entrustment. Negligent
4 entrustment has actually developed since these cases
5 and there is actually law, a couple of court cases
6 that I put in my brief that negligent entrustment may
7 in South Carolina be limited to alcohol. There is
8 cases talking about that. We never adopted the
9 restatements. I think it's 606 or 608, a restatement
10 of torts that have a broad definition of negligent
11 entrustment where it can encompass almost anything.

12 Negligent entrustment is vicarious liability. It
13 transfers. In this case we've admitted that he's
14 within the course and scope of his employment. In
15 other jurisdictions where you've admitted course and
16 scope of employment it can only be used to show
17 punitive damages in some instances.

18 THE COURT: Okay, but this sounds like you are
19 arguing why I might direct a verdict on the negligent
20 hiring. What I want to focus on is whether my ruling
21 In Limine to exclude the driver's record was
22 appropriate based on the statute.

23 MR. SHELDON: And I think the Court distinguished
24 -- yes, ma'am, and if I can address that with you. I
25 think the Court distinguished yesterday the

1 distinction there's a statute that the Court has
2 applied that does not allow the convictions to come
3 in. If he had evidence -- if he had evidence that on
4 the date of this accident that there was knowledge of
5 UPS that they were negligently entrusting a vehicle on
6 the date of this accident to a driver then that may be
7 relevant absent the convictions and I think that's
8 where you were making the distinction yesterday. Your
9 ruling appeared to me to be saying, hey this statute
10 tells me it's is not ambiguous. It is unambiguous and
11 it says no to that. Now, if he has evidence that
12 there was speeding all week long, all month long, all
13 year long, two years. Whatever that is. That I
14 admitted that he sped absent the conviction part of
15 it, that might be a different ruling from the Court.
16 That's not before the Court. I don't think the case
17 does address what you ruled yesterday. I's very
18 familiar with that case. I think it's in my brief.

19 THE COURT: I think it might have been because I
20 did read this case yesterday prior to making my
21 decision In Limine.

22 The argument that Mr. George makes is a good
23 argument. As I said yesterday I understand the
24 argument and certainly some of the language in James
25 versus Kelly Trucking does indicate that perhaps a

1 driving record has been allowed in before, but I don't
2 know this precise issue has ever been ruled on by a
3 judge. Certainly it's not the precise issue in James
4 versus Kelly. In that case two questions were
5 certified to the Supreme Court and the Supreme Court
6 answered those two questions. The issue with regard
7 to Section 56-5-6160 its applicability was not
8 addressed. But I do want to also clarify my ruling.
9 It does not preclude the plaintiff from pursuing it's
10 negligent hiring and entrustment cause of action, just
11 that the convictions for speeding are not admissible
12 and that is simply based on the language of the
13 statute. Whether the employer had knowledge of
14 previous accidents or otherwise had information about
15 the defendant's poor driving skills, my ruling does
16 not preclude that type of evidence just the
17 convictions. And I am not sure why the statute is
18 written so broadly, but I do know the statute is
19 written clearly. It's unambiguous. It's easy to
20 understand and it is written broadly. I don't have to
21 agree with it I just have to apply it.

22 Go ahead Mr. George.

23 MR. GEORGE: Would you put that statute on the
24 record that you are referring to there.

25 THE COURT: I think the statute is in the record.

1 It's Section 56-5-6160.

2 MR. GEORGE: And you are using that statute to
3 rule that we can't use the driving record, is that
4 correct?

5 THE COURT: That's right. I'm using that statute
6 to say that no evidence of conviction of any person
7 for any violation of the uniform act regulation
8 traffic on highway shall be admissible in this Court
9 in any civil action, and that statute would apply to
10 the convictions of the defendant.

11 MR. GEORGE: And our position is, Your Honor, as I
12 stated before, as this case stated that we were
13 talking about, that would not -- our position is that
14 would not bar us bringing his driving record against
15 the -- for use for negligent entrustment against UPS.
16 Thank you.

17 THE COURT: Okay, thank you. And I understand we
18 do have all the jurors now. Unless there is anything
19 further we will go ahead and bring in the jury.

20 MR. SHELDON: Nothing further. We have already
21 moved everything in evidence, correct?

22 THE COURT: That's right. That is my
23 understanding. Everything has been moved into
24 evidence. We did it on the record yesterday.

25 MR. SHELDON: Have we sworn the jury yesterday, I

1 changing events. You have some good ones. You get
2 marry --maybe some people think that's good -- and
3 then you have children. That's good. And then you
4 have bad life changing things. That is what happened
5 to Mr. Young on August the 3rd, 2009.

6 Now, you seen on television about people getting
7 into accidents. Their back is hurting. Their neck is
8 hurting. How could you get in hurt in this accident
9 and so forth. That's not the case here. The car he
10 was driving was obliterated. He was driving. This is
11 what this case is all about. He was driving his car
12 on Congeree Road. This is the road back here. He was
13 coming down this way and the UPS truck was coming up
14 this way. Now, the speed limit in here is 35. This is
15 a residential area. And the question that you are
16 going to have to -- this is what you are going to
17 determine, where did the accident happen. Did it
18 happen in this lane or did it happen in that lane.
19 Only three people know where that accident happened.
20 Mr. Young, Mr. Powell, Mr. Brown. Mr. Brown is a
21 witness. He was following behind Mr. Young at the
22 time of this accident. So he saw it and in a case
23 like this the plaintiff has to prove three things.
24 Plaintiff has to prove that the defendant was
25 negligent who failed to use due care. One person

1 neurologist from Charleston say he has a headache
2 every day because of the brain injury he has.

3 Now, so Mr. Young is going to testify and Mr. Brown
4 is going to testify and they are going to testify the
5 UPS truck crossed the center line came over in his
6 lane. This gentleman I'm sure he is going to testify
7 opposite. He is going to say that Mr. Young came over
8 in his lane. And then you are going to hear testimony
9 from a guy from the MAIT team. That is someone that
10 the state sends out to look at a wreck. And he is
11 adverse to Mr. Young, but I want you to understand
12 this, that the MAT team never talked. They never even
13 interviewed the witness that was right behind him.
14 They didn't talk to him. They talked to this
15 gentleman for less than five minutes. They tried to
16 call him on the telephone after he got out of the
17 hospital. That's their investigation. One witness,
18 the only witness that saw it that was not involved in
19 it they didn't even talk to him. So, when you hear
20 the testimony of the MAIT team I want you to remember
21 that. That's a flawed investigation. If you have one
22 witness -- you just think about this -- if you have
23 one witness that witnessed this accident and they
24 don't even talk to him. Is that fair to this
25 gentleman here. (Indicating) No, it is not. But you

1 possibly because it is very important case to not only
2 the plaintiff but for the defendant, but we are not
3 here to waste your time. We want to be efficient with
4 your time.

5 Mr. George mentioned to you exactly the issue in
6 this case. He told you and I wrote it down and I want
7 to re-emphasis it to you. The decision that you will
8 make in this case before you ever determine if there
9 is injury that has to be paid by a defendant in this
10 case is where did the accident occur. That's the
11 issue. It doesn't have anything to do with how fast
12 these vehicles were going or not going. It is where
13 the accident occurred. Because you will hear that
14 both drivers in this case claim that the other vehicle
15 crossed the center line. Okay.

16 Coming down from Greenville I don't speed, but
17 coming down from Greenville I could have done ninety
18 miles per hour but I didn't cross into someone's lane.
19 Okay. So the issue in this is who crossed the center
20 line. He hit it on the nail. He will go all through
21 this trial, 35-miles per hour, schools close by.
22 Going 45. He is doing -- he is doing what speed he
23 admitted to in his lane of travel. Okay. So the
24 issue is who crossed the center lane. Who caused the
25 accident. What is the legal cause of this accident.

1 Q And what do you do at Husqvarna?

2 A Pull parts and chain saws.

3 Q And how long have you worked at Husqvarna?

4 A Three years.

5 Q And Mr. Young (sic) are you related to Mr. Young?

6 A Yes, sir.

7 Q Is that your uncle?

8 A Yes, sir.

9 Q All right. And how far did you go in school?

10 A High school diploma.

11 Q Okay, and on this day back in August of 2009 you were
12 traveling behind Mr. Young, is that correct?

13 A Yes, sir.

14 Q How did it happen that you got behind Mr. Young?

15 A It was just a coincidence. I was going to get a law
16 mower to cut my mother's grass.

17 Q And where did you get on Congaree Road.

18 A Off of Bluff Road.

19 Q And when did you first see Mr. Young? At that time
20 where was Mr. Young when you first saw him?

21 A He was turning right and I was waiting to turn left.

22 Q So he was on Bluff Road making a right turn?

23 A Yes, sir.

24 Q On Congaree, and you were going Bluff Road and you made
25 a left turn behind him is that correct?

1 A Yes, sir.

2 Q And this accident happened at Congaree and Goodwin, is
3 that correct?

4 A Yes, sir.

5 Q Now, this is a residential area, right?

6 A Yes, sir.

7 Q There's a school in there?

8 A Yes, sir.

9 Q Speed limit is 35?

10 A Yes, sir.

11 Q Now, would you tell the jury from Bluff Road to the
12 point of impact of this -- when you witnessed this accident how
13 far is that from Bluff Road to the intersection of Congaree and
14 Goodwin would you say?

15 A I would say a little less than a mile.

16 Q Okay, and how far were you traveling behind Mr. Young?

17 A About three to four car lengths.

18 Q Step down here if you will. Stand over here so the
19 jury can see this. Bluff Road is back here, right?

20 A Yes, sir.

21 Q And when did you first see the UPS truck? Where was
22 the UPS truck?

23 A He was like right here off the road.

24 Q He was how much of his truck was off the road?

25 A Like many his front tire was off the road right at the

1 end here.

2 Q Mark right here. So when you first saw the the UPS
3 truck his tire, his right side tires were off the road?

4 A Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q And what would you say about his speed?

8 A He was going out of control. He was like -- he was off
9 the road and the truck was like bouncing and then he tried to
10 weave it back on the road.

11 Q All right. So, in relationship to the speed limit of
12 35 do you think he was going over that?

13 A Yes, sir.

14 MR. SHELDON: Objection.

15 Q How fast do you think he was going?

16 THE COURT: I am sorry, was there an objection.

17 MR. SHELDON: He was leading. I object to the
18 leading part.

19 Q How fast do you think he was going?

20 THE COURT: All right, go ahead but don't lead.

21 A About 45, 50.

22 Q Okay. And what did you see the truck do?

23 A When it came back on the road it was like at an angle
24 like.

25 Q Draw this and show what angle he was coming back on the

1 road?

2 A Like that. Like this. Like at an angle. (Indicating)

3 Q He was coming back at an angle like this?

4 A Yes.

5 Q Okay. Where did -- did you ever see Mr. Young leave
6 his lane of travel?

7 A No, sir.

8 Q All right, and use this marker to put an "X" where you
9 think the collision occurred?

10 A I think it happened right here.

11 Q All right. At this intersection there is no center
12 line running at all through it, is that correct?

13 A No center line because you got the road right here so
14 you can turn.

15 Q So this space right here, this line does not run
16 through that light?

17 A No yellow lines here.

18 Q And this is where you think the point of impact?

19 A Yes, sir.

20 Q Did you actually ever see the truck cross the center
21 line?

22 A No, sir, because there is no lines there. I couldn't
23 see that.

24 Q There is no lines there so you didn't see the truck
25 cross the center line, but this is where you think it happened?

1 A Yes, sir.

2 Q What happened to Mr. Young's vehicle when he got hit?

3 A He got pushed back like right up in here and rest like
4 here. It rest like right there.

5 Q All right. So this is where Mr. Young's vehicle hit,
6 right?

7 A Yes, sir.

8 Q All right. What happened to the UPS truck?

9 A After they hit it's like he pushed him. He pushed him
10 and he then he went like over here. Went off the road, came
11 back and he was like in front of me.

12 Q So, he came off the road here. Did he come in front of
13 you?

14 A Yes, sir. His truck rested in front of me.

15 Q And what did you do then?

16 A I stopped and I was like right here. (Indicating) I
17 stopped and I got out of the truck and asked was he all right
18 and then I went to see about my uncle.

19 Q You asked the UPS truck driver was he okay?

20 A Yeah, he was like laying on the ground like about his
21 leg and I asked him if he was all right and he said he was okay
22 and then I went to see about my uncle.

23 Q What did you find when you got there?

24 A His eye was bleeding! The dash was laying on his leg.
25 Crushed on his legs. Like his arm he couldn't move nothing. I

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1 A Yeah, I told you I didn't see it because the lines -- I
2 didn't see him crossed the center line because there is no line
3 there.

4 Q And then you were asked did you actually see the impact
5 occur which would mean the UPS vehicle crossed the center line
6 and you told me no, sir. Do you remember that sworn testimony?

7 A Sir, I said -- you gave me a paper and you told me
8 where do you think the accident happened and I put the mark
9 where the accident happened. I didn't see the accident where
10 the accident -- you know, it was like a space in between. You
11 can't see who crossed the yellow line because there is no yellow
12 line there.

13 Q I will ask you one more time Mr. Brown. Did you ever
14 see the UPS vehicle cross over into the other lane?

15 A No, I didn't see the accident -- I mean, it crossed the
16 center line.

17 Q Did you ever see it cross into your uncle's lane? That
18 was the question I asked.

19 A No, I didn't see that.

20 Q And the reason you didn't because you told me you were
21 coming around the curve and couldn't see the actually accident,
22 do you remember that?

23 A Yeah.

24 Q And that's what the officer asked you that day, wasn't
25 Mr. Brown. That trooper that passed away, Wonderley.

1 Q Okay, and you were able to catch up to him and follow
2 him at about three to four car lengths until the accident
3 occurred, correct?

4 A Yes, sir.

5 Q All right. Now, it's your testimony that the first
6 time you were able to see the UPS vehicle it looked like the
7 right wheels were right on the roadway -- right off the roadway,
8 correct?

9 A Yes, sir.

10 Q And that's when you said it looked like bouncing,
11 correct?

12 A Yeah.

13 Q Did you see it hitting the breaks and skidding trying
14 to avoid your uncle coming into his lane?

15 A No, sir.

16 A Did you ever see your uncle take any evasive action?
17 Did you ever see him move his car in any direction; right, left
18 do anything?

19 A No, sir.

20 Q And you were traveling three to four car lengths behind
21 it?

22 A Yes, sir.

23 Q And this UPS vehicle according to your testimony it
24 looks to you to be out of control, is that what you are saying?

25 A Yes, sir.

1 Q Out of control because it's beginning to start an
2 accident, not reacting to one, is that what you are saying?

3 A Yeah, he was off the road like trying to bring it back
4 on the road. Like smashing it back on the road like at an
5 angle.

6 Q And you never seen any break lights on your uncle's
7 vehicle?

8 A No, sir.

9 Q Never saw him react to any danger?

10 A No, sir.

11 Q Do you agree with me that all in this area where I am
12 pointing to, where you put the "X" to where you put your uncle's
13 vehicle coming to a final rest, is that correct?

14 A Uh-huh.

15 Q Is that a yes?

16 A Yes, sir.

17 Q All in this area there was no debris from your uncle's
18 vehicle was there?

19 A No, sir.

20 Q None. No oil, correct?

21 A Because they were like connected and he like pushed him
22 back.

23 Q I will get to that. No oil, correct?

24 A No oil.

25 Q No auto parts? No lights? All the parts that break

1 happened where it got pushed in axle, did you ever see it roll
2 freely to be able to hit your uncle's car like that?

3 A He was off the road. He came back on the road. Skid
4 and pushed him back. He bounced off of him. Came back this
5 way. His tire went back off the road and went like that. This
6 is not the picture I needed to see. There is another picture
7 where his tire went back off the road and went like that.

8 Q Sir, did you see the UPS vehicle -- you said it came
9 off the road at an angle and hit your uncle and then jumped over
10 here and yawned out, that's what your testimony is?

11 A It went off the road right here on the left like where
12 that tire went off the road. He went off the road. Came back
13 on the road. Hit about right up in here and then like pushed
14 this car back and this car when he let go his truck went over
15 here, came back like this and it is like a mark in the road in
16 the middle of the road. I don't see it in this picture here.

17 Q Let me show you exhibit one. Let me ask you a question
18 first and then you can explain it.

19 See that skid mark? See these skid marks?

20 A Yes, sir.

21 Q You are denying that those are the rear tire skid
22 marks?

23 MR. GEORGE: He has answered that question three
24 times now. He's asked him three times and he answered
25 three times.

1 So this is Bluff road back here right?

2 A Yes, sir.

3 Q And you are going this way?

4 A Yes, sir.

5 THE COURT: Can you please speak up so the jury
6 can hear you.

7 Q When did you first see the UPS truck?

8 A About here.

9 Q He was over here on this side of the road?

10 A Yes, he was in my lane.

11 Q He was in this lane?

12 A Yes.

13 Q What did you notice about him?

14 A Well, I first notice he came around the curb I noticed
15 he was in my lane.

16 Q Did you notice his speed?

17 A Yeah, he was going at high speed, yeah.

18 Q Is it your opinion he was exceeding the speed limit?

19 MR. SHELDON: Objection, leading.

20 THE COURT: Don't lead him. Ask the question so
21 it is not leading. Thank you.

22 Q Do you have an opinion whether or not, yes or no, he
23 was exceeding the speed limit?

24 A Yes, I know he was.

25 Q All right. How far -- so is this true now you saw him

1 up on this side of the road?

2 A Yes, sir.

3 Q Step in front of the jury.

4 MR. GEORGE: Your Honor, we have Plaintiff's
5 Exhibit Number 10.

6 THE COURT: Okay.

7 Q This is a picture. This is Goodwin Road. This is
8 where the accident happened. UPS truck is going this way.
9 Where did you first see him?

10 A When I first saw him as he come around the curb he was
11 in my lane.

12 Q All right, put a mark. Lets put a mark on that where
13 you first saw him.

14 That's where you first saw him and this is Plaintiff's
15 Exhibit Number 10. Step back over here Mr. Young. And then
16 what did the UPS truck do? Where did he go from here when you
17 saw him here?

18 A As he came here he proceeded to come back in his lane,
19 and then he hit the side of the road.

20 Q Is that about here?

21 A Yeah. He hit the side of the road up in here and then
22 he came back over into my lane into me.

23 Q Put a "X" where you say that collision occurred?

24 A (Indicating) collision occurred here.

25 Q All right. When your vehicle got hit what happened to

1 it?

2 A Well, as he hit me he hook up with me and was pushing
3 me backwards. He was pushing me backwards and then my vehicle
4 he proceeded to push me backwards. As he pushed me backwards my
5 vehicle swing on that way and he swing off of me. See all that
6 debris up in there because he swing off of me right there and
7 went off the road.

8 Q He went off the road over hear?

9 A Yeah.

10 Q And then where he did came?

11 A He came back on the road again and went over there.
12 During this area here is where he was pushing me?

13 Q Okay. Have a seat. Just hold a minute right there.
14 Turn around and face the jury.

15 What kind of car of car were you driving?

16 A An '85 BMW.

17 Q That's a small car?

18 A Yes, sir, two door.

19 Q This is Plaintiff's Exhibit Number 29. Show this to
20 the jury please. What is that?

21 A That's my vehicle after the accident.

22 Q And what do you see on that picture there?

23 A I see where the collision happened. He hit me up right
24 there. That's where he went in to me and started pushing me and
25 went down my vehicle as he was pushing me.

1 Q This is the hood of your car, right?

2 A Yes, sir. That's where he collided right into me.

3 Q All right. And this is Plaintiff's Exhibit Number 34.

4 Is that where your car ended up after it got hit?

5 A Yes, sir. That's the final destination.

6 Q And this is your lane of travel over here, right? This

7 is the lane you were traveling in?

8 A Yeah, my car.

9 Q And that's where your car ended up?

10 A Yeah, still in my lane.

11 Q Have a seat. Mr. Young, how do you remember them
12 getting you out of your car?

13 A I don't because the last thing I remember him pushing
14 me backwards and started spinning off of me and that was the
15 last thing I remember.

16 Q Do you know how he got you out of the car?

17 A No, sir, only by pictures.

18 Q Do you think you were cut out of the car?

19 A Yeah, that's what I was told and that's what I see
20 there.

21 Q And where were you taken after this accident?

22 A To Richland Memorial.

23 Q All right. What do you remember about being in the
24 emergency room Mr. Young?

25 A Well, I was unconscious for a week and when I came -- I

1 just woke up a week later in the hospital.

2 Q All right. According to the testimony put in to
3 evidence you broke your leg, your knee cap, your wrist, your
4 forearm. How long did it take you to get over these broken
5 bones?

6 A I haven't.

7 Q What do you still have trouble with?

8 A Well, with all the injuries; my face still hurt, numb
9 and I still lose strength in my left arm. My wrist was broken
10 so I lost strength in that some time and they had to rebuild my
11 left knee. Both of my knees were messed up so my knees and
12 stuff get weak some time and then my neck was messed up and it
13 gets weak and starts hurting. That's why I have to walk around
14 with a neck brace all the time if I know I have to sit up for a
15 long period of time.

16 Q This neck brace I have right here where did you get
17 this neck brace from?

18 A From the hospital.

19 Q The hospital gave you this neck brace at the time you
20 were in the hospital after the accident?

21 A Yes, sir. I had to wear it. I couldn't take it off
22 for three or four months.

23 Q Do you still wear it?

24 A Yes, sir.

25 Q When do you wear it?

1 A When -- when I normally have to sit up for a long
2 period of time or when my neck start hurting.

3 Q And that's what you put on?

4 A Yes, sir.

5 Q And this hole you got knocked in to your face and this
6 metal plate you have there, Mr. Young how does that effect you?

7 A Well, it hurts some time and then I can't feel complete
8 feeling in that side of my face some time and it just feel itchy
9 and stuff some time.

10 Q Mr. Young, we read the deposition of Doctor Sohn and she
11 said -- was talking about your headaches. How often do you have
12 headaches?

13 A I have headaches every day. All the time.

14 Q Well, before this accident did you ever have a
15 headache?

16 A Every now and then if I don't eat on time or overwork I
17 might get a headache every now and then, but I never had a
18 headache to this extreme.

19 Q In other words you just had regular headaches before
20 the accident?

21 A Every now and then, yes.

22 Q And what -- from one to ten I think the doctor said you
23 said you had six to eight, how does that make you feel when you
24 have that headache?

25 A Well, being as I have a headache all the time the level

1 is different at certain times. Some time it will be a six and
2 some time it could be an eight or nine some time during the day.

3 Q And then some times it is less then that?

4 A Yeah.

5 Q Is your testimony that you have a headache every day?

6 A Yes, sir.

7 Q All right. And what kind of medication are you taking
8 for those headaches?

9 A Pain pills.

10 Q And where do you get those?

11 A From Rite Aid.

12 Q What doctor prescribes them for you?

13 A Doctor Stewart, my primary doctor.

14 Q And what about Doctor Sohn?

15 A Well, they are the same medicine. The only thing my
16 primary doctor do is just refill what Doctor Sohn has changed me
17 over to.

18 Q How often do you have to take the medicine?

19 A Probably once or twice a day.

20 Q You take it once or twice a day?

21 A Yes, sir.

22 Q And there was testimony in there from a doctor that
23 said you were suffering from depression?

24 A Yes, sir.

25 Q Tell us about that?

1 A I'm just sad because I can't do none of the stuff I use
2 to do. I can't work and I lost my business and can't work like
3 I use to, so I'm just sad that I done lost eight or nine percent
4 of my life. I was a very active person and even on my spare
5 time I use to go to the high school and wrestle. I use to
6 wrestle also in high school so the and then the coach wanted me
7 to come out there and practice with the team. Some times I go
8 to the gym and play basketball and lift weights and I just miss
9 my life of working and doing what like to do.

10 Q So what is your day like now?

11 A Going to the doctor and sitting at the house.

12 Q I didn't hear you?

13 A Just going to the doctor. I got -- I still got three
14 or four doctors so a lot of time I just go to the doctor and
15 just sit home take it easy because if I try to do anything real
16 physical the pain get excruciating.

17 Q When is the last time were you in Charleston to see
18 Doctor Sohn?

19 A About four -- three or four months ago.

20 Q When do you go back?

21 A About two or three months from now. I go see her every
22 six months.

23 Q This accident has been a rough road for you hasn't it
24 Mr. Young?

25 A Yes, sir.

1 A Yes, sir.

2 Q Do you know where you were when you first saw the UPS
3 vehicle in your lane where in relationship either to this
4 intersection or back here towards Bluff Road. Do you want to
5 come out. Let me help you.

6 Do you want to switch sides with me so the court reporter
7 can hear you and I will speak up.

8 A When I first saw the vehicle I was about right here.

9 Q Okay. Where was the UPS vehicle?

10 A Here.

11 Q And he was driving at a high rate of speed?

12 A Yes, sir.

13 Q How fast were you going?

14 A About 30.

15 Q Okay.

16 A About 25, 30.

17 Q And so -- all right. Then the next time you saw the
18 UPS vehicle where was it?

19 A He went back in this, proceeded back in his lane and
20 hit the side of the road and then he came over and hit me.

21 Q Okay. When he hit you, Mr. Young, did he hit you at
22 angle or did he hit you straight on bumper to bumper?

23 A No, he hit me at a angle.

24 Q At angle. Okay. So were you still in your lane of
25 travel when the impact occurred?

1 A Yes, sir.

2 Q So you had only traveled from about here at the point
3 of that intersection before it crosses Goodwin Circle and he
4 went all this distance and hit you here, correct?

5 A Yes, sir.

6 Q All right, sir, and he hit you at an angle?

7 A Yes, sir.

8 Q And do you remember anything after that point? Do you
9 really know what happened to the UPS vehicle or how you're
10 saying it then went like that?

11 A Yeah, I remember seeing him when I landed there, I
12 remember seeing him swinging on out on up. After he came off of
13 my vehicle I remember him remember seeing him swinging out.

14 Q Now Mr. Young, if he hit you at an angle how did he end
15 up changing directions and swinging out? You are saying the
16 front tires went this way (indicating)?

17 A Yes, because when he hit me as he was pushing me his
18 vehicle did that (indicating).

19 Q All right. Sir.

20 Q Let me ask you a couple more questions with this
21 diagram and I want to show you a couple more.

22 A Do you understand what I am saying. He hit me and
23 started pushing me and as my car -- see as my car went forward
24 -- as my car went forward and turned his car did that, turned
25 off of me.

1 Q All right. And when you first saw the UPS vehicle in
2 your lane of travel of what you are describing at a high rate of
3 speed what did you do? Did you slow down, turn right, left, put
4 on your breaks? Do anything?

5 A He was going so fast I didn't have an opportunity. I
6 didn't have a chance to do anything.

7 Q You didn't hit your breaks?

8 A I didn't have a chance to. He was going so fast.

9 Q You didn't try to pull your car?

10 A No, he was going too fast. I didn't have an
11 opportunity. I didn't have a chance. He was coming so fast.
12 By the time I saw him come out of that curb he just zoom, zoom
13 zoom. He was going so fast. I didn't have opportunity to
14 react.

15 Q Yes, sir. Let me get a couple other diagrams.

16 A I wish I did because I would have ran off the road. If
17 he wasn't going at high rate of speed --

18 Q Hold on just a second. I will be right back.

19 MR. SHELDON: Barry, this is just a blow up. I
20 will mark them next in order, 33, 34, and 35 are depo
21 exhibits.

22 THE COURT: Any objection?

23 MR. GEORGE: None.

24 THE COURT: They will be entered into evidence.

25 (Defendants's Exhibits 33, 34 and 35, depo

1 know if there is any parts from that UPS vehicle that led up
2 anywhere in this area?

3 A No. There is no marks in this area because he was
4 hooked on my vehicle. On top of my vehicle. So the UPS didn't
5 hit the road back there. His vehicle didn't hit the road until
6 he spin off of me.

7 Q Got you.

8 A So UPS couldn't make no marking because it was on top
9 of my car.

10 Q Okay. Actually the gouge marks begin right here,
11 correct?

12 A Yeah.

13 Q As shown in the pictures?

14 A Yes, but he spin off my vehicle came back then his
15 vehicle hit the side of the road and went off.

16 Q Okay, and there is actually no skid marks or any marks
17 from pushing your vehicle, tire marks or anything in that area,
18 is there?

19 A No, because I didn't have time. Because I didn't have
20 a chance to hit the break. He was going at a high rate of
21 speed. Going so fast he came over, hit me so fast I did not
22 have a chance to avoid the collision.

23 Q Sir, if your vehicle is turned at angle is it going to
24 leave a skid mark?

25 A My car didn't turn. He push me straight back. When

1 the collision happened he pushed me straight in line.

2 Q And there were no marks left?

3 A No.

4 Q No debris? No oil?

5 A No.

6 Q Okay.

7 A Because I didn't have a chance to hit the break. He
8 was going so fast. He came over at high rate of speed, so fast,
9 I didn't have a chance to react.

10 Q Okay.

11 A Because he was going so fast.

12 Q All right, sir, you can take your seat back there..
13 and just a couple more questions, Mr. Young.

14 It is my understanding that you were not intending to turn
15 left on Godwin, correct?

16 A That's correct, sir.

17 Q You were intending to go straight towards I think there
18 is one other road you would have to get on and then Guardner's
19 Ferry and then you would have turned on Guardner's Ferry,
20 correct?

21 A Yes, sir. I would made a right on Lewis Boulevard.

22 Q Thank you, very much. That is all the questions I have
23 for you. All right.

24 THE COURT: Any redirect?

25 MR. GEORGE: Yes, ma'am.

1 broad motion for a directed verdict based on evidence
2 and testimony that has been presented. I think there
3 is even a case that when photographic evidence is
4 inclusive that lay testimony can not necessarily
5 override it. I understand it's probably a factual
6 issue but I need to make that motion.

7 THE COURT: Go ahead if you got another specific
8 motion.

9 MR. SHELDON: Yes, the specific one, I would turn
10 to paragraph 29 of the amended complaint that Mr.
11 Young filed. Your Honor has a copy of it or I could
12 just read it into the record the allegations.

13 THE COURT: Go ahead and read it.

14 MR. SHELDON: These are specific to UPS, Your
15 Honor, and I am not moving in this motion as to any
16 vicarious liability -- respondent's vicarious
17 liability, but directly to UPS for independent
18 negligence.

19 Paragraph 29-A failing to exercise reasonable care
20 in the hiring Mr. Powell. There has been no testimony
21 in the plaintiff's case in regards to any type of
22 negligence with regards to the hiring of the driver,
23 Eric Powell. I move for a directed verdict as to
24 that.

25 THE COURT: All right.

1 MR. SHELDON: Second, is B under 29, paragraph
2 29-B, pertaining to Eric Powell the driver of the UPS
3 UPS truck with knowledge that Eric Powell based on his
4 prior action most likely drive UPS truck in a
5 negligent, reckless manner. That's referred to the
6 negligent entrustment portion. It says parenthesis
7 negligent entrustment. Same reason, Your Honor, there
8 has been no evidence, any type of negligent
9 entrustment in regards to UPS and the use of that
10 vehicle on that date.

11 Third is 29-C, on such other further particulars as
12 evidence will show, that's not even an allegation of
13 evidence. Move to strike that or directed verdict as
14 to all three of the paragraphs that specifically go
15 to, or the subparagraphs that go to UPS under
16 paragraph 29.

17 THE COURT: Okay.

18 THE COURT: Mr. George.

19 MR. GEORGE: Your Honor, we have when we started
20 this trial we had evidence that shows negligent
21 entrustment. Because of the rulings of the Court
22 would not let us offer that evidence we could not put
23 in driving records and tickets and so forth. We have
24 no other evidence. We have evidence, but you would
25 not let it go in to the Court.

1 THE COURT: Just for a point of clarification and
2 to make the record clear, through which witness would
3 you have gotten those records in? Would you have
4 called another witness to get those records in?

5 MR. GEORGE: About his driving record?

6 THE COURT: Yes, sir.

7 MR. GEORGE: They had admitted that was his
8 driving record.

9 THE COURT: Okay.

10 THE COURT: All right. I find there is no
11 evidence for which a reasonable jury could find for
12 the plaintiff on the allegations listed in paragraph
13 29-C of the amended complaint and direct a verdict as
14 to the negligent hiring and the negligent entrustment
15 cause of action.

16 We will go forward on the theory of negligence,
17 vicarious liability, as to UPS and as to the named
18 defendant, Mr. Powell. I understand there is a gross
19 negligence cause of action that remains. The more
20 general motion for a directed verdict from Mr. Sheldon
21 is denied. I do find that there is sufficient
22 evidence from which the jury could find for the
23 plaintiff on all other causes of action other than the
24 negligent hiring and the negligent entrustment.

25 MR. SHELTON: Yes, ma'am. And I had a specific

1 motion to make as Eric -- I mean Mr. Powell and any
2 negligence that would be imputed to UPS.

3 THE COURT: Go ahead.

4 MR. SHELDON: With regards to speed. I do not
5 believe this case has been one presented for speed as
6 to the proximate cause of the accident under the case
7 law and I would ask that the Court strike any
8 allegations in the complaint that where negligence
9 speed would be a legal proximate cause of the accident
10 as opposed to who crossed the center line.

11 THE COURT: Okay, Mr. George.

12 MR. GEORGE: Of course speed is relevant to the
13 case where there is two witnesses testifying this man
14 was going so fast. He was driving on the wrong side
15 of the road at one time then he went across the road
16 lost control of his vehicle and came back. Surely
17 speed is very relevant in this case.

18 THE COURT: Right. It seems a little odd for this
19 to be something that would be handled on a directed
20 verdict. I am suppose to direct a verdict as to cause
21 of action, not specific issues that is already allowed
22 in motion of limine, evidence of the speed to come in.
23 I do think we may have some argument made prior to
24 perhaps my instructions to the jury. But as for the
25 directed verdict on that issue that is denied.

1 the best you can see them.

2 Shadowing, like I said, it's more of a shadowing here.
3 There is markings but it is not as pronounced as that side for
4 whatever reason.

5 Q Who placed the dots that we are looking, the orange?

6 A It could have been O'Donnell.

7 Q Highway patrol?

8 A Highway patrol.

9 Q Okay. Got ya.

10 A It could have been o'Donnell or Sergeant Brelan that
11 that were doing that because I ran Sockie Station. So I was
12 shooting the plot. They were actually being the architects that
13 were going out and identifying the evidence points and having
14 these marked.

15 Q I know I keep flipping around in different directions,
16 but this is exhibit five, and just so we are correct point out
17 those skid marks that you were showing us earlier in this
18 exhibit.

19 Q Again, this is a double right here and again. This
20 being Bluff Road down here (indicating) and that heading over to
21 the church. I can't remember the name of the church is. But
22 those would be the doubles -- shadowing of the other doubles.
23 You are looking here now of some gouging over on this side right
24 here. Gouge marks.

25 Q Does that show the debris field that you saw out there?

1 A This would be the debris field, yes, sir. You have oil
2 and other portions and parts of the vehicle that may have come
3 off, but this would be made from a vehicle, a portion of the
4 vehicle that is actually gouging in to the roadway.

5 Q All right, sir, and with exhibit two, it's picture that
6 shows a little beyond the BMW. Can you show us what, if any,
7 significance that picture shows as far as your investigation?

8 A Here would show on my field sketch of where the BMW
9 ended up. This will show -- this is these marks that come out
10 and come across the roadway to the final resting of the UPS
11 truck. Again those furrows, if you will, that are in the soil
12 and the grass on this side showing the final rest of the UPS
13 vehicle. And some of the gouging that would be right here on
14 this portion of the field sketch that would show that.

15 Q And when you show the gouging were those caused by the
16 UPS vehicle?

17 MR. GEORGE: Objection, Your Honor.

18 MR. SHELDON: I will rephrase it.

19 THE COURT: Rephrase.

20 Q Were you able to determine which of the two vehicles
21 had then caused the skid marks or the gouging that you
22 referenced?

23 A Yes, sir. And if you have the other book I could show
24 you a little better of what made that.

25 Q Yeah, look at that book. I think it has those pictures

1 in it. This one. (Indicating) Or wait a minute, I may have
2 another one.

3 A That's it.

4 MR. SHELDON: This is, Your Honor, exhibit number,
5 seven. Defendant's Exhibit Seven.

6 A This picture was taken after the vehicle had been
7 moved. So I guess Sergeant Brelin was going through taking the
8 photographs before they did the vehicle examination, but you see
9 all this in here. The tires missing and I wish it was a little
10 brighter here, but you got damage done to this front axle area.
11 Okay. That is what you see here, (indicating) the left front,
12 left front as it comes around making these gouges into the
13 roadway. Left front. This is the left side. The left two
14 tires leading up to the collision. Collision happening. Then
15 the damage done and the vehicle trailing off to the other side
16 of the roadway.

17 Q Those marks that you point out to us whose lane of
18 travel were those in?

19 A This would be the UPS lane of travel.

20 Q All right, sir. And before you take that one down,
21 exhibit five, were you able to identify the marks that you point
22 out to the jury on that exhibit which vehicle left those marks?

23 A These are the tandem tires from the UPS vehicle and I
24 can show you.

25 Q Rear tires?

1 A Rear ties. You got another picture I can show how it
2 -- it's not enough over there to show the rear tires of the
3 vehicle.

4 Q There may be one in the book sir. Okay. All right.

5 A Here you go.

6 Q Okay. You can show the jury. This is 24.

7 A Exhibit 24?

8 Q Exhibit 24.

9 A The two tandem rear tires. Two on this side and two on
10 that side. Two on the left. Two on the right. Leading the
11 pre-collision skids.

12 Q Is 24 is there also any paint in that picture?

13 A Yes, they did final marking. Final rest marking the
14 vehicle.

15 Q And why are you all doing painting on where the final
16 rest is?

17 A So the vehicle is at final rest, and you come out and
18 mark the axle. Okay. Where the axle should be without the
19 damage. So you mark it. Then you can remove the vehicle. Tow
20 it off. All right.

21 We can have the roadway shut down and then when it comes
22 down to plodding with the prism, with just a pole that has got a
23 prism on the end I can go to the location and say, all right,
24 this is the front left tire and then shoot it from the total
25 station and get the measurements.

1 traveling.

2 Q And show us the -- I know it obvious but show us the
3 UPS truck.

4 A UPS truck and white BMW.

5 Q All right, sir. Exhibit ten, which is you got it
6 marked as impact Midland's MAIT.

7 What is this down here in the right hand corner is that the
8 case number?

9 A That would be the case number. ML standing for
10 Midlands. L standing for limited case.

11 The actual number of cases so far that year and the last two
12 would be the actually year designation.

13 Q And what are we looking at that?

14 A This says impact, so this is how the cars would come
15 together at impact. Showing pre-collision skidding and then the
16 point of impact after placing the vehicles using the evidence we
17 have, the gouge marks, the skid marks, placing the vehicles how
18 they would actually line-up at collision.

19 Q All right, sir, and does that reflect your opinion as
20 to which vehicle crossed over into the other lane?

21 A Yes, sir.

22 Q And what is your opinion in that regard?

23 A The white BMW crossed in to the oncoming lane of the
24 UPS vehicle.

25 Q Where were those on that vehicle -- I mean on that

1 Q Was it a week after the accident? Was it two weeks, 10
2 days?

3 A Usually on MAIT team they have 45 days to complete
4 investigation.

5 Q So would you think that in 45 days you all completed
6 you're investigation?

7 A Very well could be, yes, sir.

8 Q And in 45 days nobody -- Trooper Wonderley listed
9 Marshall Brown as a witness to the accident, did he not?

10 A Yes, that is correct

11 Q And he gave you his address, his phone number and in 45
12 days knowing that this guy was an eye-witness to the accident
13 you all didn't take the time to go find out what he was going to
14 say?

15 MR. SHELTON: Objection, Your Honor, that's not
16 what he testified too.

17 THE COURT: All right, if that's not -- if the
18 answer is no he can answer no. If the answer is yes
19 he can answer yes, but the question is appropriate.
20 Go ahead.

21 THE WITNESS: And what is your question, sir?

22 Q My question is, you all had the name of a witness that
23 was three car lengths behind when the accident occurred. You
24 all had his name, telephone number and address and nobody from
25 the MAIT team took the time to go out and interview an

1 eye-witness to an accident?

2 A And the answer to that I can't tell you.

3 Q Can not tell me.

4 Well, do you have anything in your records there showing
5 what statement Marshall Brown gave you all?

6 A I got a disc that should have that on there. It came
7 from --

8 Q Is Marshall Brown on that disc?

9 MR. SHELDON: Let him answer.

10 A I don't know.

11 THE COURT: Wait a minute. Wait a minute. What
12 is the objection?

13 MR. SHELDON: He was answering the question and
14 then he started another. I just ask that the witness
15 be allowed to finish.

16 THE COURT: Okay, for the purpose of both the jury
17 and for our court reporter we need not talk over each
18 other, so listen to Mr. George to finish his question
19 and Mr. George while the witness is testifying don't
20 interrupt him. Let him answer the question. So lets
21 back up. Ask that question again and let the witness
22 answer it.

23 Q Do you know who interviewed Marshall Brown?

24 A No, sir.

25 Q Who did you talk with at UPS, sir?

1 MR. SHELDON: Your Honor, can we approach?

2 THE COURT: You may.

3 (WHEREUPON, there was an off the record discussion
4 held at the bench.

5 THE COURT: All right, Trooper Coates, there are
6 some markings on that exhibit from other witnesses
7 who have made marks on that exhibit. Now answer Mr.
8 George's question and if you are not able to mark
9 where the collision happened then answer that
10 honestly. But listen to Mr. George's question,
11 understanding that there are other marks on that
12 exhibit that were drawn on by other witnesses.

13 THE WITNESS: I understand.

14 THE COURT: Go ahead, Mr George.

15 A Your question.

16 Q Would you please mark on that exhibit where you think
17 the cars collided.

18 THE WITNESS: Can I refer, Your Honor?

19 THE COURT: You may.

20 A (Indicating.)

21 Q If we may, can I see the marker, please, sir. So,
22 right here (Indicating) is where you are saying the cars
23 collided, is that correct, sir?

24 A That's my mark.

25 Q That's your mark. Right here. Let's put a zero so we

1 don't miss it.

2 A I'll even put my initials.

3 Q Put your initials right on it. So you said the cars
4 hit right there. Okay. Thank you sir.

5 Now, you can have a seat.

6 A Thank you.

7 Q This is a Defendant's Exhibit. If you can step down
8 here if you like so you can see it.

9 THE COURT: You may. If you need to see it.

10 Q It's your testimony that these are the skid marks of
11 the UPS truck?

12 A Yes, sir.

13 Q How wide are they?

14 A I don't know.

15 Q Did you ever measure?

16 A Yes.

17 Q And how wide are they?

18 A I don't know.

19 Q How wide -- these are the rear wheels on the UPS truck?

20 A Yes.

21 Q And did you actually measure these?

22 A Yes, sir.

23 Q What did you measure with?

24 A With the Sokkie Station.

25 Q Did you ever take a ruler out there or anything and

1 We do expect that this case will be given to you
2 tomorrow to start deliberating on it tomorrow, and
3 again just to give me piece of mind that you know when
4 to be back, what time are you coming tomorrow morning.

5 (Jurors respond 9:15).

6 THE COURT: All right, thank you very much. You
7 all have a wonderful evening

8 MR. GEORGE: Your Honor, just to confirm for the
9 record, this plaintiff's speedometer is in evidence
10 now, right?

11 THE COURT: Did you move it in to evidence?

12 MR. GEORGE: Yes, ma'am.

13 THE COURT: You already had it marked and you
14 showed it to the witness. It has been moved into
15 evidence over the objection of the Mr. Sheldon.

16 MR. GEORGE: Thank you so much.

17 THE COURT: All right, let's put on the record Mr.
18 Sheldon your objection to that speedometer.

19 MR. SHELDON: Yes, ma'am. I appreciate you letting
20 me preserve my objection and letting the jury go home.
21 Judge, my objection is that he has offered no
22 foundation as to why the interior portion of this
23 vehicle has any relevance to this accident at all. To
24 extent that it accurately depicts the interior of the
25 UPS vehicle, if that's the case he is relying on.

1 That may be true, but then I believe it comes down to
2 the Court determining and in the discretion of the
3 Court whether or not the fact that it's pegged at 55
4 and it has taken while the vehicle is stopped
5 assuming. I mean, there wasn't any foundation for
6 that either. Did they take it while the thing was
7 moving. But anyway, we know it was stopped, I mean
8 intuitively. But it's pegged at 55 which means the
9 speedo-cable broke. You would have to have an expert
10 come in here and give some sort of foundation,
11 opinion, to get to the inference that he was doing 55
12 miles per hour when it broke and that's just not true.
13 Yet Mr. George wants the inference to come in and I
14 just think if -- I mean my objection would go to the
15 point where if the Court found it was relevant for the
16 purpose of showing the interior of the vehicle, the
17 next test I would ask the Court to consider for the
18 record, I know we are doing it after the ruling and I
19 apologize. I mean I don't want to argue with your
20 ruling.

21 THE COURT: Preserve your record.

22 MR. SHELDON: I just think that it becomes at that
23 point hey, does the prejudicial effect of them taking
24 that inference that is in that big blowup, does that
25 outweigh the probative value and that's where I think

1 I don't know what probative value at all that picture
2 has as to who crossed the center line in this wreck.

3 THE COURT: All right. Thank you.

4 MR. GEORGE: The probative value is that it shows
5 the speed of the vehicle was such that the damage was
6 such that it damaged the inside of the vehicle.

7 MR. SHELDON: But Your Honor, there is no
8 foundation --

9 MR. GEORGE: The only person

10 THE COURT: Mr. George, Mr. Sheldon was arguing.
11 Let him finish.

12 MR. GEORGE: I thought he was through.

13 MR. SHELDON: I will wait.

14 MR. GEORGE: I said the only person is thinking
15 that picture, the juror would think he is going 55 is
16 Mr. Sheldon. I think it shows how much damage the
17 truck had.

18 MR. SHELDON: Actually the speedo-cable runs down
19 to the tire that is broken. Okay. And that's why
20 foundation would have been necessary. A speedo-cable
21 in an old truck it is not computerized. It runs down
22 --

23 MR. GEORGE: Nobody has testified to that.

24 MR. SHELDON: I am not through, sir. Let me just
25 finish Barry and I'll promise you I will sit down.

1 Exactly. Nobody has testified to that. That's
2 exactly right. That's exactly my point. No one has
3 laid a foundation that what you are going to show them
4 means the interior. It's not. The speedo-cable broke
5 at the axle where you see it fall in. That's why I
6 think it's -- it's --

7 THE COURT: It's prejudicial and should not be
8 entered in.

9 MR. SHELDON: Yeah.

10 THE COURT: And I have overruled your objection and
11 the reason I overruled it is that Mr. George was
12 limited in how he could present the picture so long as
13 it was being presented solely for the purpose of
14 showing the damage to the interior of the vehicle.
15 That was allowed. There was no testimony regarding
16 the 55 miles per hour or the that picture indicated
17 that the vehicle was going 55 miles per hour. It
18 wasn't argued in opening statement. I will not allow
19 that to be argued in closing statement. The trooper
20 for whom -- through whom that picture was admitted had
21 that picture in his report. Clearly it was probative
22 in some respect that the trooper had it in report and
23 I do not find that it was unfairly prejudicial so
24 that's is the reason why I overruled your objection.
25 But you are protected for the record.

1 working that specific route?

2 A I started that route the same year my daughter was born
3 so it's kind of easy for me to remember. I had been on it seven
4 years when the accident happened. So I have been on since 2002.

5 Q And you are still on that route?

6 A Yes.

7 Q You are familiar with that location?

8 A Yes.

9 Q And area?

10 A Yes.

11 Q Back on August 3, 2009 I think it was Monday morning I
12 believe?

13 A Yes.

14 Q Okay, and where had you last delivered to do you
15 remember, or the general location?

16 A I had a stop on a road out there, it's called South
17 Zigler Road. It dead ends into Congeree and my next stop was
18 down on Bluff Road. So dead end at Congeree, make the left and
19 head down towards Bluff Road towards my next stop.

20 Q Let me walk you through. If the accident had not
21 happened Eric your next delivery would have been where?

22 A It would have stop at Bluff Road. I don't know the
23 exact number but it was Bluff Road.

24 Q About approximate just what normal time would you
25 normally I know your route can change at times but when would

1 probably 200 to 250 feet from where the accident occurred the
2 speed limit drops from 55 to 35. That hasn't been mentioned
3 yet.

4 Q Okay. All right. So as you are approaching that area
5 there is a drop in the speed to 35?

6 A Yes.

7 Q Where the accident happened it's 35?

8 A Yes.

9 Q Okay. All right. Take a seat for a second and I will
10 bring you you right back.

11 Before we go through these pictures, Eric, tell us how the
12 accident happened? Just lead us through what you recall?

13 A All right. Like I say I was coming down Conagree to
14 make my next stop. Like I said it drops from 55 to 35. I just
15 take my foot off the gas. I don't put my foot on the breaks.
16 Jam the breaks. I just let the car slow down. So as I'm coming
17 in to the curb I see the white car come from the opposite
18 direction and as he is coming in to the curb -- and I see this
19 100 times before, I see it every time afterwards -- he was
20 drifting in my lane initially. From the time I entered the curb
21 again, I'm thinking he is going to pull it back because usually
22 people drift and they will notice it and pull it back. He's
23 still drifting. By the time I realize that he's not going to
24 pull it back that's when I slam on my breaks and try to go to
25 right and miss him and he never corrected. He just kept coming

1 over and hit my in the front corner.

2 I know people that talk about wrecks and everything slowed
3 down. It didn't slow down for me. It was very loud. I remember
4 the white car like a flash flying in. You could hear the metal.
5 Tires squealing, the glass shattered. Made contact. My car
6 kind of went off the side this way, came across and stopped.

7 Of course my first reaction is, you know, what just happened?
8 Was that guy asleep? Was he drunk? I mean, was he looking at
9 his phone? You think all these things when it happens and then,
10 then I 'm thinking may be that guy might be dead. We just hit
11 head on. So I went up and tried to get out the car to go check
12 on him and we had the steps off the driver's side, the delivery
13 side, like this. So I go to stand up to go out the driver's
14 side to go check on him and that's when I noticed my leg is
15 burning real bad, and I really can't walk. So I'm trying to go
16 down to the steps. I get to the bottom and I just have to sit
17 down on the grass because I can't walk over there and I'm
18 thinking the whole time that guy might be dead, but I can't go
19 check on him. I have no idea and um --

20 Q Take your time.

21 A I think this is the time that his nephew, Marshall
22 Brown is the one that came up next and he asked me if I was
23 okay, and I was like I'm fine. You better check on the other
24 guy because I don't know how he is going to be.

25 Then after that like I say, the emergency vehicles get there

1 photographs. The package truck that you were operating, can you
2 describe it for us?

3 A It's what was I call a P700. It's kind of the
4 mid-range truck. It's what we use for extended routes like
5 that. It was little bit of an older truck. It was still a
6 straight drive. Like I say, now-a-days we're spoiled. We got
7 automatics and things like that, but that was a straight drive
8 truck.

9 Q How many wheels on the front right, front left?

10 A One on the front one -- or two on the front.

11 Q One on each side?

12 A One on each side.

13 Q How about the rear?

14 A This were four on the rear.

15 Q Two, on each side?

16 A Two on each side.

17 Q All right, sir.

18 MR. SHELDON: Judge, if he could come down one
19 more time for me and we go through the photographs.

20 THE COURT: Yes he may.

21 Q Eric, ignore the mark on here. But is this a -- -I'm
22 looking at Defendant's Exhibit number 1.

23 Is this a photograph depicting the accident scene right
24 after it happened?

25 A Yes, sir.

1 Q All right. Can you walk us through that. What we are
2 looking at. Identify the vehicles and any marks left by your
3 truck.

4 A We were coming this way. Bluff road is down here. The
5 BMW was coming this way and like I said, the way the road it's
6 straight. It starts to curve. So as I'm coming in to the curve
7 at this side he's coming in the curve from this side. He never
8 starts turning his vehicle. He like keeps on straight and it's
9 just that slow drift into my lane and it's probably right along
10 here I realize he is still coming in my lane. He's not going to
11 pull it back. So I slam on the breaks trying to go off to the
12 side.

13 We made contact right here. Obviously his vehicle stayed in
14 the same place where we hit because I'm assuming it hit likes
15 this and turns around. The rear of my car obviously kicks out
16 and make these marks, slides over and stops right there.

17 Q All right. Got you. Where then can you identify the
18 pre-impact skid marks from your truck?

19 A Obviously these two lines here are very clear. There
20 is two lines over here also.

21 Q Those are the dual tires?

22 A Yes.

23 Q All right sir. Let me show what has been marked as
24 Defendant's Exhibit Number Two. I think we are closer. Is that
25 the same direction you are traveling?

1 A Yes, sir.

2 Q And can you go through that photograph and just even
3 though it's obvious, identify the vehicles for us?

4 A That's his vehicle. This is where we made contact.
5 You can actually see where the front axle is broke. The tire
6 was gone. Where the car after the impact here that vehicle dug
7 down into the asphalt making those marks and it actually, I
8 guess it kind of -- well, I guess it did, drug the front end to
9 where it kicked this side out because it's not turning anymore
10 is what cause it this way.

11 Q So your testimony is the rear is what's going off the
12 road?

13 A Yes.

14 Q And the front is actually being dragged partly?

15 A Yes because this front tire is gone.

16 Q All right. After that impact occurred did your UPS
17 truck ever roll freely again?

18 A No.

19 Q Just roll?

20 A No.

21 Q Why is that Eric?

22 A Like I said the front axle was broke, the tire is gone
23 and it was digging into the asphalt right here.

24 Q All right, sir. Let me show you what is marked as
25 exhibit three, and this is the Young direction, is that correct?

1 A Yes. I will be coming from this direction.

2 (Indicating)

3 Q Can you point out from that photograph skid marks from
4 your vehicle?

5 A Yes. These two and these two. (Indiciating)

6 Q All right. So five is again from the Young direction,
7 correct?

8 A Yes.

9 Q And can you point out does that show the skid marks,
10 the pre-impact skid marks even though they are harder to see?

11 A These two lines. These two lines it shows where we
12 made contact. The axle is broke. The tire is off. The a frame
13 and axle is digging into the asphalt right here.

14 Q All right, sir. How about the debris field? Where
15 does that show any debris from either vehicle?

16 A It's all mostly here but it is back here.

17 Q All right. At any point did you ever see any debris in
18 the area where Marshall --

19 MR. GEORGE: Objection, Your Honor, he is leading.

20 THE COURT: All right, don't lead.

21 MR. SHELDON: I will rephrase it.

22 Q Did you observe any other debris on the other side of
23 the vehicle towards the other side where the fire trucks were?

24 A No the road was clear.

25 Q No debris?

1 A No debris, no nothing.

2 Q All right, sir. Exhibit four it's just a closer. Just
3 for the record can you point out the skid marks again?

4 A The two and two. (Indicating)

5 Q I just want to go through these. Exhibit six, what are
6 we looking at here?

7 A It's the final resting place.

8 Q All right. With the rescue folks out there?

9 A Yes.

10 Q And were you still out there when the rescue folks and
11 I think this is the fire truck -- local fire truck? I can't
12 read.

13 A Columbia, Richland.

14 Q Okay. You were there when that was still going on or
15 had you been transported?

16 A I may have been transported. I was -- I mean, I don't
17 know. I remember them saying they would have to cut the hood of
18 the car to get him out. I remember hearing that.

19 Q All right, sir. There is actually a photo. Bare with
20 me one second plea. Here it is.

21 Let me show you Plaintiff's Exhibit 22, and looking at the
22 left photograph can you identify that for us with the UPS truck?

23 A It's actually where I was on the grass sitting down.

24 Q Is that you in the photograph?

25 A Yes.

1 slides around.

2 Q Okay. Here it is. Here's the one. This is 28. Eric,
3 does that show it clearer --

4 A Yes.

5 Q The damage? Point that out to us?

6 A It shows where all the damage is in the front corner.
7 It broke. Tires off the rim. It broke the axle and dug down in
8 the roadway.

9 Q Okay, gotcha. All right sir. You can have a seat
10 back. Thank you.

11 What's your estimate as to your speed when the impact
12 occurred?

13 A I mean, I was guessing 45 just off -- when I take my
14 foot off the gas and it slows the motor down. Like I said, I
15 never put my foot on the brake. Slow down to 35. I just let
16 the car slow down going into that curve.

17 Q And you told the officer that?

18 A Yes.

19 Q So even knowing it was 35 you told him what you thought
20 you were doing?

21 A Yes.

22 Q All right, sir. You told us earlier at no point before
23 the impact did your package truck leave, cross left of center?

24 A No.

25 Q All right, sir, and you tried to avoid the accident?

1 has for you. Thank you.

2 CROSS EXAMINATION

3 BY MR. GEORGE:

4 Q Mr. Powell, sir, you are familiar with that area aren't
5 you?

6 A Yes, sir.

7 Q And you are familiar that is a residential area?

8 A My entire route is residential area.

9 Q And there's a school zone there?

10 A That's not a school zone.

11 Q It's not a school zone?

12 A Not right there, no, sir.

13 Q Okay. So, there's not a school zone sign anywhere in
14 that area?

15 A There's not a school --

16 Q I can't hear you sir

17 A Those are not school zone signs, no, sir.

18 Q And how fast were you going at the time of the
19 accident, sir?

20 A Like I said I estimate 45. I am not particular sure.

21 Q In your deposition that we took on -- let's see what
22 date it was that you estimated you were going 45 miles an hour.
23 Do you agree with me on that sir?

24 A Yes, sir

25 Q So you were exceeding the speed limit?

1 A Yes, sir.

2 Q And you are telling the jury that speed limit changed
3 from 55 to 35 you were familiar with that going on the roadway?

4 A Yes, sir.

5 Q This is not the first time you saw it was it?

6 A No, sir.

7 Q And how much does that truck way sir?

8 A May be three four ton. I'm not sure.

9 Q Mr. Young was driving a small car wasn't he?

10 A Yes, sir.

11 Q Can you step down here a minute please?

12 THE COURT: You may.

13 Q Would you go to this diagram and show us where you
14 think the impact occurred sir?

15 A Just to clarify is this is South Goodwin Circle?

16 Q Yes, sir.

17 A Okay. So this would be Bluff Road?

18 Q Yes, sir.

19 A This do you want to write on top with and X?

20 Q Yes, put where you think it is.

21 A It's in this area.

22 Q So you were right there where the MAIT man says it
23 happened. You're saying this is the X right there?

24 A It's in this area, yes.

25 MR. SHELDON: You have to speak up.

1 A I'm sorry. It's in this area right here. (Indicating).

2 Q All right. I will show you this diagram, sir. This is
3 when we took your deposition and this is a blowup from the
4 transcript that came out of your deposition, and I asked you in
5 your deposition would you please make a X where the vehicles
6 collided and we put number one, is that right?

7 A Yes, sir.

8 Q Do you remember that. So when we took your deposition
9 you said it happened up here, is that correct?

10 A Yes, sir.

11 Q And you said the accident happened up here. The
12 collision happened up here and then I asked you where did Mr.
13 Young's vehicle come to rest and you put it right here, is that
14 correct?

15 A If those are my marks that's correct.

16 Q And this is your -- number two, that's where you came
17 to rest?

18 A Yes, sir.

19 Q So, when I took your deposition you had the accident
20 happen in here. The collision happened in here. Mr. Young's
21 vehicle came to rest here behind the corner of the impact and
22 your truck ended up over there, is that right?

23 A Yes, sir.

24 Q So, that's a little different then what you are telling
25 us today, right?

1 A Different by it's off by maybe an inch or two on your
2 diagram. Yes, sir, it's different.

3 Q Have a seat. And do you agree with me we have some
4 pictures there that your vehicle left the road right here and
5 then went here and then went over there. But your tire tracks
6 came off right here. That's where Goodwin Road is.

7 A I would have to see the pictures to see that more
8 clearly.

9 Q Lets see, where do you think your vehicle left the
10 road?

11 A Where?

12 Q Yeah, when your vehicle went off the of Goodwin -- off
13 of Congeree Road, right?

14 A Yes.

15 Q Take this and put on there where you think your truck
16 excited Congeree Road after the impact?

17 A Again, I was there.

18 Q That is almost at the beginning?

19 A It's a little bit pass.

20 Q All right. Sir, where was the initial impact on Mr.
21 Young's vehicle?

22 A Where in the intersection or on his car?

23 Q On his car.

24 MR. SHELDON: Can the jury hear you?

25 Q Step over there and face the jury please. You can take

1 the witness stand again.

2 A The question again sir.

3 Q Where was the initial impact to Mr. Young's vehicle?
4 What part? When your truck hit Mr. Young where was the point of
5 impact?

6 A When Mr. Young hit me he drove his front end into my
7 left front.

8 Q When your truck -- when the two cars collided what was
9 the part -- the initial impact on Mr. Young's car was where?

10 A Are you asking me from the pictures or asking from
11 memory?

12 Q I'm asking you -- you tell me if you will sir, when the
13 vehicles collided what part of your truck hit Mr. Young's car
14 first? Where was the initial impact of Mr. Young's car?

15 A Mr. Young's front end hit my left front.

16 Q Are we talking about the front fenders or the front
17 bumper or where?

18 A At the time of the wreck, as the wreck was going on, I
19 saw the white flash come in which meant his whole front end was
20 coming in to my left front of my truck. That's what I remember
21 from the wreck.

22 Q So where would you have hit Mr. Young? When the cars
23 collided where did Mr. Young's car get hit?

24 A His front end hit my left front fender.

25 Q So that's his left front bumper?

1 A My memory of the accident was to see him, the white
2 flash of his car, come in to my fender.

3 Q So you got hit on your fender?

4 A Yes.

5 Q And where did he get hit?

6 A His whole front end hit my fender. That's my
7 recollection of the wreck.

8 Q So his front fender you are including that in the front
9 of the car?

10 A His front fender would be more towards the front of my
11 car, yes.

12 Q Okay. So, did you see -- did you see Mr. Coates
13 testify yesterday using these staples?

14 A Yes.

15 Q Step down here a minute please.

16 THE COURT: You may, thank you.

17 Q This is Mr. Young's vehicle here. Okay. And this is
18 you coming this way.

19 Now show us the point of impact? How the cars were when
20 they hit?

21 A From my memory, this is the way I was trying to get off
22 the road and he came in from this way.

23 Q So, from the diagram what you are showing here the
24 initial impact on his vehicle was the left front fender -- I
25 mean the left front bumper, is that right?

1 A Again, I am trying -- you are trying to ask me if I
2 recall the wreck. It happened two cars coming full speed. All
3 I remember seeing a white flash coming in to this side of my
4 car.

5 Q So he got hit on his front end is what you're saying?

6 A His whole front end drove into my front bumper.

7 Q Thank you, very much sir. Excuse me one minute, Your
8 Honor.

9 This was -- you were coming around the curve, is that
10 correct?

11 A Yes.

12 Q Now, if you were exceeding the speed and you are coming
13 around a curve which way would the speed take you? Would it
14 take your vehicle to the right or would it take your vehicle to
15 the left?

16 A I'm not understanding the question.

17 Q Okay. Let's say you are going around a curve, right
18 here? (Indicating)

19 A So asking about physics and cyntrical force.

20 Q No, I'm just asking you have been driving a truck for a
21 long time sir, and if you are going in excess speed and you are
22 going around a curve does the speed take the car to the right or
23 does it take you to left?

24 A It takes it where my front tires take it.

25 Q And where is that to the right or the left, sir?

1 A It depends on the curve.

2 Q The curve is going like this one. This way sir. And
3 if you are going excess of speed would the speed take your car
4 off the road here, or would it take it that way?

5 A Again, if I'm turning my wheels correctly as I do every
6 day when I go to that intersection it's going to keep me on the
7 roadway like it is suppose too.

8 Q Sir, I'm going to ask this question one more time and I
9 would just like for you to tell me what you think. If a car is
10 going in excessive speed around a curve that is bending this way
11 would the speed take you to the right of the curve or would the
12 speed take you to left?

13 A Would you define excessive speed then? You're talking
14 about out of control speed, right?

15 Q Yes.

16 A Which you mean to define what's out of control.

17 Q Let's say out of control.

18 A What's out of control?

19 Q Well, I would say 45 to 50?

20 A I disagree.

21 Q Sir?

22 A I disagree with that.

23 MR. SHELDON: I will object. He is asking opinion
24 at this point.

25 THE COURT: Sustained.

1 MR. SHELDON: Thank you.

2 MR. GEORGE: What was the objection? I didn't
3 hear.

4 MR. SHELDON: You are now trying to get his
5 opinion on something.

6 MR. GEORGE: I was just asking him if you know.

7 THE COURT: The objection is sustained.

8 MR. GEORGE: Okay, I will ask him that question
9 again.

10 Q So we know this for sure you were exceeding the speed
11 limit in a residential area, is that correct?

12 A Yes.

13 Q And that's when the accident happened?

14 A Yes.

15 Q Okay.

16 MR. GEORGE: That's all the questions I have.

17 THE COURT: Any redirect?

18 MR. SHELDON: Follow up.

19 REDIRECT EXAMINATION

20 BY MR. SHELDON:

21 Q Let me show you what is marked as exhibit five in your
22 deposition. See if you recognize that.

23 A Yes.

24 Q And is that -- those red marks is that what you put --
25 that X on there did you put that on that exhibit?

1 other than jury charges we need to talk about?

2 Mr. George, I know that you were going to argue
3 for a comparative negligence charge, is that correct.

4 MR. GEORGE: Yes, ma'am.

5 THE COURT: I will hear you on that.

6 MR. GEORGE: Your Honor, of course they put it
7 it's in their answer that they have plead comparative
8 negligence and in this case I think it's clear that
9 this is case of comparative negligence. They can find
10 both of them negligent in this matter. The evidence
11 points to that. And the testimony from the guy from
12 MAIT when I asked him to put an X where he thought the
13 accident happened. He put it there indicating) and
14 then I asked him to explain if the impact happened
15 there how did the tire tracks get over here and he
16 said well there is a grey area and he circled back
17 down here. This area here. And if he's believable he
18 made the area sort of large, that the impact could
19 have been in the middle of the road. So there is a
20 question here of we know one of them is negligent
21 because one of them has admitted to being negligent.

22 THE COURT: All right.

23 Plaintiff Atty: And they're saying he went over
24 the center line. So, I think it's a clear case there
25 is comparative negligence and we would ask that it be

1 charged.

2 THE COURT: Mr. Sheldon.

3 MR. SHELDON: The evidence in this case as the
4 previous trial we had, it's one crossed the center
5 line. The legal proximate cause of this accident is
6 who crossed the center line.

7 THE COURT: So even though you did in your answer
8 claim comparative negligence but you are now choosing
9 not to assert that affirmative defense and it is an
10 affirmative defense.

11 MR. SHELDON: Yes, ma'am, and if I may for the
12 record that affirmative defense I put in knowing if he
13 had brought an expert who had tried to put speed as
14 proximate cause even though it happened in our lane I
15 would be asking you to charge that affirmative
16 defense. He has not presented -- the burden of proof
17 is on the plaintiff. He has not presented that
18 evidence to pursue that theory therefore I do not
19 believe it's a correct charge. I truly don't. I mean
20 truly -- and so I'm asking that it not be charged.
21 This is the proximate cause of this accident our
22 position is who cross the center line. Which vehicle
23 crossed left of center.

24 MR. GEORGE: Your Honor, the reason it wasn't
25 charged in the first case is because nobody asked for

1 it to be charged.

2 THE COURT: Can the plaintiff ask for an
3 affirmative defense to be charged?

4 MR. GEORGE: Yes, ma'am. He can ask for anything
5 the evidence --.

6 THE COURT: Tell me why. Tell me why he can. Do
7 you have any case law that says you can.

8 MR. GEORGE: No. I think it's obvious if there is
9 evidence from the witness stand that both parties are
10 negligent that is what come comparative negligence is
11 all about.

12 What he is trying to go back too is the
13 contributory -- the old contributory negligence case.
14 That's why the first case was hung up.

15 THE COURT: But the problem I see with that is as
16 an affirmative defense then we would be saying that
17 the defendant bears some burden of proof and if he's
18 telling me know he doesn't even choose to go forward
19 on that affirmative defense then why would I charge it
20 to the jury, if he chooses not to assert and
21 affirmative defense.

22 MR. GEORGE: The plaintiff has a right to ask for
23 a charge of comparative negligence.

24 THE COURT: The plaintiff has the right to assert
25 affirmative defense on behalf of the defendant?

1 MR. GEORGE: The plaintiff has a right to ask the
2 judge if the evidence -- if the evidence is such that
3 it would indicate that both parties could be at fault
4 we have a right to have a charge of comparative
5 negligence.

6 THE COURT: And what was the evidence that both
7 parties could be at fault?

8 MR. GEORGE: Well, this one was speeding.

9 THE COURT: Okay.

10 MR. GEORGE: There's no question.

11 THE COURT: But the whole issue in the case is
12 which one crossed the center line or are you
13 suggesting that perhaps they both crossed the center
14 line at once?

15 MR. GEORGE: Based on what the man from the
16 MAIT team said when he drew this zone in here when he
17 tried to explain why the vehicle went off the road
18 about the same time it hit the vehicle, then he came
19 down and said there is a grey area in here where there
20 is no -- there is no debris and it could have happened
21 in there and he covered it almost that whole
22 intersection. So if that is true, there is evidence
23 that the accident could have happened in the middle of
24 the road and if that is true then both of them are
25 negligent and that would lead to a charge of

1 comparative negligence.

2 THE COURT: Okay.

3 MR. SHELDON: I think that means that you would
4 win and I wouldn't get any reduction because I am not
5 pursuing an affirmative defense. That's what that
6 means. You have the burden to prove your side and I
7 would have the burden to prove affirmative defense and
8 I choose not to pursue one.

9 MR. GEORGE: Well, you plead it. It's a little
10 late to withdraw it now.

11 THE COURT: All right, let's not argue back and
12 forth. I am ready to rule.

13 I am not going to charge comparative negligence. I
14 find if the defendant chooses not to assert an
15 affirmative defense and here that is exactly what is
16 happening it's not appropriate for me to charge that
17 affirmative defense to the jury. Further, I find that
18 based on the facts of this case it would be an
19 inappropriate charge in any event.

20 MR. GEORGE: I didn't hear the last part of that
21 Judge.

22 THE COURT: That it would be inappropriate in any
23 event based on the facts of this case to charge
24 affirmative defense.

25 MR. GEORGE: I understand your ruling, Your Honor,

1 verdict must be unanimous. Unanimity is mandated.
2 Every single juror must agree on the jury verdict.
3 There cannot be any split or divided vote in any form
4 or fashion, such as eleven to one, ten to two, nine to
5 three. Every single juror must agree on the jury
6 verdict. When the foreperson writes the verdict and
7 signs the name as the foreperson, that assures the
8 Court that the jury verdict is unanimous.

9 All right. You may go back to the jury room at
10 this time. You may not begin deliberating until you
11 receive the evidence back there along with the jury
12 charge and the verdict form. The bailiff will bring
13 those to you and let you know when you may begin your
14 deliberations. Lunch is back there with you and I
15 would ask that the two alternates remain seated for
16 right now.

17 (WHEREUPON, the jury leaves the courtroom.)

18 THE COURT: All right. Anything further before we
19 send the evidence back to the jury room.

20 MR. GEORGE: Yes, ma'am. We passed up a charge of
21 speeding and you did not read it.

22 THE COURT: All right. I provided you with the
23 charge prior to giving it.

24 Plaintiff Atty: But I just overlooked that. We
25 did hand up a charge for speeding and we asked that

1 you charge the statute because there is evidence that
2 he has violated -- he's speeding.

3 THE COURT: All right, Mr. Sheldon.

4 MR. SHELDON: I think the Court knows my position
5 in regards to speeding being the legal proximate cause
6 of the accident. We allowed speed in for the purpose
7 of giving a reason for why the UPS -- why it's alleged
8 UPS crossed center line.

9 THE COURT: I believe that charging the jury on
10 speeding was not necessary in light of the proximate
11 cause issue with regard to the -- who crossed the
12 center lane. I allowed evidence of speed to come in,
13 however,, I think charging the speeding would have
14 confused the jurors and so your objection is noted for
15 the record.

16 MR. GEORGE: So, as I understand it, even though
17 he admits to speeding that we are not going to give a
18 charge of the statute a man shouldn't speed when
19 driving a car, that's your ruling, Your Honor?

20 THE COURT:: That's my ruling.

21 MR. GEORGE: Yes, ma'am. Thank you.

22 MR. SHELDON: Judge, I don't have any objections.

23 THE COURT: Great. Why don't you all look at the
24 evidence and make sure all the evidence is in place
25 and I will meet the two alternates out in the hallway.

1 (WHEREUPON, the jury enters the courtroom.)

2 THE COURT: All right, Mr. Foreperson I understand
3 we have a verdict.

4 THE FOREPERSON: Yes, ma'am.

5 THE COURT: Is it a unanimous verdict?

6 THE FOREPERSON: Yes.

7 THE COURT: Okay. If you will hand it to the
8 bailiff please.

9 THE FOREPERSON: Do I need to stand up?

10 THE COURT: You can sit down. Thank you.

11 All right, and I will have the clerk publish the
12 verdict please.

13 THE CLERK: In the State of South Carolina in the
14 Court of Common Pleas, County of Richland, case number
15 2010-CP-40-07404, Reginald Todd Young versus United
16 Parcel Incorporated and Eric D. Powell, we the jury
17 unanimously find for the defendants.

18 THE COURT: All right. Any motions while the jury
19 is still here.

20 MR. GEORGE: None here, Your Honor.

21 THE COURT: All right.

22 THE COURT: All right. Ladies and gentlemen thank
23 you very much for your service this week. I
24 appreciate it. You were a wonderful jury. You paid
25 attention throughout. I was very impressed by you. I

1 will be available to speak with if you have any
2 questions. You are free to go. You are free to talk
3 about the case now. The attorneys may call you about
4 the case. You're welcome to talk about it or not talk
5 about it. That's for you to decide. If anyone
6 harasses you. You don't want to speak to them you let
7 me know, you let the court know and we will take care
8 of that.

9 The instruction that you no longer can talk about
10 the case is now lifted and you may speak about the
11 case. You are free to go to jury room. You can
12 collect your things to go and if you give me just a
13 few minutes I will be in there if anybody has any
14 questions.

15 (WHEREUPON, the jurors leave the courtroom.)

16 THE COURT: All right, any post verdict motions?

17 MR. GEORGE: Yes, ma'am, we have some. We will
18 move to set aside the verdict in that the verdict is
19 against the weight of the evidence in this case. I
20 assume in a criminal case that's the most you can
21 make. We make a judgement for JNOV and we make a
22 motion for a new trial, and the motion for a new trial
23 is based on we feel the Court was in error in not
24 allowing us to use the FR-10 form the investigating --
25 --the MAIT team used the FR-10 form and you would not

1 let us use that. We think the Court was in error, in
2 preventing us from using the driving record to show
3 negligent entrustment and this was in fact that the
4 document entered into evidence shows that the MAIT
5 team used the driving record of the plaintiff and the
6 defendant driver in formulating that opinion as to who
7 was at fault in the accident. That's in evidence. We
8 think the Court was in error in failing to charge
9 comparative negligence as there was testimony, there
10 was evidence that could lead to the opinion that both
11 parties were at fault. What the Court did was put us
12 back in to the old contributory negligence case.

13 The ruling from the Court is that the plaintiff
14 would never -- can never ask that they have a
15 comparative negligence. If that is case defense
16 lawyers should never plead it because the plaintiff
17 can't use it so it will never come in. The law is no
18 good. So we object to that.

19 We object to the Court failing to -- after the
20 driver, Mr. Powell, testified that he was speeding, we
21 had testimony that he was because of the speed he ran
22 off of the road on to the right and yanked his truck
23 back across the center line striking the plaintiff.
24 That the speeding was a very important element of this
25 case and we asked the Court to charge speeding. She

1 failed to do so. The Court failed to do so. We think
2 the Court was in error in not charging speeding. We
3 asked for punitive damage. Violation of a statute
4 forms the basis for punitive damage. There is no
5 question in this case he was speeding, so that forms a
6 basis for punitive damage and you refused to charge it
7 and with all respect to the Court that's why we think
8 the Court was in error.

9 THE COURT: Okay, thank you. Any response you
10 would like to make Mr. Sheldon?

11 MR. SHELDON: Yes, I would. I disagree with all
12 of that. In particular, regarding the charge and the
13 speed, we all had an opportunity to review the charge
14 prior to. He only asked for that after it was --
15 after the charge was given, that speed be charge. But
16 speed shouldn't have been charged regardless because
17 even if his argument is correct on punitive there
18 could have been another factor involved in the
19 negligence. He still would have to cross the center
20 line. They would have still gotten a verdict in the
21 case. It was still a case of who crossed the center
22 line, so regardless it has no bearing on who had
23 liability for the accident. So that would not go
24 anywhere as far as I am concerned regardless of
25 whether or not he is trying to now say that speed

1 MR. SHELDON: I'm trying to say that the record --

2 THE COURT: You understand that it had been
3 proffered?

4 MR. SHELDON: Yes, sir -- yes, ma'am.

5 THE COURT: That evidence had been proffered?

6 MR. SHELDON: Right.

7 THE COURT: You're just clarifying my ruling which
8 was on the record and I think it's properly reflected
9 on the record.

10 Based on the testimony and evidence at the trial
11 the motions for JNOV, a new trial, are respectfully
12 denied.

13 You all tried a very good case. I appreciate you
14 all effort in the case. I know this has been a long
15 journey for everybody involved.

16 MR. GEORGE: Can we have our exhibits back now?

17 THE COURT: I don't think you get your exhibits
18 back. They have to go to the Court. I think you can
19 get copies of your exhibits.

20 MR. GEORGE: All right, I might be using them
21 again.

22 THE COURT: All right. Thank you all very much.

23 MR. SHELDON: Thank you, judge, I appreciate your
24 patience.
25

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Reginald Todd Young,

Plaintiff(s),

vs.

Eric D. Powell and United Parcel Service,
Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-7404

**DEFENDANTS' ANSWERS TO
PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSIONS**

TO: BARRY B. GEORGE AND PAIGE B. GEORGE, ESQUIRE, ATTORNEYS FOR THE
PLAINTIFF:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Defendants
hereby answer the Plaintiff's requests served on the Defendants as follows.

1. Do you admit that the attached driving record is a true and correct copy of
Defendant Powell's 10 Year Driver Record as of August 21, 2009?

ANSWER: Admitted.

2. Do you admit that Defendant Powell was ticketed in the state of Maryland on
August 04, 2008 for Speeding – 10-mph or less (ticket number FG23679)?

ANSWER: Admitted.

3. Do you admit that Defendant Powell was ticketed in the state of South Carolina
by the South Carolina Highway Patrol on April 24, 2014 for Speeding – 10-mph or less (ticket
number B437738)?

ANSWER: Admitted.

4. Do you admit that Defendant Powell was ticketed in the state of South Carolina by the South Carolina Highway Patrol on December 02, 2003 for Speeding - 10-mph or less (ticket number B1129922)?

ANSWER: Admitted.

5. Do you admit that Defendant Powell was ticketed in the state of South Carolina by the Richland County Sheriff's Department on January 4, 2002 for Speeding -- 10-mph or less (ticket number 58606BZ)?

ANSWER: Admitted.

6. Do you admit that Defendant Powell did not appear in Central Court in Richland County for ticket number 58606BZ and that he was tried in his absence and a guilty verdict was rendered?

ANSWER: He admits he did not appear in Central Court for ticket number 58606BZ. He is without knowledge as to the remaining portions of this request and believes he paid the traffic ticket.

7. Do you admit that defendant Powell was ticketed in the state of Virginia on January 27, 2002, while driving 46 miles per hour with a 30 mph speed limit for Speeding -- 10 mph but less than 25 mph (Virginia ticket number 2002014)?

ANSWER: Admitted.

8. Do you admit that Defendant Powell was ticketed in the state of South Carolina on September 15, 2011 for "Careless or Negligent Driving" (ticket number 3378BY)?

ANSWER: Admitted.

9. Do you admit that Defendant Powell while driving a commercial motor vehicle on August 13, 2001 was travelling 84 miles per hour (mph) when the speed limit was 60 miles per hour?

ANSWER: Denied.

10. Do you admit that Defendant Powell was ticketed in the state of South Carolina by the South Carolina Highway Patrol on August 13, 2001 for Speeding more than 10 miles per hour but less than 25 mph (ticket number Z652954)?

ANSWER: Admitted.

11. Do you admit that Defendant Powell was ticketed in the state of South Carolina on April 16, 2001 for Speeding – 10-mph or less (ticket number Y638661)?

ANSWER: Admitted.

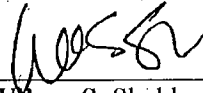
12. Do you admit that Defendant Powell was ticketed for driving 53 miles per hour in a 35 miles per hour speed limit zone in October 1993 (ticket number S464333)?

ANSWER: He admits receiving a speeding ticket in the time frame of October, 1993, but does not recall the speed listed on the ticket.

13. Do you admit that Defendant Powell has been ticketed for speeding at least eight (8) times?

ANSWER: Admitted.

WILLSON, JONES, CARTER & BAXLEY, P.A.



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Greenville, South Carolina
July 20, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

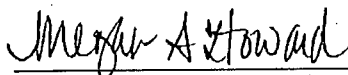
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2010-CP-40-07404

Reginald Todd Young,)
Plaintiff,)
vs.)
Eric D. Powell and United Parcel)
Service, Inc.,)
Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of July 2015 served a copy of the foregoing Defendants' Answers to Plaintiff's First Set of Requests for Admissions on counsel for the Plaintiff via first-class mail, postage prepaid and addressed as follows:

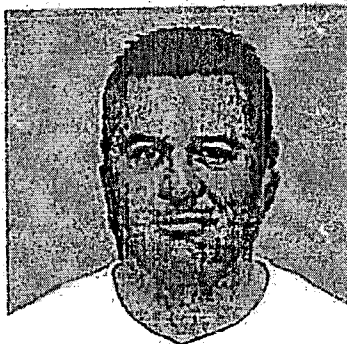
Barry B. George, Esquire
Paige B. George, Esquire
1419 Bull Street
Columbia, SC 29201



Megan S. Howard
Legal Secretary to Wilson S. Sheldon



10 YEAR DRIVER RECORD



Customer No: _____ Driver License No: _____
 Name: POWELL, ERIC DOYLE
 Address: _____ State: _____ Zip: _____
 City: _____
 County: LEXINGTON
 SSN: _____ DOB: _____ Height: _____ Weight: _____ Sex: M Race: WHITE
 Driver Training: N
 Status - DL: NO SUSPENSION CDL: NO DISQUALIFICATION

License Information

Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
Current							
DL	D	Modify	08/14/2009	07/21/2016	07/18/1996	Y	N
BP	M	Renewal	12/06/1993	06/06/1994	12/06/1993	Y	N
Prior							
DL	D	Renewal	05/09/2006	07/21/2016	07/18/1996	Y	N
DL	D	Reissue	05/09/2006	07/21/2016	07/18/1996	Y	N
DL	D	Renewal	07/19/2001	07/21/2006	07/18/1996	Y	N
DL	D	Duplicate	03/18/2003	07/21/2006	07/18/1996	Y	N

Current
 Restrictions: A Corrective Lens

Address Change -

Date Changed: 07/19/2001

Address: _____ State: _____ Zip: _____
 City: _____

Address Change -

Date Changed: 03/17/2003

Address: _____ State: _____ Zip: _____
 City: _____

Address Change -

Date Changed: 08/08/2009

Address: _____ State: _____ Zip: _____
 City: _____

10 YEAR DRIVER RECORD

Customer No:
Name: POWELL, ERIC DOYLE

Driver License No:

Point Summary

Total Current Points: 1
Driver Credit: -0
Adjusted Current Points: 1

VIOL: 421 - Speeding 10-mph or less
Violation: 08/04/2008 Conviction: 08/14/2008
ACD: S51 Conviction Loc Ref:
Conviction State: MD

Recd: 09/15/2008 Ticket#: FG23679
Post: 09/22/2008
Conviction Reference:
Court Type: DIS
Violation Points: 2 Current Points: 1

VIOL: 421 - Speeding 10-mph or less
Violation: 04/24/2004 Conviction: 06/15/2004
ACD: S51 Conviction Loc Ref:
Conviction State: SC

Recd: 07/13/2004 Ticket#: B437738
Post: 07/13/2004
Conviction Reference:
Court Type: MAG
Violation Points: 2 Current Points: 0

VIOL: 421 - Speeding 10-mph or less
Violation: 12/02/2003 Conviction: 01/22/2004
Operating Commercial Motor Vehicle: Y
ACD: S51 Conviction Loc Ref:
Conviction State: SC

Recd: 03/12/2004 Ticket#: B112992
Post: 03/12/2004
Transporting Hazardous Materials: N
Conviction Reference:
Court Type: MAG
Violation Points: 2 Current Points: 0

VIOL: 421 - Speeding 10-mph or less
Violation: 01/04/2002 Conviction: 01/25/2002
ACD: S51 Conviction Loc Ref:
Conviction State: SC

Recd: 04/17/2002 Ticket#: 58606BZ
Post: 11/08/2002
Conviction Reference:
Court Type: USM
Violation Points: 2 Current Points: 0

VIOL: 441 - Speeding more than 10 mph but LT 25 mph
Violation: 01/27/2002 Conviction: 03/15/2002
ACD: S92 Conviction Loc Ref: SCDPS
Conviction State: VA

Actual Speed: 46 Ticket#: 2002014
Recd: 05/01/2002 Posted Speed: 35
Post: 05/01/2002
Conviction Reference:
Court Type: MAG
Violation Points: 4 Current Points: 0

VIOL: 475 - Careless or negligent driving
Violation: 09/15/2001 Conviction: 10/08/2001
ACD: M81 Conviction Loc Ref: RL=05193 FR=02205
Conviction State: SC

Recd: 02/26/2002 Ticket#: 33788BY
Post: 02/26/2002
Conviction Reference:
Court Type: MUN

VIOL: 441 - Speeding more than 10 mph but LT 25 mph
Violation: 08/13/2001 Conviction: 09/20/2001
Operating Commercial Motor Vehicle: Y
ACD: S92 Conviction Loc Ref: RL=05164 FR=08861
Conviction State: SC

Actual Speed: 84 Ticket#: Z652954
Recd: 02/12/2002 Posted Speed: 60
Post: 02/12/2002
Transporting Hazardous Materials: N
Conviction Reference:
Court Type: MAG
Violation Points: 4 Current Points: 0

ACC: REPORTABLE
Accident: 10/24/2001
Accident Case Number: 119783
Accident Jurisdiction: SC Acc Loc Ref: SCDPS/ACC#2119783

Posted: 01/16/2002
FR-10 Audit Number:

10 YEAR DRIVER RECORD

Customer No:

Driver License No:

Name: POWELL, ERIC DOYLE

VIOL: 421 - Speeding 10-mph or less

Ticket#: Y638661

Violation: 04/16/2001 Conviction: 05/10/2001

Recd: 08/22/2001

Post: 08/22/2001

ACD: S51 Conviction Loc Ref: RL=04974 FR=06694

Conviction Reference:

Conviction State: SC

Court Type: MAG

Violation Points: 2 Current Points: 0

ACC: REPORTABLE

Accident: 09/13/1999

Posted: 09/27/1999

Accident Case Number: 104704

FR-10 Audit Number:

Accident Jurisdiction: SC Acc Loc Ref: SCDPS/ACC#0104704

End of Report

10-CP-40-7404

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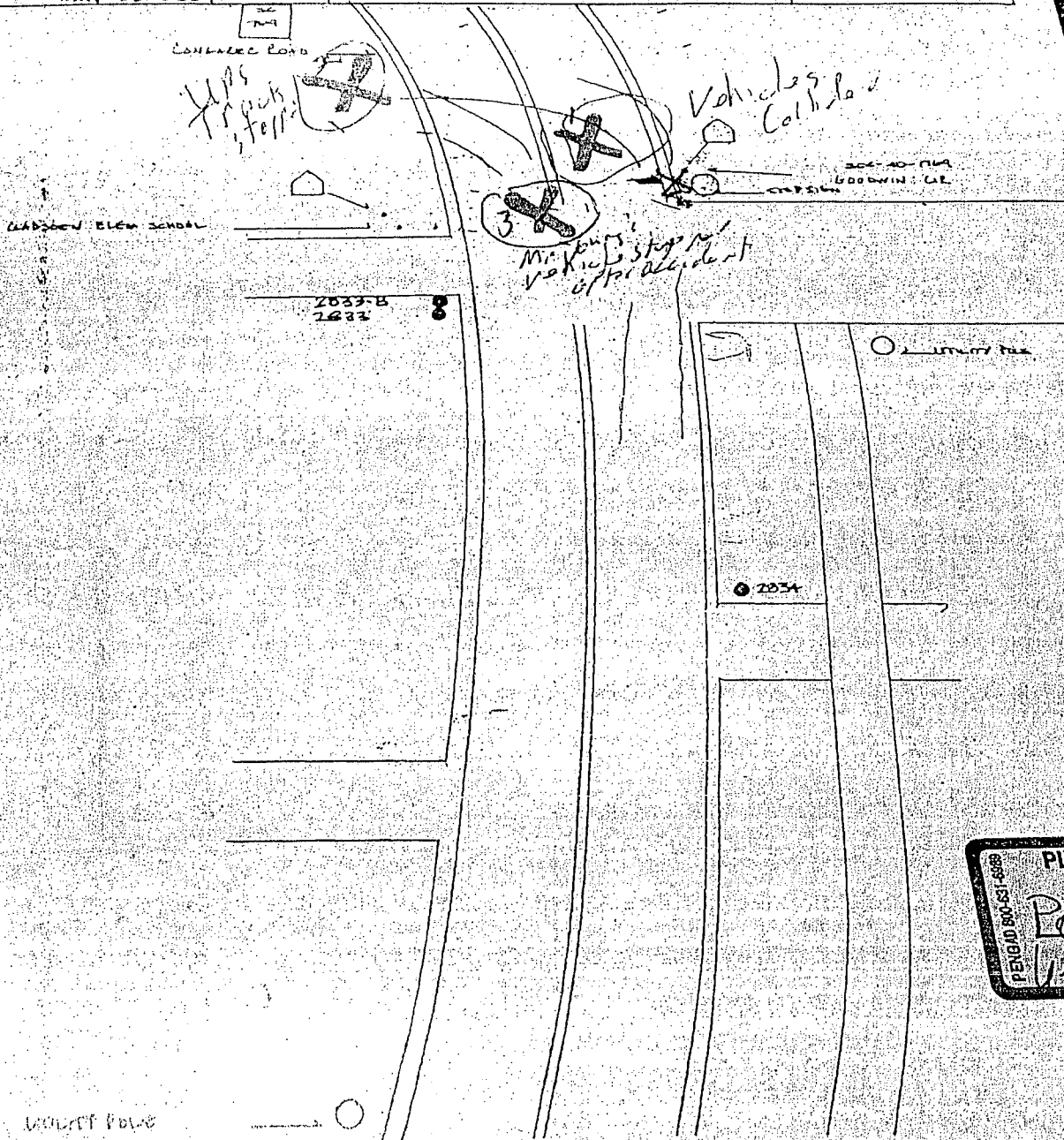


SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

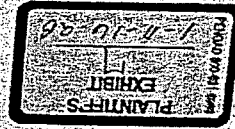


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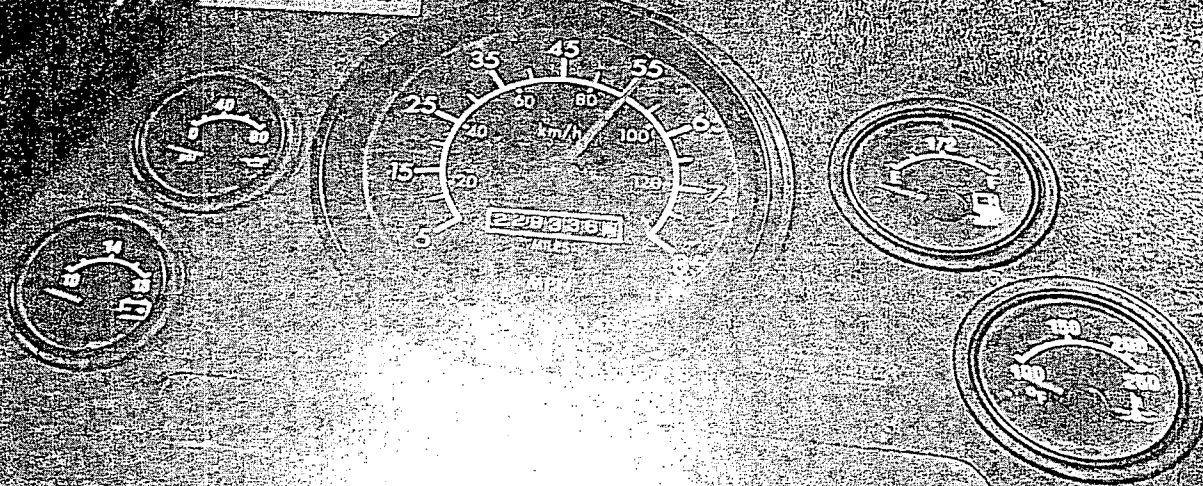
CASE #	ML-060-09	Drawn By	CATS	North	↑
Date Drawn	AUG-03-2009	Not To Scale			



10CP40-7404



FUEL ONLY





REQUEST FOR FILE DATE
FILE RETURN DATE
CHECK IN CLERK'S SIGNATURE

Indigent Fee Received
Indigent Fee No.

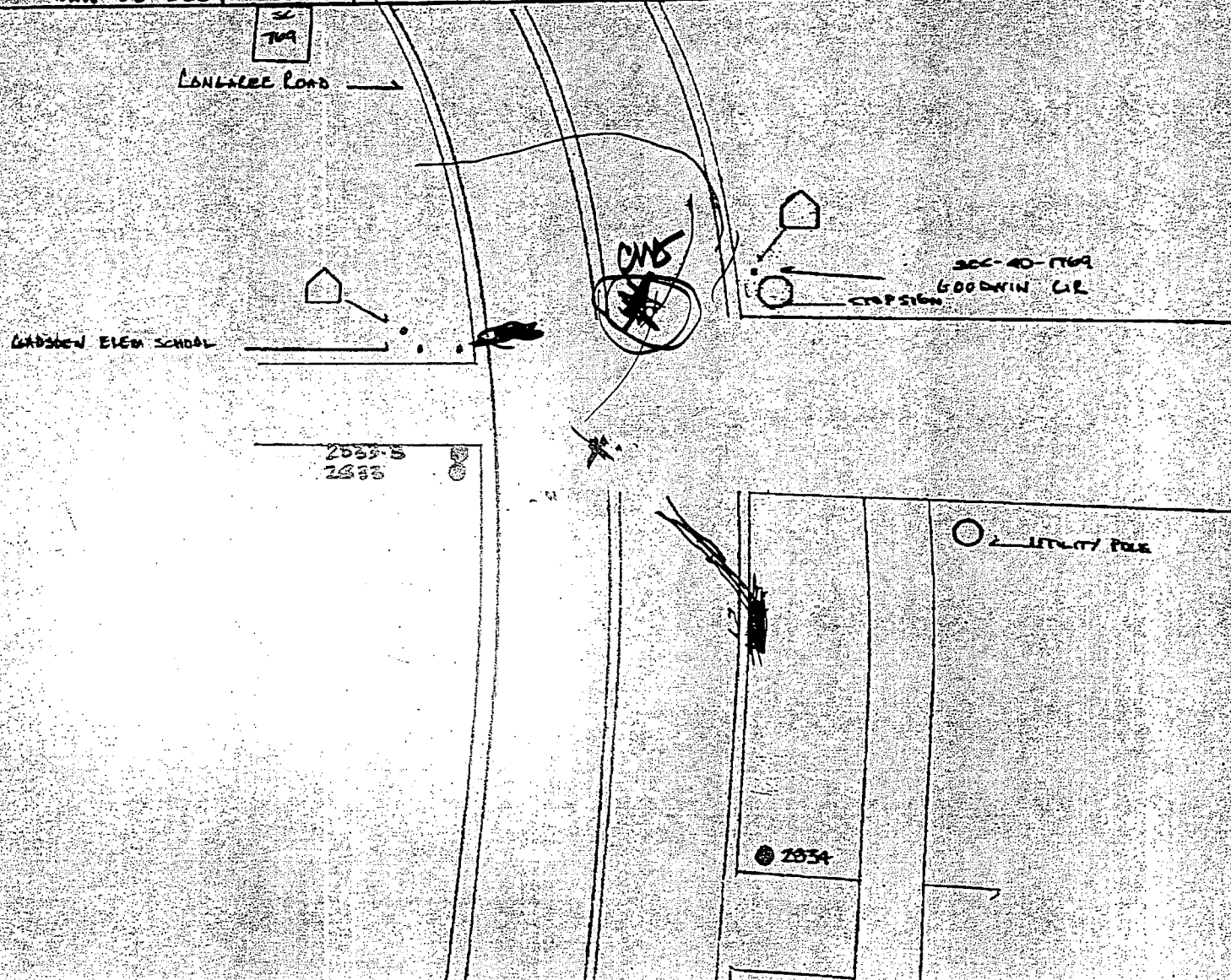
SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

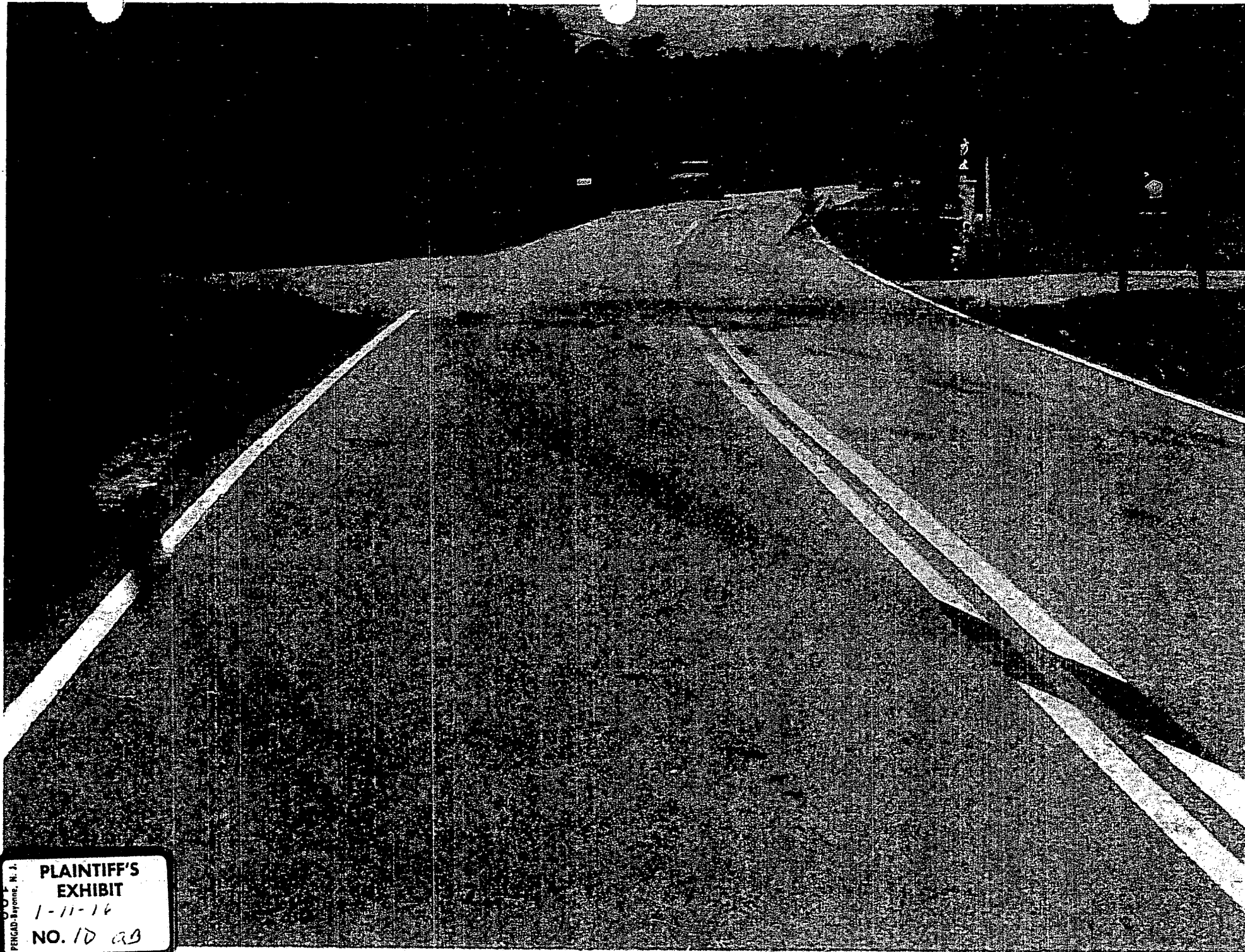


060-09

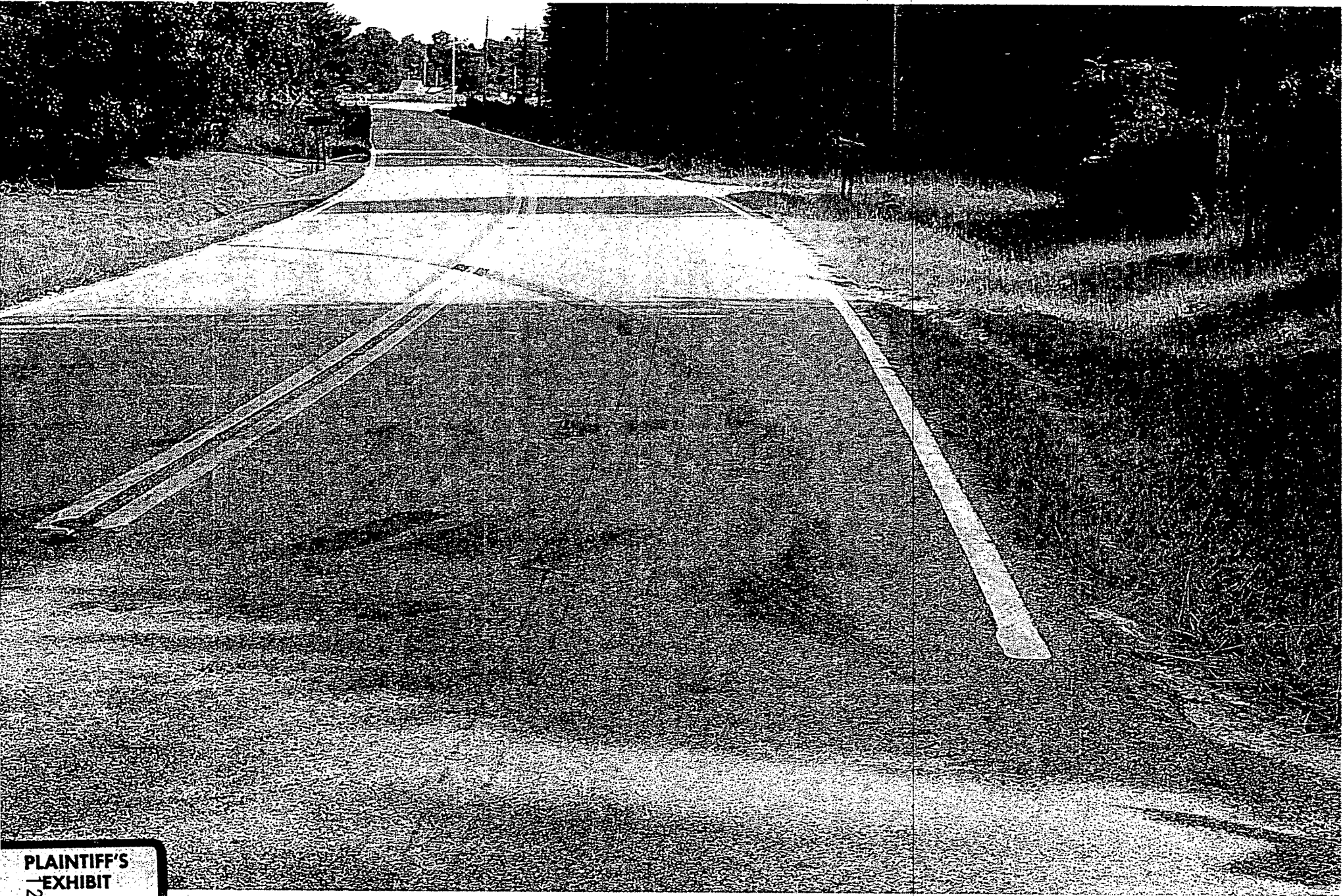
MAIT FIELD SKETCH

Case # ML-060-09	Drawn By Coats	North
Date Drawn MAY-03-2009	Not To Scale	

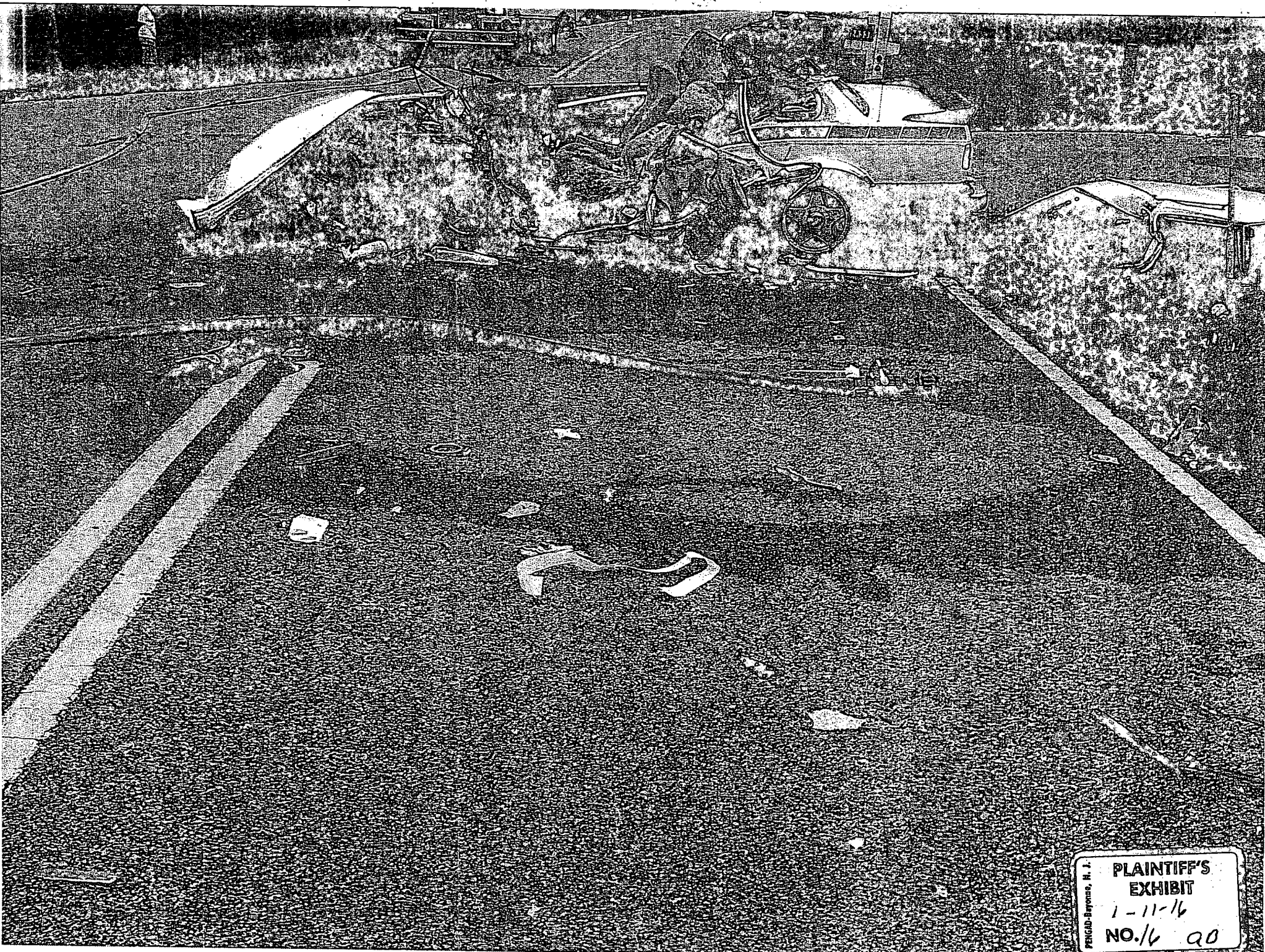




PENGAD-Sayones, N. J.
PLAINTIFF'S
EXHIBIT
1-11-16
NO. 10 AB

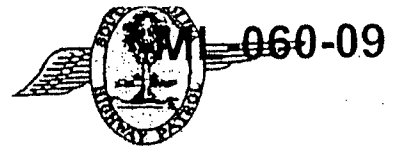


PLAINTIFF'S
EXHIBIT
12911-14
NO. 14 00



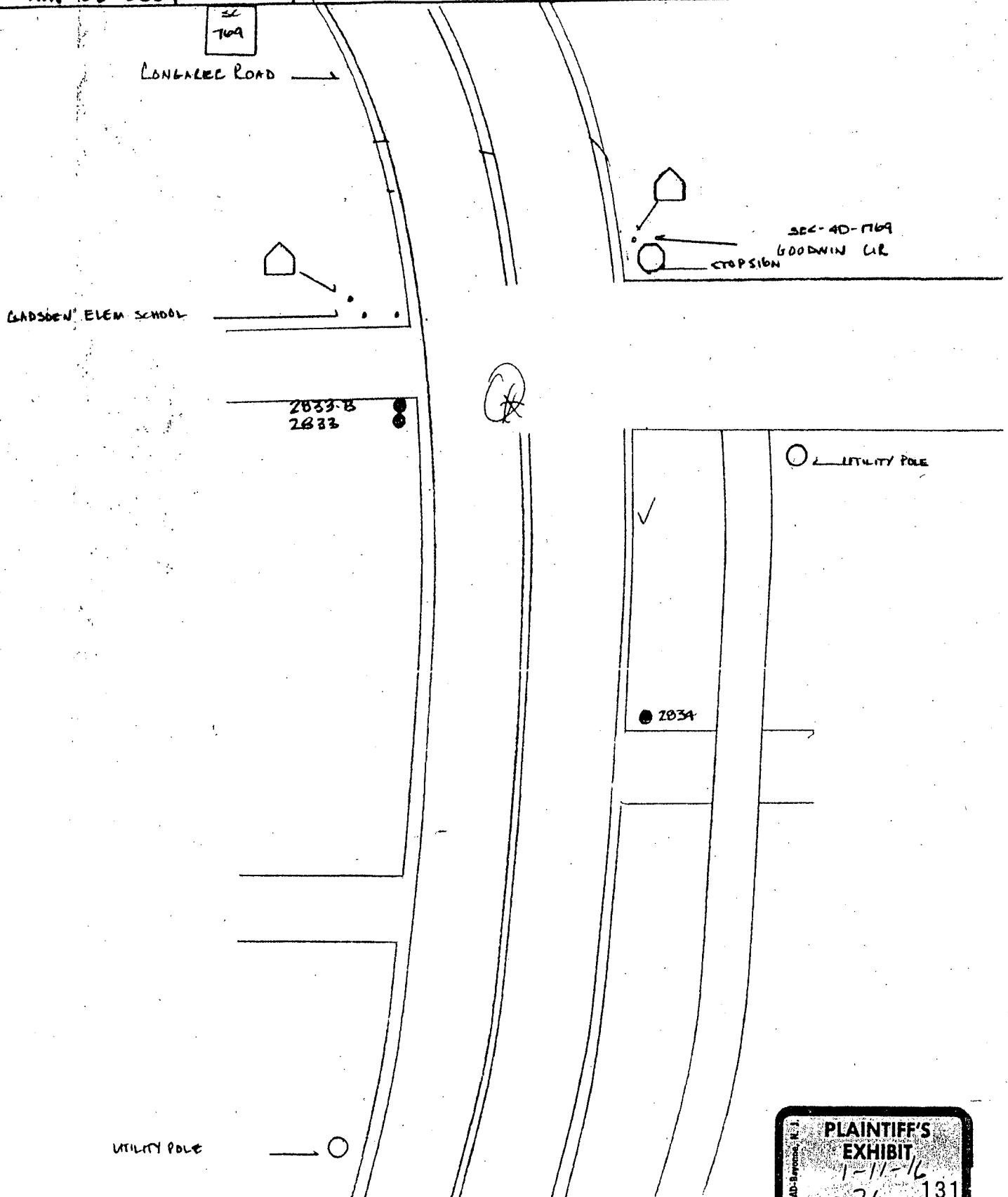
PENGAD-Bayona, N. J.
**PLAINTIFF'S
EXHIBIT**
1-11-16
NO. 16 90

SOUTH CAROLINA HIGHWAY PATROL
MULTI-DISCIPLINARY ACCIDENT INVESTIGATION TEAM

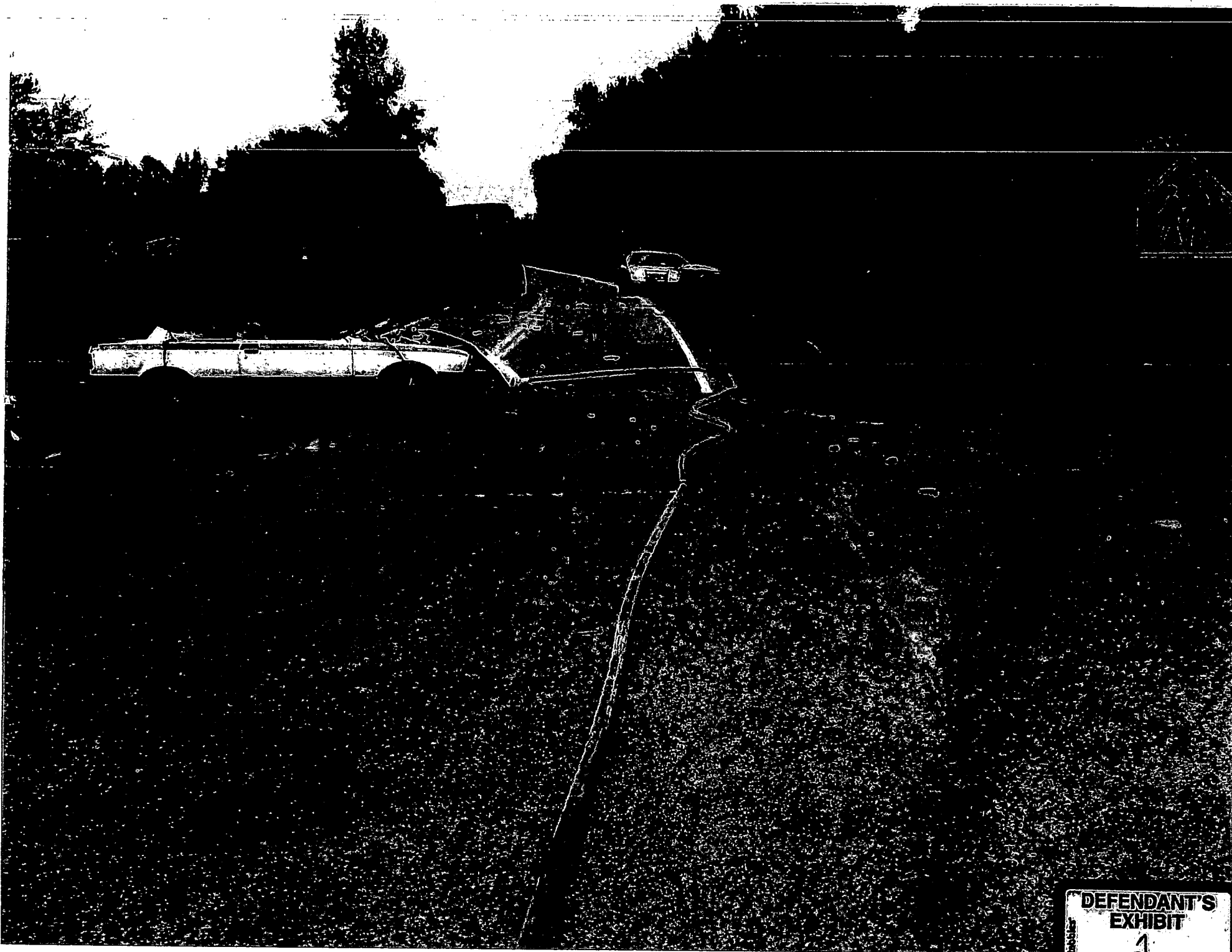


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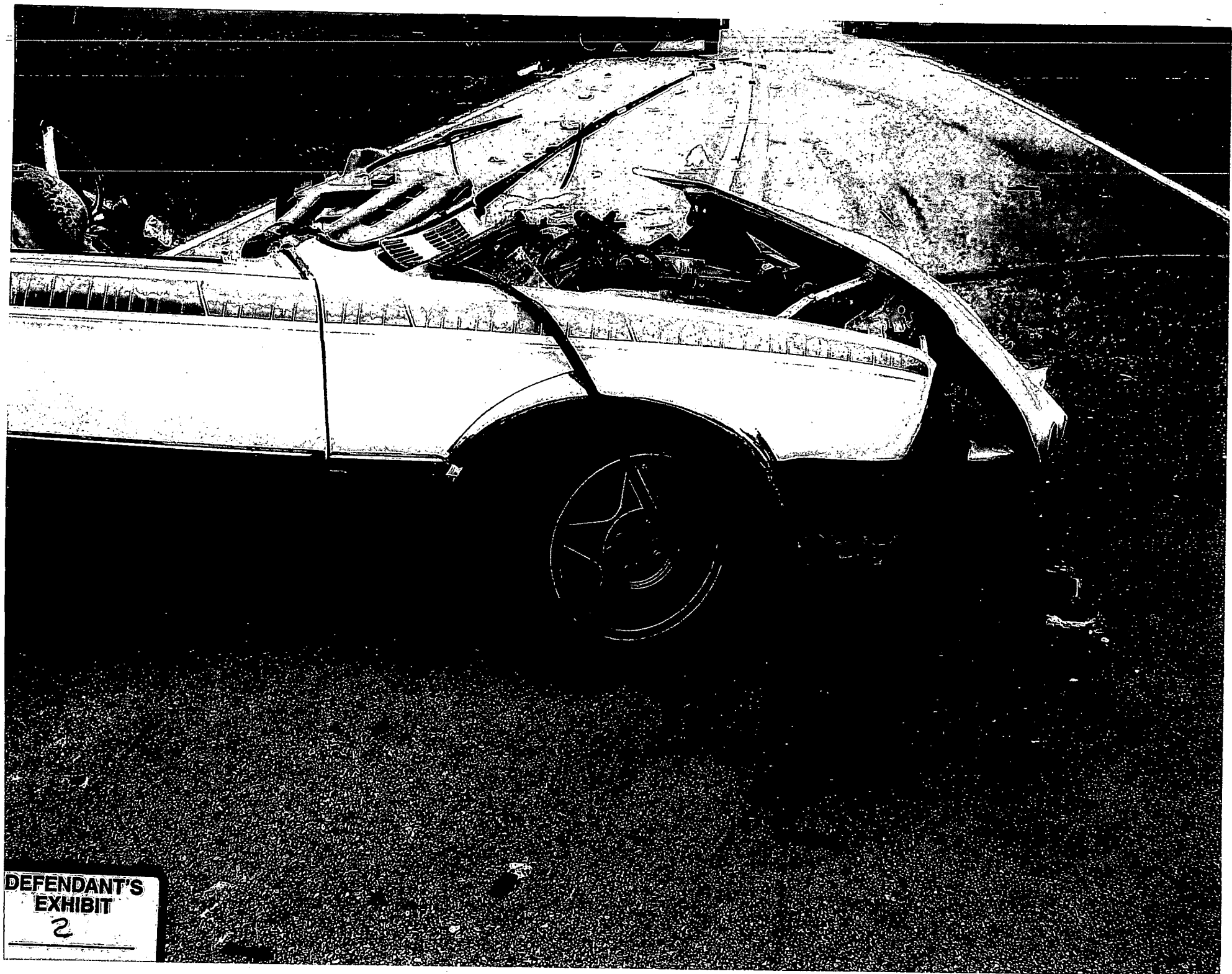
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Date Drawn	AMV-03-2009	Not To Scale		

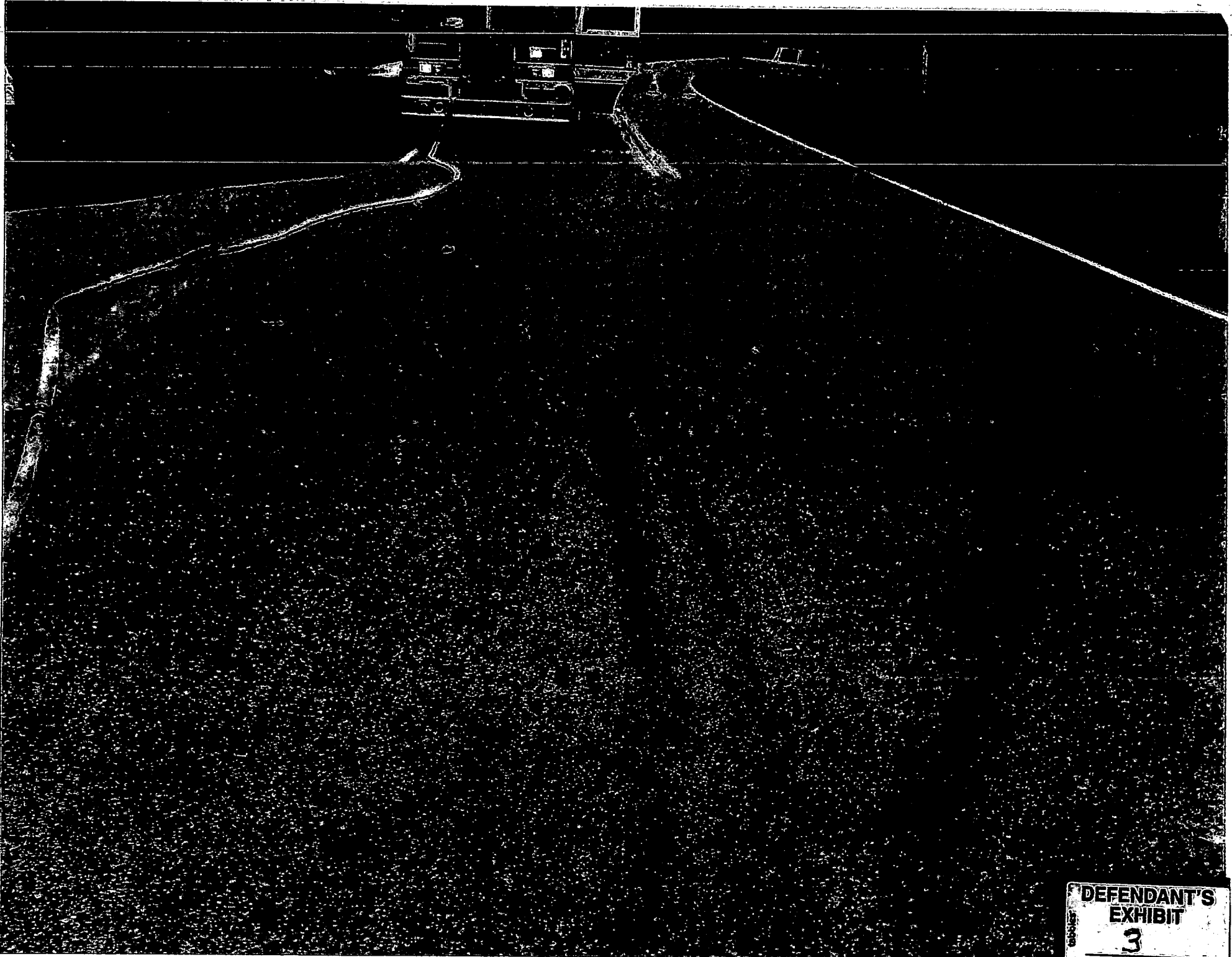


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EXHIBIT
1-11-16
NO. 36 ab 131



DEFENDANT'S
EXHIBIT
1





DEFENDANT'S
EXHIBIT
3

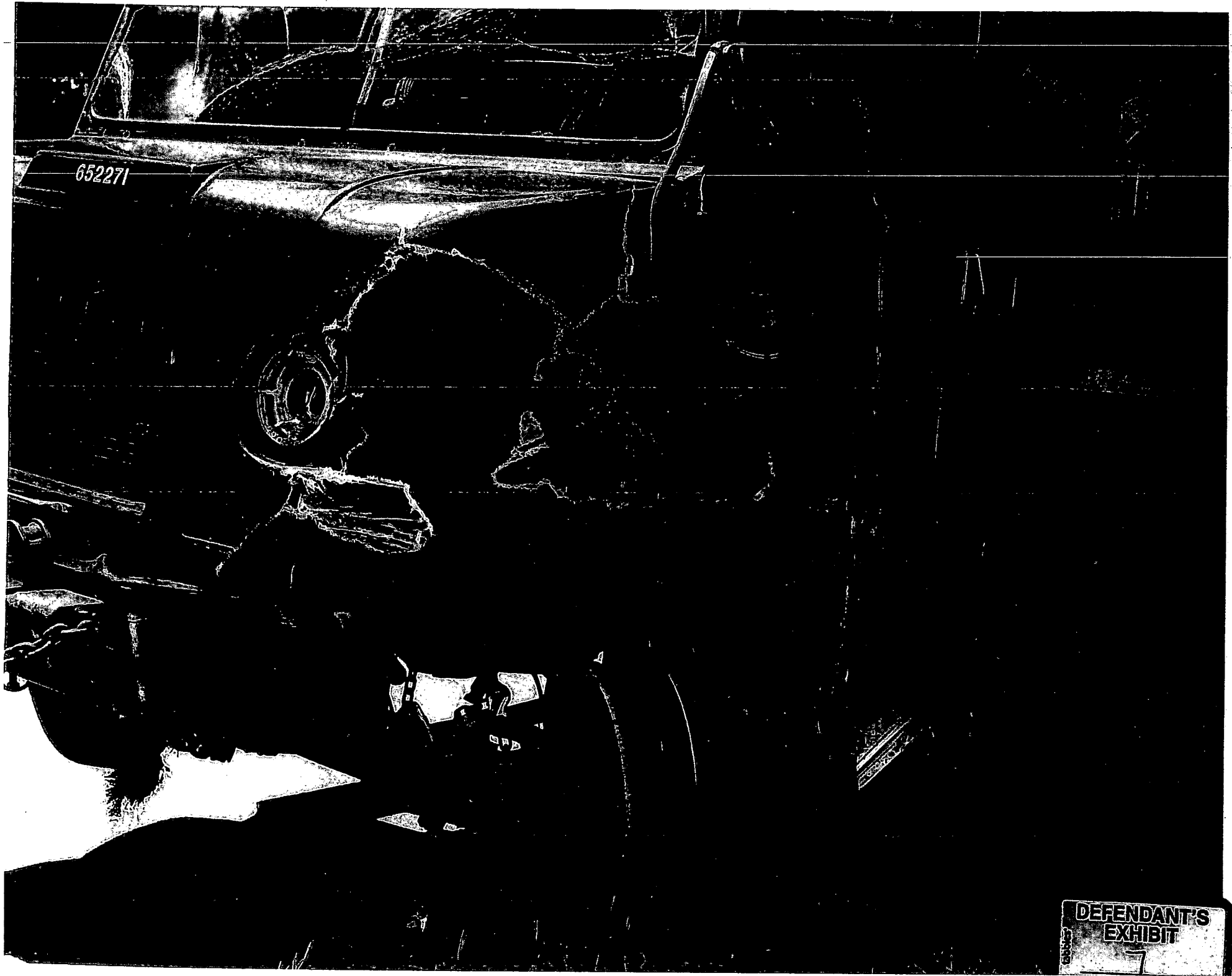


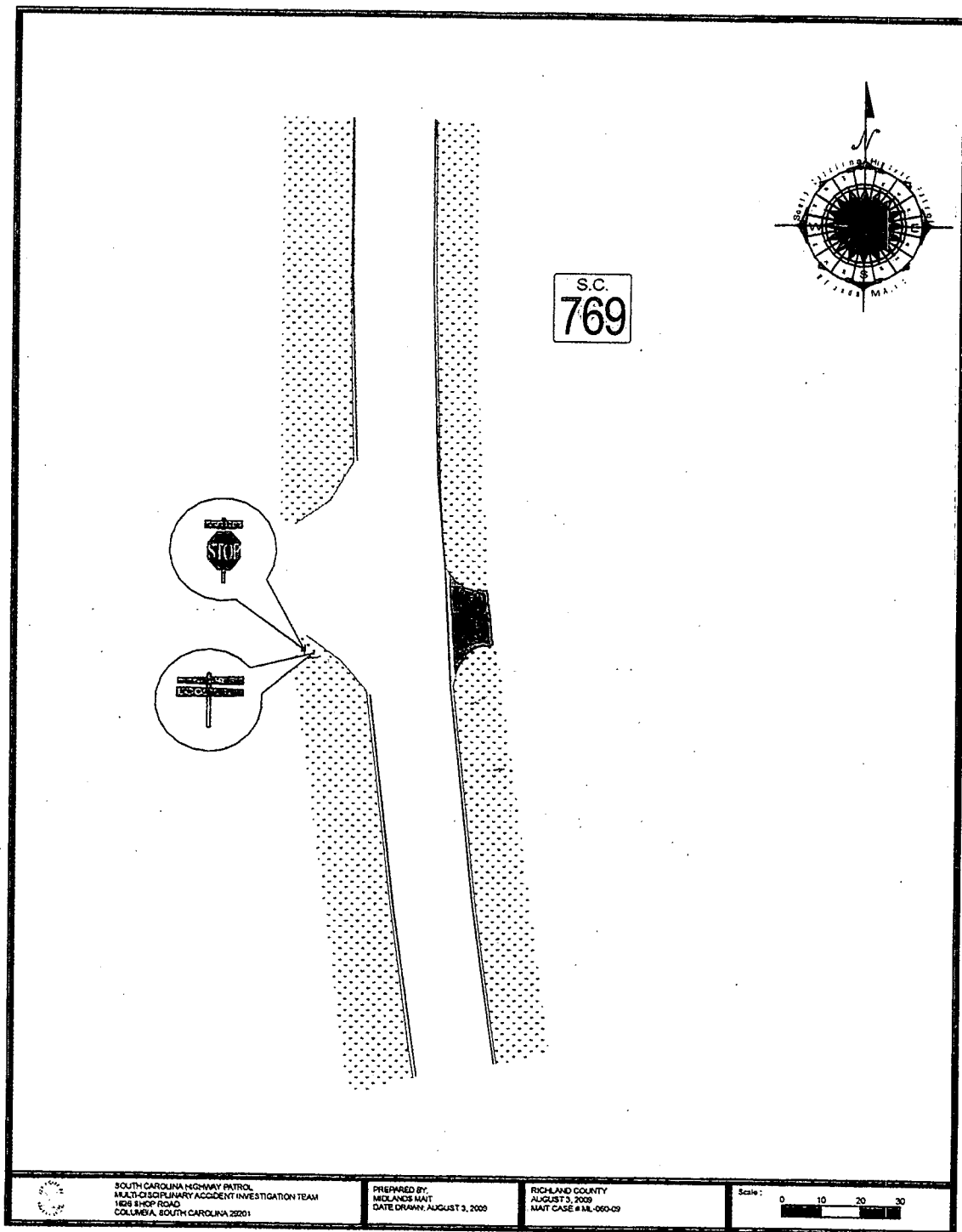
DEFENDANT'S
EXHIBIT
4



DEFENDANT'S
EXHIBIT

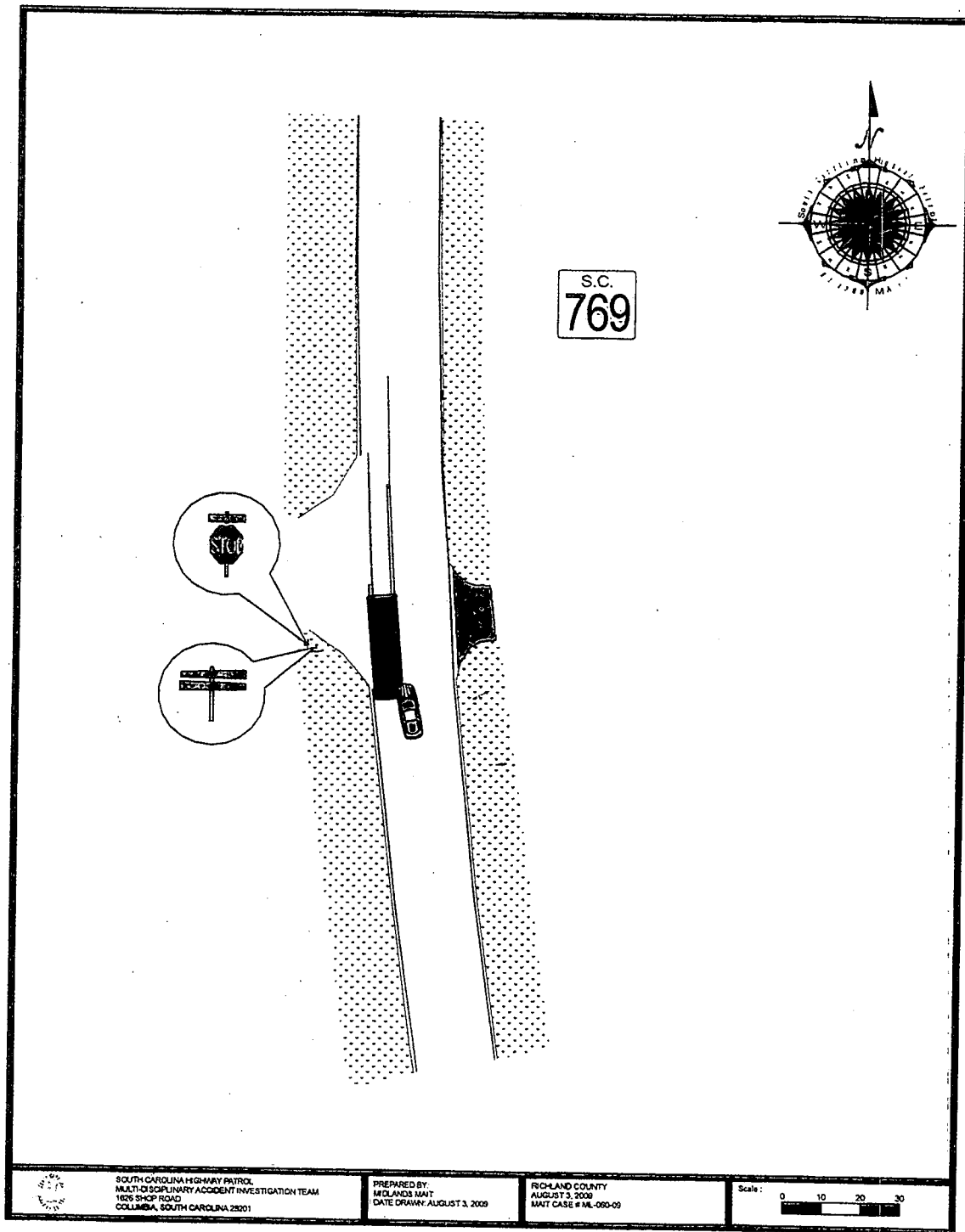
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ROADWAY



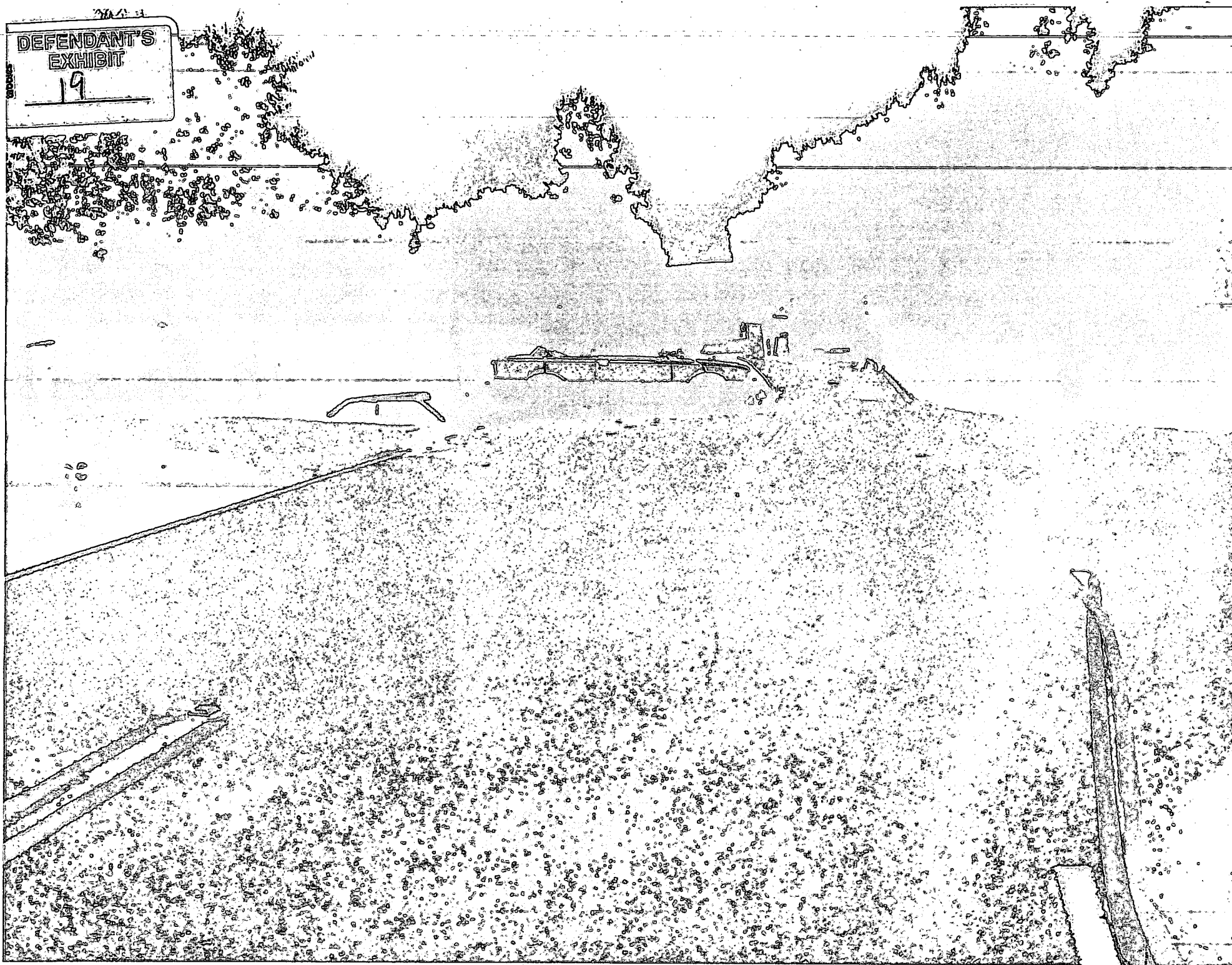


IMPACT

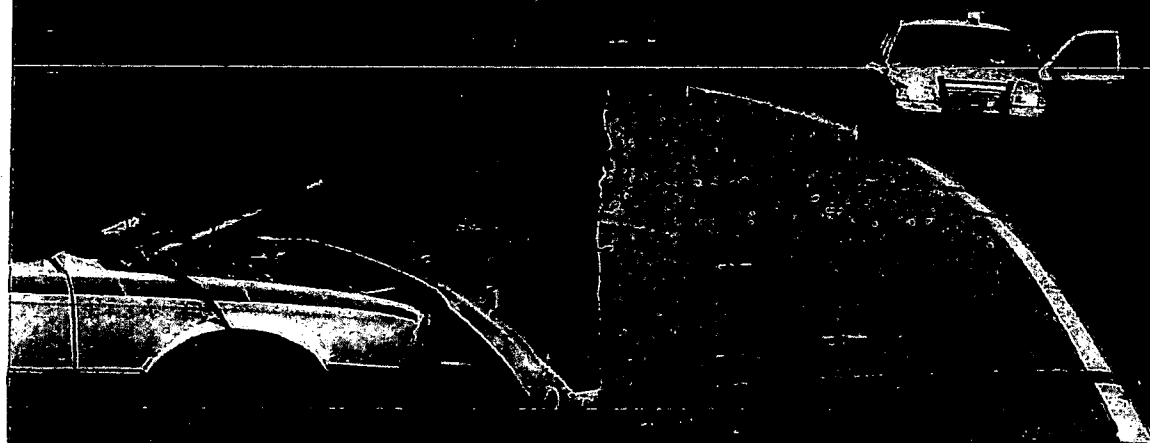


DEFENDANT'S
EXHIBIT

19



DEFENDANT'S
EXHIBIT
20



PLAINTIFF'S
EXHIBIT 5
Powell
6-25-14 GHW

DEFENDANT'S
EXHIBIT
38 1-13-0
40

SCHOOL

GOOD



(X)
Part
of Incident