

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

**APPEAL FROM HAMPTON COUNTY
Court of Common Pleas**

Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2009-126526

**Willie Homer Stephens, Guardian ad Litem
for Lillian C., a minor.....Petitioner,**

v.

**CSX Transportation, Inc. and the South Carolina
Department of Transportation,.....Respondents.**

APPENDIX – Vol. VII

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S.C. Supreme Court

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SC Court of Appeals

Case No.: 2004-CP-25-00267

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for Lillian C., a minor Appellant,

v.

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Department of Transportation,.....Respondents.

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1 told you we were going to bring you the witnesses who
2 saw something, who knew something and heard something.
3 Do y'all remember that? And that's what we endeavored
4 to do.

5 Every side gets to decide during, before trial
6 if they're going to talk to experts and consult. But
7 everybody gets to decide who we're going to bring to
8 tell you what happened. And, we brought you the people
9 who were there. What they brought was an onslaught of
10 people who never were there, who saw Lillian in some
11 instances for two hours and were rendering opinions
12 that she would never, ever live independently. Many of
13 these experts, as you will see, routinely work together
14 in lawsuits.

15 And then lastly, some of the experts are experts
16 on how to manipulate juries. Let's talk about these
17 experts, bring on the experts. This is the array of
18 experts that came to you in the plaintiff's case. And
19 what was very interesting, in the same way we heard
20 during the closing argument of Mr. Parker, there was an
21 onslaught of people to come here who knew nothing about
22 what happened at the accident. Seems to me that you
23 would want to put up the people who were there to tell
24 -- Ms. Colvin, tell us what happened. But, no. We had
25 an onslaught of all of these experts who came in here.

MIA PERRON, CCR, CVR-CM

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CHARGE OF THE COURT

THE COURT: Mr. Foreperson and members of the jury, you've now heard the evidence and all the arguments of all the parties, and I'm now going to explain to you the law which applies in this case.

Lillian Colvin claims that she's been injured or damaged by the actions of the defendants. In bringing this lawsuit, Lillian Colvin claims that the defendants should compensate her for her injuries or damages.

Now, under our constitution and code of laws only you, the jury, can make the findings of fact in this case. I am not permitted to tell you how I feel about the evidence which has been presented, and throughout this trial I have intended to be fair and impartial towards each of the parties involved.

Ladies and gentlemen, to determine the facts in this case, you will have to evaluate the credibility or the believability of the witnesses. I have already discussed with you at the beginning of this case some of the things that you may consider as you decide whether or not to believe a witness' testimony about a particular matter. You can believe as much or as little of each witness' testimony as you think proper. You may believe the testimony of a single witness against that of many witnesses, or just the opposite.

1 You may believe a part of a witness' testimony and
2 disbelieve the rest. You should not determine the
3 truth merely by counting the number of witnesses
4 presented by each side.

5 Ladies and gentlemen, throughout this process
6 you have but one objective: to seek the truth
7 regardless of its source.

8 Now, the rules of evidence ordinarily do not
9 permit witnesses to testify to opinions or conclusions.
10 An exception to this rule exists for witnesses we call
11 expert witnesses. A witness who by education and
12 experience has become an expert in some art, science,
13 or profession, may give an opinion as to the subject
14 the witness claims to be an expert in and may also give
15 the reasons for the opinion. You should consider any
16 expert opinion given by a witness and, like any other
17 evidence, give it the weight you think it deserves. If
18 you decide that an expert witness' opinion is not based
19 on sufficient education and experience, or if you
20 decide that the reasons given in support of the opinion
21 are not sound or that the opinion is outweighed by
22 other evidence, you may disregard the opinion entirely.

23 Ladies and gentlemen, evidence may be direct or
24 circumstantial. Direct evidence is testimony by a
25 witness about what the witness personally saw, heard,

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2 disbelieve the rest. You should not determine the
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19 on sufficient education and experience, or if you
20 decide that the reasons given in support of the opinion
21 are not sound or that the opinion is outweighed by
22 other evidence, you may disregard the opinion entirely.

23 Ladies and gentlemen, evidence may be direct or
24 circumstantial. Direct evidence is testimony by a
25 witness about what the witness personally saw, heard,

1 or did. Circumstantial evidence is indirect evidence;
2 that is, it is proof of one or more facts from which
3 one can find another fact. You are to consider both
4 direct and circumstantial evidence. The law permits
5 you to give equal weight to both. But, again, it is
6 for you to decide how much weight to give any evidence.

7 Testimony was presented to you in this trial by
8 way of a deposition or depositions. A deposition
9 contains sworn testimony given by a witness outside of
10 the courtroom, in the presence of lawyers for each
11 party, who may ask questions of the witness. This
12 testimony is entitled to the same consideration and it
13 is to be judged as to credibility and weighed by you in
14 the same way as if the witness were present and gave
15 the testimony to you from the witness stand. It is
16 then for you, the jury, to determine the effect, the
17 value, the weight, and the truth of the testimony
18 that's given in the deposition.

19 Ladies and gentlemen, the same constitution and
20 laws which designate and make you the finders of fact
21 makes me the instructor of the law. You must accept
22 the law as I give it to you. If I am wrong, there is
23 another place and another time for that error to be
24 considered and, if necessary, corrected. But for now,
25 you must accept the law as I give it to you. This

1 means that you should not be concerned with what you
2 may think that the law should be, but only with what I
3 charge you that the law is.

4 Ladies and gentlemen, the burden of proof in
5 this case is by a preponderance of the evidence. A
6 preponderance of the evidence simply means the greater
7 weight of the evidence which, as a whole, shows that
8 the fact sought to be proved is more likely true than
9 not true. This can be illustrated by imagining a set
10 of scales. When the case begins, the scales are even.
11 After all of the evidence has been presented, if the
12 scales remain even or if they tip even slightly in
13 favor of the defendants, Lillian Colvin has failed to
14 meet the burden of proof and would not be entitled to
15 recover in this case. If, on the other hand, the
16 scales tip even slightly in favor of Lillian Colvin,
17 she will have met the burden of proof and you should
18 return a verdict for her. Please understand, the
19 preponderance of the evidence is not determined by the
20 number of witnesses. Instead, it must be determined by
21 the greater weight of all the evidence.

22 Now, ladies and gentlemen of the jury, Lillian
23 Colvin claims the defendants were negligent and she
24 suffered as a result of the defendants' negligence. In
25 order to prove that the defendants were negligent,

1 Lillian Colvin must prove by a preponderance or greater
2 weight of the evidence four things: first, that the
3 defendant owed Lillian Colvin a duty of care; next,
4 that the defendant breached that duty by a negligent
5 act or omission; third, that she suffered damages or
6 injuries as a result of the defendant's breach of duty;
7 and, finally, she must prove that the damages
8 complained of were proximately caused by the
9 defendant's breach of duty.

10 Ladies and gentlemen, negligence is the breach
11 of a duty of care owed to the plaintiff by a defendant.
12 Negligence is defined in terms of a reasonable person.
13 Accordingly, when I refer to a reasonable person, I am
14 referring to a person of ordinary prudence and reason.
15 With this in mind, negligence can then be defined as
16 the failure to do something which a reasonable person
17 would do under the same or similar circumstances.
18 Stated another way, negligence is the failure to use
19 ordinary or reasonable care.

20 Ladies and gentlemen, negligence is a fact
21 which, like any other fact in this case, must be
22 proved. The mere happening of an accident or the
23 filing of a complaint, or the fact that damages have
24 been sustained, raises no presumption of negligence.
25 The mere fact that an innocent party sustained injury

1 or damages does not place any responsibility on another
2 party unless you find that there was some act of
3 negligence on the part of that party which caused the
4 injury or damage.

5 Ladies and gentlemen, proximate cause is
6 something that produces a natural chain of events
7 which, in the end, brings about the injury. It is the
8 direct cause of the injury. The burden of proving a
9 defendant's negligence proximately caused the injury
10 remains with Lillian Colvin. There is no
11 countervailing burden on the defendant to prove that
12 they were not at fault. Proximate cause requires proof
13 of both causation in fact and legal cause. Causation
14 in fact is proven by showing that the injuries would
15 not have occurred but for the defendant's negligence.

16 Lillian Colvin must also prove legal cause.
17 Legal cause is proven by showing the injury was
18 foreseeable. This means that the injury occurred as a
19 natural and probable consequence of the defendant's
20 acts or omissions. Lillian Colvin must prove that some
21 injury from the defendant's negligence was foreseeable,
22 but does not have to prove that the particular injury
23 that occurred was foreseeable. However, the defendant
24 cannot be held responsible for things which could not
25 be expected to happen.

1 Ladies and gentlemen, there may be more than one
2 cause of an injury, and more than one person may be
3 responsible for the injury. If the negligence of two
4 or more persons combines to cause an injury, each
5 person involved may be held responsible as if that
6 person alone caused the injury. Causes are concurrent
7 if the individual acts of negligence combine to cause
8 the injury. If an injury occurs through the concurrent
9 negligence of two or more persons, and would not have
10 happened without the negligence of either person, the
11 negligence is a proximate cause of the injury and both
12 people are responsible. If the acts happened one after
13 the other but were not related to each other, they
14 would not be concurring causes. In that case, only the
15 person whose negligence actually caused the injury
16 would be responsible. This is called an intervening
17 cause.

18 An intervening cause is an independent cause
19 which intervenes between the original wrongful act or
20 omission and the injury, turns aside the natural
21 sequence of events, and produces a result which would
22 not otherwise have followed and which would not have
23 been reasonably anticipated. It is an act of an
24 independent agency which destroys the causal connection
25 between the negligent act of a defendant and the

1 wrongful injury; the independent act being the
2 immediate cause, in which case damages are not
3 recoverable because the original wrongful act is not
4 the proximate cause.

5 An intervening act of a third person, ladies and
6 gentlemen, breaks the chain of causation and obviates
7 liability for the original breach of duty if it is a
8 superseding cause and one which the original wrongdoer
9 was not bound to anticipate as the natural or ordinary
10 result of their acts. If subsequent to an original
11 wrongful or negligent act a new cause has intervened,
12 of itself sufficient to stand as the cause of the
13 injury, the former must be considered as too remote.
14 However, if the character of the intervening act
15 claimed to break the connection between the original
16 wrongful act and the subsequent injury with such that
17 its probable or natural consequences could reasonably
18 have been anticipated or foreseen by the original
19 wrongdoer, the causal connection is not broken and the
20 original wrongdoer is responsible for all the
21 consequences resulting from the intervening act.

22 Now, ladies and gentlemen, if you decide that
23 one or both of the defendants were negligent and
24 Lillian Colvin is entitled to a verdict, your next step
25 would be to decide how much money a defendant should be

1 required to pay. This is called actual damages.

2 Actual damages are intended to compensate the
3 injured party for their injuries or loss and to put
4 them as near as possible in the same position that they
5 were in before the accident occurred. In other words,
6 actual damages would include the actual losses and
7 expenses which the injured party has suffered because
8 of the defendant's negligence, if proven. They are
9 also called compensatory damages.

10 Actual damages or compensatory damages, which
11 are the same thing, may be assessed where a wrongful
12 act has caused a loss or injury which can be assessed
13 in money, the universal and cardinal principle being
14 that the person injured shall receive compensation
15 commensurate with their loss or injury, and no more.

16 When a person is injured by the negligent acts
17 of another, the injured person is entitled to be fully
18 compensated for all injuries directly or proximately
19 resulting from any negligent acts by the defendant. In
20 determining the amount of compensation for injuries
21 suffered by Lillian Colvin, if any, you may and should
22 consider an award for both -- including, I'm sorry,
23 past, present, and future damages for the following:
24 number one, loss or impairment of earning capacity;
25 loss of future income or future earnings; medical

1 expenses, including physicians and medicines; any
2 future damages, including future medical expenses or
3 care, resulting from permanent injuries; alteration of
4 lifestyle; pain and suffering; loss of enjoyment of
5 life; psychological trauma; mental anguish; mental
6 distress; apprehension; anxiety; emotional injury;
7 psychological injury; and depression.

8 Ladies and gentlemen, the plaintiff bears the
9 burden of proving these elements by the preponderance
10 of the evidence, as I described to you earlier.

11 Now, ladies and gentlemen, pain and suffering
12 compensates the injured party for physical discomfort
13 and emotional response for pain caused by the injury
14 itself. There is no definite standard by which to
15 compensate the injured party for pain and suffering.
16 You have the authority to determine the amount, if any,
17 to be allowed for pain and suffering, using calm and
18 reasonable judgment to ensure that the damages are just
19 and reasonable in light of the testimony and the
20 evidence presented in this case.

21 Ladies and gentlemen, loss of enjoyment of life
22 compensates an injured party for limitations on their
23 ability to participate in, and derive pleasure from,
24 the normal activities of daily life.

25 Ladies and gentlemen, an injured party is never

1 entitled to recover conjectural or speculative damages.
2 But if you find Lillian Colvin is entitled to actual
3 damages, your verdict should include an amount to cover
4 any past, present and future damages which were
5 proximately caused by a defendant. Now, any future
6 damages must be reasonably certain to -- excuse me --
7 to occur in the future as a result of the defendant's
8 acts.

9 Actual damages, ladies and gentlemen, need not
10 be proven to a mathematical certainty or be based on
11 evidence of the precise amount of damages the plaintiff
12 has suffered. Instead, the evidence must allow you to
13 determine what amount of damages is fair, just, and
14 reasonable in this case.

15 Ladies and gentlemen, if you find that Lillian
16 Colvin was permanently injured as a result of the
17 defendant's actions, you must then decide how, if at
18 all, that injury will affect the rest of her life. A
19 person's life expectancy is determined by a life
20 expectancy table, which is a part of the laws of this
21 state. The life expectancy table is only an estimate
22 of the probable average remaining length of the life of
23 all persons in our state of a given age. Lillian
24 Colvin is a sixteen-year-old female with a life
25 expectancy, according to the life expectancy table, of

1 64.17 years. This fact is to be considered by you
2 along with any other facts and circumstances in
3 evidence bearing on Lillian Colvin's life expectancy,
4 including occupation, habits, and health at the time of
5 injury, in deciding the amount of damages to be awarded
6 to her. As I told you just a moment ago, the injured
7 party may recover for those future damages that are
8 reasonably sure to result from the injuries.

9 Ladies and gentlemen, future damages must be
10 reduced to their present day cash value; that is the
11 amount awarded should consider the use of both the
12 principal and interest on such principal as
13 compensating for the damage to occur in the future. In
14 reducing the award of future damages to its present day
15 value you should award that money, which if invested in
16 reasonably safe investments for the period of time for
17 which the award is made will return to the plaintiff
18 the amount of the damages awarded.

19 Ladies and gentlemen, if you find CSX was
20 negligent and that their negligence was a proximate
21 cause of Lillian Colvin's injuries and you award her
22 actual compensatory damages, then, and only then, you
23 may also consider an award of punitive damages against
24 CSX. Punitive damages are intended to punish a
25 defendant for extraordinary and outrageous misconduct

1 and to prevent a defendant and others from committing
2 similar acts in the future and to compensate for the
3 reckless or willful invasion of the plaintiff's private
4 rights. Punitive damages can only be awarded when
5 conduct of a defendant has been something more than
6 mere negligence. The evidence must establish the
7 defendant's acts were reckless, willful, and wanton,
8 meaning there was a conscious failure to exercise due
9 care or a conscious indifference to the rights and
10 safety -- I'm sorry -- the rights and safety of others
11 or a reckless disregard thereof.

12 Ladies and gentlemen, to support an award of
13 punitive damages the plaintiff must prove by clear and
14 convincing evidence that the conduct complained of
15 included a consciousness of wrongdoing at the time of
16 the conduct and that the defendant's actions were
17 wilful, reckless, and wanton.

18 Ladies and gentlemen, clear and convincing
19 evidence is an elevated standard of proof required in
20 an award of punitive damages. It lies between the
21 lesser standard of preponderance of the evidence which
22 is the standard you use in most civil cases, and the
23 higher standard of beyond a reasonable doubt which is
24 required in criminal cases. Clear and convincing
25 evidence required to award punitive damages is that

1 degree of proof which produces in your minds a firm
2 belief as to the allegations sought to be established.
3 Clear and convincing evidence requires that the
4 evidence must be found to be credible. The facts to
5 which the witnesses testify must be distinctly
6 remembered, the testimony must be precise and explicit,
7 and the witnesses must be lacking confusion as to the
8 facts in issue. The evidence must be of such weight
9 that it produces in the mind of the trier of fact a
10 firm belief or conviction, without hesitancy, as to the
11 truth of the allegations sought to be established.
12 When the law places upon a party a burden of proof by
13 clear and convincing evidence, the law means that the
14 evidence is not ambiguous, doubtful, equivocal, or
15 contradictory, but the evidence is pointed to the issue
16 and satisfactory in the sense that the source from
17 which it comes is one in which you as jurors can place
18 credence.

19 Ladies and gentlemen, before awarding punitive
20 damages, you must consider and weigh four elements
21 which may be pertinent to the facts of this case. You
22 must first -- excuse me -- consider the relationship
23 between any punitive damages award and the harm caused.
24 Any penalty imposed should take into account the
25 reprehensibility of the conduct, the harm caused, CSX's

1 awareness of the conduct's wrongfulness, the duration
2 of the conduct, and any concealment. Thus, any penalty
3 imposed should bear a reasonable relationship to the
4 nature and extent of the conduct and the harm caused,
5 including the compensatory damage award made by you.

6 Secondly, any penalty imposed should take into
7 account, as a mitigating factor, any other penalty that
8 may have been imposed or which may be imposed for the
9 conduct involved, including any criminal or civil
10 penalty or any other punitive damages award arising out
11 of the same conduct.

12 Next, you should consider whether the award and
13 the amount of any punitive damages award may deprive
14 CSX of any profits derived from the improper conduct
15 and whether the ill-gotten profits should be properly
16 awarded to Lillian Colvin.

17 Finally, ladies and gentlemen, any award of
18 punitive damages must be limited to punishment and thus
19 may not effect economic bankruptcy. To this end, CSX's
20 ability to pay any punitive damage award should be
21 considered. However, the economic bankruptcy factor is
22 not an absolute bar to an award of punitive damages.

23 Ladies and gentlemen, punitive damages may not
24 be appropriate in every case. In other words, even if
25 you find that CSX's negligence was a proximate cause of

1 Lillian's injuries, you do not have to award punitive
2 damages.

3 Ladies and gentlemen, the fact that CSX
4 Transportation is a corporation rather than an
5 individual cannot change your analysis of whether or
6 not punitive damages are appropriate and, if they are,
7 their amount. If you conclude that punitive damages
8 are appropriate, you may not award more than what is
9 reasonable and proportional simply because of CSX
10 Transportation's wealth or size.

11 Ladies and gentlemen, even if you find that CSX
12 violated a statute and that the violation caused the
13 plaintiff's injuries, you may not award punitive
14 damages against CSXT on that basis alone. You must
15 also find that CSX's conduct was willful, wanton, or
16 reckless.

17 Ladies and gentlemen, elementary notions of
18 fairness enshrined in our constitutional jurisprudence
19 dictate that a person receive fair notice of the
20 conduct that subjects them to punishment.

21 If you decide that punitive damages are
22 warranted in this case, the most important factor to
23 consider in determining their amount is the degree of
24 reprehensibility of the defendants' conduct.

25 Ladies and gentlemen, society would be harmed

1 by, and you are prohibited from imposing, an award of
2 punitive damages in any amount larger than that
3 necessary to achieve the proper amount of punishment
4 and deterrence.

5 Ladies and gentlemen, if you should decide to
6 award punitive damages, you are not to award punitive
7 damages in order to punish defendants for conduct not
8 related to the harm suffered by the plaintiff. Any
9 award of punitive damages must be based solely on the
10 conduct that harmed the plaintiff, and the harm
11 suffered by the plaintiff. You may consider evidence
12 of harm to non-parties in determining whether the
13 defendant's conduct was reprehensible. However, you
14 may not award punitive damages to punish the defendant
15 for harm it may have caused to non-parties.

16 Ladies and gentlemen, if you should decide to
17 award punitive damages, you may not use evidence of
18 out-of-state conduct to punish a defendant for action
19 that was lawful in the jurisdiction where it occurred.
20 A defendant's dissimilar acts, independent from the
21 acts upon which liability was premised, may not serve
22 as the basis for punitive damages. A defendant should
23 be punished only for the conduct -- or, I'm sorry --
24 for the conduct that harmed the plaintiff.

25 Ladies and gentlemen, the plaintiff seeks

1 punitive damages from CSX Transportation based upon its
2 alleged failure to properly maintain vegetation at the
3 Hill Road Crossing. The plaintiff has also alleged
4 that CSX failed to properly sound the horn at the
5 crossing; however, the plaintiff is not seeking
6 punitive damages for any alleged conduct relating to
7 the horn, including any statutory violation that may
8 have occurred. Thus, I charge you that you should
9 decide if -- I'm sorry. I charge you that should you
10 decide to award punitive damages in this case, no
11 amount you award may be based upon any alleged failure
12 to properly blow the horn at the Hill Road crossing.

13 Ladies and gentlemen, regulatory standards are
14 relevant to show the reasonableness of a party's
15 conduct. You may consider relevant standards of care
16 from various sources in determining whether a defendant
17 breached a duty owed to an injured person in a
18 negligence case. The standard of care in a given case
19 may be established and defined by the common law,
20 statutes, administrative regulations, industry
21 standards, or a defendant's own policies and
22 guidelines.

23 I charge you, ladies and gentlemen of the jury,
24 that the applicable sections of the Supreme Court Code
25 of Laws in this case, which I am now going to read to

1 you, should all be considered together and applied to
2 the facts as you find them to be.

3 Ladies and gentlemen, I charge you that South
4 Carolina Code Section 56-5-2710 states, whenever any
5 person driving a vehicle approaches a railroad grade
6 crossing under any of the circumstances stated in this
7 section, the driver of the vehicle shall stop within
8 fifty feet, but no less than fifteen feet, from the
9 nearest rail of the railroad and shall not proceed
10 until he can do so safely. The foregoing requirements
11 shall apply when: a railroad train approaching within
12 approximately one thousand five-hundred feet of the
13 highway crossing emits a signal audible from such
14 distance, and the train, by reason of its speed or
15 nearness -- or nearness to the crossing is an immediate
16 hazard, and an approaching railroad train is plainly
17 visible and is in hazardous proximity to the crossing.

18 Ladies and gentlemen, I also charge you
19 according to South Carolina Code 56-5-2715 that the
20 Department of Transportation, and local authorities
21 with the approval of the Department of Transportation,
22 may designate particularly dangerous highway grade
23 crossings of railroads and erect stop signs thereat.
24 When such signs are erected, the driver of any vehicle
25 shall stop within fifty feet, but not less than fifteen

1 feet, from the nearest rail of the railroad and shall
2 proceed only upon exercising due care.

3 Ladies and gentlemen, I also charge you it's the
4 law of this state, according to South Carolina Code
5 Section 58-15-910, that a bell of at least thirty
6 pounds' weight and a steam or air whistle shall be
7 placed on each locomotive engine or -- excuse me -- or
8 inter-urban car and such bell shall be rung or such
9 whistle sounded by the engineer, fireman, or motorman
10 at the distance of at least five-hundred yards from the
11 place where the railroad crosses any public highway,
12 street, or traveled place, and be kept ringing or
13 whistling until the engine or inter-urban car has
14 crossed such highway, street, or traveled place. If
15 such engine or car shall be at a standstill within less
16 distance than one-hundred rods of such crossing, such
17 bell shall be rung or such whistle sounded for at least
18 thirty seconds before such engine or inter-urban car
19 shall be moved, and shall be kept ringing or sounding
20 until such engine or inter-urban car shall have crossed
21 such public highway or street or traveled place. A
22 going of not less than ten inches in diameter may be
23 placed upon inter-urban cars in lieu of a bell as
24 herein required and shall be sounded as herein
25 provided.

1 Ladies and gentlemen, I also charge you that it
2 is the law of this state, according to South Carolina
3 Code Section 56-5-930, that the Department of
4 Transportation may place and maintain such traffic-
5 control devices, conforming to its manual and
6 specifications, upon all state highways as it shall
7 deem necessary to indicate and to carry out the
8 provisions of this chapter or to regulate, warn or
9 guide traffic. No local authority shall place or
10 maintain any traffic-control devices upon any state
11 highway without having first obtained the written
12 approval of the Department of Transportation.

13 Ladies and gentlemen, I also charge you it is
14 the law of this state, according to South Carolina Code
15 Section 56-5-940, that subject to the limitations
16 prescribed in Section 56-5-930, which I just read,
17 local authorities in their respective jurisdictions
18 shall place and maintain such traffic-control devices
19 upon highways under their jurisdiction as they may deem
20 necessary to indicate and to carry out the provisions
21 of this chapter or local traffic ordinances to
22 regulate, warn, or guide traffic. All such traffic-
23 control devices so erected by such local authorities
24 shall conform to the State manual and specifications.

25 Ladies and gentlemen, I also charge you,

1 according to the law of the South Carolina Code Section
2 56-5-950, that whenever official traffic-control
3 devices are placed or held in position approximately
4 conforming to the requirements of the South Carolina
5 Code of Laws, such devices shall presume to have been
6 so placed or held by the official act or direction of
7 the lawful authority unless the contrary shall be
8 established by competent evidence..

9 I charge you that according to the laws of the
10 state of South Carolina, according to South Carolina
11 Code Section 56-5-1010, all railroad companies
12 operating railroads in the state shall place and
13 maintain at every crossing of a highway and railroad at
14 grade, standard cross-buck signs in accordance with the
15 requirements of the manual of standards and
16 specifications for uniform traffic-control devices.

17 Ladies and gentlemen, I further charge you it is
18 the law of this state, according to South Carolina Code
19 Section 56-5-1020 that no person shall place, maintain
20 or display upon or in view of any highway any
21 unauthorized sign, signal, marking or device which
22 purports to be or is an imitation of or resembles an
23 official traffic-control device or railroad sign or
24 signal, or attempts to direct the movement of traffic.
25 Every such prohibited sign, signal or marking is hereby

1 declared to be a public nuisance and the authority
2 having jurisdiction over the highway may remove it or
3 cause it to be removed without notice.

4 Ladies and gentlemen, I charge you it is the law
5 of this state, according to South Carolina Code Section
6 56-5-2330, that every driver of a vehicle approaching a
7 stop sign shall stop at a clearly marked stop line.
8 After having stopped, the driver shall yield the right-
9 of-way to any approaching traffic that is so close as
10 to constitute an immediate hazard during the time when
11 such driving is moving across or within the
12 intersection.

13 Ladies and gentlemen, I charge you it is the law
14 of the state, according to South Carolina Code Section
15 56-5-2740, that every driver of a vehicle approaching a
16 stop sign shall stop before entering the crosswalk on
17 the near side of the intersection or the -- or in the
18 event there is no crosswalk, shall stop at a clearly
19 marked stop line, but, if none, then at the point
20 nearest the intersecting highway where the driver has a
21 view of approaching traffic on the intersecting highway
22 before entering the intersection except when directed
23 to proceed by a police officer or traffic-control
24 signal.

25 Ladies and gentlemen, I charge you it is the law

1 of the state, according to South Carolina Code Section
2 58-17-1390, that every railroad corporation shall cause
3 signs to be placed and constantly maintained alongside
4 of each public road or street where it is crossed by
5 the railroad on the same level. Each such sign shall
6 be elevated so as to be easily seen by travelers and on
7 each side of it shall be printed in large letters the
8 words railroad crossing, unless the railroad
9 corporation elects to place two of such signs at each
10 crossing, one on each side of the track, in which case
11 each of such signs may have thereon, in large letters,
12 only on the side facing the traffic approaching the
13 crossing, the words railroad crossing.

14 Ladies and gentlemen, I charge you it is the law
15 of this state, according to South Carolina Code Section
16 58-17-1450, that all railroad crossings on public
17 highways must be inspected for conditions which
18 unsafely obstruct a motorist's view of approaching
19 trains, for the presence of cross-bucks prescribed by
20 section 58-17-1390, and for the presence of stop signs
21 authorized by law to be placed at railroad crossings.
22 The Department of Transportation, hereinafter referred
23 to as the Department, is responsible for inspecting
24 railroad crossings on state maintained highways. If
25 the person inspecting a railroad crossing finds that a

1 motorist's view of approaching trains is unsafely
2 obstructed by vegetation, growth, or objects not
3 permanently affixed to realty which are within the
4 right-of-way of the railway, the person inspecting the
5 crossing must immediately notify the deputy director of
6 engineering within the Department of Transportation of
7 the hazard. Upon receipt of notice from the person
8 inspecting the crossing, the Department -- I'm sorry --
9 the Department must give written notice of the hazard
10 immediately by certified mail to any officer or
11 registered agent of the railroad within the state.
12 Notice from the Department shall direct the railroad to
13 cut or remove vegetation, growth, and objects not
14 permanently affixed to realty that are obstructing a
15 motorist's view, or to erect, maintain, or properly
16 situate cross-bucks.

17 Ladies and gentlemen, I charge you it is the law
18 of this state, according to South Carolina Code Section
19 58-15-1625, that notwithstanding any other provision of
20 law, the Department of Transportation may order legally
21 closed and abolished as a public way, within the limits
22 of a railroad right-of-way, a grade crossing, upon a
23 finding that the enhancement of public safety resulting
24 from such closing outweighs any inconvenience caused by
25 increased circuitry of highway routes.

1 Ladies and gentlemen, I instruct you that it is
2 the law of this state, according to South Carolina Code
3 of Laws Annotated 15-78-60, that the South Carolina
4 Department of Transportation is not liable for a loss
5 resulting from the exercise of discretion or judgment
6 by the governmental entity or the employees or the
7 performance or failure to perform any act or service
8 which is in the discretion or judgment of the
9 governmental entity or employee.

10 Ladies and gentlemen, I charge you it is the law
11 of this state, according to South Carolina Code Section
12 15-78-60, Subsection 13, that the South Carolina
13 Department of Transportation is not liable for a loss
14 resulting from regulatory inspection powers or
15 functions, including failure to make an inspection, or
16 make inadequate or negligent inspection of any property
17 to determine whether the property complies with or
18 violates any law, regulation, code or ordinance, or
19 contains a hazard to health or safety, unless you the
20 jury find the South Carolina Department of
21 Transportation was reckless in this regard.

22 Subsection 15 of that same code section states:
23 the South Carolina Department of Transportation is not
24 liable for a loss resulting from absence, condition, or
25 malfunction of any sign, signal, warning device,

1 illumination device, guardrail, or median barrier
2 unless the absence, condition, or malfunction is not
3 corrected by the governmental entity responsible for
4 its maintenance within a reasonable time after actual
5 or constructive note.

6 Ladies and gentlemen, I also charge you it's the
7 law of this state, according to South Carolina Code
8 Section 15-78-60, Subsection 20, to -- that the South
9 Carolina Department of Transportation is not liable for
10 a loss resulting from an act or omission of a person,
11 other than an employee, including but not limited to
12 the criminal actions of third parties.

13 Ladies and gentlemen, I charge you it is the law
14 of this state, according to South Carolina Code Section
15 15-78-100(c), that in all actions brought pursuant to
16 this chapter when an alleged joint tortfeasor is named
17 as party defendant in addition to the governmental
18 entity, the trier of fact must return a special verdict
19 specifying the proportion of monetary liability of each
20 defendant against whom liability is determined.

21 Ladies and gentlemen, under South Carolina law,
22 again, Subsection 56-5-2930, it is unlawful for a --
23 excuse me -- for a person to drive a motor vehicle in
24 any one of the following situations: if that person is
25 under the influence of alcohol to the extent that the

1 person's faculties to drive are materially and
2 appreciably impaired; if that person is under the
3 influence of any other drug or a combination of other
4 drugs or substances, including prescription medication
5 or narcotics, which cause impairment to the extent that
6 the person's faculties to drive are materially and
7 appreciably impaired; or if that person is under the
8 combined influence of alcohol and any other drugs, or
9 drugs or substances, including prescription medication
10 or narcotics, which cause impairment to the extent that
11 the person's faculties to drive are materially and
12 appreciably impaired.

13 Ladies and gentlemen, I charge you that driving
14 under the influence, under Subsection 56-5-2930, which
15 I just read to you, has been interpreted to mean that a
16 person shall not operate a motor vehicle while under
17 the influence of certain substances which materially
18 and appreciably impair the mental and physical
19 faculties of the operator; or, stated another way, the
20 impairment due to drinking of alcohol must be to such a
21 degree that it adversely affects the ability of the
22 driver to operate the vehicle safely on the highways of
23 this state.

24 I charge you, ladies and gentlemen, that it is
25 not against the law of South Carolina to drink and/or

1 use drugs and drive. A person is guilty of driving
2 under the influence only if their abilities are
3 impaired by alcohol and/or drugs to such an extent that
4 their driving is materially affected and they are
5 thereby unable to safely operate an automobile.

6 Ladies and gentlemen, a motorist may be under
7 the influence of alcohol or drugs in violation of law
8 even if the person is not drunk, passed out, or
9 intoxicated. The motorist violates the law if they
10 consume alcohol or other drugs, including prescription
11 medication, to the extent they cannot drive a motor
12 vehicle with reasonable care or if they cannot drive as
13 a prudent driver would. The question is not whether
14 the defendant is drunk or intoxicated, but whether
15 their condition is such that they could drive with due
16 regard for others and themselves.

17 Ladies and gentlemen, I charge you that to
18 provide uniformity among the states of the United
19 States, the Manual on Uniform Traffic Control Devices,
20 which is referred to as the MUTCD, was adopted by South
21 Carolina and various other states. This manual sets
22 out guidelines and standards to be followed insofar as
23 practical.

24 Ladies and gentlemen, according to the MUTCD,
25 section 2B.06, stop signs shall be located as close as

1 practical to the intersection it regulates, while
2 optimizing its visibility to the road user. Stop
3 lines, when used to supplement a stop sign, should be
4 located at the point where the road user should stop.

5 Ladies and gentlemen, I also charge you, again,
6 according to the Manual of Uniform Traffic Control
7 Devices, Subsection 3B.16, that stop lines indicate the
8 point behind which vehicles are required to stop in
9 compliance with some other traffic control signal.

10 I also charge you that according to that MUTCD,
11 again, the Manual on Uniform Traffic Control Devices,
12 subsection 8A.02, that because of the large number of
13 significant variables to be considered, no single
14 standard system of traffic control devices is
15 universally applicable for all highway rail grade
16 crossings.

17 Ladies and gentlemen, I further charge you the
18 object of the statute in requiring the whistle or bell
19 be sounded by a train approaching a crossing is to warn
20 those about to use the crossing of the approach of the
21 train but if one sees or hears a train approaching,
22 without the whistle or bell having been given in
23 compliance with the statute, and attempts to pass over
24 immediately in front of such train, that it cannot be
25 said that the failure to give the required signals was

1 the proximate cause of any injury that may have been
2 sustained by collision with the train at such crossing.

3 Ladies and gentlemen, I charge you that
4 violation of an applicable statute is negligence per se
5 and that violation of an applicable statute establishes
6 a breach of duty of care by the person violating the
7 statute. I further charge you, however, that even
8 though violation of a statute establishes a breach of a
9 duty of care, you must still determine whether the
10 statutory violation was the proximate cause of the
11 injuries sustained.

12 Ladies and gentlemen, I further charge you it is
13 the law of this state it has been well said that it is
14 always train time at a railroad crossing. The law
15 regards a railroad crossing as a place of danger. The
16 very presence of such a crossing is notice to the
17 person approaching or attempting to cross it of the
18 danger of colliding with a passing engine or train.

19 I also charge you it's the law of this state
20 that in the absence of anything which would reasonably
21 put the railroad on notice to the contrary, it is
22 entitled to presume that motorists using the crossing
23 would obey the law and exercise due care.

24 Ladies and gentlemen, I also charge you that it
25 is the law of this state that a traveler, on reaching a

1 railroad crossing and before attempting to go upon the
2 track, must use their senses of sight and hearing to
3 the best of their ability under the existing and
4 surrounding circumstances; they must look and listen in
5 both directions for approaching train; if not prevented
6 from doing so by the fault of the railroad company, and
7 to the extent the matter is under his control, they
8 must look and listen at a place and in a manner that
9 will make the use of their senses effectively. The
10 duty of a traveler arising under the foregoing rule is
11 not an absolute one, but may be qualified by attendant
12 circumstances.

13 Ladies and gentlemen, I charge you it is the law
14 of this state that when the vision of a motorist is
15 obscured by unfavorable conditions, whether by reason
16 of weather, atmospheric conditions, or other
17 obstructions to vision, such motorist must exercise due
18 care consistent with conditions of travels encountered.
19 Likewise, a motorist should exercise reasonable care in
20 keeping a lookout consistent with the increased danger
21 occasioned by the conditions that obscure their vision.

22 Ladies and gentlemen, I charge you that it is
23 the law of this state that the rule is that a traveler
24 is not bound to see or to hear, but is bound to make
25 all reasonable effort to see and hear what an

1 ordinarily prudent person would under like
2 circumstances.

3 Ladies and gentlemen, I charge you it is the law
4 of this state that a railroad corporation has a duty to
5 maintain a reasonably safe grade crossing.

6 Ladies and gentlemen, I charge you it is the law
7 of this state that where a railroad crosses a public
8 highway, a motorist using the highway has the right to
9 use the crossing just as much as a railroad has a right
10 to use it; and it is the common-law duty of the
11 railroad to give such signals and to take such actions
12 as are reasonably sufficient to protect travelers using
13 the crossing; there is a mutual duty on traveler and
14 railroad to exercise due care.

15 Ladies and gentlemen, I charge you that it is
16 the law of this state that the right of a railroad
17 company at a highway crossing is superior to the right
18 of a traveler upon a highway, but this superior right
19 does not relieve the railroad company of reasonable and
20 ordinary caution to prevent accidents at such crossing,
21 and this degree of care may be affected by obstructions
22 which prevent the track from being seen as a train
23 approaches. Both the traveler and the company are
24 charged with the same degree of care: the one to avoid
25 being injured; and the other to avoid inflicting

1 injury. The care of each must be commensurate with the
2 risk and danger involved. The greater the risk, the
3 greater the care.

4 Ladies and gentlemen, I charge you it is the law
5 of this state that rules imposed by a defendant may be
6 deemed a defendant's idea of the standard of care and
7 if violated constitutes evidence of negligence.

8 Ladies and gentlemen, a corporation may delegate
9 its duty to an independent contractor but if the
10 independent contractor breaches the duty by acting
11 negligently or improperly, the corporation remains
12 liable for that breach. A corporation which owes the
13 non-delegable duty is vicariously liable for negligent
14 acts of the independent contractor.

15 Ladies and gentlemen, the duty of the South
16 Carolina Department of Transportation to use ordinary
17 care in keeping its highways in a safe condition for
18 public travel involves the repair of defects of which
19 it has actual or constructive knowledge, and to make
20 sufficiently frequent and careful examinations or
21 inspections to enable it to discover existing defects.

22 Ladies and gentlemen, I charge you that the
23 South Carolina Department of Transportation has notice
24 of a highway defect if under the circumstances and
25 evidence of this case you find that it either knew of

1 the defect, or in the exercise of reasonable care and
2 prudence it should have known of the defect.

3 Ladies and gentlemen, in our courts no
4 distinction is made between corporations and
5 individuals. A corporation is a person in the eyes of
6 the law. A corporation is entitled to the same fair
7 and impartial consideration and to justice by the same
8 legal standards as an individual.

9 Ladies and gentlemen, as I instructed you during
10 the trial of this case where we broke a few times, your
11 first job is to determine if the defendants are legally
12 responsible for this accident and any injuries Lillian
13 Colvin may have received. To that end, you are only to
14 consider the evidence presented regarding the Hill
15 Street crossing specifically. Now, if you decide that
16 the defendants are liable to the plaintiff, only then
17 should you discuss or consider if the defendants owe
18 any damages, including whether any punitive damages
19 against CSX are appropriate in this case. Again, as I
20 told you a number of times throughout the trial, some
21 of the evidence that you heard in the case was not to
22 be considered by you for purposes of deciding whether
23 CSX is responsible for this accident. It is only
24 relevant to whether punitive damages are appropriate.

25 It is only after you determine if CSX is

1 negligent that you would consider awarding punitive
2 damages against CSX and consider the additional
3 evidence pertaining to punitive damages that I
4 instructed you on earlier. To that end, I have
5 separated the exhibits that are going to be sent to you
6 in the jury room. You are not to consider these
7 exhibits, or consider any other testimony that I
8 instructed you during the trial that pertains only to
9 punitive damages, until and unless you get to that
10 point in your deliberations.

11 Mr. Foreperson, ladies and gentlemen of the
12 jury, as you retire to begin your deliberations, I wish
13 to express to you the hope that each of you will be
14 mindful of the importance of your responsibility here
15 today. You are not called upon very often to serve as
16 jurors, and the proper performance of the duty requires
17 each of you to reach the height of freeing your mind of
18 all improper influences. You and I are acting for the
19 community and that's why we must see to it that this
20 trial is fair and the verdict is just. You have
21 observed that the presiding officer of the court is
22 always addressed as Your Honor. The reason is that
23 this Court is entrusted with the honor of this
24 community, with the honor of this state, and the honor
25 of this country, in seeking that every case tried here

1 receives fair and impartial justice. Now you, members
2 of the jury, take into your care the honor of this
3 community, the honor of this state, and the honor of
4 this country.

5 As I have already told you, ladies and gentlemen
6 of the jury, under the laws of the state of South
7 Carolina, you, the jury, are the sole judge of all
8 questions of fact. It would be highly improper for me
9 to influence you in the performance of that duty, so
10 I'm not trying to tell you what your verdict should
11 find. But as the presiding officer of this court, I am
12 vitally concerned that whatever verdict you find will
13 be the result of your going into that jury room and
14 confining your consideration to the evidence and the
15 law that you have heard here in this courtroom,
16 weighing it fairly and impartially, as I have every
17 confidence you will.

18 Ladies and gentlemen, everyone is entitled to
19 justice in this case, the plaintiff and the defendants.
20 You owe no support or sympathy to anyone. The Court is
21 of the confirmed opinion that whatever verdict you
22 reach will represent truth and justice for all the
23 parties involved.

24 Mr. Foreperson and members of the jury, I need
25 to remind you your verdict must be unanimous. It must

1 be the verdict of all twelve jurors.

2 And to that end, ladies and gentlemen, I am
3 going to go ahead and explain the verdict form to you,
4 which I believe we have on the overhead.

5 Is that correct?

6 MR. HARMON: Yes, Your Honor.

7 THE COURT: All right. As you can see on the
8 case --

9 Actually, will you put me up to the caption a
10 little bit, if you don't mind.

11 [Off the record momentarily]

12 THE COURT: All right. Ladies and gentlemen, as
13 you can see up here, on the top is just simply the
14 caption of this case, how it is brought into court.
15 And it says, the verdict form.

16 The first question you will answer is do you
17 find that the defendant CSX Transportation was
18 negligent. If yes, go to question number two. If no,
19 you would then go to question number three.

20 Question number two simply is, do you find the
21 Defendant CSX Transportation's negligence was a
22 proximate cause of Lillian Colvin's injuries. If you
23 answer yes, you go to question number three. If you
24 answer no, you also go to question number three.

25 Number three: do you find that the Defendant

1 the South Carolina Department of Transportation was
2 negligent. Yes? If you answer yes, go to question
3 number four. If you answer no, see instruction number
4 one.

5 Ladies and gentlemen, instruction number one
6 will say, if you answered yes -- and I will get to it,
7 but basically it comes down to if you answered no to
8 questions number one and three, deliberations are
9 stopped and you are over. You would just sign your
10 verdict form, simply.

11 But let's go now to question number four. If
12 you do answer yes to any of the foregoing questions, do
13 you find that the Defendant, South Carolina Department
14 of Transportation's negligence was a proximate cause of
15 Lillian Colvin's injuries -- and, again, you simply
16 follow the instructions. And we'll go up to
17 instruction one again so I can read it to you so it
18 probably makes more sense.

19 Go back. Go to the next page.

20 Instruction one: if you answered yes to
21 questions two or four, please answer question number
22 five. If you did not answer yes to either question two
23 or four, again, as I just said, your foreperson should
24 sign the verdict form and inform the bailiff that you
25 have finished your deliberations.

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1 If you did answer yes to questions two or four,
2 you then would go on to question number five which
3 says, state the total amount of actual compensatory
4 damages to be awarded to the plaintiff.

5 And Mr. Lende, you would simply write a dollar
6 figure in there. All right?

7 Go on to question number six. If you answered
8 yes to questions two and four, then please apportion
9 the damages between the defendants.

10 When apportioning damages, you are required to
11 assign a percentage of the damages between each of the
12 defendants. The total of the percentages you assign
13 must add up to a total of one-hundred percent. Again,
14 you may apportion any percentage between zero and one-
15 hundred percent to either defendant so long as the
16 total number equals one-hundred percent. So, of
17 course, the two of them combined must come to a hundred
18 percent.

19 Let's go down to number seven. Does your answer
20 to question number five, which was up above, include
21 compensation for the medical bills or other medical
22 expenses incurred to date for Lillian Colvin's injuries
23 or medical bills or other medical expenses to be
24 incurred for Lillian Colvin's injuries prior to Lillian
25 Colvin reaching eighteen years of age. If so, please

1 state the amount you awarded for the medical bills
2 incurred to date. All right?

3 Again, Mr. Lende, you would put the same thing.
4 If the answer was yes, you would put the dollar amount
5 in there.

6 Go on to question number eight. Ladies and
7 gentlemen, do you find by clear and convincing evidence
8 that the plaintiff is entitled to an award of punitive
9 damages against Defendant CSX Transportation. If you
10 answer yes, you go on to question number nine. If you
11 answer no, you're done and you would just sign the
12 verdict form. Okay?

13 And, again, question number nine is if you did
14 answer yes to question eight, please state the amount
15 of punitive damages to be awarded against CSX
16 Transportation, Incorporated. And, again, the
17 foreperson would sign it.

18 I can't emphasize enough, and I've said it
19 before, please understand this verdict is the verdict
20 of all twelve of you. It's not just the foreperson.
21 He signs it for me, but it must be the unanimous
22 verdict of all twelve of you. All right?

23 So ladies and gentlemen, let me tell you what we
24 are going to do at this time. I'm going to send you
25 back to your jury room, but for the last time I'm going
MIA PERRON, CCR, CVR-CM

1 to tell you you are not to begin deliberating this
2 case. And the reason is this: I need to ask the
3 attorneys if there is anything further they would like
4 me to charge on the law. Okay? If there is something,
5 I'm going to bring you back out here and I will further
6 charge you. If there is nothing, what is going to
7 happen is we are going to send to you this verdict
8 form, as well as the exhibits in this case.

9 Mr. Foreperson, that will be your sign to begin
10 deliberating. Okay? So you do not begin deliberating
11 this case until and unless you receive the verdict form
12 and the exhibits.

13 Respectfully, when you reach a verdict, please
14 just knock on the door and we will accept you back into
15 the courtroom to announce the verdict. All right?

16 So, again, with that said, I'm going to send you
17 back. Don't begin discussing this case until I either
18 bring you back out here to charge you further, or you
19 receive the verdict form and all the exhibits. All
20 right?

21 Thank you, y'all. I appreciate it.

22 [Whereupon, the jury exits the courtroom at
23 3:50 p.m.]

24 THE COURT: Any exception or additions to the
25 charge?

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1 MR. PARKER: Yes, Your Honor, from the
2 plaintiff.

3 You charged that certain actions took place with
4 the alcohol statute, the person would be guilty of
5 driving under the influence. And Tonia Colvin can't be
6 guilty in this case.

7 THE COURT: All right.

8 MR. PARKER: She could have violated a statute,
9 but she can't be guilty.

10 And the other thing was you referred to the
11 defendant driving under the influence. I think it
12 should say motorist.

13 And, of course, we renew our objections that we
14 made during the charge conference.

15 THE COURT: All right. Mr. Wray?

16 MR. WRAY: Your Honor, other than the objections
17 we stated yesterday, which I believe we agreed those
18 are all preserved, I would ask the Court to charge
19 number 7 and 11, which were the two on the no duty by
20 CSX to install gates and lights. And we would renew
21 that request.

22 THE COURT: Wasn't that -- wasn't that code
23 section charged?

24 MR. WRAY: You charged the statute.

25 THE COURT: Right.

1 MR. WRAY: Recall I handed you one yesterday
2 from the Price case, that I ask that be instructed that
3 there was no duty on CSX --

4 THE COURT: Right.

5 MR. WRAY: -- and you said you weren't going to
6 charge it. And you didn't charge it. But I just
7 wanted to note for the record that we had requested
8 that. And I will provide Mia with a copy of the
9 charge..

10 THE COURT: I believe the statute was adequate.
11 It basically said the burden was on DOT and that no
12 independent person could install any additional gates
13 or lights or anything else without their permission.
14 So I think it was adequately covered.

15 MR. WRAY: I understand, Your Honor.

16 And also renew our request to charge number 55,
17 which dealt with the claim for medical expenses by the
18 minor, and our request to charge comparative negligence
19 as to that aspect of the claim, which was charge number
20 56. And I will make those a part of the record.

21 And then during your charge, in the discussion
22 of actual damages you did state that it includes actual
23 expenses incurred. And we object to that for the
24 reasons previously stated. You also referred to the
25 recovery of medical expenses, which we've also

1 previously objected to.

2 And I think that was it, except for those we
3 discussed yesterday.

4 THE COURT: All right. Mr. McLeod?

5 MR. MCLEOD: Your Honor, I think I probably best
6 join in the one during the medical expenses and then
7 the comparative negligence in connection with the
8 medical expenses, which I believe would be their 55 and
9 56.

10 THE COURT: All right. Anything further we need
11 to put on the record?

12 MR. PARKER: Nothing, Your Honor.

13 MR. WRAY: I don't believe so. I don't know if
14 you've decided how --

15 THE COURT: We need to go through the exhibits.

16 MR. WRAY: -- you're going to handle the
17 exhibits.

18 THE COURT: We need to go through them,
19 obviously. If we could walk through -- I was able to
20 get through the exhibits that were put up here.

21 Gray, did you have a chance to get through them?

22 MR. HOLMES: Your Honor, I'm sorry. I had
23 handed them down to Johnny. We can go through them.

24 THE COURT: The first one I've got is 64.

25 MR. HOLMES: Your Honor, this is just a document

VERDICT

THE COURT: Mr. Foreperson, I understand you have reached a verdict, sir.

THE FOREPERSON: Yes, ma'am.

THE COURT: Would you please hand it to Mylinda, please.

[Whereupon, the foreperson proffers document to the clerk of court. The clerk of court proffers document to the Court]

[Whereupon, the Court reviews document]

THE LAW CLERK: Question one. Did you find that the defendant CSX Transportation, Incorporated, was negligent. No. If the answer is no, then go to question three. Question three: do you find that the Defendant the South Carolina Department of Transportation was negligent. No. If you answer no, see instruction one. If you answered yes -- instruction one, excuse me: if you answered yes to questions two or four, please answer question five. If you do not answer yes to either question two or four, the foreperson should sign the verdict form and inform the bailiff that you have finished your deliberations.

THE COURT: All right. And Mr. Lundy, just to be clear, under the foreperson's signature you have written: for the defendant. What I'm going to need

1 you to do is go ahead and sign the verdict, sir,
2 afterwards.

3 Mylinda, will you go ahead and poll the jury,
4 please.

5 THE CLERK OF COURT: Yes.

6 - - - - -

7 POLLING OF THE JURY

8 THE CLERK OF COURT: When I call your name, if
9 you would stand and I'll ask you two questions.

10 Lula Brooks, was this your verdict?

11 MS. BROOKS: Yes.

12 THE CLERK OF COURT: And is it still your
13 verdict?

14 MS. BROOKS: Yes.

15 THE CLERK OF COURT: Barbara White, was this
16 your verdict?

17 MS. WHITE: Yes.

18 THE CLERK OF COURT: Is it still your verdict?

19 MS. WHITE: Yes.

20 THE CLERK OF COURT: Kelvin Walker, was this
21 your verdict?

22 MR. WALKER: Yes.

23 THE CLERK OF COURT: Is it still your verdict?

24 MR. WALKER: Yes.

25 THE CLERK OF COURT: Maynard Garvin, was this

1 your verdict?

2 MR. GARVIN: Yes.

3 THE CLERK OF COURT: And is it still your
4 verdict?

5 MR. GARVIN: Yes.

6 THE CLERK OF COURT: Harold Willie J. Cook, was
7 this your verdict?

8 MR. COOK: Yes.

9 THE CLERK OF COURT: Is it still your verdict?

10 MR. COOK: Yes.

11 THE CLERK OF COURT: Jeanette Capers, was this
12 your verdict?

13 MS. CAPERS: Yes.

14 THE CLERK OF COURT: And is it still your
15 verdict?

16 MS. CAPERS: Yes.

17 THE CLERK OF COURT: Wilbur Gordon, was this
18 your verdict?

19 MR. GORDON: Yes.

20 THE CLERK OF COURT: And is it still your
21 verdict?

22 MR. GORDON: Yes.

23 THE CLERK OF COURT: Monica Lambert, was this
24 your verdict?

25 MS. LAMBERT: Yes.

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1 THE CLERK OF COURT: And is it still your
2 verdict?

3 MS. LAMBERT: Yes.

4 THE CLERK OF COURT: Tracy Lende, was this your
5 verdict?

6 MR. LENDE: Yes, ma'am.

7 THE CLERK OF COURT: Is it still your verdict?

8 MR. LENDE: Yes, ma'am.

9 THE CLERK OF COURT: Corethia Rice, was this
10 your verdict?

11 MS. RICE: Yes.

12 THE CLERK OF COURT: Is it still your verdict?

13 MS. RICE: Yes.

14 THE CLERK OF COURT: Catheryn Riles, was this
15 your verdict?

16 MS. RILES: Yes.

17 THE CLERK OF COURT: And is it still your
18 verdict?

19 MS. RILES: Yes.

20 THE CLERK OF COURT: Quanzell M. Ling, was this
21 your verdict?

22 MR. LING: Yes.

23 THE CLERK OF COURT: And is it still your
24 verdict?

25 MR. LING: Yes.

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1 THE COURT: All right. Anything further from
2 this jury? From the plaintiff?

3 MR. PARKER: Nothing, Your Honor.

4 THE COURT: From the defense?

5 MR. HARMON: Nothing, Your Honor.

6 MR. MCLEOD: Nothing, Your Honor.

7 THE COURT: All right. Ladies and gentlemen of
8 the jury, I want to thank you for your service here for
9 the last over three weeks. I know y'all have worked
10 hard, and we truly do appreciate it.

11 I will tell you, ladies and gentlemen, at this
12 time the attorneys or anyone else is free to contact
13 you in regards to your verdict; however, it is up to
14 you if you want to discuss it. So if someone contacts
15 you and you do not wish to speak to anyone in regards
16 to your verdict, just tell them politely, you know, I'm
17 not interested in discussing it with you. If someone
18 persists, I ask that you call up here to the courthouse
19 and Mylinda will give me their name and I will take
20 care of it. Okay?

21 So, again, as I instructed you every night, you
22 now are able to talk about your verdict if you so
23 choose to. All right?

24 With that said, ladies and gentlemen, again, I
25 want to thank you. I know y'all have worked very hard.

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF HAMPTON) FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2004-CP-25-267

WILLIE HOMER STEPHENS, GAL for
LILLIAN COLVIN, a MINOR,

PLAINTIFF;

VS.

CSXT TRANSPORTATION, INC. and
SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION,

DEFENDANTS.

MOTIONS HEARING

held before the Honorable Carmen T. Mullen
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Hampton County Courthouse
Varnville, South Carolina
on Tuesday, September 11, 2008, Commencing at 11:36 a.m.

SUSAN "MIA" PERRON, CCR, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
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PROCEEDINGS

THE COURT: All right. Mr. Holmes or Mr. Parker, this is your motion, sir?

MR. PARKER: Yes, Your Honor. Do you have a copy of the motion?

THE COURT: I do, sir.

MR. PARKER: Your Honor, we would at this time like to move for a judgment notwithstanding the verdict under Rule -- South Carolina Rules of Civil Procedure 50(b), and for a new trial.

The first ground I want to argue is the fact that the Court did not direct a verdict in favor of the plaintiff on the issue of negligence and the fact that CSX admittedly failed to sound the horn in accordance with 58-15-910.

The evidence indicates that -- by all accounts, was that the engineer on the locomotive did not sound the horn the required 1500 feet.

Under the -- we believe -- we move for a directed verdict on that issue, that the fact CSX was negligent in failing to sound the horn -- and only on the issue of negligence, not on proximate cause -- and the jury found that, in fact, CSX was not negligent. There was no evidence but that they failed to sound the horn and under that evidence, then clearly we would be

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1 entitled to a directed verdict on that issue.

2 Additionally, the defendant stipulated in the
3 case that the event recorder was accurate. And I'm
4 going to pass up, and I've given Mr. Wray a copy of the
5 case, of Baleau vs. Fetner [phonetic] which holds that
6 where there is a stipulation, the parties are bound by
7 that stipulation.

8 In this case the defendant not only admitted
9 that they didn't sound the horn but also stipulated
10 that, in fact, the event recorder was accurate. And
11 the facts of that event recorder then become the law of
12 the case, and the law of the case is they did not sound
13 the horn the required distance.

14 Under Mr. Wray, in his brief, argues, well, they
15 had a bell on the locomotive, therefore they didn't
16 have to sound the horn. And I'll ask him, and he can
17 address it, but they don't seriously contend, I don't
18 think, that they had a thirty-pound bell, which is what
19 the statute -- the statute allows you to have a thirty-
20 pound bell --

21 THE COURT: Right. For the horn.

22 MR. PARKER: -- for a horn.

23 Clearly in this case they were relying upon the
24 horn. There's no witness whatsoever that heard a bell
25 for the required 1500 feet. So clearly in this case --

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1 and had the jury found negligence against us on
2 proximate cause, we would not have this argument but
3 because the jury found that CSX was not negligent --
4 when clearly all of the evidence was that they were
5 negligent in not sounding the horn. The issue for the
6 jury was proximate cause but they obviously, for
7 whatever reason, did not follow the instruction of the
8 Court and the law of the case in that you have to sound
9 the horn for 1500. And they obviously found that they
10 had complied with the statute, when all of the evidence
11 was the other way. And they admitted it. If I
12 remember in opening statement, Mr. Harmon's statement
13 about it, he said, we admit there was a short horn.
14 And in that regard we feel like even though Mr. Wray
15 argues in his brief there was evidence otherwise, there
16 really wasn't.

17 The two eyewitnesses, Ms. Griffin and the --
18 over at the store across the street said they blew it
19 once and then quit blowing it and then they started
20 again right at the Family Dollar. And the other
21 witness, Mr. Hoover, who was approaching, stated the
22 same thing. And the engineer said that he would not
23 argue with the event recorder; even though he thought
24 he had, he would admit that he didn't blow it.

25 So all of the evidence in the case is that they
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1 did not sound the horn the required distance.

2 In that event -- and I cited -- I passed up the
3 case of Hines vs. Elms, which is on that issue, and it
4 states that: when all of the evidence is such that it
5 creates negligence -- this is an automobile wreck case,
6 but where -- there's no question but that the defendant
7 was negligent, then you can get a directed verdict only
8 on that issue and then the proximate cause would go to
9 the jury.

10 And they held -- in that case there was a
11 verdict for the defendant after the Court directed a
12 verdict, and they held that was the proper procedure.
13 The plaintiff was arguing, well, you had to find some
14 damages. They said, no, you can go to the jury just on
15 negligence and it's up to the jury to decide whether or
16 not the negligence caused proximate -- proximately
17 caused the injuries.

18 And that's the situation we're here -- in here
19 today. And we believe there was no contest in this
20 case but that there was a failure of CSX to comply with
21 58-15-910, and the company rules. And Mr. Gooding
22 admitted that he violated the company rules. And so
23 all of the evidence in the case established negligence.
24 And by the jury not finding negligence, then we believe
25 we are entitled to a directed verdict on that issue and

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1 a new trial, because of that, with the jury being
2 instructed that the fact CSX was negligent and then
3 leaving to the jury the issue of whether or not there
4 was proximate cause.

5 Now, the defendant, in his brief, also states
6 that we were required at the close of all the evidence
7 -- and I assume after rebuttal case --

8 THE COURT: Rebuttal.

9 MR. PARKER: -- to make an additional motion for
10 a directed verdict. We believe that is contrary to
11 Rule 50. Rule 50 says you have to make that motion at
12 the end of your opponent's evidence, which we made, and
13 we feel like the motion was timely on those grounds.

14 We also believe that the evidence in this case
15 was clear that the defendant did not clear this
16 crossing in --

17 THE COURT: Mr. Parker, do you mind just giving
18 me one moment just to --

19 MR. PARKER: Sure.

20 THE COURT: -- to ask a couple of quick
21 questions --

22 MR. PARKER: Sure.

23 THE COURT: -- as to each of the issues?

24 Does anyone have a copy of the verdict form?
25 Mylinda -- and I'm assuming you might have one. Can
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1 you go get me one and maybe run a couple of copies of
2 it for me --

3 THE CLERK OF COURT: Sure..

4 THE COURT: -- just so I can look at the verdict
5 form.

6 Do you also -- did anyone request a copy of the
7 transcript? I mean, or do you-all have one from your
8 independent court reporter? Did you --

9 MR. WRAY: We have a transcript. Obviously it's
10 not the official version.

11 THE COURT: It's not -- I understand that, I'm
12 not --

13 MR. WRAY: And I don't know how clean it was. I
14 don't know if we brought it with us today. I don't
15 think we brought a printed version. But --

16 THE COURT: If you actually had a -- I would
17 appreciate it, if you have had one done -- and like I
18 said, it doesn't have to be certified, it doesn't have
19 to be perfect. I just would like to, if I possibly
20 could, look at.

21 MR. WRAY: We certainly can provide you with the
22 dailies that Marie was doing.

23 THE COURT: Right.

24 MR. WRAY: She did not transcribe every bit of
25 the trial, so there are some gaps. I think she took
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1 down all of the witness testimony, but some of the
2 arguments -- for example, I know the jury charge was
3 not transcribed by her.

4 THE COURT: I'm not worried about that, because
5 I actually have that. I have my jury charge, so I know
6 what I've charged.

7 I guess my question would be is did she do the
8 actual directed verdict motions. Or do you know?

9 MR. WRAY: I don't recall.

10 [Off the record momentarily]

11 MR. WRAY: Your Honor, my recollection is she
12 did transcribe the directed verdict motion that I made
13 on behalf of CSX. I do not believe she transcribed the
14 one Mr. Parker made because it was made as part of the
15 charge conference, which she did not take down. Well,
16 I say it was the charge conference. It was during that
17 afternoon when we did the charge conference.

18 MR. PARKER: Your Honor, my recollection is I
19 moved twice for a directed verdict: once after the
20 CSX's case, and then again after Mr. McLeod's case on
21 behalf of SCDOT. I did not -- it is my recollection is
22 move again after the rebuttal case, which I don't
23 believe -- I think Rule 50 is clear on that, that
24 you're not required to --

25 MR. WRAY: My recollection --

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1 MR. PARKER: -- that's my recollection.

2 MR. WRAY: Again, my recollection was there was
3 one motion made. I believe it was at the conclusion of
4 DOT's case. I did go back to my notes and I actually
5 did try to look at the rough transcript we had for the
6 purpose of seeing when the plaintiff moved for directed
7 verdict. And as I mentioned, it wasn't reflected in
8 the transcript we had either way because -- and my
9 notes showed that the motion was made during that
10 afternoon we did the charge conference, and we had told
11 Marie she didn't need to transcribe the conference.

12 THE COURT: Okay. The only reason why I ask
13 that is because what I'm looking at or considering,
14 that at the stage of directed verdict -- I understand
15 when Mr. Parker says he moved for a directed verdict
16 strictly as to negligence only and not as to proximate
17 cause. I want to know if that was argued that way.
18 And the reason why I ask that is then I go back and
19 look at what I charged this jury on negligence, and
20 seeing -- our charge on negligence obviously says you
21 have to show four things, and that is part of the
22 proximate cause, and so I just want to know for what we
23 put on the record and what we heard, specifically, with
24 the understanding that -- and correct me if I'm wrong.
25 Y'all did stipulate that the event recorder was

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1 accurate.

2 MR. WRAY: We did stipulate the event recorder
3 was accurate. We did not stipulate that he failed to
4 blow at 1500 feet, which was Mr. Wooden's testimony.
5 And there's an important difference between those two.

6 THE COURT: Well, how do you -- how do you have
7 it both ways?

8 MR. WRAY: Well, we didn't have it both ways.
9 Well, let me back up, first.

10 THE COURT: Okay.

11 MR. WRAY: And I will state an objection first
12 to the motion and argument made by Mr. Parker, because
13 I believe you're correct. The motion made at trial, at
14 the directed verdict stage, as I recall it -- and,
15 again, I don't have the transcript.

16 THE COURT: And that's why I'm asking for it.

17 MR. WRAY: I'm going by memory. But my
18 recollection is that the plaintiff moved for a directed
19 verdict on negligence and did not say or argue or file
20 a motion that said you should grant a directed verdict
21 on negligence and leave for the jury the issue of
22 proximate cause. That was not a motion made, so it's
23 improper to make it now.

24 Second, the written motion -- made following the
25 jury verdict -- within the ten days, which is when it

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1 has to be done by rule, does not seek relief on that
2 ground. It is more broadly stated, as it was stated in
3 that trial, that the Court erred in failing to direct a
4 verdict in favor of the plaintiff on the issue of
5 negligence because CSX admittedly failed to sound the
6 horn.

7 Again, it's not argued in the motion, it was not
8 argued at trial, that this Court should have left only
9 the issue of proximate cause. So we object on that
10 basis.

11 And then more fundamentally, on the JNOV motion,
12 it is not timely made and it was waived. Rule 50,
13 contrary to what Mr. Parker said, it does not say at
14 the end of the opponent's case. It says at the close
15 of all the evidence. And the reason we know that it
16 means at the end of the close of all the evidence is
17 because under Mr. Parker's view, I could have moved for
18 directed verdict at the end of the plaintiff's case.
19 That would be the end of my opponent's case. And then
20 under his view, when all the evidence was in I would
21 not have had to renew my motion.

22 Let's assume the plaintiff didn't even put on a
23 rebuttal case. It's clearly not the law. And there's
24 plenty of cases that say that, and we cited them in our
25 brief. It's at the close of all the evidence, not at

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1 the end of the opponent's case. And the rules, of
2 course, are statutes. They are to be read and
3 interpreted as written. If they wanted it to be at the
4 end of the opponent's case, they could have said at the
5 end of the opponent's case. The rule doesn't say that.
6 It says very clearly at the close of all the evidence.
7 And the plaintiff did not make that motion. There's no
8 question about it. Mr. Parker agreed to that. And so
9 the motion for JNOV is clearly waived, and so that's
10 not even proper before the Court.

11 And, additionally, we object to the motion as
12 stated and as argued here today because it is different
13 from the motion for a directed verdict made at the end
14 of the trial, and it's different from the written
15 motion that plaintiff submitted.

16 MR. PARKER: Your Honor, could -- I don't want
17 to interrupt Mr. Wray, but if I could -- Rule 50(a)
18 states clearly that a party who moves for a directed
19 verdict at the close of the evidence offered by an
20 opponent may offer evidence, in the event the motion is
21 not granted, without having reserved the right to do so
22 and to the same extent as if the motion had not been
23 made, and a motion for a directed verdict which is not
24 granted is not a waiver of trial and so forth.

25 So it's clear that the -- they're anticipating

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1 that you make the motion at the end -- why would you
2 need to make the motion at the end of your evidence?
3 Because your evidence can't even be considered. The
4 motion as to the directed verdict, whatever I put up
5 has nothing to do with it. It's what the -- it's
6 whether between the two parties there has been an issue
7 created. And if it's not, there's nothing I can do
8 about that in rebuttal.

9 You don't have to move again at the end of
10 rebuttal. I'm not positive I -- and I don't believe I
11 did. But I'm still not positive, without seeing the
12 transcript, that I didn't. But my memory is that I
13 didn't move after the rebuttal case. But there's
14 nothing I could do in a rebuttal case to create any
15 issue. And whether or not the issue existed was
16 whenever they put up that. And there's no requirement
17 that -- under the rule it's clear that the time for
18 making the directed verdict is at the end of the
19 opponent's case. That's what the rule says. That's
20 what the Rule 50(a) says, unless I read it wrong.

21 MR. WRAY: Well, we're talking about two
22 different rules. Rule 50(a) is motion for directed
23 verdict. We're not here on a motion for a directed
24 verdict. We're here on a motion for judgment
25 notwithstanding the verdict, which is Rule 50(b). And
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1 there's an important reason for that distinction.

2 The plaintiff, for example: Mr. Parker couldn't
3 put up a plaintiff's case and then stand up and say, I
4 move for a directed verdict.

5 THE COURT: Of course, because you wouldn't have
6 your opportunity to present your evidence.

7 MR. WRAY: That's correct. That's what Rule
8 50(a) speaks to.

9 His motion has to be made after we present our
10 evidence. But to preserve his right to move for JNOV,
11 which is what we are here on today, it's Rule 50(b).

12 THE COURT: Well, do you have case law that
13 shows the distinction? Because JNOV is based on the
14 directed verdict motion, so --

15 MR. WRAY: Well, it incorporates the same
16 grounds. You can't change your grounds. I agree with
17 that.

18 But contrary to what Mr. Parker argued, Rule
19 50(b) says: a party who has moved for a directed
20 verdict may move to have the verdict new judgment
21 entered -- in accordance with the verdict, if it does
22 so at the close of all the evidence.

23 And so -- and we cited the cases. The Henderson
24 case, which talks about it being a very strict rule;
25 the Wright case, which says when a defendant moves for

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1 a directed verdict at the close of the plaintiff's
2 case, he must renew that motion at the close of all of
3 the evidence. Otherwise, this Court is precluded from
4 reviewing the denial of the motion on appeal. There's
5 plenty of cases that say that.

6 And so, again, as I said, the reason we know
7 that argument is not correct is because if that were
8 the correct argument then I, as the defendant, could
9 move at the end of the plaintiff's case and I would not
10 have to renew my motion and I would be protected, if
11 Mr. Parker was correct. But the law says otherwise. I
12 have to move at the end of his case. I have to move at
13 the close of all the evidence, and in this case the
14 close of all the evidence was following the plaintiff's
15 rebuttal case. And the reason for that is because
16 there could have been some inference created during the
17 evidence presented during the defendant's case that the
18 rebuttal case rebutted and eliminated from the case.
19 And that's why the rule is what it says. So --

20 THE COURT: Well, let me ask you this. Did you
21 move at all three times?

22 MR. WRAY: Yes, ma'am. In fact, I think I moved
23 after Mr. McLeod's case because I was so worried about
24 what the rule meant, at the close of all the evidence.
25 So, yes, I definitely moved at the end of plaintiff's

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1 case, we definitely moved at the end of --

2 THE COURT: Rebuttal.

3 MR. WRAY: -- the defendant's evidence, and I
4 certainly moved at the end of the rebuttal case.

5 So I don't believe you can properly even
6 consider the JNOV motion. It's not timely made. And
7 even if it were timely made, I object to the grounds as
8 stated, because they are different. You weren't asked
9 to do at trial what you're being asked to do today and
10 what they're claiming -- or where they claim you
11 committed error. You can't commit an error when you
12 weren't asked to direct a verdict on negligence and
13 submit only the question of proximate cause. I don't
14 believe that was the motion made.

15 THE COURT: Okay. Respectfully, Mr. Parker, I
16 can tell y'all this: if your court reporter hasn't
17 transcribed that portion, can I ask that you-all
18 request it from Mia?

19 MR. PARKER: Certainly. Certainly.

20 THE COURT: And I want to see it.

21 MR. PARKER: I am -- you know, you're never
22 positive about anything, so I won't say I'm a hundred-
23 percent positive. But I am ninety-percent positive I
24 moved on that grounds and in that fashion. And if I --
25 I don't want to say I'm positive, because I'm not.

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1 There's been -- you know, a lot went on in the trial.
2 But my memory is -- and on the issue of whether I moved
3 after the rebuttal case, I don't remember doing that.
4 But I'm not saying I didn't do that, either, until I
5 look at the transcript.

6 THE COURT: I would be surprised that if he had
7 renewed his motions, that that didn't prompt you to do
8 it, too.

9 MR. PARKER: I may have and --

10 THE COURT: I would be surprised.

11 MR. PARKER: -- I may not have. I'm not going
12 to sit here -- because I don't have a memory of doing
13 it but I don't have a memory of not doing it, either.

14 THE COURT: I think we need that portion, as
15 well.

16 MR. PARKER: We'll look at that and see. We'll
17 ask that that --

18 THE COURT: And someone is going to have to,
19 afterwards, sit down and explain to Mia exactly where
20 all this is.

21 MR. PARKER: Sure.

22 If he doesn't have it, we will -- but I'll let
23 him look and see, and then we'll order it if he does
24 not.

25 THE COURT: Thank you.

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1 MR. WRAY: I for sure don't have the initial
2 motion --

3 THE COURT: His motion.

4 MR. WRAY: -- that he made, because I looked for
5 that specifically.

6 MR. PARKER: Well, then, we will ask for that
7 now.

8 THE COURT: Okay.

9 MR. WRAY: But I don't know if I looked -- well,
10 I know that there was not anything on the record
11 showing that any motion was made by plaintiff after the
12 rebuttal witness, but that -- I don't know whether
13 that's because Marie didn't take down that portion.

14 I can also say -- of course, this isn't evidence
15 -- but I take very detailed notes during trial, and I
16 looked at my notes and I did not have any note
17 indicating a renewal of their motion.

18 MR. PARKER: I may not have after our rebuttal
19 case, but I'm relatively sure that I did twice before I
20 -- I made the motion twice that I'm aware of, and so --
21 that I remember.

22 THE COURT: Okay.

23 MR. PARKER: And the next ground we have, Your
24 Honor, is on the issue of negligence. The same motion
25 was made as to the vegetation and that we were entitled

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1 to a directed verdict that the Defendant CSX was
2 negligent in not clearing the vegetation but that the
3 issue of proximate cause was also for the jury. So
4 it's a similar motion. We think all the evidence
5 was -- and they admitted they didn't clear it.

6 And, again, the way the verdict form was set up
7 that negligence and proximate cause were separate.

8 THE COURT: I see that, and that's why I asked
9 for it.

10 MR. PARKER: And that we believe we were
11 entitled that.

12 Our next ground, Your Honor, we also move for a
13 new trial. And the grounds of that, as set forth in
14 our motion, is that the testimony of David Mickens was
15 disallowed, which would have established that the
16 Defendant CSX was negligent in failing to maintain
17 sight distance on the AMH line near the Hill Road
18 crossing, to put them on notice --

19 THE COURT: Was the AMH line the same line as
20 this one?

21 MR. PARKER: The same line.

22 THE COURT: And it was -- how far up was he
23 testifying?

24 MR. PARKER: It was about four or five miles.

25 THE COURT: And was he testifying to -- I

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1 believe it was a previous accident; am I correct?

2 MR. PARKER: He was. He was -- no. He was
3 testifying in the case of Hartley vs. CSX. Dr.
4 Heathington testified to a number of crossings --

5 THE COURT: That was the seven or eight
6 crossings.

7 MR. PARKER: -- and one of them -- several of
8 them were close in proximity to Hill Road, if five
9 miles at the most. We could argue about that but --

10 THE COURT: And this was back -- I know his
11 deposition testimony was '02. But it was those
12 crossings or that line in 2000, I believe was the year.

13 MR. PARKER: In May of 2000 he went there.

14 And we feel like that was error and that the
15 testimony should have been admitted.

16 We also move for a new trial for the defendant
17 being allowed to pit witnesses against other witnesses,
18 particularly concerning testimony of Dr. Lipscomb and
19 ask him -- he -- and, in fact, I think they may have
20 even played testimony. I'm not sure about it. But
21 they were able to ask him about other witnesses who
22 heard -- said, well, you know, you know a witness so-
23 and-so, Biser says he heard it, Hoover says he heard
24 it, Griffin said they heard it. But the circumstances
25 were different and it created to the jury the idea that

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1 his testimony was somehow in conflict with their
2 testimony when really it wasn't, because they had their
3 windows down.

4 But they were allowed to pit that testimony
5 against the testimony of Dr. Lipscomb that she couldn't
6 have heard it because -- because the windows were up.
7 So what it did was gave, in our opinion, an inaccurate
8 impression to the jury whether these other witnesses
9 heard it, therefore his testimony must be incorrect.
10 Well, the difference was they had their windows down,
11 she had her windows up, and we think that that was
12 improper and we believe that -- of course, we objected
13 on that ground.

14 THE COURT: Mr. Parker, I believe on that one I
15 believe what he said was did you consider this
16 testimony in your -- and Dr. Lipscomb, correct me if
17 I'm wrong, was the audiologist.

18 MR. PARKER: That's correct.

19 THE COURT: And overall, he also testified that
20 it didn't matter when the horn was blown because she
21 wouldn't have heard it because, as you said -- I
22 thought the testimony was that the windows were
23 cracked.

24 MR. PARKER: It was cracked on the driver's
25 side.

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1 THE COURT: Okay. That's what I thought, that
2 someone's was.

3 MR. PARKER: The testimony of Ms. Griffin, I
4 believe, was even -- maybe even outside of the vehicle.
5 But in any event, the windows were all the way down.
6 Mr. Hoover had his window all the way down. Then there
7 was some -- and Mr. Biser, there was -- he either had
8 it all the way down or had it cracked some, about
9 halfway down or whatever. It was -- that was the
10 testimony as I recall it.

11 THE COURT: Okay.

12 MR. PARKER: And next, our next ground, would be
13 that on the pitting the witnesses, Dr. Lipscomb was
14 also cross-examined about -- and pitted -- they pitted
15 the testimony of Ned Wooden and Calvin Cummings against
16 the testimony of Tonia Colvin during the cross-
17 examination of Dr. Heathington and asked him, well, if
18 you take this testimony as opposed to that testimony.
19 And really their -- they all testified, their testimony
20 ought to stand on their own, not be presented by in a
21 pitting method so that the jury was presented in his
22 testimony with, well, do you accept this testimony or
23 that testimony. And we believe that that was an
24 improper way of cross-examining and getting into
25 evidence the testimony of Mr. Wooden and Mr. Cummings

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1 in our case. And we believe that that was improper,
2 and we would ask for a new trial.

3 THE COURT: Let me ask you, Mr. Parker, if -- we
4 are talking about an expert witness, and typically an
5 expert witness would rely on statements by fact
6 witnesses. And I can tell you, when you made this
7 objection during the trial, you handed up to me
8 something probably from a Horn book. I don't know
9 exactly where it was from --

10 MR. PARKER: It was from Ralph King Anderson.

11 THE COURT: -- and I looked at it. I looked at
12 it, and I was concerned about it. But I don't see how
13 you don't ask an expert witness, who has to look at
14 each of the fact witnesses' testimony what happened --
15 because, again, the expert wasn't there and none of us
16 were there. It would be only those fact witnesses and
17 whether or not he considered what they said. I don't
18 have -- I don't know how you don't do that. And you
19 have to be able to do that, and I don't see that it's
20 pitting. And I guess -- I don't know, I may have to go
21 look some more, because I was concerned at the time.
22 But I still don't see how that's pitting a witness.
23 It's just saying did you consider that this person has
24 testified or will testify that they heard the horn,
25 versus Ms. Colvin who didn't hear the horn.

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1 MR. PARKER: Well, that -- it may be that you
2 could say, didn't you consider the testimony. But that
3 -- we went a lot farther in this in that they actually
4 played the testimony. They didn't ask him if he had
5 considered it. I think that would be a proper
6 question. But then to allow them to put up the
7 testimony --

8 THE COURT: In your case.

9 MR. PARKER: -- in our case I think improperly
10 influence -- of course it took the whole testimony out
11 of context and allows them to take parts and parcels of
12 testimony and put it on --

13 THE COURT: And put them in your case.

14 MR. PARKER: -- in our case.

15 And that's our objection. And that was our
16 objection, and that is our grounds for a new trial.

17 The next ground, Your Honor, is dealing with the
18 exhibits that were not allowed to go to the jury on
19 negligence, and that is Exhibit 66, 70 -- 67, 69, 70,
20 76, 77, 79, 81, 89, 92, 93, 97, and 128. And the -- we
21 believe that those exhibits were admissible on the
22 negligence cause of action and we believe that all of
23 those exhibits were, in fact, admissible on the issue
24 of negligence.

25 And, for example, Exhibit 66 was not allowed to

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1 go to the jury. It states that: their present policy
2 -- meaning CSX -- and their policy at the time of this
3 incident was that -- for a on-track brush-cutter, that
4 they were to cut the crossing for twenty-nine feet from
5 the near rail.

6 And the testimony, uncontradicted testimony, in
7 this case was that the vegetation was sixteen feet from
8 the near rail. The jury -- this information -- the
9 jury could have used this information to have, in fact,
10 found that they, in fact, violated their policy. And
11 it was not allowed to go to the jury --

12 THE COURT: Which specific document was that,
13 Mr. Parker?

14 MR. PARKER: This was Exhibit 66.

15 THE COURT: Right. What is it?

16 MR. PARKER: It's a memo by Mr. Mike McMaster to
17 Hugh Hopkins that states --

18 THE COURT: Dated when?

19 MR. PARKER: It's -- this particular document
20 was attached to another document that was in 2000. But
21 this document is undated, but it's clear from the
22 context of the other documents it was in that time
23 frame.

24 THE COURT: So this was the prior brush-clearing
25 program and not the one, I'm sorry, that was in --

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1 MR. PARKER: They still had that policy --

2 THE COURT: Right.

3 MR. PARKER: -- policy, and that's still the
4 maintenance-of-way instruction. But what it did was of
5 course then allowed -- I mean, we wanted it in because
6 it said that -- also said that all main-line tracks are
7 sprayed twelve feet each side of the crossing, each
8 crossing quadrant is farther increased to thirty feet
9 each side for a distance of 200 feet.

10 So in other words, if they had sprayed it in
11 accordance with the policy, it also would have taken
12 care of this vegetation which wasn't --

13 THE COURT: If they had sprayed it?

14 MR. PARKER: If they had killed the vegetation.
15 It would have killed the vegetation.

16 THE COURT: But weren't we talking about the
17 tree-line sight line? We weren't talking about brush
18 obstructing her vision.

19 MR. PARKER: Well, it was both. Brush was
20 sixteen to eighteen feet. The trees were a little bit
21 farther.

22 THE COURT: Okay. Are we talking about brush
23 that's growing up -- that was up in her sight line, as
24 far as --

25 MR. PARKER: Yeah. The brush was. The brush

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1 was sixteen to eighteen feet, which we had a picture
2 which was of that brush. I can't remember the -- if I
3 remember right, the brush was at 190, 195 feet, and we
4 had photographs of it. And so we believe that document
5 was admissible.

6 And the --

7 THE COURT: Mr. Parker, let me ask you this.
8 Any of the exhibits that I didn't allow in, are any of
9 them something that is above and beyond what was
10 already introduced? I mean, did any of them -- as
11 opposed to being cumulative or -- I mean, obviously I
12 understand you were trying to establish that there were
13 numerous documents. But was there anything that I did
14 not allow in, in any of those exhibits, that didn't
15 come in through another exhibit or some other way?

16 MR. PARKER: Yes, Your Honor.

17 THE COURT: Which ones, specifically?

18 MR. PARKER: Exhibits -- the exhibit dealing
19 with the Timber Management --

20 THE COURT: Timber Management? Which one was
21 that, sir?

22 MR. PARKER: Exhibit 76.

23 THE COURT: Do you have a -- can I take a look
24 at a copy? Or do you mind if I just come down and look
25 at --

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1 MR. PARKER: No. I have a copy for you.

2 THE COURT: Oh. Thank you. Okay. Is it okay
3 if I take this one?

4 MR. PARKER: Yes. You can have it.

5 THE COURT: Okay.

6 MR. PARKER: Do y'all have copies of these?

7 MR. WRAY: [Indicates affirmatively]

8 MR. PARKER: And this is the document that talks
9 about --

10 THE COURT: Okay. This is the one where
11 basically he says that they have outstanding debts,
12 it's not a good company, and despite this CSX went
13 ahead and hired them. But we had adequate testimony
14 about that.

15 MR. PARKER: I believe that Dr. Heathington did
16 read that into the record, so I believe that --

17 THE COURT: I believe he did, too.

18 MR. PARKER: -- is in evidence, as you recall.

19 But our objection is that they did not have
20 these documents back in the jury room to document that
21 and allow them to argue to the contrary on this, and
22 that -- we also had -- you know, in this regard, and
23 the real reason for this evidence, is that the program
24 that he was cutting this to was a distance of 100 feet
25 -- or 300 feet, and had they did that, it would remove

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1 the sight obstructions had they not had an incompetent
2 contractor; that the policy at that point in time, and
3 his contract, was to go down and cut this crossing for
4 100 feet to 300 feet.

5 THE COURT: Which exhibit are we talking about
6 now? Because I know we're not on --

7 MR. PARKER: These are the next exhibits that --
8 Exhibit 79, actually, the full length of the railroad.
9 79 said: we will cut all the passive public crossing
10 out -- we're using outside contractor, Timber
11 Management, to cut vegetation 300 feet on either side
12 of the crossing, full length of the right-of-way, for
13 sight distance.

14 That was not allowed to go to the jury.

15 THE COURT: And this was the -- this was the
16 specifications, or what Timber Management was supposed
17 to cut to, which is the company that was fired; right?

18 MR. PARKER: Correct.

19 THE COURT: Okay.

20 MR. PARKER: And I would state, Your Honor, when
21 the document was -- you charged the jury that this
22 document, during the -- when this testimony came in, it
23 was limited to punitive damages, I believe, and when,
24 in fact --

25 THE COURT: I only charged that five times total
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1 in this whole case.

2 MR. PARKER: I believe that what you -- you
3 charged the jury at the start of these documents that
4 these documents could only be considered -- you're
5 fixing to hear a number of documents. That's my
6 recollection. But, again, I stand corrected on that if
7 I'm wrong on that.

8 THE COURT: I did it five times. I know that.
9 I mean, maybe six. But I'm positive it was --

10 MR. PARKER: Well, it was a series of documents
11 --

12 THE COURT: Right. I know it did it before Dr.
13 Heathington got up.

14 MR. PARKER: Right.

15 THE COURT: I know that for sure. So, okay. So
16 I didn't charge 79?

17 MR. PARKER: No. 79 was not allowed to go to
18 the jury.

19 THE COURT: Go to -- I'm sorry.

20 MR. PARKER: 81 was not allowed to go to the
21 jury. And then this -- and 81, in particular, is
22 important because it says that they were going to do
23 this on the Augusta subdivision and that they were
24 going to clear these crossings on the Augusta
25 subdivision in compliance with that requirement.

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1 And then 128 is the compilation of crossings
2 that did not meet specifications. It was not allowed
3 to go to the jury, and we believe those were admissible
4 on the basis of showing that -- to rebut their
5 contention that they said they didn't do it because of
6 a landowner issue. I don't think there was any
7 evidence to support that, because they said within a
8 week they cleared up the landowner thing. But they
9 didn't -- CSX didn't clear all these other crossings.
10 They allowed all these other crossings to remain out of
11 specification where there was no landowner issue. So
12 we believe that it was admissible on actual damages to
13 reflect that position, and the jury was not allowed to
14 see this evidence. Now, this -- these were not -- I do
15 not believe these were published to the jury.

16 THE COURT: When you say these, which ones are
17 we talking about?

18 MR. PARKER: Exhibit 128.

19 And there were a number of crossings right up
20 the AMH line in this vicinity where they also failed to
21 clear the crossings in accordance with their
22 specifications, and these documents rebutted their
23 position that this was a landowner issue and that's why
24 they didn't clear the crossing.

25 THE COURT: All right.

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1 MR. PARKER: The next issue we have, Your Honor,
2 is we believe there was error in excluding the
3 testimony of two witnesses, Anna Sue Rivers and Betty
4 Ruth Crews, and that goes to the same issue as Exhibit
5 128. And we have submitted their testimony which shows
6 that the fact they would have testified that in
7 Hampton, when the contractor got here there was trees
8 that the ladies with the garden club contended were
9 their trees and they didn't want the railroad to clear
10 them but they were told there that --

11 THE COURT: They had twenty-four hours I think
12 to move them, is what you told me.

13 MR. PARKER: That's correct. And that's what
14 was in their testimony that's been submitted to the
15 Court.

16 THE COURT: And this was five months after this
17 accident; correct?

18 MR. PARKER: That's correct.

19 THE COURT: Correct me if I'm wrong. I don't
20 think there was any challenge to -- the reason why they
21 initially didn't clear it was because Mr. Jackson
22 claimed it was his property. Then obviously there was
23 adequate e-mail showing that within a week it was
24 cleared up and CSX knew they had the right-of-way. I
25 don't think at any time did they say that they were not

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1 able to clear the crossing at that point. They just
2 didn't do it. I mean, I never heard them try to rebut
3 or say it wasn't possible, we didn't have a right to do
4 it. I never heard that in any way as a defense --

5 MR. PARKER: I heard --

6 THE COURT: -- which I think could have been
7 used for impeachment purposes. I agree with you on
8 that. But I don't -- that was never the defense.

9 MR. PARKER: Well, I disagree, because they
10 argued in -- and I can't remember particularly in
11 closing, but I remember specifically in opening they
12 argued and their argument was, we did not clear this
13 because of Mr. Jackson's contention and that --

14 THE COURT: That would be the original reason
15 for them not clearing it.

16 MR. PARKER: No. But the argument was that
17 because of that -- and they contended they couldn't go
18 back and do it because you can't take one crossing over
19 another crossing. There was a lot of argument about
20 that. And their contention was that that was, of
21 course, reasonable, and because of Mr. Jackson and that
22 issue, whereas --

23 THE COURT: Who testified to that?

24 MR. PARKER: Oh, they had -- they had much
25 testimony on that. And I would say that there was --

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1 THE COURT: Who was it? Because they only put
2 up a day of testimony, so --

3 MR. PARKER: No. It --

4 THE COURT: -- who was it?

5 MR. PARKER: It was probably during the CSX
6 witnesses that we took, and the parts they published
7 from those depositions concerning Mr. Goedde, Mr.
8 LeMaster. I would say it came in in their testimony.
9 And, again, I wouldn't stand by that. But one of the
10 two of them. It came from CSX's witnesses.

11 THE COURT: Did y'all transcribe your day of
12 testimony?

13 MR. WRAY: Yes.

14 THE COURT: You did?

15 MR. WRAY: Except, again, my recollection is
16 that it was a videotape. Marie didn't take down
17 videotape testimony.

18 THE COURT: But Mr. Goedde and Mr. LeMaster, who
19 Mr. Parker is referring to, both testified in the
20 plaintiff's case.

21 MR. PARKER: That's correct.

22 THE COURT: Oh. Okay.

23 MR. PARKER: And they designated parts of that
24 that we were required to play in our case. And in
25 those designations -- that's my recollection. It could

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1 have been Mr. Patterson. It was one of the three of
2 them. I'm very confident it was one of the three of
3 them testified, well, once we left there we just
4 couldn't go back to do this; we -- and that, you know,
5 we had other crossings to go to. But these -- 128 and
6 these other witnesses contradicted that position. Even
7 though it was actually played in our case, it was by
8 their witnesses.

9 MR. WRAY: I think you will recall you raised
10 the point several times during trial that we actually
11 told DeAngelo to go back and cut it. DeAngelo denied
12 that we told them that. And I think you made a point
13 of that. There wasn't any question that the reason
14 this quadrant wasn't cut was because Mr. Jackson came
15 out. If he hadn't ever set foot out the front door, it
16 would have been cleared.

17 MR. PARKER: Well, that's not -- I mean, I hate
18 to -- excuse me. I didn't mean to interrupt you.

19 MR. WRAY: And once that dispute arose, they did
20 move on to other crossings. But it wasn't our
21 position, and we didn't put up evidence in trial on the
22 point that Mr. Parker is arguing. They, in fact, told
23 DeAngelo Brothers to go back out and clear the crossing
24 once the landowner dispute was resolved. That's what
25 the testimony was.

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1 MR. PARKER: Mr. Goedde testified to that,
2 Goedde, and Mr. Patterson said otherwise --

3 MR. WRAY: -- was with DeAngelo Brothers.

4 MR. PARKER: DeAngelo Brothers. That's correct.

5 THE COURT: Okay. Thank you. All right.

6 MR. PARKER: Your Honor, the next position we
7 have is that there was error in excluding the testimony
8 about the crossing being cut because it impeached CSX's
9 position that they couldn't go -- just what I
10 testified: they couldn't go back to cut it. Well,
11 days after the collision they did go back and cut it.
12 And it impeached their position that -- two things: it
13 impeached their position it didn't need cutting, and it
14 impeached their position that they couldn't cut it
15 because of the landowner issues and you couldn't take
16 one crossing and go back and just cut that crossing,
17 because certainly they went -- they did go back and cut
18 this crossing, and they did it on February 27th, which
19 was days after the collision occurred. And it
20 impeached their position that it didn't need cutting.
21 I mean, he can't say, well, it didn't need cutting but
22 we went and cut it anyway. And you can say that, but
23 it should come in to impeach that because it causes
24 them to question the question of whether or not it does
25 need cutting.

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1 THE COURT: I don't know, necessarily, but I
2 think there's plenty of cases where even if they don't
3 think that they were negligent, to make something --
4 and to use y'all's theme throughout this trial -- we
5 were trying to make a safe crossing even safer, I
6 believe is what y'all said.

7 MR. WRAY: And not only that --

8 THE COURT: I think that would be like an
9 admission. And that's why it's not allowed, under the
10 rules, in. I just --

11 MR. PARKER: Your Honor, you can't take the
12 position -- our position is you can't say, well, to
13 make a safe crossing safer. They were allowed to do
14 that unimpeached. That was their theme. Yet we know
15 that when they came back there and you had accident --
16 they weren't trying to make a safe crossing safer by
17 doing that. They came back and cut that, after the
18 fact, because it needed cutting.

19 MR. WRAY: Well, the jury obviously found
20 otherwise. That's what --

21 MR. PARKER: Well, they did because they didn't
22 get all the evidence.

23 MR. WRAY: No. That's what is incredible about
24 this argument is Mr. Parker says that we cut it because
25 it obviously needed cutting. The jury, which was

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1 making the decision about whether there was appropriate
2 sight line at this crossing and whether we were
3 negligent in not having cut it, concluded it didn't
4 need cutting, which was exactly consistent with what
5 the evidence showed.

6 MR. PARKER: Had they learned that, in fact,
7 they came back there two weeks later and cut it, they
8 may have said, yeah, they knew it needed cutting. And
9 this impeaches their position. And so they only got
10 that part of the evidence. They didn't get all of the
11 evidence. And we think that we were entitled to get
12 that evidence in and that we were prejudiced by not
13 having that evidence in.

14 Your Honor, we would next -- on the request to
15 charge, there were a number of requests that were not
16 charged and we think that we should have had those .
17 charged. We -- I don't think -- know if the Court's
18 copy was filed. We need to file a copy of it. I
19 don't -- we furnished the Court and all counsel with
20 it, but I'm not sure it was ever marked. So we would
21 like to mark that as a Court's Exhibit.

22 [Whereupon, Court's Exhibit Number 1 is marked
23 by the court reporter]

24 THE COURT: Have you compared and actually seen
25 what you say was not charged to see if it, in fact,

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1 was charged? Because so much of it as we went through
2 this -- and I know, Mr. Parker, you weren't here. It
3 was Mr. Holmes, from your office, that did it. So much
4 of it was incorporated in other portions of your
5 charge. For instance, the first three charges
6 basically said the same thing. They just were
7 repeating it --

8 MR. PARKER: All right. I believe --

9 THE COURT: -- and so those things were inserted
10 in there. And so a lot of it -- a lot of it, what
11 you're stating in your motion you say wasn't charged,
12 was, in fact, charged.

13 MR. PARKER: I don't think that in our motion
14 that request to charge number two was specifically --
15 you would not charge. I was here for that and where we
16 asked that the jury be charged that CSX had a duty to
17 maintain this right-of-way at a reasonably safe
18 condition so as not to obstruct a motorist's vision of
19 approaching trains was not charged.

20 You did charge that they had a duty to keep it
21 in a reasonably safe condition, but not the part -- but
22 not to maintain it in such a way as to obstruct a
23 motorist's view of an oncoming train. And my
24 recollection is we cited the Lowery case for support
25 for that, which that was, in fact, the case that they

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1 objected because there was not direct language in that
2 case, and so you did not charge it. That's my -- I
3 have a very good memory of that one.

4 THE COURT: All right, sir. You can go ahead
5 and continue.

6 MR. PARKER: The next one, Your Honor, is
7 essentially the same thing but it, under the law, is --
8 we ask it be charged that the railroad also had the
9 added duty of care of -- when the motorist's view is
10 obstructed, to give appropriate signal. And that was
11 not charged.

12 The next one is -- and that was number three.
13 The next one is number nine.

14 THE COURT: Mia, do you have the charge typed
15 up?

16 Did anyone request the charge? Did you --

17 MR. WRAY: No. I did look for that. You're
18 talking about the charge you actually read?

19 THE COURT: Uh-huh.

20 MR. WRAY: No, ma'am. We don't have it.

21 [Off the record momentarily]

22 THE COURT: I'm sorry. Go ahead.

23 MR. PARKER: And number nine is just the law
24 that even though this was a stop sign where you do have
25 a duty to stop, the part that obviously -- the reason
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1 we wanted nine charged was that it's -- you have the
2 duty to exercise ordinary care under all of the
3 surrounding circumstances. And I'll get to that. The
4 reason for that, of course, was you later charged the
5 jury that it's always train time at crossings, which
6 seems to be -- put an added burden on the motorist to
7 do something better than exercise due care, which is
8 all they're required to do is exercise due care.

9 And the next one, Your Honor, was the -- and we
10 did -- they correctly pointed out we miscited the code
11 section. But we had asked for code section on the
12 presumption about impairment, and which was 56-5-2950
13 rather than 2350. You charged the statute on --
14 violation of statute on the alcohol, but not on the
15 presumptions that go with it, and we feel like we were
16 entitled to a charge that -- particularly the reading
17 of -- in this case of .018 or 18 milligrams percent, we
18 were entitled to a charge that there's a presumption
19 under the statute that if it's less than 50 milligrams
20 percent that you're not under the influence of alcohol.
21 We feel like that was critical in this case because it
22 was a critical issue in this case.

23 THE COURT: I can tell you that that was a
24 heated discussion we had. Or I don't know if it was
25 heated, but it was at-length discussed. And Mr.

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1 Jacobson actually jumped in on that. And I remember
2 our concern being is that the presumption is only
3 applicable in a criminal case and when we were talking
4 about this, it would be fine to charge a presumption if
5 there was only an allegation of alcohol in this case,
6 but because there was also drugs, it didn't apply and
7 so the facts wouldn't necessarily be applicable to
8 this. I do know that when I charged the statute
9 stating that, you know, it's, you know, against the
10 laws of this state to drive if your driving is impaired
11 as a result of -- and that statute included not only
12 alcohol, but also drugs. And that's why I thought that
13 one was appropriate and did apply.

14 And then Chuck Jacobson then asked me for a
15 charge to immediately follow that, which was what I
16 did, which I said, please understand it is not illegal
17 in this state to drink and drive; it is only illegal to
18 drink and drive or take drugs to the extent that it
19 impairs your ability to drive a car or functioning.

20 So I will tell you, Mr. Parker, we did agonize
21 over that. And that was the reason why I chose to do
22 it that way is because the other statute encompassed
23 the alcohol and drugs, which is what we have in this
24 case, whereas the presumption charge only dealt with
25 alcohol. So for what it's worth, that was the

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1 reasoning.

2 MR. PARKER: Your Honor, our next one is that
3 you charged the jury the law of intervening and
4 superseding negligence. And as we argued at trial we
5 don't think there can be any intervening or superseding
6 negligence because certainly it was foreseeable that if
7 you block the view of a motorist or fail to blow the
8 horn, that someone is not going to hear the horn and
9 somebody is not going to see the train. So it couldn't
10 be any intervening or superseding negligence. Now,
11 their argument, of course, the defense was sole
12 negligence that was properly in the case. But I think
13 that the intervening and superseding negligence
14 confused the jury. It allowed them to believe that if,
15 in fact, Ms. Colvin, the driver, did something wrong,
16 that that superseded or intervened as a -- and relieved
17 CSX of any negligence. And they may well have found
18 that. By finding no negligence -- even though the
19 evidence of negligence was clear. So now they can also
20 find sole negligence, which I think under the facts of
21 the case was possible. But it couldn't find it's
22 intervening negligence. They shouldn't have been
23 charged intervening negligence and we believe that was,
24 in fact, confusing to the jury.

25 And the next two are interrelated and those we

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1 argued that at trial, and that was the charging of the
2 highway sections dealing with intersections. And we
3 think that clearly confused the jury. They could have
4 found, under the charge and law of the case, that Ms.
5 Colvin, by not stopping at the stop line, was negligent
6 and that was the sole negligence to cause the accident
7 when, in fact, she was not required to stop at the stop
8 line. Under the 56-5-2715, the applicable statute, she
9 was required to stop within fifteen and fifty feet,
10 between those distances. So under the charge, it was
11 charged with -- that she was required to stop at a
12 place where, under 56-5-2715, it would have been
13 inappropriate for her to stop there. So I think that
14 that was totally confusing to the jury and could -- if
15 they -- if they followed that, they could have found
16 that that was the cause of the accident, her failure to
17 stop at the stop line when that, in fact, would not be,
18 under the -- an appropriate stop under the law with
19 regard to that.

20 And our next ground would be in charging 56-5-
21 2930, because there was no evidence of impairment and
22 that all of the evidence in the case was that she was
23 not impaired, even though there was evidence that she
24 drank two wine coolers and had taken her prescription
25 medication.

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1 There was no witness who testified and no
2 evidence of impairment in the case other than the fact
3 that she did, in fact, have two wine coolers, by
4 admission, and had taken prescription medication. And,
5 of course, we hashed that out at trial.

6 And the next ground, Your Honor, would be that
7 in charging 56-5-950. 56-9-50 deals with unauthorized
8 signs, erecting unauthorized signs, on the highways of
9 the state. And there was just no evidence in this case
10 that there was any unauthorized sign. This clearly
11 could have confused the jury about the duties in this
12 case at a railroad, and SCDOT, because there was no
13 unauthorized signs in this case. It just was not
14 applicable under the facts of the case.

15 In that light, then the jury was charged 56-5-
16 1010, which requires railroad companies to erect cross-
17 buck signs. Well, no question but cross-buck signs
18 were erected. There was no issue about cross-buck
19 signs. Obviously the jury was led to believe, by the
20 charge, that that was the only duty the railroad had
21 was to erect cross-buck signs. And they certainly had
22 a duty to erect appropriate signs, but the purpose of
23 all of these was to negate their duties to erect
24 appropriate signs. And I think it was -- it, in fact,
25 led the jury to believe, well, if the railroad put up

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1 the cross-buck signs, that's all they had to do --
2 that's why they wanted that in there -- when, in fact,
3 they did have a duty to erect appropriate signs,
4 whatever was required, or slow the train, or flag the
5 crossing and do whatever. But, in effect, we believe
6 that the jury was mislead by that. Again, 56-5-1020
7 also talks about unauthorized placement of signs. And
8 that was not just an issue, and, again, we believe it
9 confused the jury.

10 58-17-1390, which was also charged, required the
11 railroad to erect cross-buck signs. And in that same
12 vein, 58-15-1625, which charged -- which is the
13 authority that the SCDOT could close crossings. And
14 that certainly had no relevance in this case. And I
15 don't know the purpose of it, but it was charged.
16 There was no issue in this case. I guess the -- the
17 argument I believe was because Dr. Heathington
18 testified -- he never said they ought to close the
19 crossing, but he said something about it and that would
20 be --

21 THE COURT: He said that the three things they
22 could have done to make this crossing more safe were --
23 and he listed them, and one of them was closing the
24 crossing. I think he's the one that clearly introduced
25 that. I don't think --

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1 MR. PARKER: But it was not an issue in the
2 case. Simply that testimony does not make that an
3 issue. It was not an issue. No one contended --

4 THE COURT: No. He made the jury believe that
5 they could have closed this crossing and that would
6 have been -- he could have said they failed to do -- I
7 mean, his argument was they failed to do all three of
8 these things and they could have done all three of
9 these things and didn't.

10 MR. PARKER: No. I think his testimony was that
11 he didn't think they needed to do that. If I remember
12 it correctly, he said that they ought to have cleared
13 the crossing and he testified about, you know, they
14 didn't want to do that, put up gates and lights. I
15 don't think he ever said that, in my opinion they
16 should have closed the crossing. If he said that, I
17 don't recall it and I would stand corrected on that.

18 Our next ground is under 15-78-60, and that is
19 the discretionary exception to the tort claims under
20 the SCDOT. And there was absolutely no evidence that
21 SCDOT exercised any discretion in the placement of stop
22 line and stop sign. There was no witness that said
23 that people who install those exercise discretion and
24 judgment in the placement of those signs. And that was
25 charged, and we believe that was confusing to the jury.

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1 THE COURT: Well, what was all the testimony we
2 heard about lines and sewer lines and everything --

3 MR. PARKER: There was a lot --

4 THE COURT: -- and they were --

5 MR. PARKER: There was a lot of testimony about
6 that but no one -- those guys didn't know why they put
7 them there. Those guys said, I don't -- they both
8 testified, we don't have any idea. They said, we
9 weren't there, we didn't put them up, but they could
10 have done this, and they didn't know why they put them
11 where they were. They only testified -- they said,
12 well, it could have been because it was a pipe there,
13 it could have been -- they said -- started off saying
14 there was a road there, but it turned out not to be.
15 But they -- there was no witness there who said that
16 the Department exercised discretion and judgment in the
17 placement of those signs..

18 THE COURT: I thought that was Mr. McLeod's
19 entire argument.

20 MR. MCLEOD: Joel Smith -- I was keeping quiet.
21 I was over there --

22 Well, since you asked -- Joel Smith said that
23 when he -- he had the authority and he could have
24 changed them if he wanted to, and he thought that they
25 were placed as good as they could be placed under the

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1 circumstances so he didn't change them.

2 THE COURT: Okay.

3 MR. PARKER: He was not -- there was actually no
4 evidence of discretion on the part of Mr. Smith. Mr.
5 Smith -- but there was no testimony that he had
6 competing interest and he exercised that judgment about
7 those competing interests. So we believe that charge
8 was improper, as we do 15-78-65 -- excuse me -- 6020,
9 which says that SCDOT is exempt from liability of
10 criminal acts of a third party. There was just no
11 evidence in this case of any criminal acts of a third
12 party. And when you combine that with the other
13 charge, we just believe that it unfairly prejudiced the
14 plaintiff to think the SCDOT would not be liable.

15 The last issue we had, Your Honor, is that --
16 the charge that says it's always train time at a
17 crossing. And we believe that places a higher duty on
18 a motorist than on the railroad, on the fact that it is
19 mutual. I recognize that that is dicta in cases --

20 THE COURT: Yes.

21 MR. PARKER: -- and I recognize that. But the
22 fact it's dicta in a case doesn't mean that that's the
23 law. And I don't think it is the law, because what it
24 leads the jury to believe is that some have -- the
25 motorist has a greater duty than the railroad. And

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1 they don't. They have mutual duties. They both have
2 the duty to exercise due care. But when you charge
3 that, it places a duty on the railroad -- I mean, on
4 the motorist to say, well, the motorist is always
5 supposed to think there's a train coming regardless of
6 whether there is one coming or not. Well, that's not
7 the exercise of due care. And then if you take that,
8 the motorist is supposed to exercise reasonable care
9 and a motorist, if their view is blocked and they don't
10 -- appropriate signal is not given, or whistle and the
11 horn, then those things go into that exercise of due
12 care; whereas the jury is led to believe by the charge,
13 well, you're supposed to be expecting a trail and that
14 you're supposed to do something other than exercise due
15 care. And I think that that charge in and of itself
16 confuses a jury or has the potential to prejudice the
17 jury by thinking, well, the train has got the right-of-
18 way, which they don't. Train does not have the right-
19 of-way. They only have the right-of-way under certain
20 conditions, and those conditions being that it -- the
21 horn being sounded for 1500 feet, the train being
22 clearly visible. And we don't believe that that is an
23 appropriate charge.

24 That is our motion, Your Honor. Thank you.

25 THE COURT: Thank you, sir. Mr. Wray?

1 MR. PARKER: I just wanted to make sure that is
2 marked. Thank you.

3 MR. WRAY: Thank you, Your Honor.

4 MR. MCLEOD: What was that you gave her?

5 MR. PARKER: Those are the charges.

6 MR. MCLEOD: Oh.

7 MR. WRAY: I think it goes without saying that
8 this was a very hard-fought and well-tried case on all
9 sides, with contrasting and conflicting evidence on
10 just about every issue in the case and certainly every
11 issue that was contested in the case.

12 The Court commented throughout the trial, and we
13 hardly agreed, that it was a very attentive jury,
14 amazingly attentive, given the length of time and the
15 volume of evidence they heard. They listened carefully
16 to the evidence and they did exactly what you charged
17 them with doing; and that is to find the truth in the
18 case about what happened in this accident. It took a
19 lot of courage for that jury to do what they did,
20 especially in light of the plea that was made to them
21 in closing argument. But they did what the law charged
22 them with doing: they listened carefully to the
23 evidence, they followed the law, and they rendered a
24 verdict which spoke the truth in this case. And there
25 is abundant evidence to support their finding.

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1 Mr. Parker, of course, as the moving party in
2 this particular instance, comes into court with a big
3 hurdle and a big obstacle standing in his way.

4 I mentioned earlier the Wave [phonetic]
5 argument. And I don't -- I'm not going to re-argue
6 that, but I want to preserve all that -- the argument
7 made, and I believe the JNOV motion was what -- I think
8 Rule 50(b) clearly says that.

9 But if you move to the merits of the JNOV
10 motion, the law says that the motion cannot be granted
11 and must be denied if the evidence is susceptible of
12 more than one inference or if there are inferences
13 which are invalid. On the new-trial motion, the
14 Court's duty is to sustain the verdict unless there is
15 no evidence that would support it, unless it is
16 completely unsupported, or it is controlled by an error
17 of law.

18 Of course, in a ruling on the JNOV motion and in
19 ruling on the directed verdict motion, the Court must
20 take all of the evidence and all of the inferences that
21 could be drawn from that evidence in the light most
22 favorable to CSXT and the South Carolina Department of
23 Transportation. Applying those standards, there is no
24 question in this case that this verdict should be
25 upheld.

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1 On the short horn, we talked about that earlier.
2 There was testimony from multiple witnesses that the
3 horn was sounded appropriately. And on the vegetation,
4 there certainly was pictures, there was videotape,
5 there was eyewitness testimony, that showed that there
6 was appropriate sight line at this crossing, that Ms.
7 Colvin could have and should have seen the train, she
8 could have and should have heard the train, and the
9 jury obviously found that she did not do so and that --
10 obviously the verdict said very clearly the defendants
11 were not negligence -- negligent.

12 The plaintiff's motion at trial, as I recall it,
13 was ask -- asked the Court to direct a verdict in his
14 favor on all elements of the negligence claim. Even if
15 there were some issue on the short horn, as Mr. Parker
16 argued earlier -- which we contend there's not --
17 there's evidence that would support the jury's verdict
18 from Mr. Wooden's testimony, Mr. Cumming's testimony,
19 and Mr. Biser's testimony, that still would have left
20 open the issue of proximate cause. So the Court could
21 not have directed a verdict and the Court certainly
22 should not grant a judgment notwithstanding the
23 verdict.

24 I could talk at length about the evidence but I
25 know, just like the jury, you were very attentive

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1 during trial and you heard the witness testimony. And
2 there's no question that this jury had a factual basis
3 to find in favor of the defendants on all of the claims
4 submitted by the plaintiff. The jury reached that
5 conclusion after fairly considering the evidence, and
6 under the law there is no basis for disturbing their
7 finding.

8 On new trial, the plaintiff raised two issues:
9 one, the evidence that they contend either should have
10 been allowed that wasn't allowed, or that you allowed
11 that they say should not have been allowed to be
12 considered by the jury; and then jury charge issues,
13 which they challenge. Again, on both those issues,
14 both evidentiary questions and the jury charge
15 questions, the plaintiff has to show both error --
16 number one, that you made a mistake, and, number two,
17 resulting prejudice.

18 In this case they can show neither. The Court
19 did not err in the evidence that you kept out. And
20 I'll be happy to walk through each one of them. But
21 even if there was some error, which we do not believe
22 there was, there certainly was no prejudice, in light
23 of the overwhelming evidence the Court permitted, that
24 touched upon every bit of these points that plaintiff
25 raises. With respect to Mr. Mickens' testimony, the

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1 Court will no doubt recall that Dr. Heathington on the
2 stand talked about these very crossings that Mr.
3 Mickens went out and inspected. .

4 In fact, that's how the whole process came
5 about, you may remember. Dr. Heathington was on the
6 stand in the Hartley case, he commented about these
7 crossings. I believe Mr. Purcell --

8 THE COURT: Sent an e-mail to --

9 MR. WRAY: Sent an e-mail.

10 -- and Mr. Thomason and Mr. Mickens went out and
11 looked at the crossings. All of that came in. The
12 jury heard every bit of that. And, in fact, you
13 allowed into evidence, over our objection, the exhibits
14 which showed them going out to those very crossings and
15 what they found when they went out there. So there
16 certainly was no prejudice from not allowing Mr.
17 Mickens' brief videotape testimony to talk about that
18 same point. At best, it was cumulative.

19 But we contended and still contend that of
20 course it would have been inappropriate, it was remote,
21 it was stale, it was taken out of context, it was at a
22 time long before the crossing-clearing program was in
23 effect. So the Court didn't err in not allowing the
24 testimony, and there certainly was no prejudice given
25 the other testimony that was admitted.

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1 On the witness-pitting issue, we did talk about
2 this at trial. And I believe that Mr. Parker is not
3 correct in his assessment of what witness-pitting
4 involves. Witness-pitting, as the cases we cited in
5 our brief say, involves a situation where I ask a
6 witness to comment on the truth or voracity of another
7 witness. For example, do you know why Mr. Jones would
8 be lying about that point. That would be witness-
9 pitting. Asking Dr. Lipscomb and Dr. Heathington --
10 both of whom were experts -- while they were on the
11 stand, and showing them the testimony, that's not
12 improper. We showed them testimony and said, did you
13 consider the testimony of witness X where he or she
14 said this particular bit. He could say, I didn't
15 consider it. I think in most cases they said they did
16 consider it. But they discounted it or they just
17 didn't credit it. Dr. Heathington I believe did not
18 consider several pieces of evidence that we thought
19 were very important. But that's just cross-examination
20 and certainly proper cross-examination of an expert, as
21 we pointed out.

22 The exhibit issue: that was one that, quite
23 frankly, I was surprised to see in the motion, because
24 prior to trial we went over to Beaufort and we spent a
25 day with you. And you'll recall a big part of that day
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1 was we were arguing for bifurcation because we said
2 there's going to be points in the trial where there is
3 going to be evidence introduced that the Supreme Court
4 in Webb has clearly said, following State Farm v.
5 Campbell and the other United States Supreme Court
6 cases, can only be considered for punitive damages
7 purposes and we thought the jury was going to be
8 hopelessly confused with trying to understand which
9 could be considered for which points. You respectfully
10 denied our motion. Mr. Parker in connection with that
11 hearing suggested, just as the Court did here, that a
12 limiting instruction would be sufficient and that if
13 the Court would simply give a limiting instruction,
14 then no prejudice would occur to CSX.

15 Before the first bit of evidence came in, as to
16 which the Court gave the limiting instruction -- and I
17 think you're correct, it was either five or six times
18 that you gave it -- you asked the parties to draft the
19 instruction, and we both did. We worked on it over
20 lunch, we came back, we consulted, and then we provided
21 you with an agreed-upon instruction. And then when
22 this evidence came up, the very evidence that they now
23 claim you erred in segregating out as punitive damages
24 only, we asked that you give the instruction and they
25 agreed.

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1 So they agreed to the procedure, they agreed to
2 the instruction, they allowed you to give the
3 instruction at the requested time without any objection
4 being made. And now they come back on a new trial and
5 they say, oh, by the way, Judge, you erred in giving
6 this limiting instruction in not allowing the jury to
7 consider this evidence. It's wholly without basis, and
8 that motion should be denied.

9 In fact, as we pointed out in our brief, what
10 would have been error and would have been inappropriate
11 is if, after telling the jury as they sat in their
12 seats and listen to the evidence, you're about to hear
13 some evidence that goes to punitive damages only, and
14 you may not consider it for any other purpose. If, at
15 the end of the trial you had done what they now suggest
16 you should have done and gone back and said, now,
17 here's all this evidence; go back there and consider it
18 for whatever you want to, negligence, punitive damages,
19 either one, that would have been error and that would
20 have been improper because you had already told the
21 jury, without objection, that those very documents, the
22 ones they are arguing about here, were punitive-
23 damages-only exhibits.

24 And as you pointed out, Your Honor, there was
25 ample other evidence that came in during the trial,

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1 with respect to many of these very documents, that came
2 in without the limiting instruction, was heard by the
3 jury. And Mr. Parker misspoke a little bit. He said
4 that you didn't allow these exhibits in. I think what
5 he meant to say is you didn't allow them -- or we
6 segregated them out when they went to the jury room, or
7 we put some in the punitive-damages-only pile.
8 Obviously, all of these exhibits that he references
9 were presented to the jury, so I don't want the record
10 to be confused about that. They were put up on the
11 screen, they were presented, they were shown to the
12 jury, but then when the jury deliberated -- and I think
13 that's what he was trying to say: these particular
14 items that he notes were segregated out and labeled as
15 punitive-damages-only exhibits.

16 With respect to Ms. Rivers and Ms. Crews, I
17 don't think I need to say much there. That testimony
18 clearly was properly disallowed. It was five months
19 after the event. The Court commented in trial about it
20 being a subsequent remedial measure, coming after the
21 fact, that certainly had nothing to do with what
22 happened at Hill Road. There was no error in excluding
23 the testimony, and certainly no prejudice to the
24 plaintiff.

25 The post-accident clearing we've already talked
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1 about a little bit in connection with Mr. Parker's
2 argument. The Court I know carefully considered that
3 issue in connection with the motion in limine hearing.
4 You then had several opportunities to consider it
5 during trial. The Webb case speaks specifically to
6 this very type evidence in a railroad-crossing-accident
7 case, and the court there said it was improper to allow
8 it under Rule 407, that there are certain exceptions
9 under Rule 407 that might trigger the allowance of that
10 evidence. None of those were triggered here. And of
11 course to make the exceptions in Rule 407 applicable,
12 it has to be an issue that was controverted by the
13 defendant. We talked about, earlier, the fact there --
14 there was no dispute at trial as to why this quadrant
15 wasn't cut, Mr. Jackson coming out and objecting. And
16 so trying to put in after the fact that it was cleared
17 did not impeach any evidence that was introduced by
18 CSX, or any position taken by CSX in the case.

19 On the jury charge issues, again, there are so
20 many of them I'm not going to go through them. I'll be
21 happy to answer any specific questions you may have.
22 But I think you touched upon it exactly correctly with
23 respect to the plaintiff's jury charges two, three and
24 nine, which they complained about you not giving. I
25 believe every one of those were covered in some aspect.

1 of your charge.

2 We did sit here -- and I appreciate your
3 patience during the charge conference. We were here a
4 long time. We had several charges that was submitted
5 by the plaintiff that were similar charges we had
6 submitted. You incorporated some of those, you
7 combined some language from some of those. There's no
8 question in mind, having looked back through the
9 charges, that these points of law that they claim
10 you've erred were covered in some fashion in the
11 Court's charge and there was no error in not giving
12 perhaps exactly as they worded it, because the
13 substance was covered and certainly no prejudice since
14 the point was otherwise covered.

15 56-5-2350, you said earlier that statute simply
16 didn't apply. Mr. Jacobson, you're correct, I think
17 made the most procipilus argument on that point. And
18 you addressed that earlier, so I won't talk about that
19 further.

20 Intervening and superceding negligence: those
21 doctrines are sometimes interchangeable with sole
22 negligence. The case law says that. Even if there was
23 some error, and we don't think there was -- we think
24 the law supported those charges -- there can't be any
25 prejudice when the jury didn't even find negligence by

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1 CSX in this case.

2 And then on the defendants' charges that they
3 complain about, as you correctly noted earlier, each
4 and every one of the statutes that dealt with where you
5 place a stop sign, what traffic-control device is
6 required, all of that whole host of statutory provision
7 were brought up and specifically addressed and were
8 made necessary by the testimony plaintiff introduced,
9 particularly Dr. Heathington. If Dr. Heathington
10 hadn't taken the stand and made some of the points he
11 made, like you're supposed to flag the crossing -- he
12 did say -- I respectfully disagree with Mr. Parker. He
13 very clearly said that one option was closing this
14 crossing. So once he introduced that testimony and
15 made those points, then the statutes became not only
16 relevant but necessary so the jury would understand
17 where those obligations lay with respect to each party.

18 On the impairment point, again, plaintiff's
19 position misunderstands where we are. The evidence at
20 this point is construed in the light most favorable to
21 CSX, and all inferences are drawn in our favor. And to
22 say that there was no evidence of impairment completely
23 reverses that standard. There was ample evidence from
24 which the jury could have found impairment, or could
25 have found impairment from the inferences to be drawn

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1 from the evidence.

2 Your Honor, I'll be happy to answer any
3 questions that you've got. But as I said earlier, the
4 standard here is a high one for the plaintiff, and they
5 simply cannot meet it. The jury's verdict has ample
6 support of the evidence, and the Court's rulings on
7 evidence and on the charge were correct findings, and
8 certainly was no prejudice to the plaintiff from any of
9 the Court's rulings or any of the charges you gave or
10 did not give, and we would ask the Court to deny the
11 motion.

12 THE COURT: Mr. Parker, do you need to respond
13 to anything?

14 MR. PARKER: No, Your Honor.

15 THE COURT: All right. Y'all are going to
16 request from Mia --

17 MR. PARKER: That's correct.

18 THE COURT: -- a copy of the directed verdict
19 motions, if you would, please.

20 MR. PARKER: We'll allow that -- we are
21 requesting it at this moment.

22 THE COURT: Thank you, sir. All right. But
23 you're going to have to tell her specifically, I think,
24 Mr. Parker --

25 MR. HOLMES: I think I've got pretty good notes
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1 of what happened on what day. And I -- if it's okay if
2 maybe Ron and I can confer and order that day after
3 such witness, and kind of get it narrowed down, if
4 that's -- do you think that will work?

5 THE COURT: And you'll just e-mail it to me,
6 Mia, when you have gotten it. Thank you.

7 [Off the record momentarily]

8 MS. AMUNDSON: I think most of the points have
9 been covered. One thing that Mr. McLeod and I just
10 wanted to bring to the Court's attention was --

11 THE COURT: Yes, ma'am.

12 MS. AMUNDSON: -- I believe it's 10(e) regarding
13 56-5-950. We had discussed this during the lengthy
14 discussion of jury charges. And the reason that we
15 wanted this in, and the reason that the Court correctly
16 charged this to the jury, was the statute discusses
17 when traffic devices are placed in a position
18 approximately conforming. And there was a lot of
19 testimony about whether the stop line had been placed
20 properly in accordance with the MUTCD, which has that
21 language that it should be placed approximately fifteen
22 feet from the near rail. So we just wanted to bring
23 that to the Court's attention that that was the reason
24 that the statute was applicable; not that the signs
25 were placed by somebody who didn't have authority or

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1 whatever. So --

2 THE COURT: Okay. Thank you.

3 [Whereupon, Ms. Amundson and Mr. McLeod confer]

4 MS. AMUNDSON: Further, as far as the two
5 charges for the Tort Claims Act -- I believe it's 10(j)
6 and 10(k) -- 15-78-65 was the one about active
7 discretion. And we believe that the Court has rightly
8 discussed already today that there was evidence that
9 there was discretion in the placement of the stop sign
10 and the stop line. Furthermore, 15-78-60, subsection
11 20, does not apply only to criminal acts. It is an act
12 or omission of a person other than an employee,
13 including but not limited to criminal actions.

14 THE COURT: Anything further from y'all?

15 MR. MCLEOD: No, Your Honor.

16 THE COURT: Anything --

17 MR. MCLEOD: Didn't she do a good job?

18 THE COURT: She did a fabulous job.

19 All right. Anything else, y'all?

20 MR. PARKER: Nothing, Your Honor. Thank you.

21 THE COURT: Thank you, y'all. I appreciate it.

22 [HEARING CONCLUDES AT 1:20 P.M.]

23

24

25

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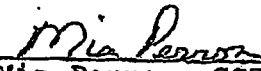
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the motions hearing held before the Honorable Carmen T. Mullen, on Thursday, September 11, 2008.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 9th day of November, 2009.


Mia Perron, CCR, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CCR, CVR-CM

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IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

WILLIE HOMER STEPHENS,
GUARDIAN AD LITEM FOR
LILLIAN COLVIN, A MINOR,

Plaintiff,

vs.

CSX TRANSPORTATION, INC.,
AND SOUTH CAROLINA
DEPARTMENT OF
TRANSPORTATION,

Defendant.

CIVIL ACTION

FILE NO.
04-CP-25-267

DEPOSITION OF
CALVIN FRANK CUMMINGS, JR.

December 14, 2004

2:20 p.m.

520 Greene Street
Augusta, Georgia

Regina W. Hollis, CCR-B-2306, RPR

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Reporting INC.

513 Ellis Street
Augusta, GA 30901
706-724-2778

(Reporter disclosure made pursuant to
Article 8.B. of the Rules and Regulations of the
Board of Court Reporting of the Judicial Council
of Georgia.)

CALVIN FRANK CUMMINGS, JR.,
having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. PARKER:

Q. Please, state your full name.

A. Calvin Frank Cummings, Jr.

Q. Mr. Cummings, where do you live?

A. Live at 3611 Cameron Drive, Augusta,
Georgia.

Q. How long have you been living there?

A. Oh, approximately 29, 30 years.

Q. And you are employed with CSX
Transportation?

A. Yes.

Q. Have been for how long?

A. 31 and a half years.

Q. And what age are you?

A. Oh, 55 and a half.

Q. What's your date of birth?

A. , May 31st, 1949.

1 Q. And you are a conductor?

2 A. Yes.

3 Q. And how long have you been a conductor?

4 A. 31 and a half years.

5 Q. Were you a trainman before you were a
6 conductor?

7 A. Well, trainman, conductor.

8 Q. And then you became a conductor, qualified
9 for a conductor when, if you remember?

10 A. Oh, can't exactly -- I think it was around
11 1976 when I first got promoted.

12 Q. Been a long time?

13 A. Yes.

14 Q. And do you work a particular job?

15 A. No.

16 Q. You work off the extra board?

17 A. Yes. Well, at that time I was on the
18 extra board.

19 Q. You have been doing that how long?

20 A. I don't understand what you mean.

21 Q. Have you had a regular job you worked, or
22 tell me about a regular run where you would go from
23 point A to point B or --

24 A. No, not until say about a month ago.

25 Q. , And what are you doing now? What job are

1 you doing?

2 A. F-214.

3 Q. What is that?

4 A. The Augusta/McCormick local.

5 Q. You work often with Mr. Wooden, you and he
6 would work together?

7 A. I wouldn't say often, but we go with each
8 other on occasions.

9 Q. And you would work the -- would you work
10 the job that was, I guess, a line job? You carry
11 trains from Augusta to Charleston?

12 A. Yes.

13 Q. Whatever terminology you want to call it,
14 where you carry the train through traffic or whatever
15 to Charleston rather than a local?

16 A. We work what we called for off the extra
17 board.

18 Q. Just whatever job was available?

19 A. Well, whatever job that comes up when we
20 first out.

21 Q. Now you can pick your job, can't you? You
22 don't have enough seniority to pick your job?

23 A. I stand for regular jobs, yes.

24 Q. On February 3rd, you were involved in a
25 car/train collision?

1 A. Yes.

2 Q. And that was in Yemassee?

3 A. Yes.

4 Q. And you were the conductor on that train?

5 A. Yes.

6 Q. And what do you recall happening?

7 A. Well, we were at -- coming in Yemassee and
8 a car was stopped at the crossing. And it pulled out
9 in front of the train.

10 Q. When did you first see this car?

11 A. I don't understand what you mean now.

12 Q. Where was the train when you first saw the
13 car? How far were you from the crossing?

14 A. Oh, we was several hundred feet from the
15 crossing when I first noticed it stopped.

16 Q. And by several hundred feet, what do you
17 mean?

18 A. Several hundred feet.

19 Q. That's anywhere from a hundred to a
20 thousand, I would guess.

21 A. Yeah, that's true.

22 Q. Well, can you get a little more specific?

23 A. No, I didn't measure anything.

24 Q. What's your best approximation?

25 ,MR. PURCELL: Object to the form.

1 A. Several hundred feet.

2 Q. (By Mr. Parker) 700?

3 A. Several hundred, several hundred.

4 Q. Excuse me. Did you make any comment about
5 that car?

6 A. Well, as we approached the crossing, we
7 got real close to the crossing, it moved. I made a
8 comment the car wasn't going to make it.

9 Q. Now, the car, you would have been on the
10 left side, and the engineer would have been on the
11 right?

12 A. Yes. I sit on the left side of the
13 engine.

14 Q. And when the car started to move, did you
15 see anyone inside the car?

16 A. I wasn't looking in the car. I was
17 looking at the car.

18 Q. Were the windows up or down on the car, if
19 you could tell?

20 A. Can't really tell.

21 Q. Could you tell who -- I assume since you
22 didn't see anybody in it; you don't know who was
23 driving or whatever?

24 A. I don't understand.

25 Q. , I mean, you couldn't see in the car. So,

1 you wouldn't know who was driving, female, male?

2 A. No, I wasn't looking in the car.

3 Q. Right. I understand. And did you hear
4 any music or anything coming from the car?

5 A. Huh-uh.

6 Q. No?

7 A. No.

8 Q. And did you see the car before it stopped?

9 A. When I first saw the car, it was stopped.

10 Q. Did you see it when it started to move?

11 A. Yes, I saw when it started to move from
12 the crossing.

13 Q. And how did it start to move after -- when
14 it started, slow, fast, average?

15 A. It just started to move off.

16 Q. Like someone normally would?

17 A. I don't understand what you mean normally.

18 Q. I mean, normal would be how you would stop
19 and start at a stop sign.

20 A. Normal, I guess say normal.

21 Q. Now, there is a crossbuck sign there,
22 right?

23 A. Yes, there is a crossbuck.

24 Q. You know how far that crossbuck sign is
25 from the near rail on the side that the car was on?

1 A. No.

2 Q. Do you know where the car was stopped in
3 relationship to that crossbuck?

4 A. It was stopped at the -- it was stopped at
5 -- it was stopped -- let me see. The car was stopped
6 on -- I don't know how you -- what you want to call
7 what side it was, but it was stopped beyond the
8 crossbuck.

9 Q. Beyond it toward the rail?

10 A. Yes.

11 Q. How far?

12 A. I don't know how far it was from the
13 crossbuck.

14 Q. Foot or two?

15 A. I don't know.

16 Q. How far is the crossbuck from the rail?

17 A. I don't know.

18 Q. How far is the -- is there a stop bar at
19 that crossing or a white line?

20 A. Yes, it's a stop bar at the crossing.

21 Q. How far is the stop bar from the
22 crossbuck?

23 A. I don't know.

24 Q. How far did the car move after you saw it
25 moving until the collision happened?

1 A. Well, it moved from the stop bar toward
2 the crossing.

3 Q. How many feet?

4 A. I don't know how many feet. I didn't
5 measure anything.

6 Q. Now, when you saw the car moved, what did
7 you say?

8 A. I told him I don't think she going to make
9 it.

10 Q. And what happened?

11 A. It was a collision.

12 Q. How much time was it between the time you
13 said that and the time of the collision?

14 A. I can't really say.

15 Q. Was it instantaneous?

16 A. I can't really say.

17 Q. Was it fast, slow, long time, short time?

18 A. I can't say, you know, time distance.

19 Q. Well, we know it wasn't an hour, right?

20 A. That's true.

21 Q. Was it ten minutes?

22 A. I can't really say, you know, what time
23 passed when I made that statement.

24 Q. Has anybody told you don't estimate times?

25 A. No.

1 Q. It would be toward -- y'all's engine would
2 be towards Yemassee?

3 A. Yes.

4 Q. And it would have been some distance from
5 that crossing back toward Yemassee?

6 A. I don't understand what you mean, some
7 distance.

8 Q. The locomotive would have been a distance
9 from the crossing --

10 A. Yes.

11 Q. -- toward Yemassee, but you don't know
12 what that distance is?

13 A. No.

14 Q. And can you tell us in football fields?
15 Was it more than a football field or approximately a
16 football field?

17 A. No, wasn't more than a football field.

18 Q. Would it have been less than a football
19 field?

20 A. It was less than a football field.

21 Q. How about half a football field?

22 A. I can't really say, now.

23 Q. That's close as you can get?

24 A. Yes.

25 Q. Okay. Now, using the football field as an

1 example, when you first saw the car, how many
2 football fields were you away from the car when you
3 first saw it?

4 MR. PURCELL: Object to the form.

5 A. I can't really say.

6 Q. (By Mr. Parker) Now, when you said, I
7 don't think they going to make it, were you less than
8 a football field away from them?

9 A. Yes.

10 Q. Were you less than a half a football field
11 away when you said that?

12 A. I can't really say now.

13 Q. When you got -- you left Charleston, what
14 time was that when you left Charleston?

15 A. I can't remember.

16 Q. Have you ever been to Florence about this
17 collision?

18 A. No.

19 Q. Ever met with anybody from Florence in the
20 claims office over there?

21 A. No.

22 Q. Did you meet with Mr. Jimmy Rhodes? You
23 know Mr. Rhodes?

24 A. No.

25 Q. , Did you meet with Mr. Glen Roland about

1 go on the A line?

2 A. Yes.

3 Q. And where did you get that authority?

4 Where were y'all? Where was your locomotive?

5 A. I can't exactly say.

6 Q. Did you talk with the dispatcher after the
7 wreck?

8 A. No.

9 Q. Did you hear Mr. Wooden talk with the
10 dispatcher?

11 A. No.

12 Q. And other than the policeman, did you talk
13 with anyone at the scene?

14 A. No.

15 Q. Now, why didn't you see the train --
16 excuse me. Why didn't you see the Explorer as it
17 approached the crossing to stop?

18 A. I wasn't looking for cars to approach the
19 crossing.

20 Q. I mean, shouldn't you have seen it -- part
21 of your job as a conductor is to keep a proper
22 lookout, right?

23 A. Yes.

24 Q. And why didn't you see it prior to it
25 stopping?

1 A. I never saw it moving until right before
2 the collision.

3 Q. You never saw it moving until it left the
4 stop position, right?

5 A. Yes.

6 Q. And the reason that you couldn't see it
7 sooner is because some trees over there to keep you
8 from seeing it, isn't it?

9 MR. PURCELL: Object to the form.

10 Q. (By Mr. Parker) You can go ahead and
11 answer.

12 A. It was vegetation, but, you know, it had
13 nothing to do with the accident.

14 Q. Yeah. But it would keep you from seeing
15 the train until you got to a certain closeness to the
16 crossing, wouldn't it?

17 MR. PURCELL: Object to the form.

18 Q. (By Mr. Parker) Let me rephrase that. It
19 would keep you from seeing the car until you got
20 within several hundred feet of the crossing, wouldn't
21 it, that vegetation?

22 MR. PURCELL: Object to the form.

23 A. Okay. There was vegetation, but the car
24 was stopped at the stop bar. And I could see the
25 car. So, would appear that they could see the

1 engine.

2 Q. (By Mr. Parker) But the reason you didn't
3 see it sooner was because of the vegetation?

4 MR. PURCELL: Object to the form.

5 A. I wasn't looking for a car.

6 Q. (By Mr. Parker) What were you looking for?

7 A. I was watching the road.

8 Q. You were watching the tracks ahead?

9 A. Yes.

10 Q. And part of watching the tracks ahead, you
11 can see cars approaching?

12 A. Yes.

13 Q. And part of your job is to look out for
14 cars approaching; is that correct?

15 A. It's to watch, you know, where we are
16 going.

17 Q. How far from the crossing would the
18 locomotive -- how far was the locomotive from the
19 crossing before you had had the first opportunity to
20 see the car?

21 A. Several hundred feet, I guess.

22 Q. I mean, 500 feet or more?

23 A. Be honest --

24 Q. Would you have been 500 feet from the
25 crossing when you had the first opportunity to see

**Videotaped Deposition of Kelly James Goedde
December 17, 2004**

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1 STATE OF SOUTH CAROLINA 2 IN THE COURT OF COMMON PLEAS 3 COUNTY OF HAMPTON 4 WILLIE HOMER STEPHENS, Guardian ad Litem for LILLIAN COLVIN, a minor, 5 Plaintiff, 6 vs. CIVIL ACTION NO.: 04-CP-25-267 7 CSX TRANSPORTATION, INC., and SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, 8 Defendants. 9 10 VIDEOTAPED DEPOSITION OF 11 KELLY JAMES GOEDDE 12 December 17, 2004 13 2:50 p.m. 14 50 North Laura Street, Suite 2225 Jacksonville, Florida 15 Sandra Crowley, RMR 16 17 18 19 20 21 22 23 24 25	1 APPEARANCES OF COUNSEL, CONTINUED 2 3 ERIK R. BILIK, ESQUIRE 4 MCGUIREWOODS 5 50 North Laura Street, Suite 3300 6 Jacksonville, Florida 32202 7 (904)798-3200 8 (904)798-2698 (facsimile) 9 rebilik@mwbb.com 10 J. ARTHUR DAVISON, ESQUIRE 11 FULCHER, HAGLER, REED, HANKS & HARPER, LLP 12 520 Greene Street 13 Augusta, Georgia 30901-1499 14 (706)724-0171 15 (706)396-3619 (facsimile) 16 adavison@fulcherlaw.com 17 On behalf of the Defendant South Carolina DOT 18 J. REAVES MCLEOD, ESQUIRE 19 MCLEOD, FRASER & CONE 20 111 East Washington Street 21 Walterboro, South Carolina 29488 22 (843)549-2516 23 (843)549-2306 (facsimile) 24 Also Present: 25 Dan Bishop, Videographer
Page 2	Page 4
1 APPEARANCES OF COUNSEL 2 3 On behalf of Plaintiff: 4 JOHN E. PARKER, ESQUIRE 5 PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A. 6 303 First Street, East 7 Hampton, South Carolina 29924 8 (803)943-2111 9 (803)943-3943 (facsimile) 10 dmarr@pmped.com 11 12 On behalf of Defendant CSX: 13 J. TRACEY WALKER, IV, ESQUIRE 14 MCGUIREWOODS, LLP 15 One James Center 16 901 East Cary Street 17 Richmond, VA 23219-4030 18 (804)775-1000 19 (804)775-1061 (facsimile) 20 twalker@mcguirewoods.com 21 22 23 24 25	1 Videotaped Deposition of Kelly James Goedde 2 December 17, 2004 3 THE VIDEOGRAPHER: This is the 4 videotaped deposition of Kelly Goedde taken on 5 behalf of plaintiff in the matter of Willie 6 Homer Stephens, Guardian ad litem for Lillian 7 Colvin, a minor, vs. CSX Transportation, 8 Incorporated, et al., Civil Action No. 9 04-CP-25-267, being heard before the Court of 10 Common Pleas, State of South Carolina, County 11 of Hampton. 12 The deposition is held at 50 North 13 Laura Street, Suite 2225, Jacksonville, 14 Florida, on December 17, year 2004, at 2:50 15 p.m. 16 My name is Dan Bishop with 17 Accurate Reporting Service. And the court 18 reporter is Sandy Crowley with Accurate 19 Reporting Service. 20 Counsel, will you please introduce 21 yourselves and affiliations and the witness 22 will be sworn. 23 MR. PARKER: My name is Johnny 24 Parker, and we represent Lillian Colvin. 25 MR. MCLEOD: My name is Reaves



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Videotaped Deposition of Kelly James Goedde
December 17, 2004

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1 complaints about this crossing not being in 2 spec, although it is cut now. 3 Q. Have you seen any letters written 4 to DeAngelo Brothers about indemnifying CSX 5 about this crossing? 6 A. No, I've not seen any of that. 7 Q. Are you aware of any? 8 A. No. 9 Q. Are you aware of what's been done 10 about that? About indemnification? 11 A. No. That's not something I'm 12 involved in. 13 Q. Have you talked with Mr. Price 14 about this fax that's dated - Exhibit 41 15 that's dated 12/22/03? 16 A. Yes. 17 Q. When did you talk with him about 18 it? 19 A. During preparation for this 20 deposition. 21 Q. What did he tell you? 22 A. That the date on the top is more 23 accurate than the date that's in the box. 24 Q. Why did he tell you that? 25 MR. WALKER: Object to the form of	1 - a copy of that fax cover sheet that 2 you're holding was sent to me on 2/4/04. 3 Q. And Mr. Price said he had not 4 faxed this to you or mailed this to you or 5 got this to you on 12/22/03? 6 A. Not that I'm aware of, no. 7 Q. I mean did Mr. Price say that? 8 Did Mr. Price tell you he had not - 9 A. Correct. 10 Q. - communicated this to you on 11 12/22/03? 12 A. Right. He did not get that to me 13 on 12/22/03. 14 MR. PARKER: All right. I don't 15 have anything further. 16 EXAMINATION 17 BY-MR. WALKER: 18 Q. I've just got a few. 19 Mr. Goedde, my name is Tracy 20 Walker. I represent CSX Transportation. 21 Does the contract between DeAngelo 22 Brothers and CSX Transportation require 23 DeAngelo to notify CSX if there's a question 24 of land ownership? 25 A. I don't think the contract requires
Page 62	Page 64
1 the question. 2 MR. PARKER: Go ahead. 3 A. Because fax machines don't lie. 4 They're programmed to put the date on top. 5 Q. You can put anything you want to 6 in it, can't you? 7 MR. WALKER: Object to the form. 8 A. How? 9 Q. I don't know. I presume if it's 10 made by humans it can be altered by humans. 11 MR. WALKER: I know you're not 12 suggesting that that has happened in this 13 case. 14 MR. PARKER: No. The reason I'm 15 asking him is because he's contending that 16 the date in the box is not correct, and I 17 want to know how he knows that. 18 A. As I've stated, the date in the 19 box is - from what I understand from Steve 20 Price, he grabbed a used fax cover sheet, 21 grabbed it from a file, paper hard copy, or 22 pulled one up off of his e-mail - out of 23 his documents. And it's electronically - 24 filled in the information below or whatever, 25 I don't know, but that fax copy - that fax	1 them to notify us, no. 2 Q. Okay. Was there a practice that 3 they put in place that they - if a 4 landowner objected to a clearing of their 5 property or said it was their property, that 6 DeAngelo was to notify CSX Transportation to 7 clarify the ownership issue before DeAngelo 8 proceeded to cut? 9 A. Yes, there was a process. 10 Q. So in October of 2003 when Mr. 11 Jackson told the contractor that he owned 12 that land, the appropriate thing for DeAngelo 13 to do was to contact CSX to resolve that 14 issue? 15 A. Yes, that is correct. 16 Q. Okay. And then if CSX 17 Transportation responded to DeAngelo that to 18 the best of CSX's understanding, based on its 19 own maps it was indeed CSX property, DeAngelo 20 was to so notify the landowner and either 21 allow the landowner to provide documentation 22 of ownership or else just proceed with the 23 crossing clearing program? 24 A. Yes, they were to - what DeAngelo 25 Brothers would be instructed to do would be



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Videotaped Deposition of Kelly James Goedde
December 17, 2004

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1 to obtain documentation from the landowner
2 stating the landowner's claim of ownership of
3 that property.

4 Q. And were you the person at CSX who
5 was primarily responsible for handling those
6 ownership issues or was that someone else?

7 A. The individual landowner disputes
8 were my responsibility.

9 Q. And Mr. LeMaster would handle
10 concerns raised by communities or towns and
11 cities?

12 A. That is correct.

13 Q. Okay. Now, Mr. Parker obviously
14 asked you a whole lot of questions about the
15 Hill Street crossing, and that's what this
16 case is about, an accident that occurred
17 there. But the crossing clearing program
18 extended far beyond that single crossing,
19 didn't it?

20 A. Yes, there's some 4,200 crossings
21 in the South portion of our system alone that
22 we've successfully worked on over the past --
23 in less than two years. While not fully to
24 our strict specifications, there has been
25 grade improvements made in a very large

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1 there wasn't a crucial need, using Mr.
2 Parker's language, to stop DeAngelo from
3 working on other crossings to get back to the
4 Hill Street crossing?

5 A. As stated, the program is very
6 large, very complex. And in order to make
7 the most progress and provide this higher
8 level of safety and this higher standard that
9 we've set across a larger portion, we would
10 not necessarily require the contractor to
11 leave work and stop progress in another area
12 to provide progress in this area provided
13 that, you know, safety was not a concern.

14 And at this crossing our regular
15 maintenance-of-way on-line programs where we
16 had sprayed -- we had done work on this
17 subdivision in three years prior with brush
18 cutting and brush spray, this crossing was
19 safe according to our -- all other
20 maintenance-of-way standards and
21 maintenance-of-way programs.

22 So safety was not an issue. So
23 there was not a demand to sacrifice the
24 production in another area to come back to
25 this crossing.

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1 program with a lot of crossings.

2 Q. And the fact that a crossing may
3 not meet the specifications of the clearing
4 program as specified in the contract and as
5 amended, does that mean that there is a
6 safety issue or a crucial need to --

7 MR. PARKER: Object to the form of
8 the question.

9 MR. WALKER: -- get out to the
10 crossing and do something immediately?

11 A. No, just because it's not within
12 specification does not mean that there is a
13 reason or cause or alarm for safety. Safety
14 is still provided there.

15 Q. And you gave an example of having
16 brush piled at the crossing site where
17 perhaps it's been cleared, and they just
18 haven't cleared away the brush that was cut.
19 You raised that as one example. But in this
20 Hill Street crossing we actually have a
21 quadrant where they did not cut standing
22 trees because the owner objected, and a
23 period of months went by and an accident
24 happened.

25 Explain why in October of 2003

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1 Q. All right, sir. And your job when
2 you were hired was essentially to continue
3 with the implementation of the contract with
4 DeAngelo Brothers and other contractors to
5 simply handle the day-to-day management of
6 what they were doing, correct?

7 A. Partially correct. My job was to
8 oversee their production and assist them in
9 fulfilling the program, but their day-to-day
10 production, day-to-day tasks were their
11 responsibility to plan their work and work
12 efficiently. And I was more to monitor and
13 assist them.

14 Q. But it was not your job -- CSX
15 did not task you to develop this program and
16 to decide on the appropriateness of this
17 program? That was done before you got there,
18 correct?

19 A. That is correct.

20 Q. And with regard to the inspection
21 sheets, CSX contracted with another company to
22 go behind DeAngelo to help CSX make sure they
23 were doing a good job, right?

24 A. That is correct. We hired HDR to
25 inspect the results of the work of our



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Videotaped Deposition of Kelly James Goedde
December 17, 2004

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1 contractors. 2 Q. And CSX thought that that was a 3 prudent thing to do? 4 A. Yes, to have -- to hire a 5 third-party independent contract -- engineering 6 firm who has high integrity for inspections 7 to come behind our contractors and verify 8 their work. 9 Q. In the inspection sheets for 10 individual crossings, one of which has been 11 identified as Exhibit 31 -- is it 31? 12 MR. PARKER: Yes. 13 MR. WALKER: Exhibit 31, what was 14 the practice with the handling of those 15 inspection sheets? Were they sent from -- 16 directly from HDR to CSX on a regular basis 17 as they were generated? 18 A. No. The -- in order to expedite 19 the crossing program and the cutting and 20 progress of the program, CSX was not notified 21 of individual crossing reports. HDR would 22 perform the inspections, make records, and 23 either copy the reports to DeAngelo Brothers 24 or fax or one way or another get copies of 25 them to DeAngelo Brothers so DeAngelo Brothers	1 them. It's minor, it's to the specification 2 of the program. And within those 84, there 3 are some crossings that still have disputes 4 with municipalities in South Carolina, or 5 perhaps a landowner of South Carolina, which 6 we are making note of and we are -- we 7 currently, as we speak, have people working 8 on trying to settle those disputes justly. 9 Q. Can you tell me why CSX 10 Transportation extended its contract with 11 DeAngelo to allow them additional time? 12 A. We allowed DeAngelo Brothers 13 additional time to work on this contract 14 because DeAngelo Brothers was -- is one of 15 the few contractors that have the size and 16 scope that they can handle this work as well 17 as the safety record. Safety record or 18 safety is very important in getting a 19 contractor that can perform safely. It's 20 very hard to do. And so -- and we believe 21 in our contractors. And DeAngelo Brothers is 22 doing good work considering the size and 23 scope of the program. And to bring on 24 another contractor would not be -- would not 25 fix the problem any sooner.
Page 70	Page 72
1 could follow up on where specifications were 2 not met. 3 Q. To date did I hear you correctly 4 that in South Carolina DeAngelo Brothers or 5 some other contractor or subcontractor has 6 done work at every passive crossing that is 7 subject to the program? 8 A. That is correct. 9 Q. And do you know approximately how 10 many crossings that is in the state of South 11 Carolina? 12 A. I believe there's 575 crossings 13 within the specification -- or within the 14 classification of the program in South 15 Carolina. 16 Q. And there are 84 that need 17 additional work? 18 A. That is correct. 19 Q. But, again, for those 84, based on 20 your knowledge and understanding of what is 21 being done, that does not mean there is any 22 kind of vegetation issue necessarily at those 23 84? 24 A. That's correct. Those crossings 25 are safe. We -- there's work to be done at	1 Q. When you say "fix the problem," 2 what do you mean? 3 A. Would not bring the crossing into 4 specifications any sooner than if we would 5 throw them off the property. 6 Q. When discussing timeliness with 7 DeAngelo Brothers, has it ever come to CSX's 8 attention that DeAngelo Brothers is taking its 9 crews off the job, either its own crews or 10 subcontracted crews and taking them off the 11 CSX contract and putting them on some other 12 work? 13 A. Only in the event of emergencies, 14 such as the hurricanes is the only time I'm 15 aware of DeAngelo Brothers or DeAngelo 16 subcontractors coming off of CSX's property 17 for anything else. 18 Q. Okay. You were shown a 19 presentation, Plaintiff's Exhibit 2, slides of 20 a presentation that may have been given by 21 DeAngelo Brothers to CSX some years ago. And 22 it's VV0229 through 0234. This was several 23 years before you came to work for the 24 company, correct? 25 A. That is correct.



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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON) CIVIL ACTION NO. 04-CP-25-267
WILLIE HOMER STEPHENS,)
Guardian Ad Litem for)
Lillian Colvin, a Minor,)
Plaintiff,)
v.)
CSX TRANSPORTATION,)
INC., and SOUTH)
CAROLINA DEPARTMENT)
OF TRANSPORTATION,)
Defendants)

ORAL, VIDEOCONFERENCE, AND VIDEOTAPED DEPOSITION OF

CHARITY MICHELLE BRYAN-SOLVIK

JUNE 24, 2008

ORAL, VIDEOCONFERENCE, AND VIDEOTAPED DEPOSITION OF
CHARITY MICHELLE BRYAN-SOLVIK, produced as a witness at
the instance of the Defendant CSX Transportation, Inc.,
and duly sworn/affirmed, was taken in the above-styled
and numbered cause on the 24th day of June, 2008, from
9:05 a.m. to 9:23 a.m., via telephone, before Joyce Ann
Smith, RPR, RMR, CSR No. 2463 in and for the State of
Texas, reported by machine shorthand, at the offices of
Nell McCallum & Associates, Inc., 2615 Calder Avenue,
Suite 111, Beaumont, Texas, pursuant to the South
Carolina Rules of Civil Procedure and the provisions
stated on the record.

Nell McCallum & Associates
(409) 838-0333

NMA
COMPRESSED TRANSCRIPT

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1 (Exhibit No. 1 marked)
2 MR. DAVISON: I think they can hear me.
3 Gray? Gray, can you hear me?
4 MR. HOLMES: Uh-huh.
5 MR. DAVISON: Just while we're sitting
6 here waiting to get the video set up, I was going to go
7 ahead and ask Ms. Solvik if she wants to read and sign
8 or waive that; and I believe she indicated she wanted to
9 waive reading and signing.
10 THE WITNESS: Yes.
11 MR. DAVISON: We'll get that out of the
12 way. Okay. We've got that on the record now.
13 We're still waiting. I think we're a
14 couple of minutes away from the video being ready.
15 THE REPORTER: Are there any other
16 stipulations you would like on the record?
17 MR. PARKER: None from the plaintiff.
18 MR. McLEOD: None from the DOT.
19 (Off the record at 9:06 a.m. to 9:10 a.m.)
20 THE VIDEOGRAPHER: We are now on the
21 record. The time is 10 minutes after 9:00 o'clock. The
22 date is June 24, 2008. We're here for the deposition of
23 Charity M. Bryan-Solvik in the case captioned
24 04-CP-25-267, Willie Homer Stephens, et al., versus
25 CX - CSX Transportation, Inc., in the State of South

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1 Carolina, County of Hampton. If the court reporter
2 would please swear in the witness, we'll have the
3 attorneys and other attendees make their announcements
4 and state their appearances.
5 (The witness was duly sworn by the court
6 reporter)
7 MR. DAVISON: I'm Art Davison on behalf of
8 CSX Transportation.
9 MR. HOLMES: Grahame Holmes on behalf of
10 the Plaintiff.
11 MR. McLEOD: Peden McLeod on behalf of the
12 South Carolina Department of Transportation.
13 MR. PARKER: John Parker on behalf of
14 Lillian Colvin.
15 CHARITY MICHELLE BRYAN-SOLVIK,
16 having been first duly sworn/affirmed, testified as
17 follows:
18 EXAMINATION
19 BY MR. DAVISON:
20 Q. Good morning, Ms. Solvik.
21 A. Good morning.
22 Q. Would you please state your name for us.
23 A. Charity Michelle Bryan-Solvik.
24 Q. What's your age?
25 A. I'm 29 years old.

1 Q. Where do you live presently?
 2 A. In Evadale, Texas.
 3 Q. How did you come to live in Evadale, Texas?
 4 A. Transferred here for my husband's job.
 5 Q. Where are you from originally?
 6 A. Walterboro, South Carolina.
 7 Q. How long did you live in Walterboro?
 8 A. 27 years.
 9 Q. Okay. All your life?
 10 A. Yes, all of my life.
 11 Q. And when did you move to Evadale, Texas?
 12 A. In August of last year.
 13 Q. That was in connection with your husband's
 14 employment?
 15 A. Yes, it was.
 16 Q. Tell us your educational background, beginning
 17 with high school.
 18 A. I attended Ruffin High School until I left
 19 there to go a Christian school, and my mother
 20 home-schooled me my 12th grade year, got a GED. Then I
 21 attended a local vocational school for my EMT basic, and
 22 other local classes for my EMT intermediate and
 23 paramedic.
 24 Q. Could you explain what EMT basic, EMT
 25 intermediate, and EMT paramedic are?

1 A. Emergency Medical Technician is three different
 2 levels. The basic level provides only basic life
 3 support care; intermediate, just as it says, provides an
 4 intermediate level in-between the basic and the
 5 paramedic; and paramedic provides advanced life support
 6 levels from basic to advanced.
 7 Q. Where did you take these classes?
 8 A. In Walterboro and Charleston, South Carolina.
 9 Q. At what locations there?
 10 A. Thunderbolt Career & Technology school for the
 11 basic. I can't remember the intermediate, somewhere in
 12 Beaufort -- through Beaufort County, I believe; and the
 13 paramedic was through Lowcountry Regional EMS Council in
 14 Charleston.
 15 Q. Do you hold any particular certificates now as
 16 a paramedic or as an EMT?
 17 A. Yes, I do.
 18 Q. What certificates do you hold?
 19 A. I'm currently a nationally registered EMT; I'm
 20 registered in the State of Alabama and the State of
 21 Texas as a paramedic.
 22 Q. Tell us your employment history.
 23 A. I started out EMS working for Hampton County
 24 and I --
 25 Q. When did you do that?

1 A. 2003, I believe. Then in 2005, I believe, I
 2 moved to Colleton County Fire/Rescue. When we moved out
 3 of state, I worked for East Alabama Medical Center as a
 4 paramedic there; and then we moved here to the City of
 5 Beaumont. That's where I currently work.
 6 Q. Where were you living and working in February
 7 of 2004?
 8 A. Hampton County EMS is where I was working, and
 9 I was living in Hampton County, as well.
 10 Q. Okay. What were your job duties with the
 11 Hampton County emergency services at that time?
 12 A. I was -- I was registered as an intermediate.
 13 Q. Could you explain to us what that means?
 14 A. Yes. I was providing -- working on the
 15 ambulance as an Emergency Medical Technician from --
 16 providing basic to intermediate skills, which is --
 17 basically the only thing different is I could start IVs
 18 on people there, providing basic life support.
 19 Q. So, when an ambulance would be called to the
 20 scene of -- of an accident, you would be in that
 21 ambulance?
 22 A. That's right.
 23 Q. Do you recall being called to a scene of an
 24 accident involving a train and a Ford Explorer at Hill
 25 Road in Yemassee on February 3rd of 2004?

1 A. Yes, I do.
 2 Q. Who went to the scene in the ambulance with
 3 you?
 4 A. Natalie Futch.
 5 Q. I want to hand you now a document that's been
 6 marked as Defendant's Exhibit No. 1. Do you recognize
 7 that document (tendering document)?
 8 A. (Reviewing document) Yes, sir.
 9 Q. What is that document?
 10 A. It's a DHEC Patient Care Report, pro bono
 11 report.
 12 Q. Was that form customarily completed by EMTs in
 13 the regular course of the business of Hampton County
 14 emergency services?
 15 A. Yes.
 16 Q. Who completed Exhibit 1?
 17 A. I did.
 18 Q. Is that your handwriting?
 19 A. Yes, sir.
 20 Q. Is that your signature as the "Primary Patient
 21 Attendant" on that form?
 22 A. Yes, sir.
 23 Q. When did you write down the information that
 24 appears on that form?
 25 A. Immediately following the call.

1 Q. The same day?
 2 A. Yes, sir.
 3 Q. Where did you get the information that appears
 4 on that form?
 5 A. From what I saw and from the patient's account
 6 of what happened.
 7 Q. Was it part of the regular course of your job
 8 as an EMT to complete this form?
 9 A. Yes, sir.
 10 MR. DAVISON: At this time we would offer
 11 Exhibit 1 into evidence.
 12 Q. (BY MR. DAVISON) What patient does Exhibit 1
 13 relate to?
 14 A. Tonia Colvin.
 15 Q. How did you come to render care to Tonia Colvin
 16 at this accident scene?
 17 A. We responded to assist another medic unit on
 18 scene, and Ms. Colvin was the patient that was given to
 19 my care.
 20 Q. Okay. Tell us what happened when you arrived
 21 at the scene.
 22 A. When we arrived on the scene, my partner,
 23 Ms. Futch, got out of our ambulance, walked over to the
 24 accident scene, assessed the -- assessed the situation;
 25 and before I got over there to them, she was bringing

1 Ms. Colvin and a gentleman to our ambulance to be
 2 transported to the hospital.
 3 Q. What happened when she brought them to your
 4 ambulance?
 5 A. We put them in the truck. Ms. Colvin got on
 6 our stretcher and her friend got onto the bench seat and
 7 we went to the hospital.
 8 Q. Okay. What -- what sort of care did you render
 9 to Ms. Colvin when she got in the ambulance?
 10 A. It appears that I checked her blood pressure,
 11 heart rate, mental status; looks like I put some 4 by
 12 4's on a laceration she had. And that was it.
 13 Q. What -- what other observations did you make
 14 about Ms. Colvin while you were tending to her in the
 15 ambulance?
 16 A. In my narrative here it says that -- let's
 17 see -- (reviewing document) that there was an obvious
 18 smell of alcohol to her; that she was complaining of
 19 left thigh pain, with no swelling; and that she had a
 20 chin laceration with a broken lower tooth; also an
 21 abrasion to the left frontal area, which is the
 22 forehead.
 23 Q. Did you have any conversation with Ms. Colvin
 24 about the aroma of alcohol?
 25 A. Yes, I did.

1 Q. What was that?
 2 A. I asked -- I couldn't tell which one of them
 3 the odor was coming from, as there were two of them; so,
 4 I asked who -- if anyone had been drinking and -- let me
 5 see. I just want to make sure I'm quoting what I said
 6 on here (reviewing document) -- that she had admitted to
 7 drinking alcohol earlier that day, and that there was a
 8 strong odor. That was what was quoted in this report.
 9 Q. Do you recall specifically what she said to
 10 you?
 11 A. She said that she was -- she had just been
 12 drinking earlier that day. She didn't -- that was it.
 13 Q. Could you read to us what you put down in the
 14 "Comments" section of your report.
 15 A. Sure.
 16 (Reading) Upon arrival found patient ambulating
 17 on scene of 10-50 - car versus train. Blazer was hit on
 18 passenger rear side with severe damage to passenger side
 19 and rear of vehicle. Patient was unrestrained driver of
 20 vehicle. Patient skin warm and dry. Bilateral breath
 21 sounds present, equal. No witnessed loss of
 22 consciousness. Unknown if loss -- loss of consciousness
 23 occurred prior. Patient was alert, conscious, and
 24 oriented times three. Patient --
 25 Q. Excuse me. Let me interrupt you there. What

1 does it mean to say that the patient was alert, oriented
 2 times three?
 3 A. It says -- at the time that we used, she was
 4 conscious, she was alert and oriented to person, place,
 5 and time. That's what alert, conscious, and oriented
 6 times three means.
 7 Q. Okay.
 8 A. (Reading) Patient had broken lower tooth, chin
 9 laceration, and complaining of left mid thigh pain
 10 without swelling -- without swelling, deformity or
 11 contusions noted. Patient admitted to ETOH earlier
 12 today and had strong odor of ETOH.
 13 Q. And could you explain to us what ETOH is?
 14 A. It's an abbreviation that we use for alcohol.
 15 Q. Okay.
 16 A. (Reading) Patient also had abrasion to right
 17 frontal area. Monitored patient throughout transport
 18 without changes noted. Contacted Hampton Regional
 19 Medical Center ER with radio report. No questions or
 20 orders. Transferred patient care to ER staff.
 21 Q. Is that information that you wrote on that
 22 report yourself?
 23 A. Yes, sir.
 24 Q. That day?
 25 A. Yes, sir.

1 Q. Okay. After you tended to Ms. Colvin in the
2 back of the ambulance, what happened then?

3 A. We took her out and take -- took her into the
4 hospital and transferred our care to the emergency room
5 staff there in Hampton.

6 Q. Did you have any further involvement with --
7 with Ms. Colvin after you delivered her to the emergency
8 room?

9 A. No.

10 Q. Do you remember giving your deposition in this
11 case back in October of 2004?

12 A. Yes.

13 Q. Other than giving that deposition, have you had
14 any contact with any of the parties to this case?

15 A. No.

16 Q. Do you know any of these parties to this case
17 or any of the attorneys?

18 A. No.

19 MR. DAVISON: Okay. Ms. Solvik, please
20 answer any questions that any of these other attorneys
21 may have. Thank you.

22 EXAMINATION

23 BY MR. McLEOD:

24 Q. This is Peden McLeod with the Department of
25 Transportation. You said that she had a companion with

1 test or any of those tests to see whether people --
2 touching their noses or anything like that?

3 A. No.

4 Q. All right. And I believe you said earlier you
5 weren't able to tell where the odor of alcohol that you
6 smelled was coming from?

7 A. That is correct.

8 Q. And do you have Ms. -- other than Ms. Colvin
9 telling you that she had had something to drink earlier
10 in the day, do you know what it was that she had to
11 drink?

12 A. No, I do not know.

13 Q. And you don't know what quantity she had to
14 drink?

15 A. No.

16 Q. Is that correct?

17 A. That's correct.

18 Q. And you don't know when, other than that it was
19 at some point earlier that day, she'd had anything to
20 drink --

21 A. That's correct.

22 Q. -- is that correct?

23 And you had noted that she was alerted -- alert
24 and oriented times three and you said that -- that she
25 was able to respond to questions you had and you didn't

1 her. Does your record indicate that that was Carlos
2 Terry, or you just know it was a male?

3 A. All I have here -- all I know is that it was a
4 male. I don't have a report of who that was with me. I
5 don't know who he was.

6 Q. Did you ask him if he had been drinking?

7 A. Yes, sir.

8 Q. What did he say?

9 A. He said no, he had just been picked up from
10 work.

11 MR. McLEOD: Thank you. That's all I
12 have.

13 EXAMINATION

14 BY MR. HOLMES:

15 Q. It's -- it's Mrs. Solvik now?

16 A. Yes.

17 Q. Am I pronouncing that correctly?

18 A. Yes, sir.

19 Q. Now, Mrs. Solvik, my name is Gray Holmes; and I
20 represent the plaintiff. We have met before, and I just
21 have a few questions for you.

22 Now, you didn't administer any sort of sobriety
23 test on the scene; is that correct?

24 A. No.

25 Q. All right. You didn't perform a blood alcohol

1 have any reason to believe there was any sort of
2 impairment?

3 A. She was alert to person, place, and time. She
4 knew where she was, who she was, and what day it was.

5 Q. All right. And she walked to the ambulance on
6 her own?

7 A. She and her -- her gentleman friend, as I
8 recall, were holding each other walking to the
9 ambulance.

10 MR. HOLMES: That's -- that's all the
11 questions I have for you. Thank you.

12 MR. DAVISON: I have no further questions.

13 THE VIDEOGRAPHER: Off the record. It's
14 9:23.

15 (The deposition was concluded at 9:23 a.m.)

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

WILLIE HOMER STEPHENS, guardian ad Litem for
Lillian Colvin, a minor,

Plaintiff,

vs.

CASE NO. 04-CP-25-267

CSX TRANSPORTATION, INC., and SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION,
Defendants.

VIDEO

DEPOSITION OF: PATRICK L. THOMAS

DATE: March 4, 2008

TIME: 9:14 a.m.

LOCATION: Colleton County High School
1379 Mighty Cougar Drive
Walterboro, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: JENNIFER M. HUGGINS

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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ALSO PRESENT:

Len Harris, Videographer

(INDEX AT REAR OF TRANSCRIPT)

Q. And did you attend local schools?

A. Yes.

Q. And are you graduate of the Colleton
 County School System?

A. Yes, I am.

Q. Did you attend college thereafter?

A. Not here in Colleton County, but yes, I
 did.

Q. Where did you attend school?

A. I finalized my education at South
 Carolina State University --

Q. All right.

A. Initially starting at Fayetteville
 State.

Q. And do you maintain a current South
 Carolina teacher's certification?

A. Yes, I do.

Q. Have you had continuing education
 courses since the time of your certification?

A. Yes, I have.

Q. And what is your area of
 specialization?

A. English language arts.

Q. And how long have you been involved in
 teaching at Colleton County High School?

STIPULATION

It is stipulated by and among Counsel
 that this deposition is being taken in accordance
 with the South Carolina Rules of Civil Procedure,
 Rule 30; that all objections as to Notice of this
 deposition are hereby waived; that all objections
 except as to form are reserved until the time of
 trial; and that the deponent waives reading and
 signing of this deposition.

.....

VIDEOGRAPHER: We are now on the
 record. Today is March 4th, 2008. The time is
 8:14 a.m. This is the videolapse deposition of Mr.
 Patrick Thomas.

PATRICK L. THOMAS,
 being first duly sworn, testified as follows:

EXAMINATION

BY MR. PURCELL:

Q. Can you give us your name and your
 occupation for the record, please?

A. Yes. My name is Patrick L. Thomas, and
 I am a teacher at Colleton County High School.

Q. All right. Mr. Thomas, how long have
 you been so employed?

A. For 12 years.

A. For the past five-and-a-half years.

Q. Okay. And where did you teach prior to
 that time?

A. Al Ruffin High School.

Q. And it became -- did it become Ruffin
 Middle School?

A. Yes, it did.

Q. And you just followed the high school
 students?

A. Right.

Q. All right. And do you have family in
 this area?

A. Yes, I do.

Q. Any in Hampton County, South Carolina?

A. No.

Q. All right. Do you -- you remember
 Lillian Colvin?

A. Yes, I do.

Q. She was your student --

A. Yes, she was.

Q. -- in 6th grade; is that right?

A. Yes, she was.

Q. Are you teaching her anything this

year?

A. No.

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1 Q. What class did you teach her in the 9th
2 grade?
3 A. I taught her English II. I also taught
4 her freshman focus class, and I also taught her
5 four elements of English. All three are combined
6 into a year-long class for English I takers of
7 England -- well, during their freshman year.
8 Q. Okay. So do I understand that you
9 would have had her two periods each day?
10 A. No. We would only have her one.
11 Q. But you caught -- taught her focus and
12 language arts?
13 A. Right.
14 Q. Was that -- was one of the classes
15 taught one semester, and then another taught the
16 other semester? How did that work?
17 A. There were two classes that were one
18 nine weeks period each, and the English I class was
19 one semester.
20 Q. Okay. And was Lillian a regular ed
21 student in these classes?
22 A. Yes. From my understanding she was.
23 Q. All right. And when you say from your
24 understanding, what do you -- what do you mean?
25 A. Per the instructions of the 504

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1 coordinator for our school, if we have any students
2 who may have an IEP or an actual 504 plan for any
3 accommodations --
4 Q. Right.
5 A. -- we then receive those
6 accommodations, a list for them at the beginning of
7 the year and then subsequently check, from my
8 understanding, at least three times per year. I
9 was aware of some things that she may have had in
10 terms of her physical disabilities because she had
11 an actual therapist to come in and work with her
12 periodically.
13 Q. A physical therapist you mean?
14 A. Right. And that's the gist of what
15 I've had.
16 Q. Okay. You mentioned a 504 coordinator.
17 Can you just explain to me in lay terms what that
18 is?
19 A. Pardon me. With an IEP, which is an
20 individualized educational plan, if a student has a
21 504 plan in place, basically what it does is it
22 outlines the parameters of how that student may
23 obtain that particular education. Any special
24 accommodations that may have to be made in terms of
25 teaching them. And this is handed down -- I know

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1 It is from the district, but we have an on-site
2 coordinator also.
3 Q. Right.
4 A. I don't exactly remember who the
5 coordinator was last year. I do know that this
6 year it is Greg Kinsey. Last year exactly who it
7 -- and it is usually an administrator --
8 Q. Right.
9 A. -- an assistant administrator. And I
10 believe it may have been Ms. Vennie Mitchell at
11 that point last year.
12 Q. Okay. So would it -- would it be fair
13 to say that you would have had her for one class
14 period for the entire year or just one class period
15 for part of the year?
16 A. No. One class period for the entire
17 year.
18 Q. Okay. And do you remember what period
19 that was?
20 A. I believe it was 2nd period.
21 Q. Okay.
22 A. I believe it was 2nd period.
23 Q. All right. And you remember Lillian,
24 obviously, since it was just last year?
25 A. Yes, I do.

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1 Q. Okay. Tell me about Lillian as a
2 student.
3 A. Rather reserved, quite pleasant but
4 rather reserved. You pretty much had to pull
5 things out of her unless she was with a group with
6 which she was familiar. I've observed her in the
7 cafeteria at some points last year and this year
8 amongst her friends --
9 Q. Right.
10 A. -- where she was, of course, more
11 sociable, as to being in class.
12 Q. Right.
13 A. Not extremely conscientious in terms of
14 being on top of grades and things of that nature,
15 but pleasant, nonetheless. Pretty much would do a
16 lot -- well, just enough to get by, but as I'm
17 finding out, that's paralleling most of her peers.
18 Q. Paralleling most of her peers in
19 regular education?
20 A. In regular education, yes.
21 Q. Okay. Why is that?
22 A. I think -- you're asking my opinion on
23 this.
24 Q. I am, sir.
25 A. In terms of Lillian, I do not know. I

Pages 6 to 9

Page 10

1 just get a general sense of apathy --
 2 Q. Okay?
 3 A. -- from many of the students. And not
 4 just her, but just them in general.
 5 Q. All right. Did she have behavioral
 6 problems on a daily basis?
 7 A. No.
 8 Q. Was she pleasant?
 9 A. Very.
 10 Q. Well mannered?
 11 A. Very.
 12 Q. Appropriate --
 13 A. Yes.
 14 Q. -- when you spoke to her?
 15 A. Yes.
 16 Q. She passed your class for the year?
 17 A. I believe she did. It is hard -- hard
 18 to know the -- and I just saw my kids, but I
 19 believe she did. Let's see. I have it here. I
 20 believe she did, though. I believe she barely
 21 pulled out. Contingent upon these grades, it looks
 22 as if she would have.
 23 Q. Okay. We have some pages here, and
 24 these are a joint exhibit to all of the depositions
 25 that were taken of Lillian's teachers. If you look

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1 Q. Yeah.
 2 A. -- into the actual English I class.
 3 The way they allow that, awarding students credit
 4 for focus on success or whether the class is taught
 5 through Stephen Covey's book is, of course, placing
 6 it at the beginning of the semester or first
 7 semester, and that way they are awarded credit via
 8 the state department by integrating that course
 9 into the English I course; whereas with this, it
 10 was split into three separate courses, two being
 11 9 -- 9 weeks courses, and the other being a
 12 semester.
 13 Q. Right.
 14 A. They're all integrated, so though you
 15 get that first one during that particular quarter
 16 because of the way it's taught, you still
 17 nonetheless get into our unit of English --
 18 Q. Right.
 19 A. -- for the year, even though now it's
 20 set up on an AB schedule, as opposed to then where
 21 it was two nine weeks and a semester.
 22 Q. Right. So the bottom line is, she was
 23 promoted to the 10th grade based on her
 24 performance --
 25 A. Right.

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1 at page 295, do those appear to be a recap of the
 2 grades for the year, her first year here at
 3 Colleton High School?
 4 A. I can only speak for mine.
 5 Q. I understand.
 6 A. Let me see. English. Focus. Okay.
 7 Yes, it does.
 8 Q. Okay. And the -- you taught her
 9 elements of English, correct?
 10 A. Elements of English, focus and success
 11 and English I.
 12 Q. And she passed those classes?
 13 A. She passed English I with a 70. She
 14 did not pass elements of English; however, she did
 15 pass focus on success.
 16 Q. Okay. And was she promoted to the 10th
 17 grade?
 18 A. From my understanding, she was,
 19 contingent upon the English I grade, yes.
 20 Q. Okay. And what's -- tell me what --
 21 how you -- how that's a contingency, how you -- how
 22 that's conditional, if it is?
 23 A. Well, as opposed to the way it is set
 24 up now, these same courses are taught, however
 25 they're integrated --

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1 Q. -- in the 9th grade?
 2 A. Right.
 3 Q. Okay. You mentioned the books. Did
 4 you bring the books with you that --
 5 A. Yes, I did.
 6 Q. -- she had? Can you just display those
 7 for the camera and explain what they are, please?
 8 A. This is the initial book for her focus
 9 on success class, and for this particular class,
 10 it's -- it uses Stephen Covey's methods via his
 11 book. And the seven methods that are used are
 12 habits that are covered in this particular book
 13 that are to help students guide themselves through
 14 high school successfully. This book is used
 15 exclusively during the first nine weeks period or
 16 was during the nine weeks period of last year. It
 17 is used again now throughout the English classes.
 18 Her literature book is this series that
 19 we picked up via the State Department and it's a
 20 Prentice Hall literature book. And it covers
 21 several different genres of literature, anywhere
 22 from poetry to fiction, nonfiction, Shakespeare,
 23 other pieces of drama, things of that nature.
 24 And she also during the elements of
 25 English class, and during the English I class, had

Pages 10 to 13

1 information from her writer's choice book. It was
2 also used as a reference. It's a grammar book, and
3 in the State of South Carolina, per the 8th grade
4 standards, you no longer teach grammar in
5 isolation, so those things and the lessons that are
6 coming from this are taught - pardon me - taught
7 within the classes as opposed to being separated.

8 But pretty much these are the books
9 that she would use with the exception of her
10 vocabulary book. And the vocabulary book this
11 year, though it is from the same series, they don't
12 have any copies of it because they had to send all
13 of them back to the State Department; however it's
14 using the same ones that they would use this year.
15 The vocabulary book that they used, it's a
16 30-lesson vocabulary book. It covers 10 words per
17 lesson.

18 There are five exercises per set of 10
19 words, and it gives the definition, the parts of
20 speech, the way the words are used, and it - you
21 go through and demonstrate your use of those 10
22 words within the lesson. After three lessons, you
23 will take a unit test, and a total of 10 unit
24 tests. There are also vocabulary bonus exercises
25 to help accumulate you through the words, and

1 that's what we used.

2 Q. Okay. And she exhibited a good enough
3 knowledge of the text and the material to pass the
4 classes?

5 A. Yes.

6 Q. All right. Where did - on this
7 Exhibit 285, it says her class rank is 186 of 700.

8 A. Okay.

9 Q. Is that surprising to you?

10 A. I will say this: It's - it's hard to
11 say because the numbers are so odd from day to day.
12 Because of the way that schools are now and the way
13 that kids are counted in terms of class rank and
14 things of that nature. I was just speaking to a
15 parent last week in reference to their child who is
16 one class ahead of Lillian's. And his daughter is
17 number 10 in her class, and she's within hundreds
18 of a point of her friend, who is number 1. So it
19 can vary from class to class and from student to
20 student.

21 Q. Okay.

22 A. And it can change, you know, contingent
23 upon the actual graduating period. It can really
24 switch off.

25 Q. Is 700 the total student population of

1 the school?

2 A. No. 700 is the total population of
3 that particular class.

4 Q. Because how many - what's the total
5 population of the -

6 A. There are -

7 Q. - school?

8 A. 1788 students approximately that go to
9 this school at this point.

10 Q. I see. Okay. So that would be of the
11 8th grade class?

12 A. From last year. They're now 10th
13 graders, yes.

14 Q. Okay. The - in your particular
15 classes, in which you taught Lillian, would the
16 student population be identical for the - for the
17 focus and English classes, or were they different?

18 A. The students usually stayed with me
19 throughout the year; however, some students were
20 switched out to balance the classes.

21 Q. Right.

22 A. And that's what I've had happen.

23 Q. Okay. Tell me how you perceive Lillian
24 relative to her peers in terms of, is she the
25 smartest in those classes, the medium or the bottom

1 of the classes?

2 A. Well, I will rate her somewhere between
3 the low and the medium. And I don't know if that's
4 because of the whole apathy factor, or - I don't
5 think necessarily it was, you know, a lack of a -
6 of a grasp of things that were taught, per say, as
7 opposed to, you know, really having an assess for
8 wanting to learn. I mean, most students do -
9 again, there is a different tone amongst students
10 now as opposed to since I taught even three years
11 ago.

12 Q. Okay. Is this a college prep class?

13 A. This is a college prep class.

14 Q. Right. Now, do you have AP class or IB
15 classes here?

16 A. We have AP classes.

17 Q. Right. So it's AP, college prep, and
18 then is there another group below?

19 A. There's AP, honors, college prep, and
20 then from my understanding at this point now,
21 college prep is your lowest. At one point, there
22 were other classes in terms of different ways to
23 categorize classes. But I believe in 1997 or '8,
24 they may have switched them. Maybe a little
25 earlier they switched them because the students

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1 were no longer recognized as practical or medial or
 2 general, college prep, advanced and honors or AP.
 3 Now, it is just those three particular tracks.
 4 Q. Okay.
 5 (The proceedings were interrupted.)
 6 BY MR. PURCELL:
 7 Q. And the college prep is meant to be for
 8 kids who actually are going to college?
 9 A. From my understanding now, per the No
 10 Child Left Behind Act of -- I believe it was 2001
 11 or '2. It is geared to all students if they, like,
 12 are prepared for college.
 13 Q. Okay. Do you feel like that's what
 14 your class is doing?
 15 A. Yes.
 16 Q. You brought some other papers with you
 17 today --
 18 A. Yes, I did.
 19 Q. -- concerning Lillian. Can you tell us
 20 what you have?
 21 A. Yes, I do. I will -- what I brought --
 22 I was asked, I guess, per the sheets to bring some
 23 work of some other students from the class or from
 24 the classes. And I have several examples of
 25 research papers done by students, some considered,

Page 20

1 Q. Okay. But the things you brought in
 2 the three envelopes are the results --
 3 A. Well, examples of students' works that
 4 would have been parallel to hers.
 5 Q. Okay. All right. Well, I don't think
 6 we are going to need to make those exhibits at all.
 7 A. Okay.
 8 Q. But in the binder, you indicate, you do
 9 have the materials that she would have --
 10 A. Been tested on.
 11 Q. She would have tested on?
 12 A. Yes.
 13 Q. Are there only tests in there?
 14 A. There should be things other than tests
 15 in here. I gave you the entire portfolio, what we
 16 had. Some tests, some bonus exercises, some
 17 quizzes, things of that nature all in here.
 18 Q. Okay. And is this for English and
 19 focus or just focus?
 20 A. This is for English -- her English
 21 class, yes.
 22 Q. And if we could make Exhibit 1 to this
 23 deposition, and Mr. Thomas, we'll see about
 24 arrangements for making copies of this, and you can
 25 obtain position -- possession of it. I assume this

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1 I guess you could say, low, middle and high, with
 2 this high being the initial one.
 3 Q. Okay. Well, let me -- let me ask you:
 4 Do you have any of the papers, compositions or
 5 projects that Lillian was graded on in the
 6 materials you brought today?
 7 A. That she was graded on?
 8 Q. Right.
 9 A. No. I actually have the papers, let's
 10 say tests, things of that nature, examples of those
 11 tests.
 12 Q. Okay.
 13 A. But I don't have the actual papers
 14 themselves.
 15 Q. Okay. Oh, so you have the -- you have
 16 the tests --
 17 A. Yes, I do.
 18 Q. -- that she would have taken?
 19 A. Right. I do.
 20 Q. Oh, excellent. Okay.
 21 A. I do.
 22 Q. And those are in those three envelopes?
 23 A. In the binders -- in my binder.
 24 Q. In the binders.
 25 A. Yeah. We keep --

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1 is the teaching material you use on a daily basis?
 2 A. Yeah, but I actually have a -- another
 3 portfolio. We have to do one every year.
 4 Q. Okay.
 5 A. So --
 6 Q. Okay. But this was her --
 7 A. This is what --
 8 Q. -- her year?
 9 A. This was what she would have had,
 10 right.
 11 Q. Okay.
 12 A. Because these tests have actually
 13 changed. These are vocabulary tests. They've
 14 changed.
 15 Q. Okay. All right. Good.
 16 MR. PURCELL: Let's make that Exhibit 1
 17 to Mr. Thomas' deposition.
 18 (DFT. EXH. 1, Copies of Tests and
 19 Quizzes, was marked for identification.)
 20 A. Do you need these and just return them
 21 or --
 22 Q. Yeah. We can do that.
 23 A. Okay.
 24 Q. I'll let the court reporter do that.
 25 A. Okay. I'll just remove this. Let me

Pages 18 to 21

1 just snatch this out because this is irrelevant to
 2 anything she would have had in that class. This
 3 is -- these are my goals. These are copies of
 4 assessments. And some of this stuff is from her --
 5 pardon me -- her 7 Habits book is in there also.
 6 Q. Okay. Very good.
 7 A. So it's in here. You know, her quizzes
 8 are here, and her tests, her final tests are in
 9 here -- her Novell test, these things are here.
 10 Excuse me. Here you go.
 11 Q. Thank you. Did you have any grade
 12 books or grading sheets for Lillian other than the
 13 computerized final grades?
 14 A. No.
 15 Q. Okay. So you don't keep those from
 16 year to year? I guess you've --
 17 A. No. It is all backed up on a disk.
 18 Q. Okay. And do you have any -- any of
 19 her tests -- or I guess those were the tests that
 20 she was given right there?
 21 A. Right.
 22 Q. But you don't have any that were
 23 completed by Lillian still in your possession?
 24 A. No.
 25 Q. Okay. Do you have any worksheets or

1 listings of daily activities that you used on a
 2 daily basis for the year in which Lillian was your
 3 student, or is that what's included?
 4 A. That's what's included.
 5 Q. Okay. Very good. Do you have all of
 6 the objectives listed on there?
 7 A. All of the objectives?
 8 Q. Yes.
 9 A. No. Mine should be on my LRPs,
 10 long-range plans. If not on my long-range plans,
 11 then in the other portfolio -- because we had to do
 12 it by goals. We have to obtain a goal, or complete
 13 a goal -- pardon me -- within each year.
 14 Q. Okay. Do -- she -- Lillian was listed
 15 on one of her IEPs as being prepared for a regular
 16 high school diploma. Is that what your class did?
 17 A. Right.
 18 Q. Does that mesh with what your
 19 observations were, that she could get a regular
 20 high school diploma?
 21 A. Right.
 22 Q. You were a part of her IEP team in --
 23 for the last school year. Do you remember that?
 24 A. Yes.
 25 Q. Okay. And would that have been near

1 the end of the year that she was your student?
 2 A. She was actually there with me the
 3 entire year; however when they do IEP meetings, you
 4 start an initial meeting at the beginning of the
 5 year, and you do your last one during the last week
 6 or two of school to finalize everything with the
 7 student.
 8 Q. Okay.
 9 A. There's also a mid meeting that they
 10 tend to do.
 11 Q. Right.
 12 A. And last year that would have been in
 13 either late or early December or early January.
 14 Q. Okay. If you will look at page 247 of
 15 the documents that you have before you.
 16 A. Okay.
 17 Q. Is the IEP that begins on 247, is that
 18 the IEP or individual education plan in which you
 19 participated?
 20 A. Yes.
 21 Q. Okay. If you look on page 263, is that
 22 your signature as her regular ed teacher?
 23 A. Okay. Yes, it is.
 24 Q. Okay. And tell me what LEA is.
 25 A. I don't quite know what LEA would stand

1 for. Let's see. No, I wouldn't quite know what
 2 that would be.
 3 Q. Okay. Well, let's -- let's just go
 4 back, if you would, please, Mr. Thomas to the -- to
 5 the -- to the beginning of her IEP that was
 6 developed for -- and this would have been developed
 7 for this year, her 10th grade year; is that right?
 8 A. That would have been the one that, I'm
 9 assuming, she had for 9th going into 10th, yes.
 10 Q. Okay. Well, it -- if it was -- okay.
 11 So it's for -- it says, date of the IEP meeting was
 12 4/18/2007.
 13 A. Uh-huh (affirmative).
 14 Q. So that would be -- although it says
 15 school year 2007, 2008, this would be an IEP for
 16 the upcoming --
 17 A. Year.
 18 Q. Well, actually this is 2007/2008 --
 19 A. 2007, right.
 20 Q. -- isn't it?
 21 A. Right.
 22 Q. Very good. So it was anticipated among
 23 your team that developed this IEP that certain
 24 transition needs would be discussed during the IEP.
 25 Are you familiar with transition services, or is

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1 that something another team member would have been
 2 more familiar with?
 3 A. Other team members would have been more
 4 familiar with that.
 5 Q. Okay. Why don't you tell us what your
 6 input would have been to the IEP.
 7 A. In regular ed, many of the questions
 8 would come about that are very similar to these.
 9 Q. All right.
 10 A. Excuse me. And they would basically
 11 ask me different behavioral things. The students
 12 dispensation to work or things of that nature, how
 13 well they did with the things they were given. The
 14 student's overall behavior, things of that nature
 15 would be as the regular ed teacher -- because
 16 although they have some of the teachers, the
 17 resource teacher, maybe the physical therapist,
 18 things of that nature, I'm one of the regular ed
 19 teachers they would have had -- that she would have
 20 had, excuse me.
 21 Q. Okay. On page -- on the first page of
 22 the IEP, it indicates a regular high school
 23 diploma --
 24 A. Uh-huh (affirmative).
 25 Q. -- is anticipated. Did you concur in

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1 experiences with her leg?
 2 A. No. Actually, no.
 3 Q. She was able to do the work in your
 4 class physically?
 5 A. Yes, she was.
 6 Q. If you turn over to the third page, it
 7 indicates that accommodations that may be needed
 8 for her would be the -- a quiet workplace with
 9 additional verbal instruction, praise and
 10 consultation with her resource teacher and her
 11 regular teacher. Did you have to accommodate her
 12 in any way?
 13 A. I often did not have to.
 14 Q. Okay.
 15 A. No.
 16 Q. And if you did offer any
 17 accommodations, what would those have been?
 18 A. Usually what we do is, in speaking with
 19 the resource teacher, we will do a pull out. And
 20 what that involves is, if the student is finding
 21 difficulty with a particular exercise, if they need
 22 to spend more time on the exercise, we usually tend
 23 to pull them out and also to let the resource
 24 teacher -- or pardon me -- the resource teacher
 25 know that they need a little more help with this

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1 that assessment?
 2 A. Yes, I did.
 3 Q. Okay. On the next page, up at the top,
 4 it is IEP section 2. It indicates that reading is
 5 her -- in general is her strength.
 6 A. Uh-huh (affirmative).
 7 Q. Do you concur that reading is her --
 8 her strength?
 9 A. Yes.
 10 Q. And that she's a --
 11 A. Excuse me.
 12 Q. Excuse me. She's a pleasant lady, but
 13 needs to focus on tasks and concentrate more. Is
 14 that your assessment as well?
 15 A. Yes.
 16 Q. And in the writing portion, the test --
 17 the KTEA test says that she has good sentence
 18 structure, is able to spell commonly used words but
 19 needs improvement in punctuation and extensive
 20 grammar form. Do you concur with that assessment
 21 of her writing as her English teacher for last
 22 year?
 23 A. Yes.
 24 Q. And did you have any difficulties in
 25 your class with her, the problems that she

Page 29

1 particular exercise.
 2 Q. Okay. And then on page 4, Roman
 3 Numeral IV, it indicates a number of objectives in
 4 English such as effective sentence structure,
 5 spelling grammar, communicating clearly, those all
 6 being objective.
 7 A. Uh-huh (affirmative).
 8 Q. And were these things that you
 9 developed as a member of the IEP team?
 10 A. In terms of the objectives?
 11 Q. Yes.
 12 A. The objectives were actually drawn from
 13 the language arts department.
 14 Q. Okay. All right. Did you concur in
 15 those objectives?
 16 A. Yes, I did.
 17 Q. And that she could -- her criteria for
 18 mastery of those objectives would be 80 percent
 19 accuracy on all of the things shown there in
 20 section 4, right?
 21 A. Right.
 22 Q. And you think that was possible for
 23 Lillian to do to reach those objectives?
 24 A. I believe so.
 25 Q. Okay. Is that based on your experience

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1 with Lillian, as well as your training as a
 2 teacher?
 3 A. Right.
 4 Q. Okay. If you will go on over to 5,
 5 I'm not going to run through each of the
 6 objectives, but there was the indication of special
 7 education sources there for her, including
 8 individualized remedial instruction in writing
 9 skills, punctuation and grammar form. And is that
 10 one of those things that you felt she would --
 11 would help her if she could get additional time?
 12 A. Pardon me. You're looking at --
 13 Q. I'm sorry. It's page 5.
 14 A. That's all right.
 15 Q. And at the bottom, it is page 257.
 16 A. Okay. Pardon me. Okay. You're asking
 17 if I -- if I concur with this?
 18 Q. Yes, sir.
 19 A. Yes, I do.
 20 Q. Okay. If you look over on page 6, it
 21 indicates that the standardized testing will be
 22 with no accommodations in English language arts.
 23 Do you agree with that? It's the HSAP.
 24 A. Yes. Yes.
 25 Q. And is that -- is that in fact a

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1 standardized test, an HSAP?
 2 A. Yes, it is.
 3 Q. Okay. What's the difference between
 4 the -- if you know, the HSAP and the Pact test?
 5 A. Well, there are a couple of
 6 differences. It is quite extensive. They both, of
 7 course, test many of the same skills; however, the
 8 standards and objectives are very different for the
 9 students who take the HSAP. The HSAP, as we call
 10 it, is a test that is taken initially in the 10th
 11 by all students in the State of South Carolina who
 12 are in schools governed by the State of South
 13 Carolina. And it usually tests what they should
 14 know at that particular point.
 15 Q. Right.
 16 A. And it is also used to -- as a deciding
 17 factor as to whether the students will graduate
 18 with a high school diploma or with a certificate of
 19 attendance.
 20 Q. So it really is a standardized test in
 21 that every student takes it?
 22 A. Yes, with the exception of a few.
 23 Q. Okay. Would these be special ed
 24 students that wouldn't take it?
 25 A. It is a particular genre of special ed

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1 students and not necessarily all of them.
 2 Q. Okay.
 3 A. But some of them are held to take this.
 4 Q. Okay. If you'd look over on page 6,
 5 the end of course examination in your field of
 6 English, indicates it would be a standard, no
 7 accommodations end-of-course examination; is that
 8 right?
 9 A. Right.
 10 Q. And is that in fact what you did for
 11 her at the end of the course --
 12 A. Yes, I did.
 13 Q. -- a standard, no accommodation test?
 14 A. Right.
 15 Q. The -- in terms of the other items
 16 listed on page 7, there were no special discipline
 17 issues with Lillian, were there?
 18 A. No.
 19 Q. And no need for accommodation with
 20 discipline or behavior issues?
 21 A. No.
 22 Q. Okay. And on page 8, the -- your team
 23 determined that no assistive technology or services
 24 devices were necessary, correct? I'm looking at
 25 the top.

Page 33

1 A. No.
 2 Q. Okay. And what kind of assistive
 3 technology services or devices does that refer to
 4 for those of us who are unfamiliar with the IEP or
 5 assistive technology devices and services?
 6 A. There are several students who may need
 7 hearing aids, who may need to have things placed in
 8 larger letters, may use computer programs in terms
 9 of voice, may use other programs, particular tapes,
 10 other pieces of technology that would apply to this
 11 particular thing. She did not require any of those
 12 things to get things done in the class.
 13 Q. Right. Okay. If you look at the next
 14 block, it indicates that behavior is not a concern
 15 in Lillian's case; is that correct?
 16 A. Right. That's correct.
 17 Q. Okay. And extended school year is
 18 given the acronym ESY in this; is that correct?
 19 A. Yes, it is.
 20 Q. Was ESY determined to be necessary?
 21 A. No, it wasn't.
 22 Q. Okay. And then on page 10, that's the
 23 list of individuals who participated in the -- in
 24 developing the IEP?
 25 A. Uh-huh (affirmative).

1 Q. Can you go on over to the next page,
2 264, the handwritten notes. It indicates halfway
3 down that -- in the handwritten notes, counseling
4 will be available if when needed. Lillian's
5 interests are childcare and finance. She goes to
6 physical therapy. She will continue this service
7 next year. She's been given a key to the elevator.
8 And these were notes that were generated in the
9 actual meeting of the team; is that right?

10 A. Yes.

11 Q. And was her mom present as well?

12 A. Yes.

13 Q. What was your sense about Lillian's
14 home environment, whether she received the support
15 that she needed?

16 A. And I'm trying to remember, because I
17 knew several of the people from her -- I knew of
18 several people from her community in speaking to a
19 lot of the students. And I believe she had a
20 brother that I would see frequently. They seemed
21 rather adjusted. And I'm -- and, again, I must
22 say -- you know, I know this in reference to
23 Lillian, but speaking in general about many
24 students now, she seemed pretty adjusted in terms
25 of things that would go on.

1 high -- high school student and employ these -- the
2 7 Habits of Highly Effective Teens. What will it
3 take?

4 A. It will take what I tell all of my
5 students. It takes some true introspection and
6 then some application. If you do that first, look
7 within and find out what you need to do, set
8 yourself on a course to do it, then she should do
9 well. She's able to, from what I've seen. But
10 other than that, I mean she should -- she should
11 do -- she should do well.

12 Q. Okay. Did you detect that she was
13 slower than her peers in processing information
14 about the same or faster than her peers?

15 A. About the same.

16 Q. Okay. And in terms of following
17 instructions, the same questions, was she slower
18 than her peers, faster than her peers or about the
19 same?

20 A. No. About the same.

21 Q. Okay. In terms of the grade, you would
22 expect her to get on a test, big or small --

23 A. Uh-huh (affirmative).

24 Q. -- do you think you would expect her to
25 be -- get a higher grade than her peers, a lower

1 There are so many things that students
2 bear witness to now that weren't prevalent, I could
3 say, even three or four years ago. So if there was
4 something that would really throw her off, I never
5 witnessed to it or saw it or anything like that.

6 Q. Okay. You didn't have an opportunity
7 to teach her brother -- her older brother, Brian?

8 A. No. I would just see him.

9 Q. Yeah. How about her younger brother,
10 William?

11 A. No. I know him, but I knew him only
12 because of me stopping him in the hallway all the
13 time.

14 Q. Okay.

15 A. Yeah.

16 Q. That would be just to chat with him
17 about various --

18 A. Right.

19 Q. -- issues that were --

20 A. Right.

21 Q. -- going on at the moment?

22 A. Right, like pull your pants up and put
23 your shirt in your pants, that type of thing.

24 Q. I understand. Now, what do you think
25 it will take for Lillian to be a really successful

1 grade than her peers or about the same?

2 A. I guess about the same.

3 Q. Well, do -- let me ask the question
4 this way: Did you detect any difference in Lillian
5 in terms of her performance on tests that were
6 either short or end-of-term type big tests?

7 A. She usually performed better on her
8 regular tests.

9 Q. Not the big tests?

10 A. Not the big tests. But most of the
11 students performed better on the regular tests, as
12 opposed to those.

13 Q. And why do you think most of the
14 students had more problem with the big tests as
15 opposed to more the regular tests?

16 A. I believe many of them, it becomes a
17 confidence issue and also somewhat close to a
18 self-fulfilling prophecy. They've heard it enough
19 that they don't do well on tests, that they tend to
20 believe that, as opposed to actually trying and
21 believing they can do it. I don't think it is for
22 lack of, you know, what's been taught or what they
23 know. They often have --

24 Q. Have you -- you observed Lillian
25 outside the classroom?

1 A. Within the school setting or --
 2 Q. Yes. Yes.
 3 A. Yes, I have.
 4 Q. How about beyond the school setting?
 5 A. No.
 6 Q. Can you tell which kid of group she's
 7 hanging with, the good kids versus the other kids?
 8 A. They -- they seem like good kids.
 9 Q. It's a good group that she's --
 10 A. Right.
 11 Q. -- seems to associate with? Was -- do
 12 you remember any instances of any -- of
 13 inappropriate behavior on -- on Lillian's part?
 14 A. No. I only remember -- I think at one
 15 point she had on something that was borderline
 16 inappropriate and was asked to change it or to
 17 cover it. And that's the only time. Other than
 18 that, no.
 19 Q. What about in terms of her behavior in
 20 class. Were there any instances of outbursts or
 21 angry eruptions or inappropriate behavior in that
 22 regard at all?
 23 A. Not that I can recall.
 24 Q. Did you like her as a student?
 25 A. Yes.

1 Q. Did she like you?
 2 A. I believe so.
 3 Q. Okay. Was she -- was her attendance
 4 pretty good? Well, let me ask it this way: Did
 5 she stand out as someone who just didn't seem to
 6 come -- seemed to be absent more than she was
 7 there?
 8 A. No. She was there more than she was
 9 absent. I do remember there being cases, if I'm
 10 not mistaken, several times where she wasn't, and I
 11 was kind of, okay, where is she. But, no, she was
 12 there more than she was absent, definitely.
 13 Q. Do you think that Lillian spent enough
 14 time on her homework?
 15 A. No.
 16 Q. Is that true of most of your students?
 17 A. Yes.
 18 Q. Is there anything that stands out in
 19 your mind about Lillian's emotional state versus
 20 the girls who are in her peer group in your class?
 21 A. No. She -- she seemed pretty well
 22 adjusted. She was friends with most of them, from
 23 what I observed.
 24 Q. Right.
 25 A. She wasn't bolsterous, as many of them

1 tend to be. In terms of being over the top, she
 2 wasn't that.
 3 Q. Okay. Did she seem to have a problem
 4 with irritability?
 5 A. No.
 6 Q. Or impatience?
 7 A. No. It didn't appear that way to me.
 8 Q. Or a low frustration tolerance?
 9 A. No.
 10 Q. Or fixations on things?
 11 A. No.
 12 Q. Or did she express problems with
 13 headaches or dizziness?
 14 A. I'm trying to remember. I don't know
 15 if she -- I know the dizziness wasn't, but I do
 16 believe a couple of times with headaches.
 17 Q. Did she experience any hallucinations?
 18 A. No.
 19 Q. Any concerns about her being constantly
 20 cold or --
 21 A. They all may have. I tend to like it
 22 chilly, so that she may have been.
 23 Q. Okay. Did she appear to have an
 24 attention span that was shorter or longer than her
 25 peer group?

1 A. No. They are all short.
 2 Q. All right. Did she experience -- did
 3 she exhibit any aggressive behavior towards you or
 4 the other students in the class?
 5 A. No.
 6 Q. Ever had any temper tantrums in your
 7 class?
 8 A. No.
 9 Q. Ever hurt anybody?
 10 A. No.
 11 Q. Ever act like a walking zombie in your
 12 class?
 13 A. No.
 14 Q. Or drooling?
 15 A. No.
 16 MR. PURCELL: Okay. I think that's all
 17 I have.
 18 EXAMINATION
 19 BY MR. PARKER:
 20 Q. Just a couple questions. What did you
 21 understand was the nature of the reason that
 22 Lillian had an IEP?
 23 A. From my understanding, her
 24 accommodations were mostly physical, from my
 25 understanding, initially, and per the IEP that she

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1 had from the year before, they usually tend to be a
2 rollover. And then they ask them to -- ask us to
3 observe and see if we have further accommodations
4 anything that's there.

5 Q. Did -- did you know what her injury was
6 that caused her physical disability?

7 A. No, I did not.

8 Q. Do you know what kind of injury she had
9 that got her on track to having an IEP?

10 A. No.

11 Q. Do you know anything about her history
12 of having any psychological or neuropsychological
13 problems?

14 A. No.

15 Q. Do you know whether or not she has a
16 traumatic brain injury?

17 A. Now that I believe I have been told,
18 but I didn't -- I wasn't told the actual cause of
19 it.

20 Q. How about the consequences of it?

21 A. Yes, they were revealed.

22 Q. And what was the consequences that you
23 knew about about her traumatic brain injury?

24 A. They lied -- they were lied rather to
25 the IEP in terms of perhaps needing more time for

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1 15 to 20 failed?

2 A. Now that I could not tell you. I would
3 have to actually pull it. I'm suspecting what that
4 class would have done. I would say probably out of
5 15 to 25, 5 probably did.

6 Q. So she would -- out of the 15 to 20
7 kids that you had in the class, she would have been
8 in the bottom --

9 A. 3rd or 4th.

10 Q. 1/3rd or 4th?

11 A. Uh-huh (affirmative). But was right on
12 par with the same material to some degree for --
13 and within incorporation of other things for the
14 English I class.

15 MR. PARKER: Okay. I don't have
16 anything further.

17 MR. MCLEOD: I don't have any questions
18 for you.

19 EXAMINATION

20 BY MR. PURCELL:

21 Q. Mr. Thomas, you mentioned that she,
22 nonetheless, was able to be promoted to the 10th
23 grade --

24 A. Right.

25 Q. -- based on certain contingencies?

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1 work, perhaps needing to -- it wasn't necessarily
2 things with her pace, per say, but allowing her to
3 have more time to work. It wasn't mentioned in
4 there anything about any episodes or things of that
5 nature; however, when given a situation as such, I
6 tend to watch for that, but that wasn't revealed to
7 me.

8 Q. Do you know -- how many people did you
9 have in your class that Lillian was in?

10 A. Approximately anywhere from 15 to 20
11 probably.

12 Q. And if -- I know in your class, she
13 didn't have resource for that class, but for others
14 she may have. Do you average in the resource grade
15 with the class grade if they go to resource for a
16 particular class?

17 A. No because the resource grade is a
18 separate class grade.

19 Q. And you don't -- the reason I'm asking
20 is apparently in middle school, they average that
21 grade in. In high school, they do not?

22 A. They do not because of Carnegie units.

23 Q. Okay. Now, Lillian failed your class?

24 A. For elements of English.

25 Q. Right. And how many kids out of that

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1 A. Right.

2 Q. Now, were the other people who didn't
3 pass English also promoted to the 10th grade based
4 on --

5 A. Well, she did pass English. She didn't
6 pass elements of English.

7 Q. Okay. I'm sorry. Elements of English.

8 A. Uh-huh (affirmative).

9 Q. So you incorporate the two classes and
10 then come up with whether she passed or failed --

11 A. Well, no, you --

12 Q. -- for the year?

13 A. You take the English I class. What
14 elements does it help to strengthen the
15 skills --

16 Q. Right.

17 A. -- they may have been weak on in terms
18 of grammar --

19 Q. Right.

20 A. -- and other things with vocabulary.

21 Q. Right.

22 A. And then you incorporate everything
23 into the actual English I class, because according
24 to state standards, those things have to be taught
25 for that particular thing.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF HAMPTON

WILLIE HOMER STEPHENS, guardian ad Litem for
Lillian Colvin, a minor,

Plaintiff,

vs. CASE NO. 04-CP-25-267

CSX TRANSPORTATION, INC., and SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION,
Defendants.

VIDEO DEPOSITION OF: BETTY RUTH CREWS

DATE: February 27, 2008

TIME: 10:27 a.m.

LOCATION: Law Offices of Peters, Murdaugh,
Parker, Eltzroth & Detrick
101 Mulberry Street East
Hampton, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KELLY A. BALL, Court Reporter

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FAST, ACCURATE & FRIENDLY

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35 ALSO PRESENT:

36 Nick Stelfo, Videographer

(INDEX AT REAR OF TRANSCRIPT)

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1 Q. So you were -- you lived with your
2 grandparents your whole life --

3 A. Well --

4 Q. -- or when you were growing up?

5 A. My parents were there too.

6 Q. Okay.

7 A. My mother was a -- the daughter and my
8 grandmother wasn't well and my grandfather, he was
9 -- he had everybody living in the household,
10 different nieces and nephews and -- anyway. My
11 father sat at one end of the table and my
12 grandfather at the other. So one wouldn't be
13 favored.14 Q. Okay. Now, you've been a school
15 teacher during your life; is that right?

16 A. 35 years.

17 Q. All right. And you're retired now?

18 A. Well, yes, since '84.

19 Q. All right. And your husband, prior to
20 his passing, did what kind of work?21 A. He was rural mail carrier. He did lots
22 of other things too.

23 Q. Okay.

24 A. Farmed.

25 Q. Okay. And you have family -- do you

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1 THE VIDEOGRAPHER: We are now on the
2 record. Today's date is February 27th, 2008. Time
3 is approximately 10:27 a.m. This is the videotaped
4 deposition of Betty Ruth Crews. And would the
5 court reporter please swear in the witness.

6 BETTY RUTH CREWS

7 being first duly sworn, testified as follows:

8 EXAMINATION

9 BY MR. PURCELL:

10 Q. Give us your name and address for the
11 record, please.12 A. Betty Ruth A. Crews, C-R-E-W-S. 113
13 Railroad Avenue. And post office box 202 Hampton,
14 29924.15 Q. Okay. Ms. Crews, how long have you
16 lived in Hampton?17 A. Well, I've lived at this home since
18 1929.

19 Q. All right. And --

20 A. Accept for seven years. I got married
21 in '51 and I moved two blocks away with my husband,
22 and in 1958 my grandparents died and they left the
23 home to the six grandchildren. And I was the
24 oldest, so my husband and I bought it and moved
25 back in on December 27th, 1958.

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1 have family in Hampton County presently?

2 A. No -- well, cousins --

3 Q. And which --

4 A. -- nieces and nephews.

5 Q. Okay. Tell me what cousins those would
6 be. What last names?

7 A. Hazel.

8 Q. All right. And the nieces and nephews,
9 are they also Hazel's as well?

10 A. Tucker, Allison Tucker.

11 Q. All right.

12 A. These are on my husband's side. And
13 Jerry Frank Crews is -- Jr. -- is a dentist.14 Q. All right. Are you related to the
15 gentlemen, last name Crews, who works with this law
16 firm?

17 MR. PARKER: Donald.

18 THE WITNESS: Donald. I don't know.
19 It has never been -- it's way, way off. I think
20 the great-grandparents came together from --
21 great-great-grandparents came from Virginia.

22 BY MR. PURCELL:

23 Q. All right. Now, you've -- you know Mr.
24 Parker?

25 A. Yes.

Page 6	Page 8
1 Q. And how long have you known him? 2 A. Since he was born. 3 Q. Okay. Do you know other members of the 4 firm? 5 A. Yes. I taught several. 6 Q. Okay. Were they good students? 7 A. Of course. I didn't have anything but 8 good students. 9 Q. Excellent. 10 A. In fact, I taught in the same school 11 with Johnny also. 12 Q. Oh, okay. When he was a school 13 teacher? 14 A. Yes. You didn't know that? I'm 15 telling tales. 16 Q. Okay. And -- do you -- have you had 17 occasion to use this firm as your -- your law firm? 18 A. I'm sure, yes. 19 Q. Okay. Have you ever sued anybody? 20 A. I don't think so. 21 Q. Have you ever been sued? 22 A. I don't think so. 23 Q. Have you ever been a witness in a 24 lawsuit? 25 A. No. I've served on one jury and that	1 A. I went to the Episcopal church and 2 participated down there too. 3 Q. Okay. 4 A. And my father was Methodist, and I -- 5 so I count that as my church, too. 6 Q. All right. 7 A. I'm a member of the Hampton County 8 Historical Society. I've been president three 9 times since the beginning of that. I -- I'm a 10 member of the courthouse, what is it called? 11 Courthouse committee. 12 Q. Renovations committee? 13 A. Yes. The whole thing. It's courthouse 14 and all the facilities. 15 Q. Yes, ma'am. 16 A. Emergency -- I serve at the Hampton 17 County -- I meant the town museum. I also 18 participate in the county museum. Well, for 19 instance, yesterday I received a call on my 20 answering machine and it was from a -- a former 21 student, he teaches -- he -- at Selkethatchie, and 22 he wants to bring a group to the town museum, 23 tomorrow, Thursday morning, and being a historian, 24 I'm going to give a tour there. What else do I do? 25 I love to dance.
Page 7	Page 9
1 was a joke, I think, after I retired. 2 Q. Okay. Was it a criminal or civil jury? 3 A. Criminal. Somebody had -- anyway, it 4 was in this courtroom. I don't even remember. 5 Q. Okay. You're active in the community? 6 A. I'd say so. 7 Q. Well, why don't you tell me what -- 8 what activities you're engaged in in the community 9 here? 10 A. Well, I'm a member of the Baptist 11 Church, teach a Sunday school class, sing in the 12 choir, head of the LAFF group, which is life after 13 after 55. I go to the Methodist Church, the 14 activities; today I'm going to their luncheon, it's 15 called young at heart. I teach Bible study, I'm a 16 -- 17 Q. What kind of Bible study do you teach? 18 A. Books of the Bible. 19 Q. I mean, like is it -- 20 A. To -- 21 Q. -- Bible study fellowship or one of 22 those kind? 23 A. Yes, yes. That -- it's in our church 24 and the Episcopal church. 25 Q. Okay. All right.	1 Q. Do you have -- 2 A. Oh, I'm in the community chorus. 3 Q. Uh-huh. 4 A. You asked for this. 5 Q. Yes, ma'am. I understand. You haven't 6 -- you haven't told us about your acting ability 7 yet? 8 A. Oh, yes. I was an extra in Forest 9 Gump. I'm a -- a Clemson fan, I attend all home 10 games, some of them away. In that -- in the '70s, 11 my son was president of the student body and my 12 daughter was a cheerleader all four years. And 13 those four years she was there in a '70s we didn't 14 miss any activity. Went to all of them. Oh, I'm a 15 -- a member of the American Legion Auxiliary. I'm 16 Chairman of the Girls State Committee. I have been 17 -- I was a senior counselor at the girls state for 18 eight or ten years in the '70s and '80s. I do 19 sleep. I enjoy entertaining. I enjoy going to 20 parties. I try to enjoy life. 21 Q. Okay. What kind of work does your son 22 do? 23 A. He was an attorney. Right now he's 24 doing insurance work. 25 Q. Okay. He's actually employed by an

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1 insurance company?
 2 A. He's a -- I don't know what he is.
 3 He's -- anyway...
 4 Q. How about your daughter?
 5 A. She's married to an attorney, lives in
 6 Greenville, and she's a guidance counselor.
 7 Q. Uh-huh. What kind of work does her
 8 husband do?
 9 A. He works for -- I think they do law.
 10 I'm not sure. Corporate. I'm not sure.
 11 Q. And what's his full name?
 12 A. Phillip Arthur Kilgore in Greenville.
 13 Q. Okay. And how did you come to be a
 14 witness in this case?
 15 A. Because of where I live, and I'm noisy
 16 and curious.
 17 Q. Okay. And how did you find your way to
 18 Mr. Parker's firm to be a witness in this case?
 19 A. I was called by somebody in Augusta.
 20 Q. Okay. Well, before that, Mr. Parker
 21 had listed your name as a witness?
 22 A. I had no idea anything was going on
 23 until this paralegal called me from Augusta.
 24 Q. Okay.
 25 A. And I immediately called Parker to find

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1 my -- cut -- clipped out the newspaper article, but
 2 I've gone through 20 boxes and I can't find them.
 3 I buy these boxes from the -- that's another one of
 4 my projects. I buy these boxes from Sam's
 5 Wholesale.
 6 Q. Yes, ma'am.
 7 A. And I'm trying to put the pictures in
 8 my life in various boxes. And I put them in -- in
 9 albums with the -- acid free things just like I'm
 10 fixing this one.
 11 Q. Yes, ma'am.
 12 A. And you see how I fixed that one.
 13 Q. Yes, ma'am.
 14 A. And so far I have 60 albums. And I'm
 15 going to have to redo them, because I was putting
 16 them according to people -- I mean, to years, and
 17 now I'm going to put them according to people so I
 18 can put my grandchildren and -- and another thing
 19 that's messed up my things, when people decide to
 20 do something like publishing the Salkehatchie in
 21 Savannah history book, factorial history, they
 22 called me and asked me if I had any pictures; of
 23 course I did. I have inherited pictures from my
 24 grandparents, my mother, and -- and -- and me and
 25 other people in the town, Frank Wilson Browning,

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1 out what the deal was.
 2 Q. Uh-huh.
 3 A. I didn't know what was going on.
 4 Q. And did he tell you that he listed you
 5 as a witness in this case?
 6 A. He left me a message on the answering
 7 machine, that if I would do this, he'd appreciate
 8 it.
 9 Q. Okay.
 10 A. That's the only communication I had.
 11 Q. And you were happy to do it, of course?
 12 A. Oh, yes.
 13 Q. Yeah. And the -- the facts about which
 14 you have knowledge, were written about in the
 15 newspaper, park, right?
 16 A. And I checked on them to be sure that
 17 my memory was correct.
 18 Q. Yes, ma'am. And --
 19 A. Because --
 20 Q. Go ahead.
 21 A. You know, you can have opinions of how
 22 you want things to be.
 23 Q. Yes, ma'am.
 24 A. But -- so therefore -- and I made
 25 pictures of me over there and with the workers and

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1 who had pictures from the first pictures of Main
 2 Street, brought them to me, left them to me. He
 3 had no children so he gave them to me. So I pulled
 4 pictures and put them on my dining room table and
 5 they came and pulled them out.
 6 Q. Yes, ma'am.
 7 A. So I'm not -- I haven't gotten them
 8 back in the albums. So that's the reason I can't
 9 find a lot of my pictures.
 10 Q. Okay.
 11 A. I hope I live long enough to get it
 12 organized.
 13 Q. Gotcha. Yes, ma'am. Well, we all do.
 14 So --
 15 A. But you're not as close as I am, I'm
 16 sure.
 17 Q. So as I understand it, you did not --
 18 you had no idea you were listed as a witness until
 19 --
 20 A. No.
 21 Q. -- you got a call, correct?
 22 A. Right.
 23 Q. To find out --
 24 A. And I was flabbergasted, and I wanted
 25 to know what in the world I was going to be called

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A. William Roberts, Jr. & Associates 800-743-DEPO

1 around here to talk to people.
 2 Q. Okay. And how did you find out what
 3 you were going to be called around here to talk to
 4 folks about?
 5 A. Well, they said that I had been noisy
 6 and curious and gone over there and approached this
 7 man, and they wanted to know what I remembered
 8 about it.
 9 Q. Uh-huh.
 10 A. That's all.
 11 Q. Okay.
 12 A. Now, I had pictures with only me and
 13 the workers.
 14 Q. Yes, ma'am.
 15 A. But I can't find them.
 16 Q. Okay.
 17 A. And they would have had the date on it.
 18 Q. Yes, ma'am.
 19 A. I couldn't remember exactly what date
 20 it was, so I got in touch with the man at the
 21 Guardian.
 22 Q. And the man at the Guardian, you're
 23 talking about the Hampton Guardian, the
 24 newspaper -
 25 A. Yes.

1 course it was the Charleston & Western Carolina.
 2 Q. Yes, ma'am.
 3 A. And I still think of it as the C & W C.
 4 Q. Yes, ma'am.
 5 A. And so the - you see where my driveway
 6 is? (Indicating.) Well, I drove up under the
 7 driveway and looked out over there, and there was
 8 somebody over there with a different outfit. But I
 9 went to back up. About three weeks before that
 10 there was some people over there surveying.
 11 Q. Uh-huh.
 12 A. So I went over there and asked them
 13 what they were doing. And so that was present - I
 14 didn't ask for their credentials, because I usually
 15 do.
 16 Q. Uh-huh.
 17 A. Because they're on my property.
 18 Q. Uh-huh.
 19 A. That might belong to the railroad, but
 20 that's been - we have seen about that property,
 21 before the town had it organized.
 22 Q. Okay.
 23 A. My grandfather used to keep it.
 24 Q. Okay.
 25 A. Okay.

1 Q. - correct? All right.
 2 A. The editor.
 3 Q. Yes, ma'am. Okay. So before we get
 4 into these pictures, why don't you tell me what you
 5 remember about this incident? What do you remember
 6 about -
 7 A. All right. I'd like to show you,
 8 though, where I live.
 9 Q. I know where you live.
 10 A. Well, you know where my driveway is.
 11 Q. Yes, ma'am.
 12 A. Okay. I drove up under the driveway,
 13 and I guess it's from when I was a teacher, I'm
 14 very observant. And my grandfather, now, built
 15 those hills that you have there.
 16 Q. Yes, ma'am.
 17 A. In about 1910 or '12, because I have
 18 pictures of my mother as a young girl sitting on
 19 those things - those hills. There are lots of
 20 pictures, family pictures.
 21 Q. Yes, ma'am. Were the railroad tracks
 22 there then?
 23 A. Yes.
 24 Q. Okay.
 25 A. Oh, yes. I don't know when they - of

1 Q. But when - there were folks who was
 2 surveying; who were these folks who was surveying?
 3 A. I don't know. They - they had
 4 provision and they were putting out - it was the
 5 gas company, I believe.
 6 Q. Okay.
 7 A. They had their gas things down there at
 8 the end.
 9 Q. All right. So -
 10 A. But I'm saying that I'm - I'm very
 11 curious about who's over there.
 12 Q. Yes, ma'am. But the - the surveying,
 13 you don't think that had anything to do with the
 14 folks who you saw on the day in question?
 15 A. Oh, no, no, no. This was entirely
 16 different outfit.
 17 Q. Okay. So you -
 18 A. I just went over there and he was a
 19 nice looking young man and he had all kinds of
 20 digging equipment.
 21 Q. Yes, ma'am.
 22 A. And I asked him who he was and I told
 23 him who I was. And we had a friendly conversation
 24 and he was very nice. And he said he was employed
 25 by someone that he had a contract. He was not an

1 employee of the railroad. He had the contract to
2 clean out the park.
3 Q. And we're talking about now the date in
4 question?
5 A. Yes.
6 Q. That you pulled --
7 A. Yes.
8 Q. -- into your driveway and saw somebody
9 over there?
10 A. Yes.
11 Q. And this -- and this was a
12 subcontractor for the railroad?
13 A. Yes.
14 Q. Not a CSX person?
15 A. Right.
16 Q. And he said he had a contract to clear
17 out the -- the plantings there; is that right?
18 A. Yes.
19 Q. And what did you tell him about that?
20 A. I told him I said, really, now, you're
21 just going to dig these up with this equipment
22 you've got here.
23 Q. Uh-huh.
24 A. And throw it away? He said, yeah. I
25 said, well, give me five minutes and I will go and

1 A. Something like that.
2 Q. Yes, ma'am. That's it.
3 A. He came with the crew and they moved
4 the plants. Now, the picture shows you what plants
5 they moved.
6 Q. Yes, ma'am.
7 A. Also they moved the benches.
8 Q. Yes, ma'am.
9 A. But he said the trees had to go too.
10 Q. Uh-huh.
11 A. Two palm trees.
12 Q. Yes, ma'am.
13 A. And we could not get in touch with
14 anybody to see about it that particular time. So I
15 recall, I think -- I thought that Trey Standley,
16 who had been my next-door neighbor when he was 10
17 and 12 years old, owns a landscaping business. I
18 thought that Trey came and moved the trees that
19 day, but the newspaper article says that they moved
20 them next day.
21 Q. Uh-huh.
22 A. So -- but I know, and the newspaper
23 article says that they moved the plants that day.
24 Q. Okay.
25 A. Now, I think the next day the garden

1 use my telephone and I'll have some people from the
2 town to come by and move them.
3 Q. Okay.
4 A. And he said really, I -- you know, I've
5 got -- I've got to do this -- I've got -- so he was
6 very nice. He sat down on the hill there.
7 Q. Yes, ma'am.
8 A. And I went there and called the town
9 hall, and they sent the work crew around there.
10 Q. Yes, ma'am.
11 A. Now, the policeman also came to be sure
12 I was all right. And I know him personally too.
13 Q. Which --
14 A. I guess --
15 Q. Which police officer was it?
16 A. I think it was Lou Bolton.
17 Q. Okay.
18 A. I know -- I think, you know. But,
19 anyway, I'm familiar with all of them, so I think
20 he was the only one that came.
21 Q. Yes, ma'am.
22 A. To be sure I was all right. And so the
23 work crew -- and I cannot remember the name of the
24 man is Barefoot or --
25 Q. Uh-huh.

1 club; who had fixed this park, came and planted
2 them properly.
3 Q. Okay.
4 A. They just moved them so they wouldn't
5 be thrown away.
6 Q. Yes, ma'am. Okay. Now, do you know
7 anything else besides from that?
8 A. No.
9 Q. Okay.
10 A. The next day I went over there and --
11 and watched them, but I'm not a member of a garden
12 club. That's not my thing.
13 Q. Okay. Well, let's -- let's talk about
14 the railroad. Whether it's the C & W C or CSX
15 railroad that runs through Hampton, have you ever
16 had any problems with them?
17 A. No.
18 Q. You had any problems with them today?
19 A. Well, I'll tell you what else I did
20 too. When the people were coming to asphalt the
21 crossing the last time and asphalt the hill --
22 Q. Yes, ma'am.
23 A. -- as children we used to love to --
24 well, everybody in town would ride their bicycles
25 back and forth over that, and the people that had

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1 the contract 15 or 20 years ago, they did not make
2 it smooth so you could ride the bicycles. So the
3 next time I saw them out there, I went and asked
4 them if they would make it so I could -- the
5 children could ride the bicycles and the tricycles
6 across that and so they did that.

7 Q. Okay.

8 A. But I did not like it, and I tried to
9 call them and get in touch with them, and -- to
10 come and redo it, but, of course, you don't do
11 that.

12 Q. Do you remember who you called?

13 A. Somebody in Yemassee.

14 Q. Was it David Poston?

15 A. I don't have any -- no, no. David --
16 this was a long time ago.

17 Q. Oh, okay. More than 15 years ago?

18 A. Oh, yes.

19 Q. Oh, okay.

20 A. Yes.

21 Q. Any other problems with the railroad
22 besides that situation more than 15 years ago?

23 A. Well, I'm one of them that went to the
24 town hall, of the Watermelon Festival Committee,
25 and ask them to request that the train not come

1 Q. Any other problems besides those?

2 A. They just -- they don't cooperate with
3 me at all sometimes. I hate to tell you that.

4 Q. Well, have -- who have you called and
5 talked to at the railroad company?

6 A. Well, I haven't had to call them
7 lately.

8 Q. Okay. How long has been it been
9 since --

10 A. I was very, very, very upset. And I'm
11 still upset with them. If you look at these
12 pictures, these plants do not block the driveway,
13 and I've got some pictures of the drive there.

14 Q. Okay

15 A. And, of course, he told me, he said,
16 now, if I don't cut all this away, the railroad has
17 -- I have a contract with them.

18 Q. Yes, ma'am.

19 A. To do it 50 feet away.

20 Q. Yes, ma'am.

21 A. That if I don't -- but see, he would be
22 doing wrong; he wouldn't be doing his job.

23 Q. Yes, ma'am.

24 A. But if you'll see some pictures, there
25 are cars that park on a place there.

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1 through during the street dance on Friday night.

2 Q. Yes, ma'am.

3 A. Because one year they came and parked
4 there and stayed there forever.

5 Q. Yes, ma'am.

6 A. And we had to get in our cars and you
7 see where I live --

8 Q. Yes, ma'am.

9 A. -- I can just walk right across to the
10 street dance. We had to get in our cars and drive
11 all the way around, come through Varnville.

12 Q. Yes, ma'am.

13 A. To come to the street dance because
14 they had all the crossings blocked.

15 Q. Okay.

16 A. And now if they block the ways
17 sometimes, I call the town hall.

18 Q. Okay.

19 A. But so far, I go out there and shake my
20 finger at them and they move. No, not exactly.

21 Q. But have you been successful in getting
22 in touch with them and getting nothing blocked --

23 A. No, no.

24 Q. Okay.

25 A. Very hard.

1 Q. Yes, ma'am.

2 A. And they are jettin' out farther and
3 higher than the plants were.

4 Q. Yes, ma'am.

5 A. I just think it was just ridiculous to
6 take the plants out.

7 Q. Okay. Well, let me get back to whether
8 you've ever talked to anybody or -- when you last
9 had a problem with CSX before this 2004 and I think
10 it's May, June 2004?

11 A. July.

12 Q. I -- I'm sorry, yeah. June, July 2004.
13 When before that you had a problem with CSX?

14 A. It's impossible to get in touch with
15 them.

16 Q. Yes, ma'am.

17 A. I'll just tell you that.

18 Q. And I hear you, but what I'm wondering
19 is when prior to the summer of 2004 you had a
20 problem before the -- before 2004. You said that
21 15 years about the rough crossing?

22 A. Yeah.

23 Q. I'm just trying to get you to --

24 A. Well, let me see.

25 Q. -- tell me --

1 A. You see time is going by so fast.
 2 Q. Yes, ma'am, it is.
 3 A. And I've forgotten what other to-do I
 4 had with them. I had one to-do and I could never
 5 get in touch with them.
 6 Q. Okay. Do you remember --
 7 A. They never answered me, and I've
 8 forgotten what it is now.
 9 Q. Okay.
 10 A. All right.
 11 Q. Well, let's -- let's talk about the
 12 things you did remember. The Watermelon Festival
 13 dance, what -- how long ago was that?
 14 A. Who knows.
 15 Q. Long time?
 16 A. No, not too long.
 17 Q. Okay. But you don't remember if you
 18 tried to talk to anybody --
 19 A. And every year now I go and refresh the
 20 Watermelon Festival Committee to be sure and get in
 21 touch with the railroad, because I don't want to
 22 have to get in my car. And I have open house that
 23 night.
 24 Q. Yes, ma'am.
 25 A. Friday night.

1 fix it.
 2 Q. Yes, ma'am.
 3 A. To look decent.
 4 Q. And that's right in front of your
 5 house.
 6 A. You can see where it is.
 7 Q. Yes, ma'am. Let's look here at this --
 8 this newspaper article which I'm going to make
 9 Defendant's Exhibit Number 1. You've reviewed that
 10 article in connection with your deposition today.
 11 haven't you?
 12 (DFT. EXH. 1, Newspaper article written
 13 by Sheila DuRant, was marked for identification.)
 14 A. Right.
 15 Q. And I think you've told us already that,
 16 you refreshed your recollection about when they
 17 actually came and moved the trees, right?
 18 A. Yes.
 19 Q. And you think the newspaper article's
 20 right, or do you think you're right --
 21 A. Of course it's right.
 22 Q. Okay.
 23 A. Because I remembered it that way, and
 24 they proved it, Ms. Crews said --
 25 Q. Yes, ma'am.

1 Q. Yes, ma'am.
 2 A. And all those people that live there do
 3 too.
 4 Q. Yes, ma'am.
 5 A. Uh-huh.
 6 Q. But when was the last time you actually
 7 had to get in touch with somebody at the railroad?
 8 A. I don't remember.
 9 Q. Okay.
 10 A. I don't remember.
 11 Q. Okay.
 12 A. I mean, I don't want to just --
 13 Q. I understand.
 14 A. -- lie or anything to you.
 15 Q. Yes, ma'am. I appreciate you -- you're
 16 being forthright about that.
 17 A. But you see I'm not a shy person, so if
 18 something happens that I don't like, I go and tell
 19 them.
 20 Q. Yes, ma'am. I can tell. Now, let me
 21 mark --
 22 A. And I've been very upset with them that
 23 they messed up my park.
 24 Q. Yes, ma'am. Well, we're going to --
 25 A. I had just gotten the garden club to

1 A. -- the contractor allowed the town an
 2 extra day to move the two palmetto trees. Well, I
 3 didn't remember it that way, but the shrubbery
 4 growing on the railroad's property was immediately
 5 moved to the front of the park town's property.
 6 Q. Is that accurate?
 7 A. Accurate.
 8 Q. Okay.
 9 A. Immediately.
 10 Q. All right. Let me show you this
 11 photograph that's already been labeled, but I'm
 12 going to make it Defendant's Exhibit 2, and it says
 13 Main Street, Lee Avenue, Hampton, March 18, 1988.
 14 It looks like it was taken from your front porch
 15 almost.
 16 (DFT. EXH. 2, Photograph taken by Betty
 17 Ruth Crews, was marked for identification.)
 18 A. Well, I have a window upstairs.
 19 Q. Yes, ma'am.
 20 A. And that's where I took this picture
 21 and apparently this picture. (Indicating.)
 22 Q. Okay. And why did you take Defendant's
 23 Exhibit 2? Why did you take that picture?
 24 A. Because of the flag.
 25 Q. It was just --

1 A. It was so pretty.
 2 Q. Okay. All right.
 3 A. The flags were blowing, I think. You
 4 know, I keep a camera there and I just take
 5 pictures all the time.
 6 Q. Okay. Let me show you Defendant's
 7 Exhibit Number 3 both -- two photographs. The
 8 bottom is your house, isn't it?
 9 (DFT, EXH. 3, Photographs taken by
 10 Betty Ruth Crews, were marked for identification.)
 11 A. Yes.
 12 Q. And the top is the picture of the park
 13 there, right?
 14 A. Yes.
 15 Q. Okay. Now, is this the way the park
 16 was before the summer of 2004 or after?
 17 A. Oh, that's before they made us move the
 18 --
 19 Q. Okay.
 20 A. -- thing. Do you see how far -- they
 21 were not sitting back there on the embankment.
 22 Q. Yes, ma'am. Do you have any idea when
 23 that picture was taken, Ms. Crews?
 24 A. No.
 25 Q. Okay. And --

1 a different day?
 2 (DFT, EXH. 5, Photographs taken by
 3 Betty Ruth Crews, were marked for identification.)
 4 A. I don't know. I'd have to look at the
 5 data.
 6 Q. Okay. That's fine.
 7 A. The reason I took those -- I brought
 8 these -- I have hundreds of pictures of my house in
 9 different degrees.
 10 Q. Yes, ma'am.
 11 A. And I'm trying to fix them in order to
 12 show they're different.
 13 Q. Okay.
 14 A. Let me see. That has September '86 on
 15 that one. (Indicating.)
 16 Q. Okay. All right.
 17 A. That one. (Indicating.)
 18 Q. And -- on both of those, top and bottom
 19 --
 20 A. Yes.
 21 Q. Of Number 6? Okay, very good.
 22 A. And you see, I have a -- an awning that
 23 was metal that my grandfather put there.
 24 Q. Yes, ma'am.
 25 A. And I have a front part of the house

1 A. I didn't look to see -- I'm sure I --
 2 right -- well, over here. June 11th. So it was
 3 taken just a month before they made us move it.
 4 Q. Okay. All right.
 5 A. It hadn't gotten good roots, did it?
 6 Q. Okay. And why did you take that
 7 picture?
 8 A. Because I thought it was pretty.
 9 Q. Okay. And then let me show you
 10 Defendant's Exhibit Number 4, and that's a -- just
 11 a picture of your house, is that --
 12 (DFT, EXH. 4, Photographs taken by
 13 Betty Ruth Crews, were marked for identification.)
 14 A. Yes.
 15 Q. Is that what it's --
 16 A. And I was showing the walkway, how they
 17 fixed it.
 18 Q. Yes, ma'am.
 19 A. See. (Indicating.)
 20 Q. Okay.
 21 A. It says June the 11th. The -- all
 22 these pictures were made the same day.
 23 Q. Okay. And how about this picture or --
 24 these two pictures, I'm going to make Defendant's
 25 Exhibit Number 5, were they also taken that day or

1 with writing, so we to take it off. So the new
 2 pictures don't have the awning on it.
 3 Q. Okay. Let's look at this, Defendant's
 4 6. Is that taken at the same time those two
 5 pictures, September of 1995?
 6 (DFT, EXH. 6, Photographs taken by
 7 Betty Ruth Crews, were marked for identification.)
 8 A. That's what it's got on it.
 9 Q. Okay. And you believe that to be
 10 accurate, right?
 11 A. I guess so.
 12 Q. Okay. Let's --
 13 A. I went into the store.
 14 Q. I understand. Defendant's Exhibit 7
 15 shows the view from your property?
 16 (DFT, EXH. 7, Photographs taken by
 17 Betty Ruth Crews, were marked for identification.)
 18 A. Yes. And that's the crossing.
 19 Q. At the crossing, yes, ma'am.
 20 A. And the reason is that that's a friend
 21 of mine's furniture store.
 22 Q. Yes, ma'am.
 23 A. And that's the reason that picture was
 24 made.
 25 Q. Okay. When was it made? We're talking

1 here about the top photograph.
 2 A. I know I have -- I have to take it out
 3 of here.
 4 Q. June the 4th, 2000, is what it says.
 5 A. That's what it says.
 6 Q. Okay. And then the photograph on the
 7 bottom there, a picture of your house, when was
 8 that taken? June the 4th, 2000, same time.
 9 A. And -- and that other picture.
 10 Q. Yes, how about this? Defendant's
 11 Exhibit Number 8 looks like both of these might
 12 have been taken on June the 4th, 2000?
 13 (DFT. EXH. 8, Photographs taken by
 14 Betty Ruth Crews, were marked for identification.)
 15 A. That's the house next door.
 16 Q. Yes, ma'am.
 17 A. And there is the crossing.
 18 Q. Yes, ma'am.
 19 A. And I was just taking it because -- I
 20 don't remember.
 21 Q. And that's your house on the bottom?
 22 A. It's June the 4th, 2000.
 23 Q. Okay. All right.
 24 A. And the reason this one was made is
 25 because it's showing my Navigator.

1 snowed?
 2 A. I guess so. Yeah, that's an old one.
 3 Q. That would be sometime in the winter
 4 past, right?
 5 A. See, I just put -- February '79.
 6 Q. Okay.
 7 A. Sunday, February 18th, home of S. M.
 8 Crews, Jr., end of Bay street.
 9 Q. Okay. And then how about these
 10 pictures on Defendant's 10. There's a van in
 11 the --
 12 (DFT. EXH. 10, Photographs taken by
 13 Betty Ruth Crews, were marked for identification.)
 14 A. Well, that's showing my driveway from
 15 the back of the house.
 16 Q. Oh, okay. All right. And the two that
 17 are beside it, those are your white Navigator, so
 18 we know that was sometime after '99, right?
 19 A. Yes.
 20 Q. Do you have the date on those two
 21 pictures?
 22 A. I'm sure I do. 2000.
 23 Q. Okay. Very good. And then Defendant's
 24 Exhibit 11 is a --
 25 (DFT. EXH. 11, Picture of the Seaboard

1 Q. All right.
 2 A. I bought it in 1999, picture August
 3 2000.
 4 Q. You still have that car?
 5 A. Yes. Running well.
 6 Q. All right. Now, then we got a sheet of
 7 pictures that I'm going to make Defendant's 9. The
 8 one at the top says "live on the other side of the
 9 tracks."
 10 (DFT. EXH. 9, Photographs taken by
 11 Betty Ruth Crews, were marked for identification.)
 12 A. That was a billboard that CSX had and I
 13 liked it and that's me. I live on the other side
 14 of the tracks. I tell people that all the time.
 15 Q. Okay.
 16 A. And I liked it.
 17 Q. Okay. Now, there are some photographs
 18 of your -- your house?
 19 A. Yes.
 20 Q. And that was when the --
 21 A. And that was showing the road in front
 22 of my house when they -- the town did it over.
 23 Q. Okay.
 24 A. They put gravel on it.
 25 Q. And the one at the top, is that when it

1 Coast Line Railroad Station, was marked for
 2 identification.)
 3 A. Well, I just had put this in this
 4 notebook -- I'm trying to put everything together
 5 that has anything to do with this, I don't know, old
 6 times.
 7 Q. Okay.
 8 A. I found that in one of the boxes. This
 9 is not the depo. In fact, it's not there now. But
 10 when they built the depo here, the contractor made
 11 a mistake and he put this -- (indicating.)
 12 Q. Platform?
 13 A. Yeah, this bay window.
 14 Q. Yes, ma'am.
 15 A. Is supposed to be there, and the man
 16 with the telegraph would sit there and when the
 17 train would go by, they'd put it out there on a
 18 hook and give the messages --
 19 Q. Yes, ma'am.
 20 A. -- to the train. (indicating.)
 21 Q. Uh-huh.
 22 A. And they -- they had received from the
 23 telegraphs somewhere else. But when they built the
 24 one in Hampton, they put the bay window on this
 25 side, so it was -- end of the street there and the

1 man's home was over here, which is now Speights &
 2 Runyan's law office. (Indicating.) And so they
 3 would wave a flag or tell him when dinner was done.
 4 Q. Okay.
 5 A. Or he'd put up a sign to tell him when
 6 he could come to dinner.
 7 Q. Okay.
 8 A. And that's the reason I just -- I found
 9 this copy somewhere.
 10 Q. All right. So --
 11 A. This is not the one that -- I don't
 12 know why I put that -- I just put it in this book
 13 because it was on the railroad.
 14 Q. Okay. Well, Ms. Crews, the way I'm
 15 hearing your testimony, and I don't want to sum up
 16 unfairly, but I want you to tell me whether I'm
 17 hearing you right, I'm hearing you say you don't
 18 appreciate the subcontractor for the railroad
 19 requiring that Y'all move the plants from this
 20 park is that about it?
 21 A. That's it.
 22 Q. Okay.
 23 A. Because I did not think that it was
 24 necessary.
 25 Q. Because you thought, you did not think

1 like you look a bulldozer and pushed everything up
 2 there.
 3 Q. Uh-huh. Is there any irrigation there,
 4 a sprinkler system or anything for the plants to be
 5 able to survive in drought?
 6 A. Yes.
 7 Q. There is a sprinkler system?
 8 A. I don't know if there's a sprinkler
 9 system. I don't know. I seen some spickels (sic)
 10 and some holes and -- the town keeps it.
 11 Q. Okay. There's --
 12 A. But they just ruined the looks of it.
 13 Q. Okay. The crossings on -- I'm looking
 14 at Defendant's Exhibit 8 and it would be on the
 15 right side of the page, correct?
 16 A. From me, from where we are.
 17 Q. Yes, ma'am.
 18 A. Yes, from that picture.
 19 Q. And a motorist approaching the railroad
 20 -- you live on Railroad Avenue, is it avenue --
 21 A. Yes, yes.
 22 Q. A motorist approaching Railroad Avenue
 23 from this direction, would any of those plantings
 24 cause any visual obstruction --
 25 A. No.

1 that the motoring public had any hazard created by
 2 that --
 3 A. No.
 4 Q. -- those plantings?
 5 A. None. None whatsoever. As you see by
 6 the picture, they were not on the embankment.
 7 Q. Okay.
 8 A. They were -- I mean --
 9 Q. They were moved forward from that
 10 position?
 11 A. Yes.
 12 Q. A few feet would you say?
 13 A. Yes. And I wish that I had a picture
 14 of it now, but I couldn't get a picture to show
 15 you. It's very, very crowded.
 16 Q. Okay.
 17 A. And they've got the benches sitting
 18 right there on the street.
 19 Q. Yes, ma'am. And how come -- why aren't
 20 the plants there now?
 21 A. They are.
 22 Q. They're there?
 23 A. But they're not there. (Indicating.)
 24 Q. Are they thriving?
 25 A. Not -- no, they look -- it just looks

1 Q. -- to him or her --
 2 A. No.
 3 Q. -- for the train?
 4 A. No. The trees either.
 5 Q. Okay. Why did they tell you they had
 6 to move them?
 7 A. Because it was so many feet from the
 8 railroad.
 9 Q. Okay.
 10 A. He said he had to clear out everything
 11 so many feet. I said, well, if it's not in the way
 12 --
 13 Q. Yeah.
 14 A. -- why do you have to clear it out.
 15 Q. And this was to make it safer for
 16 motorists -- motorists who were traveling; is that
 17 right?
 18 A. He said that's what he had the contract
 19 to, what do you call it? Clean cut.
 20 Q. Clear cut?
 21 A. Clear cut.
 22 Q. Yes, ma'am.
 23 A. Everything 50 feet from the railroad.
 24 Q. Okay. All right. Now, did you tell me
 25 you did or you didn't know David Peston?

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1 A. Oh, I know him, but he was in our
2 church -
3 Q. Uh-huh.
4 A. - growing up.
5 Q. Uh-huh.
6 A. But I don't have any - I haven't had
7 any business contact. In fact, I haven't seen him
8 in a while.
9 Q. Uh-huh.
10 A. I'm sure I went to his wedding and all
11 that kind of jazz.
12 Q. Okay.
13 A. But he grew up in our church.
14 Q. Okay. You like him, his family?
15 A. Why of course.
16 Q. And he's a person of good reputation?
17 A. Well, I don't know why I'm testifying
18 to that. I just - as far as I know he is.
19 Q. Yeah. You'd believe him?
20 A. Yes, but I don't have any - I don't
21 have his telephone number. If I wanted to contact
22 the railroad, that's who I would call.
23 Q. I'm just asking if you - if you know
24 him and what you think about him.
25 A. Does he work for the railroad?

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1 A. No.
2 Q. I think I got a picture of it. It's
3 right here. You - you drive from Hampton to
4 Yemassee on Highway 68?
5 A. Do I drive there?
6 Q. Yes, ma'am.
7 A. Oh, yes.
8 Q. Uh-huh. Are you particular with this
9 crossing? You recognize it?
10 A. No, no -
11 Q. See it.
12 A. - no. I was just down there and had
13 done a court and debate Sunday, but I - I don't
14 pay any attention to things like this.
15 Q. Okay. You say this is - that's -
16 that's 195 right there, and Yemassee is down here
17 in this direction. (Indicating.)
18 A. Uh-huh.
19 Q. Do you think you can see a train pretty
20 far there?
21 A. I wouldn't want to give any opinion of
22 anything like this.
23 Q. Okay.
24 A. If you don't mind.
25 Q. Sure. And is that because you don't

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1 Q. He does.
2 A. Okay. I didn't even know that.
3 Q. Okay.
4 A. I didn't know what his job was.
5 Q. Okay.
6 A. He lives in Yemassee now, doesn't he?
7 Q. Did.
8 A. Yeah. Okay.
9 Q. Do you know the folks who have brought
10 this lawsuit?
11 A. Oh, no. I might of - who brought it?
12 I -
13 Q. Willie Stephens on behalf of Ullian
14 Colvin?
15 A. No.
16 Q. You don't know the Colvins?
17 A. No.
18 Q. Or the Stephens?
19 A. No.
20 Q. You know anything about this crossing
21 in Yemassee -
22 A. No.
23 Q. - on Hill -
24 A. No.
25 Q. - Hill Road crossing?

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1 have any special training in accident and highway
2 traveling engineering -
3 A. Well, I could care less about that
4 crossing.
5 Q. Okay.
6 A. I'm just concerned about mine.
7 Q. Okay. But your - your training and
8 formal education is - is in education, correct?
9 A. Yeah.
10 Q. And -
11 A. But I've done lots of other things.
12 Q. Okay. What stuff -
13 A. I worked for the welfare department one
14 year.
15 Q. Okay.
16 A. As a social worker.
17 Q. What - you went to college?
18 A. Three.
19 Q. Three colleges?
20 A. Uh-huh.
21 Q. Which ones did you attend?
22 A. Well, I went to Wofford first -
23 Q. Yes, ma'am.
24 A. - during the war, didn't like it.
25 Transferred to Carolina and, because I couldn't get

1 into Columbia College that particular year, and I
 2 didn't like that.
 3 Q. Uh-huh.
 4 A. So I finished Columbia College. And in
 5 1962 I got a fellowship and went to Chapel Hill,
 6 North Carolina, University of North Carolina, for
 7 six weeks --
 8 Q. Uh-huh.
 9 A. -- in economics.
 10 Q. Okay.
 11 A. And this -- RJ Reynolds Tobacco
 12 Fellowship.
 13 Q. Uh-huh.
 14 A. Glorious, wonderful.
 15 Q. And you're -- you studied what at
 16 Chapel Hill?
 17 A. Economics.
 18 Q. And any particular branch of economics?
 19 Just macro, micro?
 20 A. I don't know.
 21 Q. Okay. And when you went to Columbia,
 22 were you studying to be a teacher?
 23 A. I think -- yes.
 24 Q. Okay.
 25 A. I started out in business. My mother

1 Q. -- as a witness?
 2 A. Yes.
 3 Q. Do you know any other people known to
 4 you to be witnesses in this case?
 5 A. No.
 6 MR. PURCELL: I don't think we've got
 7 anything further.
 8 MR. PARKER: Okay. Thank you Betty
 9 Ruth. Appreciate you coming. Take your microphone
 10 off.
 11 THE WITNESS: Oh, yes.
 12 MR. PARKER: Because you might carry it
 13 with you.
 14 MR. MCLEOD: I have no questions
 15 THE VIDEOGRAPHER: The deposition has
 16 been concluded. Time is 11:10 a.m. We are now off
 17 the record.
 18 (The witness, after having been advised
 19 of her right to read and sign this transcript,
 20 waives that right.)
 21 (The deposition was concluded at 11:10
 22 a.m.)
 23
 24
 25

1 was a school teacher, and I wanted to be a school
 2 teacher.
 3 Q. Okay. Well, I guess my -- my -- what
 4 I'm trying to -- to get at, Ms. Crews, is whether
 5 you have any expertise in traffic engineering or
 6 design?
 7 A. No.
 8 Q. Okay. And so -- and you already told
 9 me you prefer not to express opinions about the --
 10 the crossing involved in this case, right?
 11 A. Oh, yeah.
 12 Q. The only one that you're -- the only
 13 thing you're concerned about is the part in front
 14 of your house --
 15 A. Yes.
 16 Q. -- in this case, right?
 17 A. Uh-huh. I would like for the railroad
 18 to come back and fix it.
 19 Q. All right. Do you express that to
 20 anybody at the railroad company?
 21 A. No. But I -- you know -- they're so
 22 hard -- I -- I doubt they'd listen to me.
 23 Q. You, of course, know Ms. Rivera who's
 24 been identified in this case --
 25 A. Yes.

1 CERTIFICATE OF REPORTER
 2
 3 I, Kelly A. Ball, Court Reporter and
 4 Notary Public for the State of South Carolina at
 5 Large, do hereby certify that the foregoing
 6 transcript is a true, accurate, and complete
 7 record.
 8 I further certify that I am neither
 9 related to nor counsel for any party to the cause
 10 pending or interested in the events thereof.
 11 Witness my hand, I have hereunto
 12 affixed my official seal this 5th day of March,
 13 2008 at Bluffton, Beaufort County, South Carolina.
 14
 15
 16
 17
 18 Kelly A. Ball
 19 My Commission expires
 20 November 2017
 21
 22
 23
 24
 25

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Seaboard Coast Line Railroad

Station

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF HAMPTON
WILLIE HOMER STEPHENS, guardian ad Litem for Lillian
Colvin, a minor,

Plaintiff,

vs. CASE NO. 04-CP-25-267

CSX TRANSPORTATION, INC., and SOUTH CAROLINA
DEPARTMENT OF TRANSPORTATION,
Defendants.

VIDEO DEPOSITION OF: ANNA SUE RIVERS

DATE: February 27, 2008

TIME: 9:11 a.m.

LOCATION: Law Offices of Peters, Murdaugh,
Parker, Eltzroth & Detrick
101 Mulberry Street East
Hampton, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: KELLY A. BALL, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

FAST, ACCURATE & FRIENDLY

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1 never make it. We had seven candidates to come out
2 that first election.

3 Q. Yes, ma'am.

4 A. And I beat all of them handily, and
5 nobody has run against me since then.

6 Q. Uh-huh. Uh-huh.

7 A. So I feel like, you know, it -- it kind
8 of insults me to a certain extent, because it makes
9 me feel like I must be a real mean person, but I --
10 I do have a lot of encouragement and I do take --
11 my platform would be to do what's good for the
12 citizens --

13 Q. Okay.

14 A. -- and Hampton County.

15 Q. Okay. Do you take part in
16 beautification efforts?

17 A. Oh, absolutely.

18 Q. And is that something that you've been
19 interested in because of your garden club
20 experience or something else?

21 A. Well, I grew up with a gardening
22 mother, and she did a lot of planting fumerias,
23 azaleas, rooting fumerias, drafting fumerias, and
24 it's just been my lifestyle.

25 Q. Uh-huh. And is there something that

1 it. And I'd rather be know for the fact that I

2 would take a stand on things and not just say okay,
3 that's okay. I do take a stand.

4 Q. Okay. Now, you've been identified as a
5 witness in this case.

6 A. Uh-huh.

7 Q. Do you know anything about the case,
8 about the Colvin case?

9 A. Not this case, but I know a lot about
10 the railroad.

11 Q. Okay. Well, let's talk about this case
12 before we get into your knowledge about the
13 railroad.

14 A. Okay.

15 Q. Tell me how you became -- came to be a
16 witness in this case

17 A. I had a telephone call from a law firm
18 in Augusta, I believe it was, I've got the letter
19 in my pocketbook, asking me to -- would I do a
20 deposition for them.

21 Q. Okay. Well, I'm talking about before
22 that, when you were listed by the other side, the
23 plaintiff's side, as a witness in this case. How
24 did you become to be a witness in the case?

25 A. Other than getting that call --

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Page 9

1 you push for when you're --

2 A. I do.

3 Q. -- when -- tell me -- tell me the
4 things you push for?

5 A. Well, as you come into Hampton into
6 from Augusta, there's a little place out there,
7 Five Points.

8 Q. Yes, ma'am.

9 A. We took -- after my husband passed
10 away, I took that on as a project with my garden
11 club for the town, and it -- it usually looks
12 pretty good.

13 Q. Okay. And are you someone on the
14 county -- town council who's known to express an
15 opinion if you have one?

16 A. Absolutely.

17 Q. Okay. Okay. As I read the newspaper,
18 I see you quoted many times --

19 A. Uh-huh.

20 Q. -- and is that -- is that because
21 you're --

22 A. Well, you know, I -- I'm not a yes
23 person.

24 Q. Yes, ma'am.

25 A. If I object to something, I object to

1 Q. Uh-huh.

2 A. -- you know, we read about train
3 accidents and --

4 Q. Yes, ma'am.

5 A. -- and people getting killed. And I
6 really did not remember this case particularly.

7 Q. Yes, ma'am.

8 A. So I'm -- I'm not -- I knew that there
9 was a lot of -- a lot of problems with crossings --

10 Q. Uh-huh.

11 A. -- and people getting killed on
12 crossings.

13 Q. Uh-huh.

14 A. And, you know, when there's so many,
15 you just kind of file them away.

16 Q. Yes, ma'am.

17 A. Uh-huh.

18 Q. What -- had you ever had a conversation
19 about the railroad to Mr. Parker or any member of
20 this firm?

21 A. Oh, only when we had an incident at the
22 end of Lee Avenue.

23 Q. Okay.

24 A. When the garden clubs had refurbished
25 -- refurbished a park that had been in existence

Pages 6 to 9

1 Q. And that would be?

2 A. Billy Barefoot.

3 Q. Okay.

4 A. He is no longer employed by the town.

5 Q. Okay. Where is he now?

6 A. I really don't know. He left town

7 employment. I think he's up in Lexington or

8 Ridgeland County.

9 Q. And is he -- was that the -- the

10 council's decision or his decision to leave?

11 A. It was the council's decision.

12 Q. Okay. And you and he met there?

13 A. We did. And we met with the gentleman

14 from the -- that was doing the -- the cutting down

15 of the vegetation on the railroad tracks.

16 Q. Okay. And who was that?

17 A. I believe he was a Mr. Sease or -- I'm

18 not really sure who he was. I know we have some --

19 some documents that refer to a Gary Sease --

20 Q. Yes, ma'am.

21 A. -- but he told me he was from Illinois.

22 Q. Yes, ma'am.

23 A. And he'd been contracted by the

24 railroad department to cut vegetation on the

25 railroads.

1 that goes between the end of Lee Avenue and the

2 railroad track.

3 Q. Yes, ma'am.

4 A. All right. It curved down to where

5 there's a walk-through crossing over -- under --

6 through the railroad track --

7 Q. Yes, ma'am.

8 A. -- I guess is the word. And we had --

9 had set these new plants in the same boundaries of

10 this original park that sat there for how many

11 years, you know.

12 Q. Yes, ma'am.

13 A. And -- but he said no. He really

14 wanted to cut down two oak trees, and we said no

15 way. We brought out the rules then.

16 Q. Yes, ma'am. Well, Ms. Rivers, when you

17 -- when you say you were going to -- that you moved

18 the palmetto trees forward?

19 A. No, we moved them completely out of the

20 park.

21 Q. Okay.

22 A. We put them in another park.

23 Q. Okay.

24 A. And there's documentation in this as to

25 what we paid --

1 Q. All right.

2 A. Now, we had two palmetto trees at that

3 park.

4 Q. Yes, ma'am.

5 A. And I don't think the palmetto tree is

6 going to interfere with visibility of the

7 crossings --

8 Q. Yes, ma'am.

9 A. -- unless it was in the middle of the

10 crossing.

11 Q. Yes, ma'am. Okay. Well, what was the

12 -- what was the conversation there at the meeting

13 with the railroad man, Mr. Bare --

14 A. Barefoot.

15 Q. -- fool and yourself that morning in

16 the park?

17 A. The conversation was that we would

18 either move them, bring them forward.

19 Q. Yes, ma'am.

20 A. Or he would cut them down. So we moved

21 them.

22 Q. Okay. When you say bring them forward,

23 that -- to be --

24 A. That meant towards the end of Lee

25 Avenue. See there's a -- there's a tract of land

1 Q. Okay. Well --

2 A. -- the movers to move them.

3 Q. Well, tell me -- did I understand you

4 moved some plants forward, or did I just

5 misunderstand you?

6 A. We did. We moved all the plants that

7 we had put in in May; every one of them came

8 forward into that area.

9 Q. Okay. So the record will be clear

10 about where you moved them forward, would it be

11 closer to the railroad track --

12 A. No.

13 Q. -- or closer to the courthouse?

14 A. Closer to the courthouse.

15 Q. Okay. And how many feet closer to the

16 courthouse did you move the plants?

17 A. Oh, well, the courthouse is on one end

18 of the street --

19 Q. Yes, ma'am.

20 A. -- and the existing Lee Avenue is on

21 the other end of the street. So we -- we moved

22 them just -- and I'm not good at telling you

23 exactly how many feet --

24 Q. Yes, ma'am.

25 A. -- but it was within the boundaries of

1 A. And he said, and we -- you know, he --
2 when you come out with a chain saw ready to cut
3 everything down, you want to protect what you can.
4 He went through, he said, this comes down, this
5 comes down, these plants move them wherever you
6 want to, just get them off this area.

7 Q. All right.

8 A. And I mean that -- that was what he
9 told us.

10 Q. All right. But this was somebody from
11 Illinois?

12 A. I think it was.

13 Q. Who was a subcontractor?

14 A. Subcontractor for the railroad.

15 Q. All right. Do you remember what he
16 looked like?

17 A. He was a heavy-set fellow.

18 Q. Did he have any -- was there any
19 writing on the trucks or cars or whatever he was
20 going around in?

21 A. You know, I really don't remember. We
22 were really and truly upset.

23 Q. Okay.

24 A. You know, we just planted these things.
25 They were growing beautifully, and then all of a

1 down and kind of veers to the left a little bit and
2 you come across a crossing --

3 Q. Okay.

4 A. -- that would take you up to Ms. Crews'
5 house.

6 Q. Okay. And I'm going to make that
7 crossing in pencil right here realizing nothing is
8 to scale on anything. (Indicating.)

9 A. No.

10 Q. I'm just going to put crossing right
11 there. (Indicating.)

12 A. Uh-huh.

13 Q. Okay. Now, were the plants that y'all
14 planted at that crossing or -- I'm sorry. The
15 plants that y'all planted, did they -- as a
16 motorist was traveling towards Ms. Crews' house,
17 were that -- were those plants, or the palmetto
18 trees, would they interfere with a motorist's
19 visibility of oncoming traffic?

20 A. Definitely not, because, see, you've
21 got this piece of property right here that those --
22 this is just on Lee Avenue. (Indicating.)

23 Q. Yes, ma'am.

24 A. So that comes on down this way.
25 (Indicating.)

1 sudden I have to yank them up and put them back
2 out. It just -- you really wanted to shoot
3 somebody --

4 Q. Yes, ma'am.

5 A. -- not really, not really, but -- but I
6 better not make threatening remarks like that, but
7 it is something that was not appreciated to be
8 treated like that.

9 Q. Yes, ma'am. I'm going to make this
10 diagram Defendant's Exhibit 2 to your deposition.
11 Now, there is a crossing I'm going to draw -- I'm
12 trying to draw in pencil over here on this side; is
13 that right? (Indicating.)

14 (DFT. EXH. 2, Hand-drawn map of Lee
15 Avenue, was marked for identification.)

16 A. Well, it comes in from -- let's see, it
17 comes in from First Street West.

18 Q. Okay.

19 A. Which is behind -- this is Lee Avenue,
20 then you've got a row of businesses, and then you
21 have First Street West that comes in from 801.

22 Q. Yes, ma'am.

23 A. Crosses Mulberry Street.

24 Q. Yes, ma'am.

25 A. And then First Street West comes on

1 Q. Yes, ma'am.

2 A. And there's a -- there's a parking area
3 along here. (Indicating.)

4 Q. Yes, ma'am.

5 A. And that had no -- no way did it blind
6 that crossing at all.

7 Q. Uh-huh. And it would not have
8 interfered. What if a motorist had been right
9 behind one of those palmetto trees?

10 A. Never; I would say it never would have
11 interfered with that crossing.

12 Q. Even if --

13 A. Because the -- see the palmetto trees
14 are this way, forward.

15 Q. Yes, ma'am.

16 A. The crossing is this way over. To come
17 over to the railroad tracks --

18 Q. Uh-huh.

19 A. -- you're out of the visibility of the
20 palmetto trees.

21 Q. And this was 60 foot of -- of -- within
22 -- the plantings were within 60 foot of the near
23 rail; is that right?

24 A. That's what he told us.

25 Q. He being the --

1 Q. Okay. I'll make that Defendant's 7.
 2 (DFT. EXH. 7. Minutes dated July 20,
 3 2004. was marked for identification.)
 4 A. And this is the -- a copy of the
 5 payment voucher for the moving of the two palmetto
 6 trees. We moved them over to the Macmillan Park,
 7 which is another park in the town. See, we paid
 8 them \$200. (Indicating.)
 9 Q. Yes, ma'am.
 10 A. Okay.
 11 Q. I'll make that Defendant's 8.
 12 (DFT. EXH. 8. Invoice for tree
 13 relocation, was marked for identification.)
 14 A. And the date of that was the date that
 15 he -- he moved those plants.
 16 Q. Okay. Very well. Now, you got another
 17 newspaper article there?
 18 A. This is an article that was taken out
 19 of the Guardian that pertained to Vamville
 20 officials concerned that their trees could go next.
 21 I don't know whether that section is any
 22 information, but -- but it does kind of indicate
 23 that they were wholesale cutting trees along --
 24 through the area in little towns.
 25 Q. Okay. We'll make that Defendant's 9.

1 said you never cross a railroad track without
 2 stopping and looking both ways.
 3 Q. Okay.
 4 A. So that was instilled in me from the
 5 time I started driving.
 6 Q. Yes, ma'am. Now, do you -- have you
 7 had any other disagreements with the railroad other
 8 than the situation regarding --
 9 A. No.
 10 Q. -- those plants?
 11 A. No.
 12 Q. Do you have any problem with the
 13 railroad as a -- as a corporate member of the
 14 community?
 15 A. Well, I think that sometimes they
 16 habitually go through Hampton at 2:00 in the morning
 17 and up between Hampton and Brunson just as soon as
 18 they get up in that Buy-Low shopping center area;
 19 they start blowing the horn.
 20 Q. Yes, ma'am.
 21 A. The whistle.
 22 Q. Yes, ma'am.
 23 A. And they blow all the way through town.
 24 Q. Yes, ma'am.
 25 A. Now, I don't think at 2:00 in the

1 Is that okay with you?
 2 (DFT. EXH. 9. Newspaper article written
 3 by Shelia DuRant, was marked for identification.)
 4 A. That's fine.
 5 Q. Okay. All right. You mentioned the --
 6 the concerns about the railroad and railroad
 7 crossings. Is that a concern that you have
 8 opinions about? Feelings about?
 9 A. Oh, you know, when I first started
 10 learning to drive, that was the -- and I put it
 11 to you like this, my daddy was hit by a train at a
 12 blind crossing. He was not injured, but we were
 13 trained to stop at a railroad crossing and look
 14 both ways.
 15 Q. Yes, ma'am.
 16 A. And that's been my -- I taught my
 17 daughters that same thing.
 18 Q. Um-huh.
 19 A. You always stop at a railroad crossing,
 20 because you don't want to run into a train or a
 21 train hit you.
 22 Q. Yes, ma'am.
 23 A. But he -- his car stalled on the track
 24 and he -- he finally got it off; it just bumped the
 25 tail end of the car. He was not injured, but he

1 morning -- I think that's a vendetta or
 2 vindictiveness on the railroad's part.
 3 Q. To blow the horn?
 4 A. To blow that horn -- you know, this --
 5 there's crossing, but just to sit on it the whole
 6 way through town.
 7 Q. Yes, ma'am.
 8 THE WITNESS: Have you heard it,
 9 Johnny?
 10 MR. PARKER: I'm not up at that time.
 11 THE WITNESS: Well, you know, when it
 12 comes through, it wakes me up.
 13 BY MR. PURCELL:
 14 Q. Yes, ma'am.
 15 A. And I guess I'm a light sleeper.
 16 Q. Yes, ma'am.
 17 A. But they've kind of settled down on
 18 that a little bit. I think they've been complained
 19 to enough that they are not -- it's almost like
 20 they have a hatred for us.
 21 Q. Okay. Do you know of any reason for
 22 there to be ill will between the city --
 23 A. No.
 24 Q. -- and the railroad?
 25 A. I don't think so, because, you know, we

1 Yemassee.
 2 Q. Yes, ma'am.
 3 A. Uh-huh.
 4 Q. If you come this way to --
 5 (Indicating.)
 6 A. Uh-huh. That's the -- that's the
 7 street to Yemassee, this is the crossing that comes
 8 off of that street --
 9 Q. Yes, ma'am.
 10 A. -- and goes back into --
 11 Q. That's right.
 12 A. -- the hill community and connects with
 13 the Ocantan Road.
 14 MR. PARKER: Salkehatchie
 15 THE WITNESS: Salkehatchie. I always
 16 get those two mixed up. I call one one thing --
 17 Salkehatchie Road.
 18 Q. Yes, ma'am.
 19 A. Uh-huh.
 20 Q. And you see that right there?
 21 (Indicating.) That's the -- that's the bridge.
 22 Can you see that bridge to 195 over there?
 23 (Indicating.)
 24 A. Yeah.
 25 Q. Right there? (Indicating.)

1 (Indicating.)
 2 Q. Uh-huh. Have you had a chance to talk
 3 to Mr. Parker about this case?
 4 A. No, no.
 5 Q. You didn't talk to him this morning
 6 about it?
 7 A. Not about that case, no. We talked
 8 about the end of Lee Avenue.
 9 Q. Uh-huh. But you really don't know
 10 anything about the facts of this case --
 11 A. No.
 12 Q. -- that happened on Hill Road; is that
 13 right?
 14 A. I don't know anything about that case
 15 I probably read it in the paper where somebody was
 16 killed.
 17 Q. Uh-huh.
 18 A. But, you know, I don't know anything
 19 about this particular case. Don't know the people
 20 involved.
 21 Q. Okay. That was going to be one of my
 22 questions. You don't know Willie Stephens?
 23 A. No, no.
 24 Q. Or Tonya Colvin?
 25 A. No.

1 A. Yes, I see that. Uh-huh.
 2 Q. Okay.
 3 A. But see there's a -- this road comes on
 4 and meets the road that we were talking about and
 5 it goes over the railroad track. This connects
 6 with -- you say, Salkehatchie?
 7 MR. PARKER: (Nodding head up and
 8 down.)
 9 BY MR. PURCELL:
 10 Q. Okay. If --
 11 A. And this is where the accident
 12 happened?
 13 Q. Yes, ma'am, it is. She was traveling
 14 in this direction right here. (Indicating.)
 15 A. Uh-huh. Well, they should have cut all
 16 that vegetation. They didn't though. You see, she
 17 had to get a real view of that railroad track
 18 before she could see a train coming.
 19 Q. Uh-huh. Would you get someplace where
 20 you could see a train coming if you were driving on
 21 this road?
 22 A. She didn't have too much place to get,
 23 because all that vegetation right there.
 24 (Indicating.) She would have to be right here on
 25 the track before she -- at least right there.

1 Q. Or any members of their families?
 2 A. Well, now, see you're talking about --
 3 I have to go back to maybe grandparents and that
 4 sort of stuff before I could identify them.
 5 Q. Uh-huh. You've never done any studying
 6 about traffic accidents or train accidents, have
 7 you?
 8 A. Well, my daughter was involved in a --
 9 in an accident on 601. She was coming out on Holly
 10 Street and somebody was coming in from 601 South.
 11 Q. Yes, ma'am.
 12 A. And clipped her.
 13 Q. Uh-huh.
 14 A. But she had witnesses to show that she
 15 had stopped, and he was traveling too fast. But it
 16 -- they tried to sue us, but that didn't get
 17 anywhere.
 18 Q. Okay. Did you have a lawyer?
 19 A. No. We didn't really get a lawyer. I
 20 think that -- that it was an accident that was --
 21 nobody was really hurt. Now, the person that was
 22 driving the car had ten parking -- speeding tickets
 23 in his pocket of his car in the State of South
 24 Carolina in the course of a week.
 25 Q. Uh-huh.

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Page 48

1 A. I know Ms. Crews.
2 Q. And she may be a witness in this case,
3 but other than Ms. Crews, do you know anybody that
4 may be a witness in this case?
5 A. No.
6 Q. Do you know David Poston?
7 A. I do.
8 Q. How do you know David?
9 A. I've known David since he was a little
10 boy. His dad and my husband fished and shrimped
11 and -- and we had many fish fries --
12 Q. Uh-huh.
13 A. -- and fun times at the river
14 Q. Okay.
15 A. Uh-huh.
16 Q. Do you know anybody else that works for
17 the railroad besides David?
18 A. I don't think so.
19 Q. Okay.
20 A. And I know David and I know he works
21 for the railroad because I've been trying to get
22 him to rework the crossing on 601.
23 Q. Okay.
24 A. It -- it's got -- all this cushioning
25 under the railroad track has come up, and when you

1 A. I know, but, you know, I can't remember
2 names sometimes of these new plants.
3 Q. Yes, ma'am.
4 A. We did a low-growing plant that would
5 be a perennial that would come back and bloom each
6 spring. Just can't think of the name of that
7 plant, but it's --
8 Q. Okay.
9 A. -- It's used widely now. It's a new --
10 a new plant. You can get a high-growing or a
11 low-growing plant.
12 Q. It's not --
13 A. It's a low-growing.
14 Q. It's not an azalea, is it?
15 A. No, no. No, no. It -- it was one that
16 would take shade under those trees. I can -- you
17 can leave that blank and I can call you and tell
18 you what it is.
19 Q. Okay. All right.
20 A. We did a half-circle of those and we
21 put in some lantana, which blooms profusely in the
22 summer.
23 Q. Okay.
24 A. And that's about all we put in. Those
25 little -- they're a little -- little pink flower

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Page 49

1 go across that crossing it's real bad. And he said
2 he's got it on his book, but he hadn't been able to
3 get to it yet.
4 Q. Okay. Excuse me for just a minute.
5 A. Okay.
6 (Off-the-record conference.)
7 THE VIDEOGRAPHER: We will now go back
8 on the record. Time is approximately 9:58 a.m.
9 BY MR. PURCELL:
10 Q. Ms. Rivers, the plants that were there
11 in the park on the area at the end of Lee Street
12 that were planted there in 2004, what happened to
13 those plants? Are they still there?
14 A. Some of them are, but because we had to
15 move them so quickly after they'd been originally
16 set out, some of them died.
17 Q. Okay.
18 A. And so we haven't replaced those yet.
19 We were waiting on the street gales to see what
20 they were -- had planned at the end of that street.
21 Q. Okay. And what -- tell me what kind of
22 plants those were.
23 A. Oh, I knew you were going to ask me
24 that.
25 Q. Because you're a gardener, right?

1 and they bloom continuously during the year.
2 Q. Okay. So these were --
3 A. Low-growing.
4 Q. Low-growing.
5 A. Low-growing.
6 Q. And were they all perennials, the ones
7 that you planted?
8 A. Oh, yeah. They were -- it was a
9 shrubby plant.
10 Q. Okay.
11 A. And now they -- the lantana dies down
12 in the winter, but this plant does not.
13 Q. Did the -- did the lantana come back?
14 A. It -- yes, it does. It comes back.
15 Q. And did it come back at that location?
16 A. It did. Uh-huh. Everything is in the
17 same position. There's some plants that died. I
18 just can't think. I tell them my brain is -- it's
19 up there in the brain but it's on dial-up, not DSL.
20 Q. Okay. So there would be two rows of
21 plants?
22 A. No, no.
23 Q. How many?
24 A. One single row.
25 Q. One single row?

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PLAINTIFF'S REQUEST TO CHARGE NO. 2

A railroad corporation has a duty to maintain its right-of-ways and highway railroad grade crossings in a reasonable safe condition. If a railroad corporation negligently allows vegetation to grow on its right-of-way adjacent to the crossing to such an extent that it obscures or obstructs the vision of the driver of a motor vehicle using the roadway, it is liable to anyone who is injured in a collision, if the obstructing vegetation contributed as a proximate cause to the collision.

See *Lowery v. Seaboard Coastline R. Co.*, 241 S.E.2d 158 (1978).

PLAINTIFF'S REQUEST TO CHARGE NO. 3_____

When vegetation at a railroad crossing is such that it obstructs a motorist's view of an oncoming on train, the railroad has a duty to exercise added care in the operation of timing of its train as the train approaches and crosses the crossing.

Gleaton v. Southern Ry. Co., 38 S.E.2d 710, 714 (S.C. 1946).

PLAINTIFF'S REQUEST TO CHARGE NO. 9 _____

A driver of a motor vehicle is "under no absolute duty to stop, look, and listen before going on the track [at a railroad crossing], unless the exercise of ordinary care and prudence under all the surrounding facts and circumstances require[s] the adoption of such a course ...

***Clark v. Southern Ry. Co.*, 131 S.E.2d 844, 847 (1963).**



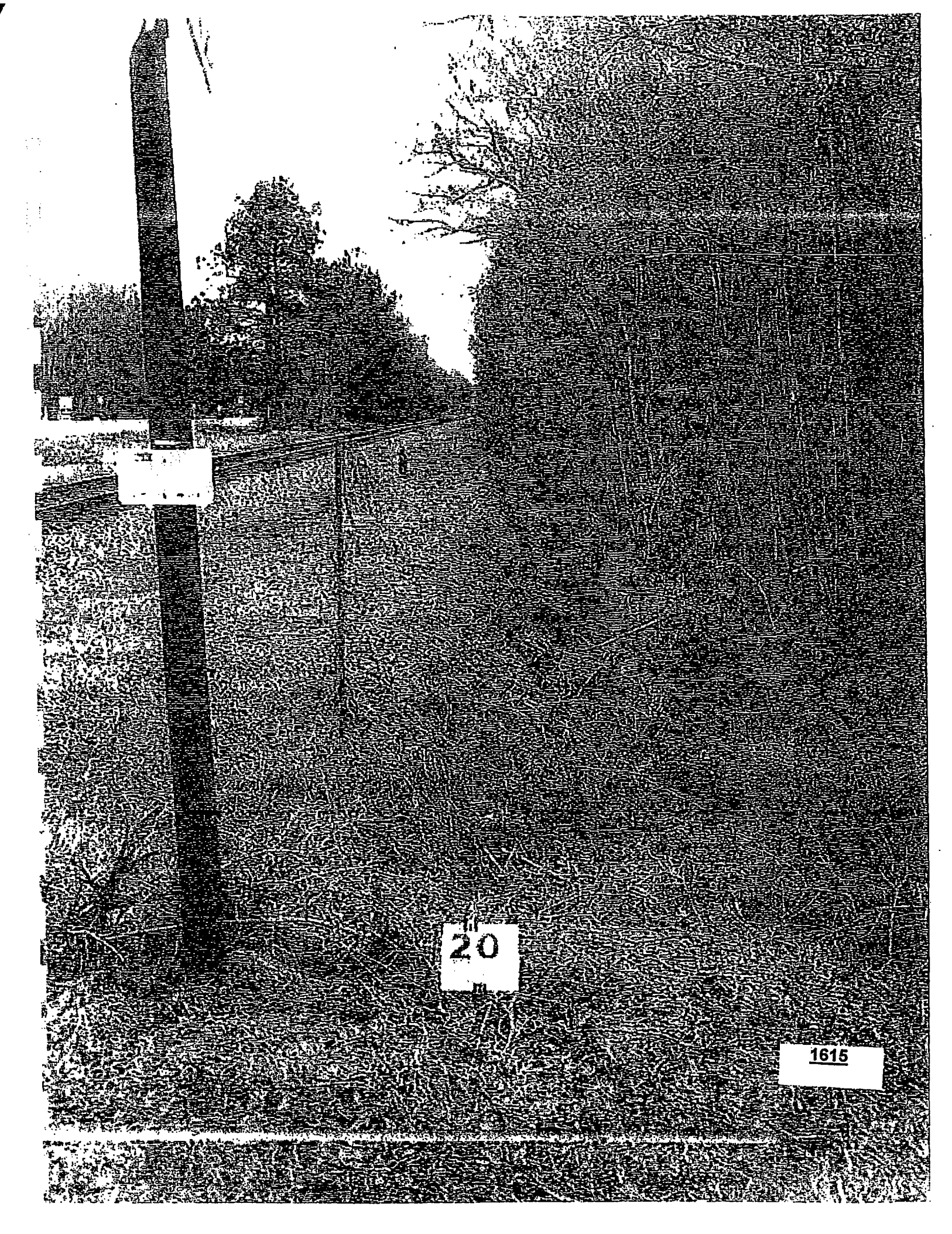
32

1612



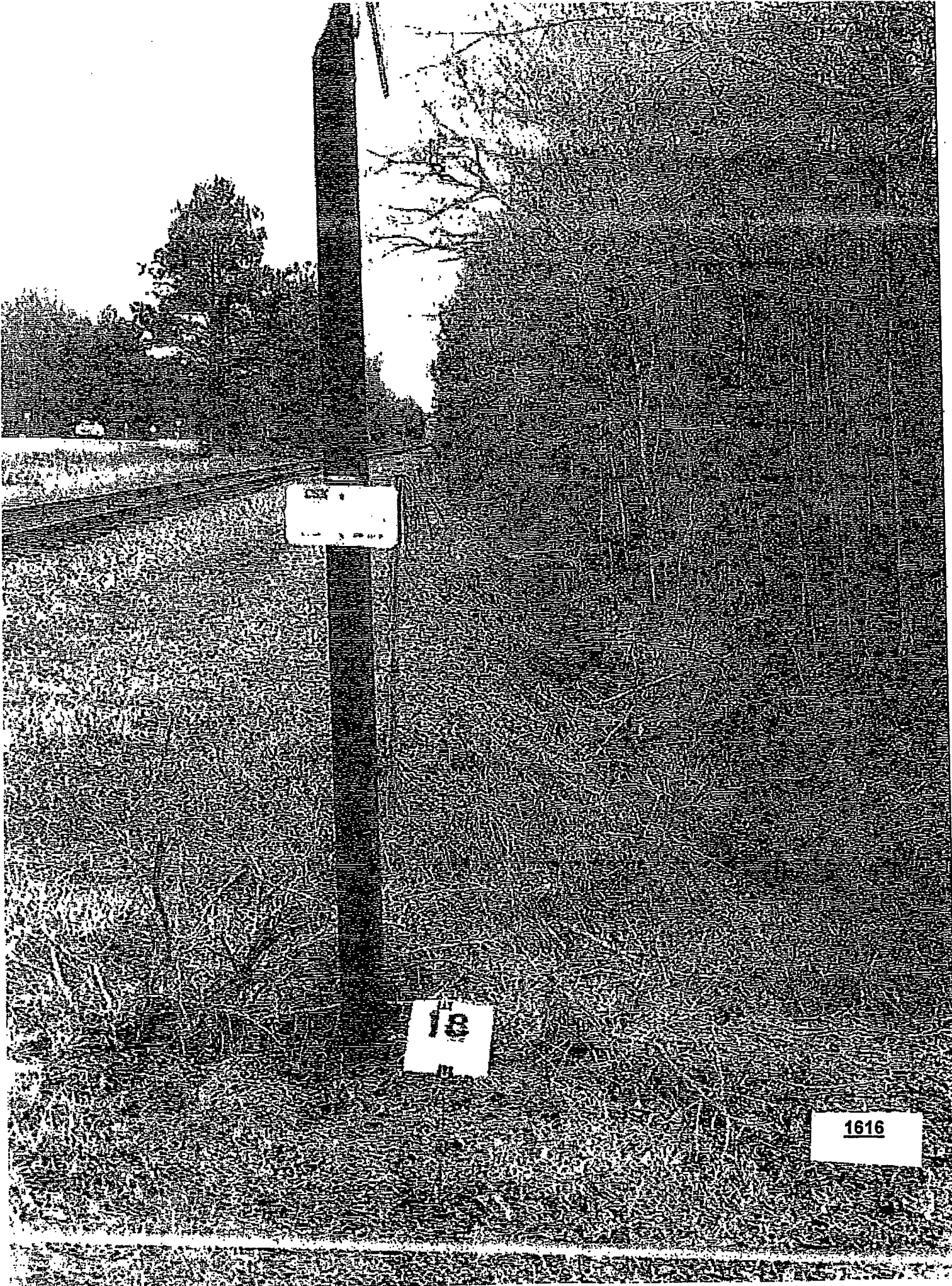


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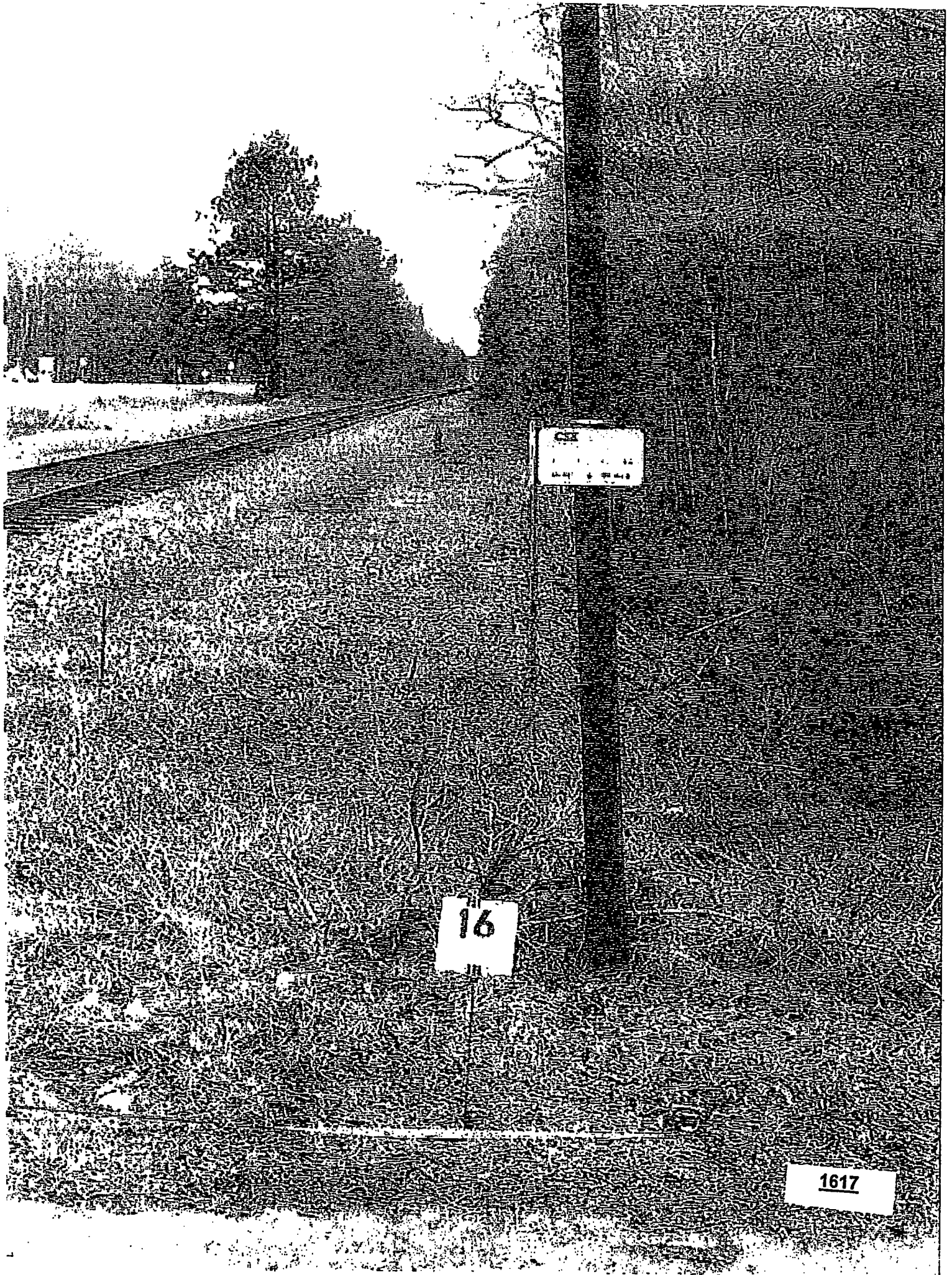
1615

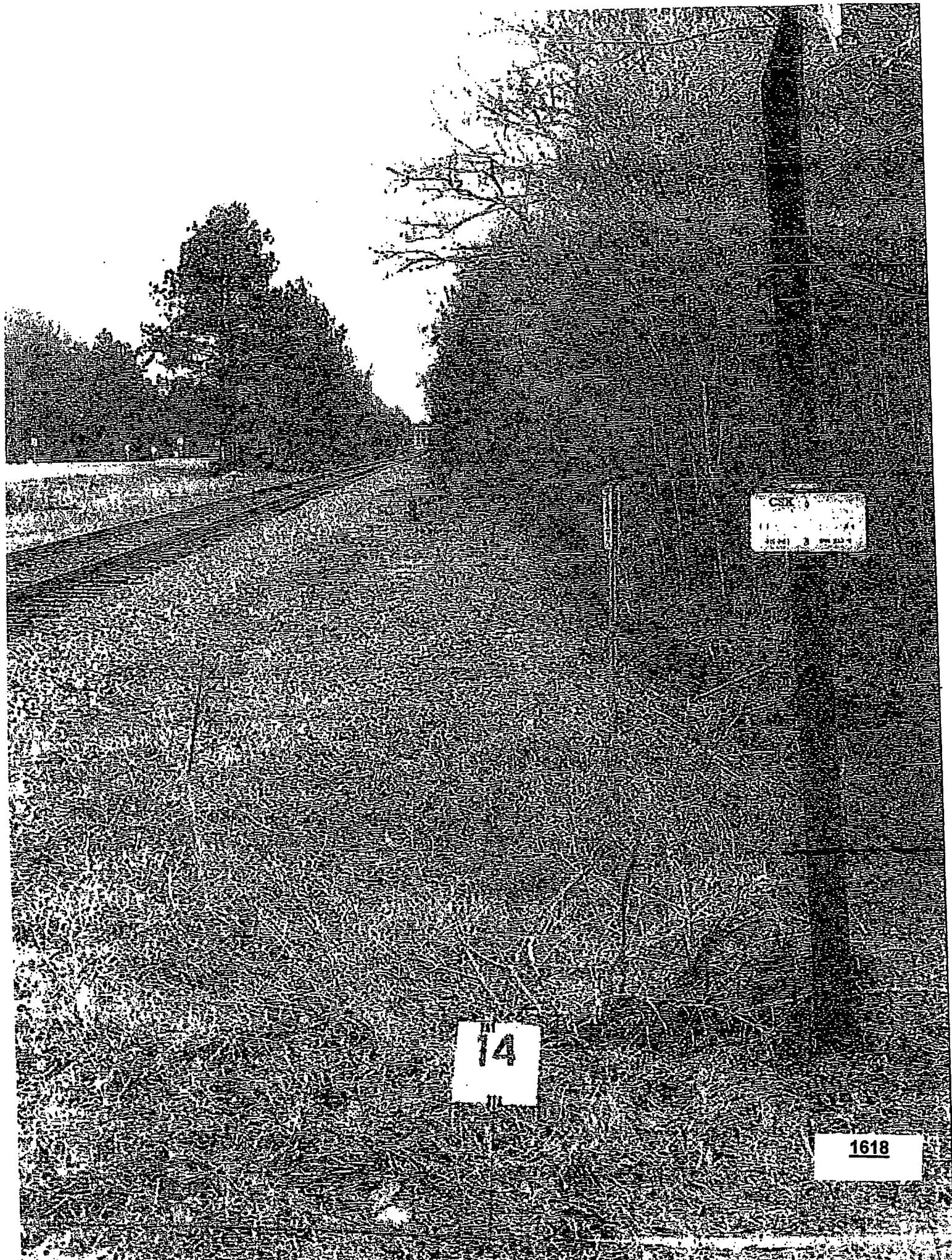


18

18

1616





14

1618

TREE & BRUSH MEASUREMENTS

190' W of Hill Street in the NE Quadrant tree located 16' from near rail

195' W of Hill Street in the NE Quadrant brush & Limbs 18' from near rail

81' W of Hill Street in NE Quadrant tree 27' from near rail

47' W of Hill Street in NE Quadrant tree 31'6" from near rail



AVAILABLE AND REQUIRED SIGHT DISTANCES FOR THE HILL ROAD CROSSING

Quadrant	Driver Position (feet)	Train Required (feet)	Train Available (feet)	Train Deficient (feet)	Train Deficient (Percent)
NORTH*					
50 mph	490	554	18	536	96.8
40 mph	340	510	19	491	96.3
30 mph	225	485	21	464	95.7
20 mph	135	510	26	484	94.9
10 mph	70	711	41	670	94.2
Stopped (STOP sign)	46**	1,176	76	1,100	93.5
Stopped (15 ft to near rail)	25***	1,176	367	809	68.8
EAST					
50 mph	490	554	23	531	95.8
40 mph	340	510	28	482	94.5
30 mph	225	485	36	449	92.6
20 mph	135	510	64	446	87.5
10 mph	70	711	228	483	67.9
Stopped (STOP sign)	46**	1,176	289	887	75.4
Stopped (15 ft to near rail)	25***	1,176	762	414	35.2

MAXIMUM TIMETABLE SPEED FOR TRAINS IS 49 MPH FOR CROSSING

- * The North quadrant was the quadrant involved in the accident in question.
- ** Front bumper of motor vehicle is even with the STOP sign; the driver is 10 feet in back of the front bumper.
- *** Front bumper of motor vehicle is 15 feet from the near rail; the driver is 10 feet in back of the front bumper.

(CONTINUED ON NEXT PAGE)

1620



AVAILABLE AND REQUIRED SIGHT DISTANCES FOR THE HILL ROAD CROSSING

Quadrant	Driver Position (feet)	Train Required (feet)	Train Available (feet)	Train Deficient (feet)	Train Deficient (Percent)
SOUTH					
20 mph (Right turn - SC 68)	135	510	79**	431	84.5
20 mph (Left turn - SC 68)	135	510	382	128	25.1
10 mph (Right turn - SC 68)	70	711	44**	667	93.8
10 mph (Left turn - SC 68)	70	711	367	344	48.4
Stopped	25*	1,176	1,176	0	0.0
WEST					
20 mph (Right turn - SC 68)	135	510	510	0	0.0
20 mph (Left turn - SC 68)	135	510	66**	444	87.1
10 mph (Right turn - SC 68)	70	711	511	200	28.1
10 mph (Left turn - SC 68)	70	711	46**	665	93.5
Stopped	25*	1,176	950	226	19.2

MAXIMUM TIMETABLE SPEED FOR TRAINS IS 49 MPH FOR CROSSING

* Front bumper of motor vehicle is 15 feet from the near rail; the driver is 10 feet in back of the front bumper.

** Available sight distance due to head movement limitations.

1621

From: Schmidt, Tom
Sent: Wednesday, December 27, 2000 10:19 AM
To: Vaccarello, Vinnie
Cc: McMaster, Mike
Subject: Crossing Vegetation

Vinnie:

I want to move ahead with the clear cut crossing plan. I think you should put it out for bid as you envision, and structure it on \$1mil increments so that we can manage the cost and the budget. Bernard, Codd and I will try to locate funding over the first million \$ but I think it best to get started.

Also, we couldn't remember if Georgia was among the first 4 states. NC, SC, and Ala I remember. What was the 4th? Codd now feels Ga. Should be the 4th if it isn't already.

Pls keep me advised.

TPS



1622

MM-1182

From: Schmidt, Tom
Sent: Wednesday, December 27, 2000 10:33 AM
To: Pettry, Dave; KASPRZYCKI, JIM J (AMS); Rahmes, Jack
Cc: Hopkins, Hugh ; McMaster, Mike; Vaccarello, Vinnie
Subject: Crossing Inspections

One of our objectives for 2001 is to establish and then accelerate a program of clear cutting (350' each side of crossings for the full width of the owned right of way) vegetation at grade crossings, particularly passive warning device (crossbucks) public crossings, and beginning in the Carolinas, Alabama and Georgia.

In discussions with risk management (Ed Codd) we considered the idea of having our roadmasters/track inspectors periodically inspect crossings, again especially the crossbuck crossings, for sight distance and documenting their assessment. Of course this works both ways: if it is thoughtfully inspected and passes muster we have a good defense; if it doesn't pass muster and we don't take remedial action, our vulnerability is increased. I would expect that we would, however, take action.

Would you guys mull this over as to both the wisdom of doing this and how we would go about it. I would envision no more than a monthly or perhaps quarterly inspection, so it shouldn't be an excessive burden.

Pls give me your thoughts.

TPS



MM-1181

1623



From: Vaccarello, Vinnie
Sent: Friday, April 27, 2001 4:36 PM
To: Zenisek, Ray; McMaster, Mike ; Scherr, Les
Cc: Ramsey, Steve ; Mellish, Greg ; Green, Dan
Subject: RE: Clearing all passive public crossings in SC starting as early as 5/1/01 or as late as 5/14/01

Ray,
I have enclosed all the information you have requested. If you need anything else please let me know.

- (1) Timber Management Co. is the contractor.
- (2) They will be cutting all the public passive crossings on the Columbia Sub starting in Columbia working south.
- (3) They will work 4 days a week 10 hours a day. They will start with 1 four man crew and add additional crews as time goes on.
- (4) They will be using a soft track. Which is an off track flail head brush cutter with padded swamp pads.
- (5) They will also be using chain saws.
- (6) They will spot treat cut stumps with back pack sprayers.

If you need any more information please call me.
Thanks
Vinnie

—Original Message—

From: Zenisek, Ray
Sent: Friday, April 27, 2001 12:26 PM
To: Vaccarello, Vinnie ; McMaster, Mike ; Scherr, Les
Cc: Ramsey, Steve ; Mellish, Greg
Subject: RE: Clearing all passive public crossings in SC starting as early as 5/1/01 or as late as 5/14/01

Unless I get the man hours and type of equipment, I am unable to notify the Union.

—Original Message—

From: Vaccarello, Vinnie
Sent: Saturday, April 21, 2001 9:25 AM
To: McMaster, Mike ; Scherr, Les
Cc: Zenisek, Ray; Ramsey, Steve
Subject: RE: Clearing all passive public crossings in SC starting as early as 5/1/01 or as late as 5/14/01

Ray,
We will be cutting all the passive public crossings using outside contractor Timber Management to clear vegetation 300 feet on either side of the crossing full length of right of way for sight distance. We will start on the Columbia and Charleston Subs. I have enclosed the list of crossings that will be cleared for you to give notice to the BMWV.
Please let us know when we can go to work and start cutting.
Thanks
<< File: SC1.xls >>

—Original Message—

From: McMaster, Mike
Sent: Wednesday, April 18, 2001 7:09 AM
To: Scherr, Les
Cc: Vaccarello, Vinnie
Subject: RE: Clearing all passive public crossings in SC starting as early as 5/1/01 or as late as 5/14/01

Vinnie will handle with Ray.

—Original Message—

From: Scherr, Les
Sent: Tuesday, April 17, 2001 3:15 PM

1624

MM-1148



Vinnie Vaccarello
C S X Transportation
Vegetation Management
P.O. Box 45054
Jacksonville, Fl. 32232-5054

April 30, 2001

Mr. Vaccarello,

As per our phone conversation this afternoon, regarding my Highway-Rail grade crossing vegetation management contract with CSX for the state of South Carolina.

Joe Basham, my foreman, and myself, have been certified by Utilico to safety train our men for Roadway Worker Safety. All personnel will be safety certified before commencing work.

I believe we will commence clearing crossings at Savannah, S.C. on the Columbia or Charleston Subs (CSX's choice) June 4th, 2001. I believe my estimate of time for completion on the attached list to be quite accurate.

I will start with a one four man crew of which will be: Joe Basham, Johnny Tobias, Joey Basham, and the fourth man I am not sure of at the present time. They will also be using a 2000 yr. Geo-Boy soft track machine with a mulcher head (seppi), chain saws, backpack hand sprayers for spraying stumps. The chemical used for spraying stumps will be Pathfinder mixed with diesel fuel (1x3 ratio) with SP1-Max Dye. The chemical for the broadcast spray will most likely be, Escort, Round Up, and Oust or Arsenal.

I probably will add additional crews to speed production , but I will correspond with you before I do.

I may also use a Gyro-Trac machine I was talking about, if so , it would most likely be a new (2001 yr. model) machine with a mulcher head.

Timber Management will be licensed to use chemicals and Joe Basham, will be licensed chemical applicator , we don't expect to get our chemical license until mid to later May 2001, which equipment we will use to pray with , I am not sure of at present time. If you have any questions please give us a call at 903-729-6600.

Thank you,


Mac McCullom

Tree Management • Select Mark for Cutting • Select Cutting or Clear Cutting
Land • Pine • Hardwood • Procurement



1625

VV-0249

The following is a bid for Vegetation Management at Highway-Rail Grade Crossings for the following subdivisions:

<u>Subdivision</u>	<u># of Crossings</u>	<u>Time to Complete</u>
South End	7	2 Days
Charleston	23	6 Days
Spartanburg	23	6 Days
C N & L	33	9 Days
Columbia	54	14 Days
Monroe	18	5 Days
Abbeville	4	2 Days
Blue Ridge	3	1 Day
Orangeburg	35	9 Days
Augusta	55	14 Days
Eastover	17	5 Days
Wilmington	1	1 Day
Andrewes	102	26 Days
Georgetown	6	2 Days
McCormick	34	9 Days
Creston	28	7 Days
Belton	58	15 Days
Lane	17	5 Days
Cross	6	2 Days
Hamlet	22	6 Days
Total		145 Days
Crossings in Towns		13 Days
(See Attachment)		158 Days

In Town Crossings

<u>City Crossing</u>	<u># of Crossings</u>	<u>Time to Complete</u>
Wilimington	1	1 Day
Clinton	3	1 Day
Charleston	1	1 Day
Sumter	1	1 Day
Atlanta	2	1 Day
Metcalf	1	1 Day
Bessemer	5	2 Days
Pearson	1	1 Day
Norlina	3	1 Day
St. Pauls (RR N)	1	1 Day
Rockingham	1	1 Day
Athens	3	1 Day
total		<u>1 Day</u> 13 Days

TIMBER MANAGEMENT
FORESTRY
LOGGING

Route 1 Box 1946
Palestine, Texas 75801
903-729-8600

*Vincent
As info.*

FAX TRANSMISSION

TIMBER MANAGEMENT
RT. 1 Box 1946
PALESTINE, TX 75801
(903) 729-8600
FAX: (903) 729-8440

To: CSX Transportation
Fax #: (904)245-1030
From: Mac McCullom
Date: April 30, 2001
Pages: 5 total, including this cover sheet
Subject: Highway-Rail grade Crossings Vegetation Management

COMMENTS:

147,000 spend in 2002

VV-0248

1628

Tree Management • Select Mark for Cutting • Select Cutting or Clear Cutting
Land • Pine • Hardwood • Procurement





*Copy Buddy Powell
re info.
SC crossing clearing
program*

AS Info

FAX TRANSMISSION

TIMBER MANAGEMENT
Rt 1 Box 1946
PALESTINE, TX 75801
(903) 729-6600
FAX: (903) 729-6440

To: Vennie Vaccarello
CSX Transportation

Date: May 9, 2001

Fax #: 904-245-1030

Pages: 2, including this cover sheet.

From: Mac McCullom

Subject: extending contract

COMMENTS:



VV-0246

1629

Tree Management • Select Mark for Cutting • Select Cutting or Clear Cutting
Land • Pine • Hardwood • Procurement





Route 1 Box 1946
Palestine, Texas 75801
903-729-6600

Vennie Vaccarello
% CSX Transportation
P.O. Box 45054
Jacksonville, Fl. 32232-5054

May 09 ,2001

Dear Mr. Vaccarello,

Due to CSX making a budget cut back, I would like to extend the beginning date for clearing the South Carolina Highway- Rail Grade crossings from June 4th to July 9th, 2001.

I believe we will be completed with the cutting and clearing before year end and I understand that even if the work is completed I have to wait until after January 1, 2002 before I can invoice the last \$147000.00 or approximate there of, of which will be paid within 30 days of invoice.

If this meets your approval, please advise. Also, if you have any questions you can reach me at 903-729-6600.

Thank you for your cooperation.
Sincerely,

VV-0247

Mac McCullom

1630



1631

VV-0386

S.C. CROSSING CLEARING PROGRAM
(ALL INFORMATION IS ESTIMATED)

<u>SUB</u>	<u>START</u>	<u>FINISH</u>	<u>MP - MP</u>	<u>DURATION</u>	<u>MAJOR CITIES</u>	<u>COMMENTS</u>
Charleston	27-Aug	10-Sep	476 - 299	3 weeks	Charleston, Florence	COMPLETE
South End	10-Sep	16-Sep	255 - 279	1 week	Dillon	COMPLETE
Augusta	5-Sep	9-Oct	443 - 498	3 weeks	Hampton, Allendale	CURRENTLY WORKING
Orangeburg	11-Oct	26-Oct	331 - 388	2 weeks	Orangeburg, Sumter	
CN&L	29-Oct	11-Nov	0 - 72	2 weeks	Irmo, Columbia, Laurens	
Eastover	12-Nov	18-Nov	332 - 374	1 week	Columbia	



Mentored Champion "Kick-Off" Plan Commodity Team and Issues

COMMODITY: VEGETATION CONTROL AT HIGHWAY-RAIL CROSSINGS

Commodity Team:

Mentored Champion: Patrick L. Powell

Team Members: Mike McMaster (Engineering)
Steve Ramsey (Safety)
Chris Haas (P&M)
Cindy Craig Johnson (Law)

Analyst: Angie Widdows

Commodity Analysis:

Benchmarking:

Pricing Trends:

Usage Trends:

Product Life:

Strategies/Interests:

List strategies the commodity team has identified and interests of CSXT.

-
- CONCERNED ABOUT SAFETY AT HIGHWAY-RAIL PASSIVE CROSSINGS
- CONCERNED ABOUT INDEMNITY IF ACCIDENT HAPPENS AT CROSSINGS
-
-
-
-
-

Goals/Objectives

-
- DEVELOP PLAN/SPECIFICATION TO REDUCE EXPOSURE
- COMPLETE SOUTHERN HALF OF SYSTEM IN 2002
- COMPLETE NORTHERN HALF OF SYSTEM IN 2003
- COMPLETE PROJECT UNDER BUDGET
-
-

1632

KM-0611

CONFIDENTIAL

Supply and Services
Management



M/C Form KO-1
Revised 1/16/96

**MENTORED CHAMPION
ISSUES, ANALYSIS, RECOMMENDATIONS
COMMODITY: VEGETATION CONTROL AT HIGHWAY-RAIL CROSSINGS**

ISSUES:

SAFETY AT PASSIVE CROSSINGS
INDEMNITY IF ACCIDENT HAPPENS AT CROSSING

ANALYSIS:

NO FRA OR RAILROAD SPECIFICATION AS TO HOW LARGE AN AREA TO CLEAR
STEVE RAMSEY (SAFETY) DEVELOPED SPEC BASED ON SPEED OF TRAIN
COMPLETE SOUTHERN PART OF SYSTEM IN 2002
COMPLETE NORTHERN PART OF SYSTEM IN 2003
\$10M BUDGET FOR 2002
SOUTH CAROLINA PARTIALLY COMPLETED IN 2001 WITH DIFFERENT SPEC - PROBLEM WITH CONTRACTOR

RECOMMENDATION:

COMPLETE MENTORED CHAMPION PROJECT TO SELECT CONTRACTOR(S)
LARGER COMPANIES WOULD BE MORE ACCEPTABLE DUE TO INSURANCE REQUIREMENTS AND BEING ABLE TO COMPLETE PROJECT
ISSUE CONTRACT TO THIRD PARTY TO INSPECT CROSSINGS

CONFIDENTIAL

KM-0612

1633



Labor Relations Department
JAMES H. WILSON
Senior Director - Labor Relations

Labor Relations Department
500 Water Street, J-455
Jacksonville, FL 32202

Fax (904) 359-7563
(904) 359-1448
Jim_Wilson@csx.com

March 6, 2002

Mr. F. N. Simpson, General Chairman
Brotherhood of Maintenance of Way Employees
Allied Eastern Federation
P. O. Box 278
Manistee, MI 49660

Mr. W. L. Glisson, General Chairman
Brotherhood of Maintenance of Way Employees
Seaboard Federation
11219 Longbrooke Drive
Riverview, FL 33569

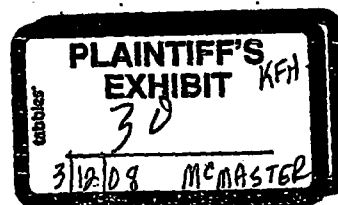
Mr. T. R. McCoy, General Chairman
Brotherhood of Maintenance of Way Employees
Affiliated System Federation
730 Greenup Avenue
Ashland, KY 41101

M. G. L. Cox, General Chairman
Brotherhood of Maintenance of Way Employees
Southern System
P. O. Box 24068
Knoxville, TN 37933-2068

Re: 3041-12-02-05 (System)

Dear Sirs:

This letter is notification of the Carrier's intent to contract the initial clear cutting of each side of various 'public passive' crossings located on the FBU, Southern Midwest and Central Regions of the CSX System (see attached). This is a new project by CSXT that involves the clearing of land at grade crossings protected by passive protection (crossbucks). This project involves the clearing of land that had not previously been cleared by the railroad to improve the visibility for the motoring public at these grade crossings. The contractor will control future growth of the cleared areas by treating them with a chemical spray. The operating speed at each crossing will determine the distance of each cut. The proposed start date is approximately March 22, 2002.



MM-1719

1634

Messrs. Simpson, Glisson, McCoy, and Cox
March 6, 2002
Page 2

Contracting of this work is necessary, as it requires specialized equipment that CSXT currently does not own or operate. The equipment to be provided by a contractor will include a magnum mulcher, hydroax, geo boy with seppi head, ASV, whole tree shear, skidder and chipper and tractor/trailers (see attached). The large capital expenditure needed to purchase this equipment cannot be financially justified since this equipment will be needed only to clear the land initially. Thereafter the growth will be controlled by spraying and subsequent brush cutting. The equipment is not readily available for lease due to the special design of some of this equipment, liability issues, wear and tear on the machines, and the fact that CSXT does not have trained people to operate the equipment properly and safely. Furthermore, it is not feasible for CSXT to train its employees given months of training and daily operation are needed to become qualified enough to safely operate this equipment. Additionally, CSXT forces do not have the required certification, license or training to handle and apply herbicide spray (see attached).

Lastly, CSXT does not anticipate that any BMW-E-represented employees in the district will be furloughed at the time this work is performed in that district. If Labor finds the need to discuss this further, arrangements for a conference have been scheduled for March 12, 2002. If you are unable to make this meeting, please contact Phil Jensen of my office at (904) 359-3336 to change the conference to a mutually agreed date and time.

Yours truly,

J. H. Wilson

J. H. Wilson, Senior Director
Labor Relations

Note: Attachments to follow via US Mail

Bcc: C. Seavy, Staff Engineer (J645)
G. Updike, Staff Engineer, 935 7th Ave., Huntington, WV 25701
D. R. Daniels, Staff Engineer, 1142 Bluegrass Parkway, Louisville, KY 40299
T. Mohler, Staff Engineer, 5656 Adamo Dr., Tampa, FL 33619
E. Jones, Contract Coordinator (J350)
R. Zenisek, General Manager (J350)
N. S. Yovanovic, General Counsel

This new program contemplates the removal of trees and clearing of property at some highway-rail grade crossings with passive protection. Meeting the program's specifications requires the use of specialized equipment that CSXT currently does not own or operate. The capital investment to purchase the equipment required to perform the clearing work would total approximately \$12,260,000. This cost is based on the following approximated equipment needs and estimated costs:

Magnum Mulcher 500	(6 @ \$385,000)	\$2.310M
Geo Boy with Seppi Head	(2 @ \$150,000)	\$0.300M
Hydro Ax 721	(2 @ \$175,000)	\$0.350M
John Deere 690L with 30 foot boom and brush cutter head attachment	(2 @ \$150,000)	\$0.300M
Whole Tree Shear	(6 @ \$250,000)	\$1.500M
Whole Tree Skidder	(6 @ \$250,000)	\$1.500M
Whole Tree Chipper	(6 @ \$325,000)	\$1.950M
Vermeer BC 2000 Brush Chipper	(6 @ \$150,000)	\$0.900M
John Deere 6300 Tractor With 6 foot browns mower And tiger side arm mower	(6 @ \$125,000)	\$0.750M
ASV with Grapple or Bobcat	(6 @ \$100,000)	\$0.600M
Tractor/Trailers	(12 @ \$100,000)	\$1.200M
Crew Cab and pick up trucks To transport crews	(12 @ \$50,000)	\$0.600M

The purchase of this equipment is not cost justified because CSXT will not need the equipment in the future. Once the land is cleared, it will be maintained by spraying or subsequent brush cutting. In addition to the cost of acquiring this equipment, it is estimated that maintenance would be approximately \$3,065,000 annually. This assumes the equipment would be used by experienced operators for no more than 40 hours per week.

We have looked into the possibility of leasing the equipment. Attached is a letter from DeAngelo Brothers, a national contractor who performs this sort of work for railroads and other entities, advising that they do not lease this type of equipment due to liability issues and wear and tear that is associated with these high-maintenance pieces of equipment. The letter further

indicates that some of the equipment is uniquely manufactured by them and they could not recommend to CSXT anyone who possesses such equipment available for lease.

We believe operation of this equipment will require 15 - 20 skilled equipment operators. The equipment operators for the companies that perform this type work typically undergo up to 2 years of training, progressing through a series of positions including laborer/hand tool operator, ground man/spotter and apprentice equipment operator, (operating a number of types of both light and heavy equipment for a period of 2 to 4 months, under the direct supervision of a qualified operator) in order to operate the equipment properly and safely.

Additionally, it is contemplated that after clearing trees at the crossings covered by the program, that the successful contractor will treat the cleared areas with chemical spray. This will require additional equipment, licenses or permits, and expertise that CSXT and employees do not currently have.

The capital investment to purchase the equipment required to perform the chemical application work contemplated would total approximately \$2,023,000, based on the following approximated equipment needs and estimated costs:

Spray Train including spray car, Tank cars and idler car	(1 @ \$0.375M)	\$0.375M
On-track spray trucks fully equipped	(4 @ \$150,000)	\$0.600M
4-wheel drive trucks equipped with 300 - 500 gal. Stainless steel, single system and multi-system tanks and hand hoses	(5 @ \$45,000)	\$0.225M
4-wheel drive tractors equipped with 3-point hitch tanks and radiarc nozzles	(5 @ \$60,000)	\$0.300M
ATV's equipped with tanks and radiarc nozzles	(5 @ \$65,000)	\$0.325M
Support and transport truck for ATV equipped with nurse tank and pump equipment	(5 @ \$40,000)	\$0.200M

Again, this is highly specialized equipment that suppliers are unwilling to lease.

The spray program will require 25-30 workers, experienced in chemical spray application, each of whom will need to meet applicable training and certification requirements. In order to handle and apply the vegetation spray, employees must be properly certified and obtain a Pesticides Applications License. Typically, training consists of 4 weeks of classroom

training, and one season of on-the-job training with a certified foreman or supervisor. The certification and license may be obtained through attendance of a Pesticide Applicators course offered by Purdue University and the National Railroad Contractors Association (NRCA). The course is offered annually during the third week in January at a cost of \$250.00 per attendee, and involves successful completion of a two-part exam over a three-day period. After obtaining certification, one can apply for a license for each state in which the work is to be performed at a cost of \$35.00 per state. Additional continuing certification credits are required to maintain a Pesticides Applicator License on an annual basis. Each state has its own minimum number of credits that need to be maintained annually to keep the license current. The program specifications require compliance with all local requirements, ordinances or regulations of the various cities, towns and villages where work is performed. The contract specifications further contemplate that the contractor [performer of the work] will be liable for any citations or fines imposed as a result of any violations of such local requirements, ordinances or regulations.



File -
Craig Acc. Safety?

MEMORANDUM

TO: Mike Ruehling

FROM: Steve Ramsey, Director of Grade Crossing Safety

DATE: May 4, 2002

RE: Highway-Rail Grade Crossing Clearing Program



CSXT is about to launch a system-wide program to clear-cut and control trees and vegetation at public grade crossings equipped with "passive" warning devices (i.e. crossbucks). The program involves clearing land at designated passive public crossings to improve visibility for the motoring public. It is anticipated that subsequent growth of vegetation in the cleared areas will be controlled through the application of chemical spray.

CSXT will employ an outside contractor, DeAngelo Brothers Inc., to perform the work in accordance with the program specifications. The area cleared at each crossing will depend on the right-of-way width and maximum authorized track speed. Except where state law requires greater amounts of vegetation to be cleared at crossings, or requires additional crossings to be cleared (where in either case CSXT will comply with applicable state law), the contractor will be required to clear the entire width of the operating right-of-way for a distance parallel to the track, in both direction from the edge of the traveled roadway, of:

- 300 ft. for maximized authorized track speed of 30 mph or less;
- 600 ft. for a ~~maximum authorized track speed~~ of 30 to 60 mph; and
- 900 ft. for a maximum authorized track speed of greater than 60 mph.

The program contemplates clearing trees and vegetation on CSXT property only. The company will furnish appropriate information to the contractor to enable them to identify the boundaries of the CSX operating right-of-way. The contractor will also be responsible for handling or disposing of vegetation residue in a manner that ensures that cleared areas are safe and tidy. In addition, the contractor will be responsible for ensuring compliance with state, federal and local laws, rules, regulations or ordinances (including environmental or other requirements regarding the use of chemical spray).

In order to insure that the program specifications are met, CSXT will employ a separate outside contractor to serve as a "project inspector." The project inspector will be responsible for visually inspecting each crossing and ensuring compliance with the program specifications. **1640**



CJ-0227

During the first year of the program, public passive crossings in the following states will be cleared: Alabama, Florida, Georgia, Louisiana, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. The second year of the program will address crossings in remaining states: Connecticut, Delaware, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia, and West Virginia. The proposed start date is May 16, 2002, and a preliminary schedule for the upcoming work is attached.

You may want to notify the State Relations group about the program and advise them that work is about to begin. More specific schedule information will be provided as the program progresses, so that the State Relations group can advise the appropriate local officials and affected community members, if necessary, before cutting begins. We may also want to consider preparing a "form" notice letter for use by the State Relations group. I would be pleased to coordinate with the Law and/or Corporate Communications Departments to prepare such a letter.

Should you (or your colleagues) have any questions or comments regarding the program, please contact me directly to discuss.

cc:

M.G. Aron

K.A. Burns

J.E. Codd

C. Craig-Johnson

E.M. Fitzsimmons

C. Haas

A.I. Havens

M.A. Hollingsworth

H.H. Hopkins

F. Lonegro

D.R. Lynch

J.M. Marks, Jr.

M.C. McMaster

J.R. Mohorovic

P.L. Powell

N.S. Yovanovic

Green, Dan

From: Covington, Jane
Sent: Friday, May 31, 2002 3:15 PM
To: Adams, James L; Key, Lyle Jr.; Green, Dan; Cooper, Lyman; Hall, David ; Keegan, Susan
Cc: Ruehling, Mike; Burns, Kathy; Hollingsworth, Adam
Subject: FW: DBI Crossing Schedules



DBI Crossing
Schedules

Guys-

I know we've talked about the crossing clearing program before, but this is an updated schedule that relates to your states. I have been asked by Adam and Ellen to be the corp. comm/ state relations liaison on this project (another "benefit" of being in Jacksonville?)

Just for clarification, there are two programs....one is a crossing clearing program and the other is a right-of-way clearing program. The attached schedule is for the crossing clearing program. We are working to be sure there is a clear line of sight at crossings without active warning devices. In this program, we cut the brush down to about four inches from the ground and we clean up the mess. In the right-of-way clearing program, we have loggers who come in for free in exchange for getting the timber that they clear. In that program, they typically leave the brush and tree-tops on the ground. They are not allowed to pile it and they have to run over it to break it down somewhat, but we do not require that the brush be hauled away. The logging program is on hold at the moment but when will start back up on the Wilmington sub (which Lyman will be thrilled to know) at some point in the near future. They will be sure to let me know in advance so I can then warn Lyman. The logging program is, of course, the one that causes us the most problems.

Ellen Fitzsimmons apparently discussed these programs in a meeting yesterday and wants to be sure as part of our effort to be more community friendly that state relations and corp comm stay ahead of the game and make proper notifications, including press releases if appropriate. I told her by e-mail that I thought the RVP's were already on-board but that I would follow-up to be sure.

Seems to me that we could get some decent press on the crossing clearing program and RVP's may be able to get brownie points with DOT and local officials. The logging program, we probably don't want to pitch to the media but may need to make certain state/local notifications.

-----Original Message-----
From: McMaster, Mike
Sent: Friday, May 31, 2002 12:53 PM
To: Covington, Jane
Subject: FW: DBI Crossing Schedules

FYI - schedule will be updated every 2 weeks.

-----Original Message-----
From: Wayne Hug [mailto:whug@dbiservices.com]
Sent: Thursday, May 30, 2002 12:45 PM
To: McMaster, Mike
Cc: Ramsey, Steve ; Brian Berlanda (E-mail); Joe Campolong; Mike Bertagnoli; Paul DeAngelo; 'stprce@ndrinc.com'
Subject: DBI Crossing Schedules

Wayne asked me to resend this email. Some recipients may not have received it when it was originally sent..

Mike,

Attached are the schedules I prepared for our contract. Please understand that this schedule is subject to change as we will continue to



1642

DG-0079

From: McMaster, Mike
Sent: Monday, February 24, 2003 7:08 AM
To: 'Wayne Hug'; Goedde, Kelly; Powell, Buddy ; Steve Price (E-mail);
Bill Patterson
Subject: Revised Clearing Specifications

Importance: High

Effective immediately, 2/24/03:

'A' crossings - Clear the area as described in existing specifications with the following changes to physical limits.

Area to be cleared full width of R/W to a distance 100' from edge of traveled surface (point A). In addition clear from a point located 28' from centerline of track at 350' down the track (point B) measured from edge of traveled surface, on a straight line to (point A) located at the cleared edge of R/W 100' from edge of traveled surface.

'B' crossings - Clear the area as described in existing specifications with the following changes to physical limits.

Area to be cleared full width of R/W to a distance 100' from edge of traveled surface (point A). In addition clear from a point located 28' from centerline at 650' down the track (point B) measured from edge of traveled surface on a straight line to (point A) the cleared edge of R/W 100' from edge of traveled surface.

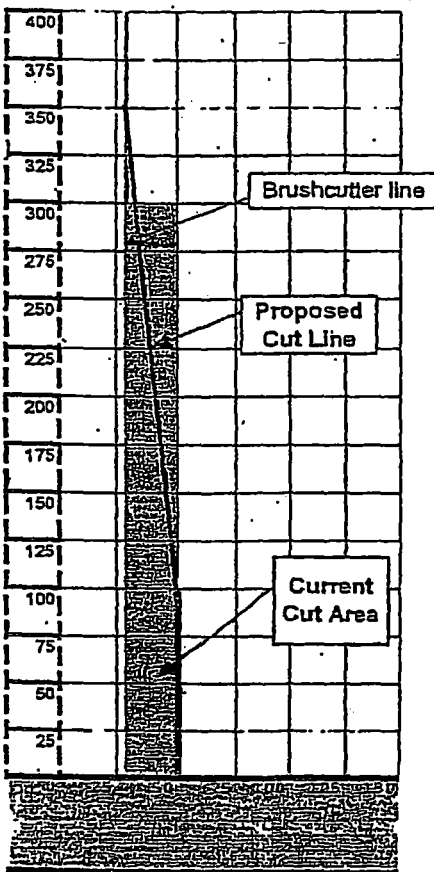
'C' crossings - Clear the area as described in existing specifications with the following changes to physical limits.

Area to be cleared full width of R/W to a distance 100' from edge of traveled surface (point A). In addition clear from a point located 28' from centerline at 950' down the track (point B) measured from edge of traveled surface on a straight line to (point A) the cleared edge of R/W 100' from edge of traveled surface.

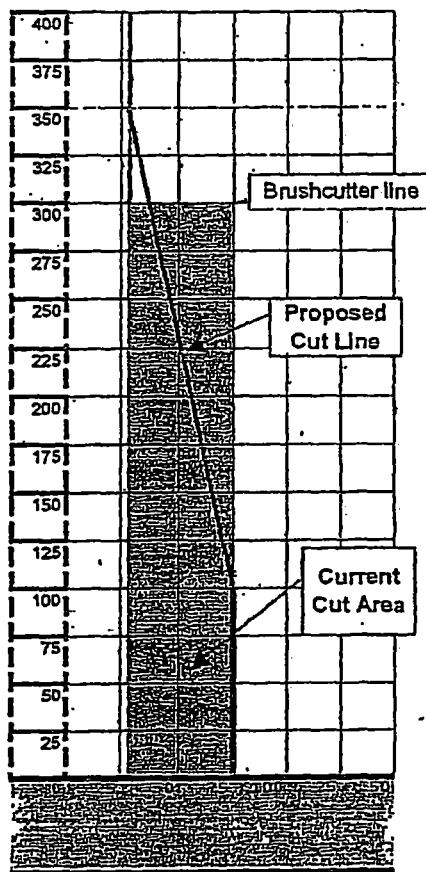


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EXHIBIT
tabbles 104

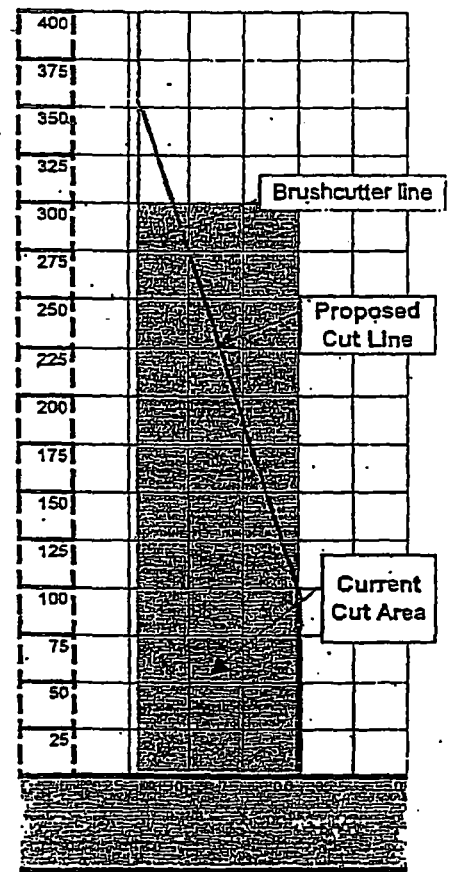
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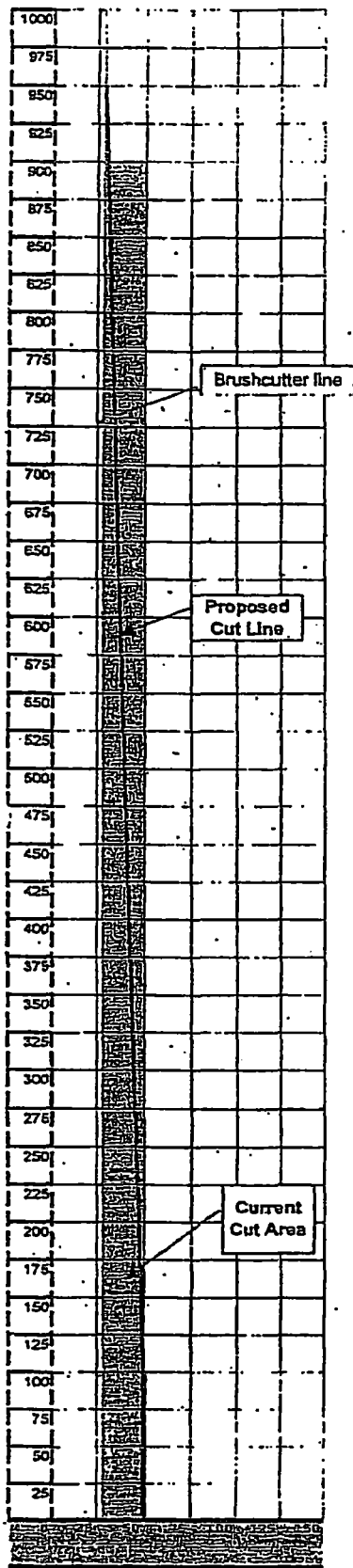


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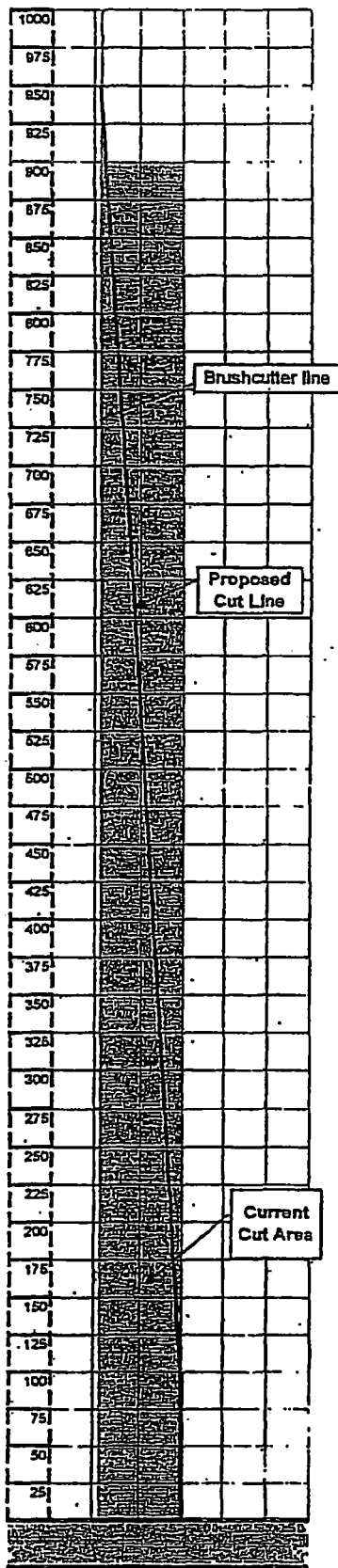


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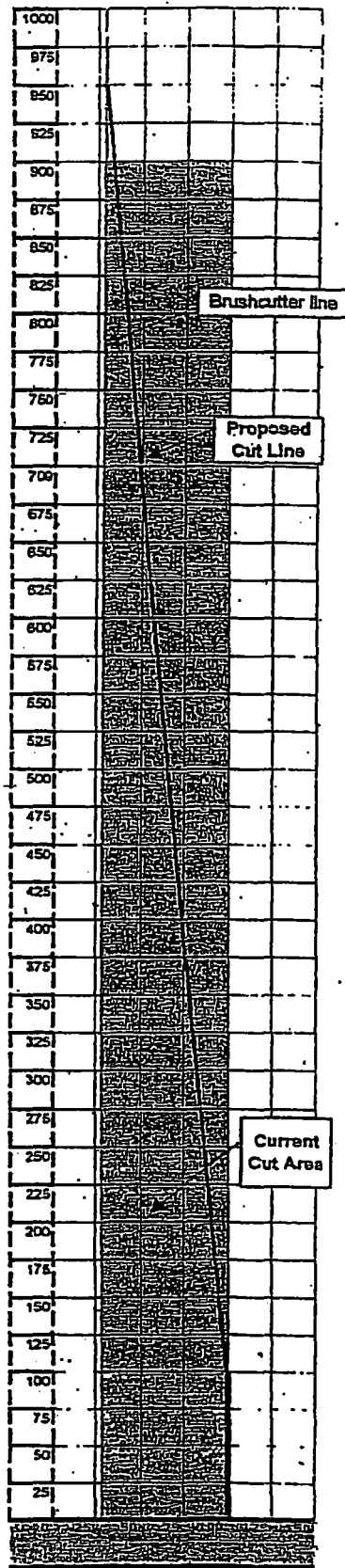
CX700369



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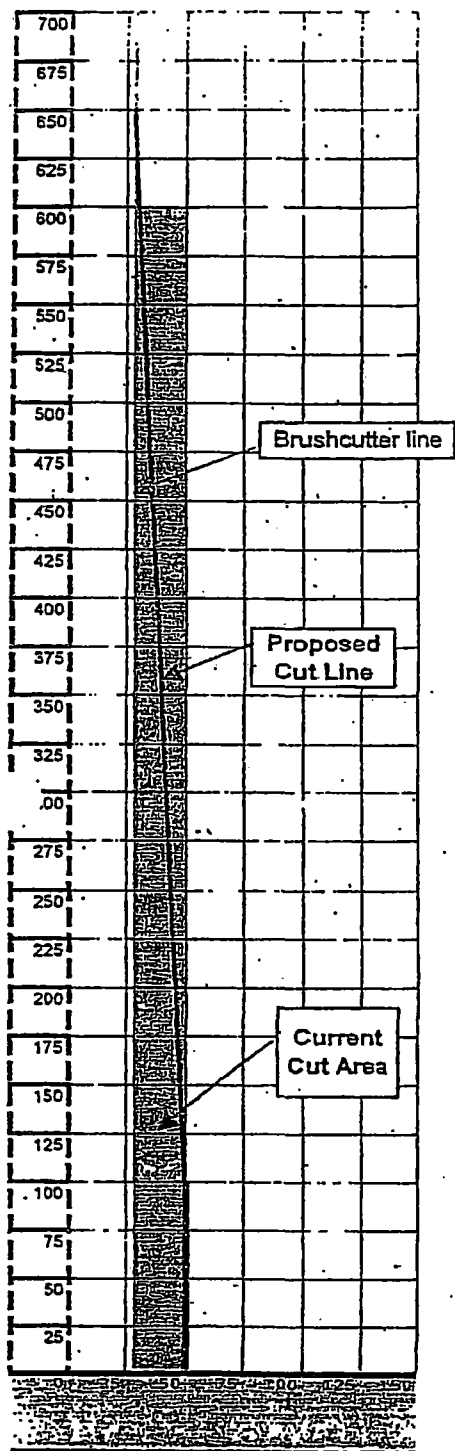


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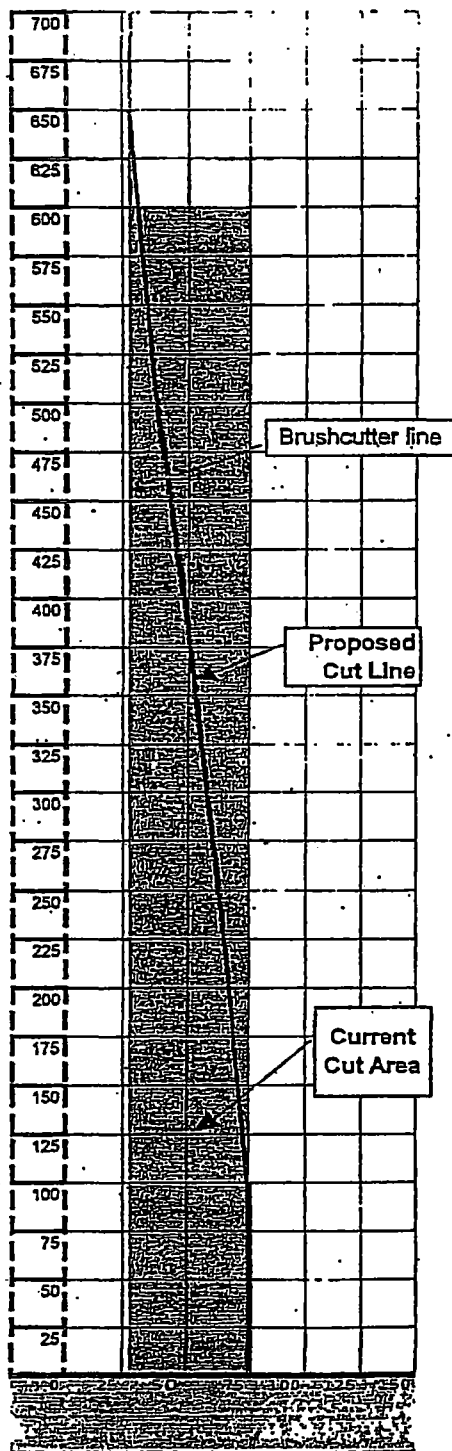


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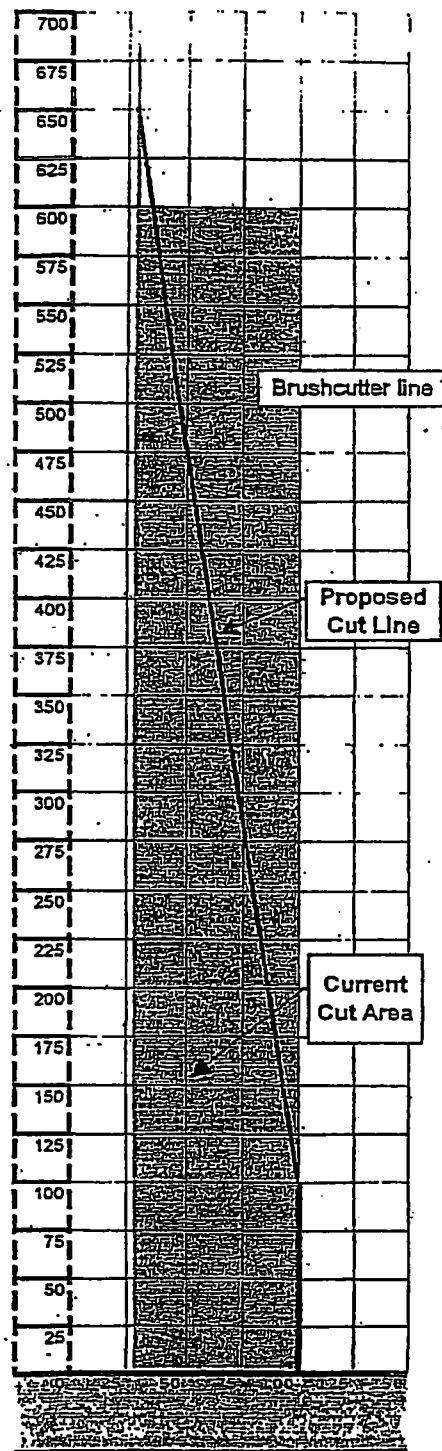
CX700370



50x650



75x650



100x650



Lemaster, John

From: LeMaster, John
Sent: Monday, October 13, 2003 3:05 PM
To: 'Bill Patterson'
Cc: stprice@hdrinc.com
Subject: RE: Landowner/City Issues - Issue at 633468F



Our crossing inventory shows 633468F is a public crossing. In fact, the inventory lists the highway as being "Hill Road" and "SR 53" (state road). Is this information incorrect?

John L.

-----Original Message-----

From: Bill Patterson [mailto:BPatterson@dbiservices.com]
Sent: Monday, October 13, 2003 9:37 AM
To: LeMaster, John
Cc: stprice@hdrinc.com
Subject: RE: Landowner/City Issues - Issue at 633468F

John, This crossing should be changed to private since it goes to Mr. Jackson's house only. It is a private drive and not a public road. Therefore I do not believe it should be part of this project. Please advise. Thanks, Bill

-----Original Message-----

From: LeMaster, John [mailto:John_LeMaster@tsx.com]
Sent: Thursday, October 09, 2003 9:36 AM
To: Bill Patterson; Goedde, Kelly
Subject: RE: Landowner/City Issues - Issue at 633468F

I looked at 633468F in "Viewer", and saw no lease agreement at this location. The ROW as shown on the Val Map should be correct. Have you had the opportunity to show Mr. Jackson the Val Map? Does he assert that he has a deed that conflicts with the ROW shown on the Val Map? If so, please ask him to produce a copy so that we can correct our records. If he has no such claim, we will plan to cut the ROW to our project specifications.

John LeMaster

-----Original Message-----

From: Bill Patterson [mailto:BPatterson@dbiservices.com]
Sent: Tuesday, October 07, 2003 11:29 AM
To: Goedde, Kelly
Cc: LeMaster, John
Subject: Landowner/City Issues

Kelly, We have cut everything on these crossings except the following areas:

Crossing MP 444.10 633468F Did not cut Quad A - Landowner claims it is his private property - Tommy Jackson 84 Hill Rd. Yemassee, SC

1647

CX610004



DATA TABLE

Page 1 Line 1

Loco Num 7837
Starting 02/03/04 16:35:00 35 miles 830 feet
Ending 02/03/04 15:00:00 89 miles 2564 Wabtec Railway Electronics

Data Analysis
Version 3.2

Date	Time	Distance mile	Spd feet	Load mph	AB psi	EOT psi	IB psi	Throttle 012345678	Horn	Bell	Dyn Brk	DOT
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1648

CSX19702

DATA TABLE

Page 2 Line 1

Loco Num 7837
 Starting 02/03/04 16:35:00 35 miles 830 feet
 Ending 02/03/04 15:00:00 89 miles 2564 Wabtec Railway Electronics

FE133 Data Analysis

Version 3.2

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02/03/16:33:41		35	853	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:40		35	854	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:39		35	855	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:38		35	855	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:37		35	856	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:36		35	856	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:35		35	857	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:34		35	858	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:33		35	858	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:32		35	859	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:31		35	860	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:30		35	860	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:29		35	861	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:28		35	861	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:27		35	863	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:26		35	863	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:25		35	864	0	0	0	0	71 1	Off	On	Off	1649
02/03/16:33:24		35	864	0	0	0	0	71 1	Off	On	Off	
02/03/16:33:23		35	865	0	0	0	0	71 1	Off	On	Off	
02/03/16:33:22		35	866	0	0	0	0	71 1	Off	On	Off	-
02/03/16:33:21		35	866	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:20		35	867	0	0	0	0	71 1	Off	On	Off	F
02/03/16:33:19		35	868	0	0	0	0	71 1	Off	On	Off	F

DATA TABLE

Page 3 Line 1

Loco Num 7837 FE133 Data Analysis
 Starting 02/03/04 16:35:00 35 miles 830 feet Version 3.2
 Ending 02/03/04 15:00:00 89 miles 2564 Wabtec Railway Electronics

Date	Time	Distance mile	Spd feet	Load mph	AB psi	BOF psi	IB psi	Throttle 012345678	Horn	Bell	Dyn Brk	DOT
02/03	16:33:18	35	868	0	0	0	71	1	Off	On	Off	F
02/03	16:33:17	35	869	0	0	0	71	1	Off	On	Off	F
02/03	16:33:16	35	869	0	0	0	71	1	Off	On	Off	F
02/03	16:33:15	35	870	1	0	0	71	1	Off	On	Off	F
02/03	16:33:14	35	872	2	0	0	71	1	Off	On	Off	F
02/03	16:33:13	35	877	4	0	0	71	1	Off	On	Off	F
02/03	16:33:12	35	883	5	0	0	71	1	Off	On	Off	F
02/03	16:33:11	35	891	7	0	0	71	1	Off	On	Off	F
02/03	16:33:10	35	902	8	0	0	71	1	Off	On	Off	F
02/03	16:33:09	35	916	10	0	0	71	1	Off	On	Off	F
02/03	16:33:08	35	929	10	0	0	71	1	Off	On	Off	F
02/03	16:33:07	35	944	11	0	0	71	1	Off	On	Off	F
02/03	16:33:06	35	961	12	0	0	71	1	Off	On	Off	F
02/03	16:33:05	35	979	13	0	0	71	1	Off	On	Off	F
02/03	16:33:04	35	1001	15	0	0	71	1	Off	On	Off	F
02/03	16:33:03	35	1023	15	0	0	71	1	Off	On	Off	F
02/03	16:33:02	35	1045	16	0	0	71	1	Off	On	Off	F
02/03	16:33:01	35	1070	18	0	0	71	1	Off	On	Off	F
02/03	16:33:00	35	1097	19	0	0	70	1	Off	On	Off	F
02/03	16:32:59	35	1126	21	0	0	70	1	Off	On	Off	F
02/03	16:32:58	35	1158	22	0	0	70	1	Off	On	Off	F
02/03	16:32:57	35	1190	22	0	0	70	1	Off	On	Off	F
02/03	16:32:56	35	1222	23	0	0	70	1	Off	On	Off	F
02/03	16:32:55	35	1257	25	0	0	70	1	Off	On	Off	F
02/03	16:32:54	35	1293	26	0	0	70	1	Off	On	Off	F
02/03	16:32:53	35	1332	27	0	0	70	1	Off	On	Off	F
02/03	16:32:52	35	1374	29	0	0	69	1	Off	On	Off	F
02/03	16:32:51	35	1416	29	0	0	69	1	Off	On	Off	F
02/03	16:32:50	35	1459	30	0	0	70	1	Off	On	Off	F
02/03	16:32:49	35	1504	31	0	0	69	1	Off	On	Off	F
02/03	16:32:48	35	1553	33	0	0	69	1	Off	On	Off	F
02/03	16:32:47	35	1601	33	0	0	69	1	Off	On	Off	F
02/03	16:32:46	35	1651	34	0	0	69	1	Off	On	Off	F
02/03	16:32:45	35	1701	34	0	0	69	1	Off	On	Off	F
02/03	16:32:44	35	1752	36	0	0	68	1	Off	On	Off	F
02/03	16:32:43	35	1805	36	0	0	65	1	Off	On	Off	F
02/03	16:32:42	35	1858	37	0	0	63	1	Off	On	Off	F
02/03	16:32:41	35	1914	38	0	0	59	1	Off	On	Off	F
02/03	16:32:40	35	1970	39	0	0	55	1	Off	On	Off	F
02/03	16:32:39	35	2027	39	0	0	49	1	Off	On	Off	F
02/03	16:32:38	35	2085	39	0	0	43	1	Off	On	Off	F
02/03	16:32:37	35	2143	40	0	0	37	1	Off	On	Off	F
02/03	16:32:36	35	2203	40	0	0	31	1	Off	On	Off	F
02/03	16:32:35	35	2262	41	0	0	23	1	Off	On	Off	F
02/03	16:32:34	35	2323	41	0	0	15	1	Off	On	Off	F
02/03	16:32:33	35	2384	41	0	0	8	1	Off	On	Off	F
02/03	16:32:32	35	2445	41	0	29	0	1	On	On	Off	F
02/03	16:32:31	35	2507	42	0	87	0	1	On	On	Off	F
02/03	16:32:30	35	2568	42	0	87	0	1	On	On	Off	F
02/03	16:32:29	35	2630	42	0	87	0	1	On	On	Off	F
02/03	16:32:28	35	2692	42	0	87	0	1	On	On	Off	F

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CCY10704

DATA TABLE

Page 4 Line 1

Loco Num 7837
 Starting 02/03/04 16:35:00 35 miles 830 feet
 Ending 02/03/04 15:00:00 89 miles 2564 Wabtec Railway Electronics

FE133 Data Analysis
 Version 3.2

Date	Time	Distance mile	Spd feet/mph	Load amps	AB psi	EOT psi	IB psi	Throttle 012345678	Horn	Bell	Dyn Brk	DOT	
02/03	16:32:27	35	2754	42	0	87	0	0	1	Off	On	Off	F
02/03	16:32:26	35	2817	42	0	87	0	0	1	On	On	Off	F
02/03	16:32:25	35	2879	42	0	87	0	0	1	On	On	Off	F
02/03	16:32:24	35	2942	42	0	87	0	0	1	On	On	Off	F
02/03	16:32:23	35	3004	42	0	87	0	0	1	On	On	Off	F
02/03	16:32:22	35	3067	42	0	87	0	0	1	On	On	Off	F
02/03	16:32:21	35	3131	44	0	87	0	0	1	On	On	Off	F
02/03	16:32:20	35	3196	44	0	87	0	0	1	On	On	Off	F
02/03	16:32:19	35	3260	44	0	87	0	0	1	On	On	Off	F
02/03	16:32:18	35	3324	44	0	87	0	0	1	On	On	Off	F
02/03	16:32:17	35	3389	44	0	87	0	0	1	On	On	Off	F
02/03	16:32:16	35	3453	44	0	87	0	0	1	On	On	Off	F
02/03	16:32:15	35	3518	44	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:14	35	3582	44	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:13	35	3649	45	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:12	35	3715	45	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:11	35	3782	45	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:10	35	3848	45	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:09	35	3914	45	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:08	35	3981	45	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:07	35	4047	45	0	87	0	0	1	Off	Off	Off	F
02/03	16:32:06	35	4115	45	0	87	0	0	1	Off	On	Off	F
02/03	16:32:05	35	4182	45	0	87	0	0	1	Off	On	Off	F
02/03	16:32:04	35	4249	45	0	87	0	0	1	Off	On	Off	F
02/03	16:32:03	35	4316	45	0	87	0	0	1	Off	On	Off	F
02/03	16:32:02	35	4384	45	0	87	0	0	1	Off	On	Off	F
02/03	16:32:01	35	4452	46	0	87	0	0	1	Off	On	Off	F
02/03	16:32:00	35	4520	46	0	87	0	0	1	Off	On	Off	F
02/03	16:31:59	35	4587	46	0	87	0	0	1	Off	On	Off	F
02/03	16:31:58	35	4655	46	72	87	0	0	3	Off	On	Off	F
02/03	16:31:57	35	4723	46	0	87	0	0	3	Off	On	Off	F
02/03	16:31:56	35	4791	46	0	87	0	0	3	Off	On	Off	F
02/03	16:31:55	35	4859	46	8	87	0	0	5	Off	On	Off	F
02/03	16:31:54	35	4927	46	0	87	0	0	5	Off	On	Off	F
02/03	16:31:53	35	4996	46	0	87	0	0	1	Off	On	Off	F
02/03	16:31:52	35	5065	46	0	87	0	0	1	On	On	Off	F
02/03	16:31:51	35	5134	47	0	87	0	0	1	Off	On	Off	F
02/03	16:31:50	35	5204	47	0	87	0	0	1	Off	On	Off	F
02/03	16:31:49	35	5273	47	0	87	0	0	1	Off	On	Off	F
02/03	16:31:48	36	62	47	0	87	0	0	1	Off	On	Off	F
02/03	16:31:47	36	131	47	16	87	0	0	1	On	On	Off	F
02/03	16:31:46	36	201	47	56	87	0	0	1	On	On	Off	F
02/03	16:31:45	36	270	47	128	87	0	0	1	On	On	On	F
02/03	16:31:44	36	339	47	128	87	0	0	1	Off	On	On	F
02/03	16:31:43	36	410	47	256	87	0	0	1	On	On	On	F
02/03	16:31:42	36	481	47	256	87	0	0	1	On	On	On	F
02/03	16:31:41	36	551	47	256	87	0	0	1	On	On	On	F
02/03	16:31:40	36	622	47	256	87	0	0	1	On	On	On	1651
02/03	16:31:39	36	692	47	256	87	0	0	1	On	On	On	
02/03	16:31:38	36	763	47	256	87	0	0	1	On	On	On	
02/03	16:31:37	36	834	47	256	87	0	0	1	On	On	On	

DATA TABLE

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Loco Num 7837

FH133 Data Analysis

Starting 02/03/04 16:35:00 35 miles 830 feet

Version 3.2

Ending 02/03/04 15:00:00 89 miles 2564 Wabtec Railway Electronics

Date	Time	Distance mile	Spd feet	load mph	AB psi	EOF psi	IB psi	Throttle 012345678	Horn	Bell	Dyn Brk	DOT	
02/03	16:31:36	36	905	47	456	87	0	0	1	On	On	On	F
02/03	16:31:35	36	975	47	456	87	0	0	1	On	On	On	F
02/03	16:31:34	36	1045	47	656	87	0	0	1	Off	On	On	F
02/03	16:31:33	36	1116	47	744	87	0	0	1	Off	On	On	F
02/03	16:31:32	36	1186	47	800	87	0	0	1	Off	On	On	F
02/03	16:31:31	36	1256	47	832	87	0	0	1	Off	On	On	F
02/03	16:31:30	36	1327	47	864	87	0	0	1	On	On	On	F
02/03	16:31:29	36	1400	49	872	87	0	0	1	On	On	On	F
02/03	16:31:28	36	1472	49	872	87	0	0	1	On	On	On	F
02/03	16:31:27	36	1545	49	872	87	0	0	1	On	On	On	F
02/03	16:31:26	36	1617	49	872	87	0	0	1	On	On	On	F
02/03	16:31:25	36	1690	49	872	87	0	0	1	On	On	On	F
02/03	16:31:24	36	1763	49	872	87	0	0	1	On	On	On	F
02/03	16:31:23	36	1836	49	872	87	0	0	1	On	On	On	F
02/03	16:31:22	36	1908	49	872	87	0	0	1	On	On	On	F
02/03	16:31:21	36	1981	49	872	87	0	0	1	On	On	On	F
02/03	16:31:20	36	2054	49	872	87	0	0	1	On	On	On	F
02/03	16:31:19	36	2127	49	872	87	0	0	1	On	On	On	F
02/03	16:31:18	36	2199	49	872	87	0	0	1	On	On	On	F
02/03	16:31:17	36	2272	49	872	87	0	0	1	On	On	On	F
02/03	16:31:16	36	2344	49	872	87	0	0	1	On	On	On	F
02/03	16:31:15	36	2417	49	872	87	0	0	1	On	On	On	F
02/03	16:31:14	36	2490	49	872	87	0	0	1	Off	On	On	F
02/03	16:31:13	36	2562	49	880	87	0	0	1	Off	On	On	F
02/03	16:31:12	36	2635	49	784	87	0	0	1	Off	On	On	F
02/03	16:31:11	36	2708	49	784	87	0	0	1	Off	On	On	F
02/03	16:31:10	36	2781	49	784	87	0	0	1	Off	On	On	F
02/03	16:31:09	36	2854	49	784	87	0	0	1	Off	On	On	F
02/03	16:31:08	36	2926	49	752	87	0	0	1	On	On	On	F
02/03	16:31:07	36	2998	49	704	87	0	0	1	Off	On	On	F
02/03	16:31:06	36	3071	49	664	87	0	0	1	Off	On	On	F
02/03	16:31:05	36	3143	48	648	87	0	0	1	Off	On	On	F
02/03	16:31:04	36	3214	48	648	87	0	0	1	Off	On	On	F
02/03	16:31:03	36	3286	48	648	87	0	0	1	Off	On	On	F
02/03	16:31:02	36	3357	48	648	87	0	0	1	Off	On	On	F
02/03	16:31:01	36	3429	48	648	87	0	0	1	Off	On	On	F
02/03	16:31:00	36	3500	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:59	36	3572	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:58	36	3644	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:57	36	3715	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:56	36	3787	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:55	36	3858	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:54	36	3930	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:53	36	4002	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:52	36	4073	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:51	36	4144	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:50	36	4216	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:49	36	4288	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:48	36	4359	48	648	87	0	0	1	Off	On	On	F
02/03	16:30:47	36	4429	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:46	36	4500	47	696	87	0	0	1	Off	On	On	F

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DATA TABLE

Page 6 Line 1

Loco Num 7837
 Starting 02/03/04 16:35:00 35 miles 830 feet
 Ending 02/03/04 15:00:00 89 miles 2564 Wabtec Railway Electronics
 FE133 Data Analysis Version 3.2

Date	Time	Distance mile	Spd feet mph	Load amps	AB psi	EOT psi	IB psi	Throttle 012345678	Horn	Bell	Dyn Brk	DOT
02/03	16:30:45	364570	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:44	364640	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:43	364710	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:42	364780	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:41	364851	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:40	364921	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:39	364991	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:38	365061	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:37	365132	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:36	365202	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:35	365272	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:34	37 63	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:33	37 132	47	696	87	0	0	1	Off	On	On	F
02/03	16:30:32	37 202	47	896	87	0	0	1	Off	On	On	F
02/03	16:30:31	37 272	47	896	87	0	0	1	Off	On	On	F
02/03	16:30:30	37 341	47	896	87	0	0	1	Off	On	On	F
02/03	16:30:29	37 410	46	816	87	0	0	1	Off	On	On	F
02/03	16:30:28	37 478	46	816	87	0	0	1	Off	On	On	F
02/03	16:30:27	37 546	46	816	87	0	0	1	Off	On	On	F
02/03	16:30:26	37 614	46	816	87	0	0	1	Off	On	On	F
02/03	16:30:25	37 683	46	816	87	0	0	1	Off	On	On	F
02/03	16:30:24	37 751	46	816	87	0	0	1	Off	On	On	F
02/03	16:30:23	37 819	46	816	87	0	0	1	Off	On	On	F
02/03	16:30:22	37 887	46	800	87	0	0	1	On	On	On	F
02/03	16:30:21	37 956	46	712	87	0	0	1	Off	On	On	F
02/03	16:30:20	37 1023	46	712	87	0	0	1	Off	On	On	F
02/03	16:30:19	37 1091	45	704	87	0	0	1	On	On	On	F
02/03	16:30:18	37 1158	45	608	87	0	0	1	On	On	On	F
02/03	16:30:17	37 1226	45	536	87	0	0	1	Off	On	On	F
02/03	16:30:16	37 1293	45	496	87	0	0	1	On	On	On	F
02/03	16:30:15	37 1360	45	376	87	0	0	1	Off	On	On	F
02/03	16:30:14	37 1427	45	376	87	0	0	1	Off	On	On	F
02/03	16:30:13	37 1494	45	376	87	0	0	1	Off	On	On	F
02/03	16:30:12	37 1560	45	328	87	0	0	1	On	On	On	F
02/03	16:30:11	37 1627	45	296	87	0	0	1	Off	On	On	F
02/03	16:30:10	37 1695	45	272	87	0	0	1	On	On	On	F
02/03	16:30:09	37 1762	45	176	87	0	0	1	Off	On	On	F
02/03	16:30:08	37 1829	45	136	87	0	0	1	On	On	On	F
02/03	16:30:07	37 1896	45	152	87	0	0	1	On	On	On	F
02/03	16:30:06	37 1962	44	176	87	0	0	1	On	On	On	F
02/03	16:30:05	37 2028	44	176	87	0	0	1	On	On	On	F
02/03	16:30:04	37 2094	44	176	87	0	0	1	On	On	On	F
02/03	16:30:03	37 2160	44	176	87	0	0	1	On	On	On	F
02/03	16:30:02	37 2226	44	176	87	0	0	1	On	On	On	F
02/03	16:30:01	37 2292	44	176	87	0	0	1	On	On	On	F
02/03	16:30:00	37 2358	44	224	87	0	0	1	Off	Off	On	F
02/03	16:29:59	37 2423	44	224	87	0	0	1	Off	Off	On	1653
02/03	16:29:58	37 2487	44	224	87	0	0	1	Off	Off	On	
02/03	16:29:57	37 2552	44	224	87	0	0	1	Off	Off	On	
02/03	16:29:56	37 2617	44	224	87	0	0	1	Off	Off	On	
02/03	16:29:55	37 2682	44	224	87	0	0	1	Off	Off	On	F

Stop distance after impact and distance horn blown:

1423 ft. (Parking Lot) Horn was on 5 sec. off 1 sec. on 11 sec. before impact. Emergency brake was 2 sec. before impact. Length of horn blow prior to impact = 1161 ft.

1584 ft. (3/10 mi. Police) Horn was on 5 sec. off 1 sec. on 11 sec. Emergency brake was at or near impact length of horn prior to impact = 1,000 ft.

1654

