

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-39

Arthur Badger as Personal Representative
of the Estate of Donna Badger. Respondent,

v.

United Parcel Service and Matthew C. Fields.....Appellants,

APPELLANTS' RETURN TO RESPONDENT'S
MOTION TO DISMISS APPEAL

Appellants United Parcel Service ("UPS") and Matthew C. Fields ("Fields") (collectively "Appellants") submit this return in opposition to the motion by Respondent Arthur Badger, as Personal Representative of the Estate of Donna Badger ("Respondent" or "Badger") to dismiss this appeal.

Respondent's motion to dismiss is fundamentally flawed in two respects: First, his argument relies upon cases that do not address the situation presented by this appeal. Second, Respondent fails to confront (or even cite) the controlling decision of the South Carolina Supreme Court, which has expressly held that a decision of the nature on appeal here **must** be appealed immediately or else it becomes law of the case and cannot be subject to later review. In spite of Respondent's best efforts to mischaracterize the circuit

court's orders denying joinder and consolidation for trial as "discretionary rulings . . . regarding matters of procedure" and "run-of-the-mill docket management decisions," the orders will result in a monumental waste of resources and deprive Appellants of their substantive statutory right to a full and fair apportionment of liability absent immediate review. (Resp't's Mot. p. 4-5) As discussed in greater detail herein, both the order denying joinder and the order denying consolidation for trial affect the merits of this action and implicate Appellants' substantial rights. Accordingly, this Court should deny the motion to dismiss and permit these appeals to proceed.

FACTUAL AND PROCEDURAL BACKGROUND

This personal injury action arises from the January 28, 2011 two-vehicle collision along Highway 278 in Allendale County between a Ford Expedition driven by Respondent Arthur Badger and a UPS delivery truck operated by Fields. Mr. Badger and five passengers sustained injuries following his improper attempt to overtake the UPS truck as its driver was making a left hand turn off of the Barnwell Highway into a residential driveway.

While the Badger vehicle was en route along Highway 278, a UPS truck driven by Fields entered the roadway ahead of the Badger Expedition. Arthur Badger testified that he "ran up to the UPS truck" and decided to pass it because the UPS truck was slowing down. Fields testified that he had activated his left turn signal and engaged his brakes prior to commencing his turn. (Field's Aff., Ex. A, ¶ 4) Badger claims the UPS truck turned into his path as he attempted to pass it. (Badger Dep., relevant portions attached as Ex. B, p. 22, lines 14-24) Following the accident, Badger informed the police that he had consumed alcohol and smoked marijuana on the day of the collision. (Badger

Dep. (Ex. B) p. 91, lines 18-20; p. 93, line 18 - p. 94, line 22) Following the accident, toxicology testing confirmed the presence of both alcohol and cannabinoids in Badger's blood. (Toxicology Report, Ex. C)

Respondent alleges that Appellants negligently caused the accident and the resulting injuries and damages. (Compl., Ex. D, ¶¶ 4-6) Conversely, UPS and Fields assert that Badger was comparatively negligent in failing to heed the UPS truck's activated left turn signal and illuminated brake lights and, further, in operating a vehicle while under the influence of alcohol and illegal drugs. (Answer, Ex. E, ¶¶ 9, 11, 13, and 15) Disregarding clear evidence of Badger's comparative fault in causing the accident, plaintiffs, four of whom are related to Badger, elected not to name him as a defendant. Rather, they chose to go after the "deep pockets," naming only UPS and Fields as defendants. Consistent with their statutory right to have a jury accurately and fairly apportion fault consistent with S.C. Code Ann. § 15-38-15, UPS and Fields moved for an order joining Badger as a party defendant and adding him to the special verdict form. At the same time, and in the interests of judicial economy, UPS and Fields filed motions to consolidate these actions for all purposes, including trial.¹

Following oral argument on March 21, 2012, the circuit court denied the motions for joinder and denied, in part, the motions to consolidate in written orders dated April 11, 2012, and entered April 23, 2012. This appeal followed.

¹ Specifically, on December 21, 2011, UPS and Field filed motions for joinder and to consolidate pursuant to Rules 19, 20, and 42(a) of the South Carolina Rules of Civil Procedures. These motions are attached collectively as Exhibit F.

ARGUMENT

The fundamental issue presented in this appeal is whether the plain terms of S.C. Code Ann. § 15-38-15 afford Appellants the substantial right to join Badger as a necessary defendant so that the jury may fairly and fully apportion fault. Appellants contend and will urge this Court to hold that this section affords them the substantial right to implead Badger as an indispensable party so the jury may determine his relative degree of fault in causing the January 28, 2011 accident. Should the jury determine Badger's proportional fault exceeds fifty percent - a likely result given toxicology results demonstrating he was under the influence of alcohol and illegal drugs at the time of the collision - Appellants will not be jointly and severally liable, and their liability will be limited to their actual percentage of fault, if any.

Appellants' statutory right to avoid being held liable for all damages is undoubtedly a substantial right specifically granted by enactment of the General Assembly. It is a matter involving the merits, and the order denying Appellants' joinder motion is immediately appealable pursuant to S.C. Code Ann. §§ 14-3-330(1) and (2). Similarly, controlling authority compels the conclusion that an order denying consolidation necessarily implicates Appellants' substantial rights in these actions, which are pending in the same court, at the same time, between the same parties, and involve substantially the same subject matter, issues, and defenses. For all of these reasons, the motion to dismiss should be denied, and these appeals should proceed without further delay.

I. THE CIRCUIT COURT ORDER DENYING JOINDER IS SUBJECT TO IMMEDIATE APPELLATE REVIEW BECAUSE IT IMPACTS A SUBSTANTIAL RIGHT AND EFFECTIVELY STRIKES A SUSTANTIVE DEFENSE.

It is telling that Respondent's motion to dismiss effectively ignores the policy considerations underlying amendment of S.C. Code Ann. § 15-38-15. Instead, he fills nearly seven pages with generic discussion of the general appealability statute and inapplicable case citations in a misguided effort to persuade this Court that the order denying joinder of a party who clearly bears responsibility for the underlying accident does not implicate Appellants' substantial right to have a jury fully apportion fault as legislatively mandated.

A. Binding Authority Compels Appellants To Seek Immediate Review Of The Order Denying Joinder.

Controlling authority compels this Court to deny Respondents' motion to dismiss. In the case of *C.I.T. Corp. v. Corley*, reported at 196 S.C. 339, 13 S.E.2d (1941), plaintiff brought a claim and delivery action for possession of a car in which it held a security interest. Defendant in the case moved to join the car dealer as a party to the action, which motion was denied by order dated August 22, 1939. The defendant did not seek immediate review of the motion denying joinder, and the case proceeded to trial. The jury returned a verdict for the defendant; however, the trial court granted a new trial.

As the case progressed, defendant filed a motion to vacate the August 22, 1939 order denying its joinder motion and again moved to join the non-party car dealer. The successive joinder motion was heard by the same judge who, on October 5, 1940, entered a new order vacating his prior decision and adding the dealer as a party to the action. The car dealer appealed, and the South Carolina Supreme Court held that inasmuch as the

defendant failed to pursue immediate review of the denial of its first joinder motion, the ruling denying leave to add the car dealer as a defendant became the law of the case:

It is . . . so manifest that the County Judge was in error in the granting of the order dated October 5, 1940, from which this appeal was taken, that no extended discussion is necessary. For it was definitely adjudged by his previous order, dated August 22, 1939, that the appellant should not be made a party to the action, and **from this order no appeal was taken. Hence it became the law of the case, and the County Judge was wholly without power or jurisdiction to revoke, vacate, overrule or reverse the same.** . . . It follows therefore that the County Court's order dated October 5, 1940, which attempted to overrule the former order dated August 22, 1939, was and is null and void, and that the appellant [car dealer] has never legally been made a party to the action, and is not now a party to the same.

The order of the County Court, dated October 5, 1940, is accordingly reversed.

Id. at 342-343, 13 S.E.2d at 441-442 (emphasis added).²

Pursuant to the holding of *C.I.T. Corp. v. Corley*, the trial court's denial of Appellants' motion to join Badger will become the law of the case if Appellants do not immediately appeal that ruling. The circuit court will be precluded from changing its ruling, and Appellants will be barred from challenging the ruling on appeal from any adverse final judgment. "An appealable order from which no appeal is taken becomes the law of the case in all subsequent proceedings involving the same parties on the same subject matter." *Prof'l Bankers Corp. v. Floyd*, 285 S.C. 607, 613, 331 S.E.2d 362, 365 (Ct. App. 1985); *see also Hagood v. Somerville*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005) (order granting motion to disqualify attorney is immediately appealable, and

² The *C.I.T. Corp. v. Corley* decision has stood as binding precedent for more than 70 years and has never been overruled, criticized, or questioned. Perhaps even more important to this Court's analysis is that the language of section 14-3-330 is the same in all material respects today as it was at the time *C.I.T. Corp.* was decided. Compare S.C. Code Ann. § 26(D) (1932) and § 26(D) (1942) with S.C. Code Ann. § 14-3-330 (1976 & Supp. 2009).

therefore “*must* be immediately appealed or any later objection in a subsequent appeal will be waived”) (emphasis in the original)).

The cases Respondent relies upon to avoid immediate appellate review are of no moment. For example, *Goodson v. R.A. Taylor Const. Co.*, 266 S.C. 33, 221 S.E.2d 102 (1975), cited at page 7 of Respondent’s motion for the proposition that an order denying joinder is not immediately appealable, is not controlling. In that case, the order denying joinder was not subject to immediate review because the circuit court order at issue specifically afforded the right to renew the motion within 20 days, a period which had not expired upon filing of the notice of appeal. *Edgefield County Hospital Trustees v. Cannon Construction and Supply Co.*, 273 S.C. 500, 257 S.E.2d 501 (1979), cited at page 7 of Respondent’s motion for the proposition that an order making a third party a defendant in the action is not immediately appealable, is similarly inapposite. That case pre-dates enactment of tort reform and addresses the situation where a party who has added as a defendant appeals joinder. In comparison, Appellants seek review of an order refusing to join a party defendant as provided for by Rules 19 and 20 of the South Carolina Rules of Civil Procedure and enactment of S.C. Code Ann. § 15-38-15.

As previously noted, *C.I.T. Corp.* makes clear that Appellants will not be able to appeal the denial of their motion to add Badger as a defendant after trial. Thus, if the order denying joinder goes unchallenged, it will become the law of the case and will “finally determine” the issue in advance of any final judgment. The decision must be appealed now, if at all, and Respondent’s motion to dismiss should be denied on this basis.

B. The Order Denying Joinder Implicates Appellants' Substantial Rights.

In 2005, as part of a broader tort reform initiative, the South Carolina General Assembly revised the law of joint and several liability by specifying that pure joint and several liability no longer applies to a defendant who is found to be less than fifty percent at fault as compared to the total fault of all defendants and plaintiffs. *See* S.C. Code Ann. § 15-38-15(A); *Branham v. Ford Motor Company*, 390 S.C. 203, 236, 701 S.E.2d 5, 25 (2010) (finding error in submission of verdict form requiring apportionment of fault between plaintiff and defendant prior to enactment of current version of Contribution Among Joint Tortfeasors Act, which now provides that a “less than fifty percent” at-fault defendant “*shall only be liable for that percentage of the indivisible damages determined by the jury.*”) (emphasis added). Instead, such a defendant is assigned a percentage of fault and is responsible for only the amount of the judgment that is equivalent to his percentage of fault. *Id.* Subsection (C)(3) of § 15-38-15 provides the procedure by which the relative degrees of fault are determined. The Act further provides that defendants “retain the right to assert that another potential tortfeasor, whether a party or not, contributed to the alleged injury or damages, and/or may be liable for any or all of the damages alleged by any other party.” S.C. Code Ann. § 15-38-15(D).

The discussion from *Branham* and the statute itself demonstrate that Appellants enjoy the substantial right to pay no more than their *pro rata* share of any damages if they ultimately are deemed to be less than fifty percent at fault. Implicit in that substantial right - and indeed the only means of ensuring it is exercised in this case - is the recognition of Appellants' ability to implead a joint tortfeasor who likely bears responsibility and whose conduct must be considered by the finder of fact in rendering a

full and fair apportionment of fault. Appellants' substantial right to apportionment also comports with, and is facilitated by, the liberal joinder rules embodied in Rules 19 and 20 of the South Carolina Rules of Civil Procedure. Indeed, absent joinder pursuant to Rules 19 and/or 20 of the South Carolina Rules of Civil Procedure, there is no available mechanism to effectuate the purposes of S.C. Code Ann. § 15-38-15.

Respondent's characterization of *Neeltec Enterprises, Inc. v. Long*, Op. No. 27125 (S.C. Sup. Ct., filed May 16, 2012) (Shearhouse Adv. Sh. No. 17 at p. 30) as "uniformly demonstrat[ing] that an order *denying* a defendant's request that a person be *added* to the action is not immediately appealable" is simply incorrect. In fact, *Neeltec* actually supports review. Like the orders denying joinder, the order at issue in *Neeltec* affected a substantial right (the tort plaintiff's common law right to choose her defendant), effectively discontinued a portion of the suit, and was required to be appealed immediately, if at all. Most importantly, while *Neeltec* recognizes the common law right of a plaintiff to choose her defendant(s), Appellants submit that their right to full and fair apportionment of fault pursuant to S.C. Code Ann. § 15-38-15 is equally substantial and equally affected by the circuit courts order denying the motion for joinder of Badger as a party defendant. Accordingly, the order denying joinder implicates Appellant's substantial rights, and Respondent's motion to dismiss should be denied on this basis.

C. The Order Denying Joinder Effectively Strikes A Portion Of Appellant's Answer, Thus Warranting Immediate Appellate Review.

The trial court's order denying joinder is subject to immediate review because it falls squarely within S.C. Code Ann. § 14-3-330(2)(c). Pursuant to § 14-3-330(2)(c), a litigant may take an immediate, interlocutory appeal from any "order affecting a substantial right made in an action when such order . . . (c) strikes out an answer or any

part thereof or any pleading in any action.”

This Court has repeatedly interpreted § 14-3-330(2)(c) to provide that “[a]n order striking a portion of a pleading is immediately appealable.” *See, e.g., P.J. Const. Co., Inc. v. Roller*, 287 S.C. 632, 633, 340 S.E.2d 564, 565 (Ct. App. 1986). Moreover, the Court recently emphasized that “section 14-3-330(2)(c) requires us to focus on *the effect* of the order, *not the label* given to the motion or to the order granting it.” *Thornton v. South Carolina Elec. & Gas Corp.*, 391 S.C. 297, 302, 705 S.E.2d 475, 478 (Ct. App. 2011) (emphasis added). If “*the practical effect* of the grant of the motion is that it strikes out” portions of a complaint or answer, it is immediately appealable. *Murphy v. Owens–Corning Fiberglas Corp.*, 346 S.C. 37, 44, 550 S.E.2d 589, 593 (Ct. App. 2001), *overruled on other grounds, Farmer v. Monsanto Corp.*, 353 S.C. 553, 579 S.E.2d 325 (2003) (emphasis added).

As a result - and contrary to the unsupported assertion in Respondent’s motion that the orders do not “strike out an answer or any part of any pleading” (Resp’t’s Mot. p. 5) - it is important to examine whether *the effect* of the order is to strike a portion of the complaint or answer. As explained below, the effect of the trial court’s order denying joinder of the party who is likely most if not completely at fault in bringing about the underlying accident in this case is to strike out a key substantive defense asserted in Appellants’ Answer. Thus, the order is immediately appealable.

In their Answer to Respondent’s Complaint, UPS and Fields specifically allege that “other parties not named as Defendants in this action are potentially liable to the Plaintiff and, therefore, any liability on the part of these Defendants, which is specifically denied, is less than fifty percent of the total fault for the indivisible damages as compared

with the total fault for all defendants. Therefore, the liability of these Defendants, if any, must be apportioned as set forth in § 15-38-15 of the South Carolina Code of Laws.” (Answer at ¶ 13) In concluding that joinder is not warranted under the facts of this case, the circuit court has effectively determined Appellants’ defense is inapplicable - a determination that is tantamount to striking this defense. Accordingly, this Court should deny the motion to dismiss and permit this appeal to proceed.

II. THE CIRCUIT COURT ORDER DENYING CONSOLIDATION FOR TRIAL PURPOSES IS SUBJECT TO IMMEDIATE APPELLATE REVIEW.

Rule 42(a) of the South Carolina Rules of Civil Procedure provides for joinder in “actions involving a common question of law or fact . . . pending before the court . . . to avoid unnecessary costs or delay.” The Official Notes to Rule 42(a) emphasize that where cases are consolidated, “[t]he parties and pleadings are not merged, and each action retains its own identity; but consolidation for trial can save much time and cost, as when all claims arise out of one auto accident.”

In his motion, Respondent argues, without citation to controlling authority, that “[t]he order denying consolidation is also not immediately appealable . . . [because it] does not ‘affect the merits’ or ‘involve a substantial right.’” (Resp’t’s Mot. p. 8) This assertion is inaccurate, as it has long been the law in South Carolina that “the granting or refusing of motions to consolidate actions for trial must be left to the wise discretion of the trial judge, but his exercise thereof will be disturbed, if it deprives a party of a substantial right, which he can show he is entitled to under the law. ‘Abuse of discretion,’ as used in this connection, merely means that the trial judge committed an error of law in the circumstances.” *Winchester v. United Insurance Company*, 231 S.C.

288, 291, 98 S.E.2d 530, 532 (1957) (quoting *Bishop v. Bishop*, 164 S.C. 493, 162 S.E. 756, 757 (1932)).

Respondent conveniently overlooks *Winchester* and instead selectively mischaracterizes the holdings of *South Carolina Public Service Authority v. Arnold*, 287 S.C. 584, 340 S.E.2d 535 (1986) and *St. Francis Xavier Hospital v. Ruscon/Abco*, 285 S.C. 584, 330 S.E.2d 548 (Ct. App. 1985) to support his view that the orders denying consolidation are not immediately appealable. (Resp't's Mot. p. 9) In *Arnold*, landowners in six condemnation proceedings moved to consolidate their cases for trial, and that motion was *granted*. The Public Service Authority unsuccessfully sought immediate review of the order *granting* consolidation, which the supreme court deemed interlocutory and not subject to immediate appeal. In *St. Francis Xavier*, this Court addressed appealability of an order denying consolidation of pending arbitration proceedings, an action not specifically authorized by the governing statute. The Court went further, noting its view that while the supreme court has entertained appeals of orders granting consolidation in pending arbitration proceedings and denying consolidation in two tort actions, those decisions did not control "appealability of an order denying an application to consolidate pending arbitration proceedings." *Id.*, 285 S.C. at 587, 330 S.E.2d at 550.

Respondent likewise overlooks the holding of *Alcorn v. Ford Motor Company*, 276 S.C. 180, 276 S.E.2d 925 (1981), which clearly stands for the proposition that the circuit court's order denying consolidation is subject to immediate appellate review. Appellant in *Alcorn* asserted the trial court abused its discretion in denying a motion to consolidate breach of warranty and misrepresentation actions where the matters "were

pending in the same court, at the same time, between the same parties, and involved substantially the same subject matter, issues and defenses.” In addition, the trial court’s written order memorializing an oral ruling denying consolidation was bereft of “any reasons for denying the motion.” *Id.*, 276 S.C. at 181, 276 S.E.2d at 926. Appellant filed its notice to appeal the order denying consolidation within ten days after receiving the court’s written order. *Id.* The Supreme Court of South Carolina held that the trial court’s “order is properly before us on appeal.” *Id.* The Supreme Court further held that under these circumstances, consolidation is appropriate and serves to “prevent the multiplicity of litigation, to save the parties unnecessary costs, to conserve court time and space and to clear congested court dockets.” *Id.*

Like the order challenged in *Alcorn*, the circuit court’s order denying consolidation of these cases for trial is bereft of details or analysis supporting the denial. Instead, the circuit court order generically asserts that damages will vary among the named plaintiffs and that Appellants “have pled comparative negligence in Arthur Badger’s case.” (Order p. 2) Upon closer inspection, these assertions fail to support denial of consolidation and, in fact, militate in favor of the opposite conclusion. The circuit court’s explanation that consolidation is inappropriate in light of differing damages pre-dates adoption of Rule 42(a) and is no longer valid. *See Sarvghad v. Sitton Buick Co., Inc.*, 312 S.C. 429, 440 S.E.2d 894 (Ct. App. 1994) (recognizing that Rule 42(a) permits consolidation and affords safeguards to protect individual identity of consolidated cases). Additionally, for the reasons set forth in the preceding section, Appellants have pled in *all* cases that Mr. Badger is responsible for the underlying

accident and the resulting injuries, so there is no basis to assert that the issue of his comparative negligence distinguishes one of these cases from any other.

It is undisputed that the facts and legal issues are identical - the only variation that exists relates to the identity of the plaintiffs, their seating positions in the Badger vehicle, and the extent of their damages. The complaints are otherwise the same, and all plaintiffs are represented by the same attorneys. The plaintiffs allege the same damages and make the same prayer for relief. The underlying facts, causes of action, and theories of negligence are the same. There is a striking repetitiveness in the written discovery served by the plaintiffs, and they have identified the same expert witnesses. These cases clearly fall within the broad category of cases envisioned by the drafters of Rule 42(a) wherein consolidation best promotes judicial economy and the substantial rights of the parties by preventing unnecessary duplication, cost, and delay. For all of these reasons, the motion to dismiss the appeal of the orders denying consolidation should be denied.

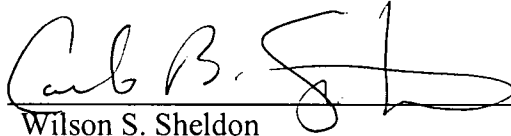
CONCLUSION

The trial court's orders are immediately appealable under S.C. Code Ann. § 14-3-330(2)(c). Accordingly, the Court should deny Respondents' motion to dismiss and permit this appeal to proceed to a determination on the merits.

(Signature page to follow.)

May 25, 2012

By:



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ATTORNEYS FOR APPELLANTS

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No. 2011-CP-03-00038

Charles E. Harley, Sr., as)
Personal Representative of the)
Estate of Charles E. Harley, Jr.,)
)
Plaintiff,)

AFFIDAVIT OF MATTHEW C. FIELDS

vs.)

United Parcel Service and)
Matthew C. Fields,)
)
Defendants.)

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ALLENDALE COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

Case No. 2011-CP-03-00039

Arthur Badger, as Personal)
Representative of the Estate)
of Donna Badger,)
)
Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)
)
Defendants.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

Case No. 2011-CP-03-00040

Eva Mae Marshall,)
)
Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)
)
Defendants.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

Barbara A. Williams,)
)
 Plaintiff,)
vs.)
)
United Parcel Service and)
Matthew C. Fields,)
)
 Defendants.)
_____)

Case No. 2011-CP-03-00041

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

Lakasha Hay,)
)
 Plaintiff,)
vs.)
)
United Parcel Service and)
Matthew C. Fields,)
)
 Defendants.)
_____)

Case No. 2011-CP-03-00042

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

Arthur Badger,)
)
 Plaintiff,)
vs.)
)
United Parcel Service and)
Matthew C. Fields,)
)
 Defendants.)
_____)

Case No. 2011-CP-03-00043

PERSONALLY APPEARED BEFORE ME, MATTHEW C. FIELDS, who being dully sworn, deposes, and says;

1. I, Matthew C. Fields, am a United States citizen over eighteen (18) years of age, of sound mind and body, and otherwise fully competent to make a statement under oath. This Affidavit is given freely and voluntarily, and all of the information contained herein is based upon my own personal knowledge.

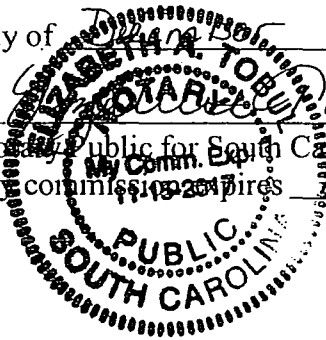
2. I am an employee of United Parcel Services (UPS) and was the driver of the UPS package truck involved in the accident with Plaintiffs on January 28, 2011, on Highway 278 in Allendale.

3. I made a left turn on Highway 278 travelling to my next delivery on Barnwell Highway.

4. Prior to the accident I had activated my left turn signal, applied my brakes and was slowing down to make a left turn when a vehicle driven by Arthur Badger attempted to pass my package truck on the left.

FURTHER AFFIANT SAITH NOT.

SWORN to before me this 21)
day of February, 2011.)
Elizabeth A. Tobey)
Notary Public for South Carolina)
My commission expires 1-15-2017)



Matthew C. Fields
Matthew C. Fields

EXHIBIT B

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF ALLENDALE
ARTHUR BADGER, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF DONNA BADGER,
Plaintiff,
vs. CASE NO. 2011-CP-03-39
UNITED PARCEL SERVICE and
MATTHEW C. FIELDS,
Defendants.

VIDEOTAPED
DEPOSITION OF: ARTHUR BADGER, JR.
DATE: November 15, 2011
TIME: 10:19 a.m.
LOCATION: Law Offices of
Peters, Murdaugh, Parker,
Eltzroth & Detrick, P.A.
101 Mulberry Street East
Hampton, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: TRISHA M. THOMAS
VIDEOGRAPHER: ANTHONY JERRAL

Job No. CS359345

1 And I got back up. When I got back up,
2 everybody still was -- still was there, and --
3 well, my -- my sister-in-law, she had already
4 called, and she wanted us to come up there, to the
5 -- you know, for the yard party, so I went in the
6 house and, you know, rest up -- you know, till it
7 was time for us to go up there.

8 So I went in the house, took a little
9 nap, and got up. We proceeded to go to Barnwell.
10 We left Fairfax, went -- stopped by the store in
11 Allendale, got some gas. I picked up some beer to
12 take to the cookout.

13 And we was on our way. We got through
14 Kline. That's when I ran up to the UPS, ran -- we
15 came up on the UPS truck. UPS truck pulled out the
16 driveway, and it -- well, it pulled out in front of
17 me, so I slowed down to keep from getting too close
18 to it, and -- you know, big truck, it was slowing
19 down in the road, so I looked around, checked the
20 highway. It was clear. Put my signal light on to
21 pass.

22 As I was passing, he was trying to turn
23 back in another yard, and as he was turning, he ran
24 into the side of me, throwing me off the road into
25 -- into the grass, and I -- you know, I lost

1 He asked me about five or six time. I
2 tell him no. I kept telling him no, kept telling
3 him no, I didn't smoke no marijuana. He asked me
4 did I smoke marijuana today, and I told him no.

5 And I kept telling him no. He kept
6 asking me. I kept telling him no. He kept asking,

7 so -- you know what I mean -- and -- so he told me
8 -- he told me, he said, well, I know you're not
9 impaired, you know. He know I wasn't drink. And
10 he was like, just tell me the truth: Did you smoke
11 some today?

12 So, you know, I got -- you know, he was
13 asking me this question over and over and over
14 again, so I got tired of answering him. I just
15 told him yeah so he could leave me alone. So I
16 just told him what he wanted to hear because he
17 told me that he wasn't going to arrest me.

18 Q. So you told the officer that you had
19 smoked marijuana earlier that day?

20 A. Yeah. Yes, sir.

21 Q. Is it your testimony today that you in
22 fact did not smoke marijuana that day?

23 A. No, I did not smoke marijuana. I told
24 him that so -- because he kept, kept, kept, kept.

25 Q. So your testimony today is that you

1 don't know. It was -- I think it was -- it was two
2 -- it was two officers in there.

3 Q. Okay.

4 A. It was two. I don't -- I don't know
5 their names.

6 Q. Do you still believe that the coroner
7 was present?

8 A. Well, he was in and out.

9 Q. I understand.

10 A. He wasn't in there when the recording
11 was going on.

12 Q. Where in the hospital did this recorded
13 statement take place?

14 A. Where?

15 Q. Yeah. Was it a private room?

16 A. It was in the room where I -- they took
17 my urine sample.

18 Q. In giving your statement, you told the
19 police that you consumed alcohol on the day of the
20 accident. True?

21 A. I told him earlier that morning.

22 Q. Well, let's talk about the alcohol.
23 Did you consume alcoholic beverages on the day of
24 the accident?

25 A. On the day, yes, sir.

1 Q. Okay. What type of alcoholic beverages
2 did you consume on the day of the accident?

3 A. Beer.

4 Q. How many beers did you consume on the
5 day of the accident?

6 A. Three.

7 Q. What brand of beer did you consume?

8 A. Bud Light.

9 Q. Were they cans or bottles?

10 A. Short cans.

11 Q. What size cans in terms of the ounces?

12 A. Twelve ounce.

13 Q. Where did you consume these beers?

14 A. At my house that morning.

15 Q. Can you approximate the span of time
16 over which you drank these beers?

17 A. Okay. That's -- that was like -- I
18 didn't drink any -- I didn't have any beer after --
19 after -- after 11:30.

20 Q. Okay. So the last sip of beer you took
21 was no later than 11:30 a.m. True?

22 A. True.

23 Q. Do you recall approximately what time
24 you took your first sip of beer that day?

25 A. It was after breakfast.

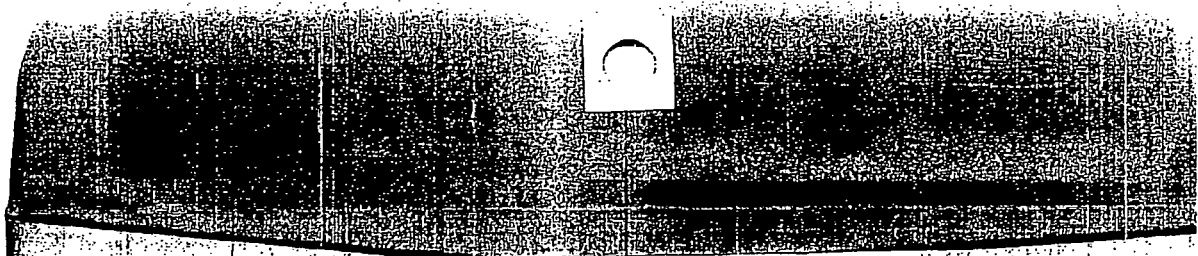
EXHIBIT C

L11-01466 TOX-

S.C. Highway Patrol Troop #7
Case# 1103HP7001

TAM
FMM

FDUI



9 x 12

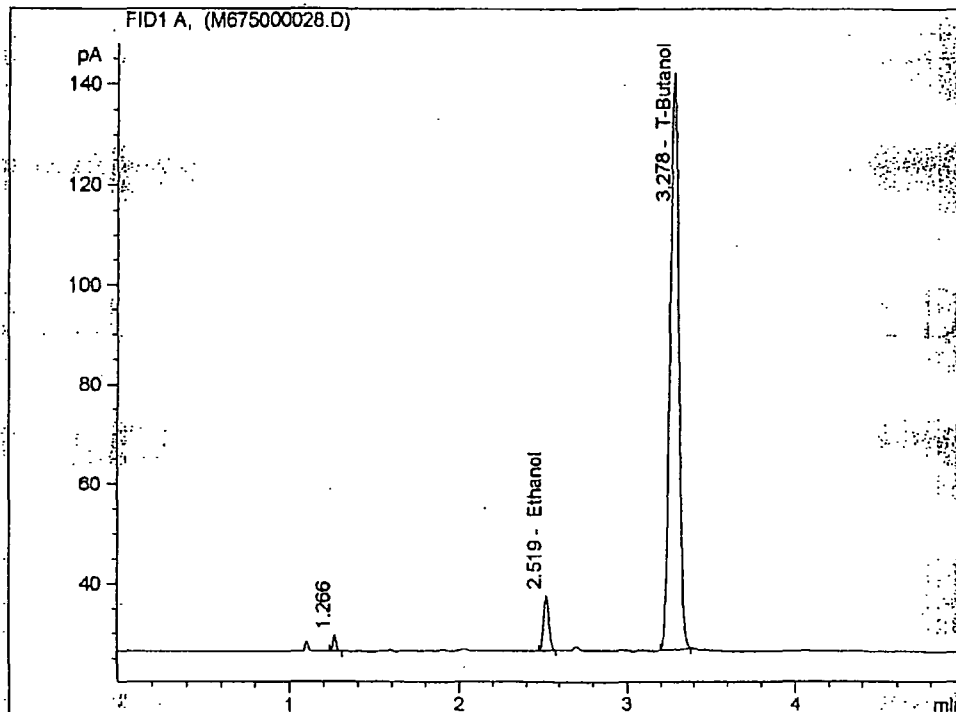
South Carolina Law Enforcement Division

Sample Name: L11-01466 B Sample Info:
 Injection Date: 2/9/2011 10:09:52 PM
 Data File Name: C:\CHEM32\1\DATA\TONI 2011-02-09 18-40-49\M675000028.D

Seq Name: C:\Chem32\1\DATA\TONI 2011-02-09 18-40-49\TONI.S

Instrument Name: HPHS5 Vial number: Vial 28

Method: C:\Chem32\1\DATA\TONI 2011-02-09 18-40-49\BA5.M



Actual R. Time	Expected R. Time	Component Name	Conc. Percent	Component Area
0.000	1.593	Acetaldehyde	0.0000	0.000
0.000	1.891	Methanol	0.0000	0.000
2.519	2.505	Ethanol	0.0311	25.999
0.000	2.688	Acetone	0.0000	0.000
0.000	2.942	IPA	0.0000	0.000
3.278	3.261	T-Butanol	0.0100	419.599

PA

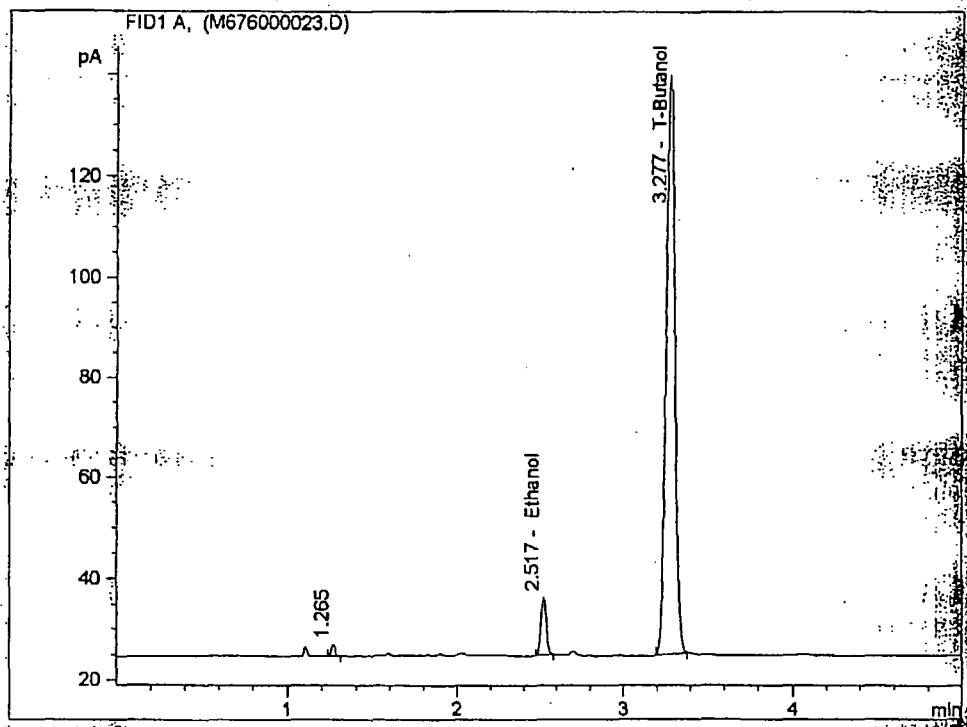
South Carolina Law Enforcement Division

Sample Name: L11-01466 B Sample Info:
 Injection Date: 2/11/2011 1:20:48 PM
 Data File Name: C:\CHEM32\1\DATA\TONI 2011-02-11 10-25-45\M676000023-D

Seq Name: C:\Chem32\1\DATA\TONI 2011-02-11 10-25-45\TONI.S

Instrument Name: HPHS5 Vial number: Vial 23

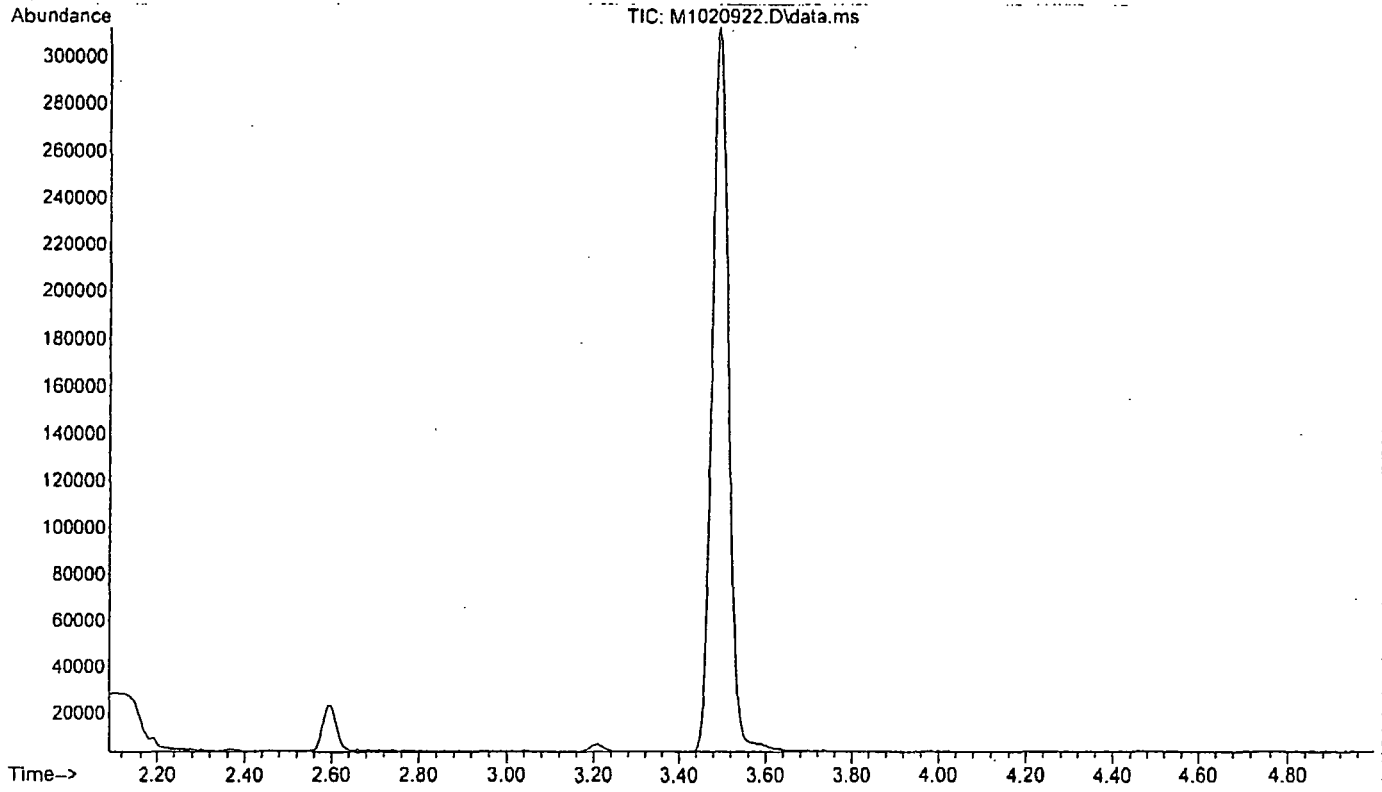
Method: C:\Chem32\1\DATA\TONI 2011-02-11 10-25-45\BA5.M



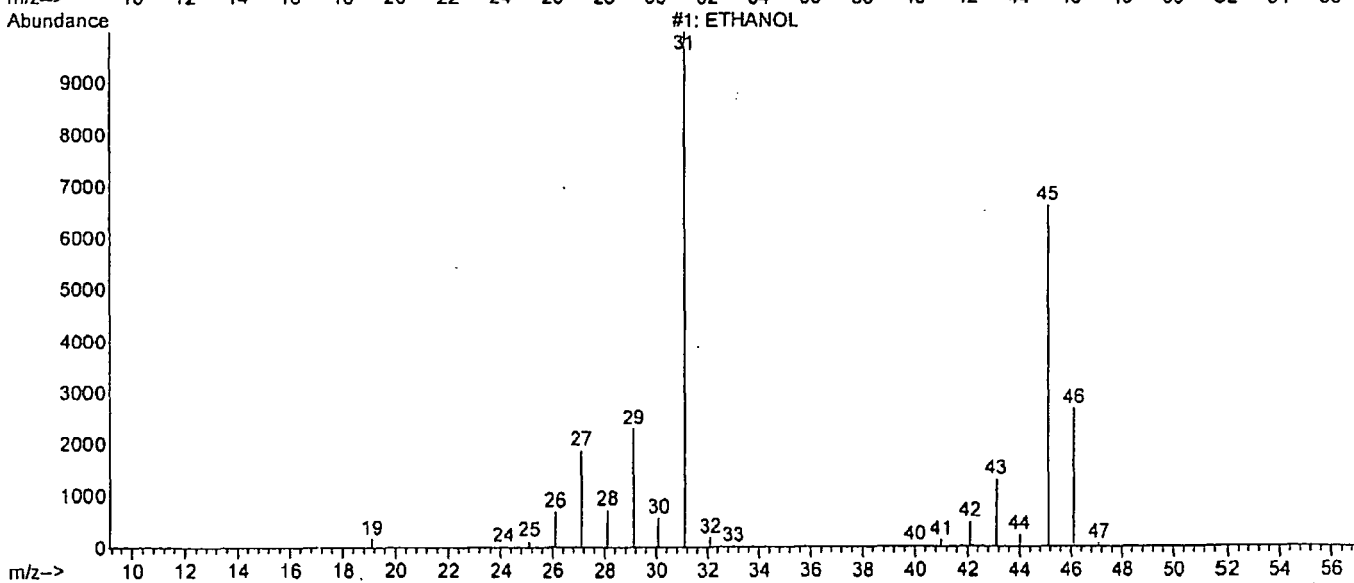
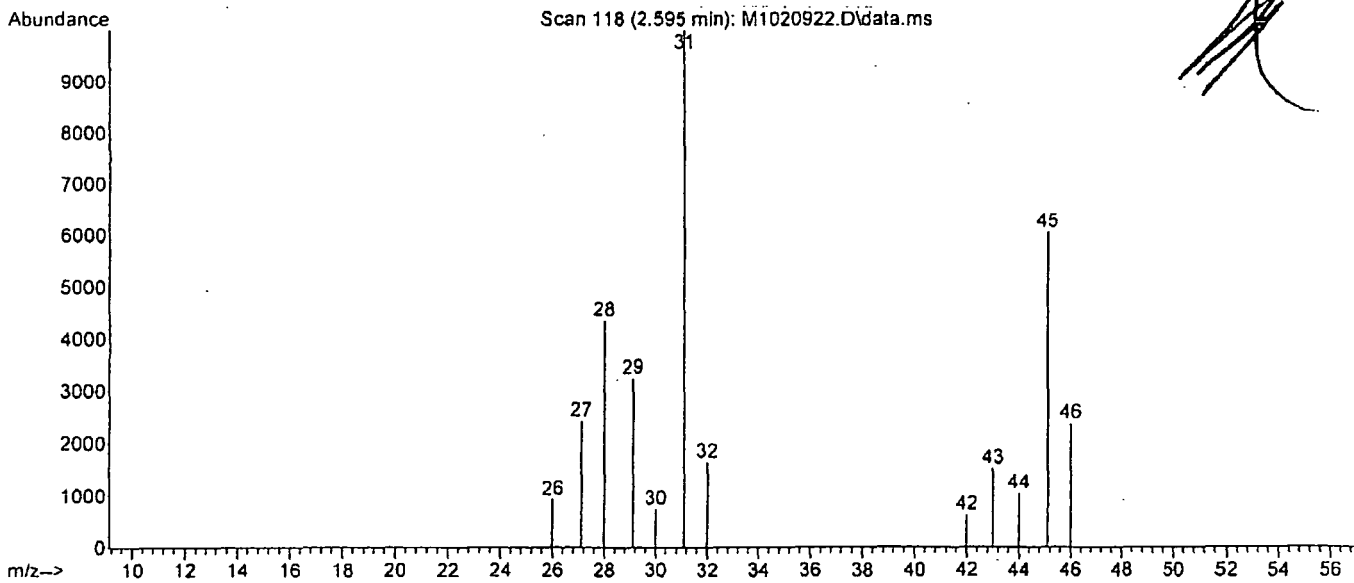
Actual R. Time	Expected R. Time	Component Name	Conc. Percent	Component Area
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0.000	1.891	Methanol	0.0000	0.000
2.517	2.505	Ethanol	0.0315	26.238
0.000	2.688	Acetone	0.0000	0.000
0.000	2.942	IPA	0.0000	0.000
3.277	3.261	T-Butanol	0.0100	416.860

TH

file : C:\msdchem\1\DATA\TONI\M1020922.D
operator : TMB
acquired : 10 Feb 2011 12:14 using AcqMethod BA2SCR.M
instrument : Tox_HSGCMS2
sample Name: L11-01466 B
disc Info :
serial Number: 22

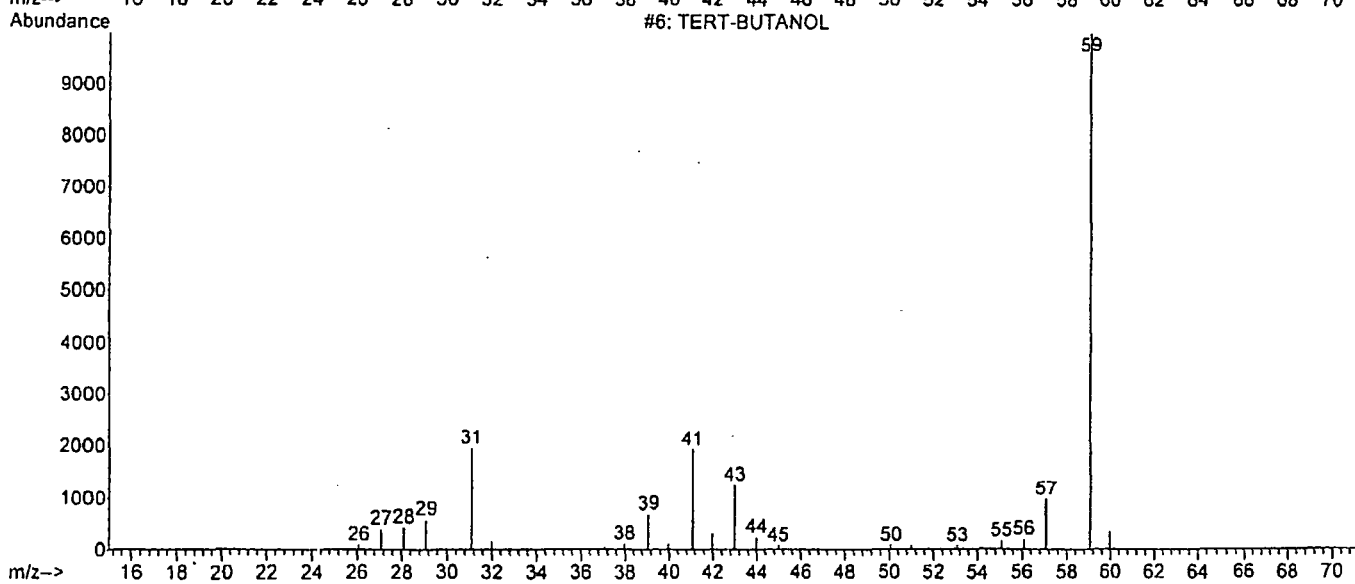
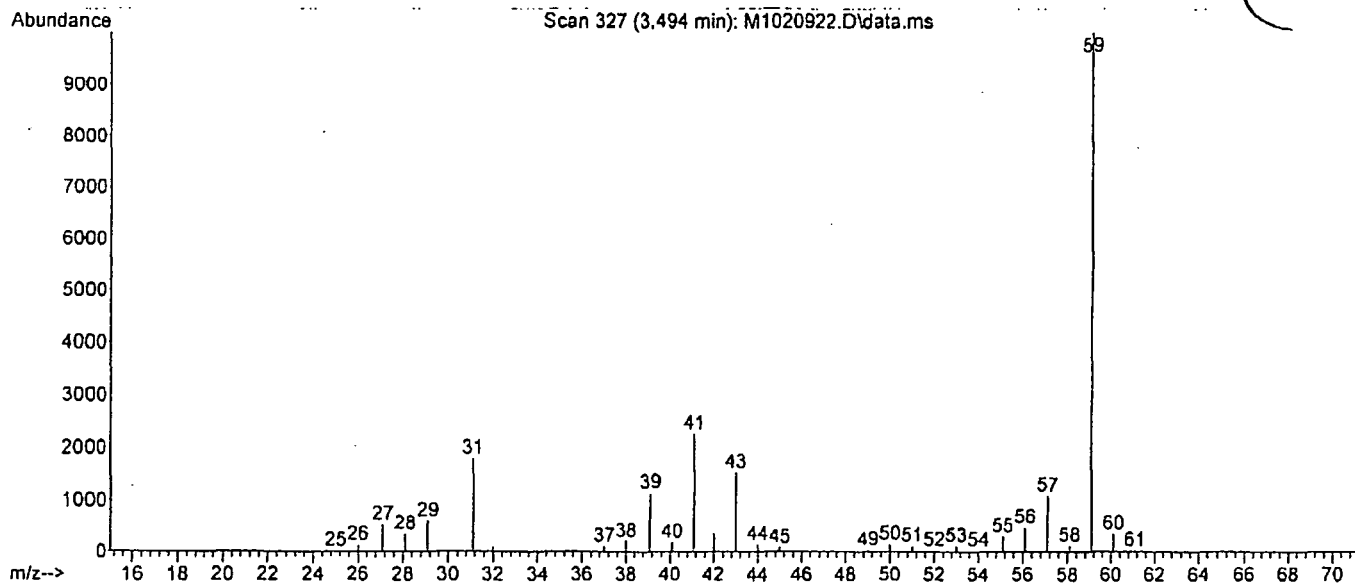


Library Searched : G:\SLED_VOL.L
Quality : 90
ID : ETHANOL



L11-01764
PA

Library Searched : G:\SLED_VOL.L
Quality : 90
ID : TERT-BUTANOL



U11-0176
MA

SAMPLE REPORT

ID: 10737
ID: L1101466/ B 1/2
ame:
JT/kdm

Date: 02/11/11

ASSAY	RESULT	UNITS	INTERPRETATION	DILUTION	RANGE
Cocaine 02/11/11 13:53 CJT/kdm	0.00	ug/mL		UNDILUTED	
Opiates 02/11/11 13:59 CJT/kdm	0.01	ug/mL		UNDILUTED	



SOUTH CAROLINA LAW ENFORCEMENT DIVISION
TOXICOLOGY DEPARTMENT
ELISA Drug Screening Report

Toxicologist **C. Tucker**

Technician **BAW**

om

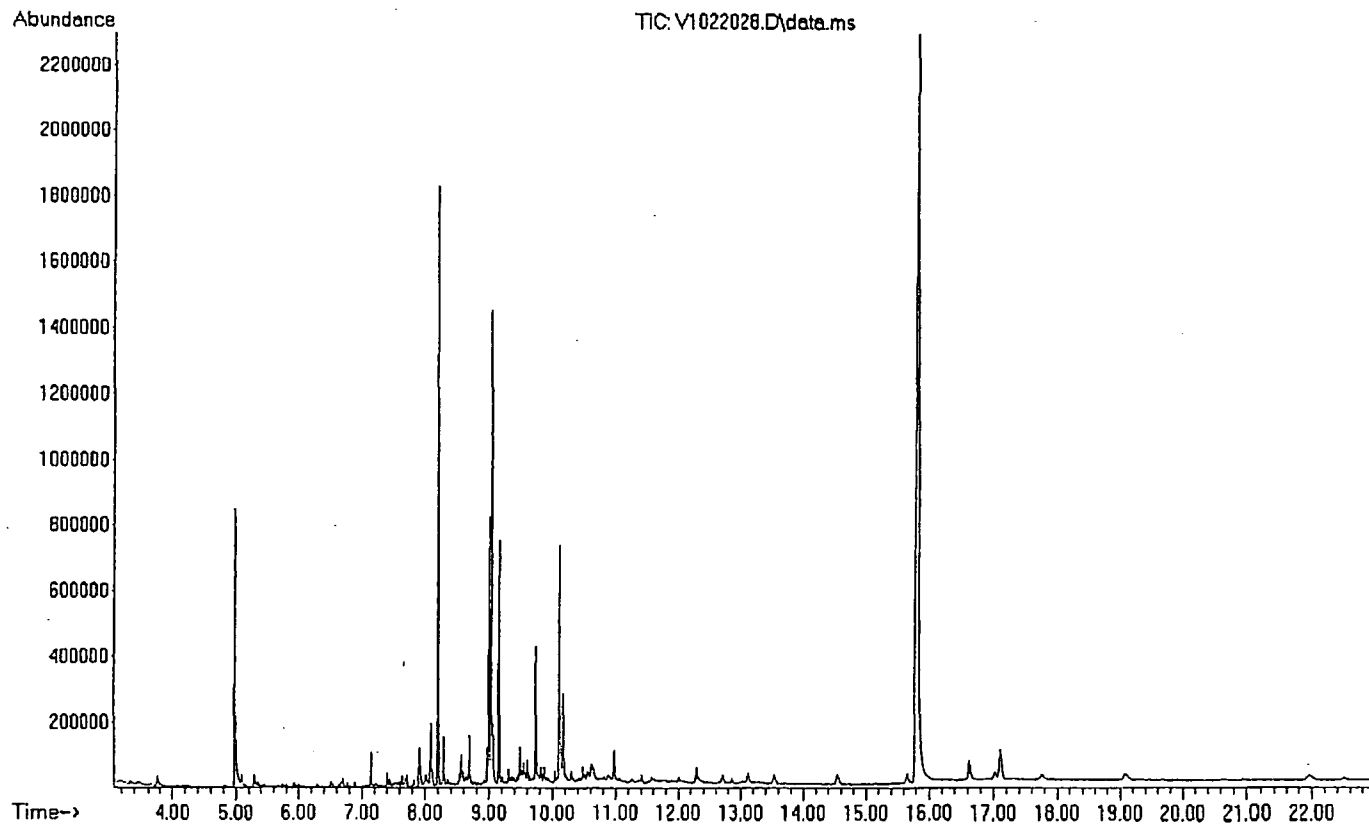
SLED Lab No: **L1101466 B**

Date: **02/11/2011**

Control ID	Amphetamine			Benzodiazepines			Methamphetamine			Oxycodone			Cannabinoids			Conc	Raw Data	Mean
	Conc	Raw Data	Mean	Conc	Raw Data	Mean	Conc	Raw Data	Mean	Conc	Raw Data	Mean	Conc	Raw Data	Mean			
NC1	BLANK	3.1	3.096	BLANK	2.001	1.999	BLANK	2.566	2.472	BLANK	2.745	2.753	BLANK	2.405	2.451			
NC2		3.092			1.997			2.379			2.762			2.498				
PC1	0.15mg/L	0.166	0.162	50ug/L	0.78	0.767	0.15mg/L	0.605	0.583	0.10mg/L	1.124	1.141	30ug/L	0.792	0.822			
PC2		0.158			0.754			0.562			1.159			0.853				
Case Data		2.926			2.067			2.344			2.844			0.123				
Result		NEGATIVE			NEGATIVE			NEGATIVE			NEGATIVE			POSITIVE				

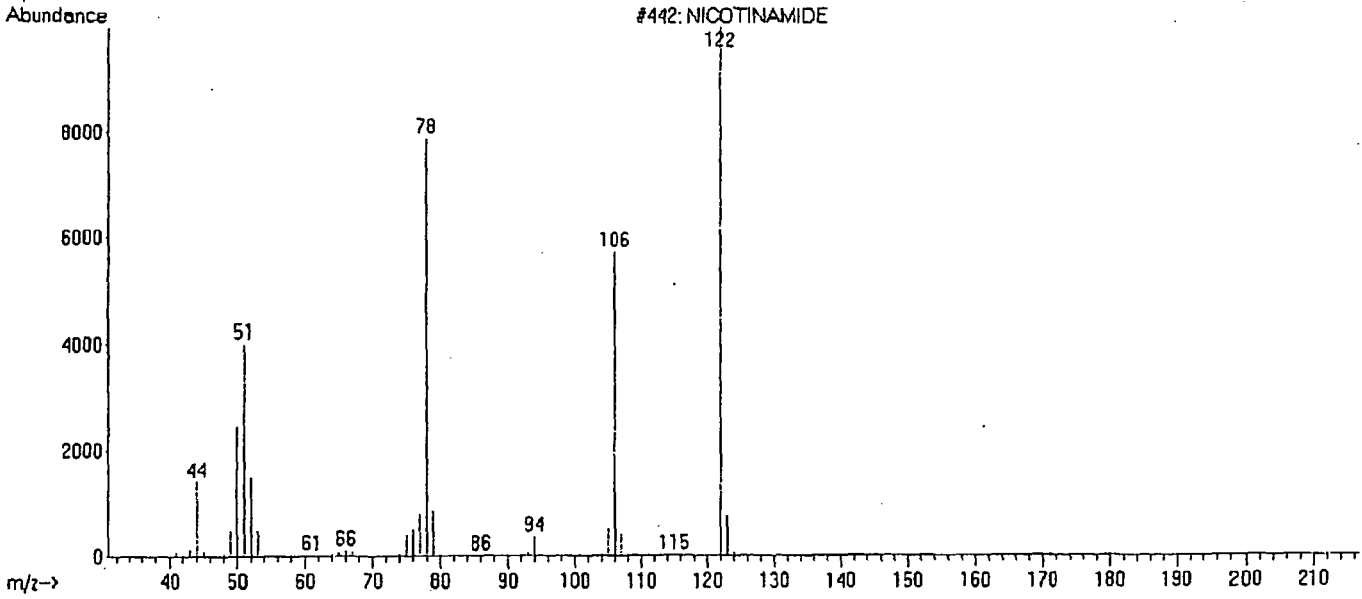
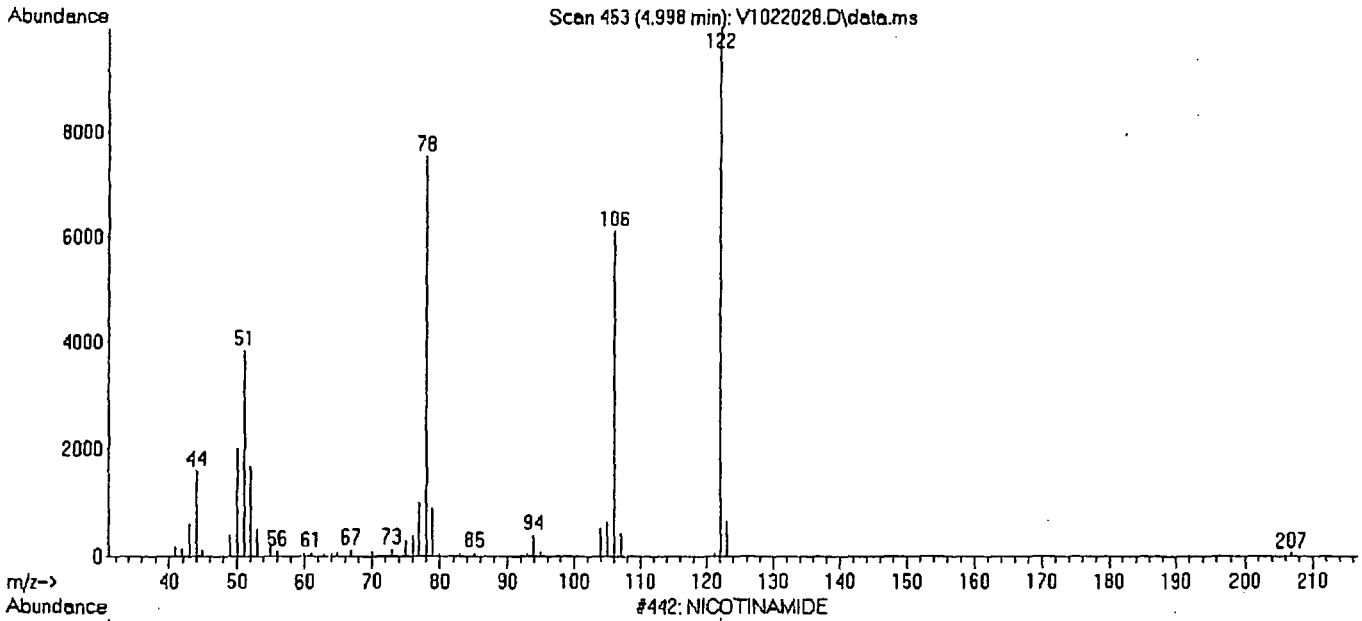
BAW

file : H:\TIM\V1022028.D
operator :
acquired : 21 Feb 2011 3:20 using AcqMethod QUAL2.M
instrument : SLED 1
sample Name: L11-01466 B TAM
disc Info : ROBOT/UCT/H+OH-
serial Number: 24



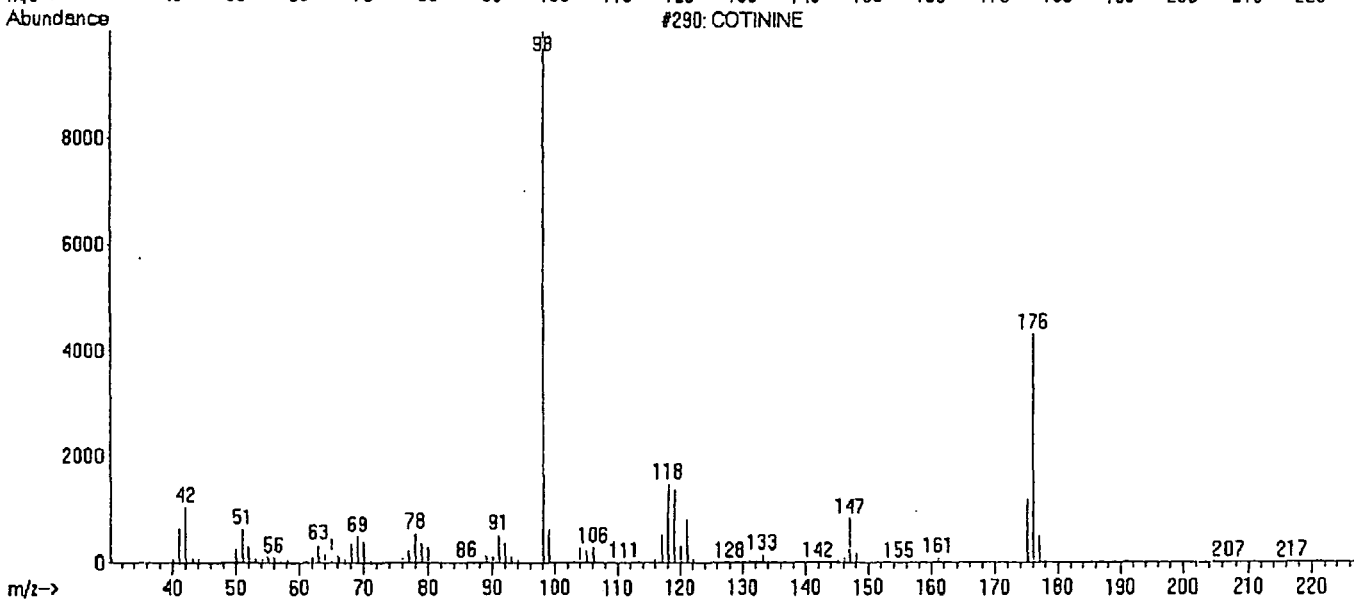
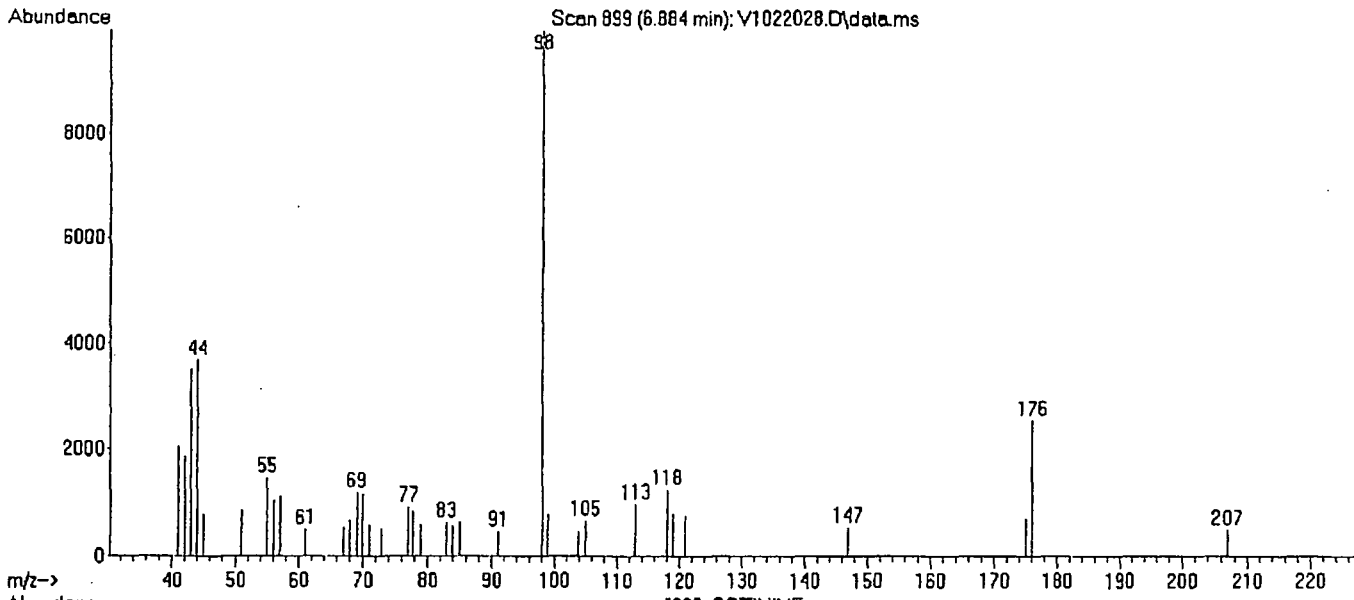
TAM
(8)

Library Searched : y:\AAFSDRUG.L
Quality : 96
ID : NICOTINAMIDE



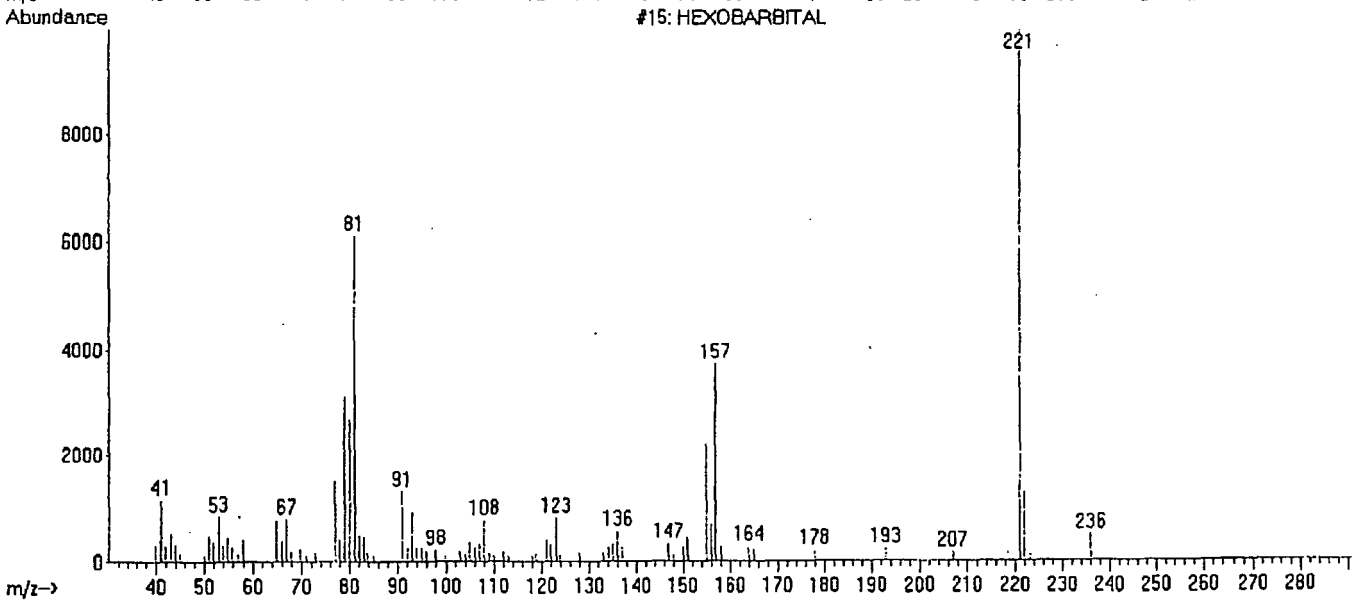
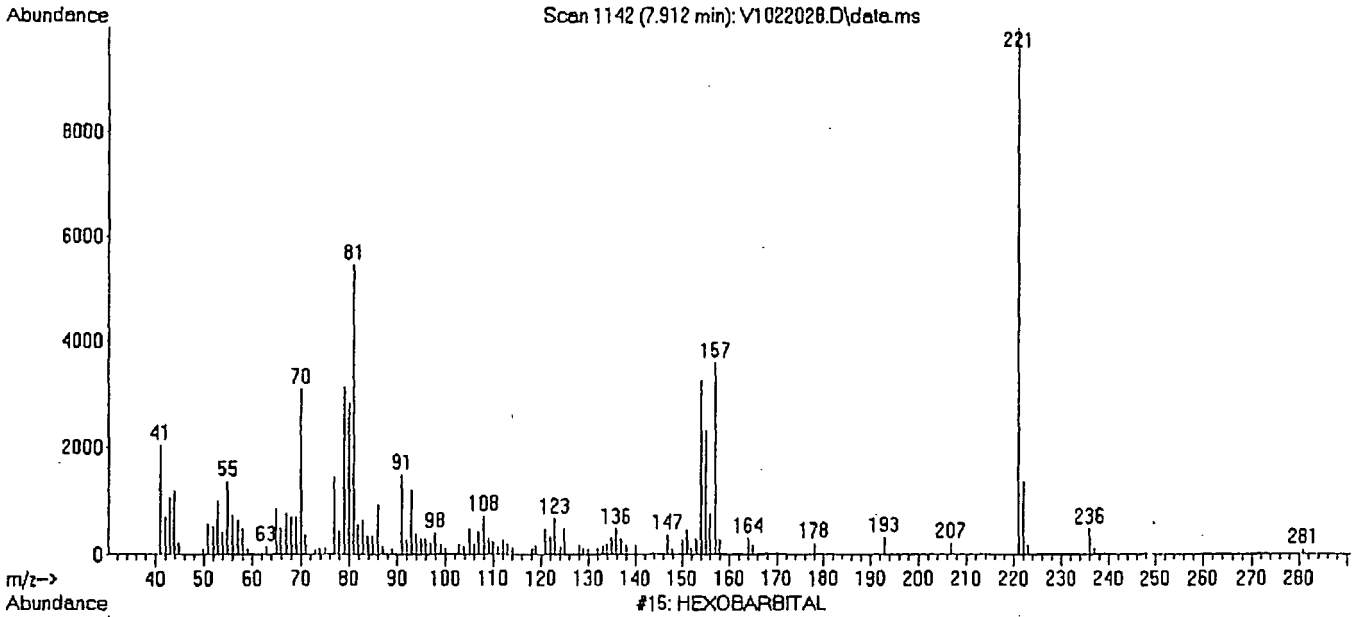
L11-0146
TA

Library Searched : Y:\TOXLIB.L
Quality : 64
ID : COTININE



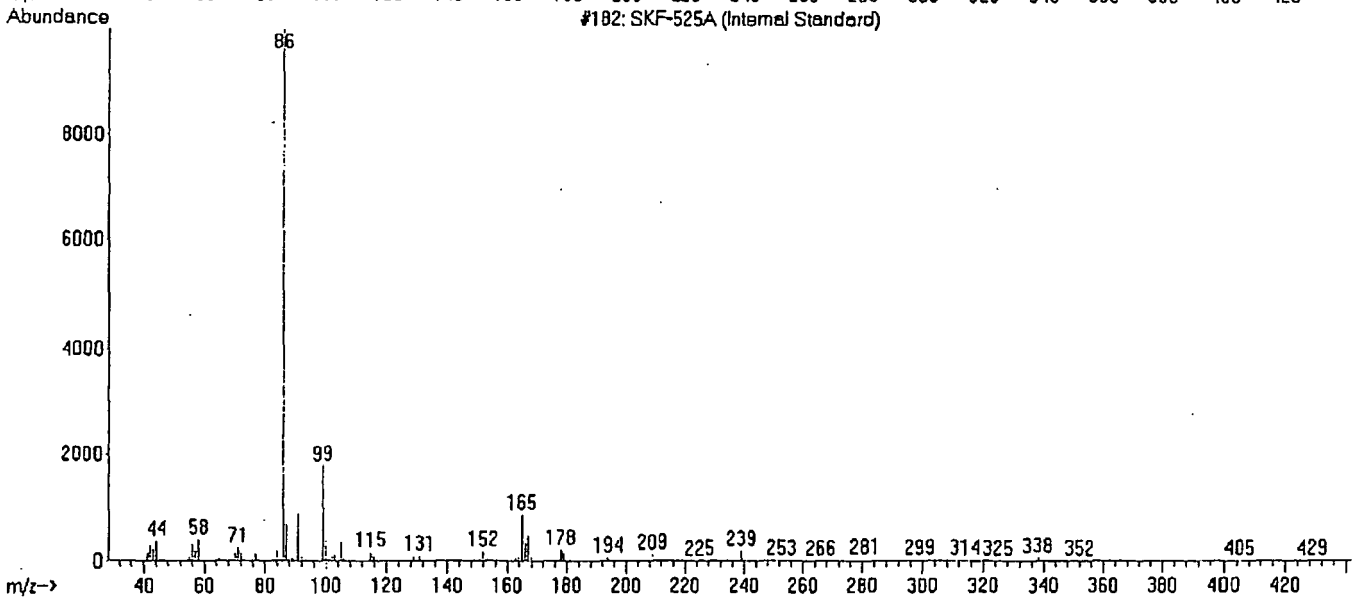
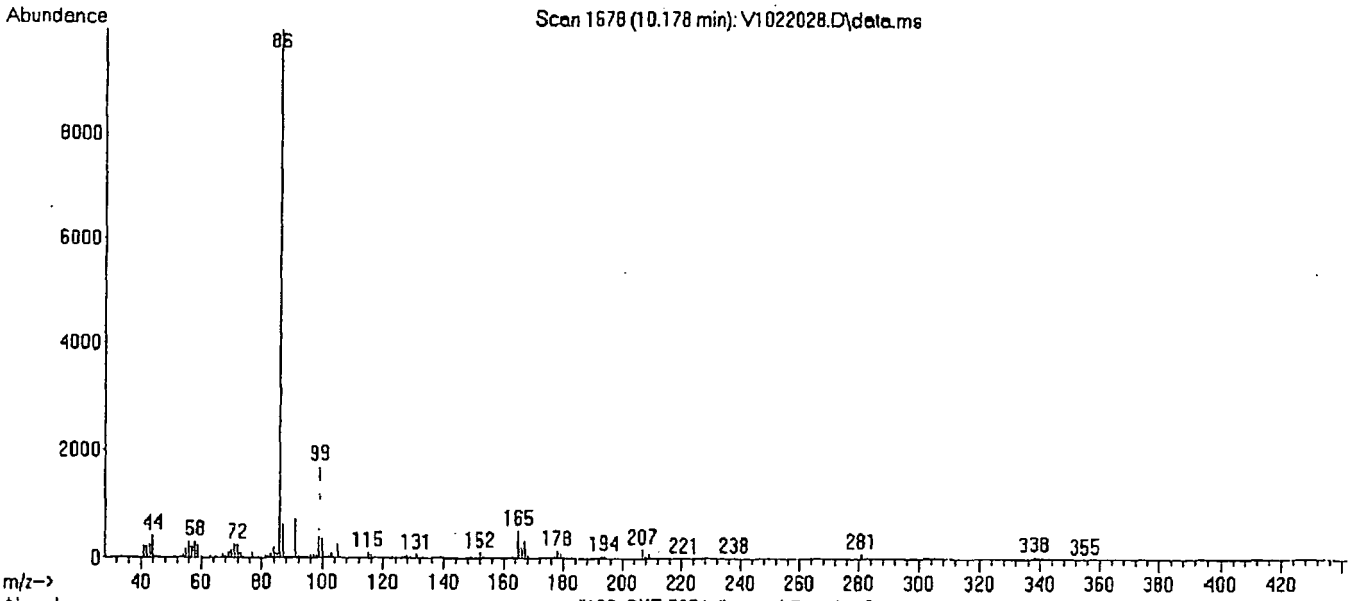
C11-01-166
M

Library Searched : Y:\TOXLIB.L
Quality : 99
ID : HEXOBARBITAL



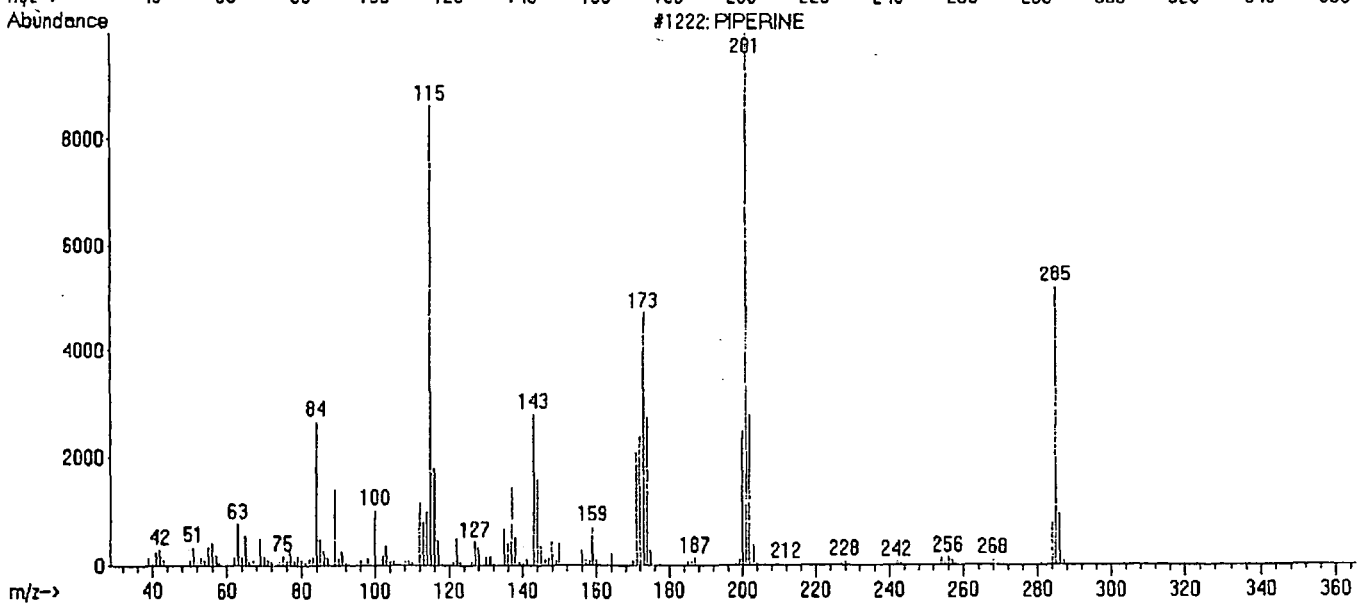
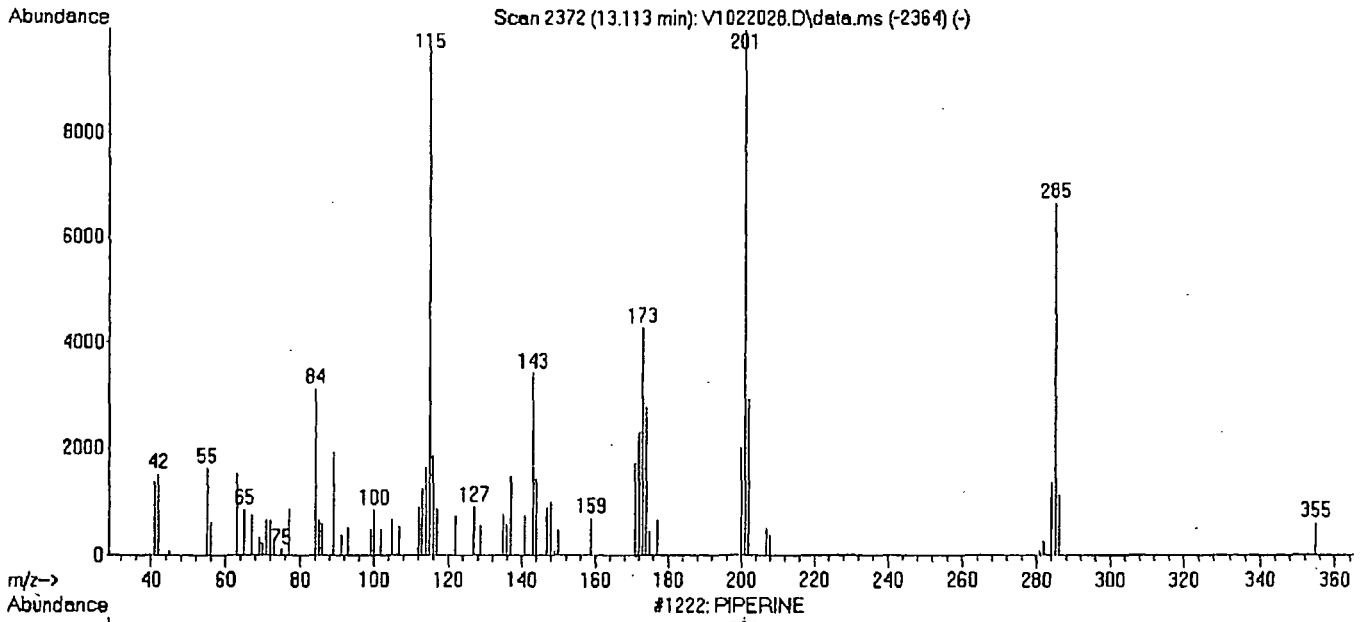
L11-2146
7A

Library Searched : Y:\TOXLIB.L
Quality : 87
ID : SKF-525A (Internal Standard)



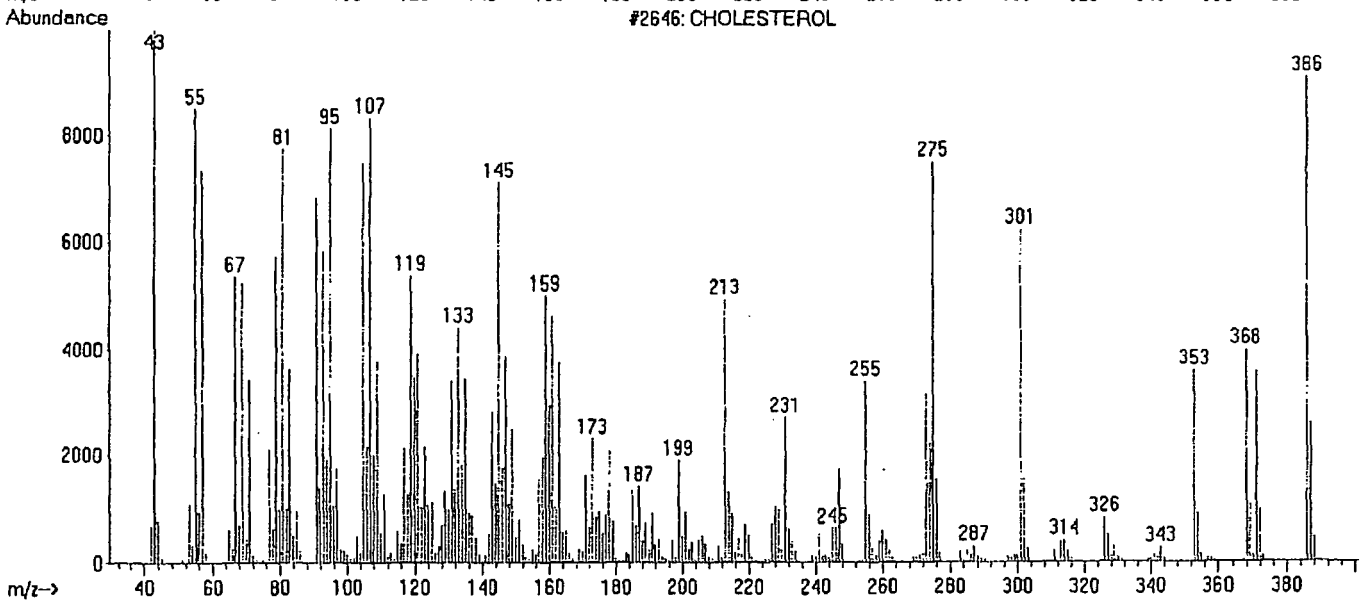
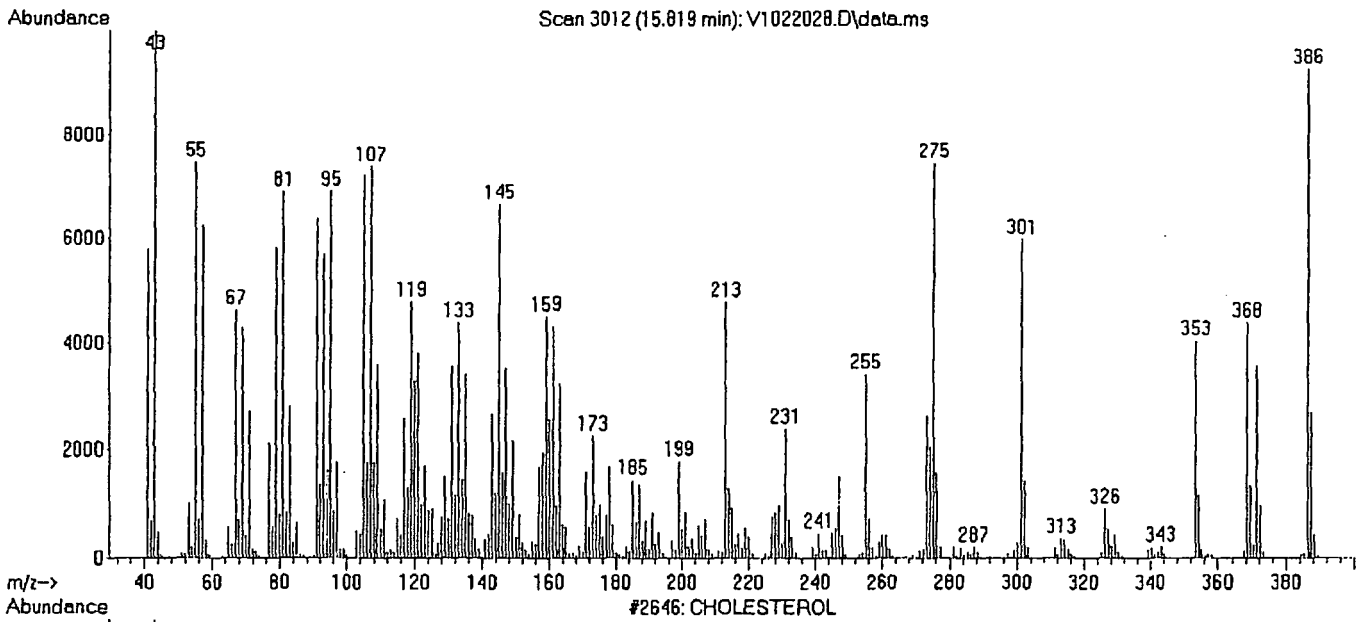
Handwritten: 11-01-16
PA

Library Searched : y:\AAFSDRUG.L
Quality : 98
ID : PIPERINE



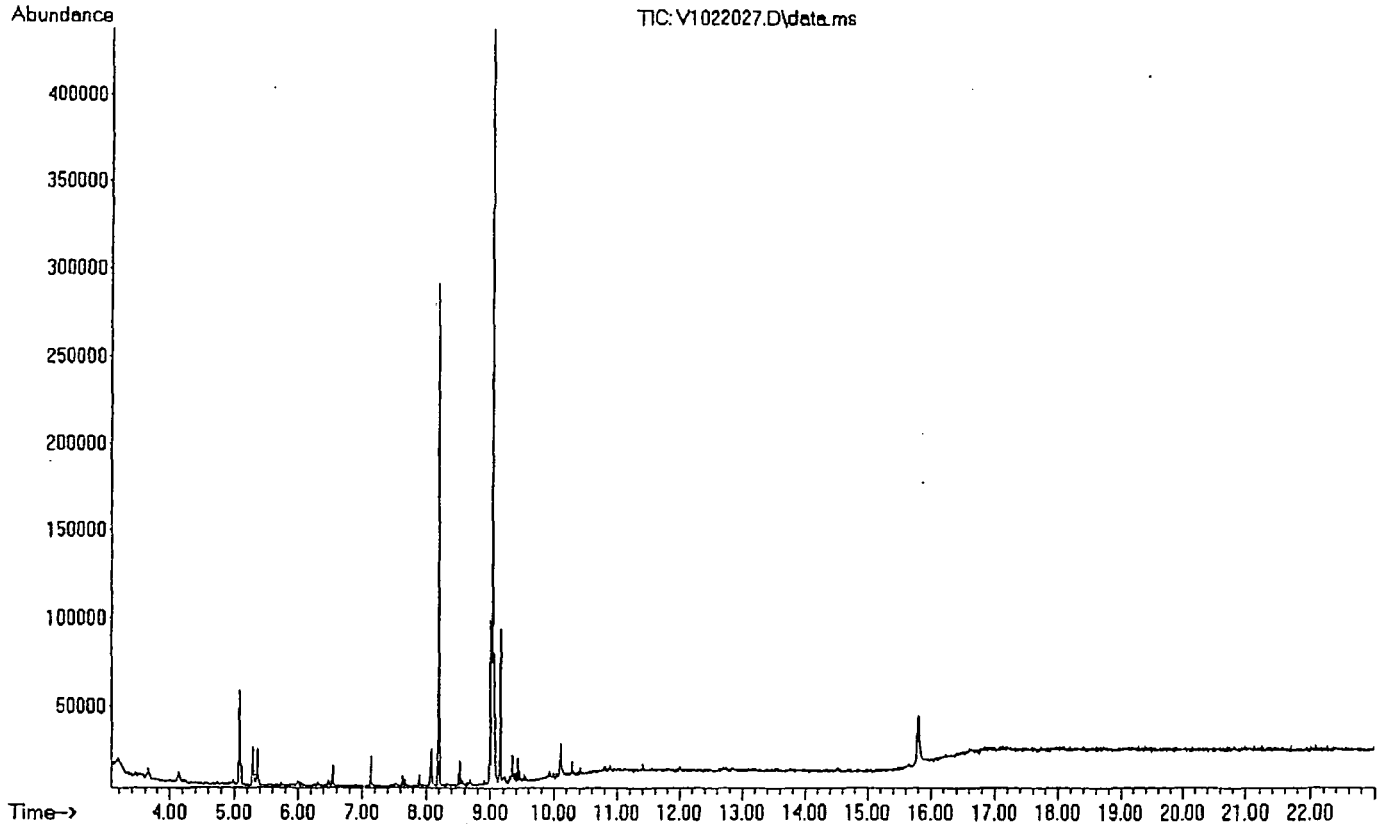
C11-0146
7/11/11

Library Searched : y:\AAFSDRUG.L
Quality : 95
ID : CHOLESTEROL



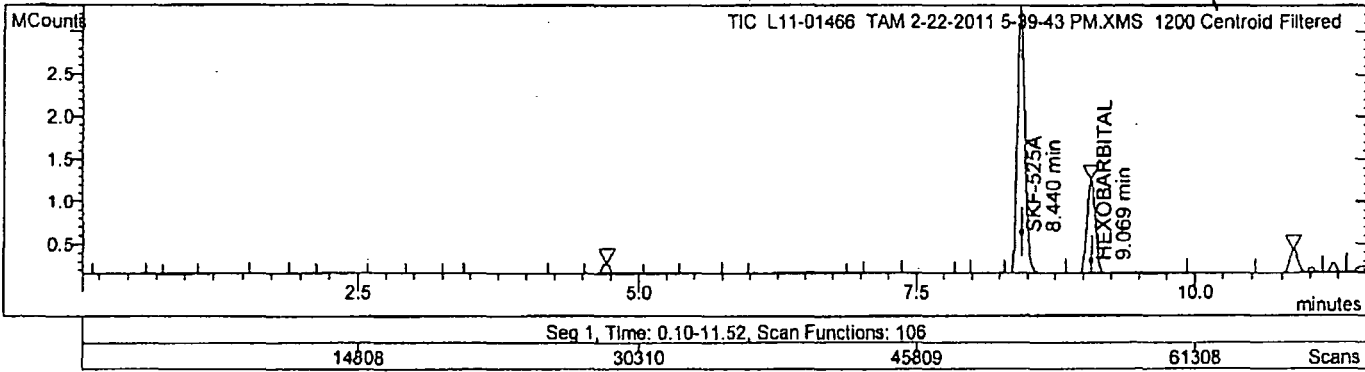
11-0146
M

file : H:\TIM\V1022027.D
operator :
acquired : 21 Feb 2011 2:52 using AcqMethod QUAL2.M
instrument : SLED 1
sample Name: 80 EtOAc: 20 MeOH
disc Info :
serial Number: 98



L11-01746
7/11

Sample ID: L11-01466 TAM Operator: TAM
 Inj. Sample Notes: None
 Vial: 13 Instrument ID: Varian LC-MS/MS #1
 Acquisition Date: 2/22/2011 5:39 PM Last Calibration: 2/23/2011 2:27 PM
 Calculation Date: 2/23/2011 3:05 PM Calibration Type: Internal Standard
 Method: c:\varianws\methods\generals_022211.mth
 Data File: c:\varianws\data\generals\022211\11-01466 tam 2-22-2011 5-39-43 pm.xmls



Target Compounds

#	RT	Peak Name	Res Type	Quan Ions	Area	Amount/RF
1	8.440	SKF-525A	Id.	354.1	3.052e+8	1.00 mg/L
2	9.069	HEXOBARBITAL	Id.	157.0	9.378e+7	0.10 mg/L
3	1.977	OLANZAPINE	Miss.	313.1	0	0.00 mg/L
4	2.563	PREGABALIN	Miss.	160.0	0	0.00 mg/L
5	2.599	GABAPENTIN	Miss.	172.0	0	0.00 mg/L
6	4.133	ZOPICLONE	Miss.	389.0	0	0.00 mg/L
7	4.443	METOPROLOL	Miss.	268.1	0	0.00 mg/L
8	4.683	m-CPP	Miss.	197.0	0	0.00 mg/L
9	5.189	ZOLPIDEM	Miss.	308.1	0	0.00 mg/L
10	5.299	PALIPERIDONE	Miss.	207.0	0	0.00 mg/L
11	5.550	RISPERIDONE	Miss.	191.0	0	0.00 mg/L
12	5.640	BUSPIRONE	Miss.	386.1	0	0.00 mg/L
13	5.701	TRAZODONE	Miss.	372.0	0	0.00 mg/L
14	5.702	ZONISAMIDE	Miss.	213.0	0	0.00 mg/L
15	6.056	PENTANYL	Miss.	188.0	0	0.00 mcg/L
16	6.477	ZIPRASIDONE	Miss.	413.0	0	0.00 mg/L
17	8.332	OXCARBAZEPINE	Miss.	253.0	0	0.00 mg/L
18	6.698	QUETIAPINE	Miss.	384.0	0	0.00 mg/L
19	6.708	GUAIFENESIN	Miss.	199.1	0	0.00 mg/L
20	6.809	BUPRENORPHINE	Miss.	468.1	0	0.00 mcg/L
21	6.868	METHOCARBAMOL	Miss.	242.1	0	0.00 mg/L
22	7.514	ARIPIPIRAZOLE	Miss.	449.0	0	0.00 mg/L
23	7.618	DULOXETINE	Miss.	298.0	0	0.00 mg/L
24	7.694	HYDROXYZINE	Miss.	201.0	0	0.00 mg/L
25	7.813	MEPROBAMATE	Miss.	158.0	0	0.00 mg/L
26	7.845	10-HYDROXYCARBAZEPINE	Miss.	255.0	0	0.00 mg/L
27	8.491	ZALEPLON	Miss.	306.0	0	0.00 mg/L
28	8.619	MODAFINIL	Miss.	296.0	0	0.00 mg/L
29	9.163	CARBAMAZEPINE	Miss.	237.0	0	0.00 mg/L
30	9.611	CARISOPRODOL	Miss.	176.0	0	0.00 mg/L
31	10.080	RAMELTEON	Miss.	260.1	0	0.00 mg/L

TAM
3

Sample ID:	L11-01466 TAM	Operator:	TAM
Inj. Sample Notes:	None		
Vial:	13	Instrument ID:	Varian LC-MS/MS #1
Acquisition Date:	2/22/2011 5:39 PM	Last Calibration:	2/23/2011 2:27 PM
Calculation Date:	2/23/2011 3:05 PM	Calibration Type:	Internal Standard
Method:	c:\varianws\methods\generals_022211.mth		
Data File:	c:\varianws\data\generals\022211\11-01466 tam 2-22-2011 5-39-43 pm.xml		

Compound Information

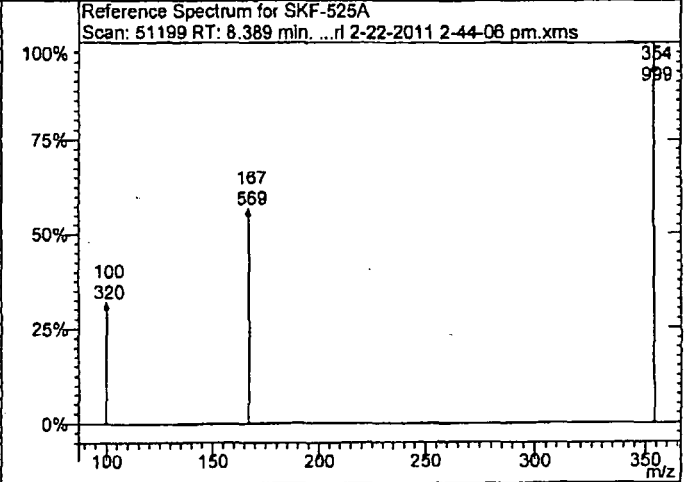
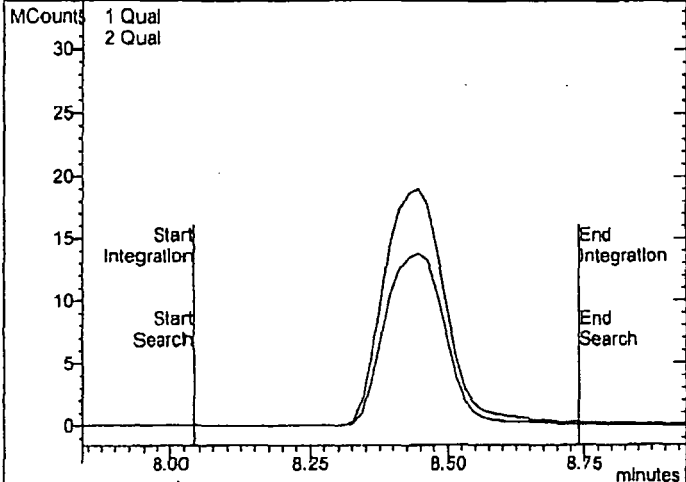
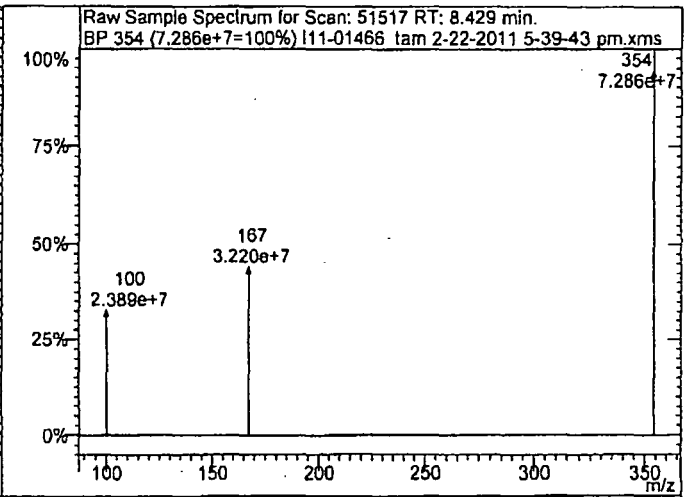
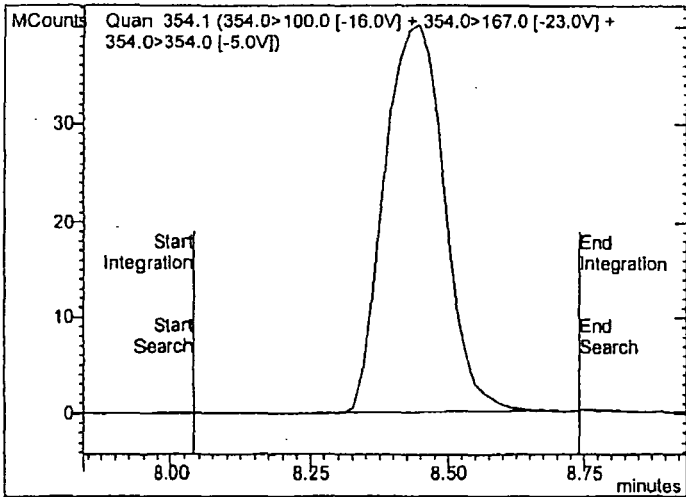
Peak Name:	SKF-525A	Compound Number:	25	CAS Number:	None	Identified
Result Index:	1					

Identification

Parameter	Specification	Actual	Status
Search Type	Nearest		
Retention Time	8.390 +/- 0.350	8.440 min.	Pass
Match Result		N/A	
Qual. Ion Ratio (2 ions)	m/z 167.0:53.3%	42.6% - 64.0%	Pass
	m/z 100.0:33.6%	25.2% - 42.0%	Pass

Integration and Quantitation

Parameter	Specification	Actual	Status
Quan Ions	354.1		
Calibration Equation	Linear, Force, None	y = +1.0000x	
Area	>=500000	3.052e+8	Pass
Height		4.010e+7	
Amount	>= 0.000 mg/L	1.00 mg/L	Pass



Seg 1, Time: 0.10-11.52, Scan Functions: 106

Sample ID: L11-01466 TAM Operator: TAM
 Inj. Sample Notes: None
 Vial: 13 Instrument ID: Varian LC-MS/MS #1
 Acquisition Date: 2/22/2011 5:39 PM Last Calibration: 2/23/2011 2:27 PM
 Calculation Date: 2/23/2011 3:05 PM Calibration Type: Internal Standard
 Method: c:\varianws\methods\generals_022211.mth
 Data File: c:\varianws\data\generals\022211\11-01466 tam 2-22-2011 5-39-43 pm.xms

Compound Information

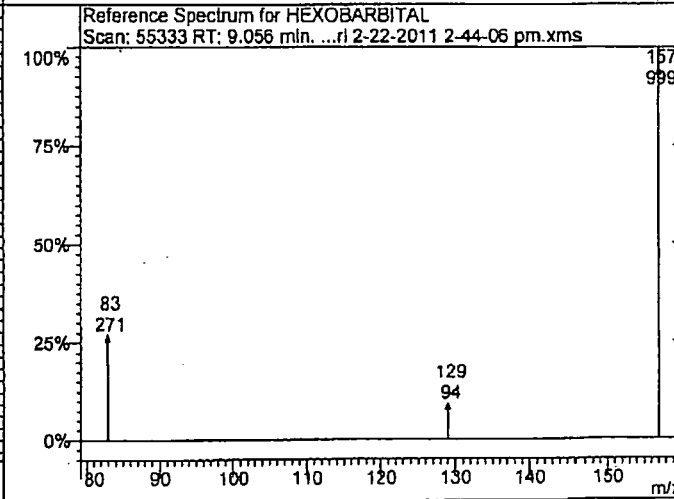
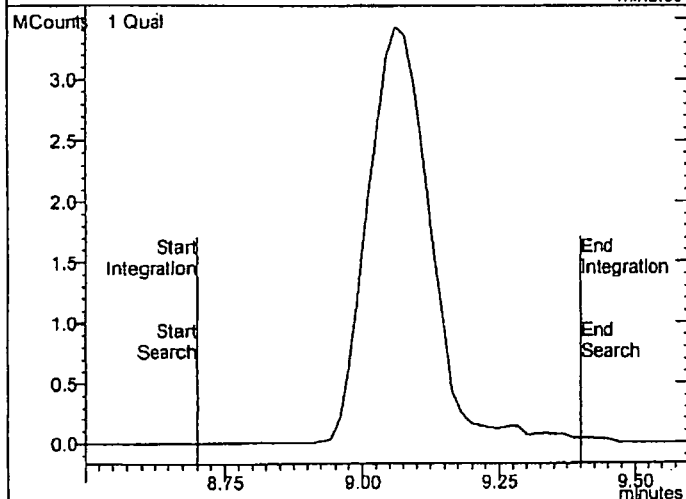
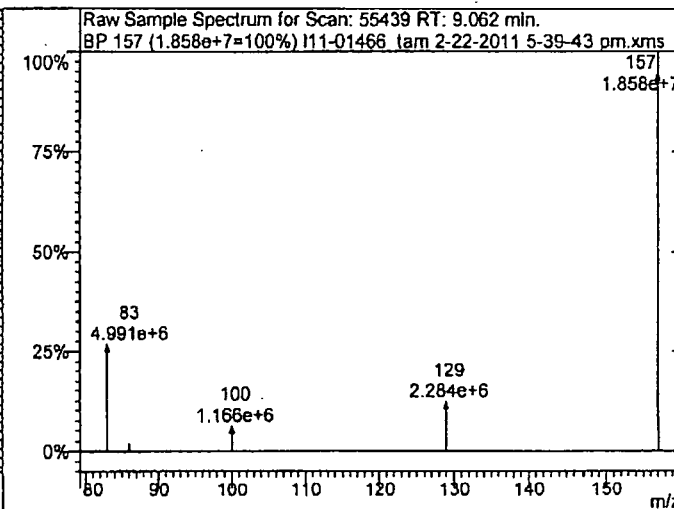
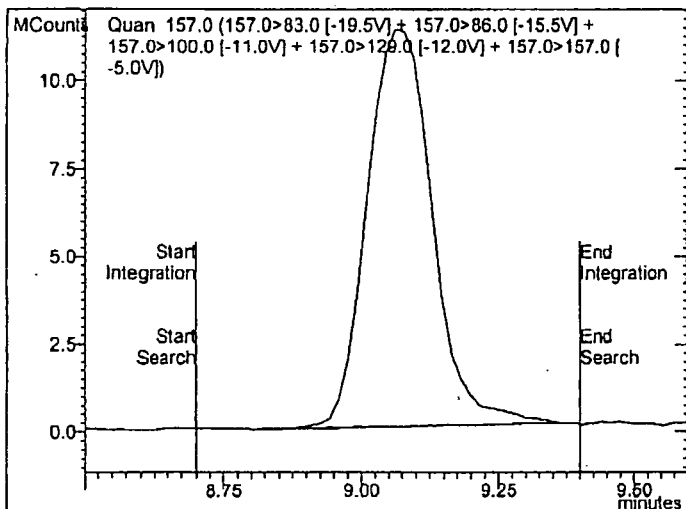
Peak Name: HEXOBARBITAL
 Result Index: 2 Compound Number: 28 CAS Number: None Identified

Identification

Parameter	Specification	Actual	Status
Search Type	Nearest		
Retention Time	9.050 +/- 0.350	9.069 min.	Pass
Match Result		N/A	
Qual. Ion Ratio (1 ion)	m/z 82.9:28.0%	21.0% - 35.0% 28.4%	Pass

Integration and Quantitation

Parameter	Specification	Actual	Status
Quan Ions	157.0		
Calibration Equation	Linear, Force, None	y = +1.0000x	
Area	>=500000	9.378e+7	Pass
Height		1.131e+7	
Amount	>= 0.000 mg/L	0.10 mg/L	Pass



Seg 1, Time: 0.10-11.52, Scan Functions: 106

Data Path : C:\msdchem\1\DATA\TIM\
 Data File : V1030449.D
 InstName : SLED7
 DataAcq Meth:THCSIM.M
 Acq On : 5 Mar 2011 7:52
 Operator : TWG
 Sample : L11-01466 B TAM
 Misc : BondElut Certify II/THC/BSTFA
 ALS Vial : 23 Sample Multiplier: 1

Quant Time: Mar 14 09:12:11 2011
 Quant Method : C:\msdchem\1\METHODS\THC10304TWG.M
 Quant Title : BLOOD CANNABINOIDS--THC FRACTION
 QLast Update : Sat Mar 05 09:16:55 2011
 Response via : Initial Calibration

Compound	R.T.	QIon	Response	Conc	Units	Dev (Min)

Internal Standards						
1) d3-THC-TMS	5.156	374	13771	1.00	mcg/L	0.00
Target Compounds						
2) THC-TMS	5.160	371	3696	1.82	mcg/L#	Qvalue 84

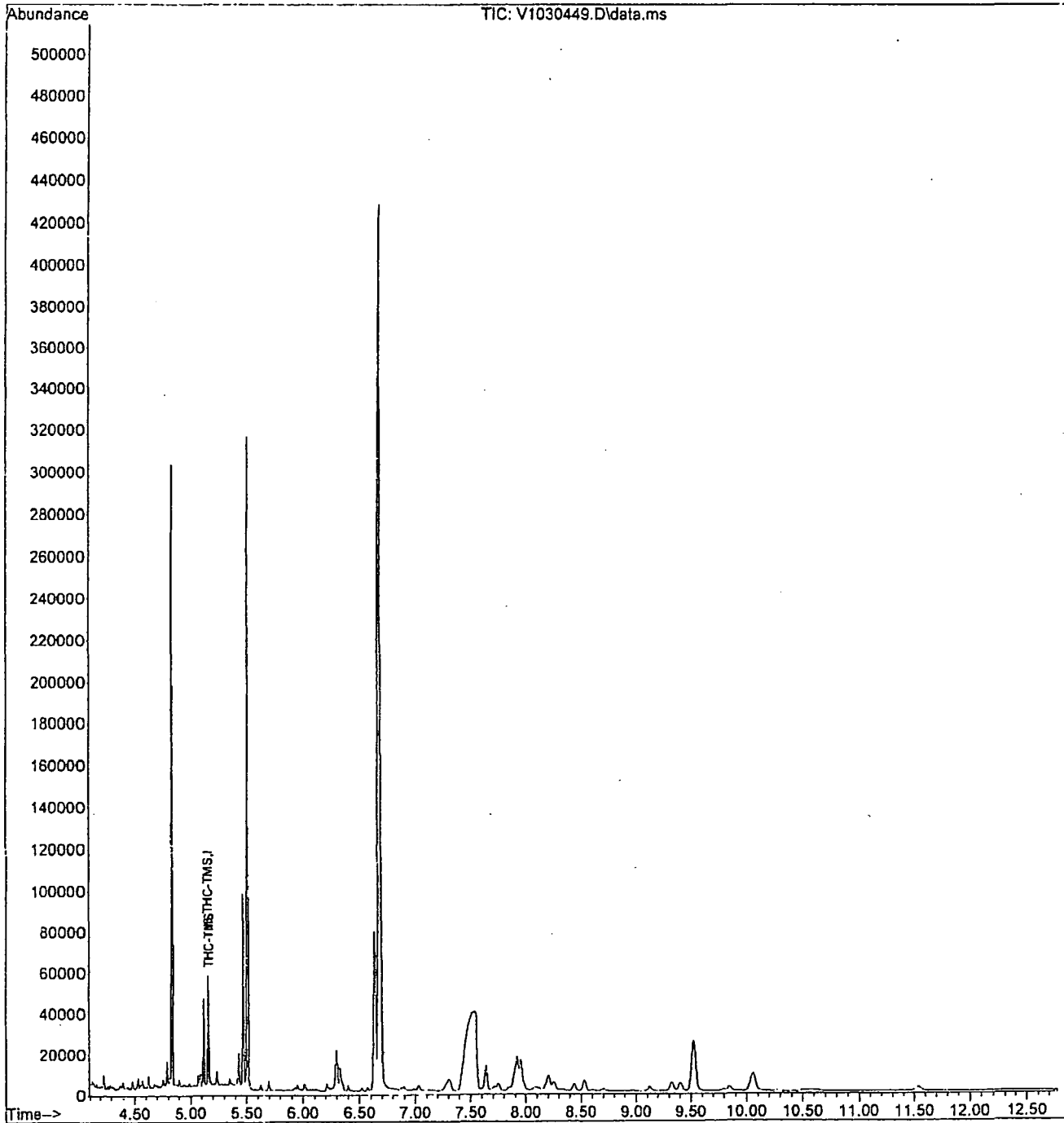
(#) = qualifier out of range (m) = manual integration (+) = signals summed

Quantitation Report (QT Reviewed)

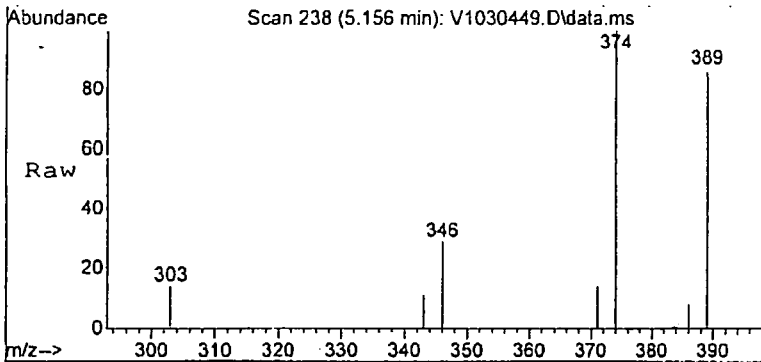
Data Path : C:\msdchem\1\DATA\TIM\
Data File : V1030449.D
InstName : SLED7
DataAcq Meth:THCSIM.M
Acq On : 5 Mar 2011 7:52
Operator : TWG
Sample : L11-01466 B TAM
Misc : BondElut Certify II/THC/BSTFA
ALS Vial : 23 Sample Multiplier: 1

tw

Quant Time: Mar 14 09:12:11 2011
Quant Method : C:\msdchem\1\METHODS\THC10304TWG.M
Quant Title : BLOOD CANNABINOIDS--THC FRACTION
QLast Update : Sat Mar 05 09:16:55 2011
Response via : Initial Calibration

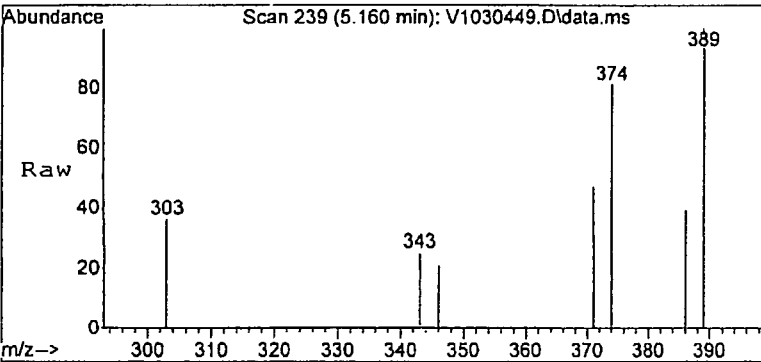
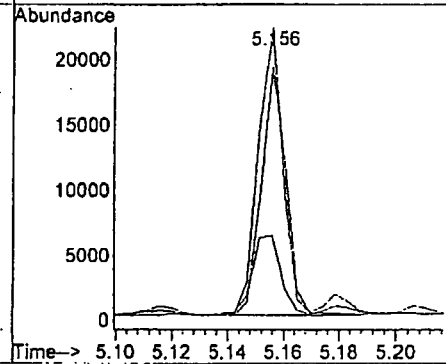
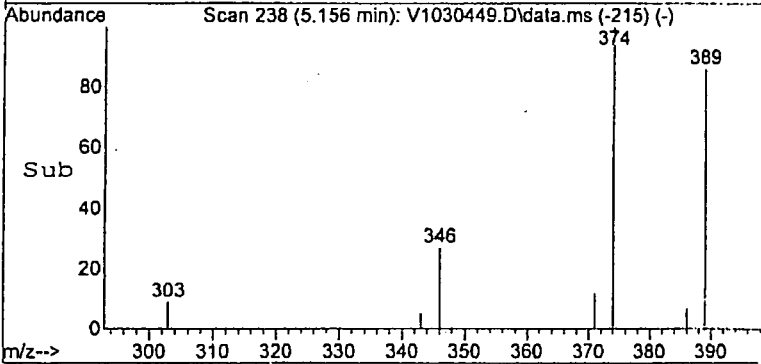


tw



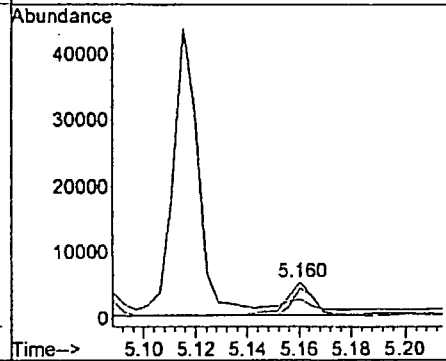
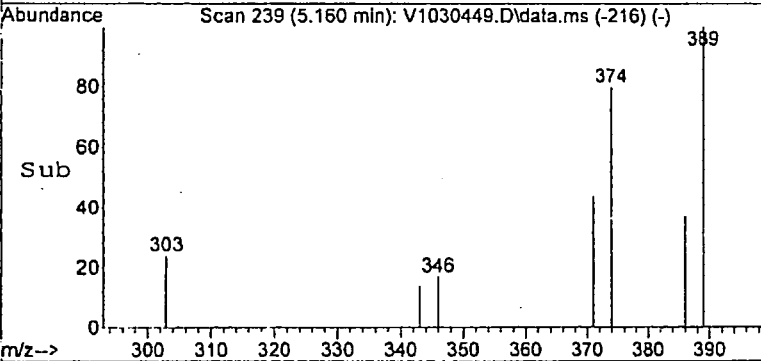
#1
 d3-THC-TMS
 Concen: 1.00 mcg/L
 RT: 5.156 min Scan# 238
 Delta R.T. 0.005 min
 Lab File: V1030449.D
 Acq: 5 Mar 2011 7:52

Tgt Ion: 374 Resp: 13771
 Ion Ratio Lower Upper
 374 100
 389 84.3 72.0 108.0
 346 31.6 22.5 37.5



#2
 THC-TMS
 Concen: 1.82 mcg/L
 RT: 5.160 min Scan# 239
 Delta R.T. 0.004 min
 Lab File: V1030449.D
 Acq: 5 Mar 2011 7:52

Tgt Ion: 371 Resp: 3696
 Ion Ratio Lower Upper
 371 100
 386 71.3 72.0 108.0#
 343 35.5 24.0 40.0



Handwritten signature/initials

Quantitation Report (QT Reviewed)

Data Path : C:\msdchem\1\DATA\TIM\
 Data File : V1030448.D
 InstName : SLED7
 DataAcq Meth: THCSIM.M
 Acq On : 5 Mar 2011 7:35
 Operator : TWG
 Sample : BLANK
 Misc : BondElut Certify II/THC/BSTFA
 ALS Vial : 98 Sample Multiplier: 1

TW

Quant Time: Mar 14 09:12:42 2011
 Quant Method : C:\msdchem\1\METHODS\THC10304TWG.M
 Quant Title : BLOOD CANNABINOIDS--THC FRACTION
 QLast Update : Sat Mar 05 09:16:55 2011
 Response via : Initial Calibration

Compound	R.T.	QI on	Response	Conc	Units	Dev (Min)

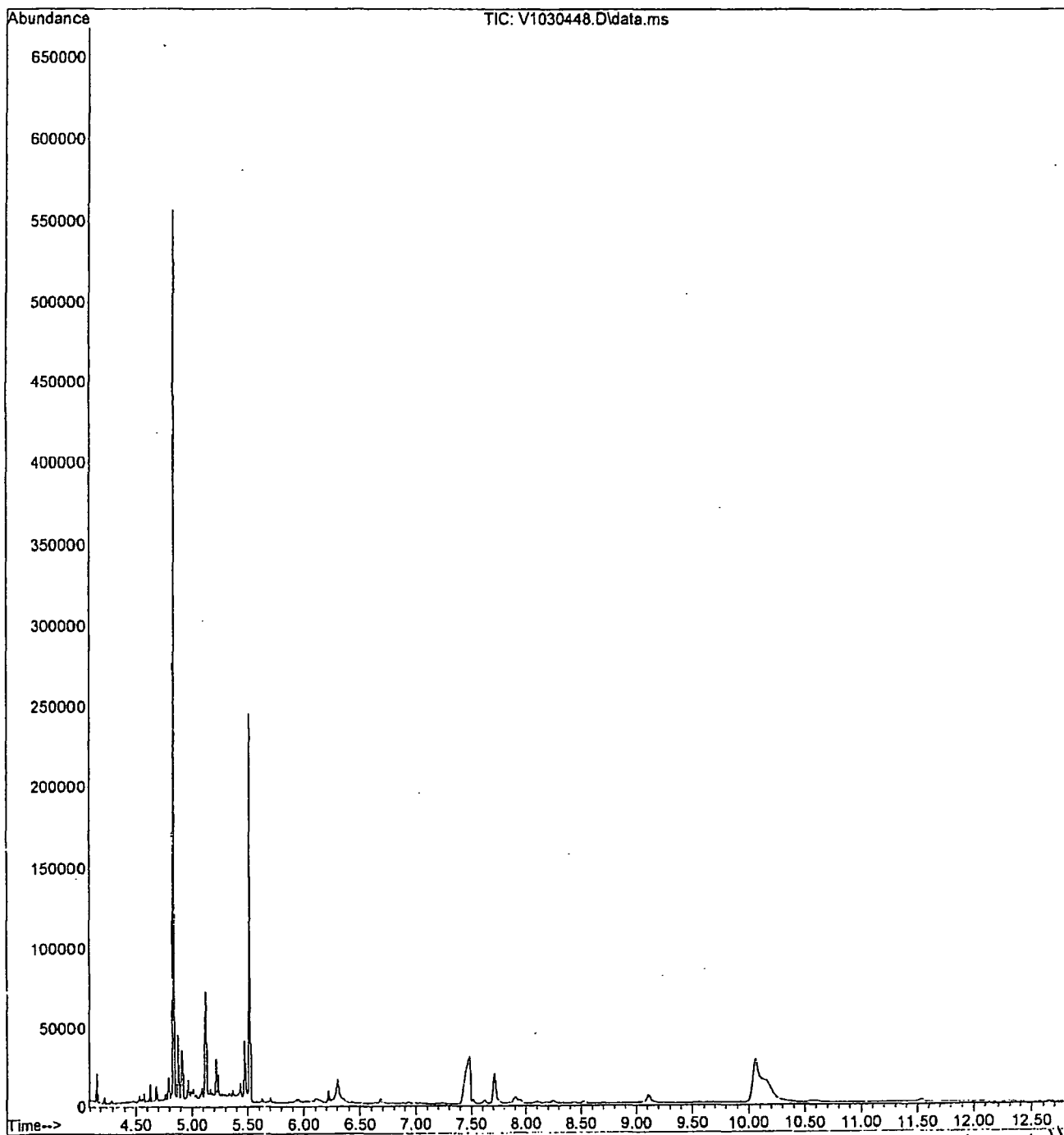
Internal Standards						
1) d3-THC-TMS	0.000	374	0m	1.00	mcg/L	-5.15
Target Compounds						Qvalue
2) THC-TMS	0.000		0	N.D.	d	

(#) = qualifier out of range (m) = manual integration (+) = signals summed

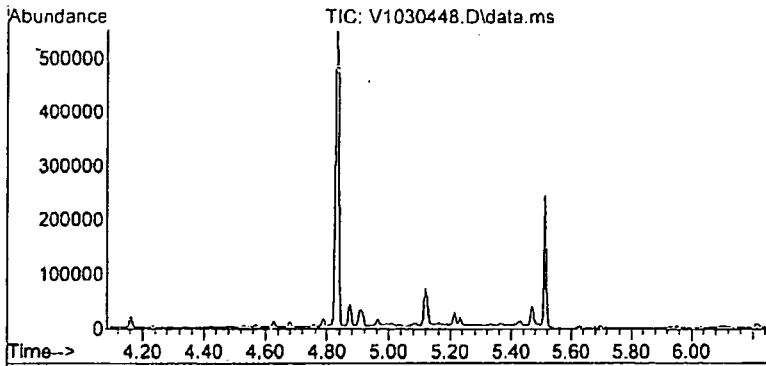
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Data File : V1030448.D
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DataAcq Meth:THCSIM.M
Acq On : 5 Mar 2011 7:35
Operator : TWG
Sample : BLANK
Misc : BondElut Certify II/THC/BSTFA
ALS Vial : 98 Sample Multiplier: 1

TW

Quant Time: Mar 14 09:12:42 2011
Quant Method : C:\msdchem\1\METHODS\THC10304TWG.M
Quant Title : BLOOD CANNABINOIDS--THC FRACTION
QLast Update : Sat Mar 05 09:16:55 2011
Response via : Initial Calibration



L11-01-106 TA

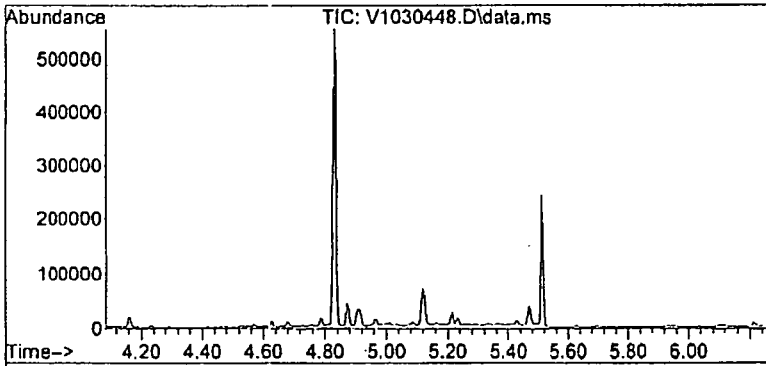
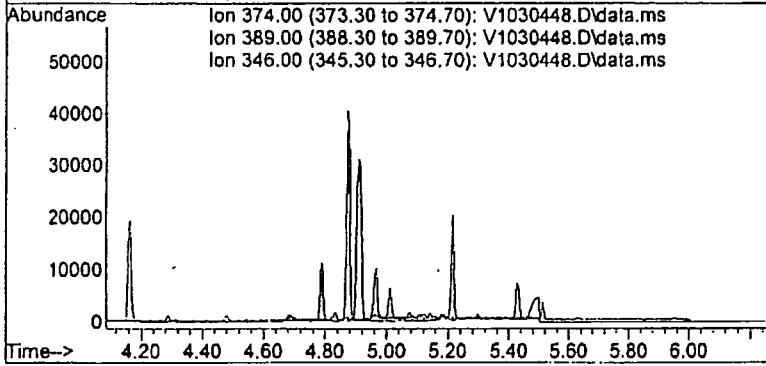


#1
 d3-THC-TMS
 Concen: 0.00 mcg/L
 Expected RT: 5.15 min

TK

Lab File: V1030448.D
 Acq: 5 Mar 2011 7:35

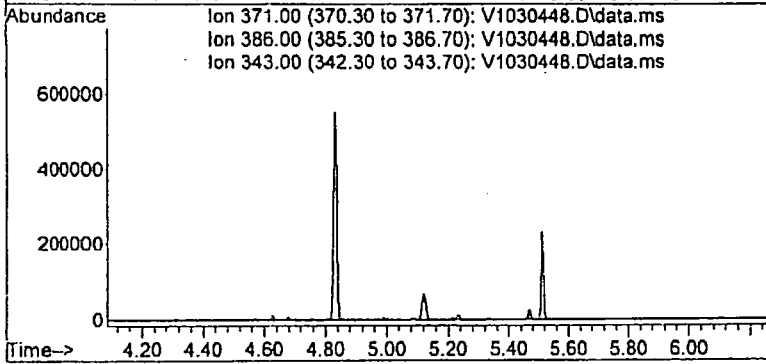
Tgt Ion	Exp Ratio
374	100
389	90.0
346	30.0



#2
 THC-TMS
 Concen: N.D.
 Expected RT: 5.16 min

Lab File: V1030448.D
 Acq: 5 Mar 2011 7:35

Tgt Ion	Exp Ratio
371	100
386	90.0
343	32.0



Quantitation Report (QT Reviewed)

Data Path : C:\msdchem\1\DATA\TIM\
 Data File : V1030644.D
 InstName : SLED7
 DataAcq Meth:THCSIM5.M
 Acq On : 7 Mar 2011 1:38
 Operator : TWG
 Sample : L11-01466 B TAM
 Misc : BondElut Certify II/THCAcid/BSTFA
 ALS Vial : 67 Sample Multiplier: 1

Quant Time: Mar 14 09:55:59 2011
 Quant Method : C:\msdchem\1\METHODS\THCAcid10304TWG.M
 Quant Title : BLOOD CANNABINOIDS Acid Fraction
 QLast Update : Mon Mar 07 15:03:14 2011
 Response via : Initial Calibration

Compound	R.T.	QIon	Response	Conc	Units	Dev (Min)

Internal Standards						
1) d3-OH-THC-2TMS	10.022	374	193085	1.00	mcg/L	0.00
3) d9-THC-COOH-2TMS	10.991	380	79647	1.00	mcg/L	0.00
Target Compounds						
						Qvalue
2) OH-THC-2TMS	10.042	371	54857	0.50	mcg/L	99
4) THC-COOH-2TMS	11.038	371	593172	73.64	mcg/L	87

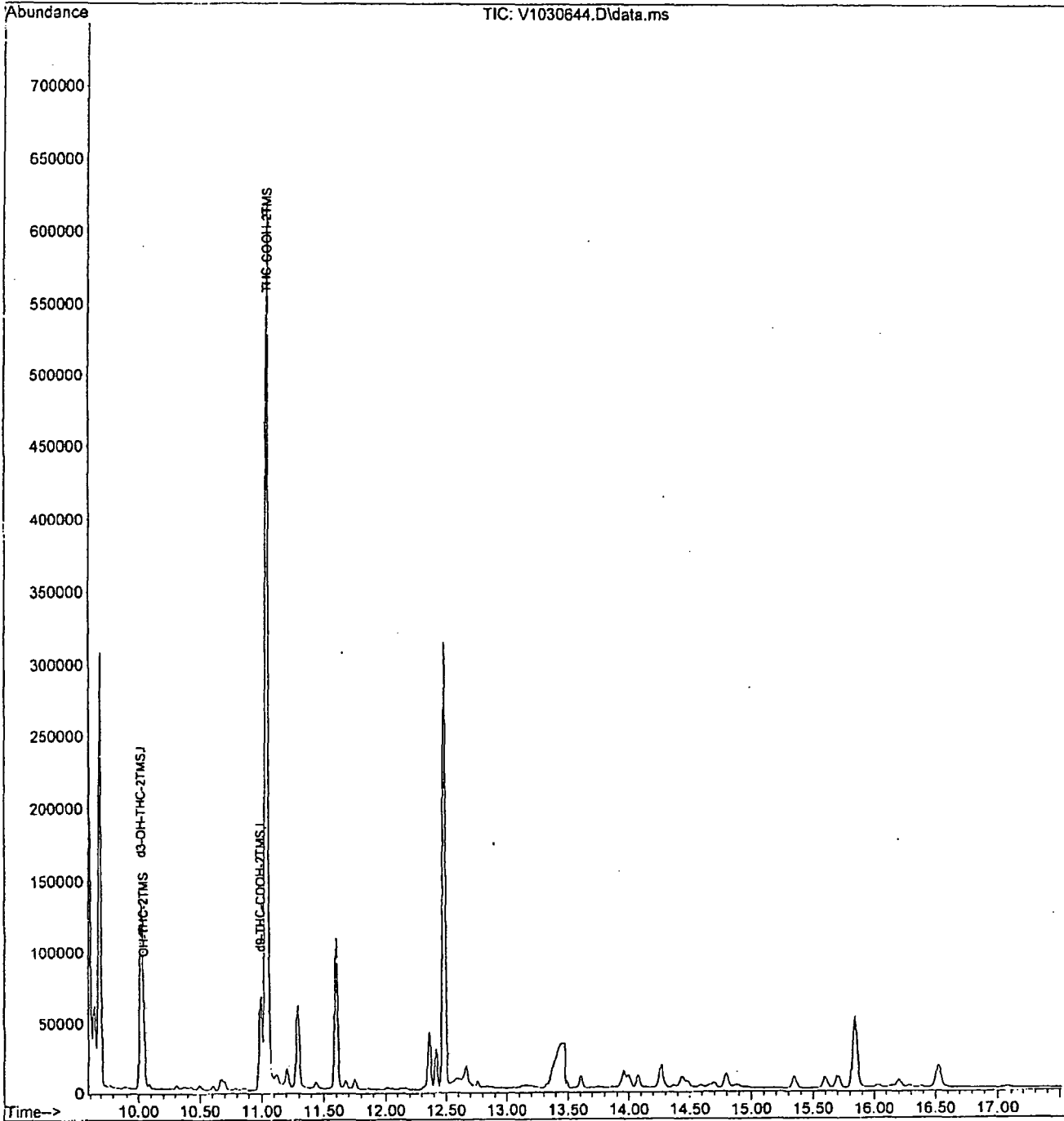
(#) = qualifier out of range (m) = manual integration (+) = signals summed

Quantitation Report (QT Reviewed)

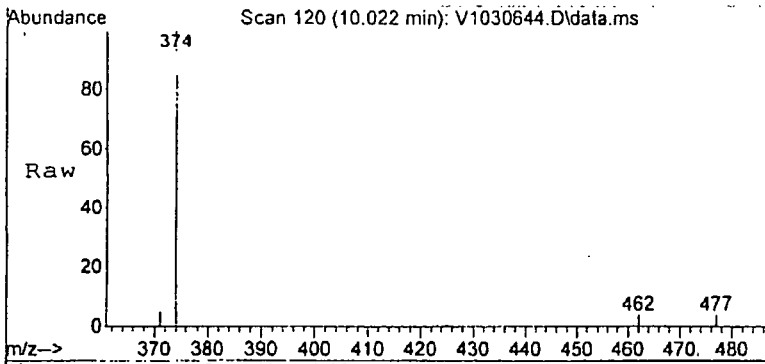
Data Path : C:\msdchem\1\DATA\TIM\
Data File : V1030644.D
InstName : SLED7
DataAcq Meth:THCSIM5.M
Acq On : 7 Mar 2011 1:38
Operator : TWG
Sample : L11-01466 B TAM
Misc : BondElut Certify II/THCAcid/BSTFA
ALS Vial : 67 Sample Multiplier: 1

tw

Quant Time: Mar 14 09:55:59 2011
Quant Method : C:\msdchem\1\METHODS\THCAcid10304TWG.M
Quant Title : BLOOD CANNABINOIDS Acid Fraction
QLast Update : Mon Mar 07 15:03:14 2011
Response via : Initial Calibration

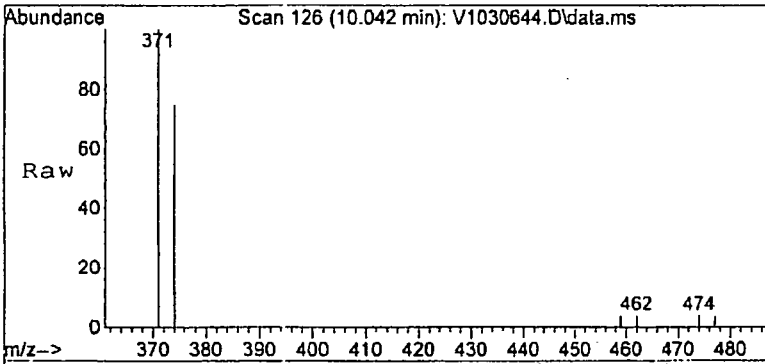
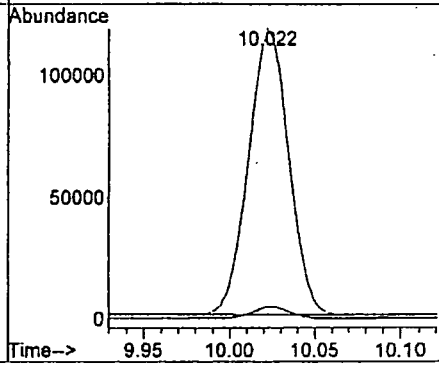
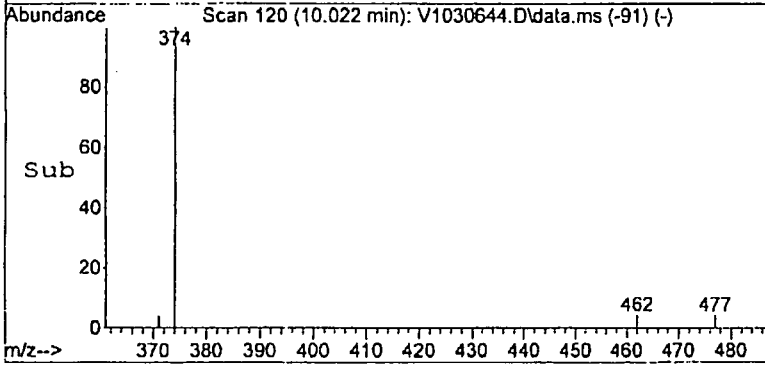


tw



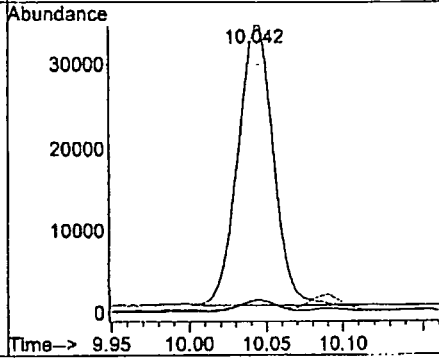
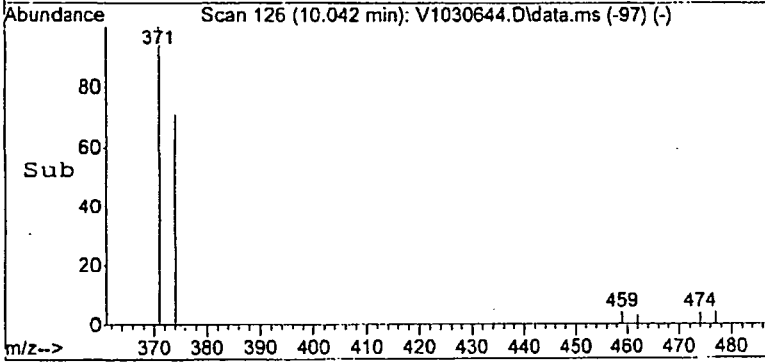
#1
 d3-OH-THC-2TMS
 Concen: 1.00 mcg/L
 RT: 10.022 min Scan# 120
 Delta R.T. -0.000 min
 Lab File: V1030644.D
 Acq: 7 Mar 2011 1:38

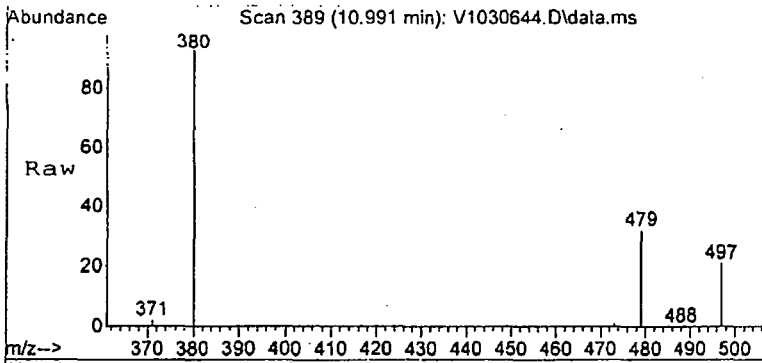
Tgt Ion	Resp	Lower	Upper
374	100		
462	4.0	3.0	5.6
477	3.9	2.9	5.3



#2
 OH-THC-2TMS
 Concen: 0.50 mcg/L
 RT: 10.042 min Scan# 126
 Delta R.T. 0.000 min
 Lab File: V1030644.D
 Acq: 7 Mar 2011 1:38

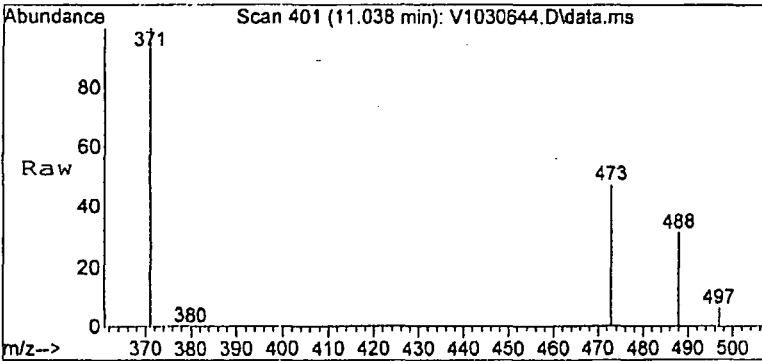
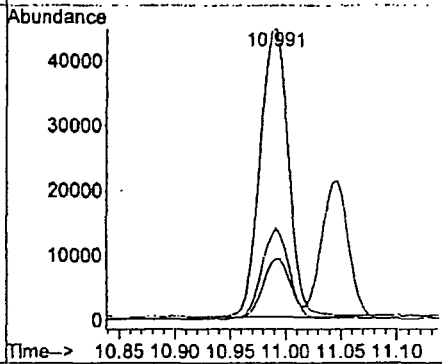
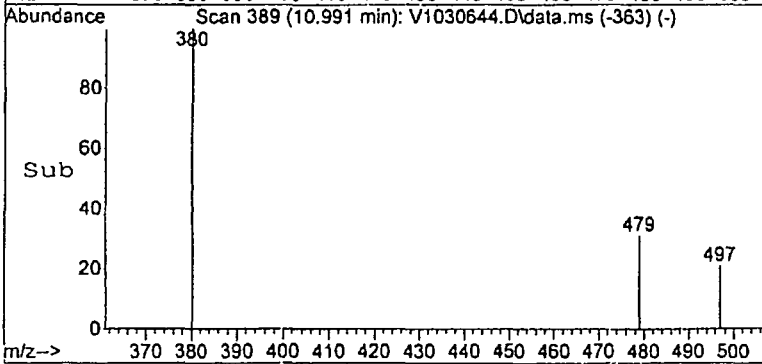
Tgt Ion	Resp	Lower	Upper
371	100		
459	3.7	2.8	5.2
474	3.9	2.8	5.2





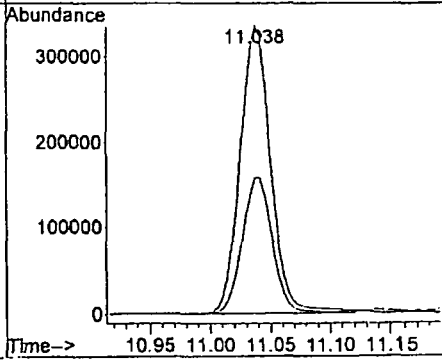
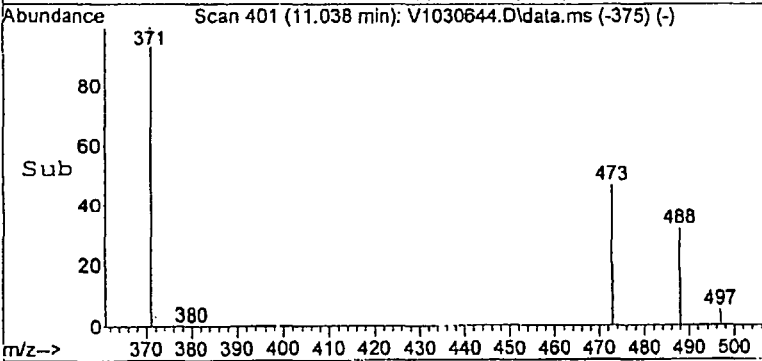
#3
 d9-THC-COOH-2TMS
 Concen: 1.00 mcg/L
 RT: 10.991 min Scan# 389
 Delta R.T. 0.000 min
 Lab File: V1030644.D
 Acq: 7 Mar 2011 1:38

Tgt Ion	Resp	Lower	Upper
380	100		
479	30.2	23.3	38.8
497	20.3	15.0	28.0



#4
 THC-COOH-2TMS
 Concen: 73.64 mcg/L
 RT: 11.038 min Scan# 401
 Delta R.T. 0.000 min
 Lab File: V1030644.D
 Acq: 7 Mar 2011 1:38

Tgt Ion	Resp	Lower	Upper
371	100		
473	46.5	28.9	48.1



Quantitation Report (QT Reviewed)

Data Path : C:\msdchem\1\DATA\TIM\
 Data File : V1030643.D
 InstName : SLED7
 DataAcq Meth:THCSIM5.M
 Acq On : 7 Mar 2011 1:16
 Operator : TWG
 Sample : BLANK
 Misc : BondElut Certify II/THCAcid/BSTFA
 ALS Vial : 92 Sample Multiplier: 1

Handwritten signature

Quant Time: Mar 14 09:56:26 2011
 Quant Method : C:\msdchem\1\METHODS\THCAcid10304TWG.M
 Quant Title : BLOOD CANNABINOIDS Acid Fraction
 QLast Update : Mon Mar 07 15:03:14 2011
 Response via : Initial Calibration

Compound	R.T.	QIon	Response	Conc	Units	Dev(Min)
Internal Standards						
1) d3-OH-THC-2TMS	0.000	374	0m	1.00	mcg/L	-10.02
3) d9-THC-COOH-2TMS	0.000	380	0	0.00	mcg/L	-10.99
Target Compounds						
2) OH-THC-2TMS	0.000		0	N.D.	d	Qvalue
4) THC-COOH-2TMS	0.000		0	N.D.	d	

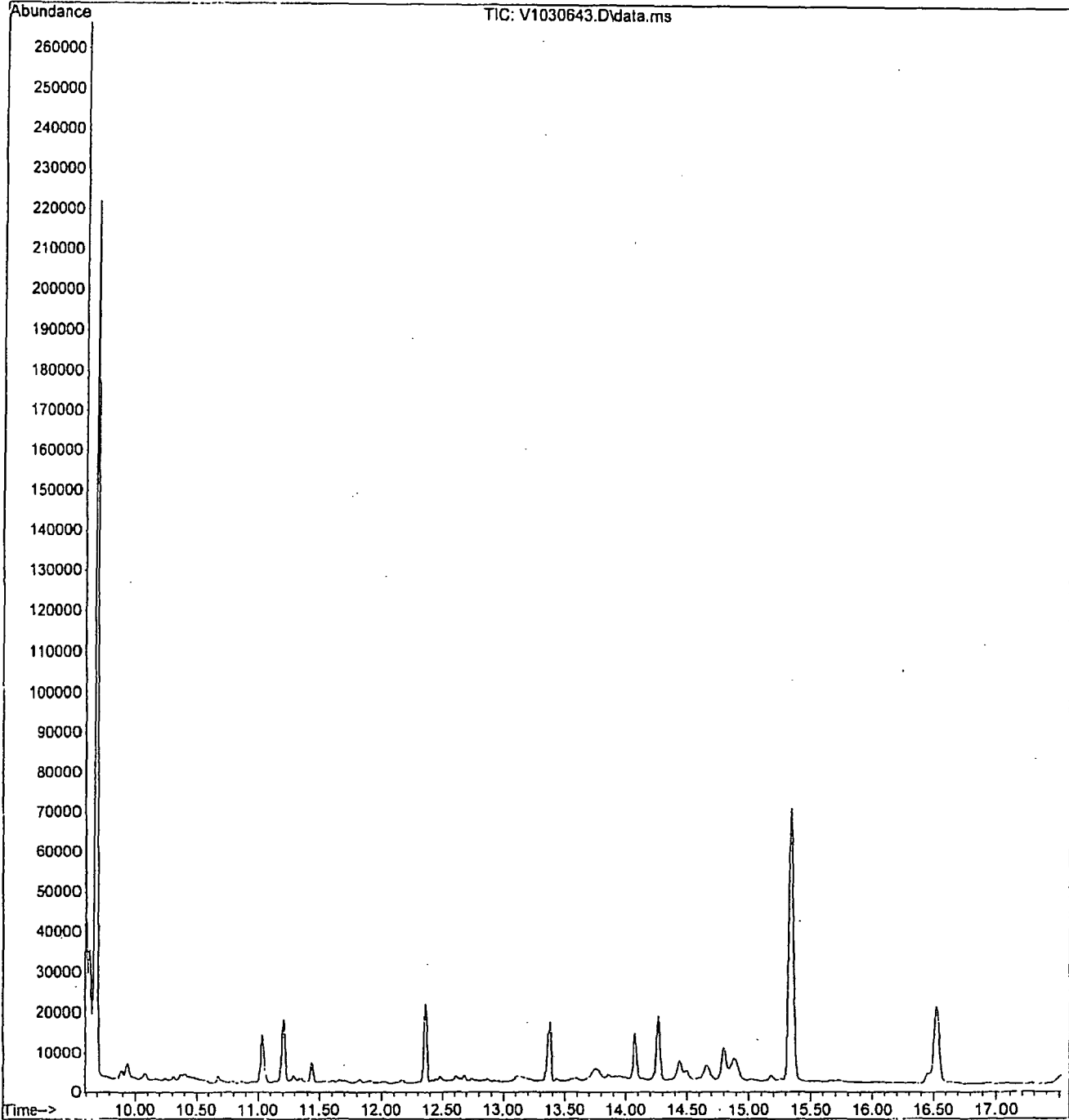
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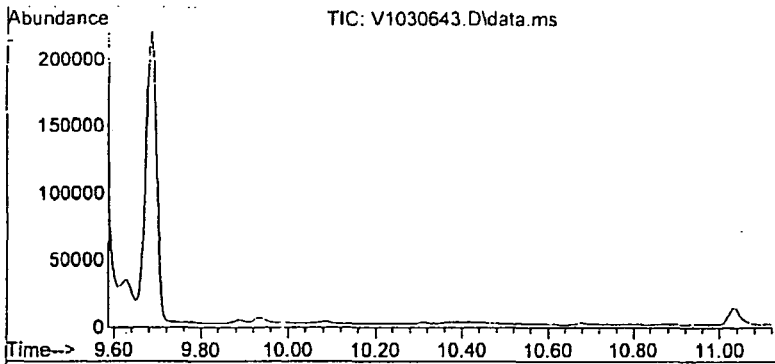
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Quantitation Report (QT Reviewed)

Data Path : C:\msdchem\1\DATA\TIM\
Data File : V1030643.D
InstName : SLED7
DataAcq Meth:THCSIM5.M
Acq On : 7 Mar 2011 1:16
Operator : TWG
Sample : BLANK
Misc : BondElut Certify II/THCAcid/BSTFA
ALS Vial : 92 Sample Multiplier: 1

Quant Time: Mar 14 09:56:26 2011
Quant Method : C:\msdchem\1\METHODS\THCAcid10304TWG.M
Quant Title : BLOOD CANNABINOIDS Acid Fraction
QLast Update : Mon Mar 07 15:03:14 2011
Response via : Initial Calibration

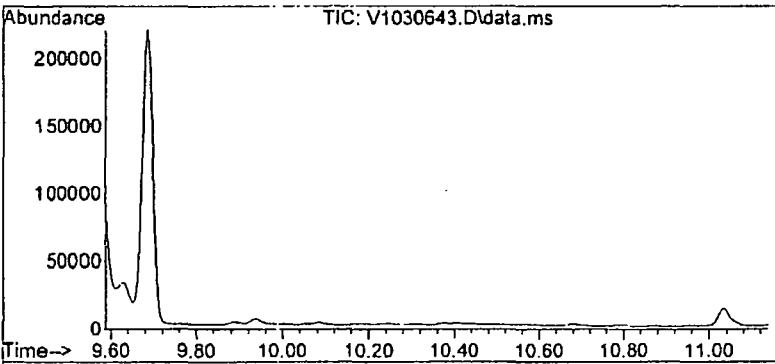
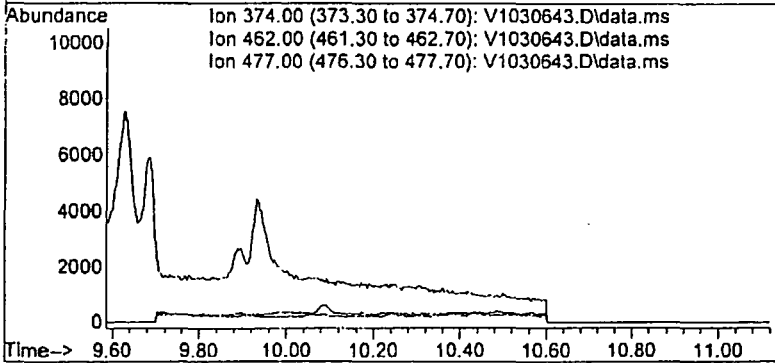




#1
 d3-OH-THC-2TMS
 Concen: 0.00 mcg/L
 Expected RT: 10.02 min

Lab File: V1030643.D
 Acq: 7 Mar 2011 1:16

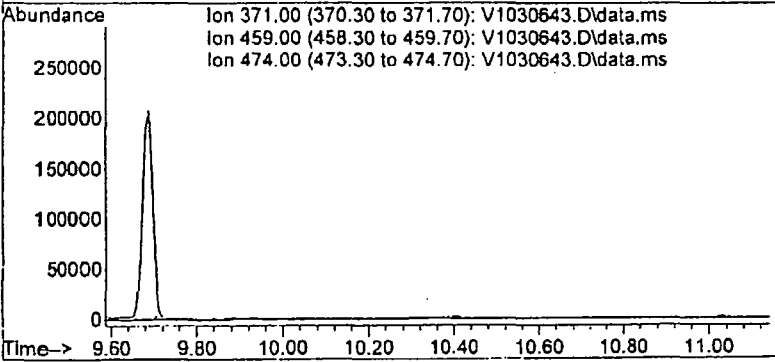
Tgt Ion	Sig	Exp Ratio
374	100	
462		4.3
477		4.1

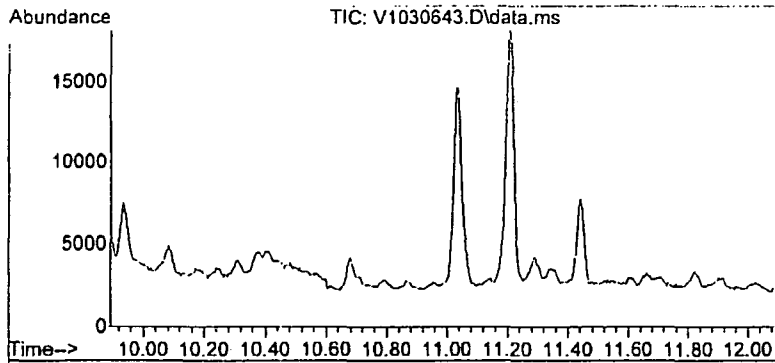


#2
 OH-THC-2TMS
 Concen: N.D.
 Expected RT: 10.04 min

Lab File: V1030643.D
 Acq: 7 Mar 2011 1:16

Tgt Ion	Sig	Exp Ratio
371	100	
459		4.0
474		4.0

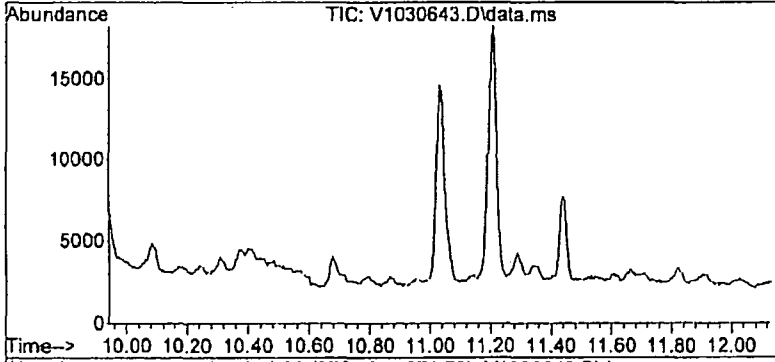
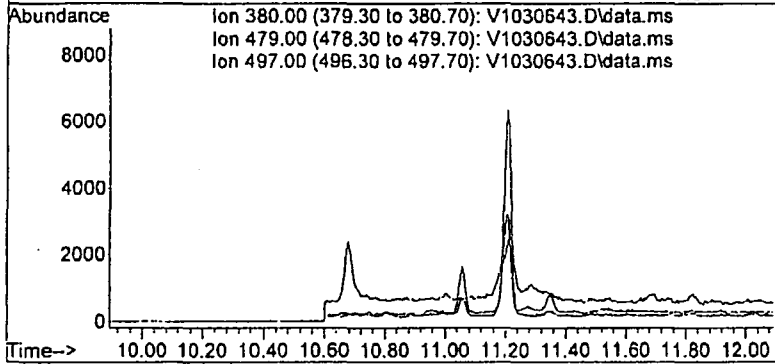




#3
 d9-THC-COOH-2TMS
 Concen: 0.00 mcg/L
 Expected RT: 10.99 min

Lab File: V1030643.D
 Acq: 7 Mar 2011 1:16

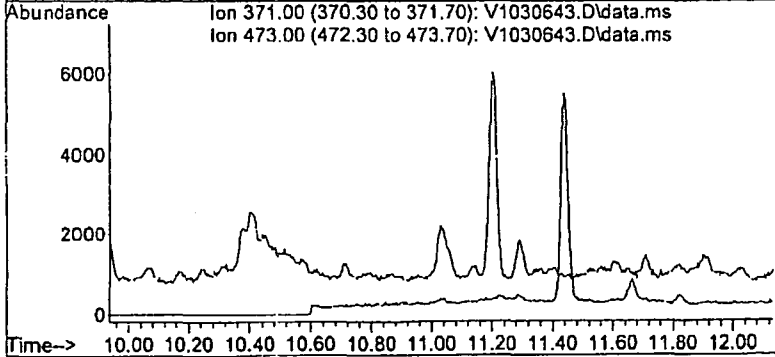
Tgt Ion: 380
 Sig Exp Ratio
 380 100
 479 31.0
 497 21.5



#4
 THC-COOH-2TMS
 Concen: N.D.
 Expected RT: 11.04 min

Lab File: V1030643.D
 Acq: 7 Mar 2011 1:16

Tgt Ion: 371
 Sig Exp Ratio
 371 100
 473 38.5



SOUTH CAROLINA LAW ENFORCEMENT DIVISION
FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



REGINALD I. LLOYD
Director

C.H. Breland
S.C. Highway Patrol Troop #7
P.O. Box 713
Orangeburg, SC 29116

TOXICOLOGY DEPARTMENT
March 17, 2011
SLED No: L11-01466
Your Case No: 1103HP7001
Incident Date: 01/28/2011

[S] Arthur Badger, Jr.
[V-Deceased] Charles Halley
[V] Barbara Williams
[V] Eva Marshall
[V] Lakasha Hay
[V-Deceased] Donna Badger
[V] Matthew Clay Figlos

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director

ITEMS OF EVIDENCE

Item: 1 **Sample Type: Blood (Toxicology) - labeled "Arthur Badger Jr"**

Analysis by Headspace Gas Chromatography (GC) and/or Headspace Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
Ethanol	0.031	% w/v	0.01



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

3/17/11

Screen by Enzyme Linked Immunosorbant Assay (ELISA)

Analyte	Result	Units	Threshold
Cannabinoids	Positive	mg/L	0.03
Amphetamine	Negative	mg/L	0.15
Benzodiazepines	Negative	mg/L	0.05
Methamphetamine	Negative	mg/L	0.15
Oxycodone	Negative	mg/L	0.10

Screen by Fluorescence Polarization Immunoassay (FPIA)

Analyte	Result	Units	Threshold
Cocaine Metabolite	Negative	mg/L	0.10
Opiates	Negative	mg/L	0.10

Analysis by Gas Chromatography/Mass Spectrometry (GC/MS)

Analyte	Result	Units	Threshold
11-carboxy-Tetrahydrocannabinol Synonyms: THC metabolite	> 50	µg/L	2.00

Comprehensive Analysis

A comprehensive analysis was performed on this sample. With the exception of the compound(s) listed, no other drugs or poisons of concern were found.

Item: 2 **Sample Type: Urine - labeled "Arthur Badger Jr"**

No Analysis Performed



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

3/17/11



Tracy McKinnon
Forensic Toxicologist



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)
)
ARTHUR BADGER AS PERSONAL)
REPRESENTATIVE OF THE)
ESTATE OF DONNA BADGER,)
)
Plaintiff,)
)
-vs-)
)
UNITED PARCEL SERVICE AND)
MATTHEW C. FIELDS.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2011-CP-03- 39

SUMMONS
(Jury Trial Requested)
(Wrongful Death)
(Survival Action)

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

~~PETERS, MURDAUGH, PARKER, ELTZROTH,
& DETRICK, P.A.~~

BY: _____



R. Alexander Murdaugh
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

Hampton, South Carolina
February 9, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ALLENDALE)
)
 ARTHUR BADGER AS PERSONAL)
 REPRESENTATIVE OF THE ESTATE OF)
 DONNA BADGER.)
)
 Plaintiff,)
)
 vs.)
)
 UNITED PARCEL SERVICE AND)
 MATTHEW C. FIELDS.)
)
 Defendant(s).)

IN THE COURT OF COMMON PLEAS
 C/A NO.: 2011-CP-03-_____

COMPLAINT
(Jury Trial Requested)
(Wrongful Death)
(Survival Action)

The plaintiff complaining that the defendant alleges:

1. The Plaintiff has been duly appointed Personal Representative of the Estate of Donna Badger by the Allendale County Probate Court, and he brings this action for the wrongful death of Donna Badger on behalf of the statutory beneficiaries.
2. That the defendant United Parcel Service is a foreign corporation; the defendant, Matthew C. Fields is a resident of the State of South Carolina.
3. That at all times hereinafter mentioned the defendant, Matthew C. Fields was an agent/employee/servant of the defendant United Parcel Service who was acting in the course and scope of his employment and his acts are thereby imputed to United Parcel Service.
4. That on January 28, 2011, the deceased was a passenger in a vehicle traveling West on U.S. 278 in Allendale County when the defendant also traveling West on U. S. 278 crossed the center line and collided with the plaintiff's vehicle; as a result of the collision Donna Bager was seriously injured and did thereafter die. Prior to her death Donna Badger endured serious conscious pain and suffering.
5. That the direct and proximate cause of the plaintiff's personal injuries and death was the negligent and reckless conduct of the defendant in the following particulars:

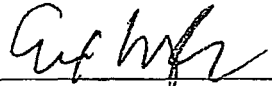
- a. In failing to keep a proper lookout;
- b. In failing to keep his vehicle under proper control;
- c. In failing to stop, slow or turn his vehicle to avoid colliding with the plaintiff;
- d. In operating an automobile in utter disregard for the safety of others on the highway; and
- e. In crossing the center line;
- f. In making a left turn when it was not safe to do so;
- g. In failing to yield the right of way;
- h. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances.

6. As a result of the above conduct of the defendant, Donna Badger sustained serious and severe injuries which caused conscious pain and suffering and resulted in her wrongful death, resulting in damages to her. That the beneficiaries of Donna Badger have endured grief, sorrow, shock, wounded feelings and loss of love and companionship.

WHEREFORE, the Plaintiff prays for judgment against the defendants for actual damages and for whatever additional and further relief this court deems just and proper all in an amount determined fair and reasonable by a jury.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: _____


R. Alexander Murdaugh
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

Hampton, South Carolina
February 9, 2011

EXHIBIT E

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No. 2011-CP-03-00039

Arthur Badger, as Personal)
Representative of the Estate)
of Donna Badger,)

2011 APR 27 AM 10:57
LINDA SARR
CLERK OF COURT
ALLENDALE COUNTY, S.C.

Plaintiff,)

vs.)

ANSWER
(JURY TRIAL REQUESTED)

United Parcel Service and)
Matthew C. Fields,)

Defendants.)

The Defendants, United Parcel Service and Matthew C. Fields, answering the Plaintiff's Complaint would show unto the Court as follows:

FOR A FIRST DEFENSE

1. The Defendants lack specific knowledge or information to admit or deny these allegations.

2. They admit only so much of the allegations contained in Paragraph 1 of the Complaint as can be construed to allege that the Defendant, United Parcel Service, is a corporation with its principal place of business outside of South Carolina. They further admit that the Defendant, Matthew C. Fields, is a resident of the State of South Carolina.

3. They admit only so much of the allegations contained in Paragraph 3 of the Complaint as can be construed to allege that the Defendant, Matthew C. Fields, on the date of the accident was an employee of the Defendant, United Parcel Service, and was acting within the course and scope of his employment. They deny the remaining allegations contained in said Paragraph inconsistent with or in addition to the above admission.

4. They admit only so much of the allegations contained in Paragraph 4 of the Complaint as can be construed to allege that on January 28, 2011, the Plaintiff's Decedent died as a result of an automobile accident occurring between a vehicle being operated by Arthur Badger traveling west on U. S. Highway 278 in Allendale County and a vehicle being operated by the Defendant, Matthew C. Fields, also traveling west on U. S. Highway 278. They deny the remaining allegations contained in said Paragraph inconsistent with or in addition to the above admission.

5. They deny the allegations contained in Paragraph 5 of the Complaint, including all sub-parts.

6. They deny the allegations contained in Paragraph 6 of the Complaint.

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

FOR A SECOND DEFENSE

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

9. The Defendants allege that if any damages were sustained by the Plaintiff, said damages were caused by the negligence and/or willfulness of a third party whom the Defendants exercised no discretion or control over, without which negligence and/or willfulness on the part of the third person, said alleged damage would not have occurred or been sustained, and for that reason the Plaintiff is totally barred from recovery.

FOR A THIRD DEFENSE

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

11. They allege that this accident and the Plaintiff's resulting injuries and damages were caused by the intervening negligence, gross negligence, careless, reckless, willful and wanton acts or omissions on the part of parties over whom they had no control and for whom they had no responsibility. They further allege that this conduct intervened and acted as the sole proximate cause of the accident and the Plaintiff's alleged injuries and damages. As such, the Plaintiff's claims against these Defendants are barred.

FOR A FOURTH DEFENSE

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

13. The Defendants allege that other parties not named as Defendants in this action are potentially liable to the Plaintiff and, therefore, any liability on the part of these Defendants, which is specifically denied, is less than fifty percent of the total fault for the indivisible damages as compared with the total fault for all Defendants. Therefore, the liability of these Defendants, if any, must be apportioned as set forth in § 15-38-15 of the South Carolina Code of Laws.

FOR A FIFTH DEFENSE

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

15. Upon information and belief, the Defendants allege that the driver of the vehicle in which the Plaintiff's decedent was riding as a passenger consumed alcohol and/or illegal drugs and the Plaintiff's decedent knew or should have known of the attendant risk inherent in the driver's operation of the motor vehicle. These Defendants allege that the injuries and damages sustained by the Plaintiff's decedent were caused by the greater negligence and/or willfulness of the Plaintiff's decedent, which exceeds the negligence and/or willfulness, if any, on the part of

these Defendants, without which greater negligence and/or willfulness on the part of the Plaintiff's decedent, said alleged injury or damage would not have occurred or been sustained; and for that reason, the Estate of the Plaintiff's decedent is totally barred from recovery. Alternatively, the Defendants allege that if any injuries and damages were sustained by the Plaintiff's decedent, said injuries and damages were caused by the negligence and/or willfulness on the part of the Plaintiff's decedent, combining, concurring and contributing with the negligence and/or willfulness, if any, on the part of these Defendants; and for that reason, the recovery of the Estate of the Plaintiff's decedent, if any, shall be reduced in proportion to the amount of his negligence.

FOR A SIXTH DEFENSE

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

17. The Defendants allege that an award of punitive damages under South Carolina law violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution; and Article I, Section 3 of the South Carolina Constitution in that:

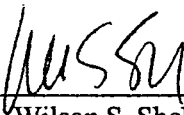
- (a) The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;
- (b) Any award of punitive damages seeking a compensatory function is inconsistent with due process guarantees;
- (c) Any award of punitive damages based upon the wealth of the defendant violates due process guarantees;
- (d) The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- (e) Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness;

- (f) Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant; and
- (g) Any award of punitive damages for conduct or activity of Brunson outside the State of South Carolina is inconsistent with the interest of federalism, and violates the governing authority of State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408 (2003) and Phillip Morris USA v. Williams, 2007 WL 505781 (U.S. Sup. Ct. Feb. 20, 2007).

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

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

BY: _____



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Direct Dial: 864-552-4603
Direct Fax: 864-282-5982

Attorneys for the Defendant,
United Parcel Service and
Matthew C. Fields

Greenville, South Carolina


April 20, 2011

EXHIBIT F

parties by way of apportionment of liability, if any, among the defendants under the Uniform Contribution Among Tortfeasors Act, *S.C. Code Ann. § 15-38-10 et seq.*

Said motion(s) will be further based upon the Affidavit of Matthew C. Fields, and the laws of South Carolina, both case and statute, as may be further amplified upon hearing.

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

BY:  _____

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Fax: (843) 577-1647
tthames@turnerpadget.com

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Fax: (267) 528-0726

Attorneys for the Defendants,
United Parcel Service and
Matthew C. Fields

Charleston, South Carolina

December 21, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No. 2011-CP-03-00039

Arthur Badger, as Personal)
Representative of the Estate)
of Donna Badger,)

Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)

Defendants.)

NOTICE OF MOTION AND
MOTION FOR JOINDER

LEAH ANN SAUBS
CLERK OF COURT
ALLENDALE COUNTY, S.C.

FILED FOR RECORD
2011 DEC 21 PM 3:39

TO: R. ALEXANDER MURDAUGH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

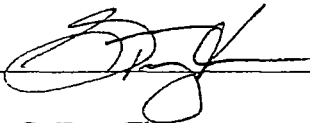
YOU WILL PLEASE TAKE NOTICE that the Defendants, United Parcel Service and Matthew C. Fields, hereby move pursuant to Rules 19 and/or 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasors Act, *S.C. Code Ann.* § 15-38-10 *et seq.*, for an Order joining Arthur Badger as a party defendant. Said matter will be heard on the tenth day after service hereof or as soon thereafter as the Court may schedule a hearing on this matter.

Said motion is made upon the grounds that Arthur Badger is a necessary party to this action in whose absence complete relief cannot be accorded to those already made parties and more particularly under the terms of the Uniform Contribution Among Tortfeasors Act. Defendants further would show that said party whose joinder is sought is subject to service of process and, in fact, is already a party in his individual capacity; that inclusion of said party would not deprive this Court of subject matter jurisdiction of the within action; and that, in the absence of joinder of the additional party, complete relief cannot be accorded to the existing

parties by way of apportionment of liability, if any, among the defendants under the Uniform Contribution Among Tortfeasors Act, *S.C. Code Ann. § 15-38-10 et seq.*

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BY:  _____

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Attorneys for the Defendants,
United Parcel Service and
Matthew C. Fields

Charleston, South Carolina

December 21, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No. 2011-CP-03-00040

Eva Mae Marshall,)
)
Plaintiff,)
vs.)
)
United Parcel Service and)
Matthew C. Fields,)
)
Defendants.)
_____)

NOTICE OF MOTION AND
MOTION FOR JOINDER

ALLIANCE BANK
CLERK OF COURT
ALLENDALE COUNTY, S.C.

FILED FOR RECORD
2011 DEC 21 PM 3:39

TO: R. ALEXANDER MURDAUGH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

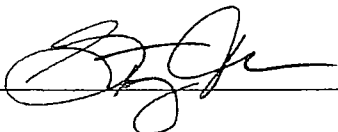
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TURNER, PADGET, GRAHAM & LANEY, P.A.

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Attorneys for the Defendants,
United Parcel Service and
Matthew C. Fields

Charleston, South Carolina

December 21, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No. 2011-CP-03-00041

Barbara A. Williams,)
)
Plaintiff,)
vs.)
)
United Parcel Service and)
Matthew C. Fields,)
)
Defendants.)
_____)

NOTICE OF MOTION AND
MOTION FOR JOINDER

CLARENCE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

2011 DEC 21 PM 3:39

FILED FOR RECORD

TO: R. ALEXANDER MURDAUGH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

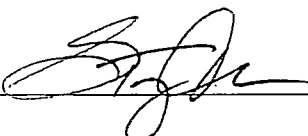
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parties by way of apportionment of liability, if any, among the defendants under the Uniform Contribution Among Tortfeasors Act, *S.C. Code Ann. § 15-38-10 et seq.*

Said motion(s) will be further based upon the Affidavit of Matthew C. Fields, and the laws of South Carolina, both case and statute, as may be further amplified upon hearing.

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

BY:  _____

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Attorneys for the Defendants,
United Parcel Service and
Matthew C. Fields

Charleston, South Carolina

December 21, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No. 2011-CP-03-00042

Lakasha Hay,)
)
Plaintiff,)
vs.)
)
United Parcel Service and)
Matthew C. Fields,)
)
Defendants.)
_____)

NOTICE OF MOTION AND
MOTION FOR JOINDER

FILED FOR RECORD
2011 DEC 21 PM 3:40
CLARENCE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

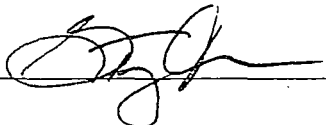
TO: R. ALEXANDER MURDAUGH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that the Defendants, United Parcel Service and Matthew C. Fields, hereby move pursuant to Rules 19 and/or 20 of the South Carolina Rules of Civil Procedure and the Uniform Contribution Among Tortfeasors Act, *S.C. Code Ann. § 15-38-10 et seq.*, for an Order joining Arthur Badger as a party defendant. Said matter will be heard on the tenth day after service hereof or as soon thereafter as the Court may schedule a hearing on this matter.

Said motion is made upon the grounds that Arthur Badger is a necessary party to this action in whose absence complete relief cannot be accorded to those already made parties and more particularly under the terms of the Uniform Contribution Among Tortfeasors Act. Defendants further would show that said party whose joinder is sought is subject to service of process and, in fact, is already a party in his individual capacity; that inclusion of said party would not deprive this Court of subject matter jurisdiction of the within action; and that, in the absence of joinder of the additional party, complete relief cannot be accorded to the existing parties by way of apportionment of liability, if any, among the defendants under the Uniform Contribution Among Tortfeasors Act, *S.C. Code Ann. § 15-38-10 et seq.*

Said motion(s) will be further based upon the Affidavit of Matthew C. Fields, and the laws of South Carolina, both case and statute, as may be further amplified upon hearing.

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

BY:  _____

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Attorneys for the Defendants,
United Parcel Service and
Matthew C. Fields

Charleston, South Carolina

December 21, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

Charles E. Harley, Sr., as)
Personal Representative of the)
Estate of Charles E. Harley, Jr.,)

Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)

Defendants.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

Arthur Badger, as Personal)
Representative of the Estate)
of Donna Badger,)

Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)

Defendants.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

Eva Mae Marshall,)

Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case No. 2011-CP-03-00038

DEFENDANTS' MOTION TO CONSOLIDATE

FILED FOR RECORD
2011 DEC 21 PM 3:35
REGANNE SADD
CLERK OF COURT
ALLENDALE COUNTY, S.C.

Case No. 2011-CP-03-00039

Case No. 2011-CP-03-00040

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

Case No. 2011-CP-03-00041

Barbara A. Williams,)

Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)

Defendants.)

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

Case No. 2011-CP-03-00042

Lakasha Hay,)

Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)

Defendants.)

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

Case No. 2011-CP-03-00043

Arthur Badger,)

Plaintiff,)

vs.)

United Parcel Service and)
Matthew C. Fields,)

Defendants.)

TO: R. ALEXANDER MURDAUGH, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that the Defendants United Parcel Service and Matthew C. Fields, will move before the Presiding Judge of the Fourteenth Judicial Circuit, Allendale County Court of Common Pleas for an Order pursuant to Rule 42(a) of the South Carolina Rules of Civil Procedure consolidating the above-captioned cases for purposes of discovery and trial. These actions arise out of a single accident that occurred on January 28, 2011 on Highway 278 in Allendale County, South Carolina, involving a Ford Expedition driven by Plaintiff Arthur Badger and a United Parcel Service package van operated by Defendant Matthew C. Fields. The five remaining Plaintiffs were all passengers in Mr. Badger's vehicle at the time of the accident.

The grounds for this Motion are that all of these actions involve common questions of law and fact. Furthermore, consolidation would serve to promote the interest of judicial economy and convenience, would promote the integrity of the judicial process, and would prevent inconsistent verdicts. Therefore, it is requested that the above-captioned cases be consolidated and placed on the general docket at the location of the most recent case (2011-CP-03-00038).

The undersigned counsel hereby affirms that counsel has communicated with Plaintiffs' counsel in an effort to resolve the matter contained in this Motion, but the matter remains unresolved.

Charleston, South Carolina

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

December 21, 2011

BY:



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Attorneys for Defendants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court Of Common Pleas

The Honorable Perry M. Buckner, III, Circuit Court Judge

Case No: 2011-CP-03-39

Arthur Badger as Personal Representative
of the Estate of Donna Badger. Respondent,

v.

United Parcel Service and Matthew C. Fields.....Appellants.

PROOF OF SERVICE

I certify this 25th day of May 2012 that I have served a copy of APPELLANTS'
RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL by United States
mail, postage prepaid, addressed to:

R. Alexander Murdaugh, Esquire
Peters, Murdaugh, Parker, Eltzroth &
Detrick, P.A.
P. O. Box 457
Hampton, SC 29924

John S. Nichols, Esquire
Bluestein, Nichols, Thompson & Delgado,
LLC
P. O. Box 7965
Columbia, SC 29202

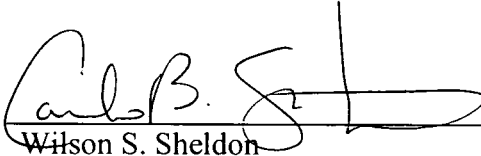
ATTORNEYS FOR RESPONDENT

(Signature page to follow.)

RECEIVED
MAY 25 2012
SC COURT OF APPEALS

May 25, 2012

By:



Wilson S. Sheldon

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ATTORNEYS FOR APPELLANTS