

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2017-001563

Cynthia Wright and Richard Wright, ... Appellants

v.

South Carolina Department of,
Transportation, Pilot Travel Centers,
LLC, Speedway, LLC, Ashley Land
Surveying, Inc. f/k/a Ashley
Engineering and Consulting, Inc.,
and Munlake Contractors, Inc.

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APR 16 2018

SC Court of Appeals

Of Whom

South Carolina Department of,
Transportation, Pilot Travel Centers,
LLC, Speedway, LLC, Ashley Land
Surveying, Inc. f/k/a Ashley
Engineering and Consulting, Inc., ...

Respondents.

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

CYNTHIA WRIGHT and RICHARD WRIGHT,

Plaintiffs,

vs.

**SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, PILOT TRAVEL
CENTERS, LLC, SPEEDWAY, LLC,
ASHLEY LAND SURVEYING, INC. F/K/A
ASHLEY ENGINEERING &
SURVEYING, INC. AND ASHLEY
ENGINEERING & CONSULTING, INC.,
AND MUNLAKE CONTRACTORS, INC.**

Defendants.

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-08-334

ORDER OF DEFAULT

FILED
CLERK OF COURT
BERKELEY COUNTY, S.C.

16 JUL -6 PM 2:08

UPON reading the Summons and Complaint, and it appearing that the pleadings have been properly filed with the Clerk of this Honorable Court, and it further appearing by Affidavit of Plaintiff's attorney that the Defendant, Munlake Contractors, Inc., is in default for failure to answer, demurrer, or otherwise plead or appear to the Summons and Complaint; it is

ORDERED, that the Defendant, Munlake Contractors, Inc., be and are hereby declared to be in default.

AND IT SO ORDERED!!

Mary P. Brown / DW
PRESIDING JUDGE *clerk of court*

Moncks Corner, South Carolina

Date

7/6/16

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

South Carolina Department of Transportation,
Pilot Travel Centers, LLC,
Speedway LLC, Ashley Land Surveying, Inc.,
f/k/a Ashley Engineering & Surveying, Inc.
and Ashley Engineering & Consulting, Inc.,
and Munlake Contractors, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2016-CP-08-00334

ORDER

MAJ P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

17 MAY -4 PM 2:26

FILED

Before this Court came Defendant Pilot Travel Centers, LLC's (Pilot) Motion for Summary Judgment. A hearing was held at the Berkeley County Courthouse on April 10, 2017. For the reasons provided below, Pilot's Motion for Summary Judgment is GRANTED.

Factual Background

Defendant Pilot owns a Pilot Travel Center gas station and convenient store ("Pilot Travel Center") that abuts Highway U.S. 17A in Summerville, South Carolina. On October 6, 2012, Plaintiffs were injured in a motor vehicle accident while traveling on their motorcycle in the left lane of U.S. 17A in front of the Pilot Travel Center. The accident occurred when a pick-up truck traveling in the opposite direction pulled into the median and attempted to make a legal left turn into one of the driveways of the Pilot Travel Center. The pick-up truck struck the Plaintiffs' motorcycle in the left lane of the highway. At the time of the accident, the driver of the pick-up truck had a blood alcohol level above the legal limit and was under the influence of cocaine. Plaintiffs contend that the accident would not have occurred had there been a solid raised median

in the highway preventing motorists from making a left-hand turn onto Pilot's premises, and that the absence of such a median created a dangerous condition on the highway. Plaintiffs also contend that the location and design of Pilot's driveways created a dangerous condition on the highway.

Pilot constructed the subject Pilot Travel Center in or around August 2002 after acquiring the real property and existing gas station on or about September 1, 2001. The existing gas station, which was owned by Speedway SuperAmerica, LLC, already had three driveways with access to U.S. 17A. There was no solid raised median in the highway preventing left turns into the existing gas station. Moreover, there has never been a solid raised median in this section of the highway.

Around the time the Pilot Travel Center was being built, the South Carolina Department of Transportation (SCDOT) was in the process of widening the section of U.S. 17A in front of the Pilot Travel Center (the "Widening Project"). SCDOT was also reconstructing the intersection adjacent to the existing gas station (the "Interchange Project"). The Widening Project and Interchange Project were completed on June 17, 2002 and November 1, 2003, respectively. SCDOT designed the plans for the Widening Project, but used an outside firm to design the plans for the Interchange Project. According to SCDOT, the design plans for the Widening Project never included a raised median.¹ The decision to not install a raised median in front of the Pilot Travel Center was made by Leland Colvin, Jr., who was the Program Manager for the Widening Project. This decision was made when the Widening Project design plans were prepared in 1998. SCDOT testified that Mr. Colvin's decision to use a painted flush median, rather than a raised median, was

¹ SCDOT testified that the initial design plans for the Interchange Project, which were prepared by an outside engineering firm, depicted a raised median in front of the Pilot Travel Center. However, the Interchange Project did not concern work performed to this section of U.S. 17A. SCDOT performed work to this section of U.S. 17A as part of the Widening Project. According to SCDOT, the presence of the raised median in the first iteration of the Interchange Project's design plans was simply a placeholder, representing the location of the highway in which the design plans for both projects would eventually be merged.

made in conformance with SCDOT's Highway Design Manual.² According to SCDOT, installing a raised median as part of the Widening Project would have been in contravention to the standards set forth in the SCDOT's Highway Design Manual.

In order to construct the driveways into the Pilot Travel Center, Pilot submitted an application for an encroachment permit to SCDOT on or about May 13, 2002.³ SCDOT had to approve the design and location of the driveways to Pilot's property before issuing Pilot the encroachment permit. According to SCDOT, it conducts an independent analysis when evaluating whether to approve an encroachment permit to ensure that the proposed driveways conform to SCDOT's regulations and standards. SCDOT also considers highway safety and how the access to private property affects traffic and the general operation of the highway system. SCDOT testified that it has the ultimate authority to approve encroachment permits and never compromises the public's safety to accommodate a property owner's interests when evaluating such permits. SCDOT ultimately approved Pilot's encroachment permit application and issued Pilot a permit to construct the driveways to the Pilot Travel Center.

Plaintiffs filed a Complaint against Pilot and the South Carolina Department of Transportation on March 31, 2014.⁴ Plaintiffs allege that Pilot owed the driving public a duty to construct its driveways in such a way as to prevent the existence of hazardous road conditions on the highway. Specifically, Plaintiffs allege Pilot was negligent for failing to construct its driveways

² Mr. Colvin served as one of SCDOT's Rule 30(b)(6) designees. Mr. Colvin metaphorically referred to SCDOT's Highway Design Manual as "the Bible" when it comes to designing highways in South Carolina.

³ Although the existing gas station on the property had driveways allowing for ingress and egress directly from the highway, the driveways to the Pilot Travel Center were relocated as part of Pilot's rebuild.

⁴ On February 9, 2016, Plaintiffs filed a separate action arising from the accident against Speedway LLC (successor in interest to Speedway SuperAmerica, LLC), Ashley Land Surveying, Inc. (engineering firm who performed work for Pilot in connection with the construction of the Pilot Travel Center), and Munlake Contractors, Inc. (general contractor of the Pilot Travel Center). The two actions have since been consolidated.

to prevent Plaintiffs from being stricken by other motorists attempting to turn left across traffic onto its premises. Plaintiffs further claim that Pilot is responsible for the absence of a solid raised median in the portion of the highway where Plaintiffs' accident occurred. Plaintiffs allege Pilot negotiated with SCDOT regarding the type of median to install on the highway.

Pilot moved for Summary Judgment on the grounds that Plaintiffs have failed to present evidence sufficient to raise a genuine issue of material fact that Pilot owed them any duty or breached any duty owed; or, that any alleged negligent act or omission on the part of Pilot proximately caused Plaintiffs' injuries.

Standard of Law

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. When a party makes a motion for summary judgment that is supported by evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); Dyer v. Moss, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). "To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture." Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010).

Analysis

Pilot maintains that it did not owe the Plaintiffs any duty to prevent them from getting in a motor vehicle accident on the highway in front of its property, and that therefore, it is entitled to judgment as a matter of law. This Court agrees.

In order for the Plaintiffs to recover on their negligence claim, they must first establish that Pilot owed them a duty of care.⁵ Absent such a duty, Pilot is entitled to judgment as a matter of law. See Hurst v. E. Coast Hockey League, Inc., 371 S.C. 33, 37, 637 S.E.2d 560, 562 (2006) (“The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.”). Under South Carolina law, a property owner whose land abuts a highway only owes a duty to motorists for highway conditions where the property owner “undertak[es] an activity that creates an artificial condition on the highway which is dangerous to travelers.” Skinner v. South Carolina Dep’t of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). Here, Plaintiffs cannot establish that Pilot created a dangerous artificial condition on the highway.

Plaintiffs allege the painted flush median in the highway in front of the Pilot Travel Center was a dangerous condition on the highway because it enabled motorists to make a left hand turn onto Pilot’s premises. However, even if the median was a dangerous condition on the highway,⁶ it was not a condition created by Pilot. SCDOT admits that it, and not Pilot, made the decision to not add a raised median in front of the Pilot Travel Center as part of the Widening Project. While Plaintiffs allege that Pilot negotiated SCDOT’s decision to continue to use a painted flush median

⁵ It is undisputed that Plaintiffs were neither invitees nor licensees of Pilot immediately prior to or at the time of the motor vehicle accident.

⁶ The Court need not determine whether the median was a dangerous condition as alleged by Plaintiffs because the Court finds that Plaintiffs have failed to establish that Pilot created any artificial condition on the highway.

in the highway, Plaintiffs have failed to provide any evidence that such a negotiation took place beyond mere speculation and conjecture.⁷ In fact, SCDOT maintains that there was no “negotiation” of the median and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center.

Moreover, even if Pilot did negotiate with SCDOT concerning the median, this Court finds that such negotiation did not impose a duty on the part of Pilot to the Plaintiffs. Ultimately, the decision as to whether a raised median should be installed on a highway falls within the exclusive authority of SCDOT, which owns and controls the highway. See Giannini v. S. Carolina Dep't of Transp., 378 S.C. 573 n.1 (2008) (recognizing SCDOT has initial discretion to place median barriers on a highway); S.C. Code Ann. § 57-3-110(1) (“The Department of Transportation shall . . . [have the power and duty to] lay out, build and maintain public highways . . . including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways”); S.C. Code Ann. § 57-3-110(3) (“The Department of Transportation shall . . . [have the power and duty to] cause the state highways to be marked with

⁷ Plaintiffs’ allegation that Pilot negotiated with SCDOT to prevent SCDOT from installing a raised median in front of the Pilot Travel Center is based solely upon handwritten notes on a letter dated August 28, 2000, from an SCDOT official to an employee of the prior owner of the subject property. However, these handwritten notes do not evidence that Pilot negotiated with SCDOT regarding the type of median to be used in the portion of the highway in front of the Pilot Travel Center. First, these handwritten notes were not made by an employee or agent of Pilot. Second, this particular letter is dated after the date by which SCDOT testified it made the decision to use a painted flush median on the highway instead of a raised median. Third, SCDOT testified that there was never a “negotiation” of the median, and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center.

At the hearing on Pilot’s Motion for Summary Judgment, Plaintiffs speculated that Pilot may have negotiated with SCDOT regarding the median as part of SCDOT’s right-of-way acquisition of a portion of Pilot’s property during the Interchange Project. However, the Title of Real Estate for this acquisition indicates that the right-of-way acquisition transaction was between SCDOT and the prior owner of Pilot’s property. Moreover, Plaintiffs admitted it did not have any evidence that any such negotiation with Pilot took place. Therefore, even if a “negotiation” between Pilot and SCDOT could somehow create a duty on the part of Pilot with respect to the median, Plaintiffs cannot provide any evidence such a negotiation occurred beyond pure speculation, which is insufficient to survive summary judgment. Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 299, 701 S.E.2d 742, 754 (2010) (“To survive summary judgment, the evidence presented must amount to more than mere speculation and conjecture.”).

appropriate directions for travel and *regulate the travel and traffic along such highways*, subject to the laws of the State[.]” (emphasis added)). This decision-making authority arises from SCDOT’s police power and duty to plan, maintain, and operate the state’s highway system. See South Carolina State Highway Dep’t v. Wilson, 254 S.C. 360, 365-66, 175 S.E.2d 391, 394 (1970) (noting that “the clear weight of authority from other jurisdictions is . . . that the construction of a median . . . is an exercise of the police power”); South Carolina State Highway Dep’t v. Carodale Assocs., 268 S.C. 556, 561, 235 S.E.2d 127, 129 (1977) (“Re-routing and diversion of traffic are police power regulations.”). Whether or not any negotiation of the median took place, the fact remains that only SCDOT has the authority to determine what type of median to install on the highway.

Furthermore, the median in question was part of the highway, and thus, under the exclusive control of SCDOT. Plaintiffs have failed to present any authority establishing that Pilot, as one of the property owners abutting the highway, has a duty to maintain, repair, or warn travelers of potentially dangerous conditions on the highway over which it has no control. The facts of this case are nearly identical to those in Allen v. Mellinger, 156 Pa. Commw. 113, 625 A.2d 1326 (1993). In that case, the plaintiffs attempted to make a left turn from the highway into the defendants’ business premises when their vehicle was hit by a truck traveling in the opposite direction. Id. at 115. Relying on Restatement (Second) of Torts §349,⁸ the Allen Court held that

⁸ According to § 349:

A possessor of land over which there is a public highway or private right of way is not subject to liability for physical harm caused to travelers upon the highway or persons lawfully using the way by his failure to exercise reasonable care

(a) to maintain the highway or way in safe condition for their use, or

(b) to warn them of dangerous conditions in the way which, although not created by him, are known to him and which they neither know nor are likely to discover.

the business owners owed no duty to the plaintiffs to maintain the highway in a safe condition or to warn them of any alleged dangerous condition on the highway. Id. at 118-119. According to the Allen Court, the Commonwealth owns the highway and "has the exclusive duty for the maintenance and repair of state highways." Allen at 118. The court further rejected the plaintiffs' argument that the business owners' failure to erect signs, paint lines or place curbing or barricades in the store's parking lot to indicate to customers the safest place to enter the parking lot created a dangerous condition. Allen at 119 n.1, 625 A.2d at 1329 n.1 (1993).

Like the business owners in Allen, here, Pilot owed no duty to the Plaintiffs to keep the highway in a safe condition or to warn Plaintiffs of any alleged dangerous condition on the highway. Medians are part of the highway subject to the exclusive control and authority of SCDOT. The decision to install a painted flush median on the subject highway was within the exclusive province of SCDOT as the governmental agency charged with the duty to design, maintain and operate the State's highways. SCDOT, not Pilot, has the duty to maintain medians. SCDOT, not Pilot, has the "duty to use reasonable care to keep streets and highways within its control in a reasonably safe condition for public travel." Ford v. South Carolina Dep't of Transp., 328 S.C. 481, 487, 492 S.E.2d 811, 814 (Ct. App. 1997). Thus, Pilot, as one of the landowners abutting U.S. 17A, has no duty (or authority) to maintain, repair, or warn others of potentially dangerous conditions on the highway over which it has no control.⁹ See Skinner v. South Carolina Dep't of Transp., 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009). (noting that while "a contractor performing highway alterations owes a duty to travelers, . . . [there is] no analogous duty on the part of an owner of property abutting a highway who neither possesses nor controls

⁹ SCDOT acknowledged during its Rule 30(b)(6) deposition that it owns and has control of US 17A, that it has the responsibility of maintaining highways in a safe condition and that it has the duty to investigate and determine whether changes need to be made to the highway.

the highway.”); Miller v. City of Camden, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997) (“one who has no control [over property] owes no duty.”).

To the extent that Plaintiffs maintain that Pilot created a dangerous condition on the highway by virtue of constructing a driveway to the Pilot Travel Center that was accessible by motorists travelling on the opposite side of the highway, such argument lacks merit. See Skinner at 525 (evidence that it was motorists’ utilization of the property owner’s driveway that led to alleged dangerous condition was insufficient to establish business owner “created” a defect on the highway).

This Court holds that having a driveway on the highway, in and of itself, is not an artificial condition as contemplated by South Carolina case law. In Skinner, the South Carolina Supreme Court noted that the types of artificial conditions on the highway that would impose potential liability on a property owner include hazards that result from the conduct of the property owner’s business, such as material spilled on the road or smoke emitted from a plant that drifts over the highway. Id. Simply having a driveway on the highway allowing for the ingress to and egress from one’s business does not impose liability on the business owner for motor vehicle accidents that occur in the highway.

Furthermore, like with medians, SCDOT has the ultimate decision-making authority with respect to the placement and design of driveways with access to a highway. In order to construct or reconstruct a private driveway with access to a highway, a property owner must first obtain an encroachment permit from SCDOT. As part of the permitting process, SCDOT reviews the permittees’ design plans to ensure compliance with SCDOT’s regulations and standards concerning the design and location of driveways. SCDOT also reviews a permittee’s encroachment application to ensure driveways do not create any safety concerns or impede efficient traffic

operations. SCDOT "may deny any request for any permit for any driveway . . . which in [its] judgment . . . may create a hazard to the traveling public." S.C. Code Ann. § 57-5-1090. Thus, Pilot could not have constructed the driveways to its property unless SCDOT deemed them to comply with SCDOT's design standards and determined that they were safe for the public.

Finally, Plaintiffs argue that Pilot can be held liable for their injuries because Pilot had notice of the danger posed by motorists making left-hand turns onto its property and failed to take any remedial action. Specifically, Plaintiffs allege Pilot was on notice of this danger by virtue of prior motor vehicle accidents that occurred in and around the Pilot Travel Centers' driveways. This Court finds that no such affirmative duty on the part of Pilot exists. "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Rayfield v. South Carolina Dep't of Corr., 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). Plaintiffs cannot establish any source of a duty requiring Pilot to affirmatively act. Even if Plaintiffs could establish Pilot was aware of other motor vehicle accidents in the highway, having notice of other accidents does not give rise to a duty to warn. See Restatement (Second) of Torts § 349 (landowner owes no duty to warn travelers of dangerous conditions in the highway or private right-of-way which, although not created by him, are known to him). Moreover, foreseeability of an injury alone does not create a duty to act. South Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc., 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). The occurrence of other motor vehicle accidents on U.S. 17A does not create an affirmative duty on the part of Pilot as a property owner abutting the highway.

Conclusion

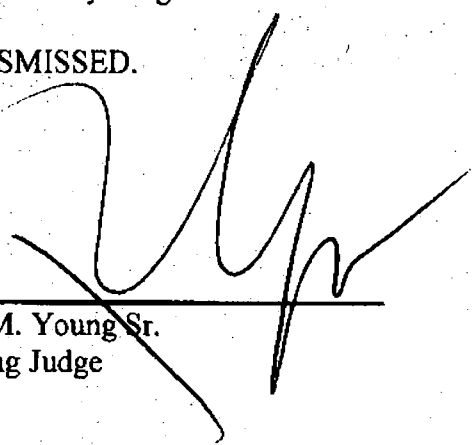
In light of the foregoing, this Court finds that Plaintiffs cannot establish that Pilot owed them any duty as a landowner abutting the portion of the highway where Plaintiffs were injured. Therefore, Pilot is entitled to judgment as a matter of law.

IT IS ORDERED that Pilot's Motion for Summary Judgment shall be GRANTED, and all of Plaintiffs' causes of action against Pilot are DISMISSED.

AND IT IS SO ORDERED!

W 4/26
May 1, 2017

In Chambers, South Carolina



Roger M. Young Sr.
Presiding Judge

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- CP-08-0334

Cynthia Wright and Richard Wright,

South Carolina Dept. of Transportation, Pilot
Travel Centers, LLC, Speedway LLC, Ashley
Land Surveying, Inc., f/k/a Ashley Engineering
and Consulting, Inc., and Munlake Contractors,
Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant Speedway, LLC's Motion for Summary Judgment is granted pursuant to SCRPC 56. There is no genuine issue of material fact as to the issues of duty and proximate cause for the claim alleged by Plaintiffs against Speedway, LLC. Defendant Ashley Land Surveying, Inc.'s Motion for Summary Judgment is granted pursuant to SCRPC 56. There is no genuine issue of material fact as to the issues of duty and proximate cause for the claim alleged by Plaintiffs against Ashley Land Surveying, Inc. Defendant South Carolina Department of Transportation (SCDOT)'s Motion for Summary Judgment is granted pursuant to SCRPC 56, as Plaintiffs' claims against Def. SCDOT are barred by the State Tort Claims Act, S.C. Code § 15-78-60 et seq.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2151

Judge Code

6/26/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Cynthia Wright and Richard Wright,)

Plaintiffs,)

v.)

South Carolina Department of)
Transportation, Pilot Travel Centers, LLC,)
Speedway, LLC, Ashley Land Surveying,)
Inc. f/k/a Ashley Engineering & Consulting,)
Inc., and Munlake Contractors, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2016-CP-08-0334

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
THIS COURT'S MAY 4, 2017 ORDER**

MAINT P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

17 JUN -8 PM 4:50

FILED

BACKGROUND

On April 10, 2017, this Court heard oral arguments on Defendant Pilot Travel Centers, LLC's Motion for Summary Judgment. This Court's Order granting defendant's motion was filed on May 4, 2017. On May 9, 2017, Plaintiff filed a Motion to Alter or Amend this Court's May 4, 2017 order pursuant to Rules 52 and 59, SCRCF.

DISCUSSION

"The power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment." Coleman v. Dunlap, 306 S.C. 491, 494; 413 S.E.2d 15, 17 (1992). A Rule 59(e) motion is the proper "vehicle to request the trial court 'alter or amend the judgment,'" and "to seek 'reconsideration' of issues and arguments." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21; 361 S.E.2d 772, 778 (2004). The Fourth Circuit has held "that Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or

prevent manifest injustice.” Zinkand v. Brown, 478 F.3d 634, 637 (4th Cir. 2007) (internal citations omitted). Rules 52(c) and 59(f) provide that “[t]he motion may in the discretion of the court be determined on briefs filed by the parties without oral argument.” Rules 52(c) and 59(f), SCRPC.

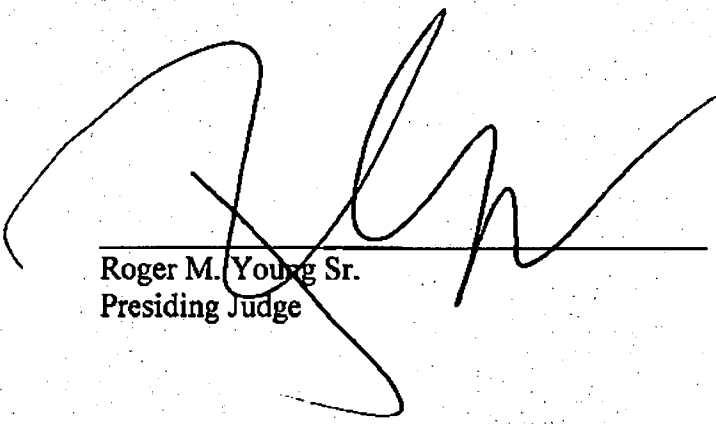
CONCLUSION

Having thoroughly considered the supporting and opposing arguments of counsel, Plaintiff’s Motion to Alter or Amend this Court’s Order of May 4, 2017 has failed to satisfy the above requirements, and is therefore denied.

IT IS THEREFORE ORDERED that Plaintiff’s Motion to Alter or Amend this Court’s Order of May 4, 2017 is DENIED.

IT IS SO ORDERED!

June 5, 2017
Charleston, South Carolina



Roger M. Young Sr.
Presiding Judge

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-08-_____

CYNTHIA WRIGHT,

Plaintiff(s),

vs.

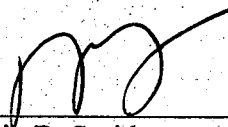
SUMMONS

**SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, C & A
UNLIMITED, INC. and PILOT TRAVEL
CENTERS, LLC,**

Defendant(s).

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers, at their offices at 7087 Rivers Avenue, North Charleston, South Carolina, 29406, within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid judgment by default will be rendered against you for the relief demanded in the Complaint.



Kevin B. Smith
Hoffman Law Firm
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N. Charleston, SC 29406
(843) 769-7077
ksmith@hoffmanlaw.net
Attorney for the Plaintiff

North Charleston, South Carolina

March 20, 2014

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-08-_____

CYNTHIA WRIGHT,

Plaintiff,

vs.

**SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, C & A
UNLIMITED, INC. and PILOT TRAVEL
CENTERS, LLC,**

Defendant.

COMPLAINT
(Negligence Action)

Jury Trial Requested

The Plaintiff, CYNTHIA WRIGHT, by her undersigned attorney, alleges in her complaint against the Defendants, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A UNLIMITED, INC. and PILOT TRAVEL CENTERS, LLC, and would respectfully show unto this Honorable Court:

1. The Plaintiff is a resident of the County of Dorchester County, State of South Carolina.
2. The Defendant, C & A UNLIMITED, INC. (hereinafter "McDonalds"), is a corporation organized and existing under the laws of the State of South Carolina. This corporation owns and maintains the McDonald's restaurant located at 1520 North Main Street in Summerville, South Carolina, in the County of Berkeley. At all times mentioned herein, this Defendant was acting through its agents, servants, and/or employees is and liable to the Plaintiff under the doctrine of *respondeat superior*.
3. The Defendant, PILOT TRAVEL CENTERS, LLC (hereinafter "Pilot Travel Center"), is a corporation organized and existing under the laws of Delaware, but is licensed to do business in the State of South Carolina and does substantial business in Berkeley County. This corporation owns and maintains the Pilot Travel Center gas station located at 1521 North

Main Street in Summerville, South Carolina, in the County of Berkeley. At all times mentioned herein, this Defendant was acting through its agent, servants, and/or employees and is liable to the Plaintiff under the doctrine of *respondeat superior*.

4. Pursuant to S.C. Code §1-30-10, Defendant, South Carolina Department of Transportation (hereinafter "SCDOT") is a Department of the Executive Branch of the Government of the State of South Carolina.

5. The Defendant, SCDOT, is one of the agencies as defined by S.C. §15-78-30(a) and governmental entities as defined by S.C. Code §15-78-30(d).

6. Upon information and belief, the Defendant, SCDOT, is a governmental entity charged with the duties of constructing, repairing and maintaining its system of highways in the State of South Carolina and keeping those public highways, including their rights of way, reasonably safe for use and travel by the road users.

7. Upon information and belief, Defendant, SCDOT has a principal place of business located in the County of Richland, State of South Carolina, and has agents and employees who perform work for its agency in the County of Berkeley, State of South Carolina.

8. This action against the SCDOT is brought pursuant to the South Carolina Tort Claims Act §15-78-10, et. seq., South Carolina Code of Laws (1976) as amended.

9. Upon information and belief, at all times mentioned herein, the agents, servants and/or employees of Defendant, SCDOT, were acting within the course and scope of their employment with the agency.

10. Under the doctrines of *respondeat superior*, master/servant, and principal/agent, Defendant, SCDOT, is liable for the torts of its agents, servants and/or employees in the same manner and to the same extent as a private individual under like circumstances.

11. Upon information and belief, at all times mentioned herein, the Defendant, SCDOT, by and through its agents, servants and/or employees had the right and/or power to direct and control the manner in which its agents, servants and/or employees performed work in and around the intersection of Interstate 26 and North Main Street in Berkeley County, South Carolina.

12. The negligent acts, omissions and liabilities of the Defendants, SCDOT, Pilot Travel Center and McDonalds, include those by its agents, principals, employees and/or servants, both directly and vicariously, pursuant to the non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

13. This Court has jurisdiction over the parties and matters in controversy, and venue is proper in Berkeley County.

FACTUAL ALLEGATIONS

14. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

15. In the early evening hours of October 6, 2012, the Plaintiff, Cynthia Wright, was a passenger on a motorcycle being driven by her husband on North Main Street just past the Interstate 26 overpass when another motorist, Daniel Sena, who was on the same road and headed directly towards her, turned left to enter the McDonald's and/or the Pilot Travel Center directly in front of the Plaintiff causing the vehicles to collide.

16. Upon information and belief, there was no center island or similar structure that would prevent motorists from making a left turn within the operational area of the intersection of Interstate 26 and North Main Street.

17. The absence of a center island or similar structure created a hazardous/dangerous condition, and the Defendant, SCDOT, owed a duty to the driving public to inspect the

highways, specifically the intersection of Interstate 26 and North Main Street, to prevent the existence of hazardous road conditions.

18. Upon information and belief, the Defendant, SCDOT, had prior knowledge of the hazardous/dangerous condition on the intersection of Interstate 26 and North Main Street prior to the time Plaintiff's vehicle was hit by Mr. Sena's vehicle.

19. Upon information and belief, said agent, servant and/or employee of Defendant, SCDOT, breached their duty of due care to the public and to the Plaintiff by not placing a center island or similar structure in the vicinity of the scene at Interstate 26 and North Main Street.

20. The hazardous and dangerous condition was not ascertainable to motorists, and especially this Plaintiff. Therefore the hazardous/dangerous condition was a latent defect, a hidden trap for the unwary motorist.

21. The failure to install a center island or similar structure posed a severe safety hazard to the motoring public which the Defendant, SCDOT, its agents, servants and employees, were fully aware of, and its failure to correct this defect was the direct and proximate cause of the aforementioned incident.

22. The Defendant, SCDOT, has a duty to inspect and maintain its system of highways of the State of South Carolina, for their full right of way, to determine if any dangerous conditions exist thereon, including intersections, and to take action to correct and/or repair such conditions if they present a hazard to the motoring public.

23. The Defendant, SCDOT, when aware of a condition presenting a hazardous condition to the motoring public, has an affirmative duty to respond to such notice in a timely manner, remedy such condition, and provide for the reasonably safe travel of the public upon the highway.

24. The Defendant, SCDOT, breached its duty of due care in allowing left hand turns at this intersection and by failing to inspect and/or remedy the dangerous condition, and, further, in failing to timely respond and correct such condition.

**FOR A CAUSE OF ACTION OF
NEGLIGENCE BY THE SCDOT**

25. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

26. The absence of a center island or similar structure to prevent left turns created a hazardous condition and the Defendant, SCDOT, owed a duty to the driving public to construct the highway to prevent the existence of hazardous road conditions at the intersection of Interstate 26 and North Main Street, and if such hazardous condition is known to the Defendant, SCDOT, to make improvements to the highway and to correct/remove hazard in a timely manner.

27. The Defendant, SCDOT, knew or should have known of the hazardous road conditions existing at the intersection of Interstate 26 and North Main Street at the time and place in question and therefore had a duty to quickly remedy or take measures that would correct or prevent the hazard.

28. The presence of the dangerous condition of the highway at the intersection of Interstate 26 and North Main Street created an unreasonable risk of serious harm to anyone driving a vehicle on this section of North Main Street, especially this Plaintiff.

29. The Plaintiff is a member of the motoring public and North Main Street is a public highway in South Carolina and the Defendant, SCDOT, had a duty to ensure that North Main Street was constructed and maintained in a safe and proper manner, and that the Defendant, SCDOT breached its duty to the Plaintiff and was thereby negligent, grossly negligent, careless,

reckless and acted in violation of the duties owed to the Plaintiff in that it committed one or more of the following acts:

(a) improperly constructing and maintaining North Main Street and the entrances to businesses located thereon, to prevent motorists, specifically this Plaintiff, from being stricken by other motorist attempting to turn left across traffic when the Defendant SCDOT knew or reasonably should have known that the absence of a center island or similar structure and allowing a driveway in this area presented a danger to the motoring public;

(b) allowing McDonalds and Pilot Travel Center to have a driveway within the operational area of the intersection of Interstate 26 and North Main Street--a dangerous condition--when the SCDOT knew or should have known that such condition presented a danger to the motoring public;

(c) failing to use due diligence by regularly inspecting and/or maintaining their highways, including the intersection of Interstate 26 and North Main Street, to discover defects that endangered the motoring public;

(d) failing to properly maintain their highway, including driveways, to avoid risk of injury to motorists;

(e) failing to act as a reasonable person or agency charged with the duty of constructing, maintaining, and repairing the highways, including driveways, would have acted under the same or similar circumstances;

(f) failing to use the degree of care and caution that a reasonably prudent person would have exercised under the conditions then and there existing;

(g) failing to hire qualified agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(h) failing to train its agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(i) failing to provide proper and necessary supervision and monitoring to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(j) Violating the laws, statutes, regulations and/or ordinances of the State of South Carolina; and

(k) Is guilty of other negligent acts and omissions not specifically alleged but as the evidence at trial will show.

30. The negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, SCDOT, through its agents, servants and/or employees, directly and proximately caused the injuries and losses of the Plaintiff as is hereafter set forth.

**FOR A CAUSE OF ACTION OF
NEGLIGENCE BY MCDONALDS**

31. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

32. The driveway within the operational area of the intersection of Interstate 26 and North Main Street created a hazardous condition and the Defendant, McDonalds, owed a duty to the driving public to construct its driveway in such a way as to prevent the existence of hazardous road conditions at the intersection of Interstate 26 and North Main Street, and if such hazardous condition is known to the Defendant, McDonalds, to make improvements to the driveway and to correct/remove the hazard in a timely manner.

33. The Defendant, McDonalds, knew or should have known of the hazardous road conditions existing at the intersection of Interstate 26 and North Main Street at the time and place

in question and therefore had a duty to quickly remedy or take measures that would correct or prevent the hazard.

34. The presence of the dangerous condition of the highway and driveway at the intersection of Interstate 26 and North Main Street created an unreasonable risk of serious harm to anyone driving a vehicle on this section of North Main Street, especially this Plaintiff.

35. The Plaintiff is a member of the motoring public and North Main Street is a public highway in South Carolina and the Defendant, McDonalds, had a duty to ensure that its driveway was constructed and maintained in a safe and proper manner, and that the Defendant, McDonalds breached its duty to the Plaintiff and was negligent, grossly negligent, careless, reckless and acted in violation of the duties owed to the Plaintiff in that it committed one or more of the following acts:

(a) improperly constructing and maintaining the entrances to its business located at 1520 North Main Street in Summerville, South Carolina, to prevent motorists, specifically this Plaintiff, from being stricken by other motorist attempting to turn left across traffic when the Defendant, McDonalds, knew or reasonably should have known that having a driveway in this area presented a danger to the motoring public;

(b) having a driveway within the operational area of the intersection of Interstate 26 and North Main Street --a dangerous condition--when Defendant, McDonalds, knew or should have known that such condition presented a danger to the motoring public;

(c) failing to use due diligence by regularly inspecting and/or maintaining their driveway to discover defects that endangered the motoring public;

(d) failing to properly maintain and correct their driveway to avoid risk of injury to motorists;

(e) failing to act as a reasonable person or corporation would have acted under the same or similar circumstances;

(f) failing to use the degree of care and caution that a reasonably prudent person would have exercised under the conditions then and there existing;

(g) failing to hire qualified agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(h) failing to train its agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(i) failing to provide proper and necessary supervision and monitoring to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(j) Violating the laws, statutes, regulations and/or ordinances of the State of South Carolina; and

(k) Is guilty of other negligent acts and omissions not specifically alleged but as the evidence at trial will show.

36. Which negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, McDonalds, and through its agents, servants and/or employees, directly and proximately caused the injuries and losses of the Plaintiff as is hereafter set forth.

FOR A CAUSE OF ACTION OF

NEGLIGENCE BY PILOT TRAVEL CENTER

37. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

38. The driveway within the operational area of the intersection of Interstate 26 and North Main Street created a hazardous condition and the Defendant, Pilot Travel Center, owed a

duty to the driving public to construct its driveway in such a way as to prevent the existence of hazardous road conditions at the intersection of Interstate 26 and North Main Street, and if such hazardous condition is known to the Defendant, Pilot Travel Center, to make improvements to the driveway and to correct/remove the hazard in a timely manner.

39. The Defendant, Pilot Travel Center, knew or should have known of the hazardous road conditions existing at the intersection of Interstate 26 and North Main Street at the time and place in question and therefore had a duty to quickly remedy or take measures that would correct or prevent the hazard.

40. The presence of the dangerous condition of the highway and driveway at the intersection of Interstate 26 and North Main Street created an unreasonable risk of serious harm to anyone driving a vehicle on this section of North Main Street, especially this Plaintiff.

41. The Plaintiff is a member of the motoring public and North Main Street is a public highway in South Carolina and the Defendant, Pilot Travel Center, had a duty to ensure that its driveway was constructed and maintained in a safe and proper manner, and that the Defendant, Pilot Travel Center breached its duty to the Plaintiff and was negligent, grossly negligent, careless, reckless and acted in violation of the duties owed to the Plaintiff in that it committed one or more of the following acts:

(a) improperly constructing and maintaining the entrances to its business located at 1521 North Main Street in Summerville, South Carolina, to prevent motorists, specifically this Plaintiff, from being stricken by other motorist attempting to turn left across traffic when the Defendant, Pilot Travel Center, knew or reasonably should have known that having a driveway in this area presented a danger to the motoring public;

(b) having a driveway within the operational area of the intersection of Interstate 26 and North Main Street --a dangerous condition--when Defendant, Pilot

Travel Center, knew or should have known that such condition presented a danger to the motoring public;

(c) failing to use due diligence by regularly inspecting and/or maintaining their driveway to discover defects that endangered the motoring public;

(d) failing to properly maintain and correct their driveway to avoid risk of injury to motorists;

(e) failing to act as a reasonable person or corporation would have acted under the same or similar circumstances;

(f) failing to use the degree of care and caution that a reasonably prudent person would have exercised under the conditions then and there existing;

(g) failing to hire qualified agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(h) failing to train its agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(i) failing to provide proper and necessary supervision and monitoring to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(j) Violating the laws, statutes, regulations and/or ordinances of the State of South Carolina; and

(k) Is guilty of other negligent acts and omissions not specifically alleged but as the evidence at trial will show.

42. Which negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, Pilot Travel Center, and through its agents, servants and/or

employees, directly and proximately caused the injuries and losses of the Plaintiff as is hereafter set forth.

DAMAGES

43. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

44. As the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, the Plaintiff:

- (a) Suffered severe, life threatening injuries to various parts of her body;
- (b) Was severely, seriously, painfully and permanently injured;
- (c) Was forced to seek medical treatment and was hospitalized for a period of time;
- (d) Will require lifetime medical treatment in the future;
- (e) Was subjected to the administration of strong and potent drugs and medications;
- (f) Suffered extreme, painful and dangerous injuries, including but not limited to, a traumatic brain injury, loss of a portion of her brain and head, a fracture in her head, pulmonary contusions, a takotsubo nonischemic cardiomyopathy, a fracture of her left toe, SIADH, an abdominal hematoma, and multiple other abrasions about her body;
- (g) Sustained permanent scarring and disfigurement about her head and body;
- (h) Has incurred and will incur in the future, substantial medical and doctors' bills due to her injuries;
- (i) Was subjected to extreme pain, mental anguish, emotional distress, suffering and discomfort both in the past and in the future;

(j) Was humiliated and embarrassed before her friends, family, and neighbors;

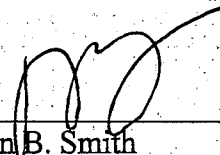
(k) Is informed and believes that her earning capacity has been and will forever be impaired;

(l) Has been and will be prevented from attending to her usual and ordinary household duties; and

(m) Has been and will be prevented from pursuing her normal hobbies and avocations and has suffered a severe loss of enjoyment of her life; and all to her damage, both actual and punitive, in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiff demands a jury trial and judgment against Defendants, SCDOT, Pilot Travel Center and McDonalds, in an amount to be determined by the trier of fact, actual damages, consequential damages, punitive damages, for the costs of this action and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,



Kevin B. Smith
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7087 Rivers Ave.
N. Charleston, SC 29406
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ksmith@hoffmanlaw.net
Attorney for the Plaintiff

North Charleston, South Carolina

March 28, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

CYNTHIA WRIGHT and RICHARD WRIGHT,

Plaintiff(s),

vs.

**SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, C & A
UNLIMITED, INC. and PILOT TRAVEL
CENTERS, LLC,**

Defendant(s).

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

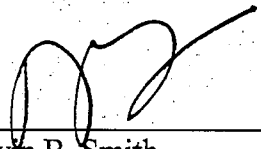
CASE NO: 2014-CP-08-675

AMENDED SUMMARY

FILED
14 MAY -5 PM 1:25
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers, at their offices at 7087 Rivers Avenue, North Charleston, South Carolina, 29406, within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid judgment by default will be rendered against you for the relief demanded in the Complaint.



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Attorney for the Plaintiff

North Charleston, South Carolina

May 1, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

CYNTHIA WRIGHT & RICHARD WRIGHT,

Plaintiff,

vs.

**SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, C & A
UNLIMITED, INC. and PILOT TRAVEL
CENTERS, LLC,**

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE NINTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-08-675

AMENDED COMPLAINT
(Negligence Action)

Jury Trial Requested

FILED
14 MAY -5 PM 1:25
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

The Plaintiffs, CYNTHIA and RICHARD WRIGHT, by thier undersigned attorney, allege in their complaint against the Defendants, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A UNLIMITED, INC. and PILOT TRAVEL CENTERS, LLC, and would respectfully show unto this Honorable Court:

1. The Plaintiffs are residents of the County of Dorchester County, State of South Carolina.
2. The Defendant, C & A UNLIMITED, INC. (hereinafter "McDonalds"), is a corporation organized and existing under the laws of the State of South Carolina. This corporation owns and maintains the McDonald's restaurant located at 1520 North Main Street in Summerville, South Carolina, in the County of Berkeley. At all times mentioned herein, this Defendant was acting through its agents, servants, and/or employees is and liable to the Plaintiff under the doctrine of *respondeat superior*.
3. The Defendant, PILOT TRAVEL CENTERS, LLC (hereinafter "Pilot Travel Center"), is a corporation organized and existing under the laws of Delaware, but is licensed to do business in the State of South Carolina and does substantial business in Berkeley County.

This corporation owns and maintains the Pilot Travel Center gas station located at 1521 North Main Street in Summerville, South Carolina, in the County of Berkeley. At all times mentioned herein, this Defendant was acting through its agent, servants, and/or employees and is liable to the Plaintiff under the doctrine of *respondeat superior*.

4. Pursuant to S.C. Code §1-30-10, Defendant, South Carolina Department of Transportation (hereinafter "SCDOT") is a Department of the Executive Branch of the Government of the State of South Carolina.

5. The Defendant, SCDOT, is one of the agencies as defined by S.C. §15-78-30(a) and governmental entities as defined by S.C. Code §15-78-30(d).

6. Upon information and belief, the Defendant, SCDOT, is a governmental entity charged with the duties of constructing, repairing and maintaining its system of highways in the State of South Carolina and keeping those public highways, including their rights of way, reasonably safe for use and travel by the road users.

7. Upon information and belief, Defendant, SCDOT has a principal place of business located in the County of Richland, State of South Carolina, and has agents and employees who perform work for its agency in the County of Berkeley, State of South Carolina.

8. This action against the SCDOT is brought pursuant to the South Carolina Tort Claims Act §15-78-10, et. seq., South Carolina Code of Laws (1976) as amended.

9. Upon information and belief, at all times mentioned herein, the agents, servants and/or employees of Defendant, SCDOT, were acting within the course and scope of their employment with the agency.

10. Under the doctrines of *respondeat superior*, master/servant, and principal/agent, Defendant, SCDOT, is liable for the torts of its agents, servants and/or employees in the same manner and to the same extent as a private individual under like circumstances.

11. Upon information and belief, at all times mentioned herein, the Defendant, SCDOT, by and through its agents, servants and/or employees had the right and/or power to direct and control the manner in which its agents, servants and/or employees performed work in and around the intersection of Interstate 26 and North Main Street in Berkeley County, South Carolina.

12. The negligent acts, omissions and liabilities of the Defendants, SCDOT, Pilot Travel Center and McDonalds, include those by its agents, principals, employees and/or servants, both directly and vicariously, pursuant to the non-delegable duty, corporate liability, apparent authority, agency, ostensible agency and/or *respondeat superior*.

13. This Court has jurisdiction over the parties and matters in controversy, and venue is proper in Berkeley County.

FACTUAL ALLEGATIONS

14. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

15. In the early evening hours of October 6, 2012, the Plaintiffs, Cynthia Wright, was a passenger on a motorcycle being driven by her husband, the Plaintiff Richard Wright, on North Main Street just past the Interstate 26 overpass when another motorist, Daniel Sena, who was on the same road and headed directly towards her, turned left to enter the McDonald's and/or the Pilot Travel Center directly in front of the Plaintiffs' causing the vehicles to collide.

16. Upon information and belief, there was no center island or similar structure that would prevent motorists from making a left turn within the operational area of the intersection of Interstate 26 and North Main Street.

17. The absence of a center island or similar structure created a hazardous/dangerous condition, and the Defendant, SCDOT, owed a duty to the driving public to inspect the

highways, specifically the intersection of Interstate 26 and North Main Street, to prevent the existence of hazardous road conditions.

18. Upon information and belief, the Defendant, SCDOT, had prior knowledge of the hazardous/dangerous condition on the intersection of Interstate 26 and North Main Street prior to the time Plaintiffs' vehicle was hit by Mr. Sena's vehicle.

19. Upon information and belief, said agent, servant and/or employee of Defendant, SCDOT, breached their duty of due care to the public and to the Plaintiffs by not placing a center island or similar structure in the vicinity of the scene at Interstate 26 and North Main Street.

20. The hazardous and dangerous condition was not ascertainable to motorists, and especially these Plaintiffs. Therefore the hazardous/dangerous condition was a latent defect, a hidden trap for the unwary motorist.

21. The failure to install a center island or similar structure posed a severe safety hazard to the motoring public which the Defendant, SCDOT, its agents, servants and employees, were fully aware of, and its failure to correct this defect was the direct and proximate cause of the aforementioned incident.

22. The Defendant, SCDOT, has a duty to inspect and maintain its system of highways of the State of South Carolina, for their full right of way, to determine if any dangerous conditions exist thereon, including intersections, and to take action to correct and/or repair such conditions if they present a hazard to the motoring public.

23. The Defendant, SCDOT, when aware of a condition presenting a hazardous condition to the motoring public, has an affirmative duty to respond to such notice in a timely manner, remedy such condition, and provide for the reasonably safe travel of the public upon the highway.

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14 MAY -5 PM 1:25
HARRY P. BROWN
CLERK OF COURT
BERNELL COUNTY, SC

24. The Defendant, SCDOT, breached its duty of due care in allowing left hand turns at this intersection and by failing to inspect and/or remedy the dangerous condition, and, further, in failing to timely respond and correct such condition.

**FOR A CAUSE OF ACTION OF
NEGLIGENCE BY THE SCDOT**

25. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

26. The absence of a center island or similar structure to prevent left turns created a hazardous condition and the Defendant, SCDOT, owed a duty to the driving public to construct the highway to prevent the existence of hazardous road conditions at the intersection of Interstate 26 and North Main Street, and if such hazardous condition is known to the Defendant, SCDOT, to make improvements to the highway and to correct/remove hazard in a timely manner.

27. The Defendant, SCDOT, knew or should have known of the hazardous road conditions existing at the intersection of Interstate 26 and North Main Street at the time and place in question and therefore had a duty to quickly remedy or take measures that would correct or prevent the hazard.

28. The presence of the dangerous condition of the highway at the intersection of Interstate 26 and North Main Street created an unreasonable risk of serious harm to anyone driving a vehicle on this section of North Main Street, especially these Plaintiffs.

29. The Plaintiffs are members of the motoring public and North Main Street is a public highway in South Carolina and the Defendant, SCDOT, had a duty to ensure that North Main Street was constructed and maintained in a safe and proper manner, and that the Defendant, SCDOT breached its duty to the Plaintiffs and was thereby negligent, grossly negligent, careless,

reckless and acted in violation of the duties owed to the Plaintiffs in that it committed one or more of the following acts:

(a) improperly constructing and maintaining North Main Street and the entrances to businesses located thereon, to prevent motorists, specifically this Plaintiff, from being stricken by other motorist attempting to turn left across traffic when the Defendant SCDOT knew or reasonably should have known that the absence of a center island or similar structure and allowing a driveway in this area presented a danger to the motoring public;

(b) allowing McDonalds and Pilot Travel Center to have a driveway within the operational area of the intersection of Interstate 26 and North Main Street--a dangerous condition--when the SCDOT knew or should have known that such condition presented a danger to the motoring public;

(c) failing to use due diligence by regularly inspecting and/or maintaining their highways, including the intersection of Interstate 26 and North Main Street, to discover defects that endangered the motoring public;

(d) failing to properly maintain their highway, including driveways, to avoid risk of injury to motorists;

(e) failing to act as a reasonable person or agency charged with the duty of constructing, maintaining, and repairing the highways, including driveways, would have acted under the same or similar circumstances;

(f) failing to use the degree of care and caution that a reasonably prudent person would have exercised under the conditions then and there existing;

(g) failing to hire qualified agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(h) failing to train its agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(i) failing to provide proper and necessary supervision and monitoring to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(j) Violating the laws, statutes, regulations and/or ordinances of the State of South Carolina; and

(k) Is guilty of other negligent acts and omissions not specifically alleged but as the evidence at trial will show.

30. The negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, SCDOT, through its agents, servants and/or employees, directly and proximately caused the injuries and losses of the Plaintiffs as is hereafter set forth.

**FOR A CAUSE OF ACTION OF
NEGLIGENCE BY MCDONALDS**

31. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

32. The driveway within the operational area of the intersection of Interstate 26 and North Main Street created a hazardous condition and the Defendant, McDonalds, owed a duty to the driving public to construct its driveway in such a way as to prevent the existence of hazardous road conditions at the intersection of Interstate 26 and North Main Street, and if such hazardous condition is known to the Defendant, McDonalds, to make improvements to the driveway and to correct/remove the hazard in a timely manner.

33. The Defendant, McDonalds, knew or should have known of the hazardous road conditions existing at the intersection of Interstate 26 and North Main Street at the time and place

in question and therefore had a duty to quickly remedy or take measures that would correct or prevent the hazard.

34. The presence of the dangerous condition of the highway and driveway at the intersection of Interstate 26 and North Main Street created an unreasonable risk of serious harm to anyone driving a vehicle on this section of North Main Street, especially this Plaintiff.

35. The Plaintiffs are members of the motoring public and North Main Street is a public highway in South Carolina and the Defendant, McDonalds, had a duty to ensure that its driveway was constructed and maintained in a safe and proper manner, and that the Defendant, McDonalds breached its duty to the Plaintiffs and was negligent, grossly negligent, careless, reckless and acted in violation of the duties owed to the Plaintiffs in that it committed one or more of the following acts:

(a) improperly constructing and maintaining the entrances to its business located at 1520 North Main Street in Summerville, South Carolina, to prevent motorists, specifically these Plaintiffs, from being stricken by other motorist attempting to turn left across traffic when the Defendant, McDonalds, knew or reasonably should have known that having a driveway in this area presented a danger to the motoring public;

(b) having a driveway within the operational area of the intersection of Interstate 26 and North Main Street --a dangerous condition--when Defendant, McDonalds, knew or should have known that such condition presented a danger to the motoring public;

(c) failing to use due diligence by regularly inspecting and/or maintaining their driveway to discover defects that endangered the motoring public;

(d) failing to properly maintain and correct their driveway to avoid risk of injury to motorists;

(e) failing to act as a reasonable person or corporation would have acted under the same or similar circumstances;

(f) failing to use the degree of care and caution that a reasonably prudent person would have exercised under the conditions then and there existing;

(g) failing to hire qualified agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(h) failing to train its agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(i) failing to provide proper and necessary supervision and monitoring to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(j) Violating the laws, statutes, regulations and/or ordinances of the State of South Carolina; and

(k) Is guilty of other negligent acts and omissions not specifically alleged but as the evidence at trial will show.

36. Which negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, McDonalds, and through its agents, servants and/or employees, directly and proximately caused the injuries and losses of the Plaintiff as is hereafter set forth.

FOR A CAUSE OF ACTION OF NEGLIGENCE BY PILOT TRAVEL CENTER

37. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

38. The driveway within the operational area of the intersection of Interstate 26 and North Main Street created a hazardous condition and the Defendant, Pilot Travel Center, owed a

duty to the driving public to construct its driveway in such a way as to prevent the existence of hazardous road conditions at the intersection of Interstate 26 and North Main Street, and if such hazardous condition is known to the Defendant, Pilot Travel Center, to make improvements to the driveway and to correct/remove the hazard in a timely manner.

39. The Defendant, Pilot Travel Center, knew or should have known of the hazardous road conditions existing at the intersection of Interstate 26 and North Main Street at the time and place in question and therefore had a duty to quickly remedy or take measures that would correct or prevent the hazard.

40. The presence of the dangerous condition of the highway and driveway at the intersection of Interstate 26 and North Main Street created an unreasonable risk of serious harm to anyone driving a vehicle on this section of North Main Street, especially these Plaintiffs.

41. The Plaintiffs are members of the motoring public and North Main Street is a public highway in South Carolina and the Defendant, Pilot Travel Center, had a duty to ensure that its driveway was constructed and maintained in a safe and proper manner, and that the Defendant, Pilot Travel Center breached its duty to the Plaintiffs and was negligent, grossly negligent, careless, reckless and acted in violation of the duties owed to the Plaintiffs in that it committed one or more of the following acts:

(a) improperly constructing and maintaining the entrances to its business located at 1521 North Main Street in Summerville, South Carolina, to prevent motorists, specifically these Plaintiffs, from being stricken by other motorist attempting to turn left across traffic when the Defendant, Pilot Travel Center, knew or reasonably should have known that having a driveway in this area presented a danger to the motoring public;

(b) having a driveway within the operational area of the intersection of Interstate 26 and North Main Street --a dangerous condition--when Defendant, Pilot

Travel Center, knew or should have known that such condition presented a danger to the motoring public;

(c) failing to use due diligence by regularly inspecting and/or maintaining their driveway to discover defects that endangered the motoring public;

(d) failing to properly maintain and correct their driveway to avoid risk of injury to motorists;

(e) failing to act as a reasonable person or corporation would have acted under the same or similar circumstances;

(f) failing to use the degree of care and caution that a reasonably prudent person would have exercised under the conditions then and there existing;

(g) failing to hire qualified agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(h) failing to train its agents, servants and/or employees to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(i) failing to provide proper and necessary supervision and monitoring to ensure that its agents, servants and/or employees performed their duties in a proper and safe manner;

(j) Violating the laws, statutes, regulations and/or ordinances of the State of South Carolina; and

(k) Is guilty of other negligent acts and omissions not specifically alleged but as the evidence at trial will show.

42. Which negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, Pilot Travel Center, and through its agents, servants and/or

employees, directly and proximately caused the injuries and losses of the Plaintiff as is hereafter set forth.

**FOR A CAUSE OF ACTION OF
LOSS OF CONSORTIUM ASSERTED BY RICHARD WRIGHT**

43. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

44. Due to the injuries to the Plaintiff's wife which were caused by the negligence of the Defendants, the Plaintiff, Richard Wright, has lost the companionship, company, services, fellowship, assistance and comfort in her society he previously enjoyed with his wife, Cynthia Wright.

DAMAGES - AS TO CYNTHIA WRIGHT

45. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

46. As the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, the Plaintiff, Cynthia Wright:

- (a) Suffered severe, life threatening injuries to various parts of her body;
- (b) Was severely, seriously, painfully and permanently injured;
- (c) Was forced to seek medical treatment and was hospitalized for a period of time;
- (d) Will require lifetime medical treatment in the future;
- (e) Was subjected to the administration of strong and potent drugs and medications;

(f) Suffered extreme, painful and dangerous injuries, including but not limited to, a traumatic brain injury, loss of a portion of her brain and head, a fracture in her head, pulmonary contusions, a takotsubo nonischemic cardiomyopathy, a fracture of her left toe, SIADH, an abdominal hematoma, and multiple other abrasions about her body;

(g) Sustained permanent scarring and disfigurement about her head and body;

(h) Has incurred and will incur in the future, substantial medical and doctors' bills due to her injuries;

(i) Was subjected to extreme pain, mental anguish, emotional distress, suffering and discomfort both in the past and in the future;

(j) Was humiliated and embarrassed before her friends, family, and neighbors;

(k) Is informed and believes that her earning capacity has been and will forever be impaired;

(l) Has been and will be prevented from attending to her usual and ordinary household duties; and

(m) Has been and will be prevented from pursuing her normal hobbies and avocations and has suffered a severe loss of enjoyment of her life; and all to her damage, both actual and punitive, in an amount to be determined by the trier of fact.

DAMAGES - AS TO RICHARD WRIGHT

47. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

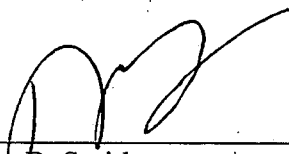
48. As the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, the Plaintiff, Richard Wright:

- (a) Suffered severe, life threatening injuries to various parts of his body;
- (b) Was severely, seriously, painfully and permanently injured;
- (c) Was forced to seek medical treatment and was hospitalized for a period of time;
- (d) Will require lifetime medical treatment in the future;
- (e) Was subjected to the administration of strong and potent drugs and medications;
- (f) Suffered extreme, painful and dangerous injuries, including but not limited to, a fracture of his Fibula, a fracture of his Tibia, a fracture of his right hip, and multiple other abrasions about his body;
- (g) Sustained permanent scarring and disfigurement about his body;
- (h) Has incurred and will incur in the future, substantial medical and doctors' bills due to his injuries;
- (i) Was subjected to extreme pain, mental anguish, emotional distress, suffering and discomfort both in the past and in the future;
- (j) Was humiliated and embarrassed before his friends, family, and neighbors;
- (k) Is informed and believes that his earning capacity has been and will forever be impaired; and
- (l) Has lost the companionship, company, services, fellowship, assistance and comfort in her society he previously enjoyed with his wife, Cynthia Wright.

WHEREFORE, Plaintiffs demand a jury trial and judgment against Defendants, SCDOT, Pilot Travel Center and McDonalds, in an amount to be determined by the trier of fact, actual damages, consequential damages, punitive damages, for the costs of this action and for

such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,



Kevin B. Smith
Hoffman Law Firm
7087 Rivers Ave.
N. Charleston, SC 29406
(843) 769-7077
ksmith@hoffmanlaw.net
Attorney for the Plaintiff

North Charleston, South Carolina

May 1, 2014

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Cynthia Wright and Richard Wright,

CERTIFIED COPY CIVIL ACTION COVERSHEET

Plaintiff(s)

2015 OCT -8 AM 9:54

2015-CP-18-1947

vs.

Cheryl Graham

Marathon Petroleum Company, LP f/k/a Marathon
Ashland petroleum, LLC, Ashley Land Surveying,
Inc. f/k/a Ashley Engineering & Surveying, Inc. and
Ashley Engineering & Consulting, Inc., and
Munlake Contractors, Inc.

CLERK OF COURT
DORCHESTER COUNTY

Defendant(s)

Submitted By: Kevin B. Smith, Esquire
Address: Hoffman Law Firm
7087 Rivers Avenue, N. Charleston, SC 29406

SC Bar #: 70587
Telephone #: 843-769-7077
Fax #: 843-769-4567
Other: ksmith@hoffmanlaw.net
E-mail: rhood@mcgowanhood.com

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

DOCKETING INFORMATION (Check all that apply)

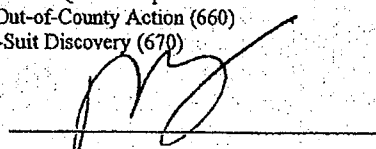
*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Conversion (310) ☒ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature:



Date:

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

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA CERTIFIED COPY IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER 2015 OCT -8 AM 9:56 FIRST JUDICIAL CIRCUIT

Cynthia Wright and Richard Wright, *Richard Wright* C.A. No.: 2015-CP-18-1947

Plaintiffs,

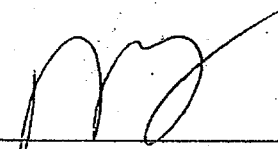
vs.

Marathon Petroleum Company, LP f/k/a)
Marathon Ashland Petroleum, LLC,)
Ashley Land Surveying, Inc. f/k/a Ashley)
Engineering & Surveying, Inc. and Ashley)
Engineering & Consulting, Inc., and)
Munlake Contractors, Inc.)

Defendants.

SUMMONS
(Jury Trial Requested)

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office at 1539 Healthcare Drive, Rock Hill, South Carolina, 29732, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to Answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



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HOFFMAN LAW FIRM
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S. Randall Hood
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Shawn B. Deery
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Attorneys for the Plaintiffs

Rock Hill, South Carolina

October 1, 2015

STATE OF SOUTH CAROLINA CERTIFIED COPY IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER 2015 OCT -8 PM 9:56 FIRST JUDICIAL CIRCUIT

Cynthia Wright and Richard Wright,

C.A. No.: 2015-CP-18-1947

Plaintiffs,

vs.

Marathon Petroleum Company, LP f/k/a
Marathon Ashland Petroleum, LLC,
Ashley Land Surveying, Inc. f/k/a Ashley
Engineering & Surveying, Inc. and Ashley
Engineering & Consulting, Inc., and
Munlake Contractors, Inc.

Defendants.

COMPLAINT
(Jury Trial Requested)

Cynthia Wright and Richard Wright (hereinafter by name or collectively "Plaintiffs"), complaining of the above-named Defendants – Marathon Petroleum Company, LP f/k/a Marathon Ashland Petroleum, LLC (hereinafter "Marathon"), Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc. (hereinafter "Ashley") and Munlake Contractors, Inc. (hereinafter "Munlake") – would respectfully show unto this Honorable Court as follows:

[Note: This matter is related to another action Plaintiffs previously filed against the South Carolina Department of Transportation and Pilot Travel Centers, LLC. That action (2014-CP-08-675) is currently pending in the Berkeley County Court of Common Pleas. Plaintiffs anticipate that to best serve judicial economy, they will file a motion for complex case designation along with a motion to consolidate the two actions in this Court].

THE PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs Cynthia and Richard Wright are and were at all times relevant to the allegations in this Complaint, citizens and residents of Dorchester County, South Carolina.

2. Upon information and belief, Defendant Marathon Petroleum Company, LP, f/k/a Marathon Ashland Petroleum, LLC, (hereinafter "Marathon") is a company organized and existing under the laws of the State of Delaware.

3. Marathon is listed on the South Carolina Secretary of State's website as a foreign corporation whose registered agent is CT Corporation System, 2 Office Park Court (Suite 103), Columbia, S.C. 29223.

4. Marathon currently, and at all times relevant to the allegations contained herein, transacts and transacted business in multiple counties throughout the State of South Carolina.

5. Upon information and belief, Marathon is a supplier of gasoline to resellers and customers in the Midwest, Gulf Coast, and Southeast regions of the United States.

6. Upon information and belief, Marathon operates and or operated (at the times relevant to this Complaint) convenience stores and/or gas stations throughout the locations described in Paragraph 4 and in South Carolina in particular.

7. Upon information and belief, Marathon's servants, agents, or employees (in conjunction with, or independent of, another similar company – Pilot Travel Centers, LLC (hereinafter "Pilot")) – were involved in the construction, planning, and/or rebuilding of a gas station/convenience store located at 1521 North Main Street

in Summerville, South Carolina currently operating under the name "Pilot Travel Center."

8. Upon information and belief, at the times relevant to the allegations contained in this Complaint, the gas station/convenience store at the location described in Paragraph 7, was being operated by Marathon and Pilot as a joint venture, was co-owned by the two companies, or was otherwise operated in a manner involving input from both companies.

9. Upon information and belief, Defendant Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc. (hereinafter "Ashley"), is a company organized and existing under the laws of the State of South Carolina.

10. Ashley is listed on the South Carolina Secretary of State's website as a domestic corporation with its registered agent located at 306 Sangaree Parkway, Summerville, S.C. 29483.

11. Ashley, currently and at all times relevant to the allegations contained herein, transacts and transacted business in multiple counties throughout the State of South Carolina, including Dorchester and Berkeley Counties.

12. Upon information and belief, Ashley provides surveying, construction, consulting, and planning services for, among other things, commercial site development throughout South Carolina.

13. Upon information and belief, Ashley's servants, agents, or employees were involved in the construction, planning, and/or rebuilding of the Pilot Travel Center gas station/convenience store located at 1521 North Main Street in Summerville, South Carolina.

14. In this capacity, among other things, Ashley applied for, and was granted, an Encroachment Permit (for encroaching on land under the control of the South Carolina Department of Transportation) for the construction of asphalt driveways at the Pilot Travel Center at issue in this litigation.

15. Upon information and belief, Defendant Munlake Contractors, Inc. (hereinafter "Munlake") is a corporation organized and existing under the laws of the State of Missouri.

16. Munlake is listed on the South Carolina Secretary of State's website as a foreign corporation whose registered agent is National Registered Agents, Inc., 2 Office Park Court (Suite 103), Columbia, S.C. 29223.

17. Munlake, currently, and at all times relevant to the allegations contained herein, transacts and transacted business in multiple counties throughout the State of South Carolina.

18. Upon information and belief, Munlake is, among other things, a pre-construction consulting, construction management, and general contracting firm that operates throughout the United States.

19. Upon information and belief, servants, agents, or employees of Munlake were involved in the construction, planning, or rebuilding of the Pilot Travel Center at 1521 North Main Street in Summerville South Carolina at issue in this litigation.

20. Upon information and belief, Munlake was the general contractor for the Pilot Travel Center gas station/convenience store described above that is at the heart of this lawsuit.

21. At all times relevant to this action, the agents, servants, and/or employees of Marathon, Ashley, and Munlake were agents or employees of each company and were

acting within the course and scope of his or her employment and/or agency, or apparent agency.

22. The negligent acts, omissions, and liability of Marathon, Ashley, and Munlake includes that of their agents, principals, employees, and/or servants, both directly and vicariously, pursuant to principles of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency, and/or respondeat superior.

23. Dorchester County, South Carolina is the proper venue for this action as the Plaintiffs and one of the Defendants – Ashley – resides in Dorchester County.

24. Though there is diversity of citizenship among some of the parties, Plaintiffs and Defendant Ashley are both citizens and residents of the State of South Carolina.

JOINT AND SEVERAL LIABILITY

25. The above-named Defendants – Marathon, Ashley, and Munlake – are jointly and severally liable for all the damages alleged herein since their negligent, grossly negligent, reckless, and wanton acts and omissions, singularly, or in combination, are the contributing proximate cause(s) of Plaintiffs' damages and injuries.

GENERAL FACTUAL ALLEGATIONS

26. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

27. In the early evening hours of October 6, 2012, Plaintiff Richard Wright was operating a motorcycle with his wife, Plaintiff Cynthia Wright, who was riding on the rear of the motorcycle as a passenger.

28. As Plaintiffs were traveling on North Main Street in Summerville, South Carolina (Highway 17A just past the Interstate 26 overpass), another motorist, Daniel Sena, was on the same road and traveling in the opposite direction.

29. In an effort to turn into the Pilot Travel Center, Mr. Sena turned left across Plaintiffs' lane of travel directly in the path of Plaintiffs' motorcycle. As a result, Plaintiffs' motorcycle collided with Mr. Sena's vehicle in a violent and severe collision.

30. Plaintiffs were thrown from the motorcycle and although both suffered serious injuries, Plaintiff Cynthia Wright suffered particularly serious and debilitating head injuries, which required multiple operations and/or surgeries.

31. Upon information and belief, no unmountable median or similar structure existed between the lanes that would prevent motorists from making a left turn (across opposing lanes of traffic) into the Pilot Travel Center on this portion of North Main Street.

32. The absence of an unmountable median or similar structure to prevent vehicle traffic from crossing opposing lanes creates and created, a hazardous and dangerous condition that was responsible for Plaintiffs' injuries and damages.

33. This hazardous and dangerous condition was not ascertainable to motorists traveling on North Main Street (Highway 17A) and especially Plaintiffs. Therefore the hazardous/dangerous condition amounted to a latent defect and a hidden trap for the unwary motorists using this highway.

34. Upon information and belief, when originally constructed, the subject portion of North Main Street (Highway 17A) contained an unmountable median that would have prevented the subject accident.

35. Upon information and belief, in the process of planning, constructing, and/or rebuilding the Pilot Travel Center at this location, the above-named Defendants participated in the destruction, removal, and/or redesign of the portion of North Main Street (Highway 17A) that contained the unmountable median barrier.

36. Upon information and belief, in September of 2000, agents, servants, or employees of Defendant Marathon negotiated with representatives from the South Carolina Department of Transportation (SCDOT) to remove the unmountable median barrier that existed at the subject location.

37. Upon information and belief, the purpose behind removing the unmountable median barrier was to increase traffic into the Pilot Travel Center at the subject location.

38. Upon information and belief, these negotiations took place and the barrier removed even though Marathon knew, or should have known, that removing the barriers would result in vehicles making illegal turns across several lanes of oncoming traffic in the Pilot Travel Center.

39. In fact, this is exactly what happened and what caused damages and injuries as further described herein to Plaintiffs.

40. Upon information and belief, at the heart of these negotiations (for the median barrier's removal) was a desire of Marathon to increase vehicular traffic into the Pilot Travel Center, and thereby increase sales and profits.

41. These negotiations were undertaken with a reckless disregard for the safety of the motoring public, specifically including Plaintiffs, which use this portion of North Main Street (Highway 17A) in Summerville, South Carolina.

42. Upon information and belief, in July 2002, Defendant Ashley participated in the redesign of the Pilot Travel Center.

43. Among other things, and as noted previously, Ashley applied for, and was granted, an Encroachment Permit – S-08-020161 – in July 2002, that contemplated Defendant Ashley constructing (or supervising the construction of) 4 asphalt driveways for commercial and truck access at or around the subject Pilot Travel Center.

44. Upon information and belief, at least one of these driveways is immediately across from the location of the subject accident and the portion of North Main Street (Highway 17A) where the unmountable median was removed.

45. Upon information and belief, Defendant Ashley participated in the approval, removal, or redesign of the unmountable median at the location of the subject accident.

46. Upon information and belief, Defendant Munlake was the general contractor for the construction, planning, and/or rebuilding of the subject Pilot Travel Center.

47. In this capacity, Munlake either participated in, approved, directed, or was otherwise involved in the decision to remove, and/or the actual removal, of the unmountable median at the location of the subject accident along North Main Street (Highway 17A) and in front of the subject Pilot Travel Center.

48. As a result of Defendants' actions in removing the unmountable median, in addition to other acts of malfeasance, Plaintiffs suffered serious and grievous injuries and damages, including medical bills in excess of one million dollars.

49. All Defendants, their employees and/or agents, had duties to Plaintiffs and their actions were negligent, grossly negligent, wanton and reckless, and contributed to the subject accident.

50. As a result of Defendants' negligent, grossly negligent, wanton and reckless actions, the subject collision resulted in Plaintiffs' injuries and damages.

FOR A FIRST CAUSE OF ACTION
(Negligence)

51. Plaintiffs repeat and reallege Paragraphs 1 through 50 as though fully set forth herein verbatim and would further allege:

AS TO DEFENDANT MARATHON

52. Plaintiffs are informed and believe that Defendant Marathon owed multiple duties to Plaintiffs, including, but not limited to, ensuring that the design and construction of the subject Pilot Travel Center was safe for the motoring public.

53. Defendant Marathon was negligent, careless, wanton, reckless, and grossly negligent at the time and place hereinabove mentioned in the following particulars:

- a. In negotiating the removal of the unmountable barrier at the accident location;
- b. In negotiating the removal of the unmountable barrier at the accident location when it knew or should have known that removing the unmountable median would result in automobile traffic illegally crossing oncoming lanes of traffic;
- c. In negotiating the removal of the unmountable barrier when it knew or should have known that doing so would create a latent defect - hazardous to vehicular traffic;
- d. In putting profits above the safety of the motoring public;
- e. In improperly constructing, or causing to be constructed, the entrances to the subject Pilot Travel Center in such a way as to prevent motorists from being stricken by vehicles illegally crossing North Main Street (Highway 17A) at the accident location;

- f. In negotiating the unmountable barrier's removal when it was foreseeable that motorists would illegally cross North Main Street;
- g. In generally failing to use the degree of care and caution that a reasonably prudent company would have used under the same or similar circumstances; and
- h. In such other particulars as may be proved through the use of discovery in this matter.

AS TO DEFENDANT ASHLEY

54. Plaintiffs are informed and believe that Defendant Ashley owed multiple duties to Plaintiffs, including, but not limited to, ensuring that the design and construction of the subject Pilot Travel Center was safe for the motoring public.

55. Defendant Ashley was negligent, careless, wanton, reckless, and grossly negligent at the time and place hereinabove mentioned in the following particulars.

- a. In improperly constructing, or causing to be constructed, the entrances to the subject Pilot Travel Center in such a way as to prevent motorists from being stricken by vehicles illegally crossing North Main Street (Highway 17A) at the accident location;
- b. In participating in, approving, or suggesting the unmountable barrier's removal when it was foreseeable that motorists would illegally cross North Main Street (Highway 17A);
- c. In participating in, approving, or suggesting the unmountable barrier's removal when it was foreseeable that it would create an unsafe condition for the motoring public at the accident location;
- d. In generally failing to use the degree of care and caution that a reasonably prudent company would have used under the same or similar circumstances; and
- e. In such other particulars as may be proved through the use of discovery in this case.

AS TO DEFENDANT MUNLAKE

56. Plaintiffs are informed and believe that Defendant Munlake owed multiple duties to Plaintiffs including, but not limited to, ensuring that the design and construction of the subject Pilot Travel Center was safe for the motoring public.

- a. In improperly constructing, or causing to be constructed, the subject Pilot Travel Center (including, but not limited to, the driveways used for ingress and egress to same) in such a way as to prevent motorists from being stricken by vehicles illegally crossing North Main Street (Highway 17A) at the accident location;
- b. In participating in, approving, or suggesting the unmountable barrier's removal when it was foreseeable that motorists would illegally cross North Main Street (Highway 17A);
- c. In participating in, approving, or suggesting the unmountable barrier's removal when it was foreseeable that it would create an unsafe condition for the motoring public at the accident location;
- d. In generally failing to use the degree of care and caution that a reasonably prudent contractor would have used under the same or similar circumstances; and
- e. In such other particulars as may be proved through the use of discovery in this case.

FOR A SECOND CAUSE OF ACTION
(Loss of Consortium)

57. Plaintiffs hereby repeat and reallege Paragraphs 1 through 56 as though fully set forth herein verbatim and would further allege:

58. As a direct and proximate result of the negligent, careless, reckless, wanton, grossly negligent, and willful actions or inactions by Defendants, their agents, and/or employees, and the breach of duties owed to Plaintiffs, Plaintiff Richard Wright has lost the care, companionship, comfort, society, and consortium of his wife, Plaintiff Cynthia Wright, for which he is entitled to recover actual and consequential damages in an amount to be determined by the jury to be full and just at the trial of this action.

DAMAGES – AS TO CYNTHIA WRIGHT

59. Plaintiffs hereby repeat and reallege Paragraphs 1 through 58 as though fully set forth herein verbatim and would further allege:

60. As the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, Plaintiff Cynthia Wright:

- a. Suffered severe life-threatening injuries to various parts of her body;
- b. Was severely, seriously, painfully, and permanently injured;
- c. Was forced to seek medical treatment and was hospitalized for a period of time;
- d. Will require lifetime medical treatment in the future;
- e. Suffered extreme injuries, including, but not limited to, a traumatic brain injury, loss of a portion of her brain and head, skull fracture, pulmonary contusions, cardiomyopathy, left toe fracture, an abdominal hematoma, and multiple abrasions over her body;
- f. Permanent scarring and disfigurement;
- g. Has and will in the future incur medical bills and expenses;
- h. Extreme pain, mental anguish, emotional distress, suffering and discomfort both in the past and future;
- i. Loss of earning capacity;
- j. Loss of the enjoyment of life that she will never fully recover; and
- k. Other damages as will be shown through discovery in this matter.

DAMAGES – AS TO PLAINTIFF RICHARD WRIGHT

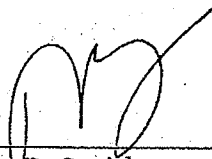
61. Plaintiffs hereby repeat and reallege Paragraphs 1 through 60 as though fully set forth herein verbatim and would further allege:

62. As a direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, Plaintiff Richard Wright:

- a. Suffered severe, life-threatening injuries to various parts of his body;
- b. Was severely, seriously, painfully, and permanently injured;
- c. Will require lifetime medical treatment in the future;
- d. Suffered extreme, painful, and dangerous injuries, including, but not limited to, fractures of his fibula, tibia, right hip and abrasions over the rest of his body;
- e. Permanent scarring and disfigurement;
- f. Substantial medical bills past and future;
- g. Extreme pain, discomfort, mental anguish, emotional distress, and discomfort past and future;
- h. Loss of earning capacity past and future;
- i. Loss of the enjoyment of life that he will never fully recover;
- j. Loss of his wife's companionship, company, services, fellowship, assistance, and comfort in her society that he enjoyed prior to the subject accident; and
- k. Other damages as will be shown through discovery in this matter.

WHEREFORE, Plaintiffs respectfully pray for judgment against the above-named Defendants for all actual and consequential damages in an amount to be determined by the jury at the trial of this action. Additionally, Plaintiffs pray for judgment against these Defendants for the costs and disbursements of this action and for such other and further relief as this Court deems is just and proper.

Signature on following page



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Attorneys for the Plaintiffs

Rock Hill, South Carolina

October 1, 2015

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
)
) NINTH JUDICIAL CIRCUIT

Cynthia Wright and Richard Wright,
Plaintiffs,

C.A. No.: 2016-CP-08-334

vs.

Speedway, LLC, Ashley Land Surveying,
Inc. f/k/a Ashley Engineering &
Surveying, Inc. and Ashley Engineering &
Consulting, Inc., and Munlake
Contractors, Inc.

Defendants.

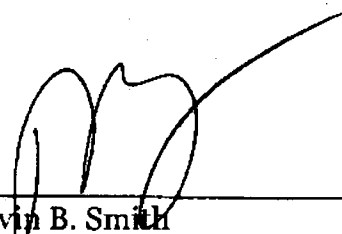
AMENDED
SUMMONS
(Jury Trial Request)

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2016 MAR 14 PM 1:08

FILED

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at his office at 1539 Healthcare Drive, Rock Hill, South Carolina, 29732, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to Answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



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Attorneys for the Plaintiffs

Rock Hill, South Carolina

March 10, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Cynthia Wright and Richard Wright,
Plaintiffs,

C.A. No.: 2016-CP-08-334

vs.

**AMENDED
COMPLAINT**

(Jury Trial Requested)

Speedway, LLC, Ashley Land Surveying,
Inc. f/k/a Ashley Engineering &
Surveying, Inc. and Ashley Engineering &
Consulting, Inc., and Munlake
Contractors, Inc.

Defendants.

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2016 MAR 14 PM 1:08

FILED

Per the Consent Order dated February 9, 2016, this Complaint is hereby amended to reflect the substitution of Speedway, LLC for Marathon Petroleum Company, LP f/k/a Marathon Ashland Petroleum, LLC.

Cynthia Wright and Richard Wright (hereinafter by name or collectively "Plaintiffs"), complaining of the above-named Defendants – Speedway, LLC (hereinafter "Speedway"), Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc. (hereinafter "Ashley") and Munlake Contractors, Inc. (hereinafter "Munlake") – would respectfully show unto this Honorable Court as follows:

[Note: This matter is related to another action Plaintiffs previously filed against the South Carolina Department of Transportation and Pilot Travel Centers, LLC. That action (2014-CP-08-675) is currently pending in the Berkeley County Court of Common Pleas. Plaintiffs anticipate that to best serve judicial economy, they will file a

motion for complex case designation along with a motion to consolidate the two actions in this Court].

THE PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs Cynthia and Richard Wright are and were at all times relevant to the allegations in this Complaint, citizens and residents of Dorchester County, South Carolina.

2. Upon information and belief, Defendant Speedway is a company organized and existing under the laws of the State of Delaware.

3. Speedway is listed on the South Carolina Secretary of State's website as a foreign corporation whose registered agent is CT Corporation System, 2 Office Park Court (Suite 103), Columbia, S.C. 29223.

4. Speedway currently, and at all times relevant to the allegations contained herein, transacts and transacted business in multiple counties throughout the State of South Carolina.

5. Upon information and belief, Speedway is a supplier of gasoline to resellers and customers in the Midwest, Gulf Coast, and Southeast regions of the United States.

6. Upon information and belief, Speedway operates and or operated (at the times relevant to this Complaint) convenience stores and/or gas stations throughout the locations described in Paragraph 4 and in South Carolina in particular.

7. Upon information and belief, Speedway's servants, agents, or employees (in conjunction with, or independent of, another similar company – Pilot Travel Centers, LLC (hereinafter "Pilot")) – were involved in the construction, planning,

and/or rebuilding of a gas station/convenience store located at 1521 North Main Street in Summerville, South Carolina currently operating under the name "Pilot Travel Center."

8. Upon information and belief, at the times relevant to the allegations contained in this Complaint, the gas station/convenience store at the location described in Paragraph 7, was being operated by Speedway and Pilot as a joint venture, was co-owned by the two companies, or was otherwise operated in a manner involving input from both companies.

9. Upon information and belief, Defendant Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc. (hereinafter "Ashley"), is a company organized and existing under the laws of the State of South Carolina.

10. Ashley is listed on the South Carolina Secretary of State's website as a domestic corporation with its registered agent located at 306 Sangaree Parkway, Summerville, S.C. 29483.

11. Ashley, currently and at all times relevant to the allegations contained herein, transacts and transacted business in multiple counties throughout the State of South Carolina, including Dorchester and Berkeley Counties.

12. Upon information and belief, Ashley provides surveying, construction, consulting, and planning services for, among other things, commercial site development throughout South Carolina.

13. Upon information and belief, Ashley's servants, agents, or employees were involved in the construction, planning, and/or rebuilding of the Pilot Travel Center gas

station/convenience store located at 1521 North Main Street in Summerville, South Carolina.

14. In this capacity, among other things, Ashley applied for, and was granted, an Encroachment Permit (for encroaching on land under the control of the South Carolina Department of Transportation) for the construction of asphalt driveways at the Pilot Travel Center at issue in this litigation.

15. Upon information and belief, Defendant Munlake Contractors, Inc. (hereinafter "Munlake") is a corporation organized and existing under the laws of the State of Missouri.

16. Munlake is listed on the South Carolina Secretary of State's website as a foreign corporation whose registered agent is National Registered Agents, Inc., 2 Office Park Court (Suite 103), Columbia, S.C. 29223.

17. Munlake, currently, and at all times relevant to the allegations contained herein, transacts and transacted business in multiple counties throughout the State of South Carolina.

18. Upon information and belief, Munlake is, among other things, a pre-construction consulting, construction management, and general contracting firm that operates throughout the United States.

19. Upon information and belief, servants, agents, or employees of Munlake were involved in the construction, planning, or rebuilding of the Pilot Travel Center at 1521 North Main Street in Summerville, South Carolina at issue in this litigation.

20. Upon information and belief, Munlake was the general contractor for the Pilot Travel Center gas station/convenience store described above that is at the heart of this lawsuit.

21. At all times relevant to this action, the agents, servants, and/or employees of Speedway, Ashley, and Munlake were agents or employees of each company and were acting within the course and scope of his or her employment and/or agency, or apparent agency.

22. The negligent acts, omissions, and liability of Speedway, Ashley, and Munlake includes that of their agents, principals, employees, and/or servants, both directly and vicariously, pursuant to principles of non-delegable duty, corporate liability, apparent authority, agency, ostensible agency, and/or respondeat superior.

23. Berkeley County, South Carolina is the proper venue for this action as the Plaintiffs and one of the Defendants – Ashley – resides in Berkeley County.

24. Though there is diversity of citizenship among some of the parties, Plaintiffs and Defendant Ashley are both citizens and residents of the State of South Carolina.

JOINT AND SEVERAL LIABILITY

25. The above-named Defendants – Speedway, Ashley, and Munlake – are jointly and severally liable for all the damages alleged herein since their negligent, grossly negligent, reckless, and wanton acts and omissions, singularly, or in combination, are the contributing proximate cause(s) of Plaintiffs' damages and injuries.

GENERAL FACTUAL ALLEGATIONS

26. All other allegations contained herein, to the extent that they are not inconsistent with the following, are incorporated by reference.

27. In the early evening hours of October 6, 2012, Plaintiff Richard Wright was operating a motorcycle with his wife, Plaintiff Cynthia Wright, who was riding on the rear of the motorcycle as a passenger.

28. As Plaintiffs were traveling on North Main Street in Summerville, South Carolina (Highway 17A just past the Interstate 26 overpass), another motorist, Daniel Sena, was on the same road and traveling in the opposite direction.

29. In an effort to turn into the Pilot Travel Center, Mr. Sena turned left across Plaintiffs' lane of travel directly in the path of Plaintiffs' motorcycle. As a result, Plaintiffs' motorcycle collided with Mr. Sena's vehicle in a violent and severe collision.

30. Plaintiffs were thrown from the motorcycle and although both suffered serious injuries, Plaintiff Cynthia Wright suffered particularly serious and debilitating head injuries, which required multiple operations and/or surgeries.

31. Upon information and belief, no unmountable median or similar structure existed between the lanes that would prevent motorists from making a left turn (across opposing lanes of traffic) into the Pilot Travel Center on this portion of North Main Street.

32. The absence of an unmountable median or similar structure to prevent vehicle traffic from crossing opposing lanes creates and created, a hazardous and dangerous condition that was responsible for Plaintiffs' injuries and damages.

33. This hazardous and dangerous condition was not ascertainable to motorists traveling on North Main Street (Highway 17A) and especially Plaintiffs. Therefore the hazardous/dangerous condition amounted to a latent defect and a hidden trap for the unwary motorists using this highway.

34. Upon information and belief, when originally constructed, the subject portion of North Main Street (Highway 17A) contained an unmountable median that would have prevented the subject accident.

35. Upon information and belief, in the process of planning, constructing, and/or rebuilding the Pilot Travel Center at this location, the above-named Defendants participated in the destruction, removal, and/or redesign of the portion of North Main Street (Highway 17A) that contained the unmountable median barrier.

36. Upon information and belief, in September of 2000, agents, servants, or employees of Defendant Speedway negotiated with representatives from the South Carolina Department of Transportation (SCDOT) to remove the unmountable median barrier that existed at the subject location.

37. Upon information and belief, the purpose behind removing the unmountable median barrier was to increase traffic into the Pilot Travel Center at the subject location.

38. Upon information and belief, these negotiations took place and the barrier removed even though Speedway knew, or should have known, that removing the barriers would result in vehicles making illegal turns across several lanes of oncoming traffic in the Pilot Travel Center.

39. In fact, this is exactly what happened and what caused damages and injuries as further described herein to Plaintiffs.

40. Upon information and belief, at the heart of these negotiations (for the median barrier's removal) was a desire of Speedway to increase vehicular traffic into the Pilot Travel Center, and thereby increase sales and profits.

41. These negotiations were undertaken with a reckless disregard for the safety of the motoring public, specifically including Plaintiffs, which use this portion of North Main Street (Highway 17A) in Summerville, South Carolina.

42. Upon information and belief, in July 2002, Defendant Ashley participated in the redesign of the Pilot Travel Center.

43. Among other things, and as noted previously, Ashley applied for, and was granted, an Encroachment Permit – S-08-020161 – in July 2002, that contemplated Defendant Ashley constructing (or supervising the construction of) 4 asphalt driveways for commercial and truck access at or around the subject Pilot Travel Center.

44. Upon information and belief, at least one of these driveways is immediately across from the location of the subject accident and the portion of North Main Street (Highway 17A) where the unmountable median was removed.

45. Upon information and belief, Defendant Ashley participated in the approval, removal, or redesign of the unmountable median at the location of the subject accident.

46. Upon information and belief, Defendant Munlake was the general contractor for the construction, planning, and/or rebuilding of the subject Pilot Travel Center.

47. In this capacity, Munlake either participated in, approved, directed, or was otherwise involved in the decision to remove, and/or the actual removal, of the unmountable median at the location of the subject accident along North Main Street (Highway 17A) and in front of the subject Pilot Travel Center.

48. As a result of Defendants' actions in removing the unmountable median, in addition to other acts of malfeasance, Plaintiffs suffered serious and grievous injuries and damages, including medical bills in excess of one million dollars.

49. All Defendants, their employees and/or agents, had duties to Plaintiffs and their actions were negligent, grossly negligent, wanton and reckless, and contributed to the subject accident.

50. As a result of Defendants' negligent, grossly negligent, wanton and reckless actions, the subject collision resulted in Plaintiffs' injuries and damages.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

51. Plaintiffs repeat and reallege Paragraphs 1 through 50 as though fully set forth herein verbatim and would further allege:

AS TO DEFENDANT SPEEDWAY

52. Plaintiffs are informed and believe that Defendant Speedway owed multiple duties to Plaintiffs, including, but not limited to, ensuring that the design and construction of the subject Pilot Travel Center was safe for the motoring public.

53. Defendant Speedway was negligent, careless, wanton, reckless, and grossly negligent at the time and place hereinabove mentioned in the following particulars:

- a. In negotiating the removal of the unmountable barrier at the accident location;
- b. In negotiating the removal of the unmountable barrier at the accident location when it knew or should have known that removing the unmountable median would result in automobile traffic illegally crossing oncoming lanes of traffic;
- c. In negotiating the removal of the unmountable barrier when it knew or should have known that doing so would create a latent defect – hazardous to vehicular traffic;

- d. In putting profits above the safety of the motoring public;
- e. In improperly constructing, or causing to be constructed, the entrances to the subject Pilot Travel Center in such a way as to prevent motorists from being stricken by vehicles illegally crossing North Main Street (Highway 17A) at the accident location;
- f. In negotiating the unmountable barrier's removal when it was foreseeable that motorists would illegally cross North Main Street;
- g. In generally failing to use the degree of care and caution that a reasonably prudent company would have used under the same or similar circumstances; and
- h. In such other particulars as may be proved through the use of discovery in this matter.

AS TO DEFENDANT ASHLEY

54. Plaintiffs are informed and believe that Defendant Ashley owed multiple duties to Plaintiffs, including, but not limited to, ensuring that the design and construction of the subject Pilot Travel Center was safe for the motoring public.

55. Defendant Ashley was negligent, careless, wanton, reckless, and grossly negligent at the time and place hereinabove mentioned in the following particulars.

- a. In improperly constructing, or causing to be constructed, the entrances to the subject Pilot Travel Center in such a way as to prevent motorists from being stricken by vehicles illegally crossing North Main Street (Highway 17A) at the accident location;
- b. In participating in, approving, or suggesting the unmountable barrier's removal when it was foreseeable that motorists would illegally cross North Main Street (Highway 17A);
- c. In participating in, approving, or suggesting the unmountable barrier's removal when it was foreseeable that it would create an unsafe condition for the motoring public at the accident location;
- d. In generally failing to use the degree of care and caution that a reasonably prudent company would have used under the same or similar circumstances; and

- e. In such other particulars as may be proved through the use of discovery in this case.

AS TO DEFENDANT MUNLAKE

56. Plaintiffs are informed and believe that Defendant Munlake owed multiple duties to Plaintiffs including, but not limited to, ensuring that the design and construction of the subject Pilot Travel Center was safe for the motoring public.

- a. In improperly constructing, or causing to be constructed, the subject Pilot Travel Center (including, but not limited to, the driveways used for ingress and egress to same) in such a way as to prevent motorists from being stricken by vehicles illegally crossing North Main Street (Highway 17A) at the accident location;
- b. In participating in, approving, or suggesting the unmountable barrier's removal when it was foreseeable that motorists would illegally cross North Main Street (Highway 17A);
- c. In participating in, approving, or suggesting the unmountable barrier's removal when it was foreseeable that it would create an unsafe condition for the motoring public at the accident location;
- d. In generally failing to use the degree of care and caution that a reasonably prudent contractor would have used under the same or similar circumstances; and
- e. In such other particulars as may be proved through the use of discovery in this case.

FOR A SECOND CAUSE OF ACTION (Loss of Consortium)

57. Plaintiffs hereby repeat and reallege Paragraphs 1 through 56 as though fully set forth herein verbatim and would further allege:

58. As a direct and proximate result of the negligent, careless, reckless, wanton, grossly negligent, and willful actions or inactions by Defendants, their agents, and/or employees, and the breach of duties owed to Plaintiffs, Plaintiff Richard Wright has lost the care, companionship, comfort, society, and consortium of his wife, Plaintiff Cynthia

Wright, for which he is entitled to recover actual and consequential damages in an amount to be determined by the jury to be full and just at the trial of this action.

DAMAGES – AS TO CYNTHIA WRIGHT

59. Plaintiffs hereby repeat and reallege Paragraphs 1 through 58 as though fully set forth herein verbatim and would further allege:

60. As the direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, Plaintiff Cynthia Wright:

- a. Suffered severe life-threatening injuries to various parts of her body;
- b. Was severely, seriously, painfully, and permanently injured;
- c. Was forced to seek medical treatment and was hospitalized for a period of time;
- d. Will require lifetime medical treatment in the future;
- e. Suffered extreme injuries, including, but not limited to, a traumatic brain injury, loss of a portion of her brain and head, skull fracture, pulmonary contusions, cardiomyopathy, left toe fracture, an abdominal hematoma, and multiple abrasions over her body;
- f. Permanent scarring and disfigurement;
- g. Has and will in the future incur medical bills and expenses;
- h. Extreme pain, mental anguish, emotional distress, suffering and discomfort both in the past and future;
- i. Loss of earning capacity;
- j. Loss of the enjoyment of life that she will never fully recover; and
- k. Other damages as will be shown through discovery in this matter.

DAMAGES – AS TO PLAINTIFF RICHARD WRIGHT

61. Plaintiffs hereby repeat and reallege Paragraphs 1 through 60 as though fully set forth herein verbatim and would further allege:

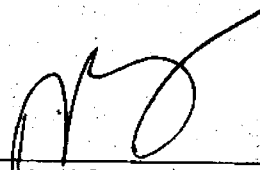
62. As a direct and proximate result of the aforesaid negligent, grossly negligent, careless, reckless, willful and wanton acts and/or omissions of the Defendants, Plaintiff Richard Wright:

- a. Suffered severe, life-threatening injuries to various parts of his body;
- b. Was severely, seriously, painfully, and permanently injured;
- c. Will require lifetime medical treatment in the future;
- d. Suffered extreme, painful, and dangerous injuries, including, but not limited to, fractures of his fibula, tibia, right hip and abrasions over the rest of his body;
- e. Permanent scarring and disfigurement;
- f. Substantial medical bills past and future;
- g. Extreme pain, discomfort, mental anguish, emotional distress, and discomfort past and future;
- h. Loss of earning capacity past and future;
- i. Loss of the enjoyment of life that he will never fully recover;
- j. Loss of his wife's companionship, company, services, fellowship, assistance, and comfort in her society that he enjoyed prior to the subject accident; and
- k. Other damages as will be shown through discovery in this matter.

WHEREFORE, Plaintiffs respectfully pray for judgment against the above-named Defendants for all actual and consequential damages in an amount to be determined by the jury at the trial of this action. Additionally, Plaintiffs pray for

judgment against these Defendants for the costs and disbursements of this action and for such other and further relief as this Court deems is just and proper.

Signature on following page



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Attorneys for the Plaintiffs

Rock Hill, South Carolina

March 10, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

South Carolina Department
of Transportation, C & A Unlimited, Inc.
and Pilot Travel Centers, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
) C/A NUMBER: 2014-CP-08-675

**ANSWER TO AMENDED
COMPLAINT**

(Jury Trial Demanded)

The Defendant, Pilot Travel Centers, LLC, above named, by and through their undersigned attorney, hereby answers the Amended Complaint of the Plaintiff's as follows:

FOR A FIRST DEFENSE

1. Except as is hereinafter specifically admitted, each and every allegation contained in said Amended Complaint is denied.

2. This Defendant admits the allegations contained in Paragraph One (1) of the Amended Complaint upon present information and belief.

3. This Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph Two (2) of the Amended Complaint, and therefore, denies said allegations and requests strict proof thereof.

4. This Defendant admits only so much of the allegations contained in Paragraph Three (3) of the Amended Complaint as alleges that it is authorized to do business in the State of South Carolina and owns and operates the Pilot Travel Center gas station located at 1521 North

Main Street in Summerville, South Carolina in the county of Berkeley; however the remaining allegations in said paragraph contained are denied.

5. This Defendant is without information or knowledge sufficient to form a belief to the truth of the allegations contained in Paragraphs Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10) and Eleven (11) of the Amended Complaint as pertain to the Defendant SCDOT, and therefore, denies said allegations and requests strict proof thereof.

6. This Defendant denies the allegations contained in Paragraph Twelve (12) of the Amended Complaint.

7. This Defendant can neither admit nor deny the allegations contained in Paragraph Thirteen (13) of the Amended Complaint as jurisdiction and venue are matters of law for the Court and cannot be conferred by the parties.

8. This Defendant answers Paragraph Fourteen (14) of the Amended Complaint consistent with its answers to Paragraphs One (1) through Thirteen (13) above.

9. This Defendant can only admit so much of the allegations contained in Paragraph Fifteen (15) of the Amended Complaint as alleges that about the time and place alleged an accident occurred between a motorcycle being driven by the Plaintiff's husband and agent and a car being driven by Daniel Sena; however, this Defendant is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph Fifteen (15) of the Complaint, and therefore, denies said allegations and requests strict proof thereof.

10. This Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph Sixteen (16) of the Amended Complaint, and therefore, denies said allegations and requests strict proof thereof.

11. This Defendant denies the allegations contained in Paragraph Seventeen (17) of the Amended Complaint.

12. This Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs Eighteen (18) and Nineteen (19) of the Amended Complaint, and therefore, denies said allegations and requests strict proof thereof.

13. This Defendant denies the allegations contained in Paragraph Twenty (20) of the Amended Complaint.

14. This Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs Twenty-One (21), Twenty-Two (22), Twenty-Three (23) and Twenty-Four (24) of the Amended Complaint, and therefore, denies said allegations and requests strict proof thereof.

15. This Defendant answers Paragraph Twenty-Five (25) of the Amended Complaint consistent with its answers to Paragraphs One (1) through Twenty-Four (24) above.

16. This Defendant is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs Twenty-Six (26), Twenty-Seven (27), Twenty-Eight (28), Twenty-Nine (29) and Thirty (30) of the Amended Complaint, and therefore, denies said allegations and requests strict proof thereof.

17. This Defendant answers Paragraph Thirty-One (31) of the Amended Complaint consistent with its answers to Paragraphs One (1) through Thirty (30) above.

18. This Defendant denies the allegations contained in Paragraph Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (25) and Thirty-Six (36) of the Amended Complaint.

19. This Defendant answers Paragraph Thirty-Seven (37) of the Amended Complaint consistent with its answers to Paragraphs One (1) through Thirty-Six (36) above.

20. This Defendant denies the allegations contained in Paragraphs Thirty-Eight (38), Thirty-Nine (39), Forty (40), Forty-One (41) and Forty-Two (42) of the Amended Complaint.

21. This Defendant answers Paragraph Forty-Three (43) of the Amended Complaint consistent with its answers to Paragraphs One (1) through Forty-Two (42) above.

22. This Defendant denies the allegations contained in Paragraph Forty-Four (44) of the Amended Complaint.

23. This Defendant answers Paragraph Forty-five (45) of the Amended Complaint consistent with its answers to Paragraphs One (1) through Forty-four (44) above.

24. This Defendant denies the allegations contained in Paragraph Forty-six (46) of the Amended Complaint.

25. This Defendant answers Paragraph Forty-seven (47) of the Amended Complaint consistent with its answers to Paragraphs One (1) through Forty-Six (46) above.

26. This Defendant denies the allegations contained in Paragraph Forty-Eight (48) of the Amended Complaint.

FOR A SECOND DEFENSE

27. Any injuries or damages sustained by the Plaintiffs, as set forth in the Amended Complaint, were due to and caused by the sole negligence, recklessness, willfulness and wantonness of the Plaintiff or Plaintiff's husband and agent in one or more of the following particulars:

(a) In failing to keep a proper lookout;

(b) In failing to keep the Plaintiff's husbands motorcycle under proper control;

- (c) In failing to use brakes, if any there were;
- (d) In driving too fast for conditions;
- (e) In recklessly participating in a joint venture with her husband; and
- (f) In such other particulars as may be shown by the evidence at trial

all in violation of the statutes and laws of the State of South Carolina, and by reason thereof, Plaintiffs are not entitled to recover from this Defendant.

FOR A THIRD DEFENSE

28. Any injuries or damages as were allegedly sustained by the Plaintiffs at the time and place alleged in the Amended Complaint, if any, upon information and belief, were due to and proximately caused by the negligence, recklessness, willfulness and wantonness of the Plaintiffs or Plaintiffs' agent or others, which contributed more than fifty (50%) percent to cause the accident and the Plaintiffs' resulting injuries and damages, if any, in one or more of the following particulars as heretofore set forth in the Second Defense stated above, which allegations are realleged and incorporated herein by reference, and therefore this Defendant has no liability to the Plaintiffs.

FOR A FOURTH DEFENSE

29. Even assuming this Defendant was careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if any such conduct on its part operated as a greater than fifty (50%) percent cause of the accident and the Plaintiffs' resulting injuries and damages, if any, which are also expressly denied, this Defendant is entitled to a determination as to the percentage which the Plaintiffs' or Plaintiffs' agent's negligent, grossly negligent, reckless and willful conduct contributed to this accident and to a reduction of

any amount awarded to Plaintiffs by an amount equal to the percentage of their own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

30. Any claim on behalf of the Plaintiffs for punitive damages is barred by the provisions of the United States and the South Carolina Constitutions.

31. That Plaintiffs' claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3, of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

32. That Plaintiffs' claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

33. That the Plaintiffs' claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, in that the amount of punitive damages is based upon the wealth of these Defendants.

34. That the Plaintiffs' claim for punitive damages violates the Federal doctrine of separation of powers and Article 1, Section 8 of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SIXTH DEFENSE

35. Further answering, this Defendant would show that if the Plaintiffs were injured or damaged as they allege, their injuries and damages were due to and/or caused by the sole negligent acts or omissions of their opposing driver, Daniel Sena, or some other person or entities over whom this Defendant had no control. As such, this Defendant pleads the superseding and/or intervening negligence of a third party or parties as a complete defense to this action.

FOR A SEVENTH DEFENSE

36. The Plaintiffs' Amended Complaint fails to state facts sufficient to constitute a cause of action against this Defendant, and therefore, should be dismissed as a matter of law.

FOR A EIGHTH DEFENSE

37. That the Plaintiffs' Amended Complaint fails to include the proper and necessary parties to this lawsuit, and all proper parties should be included on any future verdict form pursuant to S.C. statutory law.

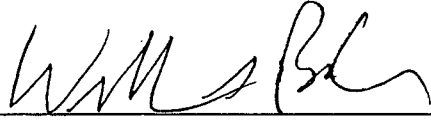
FOR A NINTH DEFENSE

38. That this Defendant should be entitled to an offset for any monies paid by other parties or non-parties to Plaintiffs as a result of this accident.

WHEREFORE, this Defendant prays that the Amended Complaint of the Plaintiffs be dismissed, with costs, and for such other and further relief as this Court deems just and proper.

HOWSER, NEWMAN & BESLEY, L.L.C.

By



William G. Besley, Esquire
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
ATTORNEY FOR THE DEFENDANT PILOT
TRAVEL CENTERS, LLC.

May 16, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

Speedway LLC, Ashley Land Surveying,
Inc., f/k/a Ashley Engineering & Surveying,
Inc. and Ashley Engineering & Consulting,
Inc., and Munlake Contractors, Inc.

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2016-CP-08-334

**ANSWER TO AMENDED
COMPLAINT BY DEFENDANT
SPEEDWAY LLC**

(Jury Trial Requested)

FILED
2016 APR -4 AM 10:17
CLERK OF COURT
BERKELEY COUNTY, SC

The Defendant Speedway LLC (hereinafter "Defendant") answering Plaintiffs' Amended Complaint (hereinafter "Complaint") herein, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. Defendant lacks sufficient knowledge and information so as to form a belief as to the allegations contained in Paragraph 1 of the Complaint and thus denies the same at this time and demands strict proof thereof.

2. Defendant admits the allegations of Paragraphs 2 and 3 of the Complaint.

3. In response to Paragraph 4 of the Complaint, Defendant admits only so much of the allegations as could be construed to allege that Defendant exited the South Carolina market and did not transact business in South Carolina as of 12:01 a.m. on September 1, 2001 when Defendant assigned and transferred all of its interests to Pilot Travel Centers, LLC. Defendant thereafter re-entered the South Carolina market and began transacting business as of September 30, 2014. Any remaining allegations contained in Paragraph 4 of the Complaint inconsistent with or in addition to the above stated admissions are denied, and strict proof thereof is

demanded.

4. In response to Paragraph 5 of the Complaint, Defendant admits only so much of the allegations as could be construed to allege that it is an operator of a chain of combination gas stations and convenience stores with gas pumps in the Midwest and Southeast regions of the United States. Any remaining allegations contained in Paragraph 5 of the Complaint inconsistent with or in addition to the above stated admissions are denied, and strict proof thereof is demanded.

5. In response to Paragraph 6 of the Complaint, Defendant admits only so much of the allegations as could be construed to allege that it operated combination gas stations and convenience stores with gas pumps in South Carolina up until 12:01 a.m. on September 1, 2001 and thereafter beginning on September 30, 2014. Any remaining allegations contained in Paragraph 6 of the Complaint inconsistent with or in addition to the above stated admissions are denied, and strict proof thereof is demanded.

6. Defendant lacks sufficient knowledge and information so as to form a belief as to the allegations contained in Paragraph 7 of the Complaint and thus denies the same at this time and demands strict proof thereof.

7. In response to Paragraph 8 of the Complaint, Defendant admits only so much of the allegations as could be construed to allege that it was previously involved with a joint venture with Pilot Travel Centers, LLC with respect to a convenience store with multiple gas pumps located at 1521 North Main Street, Summerville, South Carolina. that a merger between Defendant and Pilot Travel Centers, LLC was completed on August 31, 2001, that as of 12:01 a.m. on September 1, 2001 Defendant assigned and transferred all of its interests to Pilot Travel Centers, LLC, that as of 12:02 a.m. September 1, 2001 Pilot Travel Centers, LLC became the surviving entity and owner of the property, gas station, and convenience store in question, and

that the joint venture between Defendant and Pilot Travel Centers, LLC ceased to exist thereafter. Any remaining allegations contained in Paragraph 8 of the Complaint inconsistent with or in addition to the above stated admissions are denied, and strict proof thereof is demanded.

8. Paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, of the Complaint, are not directed to Defendant, and accordingly, no response is required from Defendant. To the extent that Paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of the Complaint attempt to allege or do allege any causes of action, claims, acts, errors or omission as to Defendant, those allegations are denied, and strict proof thereof is demanded.

9. Defendant lacks sufficient knowledge and information so as to form a belief as to the allegations contained in Paragraph 21 of the Complaint as directed to it and thus denies the same and demands strict proof thereof.

10. Defendant denies the allegations contained in Paragraph 22 of the Complaint directed to it, and strict proof thereof is demanded.

11. Defendant admits the allegations of Paragraph 23 of the Complaint.

12. Defendant admits, upon information and belief, the allegations of Paragraph 24 of the Complaint.

13. Defendant denies the allegations contained in Paragraph 25 of the Complaint directed to it, and strict proof thereof is demanded.

14. Defendant lacks sufficient knowledge and information so as to form a belief as to the allegations contained in Paragraphs 26, 27, 28, 29, 30, 31, and 32 of the Complaint and thus denies the same and demands strict proof thereof.

15. Defendant denies the allegations contained in Paragraphs 33 and 34 of the Complaint, and strict proof thereof is demanded.

16. Defendant lacks sufficient knowledge and information so as to form a belief as to the allegations contained in Paragraphs 35, 36, 37 and 38 of the Complaint and thus denies the same at this time and demands strict proof thereof.

17. Defendant denies the allegations contained in Paragraphs 39, 40, and 41 of the Complaint, and strict proof thereof is demanded.

18. Paragraphs 42 and 43 of the Complaint are not directed to Defendant, and accordingly, no response is required from Defendant. To the extent that Paragraphs 42 and 43 of the Complaint attempt to allege or do allege any causes of action, claims, acts, errors or omission as to Defendant, those allegations are denied, and strict proof thereof is demanded.

19. Defendant lacks sufficient knowledge and information so as to form a belief as to the allegations contained in Paragraph 44 of the Complaint and thus denies the same and demands strict proof thereof.

20. Paragraphs 45, 46, and 47 of the Complaint are not directed to Defendant, and accordingly, no response is required from Defendant. To the extent that Paragraphs 45, 46, and 47 of the Complaint attempt to allege or do allege any causes of action, claims, acts, errors or omission as to Defendant, those allegations are denied, and strict proof thereof is demanded.

21. Defendant denies the allegations contained in Paragraphs 48, 49, and 50 of the Complaint as directed to it, and strict proof thereof is demanded.

22. In response to Paragraph 51 of the Complaint, Defendant repeats and re-alleges all preceding Paragraphs of its Answer as if fully set forth herein verbatim.

23. Defendant denies the allegations contained in Paragraph 52 and Paragraph 53 and all of its subparagraphs of the Complaint, and strict proof thereof is demanded.

24. Paragraphs 54, 55 and all of its subparagraphs, and 56 and all of its subparagraphs of the Complaint are not directed to Defendant, and accordingly, no response is required from

Defendant. To the extent that Paragraphs 54, 55 and all of its subparagraphs, and 56 and all of its subparagraphs of the Complaint attempt to allege or do allege any causes of action, claims, acts, errors or omission as to Defendant, those allegations are denied, and strict proof thereof is demanded.

25. In response to Paragraph 57 of the Complaint, Defendant repeats and re-alleges all preceding Paragraphs of its Answer as if fully set forth herein verbatim.

26. Defendant denies the allegations contained in Paragraph 58 of the Complaint, and strict proof thereof is demanded.

27. In response to Paragraph 59 of the Complaint, Defendant repeats and re-alleges all preceding Paragraphs of its Answer as if fully set forth herein verbatim.

28. Defendant denies the allegations contained in Paragraph 60 of the Complaint, including all subparagraphs, and strict proof thereof is demanded.

29. In response to Paragraph 61 of the Complaint, Defendant repeats and re-alleges all preceding Paragraphs of its Answer as if fully set forth herein verbatim.

30. Defendant denies the allegations contained in Paragraph 62 of the Complaint, including all subparagraphs, and strict proof thereof is demanded.

31. Defendant denies the allegations contained in the "Wherefore" Paragraph of the Complaint, which is the remainder of the Complaint, and strict proof thereof is demanded.

32. Defendant denies each and every allegation of the Complaint not otherwise admitted, modified, or explained.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

33. Defendant pleads the doctrine of comparative negligence and alleges that the negligence and/or recklessness of the Plaintiffs were greater than any negligence which may be established against the Defendant, and therefore, Plaintiffs are barred from recovery.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

34. The Plaintiffs' damages, if any, were due solely to, caused wholly by, and were the direct and proximate result of the criminal activity of a third party other than the Defendant over whom the Defendant had no control so as to bar recovery herein.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

35. That upon information and belief, even if any of the damages alleged in Plaintiffs' Complaint were proximately caused by the acts and/or omissions of this Defendant, which is otherwise denied except for the purposes of this affirmative defense, this Defendant did not and could not have foreseen that Plaintiffs' damages, if any, could have proximately resulted from this Defendant's acts of omissions, which is denied.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

36. Should this Defendant have been found to breach any duty owed to Plaintiffs, which is denied, such breach has no causal relationship to the damages claimed by Plaintiffs and Plaintiffs' claims are barred and limited on account thereof.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

37. Defendant pleads the doctrine of comparative negligence and alleges that the negligence and/or recklessness of the Plaintiffs were greater than any negligence, if any, which may be established against the Defendant, and therefore, the Plaintiffs are barred from recovery. Defendant further alleges that any injury and damage sustained by the Plaintiffs was due to and caused by the negligence and/or willfulness of the Plaintiffs, combining, concurring and contributing with the negligence and/or willfulness, if any, on the part of the Defendant, and that any amount of recovery awarded to the Plaintiffs for the alleged injuries and damage shall be

reduced by the Court based on the percentage of negligence and/or willfulness attributed to the Plaintiffs.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

38. Defendant would respectfully show that each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted. Plaintiffs' Complaint should therefore be dismissed pursuant to Rule 12 of the Rules of Civil Procedure.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

39. Defendant would show the claims of the Plaintiffs for punitive damages against the Defendant cannot be sustained because any award of punitive damages under South Carolina law by a jury that (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of the punitive damages award, (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the resident, wealth, and corporate status of Defendant, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of objective standards, would violate Defendant's due process and equal protection rights guaranteed by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and by the South Carolina constitutional provisions, Article I, Section 3, providing for due process and equal protection, and would be improper under the common law and public policies

of the State of South Carolina.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

40. Defendant would allege and show that any injuries and damages sustained by the Plaintiffs as alleged in the Complaint, which are denied, were due to and were caused and occasioned by the intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties over whom the Defendant had no supervision or control, and the Defendant does plead such intervening and superseding negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by the Plaintiffs as alleged in the Complaint.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

41. Punitive damages are inappropriate in this case since the Defendant did not engage in any malicious, reckless, wrongful or intentional conduct upon which an award of punitive damages would be based.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE**

42. That to the extent applicable to the within action, the Defendant affirmatively pleads all of the defenses referenced in Rule 8(c) of the South Carolina Rules of Civil Procedure.

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE**

43. That upon information and belief the statute of repose may serve to bar any recovery to Plaintiffs herein.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

44. This Defendant did not owe any purported duty to the Plaintiffs so as to bar the

Plaintiffs from recovery against this Defendant.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

45. Defendant would allege and show that any injuries and damages sustained by the Plaintiffs as alleged in the Complaint, which are denied, were due to and were caused and occasioned by the sole negligence, carelessness, recklessness, heedlessness, willfulness and wantonness of some other party or parties over whom the Defendant had no supervision or control, and the Defendant does plead such sole negligence, carelessness, recklessness, heedlessness, willfulness and wantonness as the direct and proximate cause of the injuries and damages sustained by the Plaintiffs as alleged in the Complaint.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

46. No award for punitive damages shall exceed the statutory limits contained in S.C. Code Ann. § 15-32-510 et seq. Defendant hereby pleads all limitations and relief contained therein and demand that any claim for punitive damages be bifurcated pursuant to these code sections.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

47. Defendant would allege and show it is entitled to a set off for a credit for any monies paid to Plaintiffs by any third parties for the injuries and damages they seek recovery for in the present or companion lawsuit.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

48. Plaintiffs' claims are barred by the doctrine of assumption of the risk and/or applicable statutory law of the State of South Carolina in that assuming, but not admitting the area in question was dangerous, the Plaintiffs discovered and were aware of such, assumed

such risk and by their conduct proceeded, thus resulting in the alleged injury.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

49. Defendant pleads that the alleged dangerous condition(s), if any, was/were open and obvious; therefore Plaintiffs are barred from recovery.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

50. That assuming but not admitting that Defendant was involved in the planning, permitting, construction, or rebuilding process of the area and property in question at 1521 North Main Street, Summerville, South Carolina, that the same was ultimately approved and supervised by the South Carolina Department of Transportation and/or other municipal, county, or other governmental entity as being in compliance with industry, engineering and professional standards, the same which serves as complete bar to Plaintiffs' claims herein.

**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

51. That even if this Defendant was negligent, which is specifically denied, this Defendant was less than fifty percent liable for the total fault alleged. Accordingly, joint and several liability should not apply to this action as it relates to this Defendant and this Defendant should be held liable only for the percentage of fault, if any, to be determined by the trier of fact. Additionally this Defendant hereby reserves the right to seek all remedies, rights and privileges available to them pursuant to S.C. Code Ann. § 15-38-15

**FURTHER ANSWERING AND FOR A FURTHER
AND AFFIRMATIVE DEFENSE**

52. Defendant incorporates herein by reference all applicable affirmative defenses of any other party to the present or companion lawsuit.

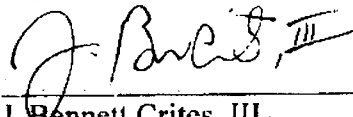
**FURTHER ANSWERING FOR A FURTHER AND
AFFIRMATIVE DEFENSE**

53. Defendant hereby gives notice that it intends to rely upon such other affirmative defenses as may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed, for the costs of defending this action, and for such other relief as the Court and jury deem just and proper.

Respectfully Submitted:

SMITH MOORE LEATHERWOOD LLP



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Attorneys for Defendant Speedway LLC

March 29, 2016
Charleston, South Carolina

CHARLESTON 77204.1

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
CYNTHIA WRIGHT AND RICHARD
WRIGHT,

Plaintiffs,

v.

SOUTH CAROLINA DEPARMENT
OF TRANSPORTATION, C & A
UNLIMITED, INC. AND PILOT
TRAVEL CENTERS, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2014-CP-08-675

South Carolina Department of
Transportation's Answer to
Amended Complaint
(Jury Trial Demanded)

RECEIVED
JUN 18 2014

BY:

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

2014 JUN 16 PM 1:02

FILED

The Defendant, the South Carolina Department of Transportation,
(hereinafter "this Defendant"), answers the Amended Complaint of the Plaintiffs as
follows:

1. This Defendant denies each and every allegation of the Plaintiffs' Amended Complaint that is not herein now specifically admitted.
2. This Defendant is without sufficient information as to form an opinion as to the allegations contained in Paragraph 1 of the Plaintiffs' Amended Complaint and therefore denies the same with strict proof thereof demanded.
3. This Defendant is without sufficient information as to form an opinion as to the allegations contained in Paragraph 2 of the Plaintiffs' Complaint and therefore denies the same with strict proof thereof demanded.

4. This Defendant is without sufficient information as to form an opinion as to the allegations contained in Paragraph 3 of the Plaintiffs' Amended Complaint and therefore denies the same with strict proof thereof demanded.

5. In response to Paragraphs 4 and 5 of the Plaintiffs' Amended Complaint, this Defendant admits it is a state agency as contemplated by the South Carolina Tort Claims Act but denies the remaining allegations with strict proof thereof demanded.

6. This Defendant denies as written the allegations contained in Paragraph 6 of the Plaintiffs' Complaint with Strict proof thereof demanded.

7. In response to Paragraph 7 of the Plaintiffs' Amended Complaint, this Defendant admits it is a state agency as contemplated by the South Carolina Tort Claims Act and performs work throughout the State of South Carolina but denies the remaining allegations with strict proof thereof demanded.

8. Paragraph 8 of Plaintiffs' Amended Complaint states conclusions of law to which no response is required. To the extent the allegations contained in Paragraph 8 requires a response, this Defendant lacks sufficient information to form a belief as to the truth of the allegations, and therefore, denies the same and demands strict proof thereof.

9. This Defendant denies as written the allegations contained in Paragraphs 9, 10 and 11 of the Plaintiffs' Amended Complaint with strict proof thereof demanded.

10. To the extent the allegations contained in Paragraph 12 of the Plaintiffs' Amended Complaint are against this Defendant, this Defendant denies the allegations in Paragraph 12 of the Plaintiffs' Amended Complaint, with strict proof thereof demanded.

11. Paragraph 13 of Plaintiffs' Amended Complaint states legal conclusions to which no responses is required, to the extent a response is required the same is denied.

FACTUAL ALLEGATIONS

12. In response to Paragraph 14 of the Plaintiffs' Amended Complaint, this Defendant repeats and realleges its responses to the allegations of Paragraphs 1 through 11 above as if set forth herein.

13. In response to Paragraphs 15 through 24 of the Plaintiffs' Amended Complaint, this Defendant, upon information and belief, admits an accident occurred on or about October 6, 2012 between the Plaintiffs and a driver by the name of Daniel Sena, who was operating his vehicle in an unlawful manner, including but not limited to performing an illegal left hand turn, in addition to likely being charged with Felony DUI, leaving the scene of an accident, and possibly driving under a suspended drivers license and possession of cocaine. Upon information and belief, Mr. Sena, after striking the Plaintiffs, drove off from the scene of the accident leaving the Plaintiffs lying in the road. Upon information and belief, Mr. Sena was eventually caught by South Carolina Law Enforcement persons and was then charged with various crimes. All remaining and inconsistent

allegations contained in Paragraphs 15 through 24, not specifically admitted, are hereby denied with strict proof thereof demanded.

**FOR A CAUSE OF ACTION OF
NEGLIGENCE BY THE SCDOT**

14. In response to Paragraph 25 of the Plaintiffs' Amended Complaint, this Defendant repeats and realleges its responses to the allegations of Paragraphs 1 through 13 above as if set forth herein.

15. This Defendant denies the allegations contained in Paragraphs 26 through 29 (including subparts a-k) and 30 of the Amended Complaint, and therefore denies the same, with strict proof thereof demanded.

**FOR A CAUSE OF ACTION OF
NEGLIGENCE BY MCDONALDS**

16. In response to Paragraph 31 of the Plaintiffs' Amended Complaint, this Defendant repeats and realleges its responses to the allegations of Paragraphs 1 through 15 above as if set forth herein.

17. Paragraphs 32 through 35 (including subparts a-k) and 36 do not contain allegations against this Defendant and therefore do not require a response. To the extent a response is required, this Defendant denies the allegations contained in those paragraphs and demands strict proof thereof.

**FOR A CAUSE OF ACTION OF
NEGLIGENCE BY PILOT TRAVEL CENTER**

18. In response to Paragraph 37 of the Plaintiffs' Amended Complaint, this Defendant repeats and realleges its responses to the allegations of Paragraphs 1 through 17 above as if set forth herein.

19. Paragraphs 38 through 41 (including subparts a-k) and 42 do not contain allegations against this Defendant and therefore do not require a response. To the extent a response is required, this Defendant denies the allegations contained in those paragraphs and demands strict proof thereof.

**FOR A CAUSE OF ACTION OF
LOSS OF CONSORTIUM ASSERTED BY RICHARD WRIGHT**

20. In response to Paragraph 43 of the Plaintiffs' Amended Complaint, this Defendant repeats and realleges its responses to the allegations of Paragraphs 1 through 19 above as if set forth herein.

21. To the extent Paragraph 44 of the Plaintiffs' Amended Complaint is directed at this Defendant, this Defendant denies the allegations with strict proof thereof demanded.

DAMAGES AS TO CYNTHIA WRIGHT

22. In response to Paragraph 45 of the Plaintiffs' Amended Complaint, this Defendant repeats and realleges its responses to the allegations of Paragraphs 1 through 21 above as if set forth herein.

23. To the extent Paragraph 46 (including subparts a-m) of the Plaintiffs' Amended Complaint is directed at this Defendant, this Defendant denies the allegations with strict proof thereof demanded.

DAMAGES AS TO RICHARD WRIGHT

24. In response to Paragraph 47 of the Plaintiffs' Amended Complaint, this Defendant repeats and realleges its responses to the allegations of Paragraphs 1 through 23 above as if set forth herein.

25. To the extent Paragraph 48 (including subparts a-l) of the Plaintiffs' Amended Complaint is directed at this Defendant, this Defendant denies the allegations with strict proof thereof demanded and the Plaintiff's prayer for relief being the remaining causes of action.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:
(Qualified Immunity)**

26. This Defendant was at all times acting within official and discretionary capacity and as such is entitled to qualified immunity.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Absolute Sovereign Immunity – Eleventh Amendment)**

27. This Defendant in his official capacity is an arm of the of the State of South Carolina and, as such, is absolutely immune to suit under the laws of the United States, the State of South Carolina, and common law sovereign immunity as well as the Eleventh Amendment of the United States Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:
(Acts of Plaintiffs, Comparative Fault)

28. Any injuries or damages sustained by Plaintiffs were caused by reason of Plaintiffs' own wrongful, illegal, and improper acts, willfulness, reckless misconduct, and gross comparative negligence.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,

THIS DEFENDANT ALLEGES:
(Punitive Damages Unconstitutional)

29. That any award or assessment of punitive damages as prayed for by the Plaintiffs would violate this Defendant's constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution, in addition to those provisions under the South Carolina Tort Claims Act.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,

THIS DEFENDANT ALLEGES:
(No Constitutional Violation)

30. The alleged actions/inactions claimed by the Plaintiffs did not rise to the level of constitutional violations and the Plaintiffs did not suffer any infringement of constitutional and/or federal rights, privileges or immunities.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:
(Comparative Negligence)

31. That even if this Defendant was negligent as described in the Complaint, which is specifically denied, the Plaintiffs' alleged injuries and damages, if any, resulted from, were due to, and were the actual and proximate cause of the

Plaintiffs' own negligence and carelessness, and such negligence was greater than the alleged negligence of this Defendant, so as to bar or reduce the Plaintiffs' recovery against this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(12(b)(6) S.C.R.C.P.)

32. Plaintiffs' fail to state facts sufficient to constitute a cause of action against this Defendant and any claim against this Defendant should be dismissed pursuant to Rule 12(b)(6) South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(Sovereign Immunity-Tort Claims Act)

33. This Defendant alleges that the Plaintiffs' Amended Complaint is barred or otherwise limited by the provisions of the South Carolina Tort Claims Act, and, specifically, by Section §15-78-60 (1), (2), (3), (4), (5), (7), (8), (10), (12), (13), (15), (16), (17), (20), (21), (25) and (27) of the Act.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(Comparative/Contributory Negligence)

34. This Defendant alleges that any injuries or damages alleged by the Plaintiffs, if any, which this Defendant expressly denies, were due to and caused by the contributory and comparative negligence, carelessness, willfulness, wantonness and recklessness of the Plaintiff in an amount exceeding fifty percent 50% of the total causal negligence, if any, in the same particulars as set forth below so as to bar

the Plaintiffs' claim as to this Defendant. In the alternative, this Defendant alleges that the injuries and damages alleged by the Plaintiffs, if any, which the this Defendant expressly denies, were due to and caused by the comparative negligence, carelessness, willfulness, wantonness and recklessness of others, who this Defendant has no control, and in an amount to be determined by the trier of fact, so as to reduce the Plaintiffs' claims proportionally, pursuant to South Carolina Law.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(Determination of Proportional Liability)

35. This Defendant alleges that the injuries and damages alleged by the Plaintiffs, if any, which this Defendant expressly denies, were due to and were the direct and proximate result of, at least partially if not solely, of the other individuals and/or companies involved in this incident, if any so existed, so as to entitle this Defendant to a determination of proportional liability as to any concurring negligence, if so found, pursuant to S.C. Code Ann. § 15-78-100.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:

(Limitation of Remedies)

36. Any recovery by Plaintiffs must be limited to the remedies allowed under the South Carolina Tort Claims Act, including but not limited to S.C. Code Ann. § 15-78-120(a)(1) and (2) and S.C. Code Ann. § 15-78-120(b).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Public Duty Rule)

37. This cause of action fails to state a claim against Defendant South Carolina Department of Transportation in that as a matter of law the Defendant violated no duty which it owed to the Plaintiffs for which the Plaintiffs are entitled to relief in the form of damages.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(Statute of Limitations)

38. The Plaintiffs failed to file and serve the Amended Complaint in a timely manner on this Defendant and is therefore barred by the applicable statute of limitations.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THESE DEFENDANTS ALLEGE:
(No Proximate Cause)

39. That, even if these Defendants was negligent, as alleged in the Amended Plaintiff's Complaint, which is specifically denied, the actions or omissions of this Defendant were not the direct or proximate cause of any injury alleged by the Plaintiff and therefore these Defendants are not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Failure to State a Claim Pursuant to Rule 12(b)(6))

40. The allegations contained in the Plaintiff's Complaint fail in their entirety to state a claim upon which relief may be granted against this Defendant.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES:
(Laches, Waiver, Estoppel)**

41. The Plaintiffs' claims are barred by laches, waiver and/or estoppel.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES:
(No Causation)**

42. No acts or omissions on the part of this Defendant were the proximate cause, or the cause in fact, of the alleged injuries.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THIS DEFENDANT ALLEGES
Rule 12(b)(7) and Rule 19**

43. Defendant, South Carolina Department of Transportation, moves for the dismissal of this action pursuant to Rule 12(b)(7) of the South Carolina Rules of Civil Procedure for the failure to join parties under Rule 19 of the South Carolina Rules of Civil Procedure. In the alternative, this Defendant moves for the joinder of Daniel Sena as a person, businesses and/or corporations or any other party, whether person, business and/or corporation who through discovery, is found to be needed for just adjudication as set forth in S.C. R.C.P 19(a)(1) so as to allow just application of S.C. Code Ann. § 15-78-100.

**FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
THIS DEFENDANT ALLEGES
(Sole, Intervening and Superseding Negligence of a Third-Party)**

44. The Defendant South Carolina Department of Transportation alleges that the injuries and damages alleged by the Plaintiffs, if any, which the Defendant South Carolina Department of Transportation expressly denies, were due to and

caused by the negligence of a third-party so as to be the sole proximate cause of Plaintiffs' alleged injuries and damages, if any, so as to bar Plaintiffs' claims as to Defendant South Carolina Department of Transportation.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE

THIS DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

45. This Defendant reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure.

FURTHER ANSWERING AS FOR A FIRST CAUSE OF ACTION AND
ASSERTING CROSS CLAIMS AGAINST THE FOLLOWING:

Pilot Travel Centers LLC.
(Contractual Indemnity)

This Defendant, The South Carolina Department of Transportation, reasserts and realleges the previous allegations of this answer as fully and completely as if restated herein verbatim.

46. If this Defendant is compelled to pay damages for any reason in this matter, this Defendant would allege that any liability this Defendant has for the Plaintiffs' damages would be an imputation of liability upon this Defendant as a result of wrongful acts or omissions committed by Pilot Travel Center LLC though their agent Gary Bloom, Project Manager and/or agent for Pilot Travel Center LLC, Roy B. Parsons III, AIA, Registered Architect, and/or agent for Pilot Travel Center LLC, Ashley Engineering and Consultants of Summerville, South Carolina, for the design of this Pilot property through the Application and Encroachment Permit No.

5-08-080161 dated May 13, 2002 to which a jury deems contributed or caused the Plaintiffs damages.

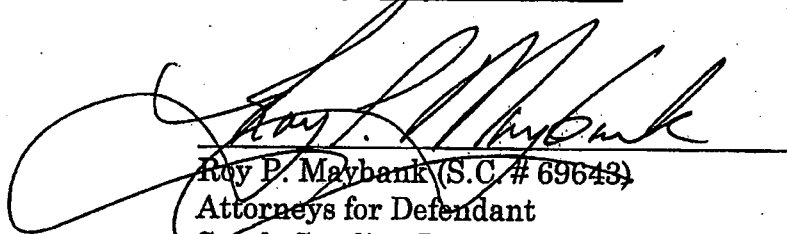
47. This Defendant is entitled to full contractual indemnification, along with all attorney fees and all associated expert fee and defense costs, for defending this matter against Pilot Travel Center LLC negligence though their agent Gary Bloom, Project Manager and/or agent for Pilot Roy B. Parsons III, AIA, Registered Architect, and/or agent for Pilot Ashley Engineering and Consultants of Summerville, South Carolina, by way of contractual indemnification provisions contained in the Application and Encroachment Permit No. 5-08-080161, dated May 13, 2002, the amount of any monies this Defendant is adjudged to owe the Plaintiffs or which it pays the Plaintiffs in settlement of Plaintiffs' claims, plus the cost of investigating and defending the claims including reasonable attorney's fees.

48. This Defendant is informed and believes that it is entitled to a judgment, based on the contractual indemnification provisions, against Pilot Travel Center LLC though their agent Gary Bloom, Project Manager and/or agent for Pilot Roy B. Parsons III, AIA, Registered Architect, and/or agent for Pilot, Ashley Engineering and Consultants of Summerville, South Carolina, for the design of this Pilot property through the Application and Encroachment Permit No. 5-08-080161 dated May 13, 2002, for the full amount of any judgment the Plaintiffs obtain against this Defendant in this matter and in addition, all costs of investigating and defending this claim including reasonable attorney's fees for this Defendant's attorneys.

WHEREFORE, having fully answered the Plaintiffs' Amended Complaint,
this Defendant prays as follows:

- a) That the Plaintiffs' action be dismissed with prejudice;
- b) The Court add additional parties to this claim for just adjudication;
- c) For trial by jury on all issues so triable;
- d) For costs and disbursements of this action;
- e) That the Plaintiffs' claim for any damages not allowed or in excess of that provided by the South Carolina Tort Claims Act be stricken;
- f) For a determination of proportional liability;
- g) For a judgment for this Defendant in its cross claims for indemnity/contribution against Co Defendant Pilot et al an its agents;
and
- h) For such other and further relief as this Court deems just and proper.

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Attorneys for Defendant
South Carolina Department of Transportation

Dated: 6/13/2014

Charleston, South Carolina

B E F O R E:

Maria Dempsey, RPR
Official Court Reporter
Berkeley County Family Court
Ninth Judicial Circuit
Moncks Corner, South Carolina

APPEARANCES

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Speedway, LLC

Bruce Alan Berlinsky, Esq.
Attorney for Defendant
Ashley Surveying & Engineering

INDEX TO PROCEEDINGS

PAGE

MOTION HEARING

3

CERTIFICATE OF THE COURT REPORTER

EXHIBITS

(No Exhibits Proffered.)

1 THE COURT: Next I've got Wright versus Marathon. All
2 right. Pilot versus Wright versus Marathon. What have we
3 got?

4 MR. SILVERBERG: Your Honor, my name is Jeff
5 Silverberg, and I represent Pilot Travel Centers, LLC in
6 this action. This is our motion for summary judgment. Let
7 me first just ask for the Court's indulgence, because
8 there's quite a bit I'd like to try to get through this
9 morning, because although the facts aren't that complex, we
10 were recently, you know, served with -- the plaintiff's
11 counsel recently submitted a long memo in opposition, and
12 some affidavits of experts on the eve of this hearing, that
13 I believe have a number of, I guess, assertions and
14 allegation, and they're not based on the record. And so I'd
15 like to clear them up, because I think it makes what
16 otherwise is a very straightforward case seem more complex
17 than it is. So I would like to address that. If at any
18 point you think I've talked enough, I'm sure you'll let me
19 know.

20 THE COURT: Who do you represent?

21 MR. SILVERBERG: Pilot Travel Centers, LLC. It's our
22 motion for summary judgment, and my name is Jeff Silverberg.

23 MR. MAYBANK: Your Honor, we are all in the case. I'm
24 Roy Maybank on behalf of the South Carolina Department of
25 Transportation.

1 MR. CRITES: Bennett Crites on behalf of Speedway.

2 MR. BERLINSKY: Bruce Berlinsky for Ashley Surveying &
3 Engineering.

4 THE COURT: Okay. Y'all just here to listen to him?
5 Is there more than one motion?

6 MR. SILVERBERG: It's one motion. It's one single
7 motion. It's Pilot's motion in this case.

8 THE COURT: Okay.

9 MR. SILVERBERG: I guess they're here for moral
10 support.

11 THE COURT: They're just there for...

12 MR. SILVERBERG: As I was saying, if you think I've
13 talked too much, perhaps you'll let me supplement with a
14 response memo to their -- the memo of law, if need be.

15 And do you have the copy of the memo in support I
16 submitted last Thursday? If not, I have a copy. I only
17 have one copy. I assume you have a copy.

18 All right. Your Honor, today the plaintiffs are
19 going to ask this Court to hold that a business owner
20 that -- whose property abuts a highway, has a duty to
21 protect travelers on that highway from being hit by a drunk
22 driver who was under the influence of cocaine is, in a
23 nutshell, is what this case is about. My client, Pilot
24 Travel Centers LLC, owns a Pilot Travel Center gas station
25 that abuts Highway US 17-A off of the I-26 exit in

1 Summerville, South Carolina. And the plaintiffs are asking
2 this Court to hold that my client can be held liable for an
3 automobile accident that involved the plaintiffs and another
4 driver in the portion of the highway that is in front of our
5 Pilot Travel Center.

6 Let me -- I'd like to provide a brief introduction
7 to the facts of the case. In order to do that, I think it
8 would be helpful if the Court looked at what's Exhibit B of
9 my memo, which is a photograph, and I can just hand this up.

10 So this photograph is an aerial view of the Pilot
11 Travel Center, which is at the top. And at the bottom,
12 across the highway, is actually another gas station. I
13 believe that's a Hess station. Now, I started to confuse
14 myself which was east, west, north, south or whatnot, so
15 I'll just kind of give directions based on this photograph.

16 What happened is, in this case, is on the night of
17 October 6th, 2012, the plaintiffs were on a motorcycle
18 traveling through the intersection to the right of this
19 photograph towards the Pilot station in the left-hand lane,
20 past the Pilot station, when at the same time an individual
21 by the name of Daniel Sena, driving a pickup truck, was
22 traveling in the left lane on the opposite side of the
23 highway in the opposite direction. He was driving with a
24 blood alcohol level above the legal limit, and he was under
25 the influence of cocaine. He was also driving without a

1 suspended license due to a prior DUI.

2 What happens is that Mr. Sena turns on his left
3 blinker, gets into the median right across from the driveway
4 to the Pilot Travel Center that's highlighted on this photo.
5 And his testimony, Daniel Sena's testimony is that he
6 attempted to make a left turn in, and he hit the plaintiff's
7 motorcycle, injuring the plaintiff. So the important thing
8 here is, the accident occurred entirely in the highway.
9 Neither Mr. Sena nor plaintiffs were invitees or licensees
10 of the Pilot Travel Center.

11 According to Sena's testimony, he simply just didn't
12 see the plaintiffs. He didn't see the motorcycle when he
13 attempted to make the -- what was a legal, otherwise legal
14 left turn. And he said, there's no reason I didn't see it,
15 just bad judgment on my part. Can't blame anyone else but
16 myself. I take full responsibility for the accident. All
17 right. That, that right there is what this case is about,
18 that accident. And then the plaintiffs have sued --

19 THE COURT: So he was wanting to make a left-hand turn
20 into the Pilot?

21 MR. SILVERBERG: That was his testimony.

22 THE COURT: But he never turned into the Pilot?

23 MR. SILVERBERG: He never turned into the Pilot. He
24 hit the plaintiffs.

25 THE COURT: So this happened in that little median

1 area?

2 MR. SILVERBERG: Well, I guess in the left lane. The
3 left lane --

4 THE COURT: Well, you've got an X written, drawn,
5 written on there.

6 MR. SILVERBERG: And Your Honor, I apologize, I'm not
7 sure exactly what the X represents. This was an exhibit to
8 Sena's deposition.

9 THE COURT: Hold on. It's already confusing enough to
10 understand these, but to mark it with something and say,
11 well, I don't know what that means, doesn't make my job
12 easier. So what does the X stand for?

13 MR. SILVERBERG: Well, I could look at the testimony,
14 but I believe this was -- perhaps plaintiff's counsel can
15 elicit.

16 MR. SMITH: Judge, X is where he was turning left. The
17 wreck happened in the right-hand inside lane just before X
18 got into the Pilot Travel Center. The plaintiffs were
19 traveling from Summerville down the overpass, heading
20 straight towards Moncks Corner.

21 MR. SILVERBERG: Well, the testimony is that the
22 plaintiffs were in the left lane, traveling left lane. No
23 dispute the accident occurred in the highway. Now, the
24 plaintiff's have sued Pilot Travel Center. They've also
25 sued the Department of -- South Carolina Department of

1 Transportation. They've sued the prior owners of this
2 property, which is Speedway, LLC. They've also sued Ashley
3 Engineering, which did some design work for Pilot. And they
4 sued the general contractor of this Pilot station.

5 The main claims are that the Pilot -- the plaintiffs
6 are claiming that this median, this flush painted median in
7 this photograph I've shown the Court, should have been a
8 raised median, and that that would have prevented this
9 incident; and that the driveway on our property was
10 somehow -- there is a design flaw, and that somehow caused
11 the accident, creating some sort of dangerous condition on
12 the highway.

13 We filed the present motion on our viewing that, you
14 know, we didn't owe any duty to the plaintiffs just by
15 virtue of abutting this highway. That even if there was a
16 duty, we didn't breach any duty, and the plaintiffs can
17 establish that any duty may or may not have breached
18 caused -- was a proximate cause of this accident or the
19 plaintiff's injuries.

20 So let me just address, I guess, the duty argument
21 first. The plaintiffs first must establish that we owe them
22 a duty to prove their negligence action against us. They
23 can't show duty, their claim fails. Now, in South Carolina,
24 there's no common law duty owed by a property owner that
25 abuts a highway to travelers. There's no just general duty.

1 Okay. In Skinner v. South Carolina Department of
2 Transportation, which is 3-83-SC-520, in this case, the
3 South Carolina Supreme Court did say that a property owner
4 whose land abuts a highway only owes a duty to travelers for
5 highway conditions where the property owner has undertaken
6 an activity that creates an artificial condition on the
7 highway which is dangerous to travelers.

8 Here, the plaintiffs cannot establish that Pilot
9 created a dangerous artificial condition on the highway to
10 serve as the basis of any duty. As I alluded to a little
11 while ago, the allegations are that the dangerous conditions
12 on the highway was the fact that this flush painted median
13 should have been a raised median. And then again, the
14 driveway that Mr. Sena testified was trying to turn into
15 created an artificial condition that was dangerous on the
16 highway. I'll take them one at a time.

17 The absence of the median. Even assuming that the
18 absence of a raised median in this highway was a dangerous
19 condition, it was not a condition on the highway created by
20 Pilot. It was a condition created by the South Carolina
21 Department of Transportation. All right. The decision as
22 whether or not a median, a raised median, should be
23 installed on a highway falls within the exclusive authority
24 of the South Carolina Department of Transportation, because
25 they are the state agency with the police power and the

1 duty, the exclusive authority to plan, maintain, and operate
2 state highway, thus state highway system in our state, and
3 we cite the several cases and statutes in our memo to
4 support those propositions.

5 You know, the Department of Transportation has the
6 exclusive authority to design the highways and to -- which
7 includes the placement of traffic control structures, such
8 as the raised median, you know, that the plaintiffs allege
9 should have been in. In fact, the Department of
10 Transportation, in their 30(b)(6) deposition, they said it
11 was their decision not to put a raised median in that
12 intersection.

13 The plaintiffs cannot point to any authority
14 establishing that Pilot, merely by being an abutting
15 property owner, had a duty to maintain or repair or warn
16 others of the fact that there was no median here, because we
17 don't have control of the highway. We don't have control of
18 the median, which is part of the highway. One of the cases
19 we cite in our memo is pretty on point. It's a Pennsylvania
20 case, Allen v. Mellinger. In that case -- the facts are
21 very similar. In that case, the plaintiffs were actually
22 trying to make a left turn into a business property, and
23 they were hit by someone as they were doing that, and the
24 Commonwealth of Pennsylvania applied -- applying the
25 Restatement Second of Torts Section 349, said that the

1 business owners owe no duty to the plaintiffs to maintain
2 the highway in a safe condition. All right. Section 349,
3 it's in a footnote in our memo, to speed things up, but it's
4 essentially paraphrasing here, and it says, the possessor of
5 land that is on a public highway, you know, is not liable by
6 his failure to maintain the highway in a safe condition or
7 to warn others, other travelers of dangerous conditions,
8 even if they know of dangerous conditions. They just have
9 no duty.

10 So using that statement, the Commonwealth Court of
11 Pennsylvania in Allen v. Mellinger, basically said no duty
12 was owed. The Court said, look, the highway is the -- you
13 know, the Commonwealth owns the highway, has the exclusive
14 duty for maintenance and repair of state highways. You
15 know, the Court also rejected the argument of the plaintiffs
16 in that case, that the business owner's failure to erect
17 signs in their driveways or place curbing or barricades in
18 the parking lot to indicate the safest place to turn into
19 the property. The Court rejected that argument, then saying
20 that argument didn't create a dangerous condition.

21 The Court said, even if this left turning lane,
22 similar in our case, this median, even if it was a dangerous
23 condition, all right, it was a condition of the highway,
24 which is the responsibility of the Commonwealth of
25 Pennsylvania, which is what we have here, like in Allen.

1 Even if the absence of a raised median was a dangerous
2 condition, it was the condition of the highway created by
3 the Department of Transportation.

4 So it seems pretty straightforward, however, perhaps
5 to try to get around this, the plaintiffs allege that, well,
6 Pilot somehow was involved in the decision to not put a
7 raised median there. In other words, we negotiated or we
8 somehow influenced the Department of Transportation's
9 decision. Now, this might be a good time to point it out,
10 in the memo and all that we submitted to the Court, I mean,
11 I counted no less than 22 times does the plaintiff allege
12 that Pilot negotiated the removal of a median. That's just
13 simply not true. It's just not supported by any of the
14 evidence in this case.

15 And in order to explain that, I'm going to have to
16 just give you some more background into where this
17 allegation that Pilot somehow influenced the decision not to
18 put a raised median, I'm just going to have to explain where
19 this comes from. So Pilot acquired this property on or
20 about September 1st, 2001. When the property was acquired,
21 there was already a gas station there. That gas station
22 already had three entrances to the highway, okay, just like
23 it does today. Now, there was never a median in that
24 highway. The DOT has testified there was never a raised
25 median in this highway.

1 Okay. Now, Pilot started to rebuild, to redesign
2 and rebuild the existing gas station. They started to build
3 it in around 2002, I think. I believe it was the testimony
4 that it was August of 2002. It just so happens that around
5 this time, the Department of Transportation had two ongoing
6 projects in the area. And so I'm going to refer to the
7 photograph I was referring to earlier. There were two
8 projects in this area going on the same time as this Pilot
9 Travel Center was being built. One, according to Department
10 of Transportation, was what I will call the interchange
11 project; that's what I refer to it in my memo. And with
12 that, my understanding of what that project was, if you look
13 at the photograph, you see on the right side, that
14 interchange, it was basically to redesign and redevelop that
15 interchange, and then all the way to the right of this
16 photograph that cuts off to Summerville. So from the stop
17 bar on the left side of that intersection, all the way to
18 the right, that's what was referred to -- was the
19 interchange project. That the plans for that project were
20 designed by -- the Department of Transportation had an
21 outside firm design those plans.

22 The second project was actually widening the highway
23 right in front of the Pilot station. These were two
24 projects going on around the same time. The widening plans
25 were actually designed internally by the Department of

1 Transportation. And this is important, because the plans
2 for the widening project, which were prepared in 1998, never
3 had a raised median in them. They weren't there. There was
4 never a raised median. Okay. Now, the DOT did testify that
5 in the plans for the interchange project, that again, we're
6 dealing with an area not related to the portion of the
7 highway in front of our Travel Center. That interchange
8 project was -- the designs that were prepared by, again, an
9 outside firm did show, on one of their plans, a marker for a
10 raised median right here, but the DOT testimony, their
11 30(b)(6) said, that was just a placeholder. It was a
12 placeholder because we had to, at one point, take our
13 widening plans, and we had to put them together with the
14 outside firm's interchange plans, but there was never an
15 intention for there to be a raised median here. That was
16 just the outside firm having to put something there, a
17 placeholder. And so the decision -- the testimony of the
18 Department of Transportation was, the decision that a raised
19 median was never -- it was never anticipated there be a
20 raised median in here, and it was just a placeholder.

21 And I bring this distinction because one of the
22 arguments is that, again, the original plans of the
23 Department of Transportation, the plaintiffs claim it showed
24 a raised median that was removed, and that's just not what
25 the Department of Transportation has testified to. They

1 said there was never an expectation that there would be a
2 raised median, and that decision was made by the Department
3 of Transportation. The person who made that decision was
4 deposed. He was one of the designees. He said, I made this
5 decision when the widening plans were prepared in 1998. So
6 to suggest otherwise, to suggest that there was always --
7 there was at one point plans for a raised median is just not
8 accurate when you consider the testimony of the Department
9 of Transportation.

10 Okay. So having explained that, the next question
11 is, all right, well, then where's the evidence that
12 plaintiff's counsel is alleging 22 times in their memo that
13 the Pilot negotiated the median? Well, that comes from this
14 document. This is the alleged smoking gun in this case.
15 This is a letter dated August 28th. It's from Tommy Smoak
16 from the Department of Transportation to a Robert
17 Gru (phonetic) -- I think it may be Grivy (phonetic), with
18 Marathon Ashland Petroleum, which I'll represent was part of
19 the prior property owners before Pilot came along. It's
20 dated August 28th, 2000.

21 Plaintiffs are relying on these handwritten notes on
22 the bottom. You know, I'm not going to read them all, but
23 you'll see the first line in parenthesis, it says,
24 negotiated median removal and drive cuts (phonetic). This
25 handwriting on this August 28th letter is what the

1 plaintiffs are relying on to argue that we negotiated the
2 removal of the median. Again, the removal of the median,
3 that according to the Department of Transportation plans,
4 was never intended to even be there. I'll tell you why
5 that's -- this offers no support for that proposition, and
6 that's because, again, look at the date. The date is
7 August 28th, okay, 2000. The Department of Transportation
8 testified that the decision not to include a raised median
9 was in the original widening plans, which were prepared in
10 1998. Okay. We got a date conflict there. Then Mr. Gru
11 isn't an employee of Pilot. All right. Pilot wasn't
12 involved at this point. He's never been an employee of
13 Pilot. Therefore, you can't somehow say that this
14 has anything -- this is any evidence that Pilot negotiated
15 with the Department of Transportation. The Department of
16 Trans -- the individual who made the decision to not have
17 the median in the widening plans, he doesn't recall ever
18 talking to anyone from Pilot about the median.

19 So again, this letter doesn't really prove in any
20 way that Pilot had any involvement in the decision of
21 whether or not to have a median in front of Pilot Travel
22 Center, notwithstanding the allegations in the Plaintiff's
23 memo of law. In fact, the Department of Transportation,
24 their deposition, the deposition lasted over 10 hours. All
25 right. We're talking about 400 pages of a 30(b)(6)

1 deposition, and several times the Department of
2 Transportation's designee said there was no negotiation of
3 the median. I'll just quote one excerpt of that long
4 deposition. It's from Leland Colvin, who was a designee.
5 It's from one Page 117 to 118, and there were some prefatory
6 comments, but the substantive question was:

7 Well, let me ask you this. Was there any
8 negotiation in the decision to go with the flush median as
9 opposed to the raised median? Answer: No. I mean, not --
10 not from my perspective, no. Definitely not from my
11 perspective. From my perspective, it was purely
12 engineering -- it was a purely engineering decision based on
13 the highway design manual.

14 And I'll represent to you that the highway design
15 manual is allegedly the bible in terms of the Department of
16 Transportation's design plans. They use that whenever
17 they're designing something. They refer to it as their
18 bible. So the deponent said, it was a purely engineering
19 decision based on the highway design manual, based on the
20 difference of the two projects, the purpose and need.
21 Certainly, one would have been easier for Mr. Smoak to negotiate
22 than another one, but no, it was not removed as a result of
23 right-of-way acquisition. It was removed as a result of meeting
24 of the plans, and the purpose and need of the two projects, and
25 matching the highway design manual. That's the DOT's deposition

1 testimony. No negotiation took place.

2 And I will point out, despite the fact that
3 plaintiff's counsel says 22 times in their memo that we
4 negotiated or altered the plans that to get rid of
5 the median, in Footnote 7, they actually -- the plaintiffs
6 actually acknowledge that there was no negotiation. The
7 plaintiffs acknowledge the Department of Transportation
8 asserts the change in median design was unrelated to its
9 discussions with Pilot. Pilot's VP of development testified
10 he was unaware of whether there were earlier plans for a
11 raised median.

12 In light of the evidence described in the negotiated
13 resolution regarding the median and the parties' differing
14 accounts, the issue presents a question of fact that a jury
15 must resolve. I would submit to the Court there's no
16 question of fact here. There's no scintilla of evidence
17 that Pilot had anything to do with the decision of whether
18 or not a raised median should be added, again, added,
19 because there never was one, ever, to the portion of the
20 highway in front of our Travel Center. So again, I would
21 argue that there was no duty as it relates to the presence
22 of a raised median.

23 The next allegation is that the construction of our
24 driveway had something to -- somehow created a dangerous
25 condition on the highway. I referenced the Skinner case

1 where it says you're only responsible for artificial
2 dangerous conditions you can create on the highway. I'd
3 come across a South Carolina case stating that a driveway in
4 and of itself can be considered a dangerous artificial
5 condition on a highway. In fact, if you look at the Skinner
6 opinion, it sets forth what artificial conditions they're
7 talking about. They're talking about situations where a
8 business spills material on the roadway or emits smoke on
9 the roadway. That's the artificial condition contemplated
10 by our case law. And just think about the ramifications of
11 that. If every business owner along this highway is going
12 to be liable simply for having a driveway on its -- on the
13 highway. It would be one thing maybe if there was something
14 defective about the driveway itself, but that's not the case
15 here.

16 And then I will add to this. I will add that,
17 again, the Department of Transportation has the exclusive
18 authority when it comes to determining where a business can
19 put its driveways. A business can't just start building
20 driveways. They have to get an encroachment permit. They
21 have to submit that to the Department of Transportation.

22 According to the Department of Transportation, the
23 location of driveways are part of the design of the highway,
24 and as we've discussed, the Department of Transportation has
25 the statutory duty to design the highways of our state.

1 They have control over the highways of our state. The
2 Department of Transportation testified that they reviewed
3 the business owner's design plans, the permit for an
4 encroachment. They review those to ensure that they comply
5 with the DOT regulations and the standards concerning the
6 design and location in driveways. They also will review
7 this permit to make sure that the driveways do not create
8 safety concerns in the highway. That's part of their review
9 process, and they use their independent analysis to
10 determine whether or not those driveways should be allowed.

11 And in this case, Pilot submitted a encroachment
12 permit, and it was granted. Therefore, Pilot could not have
13 constructed these driveways to its property, unless the
14 Department of Transportation determined that they comply
15 with the Department of Transportation's design standards,
16 and determine that they were safe for the public.

17 Briefly, I'll address, you know, there's some
18 indication, well, you know, Pilot, you should have been
19 aware of potential dangers on the highway because there were
20 other accidents on the highway. Well, you know, there's no
21 affirmative duty to act. All right. A legal duty -- an
22 affirmative legal duty only exists if it's created by
23 statute, contract, relationship status, property interest,
24 or some other special circumstance. Here, that didn't
25 exist.

1 There's no duty to affirmatively act. In fact, the
2 Department of Transportation said, we don't expect business
3 owners to tell us if there's accidents on their property.
4 And I will add that there's no evidence in this case that
5 anyone at Pilot was aware of any accidents that occurred in
6 this same manner. There's been no testimony to that effect.
7 And foreseeability of an injury alone, under our case law
8 does not create a duty to act. So I'd argue there's no duty
9 simply, even if you were to assume that there were a lot of
10 accidents here.

11 Now, plaintiff's counsel attached to their memo
12 Exhibit 14, this collision report. And they allege in their
13 memo, there's over 254 accidents in this area, and at least
14 a third of them involve turns into the Pilot station. Well,
15 I would submit to the Court that that's not what this shows.
16 In fact, there's no testimony in the record explaining what
17 this collision report says or does not say. It doesn't tell
18 you the exact locations of accidents. It gives general
19 coordinates. It doesn't tell you -- it doesn't prove that
20 any one accident was caused by not having a raised median.
21 And in the absence of any testimony explaining what this
22 does show, I would ask the Court to disregard any
23 representations as to the amount of accidents that involved
24 this particular driveway, because of the plaintiffs have
25 failed to present any admissible evidence that this report

1 shows what they say it does.

2 All right. So to finish up the duty. There is no
3 duty on the part of Pilot with respect to any dangerous
4 conditions created by the median, because we didn't control
5 the median. The Department of Transportation controls the
6 median. There's also no duty owed by virtue of simply
7 having a driveway, especially here where the driveway was
8 approved by the Department of Transportation, and deemed to
9 comply with their standards, both safety and otherwise.

10 So having established that we do not owe the
11 plaintiffs duty to move to breaches of that duty, and again,
12 thank you for the Court's indulgence in letting me go
13 through all this. The two breaches, essentially, one is
14 that, that's alleged, one is that we created an artificial
15 condition, we being Pilot, by negotiating the removal of the
16 median. Well, as I've said, and acknowledging probably,
17 that's just false.

18 There's no evidence that Pilot in any way negotiated
19 the removal of the median or was in any way involved in the
20 discussions on whether or not the median should be there.
21 So I'm not going to address that breach, because I think
22 I've covered it. There's no dispute that the Department of
23 Transportation made the decision, when it was doing the
24 widening project, not to put that median there. It was a
25 decision made before Pilot acquired the property. So let's

1 talk about the improper design of the driveways, because I
2 think that's the other alleged breach of this alleged duty
3 that we owed the plaintiffs. And before I address it
4 specifically, now probably is a good time to briefly address
5 the affidavits of plaintiffs' experts, which were sent to
6 us, again, I think it was Thursday of last week, may have
7 been Wednesday of last week, but nonetheless, I have to say,
8 I'm going to address them essentially together, because
9 they're pretty much verbatim substantively.

10 These affidavits essentially just opine on matters
11 of law, which is within the sole providence of this Court.
12 Dawkins v. Fields 354 SC 58, in general, expert testimony on
13 issues of law is inadmissible. If you look at these, you
14 know, Paragraphs 5 through 8, all they talk about are what
15 the experts think are the duty owed by Pilot. All right.
16 That's an issue of law for the Court. Paragraph 11 of both
17 affidavits, both talk about what an artificial condition is.
18 Again, I'd argue that that's for the Court to determine.
19 Paragraph -- the rest of these, I mean, the rest of these
20 affidavits, again, just make absurd statements not based on
21 any evidence in the record or some of them don't even appear
22 to be within the expert's alleged field of expertise. They
23 contain the same allegations that Pilot somehow negotiated
24 the removal of the median and that was a breach of duty. As
25 I've explained to you, that's just not factually correct.

1 So they also talk about -- they both opine that it's
2 their opinion that the absence of the median caused the
3 damages. At one point they say, it's my belief the only
4 reason why there's no median in there is because Pilot had a
5 monetary incentive for there not be one. Again, it just
6 doesn't make sense. It's not based on anything, because the
7 Department of Transportation has said that they chose not to
8 put a raised median. And so I would just ask the Court to
9 disregard this based on Dawkins vs. Fields, where Superior
10 Court, you know, agreed that an expert's affidavit shouldn't
11 be considered, because although it offered some helpful
12 factual information, the majority of the affidavit was
13 simply just legal argument as to why summary judgment should
14 be denied.

15 The Court noted in Dawkins that the affidavit just
16 read like it could be plaintiffs' oral argument to the Trial
17 Court. And I would submit to the Court that that's exactly
18 what these affidavits are, and therefore, since they
19 primarily contain legal arguments and conclusions, they
20 should be disregarded. Notwithstanding that, let's talk
21 about what they say about the breach of the duty allegedly
22 owed with respect to the design of the highways. As I can
23 tell, as I can, I guess, deduce from these, they're alleging
24 that these -- this particular driveway didn't comply with
25 one of the handbooks that the Department of Transportation

1 uses when evaluating whether or not to grant an encroachment
2 permit to a business.

3 The first design flaw, I think, that they're saying
4 is that it wasn't within the functional -- is that the
5 driveway was within the functional area of the intersection.
6 Now, I won't get too much into that. I'll just say that my
7 understanding is that the functional area of intersection
8 basically just refers to the amount of distance required for
9 people entering that intersection to be able to navigate the
10 intersection. Well, as we know, this accident happened well
11 beyond the intersection. And even to the extent that that
12 functional area of an intersection, having a driveway there
13 creates a dangerous condition, there's no evidence that this
14 particular driveway was within that functional area.

15 The DOT, at least one DOT official said that that
16 wasn't -- that he didn't think that was within the
17 functional area. And even the plaintiffs' expert, I think
18 in Paragraph 9, both of them say -- they don't say it was
19 within the functional area, they say it was too close to the
20 functional area. They don't explain why that was a problem
21 in this case or how that proximately caused the accident,
22 but that's one of the allegations.

23 The other allegation is that, well, according to
24 DOT's handbook, which again DOT said was just guidelines
25 that they would use, and they don't always comply with them,

1 is the distance between the two driveways. Well, what does
2 that have to do with this accident? Whether it's 100 feet,
3 200 feet, the distance between the two driveways had nothing
4 to do with the fact that you had a drunk driver under the
5 influence of cocaine failing to yield. So to the extent
6 that's even true, that the distance between the driveways
7 were not in compliance with some handbook, that wasn't the
8 proximate cause of the accident.

9 Finally, the proximate cause issue, there's no
10 evidence that any act or omission of Pilot proximately
11 caused the plaintiffs' accident, when the cause of
12 plaintiffs' injury may be as reasonably attributed to an act
13 for which the defendant is not liable as to one for which he
14 is liable. The plaintiff has failed to carry the burden of
15 establishing the defendant's conduct proximately caused his
16 injuries. That's McKnight vs. South Carolina Department of
17 Corrections, 385 SC 380. Ordinarily, proximate cause is a
18 question for the jury, for when the evidence is susceptible
19 to only one inference, it becomes a matter of law for the
20 Court.

21 I would argue that the only inference here is that
22 the proximate cause of this accident was Mr. Sena, the
23 at-fault driver, who was driving under the influence of
24 alcohol and cocaine, failed to yield the right-of-way. He
25 testified that it was ultimately his actions that caused

1 this accident. He can't blame anyone else but himself. He
2 simply didn't see the plaintiffs' motorcycle and used bad
3 judgment. He testified he doesn't blame Pilot. He doesn't
4 blame the Department of Transportation. He doesn't blame
5 the absence of a raised median. The only one who blames
6 Pilot and the absence of a raised median are the plaintiffs.

7 Plaintiffs cannot establish that the raised median
8 would have prevented this accident. All they can say is
9 that it could have. You know, the plaintiff herself, one of
10 the plaintiffs, Cynthia Wright, testified that she couldn't
11 say whether or not the presence of this median would have
12 prevented this drunk driver from doing what he did that day.
13 So the plaintiffs had put forth just no admissible evidence
14 that -- with respect to the driveways, no evidence that the
15 spacing of driveways or its relation to the intersection in
16 any way was the proximate cause of this accident.

17 So again, I appreciate the Court's time. In sum,
18 the plaintiff owed no duty. Even if they owed a duty,
19 there's no breach as a matter of law, and there's no
20 evidence that any alleged breach proximately caused the
21 plaintiffs' injuries. Thank you.

22 THE COURT: Who's talking?

23 MR. CALLOWAY: Good morning, Your Honor. Jordon
24 Calloway, Kevin Smith, on behalf of the plaintiffs, Wrights.
25 Your Honor, the plaintiffs were injured in that accident

1 right in front of the Pilot station, and there have been
2 hundreds of accidents since Pilot took over and rebuilt this
3 area. Your Honor, there was a duty under Skinner and under
4 South Carolina Common Law, for them, if they created an
5 artificial condition, which was dangerous to people on the
6 highway, had a duty of reasonable care. Specifically under
7 Skinner, the duty is stated as follows: When an individual
8 or business is undertaking an activity that creates an
9 artificial condition on the highway, which is dangerous to
10 travelers, there is a duty on behalf of Pilot.

11 So that's part of the duty that we're relying on.
12 The artificial conditions that they've created, both on
13 their property and within the highway itself, which made the
14 highway substantially more dangerous to the Wrights, and was
15 a proximate cause of the accident, which caused the injuries
16 to the plaintiff. That's the argument as it relates to
17 duty.

18 THE COURT: Do you have any authority to stand for the
19 proposition that Pilot is responsible for what DOT decided
20 to ultimately do with that road?

21 MR. CALLOWAY: No, but the problem with that argument
22 is they, Pilot, was heavily involved in the decision as to
23 what was going to go on in the middle of that road.

24 THE COURT: Doesn't matter once DOT, a government
25 agency, decides what to do. It's the end of the game.

1 MR. CALLOWAY: I disagree, Your Honor, for a couple of
2 reasons.

3 THE COURT: Well, convince me otherwise, because right
4 now, you have a big uphill battle.

5 MR. CALLOWAY: Your Honor, as it was explained by
6 Pilot, when the plans were made for the driveways, they were
7 made or supposed to be made by Pilot according --

8 THE COURT: This accident didn't take place in the
9 driveway. It took place in the median.

10 MR. CALLOWAY: Well, it took place on the side of
11 the -- side of the road, but not specifically in the median.
12 The median was involved, but it was on the right side of the
13 road they were traveling in.

14 THE COURT: It didn't take place in the driveway, did
15 it?

16 MR. CALLOWAY: No, but it doesn't happen without the
17 driveway in the condition they were in, without the driveway
18 violating the ARMS manual.

19 THE COURT: Well, every business has got to have a
20 driveway in order to get in to, right?

21 MR. CALLOWAY: Don't disagree with that, Your Honor,
22 but they have a duty to comply with the ARMS manual on how
23 they design those driveways. Now, they put in four
24 driveways here. They're too close together. The ARMS
25 manual says, for a 45-mile-an-hour road, 250 feet apart,

1 those are the rules. You want to attach your business to
2 the highway, you've got to comply with DOT rules.

3 THE COURT: But where the driveway is at didn't cause
4 the wreck. The accident didn't take place in the driveway.

5 MR. CALLOWAY: But -- I don't mean to interrupt Your
6 Honor.

7 THE COURT: You did it.

8 MR. CALLOWAY: If the driveways' not there because you
9 have to space them 250 feet apart, and they're further up
10 the road, then it is a big impact on where this accident
11 took place. It affects -- and the reason why that 250 feet
12 rule is there, is so that people trying to turn are going to
13 have enough time to see people coming. And so those rules
14 are in effect for safety. DOT says that's a safety
15 requirement. And they also say that under -- in this case,
16 Pilot didn't meet those requirements under the ARMS manual.
17 So they acknowledged those driveways too close together.

18 DOT also admits that at least one, possibly two of
19 those driveways were within the functional area of that
20 intersection. That too is a safety regulation. If you're
21 right next to the intersection, people coming in at 45 miles
22 an hour, it makes things much more difficult for a person
23 making a left turn there. So that's why we get the
24 driveway, for those two reasons, because they were too close
25 together, and because they were so close to the functional

1 area of the intersection; that's what our experts say.

2 That's what DOT essentially admitted, is that they were
3 within, or at least a couple of them were within the
4 functional area of the intersection.

5 Now, as it relates to the median, the letter that
6 you have in front of you indicates that there was a
7 negotiation that took place. The original plan, and this is
8 in Colvin's testimony, the original plan for that median
9 was, it was going to have a raised median. Then they come
10 in -- Mr. Colvin also said, when the property owners came to
11 us, they wanted the raised median gone. They wanted it
12 gone. So they come, and there was a negotiated, as
13 discussed here, where they say, we want the raised median
14 out and we want these driveways. So those sorts of things.

15 And as this letter says, it says, in other words,
16 the unmalleable median has been eliminated from the plan.
17 Now, when defense counsel told you, well, it was never
18 really in the plan. Well, that's not what the language of
19 this letter says. It says it was eliminated from the plan.
20 For something to be eliminated from the plan, it had to have
21 been a part of the plan originally.

22 Also, to the extent they said there were no
23 negotiations. They say we made that decision on our own.
24 Well, that's not consistent with the plain language of this
25 letter either. Negotiations are a two-party process. That

1 doesn't indicate that DOT made this decision on their own.
2 There was a negotiation, and after the negotiation, this
3 raised median was eliminated from the plan. That's what the
4 letter says. So we have now -- we have this evidence that
5 this property owner is coming to DOT and saying, we'd really
6 like to have that gone. And then we've got this saying,
7 well, the original plan was for it to be in there, and after
8 the negotiations, we're eliminating that from the plan.

9 So to say they didn't have any involvements in what
10 happened with that median is inconsistent with this. I
11 understand Mr. Colvin says otherwise, but a jury should have
12 to decide which one is right, which one is more credible.
13 The plain language of this letter that says two parties
14 negotiated? And Mr. Colvin says, no, that was all us.
15 That's exactly the kind of question of fact that a jury
16 should resolve.

17 And that brings us back to Skinner. That's the
18 artificial condition we're talking about back here, creating
19 an artificial condition on a highway dangerous to travelers,
20 and that's what happened in this case. The median and the
21 driveways, which were dangerous conditions, which caused a
22 danger, which led to the accident involving the Wrights.

23 We don't dispute at all that Mr. Sena has some
24 responsibility for this, no problem admitting that at all.
25 Our statement is that both DOT and Pilot have a

1 responsibility, because both Pilot and DOT were involved in
2 the process of getting that median in place. Also,
3 specifically as it relates to the driveways, Pilot put
4 together the plan for those driveways. Took them to DOT,
5 and then constructed those driveways outside the context of
6 the ARMS manual, the South Carolina Department of
7 Transportation Regulations, which is also important under
8 Skinner, because what Skinner said, in part, was that the
9 plaintiff in that case could not rely on the ARMS manual as
10 a duty creating mechanism. Why? Because in that instance,
11 the plaintiffs, who were just property owners who had heavy
12 horse trailers that were causing ruts beside the road, in
13 that case they didn't have to get an encroachment permit.
14 They weren't subject to the ARMS manual requirements.

15 Different case here. This is a party -- a
16 commercial party trying to link their property to the
17 highway, and they had a responsibility and obligation, and
18 in fact, did send an encroachment permit to DOT. And so
19 this is a different case than Skinner on the facts, but the
20 duty that Skinner recognized is appropriate and does apply
21 here in this case.

22 We also say in our memo, Your Honor, other bases for
23 duty under South Carolina, for example, Restatement Second
24 of Torts Section 321, which has been recognized as a duty
25 creating mechanism on the Field (phonetic) case. And that

1 section basically says that you have a duty to act when a
2 defendant's behavior creates a danger, specifically if an
3 act or doesn't act, and subsequently realizes or should
4 realize that it's created an unreasonable risk of causing
5 physical harm to another, he's under a duty to use
6 reasonable care to prevent the risk from taking effect.

7 So defense counsel mentioned the idea that there is
8 no affirmative duty to act. Well, under section 321, there
9 can be. And we believe, Your Honor, that that applies to
10 this case, as it relates to breach, the two breaches.
11 Specifically, the negotiations which we already talked
12 about, the two pieces of evidence, specifically the letter
13 that Your Honor has in front of him, and also, the driveways
14 themselves.

15 The ARMS manual, which a part of the exhibits we
16 submitted to the Court, the ARMS manual says, in particular
17 on Page 10, driveways should be as far as possible from the
18 intersection. As SCDOT admitted in their deposition, that
19 one or two of the driveway's within the functional area of
20 this intersection; that's Mr. Clark's testimony, and also
21 Mr. Colvin's testimony. Also, in the ARMS manual on Page 9,
22 there's a table which specifically talks about the distance
23 that each driveway must be from one another, and DOT's
24 30(b)(6) designees admitted that one or two -- this is
25 Mr. Clark's testimony -- did not meet that standard.

1 As it relates to proximate causation, one last thing
2 on breach. We do have two experts that submitted
3 affidavits, which identified breaches of the standard care.
4 In other words, they identified that the way these driveways
5 were designed, and the way they were implemented, violated
6 engineering standards. So to say that those are simply
7 legal conclusions is inaccurate. These are civil engineers.
8 Engineers who do highway management and intersection
9 management, that sort of thing, and they're saying, we've
10 looked at the ARMS manual, we've looked at the national
11 standards and compared them to what Pilot did here, and they
12 breached those standards. So we've got Skinner saying that
13 ARMS manual can possibly be a source of duty. We've got
14 expert testimony establishing breach of duty under the ARMS
15 manual and national standards, and so that satisfies the
16 breach element.

17 As it relates to proximate causation. Defense
18 counsel essentially seemed to indicate that didn't matter if
19 there's a raised median there or not. Well, that's kind of
20 inconsistent with what their own witness says. Basically,
21 their witness admitted -- why do you have a raised median?
22 We asked him. He says, well, to prevent left turns. That's
23 why it's there. That's why it would ever be there. To
24 force someone further down the intersection or say you can't
25 do a left turn here, you've got to go to the traffic light

1 up there here, or you have to not take a left turn there, go
2 make a U-turn and make a right turn. That's why raised
3 medians are there. DOT basically provided similar
4 testimony.

5 They also cited the testimony of the at-fault driver
6 to essentially say he admitted that the median didn't have
7 anything to do with this. Let me quote one line from
8 Mr. Sena's deposition. He said, quote, the raised median
9 could have prevented my accident and a lot more accidents,
10 and any more to come. That's Mr. Sena's testimony on Page
11 119 of his deposition. So we've got the testimony of the
12 at-fault driver, and we've also got basically the fact that
13 this median could have an impact, as stated by DOT and the
14 Pilot's representative himself. Also have experts, and the
15 experts' affidavit, they have proximate cause opinions in
16 there as well.

17 Your Honor, based on those principles, and also
18 relying on the principles stated in our memorandum
19 established on Friday, we believe that the defendant's
20 motion should be denied. There was a duty in this case
21 under South Carolina Common Law and Skinner. There were
22 breaches in these two ways described a few moments ago, and
23 there is evidence, at least specifically a scintilla of
24 evidence on that question of fact of proximate cause, we ask
25 that the motion should be denied.

1 MR. SMITH: Your Honor, can I just add one thing,
2 specifically your question regarding duty?

3 THE COURT: Go ahead.

4 MR. SMITH: You know, I've lived with this case for
5 quite a while now, and as I listen to the presentation over
6 here, I was, you know, of course scrambling around, because
7 I don't believe that paints the picture of what happened
8 here. Your Honor, we have a position -- well, sort of
9 a twofold position here, we have. The first position would
10 simply be that when you undertake an action, you undertake
11 that action with the duty to act reasonably and responsibly,
12 especially with regards to creating dangerous conditions.
13 That's our primary position. Okay. And I believe the case
14 law says that when you're doing things that are going to
15 affect a roadway, you're building driveways, you're having
16 something taken out, you should have a duty to do that.
17 Okay. That's the question of law, Judge, and that's the
18 tougher question.

19 But the second part of our argument is the easier
20 question for you. What if Pilot's involvement was more than
21 simply we submitted for approval, they approved it, we built
22 what they approved, right? What if it's more than that?
23 What if there was actually, Judge, some money changing
24 hands? What if there was some financial gain? What if
25 Pilot had more involvement than what they said? We do know

1 this, Judge, at the same time all this was going on, there
2 was a deal, a right-of-way acquisition, where the DOT was
3 negotiating with Pilot to buy some land, a right-of-way
4 acquisition, the land in front of the Pilot, right.

5 Well, we know from the time line here, within three
6 or four months of this letter, the acquisition is made, the
7 deal is struck. Here's the important thing, Judge. There's
8 only really two considerations when you're talking about
9 buying some land. How much it costs and how much land
10 you're buying, right? Pilot here, in their -- in the text
11 that they wrote, negotiated the removal of a raised median,
12 but here's how you tie it to the money changing hands.
13 There is specific testimony from Mr. Colvin, the
14 representative of the DOT, stating that the removal of the
15 raised median was part of the right-of-way acquisition.
16 What that means is that in the land deal, that they were
17 deciding how much land and how much to pay for it, that
18 there was also this discussion of the removal of the raised
19 median.

20 Now, DOT goes and destroys the original appraisals
21 for that land before we can get our hands on them, but
22 Judge, there is an open question of fact here. When you
23 read about the negotiation for the removal of the raised
24 median that was in the original plans that everyone says is
25 removed, the unmountable median that would have prevented

1 the left-hand turn that caused this wreck, but when you take
2 that, and then you take the DOT telling us that, oh, yeah,
3 that removal of the raised median was part of our
4 negotiation to buy that land, Judge, there's an issue of
5 fact out there. There is an issue of fact.

6 A jury, at this point, could easily conclude that
7 Pilot didn't just simply submit plans. That Pilot possibly
8 offered to sell the land for cheaper in order to get the
9 median removed, and to get their three driveways all within
10 the functional area of the intersection. You know, counsel
11 for Pilot told you, oh, you know, there's an issue about
12 where they are.

13 When we held up the very map -- the very map, and
14 asked the DOT to point to the functional area of the
15 intersection, do you know where he put his mark? On the
16 first one and in the middle of the second one. The DOT says
17 that. And Judge, the significance there is, at this point,
18 you've got six lanes of traffic. You got three lanes coming
19 from Moncks Corner. You got three lanes coming from
20 Summerville. It is a busy intersection.

21 Time has proved to show it's a deadly intersection,
22 but we always knew it was busy. With the functional area of
23 the intersection, the placement of driveways and the raised
24 median, you don't want people making left-hand turns in and
25 out across three lanes of traffic at 45 miles an hour,

1 because you know what happens when you do that, Judge. You
2 create a book of business. A book of accidents of 254
3 wrecks occurring in front of that Pilot, right. And Judge,
4 what we didn't give you was every single accident report,
5 because we just thought it would just not be received, to be
6 honest with you, electronically or bogging down the Court's
7 file. I have every single accident report. There's 254.
8 And interestingly, Judge, the DOT has found an extra 40 that
9 I didn't even know about. Brings us up to close to 300
10 wrecks in the 10 years since they made these changes.

11 So Judge, there's an open issue of fact as to what
12 level of involvement they did, and I hope that you will
13 agree that if they had more than just simply submitting
14 these plans, getting it approved and building what was
15 approved, if they did more, if this was part of the deal,
16 the land deal, if they paid less for the land in return for
17 getting the removal of the raised median, and all of these
18 driveways directly in the functional area of the
19 intersection, which the DOT's manual say never do because
20 it's not safe, Judge, that's an issue of fact, and if it's
21 not an --

22 THE COURT: Do you have proof of this?

23 MR. SMITH: Well, I've got the letter talking about the
24 negotiation. We have got the testimony saying the removal
25 of the raised median was part of the right-of-way

1 acquisition.

2 MR. SILVERBERG: Your Honor, can I respond?

3 THE COURT: Yep. Are you finished?

4 MR. SMITH: Yes, sir.

5 MR. SILVERBERG: The problem with what-ifs is that
6 there's no evidence for what-ifs. That's why they're
7 what-ifs. Let me nip this in the bud right now.

8 Plaintiffs' Exhibit 7 to the Department of
9 Transportation's 30(b)(6) is the Title to Real Estate for
10 this right-of-way acquisition they're referring to. You
11 will notice that Pilot did not sell the right-of-way. The
12 prior owner, SuperAmerica, Speedway SuperAmerica sold the
13 right-of-way in it looks like October 2000, again, before
14 Pilot got on the scene. So that what-if, opposing counsel
15 doesn't have to do any more investigation as to what if, as
16 to what was part of those negotiations, because Pilot wasn't
17 even part of those negotiations.

18 Quickly, the letter, again, this letter, first of
19 all, the portion they're referring to, I would argue is
20 hearsay. These handwritten notes? Hearsay. Okay. And
21 it's not -- it's dated August. It's not Pilot. These
22 aren't written by a Pilot employee. There's no dispute.
23 And then I read you the quote that said that the removal of
24 the median had nothing to do with the right-of-way
25 acquisition. It was on 117 to 118 of the Colvin dep, of the

1 Department of Transportation's 30(b)(6). I mean, there's
2 not -- it's such a long deposition transcript, and I
3 wouldn't, you know, ask you to go through it, but the
4 Department of Transportation said the decision not to put
5 the median was made as part of the 1998 widening plans not
6 to, you know, not to include it.

7 This letter is not a scintilla of evidence. There's
8 just too many reasons why. This isn't a Pilot letter. Not
9 Pilot. I wrote it on here. I don't know how else to convey
10 that message. All right. So the median, you know, one
11 thing I failed to tell Your Honor, was that the Department
12 of Transportation testified that the reason why they decided
13 not to put a raised median in there or add one -- remember,
14 there was never one there to begin with, even though the
15 preexisting gas station also had three entrances on this.
16 There was never one there to begin with, but the reason why
17 is because according to the highway design manual that the
18 Department of Transportation uses, again, the bible of
19 highway design for the Department of Transportation,
20 according to the Department of Transportation, that bible
21 required them not to put a median. And if they would have
22 put a raised median, that would have been in contravention
23 to that design manual. That is the 30(b)(6) testimony of
24 the Department of Transportation.

25 And I'm just going to dispute flat out the fact that

1 no one's testified that this specific driveway, to the
2 extent this is even relevant, was within the functional area
3 of the deposition [sic]. The plaintiff -- the plaintiff,
4 Richard Wright, who was driving the motorcycle, his
5 testimony suggests that he saw the truck, and he actually
6 consciously decided not to slow down, because he didn't want
7 to give Mr. Sena the impression that he was making the
8 left -- that he was allowing the left turn to be made.

9 There's no problem with how close this driveway is
10 to the intersection. There's no evidence to back that up.
11 It's just absurd to suggest that Pilot -- there was any quid
12 pro quo. Pilot wasn't on the scene when the decision not to
13 put a median was made and --

14 THE COURT: Is that true?

15 MR. SMITH: No, sir, and it's flatly true. Your Honor,
16 if I could hand up a document that clears all of this up.
17 Basically, in the letter that we've been talking about with
18 the negotiation, you've got Marathon Ashland Petroleum, LLC.
19 That's the title here. And Your Honor, what we've got --
20 and I've just got one copy here, and I'll hand it to you,
21 but you can see here that Pilot talks about in 2002, here,
22 somebody at SCDOT, we've been playing phone tag. I am the
23 project manager for Pilot Travel Centers, LLC, a
24 combination, parenthesis, a combination of Marathon Ashland
25 Petroleum, LLC, and Pilot Corporation. So that it wasn't us

1 back then because of this Marathon Ashland Petroleum, LLC,
2 here's Pilot themselves writing in. Let me tell you who
3 Marathon Ashland Petroleum, LLC is. I'm sorry, let me tell
4 you who Pilot Travel Center is, a combination of Marathon
5 Ashland Petroleum, LLC, and Pilot Corporation. Judge, to
6 say this wasn't us is just flatly untrue. And anyway, I'll
7 hand this up to you. It's part of our exhibits in our
8 memorandum.

9 MR. SILVERBERG: And Your Honor, I won't dispute that
10 there was -- that Pilot Travel Centers acquired the
11 property, but it was after the date of that letter. It was
12 in 2001.

13 MR. SMITH: Judge, the point is, is that when these
14 negotiations are taking place with Marathon Ashland
15 Petroleum, LLC, it's Pilot Corporation who's doing this.

16 MR. SILVERBERG: There's no evidence of that, Your
17 Honor.

18 MR. SMITH: Except the letter you're holding in your
19 hand.

20 MR. SILVERBERG: No, that does not -- that letter does
21 not show that these handwritten -- that Pilot negotiated the
22 median. All it shows is that at some point, Pilot
23 Corporation entered a joint venture to create Pilot Travel
24 Centers, LLC. The plaintiffs did sue Pilot Corporation.
25 The plaintiffs did sue Marathon Ashland. They sued Pilot

1 Travel Centers, LLC, which did not acquire this property
2 until 2001.

3 MR. SMITH: And Your Honor, I guess the response we
4 would have is, this is an open question of fact. I mean,
5 it's something that I can tell you're interested in. We
6 think a jury is going to be interested in it.

7 THE COURT: Well, I mean, it's interesting, except for
8 the fact that once -- I mean, these are all things that I --
9 ultimately, DOT's responsible for what got put and not put
10 in that median and, you know, if they negotiated with
11 somebody to put in or not put in a raised median,
12 ultimately, that's on the DOT, and I don't think you get
13 co-conspirator status by virtue of negotiations that you or
14 someone else had with SCDOT. They're ultimately the ones
15 that made the decision to put that in or not put in a raised
16 median.

17 You know, to me this case boils down to duty. If
18 that accident took place within the driveway Pilot, then
19 maybe I could see, you know, Pilot having some
20 responsibility. But this took place in a median where which
21 somebody wanted to turn into that driveway, and that doesn't
22 fall on Pilot. And I don't think -- that's the law.

23 You got a big, thick book of what you say are
24 accidents that took place in that area. That may keep DOT
25 in the case later on, but it's not their motion that's here

1 today and, you know, in order to -- as I understand the law
2 on these kind of things, is to get DOT on the hook because
3 you've got to show, oh, they had notice that this was a
4 dangerous condition, something should have been done. Well,
5 you may have it.

6 But as far as Pilot goes, Pilot's not responsible
7 for maintaining that road. Pilot's not responsible for
8 building that road. And having a driveway into your
9 business is not what is, I think, within the definition of
10 an artificial condition to incur liability in this instance.

11 MR. SMITH: Well, Judge, I mean, what is there -- let
12 me just ask you just straight out. If it turns out money
13 changed hands --

14 THE COURT: Don't ask the Judge questions, but well,
15 you make arguments and I rule.

16 MR. SMITH: I mean, if money changed hands, if Pilot
17 had more involvement than simply --

18 THE COURT: You don't have any evidence that the money
19 changed hands, other than there was a negotiation about a
20 right-of-way somewhere else. Ultimately, that's not
21 illegal. If they were negotiating with somebody down the
22 road, it's not illegal, but ultimately, this is SCDOT's
23 road. They built it, they designed it, they signed off on
24 everything that's there. Pilot didn't. People negotiate
25 for things all along the way; where can I have my curb cut.

1 Well, all sorts of things.

2 But I mean, to put liability on Pilot or any other
3 business that's along the way and say, well, they should
4 have done something about people turning in there, and
5 there's accidents that take place there, unless it took
6 place on their driveway, I don't see how they or any other
7 business could be responsible for what happened in a median
8 that was out there, which in this instance is where the
9 people were at, waiting to turn into that turn. That's what
10 I said.

11 MR. SMITH: I mean, without a driveway, he ain't making
12 this left-hand turn.

13 THE COURT: You'll obviously stand here and argue with
14 me all day. You prepare an order, and you can appeal it,
15 all right?

16 MR. SILVERBERG: Thank you, Your Honor.

17 (END OF TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

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State of South Carolina)
)
County of Berkeley)

I, Maria Dempsey, Official Court Reporter for the Ninth
Judicial Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Family Court for Berkeley County, South Carolina,
on the 10th day of April 2017.

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

June 7, 2017

Maria Dempsey, RPR
Official Court Reporter
Charleston County Family Court
Ninth Judicial Circuit
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

C/A NUMBER: 2014-CP-08-675

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

South Carolina Department
of Transportation, C & A Unlimited, Inc.
and Pilot Travel Centers, LLC,

Defendants.

**DEFENDANT PILOT TRAVEL
CENTERS, LLC'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT**

COPY

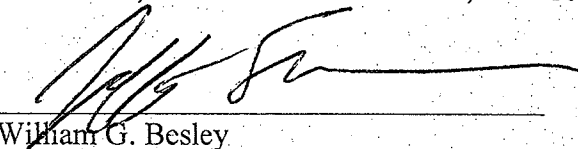
TO: KEVIN B. SMITH, ESQUIRE, S. RANDALL HOOD, ESQUIRE AND SHAWN DEERY, ESQUIRE, ATTORNEYS FOR THE PLAINTIFFS, AND THE PLAINTIFFS, CYNTHIA WRIGHT AND RICHARD WRIGHT:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys for Defendant Pilot Travel Centers, LLC, will move before the Presiding Judge of the Ninth Judicial Circuit at the Berkeley County Courthouse, at such time and place as may be set by the Court, for an Order pursuant to Rule 56, SCRCF, granting summary judgment to Defendant Pilot Travel Centers, LLC, on the grounds that the Plaintiffs have failed to present evidence sufficient to raise a genuine issue of material fact that Pilot Travel Centers, LLC, owed them any duty or breached any duty owed. Further, Plaintiffs have failed to present any evidence establishing that their injuries were caused by any negligent act or omission of Pilot Travel Centers, LLC. In the absence of evidence sufficient to raise a genuine issue of material fact on necessary elements of the Plaintiffs' claim(s), Defendant Pilot Travel Centers, LLC, is entitled to summary judgment as a matter of law.

This Motion will be supported by the attached affidavit of Bill Mulligan (Exhibit A), the pleadings, depositions, discovery, the South Carolina Rules of Civil Procedure, applicable statutes and case law, any memorandum as may be submitted, and such other matters as may be acceptable to the Court.

HOWSER, NEWMAN & BESLEY, L.L.C.

By:



William G. Besley
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1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
ATTORNEY FOR DEFENDANT PILOT
TRAVEL CENTERS, LLC

May 6, 2016

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS
)

) C/A NUMBER: 2014-CP-08-675

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

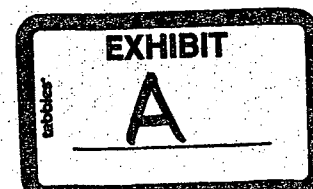
South Carolina Department
of Transportation, C & A Unlimited, Inc.
and Pilot Travel Centers, LLC,

Defendants.

AFFIDAVIT OF BILL MULLIGAN

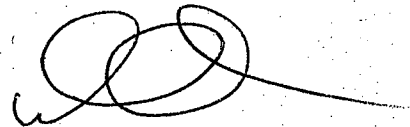
Personally appeared before me the undersigned, after being duly sworn, deposes and says:

1. The contents of this affidavit are based on my own personal knowledge.
2. I am of sound mind and over eighteen years of age.
3. I am familiar with the allegations alleged by the Plaintiffs in the above-captioned lawsuit pending in Berkeley County.
4. Beginning in 1994, I began serving as the Director of Construction for Pilot. That Directorship later became a Vice President's position, and I have continuously served as the Vice President of Construction to the present date, which title is now Vice President of Development.
5. On or about September 1, 2001, Pilot acquired the existing gas station and real property located at 1521 North Main Street, Summerville, South Carolina 29483 (the "Property").
6. After acquiring the Property in September 2001, Pilot redesigned and constructed a new Pilot Travel Center station on the Property.
7. When Pilot acquired the Property, the existing gas station located on the Property had three driveways with access to U.S. Hwy 17-A. There was no raised median in the highway preventing left turns into the existing gas station from the southbound lane.



8. Pilot was required to obtain an encroachment permit from the South Carolina Department of Transportation ("SCDOT") before Pilot could construct the driveways to the new Pilot Travel Center. In order to obtain the permit, the location and design of Pilot's driveways had to be approved by the SCDOT. In May 2002, Pilot submitted an application for an encroachment permit to the SCDOT, seeking approval of the location and design of its proposed driveways. The encroachment application was approved, and the SCDOT issued Pilot a permit to construct the driveways.

9. Construction of the Pilot Travel Center began in or around August 2002. Around the time the Pilot Travel Center was being planned/constructed, SCDOT was also performing an improvement project to the intersection of I-26 and U.S. Hwy 17-A, which was adjacent to the Property. The SCDOT did not install a raised median in the highway to prevent left turns into the Pilot Travel Center as part of the improvement project.



Bill Mulligan

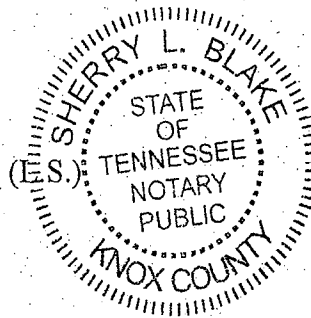
April 28, 2016

Sworn to before me this 28th

day of April, 2016

Sherry L. Blake
Notary Public for Tennessee

My commission expires: 9-11-16



STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

)
)
)

IN THE COURT OF COMMON PLEAS

C/A NUMBER: 2016-CP-08-00334

Cynthia Wright and Richard Wright,

Plaintiffs,

vs.

South Carolina Department of
Transportation, Pilot Travel Centers, LLC,
Speedway LLC, Ashley Land Surveying,
Inc., f/k/a Ashley Engineering &
Surveying, Inc. and Ashley Engineering &
Consulting, Inc., and Munlake Contractors,
Inc.,

Defendants

**DEFENDANT PILOT TRAVEL
CENTERS, LLC'S MEMORANDUM
IN SUPPORT OF SUMMARY
JUDGMENT**

This matter comes before the Court on Defendant Pilot Travel Centers, LLC's ("Pilot") motion for Summary Judgment in the above-captioned action. For the reasons set forth below, Pilot respectfully requests that the Court grant its Motion.

STATEMENT OF FACTS

This action arises from a motor vehicle accident that occurred on October 6, 2012, while Plaintiffs were traveling North on Highway U.S. 17A on a motorcycle. Plaintiff Richard Wright was driving the motorcycle, and his wife, Plaintiff Cynthia Wright, was riding as a passenger. The accident occurred when a pick-up truck that had been travelling in the southbound lane of U.S. 17A (opposite lane of traffic) stopped in the median with its left blinker on and then suddenly turned left into the side of Plaintiffs' motorcycle. The accident occurred on a portion of U.S. 17A located in front of a Pilot Travel Center gas station ("Pilot Travel Center") owned by Pilot. The driver of the pick-up truck, Daniel Sena (Sena), testified that he had intended to make

a left turn into one of the entrances to the Pilot Travel Center (Daniel Sena Deposition, May 6, 2015, 70-72, attached hereto as **Exhibit A**¹; *see also* Sena Dep. Ex. 3, attached hereto as **Exhibit B**). Police later determined that Sena had a blood alcohol level of .12, and Sena tested positive for Cocaine in his system shortly following the accident. Plaintiffs contend that the accident would not have occurred had there been a solid raised concrete median in the highway that prevented motorists travelling southbound from making a left-hand turn onto Pilot's premises. Plaintiffs also contend that the location and design of Pilot's entrances somehow caused the motor vehicle accident.

Pilot constructed the subject Pilot Travel Center in or around August 2002 after acquiring the real property and existing gas station on or about September 1, 2001. (Aff. of Bill Mulligan ¶¶ 5, 9, attached as **Exhibit C**). The existing gas station already had three driveways with access to US 17A, and there was no raised concrete median in the highway preventing left turns into the existing gas station. (*Id.* at ¶ 7). In fact, there has never been a raised median in this section of the highway (Rule 30(b)(6) Deposition of SCDOT, Leland Colvin, Jr., March 13, 2017, at 256, attached hereto as **Exhibit D**²).

Around the time the Pilot Travel Center was being built, the South Carolina Department of Transportation (SCDOT) was in the process of widening the section of U.S. 17A in front of the Pilot Travel Center (the "Widening Project"). SCDOT was also reconstructing the intersection adjacent to the existing gas station (the "Interchange Project"). The Widening Project and Interchange Project were completed on June 17, 2002 and November 1, 2003, respectively (**Exhibit D** 216). SCDOT designed the plans for the Widening Project, but used an

¹ All excerpts of Sena's deposition cited in this Memorandum are attached as **Exhibit A**.

² All excerpts of the deposition of Leland Colvin, Jr., who served as one of SCDOT's Rule 30(b)(6) designees, cited in this Memorandum are attached as **Exhibit D**.

outside firm to design the plans for the Interchange Project. (Exhibit D 252-53). According to SCDOT, the design plans for the Widening Project never included a raised median (Exhibit D 253:17-254:3). The decision to not install a raised median in front of the Pilot Travel Center was made by Leland Colvin, Jr., (Colvin) who was the Project Manager for the Widening Project. (Exhibit D 252:2-5, 255). This decision was made when the Widening Project design plans were prepared in 1998. (Exhibit D 283:20-285:2). Colvin's decision to use a flush median (rather than a raised median) was made in conformance with SCDOT's Highway Design Manual, which SCDOT considers "the Bible" for designing highways in the state. (Exhibit D 254). In fact, according to SCDOT, installing a raised median as part of the Widening Project would have been in contravention to the standards set forth in the SCDOT Highway Design Manual (Exhibit D 254).

In order to construct the entrances/driveways to the subject gas station, Pilot had to submit an application to SCDOT for an encroachment permit. (Exhibit C ¶ 8; Exhibit D 274). SCDOT had to approve the design and location of the driveways to Pilot's property before issuing Pilot the encroachment permit. (Exhibit C ¶ 8, Exhibit D 274-75). In evaluating whether to approve the encroachment permit, SCDOT conducts an independent analysis to ensure that the proposed driveways conform to its regulations and standards (Exhibit D 275). SCDOT also considers safety and how the access to private property affects traffic and the general operation of the highway system (Exhibit D 48-50). SCDOT has the ultimate authority to approve encroachment permits (Exhibit D 277). SCDOT would never compromise the public's safety to accommodate a property owner's interests when it comes to approving encroachment permits (Exhibit D 267-69). SCDOT ultimately approved Pilot's encroachment permit application and

issued Pilot a permit to construct the entrances/driveways to the Pilot Travel Center. (**Exhibit C ¶ 8**)

On March 31, 2014, Plaintiffs filed the present negligence action against Pilot and SCDOT arising from the accident.³ Plaintiffs allege that SCDOT was negligent for failing to install a raised median in the highway that prevented left-hand turns into the Pilot Travel Center. Plaintiffs also allege that SCDOT was negligent for allowing Pilot to have an entrance/exit where it was located on the property. Additionally, Plaintiffs allege in their Complaint that Pilot owed the driving public a duty to construct its entrance/exit “in such a way as to prevent the existence of hazardous road conditions [on the highway]” and was negligent for failing to construct and maintain its entrance/exit “to prevent . . . [Plaintiffs] from being stricken by other motorist[s] attempting to turn left across traffic” (Amend. Compl. ¶¶38, 41). Plaintiffs further claim that Pilot is responsible for the painted/flush median being utilized by SCDOT as opposed to a raised concrete median. Their allegation is that Pilot allegedly influenced SCDOT’s decision on which type of median to install on the roadway in front of the Pilot Travel Center.⁴

Pilot filed the present Motion for Summary Judgment based on the grounds that Plaintiffs have failed to present evidence sufficient to raise a genuine issue of material fact that Pilot owed

³ On February 9, 2016, Plaintiffs filed a separate action against several other parties in connection with the accident. The two actions have since been consolidated.

⁴ Plaintiffs’ allegation that Pilot influenced or negotiated with SCDOT to prevent SCDOT from installing a raised median in front of Pilot’s property is based solely upon handwritten notes on a letter from an SCDOT official to an employee of the prior owner of the subject property dated August 28, 2000. These notes were not made by an employee or agent of Pilot or SCDOT. Not only did SCDOT indicate that the decision to use a painted/flush median instead of a raised median was made when the design plans of the Widening Project were prepared in 1998 (prior to this letter), but SCDOT also testified that there was never a “negotiation” of the median. (**Exhibit D 260:16–262:5, 283:20–285:2**) Leland Colvin, the SCDOT employee who made the decision to use a painted/flush median, testified that he does not recall ever talking to anyone from Pilot about the median prior to making his decision. (*See Exhibit D 99:16 – 100:5*). SCDOT testified multiple times throughout its Rule 30(b)(6) deposition that it made the decision as part of the Widening Project to use a painted/flush median instead of a raised median, and that there was never an expectation that there was going to be a raised median installed in front of the Pilot Travel Center (**Exhibit D 260:16–24**) Plaintiffs cannot produce even a scintilla of evidence that Pilot did anything to influence SCDOT’s independent decision to use a painted/flush median in front of the Pilot Travel Center.

them any duty or breached any duty owed, or, that any alleged negligent act or omission on the part of Pilot proximately caused Plaintiffs' injuries.

STANDARD OF LAW

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c). When a party makes a motion for summary judgment that is supported by evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion but must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists. *Klippel v Mid-Carolina Oil, Inc*, 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); *Dyer v. Moss*, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion. *Baughman v American Tel & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

DISCUSSION

In order to prevail at trial, Plaintiff must establish that (1) Pilot owed them a duty; (2) Pilot breached that duty by a negligent act or omission; (3) and that Plaintiffs' damages were proximately caused by this breach. *Hubbard v Taylor*, 339 S.C. 582, 588, 529 S.E.2d 549, 552 (Ct. App. 2000) As will be discussed below, Plaintiff has failed to create a genuine issue of material fact regarding these essential elements of their claims.

I. Plaintiffs have failed to establish that Pilot owed them a duty of care.

Defendant did not owe Plaintiffs any duty of care as alleged in the Complaint, and therefore, Pilot is entitled to summary judgment. *See Hurst v E. Coast Hockey League, Inc.*, 371

S.C. 33, 37, 637 S.E.2d 560, 562 (2006) (“The court must determine, as a matter of law, whether the law recognizes a particular duty. If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law”).

Plaintiffs allege that Pilot owes a duty of care to all motorists traveling on the highway in front of its property.⁵ However, the Supreme Court of South Carolina has refused to recognize such a broad duty. See *Skinner v. S. Carolina Dep't of Transp.*, 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009) (noting that there is no general common law duty of care owed to travelers “on the part of an owner of property abutting a highway who neither possesses nor controls the highway.”). To the contrary, a property owner whose land abuts a highway only owes a duty to travelers for highway conditions where the property owner “has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers.” *Id.* Here, the Plaintiffs cannot establish that Pilot created a dangerous artificial condition on the highway to serve as the basis of any duty.⁶

Plaintiffs allege that the dangerous condition that led to the subject accident was the absence of a solid raised median in the highway to prevent left hand turns onto Pilot's premises. However, the decision as to whether a raised median should be installed on a highway falls within the exclusive authority of SCDOT. See *Giannini v. S. Carolina Dep't of Transp.*, 378 S.C. 573, n. 1 (2008) (recognizing SCDOT has initial discretion to place median barriers on a highway); S.C. Code Ann. § 57-3-110 (1) (“The Department of Transportation shall . . . [have the power and duty to] lay out, build and maintain public highways and bridges, including the

⁵ Plaintiffs cannot establish that Pilot owed them a duty under a traditional premises liability theory as it is undisputed that the motor vehicle accident underlying this action did not occur on Pilot's property, and that Plaintiffs were neither invitees nor licensees of Pilot prior to the motor vehicle accident.

⁶ Examples of artificial conditions created by a property owner include spilling material on a roadway, emitting smoke that drifts over the highway, or creating traffic jams on the highway due to plant shift changes. *Skinner*, at 525, 681 S.E.2d at 874.

exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges”). This decision-making authority arises from SCDOT’s police power and duty to plan, maintain, and operate the state’s highway system. See *Brashier v S Carolina Dep’t of Transp*, 327 S.C. 179, 190-91, 490 S.E.2d 8, 14 (1997) *overruled on other grounds by I’On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) (recognizing SCDOT’s police power and duty to plan, maintain and operate the state highway system); *S. Carolina State Highway Dep’t v. Wilson*, 254 S.C. 360, 365-66, 175 S.E.2d 391, 394 (1970) (noting that “the clear weight of authority from other jurisdictions is that the construction of a median . . . is an exercise of the police power”); *S. Carolina State Highway Dep’t v. Carodale Assocs*, 268 S.C. 556, 561, 235 S.E.2d 127, 129 (1977) (“Re-routing and diversion of traffic are police power regulations.”). Simply put, SCDOT has ultimate control over the design and construction of highways and the placement of traffic control structures such as raised medians. See S.C. Code Ann. § 57-3-110 (3) (“The Department of Transportation shall [have the power and duty to] cause the state highways to be marked with appropriate directions for travel and *regulate the travel and traffic along such highways*, subject to the laws of the State[.]” (emphasis added)). One need only review South Carolina’s takings jurisprudence to recognize that a business owner whose land abuts a state highway cannot usurp the authority of SCDOT to construct a solid median on a that highway. See e.g., *Hilton Head Auto., LLC v. S. Carolina Dep’t of Transp*, 394 S.C. 27, 32, 714 S.E.2d 308, 311 (2011) (business owner not entitled to just compensation where SCDOT closed a median crossover on the highway that prevented customers from continuing to make an immediate left turn onto business premises); *Hardin v S Carolina Dep’t of Transp*, 371 S.C. 598, 641 S.E.2d 437 (2007) (SCDOT’s decision to close a median crossover did not disturb business owner’s property rights because business

still had access to and from the public road system); *S. Carolina State Highway Dep't v. Carodale Assocs*, 268 S.C. 556, 561, 235 S.E.2d 127, 129 (1977) (“[a] landowner has no property right in the continuation or maintenance of the flow of traffic past its property. Traffic on the highway, to which they have access, is subject to the same police power regulations as every other member of the traveling public.”) Moreover, SCDOI testified that it, and not Pilot, made the decision to not install a raised median in the portion of US 17A in front of the Pilot Travel Center. (**Exhibit D 255**).

The facts of this case are comparable to those in *Skinner v. S. Carolina Dep't of Transp.*, 383 S.C. 520, 524-25, 681 S.E.2d 871, 874 (2009) and *Allen v. Mellinger*, 156 Pa. Cmwlth. 113, 625 A.2d 1326 (1993). In *Skinner*, the Plaintiffs were injured in a motor vehicle accident after being hit head on by another motorist whose car crossed the center line of the highway. *Id.* at 522. The at-fault motorist lost control of her vehicle when she veered onto the highway's shoulder near a driveway leading to a stable and subdivision. *Id.* Plaintiffs filed suit against several parties, including SCDOI and the owners of the driveway and stable. *Id.* Plaintiffs' theory of liability against the owners was based on the argument that the at-fault motorist could not regain control of her vehicle due to deep shoulder ruts created by those using the driveway. *Id.* at n. 1. The trial court granted the owners summary judgment, finding that the owners of the driveway and stable owed no duty to the Plaintiffs.⁷ The South Carolina Supreme Court affirmed the trial court's holding that the owners owed no duty, noting that the shoulders were part of the highway and that SCDOI, not the owners, had the responsibility to maintain them. Moreover, the Court held that the ruts themselves were “natural consequences of highway use,” and that an abutting landowner can only be liable for artificial conditions it creates, such as emitting smoke

⁷ The trial court also held that the Plaintiffs' claim failed for lack of proximate cause; however, the South Carolina Supreme Court did not address this holding.

over the highway or spilling material on the highway. Thus, the owners did not have a duty to warn travelers of the shoulder ruts or to protect them from encountering them. *Id.* at 523.

Similarly, in *Allen*, the Commonwealth Court of Pennsylvania was presented with facts nearly identical to the facts at hand. The plaintiffs attempted to make a left hand turn from the highway into the defendants' business premises when their vehicle was hit by a truck traveling in the opposite direction. *Allen*, at 115. Relying on Restatement (Second) of Torts §349⁸, the *Allen* Court held that the business owners owed no duty to the plaintiffs to maintain the highway in a safe condition. According to the *Allen* Court, the Commonwealth owns the highway and "has the exclusive duty for the maintenance and repair of state highways." *Allen*, at 118. The court further rejected the plaintiffs' argument that the business owners' failure to erect signs, paint lines or place curbing or barricades in the store's parking lot to indicate to customers the safest place to enter the parking lot created a dangerous condition. *Allen*, at 119, n. 1, 625 A 2d at 1329 n.1 (1993).

Like the driveway and stable owners in *Skinner* and the business owners in *Allen*, Pilot did not create a dangerous condition on the highway. Even if the absence of a raised median was a dangerous condition, it was a condition on the highway created by SCDOT. Medians, like highway shoulders, are part of the highway subject to the control and authority of SCDOT; and the decision to install a painted median, as opposed to a raised median, on the subject highway

⁸ According to § 349,

A possessor of land over which there is a public highway or private right of way is not subject to liability for physical harm caused to travelers upon the highway or persons lawfully using the way by his failure to exercise reasonable care

(a) to maintain the highway or way in safe condition for their use, or

(b) to warn them of dangerous conditions in the way which, although not created by him, are known to him and which they neither know nor are likely to discover

was within the exclusive province of SCDOT as the governmental agency charged with the duty to design, maintain and operate the State's highways. SCDOT, not Pilot, has the duty to maintain medians. SCDOT, not Pilot, has the "duty to use reasonable care to keep streets and highways within its control in a reasonably safe condition for public travel." *Ford v. S. Carolina Dep't of Transp.*, 328 S.C. 481, 487, 492 S.E.2d 811, 814 (Ct. App. 1997). Thus, Pilot, as one of the landowners abutting US 17A, has no duty (or authority) to maintain, repair, or warn others of potentially dangerous conditions on the highway over which it has no control.⁹

To the extent that Plaintiffs maintain that Pilot created a dangerous condition on the highway by virtue of constructing a driveway to the property that was accessible by motorists travelling southbound, such argument lacks merit. See *Skinner*, at 526 (evidence that it was motorists' utilization of the property owner's driveway that led to alleged dangerous condition was insufficient to establish business owner "created" a defect on the highway). First, Plaintiffs cannot establish that the driveway Sena was attempting to turn into on the date of the incident itself was dangerous. Second, and most importantly, like with the decision of which type of median to install on a highway, it is SCDOT who has the ultimate decision-making authority with respect to the placement and design of driveways (See **Exhibit D 274-76**). According to SCDOT, driveway locations are part of the design of the highway. (**Exhibit D 169:23-170:8**). In order to construct or reconstruct a private driveway with access to a highway, a property owner must first obtain an encroachment permit from SCDOT. S.C. Code Ann. 57-5-1080; (**Exhibit D 274**). As part of the permitting process, SCDOT reviews the permittees' design plans to ensure compliance with SCDOT regulations and standards concerning the design and location of

⁹ SCDOT acknowledged during its Rule 30(b)(6) deposition that it owns and has control of US 17A, that it has the responsibility of maintaining highways in a safe condition and that it has the duty to investigate and determine whether changes need to be made to the highway (**Exhibit D 213, 269**).

driveways (**Exhibit D** 274-76). SCDOT also reviews a permittee's encroachment application to ensure driveways do not create any safety concerns or impede efficient traffic operations. (**Exhibit D** 48-50; ACCESS AND ROADSIDE MANAGEMENT STANDARDS, October 1996, at 5, attached as **Exhibit E**). SCDOT "may deny any request for any permit for any driveway . . . which in [its] judgment . . . may create a hazard to the traveling public." S.C. Code Ann. § 57-5-1090. Even after driveways are constructed, SCDOT has the authority to require "driveways be narrowed, widened, or removed in order to correct safety and operational problems" (**Exhibit E** 6). Thus, Pilot could not have constructed the driveways to its property unless SCDOT deemed them to comply with SCDOT's design standards and determined that they were safe for the public. Moreover, had the driveways been deemed unsafe to the public at any time over the nine (9) years between the completion of Pilot's gas station and the Plaintiffs' accident, SCDOT had the authority to require Pilot to change them.

To the extent that Plaintiffs maintain that Pilot can be held liable for their injuries because Pilot had notice of the danger posed by motorists making left-hand turns onto its property¹⁰ and failed to take any remedial action, no such affirmative duty on the part of Pilot exists "An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." *Rayfield v. S. Carolina Dep't of Corr*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988). Plaintiffs cannot establish any source of a duty requiring Pilot to affirmatively act¹¹ Having notice of other accidents that had occurred

¹⁰ Plaintiffs allege Pilot was on notice of the danger its driveways posed to motorists by virtue of prior motor vehicle accidents that occurred in and around the entrance to Pilot's property

¹¹ Even if Pilot did owe Plaintiffs some duty to affirmatively act, which is denied, as discussed above, Pilot did not have the authority to install a raised median or relocate the driveways on its property absent the approval of SCDOT. See S.C. Code Ann. § 57-5-1080 (" . . . it shall be unlawful for any person to open up, construct or reconstruct any private driveway . . . which is intended for use by any vehicles in entering or leaving such highway unless a permit for such driveway . . . shall have been obtained from the Department).

on the highway does not give rise to a duty to warn. *See Restatement (Second) of Torts* § 349 (landowner owes no duty to warn travelers of dangerous conditions in the highway or private right-of-way which, although not created by him, are known to him). Moreover, foreseeability of an injury alone does not create a duty to act. *S. Carolina State Ports Auth. v. Booz-Allen & Hamilton, Inc.*, 289 S.C. 373, 376, 346 S.E.2d 324, 325 (1986). Finally, SCDOT testified that it does not expect businesses to notify it of accidents on the highway in front of the businesses' property (**Exhibit D 231**).

In light of the foregoing, Plaintiffs cannot establish that Pilot owed them any duty as a landowner abutting the portion of the highway where Plaintiffs were injured.

II. Plaintiffs have failed to establish any negligent act or omission on the part of Pilot

Even if Plaintiffs can establish that Pilot owed them some duty, Plaintiffs cannot establish a breach of this duty as a matter of law. To prove Pilot breached a duty, Plaintiffs must establish a "negligent act or omission" on the part of Pilot. *Bishop v. S. Carolina Dep't. of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998) ("To establish a cause of action in negligence, three essential elements must be proven: (1) duty of care owed by defendant to plaintiff; (2) breach of that duty *by a negligent act or omission*; and (3) damage proximately resulting from the breach of this duty." (Emphasis added)). Here, Plaintiffs have failed to present evidence of either a negligent act or omission.

Plaintiff cannot establish a negligent act or omission on the part of Pilot. As discussed above, Pilot did not have any decision-making authority with respect to which type of median to be placed on the highway. Moreover, the location and design of Pilot's driveways were approved by SCDOT as part of the encroachment permit review process. Since Plaintiffs cannot establish any breach of a duty, Plaintiffs' claims against Pilot fail as a matter of law.

III. Plaintiffs cannot establish that their damages were the proximate cause of any negligence on the part of Pilot as a matter of law.

In order to recover against Pilot, Plaintiffs must establish Pilot's alleged negligence was the proximate cause of their injuries. *McKnight v. S. Carolina Dep't of Corr.*, 385 S.C. 380, 387, 684 S.E.2d 566, 569 (Ct. App. 2009). "When the cause of a plaintiff's injury may be as reasonably attributed to an act for which the defendant is not liable as to one for which he is liable, the plaintiff has failed to carry the burden of establishing the defendant's conduct proximately caused his injuries." *Id.* "For an intervening act to break the causal link and insulate the tortfeasor from further liability, the intervening act must be unforeseeable." *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 180, 463 S.E.2d 636, 640 (Ct. App. 1995). "Ordinarily, proximate cause is a question for the jury, but when the evidence is susceptible to only one inference, it becomes a matter of law for the court."

Here, there is no evidence that any act or omission of Pilot proximately caused Plaintiff's accident. To the contrary, Sena, himself, testified that the accident was his fault and that Pilot was not to blame for his actions that night. (**Exhibit A** 108:21-109:4) Plaintiff Cynthia Wright also testified that Sena bears responsibility for hitting her and her husband, and that she cannot say whether the existence of a raised median would have prevented the accident (Cynthia Wright Deposition, February 26, 2015, at 58, 69, attached as **Exhibit F**¹²) According to Plaintiff Cynthia Wright, "I think [Sena] was determined to go to McDonald's regardless..." (**Exhibit F** 68:22-69:3). According to Sena, the fact that there was no raised median in the highway does not negate the fact that it was his actions that led to the collision with Plaintiff's vehicle. (**Exhibit A** 118-19) He testified that he simply did not see the Plaintiffs' motorcycle when he attempted to make a left turn into Pilot's parking lot (**Exhibit A** 73) Sena indicated that his failure to yield

¹² All excerpts of Plaintiff Cynthia Wright's deposition cited in this Memorandum are attached as **Exhibit A**.

“was just bad judgment.” (**Exhibit A 106**) Moreover, Sena admitted that he was under the influence of alcohol and cocaine at the time of the accident (**Exhibit A 122**) Thus, to the extent a negligent act or omission of Pilot did occur, which is denied, Sena’s actions were an intervening cause of Plaintiffs’ injuries. *See Stephens v. CSX Transp, Inc.*, No 27587, 2015 WL 6735757, at *10 (S.C. Nov. 4, 2015) (noting that the fact plaintiff consumed alcohol and prescription medication prior to driving her vehicle was not reasonably foreseeable and could have served as the intervening cause of the accident).

Moreover, as has been discussed above, to the extent Plaintiffs allege that the failure to install a raised median proximately caused the accident, such failure cannot be attributed to Pilot. SCDOT, not Pilot, has exclusive control over the highway and the ultimate decision as to which type of median should be placed on a highway. Similarly, it was SCDOT that ultimately approved the design and location of Pilot’s driveways.

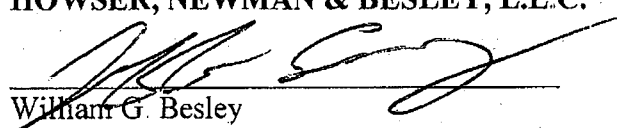
Thus, Plaintiffs cannot establish that any negligence on the part of Pilot proximately caused their injuries as a matter of law.

CONCLUSION

In light of the foregoing reasons, Pilot respectfully requests that the Court grant its Motion for Summary Judgment

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April 6, 2017

Exhibit A

In the Matter Of:
Wright, Cynthia & Richard v
SCDOT, et al.

Daniel James Sena
May 06, 2015

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1 there are two on 17A. Would you agree with me on
2 that?

3 A. Yes, sir.

4 Q. Then there's a fourth one back here
5 which is for the trucks?

6 A. Yes, sir.

7 Q. All right. If you would --

8 MR. MAYBANK: Do you mind him -- we're
9 going to mark this. Let's go ahead and mark it now
10 so we don't forget.

11 (DFT. EXH. 3, Google Aerial Photograph
12 of Accident Site, was marked for
13 identification.)

14 BY MR. MAYBANK:

15 Q. All right. If you would for the record,
16 I'm going to show you. This right here is the left
17 turn lane that you were referring to that you could
18 come up to to take a left on the frontage road;
19 right?

20 A. Yes, sir.

21 Q. All right. At some point you were going
22 to come into one of these entrances; correct?

23 A. Yes, sir.

24 Q. Can you circle the entrance with my
25 pen -- or, actually, let me do this. Can you

1 highlight the entrance you were going to come into?

2 A. (Marking.)

3 Q. Okay. As you approached that entrance
4 if you would, with my pen, would you put an arrow
5 where you were driving and approaching that?

6 A. (Marking.)

7 Q. Okay. And you have -- yes.

8 Unfortunately, you were going in the opposite
9 direction. Let me ask you this. Instead of the
10 arrow being in the oncoming traffic --

11 MR. BESLEY: I think he understood your
12 question to be the direction generally.

13 BY MR. MAYBANK:

14 Q. I'm sorry. In the oncoming area, could
15 you put the arrow of where you were driving?

16 A. Yes, sir. I'm sorry, I didn't see that
17 there. It's right here. That's where the truck
18 was, here. (Marking.)

19 Q. Okay. At what point -- if that's where
20 your truck was, at what point did you begin to merge
21 into that area?

22 A. You want me to put another arrow or X?

23 Q. If you kind of do, like, a little loop
24 as if you're pulling into it which would be where?

25 A. (Marking.)

1 Q. Very good. And with your permission I'm
2 going to just do a little thing there. (Marking.)
3 So -- and it was your intent to take the left into
4 the yellow marked highlighted entrance?

5 A. Correct.

6 Q. Did you at any time, to your
7 recollection, come to a full stop in that median
8 before you made that left-hand turn?

9 A. Yes, sir. I did.

10 Q. Okay. A full stop prior to the
11 left-hand turn. You saw how many vehicles
12 approaching you at that time, to the best of your
13 knowledge?

14 A. To the best of my knowledge I want to
15 say at least two.

16 Q. And did you wait for two vehicles to
17 pass you before you made that left turn lane?

18 A. Yes, sir. I did.

19 Q. Okay. Is it a true statement that at no
20 time prior to hitting the motorcycle did you ever
21 see the motorcycle?

22 A. I'm sorry. Repeat that.

23 Q. Yes. You were not driving that night
24 with the purpose of running into anybody, were you?

25 A. No, sir.

1 Q. Okay. Had you seen the motorcycle
2 before impact, is it a true statement that you would
3 not have taken a left in front of them?

4 A. Yes, sir.

5 Q. All right. So the question is, is it a
6 fair statement or true statement to say that before
7 you made that left turn to come into that McDonald's
8 you simply didn't see the motorcycle?

9 A. Correct.

10 Q. Okay. When was your first realization
11 that you had -- that you had had an accident?

12 A. As soon -- when I had the accident? I
13 realized we was going to have an accident before we
14 even had the collision. I seen the cars pass, I cut
15 my wheel and went to turn. And when I went to turn
16 I just glanced back this way and they were -- they
17 were there. I slammed on brakes and my vehicle was
18 halfway between that yellow line there and they said
19 they hit -- they clipped the front corner of my
20 vehicle. It was there and they couldn't avoid it.

21 Q. So you were already into the lane of
22 travel prior to impact and right at impact?

23 A. Dead stop -- I was dead stopped by the
24 time they hit me.

25 Q. Because you had seen them coming?

1 DANIEL JAMES SENA - EX. BY MR. BESLEY
2 motorcycle that's reflective that you could have
3 seen other than the headlight?

4 A. No, sir.

5 Q. Was it easier to see the car next to
6 them than it was the motorcycle?

7 A. Yes, sir.

8 Q. Why was that?

9 A. It's a larger -- larger object. I -- as
10 you can look in the picture -- may I use this? At
11 nighttime, as you have the traffic light right there
12 at the intersection going in the frontage road or
13 whatever, there's cars stopped at that light. You
14 come to a stop. I just made a judgment that the
15 headlight that I seen was at that intersection and
16 not, you know, coming toward me.

17 Like I said, the light changed -- it
18 didn't change suddenly but it changed from green to,
19 yellow. And as I seen yellow, I seen the two cars
20 coming through and, obviously, I was anticipating on
21 the cars on the other side of the light not to come
22 through. I mean, I wouldn't say that there wasn't
23 no reason why I wouldn't see it. It was just bad
24 judgment, I'd say.

25 Q. And basically, as I understood your
testimony a little while ago, you messed up because

1 DANIEL JAMES SENA - EX. BY MR. BESLEY
work, undressed, got out of my work clothes, drank a
2 beer and grabbed a second beer and went to my back
3 door in the back of my truck and then did the
4 cocaine.

5 Q. Okay.

6 A. And --

7 Q. And -- okay. Go ahead.

8 A. Smoked a cigarette, my wife came out
9 with the list, you know, and then off to McDonald's.

10 Q. No other alcohol, no shots of anything?

11 A. No, sir.

12 Q. Nothing. Did it surprise you that you
13 were a .10 alcohol level?

14 A. Yes, sir. If not, I would not have
15 given consent to a Breathalyzer. In my own personal
16 opinion, I just figured I wouldn't fail a
17 Breathalyzer with two beers in my system.

18 Q. You're absolutely certain it was just
19 two beers?

20 A. Yes, sir.

21 Q. Do you take full responsibility for the
22 accident?

23 A. Yes, sir. I do.

24 Q. You don't blame the DOT for the
25 accident?

DANIEL JAMES SENA - EX. BY MR. BESLEY

1 A. No, sir.

2 Q. You don't blame Pilot Gas Station for
3 the accident?

4 A. No, sir.

5 Q. Okay. And whose truck were you driving?

6 A. That was our truck, mine and my
7 wife's -- registered to her but ours.

8 Q. When you say it was yours or ours, is
9 that because you both paid for it? Or why do you
10 say it's ours?

11 A. When you're married, ain't half of
12 everything yours?

13 Q. All right. Fair enough. Had you driven
14 that truck previously?

15 A. Yes, sir.

16 Q. You were familiar with it?

17 A. Yes, sir. Just got home from work in
18 it.

19 Q. And you had permission to drive that
20 truck?

21 A. Yes, sir.

22 MR. BESLEY: I think that's all I've got
23 for you at this time. Thanks -- wait, let me back
24 up. I just want to confirm.

25 Q. I've got some pictures here in front of

DANIEL JAMES SENA - EX. BY MR. SMITH

1 Q. Okay. Do you know that in the original
2 plans for widening this road and building these --
3 this Pilot Travel Center, do you know that in the
4 original plans there was a requirement for a raised
5 median?

6 A. No, sir. That's not something I would
7 look into. That's something that sucks, I can say
8 that.

9 Q. And do you know that the Pilot Travel
10 Center got that requirement removed for the raised
11 median?

12 MR. BESLEY: I'm going to object to the
13 form of the question. That's mischaracterizing
14 evidence and testimony.

15 THE WITNESS: No, sir. I was not aware.

16 BY MR. SMITH:

17 Q. Not aware of that. But you're going to
18 accept responsibility for what you did; is that
19 true?

20 A. Yes, sir. I was the driver of the
21 vehicle.

22 Q. You're not looking to place blame
23 anywhere else?

24 A. I mean, that's -- you say there was
25 something in the original plans. I'm not going to

DANIEL JAMES SENA - EX. BY MR. SMITH
1 say that was the reason why -- what happened
2 happened. I mean, that could have prevented my
3 accident and a lot more accidents and any more to
4 come. I'm not going to post blame on -- my actions
5 on them for that evening because I was the one that
6 was behind the vehicle.

7 Q. Sure.

8 A. I can leave it at that.

9 Q. And you told Mr. Maybank you're clearly
10 sorry and remorseful for what happened?

11 A. Yes, sir. I am.

12 Q. And do you think about -- obviously
13 while you're here being incarcerated, I mean, do you
14 think about what happened and why you're here and
15 things like that pretty often?

16 A. Every day.

17 Q. All right. And the fact that you have
18 accepted responsibility for all this, does that help
19 you deal with it and grow and mature and heal from
20 all this?

21 A. It was -- yes. There's no way, you've
22 got to -- lesson learned. Just be more cautious out
23 there.

24 MR. SMITH: That's all I have. Thank
25 you.

1 Q. Are you aware that it's illegal to drive
2 as treating it as a lane, but it is not illegal to
3 turn?

4 A. Yes, sir. I am aware of that.

5 Q. And that's why you made that turn;
6 right?

7 A. That's because you can come to a stop to
8 make a turn, but you can't go past 30 feet?

9 Q. You're the licensed driver, but I'll
10 take that at your word. So, now, if it's a legal
11 turn and you're making a legal turn, assuming that
12 there was a wall eight feet tall in front of you at
13 that given time, you couldn't have taken that turn;
14 right?

15 A. Correct.

16 Q. But you were making a legal turn on that
17 night. You simply did not see the Wrights before
18 you turned, did you?

19 A. Correct.

20 Q. All right. And you're under the
21 influence of alcohol?

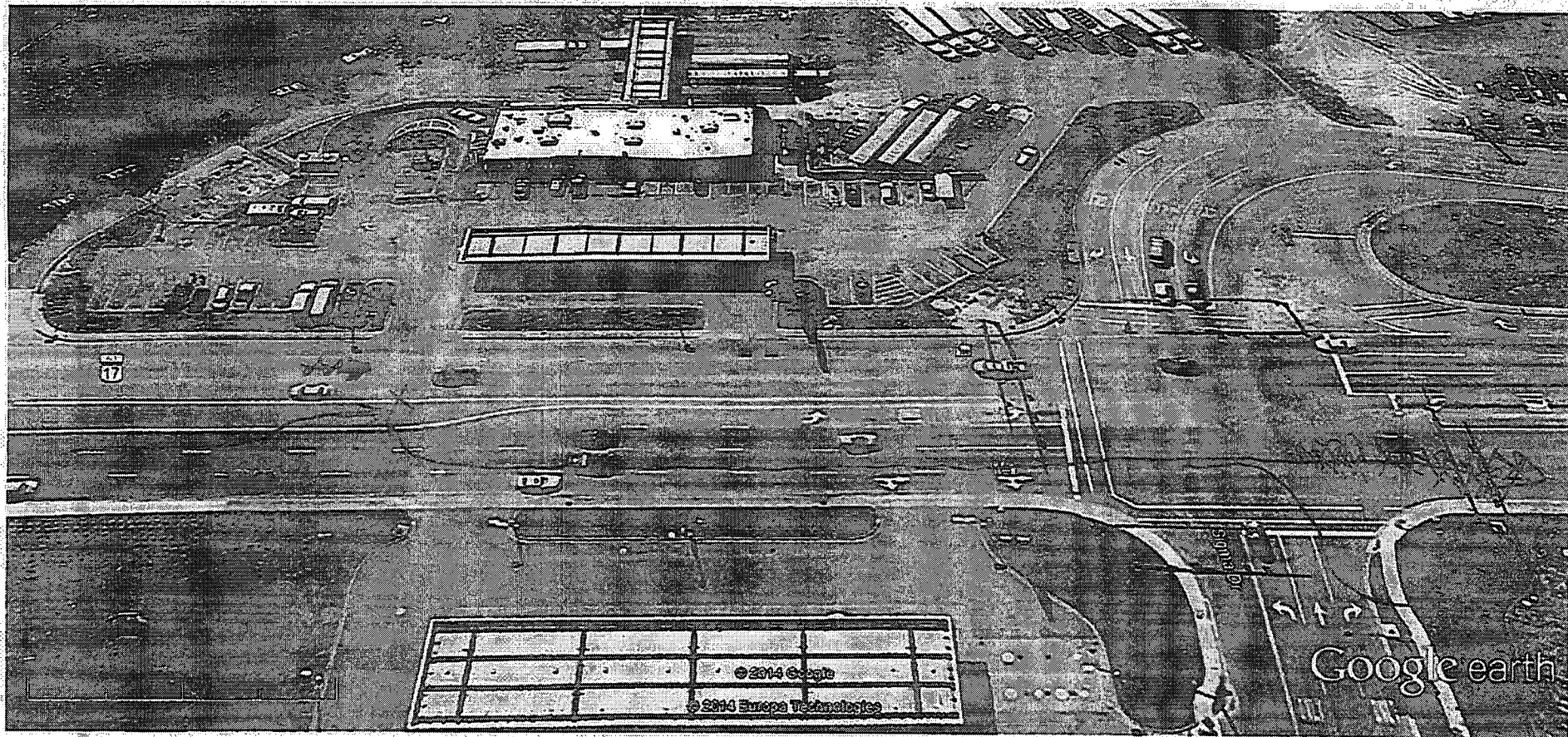
22 A. Yes, sir.

23 Q. You're under the influence of cocaine?

24 A. Yes, sir.

25 Q. Cocaine was in your possession at the

Exhibit B



Google earth

feet
meters

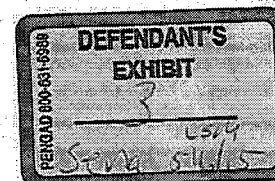


Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

)
)
)

IN THE COURT OF COMMON PLEAS

C/A NUMBER: 2014-CP-08-675

Cynthia Wight and Richard Wight,

Plaintiffs,

vs.

South Carolina Department
of Transportation, C & A Unlimited, Inc.
and Pilot Travel Centers, LLC,

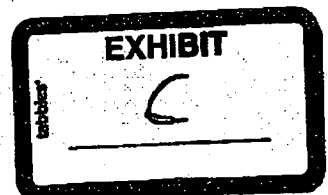
Defendants.

AFFIDAVIT OF BILL MULLIGAN

Personally appeared before me the undersigned, after being duly sworn, deposes and says:

1. The contents of this affidavit are based on my own personal knowledge.
2. I am of sound mind and over eighteen years of age.
3. I am familiar with the allegations alleged by the Plaintiffs in the above-captioned lawsuit pending in Berkeley County.
4. Beginning in 1994, I began serving as the Director of Construction for Pilot. That Directorship later became a Vice President's position, and I have continuously served as the Vice President of Construction to the present date, which title is now Vice President of Development.
5. On or about September 1, 2001, Pilot acquired the existing gas station and real property located at 1521 North Main Street, Summerville, South Carolina 29483 (the "Property").
6. After acquiring the Property in September 2001, Pilot redesigned and constructed a new Pilot Travel Center station on the Property.
7. When Pilot acquired the Property, the existing gas station located on the Property had three driveways with access to U.S. Hwy 17-A. There was no raised median in the highway preventing left turns into the existing gas station from the southbound lane.

I



8 Pilot was required to obtain an encroachment permit from the South Carolina Department of Transportation ("SCDOT") before Pilot could construct the driveways to the new Pilot Travel Center. In order to obtain the permit, the location and design of Pilot's driveways had to be approved by the SCDOT. In May 2002, Pilot submitted an application for an encroachment permit to the SCDOT, seeking approval of the location and design of its proposed driveways. The encroachment application was approved, and the SCDOT issued Pilot a permit to construct the driveways.

9. Construction of the Pilot Travel Center began in or around August 2002. Around the time the Pilot Travel Center was being planned/constructed, SCDOT was also performing an improvement project to the intersection of I-26 and U.S. Hwy 17-A, which was adjacent to the Property. The SCDOT did not install a raised median in the highway to prevent left turns into the Pilot Travel Center as part of the improvement project.



Bill Mulligan

April 28, 2016

Swoin to before me this 28th
day of April, 2016

Sherry L. Blake
Notary Public for Tennessee

My commission expires: 9-11-16

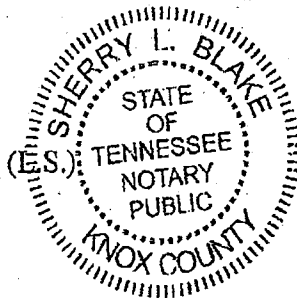


Exhibit D

1 STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2 COUNTY OF BERKELEY

3
4 CYNTHIA WRIGHT AND RICHARD WRIGHT,

5 Plaintiffs,

6 vs. CASE NO. 2016-CP-08-334

7 SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A
8 UNLIMITED, INC., and PILOT TRAVEL CENTERS, LLC,
9 SPEEDWAY, LLC, ASHLEY LAND SURVEYING, INC., F/K/A
10 ASHLEY ENGINEERING & SURVEYING, INC., and ASHLEY
ENGINEERING & CONSULTING, INC., and MUNLAKE
CONTRACTORS, INC.

11 Defendants.

12 VIDEOTAPE
13 DEPOSITION OF: LELAND D. COLVIN, JR.

14 DATE: March 13, 2017

15 TIME: 11:35 AM

16 LOCATION: SCDOT District 6
6355 Fain Boulevard
North Charleston, SC

17 TAKEN BY: Counsel for the Plaintiffs

18 REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

19
20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

21 Fast, Accurate & Friendly

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A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 because the Department of Transportation is
2 required more -- is required to care more about
3 safety than what a property owner thinks will make
4 him or her more money. Is that true?

5 A. Yeah. Our -- yes. We -- we are
6 charged with providing safe, reasonable access to
7 the state highway system.

8 Q. All right. And safety takes precedent
9 over any wishes that private corporations may have
10 that may result in them making more or less money?
11 Safety trumps that?

12 A. Yes.

13 Q. Okay. And would you say that safety is
14 the primary concern for any decision regarding
15 access to private property?

16 A. Yes. I would say safety and the
17 operation of the state highway system are the two
18 primary functions that the DOT looks at for access
19 to the state highway system.

20 Q. And I -- and I read a -- a little bit
21 about that. And -- and I think that term, to me,
22 seemed to say that we know what safety is, but the
23 operation of the road, that's about traffic issues
24 and stuff, about the road functioning smoothly and
25 not backing up and -- is that what you were talking

1 about, the second end of it?

2 A. Yes. I mean, that -- that -- the --
3 the operation, the functionality of that roadway.
4 In other words, you've got a different safety
5 standard for a interstate system that does not have
6 any access points, then an urban arterial, then a
7 minor arterial, then a neighbor street. So each --
8 no one roadway is treated the same with regards to
9 the reasonable expectation of those drivers.

10 Each functional class of that highway
11 has different safety components that -- that are
12 tied to that, which is -- which I would say most
13 drivers understand those reasonable expectations.
14 They've got a -- you know, driving along an
15 interstate with higher speeds, less conflict points
16 versus driving along a neighborhood street. And
17 then you've got those roads in between those two.

18 Q. But in any of those situations where
19 it's an interstate or it's a major highway or a
20 neighborhood or a -- or a smaller street, in any of
21 those situations, there's two concerns that the
22 Highway Department would -- I'm sorry -- the
23 Department of Transportation would have that would
24 trump the wishes of private property owners. And
25 those two concerns would be, number one, safety,

1 and, number two, the functioning of the highway or
2 roadway in question?

3 A. Yes.

4 Q. Okay.

5 A. That's a fair statement, yes, sir.

6 Q. All right. Let's talk about -- and I
7 think that maybe even Question 1 under yours? Let
8 me get to the page so I don't have to keep flipping
9 here.

10 So the history of the design, that
11 Number 1 --

12 A. Sure.

13 Q. -- why it was decided to -- decided to
14 separate the north- and southbound lanes,
15 barrier-type median, that seems to be your topic
16 rather than Mr. Clark's, right?

17 A. Correct.

18 Q. Okay. So talk to me about this history
19 of the design here.

20 A. Sure. Well, first thing I think you've
21 got to recognize, there's two different projects
22 and they just happen to start in at Farm -- at the
23 intersection of 17A and Farmington.

24 Q. And let me ask you -- let me stop you
25 right there.

1 call that construction joint, whatever you want to
2 call it, that terminus of one and the -- and the
3 starting point of the other one and marrying those
4 two together, that's when the correction was made
5 to show that -- that flush painted median.

6 Q. All right. Was that around the time of
7 this letter, marrying those two together?

8 A. Yes.

9 Q. Okay.

10 A. Yes, sir.

11 Q. Okay.

12 VIDEO TECHNICIAN: Fifteen minutes,
13 counselor.

14 MR. SMITH: Okay.

15 BY MR. SMITH:

16 Q. All right. Whose decision was it to
17 change the plans from what was in the interchange
18 project from a raised median to a flush median in
19 the final plans? Whose decision was that?

20 A. That was my decision as the program
21 manager.

22 Q. Okay. Now, what discussions did you
23 have with anyone associated with the property
24 owners or the people developing what is now the
25 Pilot Travel Center with regards to that raised

1 median?

2 A. I wouldn't have had -- I don't recall
3 any direct contact. That would have been through
4 our right-of-way acquisition agent, which was Tommy
5 Smoak.

6 Q. Okay.

7 A. So as the PM, I'm coordinating those
8 I'm not saying from time to time, do I have a
9 direct conversation with the property owner, I do.
10 Generally speaking, that is done through our
11 right-of-way agents. Again, Tommy was our
12 right-of-way manager down here out of -- out of our
13 local office. And that's one thing I would do is
14 we -- you know, kind of like I said early on, is
15 the PM part of that job duty is kind of
16 quarterbacking between purpose and need,
17 environmental, right-of-way, plan development,
18 right-of-way acquisition, and construction.

19 Q. Okay.

20 A. So as part of that, yes, that where
21 when Tommy went out, I started reviewing the
22 interchange plans in conjunction with the road
23 widening plans and said, nope, the plan is from
24 Farmington east, we're going with that flush
25 median.

1 Q. And I imagine you're probably already
2 familiar what the functional area of an
3 intersection is. And what does that -- I know
4 that -- the language in here. But if you could
5 just explain to sort of a layperson, what is the
6 functional area of an intersection?

7 MR. CRITES: Kevin, what page are you
8 on on the ARMS manual?

9 MR. SMITH: I'm sorry. Page 9.

10 MR. MAYBANK: Thank you.

11 MR. SMITH: I have an extra if you want
12 it. I did bring an extra of that. I don't think
13 it's in there.

14 MR. CRITES: Okay. I know it was an
15 exhibit in Mulligan's deposition.

16 MR. SMITH: Oh, yeah, it probably was.
17 I better get my version out.

18 BY MR. SMITH:

19 Q. So functional area of an intersection,
20 how would you explain to kind of a layperson what
21 that is?

22 A. To a layperson, it's basically the turn
23 lanes coming in and out of that intersection and
24 the -- the perception of that driver to be able to
25 make those allowable turning movements in and out

1 of that, in and out of that intersection.

2 Q. Okay. And if you could, could you use
3 maybe one of our exhibits or maybe you can grab a
4 new one -- what I want you to do is tell me where
5 the functional intersection of this intersection,
6 this 17A and Farmington is. It looks like we had a
7 clean one here on Exhibit Number 6.

8 A. Okay.

9 Q. First of all, was that ever defined?
10 Is there a document anywhere that you're aware of
11 that defines where the functional area of the
12 intersection between Farmington Road and Highway 17
13 is?

14 A. No.

15 Q. Okay. And was -- in the decision with
16 the driveways and the raised median, was the
17 functional area of the intersection considered in
18 that process?

19 A. Yes. I mean, I think that's part of
20 the design itself when you look at -- as -- as
21 stated in the ARMS manual, the left turn lanes
22 coming to and from intersections and -- and how you
23 maneuver that, yes, that's part of the highway
24 design of 17A.

25 Q. But in -- in all of the documents, the

1 of the intersection?

2 A. Yes.

3 Q. Okay. And do you believe that limiting
4 or eliminating driveways within the functional area
5 of an intersection improves safety in the vicinity
6 of an intersection?

7 MR. MAYBANK: Same objection.

8 THE WITNESS: Eliminating driveways?

9 BY MR. SMITH:

10 Q. Or limiting. Limiting or eliminating
11 driveways within the functional area of an
12 intersection improves safety in the vicinity of an
13 intersection.

14 A. It -- I would say that's case by case.

15 Q. Okay. Well, how about -- how about
16 here, let me ask you this: Are the driveways in
17 the functional area of the intersection, the
18 driveways in the Pilot Center -- Travel Center on
19 17A, are those driveways within the functional area
20 of the intersection with 17A and Farmington Road?

21 A. I believe one of the three are, yes.

22 Yes.

23 Q. And is there a -- just, you know, is --
24 is there a general rule or principle that you would
25 initially start with when you think about allowing

1 driveways in the functional area of an
2 intersection? A general principle like it doesn't
3 really matter or we need to be real careful about
4 this or that's a really safe thing to do and that's
5 something we should look at trying to implement?

6 A. Yeah. I mean, I think driveway
7 locations is -- is a part of the design of the
8 highway. Absolutely.

9 Q. And allowing driveways in the
10 functional area of an intersection is generally
11 frowned upon in the decisions that you all make.

12 MR. MAYBANK: Objection.

13 BY MR. SMITH:

14 Q. Is that a fair statement?

15 MR. MAYBANK: Object to the form.

16 THE WITNESS: Not in a vacuum, I would
17 not think that's a fair statement.

18 BY MR. SMITH:

19 Q. Okay. Oh, I'm sorry. I -- I asked you
20 to do something, then I just kind of moved on from
21 something else.

22 You were going to take one of those
23 exhibits and you were going to circle for me the
24 area -- the functional area of the -- the
25 functional area of the intersection. I may have

1 Q. So the question is: Would you disagree
2 with a traffic engineer who said, you know what,
3 this driveway, this driveway, this driveway, and
4 this driveway, which is all of the four -- the four
5 driveways closest to Farmington Road going
6 backwards to Moncks Corner, that all four of those
7 driveways are within the functional area of the
8 intersection?

9 I know people can differ on, you know,
10 things. But is that -- is that something you'd see
11 that engineers could differ on, whether or not
12 those four are in? Or are you just saying these
13 three are in it, that -- that one, last one, that
14 ain't in it, that's definitely not in it?

15 MR. MAYBANK: Object to the form.

16 THE WITNESS: Me provide testimony in
17 the deposition, these -- these three are definitely
18 in it. This one, in my opinion, is not in it.

19 BY MR. SMITH:

20 Q. Okay.

21 MR. MAYBANK: So for the record, which
22 one is not in it?

23 THE WITNESS: I -- I --

24 MR. MAYBANK: Nobody knows what these
25 three means.

1 THE WITNESS: The -- the two drives
2 going into the Hess station are in the functional
3 area. The westernmost drive into the Pilot station
4 is in the functional area. In my opinion, the
5 eastern -- the eastern vehicle drive is not in the
6 functional area.

7 BY MR. SMITH:

8 Q. But you -- you -- you would agree with
9 me that when you circled the functional area of the
10 intersection initially, both drives at the Pilot
11 Travel Center were in the functional area of the
12 intersection that you drew? Is that fair to say?

13 I mean, your mark's there, a driveway
14 is here.

15 A. Yeah. I also noticed that -- noted it
16 was approximate. I mean, I don't -- it's -- it's
17 hard to be able to make a decision -- a -- an
18 engineering decision on an 8.5 by -- 8.5-by-11
19 sheet of paper.

20 Q. Okay. I got you.

21 So if we're going to go back and have
22 somebody else try and define the functional area of
23 this intersection, we know what the ARMS says, the
24 area beyond the physical intersection compromise
25 (sic) decision and maneuvering distance plus any

1 raised median, would you -- would the DOT rely on
2 Pilot and the engineers they hire that that request
3 is a safe request?

4 A. I -- I can't answer that question.

5 Q. Okay. Plans that double profits at the
6 cost of safety should never be approved. True?

7 MR. MAYBANK: Object to the form.

8 THE WITNESS: Ask -- ask that one more
9 time.

10 BY MR. SMITH:

11 Q. Plans that double profits at the cost
12 of safety should never be approved.

13 A. Absolutely.

14 Q. Okay. Does the Department of
15 Transportation have a responsibility to maintain
16 highways in a safe condition?

17 A. Absolutely.

18 Q. That includes making changes to the
19 highways that the Department of Transportation
20 learns are unsafe?

21 A. Absolutely.

22 Q. And does the DOT have a duty to
23 investigate and determine if changes are needed to
24 be made to a highway?

25 A. Absolutely.

1 any similar studies ever done between 2000 and
2 2013?

3 A. Not that I'm aware of.

4 Q. And the -- the project here was
5 finished at around 2003, was it not? I think that
6 was the final inspection date?

7 A. The widening project was completed
8 June 17, 2002. And the interchange project was
9 completed November 1st, 2003.

10 Q. Okay. So basically ten years after
11 those changes were made was the first accident
12 study that the Department of Transportation
13 undertook?

14 A. It was the first study that I'm aware
15 of.

16 Q. Okay.

17 MR. MAYBANK: And -- and just for the
18 record, the continued objection to any of the
19 traffic safety studies and admissibility thereof.

20 MR. SMITH: Okay.

21 MR. MAYBANK: But ask him whatever you
22 want.

23 BY MR. SMITH:

24 Q. Now, what -- what did -- what did this
25 tell you?

1 advised the DOT that we've just noticed a lot of
2 accidents in front of our property, what would the
3 DOT's response to that be? Would they at least
4 look into it?

5 A. Certainly.

6 Q. Maybe pull a -- an accident analysis
7 for that area?

8 A. That would be one thing that we would
9 do.

10 Q. And given the history of this project
11 here with the original plan for a raised median,
12 then it's -- then it's taken away, does the DOT
13 have any expectation that the business owner who
14 successfully negotiated away the raised median,
15 that they would come back to the DOT at some point
16 and -- if -- if large number of accidents were
17 taking place in front of their location?

18 MR. CRITES: Objection.

19 BY MR. SMITH:

20 Q. Would the DOT expect them to come back
21 and let them know something like that?

22 MR. CRITES: Object to the form.

23 MR. MAYBANK: Object to the form.

24 THE WITNESS: No. That's -- that's not
25 part of how we -- how we do business, no.

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

A. Yes, sir.

Q. And were you somebody as the project --
I believe you said you were the project manager
earlier?

A. Correct.

Q. You were actually on-site for the
widening project?

A. During that time, my office was in
Columbia; but, yes, I certainly made site visits,
absolutely.

Q. Okay. And during that widening
project, do you recall there actually being another
convenience store there at any point in time that
was a Speedway?

A. I -- I can't recall the details of
that.

Q. Okay. But the 17 widening project,
that stretched from essentially in front of this --
the Pilot Travel Center, what is now the Pilot
Travel Center, towards Moncks Corner, correct?

A. Correct.

Q. And the design professional for that
project was the South Carolina Department of
Transportation, correct?

A. Correct.

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

1 Q. You testified earlier that there was a
2 contemporaneous ongoing project which was the I-26
3 interchange with 17A, correct?

4 A. Correct.

5 Q. And that was a project that essentially
6 started at Farmington Road and went towards
7 Summerville, correct?

8 A. Yes, sir. Correct.

9 Q. Okay. So it just so happened that it
10 was in the same general vicinity but two different
11 projects, correct?

12 A. Correct.

13 Q. And the design professional for that
14 project was the Arcadis engineering firm, I
15 believe, correct?

16 A. Correct.

17 Q. Okay. Mr. Smith talked a lot about the
18 questions about removing the median, and I know we
19 reserved or preserved all objections until a later
20 date. But some of the -- some of the questions
21 were objected to, some of them weren't. So I just
22 want to go through just to clarify a couple things.

23 The design plans for the 17A widening
24 project which was in front of what is now the Pilot
25 Travel Center did not nor did it ever include a

1 LELAND D. COLVIN, JR. - EX. BY MR. CRITES
2 raised median or a nontraversable median; is that
3 correct?

4 A. That's correct.

5 Q. And I believe your testimony earlier
6 was that there was never an expectation during the
7 17A widening project in front of the Pilot Travel
8 Center to have a raised or a nontransversable
9 median because to do so would have been not
10 compliant with the South Carolina Department of
11 Transportation Highway Design Manual; is that
12 correct?

13 A. That's correct.

14 Q. So to have put one in in front of the
15 Pilot would have been in contravention to your own
16 manual, correct?

17 A. Correct.

18 Q. And I believe you referred to that
19 manual as the bible for design projects in the
20 state of South Carolina; is that correct?

21 A. Yes, sir.

22 Q. Okay. Now, somebody, a design
23 professional with Arcadis with the other project
24 that didn't have anything to do with -- with the
25 17A widening project, but the interchange project
with I-26, drew in some sort of raised median or

1 LELAND D. COLVIN, JR. - EX. BY MR. CRITES
nontransversible median; is that correct?

2 A. Correct.

3 Q. Okay. But again, they were not the
4 design professional for the widening project,
5 correct?

6 A. Correct.

7 Q. Okay. And at some point in time with
8 traffic flow, the DOT had to marry the two projects
9 together, correct?

10 A. Correct.

11 Q. And at some point in time, you as
12 the -- the program manager for that project with
13 the Department of Transportation made the decision
14 in conformance with the South Carolina Highway
15 Design Manual that that was -- that a raised median
16 was not going in front of the Pilot Travel Center,
17 correct?

18 A. Correct.

19 Q. Okay. So there was never a raised
20 median in front of the Pilot preventing a left-hand
21 turn in that was ever installed or constructed on
22 that roadway, correct?

23 A. Correct.

24 Q. Okay. And let me ask you this: Before
25 the widening project began and there was a -- there

1 LELAND D. COLVIN, JR. - EX. BY MR. CRITES
2 was a business there, I'll represent to you it was
3 a Speedway before it became a -- a Pilot Travel
4 Center. But there was a business there with
5 driveways that provided ingress and egress from 17A
6 into that business; is that correct?

7 A. Yes, sir.

8 Q. Okay. And at that time there was not a
9 raised median preventing left-hand turns into that
10 business, correct?

11 A. Correct.

12 Q. There's never been a raised median on
13 that stretch of Highway 17A in front of what is now
14 the Pilot Travel Center, correct?

15 A. Correct. There -- there was -- I'd
16 have to see the limits. There -- there is a raised
17 median that was installed in conjunction with the
18 new location of roadway to the intersection just to
19 the east. I -- I don't think the limits of that
20 got in front of the -- the Pilot station.

21 Q. Okay.

22 A. I think that's correct.

23 Q. All right. So any discussion earlier
24 about a -- a raised median or a nontransversable
25 median being removed, it was never removed from the
roadway itself, correct?

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

A. Correct.

Q. Nor was it ever removed from the design plans for the 17A widening project right in front of the Pilot Travel Center, correct?

A. Correct.

Q. It was -- I believe you referred to it earlier as a placeholder?

A. Correct.

Q. And it was a placeholder that was put in by another design professional who was in charge of another project that was not the 17A widening project right in front of the Pilot Travel Center, correct?

A. Correct.

Q. Mr. Smith spent a lot of time asking you questions about Exhibit 5, which is the letter dated August 28, 2000, to Mr. Greiwe from Tommy Smoak. And as I understand it, Mr. Smoak is no longer employed with the Department of Transportation, correct?

A. That's correct.

Q. Did he retire?

A. He did retire.

Q. Do you know how long ago he retired?

A. I don't have the specific dates.

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

1 Q. Okay. So your testimony earlier was
2 that the design plans as per the South Carolina
3 Department of Transportation for the 17A widening
4 project, I believe, were dated in 1998. Was it
5 December of '98; is that correct?

6 A. Yes, that's correct.

7 Q. And then the interchange plans that
8 were provided by the design professional Arcadis
9 were dated July of 1999; is that correct?

10 A. The -- the right-of-way plans set for
11 that, correct.

12 Q. Okay. All right. And the letter that
13 we're talking about here is dated August of 2000,
14 correct?

15 A. Correct.

16 Q. And your testimony earlier was that
17 there was never an expectation that -- that there
18 was going to be a raised median that was going to
19 be put in in front of that Pilot Travel Center as
20 part of this widening project; is that correct?

21 A. That's correct.

22 Q. And it was always going to be a flush
23 paved median, correct?

24 A. Correct.

25 Q. You testified a little while ago that

LELAND D. COLVIN, JR. - EX. BY MR. CRITES
1 you thought that the characterization of -- let me
2 see if I can find where I wrote it -- the
3 characterization of people negotiating out the
4 raised median was inaccurate. And I think that was
5 in response to one of the -- the later questions
6 that Mr. Smith had asked you about Exhibit 5.

7 And so I guess my question to you would
8 be: What would there have been to have negotiated
9 if the position of the DOT all along was that this
10 raised median was never in the design plans to
11 begin with, nor was this raised median even in
12 conformance with the South Carolina Highway Design
13 Manual? If it wasn't there to begin with, it was
14 never going to be called -- and your manual didn't
15 even call for it, what was there to negotiate? Do
16 you know?

17 A. I -- I believe my previous testimony
18 alluded that that was not a negotiation, that it
19 was -- it was really -- it was just a combination
20 of the plans, putting them together, that the
21 widening project had a paving -- paid -- a flush
22 paved median east of Farmington. And the
23 correction of the interchange plans was just that,
24 it was not a negotiation. It was just a correction
25 of the plan to accurately reflect the Highway

LELAND D. COLVIN, JR. - EX. BY MR. CRITES
1 Design Manual.

2 Q. And I think if I can use your own
3 words, you, number one, talked about it as being a
4 clarification. Would that be fair to say?

5 A. Yes.

6 Q. Okay. But I think, also, you referred
7 to it earlier -- if I can find it -- was that when
8 you were talking about the two designs, the
9 marrying of these two projects essentially was the
10 widening design plans were correcting the
11 interchange design plans. Is that fair to say, as
12 it relates to the raised median?

13 And I'm not trying to put words in your
14 mouth, so if I've misspoke or I've misquoted you...

15 A. I -- I think that the revision to the
16 interchange plans between the right-of-way plans
17 and the construction plan is a result of us
18 marrying the two projects together.

19 Q. Okay. But at the end of the day, the
20 design plans always called for a painted -- the
21 design plans for the 17A widening project in front
22 of what is now the Pilot Travel Center always
23 called for just a painted flush median?

24 A. Correct.

25 Q. And the design of that stretch of

1 LELAND D. COLVIN, JR. - EX. BY MR. CRITES
2 when Speedway was in South Carolina, when Speedway
3 left, anything about a joint venture between itself
4 and Pilot, when it began, when it ceased to exist,
5 anything like that?

6 A. Not aware of any of that.

7 Q. Okay. You talked earlier about --
8 about that DOT has duties and responsibilities that
9 are set out per statute, I believe. Did you say
10 that?

11 A. I did.

12 Q. Okay. And does DOT have the statutory
13 duty to move traffic safely among the public
14 highways of this state?

15 A. Yes.

16 Q. And the DOT doesn't compromise safety,
17 correct?

18 A. Correct.

19 Q. Safety is of utmost importance to the
20 DOT, correct?

21 A. Yes.

22 Q. Because as Mr. Smith talked to you
23 earlier about, I mean, if you compromise safety and
24 you make a decision that's in contradiction to your
25 Highway Design Manual, people can get hurt,
correct?

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

A. Yes.

Q. Okay. And to the extent that a business owner or a private individual came to the DOT and asked a question about driveways or curb cuts or access, is there anything illegal about them doing that?

A. No.

Q. Okay. Does the DOT receive requests often in terms of an encroachment permit or in terms of access to and from their property, be it a -- a personal individual or be it a business?

A. I'd say daily.

Q. Okay. It's not unusual or uncommon, correct?

A. Correct.

Q. And the DOT can say yes or it can say no, correct?

A. We would apply our engineering judgment and guidelines to appropriately address that request.

Q. And I appreciate that. It's -- I'm just trying to move this through for you to try and get you out of here, but I'll slow down. But I appreciate the -- the more explained answer, if you will.

1 LELAND D. COLVIN, JR. - EX. BY MR. CRITES
2 Applying those engineering design
3 principles to a request that somebody might make,
4 the DOT's position, though, is they're never going
5 to compromise the safety of the individual or the
6 public-at-large to accommodate a business if they
7 don't believe that that's the right decision or the
8 correct decision, correct?

8 A. Yes.

9 Q. The 17A widening project plans, those
10 were DOT plans, correct?

11 A. Correct.

12 Q. Okay. And 17A is a DOT owned and
13 controlled roadway, correct?

14 A. Yes.

15 Q. The discussion about the raised median,
16 understanding that it was never in the design plans
17 to begin with for the 17A widening project, but I'm
18 just curious: Can you just describe for me what
19 the dimensions of it would have been in terms of
20 how wide it was, how tall it would have been, if
21 it's feathered or tapered?

22 A. I would have to -- I'd have to refer
23 back to my design documents, but it's -- no, I -- I
24 don't know the dimensions right off the top of my
25 head.

LELAND D. COLVIN, JR. - EX. BY MR. BESLEY
BY MR. BESLEY:

Q. Okay. And SCDOT would have the final
and ultimate decision on any road of theirs or even
the encroachment of driveways leading to that road.
Would that be correct?

A. Correct.

Q. That would be based upon your DOT rules
and regulations and even the national standards, as
the other lawyers have pointed out; is that
correct?

A. It would be based on the DOT standards,
that -- that those standards took into account
national standards.

Q. Okay. So in order for Pilot to
construct entrances and exits to their property,
Pilot had to submit an encroachment permit
application to the SCDOT; is that correct?

A. Yes. That's how -- that's how our
new -- that's how new encroachments are provided as
via an encroachment permit process.

Q. Okay. And I know earlier you said you
had not reviewed the one that you were shown, but
you saw an encroachment permit; is that correct?

A. Sure. Yes.

Q. Okay. And so SCDOT had to approve the

1 LELAND D. COLVIN, JR. - EX. BY MR. BESLEY
2 design and location of the entrances and exits to
3 Pilot's property before issuing the encroachment
4 permit. Is that how it works?

5 A. Correct. Yes, sir.

6 Q. Okay. And a -- property owners can't
7 do it themselves without your approval and your
8 authority, and it must conform with your regs and
9 standards; is that correct?

10 A. Correct.

11 Q. Okay. And someone at SCDOT would
12 review the encroachment permit and make sure it's
13 proper and give an independent analysis, would make
14 sure it complies with your rules and standards; is
15 that correct?

16 A. Correct.

17 Q. Okay. The SCDOT would not rely upon
18 the person submitting the encroachment permit that
19 it would be exactly up to your standards and rules.
20 You guys give it an independent evaluation, make
21 sure it's correct; and if it's not, you tell them,
22 let's change it in these certain ways; is that
23 correct?

24 A. Yeah. There's a review for conformity
25 of the permit that was submitted by a licensed PE.

Q. Okay. And it does not get approved

1 LELAND D. COLVIN, JR. - EX. BY MR. BESLEY
2 unless the SCDOT says it's approved; is that
3 correct?

4 A. Yes. The DOT approves the encroachment
5 permit.

6 Q. Okay. You're not relying upon a
7 landowner who submits an encroachment permit to you
8 to make sure that the plan that they suggested is
9 safe. You guys take a look at it yourself and
10 determine if it's according with your regs and
11 standards; is that correct?

12 A. I think there's some responsibility on
13 the permittee to design it accordingly as well. In
14 other words, we're not doing the design on behalf
15 of the permittee. We're reviewing the permittee
16 design for encroachment of the SCDOT right-of-way.
17 We're not taking responsibility for that. In other
18 words, a traffic impact study, we are relying that
19 professional standards were used to determine that
20 traffic -- traffic impact study.

21 Q. Okay. But not a traffic impact study,
22 but just an encroachment permit to determine the
23 location and widths of an ingress and egress on
24 someone's property, that's something that you guys
25 would take a look at yourselves and make that
determination?

LELAND D. COLVIN, JR. - EX. BY MR. BESLEY

MR. MAYBANK: Object to the form.

THE WITNESS: Yes. We would review the

encroachment permit as submitted by the permittee
for conformance to our regulations.

BY MR. BESLEY:

Q. Okay. So perhaps not with the traffic
study, you might -- you might rely upon someone who
submits that to you to make sure it's correct. But
for things that you can take a look at, your
engineers take a look at, you make that
determination on your own?

MR. MAYBANK: Object to the form.

THE WITNESS: I -- I would not say
that, no.

BY MR. BESLEY:

Q. Okay. Does the SCDOT have the ultimate
right to approve encroachment permits?

A. Absolutely.

Q. No one gets to tell you what is
approved or not. You guys make that decision?

A. Absolutely.

Q. Okay. And do you know what happen --
has happened to the area? You know, you've been
shown some diagrams and collision analysis over the
last few years, a little while ago in the

1 in the last 18 months or so, there's been an
2 additional position added at the district office
3 that would review commercial permits, correct.

4 Q. Okay.

5 A. So certain permits that would follow
6 that new form, resident -- other permits would
7 follow the same procedure.

8 Q. The old procedure?

9 A. Yes, sir.

10 Q. Essentially residential, the old
11 procedure; commercial then goes direct to -- to
12 district office?

13 A. Essentially, yes, sir. Yes, sir.

14 MR. BERLINSKY: Okay. I don't have
15 anything further.

16 MR. SMITH: I do have a couple. Pass
17 that down.

18 EXAMINATION

19 BY MR. SMITH:

20 Q. Mr. Colvin, I -- I just want to confirm
21 something you just said, that the decision
22 regarding the differences between the interchange
23 improvement project and widening project,
24 difference being raised median in one, no raised
25 median in the other, that the decision to square

1 that difference was made sometime before 2001?

2 A. Absolutely, yes.

3 Q. Okay. That decision was not made --
4 the final decision on that was not made in '98 or
5 '99?

6 A. The design of the widening project
7 between Farmingdale going east towards 17A, yes, it
8 was made in 19 -- 1998.

9 Q. All right. But then sometime after
10 1998 when you took -- looking at these two plans
11 with the interchange project and with the widening
12 project, sometime before 2001, the decision was
13 made about how are we going to square these two.
14 One's got a median and one doesn't. The final
15 decision, final construction plan was made sometime
16 in 2001 or sooner about this raised median?

17 MR. CRITES: Object to the form.

18 BY MR. SMITH:

19 Q. Do you see what I'm trying to get at?

20 A. Yeah, yeah -- no. I mean, the -- the
21 widening plans that started at Farmington was done
22 in 1998.

23 Q. Okay.

24 A. And that's -- that's what -- that --
25 that -- so that's -- that's the ruling set.

1 Sometime between '99 and 2001, the interchange
2 plans were updated to reflect the widening plans.

3 Q. Okay. Okay. Now, that company
4 Arcadis, that was a -- a company that was hired by
5 the DOT. True?

6 A. Yes, correct.

7 Q. Okay. And either -- whether it was the
8 DOT in-house professionals or the Arcadis, these
9 plans, both the interchange improvement plans and
10 the widening project, both of those plans were
11 developed for the DOT, right?

12 A. Correct. Yes.

13 Q. Okay. And whether it was plans
14 developed by Arcadis, these are still the DOT's
15 plans for the interchange improvement project,
16 right?

17 A. That's correct.

18 Q. They were just technically written by
19 somebody else, right?

20 A. They were designed by somebody else,
21 but are DOT plans.

22 Q. Okay. And so part of the DOT's plans
23 at some point were to have a raised median in this
24 section in front of the Pilot Travel Center?

25 MR. CRITES: Object to the form.

Exhibit E

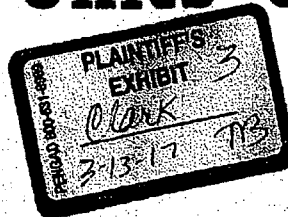
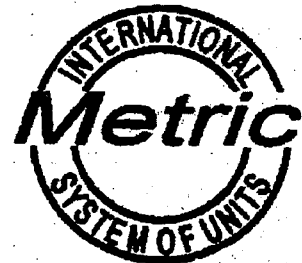
ACCESS and ROADSIDE MANAGEMENT STANDARDS



South Carolina Department of Transportation

Dual Units of Measurement:

US Customary Units &



South Carolina Department of Transportation
Traffic Engineering Section
955 Park Street
Post Office Box 191
Columbia, South Carolina 29202-0191

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The mission of the South Carolina Department of Transportation is to provide South Carolina the best possible intermodal transportation systems and services for the safe, efficient movement of people and goods, and stewardship of the State's environment and natural beauty.

quirements shall apply; however, the Department shall not issue a permit for an encroachment that meets local standards but violates the provisions of *Access and Roadside Management Standards*. Similarly, the Department's issuing of an encroachment permit does not relieve the applicant of the need to comply with local requirements, even if more restrictive.

2B REVIEW AND APPROVAL

Early submittal of the Application for Encroachment Permit will allow for proper review and approval prior to completion of design so that any required revisions can be incorporated into the construction plans. The time involved in reviewing applications will depend upon the complexity of the application. All permits will be reviewed and returned as soon as practicable. Verbal approval will not be given to permit any work until an encroachment permit for the work has been issued. All extensions, amendments or additions to existing permits must be in writing.

2C PERFORMANCE BONDS

The Department may require a performance bond before issuance of an encroachment permit. Any such requirement shall be included in the special provisions of the permit, and evidence of the bond shall be attached to the permit. The amount of the bond shall be equal to 1.5 times the estimated construction cost or \$5,000, whichever is greater. The purpose of such a bond is to ensure compliance with all terms of the permit by providing, in cases of noncompliance, for any and all damages and costs incurred in collecting damages through legal or other appropriate means. A bond shall be released only when the work described on the permit has been completed to the satisfaction of the Department.

2D CONDITIONS AND LIMITATIONS

2D-1 Traffic Safety and Operational Restraints

Safety and efficient traffic operations are important considerations in the review of Application for Encroachment Permits. In some cases it may be necessary to restrict access because of safety problems or operational restraints due to geometry, vertical grades, horizontal curves, or other conditions. Access at points within or near acceleration lanes or channelization may be restricted, limited, or prohibited. If operational or safety concerns exist, the application may be forwarded to the Director of Traffic Engineering for review.

2D-2 Land Use Changes and Redevelopment

When there is a change in land use which will affect the amount, type, or intensity of traffic activity to a site, the Department reserves the right to require submission of a new Application for Encroachment Permit. For example, a residential lot may be rezoned to allow for a professional office which will generate commercial traffic. In this case the Department may require the existing access

to be revised to better accommodate the expected traffic even if no significant building renovations are planned. In some cases the number and/or width of driveways allowed may change depending upon the land use change and the current standards. This provision will also apply to existing accesses when a property is redeveloped with the same general land use

2D-3 Subdividing Large Parcels

Access to future subdivided parcels shall be considered in the initial Application for Encroachment Permit's review process. The Department will not be obligated to allow direct access for any parcels which may be subdivided from a larger overall development at a later date. See also subsection 3C-2.2 on out-parcels

2D-4 Setback

The area to which the driveway provides access shall be sufficiently large for stopping, parking, and maneuvering of vehicles completely off the right-of-way.

2D-5 Maintenance Responsibilities

The owner shall be responsible for the maintenance of access points, including any drainage structures, for areas within the rights-of-way of State maintained facilities. An encroachment permit is not required for routine maintenance such as mowing, patching potholes, clearing pipes and ditches, applying seal coating, and repairing minor erosion damage

The Department shall be responsible for the maintenance of permittee-provided crossovers, auxiliary lanes, and right-of-way.

2D-6 Retrofitting by the Department

The Department may require driveway accesses to be modified to conform to these standards. This may require that some driveways be narrowed, widened, or removed in order to correct safety and operational problems. Preferably, such actions should be considered during the preconstruction phase. When this is required as part of a road improvement project, it will be done by the Department as part of the construction contract

2D-7 Private or Commercial Use of Right-of-Way

Pursuant to Sections 57-7-210 and 57-25-10 of the Code of Laws of South Carolina (1976 as amended), erecting fruit and vegetable stands on the right-of-way, displaying automobiles for sale on the right-of-way, or any other private or commercial uses of the right-of-way are prohibited. Some exceptions, such as placing banners across the roadway, for which encroachment permits or letters of authorization have been issued in accordance with these standards are allowed.

Exhibit F

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
BERKELEY COUNTY
DEPOSITION OF CYNTHIA WRIGHT

CYNTHIA WRIGHT and
RICHARD WRIGHT,
Plaintiff,

vs.

CASE NO. 2014-CP-08-675

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION, C&A UNLIMITED,
INC., and PILOT TRAVEL
CENTERS, LLC.,

Defendants.

DEPONENT: CYNTHIA WRIGHT
DATE: February 26, 2015
TIME: 11:10 A.M.
LOCATION: HOFFMAN LAW FIRM
7087 Rivers Avenue
North Charleston, South Carolina

REPORTED BY: TRISHA RARICK
MAGNA LEGAL SERVICES
(866) 624-6221
WWW.MagnaLS.com

1 hurt because of somebody's stupidity. And I'm
2 sorry, but that's the way I feel.

3 Q Sure. Now, you don't know of any legal
4 requirement or duty by SCDOT that will require them
5 to put what you are describing as that raised median
6 in that area of your accident, do you?

7 A No, sir. No.

8 Q Okay. And I believe you testified, and
9 you were right, that somebody took a left in front
10 of you, correct?

11 A Yes, sir.

12 Q You are a bus driver or you were a bus
13 driver, correct?

14 A Yes, sir.

15 Q All right. You're a licensed driver?

16 A Yes.

17 Q Do you believe that the individual that
18 took that left in front of you bears responsibility
19 for hitting you and your husband?

20 A Yes.

21 Q Do you know the man who took a left in
22 front of you?

23 A I know of him.

24 Q Have you ever met him before?

25 A Yes.

1 THE WITNESS: C-H-I-N-N-E-R-S.

2 MR. BESLEY: Thank you.

3 BY MR. MAYBANK:

4 Q Thank you for that. All right. So is it
5 your opinion then, or your -- the reason you're
6 suing DOT -- I have got your complaint, but I like
7 to hear from the people -- is that you felt that
8 there should have been some kind of raised median at
9 that area where the accident occurred?

10 A Yes.

11 Q All right.

12 A And that comes from also being a bus
13 driver. It's a safety factor. You can't just cut
14 in front of somebody, you know, like that. And also
15 like that I'll never be the same, and I've accepted
16 that, but somebody else shouldn't have to suffer for
17 somebody as dumb as that.

18 Q Ms. Wright, you understand Mr. Sena was
19 under the influence of alcohol; is that correct?

20 A And cocaine, yes. He tested positive for
21 it.

22 Q Okay. And cocaine. Do you believe the
23 presence of a raised barrier would have stopped
24 somebody who was driving under the alcohol -- under
25 the influence of both alcohol and drugs from making

1 that turn?

2 A Maybe. But at the same time, I think he
3 was determined to go to McDonald's regardless, and I
4 don't know. It may be he's said, well, I didn't see
5 the motorcycle and just pulled out thinking he was
6 going to make it. But I think if there was a median
7 there, it would have kind of like stopped you a
8 little bit and make you think more than not have one
9 there, and you just pull on across.

10 Q All right. So you don't -- you can't say
11 here or testify whether or not the existence of a
12 median would have preventing the accident or not?

13 A No.

14 Q Okay. You have been driving a motorcycle
15 since 1978?

16 A Uh-huh.

17 Q You have to say yes.

18 A Yes.

19 Q Since 1978, to the time of the accident,
20 had you ever worn a motorcycle helmet?

21 A Yes.

22 Q All right. And did you regularly wear a
23 motorcycle helmet?

24 A No.

25 Q Okay. I understand in the state of South

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	CASE NO.: 2016-CP-08-00334
	)	
CYNTHIA WRIGHT AND RICHARD WRIGHT	)	
	)	
	)	
Plaintiffs,	)	
	)	DEFENDANT SOUTH CAROLINA
vs.	)	DEPARTMENT OF TRANSPORTATION'S
	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
SOUTH CAROLINA DEPARTMENT	)	
OF TRANSPORTATION, PILOT	)	
TRAVEL CENTERS, LLC, SPEEDWAY	)	
LLC, ASHLEY LAND SURVEYING,	)	
INC., F/K/A ASHELY ENGINEERING	)	
& CONSULTING, INC., AND	)	
MUNLAKE CONTRACTORS, INC.	)	
	)	
Defendants.	)	

The Defendant, South Carolina Department of Transportation, (hereinafter, "SCDOT"), hereby submits this memorandum in support of its motion for summary judgment. This motion is based on the fact that there are no issues of material fact that the accident at hand was solely caused by any others other than the driver Daniel Sena who was under the influence of alcohol and cocaine. Moreover, the State Tort Claims Act S.C. Code Ann. 15-78-60 et seq., bars Plaintiffs' claims that SCDOT improperly designed the area in question. As discussed below, Plaintiffs' argument does not turn on whether SCDOT improperly maintained the location of the accident or had notice that a hazardous condition may exist, but rather on the fact that the original design was improper.

FACTS

This case stems from a motor vehicle accident that occurred on October 6, 2012, while Plaintiffs were traveling North on Highway U.S. 17A on a motorcycle. Plaintiff Richard Wright was driving the motorcycle and his wife, Cynthia Wright, was riding as his passenger. The accident occurred when a pick-up truck that had been traveling in the southbound lane of U.S.17A (the opposite lane of traffic), failed to yield to oncoming traffic and attempted to turn left into a Pilot Travel Center. The Plaintiff's motorcycle struck the side of the pick-up truck causing the Plaintiffs' injuries. As will be discussed in detail below, the police determined that at the time of the accident, the driver of the pickup truck had a blood alcohol level of .12 and had cocaine in his system.

The driver of the pick-up truck was Daniel Sena (hereinafter "Sena"). Mr. Sena testified he intended to make a left-hand turn into the Pilot Travel Center in order to pick up McDonald's for his family for dinner. (Deposition of Daniel Sena attached as Exhibit A p.51¹). Mr. Sena testified that ten (10) to fifteen (15) minutes before the accident, he had come home from work, changed his clothes, drank two beers, and done cocaine. (Exhibit A p.107-108).

Mr. Sena testified that he was extremely familiar with the intersection in question and had driven the route for many years of his life. (Exhibit A p.63-64). Mr. Sena stated that he was at a full stop in the median waiting to make the left

¹ All deposition excerpts of Daniel Sena are attached as Exhibit A; Leland Colvin excerpts are attached as Exhibit B; and Robert Clark excerpts are attached as Exhibit C).

hand turn². He waited for two vehicles to pass when he began to make the left turn. (Exhibit A p.72). After starting the turn, Mr. Sena said he saw the Wright's motorcycle and slammed on his breaks but he could not avoid the collision. (Exhibit A p.73-74).

Immediately following the accident, Mr. Sena fled the scene. He did not call 911, or get out to see if anyone was injured. He testified that he was "scared" because he had cocaine in his possession, had been drinking alcohol and was driving even though his license had been suspended for a previous DUI arrest. (Exhibit A p.79-81). Mr. Sena was almost immediately apprehended by police as there was an undercover team in the area about to conduct a meth raid, and they followed him. (Exhibit A p.81).

Mr. Sena was taken into custody where it was determined that his blood alcohol level was .12 and that he had cocaine in his system. Mr. Sena ultimately pled guilty to two counts of felony DUI, leaving the scene of an accident with great bodily injury, and possession of cocaine. (Exhibit A p.89-90).

Mr. Sena does not blame SCDOT, Pilot or anyone else for the accident and takes full responsibility for the accident. (Exhibit A p.108-109). Mr. Sena admits that it was his duty to ensure that there was no coming traffic before taking the left turn and that he is the sole cause of the Wrights' injuries. (Exhibit A p.76; p.93).

Despite the fact that the accident was caused by an impaired driver who 10 to 15 minutes before the accident was drinking beer and doing cocaine and admits that his actions caused the Plaintiffs' accident and injuries, Plaintiffs contend that the

² Contrary to Sena's testimony, video of the accident shows that Mr. Sena did not come to a stop in the median.

accident would not have occurred had the SCDOT designed and built a raised concrete median on US 17A that would have prevented motorists from making left-hand turns into the Pilot Travel Center. Plaintiffs further contend that the location and design of Pilots entrances somehow caused the Plaintiffs' accident.

As the basis of Plaintiffs' complaint is the design of the highway in front of the Pilot Travel Center, some background regarding the location of the accident and the immediate vicinity is necessary.

The area where the accident occurred underwent two SCDOT projects during the late 1990s and early 2000s. SCDOT widened the section of U.S. 17A in front of the Pilot Travel Center ("the Widening Project"), and reconstructed the intersection at the exit from I-26 at Farmington Road as you head toward Summerville (the Interchange Project"). The widening project was completed on June 17, 2002 and the Interchange Project was completed on November 1, 2003. (Exhibit B, p.216).

Before either of the projects began, there was an existing gas station in the location of the current Pilot Travel Center. The existing gas station had driveways with access to US 17A, and there was no raised concrete mediation preventing left turns into the existing gas station. In fact, there has never been a raised median preventing left hand turns into that location. (Exhibit B p.256). In 2001, Pilot acquired the existing gas station, and constructed the current Pilot Travel Center. (See Pilot's memorandum in support of motion for Summary judgment previously filed).

Leland Colvin is currently the Deputy Secretary of Engineering for SCDOT, and at the time, was the project manager for both the Interchange Project and the Widening Project of 17A. (Exhibit B p.9-10). Mr. Colvin testified that SCDOT designed the plans for the Widening Project, but used an outside firm to design the plans for the Interchange Project. (Exhibit B p.252-253).

Mr. Colvin stated that the design plans for the Widening Project did not nor did they ever, include a raised median in front of the Pilot Travel Center. In fact, Mr. Colvin stated that a raised median was never considered for the location because it would not have been compliant with the SCDOT Highway Design Manual. (Exhibit B p.253-254³).

The design plans for the Interchange Project were prepared by an outside design firm. The Interchange plans showed a raised median in front of the Pilot Travel Center as a placeholder for how the project to the east of Farmington Road would accept traffic. (Exhibit B p.257). Mr. Colvin explained that as the program manager for these two projects, he had to look at them "in totality" and marry the two plans together. (Exhibit B p.84-85). When the plans were "married" to show how the projects would come together, the Interchange Plans showing the raised median in front of the Pilot had to be corrected to accurately reflect the Highway Design Manual. (Exhibit B p.87).

Mr. Colvin testified numerous times that there never has been a raised median preventing left hand turns at the portion of US 17A in front of the Pilot

³ While Mr. Colvin testified that the South Carolina Highway Design Manual is "the Bible" for design projects in the State of South Carolina. (Exhibit B p.254).

Travel Station, nor was a raised median ever considered during the Widening Project because doing so would have violated the South Carolina Highway Design Manual.

With regard to the driveways which provide ingress and egress to the Pilot Travel Station, Mr. Colvin stated that there were existing driveways providing ingress and egress to the property before Pilot constructed the Travel Center. (Exhibit B p.256). Mr. Colvin testified that SCDOT has to approve encroachments on the DOT right-of-way and that it considers safety and how the access to the private property affects traffic and the general operation of the highway. (Exhibit B p.48-50; p.273).

Robert Clark, another 30(b)(6) representative of SCDOT testified that when SCDOT reviews an encroachment permit for access to the road way, it uses is engineering judgment which consists of reviewing the traffic in the area, the type of development, and the operations at the particular intersection. This includes analyzing traffic backups, the amount of storage, and types of turning maneuvers. (Exhibit C p.14). SCDOT also uses its manuals and design criteria. (Exhibit C p.17-18). Mr. Clark testified that it is impossible for all encroachments to be in exact conformance with the design manuals. Mr. Clark explained,

If we lived in the Midwest or lived in Phoenix where everything's laid out in a grid and, as cities grow, they're always growing in a grid and every block is the same, and as you grow out, you have the opportunity to have a clean slate, you can do that.

When you have properties that have been cut up for 3 or 400 years and you've got redevelopment going on on this

properties, you don't have a clean slate, but you are trying to do the best you can to create an efficient, effective, and safe interface with the road system.

(Exhibit C p.34-35).

Mr. Clark testified that they use the ARMS manual⁴ as one of several different sources or resources when evaluating an encroachment permit for access to the roadway:

We use information in our ARMS manual, we use information relating the SCDOT, we use design criteria. So, there's a lot of inputs and a lot of different sources or resources you can go to. For instance, depending on speed or the signal controlled intersection, you have got to have a certain amount of sight distance to the actual signal ahead in order to see it, process it and react to it. [S]o . . . each intersection is reviewed, the information that's being asked for in an encroachment permit is reviewed, and then we use a lot of resources and . . . engineering judgment to say, okay, this looks like it is in substantial conformity with – with what our rules are.

(Exhibit C p.17-18).

When specifically asked regarding the distance of between driveways and the requirements in the ARMS manual and whether these were considered at the time the encroachment permit was issued to Pilot, Mr. Clark reiterated,

Distances in the manual in place at the time where probably considered. But again, **these are suggestions**. And you have to look at the site that you've got and what the—what the traffic is doing at the site, how it's circulating on the site, and bring all those factors together to make that determination.

(Exhibit C p.20).

⁴ Mr. Colvin also testified that the ARMS manual is one of several resources used by the SCDOT when evaluating encroachment permits and that the ARMS manual provides examples for exceptions and procedures to gain the exceptions. (Exhibit B, p.45)

The facts establish that Plaintiffs accident was solely caused by the actions of a driver under the influence of alcohol and cocaine. Plaintiffs' argument turns not on facts that SCDOT had notice of a dangerous condition or that the location of the accident was a hazard to the driving public, but rather is based on the grounds that SCDOT improperly designed and constructed a flush painted median and that it improperly approved an encroachment permit with regard to the driveways at the Pilot. This claim fails and is barred by the South Carolina State Tort Claims Act. § 15-78-60(1)(2)(3)(4)(5)(9)(13) and (15). The evidence established that the design plans for the Widening Project in front of the Pilot Travel Center never included a raised median, and in fact, constructing a raised median in that location would have been in violation of the South Carolina Highway Design Manual. There is no evidence that SCDOT improperly maintained the median or that it had any notice that the flush median was a hazard.

Likewise, to the extent Plaintiffs allege that SCDOT is at fault for the design and location of the driveways into the Pilot Travel Center, those claims are barred by the State Tort Claims Act § 15-78-60 et seq. Again, Plaintiffs presented no evidence that the encroachment permit which allowed the installation of the driveways into the Pilot Travel Center was improperly approved during construction. Plaintiffs also have not presented any evidence that SCDOT failed to maintain the driveways at the Pilot Travel Center or had notice that the driveways were a hazard to the driving public.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the pleadings, deposition, answer to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP 56(c). When a party makes a motion for summary judgment that is supported by the evidence, the adverse party may not rest on the allegations of the Complaint to overcome the motion by must demonstrate, by affidavit or other evidence that a genuine issue of fact exists. *Klippel v. Mid-Carolina Oil, Inc.*, 303 S.C. 127, 399 S.E.2d 163 (Ct. App. 1990); *Dyer v. Moss*, 284 S.C. 208, 325 S.E.2d 69 (Ct. App. 1985). The nonmoving party must make an affirmative effort to set forth specific facts showing that there is a genuine issue for trial in order to overcome a summary judgment motion.

ARGUMENT

I. The State Tort Claims Act Bars Plaintiffs' Claims Against SCDOT.

Plaintiffs have not presented any evidence that SCDOT improperly designed the location of the accident or that it had notice that the location was a dangerous condition.

Nonetheless, S.C. Code Ann. 15-78-60 provides that a governmental entity is liable for any loss caused by:

(1) legislative, judicial, or quasi-judicial action or inaction;

(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;

(4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;

(5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;

(9) entry upon any property where the entry is expressly or impliedly authorized by law;

(13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;;

(15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection

with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways. Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice

South Carolina Code Ann. §15-78-60(15), specifically grants a governmental entity discretionary immunity from any loss caused by the absence of a median or the lack of a median in the initial design. Discretionary immunity based on the sections cited above is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards. *Wooten v. South Carolina DOT*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (Sup. Ct.1999). The only other exception is contained in S.C. Code Ann. 15-78-60 (15), and involves a situation when the governmental entity had actual or constructive notice of an alleged defect and does not correct the condition in a reasonable amount of time of the notice.

In the present case, with regard to Plaintiffs argument that SCDOT failed to install a raised median at the time of construction based on the Interchange Project

Plans, the evidence establishes that Leland Colvin, the program manager for both projects, was responsible for "marrying" the two design plans together. Mr. Colvin testified that a raised median was never contemplated by the Widening Project, and that in fact, installing a raised median would have been in violation of the South Carolina Highway Manual. Accordingly, he used his discretion weighed his options and using professional standards made the decision with regard to the installation of the median and corrected the raised-median "placeholder" that was incorrectly depicted in the Interchange Project plans. Accordingly, SCDOT is immune from suit based on S.C. Code Ann. Sections (1), (2), (3), (4), (5), (9), (13) and (15).

With regard to Plaintiffs' argument that SCDOT "negotiated" with Pilot to remove the raised median from the design plans, Mr. Colvin testified that he did not speak with anyone from Pilot regarding his decision to install a flush median, and that there was no negotiation. (Exhibit B pgs.99, 105, 260).

Plaintiff also argues that the driveways into the Pilot Travel Center violate provisions of the ARMS manual as they are too close to one another and too close to the intersection of the roadway. This issue was specifically addressed by Mr. Clark when he testified that when dealing with property that has been in existence for long periods of time and is being redeveloped, it is impossible to require every provision in every manual be met. According to Mr. Clark, SCDOT uses its best judgment to ensure a safe, efficient, and effective interface with the roadway.

Moreover, Mr. Clark testified that the ARMS manual referenced by Plaintiff is just one of several resources or sources that SCDOT uses when evaluating an

encroachment permit and that SCDOT uses its engineering judgment to determine whether the permit is in substantial conformity with SCDOT rules.

To the extent that Plaintiff argues that SCDOT was on notice of any problems with the location of the accident, and therefore, falls into the exception cited in S.C. Code Ann. 15-78-60(15), this argument to fails.

When addressing the design immunity contained in S.C. Code Ann. 15-78-60(15), South Carolina Supreme Court has focused on whether the SCDOT notice of a hazardous condition and does not take corrective measures in a reasonable amount of time. *Id.*

In *Wooten*, a twelve-year old was hit by a car while attempting to cross a multi-lane roadway. Her mother brought suit alleging that SCDOT was negligent in failing to install a traffic lights that would allow adequate time for a pedestrian to cross, or provide pedestrian walk signals or to warn pedestrians of the hazardous nature of the intersection.

In holding that the discretionary design immunity provision of S.C. Code 15-78-60 (15) was not applicable, the *Wooten* Court cited to testimony that from a SCDOT official that the intersection where the child was struck was a dangerous intersection for pedestrians in that crossing time available for pedestrians was not sufficient to cross the width of the road, and that the time allowed for pedestrians to cross varied because the signal was traffic-actuated. The Court also relied on testimony that established the SCDOT violated guidelines on pedestrian signals

mandated that pedestrian signals be installed at intersections when there is not adequate time to cross. *Id.* at 469, 511 S.E.2d 355, 357.

In *Giannini v. SCDOT*, 378 S.C. 573, 664 S.E.2d 450 (2008), a car traveling North on I-77 hydroplaned and crossed over the median and into southbound traffic colliding with the cars driven by the plaintiffs. One person was killed and the others seriously injured. Plaintiffs claimed that SCDOT was negligent in failing to install barriers that would have prevented the car from crossing into southbound traffic. SCDOT argued that it was immune from liability pursuant to S.C. Code Ann. § 15-78-60(15), in both its directed verdict motion and its J.N.O.V. motion.

The Supreme Court held that the trial court properly denied the motions based on S.C. Code Ann. 15-78-60(15). The Court found there was notice of a defective condition as there had been several cross-over accidents within the two mile stretch of where the *Giannini* accident occurred that those accidents had been publicized by the local media. *Id.* at 580, 378 S.E.2d 573, 580.

In *Pike v. SCDOT*, 343 S.C. 224, 540 S.E.2d 87 (2000), the Plaintiff's wife was killed in a car accident. Plaintiff alleged that SCDOT was negligent in failing to remove a sign from the roadway which obstructed motorists' view of oncoming traffic. The *Pike* Court found there was evidence that SCDOT had notice of problems at this intersection because it had received letters regarding this specific intersection. In fact, SCDOT even sent an employee to the intersection in response to one letter which specifically complained about the sign blocking the view of

oncoming traffic and calling the intersection "dangerous." However, nothing was done.

Pike, Wooten and *Giannini* all turned on facts establishing that SCDOT had some type of notice of a defective condition or, as in *Wooten*, that the condition violated its regulations, and failed to correct it. In the present case, Plaintiff does not cite to notice of a defective condition but rather argues that a raised median should have been installed during original construction based on the fact that the Interchange Project Plans, which were separate and distinct from the Widening Project Plans, originally showed a raised median.

According to Plaintiffs if the raised median depicted in the Interchange Project plans had been installed during construction the accident would not have occurred because there could be no left-hand turns into the Pilot Travel Center. However, that argument fails as the installation of the raised median would have been in violation of the South Carolina Highway Design Manual. (Exhibit B, p.253-254)⁵. Plaintiffs have not presented any evidence that SCDOT was negligent or had any notice, actual or constructive that the flushed median or the driveways were defective condition.

To the extent Plaintiffs rely on a traffic study of the area of the accident that was completed by Public Safety as part of its traffic safety program. First, these traffic studies are inadmissible pursuant to 23 U.S.C 148(h)(4) and 23 U.S.C. 409

⁵ Plaintiff has argued that a raised median would have prevented Sena from turning left. However, raised medians are not "non-transversable". Emergency vehicles must be able to drive over raised medians. (Exhibit B p.101). There is no way to predict whether a driver under the influence of alcohol and cocaine would have attempted the left turn had a raised median been installed.

(Exhibit E). Nonetheless, the traffic study was done in October of 2013 approximately a year after the Plaintiffs' accident. Therefore, it is inapplicable any analysis to whether SCDOT had any actual or constructive notice. The argument that SCDOT did not conduct a traffic study in the ten years since the completion of the Widening and Interchange Project even though this intersection is highly traveled relies on an impossible standard. It simply is not possible for SCDOT to monitor and study all highly traveled intersections in the State.

The case law is clear in that the courts in *Pike*, *Wooten*, and *Giannini* focused on actual evidence that SCDOT had notice of a defective condition at a location. The fact that accidents occurred is not the standard. If it was, virtually every intersection in Charleston would be considered a defective.

The flush median was designed and constructed properly and to have installed a raised median as advocated by Plaintiffs would have been in violation of the South Carolina Highway Design Manual. Moreover, Plaintiffs have not presented any evidence that SCDOT had any notice of a problem with the median or driveways prior to the Plaintiffs' accident.

The Plaintiffs' accident is a terrible situation which was caused solely by Daniel Sena who made the decision to drive with a suspended license and while under the influence of both alcohol and cocaine.

CONCLUSION

In light of the foregoing reasons, SCDOT respectfully requests that the Court grant its motion for summary judgment.

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Dated: 6/6/2017

Charleston, South Carolina

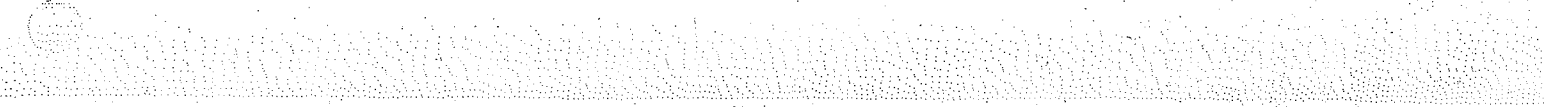
CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☒ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 6 day of June, 2017.



EXHIBIT A



1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF BERKELEY

3
4 CYNTHIA WRIGHT AND RICHARD
5 WRIGHT,

6 Plaintiffs,

7 vs.

CASE NO. 2014-CP-08-675

8 SOUTH CAROLINA DEPARTMENT
9 OF TRANSPORTATION, C&A
UNLIMITED, INC. AND PILOT
TRAVEL CENTERS, LLC,

10 Defendants.

11
12 DEPOSITION OF: DANIEL JAMES SENA

13 DATE: May 6, 2015

14 TIME: 10:17 A.M.

15 LOCATION: Walden Correctional Institution
16 4340 Broad River Road
17 Columbia, SC

18 TAKEN BY: Counsel for the Defendant SCDOT

19 REPORTED BY: LORI S. MORTGE,
20 Certified Court
Reporter, CCR

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
25 (803) 731-5224 (864) 234-7030 (704) 573-3919



1 the time from -- basically the time you woke up and
2 what you did that day.

3 A. We got up, left, went to work. My shop
4 was in Ravenel, South Carolina. We was working in
5 downtown Charleston that day. We was working -- we
6 worked late, so five or six in the evening, I'd say.
7 Left work, went back -- went back to the shop,
8 dropped the work truck off and got my own personal
9 vehicle, went back to Summerville.

10 Was at the house, had a couple of drinks
11 at the house. At that time I had left -- left the
12 house and I went to McDonald's to get dinner for the
13 kids and there was the accident.

14 Q. Okay. You answered the question exactly
15 as I asked you and I appreciate that. I'm going to
16 have to kind of dissect it a little bit more.

17 A. All right.

18 Q. You were working at Sweatman's Heating &
19 Air that day?

20 A. Yes, sir.

21 Q. How do you spell that? Do you know?

22 A. It's S-W-E-A-T-M-A-N-S.

23 Q. And that was in Ravenel?

24 A. Yes, sir.

25 Q. Where in Ravenel are they located?

1 A. Yes, sir.

2 Q. And then there would be down that road a
3 place called The Cove?

4 A. Yes, sir.

5 Q. Is there a sign on that Sangaree Parkway
6 that says The Cove that I would then turn into?

7 A. Yes, sir.

8 Q. Okay. And you think that's about a half
9 a mile from this intersection?

10 A. Correct.

11 Q. I mean, pardon me, from the scene of
12 this accident?

13 A. Correct.

14 Q. Mr. Sena, is it a fair statement to
15 say -- I dare say a true statement to say that you
16 had been very familiar with the intersection area of
17 the 199 exit, the Pilot station, the McDonald's and
18 that whole intersection area that the -- where the
19 accident occurred?

20 A. Correct.

21 Q. This is something you drove daily?

22 A. Yes, sir.

23 Q. For many years of your life?

24 A. Yes, sir.

25 Q. And you've seen where it's gone from two

1 lanes to four lanes?

2 A. Yes, sir.

3 Q. All right. You've seen the road
4 improvement, the markings on the ground, the stop
5 lights in the air, the stop signs around you. And
6 so you were familiar with the environment as
7 presented just in this whole general area?

8 A. Yes, sir.

9 Q. And specifically as to this Kangaroo --
10 pardon me, this Pilot/McDonald's gas station area?

11 A. Yes, sir.

12 Q. Okay. You left the house?

13 A. Correct.

14 Q. You had two beers?

15 A. Correct.

16 Q. You had been given an order?

17 A. Yes, sir.

18 Q. You were going to McDonald's to buy
19 dinner for -- is just your daughter -- your sons or
20 is it you and your wife as well?

21 A. For the whole family.

22 Q. Okay. At any time prior to the accident
23 did you feel that you were unable to drive the
24 vehicle in a safe manner?

25 A. No, sir.

1 Q. Very good. And with your permission I'm
2 going to just do a little thing there. (Marking.)
3 So -- and it was your intent to take the left into
4 the yellow marked highlighted entrance?

5 A. Correct.

6 Q. Did you at any time, to your
7 recollection, come to a full stop in that median
8 before you made that left-hand turn?

9 A. Yes, sir. I did.

10 Q. Okay. A full stop prior to the
11 left-hand turn. You saw how many vehicles
12 approaching you at that time, to the best of your
13 knowledge?

14 A. To the best of my knowledge I want to
15 say at least two.

16 Q. And did you wait for two vehicles to
17 pass you before you made that left turn lane?

18 A. Yes, sir. I did.

19 Q. Okay. Is it a true statement that at no
20 time prior to hitting the motorcycle did you ever
21 see the motorcycle?

22 A. I'm sorry. Repeat that.

23 Q. Yes. You were not driving that night
24 with the purpose of running into anybody, were you?

25 A. No, sir.

1 Q. Okay. Had you seen the motorcycle
2 before impact, is it a true statement that you would
3 not have taken a left in front of them?

4 A. Yes, sir.

5 Q. All right. So the question is, is it a
6 fair statement or true statement to say that before
7 you made that left turn to come into that McDonald's
8 you simply didn't see the motorcycle?

9 A. Correct.

10 Q. Okay. When was your first realization
11 that you had -- that you had had an accident?

12 A. As soon -- when I had the accident? I
13 realized we was going to have an accident before we
14 even had the collision. I seen the cars pass, I cut
15 my wheel and went to turn. And when I went to turn
16 I just glanced back this way and they were -- they
17 were there. I slammed on brakes and my vehicle was
18 halfway between that yellow line there and they said
19 they hit -- they clipped the front corner of my
20 vehicle. It was there and they couldn't avoid it.

21 Q. So you were already into the lane of
22 travel prior to impact and right at impact?

23 A. Dead stop -- I was dead stopped by the
24 time they hit me.

25 Q. Because you had seen them coming?

1 A. Yes, sir. I slammed on brakes. I had
2 enough time to put my hands up to block the airbag.
3 That gives you enough -- but then almost five
4 seconds before they hit me.

5 Q. Did your -- did your airbag deploy?

6 A. Yes, sir. Correct, they did.

7 Q. Do you know -- could you tell then, as
8 you were seeing them coming at you, do you know
9 whether or not they had shifted lanes to come
10 into -- is this -- now, did the impact occur in the
11 lane -- this outside lane closest to where you were
12 turning?

13 A. Yes, sir. It did.

14 Q. Okay. Could you tell if at any time
15 prior -- well, let me strike that poor question.
16 You had begun the left turn lane?

17 A. Yes, sir.

18 Q. Begun the left turn out of that lane.
19 You saw them for a period of seconds, just long
20 enough to brace for the airbag to deploy?

21 A. Yes, sir.

22 Q. Do you know whether or not -- or if you
23 could tell whether or not the Wrights had shifted
24 from either the far right lane or the center lane to
25 get into that lane of traffic coming into you?

1 Q. That your -- if you're testifying that
2 you were fully stopped in this median and you were
3 then going to take a left to pass three -- to cross
4 three lanes of traffic to pull into that Piggly
5 Wiggly -- pardon me, to that McDonald's, that you
6 were taking a left into oncoming traffic?

7 A. Yes, sir.

8 Q. And would you agree with me that it is
9 your duty, as a driver, to defer and to ensure that
10 there's no oncoming traffic before you take that
11 left?

12 A. Yes, sir.

13 Q. Okay. And that when you took that left
14 into oncoming traffic, whether or not you saw them
15 or not, that the fault of causing that accident with
16 the Wrights and their motorcycle was your -- was
17 caused by your driving?

18 A. Yes, sir.

19 Q. Okay. What happened after the
20 collision?

21 A. I got scared and I left the scene.

22 Q. Why did you get scared? Because,
23 frankly, you don't look like a guy that scares very
24 often.

25 A. I didn't -- I didn't know what to think

1 A. (Marking.)

2 Q. That's about what we thought. Now, from
3 that impact as -- you see how you had this line and
4 kind of showed your approach in your stop?

5 A. Yes, sir.

6 Q. Show me where the direction and how you
7 would have pulled away and which lanes you would
8 have been in, and take me all the way through this
9 Hess area.

10 A. Actually come through here -- I can't
11 quote if I went all three lanes at one time or not,
12 but I come this way here and there was a turn off --
13 used to be a turn off right there. I don't know
14 what they got going on there now, but...

15 Q. Did you take a right in front of the
16 Hess?

17 A. Actually --

18 Q. This is the Hess.

19 A. Yes, sir. I corrected myself on that.
20 On this frontage road right here, once you turn here
21 it went like this. Before this development or
22 whatever this is right here, you used to turn right
23 here and the frontage road -- all that was started
24 right there. (Indicating.)

25 Q. So the cross mount was incorrect; okay?

1 A. Yes, sir.

2 Q. What's left there is correct?

3 A. Yes, sir.

4 Q. And as you were speeding away from the
5 accident did you know anybody had been hurt at that
6 point?

7 A. Apparently the driver.

8 Q. That's after the fact; right?

9 A. What do you mean? Hold on.

10 Q. Sure. You came up to take a left into
11 the McDonald's?

12 A. Yes, sir.

13 Q. You had the accident?

14 A. Yes, sir.

15 Q. You freaked out or what did -- you got
16 scared?

17 A. Yes, sir.

18 Q. And you took off?

19 A. Yes, sir.

20 Q. At any of -- at any point of our
21 discussion I just had with you, did you know that
22 anybody had even been hurt?

23 A. To my knowledge, no, sir.

24 Q. Okay. Was the reason you were scared
25 was also because you were driving under a suspended

1 license for the second time?

2 A. I mean -- well, that's a little petty
3 charge, not really the reason to leave the scene of
4 the accident with an injury involved. I wouldn't
5 say that's the reason. It could have been something
6 to help build up to the...

7 Q. How about the two beers with the
8 suspended license as well?

9 A. Yes, sir. I'd say at the time in my --
10 I had cocaine in my possession at the time of this
11 accident. I would say that was more of the whole
12 mix all together, the suspended license, knowing I
13 had alcohol and along with the cocaine possession,
14 it wasn't the best decision but I'd rather not be
15 there with all that.

16 Q. All right. Understood. You left. Do
17 you know how you were caught?

18 A. Yes, sir. There's currently -- in these
19 three spots here, (indicating), there was an
20 undercover surveillance team about to go do a bust
21 on a meth raid somewhere down the street and they
22 witnessed the whole entire thing. As I left the
23 scene of the accident they followed me down here.
24 And this Westvaco Road is a one-way road, has a
25 guard gate, or was. And as I got to the guard gate

1 if you've got marriage certificates and all that
2 SCDC policy, you have to have the name on all the
3 documents, stating your legal kids and legal wife so
4 they can see you. In anticipation of coming to
5 prison we, you know, went and had it finalized and
6 put it on paper.

7 Q. Did you go to court on this?

8 A. Yes, sir.

9 Q. Did you have a trial?

10 A. No, sir. I took a plea deal.

11 Q. Do you know when that was?

12 A. June 19, 2014.

13 Q. 2014 you say?

14 A. Yes, sir.

15 Q. And do you know what you pled to?

16 A. Pled to failing DUI times two.

17 Q. What does that mean?

18 A. Two counts of felony DUI.

19 Q. Is that because there were two people
20 injured?

21 A. Yes, sir.

22 Q. Okay.

23 A. Leaving the scene of the accident with
24 great bodily injury.

25 Q. All right. Anything else?

A W R

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1 Q. Yeah.

2 A. No, sir. We were the only two there --
3 or three.

4 Q. You would agree with me that you were
5 the sole cause of Mr. and Mrs. Wright's injuries in
6 this case?

7 A. Yes, sir.

8 Q. Have you ever been incarcerated other
9 than when you were at Berkeley County Detention
10 Center the night of this accident prior to this
11 day -- prior to that day?

12 A. Incarcerated in SCDC, or just period?

13 Q. Just period.

14 A. I've done, you know, time --
15 overnights, you know, from all the charges we
16 stated earlier. You get arrested, spend the night
17 in jail, make PR bond the next day. Get out and
18 it's up to you to come back to court and pay your
19 fines or whatever.

20 Q. Have you ever written and apologized to
21 Mrs. Wright for causing these injuries to her?

22 A. No, sir. I was told that I'm not
23 allowed to contact within written form or verbal
24 form to the victims, period, by my attorney.

25 Q. Okay. And just -- I don't want to know

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1 A. They gave me time served for the
2 possession so that wasn't, I guess, part of this
3 part of the process.

4 Q. Did you not -- were you not sentenced to
5 five months for a cocaine possession?

6 A. Yes, sir. But that was the time -- they
7 gave me time served for the time I served in
8 Berkeley County.

9 Q. You had been incarcerated with the South
10 Carolina Department of Corrections since June 19,
11 2014?

12 A. Yes, sir.

13 Q. Did you receive -- you received the
14 credit for the five months?

15 A. Yes, sir.

16 Q. Okay. When are you eligible for parole?
17 Do you know?

18 A. It keeps changing, because they keep
19 wanting to switch me from institution to
20 institution. As of right now I believe it is
21 December of this year -- or between December and
22 January of 2016.

23 Q. December 2015 --

24 A. Yes, sir.

25 Q. -- and January 2016? All right. At

DANIEL JAMES SENA - EX. BY MR. BESLEY
1 you turned too soon?

2 A. Correct.

3 Q. When was the last time, as far as
4 minutes or whatever, that you would have had
5 something alcoholic to drink or any drugs that you
6 took prior to this accident?

7 A. I was at my house drinking that beer ten
8 minutes prior to the accident.

9 Q. Ten minutes?

10 A. Between 10, 15 minutes of just jotting
11 some stuff down on a piece of paper, you know, to
12 get ready to go.

13 Q. Now, the number two for beers has been
14 thrown out here today. Is that number that you
15 think is accurate? You had a .10 was your blood
16 alcohol content, that's what you testified; is that
17 correct?

18 A. Yes, sir.

19 Q. Was it just two beers or was it more
20 than two beers?

21 A. No, sir. The two beers I had at my
22 house.

23 Q. And you took the cocaine before the
24 beers?

25 A. No, sir. I come in -- I come in from

1 DANIEL JAMES SENA - EX. BY MR. BESLEY
work, undressed, got out of my work clothes, drank a
2 beer and grabbed a second beer and went to my back
3 door in the back of my truck and then did the
4 cocaine.

5 Q. Okay.

6 A. And --

7 Q. And -- okay. Go ahead.

8 A. Smoked a cigarette, my wife came out
9 with the list, you know, and then off to McDonald's.

10 Q. No other alcohol, no shots of anything?

11 A. No, sir.

12 Q. Nothing. Did it surprise you that you
13 were a .10 alcohol level?

14 A. Yes, sir. If not, I would not have
15 given consent to a Breathalyzer. In my own personal
16 opinion, I just figured I wouldn't fail a
17 Breathalyzer with two beers in my system.

18 Q. You're absolutely certain it was just
19 two beers?

20 A. Yes, sir.

21 Q. Do you take full responsibility for the
22 accident?

23 A. Yes, sir. I do.

24 Q. You don't blame the DOT for the
25 accident?

DANIEL JAMES SENA - EX. BY MR. BESLEY

1 A. No, sir.

2 Q. You don't blame Pilot Gas Station for
3 the accident?

4 A. No, sir.

5 Q. Okay. And whose truck were you driving?

6 A. That was our truck, mine and my
7 wife's -- registered to her but ours.

8 Q. When you say it was yours or ours, is
9 that because you both paid for it? Or why do you
10 say it's ours?

11 A. When you're married, ain't half of
12 everything yours?

13 Q. All right. Fair enough. Had you driven
14 that truck previously?

15 A. Yes, sir.

16 Q. You were familiar with it?

17 A. Yes, sir. Just got home from work in
18 it.

19 Q. And you had permission to drive that
20 truck?

21 A. Yes, sir.

22 MR. BESLEY: I think that's all I've got
23 for you at this time. Thanks -- wait, let me back
24 up. I just want to confirm.

25 Q. I've got some pictures here in front of

EXHIBIT B

1 STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2 COUNTY OF BERKELEY

3
4 CYNTHIA WRIGHT AND RICHARD WRIGHT,

5 Plaintiffs,

6 vs.

CASE NO. 2016-CP-08-334

7 SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A
8 UNLIMITED, INC., and PILOT TRAVEL CENTERS, LLC,
9 SPEEDWAY, LLC, ASHLEY LAND SURVEYING, INC., F/K/A
10 ASHLEY ENGINEERING & SURVEYING, INC., and ASHLEY
ENGINEERING & CONSULTING, INC., and MUNLAKE
CONTRACTORS, INC.

11 Defendants.

12 VIDEOTAPE
13 DEPOSITION OF: LELAND D. COLVIN, JR.

14 DATE: March 13, 2017

15 TIME: 11:35 AM

16 LOCATION: SCDOT District 6
6355 Fain Boulevard
North Charleston, SC

17 TAKEN BY: Counsel for the Plaintiffs

18 REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

19
20 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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VIDEO

1 respect to topics -- Topic Number 2? 9

2 A. I am. There is -- I think Robert and I
3 have a little bit of overlap.

4 Q. I saw that.

5 A. Especially in -- in relation to
6 encroachment permits. They are approved out of the
7 district office, so there's a little bit overlap.
8 But yes, I am prepared to talk about Topic 2.

9 Q. All right. And do you believe -- well,
10 I think you may have touched on this. The question
11 is: Do you believe you are the most qualified to
12 talk about this topic or to testify about this
13 topic? And I know you've identified another person
14 with some duplication in terms of the subjects, but
15 do you think you're more qualified than him or less
16 qualified or you're equally qualified?

17 A. I would say we're equally qualified.

18 Q. Okay. And who was it that designated
19 you to speak on the matters listed in Topic
20 Number 2?

21 A. Mr. Maybank.

22 Q. Okay. Do you know why you were chosen?

23 A. I was the program manager for this job
24 for both the interstate widening job as well as the
25 17A widening job at the time of -- of the

1 preconstruction and construction documents were
2 prepared.

3 Q. All right. All right. So I wanted to
4 just put that down, because we may refer to this
5 later.

6 So you were the program manager for the
7 widening job that was going on on Highway 17A at
8 the time?

9 A. Yes, sir.

10 Q. And also for the requests being made by
11 the folks associated with -- with Pilot for changes
12 in the entrances, exits, and things like that?

13 A. Yeah. The -- the right-of-way
14 negotiation was part of that project. Yes, that is
15 part of it.

16 Q. And that's how we would refer to it,
17 the right-of-way?

18 A. Correct.

19 Q. So there would be the road widening and
20 then the right-of-way?

21 A. There's about four components: There
22 is environmental; there is what we call
23 preconstruction, which is development of the plans;
24 and then you have the right-of-way acquisition; and
25 then you have the construction. So it is one of

1 kind of separated those out. The issues with the
2 highway and the issues with the parking lot, all of
3 that would be included?

4 A. Yes. Yes, sir.

5 Q. Okay. And so what is your official
6 position as you sit here today?

7 A. I am the deputy secretary for
8 engineering.

9 Q. And how long have you been in that
10 position?

11 A. Permanently, it will be a year in June;
12 but I was acting for about roughly eight months
13 prior to that.

14 Q. So a couple of years, about?

15 A. Roughly, not quite. 18 months.

16 Q. Okay. And then what were you doing
17 prior to that?

18 A. Prior to that, I was the chief engineer
19 for location and design.

20 Q. And how long did you do that?

21 A. For about a year.

22 Q. Okay. And what about before that?

23 A. Before that, I was chief engineer for
24 operations.

25 Q. Okay. And length of that?

1 to that, so there is a -- there is an exception
2 process as -- as well that does -- that's within
3 this -- incorporated within the manual itself.

4 Q. So what's in the ARMS manual is
5 mandatory, but the ARMS manual itself provides
6 examples for exceptions and procedures to -- to
7 gain those exceptions. Is that a fair summary?

8 A. That is correct.

9 Q. Okay.

10 A. Yes.

11 MR. CRITES: Kevin, when you were
12 referring to the manual as being mandatory, is that
13 the South Carolina Highway Design Manual?

14 MR. SMITH: I'm talking about the ARMS
15 manual.

16 MR. CRITES: Okay.

17 BY MR. SMITH:

18 Q. And maybe I'll -- I'll head off his
19 question in advance.

20 The South Carolina Highway Design
21 Manual, is that also a set of mandatory rules that
22 would provide instances for exceptions and a set of
23 procedures to try and qualify for those exceptions?

24 A. Yes, sir, it does. It provides a -- a
25 process for exceptions to the manual.

1 because the Department of Transportation is
2 required more -- is required to care more about
3 safety than what a property owner thinks will make
4 him or her more money. Is that true?

5 A. Yeah. Our -- yes. We -- we are
6 charged with providing safe, reasonable access to
7 the state highway system.

8 Q. All right. And safety takes precedent
9 over any wishes that private corporations may have
10 that may result in them making more or less money?
11 Safety trumps that?

12 A. Yes.

13 Q. Okay. And would you say that safety is
14 the primary concern for any decision regarding
15 access to private property?

16 A. Yes. I would say safety and the
17 operation of the state highway system are the two
18 primary functions that the DOT looks at for access
19 to the state highway system.

20 Q. And I -- and I read a -- a little bit
21 about that. And -- and I think that term, to me,
22 seemed to say that we know what safety is, but the
23 operation of the road, that's about traffic issues
24 and stuff, about the road functioning smoothly and
25 not backing up and -- is that what you were talking

1 about, the second end of it?

2 A. Yes. I mean, that -- that -- the --
3 the operation, the functionality of that roadway.
4 In other words, you've got a different safety
5 standard for a interstate system that does not have
6 any access points, then an urban arterial, then a
7 minor arterial, then a neighbor street. So each --
8 no one roadway is treated the same with regards to
9 the reasonable expectation of those drivers.

10 Each functional class of that highway
11 has different safety components that -- that are
12 tied to that, which is -- which I would say most
13 drivers understand those reasonable expectations.
14 They've got a -- you know, driving along an
15 interstate with higher speeds, less conflict points
16 versus driving along a neighborhood street. And
17 then you've got those roads in between those two.

18 Q. But in any of those situations where
19 it's an interstate or it's a major highway or a
20 neighborhood or a -- or a smaller street, in any of
21 those situations, there's two concerns that the
22 Highway Department would -- I'm sorry -- the
23 Department of Transportation would have that would
24 trump the wishes of private property owners. And
25 those two concerns would be, number one, safety,

1 and, number two, the functioning of the highway or
2 roadway in question?

3 A. Yes.

4 Q. Okay.

5 A. That's a fair statement, yes, sir.

6 Q. All right. Let's talk about -- and I
7 think that maybe even Question 1 under yours? Let
8 me get to the page so I don't have to keep flipping
9 here.

10 So the history of the design, that
11 Number 1 --

12 A. Sure.

13 Q. -- why it was decided to -- decided to
14 separate the north- and southbound lanes,

15 barrier-type median, that seems to be your topic
16 rather than Mr. Clark's, right?

17 A. Correct.

3 Q. Okay. So talk to me about this history
9 of the design here.

0 A. Sure. Well, first thing I think you've
1 got to recognize, there's two different projects
2 and they just happen to start in at Farm -- at the
3 intersection of 17A and Farmington.

24 Q. And let me ask you -- let me stop you
25 right there.

1 got to make sure that they're not ending -- you
2 know, multiple lanes going into a section that only
3 had a couple lanes to receive this. They had to do
4 their due diligence to say, okay, I -- I am
5 building a safe intersection through my project.

6 Now me, as a -- me, as the program
7 manager, I had to look at the project that was to
8 the east of Farmington that Arcadis was not
9 responsible for that design, and I had to mirror
10 those two projects together at the intersection of
11 Farmington.

12 Q. Okay.

13 A. So when I looked -- when that -- so
14 when you looked at both of those in its totality,
15 not looking at one project versus just the second
16 project, when you look at those in that totality,
17 that's when we made those decisions. Say, okay,
18 here's what we're planning on the widening project;
19 Arcadis, it doesn't match what's being designed as
20 part of the interchange; we need to go through that
21 design to make sure they marry up, that on the
22 widening project from Farmington out towards
23 Moncks Corner, that was always going to be a flush
24 median. So Arcadis need to, as part of their
25 iteration, need to match that design to the east of

1 Farmington. It had -- certainly had a raised
2 median and a controlled access, not only a raised
3 median, you had controlled access from the
4 interstate proper out to Farmington. From
5 Farmington east you had a -- what we refer to as a
6 flush painted median.

7 Q. Okay. But before that flush painted
8 median was in the plans, the plans included a
9 requirement for a raised median for that whole
10 area, the flush median, which -- which --

11 A. Yes, sir. There -- there was -- there
12 was a --

13 MR. MAYBANK: Object.

14 MR. CRITES: Object to the form.

15 MR. MAYBANK: Which -- which plans are
16 you referring to?

17 MR. SMITH: Any of the plans.

18 BY MR. SMITH:

19 Q. What I'm saying here is when we look at
20 the project originally, the plans, and I mean
21 drawings or the requirements for building, whatever
22 it be, the specs, whatever we want to call them,
23 the original plans for the property on 17A in front
24 of the Pilot Travel Center, those original plans
25 included the requirement for a raised median. And

1 MR. BERLINSKY: Well, you know, I -- I
2 agree wholeheartedly with what you're saying.

3 MR. MAYBANK: Here's -- you know, I
4 think you all are confusing one another.

5 MR. SMITH: Well, what -- what I'm
6 hearing from him is that portions of the
7 interchange project blended into the road widening.
8 Because when doing the inter -- interchange
9 project, they are drawing in this raised median as
10 part of accepting these lanes from the widening
11 project into their interchange improvement project.

12 BY MR. SMITH:

13 Q. That's what I heard you say.

14 A. Yes. When -- when -- in my job as the
15 program manager for the project, we had to take a
16 set of design plans that were done by a consultant,
17 a set of design plans for the widening -- it
18 doesn't really matter who did them -- and marry
19 those two plans together.

20 Q. Okay.

21 A. And as part of that marrying and coming
22 up with that final design, it was -- the final
23 design was a flush painted median and not a raised
24 median.

25 Q. Okay.

1 call that construction joint, whatever you want to
2 call it, that terminus of one and the -- and the
3 starting point of the other one and marrying those
4 two together, that's when the correction was made
5 to show that -- that flush painted median.

6 Q. All right. Was that around the time of
7 this letter, marrying those two together?

8 A. Yes.

9 Q. Okay.

10 A. Yes, sir.

11 Q. Okay.

12 VIDEO TECHNICIAN: Fifteen minutes,
13 counselor.

14 MR. SMITH: Okay.

15 BY MR. SMITH:

16 Q. All right. Whose decision was it to
17 change the plans from what was in the interchange
18 project from a raised median to a flush median in
19 the final plans? Whose decision was that?

20 A. That was my decision as the program
21 manager.

22 Q. Okay. Now, what discussions did you
23 have with anyone associated with the property
24 owners or the people developing what is now the
25 Pilot Travel Center with regards to that raised

1 Q. Okay. Now, with regards to the
2 original, we saw some mention of a unmountable
3 median. Does unmountable mean uncrossable?

4 A. Yes, un -- unmountable meaning
5 uncross -- uncrossable. And I'm not sure that --
6 yes, that is what that word means.

7 Q. Okay. And is that -- is a raised
8 median also a nontraversable median?

9 A. A -- a -- a raised median serves two
10 purposes. A raised median serves for
11 channelization and for access control. It's
12 transversable from the standpoint that, yes, we
13 want that median to be transversable for emergency
14 services. So I don't want to contradict myself,
15 but yes. The -- the intent of that is, yes, for
16 everyday morning traffic -- well, not
17 transversable, is it unmountable? That's why I say
18 the term unmountable is probably -- this was done
19 by -- I don't even know whose signature this is. I
20 don't believe this is a DOT -- I don't believe
21 that's a DOT person, but I -- I think that term
22 probably is inaccurate. Certain -- but I don't
23 want to mislead you. A -- a -- a raised median is
24 not intended to be transversed by the motoring
25 public.

1 Q. Yeah.

2 A. Does it matter how I mark that?

3 Q. Just put a straight line. Okay.

4 And so --

5 MR. MAYBANK: Hold on. Write above
6 that, two-way left turn lane. And then put the
7 arrow back towards where it's going. There you go.
8 Perfect. Thank you.

9 BY MR. SMITH:

10 Q. All right. So talk to me about the
11 function of the two-way left turn lane. So if a --
12 if a driver is coming from Moncks Corner, right,
13 and they want to go turn into one of the driveways
14 at the Pilot Travel Center, what's the function of
15 this turn lane in that situation? How early are
16 they -- is it designed so that they're supposed to
17 get into it? How much are they supposed to get
18 into it? Are they supposed to get into it at all?
19 Tell me about the -- the functioning of that per
20 the plans or per its design.

21 A. Sure. So a -- so a two-way left turn
22 lane is that flush median. And what that allows
23 that -- the -- the purpose of that would allow a
24 person turning left --

25 Q. Um-hum. Coming from Moncks Corner?

1 any similar studies ever done between 2000 and
2 2013?

3 A. Not that I'm aware of.

4 Q. And the -- the project here was
5 finished at around 2003, was it not? I think that
6 was the final inspection date?

7 A. The widening project was completed
8 June 17, 2002. And the interchange project was
9 completed November 1st, 2003.

10 Q. Okay. So basically ten years after
11 those changes were made was the first accident
12 study that the Department of Transportation
13 undertook?

14 A. It was the first study that I'm aware
15 of.

16 Q. Okay.

17 MR. MAYBANK: And -- and just for the
18 record, the continued objection to any of the
19 traffic safety studies and admissibility thereof.

20 MR. SMITH: Okay.

21 MR. MAYBANK: But ask him whatever you
22 want.

23 BY MR. SMITH:

24 Q. Now, what -- what did -- what did this
25 tell you?

1 LELAND D. COLVIN, JR. - EX. BY MR. CRITES
2 was a business there, I'll represent to you it was
3 a Speedway before it became a -- a Pilot Travel
4 Center. But there was a business there with
5 driveways that provided ingress and egress from 17A
6 into that business; is that correct?

7 A. Yes, sir.

8 Q. Okay. And at that time there was not a
9 raised median preventing left-hand turns into that
10 business, correct?

11 A. Correct.

12 Q. There's never been a raised median on
13 that stretch of Highway 17A in front of what is now
14 the Pilot Travel Center, correct?

15 A. Correct. There -- there was -- I'd
16 have to see the limits. There -- there is a raised
17 median that was installed in conjunction with the
18 new location of roadway to the intersection just to
19 the east. I -- I don't think the limits of that
20 got in front of the -- the Pilot station.

21 Q. Okay.

22 A. I think that's correct.

23 Q. All right. So any discussion earlier
24 about a -- a raised median or a nontransversable
25 median being removed, it was never removed from the
roadway itself, correct?

LELAND D. COLVIN, JR. - EX. BY MR. CRITES
A. Yes, sir.

Q. And were you somebody as the project --
I believe you said you were the project manager
earlier?

A. Correct.

Q. You were actually on-site for the
widening project?

A. During that time, my office was in
Columbia; but, yes, I certainly made site visits,
absolutely.

Q. Okay. And during that widening
project, do you recall there actually being another
convenience store there at any point in time that
was a Speedway?

A. I -- I can't recall the details of
that.

Q. Okay. But the 17 widening project,
that stretched from essentially in front of this --
the Pilot Travel Center, what is now the Pilot
Travel Center, towards Moncks Corner, correct?

A. Correct.

Q. And the design professional for that
project was the South Carolina Department of
Transportation, correct?

A. Correct.

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

1 Q. You testified earlier that there was a
2 contemporaneous ongoing project which was the I-26
3 interchange with 17A, correct?

4 A. Correct.

5 Q. And that was a project that essentially
6 started at Farmington Road and went towards
7 Summerville, correct?

8 A. Yes, sir. Correct.

9 Q. Okay. So it just so happened that it
10 was in the same general vicinity but two different
11 projects, correct?

12 A. Correct.

13 Q. And the design professional for that
14 project was the Arcadis engineering firm, I
15 believe, correct?

16 A. Correct.

17 Q. Okay. Mr. Smith talked a lot about the
18 questions about removing the median, and I know we
19 reserved or preserved all objections until a later
20 date. But some of the -- some of the questions
21 were objected to, some of them weren't. So I just
22 want to go through just to clarify a couple things.

23 The design plans for the 17A widening
24 project which was in front of what is now the Pilot
25 Travel Center did not nor did it ever include a

1 LELAND D. COLVIN, JR. - EX. BY MR. CRITES
2 raised median or a nontraversable median; is that
3 correct?

4 A. That's correct.

5 Q. And I believe your testimony earlier
6 was that there was never an expectation during the
7 17A widening project in front of the Pilot Travel
8 Center to have a raised or a nontransversible
9 median because to do so would have been not
10 compliant with the South Carolina Department of
11 Transportation Highway Design Manual; is that
12 correct?

13 A. That's correct.

14 Q. So to have put one in in front of the
15 Pilot would have been in contravention to your own
16 manual, correct?

17 A. Correct.

18 Q. And I believe you referred to that
19 manual as the bible for design projects in the
20 state of South Carolina; is that correct?

21 A. Yes, sir.

22 Q. Okay. Now, somebody, a design
23 professional with Arcadis with the other project
24 that didn't have anything to do with -- with the
25 17A widening project, but the interchange project
with I-26, drew in some sort of raised median or

1 LELAND D. COLVIN, JR. - EX. BY MR. CRITES
2 was a business there, I'll represent to you it was
3 a Speedway before it became a -- a Pilot Travel
4 Center. But there was a business there with
5 driveways that provided ingress and egress from 17A
6 into that business; is that correct?

7 A. Yes, sir.

8 Q. Okay. And at that time there was not a
9 raised median preventing left-hand turns into that
10 business, correct?

11 A. Correct.

12 Q. There's never been a raised median on
13 that stretch of Highway 17A in front of what is now
14 the Pilot Travel Center, correct?

15 A. Correct. There -- there was -- I'd
16 have to see the limits. There -- there is a raised
17 median that was installed in conjunction with the
18 new location of roadway to the intersection just to
19 the east. I -- I don't think the limits of that
20 got in front of the -- the Pilot station.

21 Q. Okay.

22 A. I think that's correct.

23 Q. All right. So any discussion earlier
24 about a -- a raised median or a nontransversable
25 median being removed, it was never removed from the
roadway itself, correct?

A W R

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
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LELAND D. COLVIN, JR. - EX. BY MR. CRITES
A. Correct.

Q. Nor was it ever removed from the design plans for the 17A widening project right in front of the Pilot Travel Center, correct?

A. Correct.

Q. It was -- I believe you referred to it earlier as a placeholder?

A. Correct.

Q. And it was a placeholder that was put in by another design professional who was in charge of another project that was not the 17A widening project right in front of the Pilot Travel Center, correct?

A. Correct.

Q. Mr. Smith spent a lot of time asking you questions about Exhibit 5, which is the letter dated August 28, 2000, to Mr. Greiwe from Tommy Smoak. And as I understand it, Mr. Smoak is no longer employed with the Department of Transportation, correct?

A. That's correct.

Q. Did he retire?

A. He did retire.

Q. Do you know how long ago he retired?

A. I don't have the specific dates.

1 Q. Okay. So your testimony earlier was
2 that the design plans as per the South Carolina
3 Department of Transportation for the 17A widening
4 project, I believe, were dated in 1998. Was it
5 December of '98; is that correct?

6 A. Yes, that's correct.

7 Q. And then the interchange plans that
8 were provided by the design professional Arcadis
9 were dated July of 1999; is that correct?

10 A. The -- the right-of-way plans set for
11 that, correct.

12 Q. Okay. All right. And the letter that
13 we're talking about here is dated August of 2000,
14 correct?

15 A. Correct.

16 Q. And your testimony earlier was that
17 there was never an expectation that -- that there
18 was going to be a raised median that was going to
19 be put in in front of that Pilot Travel Center as
20 part of this widening project; is that correct?

21 A. That's correct.

22 Q. And it was always going to be a flush
23 paved median, correct?

24 A. Correct.

25 Q. You testified a little while ago that

LELAND D. COLVIN, JR. - EX. BY MR. BESLEY
A. Correct.

Q. Okay. But again, and I think it's
clear, at least to me at this point in time, that
with respect to any raised median that was to be in
front of the Pilot during the widening project on
Highway 17A, that was never in the SCDOT design
plans, correct?

A. Correct.

MR. CRITES: Thank you, Mr. Colvin. I
don't have any other questions for you.

THE WITNESS: Yes, sir.

EXAMINATION

BY MR. BESLEY:

Q. Mr. Colvin, I know it's been a long
day. It's now, what, 6:30. We've been going since
10:00 this morning, but I have a few more questions
for you, hopefully pretty quick.

The SCDOT has the -- has to approve
anything that a landowner or business that abuts
your -- one of your roads wants to do with their
business that would affect your road. Is that not
correct?

MR. MAYBANK: Object to the form.

THE WITNESS: We have to approve
encroachment on the DOT right-of-way.

EXHIBIT C

1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF BERKELEY
4

5 CYNTHIA WRIGHT AND RICHARD WRIGHT,
6 Plaintiffs,

7 vs.

CASE NO. 2016-CP-08-334

8 SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A
9 UNLIMITED, INC., and PILOT TRAVEL CENTERS, LLC,
10 SPEEDWAY, LLC, ASHLEY LAND SURVEYING, INC., F/K/A
11 ASHLEY ENGINEERING & SURVEYING, INC., and ASHLEY
12 ENGINEERING & CONSULTING, INC., and MUNLAKE
13 CONTRACTORS, INC.

14 Defendants.

15 VIDEOTAPE

16 DEPOSITION OF: ROBERT T. CLARK

17 DATE: March 13, 2017

18 TIME: 7:16 PM

19 LOCATION: SCDOT District 6
20 6355 Fain Boulevard
21 North Charleston, SC

22 TAKEN BY: Counsel for the Plaintiffs

23 REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

24 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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14
1 don't really have to go through a formal process to

2 draw a line, no.

3 Q. Okay. But as far as when the
4 Department of Transportation was considering the
5 application for encroachment permit, Exhibit
6 Number 2, no one at the Department of
7 Transportation specifically defined where the
8 functional area of the intersection was. True?

9 A. No, you don't have to specifically
10 define it. You -- you look, review operations at a
11 particular intersection. And you determine what
12 are the backups, how much amount of -- of laneage
13 is needed for storage, what are the turning
14 maneuvers, how many left turns, how many right
15 turns that makes the traffic. All those things fit
16 into it.

17 But no, you don't go draw a line. But
18 you have that information when you use your
19 engineering judgment reviewing the encroachment
20 permit.

21 Q. Okay. But my question was very
22 specific.

23 A. And I said no.

24 Q. Okay. I just -- let me give you
25 another opportunity to -- to do that because I --

1 of the intersection, meaning the upstream
2 functional area, would be somewhere around 425 feet
3 from the intersection.

4 A. Okay.

5 Q. Is that true?

6 A. If that's what it says, that's what
7 that report and that researcher said.

8 Q. And when the Department of
9 Transportation is considering Exhibit Number 2, the
10 application for encroachment permit, there isn't a
11 document anywhere that indicates the reaction time,
12 the queue length, any of these things used to
13 determine the functional area of the intersection.

14 There's no document anywhere that defines what any
15 of those factors were. True?

16 A. Well, we -- we use information in our
17 ARMS manual, we use information relating to the
18 SCDOT, we use design criteria. So there's a lot of
19 inputs and a lot of different sources or resources
20 you can go to. For instance, depending on speed or
21 the signal controlled intersection, you've got to
22 have a certain amount of sight distance to the
23 actual signal ahead in order to see it, process it,
24 and react to it.

25 So, you know, again it -- it -- each

1 intersection is reviewed, the information that's
2 being asked in an encroachment permit is reviewed,
3 and then we use a lot of resources and then
4 engine -- excuse me -- engineering judgment to say,
5 okay, this looks like this is in substantial
6 conformity with -- with what our rules are.

7 Q. But there's no document that exists to
8 show that the DOT determined what was the reaction
9 time, the queue length, any of these things.
10 There's not a document anywhere that shows --

11 A. No.

12 Q. -- those things were defined?

13 A. No, sir. There doesn't need to be.

14 Q. And when you said you used the ARMS
15 manual in terms of -- of considering the
16 application which listed these driveways, the DOT
17 never made a determination under Page 20, or this
18 Table 3-3, and determined whether or not this was a
19 low, medium -- a low, medium, or high or major
20 volume driveway?

21 A. Well, probably the engineer, in
22 reviewing it, would have used the -- this -- the --
23 the document in place at the time and probably did
24 look at that or used his knowledge of a similar
25 facility to determine what those volumes may be.

1 A. -- I don't recall that sort of language
2 in it.

3 Q. Okay.

4 A. But generally when you're reviewing it,
5 you -- again, you know the intersection, you know
6 what the traffic is, and you make a determination
7 as to where driveways should be --

8 Q. Okay.

9 A. -- using the general guidance in our
10 guidelines.

11 Q. And let me ask you this: When
12 Exhibit 2 was considered, were these distances here
13 between driveways, were those considered?

14 A. Distances in the manual in -- in place
15 at the time were probably considered. But again,
16 these are suggestions. And you have to look at the
17 site that you've got and what the -- what the
18 traffic is doing at the site, how it's circulating
19 on the site, and bring all those factors together
20 to make that determination.

21 Q. Is there any document that reflects
22 that thought process?

23 A. Probably not anymore, but there
24 probably was at the time.

25 Q. And what would that be called?

1 reviewing a permit.

2 Q. But --

3 A. Without question.

4 Q. Okay. But -- but in this specific
5 case, there's no --

6 A. I can't lead you to written
7 documentation, but I can testify that we always use
8 the ARMS manual as a resource in reviewing
9 encroachment applications.

10 Q. Okay. Is it usual that the -- the
11 standards in the ARMS manual, is it usual that
12 they're just flat-out disregarded?

13 A. I won't say that. I won't say they're
14 flat-out disregarded. I will say that they're not
15 always in exact compliance with every written word
16 in there. If we lived in the midwest or lived in
17 Phoenix where everything's laid out in a grid and,
18 as cities grow, they're always growing in a grid
19 and every block's the same, and as you grow out,
20 you have the opportunity to have a clean slate, you
21 can do that.

22 When you have properties that have been
23 cut up for 3 or 400 years and you've got
24 redevelopment going on on those properties, you
25 don't have a clean slate, but you're trying to do

1 the best you can to create an efficient, effective, 35
2 and safe interface with the road system.

3 Q. Does the DOT expect corporations
4 submitting encroachment applications for
5 encroachment permits, does the DOT expect those
6 private corporations to conform to the industry
7 safety standards?

8 A. We -- we ask a -- a corporation would
9 have a professional engineer doing their site
10 plans. And as an engineer, according to their
11 ethics, they would do that.

12 Q. Okay. Because as Mr. Colvin was
13 talking about, you know, you all don't draw up
14 these plans. You look at whether or not to approve
15 them or not, right?

16 A. That's correct.

17 Q. And you depend on the corporation to
18 consider the safety standards when they're drawing
19 up the plans they're asking you to approve?

20 A. We --

21 MR. BESLEY: Object to the form of the
22 question.

23 THE WITNESS: We depend on their
24 professional engineer to.

25 BY MR. SMITH:

EXHIBIT D

Disclaimer

Protection of Data from Discovery & Admission into Evidence

23 U.S.C. 148(h)(4) states "Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for any purpose relating to this section [HSIP], shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location identified or addressed in the reports, surveys, schedules, lists, or other data."

23 U.S.C. 409 states "Notwithstanding any other provision of law, reports, surveys, schedules, lists, or data compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, hazardous roadway conditions, or railway-highway crossings, pursuant to sections 130, 144, and 148 of this title or for the purpose of developing any highway safety construction improvement project which may be implemented utilizing Federal-aid highway funds shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data."