

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.

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., ...

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Cynthia Wright and Richard Wright,
Plaintiffs,

Civil Action No. 2016-CP-08-334

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.

Speedway LLC's Motion for
Summary Judgment

2017 MAY -2 AM 11:33
CLERK OF COURT
COUNTY OF BERKELEY, SC

TO: KEVIN B. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

The Defendant Speedway LLC (hereinafter Speedway), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, moves for summary judgment in its favor in this action. In support of this motion, Speedway shows the following to the Court:

1. No genuine issue of material fact exists and Speedway is entitled to judgment as a matter of law because Speedway owed no duty to Plaintiffs to prevent the subject auto accident from occurring on a public highway owned and maintained by the South Carolina Department of Transportation. The Plaintiffs have failed to – and cannot as a matter of law – present evidence sufficient to raise a genuine issue of material fact that Speedway owed them any duty; or breached any duty owed to them; or that any alleged negligent act or omission on the part of Speedway proximately caused Plaintiffs' injuries.

2. As a matter of law, the South Carolina Department of Transportation (hereinafter SCDOT) had the statutory sole, exclusive, and final authority over the subject road, including its design and construction, and SCDOT had a non-delegable duty in fulfilling its statutory obligations which cannot, as a matter of law, be delegated to Speedway.

3. In addition, there is no genuine issue of material fact that Speedway was not the proximate cause of the Plaintiffs' injuries. Rather, the drunk driver in this action was the sole proximate cause of the subject accident and that, as a matter of law, Speedway could not have been the proximate cause because the alleged duty was neither owed to Plaintiffs nor breached by Speedway.

4. As a matter of law, Speedway's motion for summary judgment should be granted because at least one element of plaintiff's claim cannot withstand the summary judgment standard. In this case, Speedway posits that there is no genuine issue of material fact that Speedway owed any legal duty to the Plaintiffs; that Speedway could not therefore have breached any duty; and that, in any event, the drunk driver was the sole proximate cause and Speedway could not have been a proximate cause for Plaintiffs' damages because there was no duty or breach.

5. At a hearing on April 10, 2017, the Honorable Roger M. Young, Sr. heard Defendant Pilot Travel Centers, LLC's (hereinafter Pilot) motion for summary judgment on similar grounds in that Plaintiffs 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. The Court essentially ruled that, as a matter of law: (1) SCDOT owns, controls and maintains the highway in question, and it has the sole authority to determine what type of median to install, if any; SCDOT solely determines what type of access an abutting property owner should be granted to an SCDOT

owned, controlled and maintain highway; and SCDOT, as the design professional, has the sole authority to determine the applicable and appropriate highway design plans and the implementation with respect to the same; (2) any suggested or hypothetical negotiation between SCDOT and any other third party (specifically, Pilot) with respect to medians on or access to the highway would not create a duty on the part of the third party (even if such alleged negotiations did exist) given SCDOT's exclusive ownership, control, maintenance, and authority over the highway, the median, and the placement and design of driveways with access to a highway; and (3) no affirmative legal duty exists in the absence of a statute, contract, relationship, status, property interest, or some other special circumstance, and that Plaintiffs could not establish any source of an affirmative duty that would have been owed to these Plaintiffs on the part of a third party (specifically, Pilot).

In sum, the Court held that Plaintiffs 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.

The Court's merits ruling against the Plaintiffs in this same matter confirms the absence of a legal duty owed by a third party such as Speedway; the absence of any alleged breach of such duty by a third party such as Speedway; and the absence of a third party such as Speedway from being the proximate cause.

Given the Court's ruling on the merits in these regards, Plaintiffs should be precluded from re-litigating them as to this Defendant who is similarly situated to Pilot. Speedway is a third party who lacked any authority over the design and construction of the highway or any ownership of the highway. To the extent the Court's summary judgment ruling goes unappealed, such decision becomes the law of this case. Regardless, Speedway's motion for

summary judgment should be granted because, similar to what the Court has already recognized in this case, there was no duty owed as a matter of law, there can be no breach of a duty (that wasn't owed), and Speedway (like Pilot) could not have been a proximate cause to Plaintiffs' injuries.

5. Speedway's motion is supported by the pleadings, the discovery, the deposition testimony, the Court's prior ruling on these same issues, any affidavits that may be submitted, and South Carolina law.

WHEREFORE, Speedway moves that the Court enter summary judgment in favor of Speedway and for such other and further relief in favor of Speedway as the Court deems just and appropriate.

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April , 2017
Charleston, South Carolina

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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

Civil Action No. 2016-CP-08-334

**Speedway LLC's Memorandum in
Support of its Motion for
Summary Judgment**

INTRODUCTION AND SUMMARY

This case arises out of an October 6, 2012 motor vehicle accident which occurred when Plaintiffs were traveling North on Highway U.S. 17A (hereinafter "the highway") in Berkeley County. Plaintiff Richard Wright was driving the motorcycle and Plaintiff Cynthia Wright was his passenger. As they were traveling northbound on the highway, a grossly intoxicated driver,¹ Daniel Sena (hereinafter "Sena"), was traveling southbound on the highway in a pick-up truck. Sena's truck then proceeded into the Highway 17A painted median, and he suddenly turned left into the side of Plaintiffs' motorcycle thereby injuring the Plaintiffs.

¹ Police determined Sena's blood alcohol level was .12 and he tested positive for cocaine in his system shortly following the accident. Sena pled guilty to two charges of Felony Driving Under the Influence Involving Great Bodily Injury, one charge of Hit and Run Involving Accident with Great Bodily Injury, and one charge of Possession of Cocaine, 1st Offense. He was sentenced to 10 years and a \$10,000.00 fine, suspended to 5 years and a \$5,000.00 fine, and 5 years' probation on the DUI and Hit and Run charges, all to run concurrent. He was sentenced to 5 months and given credit for time served on the Possession charge. See documents on file with Berkeley County Clerk of Court bearing indictment numbers 2013-GS-08-00352, 2013-GS-08-00353, 2013-GS-08-00338, and 2013-GS-08-00572.

The accident occurred on the stretch of highway immediately in front of the Pilot Travel Center located at 1521 North Main Street in Summerville, South Carolina (hereinafter "Pilot"), and Sena testified he was turning left in to the subject Pilot to go to the McDonald's attached thereto. But for the fact that Sena was driving under the influence at the time of the accident, the left turn that Sena attempted from the flush painted median was a legal left turn. (Colvin Dep. at pp. 102:21-24, Ex. A.). The Plaintiffs now seek to hold these Defendants responsible. They have alleged that the accident would not have occurred but for the drunk driver's ability to make a left hand turn in to the Pilot and that the location and design of Pilot's entrances somehow caused the motor vehicle accident.

The Plaintiffs allege that Speedway's role in this arises out of Speedway's alleged role in the "construction, planning, and/or rebuilding of a gas station/ convenience store" now known as the subject Pilot. (Am. Compl. at ¶ 7.) The Plaintiffs allege that "at the times relevant to the allegations contained in this Complaint, [the subject Pilot] 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." (Am. Compl. at ¶ 8.) Specifically, the Plaintiffs allege that in September of 2000, Speedway representatives negotiated with representatives of the South Carolina Department of Transportation (SCDOT) to remove the unmountable median barrier that existed at the subject location to increase traffic (and therefore sales and profits) to the subject Pilot. (Am. Compl. at ¶¶ 36-37, 40.) The Plaintiffs allege that "these negotiations took place and the barrier removed even though Speedway knew, or should have known, that removing barriers would result in vehicles making illegal turns across several lanes of oncoming traffic" in to the subject Pilot. (Am. Compl. at ¶ 38.) Regardless of these unsubstantiated allegations and alleged negotiations, and as discussed below, Leland Colvin, Jr., one of the

30(b)(6) designees for the South Carolina Department of Transportation, testified that the design plans for the Highway 17A widening project were date stamped in 1998, with the decision therefore already having been made before 2000 that there would not be a raised or unmountable median in front of the Pilot. (Colvin Dep. at pp. 260:1-262:5, Ex. A.). Colvin was the program engineer for the Highway 17A widening project on behalf of the SCDOT.

With respect to their negligence claim, the Plaintiffs contend that "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." (Am. Compl. at ¶ 52.) They contend that:

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.*

(Am. Compl. at ¶ 53) (emphasis added).

Speedway contends that there is no genuine issue of material fact that it has any liability associated with the same. As set forth below, Speedway sold the subject property to Pilot more than 11 years before the accident in question and more than 13 years before this lawsuit was filed. Notwithstanding the Plaintiffs' allegations set forth in the Amended Complaint, the proof demonstrates that Speedway had no authority or role in the decision-making process with respect to either the driveway design and construction or the median design and construction. As set forth below, SCDOT admitted it made the sole decision with respect to the median in front of the Pilot and that it had the final authority over Pilot's encroachment permit application which authorized placement and construction of driveways into the Pilot. Moreover, there was never an unmountable barrier that was *removed* because there was never an unmountable barrier to begin with – neither on the road nor in the SCDOT design plans for the 17A widening project in front of the Pilot Travel Center. (Colvin Dep. at pp. 256:7-257:14, Ex. A.)²

Speedway filed its motion for summary judgment on May 2, 2017.

It should be noted that on April 10, 2017, the Honorable Roger M. Young, Sr. heard Defendant Pilot's Motion for Summary Judgment and on May 4, 2017 issued an Order granting that Motion. A copy of that signed Order is attached hereto as Exhibit B. Speedway respectfully requests that the Court take judicial notice of the facts as set forth in the Order.³ As set forth below, Speedway is similarly situated to Pilot in its case for summary judgment, yet Speedway arguably has a stronger case for summary judgment because it is even more attenuated from the SCDOT control of the road and decision-making process than Pilot.

² Leland Colvin, Jr. served as one of SCDOT's Rule 30(b)(6) designees.

³ *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984) ("A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records. 31 C.J.S., Evidence, Section 50(1), p. 1018-1021. It is not error for a judge to take judicial notice of what was stated in a former opinion in a prior action of the same case.").

STATEMENT OF UNDISPUTED FACTS

SCDOT's Exclusive Decision-Making Regarding Highway Design and Construction

In the 30(b)(6) deposition of SCDOT, it was acknowledged that no one other than the SCDOT has the statutory duty to move traffic safely among the public highways of South Carolina. (Colvin Dep. at pp. 267:11-14, Ex. A.) Safety is their primary concern. (Colvin Dep. at pp. 48, 267, Ex. A.) SCDOT has the final and ultimate decision on any road of theirs and also over the encroachment of driveways leading to that road based on SCDOT rules and regulations which take into account national standards. (Colvin Dep. at pp. 274, Ex. A.) Property owners can't design and locate entrances and exits to South Carolina highways without SCDOT approval, authority, and confirmation that such designs conform with SCDOT rules and standards. (Colvin Dep. at pp. 274:25-276:4, Ex. A.)

Speedway's Attenuated Involvement with the Subject Property and Lack of Involvement with the Encroachment Process

The subject accident occurred more than a decade after Speedway sold the property to Pilot, and Pilot admits it was owner of the store in the relevant time frame. (See Mulligan Aff., Ex. C.) As set forth in the Affidavit of Bill Mulligan, Director of Construction for Pilot, "Pilot acquired the existing has station and real property located at 1521 North Main Street, Summerville, South Carolina 29483" "on or about September 1, 2001." (Mulligan Aff. at ¶ 5, attached hereto as Ex. C.)

Speedway had no involvement with either the encroachment permitting or driveway construction of the subject Pilot at issue in this case. In May of 2002, almost a year after Speedway's transfer of title to Pilot, Pilot submitted its application for an encroachment permit from SCDOT. (Mulligan Aff. at ¶ 8, Ex. C.) In its application, Pilot sought "approval of the

location and design of its proposed driveways.” (Mulligan Aff. at ¶ 8, Ex. C.)⁴ SCDOT ultimately approved Pilot’s encroachment permit application and issued Pilot a permit to construct the driveways to the Pilot Travel Center. (Mulligan Aff. at ¶ 8, Ex. C.) The Pilot construction began in or around August of 2002.⁵ (Mulligan Aff. at ¶ 9, Ex. C.) Again, this was a year *after* Speedway sold the property and was no longer involved. (See Answer of Speedway to Pls.’s Am. Compl., ¶ 7.)

At the relevant times, SCDOT always planned for a flush paved median on the section of highway in front of the Pilot, and SCDOT never planned, constructed, or removed a solid, raised, unmountable median at that location.

Plaintiffs’ case against Speedway hinges on the existence and subsequent removal of a solid raised unmountable median in the section of the highway outside of the subject Pilot. However, there is now no dispute that the SCDOT was the design professional for the 17A widening project, that there was never an expectation during the widening project in front of the Pilot to have a solid, raised, unmountable median, at that was never planned, designed, built, or removed by SCDOT in that location. (Colvin Dep. at pp. 252:18-254:20; p. 256-257, Ex. A.) The SCDOT plan was always for the median to be a flush painted median. (Colvin Dep. at pp.

⁴ 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. (Colvin Dep. at p. 275:10-15, Ex. A.) SCDOT also considers highway safety and how the access to private property affects traffic and the general operation of the highway system. (Colvin Dep. at pp. 48-50, Ex. A.) 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. (Colvin Dep. at pp. 267-69 & p. 277, Ex. A.)

⁵ Around the same time as Pilot sought the encroachment permit and began its construction, SCDOT was also in the process of widening the section of US 17A in front of the subject Pilot. In addition, SCDOT was reconstructing the Interstate 26 interchange intersection adjacent to the existing gas station. The widening project was completed in June of 2002, and the Interstate 26 interchange intersection project was completed in November of 2003. (Colvin Dep. at pp. 51-52 & 216:7-9, Ex. A.) SCDOT was the design professional and designed the plans for the widening project but hired an outside firm to design the Interstate 26 interchange intersection project plans. (Colvin Dep. at pp. 252-253, Ex. A.)

260, Ex. A.) This decision was made in 1998 by Leland Colvin, Jr., the Project Manager for the Widening Project. (Colvin Dep. at pp. 252:2-5, 255, 283:20-285:2, Ex. A.) Colvin said that decision was made in conformance with SCDOT's Highway Design Manual, which SCDOT considers "the Bible" for designing highways in the state, and that the installation of a raised median as a part of the widening project would have been in contravention of the standards set forth in the SCDOT Highway Design Manual. (Colvin Dep. at pp. 254, Ex. A.)

Any confusion with respect to plans that showed a raised median in front of the Pilot were plans from another design professional on an unrelated, but contemporaneous project. (See n. 5, *supra*.) As Colvin testified: (1) the median that the other design professional drew in on the Interstate 26 plans was simply a placeholder as the SCDOT never intended for a raised median to be present in front of the Pilot; (2) it was always going to be a flush median; and (3) today it is still a flush median. Colvin testified that, as the SCDOT program manager for both projects, he ultimately married the two projects and corrected the unrelated Interstate 26 design plans to accurately reflect what was designed in the applicable 17A widening design plans and what was called for in the South Carolina Highway Design Manual. Colvin also testified that there was no negotiation of anything by any party; rather, it was simply a combination and clarification of the plans to reflect what had already been decided. (Colvin Dep. at pp. 83:4 – 84:24; 260:1 – 262:1, Ex. A.)

Colvin further testified that this decision was a pure engineering decision in compliance with the then applicable South Carolina Highway Design Manual and that the decision was based on purpose and need. (Colvin Dep. at pp. 270:10 – 271:16, Ex. A.) As previously stated, the SCDOT highway design manual that was used for the 17A widening project in effect at the time of design did not require a raised median in front of the Pilot. Of import in this regard is that this

design manual was approved by the Federal Highway Administration as part of this 17A widening project because 17A is a federally eligible route and this project received federal funds to complete this project. (Colvin Dep. at pp. 271:17 – 272:8, Ex. A.)

STANDARD ON SUMMARY JUDGMENT

“The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438–39 (2003) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). Summary judgment is appropriate where there is no *genuine* issue of any material fact and the moving party is entitled to judgment as a matter of law. *Id.* (citing Rule 56(c), S.C. R. Civ. P.) (emphasis added).

The South Carolina Supreme Court has established that “[t]he plain language of Rule 56(c) mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357–58, 650 S.E.2d 68, 71 (2007) (quoting *Baughman v. Amer. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)). The Court must therefore determine whether the plaintiff has established a *prima facie* case as to each element of a claim when ruling on a summary judgment motion. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357–58, 650 S.E.2d 68, 71 (2007).

Where, as here, the Defendant moves for summary judgment, “a court cannot properly deny the motion after only finding that a genuine issue of material fact exists as to one element of the plaintiff's claim” and, instead, “the court must determine that a genuine issue of material fact exists for each essential element of the plaintiff's claim.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). In other words, the Court should grant a

defendant's Motion where, as here, there is no genuine issue of material fact as to an essential element of Plaintiff's claim (i.e., Speedway's alleged breach of a duty). *See also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986).

LEGAL ARGUMENTS

This clear case does not require the services of a fact finder. As a matter of law, where there is no duty, then the Defendant is entitled to judgment as a matter of law.

In a negligence action, a plaintiff must show that (1) the defendant owes a duty of care to the plaintiff, (2) the defendant breached the duty by a negligent act or omission, (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) the plaintiff suffered an injury or damages. 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.

Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 135–36, 638 S.E.2d 650, 656 (2006) (internal citations omitted).

As discussed more completely below, Speedway – as a matter of law – could neither owe nor assume a duty in this case. Nor could Speedway have been the proximate cause given that, as a matter of law, Speedway lacked a duty which exclusively belongs to SCDOT, and given that, the supposed raised median that Speedway allegedly negotiated the removal of never existed to begin with. As set forth herein, the record shows that Plaintiffs' claims against Speedway (namely, that it allegedly negotiated with SCDOT the removal of an alleged raised unmountable median in 2000) are impossible because it is undisputed that (1) the plans for a flush painted median on the subject stretch of highway were finalized by SCDOT and date-stamped 1998; (2) SCDOT neither planned a raised median nor built a raised median at that time; and (3) even if it had, it cannot be disputed that SCDOT as a matter of law is the only decision-maker for state highway design, including median selection and placement. Accordingly, there can be no *genuine* issue of material fact precluding summary judgment in favor of Speedway.

I. Speedway's Motion for Summary Judgment should be granted because, as a matter of law, the South Carolina Department of Transportation has the sole, exclusive, and final authority over the subject road, including its design and construction. The South Carolina Department of Transportation has a non-delegable duty which could not, as a matter of law, have been assigned to Speedway. There is no evidence or authority which supports Plaintiffs' allegation that Speedway owed or breached a duty owed to these Plaintiffs.

The South Carolina Department of Transportation (hereinafter "SCDOT") had the sole, exclusive, and final authority over the subject road, including its design and construction.

The South Carolina General Assembly has made clear that the South Carolina Department of Transportation "shall . . . (1) lay out, build, and maintain public highways and bridges, **including the exclusive authority to establish design criteria, construction specifications, and standards required to construct and maintain highways and bridges . . .**"

S.C. Code Ann. § 57-3-110 (emphasis added). *See also County of Charleston, South Carolina v. South Carolina Dept. of Transp.*, 2015 WL 9942667 (S.C.Com.Pl.), 2 (recognizing SCDOT's exclusive authority over design criteria, construction specifications and standards required to construct and maintain highways and bridges); *Brashier v. S. Carolina Dep't of Transp.*, 327 S.C. 179, 192, 490 S.E.2d 8, 15 (1997) overruled on other grounds by *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000) ("To accomplish its functions and purposes of 'the systematic planning, construction, maintenance, and operation of the state highway system ... consistent with the needs and desires of the public, SCDOT has the following relevant powers. Generally, it has the power to 'lay out, build, and maintain public highways and bridges.' It may 'enter into such contracts as may be necessary for the proper discharge of its functions and duties,' and 'do all other things required or provided by law.'").⁶

⁶ With respect to the driveway design and placement and implementation of access to and from a highway, SCDOT similarly has the ultimate decision-making authority and is the final arbiter when it comes to encroachment permits. SCDOT reviews the permittees' design plans to ensure compliance with SCDOT regulations and standards concerning the design and location of

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* 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); *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). As noted by Judge Young, “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.” (Order at p. 7, Ex. B.)

Significantly, the SCDOT’s above-described duties are non-delegable. “The DOT does in fact have a duty to maintain safe roads and to discover and remedy potential hazards . . .” *Saxon v. S.C. Dep’t of Transp.*, No. 2004-UP-435, 2004 WL 6331800, at *5 (S.C. Ct. App. July 23, 2004). *See Simmons v. Tuomey Reg’l Med. Ctr.*, 341 S.C. 32, 43–44, 533 S.E.2d 312, 318 (2000) (recognizing that “a person or entity entrusted with important duties in certain circumstances may not assign those duties to someone else and then expect to walk away unscathed when things go wrong” and notes that a “municipality has a non-delegable duty to provide safe streets even when maintenance is undertaken by the state Highway Department, and remains vicariously liable for injuries caused by defective repairs”). Accordingly, Speedway is entitled to summary judgment because of SCDOT’s non-delegable and exclusive duty to provide

driveways; SCDOT further reviews a permittees’ encroachment application to ensure driveways do not create any safety concerns or impede on efficient traffic operations. The South Carolina Code provides that the 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 § 57-5-1090. As a matter of law, SCDOT is the gatekeeper for public safety with respect to highway access and driveway design. As previously stated, however, Pilot alone dealt with the encroachment permitting process and dealing with SCDOT and Speedway had no involvement with this aspect of Plaintiff’s case.

safe roads. As a matter of law Speedway cannot be held responsible for SCDOT's ultimate decisions with respect to median and driveway/ highway access design and implementation. This is especially the case since the record is clear that, by SCDOT's own admissions, it was the sole decision-maker and there is no evidence that Speedway played any part in the median-decision-making process to begin with.

Finally, it should be noted that Judge Young concluded that as a matter of law Pilot 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. (Order at pp. 5-10, Ex. B.) *See Rayfield v. S. Carolina Dep't of Corr.*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988) ("An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance."). As was the case with Pilot, Plaintiffs have established no legal duty owed to them by Speedway. If the property and store owner and operator at the time of Plaintiffs' accident owed no duty to Plaintiffs, Speedway submits that it is even more attenuated from the circumstances giving rise to Plaintiffs' allegations than Pilot as simply a former property owner. Speedway further incorporates the findings and determinations set forth in Judge Young's Order by reference and further seeks relief in accordance with the Order.

II. Speedway's Motion for Summary Judgment should further be granted because there is no genuine issue of material fact that Speedway did not proximately cause the Plaintiffs' injury. Because Speedway did not breach a duty that it did not owe, it cannot as a matter of law be the proximate cause. Rather, the drunk driver was the sole proximate cause of Plaintiffs' injuries in this case.

Where, as here, it has been established as a matter of law that there is no duty of care, the Court may abstain from deciding proximate cause. *See Comer v. Tandy Corp.*, 295 S.C. 133, 135, 367 S.E.2d 436, 436 (Ct. App. 1988) ("Because we hold Tandy owed no duty of care to Comer under the circumstances of this case, we do not reach the issue of proximate cause.").

Notwithstanding, even if there were a duty owed in this case, there is no genuine issue of material fact that Speedway's negligence was not the proximate cause of the Plaintiffs' injuries.

The record is clear that Plaintiffs' allegations as to Speedway's role in their accident are false. There was no raised median to begin with so there could be no removal. Even if there had been, Speedway did not and could not have played any part in SCDOT's exclusive determination made in 1998 to place a flush painted median in front of the Pilot, an engineering determination based on purpose and need and based on the South Carolina Highway Design Manual. As a matter of law, negligence is not actionable unless it is a proximate cause of the injury. "[P]roximate cause is the efficient, or direct, cause—the thing which brings about the injuries complained of." *Goode v. St. Stephens United Methodist Church*, 329 S.C. 433, 447, 494 S.E.2d 827, 834 (Ct. App. 1997).

Proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence. Legal cause is proved by establishing foreseeability. Foreseeability is determined by looking to the natural and probable consequences of the complained of act, although it is not necessary to prove that a particular event or injury was foreseeable.

Madison ex rel. Bryant v. Babcock Ctr., Inc., 371 S.C. 123, 146–47, 638 S.E.2d 650, 662 (2006) (internal citations omitted).

The Plaintiffs essentially seek to impute the unquestionable civil liability of the criminally convicted drunk driver in this case over to these Defendants because there was not a raised median in the road. Sena's guilt in this regard is undisputed by evidence of his guilty pleas as noted above. See *In re Estate of Elfayer*, 325 Ill. App. 3d 1076, 1083, 757 N.E.2d 581, 588 (2001) (recognizing precedent which absolves government entities from liability because the drunk driver is the sole proximate cause because the roadway merely provides a location, and also holding that a drunk driver is an effective intervening cause breaking any causal chain

between alleged defects in an intersection and resulting injuries). In *Elfayer*, the appellate court held that the median was, at most, merely a condition in the accident which made the crash possible and that it did not cause the driver's reckless driving (where it was undisputed the reckless driver was highly intoxicated and high on cocaine).⁷ The reckless driving in that case was the sole subsequent independent act which broke the causal connection between the alleged defect in the median's height and the decedent's death. The appellate court held that the trial court didn't err in holding that neither the median nor the defendant's alleged failure to maintain its height was a proximate cause of the accident. *Elfayer*, 325 Ill. App. 3d at 1083-84, 757 N.E.2d at 588. In that case "the defendant did not owe [the deceased] a duty of care to insure that the median prevented [the drunk driver] from crossing over in to his lane of traffic."⁸

⁷ The court recognized:

A municipality is required to maintain its traveled ways according to their normal and intended uses. *DiBenedetto*, 153 Ill.2d at 71-72, 178 Ill.Dec. 777, 605 N.E.2d 571. A municipality has no duty to initially erect median barriers on its roadways. *O'Brien v. City of Chicago*, 285 Ill.App.3d 864, 871, 221 Ill.Dec. 134, 674 N.E.2d 927 (1996); *Hull v. City of Chicago*, 236 Ill.App.3d 405, 406, 177 Ill.Dec. 128, 602 N.E.2d 1300 (1992). It is only when the municipality has undertaken to build a median barrier that it can be held liable. *Ross v. City of Chicago*, 168 Ill.App.3d 83, 87, 118 Ill.Dec. 760, 522 N.E.2d 215 (1988); see *O'Brien*, 285 Ill.App.3d at 871, 221 Ill.Dec. 134, 674 N.E.2d 927 (municipality not liable unless actually undertakes improvement). However, even then, the municipality is not an insurer of all accidents that occur as a result of the median. *Ross*, 168 Ill.App.3d at 87, 118 Ill.Dec. 760, 522 N.E.2d 215. Liability attaches "only when the [median], itself, creates an unreasonably dangerous condition." *Ross*, 168 Ill.App.3d at 87, 118 Ill.Dec. 760, 522 N.E.2d 215. In other words, the median must directly render the roadway physically defective, thereby making travel unreasonably dangerous. See *Ross*, 168 Ill.App.3d at 89, 118 Ill.Dec. 760, 522 N.E.2d 215; *Harding v. Chicago Park District*, 34 Ill.App.3d 425, 429, 339 N.E.2d 779 (1975).

In re Estate of Elfayer, 325 Ill. App. 3d 1076, 1080-81, 757 N.E.2d 581, 585 (2001).

⁸ With respect to foreseeability, the court held:

While this accident may have been foreseeable in retrospect, that foreseeability is tempered by the great deviation from the ordinary course of travel that occurred

Moreover, the plaintiff failed to provide evidence that the defendant breached a duty "if any existed" and that the median's height (not the drunk driver's independent act of driving drunk) was the proximate cause. Even if all elements could have been proven, the government entity would have been immune from its decision with respect to the median. Given those facts and circumstances, *summary judgment* as to the government was proper.

Here, Speedway is even further removed from the causal chain than the government and could not have been the proximate cause of Plaintiffs' injuries. It is undisputed (1) that SCDOT had the sole and exclusive statutory decision-making authority over the median decision on US 17A; (2) that the decision to install a flush painted median was in fact exclusively made by SCDOT; (3) that the SCDOT plans to install a flush painted median were finalized and stamped by SCDOT in 1998; (4) that Speedway transferred title to the subject property to Pilot in 2001; (5) that Pilot, alone, submitted the encroachment application, which was approved by SCDOT in accordance with SCDOT standards; and (6) that Speedway had nothing to do with the

here. Alvarez, while driving drunk and high on cocaine, crossed over a median that in no way was intended to carry vehicular traffic. This is not the type of accident one would expect to occur under normal driving circumstances. Even if it were foreseeable, the magnitude of guarding against this injury and the consequences of placing that burden on defendant would be too great; no municipality would undertake even the most minor or necessary improvements on our roads for fear of facing liability. See *Washington*, 188 Ill.2d at 239, 242 Ill.Dec. 75, 720 N.E.2d 1030 (magnitude of burden to be placed on municipality is relevant factor to issue of duty); *DiBenedetto*, 153 Ill.2d at 72, 178 Ill.Dec. 777, 605 N.E.2d 571; *O'Brien*, 285 Ill.App.3d at 874, 221 Ill.Dec. 134, 674 N.E.2d 927. Therefore, we conclude that defendant did not owe Elfayer a duty of care to insure that the median, an outlying and unused portion of the roadway, would prevent Alvarez, a drunk driver, from crossing over into oncoming traffic.

In re Estate of Elfayer, 325 Ill. App. 3d 1076, 1081-82, 757 N.E.2d 581, 586 (2001).

encroachment process. Even so, Speedway submits that the criminal acts of the reckless and intoxicated driver amount to the sole proximate cause of the injuries in question.

There can be no question of fact that Speedway was not the proximate cause of the Plaintiffs' injuries and is entitled to summary judgment. All decisions with respect to highway design and construction fall to SCDOT as a matter of South Carolina law. Under the facts of this case, there was no legal duty by Speedway to erect a barrier to prevent vehicle cross-over accidents caused by drunk drivers. As a matter of law, Speedway could not have done so and therefore cannot, as a matter of law, be the proximate cause. Moreover, Plaintiffs' causal allegations as to Speedway are not supported by the record. However, the lack of a median did not create the dangerous circumstance -- only the driver who used the highway in contravention of its intended use and purpose for lawful traveling.

III. Speedway is entitled to summary judgment because there is no "genuine" issue of material fact precluding summary judgment.

The gravamen of Plaintiffs' Complaint as to Speedway arises out of a SCDOT letter dated August 28, 2000, which included handwritten notes that stated among other things:

9/5 Per Phone Verification w/ T. Smoak (Negotiated Median Removal & Drive Cuts. 1. Approved to have painted median only from western curb cut to stop bar (stop light). In other words, the unmountable median has been eliminated from the plan.

This caused Plaintiffs to believe that Speedway had some role in "negotiating" the "removal" of a raised median.

However, based on the record and based on South Carolina law, there can be no "genuine" issue of material fact that Speedway is entitled to judgment as a matter of law as to Plaintiffs' claims against it. Specifically, and as established by SCDOT's own testimony: (1) SCDOT decided what kind of median would be placed on the subject highway; (2) there was

never a raised median on the subject highway outside of the Pilot; (3) there never a raised median in a SCDOT plan for that portion of the highway outside of the Pilot. As established by Mr. Colvin's testimony on behalf of SCDOT, the plans for the flush painted median on the subject stretch of highway were finalized in 1998 (Colvin Dep. at pp. 252:2-5, 255, 283:20-285:2, Ex. A); it is therefore impossible for Speedway to have "negotiated" the removal of a non-existent raised median in 2000. As testified to by Mr. Colvin: "I think the label that the gas station negotiated the removal of a raised median is not an accurate statement." (Colvin Dep. at p. 235:16-18, Ex. A.) "That raised median was removed as a result - - it was moved from the interchange plans as a result of tying the interchange to the 17A widening plans." (Colvin Dep. at p. 235:25 - 236:3, Ex. A.) Later on in his deposition Colvin went on to affirmatively state there was no negotiation:

I believe my previous testimony alluded that that was not a negotiation, that it was - it was really - it was just a combination of the plans, putting them together, that the widening project had a paving - paid - a flush paved median east of Farmington. And the correction of the interchange plans was just that, it was not a negotiation. It was just a correction of the plan to accurately reflect the Highway Design Manual.

(Colvin Dep. at p. 261:7 - 262:1, Ex. A.)

As previously established, SCDOT has the sole, exclusive, and final statutory authority over the subject highway pursuant to South Carolina law. Accordingly, even if Speedway had in any way negotiated (which the record shows it did not and that, in fact, the plans were finalized two years prior to the alleged "negotiation"), SCDOT - by law - is and was the final decision maker for all highway design issues, to include the design/construction (or not, as was the case here) of a raised median.

In addition, the record demonstrates that Speedway was not involved with the encroachment permitting process. By Pilot's admissions, Pilot was the encroachment permit

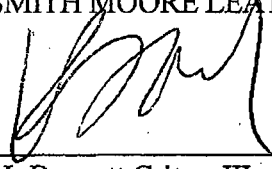
applicant, and, by SCDOT's admissions, SCDOT – in accordance with its statutory authority – approved it.

For all of these reasons, there is no “genuine” issue of material fact precluding summary judgment as to Speedway.

CONCLUSION

Plaintiffs' claims against Speedway fail as a matter of law. Pursuant to the standard on summary judgment, if Plaintiffs fail to meet their burden on summary judgment as to any essential element of their claim, summary judgment must be granted in favor of the Defendant. Because the South Carolina Department of Transportation has the sole, exclusive, and final statutory authority over the subject highway including its design and construction, and a non-delegable duty that could not have been transferred to Speedway, Plaintiffs cannot succeed on an essential element of their claim. Without a duty that would have been owed to Plaintiffs, there can be no breach of a duty by Speedway. Nor can Speedway have proximately caused Plaintiffs' injuries as a matter of law or fact. Finally, there is no genuine issue of material fact precluding summary judgment because it is now undisputed that the median designs were finalized two years prior to the alleged “negotiations.” There was never a raised median to begin with (in actuality or in SCDOT's design plans) so its removal could not have been “negotiated.” For these and all of the reasons set forth above, Speedway requests that the Court GRANT its motion in full and that it be awarded summary judgment and dismissed from this case.

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Attorneys for Defendant Speedway LLC

June 5, 2017
Charleston, South Carolina

EXHIBIT A

Page 1

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY

CYNTHIA WRIGHT AND RICHARD WRIGHT,
Plaintiffs,

vs. CASE NO. 2016-CP-08-334

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, C & A
UNLIMITED, INC., and 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.

VIDEOTAPE
DEPOSITION OF: LELAND D. COLVIN, JR.

DATE: March 13, 2017

TIME: 11:35 AM

LOCATION: SCDOT District 6
6355 Fain Boulevard
North Charleston, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

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ALSO PRESENT:

Douglas A. Browne, Video Technician
Clint A. Davis
Robert T. Clark
(INDEX AT REAR OF TRANSCRIPT)

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VIDEO TECHNICIAN: Good morning. We
are now on the record. Today's date is March 13,
2017. The time is approximately 11:35 AM.

This is the video deposition of Leland
Colvin as the 30(b)(6) representative for the
South Carolina Department of Transportation, taken
by counsel for the Plaintiff. The location today
is 6355 Fain Boulevard in North Charleston,
South Carolina.

My name is Douglas Browne, legal
videographer representing A. William Roberts, Jr.
and Associates. This deposition is taken in the
matter of Cynthia Wright and Richard Wright versus
South Carolina Department of Transportation,
et al., Case Number 2016-CP-08-334.

Counsel present, please introduce
yourselves for the record.

MR. SMITH: My name is Kevin Smith. I
represent Cynthia and Richard Wright.

MR. MAYBANK: Roy Maybank on behalf of
the South Carolina Department of Transportation.

MR. BERLINSKY: Bruce Berlinsky, Ashley
Surveying & Engineering.

MR. BESLEY: Bill Besley on behalf of
Pilot Travel Centers.

1 MS. MONOC: Katie Monoc for Speedway.
2 MR. CRITES: Bennett Crites for
3 Speedway.

4 VIDEO TECHNICIAN: And would the court
5 reporter please swear in the witness and we may
6 begin.

7 LELAND D. COLVIN, JR.,
8 being first duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. SMITH:

11 Q. Please state your name.

12 A. Leland Donald Colvin, Jr.

13 Q. My Colvin, my name is Kevin Smith. I
14 represent Cynthia and Richard Wright with regards
15 to a collision back in October of 2012.

16 The purpose for today's deposition is
17 to ask you some questions about certain topics that
18 we had provided notice of prior to today.

19 And before we get into that, tell me
20 about your deposition experience. Have you ever
21 done this before?

22 A. I have.

23 Q. About how many times?

24 A. I've probably done a half dozen or so
25 right-of-way cases and this will be my second one

1 involved in a collision.

2 Q. Okay. Right-of-way cases, what are
3 those?

4 A. Condemn -- like condemnation-type
5 cases.

6 Q. Okay. And so collisions, this is the
7 second time you've --

8 A. Yes.

9 Q. -- testified? Okay.

10 What were the circumstances of the
11 first time?

12 A. A very similar situation where there
13 was a -- a left turn, a right-angle collision in
14 the Mount Pleasant area.

15 Q. Okay. Do you remember who the attorney
16 was or the case name or how long ago that was?

17 A. Oh, it's probably been eight or nine
18 years ago.

19 Q. Okay.

20 A. I don't recall.

21 Q. Sure.

22 A. I -- I don't recall.

23 Q. So ground rules for a deposition,
24 they're usually the same, but we're required to
25 tell you certain things before we start these.

1 If you don't ask -- understand a
2 question that I've asked, please ask me to clarify
3 that question. And that would go for any lawyer in
4 the room, if they ask you a question, ask that
5 person to clarify if it's unclear. Okay?

6 A. Sure.

7 Q. If I ask you a question, I'm going to
8 assume that you understood it and answered it
9 truthfully. Is that fair?

10 A. Sure.

11 Q. All right. And do you understand your
12 testimony today is about a lawsuit involving
13 Cynthia and Richard Wright?

14 A. I am.

15 Q. All right. Do you understand that the
16 answers you give today may be used in court?

17 A. Yes, sir.

18 MR. SMITH: Okay. And I'll attach as
19 Exhibit Number 1 to this deposition a copy of the
20 deposition Notice. I think I brought enough.

21 BY MR. SMITH:

22 Q. So I'll attach that as --

23 A. Thank you.

24 Q. -- Exhibit Number 1 to your deposition
25 today.

1 (PLF. EXH. 1, Plaintiffs' Second
2 Amended 30(b)(5) and 30(b)(6) Notice of Videotaped
3 Deposition to Defendant South Carolina Department
4 of Transportation, was marked for identification.)

5 BY MR. SMITH:

6 Q. Do you know what that is?

7 A. I do.

8 Q. All right. You've seen it before?

9 A. I have, yes, sir.

10 Q. And who was it that showed it to you?

11 A. Mr. Maybank.

12 Q. All right. And this is a deposition
13 Notice requiring the Department of Transportation
14 to designate a person to testify on its behalf?

15 A. Correct.

16 Q. All right. And do you understand that
17 the Department of Transportation is required to
18 fully prepare that person to provide all
19 information known or reasonably available to the
20 Department of Transportation in response to the
21 matters listed?

22 A. Yes, sir.

23 Q. All right. And are you the person
24 that's been designated by the Department of
25 Transportation to speak on their behalf with

1 respect to topics -- Topic Number 2?

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 four phases of a typical highway construction
2 project.

3 Q. But just in terms of how we refer to
4 the decisions made about the -- the road in
5 front --

6 A. Yes.

7 Q. -- raised median, no raised median,
8 markings, things like that, if we compare that to
9 the request for curb cuts and driveways and things
10 like that, would those be two different things?
11 I'm just trying to figure out how we refer to them
12 later.

13 A. Yeah -- no. I mean, the design of the
14 road and -- and whether you put a raised median in
15 it or not is really separate, generally separate
16 from the right-of-way negotiation. There are
17 certainly cut curbs that are -- the -- the width of
18 the curbs, the radiuses, existing curbs where
19 they're at is generally different. I don't know
20 that you can say 100 percent separation. But
21 generally the design of the road in general is
22 separate from the right-of-way acquisition
23 associated with it, in general. It's kind of hard
24 to --

25 Q. Okay.

1 A. -- completely separate the two.

2 Q. Could we maybe -- just for the purpose
3 of today, we can just talk about the issues on the
4 highway versus the issues in the parking lot?

5 A. Yes.

6 Q. Okay. And -- and -- and just so you
7 know, what I'm referring to if we -- if we do that,
8 so the issues with the highway would be what I
9 talked about before, the raised median, the lanes,
10 the paint markings, signs, and stuff like that.
11 The issues with the parking lot would be the curb
12 cuts into the sidewalk and the different driveways
13 and whatever requirements were done with regards to
14 that. Okay?

15 A. Sure.

16 Q. All right. And as the project manager,
17 you were over both of those --

18 A. Yeah.

19 Q. -- things. Is that true?

20 A. The program manager is almost like the
21 quarterback. They kind of facilitate -- facilitate
22 going from basically project inception all the way
23 through project closeout. So that includes those
24 four phases of a project, yes, sir.

25 Q. All right. And it also includes how I

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 A. Approximately two years.

2 Q. Okay. And before that?

3 A. Director of construction.

4 Q. Okay. And how long did you do that
5 one?

6 A. Approximately four years.

7 Q. What time frame are we at about now?

8 A. I'm going back at -- starting director
9 of construction is 2010, and these are approximate
10 number of years.

11 Q. Sure. So you -- okay. And then go
12 back from there, if you can.

13 A. Kind of a little bit of a -- a dual
14 duty. I was the stable guy, design-build engineer,
15 but during -- during that time, I was put on
16 special assignment. I came in at the tail end of
17 the construction of the Ravenel Bridge, and then I
18 oversaw the demolition of the old Grace Memorial
19 Memorial bridges. So within that one job, I kind
20 of had a little bit of a special assignment.

21 Q. Okay. So the Ravenel Bridge was a
22 pretty big deal when --

23 A. Yeah. I came in on the tail end of
24 that. I wish I could take credit for that and have
25 that feather in my cap, but unfortunately can't.

1 Q. All right. And what -- what kind of
2 time frame are we talking about there?

3 A. That was from early 2005 to 2010. That
4 was -- and when -- that was a state-wide design
5 build engineer, including that special assignment.
6 Special assignment was only -- a little less than
7 two years.

8 Q. All right. And then back --

9 A. Before that, I was the program manager
10 for the Charleston area, which basically included
11 Charleston, Dorchester, and Berkeley Counties.

12 Q. And how long did you do that?

13 A. For about eight years.

14 Q. And then back from there?

15 A. Before that, I was in hydrology, in a
16 hydrology section as a design engineer for roughly
17 18 months.

18 Q. Hydrology, that's a totally different
19 thing, right?

20 A. Yeah. It's -- it's more of a -- it's
21 definitely in the design for sure, very technical.

22 Q. Okay. And we're all -- we're still
23 talking about the Department of Transportation,
24 right?

25 A. Correct, yes.

1 Q. Okay. That's more runoffs and things
2 like that?

3 A. Yeah. It's -- it's -- you know, of
4 course, it's the drainage design of highways as
5 well. So yeah.

6 Q. Okay. I wrote 18. Why did I do that?

7 A. 18 months, roughly.

8 Q. Okay. And then before that?

9 A. Before that, I was in Barnwell
10 maintenance. I was a very entry-level engineer,
11 did that for about 18 months. And before that, I
12 was in traffic engineering, again as an entry-level
13 engineer, doing signal design.

14 Q. About 18 months?

15 A. Yes, sir. And hopefully that adds up
16 to about 22 years.

17 Q. Okay. Are you prepared to provide all
18 the information known or reasonably available to
19 the Department of Transportation with respect to
20 Topic Number 2 in the deposition Notice?

21 A. I am, except -- with the exception of
22 the encroachment permit piece of it. With regards
23 to the right-of-way acquisition, the safety
24 project, the interchange project, and the 17A
25 widening project, I'm prepared for all those.

1 Q. All right. And help me separate out
2 the encroachment tier. What does that mean?

3 A. There -- there was -- Nexton Parkway
4 has been recently, I don't know the -- the time
5 frame, very recently was installed. And as part of
6 that, they have to come to SCDOT for an
7 encroachment permit. So there's been some changes
8 to 17A very recently --

9 Q. Okay.

10 A. -- with regards to accepting that new
11 location roadway onto our system, as far as
12 connection -- not -- not on our system -- well, as
13 far as connection with 17A. And I -- that was --
14 that's done here locally. So -- and that's where I
15 think I mentioned very early on, Robert and I have
16 a little bit of overlap. And that's where Robert
17 would speak on that subject.

18 Q. And how about the encroachment issues
19 or the encroachment permit filed by the folks that
20 are associated with the entity of the Pilot Travel
21 Center, Marathon Ashland Petroleum, and the people
22 that -- that took over after that? Were you
23 involved with that?

24 A. Not with the encroachment permit
25 per se. As -- as related to the widening project,

1 I was involved in that.

2 Q. The widening project?

3 A. Yes, sir.

4 Q. And the encroachment, correct me if I'm
5 wrong, would be really the curb cuts --

6 A. Correct.

7 Q. -- and driveways and things like that?

8 A. That is correct, yes, sir.

9 Q. Okay.

10 A. And part of the right-of-way
11 acquisition also included the acquisition of land
12 as well.

13 Q. Okay. So you're going to talk about,
14 with respect to this particular project and on
15 Highway 17A in front of the Pilot Travel Center,
16 you're going to talk about more of the highway
17 issues out front. And then Mr. Clark would talk
18 about the curb cuts and things like that?

19 A. Sure.

20 Q. Okay.

21 A. And there will be a little bit of
22 overlap there.

23 Q. All right. And what did you do to
24 prepare for today?

25 A. We've had a couple meetings, kind of

1 divvied up some of the topics; went back and
2 reviewed the plans, both the interchange and the
3 widening. There's also a -- another project that's
4 in this area that's related, reviewed that. Went
5 back and looked at our design manuals and -- and
6 see that the -- that the road was designed
7 correctly and did meet all of our design manuals.
8 And that was through -- through both looking at
9 manuals as well as talking to the folks that's in
10 charge of those manuals.

11 Q. Okay. And who were the folks you
12 talked to?

13 A. Both Jamie Kendall as well as Rob
14 Bedenbaugh.

15 Q. Okay.

16 A. Robert and I and Clint and Mr. Maybank.

17 Q. Okay. All right. So did -- did -- did
18 you get together with -- with Mr. Davis and
19 Mr. Clark in preparation for today?

20 A. We did.

21 Q. Okay.

22 A. We did.

23 Q. And how much time do you think you
24 spent overall preparing for the deposition today?

25 A. Overall, probably 20 to 30 hours.

1 Q. Okay.

2 A. Between looking at stuff, gathering
3 information, getting copies made, traveling,
4 discussion, between 20 and 30 hours.

5 Q. And you said that part of what you did
6 was to look at the -- the highway and figure out if
7 it was in conformity with the different safety
8 standards. I think you mentioned the ARMS manual?

9 A. No. The Highway Design Manual.

10 Q. Okay.

11 A. Yes.

12 Q. Did you -- all right. So I was going
13 to ask you: What -- what -- what all manuals did
14 you -- did you look at?

15 A. I started off looking at the updated
16 Highway Design Manual. And when we had our first
17 meeting, I met with Mr. Maybank and he informed me
18 that I needed to go back and -- and refer to the
19 Highway Design Manual that was in place at the time
20 of design. So I had to go back and go to a -- an
21 earlier version of that. So those are two design
22 manuals that I looked at in reference to this -- to
23 the subpoena -- or deposition might be the more
24 perfect word.

25 Q. Would that be this?

1 A. No, it isn't. No, sir.

2 Q. Highway Design Manual is what you said?

3 A. Yes, SCDOT's Highway Design Manual.

4 Q. Okay. And that's different from the
5 ARMS?

6 A. Yes.

7 Q. And what is the difference between the
8 ARMS manual and the Highway Design Manual?

9 A. The Highway Design Manual talks about
10 the design of -- of roads or a separate bridge, and
11 it talks about the different cross-section
12 elements, whether it's vertical curbs, horizontal
13 curbs, number of lanes, width of lanes,
14 intersections, medians, median types, those type of
15 things, radii. Just the different elements of a
16 roadway itself.

17 We've got a -- we've got a Highway
18 Design Manual that we follow internally as well
19 as -- as well as any consultant engineers that
20 would do design work for us in designing roadways.

21 Q. Okay. And -- and so how would -- could
22 you tell us the difference between the ARMS manual
23 and the Highway Design Manual?

24 A. Sure. The ARMS manual is -- is our
25 roadside access manual, and that's used to provide

1 guidelines on companies, developers, private
2 individuals coming in to DOT and asking for access
3 to the state highway system.

4 Q. Okay. That would be the curb cuts and
5 driveways and stuff?

6 A. Correct.

7 Q. Okay.

8 A. Correct.

9 Q. How about the -- the access management
10 in the vicinity of intersections published by the
11 United States Department of Transportation, the
12 Federal Highway Administration, do you know what
13 that is?

14 A. I know that that exists in
15 South Carolina. Our ARMS, we -- we work very
16 closely with the division office with Federal
17 Highway Administration. They approve our manuals
18 that we use to receive federal funds, and we've got
19 state ARMS manuals that we follow that's in general
20 compliance with AASHTO. Same thing with our
21 highway design manuals. We've got manuals specific
22 to South Carolina that's approved out -- out of our
23 division office for federal highways.

24 Q. And I noticed a lot of the information
25 that's in the ARMS manual is pretty much identical

1 to what's in this?

2 A. Very, very similar, yes, sir.

3 Q. Okay. It seems like they cover a lot
4 of the same topics.

5 A. Yes. They -- the AASHTO is an
6 organization of state transportation agencies,
7 state -- national, excuse me. And we are certainly
8 a member of AASHTO as well. There's national
9 standards. And then a lot of states, they adopt
10 local standards that are in general compliance, but
11 they may be more specific to local conditions
12 within those state boundaries. And certainly the
13 SCDOT follows that same practice.

14 Q. Okay. Did you have any part in
15 compiling any of the documents that have been
16 produced to us either as a result of a 30(b)(5)
17 portion of this deposition Notice or previous
18 requests that anyone has made?

19 A. Yes, sir. We -- I was -- I was
20 intimately involved in -- in putting together some
21 of the packages that Mr. Maybank provided.

22 Q. Okay. And did you -- did you -- in
23 your mind, the documents that you found and -- and
24 provided and were ultimately produced, did you feel
25 like that was a complete set?

1 A. I do, yes, sir.

2 Q. Okay. Did you notice anything missing
3 that you recall from the project?

4 A. Not -- not in -- not in relation to
5 this deposition, no, sir.

6 Q. Okay. And when I talk about the
7 project, really what I'm talking about is, you
8 know, the roadwork done in front of the Pilot
9 Travel Center, that is the Pilot Travel Center
10 today on 17A, anywhere between, you know, 2000 and
11 I think 2004.

12 A. Correct. No -- no, sir. Again, I --
13 we do have a retention schedule that we follow.
14 But based on everything that we should still have
15 in our files, I felt like we got a complete --
16 complete data set that was provided.

17 Q. Okay. And I talked to Mr. Davis a
18 little bit about this. But with regards to letters
19 and correspondence and stuff like that is -- are
20 those -- did you put that stuff together, the --
21 this is something everyone's been asking everybody
22 about in this case, and I'll just show it to you,
23 this letter here from Mr. Smoak to Ashland
24 Petroleum. Is there -- do you know how to say that
25 name?

1 A. I'm going to butcher that name.

2 Q. Greiwe?

3 A. That's close enough.

4 Q. All right. So like letters like this,
5 did you have a -- any hand in -- in -- in putting
6 together this letter among the others?

7 A. I was part of that, yes, I -- I was.

8 Q. Okay.

9 A. I was part of that. You know, we have
10 files at headquarters within different divisions at
11 headquarters, files at the district office and
12 files in our regional right-of-way office. And --
13 so yes.

14 Q. And we're going to get into this a
15 little bit more specifically, but just simply with
16 regards to the -- the document production there,
17 you know, this letter -- and we'll -- we'll attach
18 it later because we're going to get into it.

19 But this talks about the highway
20 drawings for the 17A project, and there's a mention
21 here of a negotiated median removal. What we're
22 looking for are other letters or correspondence,
23 anything having to do with really this topic. And
24 this looks to be a -- a note from Mr. -- from
25 Mr. Greiwe here talking about certain things.

1 We're looking for the background of all this. Did
2 you find any kind of --

3 A. We did not. I mean, this is part of
4 our right-of-way file that goes -- and I think
5 there's the actual acquisition document as well,
6 but we -- we did not. These type of correspondence
7 would be outside doing of our retentions, the
8 retention schedule.

9 Q. But -- and so -- but given the fact
10 that this one here exists, is it fair to say that
11 the other correspondence with regards to that
12 particular subject should exist as well?

13 MR. MAYBANK: Object to the form.

14 BY MR. SMITH:

15 Q. You can go ahead and answer.

16 A. I believe everything that we had was
17 provided, to the best of my knowledge.

18 Q. Okay. But what -- what I'm saying is:
19 And since -- since we have this letter that deals
20 with the median removal, would it be fair to assume
21 that the other letters about the median removal
22 would be -- would have been turned over as well?

23 MR. CRITES: Object to form.

24 MR. MAYBANK: Same objection.

25 THE WITNESS: I mean, I -- again, I --

1 I believe all -- everything that we had in relation
2 to this matter was provided by the Department.

3 BY MR. SMITH:

4 Q. Okay. Do you think any of the letters
5 or correspondence dealing with the median removal,
6 do you think any of those were destroyed?

7 MR. CRITES: Object to the form.

8 MR. MAYBANK: Same objection.

9 THE WITNESS: Not that I'm aware of,
10 but most likely.

11 BY MR. SMITH:

12 Q. Were you --

13 A. Not that I'm aware of any specific
14 letters that were or weren't destroyed, but so
15 it's -- it's hard for me to tell you what was or
16 wasn't destroyed.

17 Q. Okay. And when we've seen in some of
18 the other -- some of the other documents -- and I
19 apologize, this handwriting is going to be kind of
20 small -- but one of these other ones, it's a --
21 it's a plat here and painted median and stuff per
22 Leland Colvin. That would be you, right?

23 A. That's myself, yes, sir.

24 Q. All right. So you were actually
25 involved in the issue of the median, were you not?

1 A. I was, yes, sir.

2 Q. Okay.

3 A. Yes, sir.

4 Q. And so letters and correspondence and
5 conversations going on about the raised median, you
6 would have been a part of those?

7 A. Yes, sir.

8 Q. Okay. And that's what I'm saying,
9 did -- did -- from your memory of being a part of
10 those conversations and a part of that process, did
11 you look at any of the stuff provided and say, hey,
12 this must have been destroyed or this isn't here or
13 where is that? Were you satisfied that this was a
14 complete production for at least that issue?

15 A. Yes, sir.

16 Q. Okay. I'm sorry. I had a long way of
17 getting to the question.

18 A. No, no, you're fine.

19 Q. I want to ask you -- and this really
20 just simply relates to all of the topics here: But
21 can you tell me what are the three most important
22 things the Department of Transportation has learned
23 as a result of this lawsuit?

24 MR. MAYBANK: Object to the form.

25 BY MR. SMITH:

1 Q. You can go ahead.

2 A. I think that this reinforced the --
3 that -- that we followed our Highway Design Manual,
4 I think is one of the questions that's part of
5 the -- this issue here is, did DOT follow their
6 design and our design -- the highway design in a
7 safe manner. And I'm -- I'm glad to say, yes, we
8 have.

9 Q. And would the same be true for
10 maintenance issues?

11 A. As far as I'm aware of. I didn't delve
12 into the maintenance issue, more the design of the
13 roadway and kind of how it related to the -- to my
14 deposition. But when I looked at the two projects,
15 the interchange and the widening project, and the
16 design especially related to the raised median,
17 whether it existed or not existed, I am very
18 confident that we met -- met the intent in
19 certainly almost verbatim of our Highway Design
20 Manual that we design roads by.

21 Q. Okay. And I'm going to ask you some
22 sort of general questions here, and -- and these
23 relate to Topic Number 2, Parts 4 and 14. If you
24 could -- oh, you're already to the page.

25 So Number 4 talks about the DOT's

1 education, there's enforcement, there's emergency,
2 and there's engineering. And the -- and the
3 Department of Transportation plays into a couple of
4 those.

5 Certainly education, we -- we partner
6 with the Department of Public Safety and
7 engineering, so yes. That's part of that, is to --
8 is provide a -- a reasonably safe highway network.

9 Q. Okay. Do you believe the
10 South Carolina Department of Transportation must
11 follow industry safety standards when considering
12 changes to a highway or the additions of driveways?

13 A. Yes.

14 Q. And is the reason for that to prevent
15 injury or death to everyone using the road?

16 A. It is to ensure that we provide sound,
17 safe engineering. Again, we can't -- we can't
18 protect the motoring public from themselves
19 sometimes. You have impaired drivers, you have
20 drivers that are texting. So as to the reasonable
21 expectation of engineering standards from a
22 safety -- safety concern, yes. If they are
23 reasonably using those roadways in state statute,
24 the -- the engineering side of that should --
25 should -- should work.

1 duties in ensuring the location will be safe and
2 free from hazards. And it's kind of a general
3 subject there.

4 A. Right.

5 Q. And Number 14 talks about the
6 applicable safety standards and things like that.
7 Okay?

8 A. Right, yes, sir.

9 Q. So do you believe the South Carolina
10 Department of Transportation must only approve safe
11 highway plans?

12 A. Yes.

13 Q. All right. And is the reason for that
14 to prevent injury or death to other people on the
15 road?

16 A. Yes, the -- the reasonable
17 expectations. There's four E's of traffic safety,
18 and engineering is one of the four E's.

19 Q. All right. And I -- I think I may have
20 misspoken. The reason for only approving safe
21 highway plans, is that to prevent injury or death
22 to everyone using the road?

23 A. Reasonable, again, when I look at --
24 when I look at traffic safety, it's -- it's known
25 amongst the community there's four E's. There's

1 Q. Okay. So one of the reasons that the
2 Department of Transportation must follow the
3 industry safety standards when considering changes
4 to the highway or the additions of driveways, one
5 of the reasons to follow these industry standards
6 is to prevent injury or death to everybody using
7 the road?

8 MR. CRITES: Object to the form.

9 MR. MAYBANK: Object to the form.

10 BY MR. SMITH:

11 Q. You can go ahead.

12 A. Yeah. That are using the road as
13 intended.

14 Q. Okay.

15 A. That's following all state laws and
16 statute, correct.

17 Q. Would it not encompass people just, you
18 know, alongside the highway? Can you see how
19 decisions regarding driveways or highways would
20 also affect people, you know, on foot walking as
21 pedestrians?

22 A. Certainly. I -- I think both the
23 pedestrians and bicyclists are modes of
24 transportation that's taken into account with
25 our -- our highway design there. Yes, sir,

1 absolutely.

2 Q. So if the safety standards are
3 followed, one of -- the intention is, is that that
4 would ultimately protect people both on and around
5 the highway?

6 MR. MAYBANK: Object to the form.
7 BY MR. SMITH:

8 Q. You can go ahead.

9 A. Yes. I mean, if -- if the -- if the
10 pedestrians, bicyclists, the -- the -- and -- and
11 vehicle drivers are following all the applicable
12 laws, the -- that one E is part of safety, the
13 engineering. Absolutely, it is -- it is one of the
14 four E's regarding highway safety.

15 Q. Okay. Are there parts of the highway
16 design process or the maintenance issues with
17 changes to the highway or just simply the process
18 of approving driveways or -- or curb cuts and the
19 safety standards that apply to those issues, do
20 those not take in account for situations where
21 someone is performing a illegal use of the road?
22 Or do all of these safety standards presume that
23 people are going to legally use the road and just
24 simply don't apply if there's any illegal use?

25 MR. MAYBANK: Object to the form.

1 THE WITNESS: I'm not sure -- I'm not
2 sure I understand the question.

3 BY MR. SMITH:

4 Q. I know that was a long question, wasn't
5 it?

6 You said that -- I thought you said
7 that part of highway design and changes to a
8 highway and curb cuts and things like that presume
9 legal use of the roadway. Is that a fair summation
10 of what you said?

11 A. That's fair, yes.

12 Q. Okay. Do those safety standards that
13 affect those decisions, do those safety standards
14 contemplate or deal with in any way situations
15 where people are illegally using the roadway, maybe
16 an illegal turn or driving too fast or really
17 anything like that?

18 A. I think it's reasonable compliance.
19 And we -- we put, you know, signage, pavement
20 markings, spacing are all in reasonable compliance.
21 I mean, on a two-lane road, I'm not sure that
22 engineering when you look at signage and pavement
23 markings can have somebody driving down the wrong
24 lane. I'm not sure, so I'm -- that's a very
25 difficult question to answer.

1 But yes, I would say reasonable
2 conformity to the laws. Again, on a two-lane
3 roadway, we can sign and we can mark the road with
4 both paint and raised pavement markers; but if
5 somebody decides to go in the wrong lane, I'm not
6 sure we've got something that -- that can actually
7 absolutely prevent that.

8 So in all cases, no, we -- it's got to
9 be reasonable conformity to the -- to the state
10 laws.

11 Q. But if -- let me just ask you more of a
12 general question then: If -- if the safe -- if the
13 safety standards are enforced and followed with
14 regards to the highways and the curb cuts and stuff
15 like that, is it meant to protect people in
16 situations -- innocent people that come across
17 other people that are doing illegal actions? Or do
18 those safety standards just not protect people
19 in -- in any way when that happens?

20 MR. MAYBANK: Object to the form.

21 THE WITNESS: It -- it's -- it's the
22 reasonable compliance. I mean, if -- I'm not -- I
23 don't think that engineering component of the four
24 E's can protect everybody, no, I don't think that.
25 If that's your question.

1 BY MR. SMITH:

2 Q. Well, I'm just saying if -- are -- are
3 the -- the purpose of the -- the safety standards
4 with regards to the highways and the curb cuts, you
5 talked about your -- your own manuals and some
6 federal manuals and stuff like that. Those manuals
7 give certain protection to people both on and
8 around the roadway. Is that true?

9 A. Yes. They -- they provide consistency
10 amongst our state and, you mentioned AASHTO, other
11 states for driver expectation. So you've got
12 continuity amongst our state, continuity from state
13 to state for reasonable driver expectations.

14 Q. Now, do -- do those manuals, those
15 safety standards, do those manuals contemplate any
16 illegal use of the road when they're figuring out
17 how to protect people both on and around the
18 highway?

19 A. I'm not sure.

20 Q. Okay. Just more of a general question
21 about the -- the -- the manuals as far as you're
22 aware, okay.

23 Do you believe the Department of
24 Transportation must follow its own safety standards
25 when considering changes to a highway or the

1 additions of driveways?

2 A. Yes.

3 Q. And is the reason for this to prevent
4 injury or death to everyone using the road?

5 MR. MAYBANK: Object to the form.

6 THE WITNESS: It is to provide a
7 reasonable -- again, I go back to those four E's.
8 It's not to prevent every -- every collision that
9 could potentially happen, but it's to provide that
10 reasonable assurance to the reasonable uses of the
11 road that they have the same driver expectancy as
12 they should expect as a -- as a user of our system.

13 BY MR. SMITH:

14 Q. So it sounds like you're saying one of
15 the reasons for the Department to follow its own
16 safety standards is to try and prevent injury or
17 death on the road. Is that a fair statement?

18 A. It is one of the factors, yes, that
19 would -- would go into preventing collisions. Yes,
20 absolutely.

21 Q. And do you believe the Department of
22 Transportation must investigate proposed plans by
23 corporations to make sure they are safe?

24 A. In the aspect of their tying into the
25 state highway system, yes.

1 Q. Okay. And obviously the existence of a
2 raised median or not, that ties into the state
3 system, right?

4 A. Yes, sir.

5 Q. All right. And the curb cuts and
6 driveways along 17A and Farmington Road, those
7 would also tie into the highway?

8 A. Yes, sir.

9 Q. Okay. And is the -- is one of the
10 reasons to investigate proposed plans by
11 corporations to make sure they're safe, is one of
12 the reasons for that to try and prevent injury or
13 death to other people -- or to everyone using the
14 road?

15 A. Yes, it would be one of the factors.

16 Q. Okay. And do you believe the
17 South Carolina Department of Transportation must
18 take steps to discover intersections that become
19 unsafe?

20 A. Yes.

21 Q. All right. And is the reason to take --
22 those steps to try and prevent injury or death to
23 everyone using that road?

24 MR. MAYBANK: Object to the form.

25 THE WITNESS: It is to increase the

1 safety of the roadway, yes, sir.

2 BY MR. SMITH:

3 Q. Okay. And do you believe the
4 South Carolina Department of Transportation must
5 never approve unsafe plans in returns for favors or
6 financial gifts?

7 A. Yes.

8 MR. MAYBANK: Object to the form.

9 BY MR. SMITH:

10 Q. And the reason that's in place,
11 obviously, is to protect people, to prevent injury
12 or death, and -- and also be honest people --

13 A. Yes. I mean, I --

14 Q. -- who perform their --

15 A. -- I would say --

16 Q. -- duties?

17 A. -- that ethics law would rule on that
18 one.

19 Q. But ultimately, if we -- let's just say
20 ethics didn't even prevent that sort of thing, you
21 wouldn't do that or the Department wouldn't do that
22 simply because that would -- that would put people
23 at risk?

24 MR. MAYBANK: Object to the form.

25 THE WITNESS: Yes.

1 BY MR. SMITH:

2 Q. Okay.

3 A. Yes.

4 Q. And I want to talk to you just in
5 general about some different industry safety
6 standards. We talked before about the ARMS manual?

7 A. Yes.

8 Q. You agree that that's an industry
9 safety standard that applies to the South Carolina
10 Department of Transportation?

11 A. Yes. It is a roadside access man --
12 manage -- manual that provides guidelines to
13 private individuals, companies that are seeking
14 access to the state highway system. And safety is
15 one of the components that was used to develop
16 those guidelines.

17 Q. Okay. And AASHTO, another industry
18 safety standard that applies to both the highway
19 and the curb cuts and -- and driveways and -- that
20 are at issue in this case?

21 A. Yeah. I mean, I would say that -- my
22 answer to that would be that yes, we used AASHTO
23 guidance in developing ARMS. We use that
24 state-specific manual, both the Highway Design
25 Manual and the ARMS, taking guidance from AASHTO.

1 So we don't use AASHTO per se, we've got our own
2 that's approved by federal highways that that's
3 approved for South Carolina specifically, but it
4 does take into account AASHTO as well.

5 Q. Okay. And how about the MUTCD, what is
6 that?

7 A. That is a Manual of Uniform Traffic
8 Control Devices.

9 Q. Is that an industry safety standard
10 that you're aware of?

11 A. It is part of that. Part of that
12 manual takes into consideration safety, yes, sir.

13 Q. Okay. And how about the NCHRP, which
14 is the National Cooperative Highway Research
15 Program? Have you ever heard of that?

16 A. I have.

17 Q. Okay. Is that an industry safety
18 standard? Or does it represent a set of industry
19 safety standards, I should say?

20 A. I don't know specifically.

21 Q. Okay. And we talked about this, I
22 think, before: The U.S. Department of
23 Transportation access management in the vicinity of
24 intersections, would that represent an industry
25 safety standard or a set of industry safety

1 standards?

2 A. I'm not familiar with that document.

3 Q. Okay. Oh, that was the one I had
4 showed you, I think, before, the --

5 A. AASHTO?

6 Q. This one here (indicating). There's a
7 lot of the same stuff from this was in the ARMS.

8 A. Yeah. I would -- I would say that DOT,
9 in developing the state-specific guidelines, takes
10 into consideration AASHTO and USDOT standards --

11 Q. Okay.

12 A. -- but applies those specifically to
13 South Carolina conditions, as do most other state
14 DOTs.

15 Q. All right. And I had a note here to
16 ask you about any others. And I just want to -- I
17 don't know if I wrote it down, but you -- early on,
18 you said that one of the things you looked at was
19 this highway and whether it met this certain
20 manual. And I showed you this and showed you that,
21 and you said that wasn't it. Can you just say that
22 again so I can write it down?

23 A. Yeah. It's the South Carolina Highway
24 Design Manual.

25 Q. Okay. And you have in your possession

1 the versions of that manual that existed back in
2 2000 up through today? Not in your physical
3 possession right now, but that's available to you?

4 A. Yes, sir.

5 Q. Okay. After we're done here today,
6 could you maybe take those -- those manuals, those
7 versions from 2000 up through today, and provide
8 them to your attorney?

9 A. Yes. I provided the one that was in
10 place at the time of the design. But -- but the
11 new one, there's been an updated version that we
12 did not provide, so I can provide that as well.
13 One has already been provided.

14 Q. Okay.

15 MR. MAYBANK: And -- and if you gave it
16 to me, Kevin, it should be in the documents that
17 we -- all these -- A, B, C, I think you've got a
18 list of them. You've got those.

19 MR. SMITH: All right. Thanks.

20 THE WITNESS: I'll make a note of that.

21 MR. MAYBANK: Do you want the new
22 manual, Kevin?

23 MR. SMITH: Yeah, any -- any changes
24 since 2000.

25 MR. MAYBANK: Okay.

1 BY MR. SMITH:

2 Q. Are you personally familiar with the
3 ARMS manual?

4 A. I am, yes, sir.

5 Q. And I believe your description of the
6 ARM manual -- ARMS manual was it's a set of
7 guidelines used by others when they are wanting to
8 make changes to the highway or curb cuts and
9 driveways and things like that?

10 A. It is. I mean, it's something that
11 both the DOT as well as that private individual or
12 company uses to provide those guidelines for -- for
13 access to the state highway system. Something we
14 use as well in a review if there are any
15 encroachment permits.

16 Q. Does the ARMS manual contain -- does it
17 contain a set of safety rules or -- or rules for
18 the -- I'm trying to -- trying to figure out how
19 you're using the word guidelines. Maybe I can
20 rephrase the question.

21 The ARMS manual, are those merely
22 suggestions or are those rules that are to be
23 followed?

24 A. They are guidelines to be followed.
25 There are -- the manual does allow for exceptions

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 Q. Does the community have a right to
2 expect the Department of Transportation to make all
3 changes in the roadway that are safe? I'm sorry.
4 Bad question.

5 Does the community have a right to
6 expect the Department of Transportation to make
7 sure all changes in the roadway are safe?

8 A. I would say that the public has a
9 reasonable expectation to make sure that we provide
10 safe highways, and we have safety guidance that we
11 use to -- to follow.

12 Q. Okay. Is it true that ordinary people
13 in the community going up and down the highways,
14 and in particular 17A, they wouldn't know about the
15 particular safety standards or rules and
16 regulations in the ARMS manual or those published
17 by the Department of Transportation?

18 A. I think that's a fair assessment, yes,
19 sir.

20 Q. And does the South Carolina Department
21 of Transportation know that driveways have long
22 been recognized as a major source of conflict for
23 traffic on public highways? Is that a true
24 statement?

25 A. That's a true statement.

1 Q. It comes out of the ARMS manual?

2 A. Certainly.

3 Q. Reasonable access means a property
4 owner must have access to the public highway system
5 rather than being guaranteed that potential
6 patrons -- patrons should have convenient access
7 from a roadway to the property. Is that a true
8 statement, describing reasonable access?

9 MR. MAYBANK: Object to the form.

10 THE WITNESS: Could -- could you repeat
11 that one more time, please?

12 BY MR. SMITH:

13 Q. Sure. I'm trying to define reasonable
14 access --

15 A. Sure.

16 Q. -- with regards to the South Carolina
17 Department of Transportation.

18 And would you agree with me that
19 reasonable access means that a property owner must
20 have access to the public highway system, rather
21 than being guaranteed that potential patrons should
22 have convenient access from a roadway to the
23 property?

24 A. I agree with that statement.

25 Q. Okay. And the reason for that is

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 The two different projects, are you
2 talking about the stuff that the -- that people
3 that would be later identified as Pilot wanted to
4 do? Or two separate DOT projects?

5 A. Two separate DOT projects.

6 Q. Okay. So tell me what those two
7 separate projects were.

8 A. The first one is referred to -- there's
9 two sets of plans that were provided, is that what
10 the DOT commonly refers to -- they've got file
11 numbers, but the common name is the I-26/US 17A
12 intersection -- interchange improvement project.
13 And that would be from Farmington Road back towards
14 Summerville. I guess that's west. Then we'd refer
15 to Farmington Road back to the east as the US 17A
16 widening project.

17 Q. Okay. So basically at Farmington Road,
18 you head towards Summerville and that is the
19 interchange improvement project?

20 A. Yes, sir.

21 Q. And if you -- Farmington Road towards
22 Moncks Corner, that would be the widening project?

23 A. Yes, sir.

24 Q. Okay. And those two projects, we
25 talked about the history of the design here. Those

1 two projects, were they happening at about the same
2 time?

3 A. They are roughly happening at about the
4 same time. The interchange project was being
5 designed by a outside consultant, and then the --
6 the widening project was designed, what we refer
7 to, in-house by South Carolina DOT staff. A little
8 bit of different purpose and needs from -- from
9 those two, and -- and certainly different from a
10 design aspect of -- of what we did.

11 The interchange project, do you want me
12 to go ahead and describe kind of what that is or --

13 Q. Well, you had mentioned the -- I think
14 that portion was designed by a private firm?

15 A. Yes.

16 Q. Who -- who was that?

17 A. It's Arcadis Geraghty, I think it's --
18 & Miller. Arcadis is kind of the name we went by.
19 They have since been bought out, so I'm not sure
20 what it belongs to at this point.

21 Q. Were they employed by the Department of
22 Transportation for that portion of the -- or for
23 that project?

24 A. Yes, sir, they were.

25 Q. And when you -- when we talk about the

1 history of the design here, did any part of the
2 interchange improvement project from
3 Farmington Road up to Summerville, that way, did
4 any of those changes impact your analysis in this
5 case?

6 When you're looking at the safety
7 standards applied here and whether or not those
8 were met by the Department and designs or the
9 changes thereafter and things like that, did any of
10 the interchange improvement project issues come up?
11 Or were you just simply looking at basically
12 Farmington Road, Moncks Corner?

13 A. No. There was -- when you looked at
14 those two tie-ins of the project, you had to look
15 at them together. I -- and -- and that's what we
16 had to do. You know, when we stop one project and
17 start another, we've got to make sure that project
18 is designed so that the set -- the widening project
19 was set up to accept the lanes coming to it.

20 In other words, you can't have five
21 lanes just tying down into two.

22 Q. Yeah.

23 A. Same thing, the -- the widening project
24 of 17A, similar to there, it had a stopping point
25 at US 176. You just can't all of a sudden cut off

1 the lanes. You've got to neck those -- that --
2 that widening down back to the existing section.

3 So certainly when you look at the
4 termini projects, there's some overlap there in --
5 in that you've got to make sure that you are --
6 you -- you -- I use the term necking down, but
7 that's what -- I'll use that term, necking down to
8 the existing lanes that are out there. So when you
9 have that termini, you've got to make sure that
10 you're able to accept those lanes and tie those
11 back into existing conditions.

12 Q. Okay.

13 A. So there is some overlap there.

14 Q. All right. So we just started talking
15 about really the history of the project, and you
16 had described the two projects that were at play,
17 and I interrupted you. So let me let you continue.

18 A. No. I think that was -- you know, when
19 you -- when you look at this case and you look at
20 the -- at the drives and -- and look at the -- the
21 letter that went out from Tommy Smoak, our
22 right-of-way, and -- and looked at kind of how that
23 came into play, you know, Arcadis was designing the
24 interchange. They had to certainly design to
25 accept the lanes that -- that -- that -- on the

1 Moncks Corner side of Farmington Road to make sure
2 they accepted those lanes.

3 And as -- as they did, they -- they
4 drew up those lanes and put in that median or had
5 that median initially shown in there as kind of to
6 be built by others. But when you look at the 17A
7 widening, if you look at that job and -- and what
8 that entailed, it was your typical urban -- what we
9 refer to as a five-lane section where you have two
10 lanes in each direction with a center median turn
11 lane.

12 So as we looked at those two and kind
13 of got into the details of that right-of-way
14 acquisition and what those -- the purpose and need
15 of the widening project from Farmington Road out
16 towards Moncks Corner and looking at what that
17 cross-section of road would look like, that's where
18 those decisions were made right there at that
19 intersection.

20 Q. So it sounds like the Arcadis folks --
21 how do you spell that name? I wrote A-R --

22 A. They're -- they're on the design plans.

23 Q. Okay.

24 A. They're on the design plans.

25 Q. Okay. I'm going to just guess that it

1 might be on the first one.

2 A. It should be if that's the right
3 project there.

4 MR. MAYBANK: Kevin, just so you know,
5 we've turned all this --

6 MR. SMITH: Okay.

7 MR. MAYBANK: You've got all this.

8 MR. SMITH: Sure.

9 THE WITNESS: No, this is the
10 intersection safety project. That's another
11 project. Let's see, I can look at them.

12 Yes. There you go, right there.

13 BY MR. SMITH:

14 Q. Okay. Arcadis, A-R-C-A-D-I-S.

15 A. Yes.

16 Q. All right. And that other name you
17 were --

18 A. Geraghty & Miller.

19 Q. So Geraghty, G-E-R-A-G-H-T-Y, & Miller?

20 A. Yes, sir.

21 Q. Okay.

22 A. Yes, sir.

23 Q. So it sounds like what you're saying is
24 that the raised median, the plans for the raised
25 median on Highway 17A coming from Moncks Corner to

1 Farmington Road, that that original plan for a
2 raised median was something that was drawn in by
3 Arcadis?

4 A. Correct.

5 Q. Okay. And that had to do with the
6 interchange project that was happening from
7 Farmington Road going to Summerville and dealt with
8 accepting the widened lanes that were leading up to
9 that point?

10 A. Yes, sir.

11 Q. Okay. All right. What else -- what
12 else do you recall about sort of the -- the -- the
13 history of that, the history of that work?

14 A. Yeah. So you had the property owners
15 as part of the interchange. Again, that -- that
16 intersection really defined the difference between
17 the two projects, so there's certainly overlap in
18 the design and overlap in the right-of-way
19 acquisition. So in talking with Tommy Smoak and
20 the letter and looking at, okay, what's -- what's
21 Phase 2, and I'll call it Phase 2 from the lack of
22 a better -- better terminology, but the widening
23 project, what's it going to look like in refer --
24 in reference to the -- to the interchange project?
25 What's -- what's the roadway typically going to

1 look like? Are we buying control access? Do we
2 have control access?

3 So during that process of really
4 digging into that one particular property owner and
5 how it tied into the -- the scope and purpose on
6 either of the projects, that decision was made that
7 we're going to follow the same typical -- starting
8 at Farmington Drive going east towards
9 Moncks Corner, which was basically what we refer to
10 as a flush median.

11 So you basically have two -- two lanes
12 in each direction, not -- not the -- at this
13 particular intersection with -- with that two-way
14 left turn lane. Now, as you go in the
15 intersections, we paint -- we paint in left turn
16 lanes as you go into major intersections, like
17 US 176. I can't recall the next intersection down
18 as well.

19 So that's -- the decision was made. We
20 didn't own control of access on the east side of
21 Farmington Road. But if you go on Farmington Road
22 back to the west, we did have control access. And
23 when we have control access is where the Department
24 goes in and acquires not only fee simple for the
25 actual property that is acquired, there's also --

1 we buy the access. So we -- there's no access
2 within a controlled access limits. And -- and
3 that's where that was made.

4 Arcadis, again, were focused just on
5 the interchange. So when we made the interchange
6 project to the widening project, that was a
7 decision that was made on how we got to that -- how
8 we got to that issue regarding the median.

9 Q. And then where did -- so this -- this
10 group, they were probably I think originally
11 Marathon Ashland Petroleum. And then it became
12 another group, and then eventually Pilot Travel
13 Center moved in?

14 A. Certainly.

15 Q. What is your recollection of kind of
16 the -- the timing there? You know, we've got this
17 letter starting here in 2000. It looks like most
18 of the stuff that we saw really starts, you know,
19 with regards to them in around 2000. And I think
20 there was a final inspection maybe in 2003 or '4,
21 something like that?

22 A. That -- that's correct. And we --
23 that's correct. We were buying the right-of-way
24 and -- I mean, the name of the company, as long as
25 the same purpose and need is there, it's a gas

1 station, travel way, convenience store, I mean, I
2 don't know that -- I don't -- as long as that
3 purpose and need of that property owner just stayed
4 the same, there's no change in who that is, that --
5 whose name's on the front of the sign probably
6 doesn't matter as much to us.

7 So we looked, then, as part of a couple
8 things. We had to do an appraisal of the fee
9 simple land that we were acquiring. And then they
10 had existing access points to 17A prior to this
11 project, and we had to go back, go and look at
12 those access points as they related to the highway
13 design. We made some changes regarding the radius,
14 and they had three access points on 17A and one
15 access point on Farmington Drive.

16 Q. Um-hum.

17 A. So we took that in consideration as
18 part of the highway design.

19 Q. Okay. And the -- the property that you
20 all would buy, the right-of-way, was -- was any of
21 that property on any of the borders of the -- what
22 is now the Pilot Travel Center, either on
23 Farmington or 17A?

24 A. I would have to refer to the plan set,
25 but I -- certainly they were on Farmington. I'd

1 have to refer to the plan set on 17A.

2 Q. Okay.

3 MR. MAYBANK: There you go.

4 BY MR. SMITH:

5 Q. Which one you need?

6 A. This one right here, C. Thank you very
7 much. We'll just take those rubber bands off of
8 that, that will help. Thank you.

9 Okay. So when you look at the
10 interchange plans, it's File 8.790, this is the
11 interchange plans and you go to Sheet 11.

12 MR. MAYBANK: And -- and there are
13 Bates stamp numbers at the very bottom, so far down
14 you can't see them.

15 THE WITNESS: Oh, okay.

16 MR. MAYBANK: So if you can identify --

17 THE WITNESS: That was it, 102.051.

18 MR. MAYBANK: That's the file number.

19 Now what's underneath that?

20 THE WITNESS: Oh, sorry. SCDOT Colvin
21 Documents 0037.

22 MR. MAYBANK: Perfect.

23 MR. SMITH: Got it.

24 THE WITNESS: Need a -- a magnifying
25 glass.

1 MR. CRITES: I brought one if you need
2 it.

3 THE WITNESS: Tell 'em not to go
4 anywhere.

5 So as you can see within those plans at
6 Sheet 11, you kind of see where -- the intersection
7 of 17A and Farmington and -- and you can kind of
8 see the max lines. But if you also go over to Plan
9 Sheet 12, you can kind of see how 17A necks back
10 down. So there's -- that's -- you know, we --
11 again, when I talked about as you're at the
12 terminus of a project, you've got to get through
13 that intersection and that's basically what's
14 represented on Sheet 11.

15 BY MR. SMITH:

16 Q. Okay.

17 A. Now, also on Sheet 11, we talked about
18 the right-of-way.

19 Q. Um-hum.

20 A. And this is where I want to make
21 sure -- so yes, we acquired additional right-of-way
22 along Farmington.

23 Q. Yeah. Would that be -- so this is
24 Summerville this way, this is Moncks Corner that
25 way, and this is the site of the Travel --

1 A. Correct.

2 Q. -- the Pilot Travel Center?

3 A. Yes, sir.

4 Q. Okay.

5 A. Yes, sir. So we bought -- acquired
6 additional right-of-way along Farmington and some
7 transition right-of-way along 17A.

8 Q. And is that this -- and we're still
9 back here on Document Number 37, the Colvin
10 Documents 37. I can see kind of like a little --
11 like some -- like a little section right there
12 with -- with that. Is that -- is that the
13 right-of-way portion that -- that ends right there?

14 A. It -- it is -- it is -- you know, all
15 this is labeled. Of course, this is in metric,
16 unfortunately.

17 Q. Um-hum.

18 A. All this is labeled as new
19 right-of-way. You've got the transition at the
20 corner of Farmington and 17A, and then you go back
21 in to retain a present right-of-way along the
22 frontage of 17A itself.

23 Q. Okay. I got you.

24 A. Now, I want to confirm, we did not have
25 to acquire additional right-of-way as part of the

1 widening project, so let me do that. So that's the
2 interchange project. I don't want to sit on the
3 right thing -- the wrong thing.

4 MR. MAYBANK: Do you want him to mark
5 anything with a highlighter?

6 MR. SMITH: I don't think so. I'm just
7 trying to get an understanding of it for right now.

8 MR. MAYBANK: Oh, okay. Thank you.

9 THE WITNESS: All right. We
10 retained -- it looks to me that we have retained --
11 we have retained present right-of-way along 17 to a
12 certain point.

13 BY MR. SMITH:

14 Q. Um-hum.

15 A. And then we had to acquire new
16 right-of-way as you get closer to this new box
17 culvert that was installed.

18 Q. And where would that be? Kind of on
19 the -- so this is Farmington on this one here. And
20 that box culvert, where is that? Is that past
21 the -- the travel center?

22 A. It is.

23 Q. Okay.

24 A. If you look at the portal company here
25 as it's labeled here, it is to the east of that.

1 Yes, sir.

2 Q. Okay. And if we can just go back to
3 number -- was that 37, was that the first one you
4 were looking at?

5 MR. MAYBANK: Correct.

6 MR. SMITH: 36 maybe? 36 -- 37, yeah.

7 BY MR. SMITH:

8 Q. Yeah. I don't know. This is -- I
9 printed off the same stuff, and this looks to be
10 pretty small here. This is that 37. I was just
11 trying to figure out here what areas you all would
12 have -- do -- do you think you could use this one?
13 It'd be a little bit easier to attach to the
14 deposition, just to highlight the general area
15 where a right-of-way was purchased?

16 A. Just generally, because it's so small.

17 Q. That's fine.

18 A. If that -- if that's okay.

19 Q. That's fine.

20 A. I mean, I would -- yeah, on this one
21 sheet, I'm -- just highlight on it?

22 Q. Yeah.

23 A. Okay. That is new right-of-way there.

24 Q. Okay.

25 A. And it's retained to --

1 Q. The green highlighter is new
2 right-of-way obtained.

3 A. Um-hum.

4 Q. And does that mean that the Department
5 of Transportation actually purchased that property?

6 A. Yes, sir.

7 Q. Okay.

8 A. Yes, sir.

9 Q. All right. And then if we could put in
10 yellow on that same one, you said something about
11 that the DOT was going to maintain its current
12 right-of-way or rights or what -- however you
13 described that, just let me know.

14 A. Yeah. It's -- it's retained present
15 right-of-way kind of right there along the frontage
16 that stops on this plan sheet because this is where
17 this start -- stopped. But also, I think that to
18 paint the full picture, we need to make sure we
19 look at the other set of plans as well. Two
20 different projects, but that was tied to the
21 interchange project. This is tied to the widening
22 project.

23 Q. Got you.

24 (PLF. EXH. 2, SCDOT U.S. 17A

25 Construction Plan, SCDOT Colvin Documents0037, was

1 marked for identification.)

2 BY MR. SMITH:

3 Q. Well, and so let me ask you this: So
4 I've marked that, what we've just done, as Exhibit
5 Number 2.

6 A. Yes, sir.

7 Q. And the yellow section, would that be
8 property that the Department of Transportation
9 previously owned and is maintaining their ownership
10 of?

11 A. Yes, sir.

12 Q. Okay.

13 A. That's correct, yes, sir.

14 Q. Okay. I got you. All right.

15 And I think you were going to look for
16 something else?

17 A. Yes. I was just -- again, that's --
18 that's associated with the interchange project, but
19 when you look at it in its totality, there's some
20 construction permissions.

21 Let me explain what that is. That is
22 where in order to build a project, we may have to
23 go outside of our right-of-way to get either --
24 there's several ease -- well, not easements.

25 There's several -- let me think of the right term

1 here.

2 Q. Access permission or something like
3 that?

4 A. Yeah. It's -- it's really permission
5 to go onto the property to construct it. But once
6 we finish with the construction, all of those --

7 Q. I think those are easements.

8 A. Not -- no.

9 Q. You use a temporary easement?

10 A. No. Maybe you could frame it that.
11 They're not -- they're not easements, but there is
12 their permission. They're construction
13 permissions --

14 Q. Okay.

15 A. -- where we've got off our right-of-way
16 to build whatever. It could -- you know, it could
17 be several things. But -- but once we finish
18 building it, that property -- we never take the
19 property. The -- the property owner is just giving
20 us permission, so when it's all said and done --
21 for instance, the sidewalk --

22 Q. Um-hum.

23 A. -- we may need to get on that property
24 to build the sidewalk; but at the end of the day,
25 the sidewalk itself proper is within our

1 right-of-way.

2 Q. Okay.

3 A. I know that's very confusing.

4 Q. But -- but in this case, the location
5 of the sidewalk and the driveways, that was all
6 property owned by the Department of Transportation?

7 A. Yes. But we had to get permissions, we
8 call them permissions, from the property owner
9 to -- in order to build the roadway.

10 Q. Okay. And you're talking about the
11 property owner would have been the people that
12 owned the -- what is today the Pilot Travel Center?

13 A. Yes, sir.

14 Q. And -- and -- and that would be to
15 access more than just simply what you owned in
16 terms of this curb, but you had to go a little bit
17 further back from this as well. Is that what
18 you're trying to say?

19 A. We had to get off of our right-of-way
20 in order to build the project, to construct it.

21 Q. Okay.

22 A. So it's the constructability aspect of
23 it's really what I'm -- I don't know if I explained
24 that very well.

25 Q. Well, it -- it sounds to me at the very

1 least you need a place to park your stuff and, you
2 know, you need to be able to park in the parking
3 lot of --

4 A. No, it's not really for that.

5 Q. I really thought I had that one good.

6 A. No. It's really --

7 Q. I was confident in that one.

8 A. You know, if you had -- in other words,
9 one example could be where you built the road up
10 2 feet --

11 Q. Um-hum.

12 A. -- and you feather that -- you feather
13 that slope back onto the property.

14 Q. Okay.

15 A. That -- at the end of the day, the DOT
16 doesn't need to own that -- that slope, so to
17 speak, to maintain our roadway.

18 Q. Okay.

19 A. But we would need to get on that --
20 that -- off a right-of-way in order to build a
21 road. But once it's built, that slope, we -- you
22 know, the owners -- that -- that private property
23 owner can own the slope, it's we just needed it to
24 build the roadway. I know that was confusing as
25 all get out, but...

1 Q. Okay. Well, I think I got you. So --
2 so here's -- here's -- what I was trying to figure
3 out was, you know, we've got the -- the sidewalk on
4 17A --

5 A. Yes, sir.

6 Q. -- right, that is in front of what is
7 today the Pilot Travel Center, how much of that
8 property from the street back to the -- the -- the
9 parking lot in the Pilot along 17A, how many feet
10 of that from the street back to the Pilot does the
11 Department of Transportation own?

12 A. I thought that was going to be a real
13 easy one. This is where I need a magnifying glass.

14 Q. Would there be a --

15 MR. CRITES: I do have one, Mr. Colvin,
16 if you want it.

17 MR. SMITH: Okay.

18 THE WITNESS: How specific do you need
19 me to be?

20 BY MR. SMITH:

21 Q. I mean, I'm -- I'm trying to figure out
22 how much of that is -- is owned by you all and how
23 much of that is -- is their property. So really,
24 just the best way that you could describe it. I --
25 I don't want to restrict you in terms of --

1 A. As we look at this together --
2 (Off-the-record discussion.)

3 THE WITNESS: See this line here
4 that's -- that's marked present 55-foot
5 right-of-way?

6 BY MR. SMITH:

7 Q. Yes.

8 A. That is the dividing line. If you go
9 to the roadside of that line, SCDOT owns that
10 property. If you go to the -- to the convenience
11 store/gas station side of the line, that is owned
12 by -- of course, it's shown here as Port Oil
13 Company, but that would be owned by Pilot Speedway.

14 Q. Okay. So is there any way for us -- to
15 tell us how many feet from this way to that way,
16 right, this section here, how many feet off the
17 roadway is the owned property by the DOT?

18 A. I would have to scale that off.

19 Q. Just estimate for me then. I don't
20 want to -- I mean, is it like a foot or 5 feet or
21 10 feet? Maybe you could just estimate.

22 A. I would say, but I'm -- I'm estimating,
23 I would say between 0 and 5 feet.

24 Q. Okay. And would it -- would it
25 generally be about the size of the -- of the -- the

1 curb, the sidewalk?

2 A. Yes, I think that's a good general
3 statement. I think 5 -- sidewalks are 5.5 feet
4 wide.

5 Q. Okay.

6 A. So generally.

7 Q. And generally speaking in projects like
8 this, the -- the DOT would -- would own the -- the
9 sidewalk?

10 A. Yes.

11 Q. Okay.

12 A. Yes, sir.

13 Q. Is that the general policy --

14 A. That -- yes.

15 Q. -- when you see sidewalks?

16 A. Yes, sir. Absolutely.

17 Q. All right. And -- okay. I think I
18 understand you.

19 So that explains why the people that
20 would build what is today the Pilot Travel Center,
21 that's why they would apply to the DOT for
22 different curb cuts and driveways because that's
23 DOT property those curb cuts and driveways will cut
24 across, right?

25 A. That -- it would be the access to the

1 roadway. Now, as part of a widening project,
2 there's not an encroachment permit to access the
3 roadway because that access was already there.

4 Q. Um-hum.

5 A. So that access is negotiated and is
6 incorporated to the right -- into the right-of-way
7 settlement. In other words, you don't have to --
8 the ARMS manual talks about this encroachment
9 permit process where, you know, we own 17A, there's
10 a new -- a new gas station/convenience store -- I
11 don't want to offend anybody in the room -- that
12 that would go in there if they were building a new
13 store or they -- there's an abandoned store,
14 whatever, there's a change in use, they would come
15 and -- and -- and submit an encroachment permit to
16 SCDOT that we would review as part of the ARMS
17 manual and -- and provide that access.

18 Now, as far as a widening project where
19 access is there, that -- that process is -- is
20 really taken in -- taken as part of highway design
21 and right-of-way negotiation. Right-of-way
22 acquisition, I guess, is probably the better thing.
23 So it's a little bit different process because
24 where the DOT is now making improvements to the
25 roadway that it encroaches on that private

1 property, whether -- then the private property come
2 into DOT, ask for access. So it's a little bit
3 two -- kind of apples and oranges there a little
4 bit, if that's making sense. So it's a little bit
5 different situation here.

6 Q. Okay. Okay. Were there any traffic
7 studies that were done with regards to either the
8 interchange improvement project or the widening
9 project?

10 A. Yes, absolutely.

11 Q. There were?

12 A. Yes.

13 Q. And do you -- have you seen those in
14 any of the -- the documentation?

15 A. I have not. That -- that's part that
16 goes back into the projects very, very -- very
17 early on as far as the inception of the project and
18 the -- developing that purpose and need. And part
19 of that purpose and need is -- is the traffic study
20 is -- is a piece of that.

21 It goes into our environmental
22 document, and that environmental document is where
23 we capture purpose and need. There's a purpose and
24 need statement. It would be attached to that. And
25 then of course as we go out there and we have a

1 preferred alignment, you go through public
2 involvement, you go to the environmental impacts.
3 All that's kind of -- that's kind of a stiff one in
4 the whole process, is you determine purpose and
5 need, you come up with a preferred alignment, you
6 document the impacts.

7 And from that point over, you kind of
8 go forward with the design. Once you get design
9 complete, then you go to right-of-way acquisition,
10 then you go to construction. So yes, that is one
11 of the very, very first things we would do is do
12 a -- do a traffic -- traffic study to -- to really
13 formulate your purpose and need.

14 Q. Um-hum. And would the traffic study
15 have been done before 2000?

16 A. Absolutely.

17 Q. And in terms of the history of this
18 project, how much -- how much before 2000 do you
19 think that would have happened?

20 A. Let me look at the dates on these.
21 These plans, the interchange plans were completed
22 in, it looks like, July of 1999. A typical study
23 would have been completed 12 to 18 months prior to
24 that.

25 Q. Okay.

1 A. I mean, that's -- those are general
2 time frames.

3 Q. Are there any traffic studies that
4 dealt with specifically the issue of whether or not
5 a raised median should be put in front of the --
6 the gas station or the number of driveways or
7 curb cuts on 17A for this particular gas station?

8 A. No. The -- the traffic study wouldn't
9 have gotten that level of detail. It would have
10 gotten together more of how many lanes do you need,
11 the -- the capacity of the project, more -- more
12 that type stuff, not specific to any individual
13 property owner along that roadway. They -- it was
14 not that specific.

15 Q. Okay. And it -- and it wasn't specific
16 enough to address whether or not a raised median
17 should be used in that --

18 A. No.

19 Q. -- stretch of Highway 17A?

20 A. No. No, sir. We relied back on the
21 Highway Design Manual for that determination.

22 Q. Got you. And in the -- and we may be
23 moving on from this particular portion. If we are,
24 let me know.

25 But are there -- are there any notes

1 indicating what volume the -- what now is the Pilot
2 Travel Center, are there any notes that indicate
3 what type of volume that business was?

4 A. Not that I have seen. Again, if -- if
5 this was a new gas station/convenience store going
6 in, that would be part of the encroachment permit
7 process was -- would be to determine those volumes
8 since that is access already existed. It's not
9 something that we would typically look at as part
10 of a roadway widening project. Certainly the
11 volume on the road itself, but not those individual
12 property owner volumes.

13 Q. And how about -- I mean, is -- was
14 that -- was that something that was ever considered
15 in the history of the entire project? And what I'm
16 talking about the project is, you know, the --
17 the -- the widening in front of the Pilot Travel
18 Center and the construction of the driveways, was
19 a -- was the volume of the Pilot, was that ever
20 considered in any of those decisions?

21 A. Not that I recall.

22 Q. Okay. And I want to ask you about who
23 did particular work. I see in their encroachment
24 permit about, you know, things about you pay for
25 this, we'll pay for that, and -- and things like

1 that. But I want to get sort of a little bit more
2 specific if we can.

3 So painting the actual median where
4 there used to be this plan for the raised median
5 and then it became paint, who paid for the paint?

6 A. The SCDOT, as --

7 Q. Okay.

8 A. -- part of the widening project.

9 Q. And who paid for the paint to be put
10 down?

11 A. SCDOT.

12 Q. Okay. So Pilot didn't have to pay for
13 any of that stuff?

14 A. No.

15 Q. All right. Okay. And how about the --
16 the driveways and curb cuts along 17A, who would
17 have paid for that?

18 A. SCDOT would pay for that.

19 Q. Okay. And signage alongside the road,
20 paint markings on the road, DOT as well?

21 A. Yes, sir.

22 Q. All right. Is there any part of what
23 Pilot was asking for -- and when I -- when I say
24 Pilot in this case, I mean Pilot and the entities
25 before them and all that. Okay?

1 A. Sure.

2 MR. BESLEY: Yeah, I'm going to object
3 and ask that you clarify your question
4 specifically. Because there are different parties
5 in this case. If you can try to do that, that
6 would be helpful. Could mean him having to ask all
7 the questions over again when you get done.

8 BY MR. SMITH:

9 Q. Well, the group that was originally
10 involved here, this Marathon Ashland Petroleum,
11 okay, at some point they became somebody else,
12 right? I think it was Marathon Speedway or
13 Speedway Marathon; is that right?

14 MR. CRITES: (Moved head up and down.)

15 BY MR. SMITH:

16 Q. So what these people were wanting to
17 do, they wanted the -- the raised median gone and
18 they wanted these particular driveways on 17 and
19 Farmington Road. Is that fair to say?

20 MR. CRITES: Object to the form.

21 MR. MAYBANK: Same objection.

22 THE WITNESS: Yeah. I mean, I think as
23 part of any right-of-way acquisition, there's --
24 there's about two or three things that's
25 contemplated. Certainly the value of the

1 acquisition land that's taken, any damages to the
2 remainder of that, and then the access to the road
3 system, those were the three general rule-of-thumb,
4 broad-brush items that come into play when we're
5 acquiring -- when we're acquiring right-of-way.

6 BY MR. SMITH:

7 Q. Okay. But in -- in terms of so we can
8 figure out who paid for what --

9 A. Right.

10 Q. -- it's my understanding that Marathon
11 Ashland Petroleum, that they were requesting
12 basically two things: They wanted the raised
13 median gone and they wanted some driveways along
14 17A and Farmington Road. Is that your
15 understanding of basically what they were asking
16 for in terms of this project?

17 MR. CRITES: Object to the form.

18 THE WITNESS: Yes. That as -- in -- in
19 addition to the value of the property that was
20 acquired by the Department.

21 BY MR. SMITH:

22 Q. Okay. I got you. The new right-of-way
23 that was acquired?

24 A. Correct. Correct.

25 Q. Okay. And did Marathon Ashland

1 Farmington Road into what is now the Pilot Travel
2 Center, all of that was paid for by the DOT?

3 A. Yes, sir.

4 Q. Okay. All right. And in the widening
5 project of 17A in front of what is now the Pilot
6 Travel Center, is it true that the original plans
7 included a requirement for a raised median that
8 would have basically spanned the entire length of
9 the Pilot Travel Center on 17A going up to the stop
10 bar at Farmington Road?

11 A. One iteration of the plans had that
12 shown. I will say that was a placeholder for how
13 the project to the east of Farmington would accept
14 those lanes. That was one of the iterations, but
15 the final right-of-way plans had that as -- as
16 paint. But yes, there --

17 Q. Okay.

18 A. -- there was an iteration as part of
19 the design that included a raised median versus a
20 painted flush meeting -- median. Excuse me.

21 Q. What's an iteration?

22 A. As you go through design, you know,
23 a -- a couple things: Number one, Arcadis, keep in
24 mind, they -- they did the -- they did the
25 interchange. So in their due diligence, they've

1 Petroleum --

2 MR. MAYBANK: What you looking for?

3 MR. SMITH: The right caption.

4 BY MR. SMITH:

5 Q. Pilot Travel Center, Speedway, LLC, did
6 they pay for anything with regards to those topics?
7 The removal of the raised median or any of the
8 driveways on 17A or Farmington Road, did they have
9 to pay for any of that?

10 A. No.

11 Q. Okay. So these were just simply things
12 that they wanted to have happen on -- on DOT
13 property and wanted DOT's approval and wanted DOT to
14 do it?

15 A. Those were part of the acquisition
16 process that -- that we go forward with for any
17 property owner. But yes, specifically for that
18 case, yeah, those are items that were involved in
19 the acquisition process. Absolutely.

20 Q. Okay. But my -- my -- I guess my
21 question is: With the -- with the median and what
22 was done with the median, the painting of the
23 median and the actual construction of the driveways
24 on 17A going into what is now the Pilot Travel
25 Center and the construction of the driveway off of

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 that raised median would have spanned the --
2 basically the entire length of the -- what is now
3 the Pilot Travel Center area on 17A.

4 Originally there was -- there was a
5 requirement for a raised median. And that was
6 sometime later changed, I understand that. But my
7 question is: The original plans for the widening
8 in front of the Travel Pilot Center, the original
9 plans had a requirement for a raised median at
10 Farmington Road going towards Moncks Corner. True?

11 A. Can I look at this letter?

12 Q. Yeah.

13 A. Yes. There -- there was a -- yes.
14 Absolutely at one point in time, the interchange
15 plans showed a raised median.

16 Q. Okay. I got you.

17 A. At -- at -- at some point in time
18 during the process --

19 MR. MAYBANK: Hold on. I don't mean to
20 interrupt. He's talking interchange, you're
21 talking road widening. You all -- you all aren't
22 coming together, and I want to make sure the record
23 is clear. I don't mean to interrupt you.

24 Is anybody else hearing this? Because
25 that's --

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 A. And that happened, no pun intended,
2 that was flushed out as part of the merging of the
3 two projects.

4 Q. Okay.

5 A. Keep -- keep in mind, both -- both
6 documents had that piece of that design because
7 they're just right here at the termini. So when
8 you look at that termini, both -- both sets of
9 plans had that same -- had -- had the road widening
10 in front of the -- the gas station/convenience
11 store included that. Okay? You -- you had to.

12 So in marrying the interchange project
13 to the widening project, the decision was made to
14 go with a -- a flush median from Farmington out
15 toward Moncks Corner, yes.

16 Q. Well, just back to the original
17 question: The original requirement was for a
18 raised median in that section? Subsequently that
19 was changed, but that was the original plan?

20 A. I would -- I would phrase that the
21 original design. I would not phrase that as
22 original requirement.

23 Q. Okay.

24 A. I would say the original design.

25 Q. Okay.

1 A. There was -- there was a design at some
2 point prior to 1999 that had -- the plan showed
3 a -- a raised median, yes.

4 Q. Okay. Got you.

5 And where in -- in this, these
6 documents, do we see the original plan or design
7 for the raised median? Maybe just give me the
8 document number.

9 A. Yeah. I think the right-of-way, these
10 are the right-of-way plans. They show a raised
11 median at the location, the subject location.

12 Q. Okay. And we're back to -- I think you
13 were on 37?

14 A. Yes.

15 Q. Okay.

16 MR. MAYBANK: Can I -- I don't mean to
17 interrupt, but which set of plans are you referring
18 to? The interchange plans or the road widening
19 plans?

20 THE WITNESS: These are the interchange
21 right-of-way plans.

22 MR. MAYBANK: Thank you. All right.

23 THE WITNESS: Now when I go to the
24 interchange construction plans --

25 BY MR. SMITH:

1 Q. Can we do something before you do that?

2 A. Absolutely.

3 Q. Can you just maybe take a -- let's just
4 go back to the green highlighter again.

5 A. Sure.

6 Q. And if you can, just highlight the
7 raised median portion of Bates 37, which is
8 Plaintiffs' Exhibit Number 2. All right. And as
9 we look at that --

10 MR. CRITES: Can we mark that as
11 something else with a pen since there's two
12 green -- or can we just --

13 MR. SMITH: Sure.

14 MR. CRITES: -- just draw an arrow to
15 it so --

16 MR. SMITH: Yeah.

17 MR. CRITES: I think it's clear, but
18 just for the record.

19 BY MR. SMITH:

20 Q. What I'm going to do is I'm going to
21 draw an arrow to the second highlighter, and I'm
22 just going to put raised median. Is that accurate?

23 A. Yes.

24 Q. Okay. And -- okay.

25 And you said you wanted to look at

1 something else before I interrupted you?

2 A. So I go to the --

3 Q. This one?

4 A. -- construction plans, the interchange
5 construction plans.

6 Q. All right.

7 A. So going from right-of-way to
8 construction, marrying the two projects together,
9 and we look back at that same sheet number, which I
10 believe was Sheet 11, and these are documents --

11 Q. That's 190?

12 A. Yes. This is Colvin -- SCDOT Colvin
13 Document 0190.

14 Q. Okay.

15 A. And I go back to these plans, this is
16 where we marry the projects. And if you'll look at
17 the note on these plans, it says we end the
18 project -- again, associated --

19 Q. I don't think I'm on the same page.
20 What's the Bates stamp number here? 193. Oh,
21 sorry.

22 A. It's 0193, Sheet 11.

23 Q. Got it. I got you.

24 A. And again, you can tell we're marrying
25 these projects together. So we take basically from

1 the intersection of Farmington east and we -- and
2 you look at the note, I believe it's this note
3 right here, you say end project, which is ending
4 the interchange project. And it says this design
5 here, project will be done by others.

6 Q. Right.

7 A. So now -- so now -- so that just kind
8 of shows you there's -- here's the placeholder. We
9 took off -- you know, we took out all of the
10 hydrology, just basically lined up this
11 intersection. So when you say project done by
12 others, we go now to the widening plans.

13 Q. All right. Let's do this. Let's make
14 that Page 193 an exhibit.

15 MR. MAYBANK: Can -- can you -- before
16 he puts that in the record, can you highlight that
17 area you -- you -- was reading from?

18 THE WITNESS: Yes, sir.

19 BY MR. SMITH:

20 Q. It's right there.

21 A. Yeah.

22 MR. MAYBANK: You've got your
23 magnifying glass?

24 THE WITNESS: Yeah, it's over here.

25 (PLF. EXH. 3, SCDOT U.S. 17A)

1 Construction Plan, SCDOT Colvin Documents 1093, was
2 marked for identification.)

3 BY MR. SMITH:

4 Q. All right.

5 A. So now --

6 Q. Back to A?

7 A. Yeah. So as you go through the plan
8 process and marrying the two projects together, the
9 note on the construction plans at the interchange
10 refers you back to the widening project. So now
11 when you go to the widening project on Page 6 --
12 and this is marked as SCDOT Colvin Document 0437 --
13 this shows the flush painted median.

14 MR. BESLEY: Is there a date on that
15 document?

16 THE WITNESS: On --

17 MR. MAYBANK: That one you got your
18 hands on.

19 THE WITNESS: What -- there's -- I'm
20 not sure which date you're looking for, sir. I
21 apologize.

22 MR. MAYBANK: Is it stamped?

23 THE WITNESS: This is stamped, it's --

24 MR. MAYBANK: No, on the front.

25 MR. SMITH: That's Roy's stamp.

1 MR. MAYBANK: Engineer's stamp.

2 THE WITNESS: I really can't read that,
3 to be completely honest. 12 -- for construction,
4 it's signed 12/9/98.

5 (PLF. EXH. 4, Plan diagram, SCDOT
6 Colvin Documents 0437, was marked for
7 identification.)

8 BY MR. SMITH:

9 Q. All right. What I've done is I've
10 marked as Plaintiffs' Exhibit Number 4 this page
11 from the plans that's been marked as SCDOT Colvin
12 Documents 0437, same page you're looking at?

13 A. Correct.

14 Q. Okay. So -- and I want you, if you
15 could, take that same green highlighter and you can
16 highlight the area which I believe is now going to
17 be the flush median.

18 A. Correct.

19 Q. Okay.

20 A. You go outside the -- there you go.

21 Q. All right. Now, we had a discussion
22 just a moment ago about some dates.

23 A. Yes.

24 Q. And I think you -- you looked at that
25 and you saw a stamp of -- of 1998, right?

1 A. Correct.

2 Q. All right.

3 (PLF. EXH. 5, Letter dated 8/28/00 to
4 Mr. Robert G. Greiwe from Tommy W. Smoak, PILOT
5 00045, was marked for identification.)

6 BY MR. SMITH:

7 Q. But we do know, as referenced on
8 Plaintiffs' Exhibit Number 5 here --

9 A. Correct.

10 Q. -- we know that -- well, at least we
11 can see references that the decision to remove the
12 raised median were sometime around 2000. Or are
13 we -- are we reading that incorrectly?

14 A. Well --

15 MR. CRITES: Object to the form:

16 THE WITNESS: Again, going back to
17 maybe Number 1 in my deposition, talking about the
18 history --

19 BY MR. SMITH:

20 Q. Uh-huh.

21 A. -- and you looking at marrying the
22 widening project to the interchange project, I
23 would say you could -- I mean, you can make an
24 argument both ways. It's really to get the
25 interchange projects to accurately reflect what was

1 in the widening project.

2 So the widening project had the design
3 going east of Farmington --

4 Q. Um-hum.

5 A. -- as noted by this project, as well as
6 noted by the interchange plans. And the -- the
7 widening project always had that painted flush
8 median. So there was a decision at some point, and
9 you're exactly right, that we -- that the -- that
10 the interchange projects that again stopped at
11 Farmington Road, yes, they had a placeholder, so to
12 speak, or a design or however you want to call
13 that, east of Farmington with a -- with a raised
14 median.

15 But at some point, we had to get the
16 two plans to line up to show what was accurately
17 was going to be constructed, and that was the --
18 the painted flush median. So at some point, you
19 had to marry the two plan sets together. It just
20 happened to be that joint is right there at
21 Farmington Road.

22 Q. Okay.

23 A. So you had a raised median along 17A as
24 part of the interchange projects in conjunction
25 with controlled access, goes to Farmington Road.

1 Farmington Road east is a -- a flush painted
2 median.

3 And -- and yes, we had to -- between
4 the right-of-way plans and the construction plans
5 on the interchange project, we got those two to
6 marry -- marry at that point.

7 Q. Um-hum.

8 A. And I think the plans -- that timeline
9 is certainly noted in the plans, the exhibits that
10 were provided.

11 Q. Okay. In 2000, in August of 2000, what
12 was the status of the plans for whether it be a
13 raised median or a flush median? This seems to
14 indicate the -- the decision to go with the flushed
15 rather than the raised was made around the time of
16 this letter. Is that incorrect -- an incorrect
17 assumption?

18 A. Yes. And let -- let me explain that.

19 Q. Maybe -- do you want to read some of
20 these also?

21 A. Sure. Sure.

22 Q. I keep asking you about this, I just
23 want to make sure you've seen it.

24 A. Well, Tommy -- if you look at Tommy's
25 letter --

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. Um-hum.

2 A. -- and you look at the subject, it's
3 17A to I -- at I-26.

4 Q. Um-hum.

5 A. So as part of the project -- again,
6 it's -- we're all right at this -- what I call this
7 construction joint, which is Farmington Road.

8 Q. Um-hum.

9 A. So I mean, you can't just throw one out
10 and look at the other. You've got to look at them
11 in totality. And that's when -- when I prepared
12 for this case and this deposition, I had to look at
13 everything in totality. And when you do that, yes,
14 there's -- always was a painted flush median.

15 And we had to correct the interchange
16 plans to -- to reflect that. And part of that was
17 done as part of the right-of-way because we were
18 out buying right-of-way. Tommy was using the
19 interchange plans to acquire the right-of-way,
20 which is part of that. Because again, we had
21 acquired right-of-way, as I showed you on that last
22 exhibit highlighted in green along Farmington. And
23 he was using this plans, the 17A plans, as we
24 married those two together. We, in looking at this
25 whole project in totality and not having that --

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. 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. And -- and I had saw that term
2 nontransversable median, I think in the ARMS
3 manual.

4 A. That's probably a better term versus
5 unmountable.

6 Q. And but -- but those are --
7 nontraversable median, is that describing a raised
8 median such as what was in the original interchange
9 plans?

10 A. Yes, sir.

11 Q. Okay. And is it against the law to
12 drive over a raised median?

13 A. For the average motoring purpose --
14 average motoring public, yes. Not for emergency
15 services.

16 Q. Right. Double yellow lines, is that
17 what surrounds the -- the flush median that is
18 there now or that was constructed?

19 A. It is a -- it is a painted median that
20 incorporates double yellows, yes.

21 Q. Okay. And double yellow lines, it's
22 legal to cross double yellow lines if you're
23 turning into a private drive. Is that true?

24 A. Yes, sir.

25 Q. Okay. So the original plans in the

1 interchange improvement project was for a median
2 that prohibited left-hand turns coming from
3 Moncks Corner, but what was actually approved and
4 done made left-hand turns into the Pilot Travel
5 Center legal?

6 A. Yes.

7 Q. Okay. And if we look back to Exhibit 4
8 here -- and I think that's what you've got there.
9 Is that 37?

10 A. Yes, sir, 0437.

11 Q. Yeah, looking at 37 also. So
12 Plaintiffs' Exhibit Number 4, same thing you're
13 looking at here, the painted portion of this
14 median, so you see down here, coming up close to
15 the intersection with Farmington Road, right?

16 A. Correct.

17 Q. And it's skinnier here and it gets
18 wider up here, right?

19 A. Yes, sir.

20 Q. That was not intended to function as a
21 median area or a turning lane for traffic, was it
22 not?

23 A. If you work your way from
24 Farmington Drive east --

25 Q. Um-hum.

1 A. -- yes, there is a dedicated left turn
2 lane associated with the signal at Farmington. As
3 you move farther east and, as you alluded to, it
4 goes to skinny to -- widens out, this is
5 referred -- referred to as a two-way left turn
6 lane. So it does develop into a dedicated left
7 turn lane at the signal as you get away from that
8 intersection. That's -- that is referred to as a
9 flush median that's utilized as two-way left turn
10 lane.

11 Q. Okay. So this portion -- and what
12 we're going to do is just maybe mark it on here,
13 maybe with a -- a black pen. See how it turns from
14 skinny into wide right here?

15 A. Yes.

16 Q. Maybe just mark it with yours because
17 you've got a blue.

18 At what portion does this painted flush
19 median serve that left-hand turn median -- I forgot
20 which word you described, you used, the term you
21 used to describe that.

22 A. Two-way left turn lane?

23 Q. Yes, two-way left turn lane, where does
24 that start in -- in general?

25 A. Just put a little --

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 many -- you see what I'm saying? How -- how -- how
2 early are you allowed to get into that -- that
3 two-way left turning lane?

4 A. I don't know there's any specific
5 distances noted, but certainly you -- the -- the
6 intent is not to just travel down that road. It
7 would -- you would get into that median at the
8 appropriate time to make a legal left turn on -- a
9 legal left turn. Excuse me.

10 Q. And then for the folks that are coming
11 out and trying to make a left to go, you know, back
12 towards -- or in this situation, they'd be making a
13 left to go towards Summerville, what's the
14 functioning of that turn lane at that point with
15 regards to that particular type of maneuver?

16 A. It's the same thing. It'd allow them
17 refuge to -- to get -- they would be looking to the
18 left at folks traveling towards Moncks Corner,
19 allow them refuge in the median, then they can
20 merge into the -- to the turn -- to the lanes that
21 are going towards Summerville.

22 Q. Okay. My understanding has always
23 been -- and -- and you've -- I imagine you're going
24 to correct me if I'm -- and I am wrong -- was that
25 this double yellow lines here around this flush

1 A. From Moncks -- it allows them to get
2 out of the through lanes so that -- it allows them
3 to get out of the lanes that are going toward
4 Summerville, it gives them a place in the median so
5 they're allowed -- out of that, so they can get in
6 that median and make a left turn across the -- the
7 folks go -- across the lanes that's going east
8 towards Moncks Corner.

9 Q. Okay.

10 A. It also serves the purpose, again, why
11 it's called a two-way left turn lane, that if you
12 were making a left out of a drive, it allows you
13 that refuge so that you've just got to cross the
14 lanes coming toward you and allows you that refuge
15 in the median without having -- then you can merge
16 into the lanes that you're turning left to get
17 into. So that's the purpose. Hence, a two-way
18 left turn lane.

19 Q. So what -- what kind of merging is
20 taking place in that two-way left turn lane?

21 A. You would be turning -- you -- you
22 would be merging to make a left into the -- the gas
23 station.

24 Q. Okay. But I mean, how early -- how
25 early do you get into that? How many -- how

1 median, that you're allowed to cross it to go into
2 the private drives, but you're not allowed to get
3 into this area. This is an illegal area to be in;
4 is that incorrect?

5 A. That's incorrect, yes.

6 Q. Okay. I got you.

7 MR. MAYBANK: Can -- can you -- just
8 for the record, can you make an X of where you
9 thought was an illegal? Because I couldn't see.
10 Your hand was in the way.

11 MR. SMITH: Oh, it -- it's just the --
12 the entire thing, the entire flush median. The
13 entire painted flush median.

14 MR. MAYBANK: Okay.

15 VIDEO TECHNICIAN: Four minutes,
16 counselor.

17 MR. SMITH: Okay. Let me see if this
18 is a good time to stop. All right. Why don't
19 we -- do you want to change tapes here?

20 Does anybody need a break for a minute?

21 THE WITNESS: Yeah.

22 MR. SMITH: Okay.

23 VIDEO TECHNICIAN: This concludes Video
24 Number 1 in the video deposition of Leland --
25 Leland Colvin. The time is approximately 1:28 PM.

1 We are now off the record.

2 (A recess transpired.)

3 VIDEO TECHNICIAN: We are now back on
4 the record. Today's date is March 13, 2017. The
5 time is approximately 2:49 PM. This is Video
6 Number 2 in the video deposition of Leland Colvin
7 as 30(b)(6) representative for South Carolina
8 Department of Transportation.

9 BY MR. SMITH:

10 Q. Mr. Colvin, thank you for coming back.

11 A. Yes, sir.

12 Q. So when we left off before we took our
13 break, we were talking about some dates and times.
14 And I think I may have figured this out in my head,
15 just sort of thinking about it as -- as I was
16 sitting at lunch. And maybe let me run this by
17 you.

18 It looks like the -- the date stamp
19 that you had seen, I forget which exhibit it was,
20 but the date stamp you had seen from 1998 that
21 showed no raised median in this section of 17A in
22 front of what's now the Pilot Travel Center, that
23 was stamped in 1998. Do you remember that?

24 A. Correct. Yes, sir.

25 Q. And that would have been off of the

1 decision made to go without the raised median, was
2 that in this time frame of September or August of
3 2000?

4 A. You know, you had two concurrent
5 designs going on at the same time. And like I
6 said, I would -- I would almost state it that we
7 got this -- we got the interchange plans corrected
8 to show the appropriate median as designed on the
9 widening project.

10 Q. Okay.

11 A. Now, certainly the right-of-way
12 acquisition process facilitated that. There was --
13 I don't know there was anything that was really
14 pushing that at that point in time, but certainly
15 this -- this right-of-way acquisition pushed
16 this -- pushed that -- accelerated making sure
17 those two plans married up. Because you've got one
18 set of plans that showed one thing, another set of
19 plans that showed something else.

20 The set of plans that really was the
21 design east of Farmington always had the painted
22 median. The set of plans, the interchange that
23 went up to -- to Farmington and just kind of had a
24 placeholder, so to speak, beyond that showed the
25 raised median.

1 widening project --

2 A. Correct.

3 Q. -- correct?

4 A. Yes, sir. Yes, sir.

5 Q. But the -- the interchange improvement
6 project around that same time would have shown the
7 raised median in that same area?

8 A. Yeah. The plan, the right-of-way plans
9 that's date-stamped July of '99 showed the raised
10 median, yes.

11 Q. Okay. And so what I want to talk about
12 and we've been going back and forth to this letter
13 here, and it says -- I imagine that -- that means
14 September the 5th of probably 2000, just after this
15 August 28th letter -- there was a per phone call
16 verification with T. Smoak. And there's some notes
17 here: Negotiated median removal and drive cuts.

18 And earlier, you were talking about
19 marrying the two plans together, being the
20 interchange improvement project and the widening
21 project and the two different designs for the
22 median in that area, right?

23 A. Right.

24 Q. And so my question is: Is the two
25 plans, when they were put together and the final

1 Now, what makes it a little bit more
2 difficult is the right-of-way acquisition. Because
3 it included that section that we talked about along
4 Farmington was actually acquired under the
5 interchange.

6 Q. Right.

7 A. So that's kind of what spurred this
8 letter and why the right-of-way acquisition was
9 acquired as part of the interchange project and not
10 the widening project.

11 Q. And the right-of-way acquisition, is
12 that another way for just describing the dealings
13 with Marathon Ashland Petroleum, LLC?

14 A. Yes, sir. Absolutely, yes, sir.

15 Q. And so is it true that Marathon Ashland
16 Petroleum, as referenced on Plaintiffs' Exhibit
17 Number 5 there, it was their desire that the raised
18 median which appeared in the interchange
19 improvement project, that the requirement for the
20 raised median would go away?

21 MR. CRITES: Object to the form.

22 MR. MAYBANK: Same objection.

23 BY MR. SMITH:

24 Q. Is that your understanding?

25 A. Yeah. I mean, certainly Marathon

1 Ashland Petroleum would have liked to have
2 maintained the same access they had prior to the
3 widening project and the -- and a raised median
4 would have changed that access.

5 Q. Okay. Because a raised median at
6 that -- at that portion of Highway 17A would have
7 meant they would only get business off of 17A,
8 people turning right in, and they would lose access
9 to the business for people who wanted to turn off
10 17A into the Pilot Travel Center?

11 A. I don't know if I would categorize it
12 like that. It certainly would have -- would have
13 restricted left turns into those drives. There
14 could have been a -- still a left turn made at the
15 signal at Farmington, another left made from
16 Farmington into the gas station.

17 Q. But that -- that -- that entrance on
18 Farmington Road, that was a right-in, right-out; is
19 that right?

20 A. That is correct. It ended up being
21 right in, right out, correct.

22 Q. So people coming down 17A from
23 Moncks Corner, if they couldn't make a left across
24 where this -- what -- what became the flush median,
25 they go up to the intersection of Farmington Road

1 interchange improvement plan would have not allowed
2 people coming from the Moncks Corner area to make a
3 left into the -- what would then be the Pilot
4 Travel Center?

5 A. Yes.

6 Q. Okay.

7 A. Correct.

8 Q. Now -- and now talk to me about this:

9 Now, you said it was your decision that when you
10 put the two plans together to go with the plan,
11 that included the flush median, correct?

12 A. Correct.

13 Q. And this is talking about a phone
14 verification and negotiation -- or negotiated
15 median removal. And it says, number one,
16 approved --

17 A. To have painted median only from four
18 western curb cut to stop bar. In other words -- I
19 can't --

20 Q. Unmountable?

21 A. Oh, yes -- unmountable median has been
22 eliminated from the plan.

23 Q. Okay. So -- and this is signed by
24 Mr. Greiwe here, at least it looks like, right?

25 And Mr. Greiwe was the person that Mr. Smoak was

1 and took a left, they couldn't take a left into the
2 Pilot Travel Center there either since that was a
3 right-in and right-out only, right?

4 A. As -- as the final -- yes, the way
5 the -- the curb cut was located in the final -- the
6 final locations, that's a true statement.
7 Absolutely.

8 Q. And so can you see the impact that it
9 would have on the business that Marathon Ashland
10 Petroleum was associated with? Can you see the
11 impact that removing this raised median would have
12 on their business?

13 MR. CRITES: Object to the form.

14 THE WITNESS: Sure. Absolutely. Can't
15 use that access.

16 BY MR. SMITH:

17 Q. Right. And -- and is it fair to say
18 that Marathon Ashland Petroleum stood to make more
19 money because they had more access by customers
20 with the removal of this raised median?

21 MR. CRITES: Object to the form.

22 THE WITNESS: I can't -- I can't answer
23 that. I don't know how to answer that.

24 BY MR. SMITH:

25 Q. But we can say that the original

1 writing to in this letter, right?

2 A. Correct.

3 Q. So Mr. Greiwe is reporting back to
4 somebody, at least with this handwritten note about
5 the results of the phone call he had with
6 Mr. Smoak. Is that the way you read it?

7 MR. CRITES: Object to the form.

8 THE WITNESS: I don't -- I don't -- I
9 can't speculate what he was writing to.

10 BY MR. SMITH:

11 Q. Well, what do you -- if you look at the
12 thing, just kind of read it from start to finish,
13 tell me what you think is going on.

14 MR. CRITES: Same objection.

15 MR. MAYBANK: Object to the form.

16 THE WITNESS: I don't -- I have no clue
17 on if that was just a note to himself, what he
18 planned -- I can't speculate. I don't know what
19 Mr. Greiwe -- it looks like he was writing notes
20 based on a phone conversation, but that's purely
21 speculative on my part.

22 BY MR. SMITH:

23 Q. Okay. So did you discuss removing the
24 plan for a raised median in that area? Did you
25 discuss that with Tommy Smoak?

1 A. Absolutely, yes.

2 Q. Okay. And did Mr. Smoak tell you that
3 he had spoken to the folks at Marathon Ashland
4 Petroleum and they wanted this to be a flush median
5 rather than a raised median? Were you aware that
6 that was going on?

7 A. I don't specifically recall a specific
8 conversation related to that, but I am sure that as
9 part of the right-of-way acquisition process,
10 access into that tract would have been discussed.

11 Q. Okay. So what was the negotiation?
12 What was the negotiation? I mean, this -- this
13 references a negotiate --

14 Well, let me ask you this: Was there
15 any negotiation in the decision to go with the
16 flush median as opposed to the raised median?

17 A. No. I mean, not -- not from my
18 perspective. No, definitely not from my
19 perspective. From my perspective, it was a purely
20 engineering decision based on the Highway Design
21 Manual, based on the difference of the two
22 projects, the purpose and need. Certainly one
23 would have been easier for Mr. Smoak to negotiate
24 than another one.

25 But no, it was not removed as a result

1 of right-of-way acquisition. It was removed as a
2 result of meeting of the plans and the purpose and
3 need of the two projects and matching the Highway
4 Design Manual.

5 Q. Okay. So do you know -- all right.

6 You -- you mentioned a moment ago in
7 the negotiation process with Mr. Smoak -- do you
8 know what -- what Mr. Smoak negotiated? Meaning
9 what did he give and what did he give up.

10 A. Sure. It's in the right-of-way
11 document instrument that was provided as part of
12 the discovery phase.

13 Q. Okay. Do you -- do you know where that
14 is?

15 MR. MAYBANK: What are you looking for?

16 MR. SMITH: The --

17 THE WITNESS: The right-of-way
18 instrument.

19 MR. MAYBANK: Would that have been
20 something that you gave me?

21 THE WITNESS: It would have been.

22 MR. MAYBANK: Is it not in these
23 documents?

24 MR. SMITH: How about this one?

25 THE WITNESS: I don't know that it's in

1 there. This -- I printed out what you said you
2 needed.

3 MR. MAYBANK: The front cover, you've
4 got that very first page?

5 MR. SMITH: Yeah.

6 MR. MAYBANK: I think you've got a list
7 of what we produced. See if it's on one of those,
8 what number it would be. Oh, no, you've got --
9 yeah, that first page.

10 THE WITNESS: It was part of H.

11 MR. SMITH: Okay.

12 THE WITNESS: The right-of-way exhibit.
13 Yeah, H.

14 MR. MAYBANK: Let me -- and none of
15 those are H?

16 MR. SMITH: I've got it. I mean, I
17 printed it out.

18 MR. MAYBANK: And I know I've got a box
19 of stuff.

20 MR. SMITH: Okay. Oh, okay. I just
21 turned to Section H.

22 THE WITNESS: Yes. That is it.

23 MR. MAYBANK: Oh, never mind.

24 MR. SMITH: That's okay. This is it
25 right here.

1 BY MR. SMITH:

2 Q. We're looking at it?

3 A. Yep.

4 Q. Okay. And so let's identify what we're
5 looking at here. This is Bates Stamp SCDOT Colvin
6 Documents Number 0613. And so the -- the question
7 was in the negotiation process, what did the DOT
8 get and what did the DOT give up?

9 A. Yes. So what this does, this -- this
10 is what I refer as our right-of-way instrument that
11 includes an exhibit that shows the roadway and the
12 plans. It shows the area of acquisition. It shows
13 the permission that we talked about earlier in my
14 deposition as far as allowing us to -- to go in and
15 do some work. And it also includes the payment in
16 the amount of -- it appears to be 50,000 dollars.

17 And then in the -- in the special
18 provisions, we acquired 9,102 square feet. It's
19 showing in Exhibit A, attached to these documents.
20 Like I said, also as part of the document, we got
21 permission for construction slopes that extended
22 beyond the right-of-way line.

23 So this is really the -- the document
24 that basically binds both SCDOT as well as the
25 property owner.

1 Q. Okay. So it looks like what Marathon
2 Ashland Petroleum got out of this negotiation was,
3 number one, the removal of the requirement for a
4 raised median.

5 MR. MAYBANK: Object to the form.

6 MR. CRITES: Object to the form.

7 BY MR. SMITH:

8 Q. Is -- I'm just going to try and align
9 these up, down -- sort of break this thing up.
10 Would that be accurate in that statement? I'm
11 going to try to make a Column A, Column B.

12 A. The raised median was clarified for
13 sure.

14 Q. Okay.

15 A. I'm not sure that was a negotiation in
16 or out. I think it was a clarification on what the
17 access to the tract would be. I don't know if I
18 want to clarify that as that's what we gave up or
19 didn't. I would say it was certainly clarified.

20 Q. Okay. Can you pull that letter right
21 there?

22 A. Sure.

23 Q. So -- all right. If Mr. Smoak on
24 Exhibit Number 5 is referencing a phone call and
25 certain approvals that have been given, right?

1 Notes 1 through 4?

2 A. Yes. The -- the driveway's width and
3 purpose would have been part of the -- the plan
4 development and what -- and -- and yes, that would
5 have been part of the plan development process.

6 Q. And that would be not only the auto
7 driveways, but the truck driveway on frontage road
8 and the truck driveway on 17A?

9 A. Yes.

10 Q. So all of this?

11 A. Yes.

12 Q. So if we look here on Exhibit Number 5,
13 Items 1 through 4, you approved each one of those?

14 A. Yes.

15 Q. Okay. And if Mr. Greiwe is
16 representing this as a negotiation, other than
17 Marathon Ashland Petroleum, LLC paying 50,000
18 dollars, is there anything else that they
19 contributed to this so-called negotiation to result
20 in Items 1 through 4 in Exhibit 5?

21 A. We --

22 MR. CRITES: Object to the form.

23 THE WITNESS: We would have paid the
24 50,000 dollars because we acquired the -- the
25 right-of-way.

1 MR. MAYBANK: Well, Mr. Smoak isn't
2 referencing anything.

3 BY MR. SMITH:

4 Q. I'm sorry. If Mr. Greiwe is making
5 notes down here of a phone call he had with
6 Mr. Smoak and he's talking about the negotiated
7 median removal and drive cuts and he lists Items 1
8 through 4 -- do you see that?

9 A. Yes.

10 Q. Okay. And the first thing that he
11 reports is approved to have the painted median
12 only; the second thing he reports is a truck
13 delivery -- or truck driveway on 17A, right?

14 A. Um-hum.

15 Q. The third thing he reports is two auto
16 driveways. I imagine those are both on 17A as
17 well?

18 A. I believe that's the case.

19 Q. And then the driveway on the frontage
20 road, that would have been on Farmington Road, the
21 one that ended up being the right-in, right-out?

22 A. Correct.

23 Q. Okay. So other than approving the
24 median to go from raised to flush, did you make any
25 of the other decisions that are reflected by

1 BY MR. SMITH:

2 Q. Oh, okay.

3 A. So SCDOT made a payment --

4 Q. Sorry.

5 A. -- to them for the right-of-way that's
6 acquired. And as part of this is the plan sheet
7 that showed the location and that specifically
8 point out the driveways, but certainly shows the
9 location of the property in relation to 17A.

10 Q. Okay. And this page, we had
11 highlighted certain areas that were part of that
12 right-of-way purchase agreement. And -- but it
13 looks like it's a little more clearly laid out in
14 this Exhibit 615 of the Colvin documents?

15 A. That's correct, yes, sir.

16 Q. Okay. So if Tommy Smoak gave up
17 anything to give Marathon Ashland Petroleum Items 1
18 through 4 of Exhibit 5, you don't know what that
19 would have been?

20 A. I do not know what that would have
21 been.

22 MR. MAYBANK: Kevin, can we do -- can
23 we mark those three pages that you have?

24 MR. SMITH: Um-hum.

25 MR. MAYBANK: We'll make a copy so you

1 can -- or each one of those, that one and then the
2 other one in front of it?

3 MR. SMITH: Yeah.

4 (PLF. EXH. 6, Plan drawing, SCDOT
5 Colvin Documents0615, was marked for
6 identification.)

7 (PLF. EXH. 7, Title to Real Estate,
8 SCDOT Colvin Documents0613, was marked for
9 identification.)

10 BY MR. SMITH:

11 Q. So we're going to mark as Exhibit
12 Number Page 615, SCOD -- SCDOT Colvin
13 Documents 615, Exhibit Number 6. And that would
14 have been showing the right-of-way area we were
15 talking about?

16 A. Yes, sir.

17 Q. Okay. And then we're going to mark as
18 Exhibit Number 7 -- and I forget what you called
19 this. What was your name for this?

20 A. We -- we -- I call it our right-of-way
21 instrument. That may not be the technical term.

22 Q. Well, I just wanted to know what you
23 referred to it earlier as.

24 A. Yeah.

25 Q. Did -- did Marathon Ashland

1 noted in the right-of-way instrument where
2 permission was granted for construction defense.

3 BY MR. SMITH:

4 Q. Okay. And you said that as part of
5 merging those two, those two plans, you made the
6 decision to go with the flush median, right?

7 A. Correct.

8 Q. And you said that -- that that decision
9 was in line with the safety standards, with the
10 industry safety standards for highway design?

11 A. Yes. The South Carolina Highway Design
12 Manual, it -- it met that.

13 Q. Okay. And do you know what portion of
14 the South Carolina Highway Design Manual says that
15 or --

16 A. Sure. It was in the -- it was in the
17 document provided as well.

18 Q. Okay.

19 MR. MAYBANK: Go to the first page of
20 that binder.

21 MR. SMITH: Sure. Oh. Sorry.

22 BY MR. SMITH:

23 Q. Would that have been this Section
24 13422?

25 A. This is the updated -- let me

1 Petroleum -- was anybody from the DOT running for
2 some sort of political office at the time that
3 maybe they would have donated to that campaign?

4 A. They should not have been, not that I'm
5 aware of.

6 Q. Do you know of anyone that -- that was
7 at the DOT around that time that was running for
8 political office?

9 A. Not --

10 MR. MAYBANK: Object to the form. I
11 don't think he's been listed as some kind of
12 witness to give testimony in that regard.

13 MR. SMITH: Well, we're talking about
14 the reasons the thing was approved, and we're
15 exploring some of those.

16 BY MR. SMITH:

17 Q. So I just want to know any of the
18 possibilities.

19 A. Not that I'm aware of.

20 Q. Are you aware of any contributions of
21 any type that Marathon Ashland Petroleum made to
22 the South Carolina Department of Transportation
23 around, you know, August, September of 2000?

24 MR. MAYBANK: Same objection.

25 THE WITNESS: The only thing would be

1 double-check. This is the updated manual that I
2 first started. I also -- there's also relevant
3 pages from the design manual that was -- that was
4 in place at the time of the design. But yes, this
5 is the Highway Design Manual, a revision of May of
6 2013. And I can -- I can read you through that.

7 Q. May of 2002, you mean?

8 A. Yes. Yes, I'm sorry. Yeah, May of
9 2003.

10 Q. Okay.

11 A. And you go to median types, which is in
12 the Highway Design Manual, which we did here. And
13 we talk about flush medians -- flush median --
14 various median types. And we used -- we did not
15 use this particular manual because it's an update
16 of an older manual, but this is where you looked at
17 the raised medians. And you kind of go through and
18 you -- you apply this where you would place flush
19 medians or not place flush medians. So...

20 Q. Now, is it true that if you look at the
21 area past where the Pilot Travel Center is now on
22 Highway 17 and you go towards Moncks Corner, that
23 area is a raised median?

24 A. Yes. Currently, it is.

25 Q. Because it -- the original interchange

1 improvement plan had a raised median from well past
2 the Pilot Travel Center going all the way to the
3 stop bar with Farmington Road?

4 A. Between the interstate and Farmington?

5 Q. No. If you -- where is one of these
6 ones that we've got? So on this one here, so
7 there's Farmington right there. And if we just
8 were to look further back this way, let's just say
9 the travel -- the Pilot Travel Center ends right
10 here, is it true that past the Pilot Travel Center,
11 this actually picks up with a raised median that
12 goes that way?

13 A. That's -- that's not true. Yeah.

14 Q. You know, it's that way today.

15 A. It is that way today.

16 Q. Okay. But that wasn't what was done
17 back then?

18 A. Correct.

19 Q. That raised median that starts after
20 the Pilot Travel Center and goes toward -- on 17A
21 towards Moncks Corner, that raised median happened
22 after all of this?

23 A. Correct.

24 Q. Okay. And do we -- I know there was an
25 exhibit showing the interchange improvement project

1 and their plan for the raised median. I believe
2 that's on -- where was that exhibit we had with all
3 the different color highlighting? Here it is.

4 A. Yeah.

5 Q. So this one here on Exhibit Number 2,
6 it's kind of cut off there. But do you know in the
7 original interchange improvement project plans, do
8 you know how far this raised median went into
9 Moncks Corner?

10 A. Sure.

11 Q. Or towards Moncks Corner?

12 A. Sure. Thanks. Sorry. Give you that
13 back.

14 So if you go back to the interchange
15 plans, the right-of-way plans that are stamped July
16 of '99, you go to Page 11, it certainly shows a
17 raised median there. And then as you go to
18 Page 12, that's it.

19 So here's where you kind of tie them
20 back in. And it just kind of further reiterates
21 kind of the termination and how they're trying to
22 align up -- match -- match where this project
23 ended. As you can see, the plans here, which I
24 guess goes back to the confusion between the
25 widening project and the interchange.

1 As you can see, what Arcadis did is
2 their plans, they just showed the existing 17A in
3 its current form --

4 Q. Um-hum.

5 A. -- beyond on Sheet 12, which is the --
6 the next sheet that would incorporate 17A.

7 Q. Um-hum.

8 A. So --

9 Q. So that raised median plan on there
10 is -- goes just basically to -- to the end of this,
11 and they didn't take it any further than that?

12 A. Just to the -- the side, correct.

13 Q. Oh, I'm sorry.

14 A. Yeah, it's the station -- Station
15 12.1 -- plus 160.

16 Q. Okay. Okay. Got you.

17 Do you know when the raised median was
18 put -- what is that north? I don't even know what
19 direction that would be. Past the Pilot Travel
20 Center towards Moncks Corner, do you know when that
21 section was added?

22 A. I don't know the specific dates. As
23 part of our discovery, we went through a Google
24 Earth review and found some dates. But it's my
25 understanding that Mr. Clark could testify to that

1 as part of the -- as part of the new location
2 roadway that ties into 17A. It was part of that
3 encroachment application program.

4 Q. Okay. I'll just ask him about that.

5 A. But it was not done as part of the 17A
6 widening.

7 Q. Okay. And if we could just go back
8 to -- you said that your decision when you were
9 looking at the two plans to go with the flush
10 median was based on the Highway Design Manual?

11 A. Yes, sir.

12 Q. And can you just point to me what
13 the -- the factors that you considered or how it is
14 consistent with the Highway Design Manual?

15 A. Sure. So we just --

16 MR. MAYBANK: Before he answers that,
17 can I ask you -- it's not an objection because
18 certainly that's -- that's what we use now. Since
19 we didn't use that one to -- to design these plans,
20 do you want to see if we can -- do we have a set of
21 what we would have looked at then in 2000 that
22 would have been applicable here in town?

23 THE WITNESS: I do.

24 MR. SMITH: Yeah, why don't we do that.
25 Because I -- you know, I -- I would ask you if

1 there's anything substantially different between
2 this and that, but you probably just review it --
3 rely on memory for that. So do you think you can
4 grab the -- the one that was being used at the
5 time?

6 THE WITNESS: Sure.

7 MR. SMITH: Okay. Do you want to do
8 that?

9 THE WITNESS: Do you want to come with
10 me while I --

11 MR. MAYBANK: Yeah. Yeah, yeah, yeah.

12 VIDEO TECHNICIAN: We will now go off
13 the record. The time is approximately 3:18 PM.
14 (A recess transpired.)

15 VIDEO TECHNICIAN: We are now back on
16 the record. The time is approximately 3:22 PM.

17 BY MR. SMITH:

18 Q. Okay. Before we took a break, you were
19 going to go grab the version of this South Carolina
20 Department of Transportation Highway Design Manual
21 of 2003 that would have been in place at the time
22 these decisions were being made. And I believe you
23 walked in with this?

24 A. Correct.

25 MR. SMITH: Okay. Let's just mark this

1 our highways. Again, as mentioned very early in my
2 deposition, we have our own Highway Design Manual
3 that is specific to South Carolina, taking into
4 consideration components or recommendations from
5 AASHTO and USDOT.

6 So this is the Highway Design Manual
7 from 1991 that was in place at the time of the
8 design of both the interchange and the widening
9 project was done. And I just -- I just -- I can
10 get the whole thing. I just made copies of the
11 pertinent sections and chapters, and this one is
12 our medians.

13 Q. Um-hum.

14 A. And as you go through, it -- it talks
15 about all kind of medians. But when it says at the
16 very bottom:

17 In urban areas -- which is what 17A
18 would be -- where design speeds are 45 miles an
19 hour or less, a 15-foot flush median, paved median
20 at the same elevation as adjoining lanes may be
21 adopted. This width may be reduced to 14 feet
22 where economic and existing right-of-way conditions
23 justify. The median area may be used for turn
24 lanes, storage lanes, et cetera. Typical barrier
25 and flush medians are illustrated at 7-P.

1 so we -- I think we're on Number 8.

2 (PLF. EXH. 8, SCDOT Highway Design
3 Manual, was marked for identification.)

4 MR. MAYBANK: And for the record, I
5 apologize. I thought under E, Section E, we had
6 both the 1991 version and the '03.

7 BY MR. SMITH:

8 Q. All right. So I marked here as
9 Plaintiffs' Exhibit Number 8 what you brought in.

10 A. Correct.

11 Q. And that would be the 1991 version?

12 A. Correct.

13 Q. So was it 1991 and the next revisions
14 were 2003?

15 A. Correct.

16 Q. Okay. And I'm just going to put a
17 Number 9 so I don't have to keep counting.

18 Okay. And so the question is: What
19 were the elements that you looked at to determine
20 that the industry safety standards led to the flush
21 median as opposed to the raised median?

22 A. Sure. So as we're doing our Highway
23 Design Manual -- as we're doing our design, our
24 designer would go in and this is kind of the bible
25 that they use, so to speak, to -- to -- to design

1 So when I looked at this as a urban
2 roadway with a design speed of 45 miles per hour or
3 less, our design manual leads you directly towards
4 a flush painted median.

5 Q. Okay. Now, did you consult the ARMS
6 manual or the -- the U.S. Department of
7 Transportation Federal Highway Administration,
8 their access management in the vicinity of road --
9 sorry -- vicinity of intersections?

10 A. We did not. We would go by our Highway
11 Design Manual, taken those. In the development of
12 this, those have been taken in consideration. Our
13 ARMS manual is really a manual when we are
14 reviewing an encroachment permit from a private
15 developer getting access to our roadway. In this
16 particular case, there was already access to 17A.
17 We were going through and widening the project.

18 Q. Okay.

19 A. So the access manual would not have
20 been used. It would have been the Highway Design
21 Manual. How -- now, if we were widening the
22 roadway and a new gas station/convenience store was
23 going in, then at that point they would have come
24 to the DOT with an encroachment permit to access
25 the highway and we would have gone back and

1 referred to the ARMS manual as part of that
2 process.

3 Q. But do you know that an encroachment
4 permit was filed in -- in this case, in this
5 matter?

6 A. I'm not aware of that as associated
7 with the widening project.

8 Q. Okay. Maybe it was associated with the
9 interchange project?

10 A. Not that I'm aware of.

11 Q. You can see down here in the notes: An
12 encroachment permit will be required from DOT when
13 installing the cuts.

14 A. I -- I'm not sure where that came from.
15 The DOT would install the curb cuts as part of the
16 widening project.

17 Q. Okay. So I mean, I think I can
18 represent to you, along with everybody's knowledge
19 here, that the -- a -- an encroachment permit was
20 filed with the DOT with regards to those curb cuts.
21 And I -- I believe it mentioned the median as well,
22 I'm just not sure off the top of my head.

23 A. Mr. Clark could comment on that.

24 Q. Okay. I want to ask you about what
25 I'll mark as Exhibit Number 9, and this would be

1 Q. Is it true that nontraversable medians
2 have the effect of a 35 percent reduction in
3 traffic collisions?

4 A. Yes. I mean, on Page -- on -- on
5 Table 1.1, a continuous two-way left turn lane,
6 TWLTL is our engineering term, has 35 percent
7 reduction in total crashes, as well as a
8 nontraversable median. Both showed 35 percent
9 reduction in total crashes.

10 Q. All right. So nontraversable medians,
11 those would have the effect of a 35 percent
12 reduction in traffic collisions?

13 A. Correct.

14 Q. Okay. And so the absence of a
15 nontraversable would increase traffic collisions by
16 35 percent?

17 A. That is not what this table states.
18 This table -- this table states that a continuous
19 two-way left turn lane, which is what we have --

20 Q. Okay.

21 A. -- has -- the effects on that has a
22 35 percent reduction in total crashes, a 30 percent
23 decrease in delay, and a 30 percent increase in
24 capacity. The same increases and decreases as a
25 nontraversable median as noted in this table.

1 the SCOD -- SCDOT ARMS manual.

2 A. Yes.

3 Q. Right?

4 A. Um-hum.

5 (PLF. EXH. 9, SCDOT Access & Roadside
6 Management Standards, was marked for
7 identification.)

8 BY MR. SMITH:

9 Q. And this section here, this is the 2008
10 edition. So I'm going to be asking you about
11 things in here --

12 A. Sure.

13 Q. -- and then how that maybe relates to
14 information from back then. Okay?

15 A. Sure.

16 Q. So if you -- if you look at that there
17 and then you turn to Page 6 -- it's double-sided,
18 so --

19 A. Okay, got you.

20 Q. -- it should be back there.

21 A. Sure.

22 Q. And that's where I was getting this
23 term nontraversable -- nontraversable medians. Do
24 you see that?

25 A. Yes.

1 Q. Okay. Where was that -- TWLTL? Yeah.
2 And these -- these percentages here --

3 Well, how do you -- how -- how do you
4 square that? Because a nontraversable is going to
5 prevent left-hand turns, a continuous two-way left
6 turn lane is going to allow left-hand turns, each
7 one of those results in a 35 percent reduction in
8 total crashes? If you allow left-hand turns, it's
9 a 35 percent reduction in crashes; if you don't
10 allow left-hand turns, it's a 35 percent reduction
11 in crashes?

12 A. I -- I'm just -- I'm reading the -- I'm
13 reading the -- the book that you provided to me,
14 which is a DOT access management. And it just -- I
15 guess this is under the heading of effects of
16 specific access management techniques. And it
17 talks about -- that summarized the general safety
18 and operation effects of specific access management
19 techniques based on researches to date.

20 So again, if you don't have that
21 TWLTL -- and you're right, that's the term we
22 use -- you don't have that storage area to allow
23 that -- that vehicle, as we talked early on in the
24 deposition, to get out of that through lane of
25 traffic.

1 Q. But can you -- can you -- can you
2 square that -- that -- that statement that I just
3 made that allowing left-hand turns with that area
4 to get out of traffic reduces the number of crashes
5 by the exact same percentage as simply not allowing
6 left-hand turns at all by using a nontraversable
7 median? Does that make sense?

8 A. Yeah. A nontraversable median cuts
9 down on the number of conflict points compared to a
10 flush painted median.

11 Q. And the number of conflict points, that
12 talks about as a person is turning left, the
13 conflict points would be the two or three lanes
14 heading towards them. Those each would be conflict
15 points, right?

16 A. Correct.

17 Q. Okay. And allowing left-hand turns in
18 this particular area created three conflict points?

19 MR. MAYBANK: Object to the form.

20 BY MR. SMITH:

21 Q. If there were three lanes?

22 A. It didn't create any conflict points
23 that -- those, that was already there. Those left
24 turns are already allowable, so it didn't create
25 any -- any conflict points that weren't on --

1 there's -- there's additional number of lanes, but
2 there -- there was -- there -- that -- that access
3 was already in place prior to the widening.

4 Q. Okay. One of the -- well, let me ask
5 you this: The main type of -- of collision
6 resulting from left-hand turns, could we describe
7 those as T-bone collisions? Are you familiar with
8 that term, what it means?

9 A. Yeah. We -- we call those right-angle
10 crashes.

11 Q. Okay.

12 A. Collisions.

13 Q. Same thing as a T-bone?

14 A. In general, I would say yes.

15 Q. You've got one coming this way and one
16 going that way, so that's a -- that's a right
17 angle?

18 A. That is a right-angle crash.

19 Q. Okay. So if -- are you -- are you
20 familiar with what a T-bone collision means?

21 A. I -- I think it's the same definition
22 as a right angle.

23 Q. Okay. That's what I'm trying to -- I
24 was trying to --

25 A. Yeah.

1 Q. -- trying to describe the same thing.

2 A. Yeah.

3 Q. And T-bone collisions or right-angle
4 collisions, how do those rank in terms of the
5 seriousness of collisions?

6 MR. MAYBANK: Object to the form.

7 THE WITNESS: I don't have that
8 information.

9 BY MR. SMITH:

10 Q. Are they some of the most severe
11 collisions? Or are they most -- some of the most
12 minor collisions? Or they fall somewhere in
13 between?

14 MR. MAYBANK: Same objection.

15 THE WITNESS: I don't have an answer to
16 that.

17 MR. SMITH: Okay. All right. I think
18 I only brought one copy of this, so I think we'll
19 have to share. Can I have another -- have you got
20 another sheet of yellow -- all right.

21 I'm going to mark as Plaintiffs'
22 Exhibit Number 10 here this U.S. Department of
23 Transportation Federal Highway Administration
24 Access Management in the Vicinity of Intersections.
25 Like I said, I -- I only brought one copy.

1 THE WITNESS: No problem.

2 (PLF. EXH. 10, Document entitled Access
3 Management in the Vicinity of Intersections, was
4 marked for identification.)

5 BY MR. SMITH:

6 Q. So what I want to do is in Page 3 --

7 MR. MAYBANK: Year? Is there a --
8 Kevin, is there a year coinciding with that?

9 MR. SMITH: 2008.

10 MR. MAYBANK: Okay.

11 BY MR. SMITH:

12 Q. Section 1.3.

13 A. Okay.

14 Q. It's down there. In general, the
15 number of locations where travel paths meet affects
16 safety. Is that true?

17 A. Yes.

18 Q. Okay. And left turns can lead to more
19 severe crashes. True?

20 MR. MAYBANK: Object to the form.

21 THE WITNESS: In the context of this
22 paragraph, but this does not make an absolute
23 statement. I'm -- I'm not sure -- I'm not sure I
24 understand the question.

25 BY MR. SMITH:

1 Q. Well, at least according to the United
2 States Department of Transportation, left-hand
3 turns can lead to more severe crashes than merging
4 or diverging conflicts because of the angle and
5 speed differential -- differentials between the
6 vehicles.

7 A. Yes.

8 MR. MAYBANK: Hold on. What's the
9 question?

10 BY MR. SMITH:

11 Q. That is according to the U.S.
12 Department of Transportation, that statement?

13 A. What's the question?

14 MR. MAYBANK: Did he read it right?

15 BY MR. SMITH:

16 Q. It says -- the sentence starts out:
17 For example, a crash due to crossing maneuvers
18 created by motorists turning across the roadway or
19 making left turns can lead to more severe crashes
20 than -- and they list the other types of
21 situations. So is that true, in your mind?

22 MR. MAYBANK: Objection.

23 THE WITNESS: In the context of that
24 statement on this document that I'm not very
25 familiar with, it -- it says basically that a

1 left -- a -- a crossing maneuver or making left
2 turns is more severe than merging or diverging
3 conflicts. Yes, I would agree with that statement.

4 BY MR. SMITH:

5 Q. Okay. And then page -- well, let me
6 just ask you this in general.

7 Eliminating left turn movements at
8 driveways is safer. True?

9 MR. MAYBANK: Object to the form.

10 THE WITNESS: Yes. Yeah.

11 BY MR. SMITH:

12 Q. And in fact, I think that's referenced
13 in here as well. It's even in the title.
14 Eliminating left turn movements at driveways is
15 beneficial from a safety perspective.

16 Do you agree with that, in general?

17 A. Yes. At that one particular location,
18 you've got to see how the access would be, is it
19 going to resolve -- revolve -- result in U-turn
20 maneuvers? Or how do you access that point? And
21 at that one particular location, the conflict
22 points at that one location would be reduced.

23 I don't know the results of what
24 additional conflict points it may have. In other
25 words, is there a U-turn that you have to come back

1 in and make a right? So I don't -- I don't know
2 that I can say that wholeheartedly in -- in a
3 vacuum. But yes, at a specific particular spot,
4 eliminating left turners reduces the conflict
5 points at that spot. Is it safer for the overall
6 roadway? I -- I'm not sure I'm prepared to make
7 that statement.

8 Q. Okay. And that was really what I was
9 asking you about.

10 A. Yeah.

11 Q. With -- with regards to the these
12 entrances and exits, these curb cuts on -- on 17A
13 in front of what's now the Pilot Travel Center, I'm
14 talking about that particular area, not necessarily
15 any others.

16 A. Sure.

17 Q. Okay? And would that statement in this
18 context of that particular location, the earlier
19 statement about left turns leading to more severe
20 crashes, would that also be true about that
21 particular area?

22 MR. CRITES: Objection.

23 MR. MAYBANK: Object to the form. And
24 just so -- when you say this context, you're
25 looking -- if -- are you talking about this 2008

1 federal guideline document? Is that what the
2 context -- what I don't --

3 BY MR. SMITH:

4 Q. The context is the area in front of the
5 Pilot Travel Center.

6 MR. MAYBANK: Same objection.

7 THE WITNESS: It -- it -- I would say
8 it depends. If we're going to make U-turns at the
9 signal, maybe, maybe not. That's why I'm saying I
10 don't think you can just look at one thing in a
11 vacuum. Because us traffic engineers, we look at
12 the entire roadway. I mean, on one particular
13 point, you -- you can't put your blinders on and
14 look at one particular point.

15 In other words, if you had that raised
16 median and we allowed left turners at the light, is
17 that safer or not? I don't know. It'd have to be
18 evaluated. So I can't say at that one particular
19 location is it, in front of that whole roadway,
20 safer or not safer. I can't answer that.

21 BY MR. SMITH:

22 Q. Okay.

23 A. Because there is U-turns available on
24 the western side of I-26 on 17A as part of the --
25 as part of the interchange project that we're

1 talking about. There's left turns -- U-turns
2 allowed there.

3 Q. All right. But is -- is there -- you
4 wouldn't allow a left-hand turn in this area -- let
5 me see that, what we've got with the diagram.

6 On Exhibit Number 2 here, as we're
7 looking at Farmington Road right there and you've
8 got the -- the people coming down off the -- the
9 bridge right there, with I-26 running kind of
10 underneath it here, you wouldn't allow a U-turn
11 here, would you?

12 A. I -- I can't answer that
13 hypothetically.

14 Q. Does it -- does it matter to you that
15 people coming down off this are merging in off
16 of -- off of 26? Does that -- does that factor
17 into a decision about whether or not to allow
18 U-turns right here at Farmington Road?

19 A. It would be part of the equation, yes.

20 Q. Do you think that would -- I mean, just
21 kind of gut reaction here, would it be a good idea
22 to allow U-turns right here? Or would the nature
23 of what's going on in the Summerville direction of
24 people coming off the interstate and coming down
25 off that hill, just a judgment call here, would

1 that be a good idea to allow U-turns right there?

2 A. You --

3 MR. MAYBANK: Hold on before you
4 answer.

5 Kevin, I'm -- I'm not trying to be
6 difficult. I -- because it's not marked on there
7 and it -- and it's being videoed, what -- what
8 U-turn are you asking for? Are you talking about
9 the one --

10 MR. SMITH: I'm talking about people on
11 Highway 17A coming from Moncks Corner --

12 MR. MAYBANK: Okay.

13 MR. SMITH: -- up to the stop bar at
14 Farmington Road, allowing them to make a U-turn to
15 go back down 17A towards Moncks Corner.

16 MR. MAYBANK: All right. Thank you.

17 THE WITNESS: You would have to take in
18 consideration -- if you would allow a U-turn there,
19 you'd have to take in consideration how far the
20 traffic would back up going eastbound on 17A into
21 the interstate. That would be one of the factors
22 that you would look at.

23 BY MR. SMITH:

24 Q. Okay.

25 A. So that would be part of that -- that

1 would be part of that review of that intersection,
2 whether you'd allow U-turns. Like I said, we've
3 allowed them, they're part of the plans on the
4 same -- exact same project west of I-26.

5 Q. So is that -- I'm sorry. I don't know
6 west and --

7 A. That's on the Summerville side.

8 Q. Is that -- okay.

9 A. Summerville side of I-26.

10 Q. All right. Were you -- at the time
11 that you were making decisions about the flush
12 median versus the raised median, were you aware of
13 what -- what we just talked about in Exhibit Number
14 10 from the U.S. Department of Transportation,
15 those things about eliminating left turn movements
16 at driveways is safer? Were you aware of that?

17 MR. MAYBANK: Object to the form.

18 Not -- not that I -- I hate -- I don't mean to do
19 this, but he approved this back in '98, '99, 2000.

20 That's a 2008 document. You're asking him to -- to
21 project into the future --

22 MR. SMITH: I know.

23 MR. MAYBANK: -- what the government
24 was going to say.

25 MR. SMITH: Roy, I know. We've got

1 to -- we've got to stop this though. I mean, if
2 he's got questions, he's going to ask me. I think
3 you're kind of answering for him at this point.

4 MR. MAYBANK: Object to the form.

5 MR. SMITH: I got you. I mean, listen,
6 all projections are -- are -- all objections are
7 preserved, everything. There's really even no need
8 for anyone to object ever.

9 If he's got a question about my
10 question, ask me for a clarification.

11 MR. MAYBANK: Well --

12 MR. SMITH: You know, I --

13 MR. MAYBANK: No, I get it.

14 MR. SMITH: -- won't ask him about
15 something you all talked to in private, but...

16 MR. MAYBANK: Sure.

17 MR. SMITH: Everything's preserved.

18 BY MR. SMITH:

19 Q. And so if you have a question about my
20 question, just, you know, ask me.

21 A. Sure.

22 Q. I know this is from 2008. My question
23 to you is: The information in here that we just
24 talked about that eliminating left turn movements
25 at driveways is safer and that left turns lead to

1 more severe crashes than these other types of
2 merging or diverging situations, was that
3 information known to you back in 2000? Were you
4 aware of that information in general?

5 A. Yes.

6 Q. Or is this new since you made these
7 decisions?

8 A. Yeah. I -- at the time that I was
9 involved in this project, I understood access
10 control. And I understood left turn maneuvers, I
11 understood U-turn maneuvers. And I would also say
12 it's not as simple as saying left turn maneuvers.
13 It -- it depends on what the access would be.

14 So the statement that a left turn
15 maneuver at this is safe or unsafe is hard for -- I
16 cannot make that statement.

17 Q. Okay. So let's just clear that up
18 then. With regards to this particular part of 17A
19 and entrances and exits from what is now the Pilot
20 Travel Center and people turning across 17A making
21 a left into there, your testimony today as a
22 representative with regards to the decisions that
23 were made in this thing, your testimony today is
24 that you don't know whether or not allowing or
25 disallowing left turn movements in that area would

1 have any effect on safety. Is that your testimony?

2 A. No. My testimony is the 17A
3 interchange and widening project was designed that
4 met SCDOT Highway Design Manual standards. And
5 that on the interchange project there -- where
6 there was controlled access, a raised median was
7 put into place. As you got off the interchange
8 where controlled access and access control was not
9 part of that project, a flush median was installed,
10 which is as per our Highway Design Manual at the
11 point in time in 1991 and in conformance with the
12 2003 version.

13 Q. Okay. But in terms of what's marked on
14 here in Exhibit Number 10, this U.S. Highway
15 Department of Transportation -- I'm sorry -- U.S.
16 Department of Transportation talking about
17 eliminating left turn movements at driveways is
18 safer, left-hand turns lead to more severe crashes,
19 you don't know if either one of those statements
20 would apply to the area immediately in front of the
21 Pilot Travel Center on 17A?

22 A. No, I'm -- I'm saying that you've got
23 to look at the whole segment of roadway and how
24 that would or would not have been accessed. And
25 comparing a left turn mover -- maneuver compared to

1 a U-turn maneuver, since no controlled access was
2 acquired or bought on the 17A wide -- 17A widening
3 project, would have been what would have -- those
4 decisions are what we take into account when we
5 design the roadway.

6 And looking at this document,
7 Number 10, in a vacuum, which is access management,
8 is not a highway design -- is not the
9 South Carolina Highway Design Manual.

10 Q. Okay. But I -- I thought you agreed
11 with those terms in general, that left turn
12 movements at driveways is safer -- I'm sorry --
13 eliminating left turn movements at driveways is
14 safer. You agreed with that position in general
15 earlier?

16 A. It -- it eliminates conflict points.

17 Q. Right. And what I'm asking you is:
18 Did you consider that statement, that principle
19 that eliminating left turn movements at driveways
20 is safer, did you consider that principle in your
21 decision to allow left-hand movements -- left-hand
22 turns in front of the Pilot Travel Center?

23 A. Sure.

24 Q. Okay. And I -- and I apologize. I --
25 I got a little confused. This is a 2008 manual

1 that we're reading from, but those general
2 principles about eliminating left turn movements at
3 driveways is safer, left turns can lead to more
4 severe crashes, those two general principles were
5 known back in 2000, were they not?

6 A. Sure. Sure.

7 Q. Okay. Do you believe that research
8 suggests that approximately 72 percent of crashes
9 at a driveway involve a left turning vehicle?

10 MR. MAYBANK: Object to the form.

11 MR. CRITES: Objection.

12 THE WITNESS: I'm not aware of that
13 statistic.

14 BY MR. SMITH:

15 Q. Okay. And it's -- I'm reading here
16 from Page 4 of Exhibit 10, right there
17 (indicating).

18 Does that sound accurate to you?

19 A. I don't know.

20 Q. Don't know either way?

21 A. I can't -- I can't -- I can't read just
22 one word of a manual that I haven't seen and be
23 able to comment intelligently on that. I -- I'd
24 hate to do that.

25 Q. But in turning -- just in general, the

1 statement research shows that approximately
2 72 percent of crashes near driveways involve left
3 turns, do you think that's true or not true? Based
4 on your experience in the years that you've done
5 this, what would you expect?

6 MR. MAYBANK: Object to the form.

7 THE WITNESS: I mean, this is a --
8 you're asking me to look at a manual that -- that I
9 have not looked at until really today. And the
10 next sentence, it says 34 percent of these crashes
11 are due to outbound vehicles turning left, not
12 in -- inbound. So that's --

13 BY MR. SMITH:

14 Q. Yeah, it's left in, left out.

15 A. Certainly.

16 Q. I mean, these -- these are left-hand
17 turns at driveways.

18 A. Yep.

19 Q. And -- and this says that there are
20 studies that show 72 percent of crashes near
21 driveways involve left-hand turns. Based on your
22 experience and your -- and the work you've done
23 with the Department over the years, do you think
24 that's accurate or not accurate?

25 A. We --

1 MR. MAYBANK: Object to the form.

2 THE WITNESS: I don't know if we're
3 talking about -- are we talking about the 17A --
4 are we still back at the 17A driveways with the
5 Speedway? We've done an accident diagram that
6 shows some studies as part of the safety project
7 that would show exactly what the accidents were in
8 the last three years.

9 BY MR. SMITH:

10 Q. I'm just talking about just crashes
11 near driveways.

12 A. I don't know. I don't know the answer
13 to that question.

14 Q. Okay. Eliminating left turns to or
15 from the Pilot Travel Center on 17A would have
16 been -- would have been possible. True?

17 A. Certainly. Anything is possible.

18 Q. And here, a raised or unmountable or --
19 or untraversable median would have prevented
20 left-hand turns?

21 A. Yes.

22 Q. Guardrails would have also prevented
23 left-hand turns?

24 A. Certainly.

25 Q. Okay. And there was nothing that

1 prohibited the Department of Transportation from
2 incorporating their raised median plans from the
3 interchange improvement project. Nothing
4 prohibited the DOT from going with the raised
5 median plan, did it?

6 A. It would have been outside of the
7 Highway Design Manual guidelines regarding this
8 section of roadway and where it stood -- excuse me.

9 Q. Um-hum.

10 A. -- and how this urban section of
11 roadway with a design speed less than 45 miles an
12 hour, it would have been in conflict with our
13 Highway Design Manual.

14 Q. Okay. What else would have prevented
15 left-hand turns off of 17A or onto 17A in front of
16 this section where the Pilot Travel Center is? We
17 talked about medians, guardrails. Anything else
18 would have prevented left-hand turns?

19 A. I mean, there is a --

20 MR. MAYBANK: Spikes.

21 THE WITNESS: There's un --
22 unlimited -- I mean, I won't say unlimited. But
23 yeah, certainly -- certainly like control access,
24 an interchange like we have at I-26 with Farmington
25 and 17A would have prevented that. Which is safer

1 than an intersection, I think this book probably
2 would tell you that as well. So it's just you've
3 got to apply standards reasonably at the locations
4 that best fit that.

5 BY MR. SMITH:

6 Q. Um-hum. You could have put just paint
7 down the road that says no left-hand turns, too,
8 right?

9 A. We -- yes.

10 Q. And signs along the highway or signs in
11 this section that says no left turn?

12 A. Yes. We had found that that is very
13 difficult to enforce. But yes, that could have
14 been done.

15 Q. Okay. Is -- would it -- would Pilot be
16 allowed to put signs in their driveway saying no
17 left-hand turns for the people that are leaving the
18 parking lot getting onto 17A? Would they be
19 allowed to put a sign up like that?

20 MR. BESLEY: Object to the form.

21 THE WITNESS: If it was off the DOT
22 right-of-way, we don't -- certainly. There's no
23 reason why we would have not -- would not tell them
24 they couldn't put a sign on their own property.

25 BY MR. SMITH:

1 Q. Okay. But what if they wanted to put
2 that sign on the -- on the right-of-way? Let's say
3 they came to you and said -- or to the DOT and just
4 said, hey, you know, in the last 10 years or so,
5 we've seen about 250 accidents happen right in
6 front of our shop. And a lot of these involve
7 people left in and left out. We want to stop that
8 from happening, so we want to put a sign in our
9 parking lot to the people exiting our parking lot
10 onto 17A that says no left turns.

11 And they wanted to put that sign on the
12 right-of-way. Would they be allowed to do that?

13 A. We would have probably -- if that was
14 the case, we would have used other measures than a
15 sign, other countermeasures than a sign in the
16 parking lot.

17 Q. Like what?

18 A. Closing a drive. Put in islands within
19 the driveway, we call them pork chop islands,
20 that's right in, right out. Bollards on 17, a
21 raised median on 17, closing a drive, for instance.
22 There's a -- I don't think a sign -- we would not
23 have used that countermeasure in that particular
24 instance.

25 Q. Okay. Does that sound like a -- does

1 a lot, 250 in 10 years?

2 A. I can't -- I can't answer that.

3 Q. Okay. If a corporation is running a
4 business where certain allowances have been made,
5 specifically left in and left outs have been
6 allowed, does the Department of Transportation
7 expect that corporation to let them know if there
8 have been a large number of traffic collisions in
9 front of their store on that stretch of highway?

10 A. Not to my knowledge.

11 Q. Would the -- would the DOT want
12 corporations to let them know if they're
13 experiencing a high level of traffic collisions in
14 front of their store involving left ins and left
15 outs, especially with the history of the, you know,
16 questions about letting that thing happen or not
17 here, would the DOT want the corporation to tell
18 them about that?

19 A. Not to my knowledge. That would not be
20 a countermeasure that we would use as far as safety
21 considerations.

22 Q. I want to ask you about the ARMS
23 manual. You see in here the definitions for the
24 functional area of an intersection?

25 A. Yes.

1 that sound like a lot of collisions in 10 years,
2 250? Assuming those 250 happened in this --

3 A. You have to --

4 Q. -- in this area?

5 A. You have to look at the rate. I mean,
6 you know, when you look at just raw number of
7 collisions, you've got to tie that to the amount of
8 traffic. So without knowing the traffic volume
9 and -- and you really need to -- you really need to
10 convert it to rates. So it's to really -- that's
11 the --

12 Q. Like per vehicle that passes by?

13 A. Yeah. That's -- that's the numerator.
14 You've got to have that denominator to -- to --
15 that I would tell you that's a cause for concern,
16 not a cause for concern.

17 Q. But you -- you know, you've obviously,
18 if -- if you weren't before all this, you've
19 been -- you've become quite familiar with this
20 intersection now. Is that fair to say?

21 A. Yes.

22 Q. Through the preparation of this case?

23 A. Yes.

24 Q. All right. And from what you know
25 about that stretch of highway, does that sound like

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 you put those conflict points in the functional
2 area of an intersection, those conflict points
3 became -- become even more dangerous. Is that
4 true?

5 A. I would not say that necessarily.

6 Q. So conflict points outside of the
7 functional area of an intersection are -- have the
8 same danger as conflict points within the
9 functional area of the intersection. Is that your
10 testimony?

11 A. It -- it depends on several things.

12 In -- for instance, if a intersection has a traffic
13 signal, is that -- as -- as the control device, is
14 it stop signs? It just depends on each -- each
15 intersection is a case-by-case scenario that you
16 have to evaluate that in context of that exact
17 location.

18 I mean, I think you're talking
19 hypotheticals. But you've got to take each case as
20 a case-by-case scenario. A -- a driveway next to a
21 signalized intersection, that signalized
22 intersection provides gaps in traffic versus a --
23 versus a driveway that's in a mid block that you
24 don't necessarily have the gaps in traffic based on
25 a signalized intersection. So it's -- it's a

1 thousands of pages of documents that have been
2 produced so far, you've never seen a single page
3 that would actually mark out where the functional
4 areas of the intersection between 17A and
5 Farmington Road are. True?

6 A. Correct. That's correct.

7 Q. And if we go back to this Exhibit
8 Number 10, let me just ask you in general:
9 Allowing driveways within the functional area of an
10 intersection increases the likelihood of
11 collisions. True?

12 MR. MAYBANK: Object to the form.

13 THE WITNESS: Any driveway anywhere
14 increases conflict points.

15 BY MR. SMITH:

16 Q. Um-hum.

17 A. So by increasing a conflict point on
18 any road anywhere, yes, there is a -- there is a
19 higher chance. So yes, any conflict point whether
20 it's right angle, whether it's as noted in that --
21 earlier in that document where there's a merging
22 maneuver, diverging maneuver, yes, any -- any
23 contact point, there's a -- there's an increased
24 chance of accidents.

25 Q. And if you combine conflict points and

1 case-by-case scenario.

2 Q. And this Exhibit Number 10 here, this
3 U.S. Highway Department -- or U.S. Department of
4 Transportation, really this paragraph right here
5 talks about limiting or -- I'm sorry -- limiting or
6 possibly eliminating driveways within the
7 functional area of an intersection upstream and
8 downstream helps reduce the number of decisions
9 motorists make while traveling through an
10 intersection and improves the safety in the -- in
11 the vicinity of an intersection.

12 Do you take that statement as true?

13 MR. MAYBANK: Object to the form.

14 THE WITNESS: I mean, I -- it's going
15 to be hard for me to comment on a document that --
16 that I haven't really studied.

17 BY MR. SMITH:

18 Q. Okay. But do -- do you need to study
19 anything to -- to know about left-hand turns in the
20 functional area of -- well, let me ask you. Let's
21 just break it down here.

22 If you limit or eliminate driveways
23 within the functional area of an intersection, does
24 that help reduce the number of decisions that
25 motorists make when they're in the functional area

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 grabbed that from you. Yep, here we go.

2 We were going to do that on Exhibit 6.

3 And why don't you take a yellow highlighter and,
4 you know, you can circle it the whole way around.

5 A. I can do it for the western side. I
6 think this -- I think this exhibit, I cannot -- I
7 cannot tell on the eastern side of the
8 intersection, if that makes sense.

9 Q. All right. So you think that maybe the
10 functional area of the intersection would --
11 would -- would encompass more than what's shown on
12 the left-hand end of Exhibit 6 that might extend
13 further than that?

14 A. I don't know the answer to that. I'd
15 have to look at the 17A widening plans to determine
16 that.

17 Q. Okay. So can you -- can you -- can you
18 do that?

19 A. Sure.

20 Q. Okay.

21 A. Sure.

22 Q. Which one can I hand you?

23 A. I am looking at Document 0437.

24 Q. Oh, you've got it in front of you?

25 A. Yes.

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. Sorry.

2 MR. MAYBANK: What number is that?

3 THE WITNESS: 0437.

4 MR. MAYBANK: Let us pull that so we
5 can make that an exhibit.

6 MR. SMITH: Yeah. Is that this, 38?
7 I've got this as 37.

8 MR. CRITES: I think we already marked
9 that as an exhibit.

10 MR. SMITH: No, I'm sorry. We might
11 have marked it. It might be the back side of one
12 of those. Yeah, this is -- you know, you said 437,
13 right?

14 THE WITNESS: 0437, yeah.

15 MR. MAYBANK: Here you go, 437.

16 MR. SMITH: All right. Oh, that's that
17 same one we were looking at before. I'm sorry.
18 Okay.

19 BY MR. SMITH:

20 Q. So 0437 is actually Exhibit Number 4,
21 and we've got some green highlighter markings that
22 you made before.

23 A. Right.

24 Q. Now let's use the yellow highlighter
25 marking to mark the functional area of the

1 intersection.

2 A. That is it.

3 MR. MAYBANK: You got a pen?

4 THE WITNESS: Yeah.

5 MR. MAYBANK: All right. Will you do
6 the little thing that said -- draw a line that says
7 functional area of the intersection?

8 THE WITNESS: (Witness complies.)

9 MR. MAYBANK: Perfect.

10 BY MR. SMITH:

11 Q. Okay. So if we look at what you've
12 marked up here on Exhibit Number 4, that would seem
13 to suggest that both of the auto driveways are in
14 the functional area of the intersection?

15 A. Definitely the westernmost. The
16 easternmost is kind of right on the borderline.

17 Q. Sort of half of it is, half of it
18 isn't?

19 A. You know, I'm -- I'm going by way more
20 than a half size set of plans. I would almost say
21 the easternmost is not in the functional area.
22 Here's your left turn lane here. This is just your
23 taper back. And your -- so, you know, as per the
24 AASHTO guide that you showed me or the SCDOT, it
25 talked about the turn lane. So I would --

1 Q. Um-hum.

2 A. I would review that and then apply that
3 to the plan sheet. And it -- right here, it says,
4 you know, that the physical -- the area beyond the
5 physical intersection of two roadways that comprise
6 the decision and maneuvering distance plus any
7 required vehicle storage.

8 And notice on Exhibit 4, the vehicle
9 storage really ends about right here (indicating).
10 That's the taper, so you really look at the --
11 that's the vehicle storage. Then you end the
12 taper. So, you know, that's --

13 Q. So vehicle storage just means the --
14 the place where they can get -- they -- where they
15 can start getting into that left turning lane that
16 is a left up at the -- up at Farmington Road?

17 A. The -- the storage is the actual
18 full-width left turn lane.

19 Q. Okay. All right. But the functional
20 area of the intersection doesn't have anything to
21 do with the lanes that are closest to the business
22 on the opposite side of the street at the Travel
23 Pilot Center? I'm sorry. The Pilot Travel Center?

24 A. Not according to the ARMS manual.

25 Q. Okay.

1 definitely the eastern -- the eastern -- excuse me,
2 the westernmost drive was in the functional area.

3 MR. BESLEY: That's the one closest to
4 the light?

5 THE WITNESS: Yes, sir.
6 (Reporter asks for clarification.)

7 MR. BESLEY: That's the one closest to
8 the light?

9 THE WITNESS: Correct.

10 BY MR. SMITH:

11 Q. Now, tell me what -- and I -- I know I
12 just put you on the spot and asked you to do this
13 here today. We don't have any documents that have
14 specifically identified this, but what's the sort
15 of scientific process that you would go through if
16 I said, Mr. Colvin, you know, you've got a week to
17 sit down with pen and paper and rulers and
18 everything else you need, and I want you to really
19 man this thing out and tell me where it is on one
20 of these things? What -- what do you look at to be
21 able to, you know, go in and -- and do this with a
22 little more specificity?

23 A. Yeah. I mean, first of all, I would go
24 back and I would review the ARMS manual and review
25 the statement of what is the functional area.

1 A. You -- and you asked about in relation
2 to the intersection of Farmington and 17A.

3 Q. Um-hum.

4 A. It is the decision-making for that
5 intersection, not for the driveways.

6 Q. Okay. And it's the decision-making for
7 the left-hand turn? Is that what you're saying?

8 A. That would be one of them, yes.

9 Q. Okay. What would the other
10 decision-making be? I guess the stopping?

11 A. And the -- the right turns out, the
12 right turn lanes that -- could be coming in, the
13 turn -- turning maneuvers associated with the
14 intersection of Farmington and US 17A.

15 Q. All right. And now the location of
16 these driveways, now that one across the street,
17 that's definitely in the functional area of the
18 intersection, huh?

19 MR. MAYBANK: I can't see. Are you
20 talking about at the Hess station?

21 MR. SMITH: Yeah.

22 MR. MAYBANK: Okay.

23 THE WITNESS: It appears -- yes. Yes.

24 BY MR. SMITH:

25 Q. All right. And it appears the second

1 driveway at the Hess station across the street,
2 that's also in that area as well, huh?

3 A. It's outside the storage, but it's in
4 the -- the taper for the left turn lane.

5 Q. Okay.

6 A. I'd have to study this to get more
7 exact.

8 Q. Okay. Would you say this, that -- that
9 an argument could be made by a competent engineer
10 that all four of these entrances and exits on 17A,
11 both the Pilot Travel Center and the Hess gas
12 station across the street, do you think an argument
13 could be made that all four of those are within the
14 functional area of the intersection?

15 A. I think argument for the two on the
16 Hess, definitely the westernmost on the -- the
17 Pilot; at easternmost, I think you would have to --
18 I don't think I could make that determination based
19 on an 8.5 sheet -- 8.5 piece of paper. I think you
20 need to blow it up and, like you said, put scales
21 on it and so forth.

22 Q. Okay. And you -- I mean, you've got
23 a -- you've got a bigger version of that same piece
24 of paper right here in front of you, don't you?

25 A. I do.

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 required vehicle storage length. It includes the
2 length of road upstream from oncoming intersection
3 needed by motorists to perceive the intersection
4 and begin maneuvers to negotiate it. Distance for
5 travel during perception reaction time, travel for
6 maneuvering and deceleration, Q storage. Also
7 includes the length of road downstream from the
8 intersection needed to reduce conflicts between
9 through traffic and vehicles entering and exiting
10 the property.

11 As the engineer for the South Carolina
12 Department of Transportation, are there any other
13 elements that you would put into defining the
14 functional area of an intersection?

15 A. No, sir. I'd use that definition in
16 our ARMS manual, Page 9.

17 Q. Okay. And is there a standard number
18 of feet from an intersection that you would start
19 with to say where the functional area of an
20 intersection is? Or you -- you've got to look at
21 all these different things that we've -- that we've
22 talked about?

23 And I may be stating the question
24 poorly, but let me maybe give it to you a little
25 bit clearer: Is there a -- is there a distance you

1 kind of start with and then work backwards from?
 2 Or is there a standard length from an intersection
 3 that is the functional area of the intersection?

4 A. I don't know that there's a standard
 5 length. I think you start at the intersection and
 6 work away from it, not the other way around.

7 Q. And you don't start -- like generally
 8 it's about 200 feet from the intersection working
 9 outwards, and then we look at these different
 10 factors and see how that goes? But that's --
 11 that's not how it works?

12 A. No. You start at the intersection,
 13 and -- and you look at the specifics of that actual
 14 case on the ground, in the surveys, number of turn
 15 lanes, number of through lanes, double widths,
 16 right turn lanes, left turn lanes.

17 Q. Okay.

18 A. All that comes into play.

19 Q. Okay.

20 MR. MAYBANK: Can we take a quick
 21 break?

22 MR. SMITH: Sure.

23 MR. MAYBANK: Thank you.

24 MR. SMITH: And let me just tell you,
 25 I'm going to -- I'm going to ask you next, just so

1 the record. Today's date is March 13, 2017. The
 2 time is approximately 4:33 PM. This is Video
 3 Number 3 in the video deposition of Leland Colvin
 4 as 30(b)(6) representative for the South Carolina
 5 Department of Transportation.

6 BY MR. SMITH:

7 Q. I'm going to ask you a little bit about
 8 the ARMS manual --

9 A. Sure.

10 Q. -- at this point, if you'd turn to
 11 Page 19.

12 Driveways are intersections. True?

13 A. Are driveways intersections?

14 Q. Are driveways, in effect,
 15 intersections?

16 A. Where -- where they connect to our
 17 roadway, yes.

18 Q. Okay. And the driveways at the Pilot
 19 Travel Center and the Hess gas station across the
 20 street, those are driveways connecting to the
 21 roadway. True?

22 A. Yes.

23 Q. Okay. Driveways should not be located
 24 within the functional area of a roadway
 25 intersection or the influence area of an adjacent

1 you can be thinking about this, the influence area
 2 of an adjacent driveway -- I'm sorry. Right before
 3 we -- we do that --

4 MR. MAYBANK: Yeah.

5 BY MR. SMITH:

6 Q. Does that -- does that add anything to
 7 the discussion, the influence area of an adjacent
 8 driveway? I just don't know what that means. Are
 9 any of these driveways adjacent?

10 A. Sure.

11 Q. Okay.

12 A. Yeah.

13 Q. So if we were to talk about the
 14 influence area of an adjacent driveway, where --
 15 where would that be?

16 A. I don't know if I can define that.
 17 I'm -- I'm not -- I'm not familiar with that term.

18 MR. SMITH: Okay. All right. Let's go
 19 ahead and take a break now.

20 VIDEO TECHNICIAN: This concludes Video
 21 Number 2 in the video deposition of Leland Colvin.
 22 The time is approximately 4:20 PM. We are now off
 23 the record.

24 (A recess transpired.)

25 VIDEO TECHNICIAN: We are now back on

1 driveway. True?

2 A. In relation to the ARMS manual,
 3 correct.

4 Q. Okay. And then -- and the ARMS manual,
 5 again, was published by the South Carolina
 6 Department of Transportation, right?

7 A. Yes, that is correct.

8 Q. So it's the policy of the Department of
 9 Transportation that driveways are, in effect,
 10 intersections and should not be located within the
 11 functional area of a roadway. True?

12 A. Per the application of this manual --

13 Q. Okay.

14 A. -- correct.

15 Q. And so any driveways on 17A near
 16 Farmington Road that are in the functional area of
 17 the intersection would violate Page 19 or
 18 Section 3A of the ARMS manual?

19 A. No, not correct.

20 Q. Okay. Those driveways would be
 21 discouraged under this section of the ARMS manual?

22 A. Yes, in -- in relation to the ARMS
 23 manual. And new driveways are encroachments on to
 24 SCDOT right-of-way, which is what the ARMS manual
 25 was written for.

1 Q. Okay. And the reason that the ARMS
2 manual says that driveways should not be located
3 within the functional area of a roadway
4 intersection is -- is a safety concern. Is that
5 true?

6 A. Safety and operational, both.

7 Q. Okay. And on Page 2 -- I'm sorry.
8 Page 20, driveway classification?

9 A. Yes.

10 Q. And I don't want to -- well, let me ask
11 you this: What classification is the Pilot Travel
12 Center? How does that -- is that low volume,
13 medium volume, high volume, or major volume?

14 A. I -- I don't -- I don't have the answer
15 to that.

16 Q. Did the Department of Transportation
17 assign a driveway classification to the driveways
18 on 17A at the Pilot Travel Center?

19 A. No, it did not.

20 Q. How many feet are between each of the
21 three driveways in front of the Pilot Travel Center
22 on 17A? How many feet apart are they?

23 A. I will need a scale to be able to scale
24 that information off.

25 Q. I -- let me just ask you. I -- I did

1 Q. Okay. I got you.

2 And that would correlate with the --
3 what we've got here, this -- the section on that
4 that marks the -- the flush median? The end of
5 that, would that mark the -- the point of the
6 intersection we're talking about?

7 A. That's the approximate location, yes,
8 sir.

9 Q. Okay. And I -- I was going to ask you
10 to tell us what the distance is between the
11 intersection and the first driveway is.

12 A. I'd have to scale that off.

13 Q. I thought you just said you could do
14 that one.

15 A. No, I said --

16 Q. Oh.

17 A. -- it can -- it -- yeah, I mean, I
18 could -- I can get the distance for all of them. I
19 need a scale to be able to scale that --

20 Q. Okay.

21 A. -- that information off.

22 Q. I had measured it from that same point
23 using the same Google application. And it looks to
24 me that it was 110 feet. Does that seem generally
25 right to you?

1 this on Google with their little measuring tool. I
2 measured 100 feet from Number 1 to 2, and I would
3 be the closest to Farmington. I measured 100 feet
4 between 1 and 2 and 135 feet from 2 to 3. Does
5 that sound like it would be accurate?

6 MR. MAYBANK: Object to the form.

7 THE WITNESS: Based on eyeballing
8 Sheet 6 of Document 0437, those distances seem
9 reasonable.

10 BY MR. SMITH:

11 Q. Okay. And I did the same thing --
12 did -- does that sheet show you the distance
13 between the intersection and the first Pilot
14 driveway? And maybe we can --

15 A. I -- I could --

16 Q. Let me clarify here for a second.

17 A. I could scale that off.

18 Q. All right. Let me -- let me clarify
19 here.

20 On -- on 0437, where would we start to
21 measure, where would -- if we're talking about the
22 distance between the intersection to the first
23 driveway, where is the intersection on that mark?

24 A. Generally, the end of the radius return
25 of the intersection of Farmington Drive.

1 A. That -- that's -- I think it's
2 reasonable.

3 Q. Okay. And the other side of the street
4 where the Hess gas station is, I measured this one
5 starting at 37 feet from the intersection. Would
6 that seem accurate to you?

7 A. That seems reasonable.

8 Q. Okay. And on Page 26 of the ARMS
9 manual --

10 A. Yes.

11 Q. -- it looks like Section 3C-1, driveway
12 spacing, starts to talk about spacing of driveways?

13 A. Correct.

14 Q. All right. And then it looks like on
15 the very next page, there is a Figure 3-7, minimum
16 driveway spacing. Do you see that?

17 A. Yes.

18 Q. That deals with the posted speed limits
19 and the minimum driveway spacing or minimum
20 driveway spacing on roadways. Do you see those
21 two?

22 A. I do.

23 Q. Okay. And the speed limit here we
24 know, 45 miles an hour in front of the Pilot?

25 A. That's correct.

1 Q. Okay. So either the minimum driveway
2 spacing is either 325 feet or 225 feet. Would that
3 be right?

4 A. Yes. For a -- for the application of
5 this manual, correct.

6 Q. Okay. And then do you know which one
7 it would be? Would it be the 325 or the 225? Some
8 of this stuff above that seems a little Greek to
9 me, so...

10 A. The spacing on the Pilot gas station?

11 Q. Yeah.

12 A. Well --

13 Q. Which one would apply?

14 A. Well, neither would apply.

15 Q. Okay.

16 A. Because it -- the ARMS -- the ARMS
17 manual is -- the intent -- the -- the standards and
18 the -- and the purpose behind writing that is for
19 encroachment onto the right-of-way at SCDOT. Now
20 this is a widening project that that access point
21 was already established, so this -- again, this is
22 not where Pilot came to DOT and asked for an
23 encroachment permit to install drives. These
24 drives were installed on -- by DOT as part of the
25 widening project.

1 Q. Okay. Now, does that change if what I
2 told you earlier was true, that Pilot had filed an
3 encroachment permit? Would that --

4 A. Yes.

5 Q. -- then activate the ARMS manual?

6 A. Absolutely.

7 MR. SMITH: Okay. Does anybody --
8 does --

9 I don't want to mislead you here. It
10 seems like you're unaware of that.

11 Does anybody have the encroachment
12 permit? I mean, I can probably dig it up; but if
13 anyone has it, we might -- we might want to give it
14 to him.

15 MR. CRITES: Have you got Mulligan's
16 deposition? It was in there.

17 MR. SMITH: We've got one.

18 MR. CRITES: It was an exhibit to his
19 deposition. I mean, I can pull mine.

20 Can we go off the record for a second?

21 MR. SMITH: Yeah, we'll go off the
22 record for a sec.

23 VIDEO TECHNICIAN: We will now go off
24 the record. The time is approximately 4:42 PM.
25 (Off-the-record discussion.)

1 VIDEO TECHNICIAN: We are now back on
2 the record. The time is approximately 4:51 PM.

3 BY MR. SMITH:

4 Q. All right. So we've just taken a -- a
5 brief break, and I think you've looked at the
6 encroachment application.

7 A. Sure.

8 Q. And had a chance to talk with your
9 lawyer briefly as well?

10 A. Um-hum.

11 Q. And so does this satisfy the question
12 in your mind about whether an encroachment
13 application was filed?

14 A. Yes, sir.

15 Q. Okay.

16 A. It does, yes.

17 Q. And being that the encroachment
18 application was filed, that's what should have
19 triggered the consideration of the -- the ARMS
20 manual?

21 A. Yes. I'm not sure it's this particular
22 version. I think this is the 2008 version, and
23 this -- this -- it's a permit that was approved in
24 July of 2002.

25 Q. Okay.

1 A. So I don't know -- I -- I have not
2 prepared to talk about encroachments. I think
3 Mr. Clark was going to do that, so just FYI.

4 Q. Okay. The difference in the ARMS
5 manual between 2002 or 2002 through 2008, were
6 there substantial changes to that?

7 A. I'd have to -- I have not done that
8 research to know the difference.

9 Q. Okay. But when you are sitting there
10 and you are deciding the things that are listed on
11 Exhibit Number 5, the approval to have a painted
12 median only, in other words, the unmountable median
13 had been eliminated from the plan, the truck
14 driveway on 17A, the two auto driveways on 17A, and
15 the Frontage Road driveway, the right-in/right-out,
16 as you were making the decisions on each of these
17 four things, is it true that you didn't know they
18 applied for an encroachment and that you didn't
19 know to apply the standards in the ARMS manual?

20 A. A couple of comments on that. Number
21 one, the -- based on the letter, the dates on that
22 letter and the date on this encroachment permit,
23 that encroachment permit had not been filed at the
24 time that that was considered and at the time I
25 considered the raised median.

1 And the second one is, no, as part of
2 the widening project, the ARMS manual is not a
3 document that we would use, relied heavily on as
4 part of the design. Again, this is new
5 encroachments to our right-of-way. And
6 encroachments were already pre-established based on
7 what was already on 17A.

8 So a little bit -- little -- little
9 things, but yet the -- but the answer to your
10 question is, no, contemplating this and reading the
11 dates in doing my research and then now seeing this
12 encroachment permit, this permit was filed roughly
13 18 months after this was completed.

14 Q. And you see down here on the bottom, an
15 encroachment permit will be required from DOT when
16 installing the cuts. And so would it be reasonable
17 to assume that this encroachment permit that
18 occurred after that was the encroachment permit
19 that will be required?

20 A. I -- I can't answer that. I don't know
21 what Mr. Greiwe was referring to.

22 Q. Okay. But it's clear it just -- it at
23 least says that in 2000, it appears the decisions
24 were made on the encroachment permit issues. It
25 appears the decisions were made in 2000, but the

1 encroachment permit wasn't filed until later, as
2 the note suggests, in 2002?

3 A. Like I said early on in my testimony,
4 as part of the widening projects, we would have put
5 in at our expense a drive associated with the
6 widening project. An encroachment permit where the
7 permittee has come to DOT and asked for
8 encroachment on our right-of-way, those
9 encroachments associated with an encroachment
10 permit would have been done at the expense of the
11 permittee.

12 Q. So does that change your answers to any
13 of this? Who paid for what stuff I was asking you
14 in the beginning, being that now you know an
15 encroachment application was in place?

16 A. It's -- it's a -- it's a timing -- it's
17 a timing issue. And -- and I'm not -- I was not
18 aware of the encroachment permit. Mr. Clark can --
19 that was -- you know, those -- that's approved
20 locally by a resident maintenance engineer.

21 Q. But if -- is what we said -- or is what
22 you said earlier still true, that Items 1 through 4
23 in Exhibit 5, painted median, unmountable median
24 eliminated from the plan, truck delivery on 17A is
25 40 feet wide, 40-foot radius can be ingress or

1 egress if desired, the two auto driveways can only
2 be 30 feet width, 30 feet radius, ingress and
3 egress; Number 4, the driveway on the Frontage Road
4 can be 50 feet wide, 20 feet radius, but can be
5 right-in/right-out only, does that -- those four,
6 do those still represent the decisions that you
7 made with regards to these issues? Is that how it
8 turned out?

9 A. Yes. Those decisions were made as part
10 of the widening project and the location of those
11 drives in August of 2000.

12 Q. Okay.

13 A. I'm not sure about the encroachment
14 permit. I can't answer that.

15 Q. All right. Is there any -- did --
16 would you have any information or reason to suggest
17 that the issues that the encroachment application
18 addresses in here in Items 1 through 4, that --
19 that these same decisions in Items 1 through 4
20 don't relate exactly to this document?

21 A. I -- I can't answer that. The only
22 thing I can note when I looked at these two, this
23 is the address to Marathon Ashland Petroleum in
24 Norcross, Georgia. The applicant on this is Pilot
25 Travel Center located in Summerville,

1 South Carolina. So I -- I -- unfortunately, I
2 can't answer that question.

3 Q. At some point, the Pilot Travel Center
4 took over this plan. Are you aware of that?

5 A. I would have to go back and look at the
6 right-of-way instrument that we had discussed
7 earlier.

8 Q. Where was that?

9 A. That right there. Okay.

10 Q. And we were talking about the decisions
11 here and whether or not these decisions relate to
12 specific requests on the encroachment permit
13 application, and you said you'd have to look at
14 something to figure out...

15 A. Yes. I -- I'm not familiar with the
16 encroachment permit. As I stated, I will tell you
17 that -- that the information that was written, I'm
18 not familiar with this. I'm familiar with the plan
19 sheet, this document which talks to what was done,
20 as well as the associated exhibits was done.

21 In fact, a note here says they actually
22 requested payment in -- in November of 2000. The
23 date on this document was October 31st of 2000.
24 This is August of 2000. All this is related, and
25 all of a sudden I've got an encroachment permit

1 that is dated submitted in 2002, 18 months later,
2 and approved, you know, not quite two years later.

3 So I -- you're -- I don't know -- I
4 don't know the correlation between those two.
5 That -- this is a different company than what we
6 dealt with here, it appears to me.

7 Q. Um-hum. And the -- if it says here an
8 encroachment -- an encroachment permit will be
9 required from DOT when installing the curb cuts, is
10 around May of 2002 when the curb cuts were being
11 installed?

12 A. I don't know the answer to that one.

13 Q. Is there anything that you have that
14 could tell us that?

15 A. There's not. I'd have to go back and
16 look at the construction project notes to see when
17 those curb cuts were done as part of the widening
18 projects and how they related to when the applicant
19 on this encroachment permit, if they changed those
20 locations, if they didn't change the locations.

21 I was -- again, like I said earlier at
22 the very beginning, I was -- I'm not testifying on
23 the encroachment permit.

24 (Off-the-record discussion.)
25

1 a combination of Marathon Ash -- Marathon Ashland
2 and Pilot Corporation was created, I have taken
3 over this project.

4 A. All right. Okay.

5 Q. So in -- and the group on the
6 encroachment permit application would be Pilot
7 Travel Centers, LLC?

8 A. Correct.

9 Q. All right. And so it appears from this
10 letter that Pilot Travel Centers, LLC is just
11 simply taking over that project from Marathon
12 Ashland Petroleum?

13 MR. CRITES: Object to the form.

14 BY MR. SMITH:

15 Q. Is that what you take this letter to
16 say?

17 A. I -- I take that letter to say that
18 evidently there was some redesign of the facility
19 and, as part of that redesign, that would be
20 typical that they would come back to the DOT for an
21 encroachment permit.

22 Q. Okay. But does that explain to you
23 why? I mean, the encroachment permit, you see
24 Travel Center, LLC when you all were originally
25 dealing with Marathon Ashland Petroleum? That

1 BY MR. SMITH:

2 Q. I just want to hand you a piece --

3 THE COURT REPORTER: Hold on.

4 MR. SMITH: I'm sorry.

5 (Off-the-record discussion.)

6 BY MR. SMITH:

7 Q. All right. So I pulled out a page
8 here, and we can identify it as Pilot 00041. Okay?
9 That's the Bates stamp page. And just take a
10 moment for me and just look at that.

11 A. Okay.

12 Q. So this is a letter to the Department
13 of Transportation --

14 A. Correct.

15 Q. -- right? April of 2002?

16 A. Yes.

17 Q. And the person is advising the
18 South Carolina Department of Transportation that
19 previously, this facility was redesigned and
20 permitted by Nathan Fox of Marathon Ashland
21 Petroleum. And that's the date -- that's the --
22 the group we've got on Exhibit 5, right?

23 A. Um-hum.

24 Q. Mr. Fox's design is still being used.
25 But since the new company, Pilot Travel Center, is

1 Travel Center, LLC took over the project?

2 A. I -- I can't answer that. I think on
3 this -- here, we actually made a payment to
4 Speedway SuperAmerica, LLC.

5 Q. Um-hum.

6 A. So there did -- it appears there was
7 change in ownership or a combination all thereof
8 throughout the process, that there was -- sounds
9 like there was a redesign and a widening project
10 and an interchange project all going on at the same
11 time.

12 Q. Okay.

13 A. I can't speak on behalf of what
14 Pilot -- Pilot Travel Center, Speedway
15 SuperAmerica, and Marathon Ashland Petroleum, what
16 they did or didn't do in that -- in that time
17 period. I don't have any knowledge of that
18 information.

19 Q. Okay. But when you prepared for the
20 deposition, it didn't come across your preparation
21 that originally this was a Marathon Ashland
22 Petroleum project and they made certain
23 applications and requests and paperwork was filed
24 and then, at some point, Travel -- I'm sorry --
25 Pilot Travel Centers, LLC basically took over the

1 exact same project?

2 A. No. Like I said, it's -- as my role as
3 PM in preparing for this deposition, my role was to
4 discuss the I-26 interchange projects, as well as
5 the 17A widening project, and how we applied the
6 design standards of the flush median. As far as
7 the encroachment permit, that was not in the
8 purview of what I was...

9 Q. Well, the -- the design standards of
10 the flush median would have been affected if you
11 knew there was an encroachment permit application,
12 and that would have triggered the use of the ARMS
13 manual. Is that true?

14 A. Not necessarily. There -- there is an
15 existing -- there is an existing facility at that
16 location. And the Highway Design Manual, as far as
17 the design of that flush median versus nonflush
18 median, would not necessarily have triggered
19 anything in the -- in the -- in the ARMS manual.
20 Not necessarily.

21 Q. Does -- does the Highway Design Manual,
22 does it talk about the distance, the required
23 distance between the driveways? Does it talk about
24 the required distance between the intersection and
25 the first driveway? Does it even -- does it

1 guidelines have been developed to establish
2 uniformity for encroachments.

3 So I'd have to research prior to 2008
4 what guidelines were used on the current
5 encroachment permit applications.

6 Q. Well, as you all developed these --
7 these safety standards and learned new things, do
8 you -- do you go back and look at old projects and
9 say, eh, I don't know if what we did back then was
10 the right way to go?

11 A. Not necessarily. I mean, I think that
12 what you looked at, you know, how -- the things we
13 designed 50 years ago, when we come up with a new
14 design, would we -- would a new design on a new
15 project be different? Absolutely, it would. But
16 no, we do not go back and -- and review every
17 intersection and every roadway that we designed
18 every time a new design manual or a design
19 memorandum comes out, no. We do not do that.

20 Q. And I just want to maybe clarify the
21 exceptions here. I guess we'll figure out at a
22 later point if the same, you know, this Figure 3.7,
23 if this is in a -- in a version that existed in
24 2000 or 2002. But the exceptions listed here, it
25 looks like there's two: For residential

1 even --

2 A. There's -- I would have to -- I'd have
3 to go back and refresh my memory regarding that.

4 Q. Um-hum. But if we -- if we just look
5 at the ARMS manual at Page 27 --

6 A. Certainly.

7 Q. -- and we know -- and the posted speed
8 limit is 45 --

9 A. Um-hum.

10 Q. -- assuming that the -- the filing of
11 the encroachment permit application would trigger
12 the ARMS manual, if we assume that, then can we say
13 that not only the distance between the driveways
14 but also the distance between the intersection and
15 the driveway is in violation of the ARMS manual,
16 Page 27, Figure 3-7?

17 A. Again, if it was a undeveloped piece of
18 property where the encroachment permittee was
19 coming to DOT for access onto that road system,
20 certainly the ARMS manual -- again, this is a 2008
21 edition, would have been in play.

22 This ARMS manual was not in play in
23 2000 or 2002. Matter of fact, I think if you go
24 back to Page 5 and you look at 1A, it talks about
25 the purpose. It says: These standards and

1 driveways -- and this is not a residential
2 driveway, right?

3 A. Correct.

4 Q. -- and/or, Number 2, the replacement of
5 a driveway to a property that may be lost or
6 disrupted due to a -- due to a DOT project. That
7 doesn't apply either, does it?

8 A. Absolutely that applies.

9 Q. It does?

10 A. Absolutely, it does.

11 Q. So disrupted, I guess?

12 A. Yes. I mean, we -- the -- basically
13 that second bullet is referring to a driveway to a
14 property that would be impacted, lost, or disrupted
15 due to a DOT widening project. That's exactly what
16 we have here.

17 Q. Okay. So the DOT widening project went
18 into the old driveways that were there?

19 A. Absolutely it did, yes.

20 Q. And -- and so if the DOT is coming in
21 and widening the road and widening it such that it
22 is encroaching in the old driveways, aren't these
23 new driveways now new construction?

24 A. No. You've -- no, not as -- not as
25 stated on Page 27 on the exceptions that you noted

1 in -- in the 2008 ARMS manual.

2 Q. Um-hum.

3 A. No. Those would be exceptions on those
4 drives.

5 Q. No. What I'm saying is: If you've got
6 an area of the highway that's this wide -- right?

7 A. Um-hum.

8 Q. -- and you've got driveways over here
9 and driveways over here, and then you widen it
10 so -- such that those driveways just don't exist
11 anymore, right, you've graded the street, you've
12 pulled up the -- the stuff, you've put driveway --
13 you've put highway down where those driveways were,
14 are those new -- are those driveways that are then
15 being constructed, are those not new driveways?

16 A. Those -- those would not be new access
17 points, no.

18 Q. Okay. The Pilot gas station and the
19 McDonald's on that property, they both share the
20 two driveways?

21 A. I'm not -- I'm not sure --

22 Q. All right.

23 A. -- how to answer that.

24 Q. If there's a Pilot Travel Center and a
25 McDonald's in the same building there, both using

1 believe it's Page 27. Yes, on Page 27. Because
2 these are drives that are being disrupted or lost
3 to a DOT project.

4 In other words, these applications of
5 these drives as shown on this project are not --
6 they are not being -- they're not being approved as
7 an encroachment permit. They're going back in as a
8 result of a widening project.

9 Q. Okay. And the fact that the
10 encroachment application specifically mentions
11 these exact driveways, do you still maintain that
12 these driveways have nothing to do with the
13 encroachment application?

14 A. I may -- not to say that, I'm -- I'm
15 not familiar with that encroachment permit
16 application and the purpose behind that.

17 Q. All right. But you're saying -- so the
18 exceptions we looked at are exceptions to minimum
19 driveway spacing, right? That's what it says,
20 doesn't it?

21 A. Correct.

22 Q. Right, minimum driveway spacing. So
23 you are interpreting those same expect --

24 exceptions to apply to driveway connections on
25 opposite sides of the roadways labeled avoid jogged

1 the same driveways, would those driveways be shared
2 driveways?

3 A. In that circumstance, yes.

4 Q. Okay. And how do you say this, jogged
5 driveways? Is that what it's called? Or jogged,
6 J --

7 A. I believe it's jogged.

8 Q. Jogged? Okay.

9 Are jog -- jogged driveways, are
10 they -- are they discouraged?

11 A. I would have to go back and refresh my
12 memory.

13 Q. 28.

14 A. Page 28, okay.

15 Q. Are jogged driveways discouraged?

16 A. Absolutely.

17 Q. Okay. And if you look at the plans
18 here, is that what we've got with the Pilot and the
19 Hess across the street, jogged driveways?

20 A. Certainly the westernmost drive, I
21 would say that would be a jogged driveway. But
22 keep in mind when you -- referring to the ARMS --
23 the 2008 ARMS manual and the definition of jogged
24 driveways, it doesn't apply necessarily to this, as
25 noted in the exception that's on Page 27. I

1 driveways? You're stating that the exceptions to
2 minimum driveway spacing are also an exception to
3 avoiding jogged driveways?

4 A. No. I'm saying that the access and
5 roadside management standards, the 2008 edition
6 is -- is published by the DOT. It's not intended
7 to present all information that is needed by the
8 permittee or designer. And it does not -- it does
9 provide a majority of information needed for
10 encroachments onto the right-of-way, and this is
11 not what we have here. We've got a widening
12 project.

13 Now, if the permittee went and changed
14 their -- changed as you -- as was referenced in the
15 letter that you provided earlier, if there's a
16 change in that land use or additions was added to
17 that property that wasn't contemplated at that --
18 as a part of the widening project, then an
19 encroachment permit would have to be submitted.

20 Q. Okay. I -- but we can certainly say
21 here today that in the Pilot Travel Center and the
22 Hess across the street, those are jogged driveways
23 that are specifically discouraged in the ARMS
24 manual. True?

25 A. Yes. Those drives back in 2002 are

1 discouraged in the 2008 edition, correct.

2 Q. Yeah. And you don't know whether or
3 not those same drives were discouraged back in 2000
4 or 2002?

5 A. I do not.

6 Q. Okay. And it sounds like, because an
7 encroachment application wasn't submitted, you
8 weren't even looking at ARMS when you were making
9 the decisions that are referenced in Items 1
10 through 4 of Exhibit 5.

11 A. Correct. As part of the widening
12 project, the -- the various drives along the
13 project as part of the right-of-way acquisition
14 process, we do not go through an encroachment
15 permit for those. Typically those drives are --
16 are put in as part of the widening project itself.

17 Q. Okay. Now, the -- a raised median,
18 from what you know about the particular collision
19 with the Wrights, would a raised median have
20 prevented this collision?

21 A. I don't -- I -- I cannot answer that.

22 Q. Well, you know the fellow was coming
23 down on Highway 17A from Moncks Corner and he's
24 taking a left into the Pilot?

25 A. Right.

1 Q. And the area where he was making a
2 left, that's the area where the original plans
3 included a raised median, right?

4 A. Correct.

5 Q. An unmountable or untraversable median,
6 or nontraversable median?

7 A. Say -- ask the question one more time.
8 I'm sorry.

9 Q. The original plans included a raised
10 median, which is an also nonmountable median or a
11 nontraversable median?

12 MR. MAYBANK: Object to the form.

13 THE WITNESS: Yes, it was -- the -- the
14 median contemplated as part of the interchange
15 project would have been defined as a
16 nontransversable medium -- median.

17 BY MR. SMITH:

18 Q. So you don't know whether or not a
19 unmountable or a nontraversable or a raised median
20 would have prevented the left-hand turn by the
21 fellow that turned in front of the Wrights that
22 day?

23 A. Yes. I -- I cannot sit here and say
24 that the impaired driver associated with the
25 accident would not have transversed that median at

1 that particular time. I can't answer that. I -- I
2 don't know the answer to that.

3 Q. But in general, a raised median or an
4 unmountable median or a nontraversable median would
5 eliminate or at least reduce the likelihood of
6 left-hand turns across it.

7 A. Yes.

8 Q. Is that fair to say?

9 A. The -- the -- the purpose of that
10 trans --

11 Q. Nontransversable?

12 A. The -- the purpose of the
13 nontransversable is to discourage normal left-hand
14 turn maneuvers not associated with emergency
15 vehicles, yes.

16 Q. And so -- and you're aware that what
17 this fellow did was turned left in front of the
18 Wrights? You know that, right?

19 A. Yes.

20 Q. Okay.

21 A. Yes.

22 Q. And -- but you can't say that the
23 absence of that raised median had anything to do
24 with his ability to make that left turn?

25 A. That's correct, not in the condition as

1 noted on the DPS collision report.

2 Q. Okay. Did you -- were you -- did --
3 did anyone happen to share with you the testimony
4 of the driver who said if there was a raised
5 median, I never would have made that left turn?

6 A. I'm not aware of that. I've just
7 reviewed the DPS report.

8 Q. Okay.

9 A. The collision report itself.

10 Q. Does the DOT rely on Pilot and the
11 engineers they hire to submit plans that are safe?

12 MR. BESLEY: Object to the form of the
13 question.

14 BY MR. SMITH:

15 Q. You can go ahead.

16 A. Ask the question again.

17 Q. Does the DOT rely on Pilot and the
18 engineers they hire to submit plans that are safe?

19 A. As part of an encroachment permit
20 application?

21 Q. Sure.

22 A. Absolutely.

23 Q. Okay. And if -- also if Pilot or the
24 companies that were doing this project before them,
25 if they're trying to get permission to take out a

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 Q. From 2000 to 2012.

2 A. Yes.

3 Q. And what was that rate?

4 A. There -- I would have to refer to some
5 additional information that was provided.

6 Q. Would it be in this notebook --

7 A. It should be.

8 Q. -- we've been looking at?

9 A. Absolutely. It should be -- it should
10 be associated with a G.

11 (Reporter asks for clarification.)

12 THE WITNESS: Yeah, G as in -- there
13 you go. Clint Davis likes golf. Okay.

14 BY MR. SMITH:

15 Q. All right. So we're looking at
16 Document SCDOT Colvin Documents 0612, and what is
17 this?

18 A. This is a collision diagram that was
19 put together by our traffic safety office out of
20 Columbia.

21 Q. And when was that done?

22 A. Some of this stuff is cut off at the
23 very bottom, but the date of this is 10 --
24 October 15th, 2013.

25 Q. All right. And to your knowledge, were

1 Q. Okay. And one of the ways that the DOT
2 could learn that a particular stretch of highway
3 needs changes is the number of motor vehicle
4 collisions that happen on that stretch of highway?

5 A. That would be one factor. The rate is
6 a bigger factor, but that is part of that rate
7 calculation, yes.

8 Q. Um-hum. And the DOT, do you all have
9 access to the South Carolina Public Safety database
10 showing GPS locations of collisions?

11 A. Absolutely.

12 Q. Okay. And is there any -- is there any
13 particular number? I know you've talked about
14 the -- the -- you want to know the vehicles that
15 pass through, but is there any particular number
16 like five collisions a year, ten collisions a year,
17 is -- is there any sort of number of collisions per
18 year that would trigger the DOT to come in and say,
19 hey, we need to go look at something here?

20 A. Not necessarily just raw number of
21 collisions. It goes back by rate.

22 Q. Um-hum. Was the -- was the rate ever
23 established with this stretch of highway in front
24 of the Pilot?

25 A. At what point in time?

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 A. The study that was looked at as part of
2 our safety program -- you had asked the question,
3 do we -- do we have one of those, absolutely we
4 do -- basically indicates that the left turns out
5 of the driveway farthest east.

6 Q. Okay. The middle driveway, could we
7 say?

8 A. Yes.

9 Q. If we count the truck driveway that's
10 far out?

11 A. Yes. Yeah, that is experiencing riding
12 while accidents -- folks trying to make a left out
13 of the Pilot, out of the drive -- the eastern
14 automobile drive, middle drive, however you want to
15 term that.

16 Q. So people coming out this middle
17 driveway taking a left, heading toward Summerville,
18 there's a lot of collisions happening because of
19 that maneuver?

20 A. That is correct.

21 Q. Left-hand turn-outs?

22 A. Left turn-outs.

23 Q. All right. How about left-hand
24 turn-ins?

25 A. If you look at the two driveways,

1 there's not any collisions on the driveway -- the
2 westernmost driveway, there's not a single
3 collision during this time frame noted. The left
4 turns coming in, there are two left turns going out
5 at the westernmost drive.

6 At the easternmost vehicular drive,
7 there are three collisions in the four years --
8 three collisions in four years involving that left
9 turn into that drive.

10 Q. Um-hum. So in the three years between,
11 what, 2000 and 2013 (sic), I guess?

12 A. It's four -- four years' worth of data,
13 2010, 2011, 2012, and 2013.

14 Q. Okay. So in those four years, how many
15 collisions are there because of left-ins and
16 left-outs, put together, on -- on 17A?

17 A. At the two drives?

18 Q. Yeah.

19 A. Less out. There are two collisions at
20 the westernmost drive, and zero collisions on
21 left-in. On --

22 Q. Just -- just a total number of left --
23 left-in, left-outs. You can just --

24 A. Our left-outs at the -- at the
25 easternmost commercial drive, there's one, two,

1 three -- sorry. Let's see.

2 Q. You want a piece of paper?

3 A. No. Where's that magnifying glass?

4 (Off-the-record discussion.)

5 THE WITNESS: Let's see. There is 1,
6 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 left turners
7 out; and 1, 2, 3 left turners in.

8 Q. So 15?

9 A. At that driveway, correct.

10 Q. Which driveway?

11 A. The easternmost commercial driveway.

12 Q. Okay. I'm -- I'm just talking about
13 left-in, left-out access to the Pilot Travel Center
14 2010 to 2013, how many?

15 A. 17.

16 Q. Okay. And that's in four years?

17 A. That's correct.

18 Q. And -- and how do you all go about
19 discovering, you know, which -- which ones go on
20 here? Where -- where do you get that from?

21 A. DPS's database.

22 Q. Okay. Department of Public Safety?

23 A. Yes.

24 Q. All right. Now, I did a -- let me tell
25 you what I did to figure this out.

1 A. Sure.

2 Q. I basically drew a box around this area
3 right here (indicating).

4 A. Um-hum.

5 Q. And I got the GPS coordinates for what
6 would be in here and then went to the Department of
7 Public Safety and said, give me all the accidents
8 on 17A.

9 A. Right.

10 Q. And then I was able to arrange those
11 accidents by GPS location, and I was able to figure
12 out that 280 accidents had occurred in this box
13 location in front of there from, you know,
14 basically 2002 to -- to 2012.

15 And then what I did was went through
16 and looked at all the ones that would be affected
17 by left-ins and left-outs. And what that showed
18 was in those 10 years, I saw 77 that were
19 left-in/left-out to the Pilot Travel Center.

20 Would that -- would 77 over 10 years,
21 would that be consistent with the rate that you're
22 seeing over the course of 4 years?

23 MR. MAYBANK: Object to the form.

24 THE WITNESS: The only thing I can
25 testify to is there was 17 left-in or left-outs at

1 the two drives at the Pilot station in the 4 years,
2 as noted on this diagram. I can't speak to the --
3 to the number that you've produced.

4 BY MR. SMITH:

5 Q. I mean, it sounds like you got a whole
6 lot less than I came up with. I came up with 72 --
7 72? I came up with 72 in 10 years with left-ins
8 and left-outs, and it looks like you came up with
9 17 in 4 years, left-in and left-outs. Does -- does
10 that seem to be a similar number or is that a lot
11 different?

12 MR. MAYBANK: Object to the form.

13 THE WITNESS: Can I do a little bit of
14 math?

15 BY MR. SMITH:

16 Q. You can Google. You can ask Siri if
17 you want.

18 A. It's not Google. It's a calculator. I
19 mean, based on the data here in the 4 years,
20 there's about 4 collisions -- 4.25, to be exact,
21 per year in the 4 years that were studied here. I
22 can't -- I can't --

23 Q. All right. It says 4.2 a year with
24 left-in, left-outs?

25 A. At both drives.

1 A. So I don't want to comment on raw
2 numbers.

3 Q. Okay. So these are raw numbers, right?

4 A. Those are -- no, those are -- those --
5 that --

6 Q. That's not the detailed --

7 A. That's the detailed --

8 Q. -- information?

9 A. That's the detailed information.

10 Q. Does that give the time of day and wet
11 and dry and all that?

12 A. Absolutely, yes.

13 Q. All right. So are you -- with -- with
14 the number you got, 4.2, considering all that
15 additional data, is that something you're concerned
16 about?

17 A. We are concerned about the left-out at
18 this middle driveway is what we're concerned about.
19 That's what the collision diagram shows us.

20 Q. Okay. And when you mean --

21 A. And the relations to the -- in -- in
22 relation to the Pilot Travel Center truck stop.

23 Q. All right. So does that mean something
24 needs to change?

25 A. Yes.

1 Q. At both drives?

2 A. Yes.

3 Q. And then why don't you do that with 77
4 over 10 years. I don't think you need a calculator
5 for that, do you?

6 A. 7.7.

7 Q. 7.7 -- 7.2, sorry.

8 A. No, 7.7.

9 Q. 72.

10 A. Oh, oh, oh. I'm sorry. Yeah, 72.
11 Yeah, 7.2. I thought you said 77.

12 Q. Do either of those numbers strike you,
13 either 4.2 a year or 7.2 a year involving
14 left-in/left-out, does that cause you any concern,
15 either one of those numbers?

16 A. Not just the wrong numbers themselves.
17 I think you have to -- we've got a process that we
18 follow at SCDOT, and I'm looking at the process
19 that we follow. We plot those. We look at several
20 things or is there any -- is there any at night, is
21 it wet conditions? So there's a whole lot that
22 goes into that than just a raw number. You have to
23 look at all the factors, and -- and we have got a
24 very detailed process that we do that on.

25 Q. And so you --

1 Q. Okay. And you know, the fact that
2 originally there was a plan for --

3 Well, let me ask you this: Would a
4 raised median help or cure that problem with the
5 left-in/left-out of the middle driveway?

6 A. Yes.

7 Q. Okay. And considering the original
8 plan was -- for that raised median was taken out
9 and you've got this number of accidents that has
10 happened, is -- is that what should be done now?
11 Should the raised median be put back in?

12 A. We have -- a safety project was
13 developed as a result of this accident diagram
14 that -- sorry.

15 Q. Start over.

16 A. Where was I at?

17 Q. My name's Kevin.

18 A. Sorry.

19 Yes. As a result of this collision
20 diagram, our safety office designed a counter --
21 countermeasure that would prohibit lefts out but
22 still allow lefts in to the center driveway.

23 Q. Okay. And how do you do that? Is that
24 just a sign or is that --

25 A. No. That is a physical concrete raised

1 median.

2 Q. That pork chop median?

3 A. No.

4 Q. No?

5 A. No. It was a long -- it's a long
6 median that's in one of the -- I think it's one of
7 the exhibits that we provided.

8 Q. Okay. I think I saw that in there.
9 It's a project that I think was supposed to start
10 by 2015, originally?

11 A. Yes. We have -- we have let that
12 project, which means we received -- well, we tried
13 to receive bids twice. We did not get any bidders
14 two times. It's actually -- we expect to receive
15 bids again tomorrow, which is in our March letting.
16 We call that our highway letting.

17 Q. Okay. But you're still going to allow
18 left-hand turns out of this first driveway closest
19 to Farmington Road?

20 A. Can I look -- do you mind if I refer to
21 that?

22 Q. Yeah, sure. I think it was last -- no,
23 maybe I'm wrong. Maybe it's this. Is that it?

24 MR. MAYBANK: What number are you on?

25 THE WITNESS: We are on 0611?

1 Q. Second driveway is going to allow
2 left-in but prohibit left-outs?

3 A. Correct.

4 Q. Any change to the third driveway?

5 A. No change.

6 Q. Okay. And what is going to be done to
7 prevent the left-outs from the second driveway, the
8 middle driveway?

9 A. It's part of the concrete median that
10 is -- that is going in.

11 Q. Okay. Just a break in the median?

12 A. Yes.

13 Q. Okay. But a break in the median only
14 in a certain direction that's going to allow those
15 left-outs --

16 A. The lefts --

17 Q. -- but not left-ins?

18 A. No. You got it backwards.

19 Q. I'm sorry. Opposite?

20 A. Yes. It would -- left-ins on the
21 easternmost commercial drive will be allowed.
22 Lefts out of the easternmost drive will not be
23 allowed out.

24 Q. Okay.

25 A. And no change to the truck drive.

1 BY MR. SMITH:

2 Q. Yeah.

3 A. And the question?

4 Q. So turns -- so is this Farmington here?

5 A. Correct.

6 Q. Okay. I don't see the first driveway.
7 Is it -- is this the first driveway there?

8 A. No. It's the first driveway, second
9 commercial driveway.

10 Q. Oh, okay. Okay. So is there going to
11 be any change to the first driveway, whether or not
12 left-ins or left-outs?

13 A. Yes. The -- the safety project as
14 designed would restrict left turns into and left
15 turns out of the westernmost drive.

16 Q. Okay. And so that's the drive closest
17 to Farmington Road?

18 A. Correct.

19 Q. All right. And that's based on the
20 accident -- the accident study that was done in
21 2013?

22 A. Correct.

23 Q. Okay. So no left-ins or outs from that
24 first driveway closest to Farmington?

25 A. Correct.

1 Q. Okay. Is there -- and at what --
2 what's the -- what's the usual sort of frequency of
3 these accident -- what would you call that, an
4 accident analysis or traffic study? Or what do you
5 call that thing?

6 A. It would be a -- yeah, a safety
7 analysis.

8 Q. Okay. What's the frequency of the --
9 of a safety analysis? Is ten years between
10 construction and a safety analysis the norm?

11 A. No. We do safety analysis annually.

12 Q. Oh, so every year?

13 A. Yes.

14 Q. Okay.

15 A. Across the state.

16 Q. Across the state. And is that -- would
17 this particular driveway in front of the Pilot,
18 would that have received a safety analysis every
19 year since --

20 A. No. A safety analysis, the way that
21 process works, we go out and we pull the
22 intersections that have the highest accident rates.

23 Q. Okay.

24 A. So -- so that's -- that -- that
25 analysis is done on an annual basis.

1 Q. So the -- so the reasoning that this
2 accident analysis was done was because in 2013,
3 this intersection was one of the high accident
4 rates?

5 A. Correct.

6 Q. And if it -- and -- and because we know
7 that the accident analysis was not done prior to
8 2013, is it your position that from -- from 2002
9 all the way up to 2012, this intersection was not
10 one of the highest accident rate locations?

11 A. I don't know the answer to that. I --
12 I'm not aware of an accident study at this location
13 prior to the 2013 that we looked at. That does not
14 mean that I -- I'm not aware of one.

15 Q. But you -- but you do them every year,
16 and the way that you determine which ones are going
17 to be done is the frequency of accidents at those
18 locations?

19 A. Yes.

20 Q. Okay. And -- and who tells you that
21 this particular one needs to be looked at or that
22 one needs to be looked at? Who -- who lets you
23 know which ones of these high rate of accident
24 locations? Who tells you which ones are which?

25 A. It is performed by our traffic safety

1 office.

2 Q. But do you know how they do that?

3 A. They -- they use the DPS accident
4 information. That pulls the accidents, number of
5 accidents, location. We have to determine if
6 there's countermeasures available to -- to --
7 there's -- there's a whole -- there's a whole
8 methodology that our traffic safety office uses.

9 Q. Okay. If a -- if a -- if a
10 corporation, a private corporation notices, you
11 know, a lot of collisions happening in front of
12 their property -- we talked about this a little bit
13 earlier -- and they wanted to call somebody to tell
14 them about it, what -- what department with the
15 transport -- with the Department of Transportation,
16 who -- who would they call? Who would receive that
17 call?

18 A. It depends on who they -- they talk to
19 eventually. It would start locally --

20 Q. Um-hum.

21 A. -- which would be here in the -- in
22 the -- in our district office here. But
23 eventually, that -- that phone call would most
24 likely be referred to a traffic safety office.

25 Q. Okay. And if the corporation had

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.

1 BY MR. SMITH:

2 Q. Okay. But if they did call, it would
3 get to the right people and you all would at least
4 investigate it?

5 A. Certainly. Any -- any call, whether --
6 no matter who would make that phone call with
7 concerns over safety at a -- at any particular
8 inter -- intersection, we would take seriously.

9 Q. Now, we took the deposition of -- of
10 this fellow at Pilot Travel Center, and I'm going
11 to sort of paraphrase something that we heard from
12 him: It doesn't matter if this stretch of the
13 highway is safe or not, right? A free market's
14 going to work this out, right? That means if it's
15 unsafe and people are injured, people are dying,
16 customers will figure that out and they just won't
17 visit this location anymore. The free market's
18 just going to figure all this out.

19 Now, assuming I have paraphrased that
20 correctly, okay, what would you think if that was
21 Pilot Travel Center's attitude or this Marathon
22 Ashland's attitude? If you had known that that was
23 their attitude when these encroachments were being
24 applied for, when the -- when they are wishing for
25 the raised median to go away, if you knew that,

1 would you have done anything differently?

2 MR. CRITES: Object to the form.

3 MR. MAYBANK: Yeah, same objection.

4 MR. BESLEY: Object for many reasons.

5 THE WITNESS: I mean, I can't -- I
6 can't speak to the safety program at Ashland
7 Marathon Oil just because I -- I can't speak to it.

8 BY MR. SMITH:

9 Q. Well, but -- but it -- that's not your
10 way of looking at this though, right?

11 A. No.

12 Q. Okay. If -- if you had that attitude
13 in terms of designing this stuff, that would be
14 downright reckless, dangerous, and probably
15 something you'd get fired for if you said it to
16 anybody. Is that true?

17 MR. MAYBANK: Object to the form.

18 THE WITNESS: Would I be irresponsible
19 as a professional engineer not taking safety into
20 account on design of highways?

21 BY MR. SMITH:

22 Q. Yeah.

23 A. That would be a true statement.

24 Q. Okay. And if that was a sub -- if --
25 if you heard a subordinate of yours, a highway

1 design engineer, you heard a subordinate of yours
2 saying something like that, that it doesn't matter
3 if the highways are safe or not, the free market's
4 going to work it out, if it's dangerous and people
5 are injured or they die, customers will figure that
6 out and they just won't visit the property anymore,
7 would that highway engineer's attitude, would that
8 be dangerous, reckless, something that would
9 warrant immediate termination? I mean, how would
10 you respond to that kind of thing?

11 MR. BESLEY: Object to the form of the
12 question.

13 MR. CRITES: Objection.

14 MR. MAYBANK: Same objection.

15 THE WITNESS: I -- no, that is not the
16 attitude we're looking for from our highway
17 designers or our traffic safety engineers. Safety
18 is -- safety is a very important part of what we
19 do, and that's -- that's in our state statute, the
20 safe and efficient design use and operation of
21 the -- of the state highway system.

22 BY MR. SMITH:

23 Q. And -- and if someone has submitted
24 plans or an encroachment application to do certain
25 things and you learn that that's their attitude

1 about safety, would it cause you to scrutinize
2 those requests a little bit harder?

3 MR. MAYBANK: Object to the form.

4 THE WITNESS: It -- it shouldn't.

5 We -- we should be following the same set of
6 guidelines and principles whether we got a --
7 regardless of the -- of the permittee.

8 BY MR. SMITH:

9 Q. Okay. So the -- the person that could
10 tell us about the negotiation referenced on I think
11 it was Exhibit Number 5, that would have to be
12 Mr. Smoak?

13 A. It would be.

14 Q. Okay. Whatever that was, it -- it
15 didn't get back to you?

16 A. Yeah. I mean, I -- I think the label
17 that the gas station negotiated the removal of a
18 raised median is not an accurate statement.

19 Q. I'm sorry?

20 A. The -- I -- the categorization -- I
21 didn't pronounce that correctly -- of the Pilot
22 station negotiating out the raised median is not an
23 accurate statement.

24 Q. Okay.

25 A. That raised median was removed as a

1 result -- it was moved from the interchange plans
2 as a result of tying the interchange to the 17A
3 widening plans.

4 Q. Okay. So Exhibit Number 5 when it
5 talks about negotiated median removal and drive
6 cuts, that's not accurate? There was no
7 negotiation, right? No give, no take?

8 A. No. I'm -- I'm saying that the
9 plans -- the interchange plans as dated 1990 --

10 Q. '8, I think?

11 A. No. Let me get them.

12 Yes. The interchange plans that are
13 dated 1999 for right-of-way, these are the
14 right-of-way plans of -- of the interchange in
15 1999, are in direct conflict with the construction
16 plans for the widening dated 1998.

17 Q. Um-hum.

18 A. And the resolution of that conflict is
19 a result of the raised median being removed out of
20 the interchange plans, which was really past the
21 terminus, and the widening plans dictated that
22 median --

23 Q. Okay.

24 A. -- design.

25 Q. But we've -- by we, I mean you -- have

1 learned since then that taking away this raised
2 median and allowing unfettered ins, left-ins and
3 left-outs, that's led to a high enough number of
4 accidents such that it's the plan to put that back
5 in, at least to a limited degree?

6 MR. MAYBANK: Object to the form.

7 MR. CRITES: Same objection.

8 THE WITNESS: I -- I think the
9 conditions in today and the review of the
10 collisions that happened in this area between 2010
11 and 2014 has led the DOT to develop a
12 countermeasure that's shown in -- in the exhibit
13 that we looked at earlier.

14 BY MR. SMITH:

15 Q. And the countermeasure is to -- in
16 other words, the unmountable median is going back
17 into the plan?

18 MR. CRITES: Object to the form.

19 THE WITNESS: As per the interchange
20 plans? I'm not sure I --

21 BY MR. SMITH:

22 Q. An unmountable median is going back in
23 that location?

24 A. No, that's not correct.

25 Q. Didn't you say that accident study in

1 2015, you all are putting an unmountable median
2 back in?

3 A. For a portion of --

4 Q. Right.

5 A. For a portion of it, yes. It does
6 not --

7 Q. Okay.

8 A. That does not -- it does not match the
9 raised median shown at one point in time in the
10 right-of-way plans.

11 Q. All right. Then the -- the last thing
12 I want to ask you about here is I just want to --
13 if you know, you can tell me. If -- if other -- if
14 other people know, you can tell me that too. But,
15 you know, it has to do with when these accident
16 studies are done. Okay?

17 And as part of these accident studies,
18 do you all get the actual collision reports?

19 A. We do.

20 Q. You do? And that's how you get the
21 time of day and --

22 A. Certainly.

23 Q. -- conditions and --

24 A. Yes.

25 Q. -- stuff like that?

1 A. Yes.

2 Q. So I -- I just want to go back and just
3 make sure I absolutely understand what triggers
4 this accident analysis, because we have every
5 single accident that happened in front of that gas
6 station from 2002 to 2012. So Public Safety,
7 right, has the information about the GPS locations;
8 Department of Transportation goes and gets that
9 information from Department of Public Safety,
10 right? Yes?

11 A. Yes.

12 Q. Analyzes that information and
13 determines which particular intersections or areas
14 have a high enough collision rate such that a
15 accident analysis needs to be done?

16 MR. MAYBANK: Before you answer
17 anything, let me re -- I know you said we don't
18 have to redo it, but I want to -- I want to renote
19 my objection to the record on anything having to do
20 with safety studies on any -- under any of these
21 federal/state projects.

22 Go ahead and answer if you can.

23 BY MR. SMITH:

24 Q. So is that what happens?

25 A. Ask it -- ask it again.

1 Q. All right. So --

2 A. I apologize.

3 Q. DOT goes to Public Safety each year and
4 gets information about the number of collisions
5 that are happening all over the state of South
6 Carolina. True?

7 A. Yes.

8 Q. DOT then takes that information and
9 figures out if there are any areas that have higher
10 collision rates than other areas. True?

11 A. Yes. First -- first, we would -- we
12 vet -- we vet the -- the -- the reports that are
13 provided to us. For instance, if you note -- if --
14 we -- we plotted. As part of my deposition, I
15 plotted the accident location, the GPS coordinates
16 associated with the accident diagram here. And if
17 you plot the coordinates, it's actually shown at
18 the -- at the truck drive.

19 Q. Yeah.

20 A. So the first thing we do is we vet the
21 accidents, we clean up that data, and then we --
22 then we actually plot that diagram as shown as --
23 as one of the exhibits we looked at earlier.

24 Q. Because the GPS spots wherever the cop
25 parked his car, right?

1 A. I can't -- I -- I don't know where
2 they -- how they do that.

3 Q. Okay. But the GPS locations will give
4 you general enough, and you go and get the accident
5 reports, you can tell exactly what's happening and
6 where it is, right? By the diagrams?

7 A. There -- there is -- there's a process
8 we go through to -- to review the accident report
9 and fatality.

10 Q. So what is a -- what is a high enough
11 accident frequency to trigger this accident
12 analysis? What's a high enough frequency?

13 A. It -- we look at the -- the
14 intersections. Have two parts of our safety
15 program. We've got a corridor analysis and we've
16 got an intersection analysis. So we compare the
17 rates of intersections across the state and the
18 resources, so -- so first, we -- we collect the
19 data, then we analyze the data. Then we form
20 countermeasures, and we bring those
21 countermeasures, develop projects based on
22 available funding. And we down that list of
23 available funding to the -- to the number of --
24 of -- of locations that we can -- we can form.

25 Q. So --

1 year. That is -- that's the --

2 Q. All right.

3 A. -- metric.

4 Q. And that particular number that I've
5 been after is probably on this thing, we just can't
6 see it because it's cut off?

7 A. Absolutely.

8 Q. Is that the -- would it be this -- this
9 one right under the CR? That S -- I don't know if
10 that even -- what that is.

11 A. I can't --

12 Q. But would it be that number or
13 something even further down the page, you think?

14 A. I -- I don't know. I hate to speculate
15 on something.

16 Q. Okay.

17 A. It looks like it was cut off.

18 Q. Okay. Let me just review for just a
19 second.

20 A. Sure.

21 MR. MAYBANK: Not that I'm agreeing to
22 it in any way, shape, or form, but just for clarity
23 purposes, do you want to make that an exhibit?
24 Since he talked --

25 MR. SMITH: Yeah, I might as well.

1 A. Does that answer your question?

2 Q. Yeah. I don't really -- I mean, how
3 many is enough to start doing that? What --
4 what -- what triggers? How many -- how many --

5 A. The -- the -- the rates and the type
6 of the -- the rates and the type of accidents.

7 Q. Okay. And rates meaning a comparison
8 to the number of vehicles that are traveling on the
9 road to the number of collisions that are happening
10 on that stretch?

11 A. Correct.

12 Q. And -- and then how would -- how would
13 that be expressed here in this case? I guess
14 that -- it's probably in the study?

15 A. It is.

16 Q. I think I put it away. Yeah, it's
17 still out here.

18 A. It's cut off of here.

19 Q. Of course it is.

20 A. But -- yeah, but it -- there's a rate.

21 You -- you can see there's a total number of
22 accidents, there's an average annual daily traffic,
23 there's a number of years. And then there's a rate
24 that ties those accidents to the number of years to
25 the traffic. So it's accidents per volume per

1 MR. MAYBANK: Though I'm only doing it
2 for his -- a reference to further object at a later
3 date.

4 MR. SMITH: I thought you were being
5 nice.

6 MR. MAYBANK: No. I am, but...

7 And I'll be honest with you, so I don't
8 have to go digging around and try to find that
9 later.

10 MR. SMITH: All right. So we're going
11 to mark that accident analysis as Exhibit
12 Number 11. Okay?

13 (PLF. EXH. 11, SCDOT Collision Diagram,
14 SCDOT Colvin Documents0612, was marked for
15 identification.)

16 MR. MAYBANK: And then can we get the
17 other document out? I think it's about four pages
18 in front of that. That had the raised median,
19 slash, left turn.

20 THE WITNESS: Yeah.

21 MR. SMITH: And we will mark the plans
22 for the changes in front of the Pilot Travel Center
23 with that kind of restricted left-in/left-out, that
24 middle intersection, O611, we'll mark that as
25 Exhibit Number 12.

1 (PLF. EXH. 12, Plan diagram, SCDOT
2 Colvin Documents0611, was marked for
3 identification.)

4 MR. SMITH: All right. Let me just
5 look that thing over. Do you all mind if I chat
6 with Amanda real quick? I think that's done, so
7 maybe you all want to figure out who's going to...

8 VIDEO TECHNICIAN: We will now go off
9 the record. The time is approximately 5:55 PM.

10 (A recess transpired.)

11 VIDEO TECHNICIAN: We are now back on
12 the record. The time is approximately 6:01 PM.

13 BY MR. SMITH:

14 Q. This process of performing accident
15 analysis, is that a normal part of the Department
16 of Transportation's maintenance of highways?

17 MR. MAYBANK: One -- one more time, I'm
18 going to put on the record, object to this line of
19 questioning.

20 MR. SMITH: Okay.

21 THE WITNESS: It is part of our normal
22 operations. I'm -- I'm not sure I'd say it's part
23 of our normal maintenance operations; but yes, it's
24 part of DOT operations.

25 MR. SMITH: Okay. And this is the last

1 A. I -- I can't read the note, but that --
2 that would refer to the -- the radii associated --
3 sorry. Sorry. I just grabbed it from you.

4 It appears that that is referring to
5 the -- the radii associated with the -- the -- the
6 two drive -- the three drives on -- off of 17A into
7 the gas station/convenience store.

8 Q. All right. And what is it about those
9 radii for those first two auto entrances, exits out
10 of the Pilot Travel Center, what is it about those
11 radii that are inadequate for use?

12 A. I -- I can't read the dimensions on
13 this one.

14 Q. But is that talking about really the --
15 the size of the -- of the driveway?

16 A. No. That -- no.

17 Q. Okay. What does the radii refer to?

18 A. The radii is the -- the radius of the
19 driveway on both sides and how that ties into
20 the -- to the roadway, the -- thank you. I think
21 the dimension you're referring to is the width. So
22 you've got the width, and you've got the radii.

23 Q. Okay. And the radii would be the curve
24 on the driveway?

25 A. Yes.

1 thing I wanted to ask you about. And why don't we
2 just go ahead and mark it as Number 13.

3 (PLF. EXH. 13, Plan diagram, was marked
4 for identification.)

5 BY MR. SMITH:

6 Q. And there are some notes down here.
7 You may want to use that thing. Do you see that,
8 what's inside the box or inside the little bubble,
9 it seems like, or cloud?

10 A. It's hard for me to read it though.

11 Q. You've got a bigger version, I think,
12 that we've already -- actually already looked at.
13 I don't know if we've -- let me -- let me just try
14 to read it for you then.

15 All -- is it radii? Is that a word?

16 A. I guess.

17 Q. Okay. All radii shown are inadequate
18 for use.

19 Is -- is -- is radii a term -- or
20 radius a term?

21 A. I mean, radius, radii, yeah. Radii is
22 the plural of radius.

23 Q. Okay. So what does -- what would that
24 mean on this, if that's what it says? All radii
25 are inadequate for use.

1 Q. Okay. Do you remember any
2 determinations that the curve on those driveways or
3 the radius or the radii, do you remember any
4 discussions or anything about the -- changing that
5 or saying it was inadequate for use?

6 A. Yeah. These -- I believe these are
7 Mr. Smoak's notes. From what I recall, what I
8 studied for this, I believe these are Mr. Smoak's
9 notes -- notes referring to the ingress and egress
10 into and out of the -- the gas station/convenience
11 store. And he has notes from the discussions with
12 both myself and I believe with Mr. Clark as well.

13 Q. All right. And is there a date on
14 this?

15 A. I do not see a date on this.

16 Q. Okay. Can I grab it from you?

17 A. Sure. Absolutely. Oh, yeah, there's
18 the date. Yeah, the date -- I believe this is
19 saying August 16th, 2000.

20 Q. Okay. That would have been in the
21 general time frame of that Exhibit 5 letter? That
22 was August 2000, so...

23 A. Yeah, if that -- if that's what the
24 letter stated. I don't recall the exact date.

25 Q. And what you see here -- thanks.

1 So that this note about all the radii
2 shown are inadequate for use, that's a note from
3 August 16th of 2000?

4 A. Yes.

5 Q. And the letter from Exhibit 5 is dated
6 August 28th of 2000?

7 A. Correct.

8 Q. Around the same time frame?

9 A. Yes.

10 Q. Okay. Do you know what changes were
11 made to the radii of those driveways? Can you tell
12 if anything was changed?

13 A. I can't tell on that drawing. I -- I
14 can infer. I mean, I can infer -- infer from this
15 drawing, which is hard to read at that -- at that
16 scale --

17 Q. Um-hum.

18 A. -- that -- that the Department agreed
19 to both the width and the radii for both the truck
20 driveway and the -- and the commercial driveways on
21 17.

22 Q. Okay. So this -- this last one and
23 this one, but what about these?

24 A. No, those -- those two and this one.

25 Q. Okay.

1 A. Yeah.

2 Q. So you -- you're going to infer that
3 the radii that are shown in Exhibit 13 were
4 ultimately approved?

5 A. No. I would say just the opposite of
6 that.

7 Q. Okay.

8 A. But it's -- I -- it was very hard to
9 see. I -- it -- I can't -- I can't read that at
10 that scale.

11 MR. SMITH: Okay. All right. Thank
12 you. That's all I have.

13 THE WITNESS: All right. Thank you.

14 MR. SMITH: Somebody else might have
15 something.

16 THE WITNESS: Oh.

17 MR. SMITH: If they do...

18 VIDEO TECHNICIAN: This concludes Video
19 Number 3 in the video deposition of Leland Colvin.
20 The time is approximately 6:08 PM. We are now off
21 the record.

22 (Off-the-record discussion.)

23 VIDEO TECHNICIAN: We are now back on
24 the record. Today's date is March 13, 2017. The
25 time is approximately 6:08 PM. This is Video

1 Number 4 in the video deposition of Leland Colvin,
2 as 30(b)(6) representative for the South Carolina
3 Department of Transportation.

4 EXAMINATION

5 BY MR. CRITES:

6 Q. Hey, Mr. Colvin.

7 A. Hey.

8 Q. It's been a long day, I know. We
9 started about 10:00 and we're after 6:00. My name
10 is Bennett Crites. I represent Speedway, LLC.
11 They are the successor, if you will, to Marathon
12 Ashland.

13 Mr. Smith has asked you a lot of
14 questions here today. I might jump around a little
15 bit. I'm not trying to. I'm certainly not trying
16 to confuse you. There are just a couple of things
17 I -- I want to go over with you and -- and try and
18 clarify. So certainly if you need to take a break
19 for any reason, just let me know and I'll be happy
20 to accommodate you. Okay?

21 A. Sure. Thank you.

22 Q. Tell me this: We talked about the --
23 the two different projects. And there was the 17A
24 widening project, which was directly in front of
25 what is now the Pilot, correct?

1 A. Yes, sir.

2 Q. And were you somebody as the project --
3 I believe you said you were the project manager
4 earlier?

5 A. Correct.

6 Q. You were actually on-site for the
7 widening project?

8 A. During that time, my office was in
9 Columbia; but, yes, I certainly made site visits,
10 absolutely.

11 Q. Okay. And during that widening
12 project, do you recall there actually being another
13 convenience store there at any point in time that
14 was a Speedway?

15 A. I -- I can't recall the details of
16 that.

17 Q. Okay. But the 17 widening project,
18 that stretched from essentially in front of this --
19 the Pilot Travel Center, what is now the Pilot
20 Travel Center, towards Moncks Corner, correct?

21 A. Correct.

22 Q. And the design professional for that
23 project was the South Carolina Department of
24 Transportation, correct?

25 A. Correct.

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 nontransversable 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 raised median or a nontraversable median; is that
2 correct?

3 A. That's correct.

4 Q. And I believe your testimony earlier
5 was that there was never an expectation during the
6 17A widening project in front of the Pilot Travel
7 Center to have a raised or a nontransversable
8 median because to do so would have been not
9 compliant with the South Carolina Department of
10 Transportation Highway Design Manual; is that
11 correct?

12 A. That's correct.

13 Q. So to have put one in in front of the
14 Pilot would have been in contravention to your own
15 manual, correct?

16 A. Correct.

17 Q. And I believe you referred to that
18 manual as the bible for design projects in the
19 state of South Carolina; is that correct?

20 A. Yes, sir.

21 Q. Okay. Now, somebody, a design
22 professional with Arcadis with the other project
23 that didn't have anything to do with -- with the
24 17A widening project, but the interchange project
25 with I-26, drew in some sort of raised median or

1 was a business there, I'll represent to you it was
2 a Speedway before it became a -- a Pilot Travel
3 Center. But there was a business there with
4 driveways that provided ingress and egress from 17A
5 into that business; is that correct?

6 A. Yes, sir.

7 Q. Okay. And at that time there was not a
8 raised median preventing left-hand turns into that
9 business, correct?

10 A. Correct.

11 Q. There's never been a raised median on
12 that stretch of Highway 17A in front of what is now
13 the Pilot Travel Center, correct?

14 A. Correct. There -- there was -- I'd

15 have to see the limits. There -- there is a raised
16 median that was installed in conjunction with the
17 new location of roadway to the intersection just to
18 the east. I -- I don't think the limits of that
19 got in front of the -- the Pilot station.

20 Q. Okay.

21 A. I think that's correct.

22 Q. All right. So any discussion earlier
23 about a -- a raised median or a nontransversable
24 median being removed, it was never removed from the
25 roadway itself, correct?

1 A. Correct.

2 Q. Nor was it ever removed from the design
3 plans for the 17A widening project right in front
4 of the Pilot Travel Center, correct?

5 A. Correct.

6 Q. It was -- I believe you referred to it
7 earlier as a placeholder?

8 A. Correct.

9 Q. And it was a placeholder that was put
10 in by another design professional who was in charge
11 of another project that was not the 17A widening
12 project right in front of the Pilot Travel Center,
13 correct?

14 A. Correct.

15 Q. Mr. Smith spent a lot of time asking
16 you questions about Exhibit 5, which is the letter
17 dated August 28, 2000, to Mr. Greiwe from Tommy
18 Smoak. And as I understand it, Mr. Smoak is no
19 longer employed with the Department of
20 Transportation, correct?

21 A. That's correct.

22 Q. Did he retire?

23 A. He did retire.

24 Q. Do you know how long ago he retired?

25 A. I don't have the specific dates.

1 notes, you don't know where any of this information
2 came from, do you?

3 A. As far as the information numbered in
4 the notes?

5 Q. Yes, sir.

6 A. No, I don't.

7 Q. Okay. Have you ever spoken with
8 Mr. Greiwe?

9 A. I -- not to my knowledge.

10 Q. Do you remember at any point in time
11 back in the -- the 2000 time frame speaking with --
12 with a Mr. Greiwe or with anybody from Marathon
13 Ashland Petroleum?

14 A. Not that I recall.

15 Q. And Mr. Smith had asked you some
16 questions earlier about this letter and whether or
17 not there was backup correspondence from the DOT.
18 I'll represent to you on the bottom of my letter,
19 it looks like it was actually produced by Pilot
20 because it says -- it's Bates-labeled Pilot 00045.

21 So do you know if this letter was
22 actually in the DOT's possession or it just came to
23 be in everybody's possession because Pilot produced
24 it?

25 A. I -- I don't know the answer to that.

1 Q. Have you spoken with him at all about
2 this lawsuit or about this letter or about your
3 deposition?

4 A. I have not.

5 Q. Okay. As you sit here today -- and I'm
6 happy to --

7 MR. SMITH: Here's one. It's not
8 marked, and I -- I already marked on this.

9 MR. CRITES: Okay.

10 BY MR. CRITES:

11 Q. I'm happy to show you my copy, but I'm
12 just curious. The information contained on the
13 bottom of this letter and these handwritten notes,
14 do you know where that information came from?

15 A. I do not.

16 Q. Okay. And I understand up at the top
17 it says 9/5 per phone verification with T. Smoak.
18 But in terms of who was telling Mr. Smoak something
19 that might have been referred back to Mr. Greiwe,
20 you don't know where any of this information came
21 from. Is that fair to say?

22 A. Ask that question one more time now.

23 Q. Sure.

24 In terms of the information that's

25 actually contained down here with these handwritten

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

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

1 roadway in front of what is now the Pilot Travel
2 Center was in conformance with the South Carolina
3 Highway -- the South Carolina Department of
4 Transportation Highway Design Manual, correct?

5 A. Correct.

6 Q. And I think we looked at what you
7 recently produced, which is Exhibit E to the
8 30(b)(5), where it talked about in urban areas
9 where design speeds are 45 or less, a 15-foot flush
10 median -- paved median -- parenthesis, paved median
11 at the same elevation as adjoining lanes may be
12 adopted. This width may be reduced to 14 feet
13 where economic and existing right-of-way conditions
14 justify. And then it says: The median area may be
15 used for turn lanes, storage lanes, et cetera.

16 Is that correct?

17 A. That's correct.

18 Q. And this was the 1991 design manual?

19 A. Yes, sir.

20 Q. And that would have been applicable to
21 this design at that point in time, correct?

22 A. Yes, sir.

23 Q. And then you also produced the May 2003
24 design manual, which was Exhibit I to the 30(b)(5).
25 And I know the 2003 manual is not -- was not

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 applicable to this design, correct?

2 A. Correct.

3 Q. Okay. But it's still instructive
4 because it talks about you-all developing your
5 design criteria?

6 A. Certainly.

7 Q. And under Colvin 0625, 13.4.2.1, it
8 talks about flush medians. And again, it says:
9 Flush medians are used most often on urban highways
10 and streets where design speeds are 45 miles per
11 hour or less. Correct?

12 You don't have to take my word for it.

13 A. Yeah. That's correct.

14 Q. Okay. And then if I flip forward to
15 Colvin 0627, it talks about raised medians. And it
16 says: In general, the Department does not use
17 raised medians. And then it says: They may only
18 be considered by special request.

19 Let me show you that and just tell me
20 if I read that correctly.

21 A. That is correct.

22 Q. Okay. And then let me finally show you
23 real quick Colvin 0628, where it discusses flush
24 medians as well. And it says: Flush medians
25 provide an arrow -- excuse me -- flush medians

1 provide an area for left turn movements and permit
2 direct access to adjoining properties. This allows
3 for numerous unrestricted conflict points. The
4 flush median may serve as refuge for disabled
5 vehicles and serve as a temporary lane for
6 emergency vehicles.

7 Is that correct and did I read that
8 correct?

9 A. Yes, sir.

10 Q. Okay. And so when the individual who
11 was operating the pickup truck, Mr. Sena, who was
12 under the influence of alcohol and cocaine that
13 evening, attempted to pull into that flush median,
14 to the extent that he yielded the right-of-way, he
15 would have been making a legal and lawful left-hand
16 turn from that median -- from that flush median
17 into the Pilot, correct?

18 A. Yes, as long as he yielded to the
19 right-of-way.

20 Q. And that's what I said. Thank you.

21 A. Yeah.

22 Q. So you can make -- anybody when there's
23 a flush median that's surrounded by the double
24 solid -- solid yellow lines, it's both legal and
25 appropriate to make a left-hand turn from that

1 when Speedway was in South Carolina, when Speedway
2 left, anything about a joint venture between itself
3 and Pilot, when it began, when it ceased to exist,
4 anything like that?

5 A. Not aware of any of that.

6 Q. Okay. You talked earlier about --
7 about that DOT has duties and responsibilities that
8 are set out per statute, I believe. Did you say
9 that?

10 A. I did.

11 Q. Okay. And does DOT have the statutory
12 duty to move traffic safely among the public
13 highways of this state?

14 A. Yes.

15 Q. And the DOT doesn't compromise safety,
16 correct?

17 A. Correct.

18 Q. Safety is of utmost importance to the
19 DOT, correct?

20 A. Yes.

21 Q. Because as Mr. Smith talked to you
22 earlier about, I mean, if you compromise safety and
23 you make a decision that's in contradiction to your
24 Highway Design Manual, people can get hurt,
25 correct?

1 median so long as when you do so, you maintain a
2 proper lookout, correct?

3 A. Yes, sir.

4 Q. You maintain your vehicle under proper
5 control, correct?

6 A. Correct.

7 Q. And you yield the right-of-way to
8 oncoming traffic, correct?

9 A. Absolutely.

10 Q. Do you know anything as you sit here
11 today about the relationship between -- and I know
12 some of these documents refer to Speedway
13 SuperAmerica, that some of them refer to Marathon
14 Ashland. Mr. Smith and I and his co-counsel
15 entered a stipulation, if you will, where we agreed
16 that Speedway was the proper party because they
17 were the successor in interest. So I'm just going
18 to refer to them as Speedway, understanding that
19 when I say Speedway, it -- it encompasses all of
20 those parties except for Pilot Travel Centers.
21 Okay?

22 A. Okay.

23 Q. So if you just assume that for purposes
24 of my question.

25 As you sit here today, are you aware of

1 A. Yes.

2 Q. Okay. And to the extent that a
3 business owner or a private individual came to the
4 DOT and asked a question about driveways or
5 curb cuts or access, is there anything illegal
6 about them doing that?

7 A. No.

8 Q. Okay. Does the DOT receive requests
9 often in terms of an encroachment permit or in
10 terms of access to and from their property, be it
11 a -- a personal individual or be it a business?

12 A. I'd say daily.

13 Q. Okay. It's not unusual or uncommon,
14 correct?

15 A. Correct.

16 Q. And the DOT can say yes or it can say
17 no, correct?

18 A. We would apply our engineering judgment
19 and guidelines to appropriately address that
20 request.

21 Q. And I appreciate that. It's -- I'm
22 just trying to move this through for you to try and
23 get you out of here, but I'll slow down. But I
24 appreciate the -- the more explained answer, if you
25 will.

1 Applying those engineering design
2 principles to a request that somebody might make,
3 the DOT's position, though, is they're never going
4 to compromise the safety of the individual or the
5 public-at-large to accommodate a business if they
6 don't believe that that's the right decision or the
7 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.

1 Q. Sure. Is it 4 inches off the ground?
2 6 inches? 12 inches?

3 A. I -- I'd have to look at the design
4 detail. I'm -- I apologize.

5 Q. Okay. No, fair enough.

6 A. It's less than 12 inches, for sure.

7 Q. Fair enough. As you sit here today,
8 you just don't know?

9 A. Correct.

10 Q. When you testified earlier about
11 marrying the plans and that there was never going
12 to be a raised median in front of Pilot Travel
13 Center, I wrote down that it was a pure -- pure
14 engineering decision on your part, is that correct?

15 A. Correct.

16 Q. Okay. That it was in compliance with
17 the design manual --

18 A. Correct.

19 Q. -- that was applicable at the time,
20 correct?

21 A. Correct.

22 Q. And then the third thing I wrote down
23 was purpose and need, it was also based on purpose
24 and need. So can you just tell me what purpose and
25 need means --

1 A. Yeah.

2 Q. -- in this context?

3 A. Sure. Purpose and need defines why we
4 are taking a certain action. And the action
5 that -- that the DOT took with the 17 -- 17A
6 widening project was to increase capacity along
7 that section from Farmington Drive really all the
8 way out to Moncks Corner. There's a -- it was
9 constructed in phases, and this phase in that
10 US 176. So that was the purpose and need.

11 So conjunction of this project, the
12 purpose and need increased capacity to go back to
13 the Highway Design Manual and implement with
14 regards to the raised median -- or flush median
15 those -- those design features would -- would
16 dictate what we would put there.

17 Q. Okay. Did I write down earlier, as
18 well, that the South Carolina Highway Design Manual
19 is approved by the Federal Highway Administration?

20 A. It is.

21 Q. Okay. And can you just expound on that
22 a little bit, please?

23 A. Yes. We -- all of our manuals,
24 there's -- excuse me. I didn't mean to say that.
25 Let me rephrase -- refrain from that. Restate

1 that. Excuse me.

2 Yeah. Our -- our -- our design
3 standards, and our Highway Design Manual being one
4 of those, goes over to Federal Highway for comment
5 and approval. So that -- that is the design manual
6 that we use for our design of federally eligible
7 routes. And US 17A is a federally eligible route,
8 and federal funds were spent to widen that project.

9 Q. Okay.

10 A. And that's the reason for the Federal
11 Highway oversight is the expenditure of federal
12 funds.

13 Q. One of DOT's jobs is to move traffic as
14 safely as possible, correct?

15 A. Correct.

16 Q. Okay. And I believe you already
17 answered this. But to the extent a developer makes
18 a request, asks a question for access, for a curb
19 cut, for a driveway, that question or that request
20 in and of itself does not drive the decision by the
21 DOT, correct?

22 A. Correct.

23 Q. There's a variety of factors that the
24 DOT looks at to consider those requests in terms of
25 whether to say yes or say no, correct?

1 A. Correct.

2 Q. Okay. But again, and I think it's
3 clear, at least to me at this point in time, that
4 with respect to any raised median that was to be in
5 front of the Pilot during the widening project on
6 Highway 17A, that was never in the SCDOT design
7 plans, correct?

8 A. Correct.

9 MR. CRITES: Thank you, Mr. Colvin. I
10 don't have any other questions for you.

11 THE WITNESS: Yes, sir.

12 EXAMINATION

13 BY MR. BESLEY:

14 Q. Mr. Colvin, I know it's been a long
15 day. It's now, what, 6:30. We've been going since
16 10:00 this morning, but I have a few more questions
17 for you, hopefully pretty quick.

18 The SCDOT has the -- has to approve
19 anything that a landowner or business that abuts
20 your -- one of your roads wants to do with their
21 business that would affect your road. Is that not
22 correct?

23 MR. MAYBANK: Object to the form.

24 THE WITNESS: We have to approve
25 encroachment on the DOT right-of-way.

1 design and location of the entrances and exits to
2 Pilot's property before issuing the encroachment
3 permit. Is that how it works?

4 A. Correct. Yes, sir.

5 Q. Okay. And a -- property owners can't
6 do it themselves without your approval and your
7 authority, and it must conform with your regs and
8 standards; is that correct?

9 A. Correct.

10 Q. Okay. And someone at SCDOT would
11 review the encroachment permit and make sure it's
12 proper and give an independent analysis, would make
13 sure it complies with your rules and standards; is
14 that correct?

15 A. Correct.

16 Q. Okay. The SCDOT would not rely upon
17 the person submitting the encroachment permit that
18 it would be exactly up to your standards and rules.
19 You guys give it an independent evaluation, make
20 sure it's correct; and if it's not, you tell them,
21 let's change it in these certain ways; is that
22 correct?

23 A. Yeah. There's a review for conformity
24 of the permit that was submitted by a licensed PE.

25 Q. Okay. And it does not get approved

1 BY MR. BESLEY:

2 Q. Okay. And SCDOT would have the final
3 and ultimate decision on any road of theirs or even
4 the encroachment of driveways leading to that road.
5 Would that be correct?

6 A. Correct.

7 Q. That would be based upon your DOT rules
8 and regulations and even the national standards, as
9 the other lawyers have pointed out; is that
10 correct?

11 A. It would be based on the DOT standards,
12 that -- that those standards took into account
13 national standards.

14 Q. Okay. So in order for Pilot to
15 construct entrances and exits to their property,
16 Pilot had to submit an encroachment permit
17 application to the SCDOT; is that correct?

18 A. Yes. That's how -- that's how our
19 new -- that's how new encroachments are provided as
20 via an encroachment permit process.

21 Q. Okay. And I know earlier you said you
22 had not reviewed the one that you were shown, but
23 you saw an encroachment permit; is that correct?

24 A. Sure. Yes.

25 Q. Okay. And so SCDOT had to approve the

1 unless the SCDOT says it's approved; is that
2 correct?

3 A. Yes. The DOT approves the encroachment
4 permit.

5 Q. Okay. You're not relying upon a
6 landowner who submits an encroachment permit to you
7 to make sure that the plan that they suggested is
8 safe. You guys take a look at it yourself and
9 determine if it's according with your regs and
10 standards; is that correct?

11 A. I think there's some responsibility on
12 the permittee to design it accordingly as well. In
13 other words, we're not doing the design on behalf
14 of the permittee. We're reviewing the permittee
15 design for encroachment of the SCDOT right-of-way.
16 We're not taking responsibility for that. In other
17 words, a traffic impact study, we are relying that
18 professional standards were used to determine that
19 traffic -- traffic impact study.

20 Q. Okay. But not a traffic impact study,
21 but just an encroachment permit to determine the
22 location and widths of an ingress and egress on
23 someone's property, that's something that you guys
24 would take a look at yourselves and make that
25 determination?

1 MR. MAYBANK: Object to the form.

2 THE WITNESS: Yes. We would review the
3 encroachment permit as submitted by the permittee
4 for conformance to our regulations.

5 BY MR. BESLEY:

6 Q. Okay. So perhaps not with the traffic
7 study, you might -- you might rely upon someone who
8 submits that to you to make sure it's correct. But
9 for things that you can take a look at, your
10 engineers take a look at, you make that
11 determination on your own?

12 MR. MAYBANK: Object to the form.

13 THE WITNESS: I -- I would not say
14 that, no.

15 BY MR. BESLEY:

16 Q. Okay. Does the SCDOT have the ultimate
17 right to approve encroachment permits?

18 A. Absolutely.

19 Q. No one gets to tell you what is
20 approved or not. You guys make that decision?

21 A. Absolutely.

22 Q. Okay. And do you know what happen --
23 has happened to the area? You know, you've been
24 shown some diagrams and collision analysis over the
25 last few years, a little while ago in the

1 questioning. Do you know offhand what has happened
2 in that area in the last five years or so? Have
3 other places gone in?

4 A. In -- in general, I know that this
5 section of Berkeley County has definitely grown for
6 sure. I mean, specific of what -- what -- what new
7 businesses are in place, I don't have any specific
8 knowledge of specific businesses. But certainly
9 I'm aware in my position now of the -- of the
10 amount of growth in Berkeley County.

11 Q. Okay. Well, for instance, we know that
12 at the time of the accident, there was a Hess
13 station across the street from the Pilot station;
14 is that correct?

15 A. Correct.

16 Q. And it had all kind of in and out
17 access, just like the Pilot station? Similar?

18 A. Yes. It had access to the roadway.

19 Q. Okay. And do you know when that Hess
20 station was put in or constructed?

21 A. I do not.

22 Q. Okay. It could have been constructed
23 between 2002 and 2012; is that correct?

24 A. No. I believe that was in place at the
25 time of the widening project.

1 Q. At the widening project?

2 A. I believe that is the case. Can I
3 refer to the plans?

4 Q. Sure.

5 A. Yeah. I'm -- I mean, I -- referring
6 back to the plans, there -- there is certainly a
7 business that is in place when we surveyed the
8 plans. Certainly prior to 1998, that shows two
9 driveways at the location. And Mr. Mike Kennedy is
10 the property owner.

11 Q. Okay. So perhaps that might be the
12 Hess station?

13 A. Perhaps.

14 Q. Okay. And now in the last few years,
15 there's been like a Carolina Wings & Ale put in at
16 that intersection and some other -- hotels and
17 other things like that recently?

18 A. I don't have any direct knowledge.

19 Q. Okay. Would other businesses being put
20 in affect a traffic analysis?

21 A. In what respect?

22 Q. Well, the -- the attorney seated next
23 to you asked you all those questions about the
24 number or frequency of accidents. Would you expect
25 frequencies of accidents to increase when you add

1 more businesses to the direct area?

2 A. Yes. More conflict points would be
3 introduced to the roadway, yes, sir.

4 MR. BESLEY: Okay. I think that's all
5 I have for you. Thank you.

6 THE WITNESS: Yes, sir.

7 EXAMINATION

8 BY MR. BERLINSKY:

9 Q. Okay. I'm Bruce Berlinsky. I
10 represent Ashley Surveying & Engineering, and it
11 looks like my friends here and colleagues have
12 whittled my list of 32 questions down to about 4.

13 A. Okay.

14 Q. So again, just to clarify, we have the
15 interchange plans of '99, the widening plans of
16 '98. And at that point, there's no -- there's no
17 raised median in the project?

18 A. There's no raised medians on the US 17
19 widening plans.

20 Q. Widening project?

21 A. Correct.

22 Q. And then -- hand me the top letter.

23 And then in -- could we say by August 28th of 2000
24 when Plaintiffs' Exhibit 5 went out, that at -- by
25 that time, the plans have been merged or mirrored

1 to the point that whatever median was drawn in to
2 the interchange plans had been removed and the only
3 issue with this site was driveways?

4 A. I can say between the right-of-way
5 plans dated July of '99 and the final construction
6 plans dated June of 2001 that the marrying of the
7 plans have taken place. And the construction plans
8 basically said that the project east of
9 Farmington Road would be constructed by others, and
10 that others is the 17A widening project.

11 Q. Okay.

12 A. I can't tell you an exact date of when
13 that merger actually happened; but I can tell you
14 between the right-of-way plans for the interchange
15 and the construction plans, that portion was
16 basically referred back to -- instead of assuming
17 something east of Farmington, that section of
18 roadway referred us -- referred us back to the
19 widening plans.

20 Q. Okay. And while you aren't completely
21 familiar with the encroachment permit from '02, if
22 you could pull that, the encroachment permit only
23 deals with driveway --

24 A. Got it, a copy.

25 Q. -- driveway access in the truck

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 entrance. It has nothing to do with a median?

2 A. Yes, sir. That appears so, yes, sir.

3 Q. Okay. And again, kind of following up
4 on one of Mr. Crites' questions but applying it to
5 my client: Even if an engineering company asked to
6 do something unsafe, in your review if you
7 determined it was unsafe, you have the ultimate
8 power to say no --

9 A. That's right.

10 Q. -- we're not going to allow you to do
11 that?

12 A. Yes, sir.

13 Q. Okay. At the time of the encroachment
14 permit or this entire project, it's my
15 understanding -- and tell me if I'm wrong -- that
16 encroachment permits started out with, I guess, the
17 local county maintenance office and then would be
18 reviewed by the district office; is --

19 A. That's the -- that's the normal
20 procedures, correct.

21 Q. Okay. Now, the procedure has changed
22 since then, right? It goes now to the district
23 office and then up to Columbia?

24 A. Based on permit type. Based on permit
25 type, it would, yes. There's been an additional --

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.

1 Q. All right. And those were done by
2 people hired by the DOT?

3 A. Correct.

4 Q. And in fact, those plans at the top of
5 those say DOT, right?

6 A. Absolutely.

7 Q. Okay. And did you expect Arcadis to
8 use industry safety standards in their plans?

9 A. Sure.

10 Q. Okay. And would you expect that given
11 the amount of traffic Arcadis determined was going
12 to come down that road and especially with the road
13 widening, that a raised median would have been
14 required under the industry standards?

15 MR. CRITES: Object to the form.

16 MR. MAYBANK: Objection.

17 THE WITNESS: I -- I would not. I
18 think that was a placeholder to show that they did
19 their due diligence not to have a -- a six-lane
20 roadway going into a -- tying into a two-lane
21 roadway. Again, I -- I stated, as earlier, that I
22 believe that is a placeholder east of Farmington,
23 that it's -- it's a placeholder to show that they
24 did their due diligence to tie a six-lane roadway
25 into a six-lane roadway.

1 BY MR. SMITH:

2 Q. They just happened to be the DOT's
3 plans that were developed by Arcadis?

4 MR. MAYBANK: Same objection.

5 THE WITNESS: Again, as I stated
6 earlier in my testimony, they -- they are a
7 placeholder. You cannot end a set of plans at a
8 terminus that would just tie in. You can't have
9 six lanes of traffic coming to two lanes. So
10 certainly, yes, the right-of-way plans for the
11 interchange as part of that placeholder showed just
12 marrying that -- that design going east of
13 Farmington, but -- but however, with that being
14 said, the plan was always a flush painted median
15 east of Farmington going out to 176.

16 BY MR. SMITH:

17 Q. The DOT in-house people, that was their
18 plan for the widening project, right?

19 A. Absolutely.

20 Q. All right. But the Arcadis people that
21 were hired by the DOT, they wrote into the plans
22 that there would a raised median. True?

23 A. They are -- yes, the right-of-ways
24 plans associated with the interchange shows a
25 raised median.

1 BY MR. SMITH:

2 Q. Well, how would they have to do
3 anything other than just, you know, draw three
4 lanes going one way, draw three lanes going the
5 other way, and their project up on the Summerville
6 side of Farmington Road has got three lanes coming
7 one way and three lanes going the other way?

8 A. That's essentially what they did.

9 Q. Yeah. So -- so why would they -- why
10 would they need to draw in a raised median as a
11 placeholder in that area?

12 A. I -- I can't speak for them. I mean,
13 they could have -- they could have shown that as
14 raised or flushed, as long as they showed three
15 lanes tying into three lanes, they were doing their
16 due diligence to complete the transition at the
17 terminus.

18 Q. But it's entirely possible that as
19 Arcadis is looking at this thing, they're saying
20 the industry safety standards with this area
21 required a raised median?

22 MR. CRITES: Object to the form.

23 THE WITNESS: I can't speak for -- I
24 can't speak for Arcadis.

25 BY MR. SMITH:

1 Q. Okay. It's -- it's possible that that
2 was part of their decision process?

3 MR. MAYBANK: Object to the form.

4 THE WITNESS: I can't speak for -- I
5 can't speak to Arcadis.

6 BY MR. SMITH:

7 Q. Okay. Because -- now this -- this
8 bible that you've referred to, the South Carolina
9 Highway Design Manual --

10 A. Certainly.

11 Q. -- right?

12 A. Yes.

13 Q. So we -- we've got one sentence with
14 regards to raised median versus flush medians.

15 A. Yes.

16 Q. True?

17 A. Yes.

18 Q. And the one sentence is: In urban
19 areas where design speeds are 45 miles an hour or
20 less, a 15-foot flush median, parenthesis, paved
21 median at the same elevation as adjoining lanes,
22 end -- end parentheses, may be adopted. Correct?

23 A. Yes.

24 Q. So it's not the -- it's not the -- the
25 specs of the South Carolina Highway Design Manual

1 to use flushed medians -- flush medians. It's just
2 the Highway Design Manual references that flush
3 medians may be adopted. True?

4 A. Sure.

5 Q. I mean, there's a difference between
6 saying the High -- South Carolina Highway Design
7 Manual dictates a flush median in this situation as
8 opposed to saying that South Carolina Design Manual
9 would allow a raised median or says it may be
10 adopted. There's a difference between those two,
11 isn't there?

12 A. Yeah. It doesn't reference a raised
13 median. I think what that's referencing, that you
14 can put in a 15-foot median, you don't have to have
15 two lanes with no median whatsoever.

16 Q. Right. But this South Carolina Highway
17 Design Manual doesn't talk anything about raised
18 medians, whether or not there's a -- driveways and
19 functional area of intersections, doesn't talk
20 about the volume of traffic, anything like that.
21 It just says: It's our position that flush medians
22 may be adopted. True?

23 A. Sure.

24 Q. All right. And -- and that's a --
25 that's a very general statement, don't you think?

1 A. I don't think -- no, I don't.

2 Q. I mean, you -- you -- what we read in
3 the ARMS manual about nontraversable median,
4 reduction in 35 percent, about left turns
5 contributing to 72 percent of crashes involving --
6 in front of driveways, I mean, which -- which one
7 do you think is more detailed? The ARM -- about
8 what was going on here? Do you think it would be
9 the -- the South Carolina Highway Design Manual or
10 the ARMS manual?

11 A. I think the Highway -- the
12 South Carolina Highway Design Manual. Certainly we
13 had the 1999, if I'm not mistaken, then we had a
14 2003 that we referred to as part of the discovery
15 as well. The '03 has certainly more details
16 regarding medians. The access manual, again, is
17 used for where private individuals, companies,
18 whatever the case may be, is trying to access a
19 public roadway. In this scen -- in this scenario
20 of widening 17A, the Highway Design Manual would
21 hold true.

22 And I would point as well -- and you
23 talked about reduction and the effects, again this
24 is talking about medians in general --

25 Q. Um-hum.

1 A. -- that the same reductions for a
2 continuous two-way left turn lane, TWLTL as we
3 referred to, has the same effects and reductions as
4 nontraversable median referred to in the 2000 --
5 2008 edition of the ARMS manual.

6 Q. Is that still true today?

7 A. Yes. This is the current -- this is
8 the current ARMS manual that we were -- you got --
9 you've got to understand that -- what the purpose
10 of this manual is for and understand what the
11 purpose of the Highway Design Manual is for.

12 Q. I got you. The ARMS is triggered when
13 an application for an encroachment permit is filed.
14 True?

15 A. True.

16 Q. Okay. And with regards to today, would
17 you disagree that a -- most studies and the models
18 derived from them also suggest that safety is
19 improved where physical medians replace TWLTLs?

20 A. I think you're reading theory. I think
21 we talked a lot of theory today on you -- that you
22 referred to one of the theories that we've talked
23 about as the functional area of the intersection.

24 Q. Um-hum.

25 A. And when we looked at the actual

1 accident diagram based on real data and not theory
2 and the driveway that was with -- 100 percent
3 within the functional area of -- of the
4 intersection had significantly less collisions
5 compared to the driveway that I testified to that I
6 do not believe is in the functional classification.
7 So yeah, you've got some theory and some data
8 there; but you've got to make sure me, as a -- as
9 an engineer, make sure that I take that theory and
10 apply it to the right -- to the right location.

11 Q. But as we sit here today, do you
12 disagree that most studies and the models derived
13 from them suggest that safety is improved where
14 physical medians replace the TWLTLs?

15 MR. MAYBANK: Object to the form.

16 THE WITNESS: I -- I've always stated
17 that the -- that reducing the number of conflict
18 points theoretically reduce -- increases safety.
19 BY MR. SMITH:

20 Q. Okay. And one way to reduce the number
21 of conflict points is to eliminate left-in,
22 left-outs?

23 A. Absolutely.

24 Q. Okay. And so do you think that this --
25 this data here on the 2008 edition of the ARMS

1 the permit for -- an application for a permit --
2 I'm sorry. Application for encroachment permit,
3 those questions need to go over to Mr. Clark?

4 A. Correct.

5 Q. And the driveways?

6 A. Yes.

7 MR. SMITH: Okay. All right.

8 MR. MAYBANK: Anybody? Anybody?

9 MR. SMITH: Going once.

10 MR. MAYBANK: Thank you.

11 VIDEO TECHNICIAN: This concludes the
12 video deposition of Lee -- Leland Colvin as
13 30(b)(6) representative for the South Carolina
14 Department of Transportation.

15 The time is approximately 7:02 PM. We
16 are now off the record.

17 (WHEREUPON, the proceedings concluded
18 at 7:02 PM.)

19 (The witness, after having been advised
20 of his right to read and sign this transcript, does
21 not waive that right.)
22
23
24
25

1 manual that the reduction in total crashes from
2 TWLTLs is the same in reduction in crashes from
3 nontraversable medians, do you think this number is
4 still accurate?

5 A. Absolutely. I mean, I -- I think that
6 what you're -- that what not -- what's not taken
7 into consideration, we're looking at medians, so
8 the effect of a median or not having a median all
9 together.

10 Q. Um-hum.

11 A. So you've got to make sure you're
12 comparing the right data, statistics, and theory to
13 the right...

14 Q. Okay. I think I see what you're
15 saying. So -- so this is talking about the
16 reduction in total crashes between not having a
17 median at all to a TWLTL --

18 A. Absolutely.

19 Q. -- right? And not having a median at
20 all to a nontraversable median?

21 A. That's right.

22 Q. Same sort of thing, they're comparing
23 it?

24 A. Yep.

25 Q. All right. And then so questions about

1 SIGNATURE OF DEPONENT

2 DEPONENT: LELAND D. COLVIN, JR.

3 DEPOSITION DATE: March 13, 2017

4 REPORTER: TERRI L. BRUSSEAU

5 AWR JOB #: 170313TLB

6 CASE CAPTION: CYNTHIA WRIGHT AND RICHARD WRIGHT
7 vs. SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

8 (Please return both Signature of Deponent pages)

9 I, the undersigned, LELAND D. COLVIN, JR.,
10 do hereby certify that I have read the foregoing
11 deposition and find it to be a true and accurate
12 transcription of my testimony, with the following
13 corrections, if any:
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PAGE LINE CHANGE REASON

EXHIBIT B



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

MARY P. STOWN
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

B

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." 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.

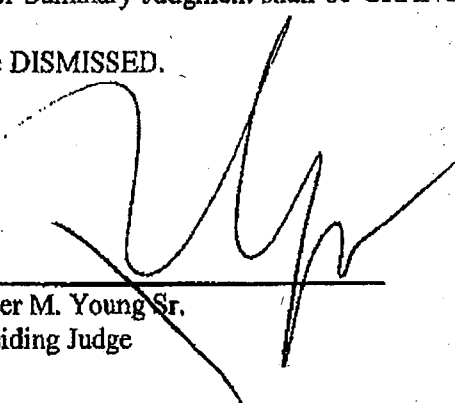
Finally, Plaintiffs argue that Pilot can be held liable for their injuries because Pilot had notice of the danger posed by motorists making left-hand turns onto its property and failed to take any remedial action. Specifically, Plaintiffs allege Pilot was on notice of this danger by virtue of prior motor 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!



Roger M. Young Sr.
Presiding Judge

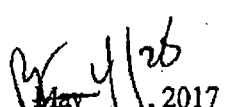

May 4/26, 2017
In Chambers, South Carolina

EXHIBIT C

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

AFFIDAVIT OF BILL MULLIGAN

Personally appeared before me the undersigned, after being duly sworn, deposes and says:

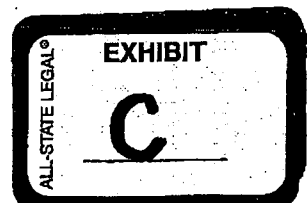
1. The contents of this affidavit are based on my own personal knowledge.
2. I am of sound mind and over eighteen years of age.
3. I am familiar with the allegations alleged by the Plaintiffs in the above-captioned lawsuit pending in Berkeley County.

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

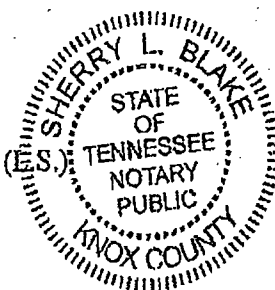
April 28, 2016

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

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

Civil Action No. 2016-CP-08-334

**Speedway LLC's Supplemental
Memorandum in Support of Motion for
Summary Judgment**

Speedway submits the following points for the Court's consideration in light of Plaintiffs' memorandum in opposition to Speedway's motion for summary judgment and the assertions made by Plaintiffs' counsel at the hearing:

- At the hearing on Speedway's Motion for Summary Judgment, Plaintiffs stated there was critical outstanding discovery which needed to be answered prior to the Court's summary judgment ruling because of Plaintiffs' unsupported hypothesis that (notwithstanding the statute outlining SCDOT's duty to make the decisions regarding the highway and subject median and notwithstanding the testimony that SCDOT indeed exercised that discretion) somehow Speedway and SCDOT had a *quid pro quo* wherein Speedway essentially gave away property to SCDOT for a SCDOT right of way in exchange for the alleged "negotiated" "removal" of the raised median (which again never existed to begin with). In response to Plaintiffs' request, Speedway located the appraisal in question and it, along with the accompanying correspondence, demonstrates that SCDOT paid Speedway an amount *greater than* the appraisal amount, which further solidifies the complete absence of merit to Plaintiffs' speculative theory of their case about the negotiation of the removal of a raised median. There simply cannot be a *quid pro quo* where SCDOT paid more than the appraised value for the subject property. This discovery has been fully responded to by Speedway. (Speedway Discovery Responses dated June 8, 2017 with document production, Ex. D.)
- Plaintiffs' memorandum contains incorrect representations of fact and conclusions unsupported by the record. For example, Plaintiffs improperly attribute the testimony of

William Mulligan to Speedway. In Mulligan's deposition, *noticed and taken by Plaintiffs*, it is clear that Mulligan is the "Vice President of Development" for "Pilot Travel Centers." (Mulligan Dep. p. 5, Ex. A) His role with Pilot was further established in his affidavit of record in this case. (Mulligan Aff., Ex. B.)

Plaintiffs incorrectly state in their Memorandum: "From Speedway's perspective, however, the planned non-transversible median could harm its business by making it harder for potential customers to make a left turn in to its parking lot. W. Mulligan Dep. 60:10-23."¹ (Pls.'s Mem. at p. 6.) Pilot's Vice President of Development, Mulligan, does not speak for Speedway and his testimony cannot bind Speedway as to what Speedway discussed or didn't discuss; nor could Mulligan or Pilot say what Speedway's perspective was. The only testimony in this case on the subject median demonstrates there was never a raised median ever contemplated, designed, or proposed by SCDOT to begin with in front of the Pilot Travel Center. (*See* Colvin Dep. previously submitted)

In addition, Plaintiffs made statements wholly unsupported by the record such as: "Here, however, Speedway did submit an encroachment permit and was subject to all ARMS Manual requirements including its sidewalk standards. W. Mulligan Dep. 11: 17-25; 62-66." (Pls.'s Mem. at p. 12.) These record citations offered by Plaintiffs do not support that Speedway was involved with the encroachment permit; to the contrary, the record is clear, and by Pilot's own admissions, that Pilot alone submitted the encroachment permit.

Significantly, "[w]hile statements of fact can constitute an 'admission[] on file' and thus be entitled to consideration by the court in determining whether a genuine issue of material fact exists, **factual statements of counsel, whether made during oral argument or in written briefs or memoranda, ordinarily may not be so considered.**" *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (S.C. Ct. App. 1986) (internal citation omitted) (emphasis added).

- The case law relied upon by Plaintiffs is inapposite as it relates to Speedway's motion for summary judgment.² As conclusively established in this case, Speedway was not the adjacent owner of the subject gas station property after its 2001 transfer of title to Pilot. (*See* Mulligan Aff., ¶ 5, Ex. B.) The outcome of Speedway's motion does not change when interpreting the term "artificial danger" in the light most favorable to Plaintiffs such that a median could be construed as an "artificial danger" because South Carolina Code Section 57-3-110 entitled "**Powers and duties of Department of Transportation**" clearly and conclusively establishes SCDOT's sole, exclusive, non-delegable, and statutorily-mandated "**power**" and "**duty**" over the subject highway and its median design and construction. To the extent Plaintiffs make these arguments with respect to the driveway design and construction, there is no dispute that Speedway had nothing to

¹ For the Court's reference, those deposition pages cited above are enclosed herein as Exhibit A.

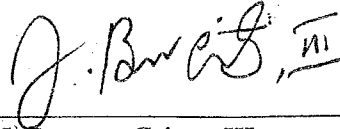
² For example, *see Skinner v. South Carolina Department of Transportation*, 383 S.C. 520, 524, 681 S.E.2d 871, 873 (2009), chiefly relied upon by Plaintiffs. Nor does *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 334 n. 8, 566 S.E.2d 536, 546 n. 8 (2002) (citing Restatement (Second) of Torts § 321) take the leap suggested by Plaintiffs.

do with the encroachment permitting process. Furthermore, the accident in question occurred on the roadway and not in the driveway.

- Speedway supplements its previous submission with the hearing transcript on Pilot's motion for summary judgment, attached hereto as Exhibit C. Speedway further submits that Plaintiffs misapprehend Judge Young's Order in their memorandum of law. Judge Young's Order speaks directly to the speculative nature of Plaintiffs' case and holds that even if a negotiation took place, it did not impute a duty owed to Plaintiffs on the part of Pilot. Likewise, in the light most favorable to Plaintiffs (and contrary to the record), if Speedway had any part in "negotiating" a "removal" of the raised median (which is impossible given the conclusive facts already established), such "negotiation" could not as a matter of law impart on Speedway a duty owed to Plaintiffs which is exclusive and nondelegable as to SCDOT. Plaintiffs seek to equate an alleged "negotiation" with a decision, and the decision over what kind of median would be placed on that stretch of highway is and was a decision that Speedway did not and could not have, as a matter of law.
- To the extent Plaintiffs rely on their experts to create questions of fact in their memorandum of law, there is no need to reach expert opinions where, as here, there is no legal duty owed to Plaintiffs by Speedway as a matter of law given the statute which clearly creates in SCDOT a sole, nondelegable, and exclusive duty over the subject roadway.
- Finally, to the extent co-Defendants' arguments are not inconsistent with Speedway's position, Speedway adopts the same.

For all of these reasons, Speedway is entitled to summary judgment as a matter of law.

SMITH MOORE LEATHERWOOD LLP



J. Bennett Crites, III
Kathleen F. Monoc
25 Calhoun Street, Suite 250 (29401)
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Attorneys for Defendant Speedway LLC

June 9, 2017
Charleston, South Carolina

EXHIBIT A



Southern Reporting, Inc.

Condensed Transcript of the
Video Deposition of

William Mulligan

7/14/2016

Wright, et al. vs. South Carolina Department of
Transportation, et al./Wright, e
2014-CP-08-675/2016-CP-08-334

COPY

Southern Reporting, Inc.

Phone: 803.749.8100

Fax: 803.749.9991

Email: Depos@southernreporting.net

Page 1		Page 3	
State of South Carolina) County of Berkeley) Cynthia Wright and Richard) Wright,) Plaintiffs,) v.) South Carolina Department) of Transportation and) Pilot Travel Centers, LLC) Defendants.) Cynthia Wright and Richard) Wright,) Plaintiffs,) v.) Speedway, LLC, Ashley Land) Surveying, Inc. F/K/A) Ashley Engineering &) Surveying, Inc. and Ashley) Engineering & Consulting,) Inc., and Munlake) Contractors, Inc.,) Defendants.)		EXHIBITS Plaintiffs' Exhibit Number 1, "Affidavit of Bill Mulligan." 7 Plaintiffs' Exhibit Number 2, Plate. 20 Plaintiffs' Exhibit Number 3, "Application for Encroachment Permit." 27 Plaintiffs' Exhibit Number 4, South Carolina Department of Transportation notifications. 30 Plaintiffs' Exhibit Number 5, Plat. 32 Plaintiffs' Exhibit Number 6, Google Earth photograph of Sigma Drive intersection. 34 Plaintiffs' Exhibit Number 7, "Encroachment Permit Final Approval Form." 36 Plaintiffs' Exhibit Number 8, Memo in reference to permit number S-08-020161. 39 Plaintiffs' Exhibit Number 9, Letter to Mr. Moskal, Encroachment Administrator from Gary Bloom. 42 Plaintiffs' Exhibit Number 10, Letter to Robert G. Greive from R.F. Clair, Jr. 45 Plaintiffs' Exhibit Number 11, Letter to Robert G. Greive from Tommy W. Smoak. 46 Plaintiffs' Exhibit Number 12, Google Earth photograph of North Main Street. 50 Plaintiffs' Exhibit Number 13, Color photograph of parking area. 54 Plaintiffs' Exhibit Number 14, "South Carolina Traffic Collision Report Form." 56 Plaintiffs' Exhibit Number 15, "SCDOT ARMS Access & Roadside Management Standards." 61	
Date: July 14, 2016 Time: 9:07 a.m. Location: McGowan, Hood & Felder, LLC, 1517 Hampton Street, Columbia, South Carolina Reported by Kathleen R. Tackett, CVR-M			
Page 2		Page 4	
APPEARANCES For the Plaintiff: S. Randall Hood, Esq. McGowan, Hood & Felder, LLC Rock Hill, South Carolina For the Defendant Pilot Travel Centers, LLC: William G. Besley, Esq. Howser, Newman & Beasley, LLC Columbia, South Carolina For the Defendants Speedway, LLC: J. Bennett Crites, III, Esq. Smith Moore Leatherwood, LLP Charleston, South Carolina For the Defendants Ashley Land Surveying, Inc. F/K/A Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc.: Bruce A. Berlinsky, Esq. Berlinsky Law Firm Charleston, South Carolina For the Defendant South Carolina Department of Transportation: Roy P. Maybank, Esq. Maybank Law Firm, LLC Charleston, South Carolina Also Present: Franklin Jones, Videographer		STIPULATIONS 1 2 It is stipulated by and between counsel for 3 the respective parties that all objections are 4 reserved until the time of trial, except as to 5 the form of the questions. 6 This deposition is being taken pursuant to the 7 South Carolina Rules of Civil Procedure. 8 9 The reading and signing of this deposition is 10 waived by the deponent and counsel for the 11 respective parties. 12 Whereupon, 13 William Mulligan, being duly sworn and 14 cautioned to speak the truth, the whole truth, 15 and nothing but the truth, testified as 16 follows: 17 18 EXAMINATION 19 BY MR. HOOD: 20 Q Sir, my name is Randy Hood. I believe your name is 21 -- is Bill Mulligan (as spoken)? 22 A William Mulligan. 23 Q William Mulligan, I'm sorry. I apologize. Mr. 24 Mulligan, I'm going to ask you some questions 25 today. If I ask you something you don't understand, will you let me know?	
INDEX Stipulations: 4 Examination by Mr. Hood: 4 Examination by Mr. Maybank: 70 Examination by Mr. Crites: 74 Examination by Mr. Berlinsky: 79			

Page 5

1 A Yes.
2 Q And, if you need to take a break for any reason,
3 we'll be glad to take a break, for any reason. I
4 really don't expect this to take a -- a huge amount
5 of time.
6 And I've got documents. We've all got enough,
7 we've probably killed the forest with all the
8 documents that we have. And so, if there's
9 something you feel like you need to see, if you'll
10 just let us know, I would appreciate it, okay?
11 A Yes.
12 Q And is it fair for me to assume that if you answer
13 my question, you understood it and answered it to
14 the best of your ability?
15 A Yes.
16 Q Okay. You gave an affidavit in this case, right?
17 A Yes.
18 Q And what did -- tell us your position, Mr.
19 Mulligan.
20 A I am vice president of development.
21 Q Okay. And, when you say you're "vice president of
22 development," who are you vice president of
23 development for?
24 A Pilot Travel Centers --
25 Q Okay.

Page 6

1 A -- LLC.
2 Q And -- and -- and what are your duties and
3 responsibilities, as the vice president of
4 development?
5 A I have responsibility for real estate, engineering,
6 construction, environmental, outdoor advertising.
7 Q Okay. And, when you say "construction," are you
8 talking about the design and construction of the
9 travel centers themselves?
10 A No. Construction would be the actual construction
11 of the travel centers themselves.
12 Q Okay. And -- and who would be responsible for the
13 design of the travel centers?
14 A They fall under my group, also.
15 Q Okay. And so there is a group at Pilot Travel
16 Centers that is responsible for the construction
17 and design of a travel center, whether it's new or
18 whether it's a redesign?
19 A Yes.
20 Q Okay. Now, you would agree with me that -- that,
21 when you construct a travel center, you try to do
22 it with safety in mind, right?
23 A Yes.
24 Q Okay. And, when you redesign a center, if you do
25 redesign a center, you try to redesign it with

Page 7

1 safety in mind?
2 A Yes.
3 Q And you would agree that a -- a good corporate
4 citizen would do those types of things?
5 A Yes.
6 Q Okay. Because you don't want somebody hurt, do
7 you?
8 A No.
9 Q Okay. Now, you gave an affidavit in this case,
10 right?
11 A Yes.
12 Q I'm going to -- I'll mark this as Plaintiff's
13 Exhibit 1.
14 Plaintiffs' Exhibit Number 1, "Affidavit
15 of Bill Mulligan."
16 Q There you go, sir. Okay. You've already -- do you
17 have the affidavit?
18 MR. HOOD: I've got three of them. And I've
19 got -- I apologize.
20 MR. HAYBANK: I got one.
21 MR. BERLINSKY: I -- yeah.
22 MR. HOOD: Okay.
23 MR. BERLINSKY: I got mine.
24 MR. HOOD: Okay.
25 MR. BERLINSKY: Right. That's the one that

Page 8

1 was attached to the summary judgement motion?
2 MR. HOOD: Yes.
3 MR. HAYBANK: Yes.
4 Q Okay. Mr. Mulligan, I'm just going to ask you some
5 questions about your -- your affidavit. This was a
6 -- a sworn affidavit by you, correct?
7 A Yes.
8 Q Exhibit 1. And I'm just going to kind of read over
9 a couple of them, get you -- just ask you your
10 questions and then I'll get to the meat of it,
11 okay?
12 A (Nods head up and down.)
13 Q It says: "Beginning in '94, I began serving as
14 director of construction for Pilot. That
15 directorship later became a vice president's
16 position. I've continuously served as vice
17 president of construction through the present day,
18 which title is now vice president of development."
19 And you agree with that?
20 A Yes.
21 Q And that's the thing that we just kind of talked
22 about, irrespective of this affidavit, right?
23 A Yes.
24 Q It says: "On or about September 1st, 2001, Pilot
25 acquired the existing gas station and real property

Page 9

1 located at 1521 North Main Street-Summerville,
2 South Carolina 29483, the property." Do you see
3 that?
4 A Yes.
5 Q Now, when y'all acquired that, that was in a -- a
6 joint enterprise with Marathon and Ashland
7 Petroleum, right?
8 A Yes.
9 Q Okay. And -- and when you -- when you go into a
10 joint enterprise or a joint purchase agreement, why
11 do y'all do that, as opposed to just buying it
12 right out?
13 A It seemed economical and it's what the other party
14 wanted.
15 Q Okay. And when you say "the other party," who are
16 you talking about?
17 A Speedway Marathon.
18 Q Okay. It says: "After acquiring the property in
19 2001, Pilot redesigned and constructed a new Pilot
20 Travel Center station on the property." You see
21 that, right?
22 A Yes.
23 Q So, after the property was acquired in 2001, Pilot
24 actually redesigned this -- this Pilot Travel
25 Center, right?

Page 10

1 A Redesigned the Speedway Travel Center.
2 Q Okay. And that would be "the property," right?
3 A Yes.
4 Q "When Pilot acquired the property, the existing gas
5 station located on the property had three driveways
6 with access to US Highway 17-A. There was no
7 raised median in the highway preventing left turns
8 into the existing gas station from the southbound
9 lane." That's part of your affidavit?
10 A Correct.
11 Q Now, do the three driveways that you're referencing
12 there, are they the same three driveways that are
13 there today?
14 A No.
15 Q They're different, right?
16 A Yes.
17 Q They've been redesigned?
18 A Yes.
19 Q Now, if you go to Page 8 -- I mean -- excuse me --
20 Page 2, which is Paragraph 8 --
21 A Gotcha.
22 Q -- it says "Pilot was required to obtain an
23 encroachment permit from the South Carolina
24 Department of Transportation before Pilot could
25 construct the driveways to the new Pilot Travel

Page 11

1 Center." And, when you say that, what is an
2 "encroachment permit"?
3 A It's a permit to access the state right-of-way of
4 the state road.
5 (A cell phone rings.)
6 Q And the state road would've been Highway --
7 A 17-A.
8 THE DEPONENT: Sorry about that.
9 MR. HOOD: Oh, no problem.
10 THE DEPONENT: I thought I had that off.
11 MR. HOOD: Reminds me of mine.
12 MR. BESLEY: Everybody can now take a moment
13 to --
14 MR. HOOD: Yes.
15 MR. BESLEY: -- silence their phones.
16 MR. HOOD: To silence my phone.
17 Q And you had to get that encroachment permit from
18 the South Carolina DOT before you could construct
19 the driveways to the -- to the new Pilot Travel
20 Center?
21 A Correct.
22 Q And, when they talk about this new Pilot Travel
23 Center, you're talking about the redesigned Pilot
24 Travel Center?
25 A Correct.

Page 12

1 Q In order to obtain the permit, the location and
2 design of Pilot's driveways had to be approved by
3 the SCDOT?
4 A Correct.
5 Q And, in May 2002, Pilot submitted an application
6 for an encroachment permit to the SCDOT seeking
7 approval of the location and design of its proposed
8 driveways?
9 A Correct.
10 Q And the encroachment application was approved and
11 the SCDOT issued Pilot a permit to construct the
12 driveways?
13 A Correct.
14 Q Okay. Now, you would agree with me that -- that
15 the company that you work for had a duty of care to
16 third parties traveling on a highway that was
17 independent of its contract or its -- independent
18 of its approval of the location of the driveways by
19 the State, right?
20 MR. BESLEY: I'm going to object to the form
21 of the question.
22 A No.
23 MR. CRITES: Same objection.
24 Q Okay. So you would disagree with that?
25 A Yes.

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1 accident report from the Richard Wright case that
 2 -- that precipitated this litigation.
 3 A Okay.
 4 Q Do you know anything about this -- this accident?
 5 A Other than there was a driver either in a truck --
 6 I think it was a truck -- a pickup truck -- that
 7 was intoxicated, and I think on drugs, also, and he
 8 hit a motorcycle with two occupants on it.
 9 Q Okay. Did you ever talk to anybody or have you
 10 talked to anybody at the Pilot Travel Center if
 11 they saw this or anything like that?
 12 A No, sir.
 13 Q Okay. And, so, that's basically the only knowledge
 14 that you have about it?
 15 A Yes, sir.
 16 Q Okay. I believe that you've already answered this
 17 but I just want to ask again: A truck stop
 18 corporation has a responsibility to construct these
 19 centers in a safe way, correct?
 20 MR. BESLEY: Object to the form of the
 21 question.
 22 A Truck stop centers?
 23 Q Corporation.
 24 A I -- I don't know what you mean by "truck stop
 25 corporation" or --

Page 58

1 Q Pilot has a responsibility to construct one of
 2 their travel centers in a safe way?
 3 A Yes, sir.
 4 Q And, if they construct it unsafely, who does it put
 5 at risk?
 6 A Well, it would put at risk their customers that
 7 were coming into the facility.
 8 Q Okay. I believe you've already said that -- that
 9 Pilot employees do not have a responsibility to
 10 know state regs, right? Because y'all depend on
 11 someone else?
 12 A That -- that's correct. They will research the
 13 state regulations. They will research the
 14 professionals that they use. None of -- none of
 15 the guys -- Gary Bloom is not a licensed traffic
 16 engineer, so he is going to go -- he is going to
 17 hire professionals that are. He's going to rely on
 18 the Department of Transportation, again, who has
 19 responsibility for all roads, has immense amounts
 20 of data, has professionals that study this day in,
 21 day out. It's -- it's their living, so he's going
 22 to rely on those, and -- and that's what you, as
 23 the traveling public or as a customer, would --
 24 would want. You want the -- the best people and
 25 that's why the DOTs are there: They're to protect

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1 our safety.
 2 Q Okay. And -- and the -- when you talk about that,
 3 you're talking about y'all -- y'all either hire
 4 someone or rely on the DOT, right?
 5 MR. MAYBANK: Object to the form.
 6 A We -- but, well, ultimately it's the DOT, so --
 7 Q Okay.
 8 A Because it's -- it's -- they're the guys that're
 9 going to issue the permits. It's their road. It's
 10 their access.
 11 Q Okay. And we know that there's a book called, and
 12 they refer to it as, "The State -- State
 13 Regulations," right?
 14 A I -- I'm sure they have a book. I don't know what
 15 it's called, but I'm sure --
 16 Q But there are industry standards to -- you've heard
 17 of the term "industry standards"?
 18 A Absolutely.
 19 Q And you know there are industry standards, too,
 20 right?
 21 A Yes, sir.
 22 Q And, if -- if Pilot constructed a parking lot with
 23 a goal of maximizing profits over safety, bad
 24 things could happen, right?
 25 A I don't think we -- we design things like that.

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1 Q Right. That's what I'm saying.
 2 A Right. Right.
 3 Q Bad things could happen if somebody did do that,
 4 right?
 5 A No. That's incorrect.
 6 Q Okay. So bad things couldn't happen if they
 7 maximize profits over safety?
 8 A No. You have a one-sided statement.
 9 Q How is it one-sided?
 10 A Well, today there's numerous choices that somebody
 11 could -- could buy, so if there's a lot of
 12 accidents or it's a safety issue, people just won't
 13 patronize your business. So, when you say, "Well,
 14 just do however you would -- design it however you
 15 want and -- and more people would come," that --
 16 that's incorrect. People today have choices --
 17 multiple choices, so if a site is unsafe -- like
 18 you said, if there's vagrants hanging around, if
 19 it's congested, if it's hard to get in and out, all
 20 those types of things, they won't come because
 21 there's so many other choices for them to go. Why
 22 would they risk themselves or their family in a
 23 dangerous situation?
 24 Q Okay. But somebody that's just driving down the
 25 road and is smacked while somebody's trying to move

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1 into your station, they're not actually trying to
2 go into your station, they're just traveling down
3 the road, right, like the person on this
4 motorcycle?
5 A The person on this motorcycle was hit by a drunk,
6 intoxicated driver.
7 Q Who was pulling into the Pilot station?
8 A That -- that's -- that's even more of a reason
9 there. He was drunk and intoxicated and was hit by
10 a person pulling in. He could've been hit -- the
11 station could've been a thousand yards down the
12 road, and he would've hit him anyway. He was drunk
13 and intoxicated and hit a motorcycle in the closest
14 lane to him. Could've happened a thousand --
15 could've happened a mile from the intersection.
16 Q Okay. I know you had said earlier you were down in
17 Charleston yesterday. Was -- was it down there at
18 this particular Pilot Travel Center?
19 A No, sir. We were opening a new travel center down
20 by the port.
21 Q Okay. I'm going to hand you that -- where's that?
22 We're almost done. Let's see.
23 Plaintiffs' Exhibit Number 15, "SCDOT
24 ARMS Access & Roadside Management
25 Standards."

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1 Q I think this was Exhibit 15, and it says, "SCDOT
2 ARMS," which is the Access and Roadside Management
3 Standards. And, when I go to the very first page,
4 which is actually Page 19. I didn't make a copy of
5 the whole manual, I just made the one about
6 driveways.
7 It says, "The ASHTO A Policy of Geometric
8 Design of Highways and Streets (Green Book, 2004)
9 states: Driveways are, in effect, intersections
10 and should be designed consistent with their
11 intended use." Do you see that?
12 A Uh-huh.
13 Q And you would agree with that, right? They should
14 be used for their intended use?
15 A Yeah. Yeah..
16 Q And then, at the bottom it says, "Appropriate
17 engineering and safety factors should be considered
18 in conjunction with these standards so that
19 conditions unique to individual driveways are
20 properly taken into account."
21 A Correct.
22 Q You would agree with that?
23 A Uh-huh. Yes, sir.
24 Q Now, on the -- Page 20, which is the third page,
25 but -- and you may not know this, I just --

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1 A Uh-huh. Uh-huh.
2 Q I'm going to ask anyway.
3 It says, "Driveway Classification," and then
4 on the left side it has, "Low Volume, Medium
5 Volume, High Volume, and Major Volume."
6 Do you know which volume it was in front of
7 this particular store?
8 A Well, this is not talking about traffic volume in
9 front of a store. This is not talking about road
10 traffic volume.
11 Q Oh. Okay.
12 A Has nothing to do with road traffic volume.
13 Q Is it trips to the store itself?
14 A That's what it is. Yes, sir.
15 Q Okay. Do y'all know if you have -- do -- do y'all
16 know how many trips you have to the store a day
17 or --
18 A I -- I am guessing it's somewhere in the high
19 volume, 501 to 4,000.
20 Q Okay. If you go to the next page, it just talks
21 about the angle of an intersection, the width and
22 radii. That stuff that you -- when you say that
23 you rely on others for that, that's what you rely
24 on them for, right?
25 A You rely -- yes. You rely them on all types of

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1 design, yes.
2 Q Okay. Going to the next page, Page 22, under the
3 first paragraph, the last sentence, it says,
4 "Inadequate driveway design creates conflicts that
5 can be detrimental to safety and operations on the
6 mainline." Would you agree with that?
7 A Say that again.
8 Q Yes. "Inadequate driveway design creates conflicts
9 that can be detrimental to safety and operations on
10 the mainline."
11 A Okay. I'd agree to that.
12 Q Okay. The next page -- let's go to the next. When
13 I go to Page 25, it says, "Islands."
14 It says, "Traffic islands are used to guide
15 motorists into proper lanes and can be used for
16 pedestrian access." You see that, right?
17 A Yes, sir.
18 Q It says, "They shall be used when the driveway
19 characteristics or complexity is of such a nature
20 that their use is needed to eliminate conflicts."
21 Do you see that?
22 A Yes, sir.
23 Q And you would agree with that, right?
24 A Yes, sir.
25 Q Okay. If you go to the bottom, it says, "Right-in,

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1 Right-out Driveways." 2 A Uh-huh. 3 Q It says, "Their -- their" -- it says, "Right-in, right-out driveways are necessary in some locations in accordance with Section 3C. A right-in, right-out driveway should incorporate a triangular (pork chop) raised concrete island no smaller than 100 square feet with sides a minimum of 12 feet in length after rounding the corners." Do you see that? 10 that? 11 A I do. 12 Q And you would agree with that, right? 13 A In general, yes. 14 Q Okay. It says, the next page, it says, "When a right-in, right-out driveway is implemented on an undivided highway, the use of a restrictive median in concurrence with the 'pork chop' island is preferred; however, adjacent impacts must be evaluated prior to implementing restrictive medians." You see that, right? 20 medians." You see that, right? 21 A Uh-huh. 22 Q Says, "A 4 foot wide raised median concrete median is recommended. However, if a concrete median cannot be provided, consider the use of a Department-approved surface-mounted curbing system	1 Q Do you have any relatives in Berkley or Dorchester County? 2 3 A Not to my knowledge. 4 Q Can you just tell us just a little bit about your education? 5 6 A Graduated from Texas A&M with a degree in engineering technology specializing in civil construction. 7 8 9 Q Okay. Texas A&M has one of the top highway engineering schools in the country. 10 11 A Yes, sir. 12 Q Did you -- did you take any courses in their -- 13 A I think I had one class. 14 Q Okay. Did you get -- have you gotten any master's degree or doctoral degrees? 15 16 A No, sir. 17 Q Can you tell us just a little bit about your employment for the last 15 years/20 years? Well, since 1994 you've been with -- 19 since 1994 you've been with -- 20 A Pilot Travel Centers. 21 Q -- Pilot Travel Centers. 22 A I started with Pilot Travel Centers as the director of construction. About a year and a half later, I took over as director of construction and engineering. About three years later, I took over
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1 with flexible delineator posts as an alternative." 2 Do you see that? 3 A Uh-huh. 4 Q So you can actually have guardrails used instead of just a raised median to prevent left turns, right? 5 6 A Sure. The DOT can put whatever they want up in a median. 7 8 Q Okay. 9 A Can put trees. 10 Q Sure. Okay. Now, a couple general things and we're almost done. 11 Your name is William Mulligan. You're from Atlanta, Georgia? 13 Atlanta, Georgia? 14 A No, sir. 15 Q Where? 16 A Knoxville, Tennessee. 17 Q Knoxville, Tennessee. You're in Gamecock country. 18 A I know. There you go. 19 Q Date and place of birth? 20 A Dubuque, Iowa. April 20th, 1961. 21 Q Now, you got the Big Ten and the SEC. 22 A I'm telling you. I went to Texas A&M. 23 Q Oh, goosh. Then you got a Big Twelve. Well, now the SEC. 24 25 A Now the SEC.	1 part of real-estate. Early -- mid-2000s, I took over environmental and -- and facility maintenance. Somewhere in there, I picked up outdoor advertising. I also work on joint ventures. 4 5 And recently, two/three years ago, the president of our company left. And he was doing a lot of the -- we were doing the real estate together. He was doing a lot of it. So I took over the rest of the real estate and gave back maintenance. 10 11 Q When do you sleep? 12 A They don't pay me to sleep. 13 Q And are you licensed? 14 A I am not. 15 Q I mean, like, a civil engineer -- 16 A I am not -- 17 Q -- or anything? 18 A I do not have a -- I do not have a -- I'm not a PE, professional engineer. 19 20 Q Okay. 21 A Sorry. 22 Q Do you have any felony or misdemeanor convictions? 23 A I do not. 24 Q Ever been in any drug or alcohol rehab? 25 A I have not.

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1 Q Okay. When -- would it be safe to say that Gary
2 Bloom, at the time, was, I guess, the project
3 engineer for this particular . . .
4 A We would refer to him as "project manager."
5 Q Okay. So he would be in charge of this from
6 closing, levelling the old center, getting it --
7 till it's reopened?
8 A No. The way he does it is: He would've got the
9 site when we said, "Hey, we want to do something
10 with this." So he would've done an investigation,
11 figured out what needed to be done as far as to
12 rebuild it, he would've got it all the way up until
13 it went to bid. And at that point a construction
14 manager, he would've worked with him, and then that
15 would've got transferred over to a construction
16 manager who would've then monitored it from the
17 time construction started until the time he turned
18 it over to operations.
19 Q Okay. Do you know who that person was after Bloom
20 until it became -- till it went to operations?
21 A I would have to go back and review who it was. I'm
22 not sure. I can't remember. I had multiple
23 construction managers, so.
24 Q Okay. Thank you.
25 MR. CRITES: I don't have anything further.

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1 MR. BESLEY: Anything else? All right.
2 FURTHER DEPONENT SAITH NOT.
3 (Whereupon, there being no further
4 questions, the deposition was
5 concluded at 11:03 a.m.)
6 (*This transcript may contain quoted material.
7 Such material is reproduced as read or quoted
8 by the speaker.)
9 (**Certificate accompanies sealed original
10 only.)

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cynthia Wight and Richard Wight,

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

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

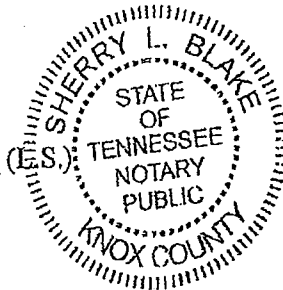


EXHIBIT C

1 STATE OF SOUTH CAROLINA) IN THE FAMILY COURT
 2 COUNTY OF BERKELEY) 2016-CP-08-334
 3 CYNTHIA WRIGHT,)
 4 PLAINTIFF,) MOTION HEARING
 5 vs.) TRANSCRIPT OF RECORD
 6 SOUTH CAROLINA DEPARTMENT OF)
 7 TRANSPORTATION, PILOT TRAVEL)
 8 CENTERS, LLC, SPEEDWAY, LLC,)
 9 ASHLEY LAND SURVEYING, INC.,)
 10 F/K/A ASHLEY ENGINEERING &)
 11 SURVEYING, INC., and ASHLEY)
 12 ENGINEERING & CONSULTING, INC.,)
 13 AND MUNLAKE CONTRACTORS, INC.)
 14 DEFENDANTS.)
 15 _____)

Monday, April 10, 2017
 Moncks Corner, South Carolina

B E F O R E:

The Honorable Roger M. Young, Sr.

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

APPEARANCES

Kevin B. Smith, Esq.
Jordon Calloway, Esq.
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Jeffrey Ian Silverberg, Esq.
Attorney for Defendant
Pilot Travel Centers, LLC

Roy Pearce Maybank, Esq.
Attorney for Defendant
South Carolina Department of Transportation

Jerome Bennett Crites, III, Esq.
Attorney for Defendant
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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19
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5. County of Berkeley)

7

8 I, Maria Dempsey, Official Court Reporter for the Ninth

5 I do further certify that I am neither of kin, counsel,

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June 7, 2017

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

EXHIBIT D

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

Civil Action No. 2016-CP-08-334

Speedway LLC's Responses to Plaintiffs'
Requests for Production

TO: KEVIN B. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

Defendant Speedway LLC responds to Plaintiffs' Requests for Production as follows:

1. Copies of all documents relating to the right of way acquisition for the I-26/US17A Interchange Improvement project.

RESPONSE: Defendant is in possession of the following:

- (a) Title to Real Estate with Exhibit A executed by Speedway Super America LLC in favor of SCDOT dated October 31, 2000 (bates labeled Speedway 000001 – 000002);
- (b) Appraisal prepared by Pledger M. Bishop on behalf of SCDOT dated June 20, 2000 (bates labeled Speedway 000003 – 000014);
- (c) 6 pages of miscellaneous correspondence (bates labeled Speedway 000015 – 000020).

2. Please provide a copy of the Settlement Agreement relating to the right of way acquisition for the I-26/US17A Interchange Improvement project.

RESPONSE: Defendant is not in the possession of any documents that meet this Request.

3. Please provide a copy of any and all appraisals relating to the right of way acquisition for the I-26/US17A Interchange Improvement project.

RESPONSE: See attached appraisal prepared by Pledger M. Bishop on behalf of SCDOT dated June 20, 2000.

4. Please provide a copy of the Condemnation Notice relating to the right of way acquisition for the I-26/US17A Interchange Improvement project.

RESPONSE: Defendant is not in the possession of any documents that meet this Request.

SMITH MOORE LEATHERWOOD LLP



J. Bennett Crites, III
Kathleen F. Monoc
25 Calhoun Street, Suite 250 (29401)
P.O. Box 21509
Charleston, SC 29413
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Attorneys for Defendant Speedway LLC

June 8, 2017
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

TITLE TO REAL ESTATE

Approximate Survey Station

ad/Route..... I-26/US17A Interchange Improvements _____ 20+000 To 20+080
 e..... 8.790 _____ Farmington Road Survey
 m..... _____ To _____
 ject..... IU-0264(174) _____ To _____
 v..... 22338 _____

KNOW ALL MEN BY THESE PRESENTS, That I (or we) Speedway Super America LLC, 3200 Pointe Parkway, Suite 200, Norcross, Georgia 30092 in consideration of the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars and other valuable consideration to me (or us) in hand paid at and before the sealing and delivering thereof, by the South Carolina Department of Transportation, Columbia, South Carolina, receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release, unto the said South Carolina Department of Transportation, its successors and assigns, all that certain real property of the Grantor in fee simple absolute I-17A From Berlin G. Myers Parkway to West of Sanger Park on I-26/US17A Interchange Improvements, its and County aforesaid, as shown on plans prepared by the South Carolina Department of Transportation and dated July 1999.

SPECIAL PROVISIONS: All that certain parcel of land, containing 9,102 square feet of land, more or less and any improvements thereon owned by Speedway Super America, LLC shown as the "Area of Acquisition" on Exhibit A, attached hereto and made a part hereof. This being a portion of the property acquired from Emmaline B. Smith by deed dated September 11, 2000 and recorded September 12, 2000 in Deed Book 2027, Page 8 and from Meredith Brown by deed dated September 11, 2000 and recorded September 12, 2000 in Deed Book 2027, Page 4 in the records for Berkeley County and shown as Tax Map Numbers 221-00-00-015 & 221-00-00-091.

Together with, all and singular, the rights, members, hereditaments and appurtenances thereunto belonging, or in any wise incident or appertaining.

And I (or we) do hereby bind my (or our) heirs, executor and administrators, to warrant and forever defend all and singular the said premises unto the said South Carolina Department of Transportation, its successors and assigns, against me (or us) and my (or our) heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

TO HAVE AND TO HOLD in fee simple, absolute and singular the said property and the rights hereinbefore granted, unto the said South Carolina Department of Transportation, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand(s) and seal(s) this 31st day of October, in the year of our Lord, Two Thousand and 00.
 signed, sealed and delivered in the presence of:

Natalie A. Rogers
 Witness
Marlene Ann Wilcox
 Witness

SPEEDWAY SUPER AMERICA LLC

BY: [Signature]
 ITS: Sr. Vice President - Oper. (L.S.)
 (L.S.)



NOTE: All right of way agreements must be in writing and are subject to rejection by the South Carolina Department of Transportation.

THE STATE OF

COUNTY OF

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within above named sign, seal and their act and deed, deliver the within affidavit; and that s/he with the other witness whose signature appears above witnessed the execution thereof.

VORN to before me this 31st
 y of October, 2000
Rosalie B. Lawson
 OTARY PUBLIC FOR

My Commission Expires:

ROSALIE B. LAWSON, NOTARY PUBLIC
 IN AND FOR THE STATE OF OHIO
 MY COMMISSION EXPIRES MARCH 3, 2005

checked _____ By _____
 recorded _____ By _____
 object _____ File No. _____

Tract 29

Speedway 000001

Speedway Exhibit D

EXHIBIT "A"

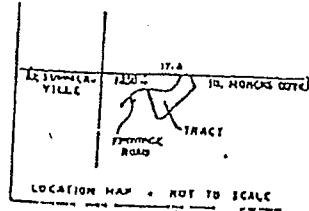
To Option to Purchase

1 of 3

Between
MEREDITH BROWN (Seller)
and
SPEEDWAY SUPERAMERICA LLC

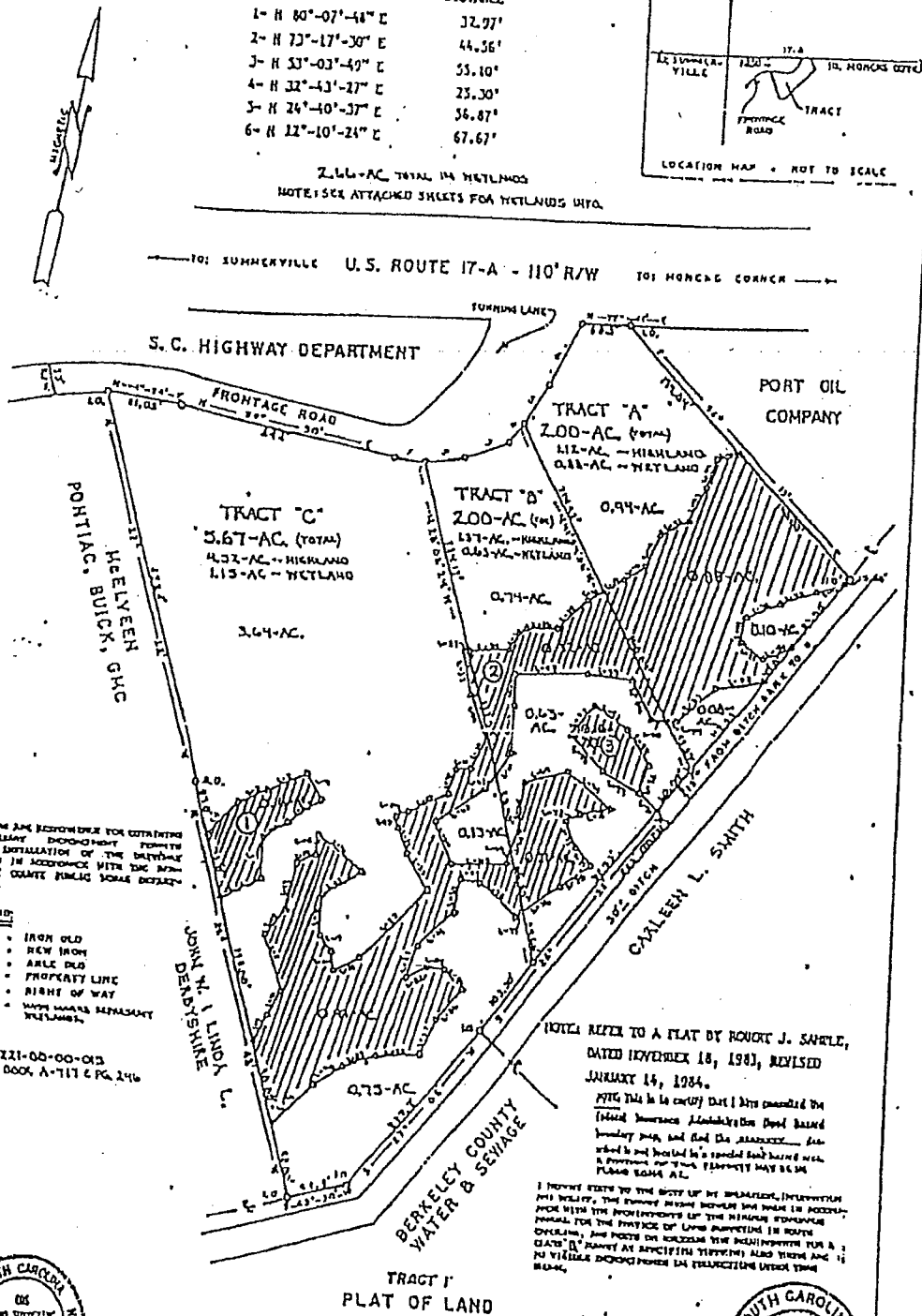
BEARING	DISTANCE
1- N 80°-07'-48" E	32.97'
2- N 73°-17'-30" E	44.56'
3- N 53°-03'-49" E	55.10'
4- N 32°-43'-27" E	25.30'
5- N 24°-40'-37" E	56.87'
6- N 12°-10'-24" E	67.67'

2.66-AC. TOTAL IN WETLANDS
NOTE: SEE ATTACHED SHEETS FOR WETLANDS INFO.



0.94 ACRES USABLE IN TRACT
0.88 ACRES WETLANDS
0.18 ACRES HIGHLANDS AT REAR
ALONG DITCH
2.00 ACRES - TOTAL AREA

0.74 ACRES USABLE IN TRACT
0.63 ACRES WETLANDS
0.63 ACRES HIGHLANDS AT REAR
2.00 ACRES - TOTAL AREA



OWNER AND RECORDS FOR CONTAINING
NECESSARY INFORMATION
AND INSTALLATION OF THE DRAINAGE
PUMP IN ACCORDANCE WITH THE
RECORDS OF THE PUBLIC WORKS DEPARTMENT.

- LEGEND:
- 1.0. IRON OLD
 - 2.0. NEW IRON
 - 3.0. ASLE DLS
 - 4.0. PROPERTY LINE
 - 5.0. RIGHT OF WAY
 - 6.0. WITH WARE REMAINING

THIS IS 221-00-00-013
DEED BOOK A-717 P. 246

NOTES REFER TO A PLAT BY ROBERT J. SARTLE,
DATED NOVEMBER 18, 1983, REVISED
JANUARY 14, 1984.

THIS IS TO CERTIFY THAT I HAVE EXAMINED THE
FIELD BOOKS AND RECORDS OF THE PUBLIC WORKS
DEPARTMENT, AND THAT THE RECORDS
SHOWED THAT THE DRAINAGE PUMP
WAS INSTALLED IN A SPECIAL LAND HAVING BEEN
A PORTION OF THE PUBLIC PROPERTY MAY BE USED.

I HAVE BEEN TO THE SITE OF THE DRAINAGE PUMP, INTERVIEWED
THE PUBLIC WORKS DEPARTMENT, AND HAVE BEEN INFORMED
THAT THE DRAINAGE PUMP IS IN ACCORDANCE
WITH THE RECORDS OF THE PUBLIC WORKS DEPARTMENT.
I HAVE BEEN TO THE SITE OF THE DRAINAGE PUMP, INTERVIEWED
THE PUBLIC WORKS DEPARTMENT, AND HAVE BEEN INFORMED
THAT THE DRAINAGE PUMP IS IN ACCORDANCE
WITH THE RECORDS OF THE PUBLIC WORKS DEPARTMENT.



Speedway 000002

Speedway Exhibit D

South Carolina Department of Transportation
STANDARD APPRAISAL

1- File: 8.790 Rd./Rt.: 1/26 Interchange Improvements
Project: 1U-0264(174) Pln: 22338 County: Berkeley

2- From Station: 20+000 To Station: 20+080 LT Sheet: 4, 4D, 11

3 a- Owner: Emmaline B. Smith and Meredith Brown Telephone: 873-3203
Owner Address: 122 Owens Circle, Summerville, S.C. 29483
Tract Location: Main Street (Hwy 17A) at Farmington Drive, Summerville, S.C.
b- Mortgages & Addresses: NOR
Recorded: Bk. Pg. Date Amt.
c- Lessees & Address: N/A
Terms of Leases: N/A

4- Size: A) Before: 3.973 ac; 173,094 sf Approx. Dimensions (Before): 275 FT x 375 feet deep
B) After: 3.7649 ac; 163,992 sf Approx. Dimensions (After): 275 FT x 335 feet deep
C) Acquired: .0289 ac; 9,102 sf Width of R/W: Variable

5- Tabulation of sales: (At least 5 years; if more than 5 years, last sale)					
From	To	Date	Consideration	Book	Page
Roosevelt Brown	Emmaline B. Smith	3-28-97	\$210,000	1023	176
Tax Map: 221-00-00-015 & 091		Plot: M	278		

6- **PURPOSE OF THE APPRAISAL:** To estimate the difference in the market value of this property caused by acquisition of the right of way for the proposed construction of this project. This is a complete self-contained appraisal report as described by USPAP Standard 1 and 2.
Property Rights Appraised: Fee Simple

7- Present Use: Commercial - Vacant Zoning: General Commercial

8- Highest and Best Use Before: Commercial

Highest and Best Use After: Commercial

9- Utilities: ☒ Elec. ☐ Gas ☐ Well ☒ Pub. Water ☐ Septic Tank ☒ Pub. Sewer ☐ Other -

10- Prior to inspection, the owner was contacted by (☒ telephone ☐ letter ☐ in person) and invited to be present during inspection of this property. The tract was inspected on June 20, 2000, and I was accompanied by no one. Required by Sec. 301(2) of Uniform Act.
Explain: (Why not accompanied, relation of representative, items discussed, etc.)
I contacted Ms. Brown via telephone and explained the proposed taking and the appraisal process. She explained that the adjacent property owners were negotiating to purchase the subject and that she was aware of the SCDOT highway changes. She instructed me to proceed and that she did not need to meet me at the site.

Original - RW
☒ Copy - Agent
Copy - FHWA

RECEIVED

JUL 7 2000

ROBBISON COMPANY

JUL 13 2000

Prepared by: Pledger Bishop, MAI
File No: 8.790
Tract No: 28 & 29P

Speedway 000003

Speedway Exhibit D

PHOTOGRAPHS OF SUBJECT

Date Taken: June 22, 2000
Taken By: Pledger M. Bishop, MAI



View of Subject from Farmington Road



View of Acquisition area

File No: 8.790
Parcel No: 29 & 29P

Page No. 2

Hand-drawn map showing the proposed Highway 17-A and Farming Two Road. The map includes the following labels and features:

- Directional Arrow:** To Summerville
- Highway:** Hwy 17-A
- Access Points:**
 - Left turn Access
 - Picture No. 1
 - Picture No. 2
- Roads:** Farming Two Road
- Proposed Roadway:** Acquisition New R/W
- Dimensions:** 9102.35, 40 ft
- Parcel Information:**
 - Parcel 29
 - 3.9737 AC
 - 3.7649 AC
 - Before After
- Other Labels:**
 - Median to be Added
 - Traffic Light
 - R/W (Right of Way)
- North Arrow:** Indicated by an arrow pointing towards the top right.

Page 3

PARAGRAPH 11. Zoning and Health Requirements:

The subject is located in the Town of Summerville and is zoned for general commercial use. The zoning category permits most any type commercial use including service stations and convenience stores. The existing use is a vacant commercial parcel, a portion of which is wetlands. All properties around the subject are improved commercially. I do not anticipate a zoning change for this parcel.

The subject is currently valued at \$400. This is an agricultural use value that results in a property tax liability of \$7. Anyone changing the use of the property may be obligated to pay a rollback tax based on market value over the last 5 years. According to public records, the property taxes are current.

PARAGRAPH 12. Highest and Best Use (Before):

The Highest and Best Use of a property should be scrutinized utilizing four criteria. The anticipated use must be:

- 1 - Physically Possible;
- 2 - Legally Permissible;
- 3 - Financially Feasible;
- 4 - Maximally Productive

Physically Possible - Size, shape and topography affect the uses to which land may be developed. The subject is semi-rectangular and totals 3.9737 acres or 173,094 square feet. It has approximately 275' of effective frontage on Farmington Road (frontage road) at the intersection of Highway 17A (Main Street) and a depth of approximately 375 feet. All utilities are available at the property line. There are no restrictions, other than zoning, on use of the property. The soil, to my knowledge, contains no deficiencies but a portion is classified as wetlands and cannot be developed. The front portion is below grade and will also require fill. This is a traffic light controlled intersection next to Interstate 26. Its proximity to Interstate 26 is a positive feature.

The subject's size, location, visibility and access are considered good.

Legally Permissible - The subject property is currently zoned for General Commercial use by the Town of Summerville. This commercial zoning category permits a variety of commercial uses ranging from professional office to retail use. The current use is conforming.

Financially Feasible - Based upon surrounding land use patterns, and the subject's location, commercial development of some type high volume retail business appears to be the highest and best use. Rental rates along this corridor range from \$12.00 to \$14.00 per square foot for typical retail, and could be substantially higher for specialty type uses such as convenience stores. It has been my observation that there are no significant differences in land prices amongst the potential commercial uses for the subject. A typical commercial lot along the Main Street corridor would sell for the same price regardless of the commercial use for which it is intended. Professional office, residential, or light industrial use would not be considered feasible as the rental rates in the area could not support acquisition and development of this site. High volume retail uses would be able to generate sufficient rental income to justify acquisition and development. Market rental rates along the Main Street corridor are sufficient to justify new commercial development compatible with the surrounding environment and trends for this neighborhood.

Maximally Productive - The productivity of any use may be measured by the potential return on the overall investment. High volume retail uses in this area can command rental rates sufficient to justify commercial construction due primarily to the subject's proximity to Interstate 26, downtown Summerville, and the abundance of new retail construction in the immediate area.

It is beyond the scope of this appraisal to ascertain a particular use for the subject site, but data discussed above reasonably indicates that the highest and best use of the site, if it were vacant, would be for commercial/retail development.

PARAGRAPH 13. Description of the Realty:

Site Description

Size - The subject site totals 3.9737 acres or 173,094 square feet. It has approximately 275' of frontage on Farmington Drive (frontage road), and a depth of 375 feet. It is typical in size of other commercial lots in the immediate area.

Access - Access to the subject is via a single curb cut from Farmington Road. The site has minimal frontage on Hwy 17A (Main Street), but is too close to the intersection for access from this corridor. This is a traffic light controlled intersection and access and exposure are good. Hwy 17A is a four lane commercial corridor.

Topography - The site is below grade and will require fill. The rear portion of the lot is classified as

4

File No: 8,790
Tract No: 29 & 29P

wetlands.

Drainage - The lot abuts a natural drainage area providing good drainage for the subject.

Soil Conditions - I was not provided an engineering or soil analysis for the subject, but have assumed for purposes of this appraisal, that no unusual soil or subsoil conditions exist that might inhibit or prohibit continued use of the property. As stated, portions are low or below grade and will require suitable fill dirt for development.

Hazardous Soil Conditions - In the preparation of this report, I have made the assumption that there are no environmental pollution or hazardous materials present in any part of the subject property or nearby properties. I have made no environmental survey or study and assume no responsibility in connection with such matters or for any studies which might be required to discover such matters.

Utilities - Public water and sewer are available at the property line.

Flood Zone - According to FIRM Flood Map Panel 45029-0290C, dated May 6, 1996, the subject property is located in Flood Zone X. This is a non-hazardous flood zone permitting slab on grade construction.

Surrounding Properties - The subject is located between a convenience store/gasoline station and vacant commercial land on the frontage road of Interstate 26. There are numerous uses on this road including an automobile dealership, a commercial machinery dealership and a UPS distribution center.

Easements & Encroachments - Typical utility and access easements apply, but I am aware of no adverse easements affecting the subject site.

PARAGRAPH 14 Valuation Before Acquisition:

This analysis addresses a partial taking of the subject property. I have used the Sales Comparison Approach to prepare an estimate of market value on the subject property in its present or "as is" condition. Generally, this is the only approach applicable to the appraisal of vacant land. Sales of other commercial land sites in the immediate area have been directly compared to the subject.

A. Direct Sales Comparison Approach to Value Land Valuation - Before Acquisition

I have researched the immediate neighborhood for recent sales of vacant land sites that might indicate value for the subject. I have located several closed transactions as well as information on the subject. It is my understanding that negotiations are ongoing with the adjacent property owner to acquire the subject. Other transactions were investigated, and those that were sufficiently comparable have been discussed in detail in the sales brochure for this project. The sales selected that were considered comparable to the subject, are identified as L-24, L-25, L-26, and L-27. L-25 is the subject property.

Explanation of Adjustments

Time - This was discussed earlier in the original sales brochure section.

Location - Sale L-24 is on the town side of I-26 next to WalMart, which is superior. A pairing of L-24 to L-25 indicates a downward adjustment of 25% for L-24. L-24 and L-25 are similar in site condition as both require substantial land fill. Sale L-27 is 1/4 mile south of the Farmington Road Intersection which limits its potential uses to service or industrial. A pairing of this sale with L-25, indicates a positive adjustment of 90% after sale L-27 is adjusted for a superior site condition.

Site Condition - The subject property is low and will require fill. Sale L-24 is similar and also required fill. Sales L-26 and L-27 are level high land. A pairing of L-25 and L-26 suggests an adjustment of 20% for superior site condition.

Size - It has been my experience that with all else being equal, smaller parcels tend to sell for higher unit prices. All of the comparables are similar to the subject and no adjustments were required.

As shown, adjusted unit prices range from \$2.31/sf to \$2.33/sf. With the primary emphasis placed on Sale L-25, which is bracketed and adequately supported, it is my opinion that a unit value of \$2.31/sf is reasonable.

The above sales have been compared to the subject in chart form on the following page:

File No: 8,790
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LAND VALUATION - BEFORE ACQUISITION
SCDOT - TRACT NO. 29
FARMINGTON RD - SUMMERVILLE, S.C.

TRANSACTION NO:	L-24	L-25	L-26	L-27
TYPE TRANSACTION	SALE	SALE	SALE	SALE
LOCATION	Jockey Cl	Farmington Rd	Farmington Rd	Farmington Rd
IDENTIFICATION	Vacant Site	Vacant Site	Vacant Site	Vacant Site
DATE OF SALE	Mar-97	Jun-00	Jul-96	Apr-99
SALES PRICE	\$ 445,000	\$ 400,000	\$ 355,000	\$ 271,827
SIZE(SF)	87,120	173,084	159,430	182,274
SIZE(ACRE)	2.00	3.97	3.65	4.41
SALES CONDITION	\$ (225,000)	0	0	0
ADJ/ S.P./\$SF	\$ 2.53	\$ 2.31	\$ 2.23	\$ 1.41
TIME ADJUSTMENT	1.231	1.0000	1.300	1.078
TIME ADJ S.P./\$SF	\$ 3.11	\$ 2.31	\$ 2.90	\$ 1.52
ADJUSTMENTS:				
LOCATION	0.75	1.00	1.00	1.00
ACCESS/SHAPE	1.00	1.00	1.00	1.00
SIZE	1.00	1.00	1.00	1.00
SITE CONDITION	1.00	1.00	0.80	0.80
NET ADJ FACTOR	0.75	1.00	0.80	1.62

RECONCILIATION:	
INDICATED UNIT VALUE \$/SF	\$ 2.31
SIZE (SF)	173,084
INDICATED VALUE	\$ 399,847
ROUNDED TO:	\$ 400,000

Not Applicable B. Cost Approach to Value

Not Applicable C. Income Approach to Value

PARAGRAPH 15. Resolution of Before Value and Value Estimates:

Value Indicated by the Sales Comparison Approach-----\$400,000
Value Indicated by the Cost Approach-----N/A
Value Indicated by the Income Approach-----N/A

Based on the above, it is my opinion that market value of the subject property before the acquisition, on June 20, 2000, is

FOUR HUNDRED THOUSAND DOLLARS (\$400,000).

PARAGRAPH 16. Description of the Acquisition:

The Highway 17A right-of-way will be widened, which will require the taking of a strip across the front of the subject parcel. The strip will average 40' in depth. The actual acquisition will total .2089 acres or 9,102 SF.

At present, there is a single curb cut or access-way from Farmington Road. A raised concrete median will be added on Farmington Road at the immediate intersection of Hwy 17A. Left turn access to the subject from Farmington Road will have to negotiate around the end of the median but left turn access will be available. Left turn access would generally have to negotiate around traffic backed up at the traffic light; hence, it is my opinion that the median will cause no additional access problems for the subject.

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File No: 8.790
Tract No: 29 & 29P

Speedway 000008

Speedway Exhibit D

There are no improvement acquisitions.

PARAGRAPH 17. Description of the Remainder:

The remaining tract will total 3.7649 acres or 163,992 sf. The parcel still has similar frontage and exposure. Access from Farmington Road is similar to the "before" condition. Left turn access must negotiate around the end of a concrete median but left turn access is adequate. Left turn access often has to negotiate around traffic backed up at the traffic light, which is similar to the median access. The acquisition and median result in no damage to the subject. The size of the subject is adequate and permits similar utility when compared to the "before acquisition" condition.

PARAGRAPH 18. Highest and Best Use (After)

The same considerations as discussed in the "before" status apply to the remainder. The remainder will total 163,992 square feet which is large enough to accommodate a variety of commercial improvements. Exposure will be excellent and access adequate for commercial development.

PARAGRAPH 19. Value After the Acquisition:**LAND VALUATION**

I have used the same comparables as discussed in the "Before" section and the same adjustments apply. The reduction in size has not reduced the lots utility. There are no other damages to the subject. The same adjustments apply indicating adjusted unit values of \$2.31/sf to \$2.33/sf. A unit value of \$2.31/sf is reasonably supported indicating a property value in the after condition as follows:

$$163,992 \text{ sf} \times \$2.31/\text{sf} = \$378,882, \text{ rounded to } \$379,000.$$

LAND VALUATION - AFTER ACQUISITION
SCDOT - TRACT NO. 29
FARMINGTON RD - SUMMERVILLE, S.C.

TRANSACTION NO:	L-24	L-25	L-26	L-27
TYPE TRANSACTION	SALE	SALE	SALE	SALE
LOCATION	Jockey Cl	Farmington Rd	Farmington Rd	Farmington Rd
IDENTIFICATION	Vacant Site	Vacant Site	Vacant Site	Vacant Site
DATE OF SALE	Mar-97	Jun-00	Jul-98	Apr-99
SALES PRICE	\$ 445,000	\$ 400,000	\$ 355,000	\$ 271,827
SIZE(SF)	87,120	173,094	169,430	192,274
SIZE(ACRE)	2.00	3.97	3.88	4.41
SALES PRICE/SQ. FT.	\$5.11	\$2.31	\$2.09	\$1.41
SALES CONDITION	\$ (225,000)	0	0	0
ADJ. S.P./\$SF	\$ 2.53	\$ 2.31	\$ 2.23	\$ 1.41
TIME ADJUSTMENT	1.231	1.0000	1.300	1.078
TIME ADJ S.P./\$SF	\$ 3.11	\$ 2.31	\$ 2.90	\$ 1.52
ADJUSTMENTS:				
LOCATION	0.75	1.00	1.00	1.00
ACCESS/SHAPE	1.00	1.00	1.00	1.00
SIZE	1.00	1.00	1.00	1.00
SITE CONDITION	1.00	1.00	0.80	0.80
NET ADJ FACTOR	0.75	1.00	0.80	1.52

~~ADJUSTED S.P./\$SF = \$2.31 (\$2.53 x 0.75) = \$1.8975 (\$2.31 x 1.00) = \$2.31 (\$2.09 x 1.30) = \$2.717 (\$1.41 x 1.078) = \$1.509~~

RECONCILIATION:

INDICATED UNIT VALUE \$/SF	\$ 2.31
SIZE (SF)	163,992
INDICATED VALUE	\$ 378,822
ROUNDED TO:	\$ 379,000

PARAGRAPH 20. Resolution of After Value and Value Estimate:

Since there are no improvements, I have used only the Sales Comparison Approach to estimate land value.

The estimated land value after acquisition as of June 20, 2000, is

THREE HUNDRED SEVENTY NINE THOUSAND DOLLARS (\$379,000)

PARAGRAPH 21. Uneconomic Remainder

None

22.	Final Estimate of Value	Before (P#14)	After (P#19)	Difference
	Indicated Value by Direct Sales Comparison	\$400,000	\$379,000	\$21,000
	Indicated Value by Summation	\$00	\$00	\$00
	Indicated Value by Income	\$00	\$00	\$00

23.	Distribution of Values	Before (P#15)	After (P#20)	Difference
	Land Value	\$400,000	\$379,000	\$21,000
	Improvement Value	\$00	\$00	\$00
	Other - N/A	\$00	\$00	\$00
	TOTAL	\$400,000	\$379,000	\$21,000

24. Recommended Distribution of Difference	
Right of Way Acquired:	
Land: 9,102 sf Acres Sq. Ft. @: \$2.31/sf	\$21,000
Site Improvements: N/A	\$00
Buildings: N/A	\$00
Total for Acquisition	\$21,000
Damages (if any to remainder)	
Explain:	
None	
Total Damages	\$00
Benefits (if any to remainder)	
Explain:	
00	
Subtract Total Benefits	\$00
Total Value of part acquired, plus damages, less benefits (Should equal total difference above)	\$21,000

25. Final Statement of Value	
I. Having considered all applicable approaches, it is my opinion that the indicated value of the whole property before the acquisition.....	\$400,000
II. Having considered all applicable approaches, it is my opinion that the indicated value of the remainder, after the acquisition.....	\$379,000
III. The difference between the indicated value of the property before the acquisition, and the indicated value of the remainder, after the acquisition.....	\$21,000

26. Based on this report, the fair market rental for this property is <u>N/A</u> per month.	
Appraisal made as of:	
Date: June 20, 2000	
* These values must agree exactly and also in the Certificate.	 Pledger M. Bishop, MAI SC General Real Estate Appraiser CG193

ASSUMPTIONS AND LIMITING CONDITIONS

The legal description, furnished by SCDOT is assumed to be correct, and no responsibility for matters legal in nature is assumed, nor is any opinion of title, which is assumed to be marketable, rendered. Any existing liens or encumbrances have been disregarded, and the property appraised as free and clear.

No current survey of the property was made, and the improvements are assumed to be within the lot lines, in accordance with the building codes and any restrictive covenants covering the property. The sketches in this report are included only to assist the reader in visualizing the property, and are not to be considered as accurate.

All information included in this report which was furnished by others is believed to be correct, but no responsibility for its accuracy is assumed.

Possession of this report, or a copy thereof, does not carry with it the right of publication, either in whole or in part, nor may it be used for any purpose by any except the party for whom it was prepared without the consent of the appraiser, and then only with proper qualification.

The appraiser is not required to give testimony or to appear in court with reference to this property by reason of this report unless prior arrangements have been made.

Distribution of the value reported between land and building applies only under the existing program of utilization, and separate valuations for land and improvements must not be used in conjunction with any other report, and are invalid if so used.

Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on or in the property. The appraiser, however, is not qualified to detect such substances. The presence of substance such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. The value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field, if desired.

File No. 8.790

Tract No. 29 & 29P

REAL ESTATE DEFINITIONS

PROPERTY RIGHTS APPRAISED:

The property right considered in this appraisal is the fee simple estate of the subject property. The fee simple estate is the "absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police powers, and escheat." (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 140)

SCOPE OF APPRAISAL:

The appraiser conducted market analysis to locate comparable sales and other relevant data. Local real estate brokers, appraisers, and public records, were used together information such as market conditions, sales, verification of sales, subject area data, etc.

HIGHEST AND BEST USE:

The highest and best use is defined as "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility and maximum profitability." (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 171)

Highest and best use of the site as vacant is defined as "among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination. The use of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements." (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 170)

Highest and best use of a site as improved is defined as "the use that should be made of the property as it exists. An existing property should be renovated or retained as long as it continues to contribute to the total market value of the property, or until the return from the new improvement would more than offset the cost of demolishing the existing building and constructing a new one." (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 171)

The four test for highest and best use enables the appraiser to determine the most probable use of the property and leads to the selection of comparable properties for the tract being appraised. The four test encompass the following:

1. Legally permissible describes the zoning, restrictions, easements, and regulations a tract must meet to be a permissible use.
2. Physically possible describes the physical character such as shape, size, and access which makes it possible for potential development.
3. Financially feasible describes the financial obligations and investment criteria the potential use must meet in order to be viable use.
4. Maximally productive describes the best use for the property based on the financially feasible conclusions.

(Appraisal of Real Estate, pages 275-297, 10th edition)

File No: 8.790
Tract No: 29 & 29P

VALUATION PROCESS:

The valuation process is "a systematic procedure employed to provide the answer to a client's question about a real estate property value." (Appraisal of Real Estate, page 82, 10th edition)

MARKET VALUE

Market value is defined as "the most probable price, as of a specified date, in cash or in terms equivalent to cash, or in other precisely revealed terms for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest and assuming that neither is under undue duress." (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 222)

SALES COMPARISON APPROACH

The sales comparison approach is defined as "a set of procedures in which a value indication is derived by comparing the property being appraised to similar properties that have been sold recently, applying appropriate units of comparison, and making adjustments to the sale prices of the comparables based on the elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant; it is the most common and preferred method of land valuation when comparable sales data are available." (The Dictionary of Real Estate Appraisal, 3rd Edition, Page 318)

COST APPROACH

The cost approach is used in valuing new improvements and specialty property. The cost approach is defined as "a set of procedures through which a value indication is derived for the fee simple interest in a property by estimating the current cost to construct a reproduction of, or replacement for, the existing structure; deducting accrued depreciation from the reproduction or replacement cost; and adding the estimated land value plus an entrepreneurial profit. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised." (Dictionary of Real Estate Appraisal, page 81, 3rd edition)

INCOME APPROACH

The income approach is used when value is derived from the future benefits of a income stream. The income approach is defined as "a set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversions) into property value. This conversion can be accomplished two ways. One year's income expectancy can be capitalized at a market derived capitalization rate or at a capitalization rate that reflects a specified income pattern, return on investment, and change in value of investment. Alternatively, the annual cash flows for the holding period and the reversion can be discounted at a specified yield rate." (Dictionary of Real Estate Appraisal, page 178, 3rd edition)

File No: 8.790
Tract No: 29 & 28P

CERTIFICATE OF APPRAISER

I hereby certify:

That I have personally inspected the property herein and that I have also made a personal field inspection of the comparable sales relied upon in making said appraisal. The subject and the comparable sales relied upon in making said appraisal were as represented in said appraisal or in the brochure which supplements said appraisal.

That to the best of my knowledge and belief the statements contained in the appraisal herein set forth are true, and information upon which the opinions expressed therein are based is correct; subject to the limiting conditions therein set forth.

That I understand that such appraisal may be used in connection with acquisition of right of way for a highway to be constructed by the State of South Carolina with the assistance of Federal-aid highway funds, or other Federal Funds.

That such appraisal has been made in conformity with the appropriate State laws regulations and policies and procedures applicable to appraisal of right of way for such purposes; and that to the best of my knowledge no portion of the value assigned to such property consist of items which are noncompensable under the established law of South Carolina.

That neither my employment nor my compensation for making this appraisal and report are in any way contingent upon the values reported herein.

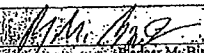
That I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of such property appraised.

That I have not revealed the findings and results of such appraisal to anyone other than the proper officials of the South Carolina Department of Transportation or officials of the Federal Highway Administration and I will not do so until so authorized by the State officials or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified as to such findings.

That the owner or his designated representative was given the opportunity to accompany me during my inspection of the property that was appraised.

That any decrease or increase in the fair market value of the real property prior to the date of valuation caused by the public improvement for which such property is being acquired, or by the likelihood that the property would be required for such improvement, other than that due to the physical deterioration with in the reasonable control of the owner, has been disregarded in determining the compensation for the property.

That my opinion of the fair market value of the acquisition as of the 20th day of June, 2000, is \$21,000 based upon my independent appraisal and the exercise of my professional judgment.

Date: July 3, 2000	
Pledger Mc Bishop, MAI State Certified General Real Estate Appraiser CG #17951	

File No. 8,790

Tract No. 29 & 29P



South Carolina
Department of Transportation

9-25-00

File 8.790 - Interstate 26/US HWY 17A Interchange Improvements - Berkeley County
PIN 22338 - Project IU-0264(174) - Tract 29

Marathon Ashland Petroleum
Attention: Mr. Robert Greiwe
3200 Pointe Parkway
Suite 200
Norcross, Georgia 30092

Dear Mr. Greiwe:

The South Carolina Department of Transportation proposes to acquire a portion of the property formerly owned by Ms. Emmaline B. Smith located off of US Highway 17A near the town of Summerville, SC. I understand that a closing has taken place and that Marathon Oil now holds title to the property.

An offer for the 9,102 square feet of land to be converted to state right of way was made to Ms. Smith on August 21, 2000, at which time she was still the property owner. No agreement was ever reached between Ms. Smith and the Department. Consequently, the Department will now make the offer to purchase the right of way to Marathon Oil as the new owner.

Enclosed please find the letter of offer and a copy of the appraisal from which the offer is derived. Please review the offer and let me know if you have any questions or concerns. I will be in touch with you shortly to discuss our offer. I will look forward to speaking with you soon to reach an amicable settlement.

Sincerely,

Timothy B. Bowers
Right of Way Agent
301 Stefan Drive
Charleston, SC 29412
(843) 762-7882

Speedway 000015

Speedway Exhibit D



South Carolina
Department of Transportation

File 8.790 Road/Route I-26/17A Interchange Improvements -Berkeley County
PIN 22338 Project IU-0264(174) Tract-29

Marathon Ashland Petroleum
Attention: Mr. Robert Greiwe
3200 Pointe Parkway, Suite 200
Norcross, Georgia 30092

Dear Mr. Greiwe:

Reference is made to the above captioned project, under which the South Carolina Department of Transportation proposes to acquire a portion of your property for this improvement as has been discussed with you previously. The Department must pay just compensation for the property which is based on an appraisal made by a qualified real estate appraiser using comparable sales in the area.

The appraisal, which is available to the landowner upon request, has been made, reviewed and approved, and I am now authorized to make you the following offer:

\$21,000.00 For fee simple title to 9,102 square feet of land and
all improvements thereon, if any.

Please give this offer your prompt attention and let me know your decision as soon as possible.

If I can be of any further assistance, do not hesitate to contact me.

Sincerely,

Timothy B. Bowers
Right of Way Agent
301 Stefan Drive
Charleston, SC 29412
(843) 762-7882

9-25-00

Date offer made



South Carolina
Department of Transportation

10-3-2000

File 8.790 - Interstate 29/US 17A Interchange Improvements - Berkeley County
PIN 22338 - Project IU-0264(174) - Tract 29

Marathon Ashland Petroleum
Attention: Mr. Robert Greiwe
3200 Pointe PKWY, Suite 200
Norcross, Georgia 30092

Dear Mr. Greiwe:

Reference is made to the above captioned project, under which the South Carolina Department of Transportation proposes to acquire a portion of your property for this improvement as has been previously discussed with you. The Department must pay just compensation for the property which is based on an appraisal made by a qualified real estate appraiser using comparable sales in the area.

Based on said appraisal, an offer of \$21,000.00 was made to you on Sept. 25, 2000. However, a settlement agreement was reached in the amount of \$50,000.00. This settlement figure is not an admission by the Department that our original offer was not a true reflection of the property value, rather an attempt to avoid any litigation or further delay.

Sincerely,

A handwritten signature in black ink that reads "Tim Bowers". The signature is written in a cursive, flowing style.

Timothy B. Bowers
Right of Way Agent
301 Stefan Drive
Charleston, SC 29412
(843) 762-7882

Speedway 000017

Speedway Exhibit D



South Carolina
Department of Transportation

10-3-2000

File 8.790 - Interstate 29/ US 17A Interchange Improvements - Berkeley County
PIN 22338 - Project IU-0264(174) - Tract 29

Marathon Ashland Petroleum
Attention: Mr. Robert Greiwe
3200 Pointe PKWY, Suite 200
Norcross, Georgia 30092

Dear Mr. Greiwe:

Please find enclosed the title to real estate for the 9,102 square feet of land to be converted to state right of way along with a request for the tax payer id information. Also enclosed per your request is a copy of the construction plans, a copy of the profile, and copies of the cross sections.

Please have the title and tax payer id request executed as quickly as possible and returned to me no later than October 23. If you have any questions or concerns, please contact me at once. Thank you for your cooperation.

Sincerely,

Timothy B. Bowers
Right of Way Agent
301 Stefan Drive
Charleston, SC 29412
(843) 762-7882

Speedway 000018

Speedway Exhibit D

SOCIAL SECURITY NUMBER INFORMATION**REQUEST FOR SOCIAL SECURITY NUMBER OR
TAXPAYER IDENTIFICATION NUMBER AND CERTIFICATION**

Road/Route I-26/US 17A Interchange Improvements
 File 8.790
 Project IU-0264(174)
 Tract 29
 PIN 22338
 TMS 221-00-00-015 & 221-00-00-091
 Amount \$50,000.00
 Acquisition (Sq. Ft./Acres) 9,102 sf.

You are required by law to provide the South Carolina Department of Transportation (Hereinafter "SCDOT") your correct Social Security Number or Taxpayer Identification Number. If you do not provide SCDOT your correct Social Security Number or Taxpayer Identification Number, you may be subject to civil or criminal penalties imposed by law.

Please print or type:

NAME: Speedway Super America, LLC
 (If husband & wife filing jointly, enter both names and circle name of person whose Social Security Number appears below.)

MAILING ADDRESS: 539 South Main Street

CITY: Findlay STATE: OH ZIP-CODE: 45840

SOCIAL SECURITY NUMBER AND TAXPAYER ID NO.:

Under penalties of perjury, I certify that the number shown on this statement is my correct Social Security Number or Taxpayer Identification Number.

Date: 10/31/00

Ginda B. Miller
 Signature of Landowner

You are further requested to provide to the South Carolina Department of Transportation the dollar amount of your share of the gross proceeds, or if gross proceeds are not known, the percentage of your share.

Your Share: \$ 50,000.00 , or 100 % of ownership

Ginda B. Miller
 Signature of Landowner

Speedway 000019

Speedway Exhibit D



Marketing - Real Estate

MARATHON ASHLAND Petroleum LLC

539 South Main Street
Findlay, OH 45840-3295
Telephone 419/422-2121
Fax 419/421-3522
Internet www.marathon.com/realest

November 9, 2000

VIA OVERNIGHT MAIL

Mr. Timothy B. Bowers, Right of Way Agent
South Carolina Department of Transportation
301 Stefan Drive
Charleston, SC 29412

RE: File 8.790 - Interstate 29/US 17A Interchange Improvements
Berkeley County - PIN 22338 - Project IU-0264(174) - Tract 29
SSA #0258, 1520 N. Main Street, Summerville, SC

Dear Mr. Bowers:

Enclosed please find the fully executed Title to Real Estate form and Social Security Information relating to the subject project for your further processing.

Please forward the check made payable to Speedway SuperAmerica LLC in the amount of Fifty Thousand (\$50,000.00) to my attention.

If we can be of any further service, please advise.

Sincerely,

Linda B. Miller
Real Estate Coordinator

Im

Enclosures

ccs: G. R. Greiwe
R. Q. Scholes

Speedway 000020

Speedway Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Cynthia Wright and Richard Wright,
Plaintiffs,

versus

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

**ASHLEY LAND SURVEYING, INC.'S
MEMORANDUM IN SUPPORT
OF SUMMARY JUDGMENT**

TO: KEVIN B. SMITH, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

This matter comes before the Court on Defendant Ashley Land Surveying, Inc. f/k/a Ashley Engineering & Surveying, Inc. and Ashley Engineering & Consulting, Inc. ("Ashley") motion for summary judgment in the above-captioned action. For the reasons set forth below, Ashley 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 has intended to make a left hand turn into one of the entrances to the Pilot Travel Center (Daniel Sena Deposition, May 6, 2015, 70-72, attached hereto as Exhibit A; 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 Paragraphs 5, 9, attached as Exhibit C). The existing 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 (IS at Paragraph 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).

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.

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 US 17A in front of 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 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 Paragraph 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, Paragraph 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 a permit to construct the entrances/driveways to the Pit Travel Center (Exhibit C Paragraph 8).

On March 31, 2014, Plaintiffs filed the present negligence action against Ashley and SCDOT arising from the accident. 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 Ashley 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 design the entrance/exit "to prevent . . . [Plaintiffs] from being stricken by other motorist[s] attempting to turn left across traffic . . ."(Amend. Compl. Paragraphs 54, 55). Plaintiffs further claim that Ashley is partially responsible for the painted/flush median being utilized by SCDOT as opposed to a raised concrete median. Their allegation is that Ashley allegedly influenced SCDOT's decision on which type of median to install on the roadway in front of the Pilot Travel Center.

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 Ashley 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 Ashley 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 Ashley did anything to influence SCDOT's independent decision to use a painted/flush median in front of the Pilot Travel Center.

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 them any duty or breached any duty owed, or, that any alleged negligent act of 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 by must demonstrate, by affidavit or other evidence, that a genuine issue of fact exists *Klippel v Mid-Carolina Oilm, Inc*, 303 S.C. 127, 399 SE2d 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 here 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) Ashley owed them a duty; (2) Ashley 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 Ashley owed them a duty of care.

Defendant did not owe Plaintiffs any duty of care as alleged in the Complaint, and therefore, Ashley is entitled to summary judgment. See *Hurst v. E. Coast*

Hockey League, Inc., 371 S.C. 33, 37, 637 S E 2 d 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 Ashley owed a duty of care to all motorists traveling on the highway in front of the Pilot 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 owed 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 Ashley created a dangerous artificial condition on the highway to serve as the basis of any duty. 6.

5 Plaintiffs cannot establish that Ashley 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 licensee 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 2 d at 874.

Plaintiffs allege that the dangerous condition that lead 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. and 57-3-110 (1) ("The Department of Transportation shall . . . [have the power and duty to] lay out, build an maintain public highways and bridges, including the 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 SE 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 Section 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 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 the make an immediate left turn onto business premises); *Hardin v. S Carolina Dep’t of Tranp*, 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, SCDOT testified that it, and not Ashley, 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 SCDOT and 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 SCDOT, 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 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 Section 349 8, the 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,

7. The trial court also held that the Plaintiff's claim failed for lack of proximate cause; however, the South Carolina Supreme Court did not address this holding

8. According to Section 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 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, Ashley 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 was within the exclusive providence of SCDOT as the governmental agency charged with the duty to design, maintain and operate the State's highways. SCDOT, not Ashley, has the duty to maintain medians. SCDOT, not Ashley, 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).

To the extent that Plaintiffs maintain that Ashley created a dangerous condition on the highway by virtue of applying for construction of 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 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. Section 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, Ashley could not have designed the driveways to the Pilot 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 Ashley can be held liable for their injuries because Pilot had notice of the danger posed by motorists making left-hand turns onto its property 10 and failed to take any remedial action, no such affirmative duty on the part of Ashley 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 Ashley to affirmatively act 11. Having notice of other accidents that had occurred on the highway does not give rise to a duty to warn. See Restatement (Second) of Torts Section 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 and 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).

10. Plaintiffs allege Ashley was on notice of the danger the 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 Ashley did owe Plaintiffs some duty to affirmatively act, which is denied, as discussed above, Ashley did not have the authority to install a raised median or relocate the driveways on the 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)

Finally, it should be noted that Judge Young concluded that as a matter of law Pilot 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. (Order at pp. 5-10 Ex. G) *See Rayfield v. S Carolina Dep't of Corr.*, 297 S.C. 95, 100, 374 S.E.2d 910, 913 (Ct. App. 1988) ("An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance."), As was the case with Pilot, Plaintiffs have established no legal duty owed to them by Ashley. Ashley further incorporates the findings and determinations set forth in Judge Young's Order by reference and further seeks relief in accordance with the Order.

In light of the foregoing, Plaintiffs cannot establish that Ashley owed them any duty as a party to the construction of the 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 Ashley.

Even if Plaintiffs can establish that Ashley owed them some duty, Plaintiffs cannot establish a breach of this duty as a matter of law. To prove Ashley breached a duty, Plaintiffs must establish a "negligent act or omission" on the part of Ashley. *Bishop vv. 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 Ashley. As discussed above, Ashley 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 Ashley 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 Ashley, Plaintiffs must establish Ashley 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/her 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 Ashley proximately caused Plaintiffs 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 F12). 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 "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 Ashley 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).

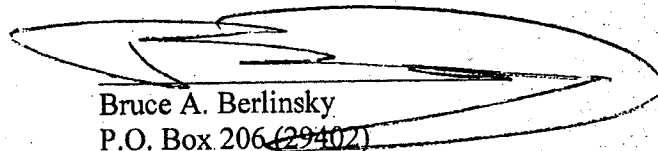
Moreover, as has been discussed above, to the extent Plaintiffs allege that the failure to install a raised median proximately caused the accident, such failure cannot be attributed to Ashley. SCDOT, not Ashley, has exclusive control over the highway and the ultimate decision as to which type of median 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 Ashley proximately caused their injuries as a matter of law.

CONCLUSION

In light of the foregoing reasons, Ashley respectfully requests that the Court grant its Motion for Summary Judgment.

BRUCE A. BERLINSKY, PA

A handwritten signature in dark ink, appearing to read "Bruce A. Berlinsky", is enclosed within a large, hand-drawn oval. The signature is fluid and cursive.

Bruce A. Berlinsky
P.O. Box 206 (29402)
One Carriage Lane, Bldg. F
Charleston, SC 29407
*ATTORNEY FOR DEFENDANT,
ASHLEY LAND SURVEYING, INC.*

Charleston, South Carolina
June 5, 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
motorcycle that's reflective that you could have
2 seen other than the headlight?

3 A. No, sir.

4 Q. Was it easier to see the car next to
5 them than it was the motorcycle?

6 A. Yes, sir.

7 Q. Why was that?

8 A. It's a larger -- larger object. I -- as
9 you can look in the picture -- may I use this? At
10 nighttime, as you have the traffic light right there
11 at the intersection going in the frontage road or
12 whatever, there's cars stopped at that light. You
13 come to a stop. I just made a judgment that the
14 headlight that I seen was at that intersection and
15 not, you know, coming toward me.

16 Like I said, the light changed -- it
17 didn't change suddenly but it changed from green to
18 yellow. And as I seen yellow, I seen the two cars
19 coming through and, obviously, I was anticipating on
20 the cars on the other side of the light not to come
21 through. I mean, I wouldn't say that there wasn't
22 no reason why I wouldn't see it. It was just bad
23 judgment, I'd say.

24 Q. And basically, as I understood your
25 testimony a little while ago, you messed up because

1 DANIEL JAMES SENA - EX. BY MR. BESLEY
2 work, undressed, got out of my work clothes, drank a
3 beer and grabbed a second beer and went to my back
4 door in the back of my truck and then did the
5 cocaine.

6 Q. Okay.

7 A. And --

8 Q. And -- okay. Go ahead.

9 A. Smoked a cigarette, my wife came out
10 with the list, you know, and then off to McDonald's.

11 Q. No other alcohol, no shots of anything?

12 A. No, sir.

13 Q. Nothing. Did it surprise you that you
14 were a .10 alcohol level?

15 A. Yes, sir. If not, I would not have
16 given consent to a Breathalyzer. In my own personal
17 opinion, I just figured I wouldn't fail a
18 Breathalyzer with two beers in my system.

19 Q. You're absolutely certain it was just
20 two beers?

21 A. Yes, sir.

22 Q. Do you take full responsibility for the
23 accident?

24 A. Yes, sir. I do.

25 Q. You don't blame the DOT for the
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

1 DANIEL JAMES SENA - EX. BY MR. SMITH
2 say that was the reason why -- what happened
3 happened. I mean, that could have prevented my
4 accident and a lot more accidents and any more to
5 come. I'm not going to post blame on -- my actions
6 on them for that evening because I was the one that
7 was behind the vehicle.

8 Q. Sure.

9 A. I can leave it at that.

10 Q. And you told Mr. Maybank you're clearly
11 sorry and remorseful for what happened?

12 A. Yes, sir. I am.

13 Q. And do you think about -- obviously
14 while you're here being incarcerated, I mean, do you
15 think about what happened and why you're here and
16 things like that pretty often?

17 A. Every day.

18 Q. All right. And the fact that you have
19 accepted responsibility for all this, does that help
20 you deal with it and grow and mature and heal from
21 all this?

22 A. It was -- yes. There's no way, you've
23 got to -- lesson learned. Just be more cautious out
24 there.

25 MR. SMITH: That's all I have. Thank
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?

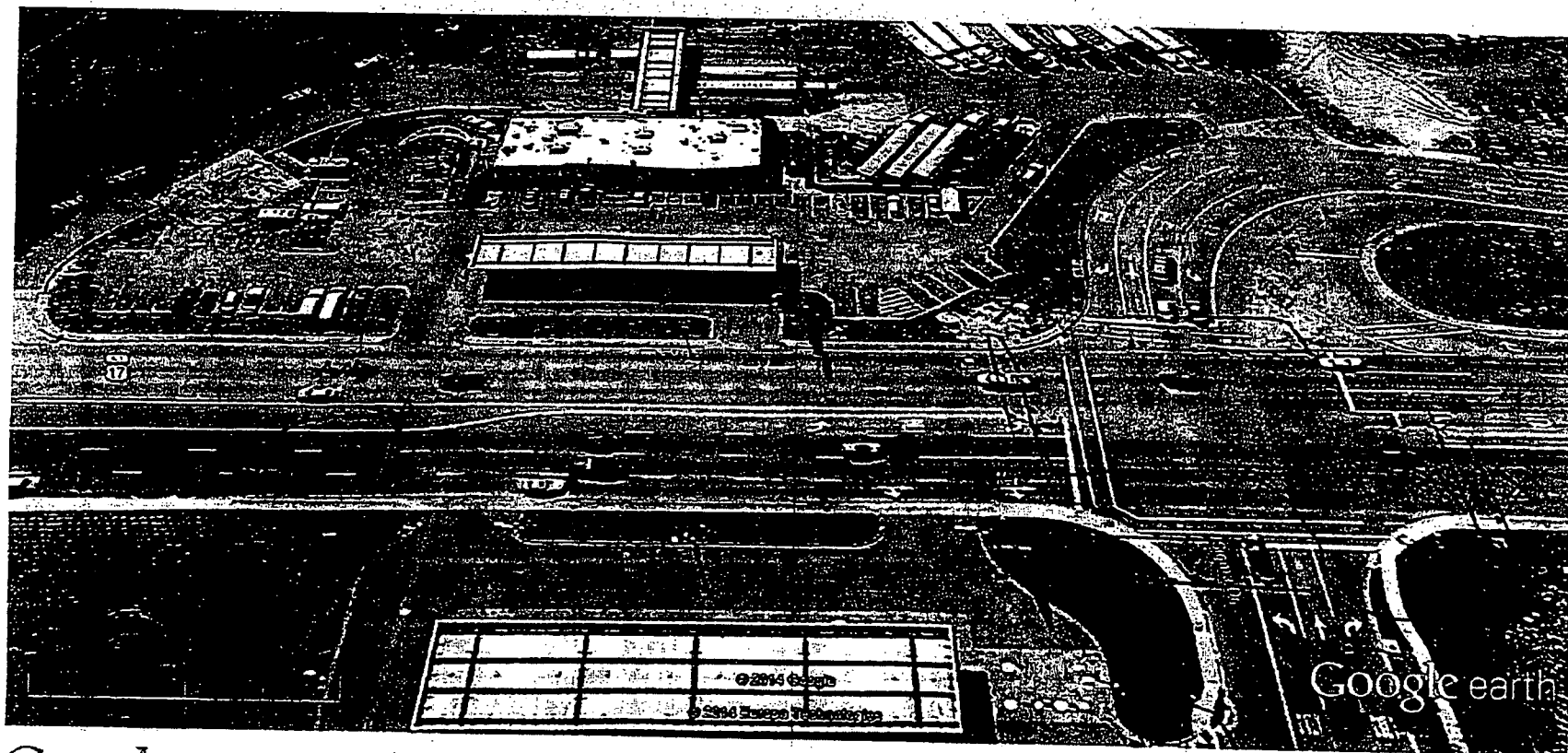
22 A. Yes, sir.

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

300
90

10/2/2011 Cynthia Wright & SCOTTY
SCOTTY Original File 0005

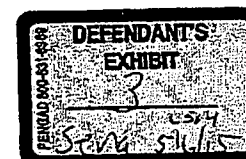


Exhibit C

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.

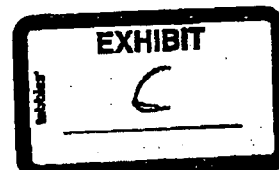
) IN THE COURT OF COMMON PLEAS
)
)

C/A NUMBER: 2014-CP-08-675

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

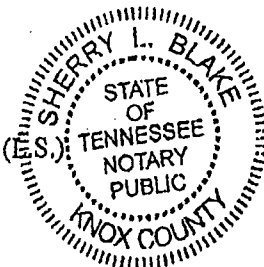


Exhibit D

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
UNLIMITED, INC., and PILOT TRAVEL CENTERS, LLC,
8 SPEEDWAY, LLC, ASHLEY LAND SURVEYING, INC., F/K/A
9 ASHLEY ENGINEERING & SURVEYING, INC., and ASHLEY
ENGINEERING & CONSULTING, INC., and MUNLAKE
CONTRACTORS, INC.

10 Defendants.

11
12 VIDEOTAPE

DEPOSITION OF: LELAND D. COLVIN, JR.

13 DATE: March 13, 2017

14 TIME: 11:35 AM

15 LOCATION: SCDOT District 6
16 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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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
nontransversable 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

LELAND D. COLVIN, JR. - EX. BY MR. CRITES
1 was a business there, I'll represent to you it was
2 a Speedway before it became a -- a Pilot Travel
3 Center. But there was a business there with
4 driveways that provided ingress and egress from 17A
5 into that business; is that correct?

6 A. Yes, sir.

7 Q. Okay. And at that time there was not a
8 raised median preventing left-hand turns into that
9 business, correct?

10 A. Correct.

11 Q. There's never been a raised median on
12 that stretch of Highway 17A in front of what is now
13 the Pilot Travel Center, correct?

14 A. Correct. There -- there was -- I'd
15 have to see the limits. There -- there is a raised
16 median that was installed in conjunction with the
17 new location of roadway to the intersection just to
18 the east. I -- I don't think the limits of that
19 got in front of the -- the Pilot station.

20 Q. Okay.

21 A. I think that's correct.

22 Q. All right. So any discussion earlier
23 about a -- a raised median or a nontransversable
24 median being removed, it was never removed from the
25 roadway itself, correct?

LELAND D. COLVIN, JR. - EX. BY MR. CRITES

1 A. Correct.

2 Q. Nor was it ever removed from the design
3 plans for the 17A widening project right in front
4 of the Pilot Travel Center, correct?

5 A. Correct.

6 Q. It was -- I believe you referred to it
7 earlier as a placeholder?

8 A. Correct.

9 Q. And it was a placeholder that was put
10 in by another design professional who was in charge
11 of another project that was not the 17A widening
12 project right in front of the Pilot Travel Center,
13 correct?

14 A. Correct.

15 Q. Mr. Smith spent a lot of time asking
16 you questions about Exhibit 5, which is the letter
17 dated August 28, 2000, to Mr. Greiwe from Tommy
18 Smoak. And as I understand it, Mr. Smoak is no
19 longer employed with the Department of
20 Transportation, correct?

21 A. That's correct.

22 Q. Did he retire?

23 A. He did retire.

24 Q. Do you know how long ago he retired?

25 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
Design Manual.

Q. And I think if I can use your own words, you, number one, talked about it as being a clarification. Would that be fair to say?

A. Yes.

Q. Okay. But I think, also, you referred to it earlier -- if I can find it -- was that when you were talking about the two designs, the marrying of these two projects essentially was the widening design plans were correcting the interchange design plans. Is that fair to say, as it relates to the raised median?

And I'm not trying to put words in your mouth, so if I've misspoke or I've misquoted you...

A. I -- I think that the revision to the interchange plans between the right-of-way plans and the construction plan is a result of us marrying the two projects together.

Q. Okay. But at the end of the day, the design plans always called for a painted -- the design plans for the 17A widening project in front of what is now the Pilot Travel Center always called for just a painted flush median?

A. Correct.

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.

LELAND D. COLVIN, JR. - EX. BY MR. CRITES
Applying those engineering design

principles to a request that somebody might make,
the DOT's position, though, is they're never going
to compromise the safety of the individual or the
public-at-large to accommodate a business if they
don't believe that that's the right decision or the
correct decision, correct?

A. Yes.

Q. The 17A widening project plans, those
were DOT plans, correct?

A. Correct.

Q. Okay. And 17A is a DOT owned and
controlled roadway, correct?

A. Yes.

Q. The discussion about the raised median,
understanding that it was never in the design plans
to begin with for the 17A widening project, but I'm
just curious: Can you just describe for me what
the dimensions of it would have been in terms of
how wide it was, how tall it would have been, if
it's feathered or tapered?

A. I would have to -- I'd have to refer
back to my design documents, but it's -- no, I -- I
don't know the dimensions right off the top of my
head.

1 LELAND D. COLVIN, JR. - EX. BY MR. BESLEY
BY MR. BESLEY:

2 Q. Okay. And SCDOT would have the final
3 and ultimate decision on any road of theirs or even
4 the encroachment of driveways leading to that road.
5 Would that be correct?

6 A. Correct.

7 Q. That would be based upon your DOT rules
8 and regulations and even the national standards, as
9 the other lawyers have pointed out; is that
10 correct?

11 A. It would be based on the DOT standards,
12 that -- that those standards took into account
13 national standards.

14 Q. Okay. So in order for Pilot to
15 construct entrances and exits to their property,
16 Pilot had to submit an encroachment permit
17 application to the SCDOT; is that correct?

18 A. Yes. That's how -- that's how our
19 new -- that's how new encroachments are provided as
20 via an encroachment permit process.

21 Q. Okay. And I know earlier you said you
22 had not reviewed the one that you were shown, but
23 you saw an encroachment permit; is that correct?

24 A. Sure. Yes.

25 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 & *Metric*



South Carolina Department of Transportation
Traffic Engineering Section
955 Park Street
Post Office Box 191
Columbia, South Carolina 29202-0191

1996 Edition

1st printing

October, 1996

2,000 copies

Access and Roadside Management Standards is published by the South Carolina Department of Transportation and may be obtained at a cost of \$5.00 per copy from the Director of Traffic Engineering at the above address.

As the need arises *Access and Roadside Management Standards* is revised, updated, and distributed within the South Carolina Department of Transportation. Others are responsible for obtaining the most current edition.

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
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

MAEY 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

B

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 Tester, 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 §349,¹ the Allen Court held that

¹ 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." 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.

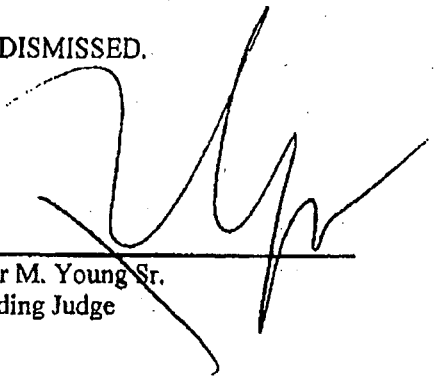
Conclusion

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