

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

RECEIVED
JUN 22 2018
SC Court of Appeals

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 & Consulting, Inc., and
Munlake Contractors, Inc.,

Of whom

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

APPENDIX TO RECORD ON APPEAL

R. Davis Howser
Jeffrey I. Silverberg
HOWSER, NEWMAN & BESLEY, LLC
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
Tel: (803) 758.6000
rdhowser@hnblaw.com
jsilverberg@hnblaw.com
*Attorneys for Respondent Pilot Travel
Centers, LLC*

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 & Consulting, Inc., and
Munlake Contractors, Inc.,

Of whom

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

APPENDIX TO RECORD ON APPEAL

R. Davis Howser
Jeffrey I. Silverberg
HOWSER, NEWMAN & BESLEY, LLC
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
Tel: (803) 758.6000
rdhowser@hnblaw.com
jsilverberg@hnblaw.com
*Attorneys for Respondent Pilot Travel
Centers, LLC*

Kevin B. Smith
HOFFMAN LAW FIRM
7087 Rivers Ave.
N. Charleston, SC 29406
ksmith@hoffmanlaw.net

S. Randall Hood
Jordan C. Calloway
MCGOWAN HOOD & FELDER, LLC
1539 Health Care Drive
Rock Hill, SC 29732
rhood@mcgowanhood.com
jcalloway@mcgowanhood.com

Shawn B. Deery
MCGOWAN HOOD & FELDER, LLC
1517 Hampton Street
Columbia, SC 29201
sdeery@mcgowanhood.com
Attorneys for Appellants

Amanda R. Maybank (S.C. #69825)
Roy P. Maybank (S.C. #69643)
MAYBANK LAW FIRM
531 Savannah Highway
Post Office Box 12579
Charleston, South Carolina 29422
Attorney for Respondent South Carolina Department of Transportation

Mary Barnwell Ramsey
J. Bennett Crites, III
SHUMAKER LOOP & KENDRICK, LLP
Post Office Box 22207
Charleston, South Carolina 29413
bcrites@slk-law.com
Attorney for Respondent Speedway, LLC

Bruce A. Berlinsky
BURCE A. BERLINSKY, PA
One Carriage Lane, Bldg. F
Charleston, South Carolina 29407
bruce@berlinskylawfirm.com
Attorney for Respondent Ashley Land Surveying, Inc.

INDEX

Volume 1

Order of Default (Mulake Contractors, Inc.)	1
Order Granting Pilot Travel Centers, LLC’s (“Pilot”) Motion for Summary Judgment	2
Order Granting South Carolina Department of Transportation (“SCDOT”), Speedway, LLC (“Speedway”), and Ashley Land Surveying, Inc.’s (“Ashley”) Motions for Summary Judgment	13
Order Denying Motion to Alter or Amend Judgment	16
Summons and Complaint (Wright v. SCDOT et al.)	18
Amended Summons and Complaint (Wright v. SCDOT et al.)	32
Summons and Complaint (Wright v. Marathon Petroleum Co., LP et al.)	48
Amended Summons and Complaint (Wright v. Speedway, LLC et al.)	67
Pilot’s Answer to Amended Complaint	83
Speedway’s Answer to Amended Complaint	91
SCDOT’s Answer to Amended Complaint	102
Hearing Transcript, Pilot’s Motion for Summary Judgment	116
Pilot’s Motion for Summary Judgment	164
Exhibit A – Affidavit of Bill Mulligan	166
Pilot’s Memorandum in Support of Summary Judgment	168
Exhibit A – Daniel Sena deposition excerpts	182
Exhibit B – Google Earth image of intersection	194
Exhibit C – Affidavit of Bill Mulligan	196
Exhibit D – Leland Colvin deposition excerpts	199
Exhibit E – Excerpts from SCDOT Arms Manuel	234

Exhibit F – Cynthia Wright deposition excerpts	239
SCDOT’s Memorandum in Support of Motion for Summary Judgment	244
Exhibit A – Daniel Sena deposition excerpts	261
Exhibit B – Leland Colvin deposition excerpts	279
Exhibit C – Robert Clark deposition excerpts	303
Exhibit D – Excerpts from federal statutes	312

Volume 2

Speedway’s Motion for Summary Judgment	313
Speedway’s Memorandum in Support of Motion for Summary Judgment	317
Exhibit A – Leland Colvin deposition	336
Exhibit B – Order Granting Pilot’s Motion for Summary Judgment	411
Exhibit C – Affidavit of Bill Mulligan	423
Speedway’s Supplemental Memorandum in Support of Motion for Summary Judgment	426
Exhibit A – William Mulligan deposition excerpts	430
Exhibit B – Affidavit of Bill Mulligan	439
Exhibit C – Hearing Transcript, Pilot’s Motion for Summary Judgment	442
Exhibit D – Speedway’s Responses to Plaintiff’s Requests for Production	491
Ashley’s Memorandum in Support of Summary Judgment	515
Exhibit A – Daniel Sena deposition excerpts	531
Exhibit B – Google Earth image of intersection	543
Exhibit C – Affidavit of Bill Mulligan	545

Exhibit D – Leland Colvin deposition excerpts	548
Exhibit E - Excerpts from SCDOT Arms Manuel	583
Exhibit F – Cynthia Wright deposition excerpts	588
Exhibit G – Order Granting Pilot’s Motion for Summary Judgment	593

Volume 3

Plaintiff’s Memorandum in Opposition to Pilot’s Motion for Summary Judgment	604
Exhibit 1 – William Mulligan deposition excerpts	625
Exhibit 2 – Daniel Sena deposition excerpts	640
Exhibit 3 – Affidavit of Bill Mulligan	645
Exhibit 4 – Pilot Letter to SCDOT, dated May 7, 2002	648
Exhibit 5 – Application for Encroachment Permit	650
Exhibit 6 – SCDOT Encroachment Permit Final Approval Form	652
Exhibit 7 – Robert Clark deposition excerpts	654
Exhibit 8 – Leland Colvin deposition excerpts	658
Exhibit 9 – Letter from SCDOT to Marathon Ashland Petroleum LLC (with handwritten notes)	647
Exhibit 10 – South Carolina Traffic Collision Report	676
Exhibit 11 – Affidavit of John Mark Teague, P.E., CPM	681
Exhibit 12 – Affidavit of Richard Balgowan P.E., P.P. CPWM, CPM	689
Exhibit 13 – SCDOT ARMS Manual	696
Exhibit 14 – SCDOT Collision Diagram	779
Plaintiff’s Memorandum in Opposition to SCDOT’s Motion for Summary Judgment	813

Plaintiff's Memorandum in Opposition to Speedway's Motion for Summary Judgment	834
Plaintiff's Memorandum in Opposition to Ashley's Motion for Summary Judgment	855
Plaintiff's Notice of Motion and Motion to Compel to Pilot	869
Plaintiff's Notice of Motion and Motion to Compel to SCDOT	871
Plaintiff's Notice of Motion and Motion to Compel to Speedway	873
Speedway's Return to Plaintiff's Motion to Compel	875
Richard Wright deposition excerpt (P. 70)	902

Appendix

Exhibit 1 to Plaintiff's Memorandum in Opposition to SCDOT's Motion for Summary Judgment	903
Plaintiff's Motion to Alter or Amend Judgment	925

EXHIBIT 1

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.)

2014-CP-08-675

Video Deposition

of

William Mulligan

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.)

2016-CP-08-334

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

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 the new Pilot Travel
23 Center, you're talking about the redesigned Pilot
24 Travel Center?

25 A Correct.

1 A I would agree.

2 Q You know, it's very heavily traveled.

3 A I would agree.

4 Q When you have a heavily traveled road like that,
5 you agree that there are -- you had two different
6 driveways independent of the truck driveway that
7 fronted 17, right?

8 A Correct.

9 Q Now, if you had put those two together, it would've
10 required a signal device, based on the amount of
11 traffic, wouldn't it?

12 MR. MAYBANK: Object to the form.

13 A I do not know that. I do not know that.

14 Q Okay. And do you know if there was 220 feet
15 between these two driveways?

16 A I do not know the exact amount of feet between the
17 two driveways.

18 Q You would -- you would agree with me that, based on
19 the amount of -- of traffic on that highway, it
20 would've required them to be 220 feet apart, right?

21 A I do not know that.

22 MR. MAYBANK: Object to the form.

23 Q Okay. I'm going to hand you some of the stuff in
24 regard to this project, sir. This is really only
25 one -- it should only be one page, but I'm half

1 Q Okay.

2 A -- recently.

3 Q And what is your understanding of what this is?

4 A This looks like a Marathon drawing of a proposed
5 site.

6 Q Okay. And -- and Marathon would've been somebody
7 independent of Speedway, right?

8 A No. Marathon is Speedway.

9 Q Okay.

10 A Or Speedway is Marathon.

11 Q Okay.

12 MR. BESLEY: For clarification, I don't -- I
13 think he's saying that, when it was done, it
14 was Marathon. I think the company is now
15 Speedway, but someone else here could answer
16 that definitively.

17 MR. HOOD: Okay.

18 MR. CRITES: Randy, it's the same entity.

19 It's --

20 A Speedway is the brand name --

21 Q Gotcha.

22 A -- of the company.

23 Q Gotcha. Okay. Okay. So -- and -- and I apologize
24 for going --

25 A Uh-huh.

1 Q -- back; it's just very briefly. Okay.

2 In 2002, Pilot took over, right?

3 A In 2002, Pilot formed a joint venture with
4 Marathon/Speedway.

5 Q Okay. So is it fair to say that -- that Marathon
6 and Pilot own this facility together?

7 A The joint venture on this --

8 MR. CRITES: Object to the form.

9 A -- facility.

10 Q Together?

11 A Together.

12 Q Today?

13 A No.

14 MR. CRITES: Object to the form.

15 Q Only until 2002?

16 A You're confusing me.

17 Q Okay. I apologize. I -- I --

18 MR. CRITES: Same objection.

19 Q I'm confusing myself, and I apologize for that.

20 I'm just trying to make sure, in my mind, it gets
21 straight.

22 In 2000, Marathon/Speedway --

23 Marathon/Speedway, which was the trade name, owned
24 the property and had a station there. Y'all
25 entered into a joint -- Pilot Travel Centers

1 entered into a joint venture with them in --
2 sometime in 2001, probably around September 2001,
3 and then, in -- sometime in 2002, Pilot took over
4 the entire facility and bought out whatever
5 interest Marathon/Speedway would've had?

6 A No.

7 MR. CRITES: Object to the form.

8 Q Okay. I apologize. If you could elucidate me,
9 that would be great.

10 A What -- what question would you like me to answer?

11 Q Basically, if you could just kind of just lay it
12 out for me the way that it really is?

13 A The way that it -- okay. In 2001, Pilot and
14 Speedway formed a joint venture; this was one of
15 the facilities in that joint venture.

16 Q Okay.

17 A And that's -- and, in 2002, Pilot, or the joint
18 venture, rebuilt the facility.

19 Q Okay. And -- and, when the -- the -- the joint
20 venture rebuilt the facility, did, at some point,
21 Pilot become the sole owner of the facility?

22 MR. CRITES: Object to the form.

23 A In 2006.

24 Q 2006, they became the sole owner of the facility?

25 A Correct.

1 Q And -- and do you know why they would not be able
2 to enter or turn right from US 17-A?

3 A "Trucks will not be able to turn right." Well, it
4 looks like it's a one-way entrance. So, if it was
5 a one-way entrance, you couldn't get the trucks
6 back out.

7 Q Okay. And, I mean, it's -- they -- they take a
8 much greater radius to get into a driveway too,
9 don't they?

10 A Yes, sir.

11 Q And then, if you go to the last page, it -- it says
12 here -- starting on the left side, it says, "Stop
13 unmountable median." And then, it has, it looks
14 like, a colored thing. And it says, "Painted
15 median to stop bar per Leland Colvin, 8/16/2000.
16 And "All radii shown are inadequate for use." Do
17 you know what any of that means?

18 A No idea.

19 Q Okay. Were you aware that at one time, prior to
20 the joint venture, that there was either a raised
21 median or specifications for a raised median?

22 A No idea.

23 Q Okay. If there was a raised median, you would
24 agree with me that people -- most people would not
25 be able to make a left turn into the facility?

1 MR. MAYBANK: Object to the form.

2 A I disagree with that.

3 Q And -- and why is that?

4 A Anybody can make a left turn and go over a -- a
5 median.

6 Q Okay. Why do they have medians?

7 A To keep people from making a left turn.

8 Q Okay. I'm going to have marked as Plaintiffs'
9 Exhibit 3 . . .

10 MR. HOOD: There you go. Whoops. That's
11 mine. I'm sorry.

12 MR. BERLINSKY: I've got one.

13 MR. HOOD: If you've got -- okay. Okay.

14 Plaintiffs' Exhibit Number 3,
15 "Application for Encroachment
16 Permit."

17 Q Have you had an opportunity to look at --

18 A Yes, sir.

19 Q Okay. This says "Application for Encroachment
20 Permit." On the left side, it says, "Applicant,
21 Pilot Travel Center, LLC; care of Ashley
22 Engineering & Consultants, Inc." And then, it
23 says, "Type of encroachment: four asphalt
24 driveways for commercial truck access." You see
25 that, right?

1 2001, there would've still been the submission of
2 an encroachment permit in May of 2002 in regard to
3 the driveways into speed -- into the -- the Pilot
4 station off 17-A, right?

5 A Yes, sir.

6 Q Now, if -- would you agree that employees of Pilot
7 need to be aware of state regulations?

8 A Depending on --

9 Q Depending on -- and I -- I will say this -- and I
10 apologize.

11 A Does the janitor need to be there?

12 Q That's so vague and I apologize. I -- I'm talking
13 about when you're talking about the -- the width of
14 a -- of a driveway based on the traffic pattern --
15 what is safe, what's not safe and that kind of
16 thing.

17 A Well, no. They don't -- they don't need to.

18 Q Okay. So it's -- it's your testimony under oath
19 that they don't need to be aware of state
20 regulations?

21 A The state regulations are designed -- first of all,
22 we use professionals to design -- to review any
23 drawings or things that we come up with. So we use
24 a professional engineering firm such as Ashley. On
25 top of that, you have -- whichever state you're in

1 -- whether it's the South Carolina Department of
2 Transportation or the Tennessee Department of
3 Transportation, that you have to get a permit from
4 them. It is their access -- it is their
5 encroachment permits and they have tons of
6 professionals on staff, that their whole career and
7 whole life is designed around safely designing
8 roadways. So we're going to trust those guys in
9 their opinions because they do it every single day
10 of their life.

11 Q Okay. And what if they make a mistake? How are
12 you supposed to know if somebody made a mistake or
13 not?

14 A They are the professionals. I assume they have
15 enough reviews and they've done enough that they
16 don't make mistakes. These are pretty common.
17 It's not like it's -- we're building a -- the
18 spacecraft that went and orbited Jupiter on a one-
19 time event. How many left turns are in the State
20 of South -- State of South Carolina? How many
21 intersections are there? There's -- from my
22 understanding, there's standard designs that they
23 research and they spend their whole life -- some of
24 these guys have PhDs in safety engineering.

25 Q Okay. And, so, is -- just so I understand it, it's

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

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.

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

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."

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 --

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, 601 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

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,

1 Right-out Driveways."

2 A Uh-huh.

3 Q It says, "Their -- their" -- it says, "Right-in,
4 right-out driveways are necessary in some locations
5 in accordance with Section 3C. A right-in, right-
6 out driveway should incorporate a triangular (pork
7 chop) raised concrete island no smaller than 100
8 square feet with sides a minimum of 12 feet in
9 length after rounding the corners." Do you see
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
15 right-in, right-out driveway is implemented on an
16 undivided highway, the use of a restrictive median
17 in concurrence with the 'pork chop' island is
18 preferred; however, adjacent impacts must be
19 evaluated prior to implementing restrictive
20 medians." You see that, right?

21 A Uh-huh.

22 Q Says, "A 4 foot wide raised median concrete median
23 is recommended. However, if a concrete median
24 cannot be provided, consider the use of a
25 Department-approved surface-mounted curbing system

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
5 just a raised median to prevent left turns, right?
6 A Sure. The DOT can put whatever they want up in a
7 median.
8 Q Okay.
9 A Can put trees.
10 Q Sure. Okay. Now, a couple general things and
11 we're almost done.
12 Your name is William Mulligan. You're from
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, gosh. Then you got a Big Twelve. Well, now
24 the SEC.
25 A Now the SEC.

1 a local engineering company to get the compliance
2 for everything else you need?

3 A Yes, sir.

4 Q Or other companies for whatever it is you need?

5 A For what -- yes.

6 Q Some -- but for engineering purpose --

7 A Storm water engineering, traffic; all those, we'll
8 -- we'll hire local guys, and they will make sure
9 that that facility meets local, state, federal
10 regulations for that area.

11 Q Okay. And I believe it would -- it's correct that
12 you stated earlier that the individual who signed
13 the application for the encroachment permit, Gary
14 Bloom, is an -- or was an employee of Pilot?

15 A Yes.

16 Q Or --

17 A Yes. He was a Pilot employee.

18 Q At the time?

19 A At the time.

20 Q And he no longer is?

21 A He no longer is.

22 Q Okay. And -- or do you know what Ashley Surveying
23 -- what the scope of their work was when they were
24 contracted?

25 A I -- I do not know specifically.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Cynthia Wright and Richard Wright,)
)
Plaintiffs,)

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

vs.)

**PLAINTIFFS' MOTION TO ALTER OR
AMEND JUDGMENT**

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

2017 MAY -9 PM 4:49
CLERK OF COURT
COUNTY OF BERKELEY, SC
JTB

Pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure, Plaintiffs Cynthia and Richard Wright hereby move to alter or amend the Court's order granting Defendant Pilot Travel Centers, LLC's ("Pilot") Motion for Summary Judgment. Specifically, Plaintiffs' motion is based on the following grounds:

First, the Court's order fails to address Plaintiffs' argument that Pilot owed Plaintiffs a duty pursuant to Restatement (Second) of Torts § 321. Pla.' Mem. in Opp. to Mot. for Summ. J. at 9-10 (quoting 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)). As the Supreme Court recognized in Faile, South Carolina common law (as derived from Section 321) holds a party responsible for the foreseeable danger caused by harms the party created. Plaintiffs presented substantial evidence that Pilot contributed to the decision to alter an existing plan for a raised median by negotiating for the use of a less safe but more business friendly painted median. Letter from SCDOT Right-of-Way Manager dated Aug. 28, 2000 with

handwritten notes, PILOT 000045; L. Colvin Dep 113:1-4 (noting raised median was undesirable to property owner because it would “change . . . access to the premises”).

While the Court’s order cites South Carolina statutes to support the proposition that Defendant South Carolina Department of Transportation (“SCDOT”) is responsible for highway alterations, the evidence in this case suggests the median selection for this intersection was **not solely SCDOT’s decision** but rather the product of negotiations in which Pilot was an active participant. Moreover, none of the statutes cited in the Court’s order preclude SCDOT and Pilot from being joint tortfeasors responsible for Plaintiffs’ injuries. In other words, while the statutes cited in the order may state SCDOT’s duties, they do not immunize Pilot from liability for its misconduct which coincides with SCDOT’s grossly negligent performance of its duties.

Second, the Court’s order fails to address Plaintiffs’ argument that Pilot owed Plaintiffs a duty to safely locate its driveways (linking the business to the roadway) pursuant to SCDOT Access and Roadside Management Standards (“ARMS manual”). In Skinner v. South Carolina Department of Transportation, 383 S.C. 520, 523, 524, 681 S.E.2d 871, 873 (2009), the Supreme Court recognized the ARMS Manual as a potential source of duty but refused to apply it because the defendants in that case were not required to seek an encroachment permit and were not subject to ARMS Manual requirements. Here, however, Pilot 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.

ARMS contains specific requirements and limitations on where a driveway may be placed and, in the case of multiple driveways, how far each must be from each other. In general, ARMS requires all roadway access points including driveways to be located “as far from roadway intersections . . . as possible.” ARMS Manual at 10 § 3A-4. Moreover, every driveway “shall be

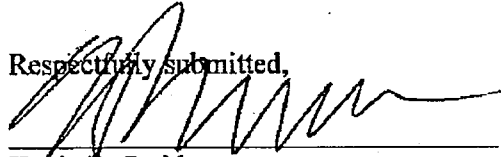
located at a point which provides optimum sight distance along the roadway. Id. at 9 § 3A-3. ARMS includes a table outlining the acceptable minimum distances between driveways and states in clear terms that “[n]o access point shall be located within the radius of intersecting roadways.” Id. at 9 § Table 3-2, 10 § 3A-4. SCDOT representatives testified that Pilot’s driveways violated ARMS standards in multiple ways. R. Clark Dep. 11:23 – 12:1-4 (agreeing that at least one of Pilot’s driveways were in the functional area of the adjacent intersection); R. Clark Dep. 30:23-25 (testifying that Pilot’s driveways violated ARMS by being too close together).

To the extent the Court found the ARMS Manual violations (and the driveways in general) were irrelevant to Plaintiffs’ losses, the Court’s order is in error because it makes a determination on the causation portion of Plaintiffs’ claims that is rebutted by evidence in the record. While the existence of a legal duty is a purely legal question, proximate causation is a question of fact and generally an issue for the jury to resolve. Balkou v. Sigma Nu Gen. Fraternity, 291 S.C. 140, 147, 352 S.E.2d 488, 493 (Ct. App. 1986) (“Only in rare or exceptional cases may the question of proximate cause be decided as a matter of law”). Several different types of evidence may be used to demonstrate that a defendant could reasonably foresee injuries ultimately perpetrated by an independent third party. Expert testimony may be used to establish foreseeability. Cody P. v. Bank of Am., N.A., 395 S.C. 611, 621-22, 720 S.E.2d 473, 478 (Ct. App. 2011). In this case, Plaintiffs’ experts provided uncontroverted testimony that the driveway locations were a proximate cause of the collision that resulted in Plaintiffs’ injuries. J. Teague Aff. ¶ 15 (finding Pilot “created an artificial condition, which generated hazardous conditions and contributed to the injuries of the plaintiffs”); ¶ 19. Plaintiffs also presented evidence of over 200 motor vehicle collisions in the immediate vicinity of Pilot’s driveways (accident reports attached as **EXHIBIT 1**). Even Pilot’s Vice President for Development acknowledged poor driveway design and placement affects

safety. W. Mulligan Dep. 64:8-11. Based on this evidence, there is a material question of fact on proximate causation which must be resolved by a jury. See Rule 56(c), SCRCF.

This motion is further based on any memorandum of law to be filed and other evidence as may be submitted to the Court prior to a hearing on this motion.

Respectfully submitted,



Kevin B. Smith
HOFFMAN LAW FIRM
7087 Rivers Ave.
N. Charleston, SC 29406
(843) 769-7077
ksmith@hoffmanlaw.net

S. Randall Hood
Jordan C. Calloway
MCGOWAN, HOOD & FELDER, LLC
1539 Health Care Drive
Rock Hill, South Carolina 29732
803-327-7800 (phone)
rhood@mcgowanhood.com
jcalloway@mcgowanhood.com

Shawn B. Deery
Whitney B. Harrison
MCGOWAN, HOOD & FELDER, LLC
1517 Hampton Street
Columbia, South Carolina 29201
(803) 779-0100 (Columbia)
sdeery@mcgowanhood.com

Attorneys for the Plaintiffs

Rock Hill, SC
May 5, 2017

CERTIFICATE OF SERVICE

I, Jessica L. Cooksey, an employee of the law firm McGowan, Hood & Felder, LLC do hereby certify that I served copies of the above *Plaintiffs' Motion to Alter or Amend Judgment* on the Defendants in the above-captioned matter by depositing the same in the United States Postal Service, with proper postage affixed thereto, on this 5th day of May, 2017, addressed to the attorney(s) listed below:

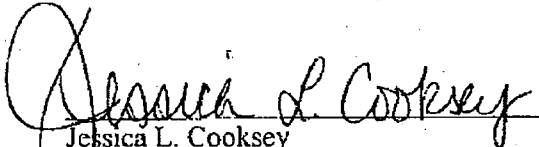
J. Bennett Crites, III, Esquire
Kathleen Fowler Monoc, Esquire
SMITH, MOORE, LEATHERWOOD, LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401

Roy P. Maybank, Esquire
Maybank Law Firm LLC
PO Box 12579
Charleston, South Carolina 29422

Bruce A. Berlinsky, Esquire
Bruce A. Berlinsky, PA
1 Carriage Lane, Building F
Charleston, South Carolina 29407

William G. Besley, Esquire
PO Box 12009
Columbia, South Carolina 29211

JB
2017 MAY -9 PM 4:49
CLERK OF COURT
SOUTH CAROLINA, SC


Jessica L. Cooksey
Paralegal

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

RECEIVED
JUN 22 2018
SC Court of Appeals

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 & Consulting, Inc., and
Munlake Contractors, Inc.,

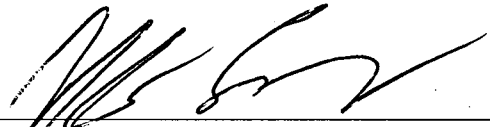
Of whom

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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies pursuant to Rule 210(g), SCACR and Rule 212, SCACR,
that the *Appendix to Record on Appeal* only contains material previously proposed to be included
in the Record on Appeal by the parties.

[Signature Block on Next Page]



R. Davis Howser
Jeffrey I. Silverberg
Howser, Newman & Besley, LLC
Post Office Box 12009
Columbia, South Carolina 29211
Phone: (803) 758-6000
rdhowser@hnblaw.com
jsilverberg@hnblaw.com
Attorneys for Pilot Travel Centers, LLC

June 22, 2018