THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LAURENS COUNTY
IN THE CIRCUIT COURT
THE HONORABLE EUGENE C. GRIFFITH, JR.,
CIRCUIT COURT JUDGE

Civil Action No.: 2008-CP-30-1120

William D. Farrow, Jr. and
Karen W. Farrow,

RESPONDENTS,

versus

Jerry W. Darby, **APPELLANT.**

RECORD ON APPEAL
VOLUME II OF II (pp. 407-833)

Charles E. Carpenter, Jr.
Carmen V. Ganjehsani
CARPENTER APPEALS & TRIAL SUPPORT, LLC
1201 Main Street, Suite 980
Columbia, SC 29201
(803) 758-2886

George V. Hanna, IV
HOWSER, NEWMAN & BESLEY, L.L.C.
1508 Washington Street
Post Office Box 12009
Columbia, SC 29211
(803) 758-6000
ATTORNEYS FOR APPELLANT

Cameron G. Boggs
THE BOGGS LAW FIRM
Post Office Box 65
Greenville, SC 29602
(864) 233-8066

J. Faulker Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
ATTORNEYS FOR RESPONDENTS

RECEIVED
JUL 26 2012
SC Court of Appeals

FARROW V. DARBY

INDEX TO RECORD ON APPEAL

VOLUME I OF II (pp. 1-407)

I.	**ORDERS/JUDGMENTS**	**PAGE**
	Special Verdict Form, dated February 3, 2011,	1
	Order Denying Post-Trial Motions, filed March 24, 2011	3
II.	**PLEADINGS**	
	Summons and Complaint, filed December 19, 2008	5
	Answer, filed January 23, 2009	11
	Pre-Trial Agreement	18
	Defendant's Motion in Limine, filed January 27, 2011	27
	Plaintiffs' Reply and Memorandum of Law in Opposition to Motion in Limine, dated January 28, 2011	29
	Defendant's Post-Trial Motions, dated February 11, 2011	38
	Plaintiffs' Return in Opposition to Post-Trial Motions, dated February 16, 2011	40
III.	**TRANSCRIPTS**	
	Entire Transcript of Hearing Held January 28, 2011	47
	Transcript of Trial held January 31 – February 3, 2011 (designated pages only)	114
	TESTIMONY OF REBECCA E. WILLIS	122
	Direct Examination by Mr. Boggs	122
	Cross Examination by Ms. Raines	129
	Re-Direct Examination by Mr. Boggs	134

TESTIMONY OF JAMES L. SHIELDS 139

Direct Examination by Mr. Boggs 139

Cross Examination by Ms. Raines 147

Re-Direct Examination by Mr. Boggs 152

TESTIMONY OF JERRY WAYNE DARBY 158

Direct Examination by Mr. Boggs 158

TESTIMONY OF MALINDA GRIFFIN 342

Direct Examination by Mr. Boggs 342

Cross Examination by Ms. Raines 348

Re-Direct Examination by Mr. Boggs 349

TESTIMONY OF RICHARD MARSHALL 350

Direct Examination by Mr. Boggs 350

Proffer by Mr. Boggs 365

Direct Examination by Mr. Boggs 383

Cross Examination by Mr. Hanna 384

Re-Direct Examination by Mr. Boggs 387

TESTIMONY OF TERRY D. BURDETTE 392

Direct Examination by Mr. Boggs 392

Cross Examination by Ms. Raines 401

Re-Direct Examination by Mr. Boggs 404

VOLUME II OF II (pp. 408-833)

TESTIMONY OF NILES W. WOOD 429

Direct Examination by Mr. Boggs 429

Cross Examination by Ms. Raines 442
Re-Direct Examination by Mr. Boggs 449
TESTIMONY OF JAMES THOMAS GRAHAM 454
Direct Examination by Mr. Boggs 454
TESTIMONY OF HARRY H. HAYS, JR. 474
Direct Examination by Mr. Boggs 474
Cross Examination by Ms. Raines 476
TESTIMONY OF JEFFREY M. HOLLIFIELD 478
Direct Examination by Mr. Boggs 478
Cross Examination by Mr. Hanna 487
Re-Direct Examination by Mr. Boggs 490
TESTIMONY OF JIMMY W. MILLER 493
Direct Examination by Mr. Boggs 493
Cross Examination by Mr. Hanna 520
Re-Direct Examination by Mr. Boggs 522
Reading of Deposition of John W. Harrison into record 534
TESTIMONY OF MICHAEL A. WORRELL, P.H.D. 555
Direct Examination by Mr. Boggs 555
Cross Examination by Mr. Hanna 610
Re-Direct Examination by Mr. Boggs 621
Re-Cross Examination by Mr. Hanna 625
Further Re-Direct Examination by Mr. Boggs 626

TESTIMONY OF WILLIAM DAVID FARROW, JR. 627

Direct Examination by Mr. Boggs 627

Cross Examination by Mr. Hanna 658

Re-Direct Examination by Mr. Boggs 664

Motions for Direct Verdict 675

TESTIMONY OF JERRY WAYNE DARBY 681

Direct Examination by Mr. Hanna 681

Closing argument by Mr. Boggs 687

Jury charges 692

Re-charge by the Court 714

Verdict 716

IV. EXHIBITS

A. PLAINTIFFS' EXHIBITS:

Exhibit No. 1 – Photograph of Road 721

Exhibit No. 2 – 911 Report of Rebecca Willis 722

Exhibit No. 3 – Photograph of Pasture 723

Exhibit No. 5 – Photograph of Skid Marks in Road 724

Exhibit No. 6 – Calendar 725

Exhibit No. 7 – Cattle Records 726

Exhibit No. 8 – Copy of check to Martin and Martin 750

Exhibit No. 9 – Photograph of cows 751

Exhibit No.10 – Photograph of cows 752

Exhibit No.11 – Photograph of cows 753

Exhibit No.12 – Photograph of cows.....754
Exhibit No.13 – Photograph of cows.....755
Exhibit No.14 – Photograph of cows.....756
Exhibit No.15 – Photograph of gouge in road 757
Exhibit No.16 – Photograph of gouge in road.....758
Exhibit No.17 – Photograph of gouge in road.....759
Exhibit No.18 – Photograph of gouge in road.....760
Exhibit No.19 – Photograph of gouge in road.....761
Exhibit No.20 – Photograph of gouge in road.....762
Exhibit No. 21 – Photograph of pasture 763
Exhibit No. 22 – Photograph of road.....764
Exhibit No. 23 – Handwritten cow figures.....765
Exhibit No. 24 – Photograph of road.....769
Exhibit No. 26 – Photograph of backyard 770
Exhibit No. 27 – Photograph of cows in yard 771
Exhibit No. 28 – Photograph of cows in yard 772
Exhibit No. 29 – Photograph of cows in yard 773
Exhibit No. 30 – Photograph of cows in yard 774
Exhibit No. 31 – Photograph of cows in yard 775
Exhibit No. 32 – Photograph of cows in yard 776
Exhibit No. 33 – Photograph of cows in yard 777
Exhibit No. 34 – Photograph of motorcycle 781
Exhibit No. 35 – Photograph of motorcycle 782

Exhibit No. 36 – Photograph of motorcycle 783

Exhibit No. 37 – Photograph of motorcycle 784

Exhibit No. 38 – Report of Hollifield 785

Exhibit No. 39 – Drug Report 797

Exhibit No. 40 – Aerial marked photograph 799

Exhibit No. 41 – Aerial small and large photograph 799

Exhibit No. 42 – Oversized aerial large board photograph 801

B. COURT'S EXHIBITS:

Exhibit No. 1 – Photograph of road 802

Exhibit No. 2 – Photograph of fence 803

Exhibit No. 3 – Photograph of fence 804

Exhibit No. 4 – Photograph of fence 805

Exhibit No. 5 – Photograph of fence 806

Exhibit No. 6 – Photograph of GPS 807

Exhibit No. 7 – Deposition of John William Harrison 808

Direct Examination by Mr. Patterson 811

Cross Examination by Mr. Alston 823

Re-Direct Examination by Mr. Patterson 825

Re-Cross Examination by Mr. Alston 827

Exhibit No. 8 – Photograph of fence 829

Exhibit No. 9 – Resume of Michael A. Worrell, PH.D. 830

Exhibit No.16 – Note from jury 832

V. CERTIFICATE OF COUNSEL 833

State of South Carolina	)	In the Court of Common Pleas
County of Laurens	)	Eighth Judicial Circuit
William D. Farrow, Jr. and	)	Transcript of Record
Karen W. Farrow,	)	2008-CP-30-01120
Plaintiffs,	)	** Volume II **
V.	)	
Jerry W. Darby,	)	
Defendant.	)	

February 1 & 2, 2011

Laurens, South Carolina

B E F O R E:

The Honorable Eugene C. Griffith, Judge; and a jury.

A P P E A R A N C E S:

Cameron G. Boggs, Esquire

Wayne Patterson, Esquire

Attorneys for the Plaintiffs

George V. Hanna, IV, Esquire

Caroline H. Raines, Esquire

Attorneys for the Defendant

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

I N D E X

Monday, January 31, 2011

** VOLUME I **

Jury Voir Dire and Selection.....9

Preliminary Remarks by the Court.....41

Opening Statement by Mr. Boggs.....51

Opening Statement by Mr. Hanna.....60

WITNESSES

Rebecca E. Willis:

Direct Examination by Mr. Boggs.....69

Cross-Examination by Ms. Raines.....76

Redirect Examination by Mr. Boggs.....81

James L. Shields:

Direct Examination by Mr. Boggs.....86

Cross-Examination by Ms. Raines.....94

Redirect Examination by Mr. Boggs.....99

Jerry Wayne Darby:

Direct Examination by Mr. Boggs.....105

Tuesday, February 1, 2011

Jerry Wayne Darby:

Direct Examination by Mr. Boggs.....213

Malinda Griffin:

Direct Examination by Mr. Boggs.....289

Cross-Examination by Ms. Raines.....295

Redirect Examination by Mr. Boggs.....296

I N D E X

Richard Marshall:

Direct Examination by Mr. Boggs.....298

Cross-Examination by Mr. Hanna.....331

Redirect Examination by Mr. Boggs.....334

Terry D. Burdette:

Direct Examination by Mr. Boggs.....339

Cross-Examination by Ms. Raines.....348

Redirect Examination by Mr. Boggs.....351

** VOLUME II **

Niles W. Wood:

Direct Examination by Mr. Boggs.....376

Cross-Examination by Ms. Raines.....389

Redirect Examination by Mr. Boggs.....396

Thomas Graham:

Direct Examination by Mr. Boggs.....401

Motions.....409

Harry H. Hays:

Direct Examination by Mr. Boggs.....421

Cross-Examination by Ms. Raines.....423

Jeffrey M. Hollifield:

Direct Examination by Mr. Boggs.....425

Cross-Examination by Mr. Hanna.....434

Redirect Examination by Mr. Boggs.....437

I N D E X

Jimmy W. Miller:

Direct Examination by Mr. Boggs.....440

Cross-Examination by Mr. Hanna.....467

Redirect Examination by Mr. Boggs.....469

Wednesday, February 2, 2011

Michael A. Worrell, Ph.D.

Direct Examination by Mr. Boggs.....502

Cross-Examination by Mr. Hanna.....557

Redirect Examination by Mr. Boggs.....568

Recross-Examination by Mr. Hanna.....572

William David Farrow, Jr.:

Direct Examination by Mr. Boggs.....574

Cross-Examination by Mr. Hanna.....605

Redirect Examination by Mr. Boggs.....611

Motions.....622

Jerry Wayne Darby:

Direct Examination by Mr. Hanna.....628

Cross-Examination by Mr. Boggs.....639

Daniel N. Olson:

Direct Examination by Mr. Hanna.....672

Cross-Examination by Mr. Boggs.....697

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
For the Court:			
1	Photograph of Road	321	
2	Photograph of Fence	321	
3	Photograph of Fence	321	
4	Photograph of Fence	321	
5	Photograph of Fence	321	
6	Photograph of GPS	321	
7	Deposition of John Harrison	482	
8	Photograph of Fence	485	
9	Resume of Michael A. Worrell, Ph.D.	506	
10	Metal Leg Plate and Screws	553	
11	Photograph of Plaintiff	589	
12	Photograph of Plaintiff	589	
13	Photograph of Plaintiff	589	
14	Photograph of X-ray	589	
15	Defendant's Charge Requests	771	
16	Note from Jury	835	
For the Plaintiff:			
1	Photograph of Road		94
2	911 Report of Willis		145
3	Photograph of Pasture	99	104
4	H and H Grading Document	108	XXX
5	Photograph of Skid Marks in Road		138

I N D E X

Thursday, February 3, 2011

** VOLUME III **

Charge Conference.....740

Closing Argument by Mr. Boggs.....779

Closing Argument by Mr. Hanna.....799

Closing Argument by Mr. Boggs.....809

Jury Charge by the Court.....813

Re-Charge by the Court.....835

Verdict.....837

Certificate of Reporter.....842

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
For the Plaintiff:			
6	Calender		145
7	Cattle Records		157
8	Copy of Check to Martin and Martin		214
9	Photograph of Cows	173	214
10	Photograph of Cows	173	214
11	Photograph of Cows	173	214
12	Photograph of Cows	173	214
13	Photograph of Cows	173	214
14	Photograph of Cows	173	214
15	Photograph of Gouge in Road	178	214
16	Photograph of Gouge in Road	178	214
17	Photograph of Gouge in Road	178	214
18	Photograph of Gouge in Road	178	214
19	Photograph of Gouge in Road	178	214
20	Photograph of Gouge in Road	178	214
21	Photograph of Pasture	178	214
22	Photograph of Road	196	214
23	Handwritten Cow Figures		235
24	Photograph of Road		241
25	Photograph of Solar Box		XXX
26	Photograph of Backyard		310
27	Photograph of Cows in Yard		310

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
For the Plaintiff:			
28	Photograph of Cows in Yard		310
29	Photograph of Cows in Yard		310
30	Photograph of Cows in Yard		310
31	Photograph of Cows in Yard		310
32	Photograph of Cows in Yard		310
33	Photograph of Cows in Yard		310
34	Photograph of Motorcycle	342	345
35	Photograph of Motorcycle	342	345
36	Photograph of Motorcycle	342	345
37	Photograph of Motorcycle	342	345
38	Report of Hollifield		438
39	Drug Report	548	580
40	Aerial Marked Photograph	548	774
41	Aerial Small and Large Photograph	548	774
42	Aerial Large Board/Photograph	548	774
For the Defendant:			
1	Large Photograph Board	670	697
2	Large Photograph Board	670	697
3	Large Photograph Board	670	697
4	Large Photograph Board	670	697
5	Large Photograph Board	670	697
6	Large Photograph Board	670	697

Tuesday, February 1, 2011

(WHEREUPON, the trial of this case resumed at approximately 1:30 p.m., after the lunch break was taken.)

THE COURT: All right. So we got an issue about which anticipated testimony here right now?

MR. HANNA: Probably my motion. I think that he's about to put up -- and I believe we talked about this. This may have been something that I failed to mention in my vast number of motions on Friday, but they have an expert, the forensic hair analysis guy, okay.

MR. BOGGS: Just to make sure. He's in the courtroom. I don't think he needs to be excused. I just wanted you to ---

MR. HANNA: They helped to have him, you know -- anyway, Mr. Hollifield is back there. He did two different things. One of them that I'm not -- you know, he went and found the hairs and found them to be bovine, etcetera, and then that's not what I'm talking about.

There is a second assignment he was given later, and apparently all the hairs that he managed to pull off the bike he determined were brown. And then there's this old farmer, Harry Hays, whose name you may have heard mentioned once or twice. He's the one that Mr. Darby said he'd seen cows out down near the bridge that weren't

his. Okay.

Mr. Darby -- excuse me. Mr. Hays owns apparently owns Black Angus cow, which is a specific kind of cow. And they had Mr. Blackburn here, with the mustache, went out to Mr. Hays' property and collected some hairs off of one of their cows and then they asked Hollifield to compare those hairs to the hairs found on the bike. Okay. And he went into some stuff about their hair has got 20 characteristics and 18 of them were similar and two of them weren't.

And then, you know, basically the part that then, I believe they want him, you know, Can you say this is not -- you know, that Mr. Hays' cows weren't the same one in the accident. And when I asked him that, I asked him, Can you say that to a reasonable degree of certainty in your field of expertise, and he said he could not.

Therefore, preemptive objection is if the man can't state it to the appropriate degree of certainly then he shouldn't be allowed to give the opinion at all, and basically all the evidence of comparing those two hairs because it doesn't get anywhere except for that he can't say they are the same.

MR. BOGGS: I don't mean to interrupt, but to cut to the chase, what I anticipate his testimony to be concerning those second set of hairs is this, is that we

will have testimony that Mr. Blackburn took the hairs off Harry Hays' cow, that he took about a hundred to Mr. Hollifield. Mr. Hollifield tested about 20 of them, okay, 20 percent, and that all of those were distinguishable in -- out of vagueness, color and size to the hairs that were tested off the bike, okay.

I am not -- and then as an expert in forensic science when I asked him if they appear to be different to him, as an expert in forensic science. I'm not going to ask him to make -- I'm not going to say, Do you have an opinion as to whether the cows were the same or not? I'm not going to ask him that.

Am I ---

MR. PATTERSON: We're not going to ask him that.

MR. BOGGS: I was just making sure I knew what I wasn't going to ask. My brains over here have to make sure. And so I see what he's saying but I don't think I'm asking that.

I think that in the deposition Geov was doing his job, and I understand what he's saying, but I think that I'm going to have Harry Hays come testify that he has registered Black Angus and that all his cows are black. Okay. I'm going to have -- you know, I think Geov can cross-examine and say, Well, you didn't check -- and I think you did this very well in the deposition, You

didn't check the hip or you only got hairs from the neck.

And so it's not a determination that -- he is not qualified to say that the Black Angus hairs, because he hasn't tested -- I mean, he hadn't studied the totality of Black Angus hairs. Okay. I'm trying to dumb it down for myself, but we're not making the leap that he thinks we're trying to make.

THE COURT: All right. So he tested hairs off the motorcycle and then somebody else retrieved hairs from Harry...

MR. HANNA: From one of Harry Hays' cows.

THE COURT: And they were similar in 18 characteristics but different in two. So what you don't want him to say is therefore I can exclude they are not Harry's cows, they must be someone else's?

MR. HANNA: Yes. That's what -- I mean, I don't see -- other -- and if that is not where they are going then there is no probative or relevance to this at all. I mean, who cares about the hairs unless -- you know, the only possible argument anybody wants to make is because they are different in these ways they can't have been Harry Hays' cows.

THE COURT: I thought the purpose was it was not an animal other than a cow. They are bovine hairs; therefore, they had to be a cow.

MR. BOGGS: That's the way it -- that's the first report.

MR. HANNA: The first report says that and, you know, we had our own expert examine them and came to the exact same conclusion he did. They were bovine hairs. So I'm not challenging the fact that the hairs he removed were bovine.

I'm challenging this evidence of the -- you know, basically you got -- from our perspective there's -- Harry Hays lives right around the corner, okay. He will testify that his cows get out a lot. He's a very elderly guy. In fact, he'll go, Sometimes I leave my gate open and they just get out. Okay. And he's got black cows. There's some black hair found on the bike.

You know, again, I'm not saying it was his cow but it creates doubt as to whether or not it was my client's cow. And then for them to bring in somebody to say -- you know, with this forensic stuff to suggest that they couldn't be his cows when, you know, I asked him the ultimate question and he can't say it, therefore ---

THE COURT: You don't think he ought to be able to say, based upon my opinion, professional opinions these hairs didn't come from Harry's cows? You don't want him saying that.

MR. HANNA: I don't want him -- and I think that

because he can't say that Harry -- that to a reasonable degree of certainty that the hairs collected from Harry Hays' cow are for sure different than the cow that was collected from the bike, to put in any evidence about his examination of Harry Hays' cows is highly prejudicial, confusing and should not come in.

THE COURT: Well, are you going to bring in Harry's cows?

MR. HANNA: Excuse me?

THE COURT: Are you bringing Harry's cows in?

MR. BOGGS: Am I?

THE COURT: Either of you.

MR. HANNA: My client testified that Harry Hays has had cows out in the same general area. That's already happened. I'm not calling Harry Hays as a witness, but if they bring Harry Hays in here I'm going to ask him, Have you ever had your cows out? He's going to go, As a matter of fact, they have been out.

THE COURT: And that's fair.

All right. So tell me what you want to use the expert for again on the second phase, the second test.

MR. BOGGS: The hairs compared from the wreck versus the hairs from Mr. Hays are different in coarseness and color. That's simple. And he's an expert in forensic science and he can testify to that.

THE COURT: All right. Mr. Hanna, tell he why he can't say that, if he's going to say something that simple, In my opinion, the hairs I examined from the motorcycle versus the hairs I retrieved from Harry's cows are distinguishable with coarseness and thickness?

MR. BOGGS: Coarseness and color.

THE COURT: Coarseness and color.

MR. HANNA: Make sure we're saying the right thing. He's the one right there. The bottom line is, is that the inference upon which the jury will then attempt to draw, and that I think that they may argue or whatever, that's out there now in evidence is, is that they can't be the same hair when in fact he can't say that.

You know, he says it could of -- you know, if they collected hair off of some other part of the hair I can't say that it wasn't different. He admitted to me -- you know, I went into all kinds of detail about does it matter what part of the ---

THE COURT: You're saying -- they're saying if you got the hair of the tail versus the back, versus the chest it may be different in coarseness or some distinguishable characteristic?

MR. HANNA: And he can't rule that out; therefore, he can't say that it wasn't the same cow.

MR. BOGGS: Judge, I'm going to have Harry Hays

here to testify, and he's elderly, I mean, for lack -- he's getting a ride up here. He's going to be here like 2:45. So I have some witnesses I can call if you want to hear from him first.

But I also tell you that I have a cow expert or the Ph.D. guy, even though he's from the University of Florida, as you noted last week, that will testify -- I mean, he can testify about the color of cow hair. And so I'm not asking this forensic expert to testify to anything other than what he's an expert and able to do.

And, I mean, is the question I'm asking you about that, is that based on your expertise and forensics?

MALE IN AUDIENCE: It is.

MR. BOGGS: And, Judge, I'm sorry to do that while he's back there but it's ---

MR. HANNA: Again, I just would argue that it's ---

MR. BOGGS: I think we're splitting hairs, no pun intended.

MR. HANNA: We are.

THE COURT: I don't have a beef with this issue but I want to make certain we get it clear. Isn't that what we said last week a bunch of times?

MR. BOGGS: I don't know. I don't know what we said.

MR. HANNA: I didn't hear what you just said. I'm

deaf.

THE COURT: I don't have a beef with this issue.

MR. BOGGS: Oh, he kept saying that.

MR. HANNA: She said that there was no pun intended but she noted that I mentioned that many times.

THE COURT: We've been herding the jury in and out of the courtroom so many times.

MR. BOGGS: Herding them. I just hope the bailiff doesn't, you know, bump into them with his chair to herd them in through the door.

THE COURT: He generally doesn't bump into them to get them to go in that chute, and I don't want to go through the chute.

MR. HANNA: I don't either. If you are a man and you go through the chute nothing good comes out of that.

THE COURT: No, sir.

MR. HANNA: But anyway ---

THE COURT: I think I want to listen to it first. I understand your argument and I think if you stop where in color and coarseness and, you know, stop there I think that's probably going to be okay. But I want to hear. I think I want to hear from Mr. Hays first.

MR. HANNA: Understood. And, you know, obviously as soon as that -- this is, again, the beef -- the beef, but I got what it is, is that I feel compelled in order

to adequately represent my client and then go on and say, You can't -- I'm going to ask those questions. You know, You can't say it's not the same kind, can you? He's going to go, I can't. And as soon as he says that, you know, if that's the ultimate deal with whether he elicits that question or me, if that's his answer I don't think any of it should come in.

THE COURT: Okay. I understand. All right. I'm going to step out for a brief break, and we're off the record.

MR. BOGGS: Judge, can we go back on the record? I have some -- I have a witness named Teula Chapman, who did an investigation, and seven of her -- eight -- or all but one of her pictures came in. She was the one that was there with Mr. Darby on August 6th.

She's prepared to come testify as to what they saw. There was a problem in the fence, all right, but it was after the accident. And so I don't think -- subject to your ruling I don't think it would come in.

I would like to proffer the picture and her -- I mean, I don't want to call her down here just to have her testify for five minutes on proffer. I think Geov and I agree that she showed up, took pictures of the fence that day and that's the picture, that the picture is how it was on August 6th, but I don't think it should come

before the jury so ---

THE COURT: Well, can you all not agree that if she were proffering the testimony the testimony would show condition after the fact, and you all can agree to that?

MR. HANNA: Yes.

MR. BOGGS: And then I'll put that in as a Court exhibit, that one photo.

MR. HANNA: She's been deposed. And, in fact, you know, to the extent it matters you could agree we could make it an exhibit, what her deposition testimony is. I think it would be identical.

MR. BOGGS: Yeah.

THE COURT: How about that? You could submit the deposition testimony as a Court's exhibit as the proffer.

MR. BOGGS: Okay. And I'm not prepared to -- I haven't highlighted what I want yet but I'll have that done by ---

THE COURT: That's fine ---

MR. BOGGS: Before the end of the case.

THE COURT: Okay.

MR. BOGGS: And one other thing. Just subject to your prior ruling, Mr. Blackburn, my investigator, or who has helped me as an investigator in this case, did a test on the -- a very scientific test on the fence and that for about a month he would go out and grab the wire and

test it and see if it was on. That was April of last year.

Is that right, April?

MR. BLACKBURN: April or May.

MR. BOGGS: April or May. And I know what you previously ruled but I -- respectfully, I would like to cut put on the record that he -- you know, he -- that challenges really the credibility and the, like I said, the habitual testing that Mr. Darby speaks of. Now, I know it's after the accident but I would -- and I'm not fighting for it, just protecting the record.

Now, Geov and I could probably get together and come up with something similar to Chapman because he was deposed and so ---

THE COURT: Well, I mean, don't you have an opportunity to rebuttal if Mr. Darby testifies further ---

MR. BOGGS: Sure.

THE COURT: --- regarding how he maintains his fence and that way you could get it in?

MR. BOGGS: Yes, sir. But I would like to proffer it prior to closing in case he doesn't. I mean, you know, in case they don't ---

THE COURT: If he doesn't I'll allow that.

MR. BOGGS: Okay.

MR. HANNA: Agreed. I think you should be allowed to proffer whatever you need to.

MR. BOGGS: So move along. Are you challenging -- I'm sorry, Judge.

Ed took the Hays hairs. Are you challenging the chain of custody because Ed -- the only thing Ed can testify to is that he took the hairs.

MR. HANNA: To the extent that -- again, if you ---

MR. BOGGS: I'll call him. I'll call him briefly.

MR. HANNA: The only thing is to establish that he only got them from the one cow and from the one part of the body ---

MR. BOGGS: I'll call him. That's fine.

THE COURT: Be right back.

MR. BOGGS: Sorry, Judge.

(WHEREUPON, a brief recess was taken.)

THE COURT: You all ready?

MR. HANNA: Yes, sir.

THE COURT: All right. Bring them to me.

(WHEREUPON, the jury enters the courtroom at approximately 2:08 p.m.)

THE BAILIFF: All present, Your Honor.

THE COURT: I hope you all had a good lunch. We'll continue.

MR. BOGGS: Thank you, Your Honor. May it please

the Court. We call Niles Wood to the stand.

THE COURT: Okay.

NILES W. WOOD, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGGS:

Q. Please state your full name for the record.

A. Niles Wesley Wood.

Q. And with whom are you employed? Who do you work for?

A. Century Plastics.

Q. Okay. And are you a member or were you a member of the Green Pond Volunteer Fire Department?

A. Yes.

Q. Okay. And do you recall the accident of July 24, 2008?

A. Yes.

Q. Okay. Did you respond to the accident?

A. Yes.

Q. Did it involve -- do you remember this gentleman seated right here with the beard?

A. Yes.

Q. Okay. Do you recall his name?

A. Mr. Fowler.

Q. Would it be Mr. Farrow?

A. Farrow, yes.
Q. Okay. You didn't know his name, did you? Is that him that was sitting there?
A. Yes, sir.
Q. Okay. You sure about that?
A. Yes, sir.
Q. Okay. Is this the first time you testified?
A. Yes, sir.
Q. Okay. Well, just remember to breathe, okay?
A. Okay.
Q. Now, where were you when you got the call to come out?
A. I was at the fire department.
Q. Okay. And where is that located?
A. That's 87 Winding Hollow Road.
Q. Winding Holler?
A. Hollow.
Q. Hollow Road. Okay. I'm sorry. In which direction did you travel to get to the scene of the accident?
A. Green Pond Road, took a left onto Cooley Road, and then right onto Dials Church Road.
Q. Okay. And how off of -- how far did you travel on Dials Church? I mean, did you go very far?
A. Just a couple hundred feet.
Q. Okay. Was anybody else there when you got there?

A. Yes.
Q. Who was there?
A. First responder truck, there was a medic there.
Q. Okay. I'd like to show you what's been marked as Plaintiff's Exhibit Number 2. Have you had the opportunity -- how long have you been with the fire department?
A. Since 2006.
Q. Okay. Have you had the opportunity to see a form like Plaintiff's Exhibit 2 before?
A. Yes.
Q. Okay. Does it contain information that you're familiar with in your course as a volunteer fireman?
A. Yes.
Q. Okay. Now, do you know approximately what time you arrived at the scene of the accident?
A. It was about 8:58.
Q. Okay. And was it dark yet?
A. It was close to dark. It was dusk, dark.
Q. And do you remember where the motorcycle was in relation to the accident scene?
A. It was on the right-hand shoulder of the road, probably 50 to 60 yards away from ---
Q. Okay. Well, you just said earlier 100 feet, I thought you said. Now you're saying 50 to 60 yards. Do

you remember exactly where it was?
A. Yes. It was -- it was right off as you turn onto Dials Church Road.
Q. Okay. So once you turned -- you made a right from Cooley to Dials Church then it was right there?
A. Yes.
Q. Okay. And I'm not going to ask you anymore questions about feet, okay?
A. Okay.
Q. Can you tell us about Mr. Farrow's condition. I mean, was it serious or was it ---
A. It was serious.
Q. Okay. Did you personally call for an ambulance?
A. No. They was already in route. They was ---
Q. Okay. Were you present when the ambulance got there?
A. Yes, sir.
Q. Did the ambulance take him?
A. No, sir.
Q. What took him away?
A. The helicopter.
Q. Okay. And do you recall where the helicopter landed?
A. Yes, sir.
Q. Okay. I'm going to show you what's been marked as

Plaintiff's Exhibit 3. Do you recognize that field?

A. Yes.

Q. Okay. Is that where the helicopter landed?

A. Yes.

Q. Now, did you happen to notice anything about the motorcycle that night?

A. I noticed it had damage to the front of it and it had hair.

Q. Okay. Anything else?

A. Not that I recall. I was --

Q. When you drove up Cooley Road did you see any cows in the area?

A. No, sir.

Q. All right. And you said it was almost dark?

A. Yes, sir.

Q. Could you see very far into the pastures?

A. No, sir.

Q. Was your attention on looking for cows?

A. No, sir.

Q. Before you got to the scene did you have any reason to look for cows?

A. No, sir.

Q. After you got to the scene did you have any reason to look for cows?

A. No, sir.

Q. Now, on the day of the accident -- excuse me. Do you live in this area?
A. Yes, sir.
Q. Do you know this gentleman over here in the denim shirt?
A. Yes, sir.
Q. Who is that?
A. Wayne Darby.
Q. All right. And how do you know him?
A. Through my grandfather.
Q. Okay. What's your grandfather's name?
A. Doug Wood.
Q. I'm sorry?
A. Doug.
Q. Oh, Doug Wood. Okay. Now, on the same day as the accident had you been in that area?
A. Yes. I come home that way.
Q. Okay. So which way would you -- where had you been coming home from?
A. I been coming off of 101 to Cooley.
Q. Okay. And so you would have been traveling the same way you came from the accident -- I mean, when you were responding to the accident?
A. No.
Q. Oh, which way would you be coming from?

A. I'm coming the opposite way.
Q. So you'd be going 101 down by the church?
A. Yes, sir.
Q. Okay. So you'd be going up Dials Church Road?
A. Yes.
Q. Okay. Then you said you were taking a left on Cooley?
A. Yes.
Q. Okay. Earlier -- do you remember what time it was earlier that day?
A. It was about four o'clock.
Q. Okay. And were you headed to the station, I guess, or what were you doing?
A. I was heading home.
Q. Okay. So did you see cows in the pasture on the left side as you were going up Dials Church Road?
A. I can't recall. I wasn't ---
Q. Okay. That's fine. Did you see cows in any pasture at the time of when you were driving through there?
A. No, sir.
Q. All right. I'll call your attention to your deposition, Niles?
A. Okay.
Q. And I asked you -- and I know you're nervous, okay?

A. Okay.
Q. Do you now if there were any cows in either pasture while you were out there?
Earlier that day I traveled that road and there was cows in one of the pastures.
Okay. That's what you said in your deposition, okay?
A. Okay.
Q. Is that -- which one is accurate? What you said in your deposition or -- I know it's been two and a half years.
A. The one that was in the deposition.
Q. Okay. Now, do you remember which pasture you were talk -- if you took -- if you were taking Dials Church Road and took a left on Cooley do you recall which pasture you were talking about in your deposition?
A. It would have been the left.
Q. Okay. And my hand is on F-1, is what we were taking about. That's what we named it earlier. Is that where?
A. That's correct.
Q. If you're going up Dials Church that's the first pasture on the left, and then you turn on Cooley and it's still on the left?
A. That's correct.

Q. Is that the one you're taking about?
A. Yes.
Q. Okay. Now, how often do you travel up and down this road?
A. Probably three or four times a week.
Q. Okay. And how long you been traveling?
A. For ever since that I reckon remember riding in the car.
Q. Okay. Now, how old are you now?
A. Twenty-three.
Q. Okay. So at the time of accident you were, what, 21?
A. Yes.
Q. Okay. So when you were 20 or 21, leading up to this accident, and more specifically from July 25th, 2007 through July 24th, 2008, the date of the accident, did you have an opportunity to -- or did you ever see cows outside of the pastures in this vicinity of the accident?
A. Yes.
MR. HANNA: Object on relevance ground, same.
THE COURT: All right. That's consistent with my prior ruling.
MR. HANNA: Yeah. Understood. I just don't want to ---
THE COURT: I'll overrule it.

BY MR. BOGGS:

Q. And where did you see those cows out? Were they on Cooley Road? Excuse me. Which road were they on when you saw them?

A. Cooley.

Q. And did you have an opportunity to -- excuse me. Based on you living there all your life and based on where they were whose cows do you think they were?

A. Mr. Darby's.

Q. And what did you do about it?

A. I went to his house.

Q. Did you see Wayne?

A. Yes.

Q. All right. Did you talk to him about it?

A. Yes.

Q. What did he say to do?

A. He said he'd take care of it.

Q. All right. Now, did you notice -- when you saw those cows did you notice where they went after you saw -- you saw them out of the pasture, right?

A. Uh-huh.

Q. What were they doing outside of the pasture?

A. They was walking along the edge of the road.

Q. All right. When you drove by did they do anything?

A. When I drove by they -- I stopped and they hopped

back over the fence or jumped back over the fence.
Q. Now, wait a minute. How many did you see? How many cows did you see?
A. There was a couple.
Q. Now, have you been around cattle?
A. Yes, sir.
Q. All right. Were these cows or calves? Could you tell?
A. They was probably six, seven months old.
Q. Okay. So how big did you perceive them to be?
A. Probably three, four, five hundred pounds.
Q. I'm going to show you Plaintiff's Exhibit Number 21. And it's been testified to that this is facing the fence on that pasture you've been taking about from Dials Church Road and that up at the top of the picture is Cooley Road with the fence. Do you recognize that fence?
A. Yes.
Q. Okay. Do you know approximately how tall that fence is?
A. No, sir.
Q. Okay. Well, on the date in question that you saw the cows was the fence in essentially the same condition?
A. Yes.
Q. And I'm talking about the one you just described.
A. Yes.

Q. All right. And so it's your testimony that -- you said there were two cows?
A. Yes.
Q. It's your testimony that the two cows jumped over this fence?
A. Yes.
Q. You saw that with your own two eyes?
A. Yes.
Q. Are you familiar with electric fences?
A. Not real familiar.
Q. Did you have occasion to see cows out in this vicinity of the accident at any other point in time from January -- excuse me, July 25th, 2007 through July 24, 2008?
A. Yes.
Q. You did see them during that year?
A. Yes.
Q. Okay. Do you recall when it was?
A. No, sir. It was in springtime.
Q. Was it in the -- where was it?
A. It was on Cooley Road down towards the bridge.
Q. So down towards the creek down there?
A. Yes, sir.
Q. All right. Do you know whose cows they were?
A. Yes, sir.

Q. How do you know that?
A. Because they went back in.
Q. How did they go back in?
A. They hopped over the fence.
Q. Again?
A. Yeah.
Q. All right. How long you been around cattle?
A. All my life, ever since I can remember.
Q. Is that the first time you've seen cows jump over a fence?
A. No, sir.
Q. So did it surprise you?
A. No, sir.
Q. Did you go tell Mr. Darby that day?
A. There was two or three times that I've went and ---
Q. Hold on. That's not -- I appreciate your willingness to answer, but on that day that you saw in 2000 -- between July 25th, 2007 and July 24th, 2008, the one where you saw them down by the creek -- and I'm sorry to interrupt, but just on that specific occasion when you saw them hop the fence, you know, you told us two occasions, on the second one did you go notify Mr. Darby?
A. No, sir.
Q. Okay. So based on those two times and during that year that I talked to you about did Mr. Darby's cows --

or the cows that you perceived to be Mr. Darby's that went back into Mr. Darby's pasture, did they have any trouble getting back into his pasture?

A. No, sir.

MR. BOGGS: Please answer any questions the defense might have.

CROSS-EXAMINATION

BY MS. RAINES:

Q. Hi, Mr. Wood. How are you doing?

A. Good.

Q. When you were traveling to the accident scene on July 24th, 2008 do you recall seeing any cows out that evening?

A. No, ma'am.

Q. And once you got there did you see any cows out anywhere?

A. No, ma'am.

Q. And when you were traveling around earlier that day you testified -- do you actually remember seeing cows out and where you saw them in any specific pasture at four o'clock on July 24th, 2008?

A. No.

Q. But do you know that you did not see them outside of a pasture?

A. Yes.

Q. So they were inside an enclosed area?
A. Yes.
Q. And you, yourself, you own some cows; is that correct?
A. Yes.
Q. And where are the pastures that you have, where you keep your cows?
A. Closer to Green Pond Road side ---
Q. About how many miles from the star here?
A. It's probably two and a half.
Q. Two and a half miles?
A. Yes.
Q. How many cows do you have?
A. We have -- or I have -- there's 16 right now.
Q. Sixteen?
A. Yes.
Q. And your grandfather has some, too?
A. Yes.
Q. And where is your grandfather's pasture?
A. He's got some there and then some on Highway 101.
Q. So there's some two -- did you say two and a half miles from where the star is about there?
A. Yes.
Q. Your grandfather has some there?
A. Yes.

Q. And how many does your grandfather have?
A. Probably 25.
Q. And what color are your cows that you have?
A. Multi-colored, reddish colored, red and white, black, tan colored.
Q. And what about your grandfather's, the same?
A. About the same.
Q. And you are a cattle farmer? You've had some cows for a number of years; is that right?
A. Yes, ma'am.
Q. Have cows of yours ever gotten out before?
A. Yes, ma'am.
Q. Does it happen from time to time?
A. Yes, ma'am.
Q. And when they get out can you usually tell how a cow got out?
A. Yes.
Q. What are some of the reasons that cows get out?
A. Tree fall on the fence, deer run through the fence, not well-maintained fence.
Q. Have you ever had a not well-maintained fence?
A. Yes.
Q. And tell me about that.
A. About the?
Q. About fence that you had that ---

A. It was ---
Q. --- was problematic?
A. It was old and been up for five, six years.
Q. And was that on the property that was two and a half miles from...
A. No, ma'am.
Q. It was on a different property?
A. Yes, ma'am.
Q. Different pasture. You said a moment ago that you had seen some of Mr. Darby's cows out.
A. Correct.
Q. Can you say definitively that any of those cows that you saw out were within the year proceeding July 24th, 2008? And I'm talking about July 24th, 2007 to July 24th, 2008.
A. Yes.
Q. And which date can you say specifically, or you can say that you saw on that time frame?
A. Yeah. It was springtime. It was -- I really don't know ---
Q. So there was just that one time in the springtime?
A. Yeah.
Q. You said that you talked to Mr. Darby before about cows; is that correct?
A. Correct.

Q. And you recall having your deposition taken?
A. Yes.
Q. I'm going to show you your deposition testimony, and you were asked, I believe, when -- I'll read the question to you and you tell me if this is how you recall answering at your deposition.

The question is: When you mentioned that you had some cows and had called Mr. Darby about his cows could you be more specific about when it is you've called and told him that there were cows out in the road?

And tell me if this is what you recall your answer being. Actually, there's been a couple of times that I went to his house and also a couple of times that my grandfather has called him.

And next question: What I mean is can you tell me when that happened?

Answer: It's been four or five years ago.

So having heard your deposition testimony can you say that from -- that that's correct, that it's been four or five years since your deposition was taken that anyone notified you or that you discussed with -- let me ask that again. I'm sorry. Has it been four or five years since when you had your deposition taken that you had talked to Mr. Darby about having cows out?
A. No. Could you repeat the ---

Q. That's what it sounds to me like you said in your deposition, it's been four or five years when you were asked when you talked to Mr. Darby about him having cows out. You said it's been four or five years.

A. Correct.

Q. So can you specifically say that that's wrong, that it wasn't? Are you telling us it wasn't four to five years?

A. It was -- it had been in the past and then leading up to that time.

Q. So it was a while ago though. You can't say that you talked to him within a year of that accident, correct?

A. Correct.

Q. When you got to the scene of the accident that night what color hair did you see? You mentioned you saw some hairs?

A. Yes, ma'am.

Q. What color were those hairs?

A. They was black.

Q. Any other color at all?

A. No, ma'am.

Q. Only black. And when you got there did you know if the motorcycle engine was still hot?

A. No, ma'am. I didn't check.

Q. You don't know one way or another?
A. No, ma'am.
Q. And when you got there did you see any loose cows?
A. No, ma'am.
Q. Did you see any cow tracks?
A. No, ma'am.
Q. Did you see anything other than the hairs that was any evidence of a cow?
A. No, ma'am.
Q. The cow feces as well?
A. Yeah.
Q. Right. Correct. But other than that?
A. No.
Q. And you didn't happen to -- and understanding you were taking care of your patient and doing your job, but you didn't happen to look up and notice any problems with the fence there?
A. No, ma'am.
Q. So to your knowledge nothing was wrong with that fence?
A. Correct.
Q. And to your knowledge nobody else noticed anything wrong with that fence?
A. Correct.
Q. And to your knowledge nobody saw any loose cows?

A. Correct.
Q. And the other time, that one time you said in the spring, the only one time within the year in the springtime that you had said you seen cow out there you knew it was Mr. Darby's because of location?
A. Correct.
Q. And that's all? I mean, you didn't see an I. D. tag on it or anything like that?
A. No. There was other cattle out in the pasture.
Q. Have you ever known Mr. Darby to help other people retrieve their cattle?
A. Yes.
Q. Has he ever helped you retrieve your cattle?
A. Yes.

MS. RAINES: No further questions. Thank you.

MR. BOGGS: Just follow-up, Judge. May it please the Court?

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. BOGGS:

Q. Now, you said you own cattle. Do you tag all your cattle?
A. Most of them.
Q. Okay. Now, you said that you thought it was Mr. Darby's because it was close to Mr. Darby's fence and

it jumped back in there. Is that what you said?
A. Correct.
Q. Okay. Has it been your experience in your years of raising cattle that the cows when they got out will stay close or wander far away?
A. They'll stay close.
Q. Okay. And I think there's been some testimony that if -- there's usually two reasons why a cow gets out, and do you know why -- what has been your experience for cows getting out?
A. Not maintaining fences. They could be hungry, and I've had a few of them that just ---
Q. Could they be looking for companions?
A. Yes.
Q. For lack of a better term. Okay. Now, you mentioned that -- and I was about to ask you something. I'm glad you brought it up. You said that your cows got out for not well-maintained fence.
A. Yes.
Q. You're saying that you and your grandfather didn't maintain your fence all the time as best as you could?
A. That is as far as deer running through it and tree limbs when you ---
Q. Well, I mean, you said that and then you said also not maintaining it well. So, I mean, do you feel like

it's your duty on your farm to maintain your fence?
A. Yes.
MS. RAINES: Objection. Calls for legal conclusion.
MR. BOGGS: She asked.
THE COURT: No. I think I'm going to allow that.
BY MR. BOGGS:
Q. So why do you feel like it's your duty to maintain your fence?
A. To keep your cows in and they'll cause other damage to other people's property or ---
Q. Or run into a motorcycle?
A. Or vehicle.
Q. All right. Now, she asked you if any of your cows have gotten out. Have any of your cows ever hit a motorcycle?
A. No, ma'am. No, sir.
Q. That's all right. That's all right. Now, opposing counsel asked you about your testimony. I want to get it straight. You said two different things, okay.
A. Okay.
Q. So you know Mr. Darby?
A. Yes.
Q. All right. Are you trying to help him with your testimony?

A. No, sir.
Q. Are you trying to hurt him with your testimony?
A. No, sir.
Q. Are you telling the truth?
A. Yes, sir.
Q. Okay. Now, you've said today of two incidents that you saw cows jumping within a year prior to the accident.
A. Correct.
Q. All right. Now, are you sure it was a year prior to the accident that you saw those two incidents?
A. It could have been a little bit further length of time than that but I'm ---
Q. Could it have been a little bit shorter length of time than that?
A. Yes.
Q. Okay. So when she brought up your deposition testimony about, Actually, it's been a couple of times I went to his house and also a couple of times that my grandfather has called him, and she asked you about those, that's more than two times. So there's been more than two times over the years, hadn't there?
A. Yes.
Q. In fact, can you name the number of times there have been over the years prior to the accident?
A. No, sir. It's probably four or five times.

Q. Well, how did you know to call Mr. Darby the first time you ever called him?

MS. RAINES: Object, Your Honor. Can we have a sidebar, please?

MR. BOGGS: She opened the door, Judge.

(WHEREUPON, a sidebar was had.)

MR. BOGGS: May it please the Court?

THE COURT: Yes, sir.

BY MR. BOGGS:

Q. Concerning the phone call -- or concerning the contact with Mr. Darby. How did you know to -- how did you first learn to contact Mr. Darby for cows in that area?

A. Through my grandfather.

Q. Okay. Now, in your experience with the cows jumping the fence do you know of any reason why the cow would jump the fence?

A. Just the reasons that we talked about before of ---

Q. Well, I mean, I don't think we talked about it before. You said you drove by and the cows jumped the fence.

A. Yes.

Q. Okay. Did you honk the horn?

A. No, sir.

Q. Did they -- do you know if -- I'll call your

attention to your deposition, okay. All right. Just so we move on. And I said -- or someone said, In your experience do cows -- why would they jump a fence?

And the answer was: Being spooked or scared.

A. Correct.

Q. Is that your testimony today?

A. Correct.

MR. BOGGS: All right. No further questions.

MS. RAINES: Nothing further from this witness, Your Honor.

THE COURT: All right. You may step down.

MR. BOGGS: Judge, just for planning purposes. I'm going to call a witness that's not involved with the legal issues we might have to address and then I want to go ahead and get that out of the way so he can leave.

I call Thomas Graham to the stand.

THE COURT: Very well. Come forward and be sworn.

JAMES THOMAS GRAHAM, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGGS:

Q. Can you state your full name for the record, please.

A. James Thomas Graham.

Q. Mr. Graham, I believe you and I met during the

pendency of this case; is that correct?

A. That's correct.

Q. And you probably can't see too well through these hieroglyphics here but I'll submit to you that this is an aerial view of Dials Church Road area, okay?

A. Okay.

Q. Do you live near Dials Church Road?

A. Yes, I do.

Q. Okay. And if you were leaving the church headed away from it on Dials Church Road, I guess that's from 101, where would your house be? Give me general directions to your house from Dials Church.

A. If you go on Dials Church Road approximately three eighths of a mile and take a right on Dot Simmons Road.

Q. Okay. And so there's been talk -- are you familiar with the fact that there's a bridge on Dials Church Road?

A. Yes, I am.

Q. Okay. I'll show you Plaintiff's Exhibit Number 24. That's a piece of evidence that has been testified to show from the bridge looking up Dials Church Road. Are you familiar with that?

A. Yes, I am.

Q. Does that accurately depict what that exhibit appears to be?

A. Yes.

Q. Or claims to be?
A. Yes. That's accurate.
Q. That bridge on this diagram had been pointed out is right about here where this mark is, okay, and talking about approximately. Can you -- and this may have shifted a little bit, but you agree in general that that's where the bridge is that you are looking at?
A. Yes.
Q. And is Dot Simmons Road before that bridge or after that bridge?
A. Before the bridge ---
Q. As you're leaving from the church. Okay. In fact, do you live near the racetrack down here?
A. Yes. It's close to the racetrack.
Q. On the racetrack side?
A. No, on the -- back up.
Q. Okay.
A. Right there.
Q. All right. Right here (indicated). In this general area?
A. That's it. That's where I live.
Q. I'm going to put T-G, okay. Or is it -- you go by Thomas?
A. Thomas. Yes, I do.
Q. Okay. Thomas Graham. All right. Now, how long

have you been living there?

A. Since 1989.

Q. Okay. So 21 years now almost?

A. Yeah, about, correctly.

Q. That's it. I'm not going to draw anymore. I know everybody is disappointed.

Now, so you've had an opportunity to travel back and forth over the 20 years?

A. Yes, I have.

Q. All right. And do you know who owns or who has pastures at the intersection of Cooley Road and Dials Church Road?

A. Yes, sir, I do.

Q. Do you know who owns them?

A. Yes.

Q. Who is that?

A. Ms. Freeland.

Q. Okay. Do you know who possesses them or leases them?

A. To the best of my knowledge, Wayne Darby.

Q. Well, during the time for the 20 years you've been living there have you known anybody else to keep cow -- or, excuse me. Have you known Mr. Darby to keep cows over there?

A. Yes, I have.

Q. All right. During your 20 years of living there?
A. Yes.
Q. How often you think you've driven up and down Dials Church Road by his cows?
A. Probably twice a day every day for 21 years.
Q. Have you known anyone else to have cows up there?
A. Not in those two pastures.
Q. Okay. Have you had occasion to see cows out on Dials Church Road through your -- and let me restrict that. Prior to the accident have you had occasion to see cows out in the year prior to the accident, and I'll submit to you that the accident was July 24th, 2008?
A. I couldn't say for sure that within that frame of time but I've seen cows out there.
Q. Okay. Now, do you now anything about the accident of July 24th, 2008? Excuse me. That was a bad question. Do you have any personal knowledge about the accident July 24th, 2008?
A. No, other than it's a cow and a motorcycle.
Q. Okay. And did you talk to Mr. Darby about it?
A. No. I haven't discussed the accident with him.
Q. Well, you all are friends, right?
A. Yes.
Q. And do you want to be here today?
A. No.

Q. Fair enough. All right. Do you remember in your deposition that -- well, let me ask you this. Did you ever have occasion to call Mr. Darby to tell him that his cows were out during the year prior to July 24th, 2008?
A. I couldn't -- no. No. I couldn't say that I personally called him.
Q. Okay. Based on your 20 years of living there and based upon your experience with cows, without speaking specifically about any event that you don't know the date of but prior to the accident, have you formed an opinion as to the dangerousness or not of his cows?
MS. RAINES: Object. Lay witness opinion testimony.
MR. BOGGS: Judge, he's lived there for 20 years. And, Judge --
MS. RAINES: Also character evidence.
MR. BOGGS: I can read his --
THE COURT: I ---
MR. BOGGS: I'm sorry.
THE COURT: I'm going to let you rephrase it but I'm going to sustain it because he's not an expert. He is a neighbor.
MR. BOGGS: All right, sir.
BY MR. BOGGS:
Q. Do you recall your deposition?

A. Vaguely, but I'm sure -- you know, I told the truth. So I'm sure I can.

Q. Okay. Do you recall the question where I said, And do you remember saying that you had formed an ---

MS. RAINES: Object. Opinion and character evidence.

MR. BOGGS: Judge, can we come to the -- we need to talk about this one.

(WHEREUPON, a sidebar was had.)

BY MR. BOGGS:

Q. Mr. Graham, you said you've been living there 20 years. Have you seen cows out during the time that you've lived in the Dials Church -- where you've lived?

MS. RAINES: Objection, Your Honor.

THE COURT: I'm going to allow it subject to our conversation. I've got some parameters out there.

MS. RAINES: Well, just to be protected for the record. I'm sorry.

A. Yes, I have.

Q. And based upon your daily travel, and you said at least twice a day for 21 years, when you heard there was an accident near the intersection of Dials Church Road and Cooley Road were you surprised?

A. No, I wasn't.

Q. Were you surprised to hear that there was an

alleged accident between a motorcycle ---

MS. RAINES: Objection, Your Honor.

MR. BOGGS: I was just ---

THE COURT: It's all right. Your objection is noted regarding the timing and relevancy and probative value because of the prejudicial effect it may have. Is that ---

MS. RAINES: Yes, Your Honor.

THE COURT: All right. Then I'll allow him to ask the question as characterized. I haven't quite heard his full question but let me hear it all the way in full.

Q. You just said you weren't surprised there was an accident. Were you surprised there was an accident alleged to have happened between a motorcycle and a cow?

A. No.

MR. BOGGS: Please answer any questions that the defense might have.

MS. RAINES: No further questions for this witness, Your Honor.

THE COURT: All right. Mr. Graham, thank you so very much.

Anybody want to keep him here?

MR. BOGGS: No, sir. He can be released.

THE COURT: You may go.

MR. BOGGS: Judge, I think everybody is here. I

think you wanted to have some more conversation on the law of what the -- how that potential testimony might go.

THE COURT: I think that's fair enough.

All right. Let's take a brief break. So, ladies and gentlemen, please step back in the back. I'll call you in a moment. I got a few things I want to hear first to make sure I set the parameters, like I described to you all before. So don't discuss the case. Step in the jury room and we'll call you back in a few moments.

(WHEREUPON, the jury leaves the courtroom at approximately 2:55 p.m.)

THE COURT: All right. Regarding the conversation at sidebar, there was testimony headed in the direction from the lay witness neighbor that he had seen cows over the years and he was confined to the one year prior, 12 months prior. Then it was getting to, Would you consider cows in the road to be dangerous, and that's when it stopped and we had a conversation at sidebar and each party expressed their prejudicial effect of having cows over 20 years, and they are always out there, how dangerous to be. I suggested that the question be characterized in a fashion to the witness, Were you surprised when you heard there was a wreck between a cow and a motorcycle. And I think that was more or less accurately presented by Mr. Boggs, subject to the

defense's objection, and the question was answered no, and without further explanation. So I was surprised by that singular answer but nonetheless that created fewer problems for me.

MR. BOGGS: May it please the Court. Judge, we would proffer testimony at this time from Mr. Harry Hays. I believe it's H-a-y-s.

Is that right, Mr. Hays, no E in there?

And essentially the testimony we'd proffer would be towards the fact that he only owned registered Black Angus on July 24th, 2008, and I think he has 80 cows.

Is that right? Do you recall how many you had on that day?

THE COURT: Hang on, so we can be clear. You all want to put him on the witness stand and put him under oath? That way we've got it done, or you want to do it with your deposition?

MR. BOGGS: I was just saying that the only question I'm going to ask to proffer is about the registered Black Angus. This relates to what we talked about earlier prior to going back with live testimony. So due to his health I didn't want to walk him up. I just want to sort of summarize. Then if you wanted to hear from Mr. Blackburn, who took hairs from Mr. Hays, and then Mr. Hollifield's testimony. So I just wanted to

clear that up before we got into that testimony and see what problems we have, what exclusions you might have or might rule upon, or what have you.

THE COURT: All right. Let me hear you all regarding that line and three tie-ins.

MR. HANNA: Well, I think the objection goes to what Mr. Hollifield is going to say about the hair, okay. I will concede that Mr. Hays is going to testify that he has these registered Black Angus cows, okay. I don't think we need to put him up there. I'll concede -- I know he's going to say that, okay. I've heard him say it before. I'm confident he'll say it again.

Then I know that I've heard Mr. Blackburn say he went out, collected the hairs and how he collected them. And it really comes down to what you're going to let -- whether we're going to let Hollifield talk about that. I think that's the part that ought to be proffered but if we need to proffer all three in a row we can.

MR. BOGGS: No. Judge, you stated that when Mr. Hays gets here we'll deal with it. So he got here and I just want to -- so I didn't know what you wanted.

THE COURT: Yeah. I think Mr. Hays -- I don't think anything he's going to say is going to be outside my restrictions thus far and Mr. -- red necktie. I can't remember ---

MR. BOGGS: Mr. Blackburn.

THE COURT: Retrieved hairs from the cow. No prejudicial effect there. The prejudicial effect is the ultimate question to Mr. Hollifield is ---

MR. HANNA: Well, to be more accurate, because when I asked him the ultimate question he cannot say that I think that there's no -- I'm objecting to any of the evidence of the collection. Mr. Hays can testify, okay, I mean, about being in the neighborhood. He's got more to say than just he's got some cows, okay.

But as far as Mr. Blackburn collecting the hairs or what happened once they got collected, based upon the inability to say that they weren't the same cow it's highly prejudicial that this testimony come in. And, anyway, I think it can mislead the jury.

MR. BOGGS: Judge, you going to sign up to the cow case special judge for the state?

THE COURT: Apparently so to the extent it's going to be a big issue.

MR. BOGGS: And, again, Judge, I'm not asking him to make a -- I'm asking him to make a scientific opinion about what he looked at. The weight of it can be argued by Mr. Hanna, and I don't see how it's prejudicial if he says based on his scientific knowledge it looks one way. One set of hairs look one way, another set of hairs look

another. That's all.

THE COURT: All right. And so he can't say either way they were not or they absolutely were Mr. Hays' cows? He can say they are not ---

MR. BOGGS: He can say the hairs ---

THE COURT: Just similar characteristics.

MR. BOGGS: The hairs that he tested. All I'm going to ask him is that the hairs that he tested were different in color and coarseness from the ones he tested off the bike, and that's it. I mean, I'm going to ask him, you know, obviously about bovine but I think that's not even -- that's on the initial set.

MR. HANNA: That's not my beef.

THE COURT: If he stops there where does that put you?

MR. HANNA: Well, again, you know, that's going to then have me have to say, well, the idea that there's something different about the hairs immediately brings up, well, it just couldn't have been Mr. Hays' cow. Okay. My point is that when I asked, Can you say to a reasonable degree of certainty whether or not these are -- you say they are not the same cow, he says, No. I can't say that.

Therefore, if he's unwilling to go all the way, okay, with the testimony none of it should come in.

That's what I'm saying. It's not proper expert witness testimony.

MR. BOGGS: Judge, I recall they had brought up the idea and through his testimony Mr. Darby said that Mr. Hays had cows out down at the bridge, for lack of a better place. They've also alleged that the accident was caused by a thirty party. And so if we're talking about inferences I've got to defend any inferences even as a plaintiff. So I just respectfully assert that I am not asking him to do anything outside of his expertise.

He knew this was coming. If he wanted to test the hairs he could have tested the whole body, found something. You know, and he mentioned he had an expert look at things. So he had the opportunity. They never declared an expert but I'm sure he just checked it out to see if he needed to declare one but obviously ---

THE COURT: Did Mr. Hollifield compare the hair samples towards any of the cows out of the pasture from Mr. Darby?

MR. HANNA: No. All he did was check one cow that Mr. Hays had.

MR. BOGGS: Judge, Mr. Hays has only one type of cow.

THE COURT: He's got six Black Angus.

MR. BOGGS: Six or however many Black Angus,

registered Black Angus, and that's the way it's been and that's the way it is. Now, my animal science expert will be able to testify as to any typing but it's not -- I mean, I'm not sure what I'm going to ask him yet. I'm talking about the animal science expert.

And, Judge, if they aren't going to argue that it was Harry Hays' cow then we're good.

MR. HANNA: I don't purport to know whose cow it was, and I don't have to prove anything. All this talk about I should go test some hairs, I should go this or that, it ain't my job. Okay.

My job is simply to cast doubt on what he's saying, and I'm going to cast doubt by suggesting and, you know, but before this case is over there's going to be testimony that there are numerous cow owners along this road, all of whom have had cows get out before.

The only one who happens to be nearby is Mr. Hays. I am not saying it's Mr. Hays' cow. I'm merely suggesting that for them to suggest that it had to be my guy's cow because it happened right next to his pasture, why couldn't it have been one of these other guys' cows? I mean, it's as likely.

MR. BOGGS: And my cattle expert -- or my animal science guy will tell you why, and tell the jury why.

MR. HANNA: I understand, and we're going to argue

about him when he gets here. That's a whole nother argument we got.

THE COURT: All right. Here's what I'm going to allow. I'm going to allow the expert to testify that the hair is bovine and then -- there are 20 qualities that the hair was analyzed with and two of them were dissimilar and 18 are similar; is that right? But that means the hairs are not exact matches; is that correct?

MR. HOLLIFIELD: They are definitively both from the same species. They are both cattle hair. The characteristics of color and coarseness are completely different for all the hairs I examined, but I cannot exclude all Black Angus hairs. That's the bottom line.

THE COURT: All right. Can I ask this question of the expert, Mr. Hollifield. If you had the cow that actually did this and he was located with a broken leg and you tested his hairs would those show up exact matches to the hairs off the motorcycle?

MR. HOLLIFIELD: No. There's a lot of variation or at least some variation among hairs from a given animal or person.

THE COURT: All right. So if we had the cow and the motorcycle hairs then they wouldn't match up because of the variations? That's going to be an ordinary finding in your field?

MR. HOLLIFIELD: It would be.

MR. BOGGS: In other words, we've never said -- I don't think there's any cow D. N. A. I think that's what you're asking.

MR. HANNA: And you didn't ask him this but I did before, the only way to definitively tell is a D. N. A. test, correct?

MR. HOLLIFIELD: Which could be done, yes.

MR. HANNA: That would be the way. Just by looking, and that's all that's happened so far, just to be clear, we're just looking at them. He did it, all be it, under a fancy microscope that a normal person -- not that you're not normal but you know what I'm saying, your average Joe doesn't have.

THE COURT: All right. I mean, it seems to me if he can't definitively say it's this cow and not that cow doesn't that just create confusion?

MR. HANNA: That's exactly what I'm saying, Your Honor.

THE COURT: I mean, tell me why it doesn't, Mr. Boggs. I mean, just from the colloquy out there with Mr. Hollifield if he can't say based upon the test he's done, even if he had the actual match cow and was told it matched, he couldn't match them up doing his test without the D. N. A., and that's what I understood, then that

seems to be -- how is that relevant if it can't match up?

MR. BOGGS: Let me see if my next thought holds water.

(PAUSE)

MR. BOGGS: We're just talking about the third thing, Judge. Judge?

THE COURT: Yes.

MR. BOGGS: The end result.

Right, Geov? Just the last comparison of Hays' versus cow?

MR. HANNA: Yeah, in other words, I want to be -- in case the record isn't clear, the only thing that -- I have no problem with him taking the stand and saying that he tested these hairs, the ones he pulled off the bike, and then whatever he wants to say about that. Okay.

But I deposed him in length and I think that is absolutely proper testimony. Okay. In fact, I had another guy test it and it came to the same exact conclusion he did. Okay. I'm only talking about the comparison of the hair between Mr. Hays' cow and the original sample. That is it, just to be clear.

THE COURT: All right. How about -- Mr. Boggs, I think, can you live with -- I mean, this is my likely ruling, unless you think of something I haven't considered yet. Eliminate or restrict the testimony

regarding the comparison between the Hays' cow and the hairs on motorcycle. You exclude that and you let him testify within his field.

MR. HANNA: In other words, don't talk about the Hays' hairs at all?

THE COURT: Nope.

MR. HANNA: That's okay.

MR. BOGGS: Mr. Hays can talk about the Hays' hair.

MR. HANNA: Yeah, I'm not saying ---

MR. BOGGS: I was just making sure.

MR. HANNA: And, again, I'm not suggesting you can't argue -- you know, you can't have Mr. Hays say that he's got Black Angus or whatever. That's a different deal.

MR. BOGGS: Judge, honestly, I can live with any of your rulings, I think. I'd rather -- I mean ---

THE COURT: Well, I mean ---

MR. BOGGS: I paid for an opinion, I want to use it. No, I'm just -- you know what I'm saying.

THE COURT: I'm with you, very much so.

MR. BOGGS: I paid for his time. Okay. Do we need to -- well, Mr. Hays is here but he's -- I mean, I know Mr. Hays needs to get home. Do you need to cross-examine him or can we just put on the record that he's got Black Angus?

MR. HANNA: I want to ask him about his cows now, too ---

MR. BOGGS: Okay.

MR. HANNA: You know, if you want that in he's got to come testify. Okay. It will be short. I can't imagine it will any more than 10 minutes, once we actually start.

MR. BOGGS: Okay.

THE COURT: You all need a break? We need a small break.

MR. BOGGS: Five minutes, maybe.

(WHEREUPON, a brief recess was taken.)

THE COURT: You all ready? You ready?

MR. BOGGS: I think so.

THE COURT: All right. Go get them, Mr. Bolt.

(WHEREUPON, the jury enters the courtroom at approximately 3:21 p.m.)

THE BAILIFF: All present, Your Honor.

THE COURT: All right. Mr. Boggs?

MR. BOGGS: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

MR. BOGGS: I call Mr. Harry Hays to the stand.

THE COURT: All right, Mr. Hays. Please come forward and be sworn, Mr. Hays.

HARRY H. HAYS, JR., after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGGS:

Q. Mr. Hays, please state your full name for the record.

A. Harry H. Hays, Jr.

Q. And how do you spell Hays?

A. H-a-y-s.

Q. No E. Thank you. And where do you live?

A. 982 Hayes Drive, Gray Court.

Q. Okay. And is that -- is Hayes Drive off of Dials Church Road?

A. Yes, it is.

Q. All right. And do you and some of your family members live in the same general area?

A. Yes.

Q. How long you lived there?

A. Oh, 35 years.

Q. You know that guy over there in the denim shirt?

A. Been knowing him all my life. Well, not all my life. Ever since I moved there.

Q. Yes, sir. You all friends?

A. Yes, sir.

Q. Okay. Now, do you -- on or about July 24th, 2008

did you own any cattle?

A. Yes, I did.

Q. Okay. And do you recall how many you had?

A. Best of my knowledge six.

Q. All right.

A. At the time.

Q. I'm sorry?

A. At that time.

Q. Okay. And do you recall what type cattle you had?

A. Registered Black Angus.

Q. All right. Is that the type cattle you've always owned?

A. No.

Q. All right. At the time of July 24th, 2008 is that the only type cattle you owned?

A. Yes.

Q. All right. And were your Black Angus, registered Black Angus cattle a certain color?

A. Black. Yes.

Q. All right. Do they any other color hair than black?

A. No.

Q. Did they on July 24th, 2008?

A. No.

MR. BOGGS: Please answer any questions that the

defense might have.

CROSS-EXAMINATION

BY MS. RAINES:

Q. Hi, Mr. Hays. Just a couple. Do you know anything at all about this motorcycle accident that occurred on July 24th?

A. I can't hear you.

Q. I'm sorry, sir. I'll speak up. Do you know anything, do you have any personal firsthand knowledge of a motorcycle accident that occurred on July 24, 2008? Did you see anything that night?

A. Not personal. All I know is what I heard.

Q. And I don't want to go into what you heard but just from your knowledge you don't know anything?

A. No.

Q. And you don't know anything about Mr. Wayne Darby's cows being out that day; is that correct?

A. No.

Q. And you don't know anything about Mr. Wayne Darby having any problems with his fence that day; is that correct?

A. No.

Q. And have you ever as a cattle farmer -- and you've had cattle for some period of time; is that right?

A. Yes.

Q. And as a cattle farmer have on occasion has your cattle ever gotten out before?
A. Yes.
Q. Is that something that just generally occurs every so often?
A. Yes.
MR. BOGGS: Your Honor, I'm going to object to outside the scope of direct testimony.
THE COURT: I sustain that.
MS. RAINES: One moment please, Your Honor.
BY MS. RAINES:
Q. Mr. Hays, do you have any knowledge of Mr. Darby ever helping other farmers get their cattle back in?
A. No.
MR. BOGGS: Object. Outside the scope of direct.
THE COURT: I'm going to sustain that, also.
MS. RAINES: Nothing further, Your Honor.
THE COURT: Any redirect?
MR. BOGGS: No, sir. Nothing.
THE COURT: Mr. Hays, thank you very much.
MR. BOGGS: I ask that he be excused, please.
THE COURT: Certainly.
MR. BOGGS: Thank you, Mr. Hays.
MR. HAYS: You're welcome.
MR. BOGGS: I call Jeff Hollifield to the stand,

please.

JEFFREY M. HOLLIFIELD, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGGS:

Q. Please state your full name for the record.

A. My name is Jeffrey Morris Hollifield, H-o-l-l-i-f-i-e-l-d.

Q. I'm sorry I mispronounced it. What is your occupation?

A. I own and operate Micro Analytical, which a private forensics lab in the Greenville area. I do work for local state and federal law enforcement agencies, for attorneys, for insurance companies, and also examine contaminants in commercial products for industry, and then I also teach chemistry and forensic science at Greenville Technical College as an adjunct instructor.

Q. And do you have a position title with your company or are you just owner and operator?

A. I own and operate. I do the day-to-day work in the lab.

Q. Okay. And how long have you been running Micro Analytical?

A. A little over 14 years.

Q. And were you contacted about your services for this

case?

A. I was. In August of '08 Mr. Boggs' office contacted me and asked me if I could collect some samples from a motorcycle and do some laboratory analysis.

Q. And what academic degrees do you hold that allow you to serve in that purpose?

A. My training or background is in chemistry and microscopy, which is using microscopes to do analysis. I have a bachelor's degree in chemistry, a master's degree in chemistry, both for Furman University; and then I have a master's in microscopy from McCrone Research Institute in Chicago, and then I also worked for 10 years at the SLED crime lab in Columbia as analyst or chemist.

Q. And can you describe microscopy?

A. Yes. My expertise is in the area of analyzing small pieces of evidence or trace evidence. That includes things like textile fibers, hairs, paint pigments, glass, installation, soil, that sort of thing. So the microscopy is using various types of microscopes to do chemical analysis and to identify small particles and where they may have come from.

Q. And what's your aggregate amount of time you've been in this field?

A. Twenty-four years.

Q. And do you have -- have you had the opportunity to

serve as an expert in other cases?

A. I have.

Q. And what was your declared expertise in those particular cases?

A. Two areas: Trace evidence, which is the area that I just described, identifying small particles microscopically and chemically; and the other area is drug identification.

Q. Okay. In this particular case did you apply your prior -- excuse me, your prior experience in trace evidence?

A. I did, yes.

Q. And microscopy in analyzing trace evidence?

A. That's correct.

Q. And how many times do you think you've been an expert on trace evidence and microscopy?

A. I've testified 173 times. Roughly half of those have been in trace evidence.

MR. BOGGS: Okay. Judge, at this time I'd like to offer -- or excuse me. I'd like to approach the witness.

BY MR. BOGGS:

Q. I'd like to hand you your C. V. or curriculum vitae that you provided to me. Is that an accurate copy of the extent and -- is that your full C. V.?

A. It is. That's current. Yes, sir.

Q. Okay. And does it show your prior experience and education, and things related to your expertise?

A. It does.

MR. BOGGS: Judge, at this time I'd ask that the court reporter mark this as the next exhibit, and offer it into evidence.

MR. HANNA: Your Honor, we would object to the C. V. itself coming into evidence. He can certainly testify as to his qualifications but I can't see how putting in his resume, in essence, has any probative value to anything that the jury is going to have to decide later. They can hear what his background is.

Quite frankly, I don't object to him being qualified as an expert in the field of -- the trace evidence field that he has described, but to put the C. V. in, I think, is improper.

THE COURT: And you were offering as an expert in which field?

MR. BOGGS: In trace evidence.

THE COURT: All right. We'll qualify him as an expert in the field of microscopy, which is the study of trace evidence.

MR. BOGGS: Yes, sir. All right.

THE COURT: And I don't think his resume needs to go in.

MR. BOGGS: Okay. Well, and, Judge, I'd like to summarize it. I was just trying to avoid going through it, but I think out of --

BY MR. BOGGS:

Q. Have you participated in continuing education?

A. I have.

Q. Okay. And have you participated in law enforcement in subsequent training to your education?

A. Yes. I completed the police academy when I was an employee of SLED and served in law enforcement for 10 years.

Q. And have you published papers or articles concerning your fields of study?

A. I have. I've published several articles in the area of microscopy and trace evidence.

MR. BOGGS: Thank you, Judge. I was trying to skip ahead, and I apologize. Your Honor, he's been qualified as an expert. I'd ask that he be able to give an opinion about this case upon further foundation.

THE COURT: All right.

BY MR. BOGGS:

Q. Sir, did you collect any samples from the motorcycle that was involved in the accident?

A. I did. On August the 29th of '08 I went to Burdette's Towing. Made an appointment with a fellow

named Randy and then I went there and took photographs of a motorcycle that was in the garage there and then I collected samples from the motorcycle, myself.

I collected what appeared to be hair samples and also some fecal material samples from various parts of the motorcycle. I collected those samples with tweezers and razor blades, put them in small envelopes and then labeled everything and took them back to the lab for analysis.

Q. From those samples were you able to determine the type of animal that was involved in the accident with the motorcycle?

A. Yes, sir. With respect to hair analysis, it's possible to determine if it's a human hair or an animal hair. These were animal hairs. And if it's an animal hair it's also possible microscopically to determine what species it is, and I found that these were bovine or cattle hair as opposed to other species or other animals.

Q. And what color were the hairs?

A. I examined approximately 25 hairs and also hair fragments. All the ones that I looked at appeared to be, in reflected light, meaning light shining on top of the sample, they appeared to be brown in color. When you look at them microscopically you also use transmitted light, light coming up from beneath going through the

sample, and they appeared reddish in color when I looked at them that way. But they visually and with reflected light they appeared to be brown, all of them.

Q. Okay. Did you look at those same hairs non microscopically?

A. I did. I looked at them visually and noted the color and the length of the hair and general appearance of the hair.

Q. Were all the hair that you tested, were they just all sitting on top of the bike or where did you find the hairs on the bike?

A. They were from various parts of the bike. I did collect every hair that I saw. I don't know that I obtained every hair that was on the bike but I did collect all the ones that I could see visually. I took them mostly from the fender, from the headlight that was on the bike, and also from around the front of the handlebars and underneath the bike as well.

Q. When you got to Burdette's and you took pictures did it appear that the bike had been cleaned in any way?

A. No, it didn't.

Q. Did you clean it in any way, other than removing specimens?

A. Other than removing the samples, no, I didn't.

Q. Okay. Did you also examine the feces?

A. I did.
Q. And what did you determine from the feces?
A. The fecal material was very dry and brittle. It had been there at least long enough to dry out. So I disbursed it on a microscope slide and looked at it, looking for particles that might be in the feces. I found four things. I found cellulosic or plant material, like from grass. I found parts of leaves. I also found some quartz, which is a mineral that's in the soil and sand, then I also found a portion of a feather.
Q. A feather?
A. Yes, sir.
Q. Okay. Now, were you able to tell what type of leaves they were?
A. No, sir.
Q. Did your findings from the fecal material, were they consistent with your previous finding of the determination of analyzing the hairs that it was a bovine?
A. I cannot and could not determine that from the fecal material.
Q. So no matter what you found in the fecal material you couldn't have determined that it was a bovine in that manner?
A. No. My conclusion that it was bovine is

exclusively and completely from the hair analysis itself. That's all.

Q. In your field of study and your field of expertise is it readily accepted to determine whether it was bovine or not solely by analyzing the hair?

A. That's accepted practice, yes, sir.

Q. Now, you mention quartz. What are quartz mineral grains, or what would that mean to a non expert in microscopy in trace evidence?

A. The presence of the quartz, which is a component of sand or soil, suggests -- as well as the grass and the leaves, suggests that the diet of the animal was outdoor, eating grass or eating near the ground. That's what that evidence suggests, as opposed to finding a lot of corn starch, which would suggest that the animal might be grain fed inside a barn.

Q. So in other words -- I just want to make sure I understand it. At some point in time the cow that produced that feces had eaten some dirt?

A. Correct.

MR. BOGGS: One second, Judge, please.

I have no further questions at this time, Mr. Hollifield. Please answer any questions that Mr. Hanna or his team might have.

CROSS-EXAMINATION

BY MR. HANNA:

Q. How you doing, Mr. Hollifield?

A. Okay. Thanks.

Q. Is it Holyfield (ph) or ---

A. Either one.

Q. Okay. Every time I hear Hollifield I think of Evander Holyfield, the boxer. Okay. Just I want to kind of cover probably some of the same ground but I'll be as brief as I can. First of all, I understand that you did not collect the hairs nor the fecal material off the motorcycle until approximately one month after the accident; is that correct?

A. I don't know that I have the actual date of the accident.

Q. Assume the accident to have been on July the 24th of 2008.

A. Yes, sir, that would be correct because this was August 29th of '08. Yes.

Q. So a little over a month. And the collection process took place at a fellow named Terry Burdette's garage?

A. That's correct.

Q. And just so you're clear, you don't know how the motorcycle got to that garage, do you?

A. I have no idea.

Q. Okay. You have no idea who may have had access to the motorcycle prior to the time you examined it, correct?

A. No. It was located indoors but it was in an open garage area when I arrived.

Q. Okay. And in essence what I understand your testimony to have been is you examined this hair and determined it came from cow, right?

A. That's correct.

Q. Isn't it true that based upon the investigation that you have done so far in this case that it is not possible to determine which specific cow the hair you collected came from; is that correct?

A. That's correct.

Q. And isn't it true that absent running a full D. N. A. scan and having a sample cow to get a hair from and then run a D. N. A. scan against what you have collected it wouldn't be possible to determine the precise cow?

A. That's right. I could identify from the hair the species but I can't assign that to any one particular cow without a D. N. A. exam.

Q. Okay. Do you know what part of the animal the hairs you collected from came? Do you have an opinion about that?

A. To a certain degree, yes. There are several different types of hairs that are on animals, just in general. There are whiskers like on a cat. You have tail hair on a cow, which would be very, very course and not like these.

But in general animals have two -- on their body they have two types of hairs. They have what are called guard hairs, and those are the hairs that we see visually and those are the ones that you use to identify species, whether it's dog, cat, cow, horse or deer.

The second type of hair is called a fur hair or wool hair, and those are very short fine hairs that cover the body and that serves as an installation against wet and cold. So these hairs that I collected from the motorcycle were all guard hairs, which are the outer hairs that are used to identify the animal and species.

Q. And based upon your examination you could rule out that it came from a tail; isn't that right?

A. That's correct. They are not from the tail of a cow.

Q. Understood. And you didn't find any -- other than the hair and fecal material you didn't find any blood or any other type of body fluid on that bike, did you?

A. No, I didn't. I didn't see any blood or any body tissue.

Q. And just so we're clear, of the hairs you collected all the ones you looked at were brown, correct?
A. Of the 25 I looked at they were all brown. Yes, sir.
Q. You did not find any black hairs when you got there?
A. No, sir.
MR. HANNA: Okay. I have no further questions. Thank you very much.
THE COURT: Any redirect?
MR. BOGGS: Just briefly.

REDIRECT EXAMINATION

BY MR. BOGGS:
Q. Did you verify that the motorcycle that you inspected, that he was just asking, that it was the motorcycle involved in the accident?
A. I recorded the V. I. N. number and tag number and the odometer display so that that could certainly be matched to whatever motorcycle is in question.
Q. And I think you mentioned it earlier, did you -- you took pictures as you were doing this?
A. I did.
Q. To record everything that Mr. Hanna and I had asked about?
A. Yes. I took photographs at the garage of various

parts of the motorcycle, including those things I just mentioned.

Q. And did you incorporate those into your report?

A. I did.

Q. Or did you write a report?

A. Yes, I did.

Q. Based on your investigation of this issue?

A. I did.

Q. Okay. And did you incorporate those photos into the report?

A. Yes, I did.

Q. And did you bring that report with you?

A. I did.

MR. BOGGS: And, Judge, I would ask that we be allowed to move this report into evidence?

MR. HANNA: Again, I think that the substance of his testimony has been testified to on direct and on cross. I believe that the report itself is not proper evidence to go into the jury.

THE COURT: All right. Let me see it.

(WHEREUPON, the document was handed to the Court.)

THE COURT: I think I'll allow it to go in.

(WHEREUPON, Plaintiff's Exhibit Number 38, a Report, was marked and admitted into evidence.)

BY MR. BOGGS:

Q. Now, Jeff, you mentioned, I think, Mr. Hanna testified touched upon it, if not I still want to ask you, the hairs that you found and pulled, and I think they are reflected in figure 24 of your report on page six?

A. Yes, sir.

Q. And can you describe what that picture is of?

A. Yes. Figure 24 is a photo of the underneath side of the motorcycle and what it shows is a tuft of hair, like a clump or several hairs twisted together that are wedged up into one of the crevices underneath the bike.

Q. And also in your report on same page, figure 22 and 23, what do those show?

A. Figure 22 reflects hairs that are on the fender of the motorcycle. Figure 23 again reflects some hairs that are wedged up into the crevices underneath the motorcycle.

Q. And based upon your experience and your expertise in trace evidence were you able to form an opinion about how those hairs were attached to the motorcycle?

A. Well, they were -- they had to be ---

MR. HANNA: I believe this would be outside the scope of our cross-examination and not proper subject for redirect.

MR. BOGGS: I believe -- well, I'm sorry.

THE COURT: I tend to agree with him.

MR. BOGGS: He would be subject to recall until -- and I'm still -- I mean, do we need to talk over there? It would be a brief conversation.

THE COURT: All right. When was the last time we had a break, ma'am? Do you all need one?

THE FOREPERSON: We're okay.

THE COURT: All right.

(WHEREUPON, a sidebar was had.)

BY MR. BOGGS:

Q. In general, Mr. Hollifield, do the pictures in your report accurately reflect what you found and did you report them as such?

A. They do.

MR. BOGGS: Okay. No further questions.

Permission to publish, Judge?

THE COURT: Yes, sir.

MR. HANNA: No further questions from the defense.

MR. BOGGS: Judge, the plaintiff calls Jimmy Miller to the stand.

JIMMY W. MILLER, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGGS:

Q. Can you please state your full name for the record.

A. Jimmy Wayne Miller.
Q. And where do you reside?
A. 1245 Burdette Road.
Q. Okay.
A. Gray Court, South Carolina.
Q. And we have this masterpiece we've been working with throughout the trial, so bear with me. Do you agree that this is an aerial view of the area involving Dials Church Road and that that is Burdette Road? Can you see it or do I need to tilt it? I know there's a glare.
A. It looks correct to me.
Q. Now, do you reside -- does anyone else reside at your place of residence?
A. Yes.
Q. And what's his name?
A. Richard F. Marshall.
Q. Okay. I'll submit to you that he testified earlier today. This mark right here purports to be your house. Do you agree with that? I know it's tough.
A. Yes.
Q. Okay. So how long have you been living there?
A. Since '06.
Q. Okay. And did you and Richard move into that house together?
A. Yes.

Q. Okay. So whenever he moved in you moved in?
A. Correct.
Q. Same length of time. Now, just because we've talked about it when you haven't been here and just so you know, all right, this black line has been testified to be Burdette Road, which you just confirmed. Okay?
A. Okay.
Q. And that's your house up there?
A. Yes.
Q. Okay. We have shown that Mr. Darby lives where it says JD-2. Can you see that?
A. Yes.
Q. And do you know that without me tell -- did you know that without me telling you ---
A. Yes.
Q. --- where Mr. Darby lives? And can you point out Mr. Darby in the courtroom.
A. (Indicated).
Q. He was hiding from you. Is that him?
A. Yes. He had his hand over his face and I couldn't see him.

Hi, Wayne.

Q. Now, I want to tell you that we've come up with names for pastures and the one next to Mr. Darby's house we called JD-1.

A. Okay.
Q. The one right below that as you come up from your house on the left, the first field on the left you would see would be F-3. Okay?
A. Okay.
Q. And then on the right side we've called it cattle, and then the upper one across the street from JD-1 would be JD-2. Okay?
A. Okay.
Q. Just so you know what I'm talking about, even though I may not. All right. Now, have you had occasion to travel up and down Burdette Road?
A. Yes.
Q. During the time you've been living there?
A. Yes.
Q. Have you had occasion to observe the activities in these pastures?
A. Yes.
Q. And what is commonly kept in these pastures? Do you know?
A. Cattle.
Q. Now, do you have any personal knowledge of the motorcycle accident that occurred on July 24, 2008?
A. No.
Q. Okay. And but you lived where you live now at that

time, correct?
A. Correct.
Q. Now, how do you travel up and down Burdette Road when you do?
A. By car and during good weather we take a walk out to Dials Church Road or go the other way out to Stoddard Mill.
Q. Okay. Now, have you -- I want to call your attention, as I stated -- as you frame an answer to any of my questions if I don't mention the date I'd like for you to restrict any answer to between July 25th, 2007 up until July 24th, 2008. Okay?
A. Okay.
Q. So essentially a year before the date of the accident.
A. Okay.
Q. All right. So I'd like to hand you what has previously been marked as Exhibits 26 through 33. If you'll take a minute to look through those.
(PAUSE)
Q. All right. Do you recognize those photos?
A. Yes.
Q. Can you explain to the jury briefly what they purport to be.
A. This picture right here are cows in the --

Q. Excuse me, Mr. Miller.
A. Yes.
Q. Will you just say, like, the exhibit number and just a brief description.
A. Okay. Exhibit 26.
Q. Yes.
A. Okay. These are cows in the next-door neighbors yard, the Zowitski's (ph).
Q. Okay. Do you recall what date that was?
A. The 21st of June.
Q. Okay. 2008?
A. Yes.
Q. Okay. And how do you know that?
A. From the date stamp that's on the pictures from the camera when they were taken.
Q. Okay. So since your deposition you went back and you and Richard looked at your camera -- or at your records and ---
A. Correct.
Q. Were you present when that photo was taken? Were you at your house?
A. I believe I took these pictures. Okay. Exhibit 26 and 27, I believe I took those pictures.
Q. Okay. Is it a camera that you share with Mr. Marshall?

A. Yes.
Q. Okay.
A. So either one of us could have taken the picture but I think these two pictures I may have taken.
Q. Were you both there that day?
A. Yes.
Q. Okay. Now, again, go through Number 27. It appears to be a bunch of cows. Do you recognize where they are?
A. Yes.
Q. And where is that?
A. That's on the south side of the Zowitski's property.
Q. Okay. And the Zowitski's are your next-door neighbors ---
A. Correct.
Q. --- as you go from your house towards Mr. Darby's -- or, excuse me, towards Dials Church Road?
A. Correct.
Q. And Number 28, the one that shows a cow and the car, whose car is that?
A. That's Richard's Chevy.
Q. So is that cow on your property?
A. Yes.
Q. Now, you don't know whose cows these are, do you?

A. No.
Q. I mean, do you know what a cow tag is?
A. Yes.
Q. Okay. Do you see any cow tags on those -- on that particular one, particular cow?
A. I do not.
Q. Okay. Going back to Number 27. Are there any cow ear tags readily apparent?
A. No.
Q. On any of the cows?
A. There could be on the closest one here. There seems to be a spot on the ear but I can't see if it's a tag or not.
Q. In general do you recall with your own eyes without these pictures seeing many cow ear tags on that day?
A. I can't recall.
Q. Okay. Fair enough.
A. It's something I wasn't looking for.
Q. I got you. Number 29, can you identify where this cow is?
A. It's in our front yard.
Q. Okay. And Number 30 looks like two, three cows. Can you identify where those are?
A. Those are in the front of the house.
Q. Okay. And Number 31 looks like one, two, three,

four, five, six, maybe six cows?
A. Correct.
Q. Can you identify where those are?
A. Those are directly in front of the house.
Q. All right. Now, are you a cattle farmer?
A. I am not.
Q. Okay. So this isn't your cattle farm, right?
A. No, it is not.
Q. Now, Number 32 looks like a cow. Where is that cow?
A. The cow is directly on top of the flower bed in front of the house.
Q. And all these were 6-21-08?
A. Correct.
Q. All these pictures?
A. Yes.
Q. Now, on Number 33, can you identify the road that the cows are on?
A. That's Burdette Road.
Q. And there's a white cow in the middle of the road, or lighter colored cow. Is it facing back towards Dials Church Road?
A. Yes. They are heading down the hill where the stream is.
Q. Okay.

A. Right directly in front of the Zowitski's house.
Q. Calling your attention to that specific date, can you tell us what happened after the cows were in your yard?
A. (There was no response).
Q. I guess did you do anything after the cows were in your yard?
A. Well, we attempted to get them down closer toward where the pastures are where ---
Q. Okay. You say we. Who is that?
A. Richard and I.
Q. Richard and you. All right. How did you attempt to get them down there?
A. Just basically walk behind them and they continue to walk down the street. Some of them veered off into the Zowitski's property.
Q. Okay.
A. And then as you travel down the hill where the Swinsons live there is a section of fence there that was on the ground and some of the cows went into that area.
Q. Okay. Now, on this particular date did you have an opportunity -- did you call anybody to ascertain -- or did you call anybody about the cows in your yard?
A. 911 was called.
Q. Okay. And was Richard present when you called?

A. Was he in the same room? He was on the property.
Q. Okay. But you made the call?
A. I believe I did.
Q. And what's your phone number?
A. 864-409-0880.
Q. I'd like to show you a document. Do you see the phone number at the top of that document?
A. Correct.
MR. HANNA: Your Honor, I'm not sure the purpose of -- well, I don't want to make a speaking objection, so can we have a sidebar briefly?
THE COURT: You may.
(WHEREUPON, a sidebar was had.)
MR. BOGGS: May it please the Court?
THE COURT: Yes, sir.
BY MR. BOGGS:
Q. Mr. Miller, the bottom line, did you call 911 on this day?
A. Yes.
Q. Was it you that called?
A. Yes.
Q. Was the purpose of your call -- what was the purpose of your call?
A. To report the fact that we had a lot of cows out on the road and in the yard again.

Q. Okay. In the year prior to the accident, so from July 25th, '07 through July 24th, '08, had you had cows out in the road before ---

A. Yes.

Q. --- this date, 6-21-08?

A. Yes.

Q. All right. Only on those occasions, during that one year time span, had you attempted to call who you thought to be the owner of the cows?

A. Yes. Well ---

Q. I'm sorry.

A. During that period of time?

Q. Yes.

A. No.

Q. Did you -- well, let me ask you this. Based upon cows being out before did you formulate an opinion of whose these cows belonged to?

MR. HANNA: Objection, calls for speculation.

THE COURT: As to the form of the question I'll sustain. Rephrase your question.

MR. BOGGS: All right.

BY MR. BOGGS:

Q. Where did the cows go -- you said you chased them -- or, excuse me. You and Richard walked behind them, right?

A. Correct.
Q. And they were walking toward Mr. Darby's property; is that correct?
MR. HANNA: Objection, leading.
MR. BOGGS: I was summarizing.
Wait a minute, Mr. Miller. I got to rephrase it. It's late in the day. I apologize.
THE COURT: Yes. Rephrase it.
BY MR. BOGGS:
Q. All right. In which direction did the cows travel once you and Richard walked behind them?
A. They went out to Burdette Road and made a left-hand turn and headed towards the Zowitski's property and Dials Church Road.
Q. Okay. Did some of the cow -- so some of them veered left into the woods? Is that what you are saying?
A. After they got past -- when they got down to the Zowitski's some of the cows went into his property and across in behind the pool.
Q. Okay. And where did the other cows go?
A. They continued down Burdette Road. Some of them when they got just past the Zowitski's property, there's a fence there and there's quite a bit of kudzu in that area, and so they made a left into that area and some of the other cows continued down the road.

Q. Okay. Did you follow the other cows that went down the road?

A. I'm sorry. There were so many occasions that happened with this I have to put things in the timeline that you are looking for.

Q. Okay. Do you remember your deposition recently?

A. Yes.

Q. Okay. Have you on occasion walked behind cows that you've seen loose down Burdette Road towards Dials Church Road?

A. Yes.

Q. Okay. On this specific occasion, which was 6-21-08, do you recall if you walked behind any of the cattle that were loose down towards Dials Church Road?

A. Yes.

Q. Okay. Once you got down, I believe there's been testimony as to a bridge on Burdette Road.

A. Yes.

Q. Okay, as you go back towards Dials Church.

A. Correct.

Q. Did you walk with the cows on this particular occasion across the bridge?

A. I did not cross the bridge. I just went down to the bridge.

Q. Did the cows cross the bridge?

A. Some of them.
Q. Okay. Where did some of the cows go that didn't cross the bridge?
A. There were a couple of cows that did not want to go across the bridge.
Q. Okay. Did you hit them?
A. No.
Q. Did you yell at them?
A. No.
Q. Did you ask them nicely to move?
A. Well, I refer to them as the girls.
Q. Okay. Fair enough. And what did the girls do?
A. The girls finally decided that they didn't like my presence there, so they bolted into a piece of pasture just before the -- just before the bridge on the left-hand side.
Q. Okay.
A. And just plowed through the fence.
Q. All right. Now, you said some of them went that way, right?
A. Right.
Q. What kind of fence was there?
A. Old barbed wire fence.
Q. Okay. Now, what did the others that didn't go through that fence, what did they do?

A. They went across the bridge and continued up the hill.
Q. Okay. And you never crossed the bridge, correct?
A. No, I did not.
Q. Did the bridge -- did you on that day, based upon living there, did you have an -- excuse me. Whose pasture did you perceive the cows to be going into on that day?
A. The pastures that are on the left and the right side of Burdette Road as you are going out. Those are the pastures that I see cows there all the time and I just figured that that's where they belonged.
Q. On that date did you have personal knowledge as to who keeps cows in those pastures?
A. Yes.
Q. Okay. And who is that?
A. Wayne Darby.
Q. Have you seen him with your own eyes out there?
A. Yes.
Q. Now, during the year prior to the accident that we've been talking about did you have occasion to see cows out on Burdette Road?
A. Yes.
Q. Okay. And during that year when you saw cows out on Burdette Road can you describe what you saw when you

saw cows out?

A. There were numerous times.

Q. Okay.

A. That I saw cows. Usually the cows if they weren't in our yard we kind of herd them out to Burdette and they would head down to where the pastures are.

Q. Okay.

A. And the reason that I didn't go across the bridge is because I just -- you know, I just assumed that they were Wayne Darby cows, and after calling 911 they were in a safer place there than they were in the neighborhood where there are children playing. So we just -- that's as far as I went, as far as my responsibility.

Q. Okay. Now, I asked you, after you walked down there did you see cows out as you were traveling on Burdette Road, during that year?

A. Yes.

Q. On the separate occasion than the one with the pictures?

A. Well, several times I was driving.

Q. Okay.

A. I wasn't walking but I was driving.

Q. During that time span ---

A. Yes.

Q. --- that I've been asking about?

A. Yes.
Q. Now, what did you see when you were driving and you saw cows out?
A. Saw a cow in the road.
Q. Did you ever -- was Mr. Darby with the cow on all those -- or how many occasions did you see them during that time frame?
A. All I can tell you is numerous.
Q. Numerous. All right.
A. Now, if you count cows going from one pasture to another that's a different story.
Q. All right. Well, tell me about that. Did you see in the year prior to July 24th cows going from one pasture to the other?
MR. HANNA: Your Honor ---
A. It's a common occurrence.
MR. HANNA: I understand the prior ruling. We want to preserve the record and I object to the herding testimony with relevance ---
THE COURT: I'm going to allow it because, I mean, he's ---
MR. HANNA: I understand.
THE COURT: He's restricted it.
MR. HANNA: I'm not arguing. I'm just trying to preserve the record. I know what you're going to say.

THE COURT: I understand your beef.

MR. BOGGS: It slipped. Finally it slipped. I think we're all too tired for humor.

BY MR. BOGGS:

Q. Okay. You were taking about herding -- or you saw cows going from one pasture to another?

A. Correct.

Q. During the time frame I'm asking?

A. Yeah.

Q. All right. Describe what you saw. You brought that up when I asked if you saw a cattle out. So describe what you saw.

A. On occasion the cows would be herded from either the left-hand pastures to the right-hand pastures, and vice versa.

Q. As you're facing Dials Church Road, leaving your house and heading to Dials Church Road?

A. Heading up the hill. There's several gates. Some of them are just -- they are wire gates, and the cows would be herded from the left-hand pasture to the right-hand pasture and when this happens occasionally there's a stray that heads down the road, which I've encountered coming up the hill when they are going from one pasture to the other.

Q. Okay. Have you had occasion to see -- be on the

road when you see Mr. Darby participating in the movement of the cattle?

A. He's generally in his truck.

Q. Okay. So when you've seen him were the gates open or closed?

A. Well, to get the cows from one pasture to the other they have to be open.

Q. Fair enough. Now, was there a guard put up between the gates, between one pasture and another?

A. You mean across the road?

Q. Yeah.

A. No.

Q. All right. When the gates are open do they form a corral when they open? I mean, you know, is there a barrier to where cows can't go up and down the road, if they wanted to?

A. No.

Q. Okay. And, now, did you -- were you exactly right there waiting on this to be completed?

A. Well, there were times that the gates were open and there were no cows going across it.

Q. Okay. Did you see cows in both pastures when the gates were open?

A. Yes.

Q. Did you see Mr. Darby from the road?

A. Well, I saw Mr. Darby's truck.
Q. Where did you see Mr. Darby's truck?
A. He would be in the pasture herding them towards the gate.
Q. Was there ever an occasion when the gates were open, and you were right there, that you could not see Mr. Darby's truck, from the road?
A. From where the gates are, yeah.
Q. Okay. And you said you walked up and down there. Did you ever encounter any cows out during the time frame we're asking while you were walking?
A. It was more likely that I saw cows up around the Zowitski's, maybe on -- the time frame is the thing that I'm having a problem with.
Q. Well, please don't testify to anything and we can move on, okay.
A. I mean -- okay.
Q. When the cows were in your yard were they eating your grass?
A. They were more -- their intention was to eat the kudzu.
Q. Okay. And where is the kudzu?
A. Just behind the area that's cleared out for the -- you know, there's, like, two and a half, three acres that's cleared off with lawn, and beds, and outbuildings,

and that sort of thing.
Q. In the year prior to the accident did you have occasion to call Mr. Darby for any reason?
A. No.
Q. Okay. In the year prior to the accident did you notice any problems with Mr. Darby's cattle that were easily noticed by you as you were traveling up and down the road?
A. No.
MR. BOGGS: He said, No.
MR. HANNA: Okay.
A. Not during that time frame.
Q. Okay. How often did you -- you said you walked during the nicer weather months. Is that what you said?
A. Well, as long as the weather is reasonable I go for a walk up and down the road and pick the trash up and that sort of thing.
Q. Including the year prior to the accident?
A. Yes.
Q. And how often do you think you walked during that year?
A. Anywhere from three to seven times a week.
Q. And when you walk did you -- I mean, Burdette is a single -- almost -- how big is the road?
A. Two trucks cannot pass on it without somebody

giving way.
Q. Okay. So it's a small road. So you're pretty close to both sides? Is that a fair assessment?
A. Yeah.
Q. Did you have an opportunity to observe the fencing during the time, the year prior to the accident?
A. Yes.
Q. All right. Based upon that daily use were you able to -- what was your ---
MR. HANNA: Again, I'm not trying to interrupt anymore than to make sure I'm preserving my continued objections to this line of evidence ---
THE COURT: He can tell what he saw.
MR. HANNA: I understand he's going to say it but paranoia.
BY MR. BOGGS:
Q. Did you formulate -- what was your impression of the fencing along the pastures as you rode? And let's talk about -- excuse me, as you walked. If you're leaving your house going up Dials Church there would be the one on the left, F-3, and JD-1, talk about those first.
A. Okay. That -- the fencing -- now, does that encompass the area on -- before you get to the bridge, because that's obviously part of the pasture because the

cows go across the stream and over into that other area so...

Q. Was the condition of the fencing on the left side better or worse or the same as the condition of the fencing on the right side?

A. Well, neither one of the fences were in great shape, but the one on the left side ---

Q. Go ahead.

A. It was in disrepair a lot of times.

Q. During the year that I'm asking about?

A. Yes.

Q. Okay. And when you say disrepair, what did you see?

A. Actually saw the fence on the ground.

Q. Okay. And when you saw the fence on the ground or problems that you say is disrepair would that -- how long would that -- those problems, how long would those problems stay there; do you recall?

A. Well, the section that's up by the Zowitski's, that continued. That could continue for months on -- in fact, I went and put the fence back -- you know, tried to stand it back up.

Q. Does that have barbed wire?

A. It's a combination of -- it's old barbed wire.

Q. Okay.

A. And I think there may be some just plain wire involved in some of it.
Q. And I think what you're talking about has been marked with the red line on up across the bridge.
A. Correct.
Q. I'd ask you, please, to restrict your testimony to on the Dials Church side of the bridge, okay?
A. Okay.
Q. Just because -- well, just please restrict your testimony. So the general disrepair that you mentioned earlier, were you talking about on the Dials Church side of the bridge as well?
A. Yes. It wasn't as severe as the other ends.
Q. Okay. When you saw disrepair, what you saw was disrepair, what did you see?
A. Gaps in the fence.
Q. Okay.
A. Where the fence was either on the ground or part of it was broken loose.
Q. Okay. When you saw that, say on the day you saw it, call that day one, did you have occasion to go back on a later day, still within this year, and see the same occurrence or the same disrepair?
A. Yes.
Q. Okay.

A. A lot of times it's not real obvious.
Q. Okay. But it was obvious to you, right?
A. Yes.
Q. And did you notice that it hadn't been fixed?
A. Yes.
Q. On the disrepair, do you have any idea how long that was between the time you saw it and the time it was fixed?
A. Honestly, I can't recall.
Q. Fair enough.
A. I mean, if you're looking for was it a couple of days, it could be a couple of days.
Q. Was it ever a week?
A. Oh, yeah.
Q. Was it ever more than a week?
A. There again, we're talking about this time frame so...
Q. I got you. Now, let me ask you this. These items of disrepair or these areas of disrepair that you view while you're walking, if you were in your car could you see the same areas without getting out?
A. Yes.
Q. Okay. So if you were looking at the fence studying it as you drove up it was open and obvious to you?
A. My recollection of problems with the fencing,

really, when you are walking you have a chance to see things that you can't see it when you're whizzing by in a car ---

Q. Yeah, but if you were driving along and looking at the fence to make sure it was good, well, all I'm saying is from where you were standing you could be in a car and see it, right?

A. Yes.

Q. Okay. I mean, you weren't walking up by the fence, right? You were on a walk in the middle of the road -- or in the road?

A. Well, if you're picking trash up you're just a matter of feet from the fence and that's generally how, you know.

Q. Okay. Fair enough but -- I'm not trying to trick you. I just want to know. Can what you saw that you deemed to be disrepair, could it have been seen if you were standing in the road looking at the area that you say is dis ---

A. Oh, yes.

MR. HANNA: Objection, speculation.

THE COURT: Asked and answered.

MR. BOGGS: He answered. I'm done. Thank you. Oh, wait a minute, Judge. I apologize.

BY MR. BOGGS:

Q. When you saw the cows in the road on 6-21-2008 did you believe them to belong to any certain person, your personal belief?

A. I believe they belonged to Wayne Darby.

Q. Why didn't you call him directly?

A. Because prior to that date there was several incidences where I had called Mr. Darby and he didn't return the call.

MR. BOGGS: No further questions.

THE COURT: Cross-exam.

CROSS-EXAMINATION

BY MR. HANNA:

Q. Mr. Miller, on the time that you testified to a few moments ago about the pictures there on June 21, 2008, do you know from where those cows came, how they escaped the enclosure?

A. That's two questions. Where did they come from? I don't know.

Q. I'm clarifying. I wasn't clear. What I mean to ask is the second question. Do you know how they escaped the enclosure?

A. No.

Q. So it's fair to say you don't know if a fence -- if a tree had fallen on the fence?

A. No.

Q. Okay. The occasions when you described the herding technique and a cow getting out, do you recall that testimony?
A. Yes.
Q. Do you know whether or not or can you say whether or not Mr. Darby had been moving any cow in that manner on or about July the 24th, 2008?
A. Explain about.
Q. Start on that date.
A. No.
Q. The day before?
A. I can't recall what went on on a specific -- whether there was a problem or whether he was herding cattle on that particular date or not. I can't recall.
Q. The point is, you can't say with any degree of certainty at all that he was herding any cows on that day, correct?
A. No.
Q. Okay. Do you know whether or not Mr. Darby had a cow loose on July the 24th of 2008?
A. No.
Q. Do you know whether or not the fence around the Cooley Road pasture down by Dials Church and Cooley Road had any defect, breach on or about July 24, 2008?
A. No.

MR. HANNA: That's all the questions I have of this witness. Thank you very much.

REDIRECT EXAMINATION

BY MR. BOGGS:

Q. When the cows were out, including that date, did anyone come claim the cows or say they were missing any cows?

A. No.

Q. Can you say the fence on the Burdette Road had breaches in it on July 2008?

MR. HANNA: I'm going to object that that's outside the scope of anything asked on direct examination.

MR. BOGGS: I think we already talked about the stuff. I mean ---

MR. HANNA: That's you talked about ---

THE COURT: I think he talked about whose cows they were.

MR. HANNA: I was very careful.

MR. BOGGS: Wait a minute. Woah, woah. Are you objecting to my first question or this question?

THE COURT: That question.

MR. HANNA: I'm not objecting to the one you asked already. I'm objecting to the one he hasn't answered yet.

THE COURT: The condition of the fence on the date

of the incident, I think is question.

MR. HANNA: Yes, it is. I don't think I mentioned the Burdette Road pasture.

THE COURT: You didn't.

MR. BOGGS: My recollection is that he did talk about it. I'll move on, Judge. No worries. Nothing further.

THE COURT: All right. You may step down.

Let's take a break. You all go out and take a few minutes and relax. Don't discuss the case. I don't let you do that yet.

(WHEREUPON, the jury leaves the courtroom at approximately 4:30 p.m., and a brief recess was taken.)

MR. BOGGS: I don't have a live witness that I can fit into the remaining time.

THE COURT: All right.

MR. BOGGS: But I do have some testimony by deposition that we could read, and I know that's not exciting. It's Mr. Harrison who can't be here because he's not in good health.

MR. HANNA: I can go ahead and give a preemptive strike. When this fellow was -- I don't know what part they want to read and exactly the part of what I believe they want to read is where they went through a litany of questions about have you seen cows before, and basically

all he could say was that he had seen in the past 10 years more than five but less than 20, and that's the extent of his specificity in his testimony.

MR. BOGGS: He's kin to Mr. Graham and Mr. Hays, but, you know, Judge, it wasn't specified but at the same time he had a chance to cross-examine him. He didn't ask did you -- well, I can't remember what you asked. So I don't want to mislead, and it wasn't Mr. Hanna. It was a prior lawyer with their firm but --

THE COURT: The horse already got out of the barn that time.

MR. BOGGS: Sir? The horse had already gotten out of the barn that time? Yeah, that's funny.

MR. HANNA: I'll be honest with you, I think that at the time it never dawned on us that we would depose every soul within a three-mile radius of the case and nor did I know the extent of their testimony.

You know, we hadn't thought -- you know, a lot of the arguments I'm raising now did not come into my pee little brain until I realized the extent of how many people were going to be trying to say stuff.

THE COURT: All right. So the substance of his testimony is that he lived out there for numerous years and seen cows out from time to time but he was never restricted as to do you have any specific memories of the

last 12 months and offered that question because that question was never fashioned to him that way, but he'd seen cows out there before on the road?

MR. BOGGS: Yes, sir.

MR. HANNA: He basically said -- I can read to you what exactly. About how many times have you seen cows out in that area? That was the question.

Answer: Well, I hardly know. Every once in a while but I just don't know you often.

Okay. Well, I mean, is it more than five?

He says, Over how many years?

He says, Well, let's say in the last 10 years, do you have any?

He says, I imagine I've seen them that many times.

Have you seen them more than five, have you seen them as many as 20 times in last 10 years.

He says, No.

Not as many as 10. All right. When you see cows out in the road, the times that you've noticed, were they in the vicinity of Cooley Road?

I've seen them out there, yes.

Have you seen them in any other location?

Yes.

Where have you seen them?

Down the creek towards Cooley. Further down Cooley

I've seen them all the way out that way.

MR. BOGGS: The question I'd like to start with is page seven, question four. Where do you live in relation to accident?

Approximately one quarter or maybe a little better than that on the left-hand side of the road.

And how long have you lived there?

About 55 years.

So you're familiar with everybody that's in the area?

He nods head.

And do you travel Dials Church Road on a regular basis?

Yeah.

How many times a day would you say you go up and down Dials Church Road?

Maybe two or three.

Two or three times a day. All right, sir. If you're coming from Dials Church and you're coming in that direction, which is north, could you tell me what is on the left-hand side of the road at the accident scene?

Just before you get to Cooley Road there's a fence, pasture fence, and pastures all the way, all the way up to my house nearly. There's one house in between the scene and my house. Before you get to my house there's

one house more on the left.

At the scene of the accident going that direction on the left-hand side, the pasture you described, as you travel this road two or three times a day is it normal to see cows in that pasture?

Yeah.

Do you have any knowledge as to whose cows those belong to?

They belong to Darby.

Do you know anybody else who has cows in that immediate area.

No.

Honestly, I think that would be less offensive to Geov. I mean, maybe ---

MR. HANNA: I don't have any ---

MR. BOGGS: Problem with that.

MR. HANNA: I mean, it's cumulative but I don't -- but other than that, no.

MR. BOGGS: Have you seen in the general area of Cooley Road and Dials Church Road in your 55 years since you've lived, have you seen cows out of this pasture that you described on the left-hand side?

I have.

And were those cows, where were they in relation to the road?

Well, they were between the fence on the shoulder of the road.

And about how many times have you seen cows out in this area?

Well, I hardly know. Every once in a while but I don't know just how often. Then it goes on over the years that Geov just read.

Judge, I'm fine if I could read to every once in a while. I don't know just how often.

He's lived there 55 years. And, I mean, I know it's not specific but it --

THE COURT: All right. If we limit it to that what do you think about that, Mr. Hanna?

MR. HANNA: I mean, you know...

THE COURT: Let me ask you this. I mean, let me rephrase that. Is this your last witness regarding the cows and their behavior in the road?

MR. BOGGS: Yes, sir, I think. I mean, barring anything that comes up I think I've got two experts and my client tomorrow.

THE COURT: Okay. I mean, that probably wouldn't influence -- this is the last one of the neighbors?

MR. BOGGS: I don't have any more of these type people.

MR. HANNA: I guess, again, I'm concerned that by

saying I agree I'm somehow, you know -- you know how the record is when you read appellate cases but, you know, assuming something is coming in, okay, that's pretty -- you know, that's not all that offensive. I'll be honest you.

THE COURT: Okay.

MR. BOGGS: And, honestly, Judge, before the trial I told them Mr. Harrison is very sick and I plan to read his testimony, and not that he's -- I plan on using this. I don't have him here. Otherwise, I could have him here and get more specific because at the time of the deposition we didn't. And I know Geov didn't know what your ruling would be but I think it's benign, and I'm not going to -- obviously, I can't go any further. It's there.

THE COURT: All right.

MR. BOGGS: So I propose ---

MR. HANNA: You're stopping at 17?

MR. BOGGS: I'm sorry?

MR. HANNA: Seventeen, is that what line you said?

MR. BOGGS: I'm stopping at line 25 on page 8, the whole page 8.

MR. HANNA: Every once in a while. Okay. Got it.

THE COURT: It stops there at every once in a while.

MR. HANNA: And is that it? Then I can read my cross and that's it?

MR. BOGGS: Well, the sentence is, Every once in a while, but I don't know just how often ---

THE COURT: Yeah. Okay.

MR. BOGGS: --- period.

MR. HANNA: And that's all you want to proffer?

MR. BOGGS: No. I want more but I'm willing to give that if we just move it along.

MR. HANNA: What I mean is ---

MR. BOGGS: Oh, it's not a proffer. I want to read it to the jury.

MR. HANNA: I am tired ---

THE COURT: What all you intend to present. What he meant was is that all you intend to present through this deposition?

MR. HANNA: Yes, that's exactly. Thank you.

THE COURT: You need a Red Bull, too.

MR. BOGGS: I need something in it. No, just kidding. With it. Not in it.

THE COURT: Who do you want to read that?

MR. HANNA: I prefer if I would be allowed to read -- you know, if I could read the cross that we did. I can just read the question and answer, and he do it, too.

MR. BOGGS: What part are you going to read?

MR. HANNA: I'm going to read starting on page 16 starting with line 10, through page 17 line 21.

MR. BOGGS: If we can read the follow-up then on page 18 line 23, I know Mr. Austin. And we can say, I know Mr. Hanna has asked you about several other people in the area that have cows and you know where most of those people are located, correct?

He nods his head.

Have you ever seen cows out at any of those other locations?

No, I don't think I have.

So I rehabilitated what he talked -- I think it's -- that's all I would want to say.

MR. HANNA: That's fine. That would clearly be within the course of what scope of what I'm about to ask.

THE COURT: All right. We're pretty clear as to which Mr. Hanna is going to read, present.

MR. HANNA: Yes. I understand what he's going to read, and subject to what we were talking about before I'm okay.

THE COURT: Is he okay with what you want to present?

MR. HANNA: As I understood it he's okay as long as he can read that part in the redirect; is that right? The God's honest truth is, Your Honor, I think what he's

really deciding is this stuff -- I don't think there's an objection to the admissibility of it. It's whether or not he wants to really read -- I think he's trying to decide do I want to read the first part enough to let me say what I asked, which is about other farmers in the area. Does that make sense?

MR. BOGGS: Can I have one moment to talk to my client for once during the trial?

MR. HANNA: It's going to be a different kind of cross. I'm going to ask, Do you know another guy down the road who's got cows, you know another guy? We're eventually going to hear it anyway.

THE COURT: Well, you know, if someone leaves the gate open and you open the door so-to-speak all kind of things will come out.

MR. BOGGS: We're good. I'm good with it.

THE COURT: All right. How do you all intend to present that? You going to read it and then...

MR. HANNA: Can we read our own questions?

THE COURT: Sure.

MR. BOGGS: That's fine.

MR. HANNA: You okay with that?

MR. BOGGS: Geov, can you give me your exact start and stop?

MR. HANNA: Yes.

MR. BOGGS: I didn't write it down.

MR. HANNA: I didn't either but I'm starting here on line 10.

MR. BOGGS: On page 16?

MR. HANNA: Yes.

MR. BOGGS: Do you know a gentleman?

MR. HANNA: Yes. And then stopping where he says after right -- 21 on the next page, because the next few questions he said he didn't know ---

MR. BOGGS: That's fine. Yeah, that's fine. All right.

THE COURT: I would offer my law clerk to read his park but she doesn't sound like an elderly man.

MR. BOGGS: Do you prefer us to have someone else to question?

THE COURT: It's you all's presentation.

MR. BOGGS: I was just going to say question, answer.

THE COURT: Okay. Bring the jury and we'll be done for the day. This shouldn't take very long, should it? Ten minutes?

MR. HANNA: If that.

(WHEREUPON, the jury enters the courtroom at approximately 5:04 p.m.)

THE BAILIFF: All present, Your Honor.

THE COURT: All right. I'm going to tell the jury what we're going to do.

All right. Ladies and gentlemen, we've got a very short witness or a presentation of a witness. It's an elderly gentleman who lives in the community. I don't recollect his name. It doesn't matter, the lawyers will tell you. Since he is very, I'm told ill, unable to attend, his deposition was taken. So they have the sworn testimony of several months ago, or some period of time ago, questions he was asked by both attorneys.

So the attorneys are going to present the questions they asked and the answers to which he responded, which were done before a court reporter, just like Ms. Hanks, and under oath. And so it won't take very long, and that will be our last witness today and we'll go home and start back in the morning. All right.

Mr. Boggs, introduce your witness.

MR. BOGGS: Thank you, Your Honor. May it please the Court. We call, by way of reading deposition, Mr. John William Harrison who was deposed on May 1st, 2009 under oath for purposes of giving a deposition to record his testimony in this case. And I will read beginning on page seven at line four.

(WHEREUPON, the deposition of John W. Harrison was read into the record.)

MR. BOGGS: That's it. Ask that he be excused.

THE COURT: I think we can do that.

All right. That's it for the day. What time do you want to start in the morning, nine again?

(WHEREUPON, various jurors nodded their heads.)

THE COURT: Nine again. All right. We'll see you all in the morning. Be in the jury room before nine. We'll get started at nine as sharply as we can. I'll have my candy replenished. Please remember, don't begin discussing the case. Thank you all so much. Have a good evening.

(WHEREUPON, the jury leaves the courtroom at approximately 5:11 p.m.)

THE COURT: The court reporter has put in specific lines and pages of the testimony you presented. Do you all want to put the original deposition in to have that in her possession?

MR. BOGGS: Yes, that would be great.

(WHEREUPON, Court's Exhibit Number 7, the Deposition of Mr. John William Harrison, was marked and made a part of the record.)

THE COURT: All right. See you all.

MR. BOGGS: Judge, we've been thinking about how we're going to preserve the masterpiece or present it to the jury. I don't think there's any way for that plastic

to go in there. I have copied it to the best of my ability with only one mistake that is not really -- I mean, it's an extra line but it doesn't have -- can be easily avoided.

I'm going to ask that Your Honor consider submitting this to the jury along with either the big board or a clean picture of the board. I don't know if the court reporter wants the big demonstrative into evidence.

THE COURT: She does not.

MR. BOGGS: Then I would suggest this copy, which is, you know, copied what is on the transparency and a clean copy. And I was just going to bring that up now.

THE COURT: I don't think that's going to be a big issue. If it's an accurate depiction that Mr. Hanna and Ms. Rains can review then we'll probably let that go to the jury room as a substitute for the big board.

MR. BOGGS: All right. I'd like to leave it with the court reporter at this time.

THE COURT: Have they looked at it?

MR. BOGGS: Yes, sir, they have, but I don't think they've compared it yet but I just ---

THE COURT: Well, give them an opportunity to do that. I don't want to put them on the spot. They can have until in the morning.

MR. HANNA: Well, more than anything I want to think about whether or not I want to voice an objection. I have no objection to an aerial photo that's either that big one or one just like it going in. I am still mulling over whether or not I'm going to articulate some kind of objection to the one he's been drawing on going in.

THE COURT: Well, think about it. I don't need to rule on it right now.

MR. HANNA: I understood in the end -- I don't know if we want to -- he was talking about proffering some testimony as well. Do we want to do that real quick before we all go home? It was Mr. Blackburn and the fence grabbing deal, and then there was the photos that Ms. Chapman took. I could care less if we do it now or later. I just didn't know. I mean, while we already let the jury go this may be the prime opportunity to do it, as much as none of us want to be here anymore.

MR. BOGGS: On Ms. Chapman, all I have is this photo. That's all. I mean, obviously I think Geov would stipulate that she would show up, that she took the photo on August 6th, 2008, and that she found a problem in the fence, but subject to your prior ruling even though this was two week s after the accident I would want it to come in as Court's to be on the record.

As far as Mr. Blackburn, I think we'll wait until

they present their case because I might have an argument that it could come in. I mean, you know, I don't know yet.

THE COURT: All right. We'll do that.

MR. BOGGS: You want to put this in as ---

MR. HANNA: Please.

MR. BOGGS: Okay. So Chapman, I think we already have another Court's exhibit. So this would be Court's Exhibit 8.

THE COURT: Court's Exhibit 8, and basically that is also consistent with my ruling the year before date of incident.

MR. HANNA: Understood.

THE COURT: Out of those parameters nothing is in intentionally.

(WHEREUPON, Court's Exhibit Number 8, a Photograph, was marked and made a part of the record, and the trial of this case was recessed for the day.)

Wednesday, February 2, 2011

THE COURT: All right. You all ready to go?

MR. BOGGS: Yes, sir. My next witness is one of the experts that we talked about last Friday, the Ph.D., Dr. Worrell, and I just wanted to see if he had any preemptive problems or if we need to put something on the record instead of taking the jury back out.

MR. HANNA: Just as a reminder that my real beef with this, the ultimate conclusion because it happened next to his property that, you know, it must be his. Again, I think the rest of what he's going to say as far as -- you know, is okay. I just have a problem with the expert -- I don't think that that's the proper -- that's what the jury is here to decide and is not the proper subject of expert testimony to basically just say well, it must be his because it happened next to his property.

MR. BOGGS: I don't think he would -- I don't think his testimony is going to be that it must be his. It's going to be that proximity is a factor on a stray cow because especially if it's sitting there eating, and that based on his expertise and the facts that he's reviewed in his experience is that it's more likely than not that it was Darby's cow because it happened right beside Darby's pasture.

MR. HANNA: Understood. I stand corrected. I still -- that doesn't change my objection.

THE COURT: You still don't like it.

MR. HANNA: No. No. I think, again, I believe that to be -- I think that they can elicit the testimony from him and that they can argue -- that's exactly what they intend to argue to the jury in the end and this is not a situation where, you know, it required -- in other

words, it is my belief that expert testimony would be, for instance, he could say that of the standard of care for a cattleman is X and he breached it in this way, and I believe that, but then to have him go on and say it's most likely his cow, that is not the proper subject of expert testimony.

Again, I know I'm, quote, splitting hairs here but there's a difference between the two types of opinions, okay. And the opinion of, it happened close to his property so it more than likely is his cow, anybody can think. You don't need an expert to tell you that.

THE COURT: Well, I mean, we had the young man yesterday said cows won't go far.

MR. HANNA: I understand.

THE COURT: I mean, he said that, the young man.

MR. HANNA: And that's what he'll say.

MR. BOGGS: But he's an expert in cattle behavior so when proximity is part of cattle behavior based on his expertise then that's a conclusion that an expert can make. If he doesn't like it he can bring in his cow expert to say that that doesn't mean a thing, and he can cross-examine him, but it doesn't mean that he's excluded from giving an opinion.

MR. HANNA: Again, you know, I want to be clear that I think there's a difference between an expert

testifying as to the ultimate conclusion to be drawn in the case and an expert to say that someone was negligent and the reason for which they did it, you know.

MR. BOGGS: Judge ---

MR. HANNA: That's the basis for our ---

MR. BOGGS: Judge, his expert that he's going to call, in all likelihood, about traffic engineering is going to opine that my client should have avoided the cow. Under his theory he shouldn't come in because that directly bears on the outcome of the case.

THE COURT: Well, I think an expert can give their opinion, and his expert is in the field of the animals. And he can't say conclusively beyond every doubt, absolutely, those type of words, but more probably than not I think I'll allow that, just with the same respect the expert anticipated that was going to say that could have avoided the accident by taking -- seemed like you all -- did you all tell me early on in this case that you had an expert that was going to come in and say if he just let his hand off the motorcycle would have slowed down enough and missed the cow? Where did I hear that? Did I dream that up?

MR. HANNA: That's me.

THE COURT: All right. I remember that from ten months ago.

MR. HANNA: And, again, all he's saying is -- and I think that the types of -- I think that that is apples and oranges and you'll hear what we're getting at. But all my guy did was take what the plaintiff himself said, put it into -- you know, if you were going this fast and you see it from this distance can you stop? You know, in other words, are you going to wreck before you stop or not? And the calculations show that you could have stopped, okay. That's all it shows.

And you do need an expert in order to have the sufficient expertise to know what the calculation is and to add it together. You know what I'm saying? A layperson can't do that.

THE COURT: All right.

MR. HANNA: Whereas -- you know, again, I understand your ruling. I just want to make sure for protecting the ---

THE COURT: I'm going to allow both of them.

MR. HANNA: Well, I understand and I'm just -- again, I'm protecting the record only at this point by saying I believe that the -- we have a case here, it's the case of McBeth V. Mills in which basically it was a slip and fall case and the expert tried to say that when a woman is wearing high heels she wouldn't normally walk across a certain type of ground, and I think that's no

different than -- and the Court said that's not proper expert testimony, okay. You know, I mean, that's just anybody could figure that.

THE COURT: And what field was this expert qualified in?

MR. BOGGS: High heel literati, sassiness.

THE COURT: Some sort of husbandry, I guess.

MR. BOGGS: Future husbandry.

MR. HANNA: I think it had to do with the design of the sidewalk and that some of thing.

MS. RAINES: He had some testimony about also yellow, the yellow sidewalk and how your eye wouldn't catch that. Oh, it was ergonomics. Those are the factors I'm talking about. That's the way you see, the way you move, kind of that field, is what he was qualified in.

MR. HANNA: And we would, like in this case -- that case is just ---

MS. RAINES: So people behavior instead of cow behavior.

MR. HANNA: The record in McBeth v. Mills ---

THE COURT: And was it allowed?

MR. HANNA: No. The Court held that that was improper expert testimony, that the guy was saying something anybody could say. You know, and that's the

point I'm getting at here is that he could say I'm an expert in cows and cows don't normally go very far and this and that and the other. I'm not saying that's not -- but to then go on and say I think in this case it more than likely or not was his because it happened next to his property, that is what I'm objecting to, particularly when ---

THE COURT: Let me see that case. That's interesting.

MR. HANNA: Particularly when there's no other evidence of a breach in the fence and I'm going to bring all that out that normally in these cases when ---

MS. RAINES: I apologize. I handed you the wrong case. This is a Fourth Circuit Court of Appeals case. That case has the same holding but the facts are different in that case but still says an expert can't testify as to common knowledge, something that's within the propensity of the jury. They both have the same holding. The facts that I just described were from the Fourth Circuit Court of Appeals case.

MR. BOGGS: Judge, I can assure you in this particular matter that my expert is not going to testify that because the cow was there it had to be Mr. Darby's, just because it was there. There's a reason why the cow was there and that is based on his knowledge and he can

give an opinion, and the cow -- he's not going to talk about high heels.

THE COURT: All right. Here's what I'm going to do. I think these cases, understanding the common sense thing, and I think your question you want to ask, Mr. Boggs, is the common sense question. And so I'm not going to allow that question of well probably not was it his cow. You can ask everything up to that, but reading this, reading these two cases it seems to me that that is -- juries can't -- or don't need assistance with common sense, is kind of the analysis.

Cows in the area, cows go through fences, cows get out and eat more grass, cows were near the property, cows don't wander far, all those sort of things to me it's common sense, what you want to prove.

MR. BOGGS: Well, with all due respect, Judge, if that's your ruling and that's common sense then any defense by Mr. Darby that it was someone other than his cow, because there's no other cows in the area, should not be allowed. And that's why I think it's dangerous not just -- and I'm not trying to -- I'm saying this respectfully, Judge.

THE COURT: I understand. You all have been very respectful. I mean, you all have very diverse opinions as to the law but very consistent opinions of the facts.

MR. BOGGS: Yes, sir.

THE COURT: I mean, you all are dead on the money. You all are not factually arguing.

MR. BOGGS: And, Judge, I think ---

THE COURT: What do you anticipate them saying regarding the cow?

MR. BOGGS: Where he's already said it wasn't his cow.

MR. HANNA: I can tell you what we're going to say about it, if it will help, but I think the inference he's trying to draw, if you don't let the expert say that, I don't think the two have anything do with each other.

The expert will also testify on cross that while cows don't normally go very far they've been known to go very far, that cows sometimes escape. He will say that you almost always -- I think he will testify that every time a cow escaped from his personal enclosure he's always been able to tell where it got out from.

And, again, so the point I'm making and the whole argument I'm making in this case is, is that while maybe it's normally they do get here. Okay. You also in those normal situations there's other factors that will be involved, you know where it got out. There's explanation. And the fact that there is no explanation as how this particular cow got out that brings in the

realm of possibility that we have a cow that walked a long way, just like they'll all say could happen.

THE COURT: All right. Now, you've -- there's a factual issue out there as to conditions of the fence because I've heard testimony that the fences were in good state of repair and they were in a terrible state of repair, and that laymen have seen the cows going in and out of the fence. That's a factual issue.

I mean, I don't think you can say to the expert, Assuming the fences are in good repair. I think you got to preface everything with that, but assuming they're in an average to below state of repair can you tell. I think he can ask that question because I think that's a factual question that you all presented me.

MR. HANNA: I want to make something clear that you may not be picking up on, okay, which is all of the evidence the fence being in disrepair is the fence on the Burdette Road, which is approximately a mile and a half away from where the accident is. And so, in other words, if the theory is that a cow doesn't go very far that it had to have come out of the fence that is in good shape, okay, not out of the crappy fence.

And the moment that they want to start saying well, it must have come out of the Burdette Road pasture then why couldn't it have come out of Boyd Stoddard, Sonny

Stoddard, Harry Hays? They all live -- I mean, it's a completely different argument, and that's where I get back to what I've been saying all along about there's got to be a theory of the case, okay. And if the theory is, is that a cow only walks five feet from where he gets out then it had to have come out of the Cooley Road pasture, couldn't have come out of the other one.

THE COURT: I don't know about that but...

MR. BOGGS: He's clouding the issue. First of all, I think my argument has been clear. My theory of my case has been clear that there's a standard -- when you undertake an act or a duty, or a business, or an operation you have the reasonable standard of care, and Geov said carelessness is negligence.

If he was careless and you allowed testimony to come in because the case law says prior acts come in this it doesn't mean that he did something wrong specifically on that day but what it does mean is that the jury can infer that his overall slackness was in place at the time the accident occurred.

Now, my expert can testify that proximity, among other factors, including the condition of the field, things like that, which he's going to testify to lead to his opinion, but once again, I'm not making the jump. He was not there. None of us were there, but experts don't

have to be there to give an opinion about what happened. That's why they are experts.

For a court to find a witness competent to testify as an expert the witness only must be better qualified than the jury to form an opinion on the particular subject of the testimony.

I submit to you that a Ph.D. in animal husbandry is better suited to talk about cattle behavior than the jury, therefore is not common knowledge. And all this started was about proximity. I don't want him saying because it was right there it was Darby's but, Judge, his expertise will tell you and the jury, the Court, the record, the whole free world that that is an indicator that if they are hungry and they are on the side of the road outside the fence that they probably came from where they were hungry from, and right there. And that's not the sole -- proximity is not the end all, be all. It's everything, and that's part of his expertise. So, respectfully, I'd ask that you reconsider.

I feel that once he's qualified as an expert I can ask him about his opinion, and Geov can then say, Now, just because the cow is right there doesn't mean it's his cow, does it. Enough said. That's called impeach ment.

THE COURT: All right. Well, here's -- I'm going to see how the testimony goes but I don't want you to ask

the question more probably than not whose cow is it, that question. I don't want you to ask that question.

MR. BOGGS: But he only asked about proximity. I can ask that question about other factors, can't I?

THE COURT: Sure.

MR. BOGGS: Okay. So do you want me to say -- I mean, I still want to ask about proximity. So, I mean, do you want me to stop before I ask him about his opinion?

THE COURT: No. What I'm telling you is this is -- I mean, I'm having a hard time because I don't have the question in front of me. You all herd me up a chute blind and I feel like I'm getting a couple shots. I don't think you go to the very end and say, All right, based upon everything you've seen whose cow was it, more probable than not. That's the question I don't want you to ask. I don't think you can do that.

MR. BOGGS: I can say as an expert in animal science -- I mean, respectfully, Judge, I don't mean to be talking about it, but I feel, and I think it's clear under South Carolina jurisprudence about experts. Once he's an expert, once he's reviewed and studied facts about this case, once he knows facts in evidence, and pictures in evidence, and based on his expertise I can say, Based upon your expertise what is your opinion about

this case. And if that includes that it is more likely than not that a cow right there came from Darby's field because of blah, blah, blah, blah, blah, then that's a valid opinion that should be introduced into the record and before the jury. That's the -- I think he's trying to cloud the picture by saying it's common sense, but if he'll stipulate that the cow right there belonged -- probably belonged to Darby then that's a different matter but I don't think ---

THE COURT: He ain't going to stipulate to that. He's going to argue that hard.

MR. BOGGS: So it must not be that common sense.

THE COURT: All right. I think it's common sense.

MR. PATTERSON: Judge, may I interject something. We've got the same -- exact same argument with his expert. All his expert is going to say is that if he could have seen the cow, if he could have seen the cow 450 feet away he could have stopped.

He didn't use any special knowledge, no documentation as far as any, you know, learned papers or treatise, or anything like that. The fact that if you see something 450 feet away that you can stop, that's common knowledge. He admits, their expert admits in his deposition that all he used was the normal everyday laws of gravity that every juror knows about.

So if you're going to excludes our expert from making his conclusion you need to exclude his expert from making his conclusion because that's all his conclusion is, is that if the cow was in the road, which he doesn't know, if the cow was in the road and if he saw it 450 feet ---

THE COURT: Well, can't you all argue obviously he didn't see the cow?

MR. PATTERSON: But that's his testimony. That's his expert testimony, which is common knowledge.

THE COURT: Why would anybody stay at speed when a cow is in the road? I mean, you all aren't going to say that? I'd be stunned -- I can't argue your case for you but I'd be stunned if you all didn't say that, or pitch that out there to the jury; Who would stay at full speed or constant speed if they saw something? Nobody would. That's common sense.

MR. BOGGS: That's our argument, Your Honor, that if he's saying that if he saw it 450 feet away that he could have stopped. He didn't use any special knowledge about it. That's all his expert is going to say.

MR. HANNA: I respectfully disagree.

THE COURT: Well, all right --

MR. PATTERSON: It's in his deposition.

THE COURT: I understand where you all are going.

Let's let this testimony go, and I'm telling you not to ask that last question and I don't think that should be asked. You can ask anything but that.

MR. BOGGS: May I please have the specific question that you are forbidding me to ask because ---

THE COURT: Based upon everything you've seen whose cow was it more probably than not. That question.

MR. BOGGS: Based on everything or proximity ---

THE COURT: Well, that's what you ---

MR. BOGGS: Because his whole motion was about proximity.

MR. HANNA: I can tell you, Judge, and I can find the specific part of the testimony but that's what I asked him, what was his basis for that opinion, and he said that it was proximity. Okay. I mean, that's why I'm saying that, but they are now wanting to say a bunch of other stuff, too.

But the bottom line is, is that I don't see what -- this is the part I'm not getting from them is, is that even though he says all that stuff you can then make a very quality argument that based upon everything this man said about what cows normally do, where they go, it's so obvious what happened here. Okay.

And that's what the Judge is saying is, is that to have him say what is so obvious based upon all the other

testimony you're going to elicit from him adds credence to something that you don't have to be an expert to say that. That's the whole thing. It's common sense once all the other facts are out there.

MR. BOGGS: Were you talking to me?

MR. HANNA: I was talking to the Judge and saying what you -- I mean, the bottom line is, is that you're not preventing -- what I'm asking is not preventing you from making the argument you want to make.

MR. BOGGS: I'd ask that you reserve your decision until after the testimony, and then I won't ask the question. We'll take a break and then we'll re -- because I think ---

THE COURT: That's fair enough. Just let's do it that way because I'm telling you, it's hard anticipating this stuff. You all, really, that's a difficult thing to do. I'd rather ---

MR. BOGGS: Yes, sir.

THE COURT: --- guess at sentences of people than do this.

MR. BOGGS: But aren't you glad I brought it up now so you can start thinking about it? All right. We're ready, Judge.

THE COURT: Go get them.

(WHEREUPON, the jury enters the courtroom at

approximately 9:35 a.m.)

THE BAILIFF: All present, Your Honor.

THE COURT: You all ready to go to work? I had to get more candy. That was a good idea I got from Reno, wasn't it? I'm going to have to try to figure out which Judge told me that. The judges came in from all over the country to talk to the 40 judges that were out there. We had judges from Micronesia and all over the country. So it was really neat. But that was a suggestion by one of them from, I think Minneapolis. Anyway, we're ready to get to work.

Mr. Boggs, it's still your case.

MR. BOGGS: Thank you, Your Honor. May it please the Court. We call Dr. Michael Worrell to the stand.

MICHAEL A. WORRELL, PH.D., after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGGS:

Q. Can you state your full name for the record, please.

A. Michael Anthony Worrell.

Q. And what is your occupation?

A. I'm a cattleman at present.

Q. Okay. And where are you currently employed?

A. MiBek Farms, which I'm the owner.

Q. And where is that located?
A. Barnwell, South Carolina.
Q. Do you have a title other than owner?
A. Owner, manager, chief cook, bottle washer.
Q. Okay. Do you participate in the running of that company, of that farm?
A. Absolutely.
Q. From the ground up, literally?
A. Absolutely.
Q. Okay. And what does that company do or what does that farm do?
A. We are a cattle enterprise and a specialty hay enterprise farm. Our cattle operation is which we supply cattle to feed lots out west and presently we're actually finishing our cattle in supplying a high quality niche beef to restaurants and customers. We also grow perennial peanut hay, which is a specialty hay crop similar in quality to alfalfa for the horse and goat market.
Q. Okay. Now, can you briefly describe for the jury and the Court the subject matter of your specialty -- of your knowledge. What's your -- what have you studied that allows you to -- would allow you to testify about the subject matter of the case?
A. Well, I have three university degrees. First was a

Bachelor of Science in Animal Science at University of Florida. I have a Master of Science in Animal Science, also at the University of Florida, with a specialty of ruminate nutrition or cattle nutrition.

I have a Ph.D. from the University of Nebraska, again in animal science, again with the specialty of ruminate nutrition. Both my masters and my Ph.D. programs were heavily influenced with agronomics, looking at forages, forage quality, pasture management.

Subsequent to graduating at the University of Nebraska I joined the faculty at Clemson University and served on faculty for 16 -- almost 16 and a half years obtaining tenure at the University and also a promotion to associate professor before I left to start my own private enterprise.

Q. Okay. Now, the terms you use I need to ask you about. Now, can you describe for the jury what animal science means.

A. Animal science is essentially the biology of agricultural animals. It is an agricultural production system.

Q. Including cows?

A. Including cattle.

Q. Now, you mentioned ruminate science. Tell me again what ruminate is.

A. Ruminate nutrition.
Q. Oh, I'm sorry. Ruminate nutrition.
A. That's essentially the nutrition of ruminate animals. Ruminate animals are those animals that are not simple stomach animals such as pigs or chickens. These are the ones that have -- actually, many people consider four stomachs into a cow. Essentially, there's three pre-gastric fermentation organs and then one true stomach. So cows are ruminates, both beef cows, dairy cows, goats, sheep, deer, camels, lammas.
Q. So after you taught you decided to go into the field again?
A. Yes, sir. More specifically I was a research scientist that did not have per se assigned responsibilities for teaching; however, I did teach. I taught things up to graduate level beef production courses.
Q. So, in other words, when you worked for Clemson you weren't up at Clemson at the University in a classroom for those how many years?
A. About 16 and a half.
Q. So you weren't there all the time. You were -- when you say research ---
MR. HANNA: Objection, leading.
Q. Where were you when you were employed by Clemson?

A. I was at the Blackville station, the Edisto experiment station.

Q. Okay. Did that involve working on a farm or maintaining farmland or cattle land?

A. Yes, sir. I was in charge of the cattle production there from probably 1985 to 1995. That included not only doing my own research there but it also -- including coordinating with other researchers from campus, their research projects and maintaining the integrity of the management of the cattle herd.

Q. Now, have you been asked to be an expert witness before today?

A. No, sir.

Q. And therefore you haven't testified in any cases about your expertise, have you?

A. No, sir.

MR. BOGGS: Your Honor, at this time I would put his resume into evidence. Based on your prior ruling I'd just like to do that as a Court.

THE COURT: That will be fine.

(WHEREUPON, Court's Exhibit Number 9, a Resume, was marked and made a part of the record.)

MR. BOGGS: Your Honor, pursuant to Rule 702 I'm tendering Dr. Michael Worrell as a qualified expert witness in the field of animal science with a specialty

in ruminate nutrition?

THE COURT: Any voir dire?

MR. HANNA: None from defendant.

THE COURT: He'll be so qualified.

All right. Ladies and gentlemen, this is -- I'm not sure I explained this to you before, but there are two types of witnesses. There's lay witnesses and expert witnesses. Expert witnesses because of their experience, training, study of a particular area can render opinions in that particular field or study.

For instance, in a criminal case a fingerprint expert can be qualified in locating fingerprints. That sort of thing. Dr. Worrell has been offered as an expert in the field of animal science and ruminate nutrition, and he is so qualified to testify in that field.

BY MR. BOGGS:

Q. Dr. Worrell, before you testified in this case we've been focussing on the events that led up to July 24th, 2008, and also going back only a year prior to that, just for your knowledge. So I ask in your response to any of my questions if you focus on facts that you -- or testimony from that time, okay?

A. Yes, sir.

Q. All right. Now, what was the weather like in South Carolina in 2008?

A. We were experiencing a drought, a statewide drought, very severe down in Barnwell, and I understand much more severe up in the upstate all the way up towards Clemson.

Q. Okay. I'd like to show you what's been marked as Plaintiff's Exhibit Number 21 and I'll submit to you that it's been determined or testified to that that was Mr. Darby's pasture which was immediately beside where the accident occurred on Dials Church Road July 24, 2008.

I'm also going to show you Plaintiff's Exhibit Number 3, which is a pasture across Dials Church Road, and for purposes of our discussion during the trial the picture I showed you in Plaintiff's Exhibit 21 would be F-1 on this diagram with this red line representing, tracing Dials Church Road.

And the picture in Plaintiff's Exhibit 3 would be a picture of the site -- excuse me, of the pasture that's marked as D, and that's the one with the hay bales, hence hay right here. I'll submit to you that those were -- those have been testified to be true and accurate depictions of the conditions of the respective pastures at the time of the accident.

Now, I'd also like to show you Exhibits 9 through 14, which are a series of pictures of cows, which there's been testimony that those are cows that were in F-1 at

the time of the accident.

A. Yes, sir.

Q. And there's been testimony as well in F-1 that there were a total of 45 cows and 43 calves in that pasture.

A. Yes, sir.

Q. Now, calling your attention to the picture of F-1, which I believe was Exhibit Number 21. Based on your expertise can you describe what you see about the condition of that pasture as it existed on or about July 24th, 2008.

A. The clearest way to describe it is a pasture that's obviously suffering effects of drought and/or over grazing.

Q. Now, based upon your expertise and review of that picture is there enough grass in that pasture to feed 88 head of cow?

A. No, sir.

Q. All right. Without knowing more would you think that based on your expertise that feeding would be required?

A. Yes, sir.

Q. Now, is it unusual to have to feed cattle in the summertime?

A. Yes, sir, in normal environmental conditions.

Q. But it wasn't unusual to feed them in a drought?
A. No, sir.
Q. Mr. Darby testified, again, that there were 88 head of cattle, 43 mommas and 43 babies, or cows and calves, and he was feeding them two bales of hay every other day. And I'll call your attention again to the picture with the hay bales across the street. That was Exhibit Number 3. He testified that each of those bales was approximately 1200 pounds. Based on the condition of the pasture and the number of cattle can you tell me whether the cattle had sufficient feed?
A. I actually did some calculations for that for you that I've shared with the defense during the deposition. And, no, there's not enough feed based upon the size of the animals, based upon their -- part of their lactation curve that they are in, plus not enough pasture to supplement that. So basically what's happened with the feed source, there would not be enough to support 45 cows, 43 calves.
Q. Now, did you base that determination you said on the size of the cows and calves? You didn't measure the cow and calves in this particular field, did you?
A. No, sir.
Q. How did you come up with a factor for the size of the cows going into your determination?

A. This is based a lot upon years of experience with Clemson University, also a little bit of experience with -- several years ago with actually Mr. Darby himself and knowing the breeds of cattle that are very prominent up in this area of the state.

Q. Well, let me interrupt you right there. You know Wayne Darby?

A. Yes, sir. Well, I've met him many, many years ago.

Q. And what was the purpose of that meeting?

A. Actually, I purchased some calves from him.

Q. And how long ago was that?

A. 2002.

Q. Now, you talked about prior knowledge of buying or what is typically up here. In looking at the pictures of all the cattle were your thoughts confirmed -- or are your thoughts confirmed in the type cattle you expected to be up here?

A. Absolutely.

Q. Okay. So bottom line is what weight did -- I don't want you to go through the exact multiplication and all that. What was the approximate weight that you used for these cows?

A. For the benefit of doing the calculations I think I used 1150 pounds, which would be on the light side ---

Q. For the cows?

A. --- but that's my experience. Yes, sir.
Q. Is that for the cows?
A. That's for the cows.
Q. Okay. And what weight did you use for the calves?
A. I don't really recall that but probably somewhere about 400 pounds.
Q. Okay.
A. 450 pounds.
Q. Would you consider that on the light side for that time of year?
A. In the middle of the summer during a drought and knowing the type of cattle probably a little bit on the light side.
Q. Okay. So in other words, you did a conservative determination?
A. Yes, sir. I tried to be conservative.
Q. And did you use certain standards in the cattle industry for -- or what standards did you use to determine -- to end up with your ultimate determination? In other words, is there an amount of hay or grass or intake that you use to reach this conclusion?
A. Yes, sir. There's many tables that have been published by the National Research Counsel very well known in the nutrition field that there is a requirement, an intake requirement. That requirement actually varies

depending upon the quality of the feed itself, I. E. whether it's a forage or where it's a grain.

It also varies upon the size of the animal and it varies upon its production potential of the animal itself. And what I mean by that, the milk production potential of a female has a significant impact upon its intake potential. I chose two and a half percent to make it on a conservative basis again. This is probably -- was on the low side.

Q. Let me see if I understand that. So essentially if the momma cow is feeding, milking the younger cow she requires more food?

A. Yes, sir, that's true.

Q. Is that part of what you were just saying?

A. Yes, sir. And maybe just a little bit further as well because the amount of milk that the dam produces also will have an affect then on intake. So the more milk she produces the more energy and protein she needs to consume. And there's a growing body of evidence that indicates that even just the potential of milk production can have a varied impact on intake and maintenance requirements of those animal s.

Q. When the cattle are fed hay will they all get an equal amount of food?

A. That is a question that would be based upon how

much feed that's being provided, and this situation where we're looking at the amount of feed that's provided I would really refer to this to as a limit feed situation during ---

Q. Before you go on can you explain what you mean by limit feed situation.

A. Yes, sir. This is truly a common and can be a very sound management practice where you actually allow the body reserves or the fat covering of the cow to be like a bank account for you. This is generally done in late gestation, early winter where you have cattle that have developed fat over the forage growing season, the pasture season, and then you use that fat as to help maintain that cow. So you're having that cow lose weight.

In a limit feed situation, in that situation the cow is dry; in other words, she is not lactating. She's generally in the third trimester of her pregnancy, and in that situation where you have cattle that are in very good flesh it is a smart and sound management practice.

Q. Okay. When is limit feeding unsound or when is limit feeding not being -- never mind. When is limit feeding unsound?

A. When you are trying to achieve a production level from your animals itself, whether it's a growing animal or and you're trying to get them to gain as much weight

as possible or whether it's a dam, a female that's lactating and you want her to produce as much milk as you can for the calf that she's raising.

Q. So if I were to tell -- there's been testimony that a bale of hay that Mr. Darby used is about four-feet by five-feet, I think is the testimony. I remember holding my arms out and doing a circle.

A. Yes, sir.

Q. Is that consistent with your knowledge of hay, of round bales of hay?

A. Yes, sir. Up in this area the bales are significantly bigger than we make them down in our part of the state. Four-foot to five-foot bales is common.

Q. Okay. Now, there's testimony that the two bales were placed in the field and, in fact, there's testimony that if you look closely you can just see where the bales -- the remnants of bales have been, and that the testimony that it's not spread out but just set there for the cows to eat. Now, would that technique alone affect how far 88 cows could feed on the hay?

A. Absolutely, and it depends on how close the proximity of the two bales are and whether those remnants that we see in the photo, whether those were over a period of several weeks or months. The closer they are together then you start having an affect of social

dominance in the availability of that feed for cattle herd.

Q. When you say social dominance, does that mean, like, only the strong will survive or survival of the fittest? What do you mean by social dominance?

A. In all cattle herds there's definitely a social hierarchy in terms of dominance that's established. There's always one or two, or many boss cows that are very dominant. In fact, the common vernacular is boss cow. All the cattle know their -- essentially know their place in this hierarchy. The hierarchy essentially goes from the more aggressive dominant cows to the more less aggressive, less dominant to timid, to calves.

Q. Based upon the way they were being fed and would a calf be more likely or less likely to be able to eat its share of hay.

A. When you limit feed that's essentially saying that you are not allowing the entire herd equal access to the feeds. So calves at the bottom of the social dominance would be the ones most likely to be excluded from the feed.

Q. Are you able to look at the pictures of the cows in the photos, I believe it's -- whatever exhibits, I think it's 9 through 14, but those cattle exhibits, can you tell from the picture alone anything about the nutrition

or the condition of the cows?

A. Yes, sir. Yes and no. I can say it that way.

Q. Okay.

A. After the point that these pictures were taken I cannot tell what stage of energy balance that they are in. In other words, I can't tell you that they are gaining weight or losing weight. It would take a series of photos over time to be able to distinguish that.

The condition score that they are in in these photos look like to me -- and this is, again, an estimate off of photos which is not as near as well as -- as good as visual firsthand appraisal, their body condition score fives, which is an adequate and a good body condition score for momma cows.

And there is variation in this. There are some cattle that look like they are carrying a little bit more flesh and a few cattle that look like they're carrying a little bit less which would then be consistent then with a normal distribution of fat cover for the cattle.

Q. And because you are an expert I want to make sure I understand. Is what you just said that some of them look good, some of them look a little thin ---

MR. HANNA: Leading.

THE COURT: I'm going to let him lead here.

BY MR. BOGGS:

Q. I'm not trying to put words in your mouth. I just want to make sure I understand what you just said.

A. No, sir, I didn't mean that.

Q. Well, tell me, can you dumb it down for me a little bit? I'm sorry. Because what you just said, I took it to mean something different, and if you just keep it -- or please tell me again what you just said in language maybe a lawyer could understand.

A. First off, I'm sorry.

Q. No. No.

A. What I'm saying is there is variation in body condition on these animals.

Q. Okay.

A. This is consistent with cattle management regardless of the time of the year or whatever. Again, the cattle that generally have higher condition scores generally tend to be a little bit more dominant animals or those that are less productive.

And it looked to me like in these pictures there was a normal distribution of condition and my average condition that I put on those cows were five which was, at that point in time, that snapshot says to me that they were in good production or good condition from a cattle management animal husbandry standpoint.

Q. Okay. And when you use the term normal for cattle

management, and based on what you -- I think you just said, does that mean that based on those pictures it's what you would expect to find in these pastures?

A. And I can't say that.

Q. That's fine. If you can't say that then just tell me. I'm trying to move it along but I'm still trying to keep it straight.

MR. BOGGS: Judge can we approach?

THE COURT: Sure.

(WHEREUPON, a bench conference was had.)

BY MR. BOGGS:

Q. Okay, Doctor. Based on the amount of hay, based on the amount of cattle, or number of cattle, based upon what you called social dominance, and based upon the date, the drought, do you think there were hungry cows and calves in this pasture as of July 24th, 2008?

A. Yes, sir.

Q. Is that opinion based on a reasonable degree of professional certainty?

A. Yes, sir.

Q. Would a reasonable cattleman have been feeding more than what Mr. Darby was feeding?

A. Yes, sir.

Q. Now, just briefly. I'll hand up to you what's marked Plaintiff's Exhibit Number 23. I'll submit to you

that there's been testimony that those approximate -- I think there's approximately 80 numbers with corresponding dates. It's been testified to mean that the left column is tag numbers for the cows, the middle column is sex of the -- it's been testified the sex of the calves, and the right column would be date of birth for the calves, and those dates would have started in 2007.

Now, there's testimony that none of the calves had been tagged as of July 24th, 2008, those calves that are listed in the right side.

A. Yes, sir. Yes, sir.

Q. Is it reasonable for a cattleman not to know how many cattle he had?

MR. HANNA: Object to the form.

MR. BOGGS: Okay. I'll rephrase, Judge.

MR. HANNA: It's also assuming facts not in evidence.

THE COURT: He can ask a hypothetical question.

MR. HANNA: Okay.

BY MR. BOGGS:

A. Would you ask the question again, please.

Q. I'll try. I'm not sure what it was. All right. When Mr. Darby said that he had about 185 head of cattle, okay, and he said that he -- after the accident he went and inventoried his cattle by walking through the fields,

okay. When asked about the tagging he said that he had most if not all tagged, but those were the records he provided me, okay?

A. Yes, sir.

Q. Now, when asked why calves were not tagged he said they should be tagged as they got older, probably like the ones in November born in October when they are two or three months should have been tagged, but these weren't, okay. What based on your expert knowledge in this field, what does that tell you about his proper maintenance of the number of cattle and where they are?

A. Probably the -- one of the beginning courses in cattle production, beef production involves the instruction of proper identification of your animals. Without proper identification of animals with large numbers of dams it is impossible to keep straight which dam belongs to which calf. It's impossible then to ascertain the productivity level of that cow; in other words, how much did that cow produce in terms of calf weight.

It's like, if I can use a simile, when I was growing up I used to play golf with my daddy and he taught me to count all the strokes when I was playing golf. And I, at 10 or 11 years old, I said, Well, daddy, I can show a good score by not.

And he said, But you never know when you're getting better or not if you don't count everything.

The same thing goes on with cattle the production. If you do not use proper records and proper identification you never know if you're improving your cattle herd or not improving your cattle herd, and that's the goal of all cattle management is to have as good a cattle management as our resources allow.

The answer to your question, no, it is not good practice to not identify your cattle, your calves either at birth or very shortly after.

Q. The next question concerning this list. On Exhibit 23 it looks like the earliest birth date would be October of 2007, and the latest birth date would be February of 2008, approximately. Does that tell you any information about the calves as of July 24th, 2008 in terms of size?

A. Yes, sir. You're going to have a wide variation in size depending on the age of calf. Essentially you have a five-month breeding season, calving season that's going on. So you will have calves that should have been weaned somewhere in the sixth to six and a half month range to calves are just now at the point of being weaned or should be being weaned.

Q. Now, are you familiar with electric fences?

A. Yes, sir.

Q. And what experience do you have personally with electric fences?
A. My entire farm is under electric fence.
Q. Okay. And how do you monitor your electric fences?
A. Two ways. I have an electric energy supplier to my fences themselves that has idiot lights to ---
Q. Did you say idiot lights?
A. Yes, sir, idiot lights. Essentially like our cars now instead of having gauges they just have lights that tell you that you are overheated or whatever, but it has lights on it that indicate the voltage that is being outputted from that box. That is checked daily at my farm. We actually use a fence tester that we will check the fence twice a week.
Q. Now, just because a cattleman doesn't use what you use doesn't mean he's not -- doesn't have reasonable fences, right?
A. That's correct.
Q. Okay. So but based on your experience with electric fences can a calf go through an electric fence without there being any visible damage to the fence?
A. Absolutely.
Q. Will a cow or calf go through a fence?
A. Absolutely.
Q. Can a calf go through an electric fence even if it

has the power on it?
A. Yes, sir.
Q. Now, can a cow or calf jump and electric fence?
A. Yes, sir.
Q. Could it still jump it even if the electricity was still on?
A. Yes, sir.
Q. Based on your experience if a cow was jumping a fence what does it tell you about how it perceives the fence? Strike that. Let me rephrase. What is the purpose of an electric fence?
A. To maintain them in a set area.
Q. Okay. Now, how does electric fence properly work in keeping cows in?
A. It is electricity that is the actual barrier. The wire is not the barrier. It's the electricity.
Q. Okay. Now, you stated that a cow could go through an electric fence when the electricity was on, right?
A. Yes, sir.
Q. And you stated a cow could jump over a fence if the electricity was on?
A. Yes, sir.
Q. All right. Does that mean that -- excuse me. Would a reasonable cattleman rely solely on the electric fence to keep his cattle in?

A. I believe a reasonable cattleman using a proper electric fence, yes, he would count on that. I count on that every day.

Q. Now, do other factors about the care and treatment of the cows inside the electric fence affect your determination about the effectiveness of electric fences?

A. Yes, sir, but I don't think we can just restrict it to electric fences. I think we have to talk about fences in general. Why cattle leave enclosures is essentially to either satisfy a basic need of be a feeding or a drinking, thirst. There are times that they are trying to escape a threat to them, and those are the primary reasons. Now, bulls could have another reason as well.

Q. We've been talking about looking for action. Is that what you are talking about?

A. Yes, sir.

Q. Okay. All right. So if they are hungry, thirsty, looking for action then would an electric fence matter?

A. Probably not.

Q. Okay. Now, if a cattleman failed to properly feed his cattle is that reasonable -- even though he had electric fences, is that what a reasonable cattleman should do?

A. I'm sorry, sir. I didn't understand.

Q. You said an electric fence in general should -- if

it's working, should keep a cow in, right?
A. Yes, sir.
Q. Okay. But if it's hungry then the fence doesn't matter, right? Is that what you said?
A. Yes, sir.
Q. So if the cattleman fails to properly feed or care for his animals is that reasonable even though he has an electric fence around the property?
A. From an animal production, animal husbandry or from a cattle management standpoint, no, it's not reasonable to have hungry cattle.
Q. Okay. Now, there's been testimony -- or, excuse me. Do you know what an arc is, in terms of electricity?
A. I believe that's when electricity is jumping from one piece of wire to another or to one conductor to another conductor.
Q. Okay. Now, can you see arcs by riding by fences?
A. At nighttime, I think so.
Q. Okay. Now, if you see arcs by riding by fences does that mean that the electric fence is working?
A. It means there's electricity in the fence. It does not mean you have an effective fence.
Q. So if I -- or there was a cattleman that road a substantial length of fence and just eyeballed whether arcs were there is that reasonable in keeping cattle in?

A. The arc would indicate to me you have a short and it's a faulty insulator, and when you start having shorts your voltage starts decreasing. The less voltage on it the less effective the fence becomes.

Q. Whether there's electric fencing or whatever fencing, if someone's cow are getting out on a regular basis does that tell you anything about how that particular cattleman guards his cattle?

A. Yes, sir.

Q. And what that?

A. It tells me that the enclosure, the security of those animals themselves is not being properly done, maintained.

Q. Is that particular cattleman being reasonable?

A. I don't believe so.

Q. Is that particular cattleman, if such occurrence is going on, is he being careless?

A. If his cattle are getting out on a routine basis, yes, sir, that's careless.

Q. Now, you said you check your electric fences every day; is that right?

A. No, sir. I said I check my electric box, my energizer every day.

Q. Okay. Now ---

A. Or I have one of my employees, one of my

part-timers do.

Q. Okay. So if a cattleman's practice is to test his fence, whether by driving and looking for arcs or by testing once or twice a week, is that sound cattle management?

A. I cannot drive by my fences unless -- and see that they are in working condition unless I see a tree on it. The only way I can tell you that my fences are in working condition is either looking at the energizer or putting my actual fence tester on the wire itself.

Q. So if I were to tell you that a cattleman took a tester and tested the voltage on July 20th but didn't test it again until after July 24th is that reasonable in terms of cattle management?

A. Yes, sir.

Q. It is reasonable?

A. A couple times a week on an electric fence, particularly on an enclosure would be reasonable unless you knew of some extenuating circumstances such as a windstorm or a lightening storm, or something to that sort of thing.

Q. Would it be reasonable for a cattleman who had had cattle out on a regular basis to go at least four to five days before checking the charge on the fence?

A. No, sir. Cattlemen that have cattle that escape

enclosures need to spend more -- or put more attention into why the cattle are leaving that enclosure.

Q. Is it sound or reasonable in the cattle industry to be gone over 14 hours a day from your cattle for several days in a row?

A. Yes, sir. That's reasonable.

Q. Okay. So that in and of itself doesn't mean that the cattleman is particularly unreasonable in his behavior?

A. No, sir. In fact, that's a pretty common practice here in South Carolina because most of our cattlemen have outside employment and that employment keeps them away from the farm, so they try to do the cattle raising on their off times. So 12 to 14 hours being away from cattle would be.

Q. Fair enough. Now, that same cattleman that had -- worked 56 hours in the previous four days had existing escape problems, would you still say that that was reasonable?

A. No, sir, I would not.

Q. Based on the fact that Mr. Darby did not tag all of his cows and based on his records is there any way to tell if he had a cow missing on July 24th, 2008?

A. I don't think I can answer that one.

Q. Okay. Well, is there any way to tell if all his

cattle were in there based on the records you've seen?
A. From what I've seen I have no knowledge of whether Mr. Darby can individually identify 188 animals and know exactly which ones are there and which ones aren't. Without some sort of permanent identification, whether it's an ear tag or not, then I don't believe it's reasonable to assume that he can do that.

I personally, even with my cattle herd, and right now I'm numbering about a hundred head, without that permanent identification I cannot tell you if one is mine or not and if one is missing without actually counting the number in that field itself.

Q. Well, based on your expertise would a reasonable cattleman keep up with how many cows he bought and sold?
A. Absolutely.
Q. Okay. Would a reasonable cattleman keep basic records to know when he sold his cattle?
A. Absolutely. It would be a requirement as well from --
Q. Now, I know you're university trained and educated but do you have to go to college or have a Ph.D. to be a reasonable cattleman?
A. No, sir.
Q. All right. And did you have -- how long you been working with livestock?

A. I received my first calf when I was either six or seven years old and I've been in the cattle industry ever since, in one form or another. Better than 50 years.
Q. When you talk about reasonable cattlemen you're not telling this jury that he had to have a Ph.D. to know what I know, right?
A. No, sir, I'm not.
Q. Okay. Now, and one thing you mentioned earlier, you said dams, and I think that's d-a-m-e-s like ---
A. No, d-a-m-s.
Q. D-a-m-s. Okay.
A. Right.
Q. And those are the momma cows?
A. Those are the female, yes, sir.
Q. I was just making sure. And is that what the British call dames or ---
A. No, sir. I think that's something else.
Q. Okay. I'm just making sure. All right. Now, in looking at the picture 21 -- or Exhibit 21 and Exhibit 3, knowing that those true and accurately reflect the condition of both the pasture inside the fence, the roadside and the roadside and pasture across from the pasture, can you compare the grass inside the pasture with the grass outside the pasture and across the street?
A. Oh, absolutely. The forage availability inside

that pasture is very limited versus that that's on the roadside or the right-of-way is quite extensive, even in this draught situation. There is very little -- very little grass availability for those cattle inside the field.

Q. All right. Fair to say that no stray cows were breaking into that pasture?

MR. HANNA: Object. Calls for speculation.

MR. BOGGS: I'll move on. I'll move on.

BY MR. BOGGS:

Q. So is there any truth to the old saying that the grass is always greener on the other side of the fence?

A. Obviously in these pictures, yes.

Q. Okay. And given that you said hungry cows would tend to try to find food, including outside the fence, where would you expect to find a stray cow from Mr. Darby's pasture?

A. I would expect it on that right-of-way, on one side or the other. I'd expect it to be grazing, moving, tasting -- the cattle actually taste grass and so what they're doing is looking for the most immature, the highest quality grass, so they will actually move around as they graze to select the more nutritious grass.

Q. Now, the picture of all that hay across the field, would a cow necessarily -- if it left the pasture looking

for food, would it necessarily walk all the way to the hay out in the field, based on your expertise?

A. I don't believe that would happen.

Q. What do you believe would happen?

A. I believe that animal if it came from this pasture that it would stay in the less grass at right-of-way, one side of the road or at the other.

Q. Okay. And you mentioned that the cows eat standing up or do they -- they have to bend over, right, to get the grass?

A. Cattle generally are grazers. So they will actually bend their head down while they are walking and they are moving. There are times that you'll see -- and it's just more of, I think a fun observation, you'll see a cow laying down chewing its cud then reach over and actually graze a little bit while it's laying down, but that's not their normal behavior.

Q. So in other words cows eat different ways?

A. Essentially cattle eat standing up, they graze standing up. If they came to eat out of feed bunk they'd be standing up.

Q. Do they stand still while they graze?

A. Generally not.

Q. All right. Now, is there -- in the summertime especially, especially it's fair to say it was hot since

it was a drought, is there a more typical time for cattle to eat, you know, during different times of the day?

A. Absolutely. Cattle, they do their main grazing or the main period of time for grazing earlier in the morning and then later in the evening when it's cooled off. This is accentuated in the summertime when the temperatures are much more extreme. During the hot part of the day they will look for a place where they can lay down and start ruminating.

Q. Okay. In all of these opinions I've been asking you about a reasonable cattleman and what he would do and what not do, all of those are based on a reasonable degree of professional certainty; is that correct?

A. Yes, sir.

Q. And that's in your industry?

A. Yes, sir.

Q. And in your realm of expertise?

A. Yes, sir.

Q. Okay. Now, when I asked you about buying and selling cattle you started to say something about a requirement to keep up with the sale of cattle and you mentioned earlier agronomics. Again, does is require a college education or in-classroom training to do what you were taking about?

A. No, sir. Let me first address the agronomic part

of your question.

Q. Okay.

A. Agronomics is essentially your pasture or pasture management, the types of grasses you use, the fertility, or the putting the fertilization, the lime, correct liming on your pastures and then following that up then with managing those pastures.

There's very few individuals that would be true -- that are true cattlemen that actually would be true or great grass farmers; however, the in-vogue classification of cattlemen was to start thinking of us as not as cattlemen but as grass farmers and we're harvesting the grass using the animal itself.

So the agronomic standpoint that all cattlemen should have a basic understanding of that, whether they develop that understanding over years of experience, whether they develop that understanding through a university or a classroom setting or whether they've employed the services of the extension service to help them and enlist their aid in developing the knowledge of pastures then they would not be following a good cattle management program because that's encompassed in that cattle management.

Q. So in other words before -- before we move to the next part. So in other words, a reasonable cattleman

needs to know how to manage his pastures?
A. Absolutely.
Q. And so my double question was you started to say something about requirement to keep up with sales of cattle. What did you mean by that?
A. The Internal Revenue is very, very interested in what we do with cattle sales and incomes.
Q. Okay. Now, when you were talking about the cow getting out and likely grazing on the green grass picture there, would that cow likely be standing in the road?
A. No, sir. There's not much grass in that road. So he would probably be on the side grazing.
Q. Okay. So you would expect, based on your experience, for the cow to be either on one side or the other or crossing back and forth?
A. Definitely would be crossing back and forth.
Q. Okay. If a cow was standing on the side of the road, say the right side of the road and heard a loud noise, what would it likely do?
A. It would probably freeze and try to identify the noise.
Q. Okay. If that cow was on the right side of the road and was from the left side of the road where would it likely go if it got scared and decided to move?
A. It would want the rejoin its herd mates or rejoin

his dam.

Q. Would it do so in a deliberate manner?

A. Oh, absolutely.

Q. I guess that was a poor choice of words?

A. I'm presupposing this, that the animal was spooked or frightened. Yes, it would be very deliberate and be very quick.

Q. Okay. Is there any way for a layman, a non cattle person like you, to know how a cow is going to react to when it's spooked?

A. A person without cattle experience I doubt it. I wouldn't think it would be reasonable that they should know.

Q. So if a layman approached a cow that was startled would the cow -- could the cow appear to freeze but then move quickly immediately after looking up?

A. Yes, sir.

Q. Are you familiar with registered Black Angus cattle?

A. Yes, sir.

Q. Have you ever seen a registered Black Angus cow with brown hair?

A. No, sir.

Q. If the cow in the accident did have brown hair on some point of its body in your professional opinion would

you believe it to be a registered Black Angus cow?
A. No, sir.
Q. You've reviewed the pictures of Mr. Darby's cows that we have?
A. Yes, sir.
Q. Did he have cattle with brown hair?
A. Yes, sir.
Q. Should a cattleman take reasonable care to be sure that his cows do not get out?
A. Absolutely.
Q. And what would those measures be?
A. Obviously, maintenance and checking of the enclosure would be the first foremost. If employing some management techniques such as limit feeding that scrutiny should even be intensified as well. That would be the main.
Q. Okay. If a cattleman had a history of cows getting out what would that indicate in terms of cattlemen taking reasonable care?
A. It would indicate to me that proper maintenance is not being maintained on his fence so reasonable care would be questionable.
Q. If cattle had gotten out once in a particular pasture or in any pasture are they more likely to get out again or to attempt to get out again?

A. No, sir.
Q. Okay. Fair enough. How quickly should a reasonable cattleman repair a breach in his fencing?
A. I would say immediately. Once they found cattle out then without repairing it then your cattle get back out again.
Q. You mentioned that it was not unreasonable for a cattleman, especially in South Carolina, to be gone for 14, or 10, or significant hours of time. Isn't that what you said? Excuse me. It was not unreasonable to leave for a significant amount of time.
A. I think that's exactly what I said. Probably I meant normal as well.
Q. Okay. Now, when that cattleman decides to leave for that amount of time, whether it's for a job, trip, what have you and is gone is it reasonable for a cattleman not to have some way to -- excuse me. Is it reasonable for that cattleman not to return calls that are made to him about cattle being out?
A. Oh, gosh, no. I mean --
Q. And not necessarily am I asking should he call the person back but is it reasonable for that cattleman not to react to complaints of cattle being out?
A. As the cattle manager it's his responsibility to insure the safety and security of his cattle herd. This

is part of the stewardship that we as cattlemen have and as part of our animal husbandry practices. I believe that if one ignores something that is contrary to being a good steward then that would not be reasonable as a cattleman.

Q. Is allowing a breach in fencing to go as long as a week, careless behavior for a cattleman?

A. Absolutely, knowingly, knowingly letting it go for a week.

Q. How about unknowingly by not checking for a breach?

A. Yes, sir.

Q. That's unreasonable?

A. It's unreasonable. If you have cattle getting out not to understand where they are getting out from and it's unreasonable not to check fences in a routine and sufficient -- with sufficient scrutiny to identify any breaches that might be in the fence, yes, sir.

Q. Now, if I were to tell you that an electric fence was charged by solar panel and that solar panel was on top of a battery box inside the pasture is that alone unreasonable?

A. No, sir.

Q. Okay. If I was to tell you that that solar panel and box was hanging on the inside of the fence and that the wires connecting the charge were laying down going to

the fence is that alone unreasonable?
A. If that wire was insulated, no, sir.
Q. Okay. If I were to tell you that same setup and there was a wire connected about two to three feet off the ground with a charge to prevent cattle from getting to the battery is that alone unreasonable?
A. No, sir.
Q. If that same setup had resulted in a cow or calf removing that protective wire does that tell you or are you able to say whether that was unreasonable or not? Let me rephrase.
A. Please.
Q. If with that setup that you said was not unreasonable, if a calf had removed that wire and gotten out, talking about the wire that's to protect the battery, if you use that same setup again without taking any remedial measures is that reasonable cattle management?
A. I would say no if it just happened the one time.
Q. Aren't cattle learned animals?
A. Learned like educated?
Q. Well, not learned as in educated but --
A. They can learn.
Q. They can learn?
A. Yes, sir.

Q. Now, and I believe you've already said that if the cow gets out once -- or if the cow gets out once would it try again?

A. And the first answer to that is no, but there's caveats to that as well.

Q. What are those caveats?

A. If it's hungry, yes, sir, it'll try to get out again. If it's thirsty it'll try to get out again.

Q. Okay. Is it reasonable for a cattleman to herd his cattle across the street into another pasture without a cattle guard?

A. No, sir.

Q. Is it reasonable for a cattleman to open ---

A. Excuse me, sir. Let me -- I may have misheard your question, that last question.

Q. And essentially it was do you have to use a cattle guard to ---

A. The answer to that is no. You do not need to use a cattle guard.

Q. So that's not unreasonable?

A. No, sir. No, sir. I misspoke.

Q. That's all right. And there's no testimony that one was used here so you aren't saying that was unreasonable, correct?

A. Correct.

Q. But if the gates were open on one side of the road, and the gates were open on the other side of the road, and the gates were left unattended while those gates were open is that sound and reasonable cattlemen practice?
A. No, sir.
Q. If the pasture is substantial, and some of those pastures have been testified as a hundred acres, and the gates were open and if that same cattleman was driving around the pasture to get what has been deemed stragglers in your opinion would that be careless?
A. Yes, sir.
Q. If a cow or calf is not moving where a cattleman wants it to go is it reasonable for that cattleman to bump the cow or calf with his truck or automobile?
A. I'm presupposing this is an intentional running into the cow?
Q. Yes, sir.
A. No. I don't believe that's being a good steward or being a reasonable cattleman.
Q. Is it careless?
A. It's pretty foolish.
THE COURT: Mr. Boggs, we're about quarter to an hour. We've been going an hour an 15 with the jury. I think it's a good time to take a break.
MR. BOGGS: Yes, sir. And we can take up the other

matter as well.

THE COURT: All right.

MR. BOGGS: Thank you, Judge.

THE COURT: You all can have a break. If you need to use the phone or step outside for whatever your needs may be. Step to the jury room and don't begin discussing the case.

(WHEREUPON, the jury leaves the courtroom at approximately 10:45 a.m., and a brief recess was taken.)

MR. HANNA: We were talking outside when you were outside about he's got, I think, two more questions he wants to ask which I don't believe run afoul of what we're saying and just to make sure that you ---

MR. BOGGS: Let's not bring birds into it.

MR. HANNA: Bring what?

THE COURT: Birds in.

MR. BOGGS: Birds, fowl.

MR. HANNA: That's a real knee slapper there.

MR, BOGGS: They've all been knee slappers.

I have more than two questions but the two questions -- may I put them on the record just so we have continuity?

And, Doctor, don't answer now. I'm just telling the Judge what I'm going to say.

What role does proximity play in determining where

a cow is from? Okay?

MR. HANNA: I'm saying I don't have a problem with that.

MR. BOGGS: Does the fact that the accident occurred at a certain location make it more or less likely that a cow is from nearby the scene or farther away?

THE COURT: I think that's okay.

MR. HANNA: I do, too.

MR. BOGGS: Okay. And I'll probably say before that based on -- well, I'll just keep it general. I'll just keep it general.

MR. HANNA: I think as long as it's there that's not running -- getting into my beef, to keep it with the right analogies here, with what I was complaining about earlier, and I think it's consistent with the ruling you were making prior to it. As long as he doesn't then say, Well, is it Darby's cow? But clearly the inference from that testimony -- I know his answer will be is that he can argue that all day based upon that.

THE COURT: You know, seems all the work you all have done in this case I still don't believe you didn't do the DNA on something. I'm astound. I think those questions are fine considering the question that I don't believe you can ask is not one of those.

MR. HANNA: Right.

THE COURT: And I think those would be allowed.

MR. BOGGS: Okay. If I have the urge to ask something other -- about that. I do have two more questions I think clearly come -- I mean, that have nothing to do with that.

THE COURT: All right. We ready?

MR. BOGGS: Just before we go, so we can have continuity, I think we've talked about this, Judge, just want to make sure.

(PAUSE)

MR. HANNA: Your Honor, to address the matter that he's brought up. He's got some stuff when the plaintiff goes up. He's got some pictures of some things, etcetera. I don't object to using the pictures as demonstrative evidence, you know, but I do object to them going into evidence as something that the jury can -- I mean, the fact that he's got a picture of the guy's x-ray of the leg or whatever or the hardware I don't think bears anything on what the jury needs to decide, but I don't object to him showing it and using it as demonstrative evidence. I do object to it going into the record for the jury. I don't see how that could possibly have any bearing on whether or not it was Darby's cow, whether Darby was negligent or whether he was negligent.

MR. BOGGS: And, Judge, pursuant to our pretrial agreement we are allowed to discuss and at no time did we ---

MR. HANNA: I'm not saying ---

MR. BOGGS: Well, hold on. Let me finish.

MR. HANNA: Okay, okay, okay.

MR. BOGGS: I don't have big blowups of those pictures. So as long as I can put them in their hands, they can look at them in here and they are not in evidence I can live with that. I agree. They don't need them back in the jury room when it's time to decide but they need to be able to see what he's talking about and that was the gist ---

MR. HANNA: That's exactly ---

MR. BOGGS: Okay.

MR. HANNA: I'm not disagreeing with that. I'm just saying when it comes to, you know, moving them into evidence I'm going to object if you do.

MR. BOGGS: The's fine.

MR. HANNA: I'm not objecting to you showing it to them. That's a totally different matter.

THE COURT: Is this like one or is this the one?

MR. BOGGS: That's the one.

MR. HANNA: That is the one. Be careful.

MR. FARROW: That was in me.

THE COURT: Those are some long screws.

MR. BOGGS: Yes, sir.

MR. HANNA: Understood, yeah.

MR. BOGGS: Okay, Judge. I think we can -- I think we're good.

MR. HANNA: Yeah. That's not -- again, I think we're all in agreement with that. That's not a problem.

THE COURT: We're going to allow them to be shown to the jury for demonstrative purposes and they'll be returned to the plaintiff.

MR. BOGGS: You can have the pictures because those don't take up that much space. The only thing will be returned will be the (indicated).

Now, there is a drug test where he went -- you know, was tested and I have the results. That can go into evidence, can't it?

THE COURT: I think you said that in the opening.

MR. HANNA: You said it was ---

THE COURT: That he was coming from an interview or something, which he passed, kind of late in the statement.

MR. BOGGS: I mean, yes, sir.

MR. HANNA: I'm not suggesting he didn't pass it. I'm not saying he was high or something.

THE COURT: You want to let it in, it can go in.

MR. BOGGS: Okay. I would ask -- it has his Social Security number, should I blacken that out before?

THE COURT: I would.

MR. BOGGS: So with the Court's permission?

(WHEREUPON, Plaintiff's Exhibit Numbers 39 through 42 were marked for identification only.)

MR. BOGGS: All right, Judge. And for further planning purposes, I'll finish him, briefly. I got my client and I've got another expert that shouldn't be as long as this expert. So, I mean, just to help you determine how long you want to go. I would hope we can finish before lunch. If not, immediately after lunch, okay, depending on Geov's cross-examination, of course, and no way to limit him.

MR. HANNA: I don't intend to be remotely near the length of any of this. I'm going to be brief on all three witnesses.

THE COURT: I'll try not to be distracted and limit his cross-examination.

MR. HANNA: I mean, we were just as at fault. In fact, we were talking about it on the way home. I said the Judge was very clear. He's a referee only and if we didn't bring up the fact that he was incorrectly saying the rule that's our own problem.

And, quite frankly, I would prefer it to be that

way. You know, if I'm dumb enough not to know then that's just my own problem, but I much prefer a judge like you than one who is constantly interjecting himself into the proceedings. We've all been there and had one of those guys. So nothing from us. It was our own lesson learned.

THE COURT: I still can't believe we got it.

MR. HANNA: It sounded so good when he said it. I was like, man, you know, that was smooth.

THE COURT: Always act like you know where you're doing.

MR. BOGGS: What's that?

MR. HANNA: When you said that we were outside the scope of your direct and limited our cross to that one witnesses ---

MR. BOGGS: I never cease to amaze myself with what comes out of my mouth, both good and bad.

MR. HANNA: It sounded really good. It wasn't until like an hour later that I realized that the rule said exact opposite.

MR. BOGGS: Well, it sounded good, and I blame it on Wayne. Everything good that comes out is all my idea, everything bad is all Wayne's fault.

But, Judge, I misspoke. In speaking with Wayne about this, my expert, my last witness, if I could call

him after lunch it would make it go smooth. Does that make sense, because he has drove up today? And that way it will give me time.

Geov has demonstrative things that were from his report, from his expert's report, and I think that in meeting with my client over lunch or before we start this afternoon and allowing him to just peruse those we can use the same demonstratives and not be, well, this says this. You know, I know it's what it says but just if we could lay those out it will make it go better.

THE COURT: Just curiosity is going to kill the cat. How many witnesses do you anticipate calling right now? I'm not holding you to it at all.

MR. HANNA: At this point, I think I'm going to call two witnesses.

THE COURT: Okay. So it is possible we get through the testimony today?

MR. BOGGS: Yes.

MR. HANNA: I would love to be done with the whole thing today, if possible but, you know. At the bare minimum I'd like to be done with the testimony and argue and charge in the morning.

MR. BOGGS: I'm fine with arguing and charging tonight, if time allows. I don't want to be in a rush.

THE COURT: I don't like to be in a rush.

MR. HANNA: And, again, you know, I think that sometimes -- what my old judge used to do sometimes if it's like at four and we're done would give the jury the option. Obviously, if they would rather be done tonight and not come back. I don't know if that's an option to them but frequently, you know -- if that's what they want to do I'm willing to stay as long as it takes because I would really like to be done.

MR. BOGGS: That's fine with me.

MR. HANNA: You know what saying? I'm also fine with coming back.

MR. BOGGS: I mean, I think both of our wives and our children are wanting us home as soon as possible. We'll stipulate to that, mutually stipulate to that.

MR. HANNA: I get paid by the hour. So if we need to come back so be it, you now, but I'm more than happy to slug it out and finish today.

THE COURT: All right. Well, I'm generally not inclined unless, you know, something I can't move for the next day. I'm generally not inclined to push through and make the jury inconvenienced past six o'clock. You know, Friday night, oh, yeah, we'll do something different but on a Wednesday, come back Thursday morning and get it done, I'm probably more likely to come back Thursday morning and get it done.

MR. BOGGS: And, Judge, I'm okay with a shorter lunch break. It's not like I need two hours to meet with my expert. So whenever we break now, after Mr. Farrow testifies, an hour, hour and 15 minutes would be suffice.

THE COURT: Okay.

MR. HANNA: And I can have my guy here in an hour. So as soon as we break I'll make sure that the witness who is not present is in route.

THE COURT: All right. Bring the jury.

MR. HANNA: We'll at least get the testimony done.

(WHEREUPON, Court's Exhibit Number 10, Leg Hardware, was marked and made a part of the record.)

(WHEREUPON, the jury enters the courtroom at approximately 11:15 a.m.)

THE COURT: All right, Mr. Boggs. You may continue.

MR. BOGGS: Thank you, Judge. May it please the Court.

BY MR. BOGGS:

Q. Now, Dr. Worrell, based on your expertise when you're looking at stray cattle what role does proximity play in determining where a cow is from, based on your reasonable degree of professional certainty?

A. If by the question you mean if I saw cow out on the road?

Q. Uh-huh.
A. Whether it's a field that's in close proximity to where that animal is at that point in time I would say proximity has a great influence on it.
Q. Okay. So it's not the sole factor in determining where a cow might be from?
A. Oh, no, sir.
Q. But does the fact that the accident occurred between where it did, which was between F-1, D, F-2, and right here on Dials Church Road, does the fact that the accident occurred make it more or less likely that the cow is from nearby the scene or farther away?
A. Nearby.
Q. Is that a reasonable degree of professional certainty ---
A. Yes, sir.
Q. --- in your area?
Okay. Now, there's been testimony, and we may have covered this but I want to make sure, that you said or it's been said that cows get spooked when -- based on certain circumstances, okay. What is it likely that a cow that is involved in a collision or a cow that hears a loud noise for it to defecate?
A. Absolutely.
Q. Okay. I mean, if they are scared they poop?

A. Yeah, amongst other times as well.
Q. Okay. So and I said scared but how does -- are surprise, collision, loud noises factors that may spook a cow based on your professional -- or, excuse me, your expertise?
A. Yes, sir.
Q. Okay. Now, if a cattle -- excuse me. If at the area of the accident there was sirens, lights -- or if it's gotten dark, at the scene of the accident, there's sirens, lights, helicopter landing in the field across the street, would it be -- based on your expertise would the cows be more or less likely to hang out by the fence or to move farther away from the noise, or can you tell?
A. On that I can speculate, and that would be the best I could do.
Q. Is your speculation based on your expertise and your experience, and to a reasonable degree of professional certainty?
A. No, sir.
Q. Okay.
MR. HANNA: I would object to any ---
MR. BOGGS: I'll stop. Okay.
BY MR. BOGGS:
Q. Now, one last thing. There was a report done by essentially a C. S. I., a chemist, okay, or a forensic

analyst. And without reading this entire report I'll tell you that he said that there was in the hairs that were taken from the motorcycle, okay, he did a test on it to see what it was, and he said it was bovine. And he said that there was evidence of leaves in the excrement.

Now, based on your expert opinion to a reasonable degree of professional certainty is that common for a cow to have leaves in its system?

A. If we're referring to tree leaves, yes, it would be very uncommon.

Q. Okay.

A. Grass, leaves, which that would be part of it.

Q. Okay. So talking about blades of grass, that's obviously?

A. Yes, sir, that would be reasonable.

Q. Okay. But -- well, in the field that's depicted as Mr. Darby's pasture, do you see any source of leaves that would be appetizing to cattle?

A. No, sir.

Q. Based on all the factors that you've learned about Mr. Darby's actions as a cattleman was he careless in the management and guarding of his cows, and I'm asking you with a reasonable degree of professional certainty?

A. Yes, sir.

MR. BOGGS: Please answer any question that

Mr. Hanna may have.

MR. HANNA: If it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. HANNA:

Q. I'm going to kind of jump around on some of the topics you discussed previously. Let's start with talking about some fencing. You are not testifying in this case there's anything fundamentally wrong with the fencing system Mr. Darby uses, are you?

A. No, sir.

Q. In fact, you, yourself, use a similar fence, correct, electric?

A. Yes, sir.

Q. Okay. And would it be true to say that you have no idea whether or not his fence was operating properly on the date of the accident, do you?

A. That's correct.

Q. And would it be fair to say that if, in fact, it was electrified and working properly on the date of incident that it would be a barrier, as you discussed, the electricity running through it?

A. Sir, with different caveat to that, if the voltage was insufficient then it was not a barrier, regardless whether electricity was running through it or not.

Q. Understand, but my question was very specific. Was it working properly?
A. Okay. If it's working properly it should act as an effective barrier.
Q. And, again, you have no evidence that it wasn't working properly, do you?
A. No, sir, I don't.
Q. There was also some discussion on direct about some herding techniques. Are you aware of any evidence in this case that Mr. Darby was herding any cattle between any of his pastures on or about the date of the accident?
A. No, sir.
Q. Would you agree with me, the fact even if you assume that his herding technique is monumentally and unbelievably negligent if he wasn't doing it any time around the accident that would have no affect on a cow getting out on this case?
A. That's correct.
MR. BOGGS: Objection. Calls for a legal conclusion. I'll withdraw.
BY MR. HANNA:
Q. Let's talk some about the feeding.
THE COURT: Hang on one second. I want to rule on that.
MR. HANNA: I'm sorry.

THE COURT: Did you make an objection?

MR. BOGGS: I did but he'd already answered, and if he's moving on I withdrew it. Fair enough.

THE COURT: Fair enough. Withdrawn.

MR. HANNA: I'm absolutely done with that topic. We're moving on, okay.

THE COURT: All right.

BY MR. HANNA:

Q. Again, feed. Okay. And there was some discussion about some feed consumption calculations that you had performed. Do you recall that?

A. Yes, sir.

Q. I want to make sure the jury is clear on what I understand to be one of the fundamental underlying assumptions of those calculations, and that is isn't it true that you were assuming that the only thing that the cows were eating when you performed those calculations is the two bales of hay per every two days?

A. Yes, sir.

Q. And that means that you were assuming that there is absolutely no other available source of feed?

A. Yes, sir.

Q. Okay. So that basically the assumption is, is that there was absolutely nothing edible in the pasture F-1 that we've been discussing, correct? Is that correct?

A. No, sir. When you asked me about the assumption that there was no other source of feed, yes, I did look at the photo, and, yes, I am making that assumption that there is not consumable forage availability for those cattle.

Q. Are you aware that that is a hundred-acre pasture?

A. I am now but also I can only look at the pictures and see.

Q. I understand, and that's what I'm getting at. You've looked at one picture of one portion of the pasture; isn't that accurate?

A. Yes, sir.

Q. Okay. Now, there was some photos of the cow. Do you still have those up there with you?

A. Yes, sir.

Q. And I think they were marked Exhibits 9 through 14; is that correct?

A. Yes, sir.

Q. Would you agree with me that -- and I think this was clear on direct but I want to make sure. Would you agree with me that the cows in those photos do not appear to be underfed?

A. I agree with you that those cattle are in good flesh condition.

Q. Understood. Okay. Now, let's talk some, there was

some discussion about cow behavior and what is normal or not normal cow behavior, and I understood what you were basically saying on direct was if a cow escapes and the reason it escaped is that it's hungry it would typically basically just start grazing on the first edible food it could find; isn't that right?

A. It is my belief and my opinion that cattle will not walk miles to graze when there is grass right in front of them.

Q. Exactly and so ---

A. But that is not the same as your question.

Q. Okay. I mean, what I'm trying to say is, is that a cow, if the reason it escaped was that it's hungry, going to eat something -- I mean, if there's good food to eat right there it's not going to walk ten miles to McDonald's or -- that's a bad example, but it's not going to go down, you know, five miles down the road and eat some grass just like the grass it just went past?

A. I would agree with that.

Q. Okay. That's what I'm trying to say. I may not be speaking technically enough in your field. And, in essence, if the cow got out it would move around from side-to-side across the road basically grazing and eating grass in the general area it came out of?

A. That's what I believe.

Q. Okay. Now, if a cow happened to be in the roadway and a motorist were to approach it would you agree with me that the cow could stop and look and stop and going from side-to-side?

A. Oh, yes.

Q. Would you agree with me that there are other reasons that a cow may try to escape its enclosure other than looking for food or water?

A. I think a -- yeah. Oh, absolutely. Yes.

Q. Okay. For instance, if a cow was new to a herd it might get out and walk a long way trying to find its old herd mates, correct?

A. That would be correct.

Q. If a bull were to escape from its pasture it could be known to walk a long way in order to find a cow in heat?

A. I believe so.

Q. And I've even heard -- and, you know, you may see if you agree with this. I've even heard a cow in heat, a female cow in heat may go a long way looking for a bull.

A. The definition of a long way would be debatable but, yes, I think it's more apt for a bull to leave a pasture than a cow to leave a pasture, but I wouldn't preclude that possibility.

Q. Like one person in this case described that as

bulling. You ever heard of that phrase?

A. That's not bulling.

Q. Okay. What is bulling?

A. Bulling is when a female is in estrus and she's standing and another female is mounting her.

Q. Okay. You learn something new every day. I apologize. I'm just repeating what some other fellow said to me.

Is it conceivable under certain circumstances that a cow could travel more than a mile after it escaped its enclosure? You ever heard of that happening ever?

A. No. I've not heard that.

Q. You've never heard of a cow walking more than a mile?

A. No, sir, that wasn't the question.

Q. I'm sorry.

A. That wasn't your first question.

Q. Well, what was my question?

A. Your first question is escaping an enclosure and walking a mile.

Q. I'm sorry. I apologize. Is it conceivable a cow could walk several miles?

A. Yes, sir.

Q. For instance, if a cow, the bull escaped, how far have you known a bull to go after it escaped looking for

a female?

A. The distances, I can't give you a real good answer on but I know that the reason a bull would escape is because he'd detect the pheromones in the air. So I imagine how far he would go would be dependant upon the wind currents and the direction of the wind. So if he's picking up the pheromones that the female in estrus is emitting then he might go as far as wherever that animal is.

Q. So however far that is, is how far it would go?

A. Yes. I have no knowledge of how far pheromones can go ---

Q. Understood.

A. --- and cattle still pick it up.

Q. Are you aware of testimony in this case from several witnesses that the cow at the scene -- or the hair that was found at the scene was black?

A. I am aware of tricolor.

Q. Well, some have said more than one color.

A. Yes, sir.

Q. Some have said black only.

A. No, sir. I'm not familiar with testimony of black only.

Q. Would you agree that no matter what the cow color was the mere fact that Mr. Darby had a cow the same color

does not necessarily follow that it was his cow in the accident, correct?

A. Correct.

Q. You would agree with me that the cow, the actual cow involved in this accident has never been identified, correct?

A. That's my understanding.

Q. Would you agree with me that there is no evidence of any breach in the fence surrounding the Cooley Road pasture right next to the accident on the date of the accident, correct?

A. Would I agree that there was no breach?

Q. That there is no evidence that you've heard about in this case that on the date of the accident that there was a breach in that fence.

A. I have no knowledge of a breach or lack of breach.

Q. You're not aware that Mr. Darby left a gate open on that date, are you?

A. No, sir.

Q. Would you agree with me that there is absolutely no evidence at all in this case of how the cow may have gotten out of that pasture if it, in fact, came from the Cooley Road pasture?

A. Would you repeat, please.

Q. You agree that if the cow, in fact, came from the

Cooley Road pasture that there is no explanation of exactly how it got out?

A. To the best of my knowledge there's no explanation.

Q. You are a cattleman, correct?

A. Yes, sir.

Q. Have you ever had a cow get out?

A. Yes, sir.

Q. How?

A. Oh. I've had branches and trees fall down on fences. I've had lightening hit fences that were electrified and destroyed the electric box. I've had cattle that actually were new cattle that were actually fighting and developing their social hierarchy and one be pushed through the fence.

Q. Would you agree with me that under normal circumstances when a cow gets out there is an explanation for how it, in fact, did escape?

A. I believe there's an explanation for every escape. I may not find it but there's an explanation.

Q. Have you personally ever had a cow escape from one of your pastures where you could not determine where it got out from?

A. Could not determine where it got out from, that is true. I've not -- there's -- actually, I think that I have had an animal get out that I did not know exactly

where it got out from. So if one of those ---

Q. You have had that happen?

A. I believe that that's what I've had.

Q. On one occasion or are you not ---

A. Sir, I don't recall that.

Q. In other words, so what I'm hearing is, is that you have been able to come up with an explanation of how it got out each time you are aware of one getting out of your pastures?

A. I tried very much to identify the reason and there are -- there may be a time when you won't have a reason that you can readily identify. And I'm not precluding the possibility that one of mine didn't get out that way then went back in the same way.

Q. Considering what you know about cow behavior, motivations, etcetera, if you were driving down the road and saw a cow in the roadway what would you recommend someone do driving?

MR. BOGGS: Objection. Outside the realm of his expertise.

THE COURT: I think that would -- he's testifying as a cattleman, ruminate nutrition and not operating ---

MR. BOGGS: I think he can ---

MR. HANNA: Should we have a sidebar?

THE COURT: Yeah. You all may stretch, step up,

move around.

(WHEREUPON, a sidebar was had.)

BY MR. HANNA:

Q. And based upon your expertise if you were to come upon a cow in the roadway is there any way to predict which way it might go?

A. Yes, sir.

Q. And how would you go about predicting that?

A. The position on the road then the position of where it's home field would be.

Q. Okay. What if you ---

A. However, if it's spooked and it's a young animal then there's no way I can predict it.

Q. Understood. One moment, please, I think I'm done.

MR. HANNA: No further questions.

MR. BOGGS: May it please the Court. Quite briefly.

REDIRECT EXAMINATION

BY MR. BOGGS:

Q. Dr. Worrell, he asked you if working properly you said the fence would be an effective barrier but does an effective barrier keep a hungry cow in?

A. No, sir.

Q. And he asked you about assuming only eating two bales of hay. When you were talking -- when you were

analyzing the proper nutrition for Darby's fields did you factor in, like, hay loss or unused hay and availability of any grass in the field?

A. I factored in essentially the hay loss. Looking at the aerial photos I could see which way the owner had fed his animals. In other words, he just put the bales of hay out there and not into any kind of hay rings themselves. So differently a loss, and I assumed a 15 percent loss on trampling and where the animals defecated and urinated on it. I think that's a low estimate on that type of feeding.

Q. Okay. Now, is feed a term of art for the cattle industry? I mean, when you feed a cow are you giving it something that's not in the pasture or does feed include what's in the pasture?

A. Well, feed is both a noun and a verb, in this case. So when we refer to feed we could refer to something that we brought or the pasture availability where the animal would actually get feed from the pasture. Primarily it is thought of as what the cattleman would bring to the animal, whether it's in a grain form, or a hay form, a silage form or whatever.

Q. Now, when you describe -- when he asked you about and you said good flesh condition, that doesn't mean that the cattle -- even if it's in good flesh condition, by a

standard that says it's in good flesh condition, that doesn't mean it's not hungry or being underfed at the time the picture was taken, does it?

A. No, sir, it doesn't.

Q. In fact, doesn't it mean that it's okay right now but if it had been fatter a month before it's on the way down, right?

A. Yes, sir. That's correct.

Q. Would the fact that someone only had Black Angus, would that exclude their cattle if there were brown hair found at the scene?

A. It would be my belief, yes, sir.

Q. And he asked you if you looked at one picture of the pastures. You looked at several pictures. You just have one picture right there; is that correct?

A. That's correct. I looked at several, the aerial photos.

Q. When you had a cow out but couldn't find the reason did you look diligently to find the reason?

A. Absolutely.

Q. When you didn't find a reason did you look a little bit more?

A. Absolutely.

Q. Did you do more than go out in the pasture and see if hey, looks like all my cows are here?

A. No, sir. I did a lot more than that.
Q. Would a reasonable person just go out there and say yep, got them all, if they don't have any sort of proper tagging system? Is that reasonable?
A. No, sir.
Q. Does that mean that they didn't have a cow out ---
A. No, sir.
Q. --- the day before?
A. No, sir.
Q. Now, when you had a cow out did you think it was your responsibility for anything that cow did?
A. Absolutely.
Q. All right. Is it reasonable for a cattleman to be responsible when his cows get out and they got out improperly, or if they get out at all?
A. Yes, but there are acts of God. And this is what we refer to with lightening or a tree falls on your fence during a storm and the animal gets out then you've not -- at that point in time you've still done everything reasonably and sound as you can to prevent that and technically you are responsible because you own the animal.
Q. Generally, as cattlemen and as a reasonable cattleman, a reasonable cattleman responsible for their cattle?

A. Yes, sir.

MR. BOGGS: No further questions.

THE COURT: Recross?

MR. HANNA: Just very briefly.

RECROSS-EXAMINATION

BY MR. HANNA:

Q. Do you have any idea when those aerial photos that you were speaking of, that you studied, do you have any idea of whether or not those are indicative of the condition of the field on or about July 24, 2008?

A. My belief, those were taken shortly afterwards.

Q. And based upon what?

MR. BOGGS: Judge, may it please the Court. We'll stipulate that they -- I don't think -- they were not taken shortly afterwards, and I was not trying to elicit testimony to that affect but the extent that it was I certainly understand Mr. Hanna's concern.

MR. HANNA: And understood.

BY MR. HANNA:

Q. So to the extent you were relying on those photos if they weren't taken at the time of the accident then you would agree with me that you can't rely on those as being indicative of how much edible food may or may not have been in the pasture that day?

A. I think really the aerial photos would be very

difficult to ascertain forage availability on it regardless; however, the photos, at least particularly this one in 21 that shows that field itself, that is very indicative, particularly in that particular spot of forage availability.

Q. I understand and as we just already established it's a hundred acres and you don't have photos of the entire thing, correct?

A. Except when we go to the aerial.

Q. And that's my point. You can't rely on the aerial as indicative of what the condition was at the time of the accident. We don't even know when it was taken.

A. I have no knowledge.

MR. HANNA: Okay. That's all I've got.

FURTHER REDIRECT EXAMINATION

BY MR. BOGGS:

Q. You looked at the pictures of the cow --

MR. BOGGS: I'll move on, Judge. I'm done.

THE COURT: Very well. Dr. Worrell, your expert testimony career is now over.

MR. WORRELL: I'm sorry?

THE COURT: Your expert testimony career is now over.

MR. WORRELL: It is. Thank you, Judge.

THE COURT: Good luck to you.

Mr. Boggs?

MR. BOGGS: I'd call David Farrow to the stand.

THE COURT: Come forward and be sworn.

WILLIAM DAVID FARROW, JR., after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGGS:

Q. Can you state your name for the record, please, David.

A. William David Farrow, Jr.

Q. And how old are you, David?

A. Forty-six.

Q. And where do you currently reside?

A. In Gray Court, South Carolina.

Q. And how long you been living in Gray Court?

A. I've lived in Gray Court my entire life.

Q. And have you been at the same address?

A. Except when they changed the 911 system, yes. I've lived on the same acreage my entire life.

Q. And where are you currently employed?

A. I'm currently unemployed.

Q. Where did you last work a full-time job?

A. I worked at Pierburg.

Q. And where is that?

A. Pierburg is in South Chase Court in Fountain Inn,

South Carolina.

Q. And when did you last work there?

A. The date of the accident.

Q. And did you work anywhere else at the time of the accident?

A. Yeah, I had a part-time job, also.

Q. And who was that with?

A. It was with a company called Able Task Force.

Q. And just briefly, what did you do for them?

A. Able Task Force was a company that contracted with Home Depot to provide people to go and assemble gas grills, wheel barrels, riding lawn mowers, mainly outside garden equipment and patio furniture.

Q. So you essentially -- you put the stuff together for the store itself, right, or did you go to people's homes and put things together?

A. No, at the store.

Q. Now, can you tell the jury about your day on July 24th, 2008 before the accident, the reason we're here.

A. Yeah. I went to my primary job at Pierburg and worked there. I had to go to a drug test, as ironic as it sounds, afterwards because of formality for my part-time job that they had entered into, I guess for their insurance company earlier that year. So I drove up there, took the test, came home, stayed for a little

while, decided I wanted to go visit my grandfather's grave. I drove out there and stayed a little while and then came home.

Q. All right. And ---

A. Well, I tried to come home. I got home about a week later.

Q. What did you drive up to Greenville for the drug test?

A. I drove the motorcycle.

Q. Okay. And what did you drive to the church -- or to the grave site?

A. I drove the motorcycle.

Q. And where is that grave site?

A. It's at Dials Church.

Q. Now, I know the scene is not up but where exactly is Dials Church?

A. Dials Church is at the very end -- for lack of a better term, the very end of Dials Church Road at Highway 101.

Q. So did you travel Dials Church to get to -- did you travel Dials Church Road to get to Dials Church?

A. Yes.

Q. And you said you were visiting your grandfather's grave site?

A. Yes.

Q. And what was his name?
A. Furman Tucker.
Q. Okay. Is that something back in the time that you did on a regular basis?
A. Probably a couple times a month.
Q. Okay. And before I get into that more, on the date of the accident did you have a valid South Carolina driver's license?
A. Yes, I did.
Q. And did you have a license to ride a motorcycle in South Carolina?
A. Yes, I did.
Q. And what type of license was that?
A. It was a permit.
Q. Did that allow you to drive unconditionally during daylight hours?
A. During day light, yes, sir.
Q. Okay. And was that your primary means of transportation?
A. No. It wasn't the primary means.
Q. Okay. Is that why you only had a permit, or why did you only have a permit?
A. I only had a permit because it wasn't the primary means of transportation. It was just -- typically it was used for just, you know, enjoyable riding but then when

gasoline got so high it became a little more frequent.
Q. Okay. Now, you went all the way down Dials Church Road. Did you say that?
A. That's right.
Q. You left your house, went, I guess north to south?
MR. HANNA: Objection, leading.
MR. BOGGS: I'm sorry.
BY MR. BOGGS:
Q. Which way did you travel again to get to the church?
A. Well, when I got on Dials Church Road I drove what I understand now was south towards 101.
Q. And how often did you travel Dials Church Road?
A. At the time frame of the accident, as I said, about twice a month.
Q. Okay. On the way to the church -- or did you drive by what would then be the accident scene on the way to the church?
A. Yes, I did.
Q. On the way to the church did you see anything out of the ordinary near the intersection of Cooley Road?
A. No.
Q. Okay. Had you ridden your motorcycle on that route before to the church?
A. Yes, I had.

Q. And how long did you stay at the church?
A. It wasn't very long, probably 30 minutes, at the most.
Q. I'd like to show you what's been marked Plaintiff's Exhibit 39. Can you identify it?
A. Yes, I can. This is the -- it's a copy of the results of the drug test I took that afternoon and the formality of paperwork you had to fill out.
Q. Okay. Now, did you -- I assume everything was negative, right?
A. Oh, yeah.
Q. Now, on the second page that you describe is there any information that can help you approximate what time you were up in Greenville that day?
A. Yes. It says 4:13 p.m.
Q. Is that consistent with what you related to the jury about being at work then going up there?
A. Yeah.
Q. Okay. And so do you remember how long you were there?
A. For the drug test? I don't really remember. It was a while. It was a little extensive.
Q. Okay. Well, you didn't get the results right then, did you?
A. No.

MR. BOGGS: Move into evidence, Judge, I think without objection.

THE COURT: I'll allow it.

(WHEREUPON, Plaintiff's Exhibit Number 39, a Document, was admitted into evidence.)

BY MR. BOGGS:

Q. Now, I asked you if you'd ridden your motorcycle before down that road and I think you said yes; is that correct?

A. That's correct.

Q. Do you remember what time of day it was when you left your grandfather's grave site?

A. It was before dark. Yeah.

Q. And going back to the exhibit I just handed to the jury, there's a black mark on the front page where a pen has gone through. What has been covered up up there?

A. Oh, that was my Social Security number. At least, I hope it was. That's what you said it was going to be.

Q. All right. Now, so when you left the church where were you headed?

A. When I left the church I was headed home.

Q. Okay. And what direction did you travel?

A. The opposite way that I came up Dials Church Road.

Q. Okay. Now, do you remember how fast you were going as you were traveling Dials Church Road?

A. I didn't look at the speedometer but I always drive on a normal country road on the motorcycle 35, 40 miles per hour. That's typical.

Q. And what is the -- prior to reaching -- after crossing the bridge what is the terrain of Cooley Road -- or, excuse me. Is there a grade on Dials Church Road as you are approaching Cooley Road?

A. On Dials Church Road?

Q. Yes.

A. Yeah. It's a real steep, long hill. Yes.

Q. Now, do you know the speed limit on Dials Church Road?

A. Yes, I do know. It's 45.

Q. Okay. And were you alert?

A. Oh, yeah.

Q. I mean, you been at work and driven to Greenville and back. Were you tired or anything?

A. No. That's one thing, I wouldn't get on a motorcycle without feeling like I can handle it because it's hard enough to watch out for other people if you're not able to do it for yourself.

Q. I got you. Now, were you wearing a helmet?

A. No, I wasn't.

Q. What, if anything, did you have on your head?

A. I had on gobbles that seal around your eyes to make

sure the wind doesn't affect where you're tearing or what have you.

Q. And did you have anything else on your head?

A. I had what they call a do-rag, a wrap or whatever of an American flag.

Q. Okay. And were you watching for obstacles in the road?

A. Absolutely.

Q. Were there any shadows on Dials Church Road as you were traveling away from the church?

A. There were shadows whenever the trees lined the left side of the road as I was driving because the sun was in that direction (indicated).

Q. I'm sorry? I couldn't hear you.

A. Because the sun was from that direction, so it would have been shadowed by trees on the left side of road.

Q. Okay. When you said from that direction you were pointing to left; is that correct?

A. Yeah.

Q. Okay. Now, please tell the jury what happened as you drove on Dials Church Road before it reaches Cooley Road.

A. Same as I always have up until suddenly there was a cow in the road. It was just there. And everything was

the same except for that.

Q. Where was the cow?

A. The cow was in my lane when I saw it.

Q. Okay. Now, did you see the cow prior to it being in your lane of travel on Dials Church Road?

A. I didn't see it before then.

Q. I'd like to show you what's been marked as Plaintiff's Exhibit Number 22. Can you describe what this picture shows in terms of the contour of Dials Church Road based on your experience traveling?

A. Yes, I can. This picture depicts the steep incline that we previously talked about and what it's showing though is the small hill that you encounter after you basically get off of that initial angle, and then on after that is when you can see straight ahead of you and see into Cooley Road.

Q. Okay. So just to be sure. What it depicts to you is a small hill. Is that what you said?

A. Yeah. That's what you see from the picture. Yeah.

Q. Now, did you have to go over what you say is a small hill in Exhibit 22 before you came into contact with the cow?

A. Yeah.

Q. Okay. So the accident -- you don't remember hitting the cow prior to going over this last hill?

A. No.
Q. Is that, to your recollection, the last hill ---
A. Yeah.
Q. --- before the accident?
A. The one that you see in the distance there, yes.
Q. Okay. Not where the picture is taken from but what it's looking at?
A. Right.
Q. Now, before you went over this last hill did you see a cow?
A. No.
Q. Did you have any ideas where it came from?
A. Only afterwards. I mean, I would assume it came from the pasture that was nearby.
Q. But you had no ideas where it came from? You have no personal knowledge where it came from, right?
A. No, I don't.
Q. Any idea where it went?
A. No.
Q. Any idea about the size?
A. All I know is it was big enough that I didn't want to hit it.
Q. Fair enough. Any idea about the color?
A. All I really remember is that it was dark. It was large and it was dark.

Q. Okay. And one thing I didn't ask you. What kind of bike were you riding, motorcycle?
A. It was a Suzuki, if I'm not mistaken, a 250. It's not a really big bike. It's sort of like a -- like a mini Harley. We called it the pig instead of the hog because it looked like a little Harley.
Q. And I believe there's some pictures in from -- through Mr. Burdette. Is that the motorcycle that you were riding?
A. Yeah.
Q. Have you seen those pictures?
A. Yes. Uh-huh.
Q. I'll show you. It's Exhibits 34 through 37. Is that your motorcycle that you were riding that day?
A. Yes, it is.
Q. Okay. Now, after you saw the cow how did you react?
A. After I saw the cow I tried to stop. I saw the cow and all you have time to do is like breathing. It's involuntary. You do what you know you need to do and that's -- on a motorcycle it's very precarious because you have more than one brake. You have a front brake and a back brake. The front brake applied by the hand and the back brake applied by your foot. And the front always receives more of the pressure. That's just the

way it works, and it's a balance. You can't lock up either brake or you lose it. You're on two wheels not four, and I knew enough not to do that because I knew I would get hurt if I did. So I tried to miss the cow.

Q. I'm sorry. What did you say just then? I couldn't hear you. Repeat what you said. You said you knew enough not to do that then what?

A. I knew enough not to do that, as far as locking up the brakes because that would have caused me injury without doubt. And so I tried to aim for where the cow wasn't. That's all I had time to do.

Q. How much time did you have to react from the time you first saw the cow in your lane of travel?

A. Hardly any. I mean, all I had time to do was try to apply the brakes and aim for a different piece of road.

Q. Okay. And there's a term that is called laying down the bike. Do you know what that means?

A. Yes, I do.

Q. Did you attempt to lay down the bike?

A. No, I didn't.

Q. Okay. Do you remember where the bike ended up?

A. I don't remember that. I know what I've been told.

Q. Okay. Do you remember where you ended up?

A. Same answer. I remember what I'm being told, and

the reason I say this because I had a head injury and I have memory problems. I hardly remember anything of the accident scene after the impact.

Q. Now, at the accident scene do you remember talking to any paramedics, or anybody, for that matter?

A. No, I don't.

Q. Do you know how long you were laying -- or, excuse me. Do you know how long you were at the accident scene after the accident happened before someone came along?

A. No, I don't.

Q. After you hit the -- do you remember hitting the cow?

A. I don't remember hitting the cow. I remember knowing I was going to hit a cow, and that's the last thing I remember.

Q. Okay. After you remember knowing you were going to hit the cow what is your next memory?

A. If you can call it a memory. It's not like when you remember like a visual it's -- for some reason I seem to have this memory in my head that -- like being almost floating, and I assume that was, like, the motor -- or not the motorcycle but the helicopter lifting off, but I don't know that. That was my next memory. It's about the only one I have there.

Q. Did you visit the scene of the accident after that

date or at a later date?
A. Yes.
Q. Do you have personal knowledge as to what's on the right side in your direction of travel, on the right side of Dials Church Road when you were heading away from the church?
A. Yes. On the side of road it's a very narrow shoulder and then it's a very steep drop off into the -- I don't remember what number the pasture was but it's the one that they said that had the big round hay bales in.
Q. Does Exhibit 3 show what you just described?
A. Yes, it does.
Q. Okay. Now, how about as you're going up Dials Church Road on the left? Do you have personal knowledge as to what's on the left side of the road?
A. Yes, I do. That would be the pasture. There's a -- well, before the fence for the pasture there's a wider area of shoulder as opposed to the right side of it. It's more level. There's a -- I don't know, maybe 15 feet of grass then the fence.
Q. Okay. Now, can you compare -- based on your personal knowledge can you compare the two sides, I mean, in terms -- how would you compare how the right side of the road sits with the left side of the road, or vice versa?

A. Well, like I said, there's much more -- it's not really a shoulder. I guess it's the same level as the pasture on the left side but the fence just changes the shoulder from the pasture. So it's very level, almost even with the road, maybe a little bit of a drop, but just a gradual. Well, on the right side of the road, as I said, you got a very narrow shoulder but then it drops off really, really steep into some overgrowth.

Q. And I almost forgot one question. Before you had hit the cow, or what you perceive as hitting the cow, did you have any cow feces or hair on your body?

A. No, I didn't.

Q. Sorry, I had to ask. Now, you mention remembering what you called a lifting sensation, and I think you said you equated -- you thought it was the helicopter ride. What is your next memory after that?

A. The next memory I have after that is I had asked somebody to call my wife because she's -- I knew that I was hurt pretty bad because I couldn't think of what I wanted to think and I just wanted to call her.

Q. Now, while you were hospitalized did you undergo any surgeries?

A. Yeah, I did.

Q. I'd like to show you a series of pictures.

(WHEREUPON, Court Exhibit Numbers 11 through 14,

Photographs, were marked and made a part of the record.)
BY MR. BOGGS:
Q. David, I'll show you what's been now correctly marked as Courts 11 through 14. Can you identify just briefly what each of those pictures depict.
A. Each one independent?
Q. Yeah, just quickly. I mean, you don't have to go into detail.
A. The first one is a picture of me in the hospital bed with obviously I've got a cervical color, I guess you'd call it, a collar around my neck.
Q. That's okay. Just ---
A. Obvious damage to the leg.
Q. Yeah.
A. The second one is a close-up picture of the damage that was done to my right leg. The next one, which would be Number 13, is a closer picture of a grotesque swelling, I guess you can call it, of the leg, and sutures. And then the next one, which would be 14, would be an x-ray of the leg with the fixture and the screws showing through it.
Q. Okay. And does that one have your Social Security number on it?
A. The last one?
Q. Yeah. The records up on top.

A. Yes, it does.
Q. Would you take a pen and just mark out your Social Security number, please. I'm sorry about that.
A. (The witness complied).
MR. BOGGS: Permission to publish, as earlier discussed?
THE COURT: Yes.
BY MR. BOGGS:
Q. Now, David, I don't know if I asked you, did you have any surgeries while you were at the hospital?
A. While I was in the hospital, yes.
Q. Okay. And what -- obviously, you had some problems with your leg. Did you have surgery on your leg?
A. Yes.
Q. And what was wrong with your leg?
A. It was broken, shattered. It's the bone that they call the tibial plateau below the knee and to the ankle. It's sort of -- the top part of it was were the worst damage was. The bone sort of comes up and shelves into a support for your knee and there was a lot of shattering in there.
Q. Okay. And so did they install an apparatus, if you will?
A. Yeah. They installed what almost looked like the kickstand to the motorcycle if you look at it. I think

you -- the jury may see it later but it's a long rod made out of a titanium plate and they -- I don't know the exact number of screws, a fair number of screws, some of them really, really long that they attached it to my bone.

Q. Now, I'm going to show you what's been marked as Court's Exhibit Number 10. First of all, this says sterilization pouch. It's a sterile bag, isn't it?

A. As far as I know.

Q. Okay. Good. Can you -- well, just basically, is this what was in your leg?

A. That's what they told me was this there, yeah.

Q. Is that what was given to you by your doctor?

A. Yes.

Q. Is that what's depicted, to your knowledge, in the x-ray?

A. Yes.

MR. BOGGS: Permission to give it to the jury?

THE COURT: They may see it.

BY MR. BOGGS:

Q. All right, David ---

THE COURT: Let me explain to the jury what these are.

These Court's exhibits are not matters that are being challenged by either side. They are for you all to

see. They won't be in the jury room with you with the evidence that is for the factual disputes because everybody admits the leg was broken and it was repaired. So that's kind of the purpose of those exhibits, for you all's understanding, the difference.

MR. BOGGS: Thank you, Judge.

BY MR. BOGGS:

Q. Now, briefly, what other injures were treated during your hospitalization?

A. Briefly?

Q. Briefly.

A. I had a severe closed-head injury, I had a cracked sinus cavity, abrasions, of course. I had severe vertigo. I had one time what they thought was a blood clot that they had to rush me down and do the test like they do on a woman when they test her for being pregnant to make sure that that wasn't there because they thought I might be going the wrong way as far as surviving.

Q. You talking about an ultrasound?

A. Yeah. Yeah. It was on my leg because they thought there was a blood clot there.

Q. Okay.

A. Severe, very severe perispinal muscles which are the muscles that hold up your head, basically.

Q. Get a little bit closer to that microphone.

A. Okay.
Q. You're very soft spoken.
A. I had ---
Q. Maybe not that close.
A. I had a very restricted movement to my neck up and down and radially. I had a badly -- almost broken knuckle -- or left -- right thumb.
Q. So essentially a lot of things were wrong and they were treated during your hospital stay?
A. And then some of those things formed out into other things after I got out.
Q. Well, how long were you in the hospital?
A. I was in the hospital for seven days.
Q. Okay. After you went -- I assume you went home, right?
A. From the hospital, yeah.
Q. Did you ever have to go back into the hospital?
A. Yes, I did.
Q. Okay. And what was that for?
A. If I remember correctly, about one week after I got home my wife had had enough and took me back because I couldn't eat anything at all. I basically survived on water and maybe a cracker here or there because -- I don't know how to explain it, nobody has been able to tell me but everything that was cooked in the house

smelled identically the same but it was a smell I'd never smelled before and everything tasted like that smell, if that makes any sense, because your smell and your taste are so closely related, and I couldn't keep anything down. I threw up everything that I tried to eat and I lost a significant amount of weight in a quick amount of time. And I woke up, I guess it was the next weekend, I think, throwing up upon waking up, and she said, Enough is enough, and took me back.

Q. Okay. Now, after the hospital were you treated for any other injuries?

A. Yes.

Q. And after the hospital, the second visit, what types of treatment did you have? Just briefly explain the types of treatment.

A. I had physical rehabilitation with my leg after they said I could put weight on it at the rehab center. I had positional rehabilitation for severe vertigo. They called it positional vertigo. There's different types. I had physical therapy for the neck restrictions, movements that I was taking about.

I had to go have MRIs taken because of the pains in my head that just would not ever go away no matter how much pain medication I took. I was prescribed to go to a neuropsychological evaluation because of the short-term

memory problems and some motor skill problems I was having in my right hand.

I had to go to an ENT because of problems with vision, with distant vision, which I've never had prior to the accident. I had a recurring noise, I think it was mainly my right ear, that sounded like a busted speaker would. It just came and went.

Q. And all those ---

A. That's off the top of my head.

Q. Well, I mean, bottom line is since the date of the accident you've been through a lot and treated for different injuries; is that correct?

A. Yes.

Q. Now, have you been prescribed medicines during this time?

A. Yes.

Q. Were they necessary for the treatment?

A. Yes.

Q. Or the rehabilitation or what have you? Did you always take your meds?

A. I definitely took the things that were pertinent to having to heal me up. I did stop taking the pain medication after the one week that I talked about because when we went back to the hospital we didn't get a real conclusion. All they would say was, Look, you know,

you've had a really, really bad accident and you're going to have to endure some of these things.

And I needed some relief. So I didn't know anything else to do but cut out what I'd never done before, and that was the pain medication. So I just stopped the pain medicine and just tried to endure it with over-the-counter stuff to try to allow me to be able to eat.

Q. Do you have any current course of treatment right now or do you have anything that's, you know, scheduled right now that you're doing on-going treatment?

A. The only thing that's really -- and I don't know if you call it scheduled, but when the vertigo comes and goes, there's no cure for that once you get it, and anybody can get it, but I have it, and sometimes it's worse than others over periods of time and what they prescribe you to do is to do positional movements, which basically amounts to -- I won't got into it real deeply but what vertigo is kind of means that there's something in your inner ear that gets out of place and it's not operable. You can't fix it by going in there. All you can do is move around and hope that it moves somewhere else that it doesn't bother you. So occasional ly I'll have to reproduce those type of movements and hope that it diminishes.

Q. So essentially doctors have given suggestions for what may come up ---

A. Right.

Q. Is that a fair assessment?

A. Yeah.

Q. They try to teach you how to deal with whatever you have to deal with, right?

A. Right. And I do still have physical therapy for my leg that they told me to continue to do at home.

Q. Okay, so at this point your doctor -- has your doctor done all that can be done until some more time passes and you know how your body is going to react?

A. Yes. Essentially, as a matter of fact, the plate, the reason that it was out is a little unusual. They put those in and don't intend to take them out, but in rare occasions, such as mine, when you keep having complications and you can't reach the maximum point of recovery that you want to reach, which is as good as you could be and not be restricted, that's done as a last result, and we tried everything else before that. The doctors decided to do that. So basically, you know, after that you're as good as you're going to be.

And that's the same thing with the head injury. The head injury, the neuro psychoanalysis evaluation determined that you've got a problem but it's a brain

injury, and if it's an inoperable brain injury, which mine is, your brain heals on its own over time.

Q. Okay.

A. And it's that progress -- progressive stage.

Q. How long was the plate in your leg?

A. It was up until spring of last year.

Q. So almost two years?

A. End of March, I think, if I'm not mistaken.

Q. Okay.

A. 2010.

Q. So bottom line, are you a hundred percent of the way you were before this accident?

A. Oh, no.

Q. Okay.

A. No.

Q. Do you anticipate any future treatment that you may have to endure?

A. I do now, probably, is because taking the plate out doesn't seem to have done what we hoped it would do. It's better than it was but I'm still -- I know I'm nowhere near where the doctor hoped I would be by his own statement, and I know I'm not anywhere where I hope or want to be, or close to where I was.

Q. Well, how has it affected your life, physically?

A. Just about every way. You don't -- maybe some of

you or some of you all been there but you don't know that unless you get this. It touches everything because -- family life, we have grandkids. Those of you who have grandkids know how special they are.

(The witness appears to be upset.)

I'm sorry. Got a four year old and he's the light of my life. Before the accident he would run, you know, Pop, Pop, you're home. You know, and actually, you know, you're a granddaddy. You throw him up in the air and you run after him. And when you come home and he's doing that, especially the first little while after I could even get around on my leg, and you can't do that anymore, he doesn't understand. And then you see the look in his eyes and it's -- like I said, it doesn't make any sense to you that I'm acting like I'm acting now but unless you've been there you don't actually know how much it impacts you. And that's just one example.

With his father, or my stepson, we threw football all the time. I could run -- you know, I feel like I was in decent shape for my age and I could run, catch the ball, throw the ball, play tackle, or whatever, and I can't run anymore. I just can't. I don't know any other way to explain it other than that. If you've been there you know. If you don't you probably can't relate. But just everyday activities.

Being a man, I've never -- I'm a very mechanical person. That's what I've done all my life, as far as an occupation. I've prided myself on not having to call anybody to do things around the house, let alone the fact we couldn't really afford it, but you do what you do. And just some things that I can't do anymore, and I guess that affects your pride. Then you go on to the psychological thing, and I can go on. It's like a chain reaction.

Q. Well, and you're aware of the agreement that we have with the other side. The damages aren't going to be determined by the jury and that they are just going to focus on liability?

A. Yeah.

Q. And so, again, in summary, physically this has affected you, your everyday life; is that fair?

A. Oh, yeah. Yeah.

Q. Okay. Now, during your treatment have you been trying to -- well, you stated you hadn't been able to go back to your job. Is that because you're physically unable?

A. Yeah.

Q. Okay. Now, with the economy and all has there been any job availability problems? I mean, have you been looking for a job that you can take?

A. Yeah.
Q. Okay. Have you been able to find one?
A. Not as of yet.
Q. Have you been taking any steps to better your opportunity for a job?
A. Yeah.
Q. And what's that?
A. I've gone back to school, Greenville Technical College.
Q. And are you seeking training that might lead to a job that you can handle?
A. Yeah. That's what I've tried to map it out as. I figured if I'm going to be out due to the injury and I can at least get out then take advantage of the opportunity and try to widen it because it looks like that's what I'm going to have to do because I've been a very physical person all my life, like I said, and now limited. So I need to sort of broaden where I've been.
Q. All things considered, in a perfect economy or perfect world, the way your leg is right now could you have gone back to Pierburg and done the job you had before?
A. No.
Q. Even today?
A. No.

Q. All right. Now, your wife has a claim for what's called loss of consortium. Without getting into the legal aspects of it, has she suffered as a result of your injuries?

A. Oh, yeah.

Q. And I guess can you briefly explain that. I mean, take as much time as you need but just summarize. Again, that's part of damage so we have this agreement but tell how it's affect -- your injuries have affected your home life or your marriage.

A. Well, physically, as you can imagine, I can't move around like I used to and probably the obvious thing that you're going to think about is the marital relationship, and I guess everybody knows what I'm talking about, in the bedroom. I can't move like I used to move, without being too nasty.

But there again -- and this may be a man thing, when you can't do things that you used to do it makes you feel like less of a man. And then she, of course, tries to be her and the rest of me, that I can't be, and it just -- that affects me mentally, and it frustrates me and bothers me until it's gotten to the point where it's just -- It's almost -- It's almost like something that you have to plan and try to do right and it's just -- it ruins that.

And aside from that, like I said, you asked about her specifically. As I said, she tries to take up for what I'm not able to do anymore, which she's wonderful about that but that makes me feel even less than a man, and I don't know how to explain it other than that. It just compounds it mentally and the frustration sets in, which makes her worse because it adds to her, and it's a process that I guess she'd have to learn to deal with.

Q. Prior to the accident did you know Wayne Darby?

A. I knew him, yeah, not well though.

Q. How did you know him?

A. Just that we've lived in the same area all our lives, acquaintances, passing in the road, waiving in the road, what have you.

Q. When you drove down Dials Church Road any occasion prior to the accident, up to the accident, did you know specifically that that was Wayne Darby's pasture on either side or around there?

A. Not specifically.

Q. Okay. Going back to the accident. What did you try to do or what did you do to try and miss the cow? What do you recall?

A. I did everything I could with the time I had, and that was, as I said, I applied the brakes, tried not to apply them too hard to where I'd lose control of the

motorcycle. I steered to where the cow wasn't at the time, and that's all I had time to do.

Q. Why didn't you miss it?

A. He got to the same place that I was when we hit, is all I can tell you. I couldn't avoid it.

Q. Did you try and hit it on purpose?

A. No.

Q. When you left that grave site and were heading home on July 24th, 2008 is that where you thought your trip would lead to?

A. Absolutely not.

Q. David, you know, if by some chance you are in the same position again, let's hope not, riding a motorcycle down the road under the same circumstances would you have acted the same way?

A. Absolutely.

MR. BOGGS: Please answer any questions that Mr. Hanna may have.

MR. HANNA: Please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. HANNA:

Q. How are you doing, David?

A. Pretty good.

Q. I want to go back and focus on the events that

occurred immediately prior to the collision that we're here about today, okay? And let's start with, you know, I understand that you live close to the Dials Church, correct?

A. Fairly close, yeah.

Q. Take, what, five, seven minutes to get from your house to the Dials Church?

A. Yeah, probably seven to ten.

Q. Would you agree with me that it was somewhere between 6:00 and 6:30 when you left your home to go to Dials Church?

A. I don't really remember the time.

Q. Do you recall me taking your deposition in this case?

A. Yes, I do.

Q. When I asked you in the deposition what time of day are we talking about now, do you think, and again, referring when you went to the church, you said, I'm not absolutely sure. My guess, 6:00, 630.

Do you disagree with what you previously testified to?

A. I don't disagree with what I testified to then as being what I thought was the time then, but what I'm saying is as of right now I don't recall exactly when that was.

Q. I understand. Now, as we discussed, you rode from your home to the cemetery on your motorcycle, correct, or the motorcycle? I think technically it belongs to ---
A. Yeah, I rode the motorcycle.
Q. And that, again, took about seven minutes?
A. Yes.
Q. Okay. And you stayed at the cemetery somewhere 15 minutes to half an hour; is that accurate?
A. That's what was fairly typical for me.
Q. And you were heading back to your home when this accident occurred; is that accurate?
A. That's right.
Q. So would you agree with me that based upon the timeline we've been discussing that it was somewhere in the neighborhood of 7:00 p.m. when this accident occurred?
A. As I said, I don't remember times. All I know is it was afternoon.
Q. It was still light, correct?
A. Yes.
Q. Now, it's my understanding that you were going approximately 35 miles an hour immediately prior to the accident; is that correct?
A. As I told Mr. Boggs, I don't recall looking at the speedometer knowing exactly. All I know is that on

country roads I never drive, you now, anymore than 40 miles an hour.

Q. Understood. And, again, we've already established -- I previously took your deposition and when I did so and I asked you how fast do you think you might have been going on that road, your answer was, I was probably going 35.

You don't disagree with that, do you?

A. I don't disagree with what I said then. What I'm saying is I don't ---

Q. I understand.

A. Forty miles an hour, 35 ---

Q. Bottom line is you previously testified under oath that you were probably going 35?

A. Yes, I did.

Q. Okay. And, again, in fact, I expressed surprise because I thought that was below the speed limit, I believe. You may recall that. You are aware, I think as you established on direct, the speed limit actually is 45 on that road?

A. Yes.

Q. So whether you were going 40 or 35 you were definitely going under the speed limit?

A. That's right.

Q. Okay. Now, I think -- again, I think this was

established on direct but I want to make sure. When you first laid eyes on the cow it was in the road; isn't that accurate?

A. That's my memory, yes.

Q. Okay. But you don't know -- if I recall correctly, you don't know which way the cow was heading. Like you said, it was pointing towards the pasture with the bales of hay or the other way, or heading towards you or going away from you, do you?

A. No.

Q. And I think as we established there was some photographs that showed kind of immediately prior to this area where your accident occurred there's a long hill and then it crests and opens up into more of a -- I'm not going to say exactly straight but more straight that flat. Is that accurate?

A. Somewhat. What happens is the road -- there's a long hill, as you said, and that angle is pretty consistent all the way up, then that angle changes. I wouldn't say it flattens out but the elevation is definitely not as steep. But then you come to another slight hill, and then after over that hill that's where the road actually flattens out until then you can see past that white house on the other side of Cooley Road.

Q. Understood. And it's my understanding that as you

crested the hill you immediately saw the cow. Is that accurate?

MR. BOGGS: Objection. Can we ---

THE COURT: Sure.

(WHEREUPON, a sidebar was had.)

BY MR. HANNA:

Q. We've been talking about the elevation and the hill. Which hill were you referring to in your deposition when you stated that you crested the hill and immediately saw the cow?

A. The last hill before I hit the cow.

Q. Okay. Now, I think you testified you'd lived in this part of the state your whole life, correct?

A. That's right.

Q. And you had some experience traveling up and down this particular roadway; isn't that correct?

A. Yes.

Q. You had general knowledge there were cows in the area, right?

A. Yes.

Q. However this is, to my understanding, the first time you had personally ever witnessed one outside of its enclosure and in the roadway, correct?

A. To the best of my memory, yeah.

Q. You don't know which part of your motorcycle

actually made contact with the animal, do you?

A. I don't remember by memory. I can hypothesize from looking at the motorcycle, but, no.

Q. Again, I don't want you to hypothesize. I'm saying by memory. Isn't it true that you have no personal knowledge of any damage to the fence around the field immediately adjacent to the accident on the date of the accident?

A. That's true.

Q. And you can't identify the cow that was involved in the accident, can you?

A. I've tried, but, no.

Q. Understood. One second. I think I'm done.

(PAUSE)

MR. HANNA: No further questions.

THE COURT: Any redirect?

MR. BOGGS: Just one. May it please the Court.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. BOGGS:

Q. Even though you're familiar with cows in the area did you have any special reason to be on the look out for a cow where you found it in the road or where you hit it in the road ---

A. No.

Q. --- on Dials Church Road?

MR. BOGGS: No further questions.

THE COURT: Any recross?

MR. HANNA: None.

THE COURT: All right. Mr. Farrow, you may step down.

All right, ladies and gentlemen. I'm ready for a lunch break. I hope you all are. It's 12:30. I'm going to give you all until -- try to be back in the jury room just before two o'clock and we'll get started back two o'clock sharp. I've got an issue or two with the lawyers and I don't know if I'm going to do it now or about 1:30, but that's how we've been attending to some of the Court's business with them to keep things moving for you all. So you all be back in the jury room just before 2:00. You've got about an hour and a half. Don't discuss the case.

(WHEREUPON, the jury leaves the courtroom at approximately 12:33 p.m.)

THE COURT: All right. You all going to coordinate your looking at exhibits with your respective witnesses?

MR. BOGGS: Yes, sir. I would just -- I mean, basically what I need to do is confirm, and I have no reason to doubt it. It's just those are the same pictures that were in the report. And then I would just,

since they are blown up, with Geov's permission I'm going to have my expert -- I was just going to have my expert refer to these same photos so we're -- so both experts are talking about the same demonstrative evidence. So when we get back we'll look at them.

THE COURT: I think Mr. Hanna can represent he didn't Photoshop those documents and trip you up.

MR. BOGGS: Well, I agree.

THE COURT: Certainly he's cleaver and maybe can do that but ---

MR. BOGGS: Well, and honestly some of the wording I may have a problem with that was in the report, until there's a proper foundation laid.

THE COURT: Well, I'm just talking about the photographs themselves, not the wording.

MR. BOGGS: Oh.

THE COURT: All right. We'll see you all. What time you need back in the courtroom, for the benefit of the bailiffs?

MR. BOGGS: At 1:30.

THE COURT: 1:30?

MR. BOGGS: An hour from now.

THE COURT: All right.

MR. BOGGS: If that's all right.

THE COURT: All right.

(WHEREUPON, a lunch break was taken.)

THE COURT: I understand you all have an issue.

MR. BOGGS: Probably more than one. One to discuss with you but many internally, I'm sure.

THE COURT: I'll take judicial notice of that.

MR. BOGGS: Thanks. Well, I don't know whose motion. The witness I plan to call is an expert. His name is Gerald McDevitt, seated right here. There's a video he made of driving a motorcycle up Dials Church Road for his reference, not for his use. It wasn't drawn to scale. There's no -- excuse me, not drawn to scale. But there was no measuring there was no -- it was intended for use in Court.

Obviously, we gave them everything he had, because that's what we're supposed to do. They want to use that video I assume during cross and we think it's misleading, prejudicial, a waste of the Court's time. What else have you been saying throughout the trial? No, just kidding. And also, Judge, one major problem -- or another major problem is that Wayne is in the video. Wayne portrayed -- Wayne, my associate, portrayed the mark, as you will.

THE COURT: The mark of the cattle?

MR. BOGGS: Well, the estimated position of the cow, and so I just think that it has no probative value. We can put on Mr. McDevitt and he'll testify as to what

he used to formulate an opinion and it was not the video.

THE COURT: All right. Mr. Hanna, what probative value does it exist to show of relevant evidence?

MR. HANNA: What the video purports to show is, again, he got on a motorcycle at Dials Church and basically followed going 35 and you could see clearly on the video that he's going the speed the plaintiff did and he just follows the path up the road that the plaintiff did, and the purpose for which I would want to show it was and particularly based upon this confusing testimony to, again, about two crests of hills and all that kind of stuff, so that the jury can see for themselves exactly what the roadway looks like.

There's been abundance of testimony in the case and with all these pictures that they keep putting in that other than a little bit of tree growth the road is identical now than what it was then. And to the extent that there was some confusion about at what point you -- stuff would become visible in the roadway ahead I think it is highly probative.

Now, if we had not had the confusion moments ago and it would have gone exactly as I suspected it would go I wouldn't care about this video but now that we've brought an issue in of ---

MR. BOGGS: I want to clarify the record. I don't

know what confusion he's referring to. The only confusion may be on his interpretation of my client's testimony deposition. So to the extent he's confused, I'm not.

MR. HANNA: I never said you were confused.

MR. BOGGS: You said confusion on the record, and I want the record to reflect I don't know what confusion you're taking about.

THE COURT: All right.

MR. HANNA: I think that if the video is shown it will show that there's only one possible hill that one could crest, okay, and I think that it will -- anyway, I think that it does help the jury understand what it looks like. We've got all these pictures, what's wrong with a video showing ---

MR. BOGGS: What's wrong with the video ---

MR. HANNA: And here is the video.

MR. BOGGS: My associate is standing in the road and it shows him as he drives by, and it has no scientific basis. It's basically my expert riding up the road. And so -- I'm sorry.

THE COURT: How is it prejudicial to you?

MR. BOGGS: I'm sorry?

THE COURT: How is it prejudicial to you? I mean ---

MR. HANNA: Can we let the Judge see it? Does it work? Let's let the Judge see the video. There's two of them.

THE COURT: Let's look at it.

(WHEREUPON, the video was played for the Court.)

THE COURT: All right. Explain to me again why it's prejudicial? I mean, it's the scene. It would be tantamount to putting the jury on a bus or van and riding them out there at 35 miles an hours on the scene, and I'll do that if you all request it but I'd rather not.

MR. BOGGS: Judge, under what -- how is he trying to get it in?

MR. HANNA: Their expert did it. I'm just going to ask him, Did you make a video, can we show the video? That's all I plan to ask him. But the purpose of the video is to show what the scene looks like.

MR. BOGGS: Judge, it's not the date in question, it's not the time of year, it's not the time of day, it's got my associate in it. It wasn't used by the expert. It's not to scale. There's no markings. The markings are clearly in his expert's materials. It's not necessary to show the scene.

If they wanted to have it they should have done it. My expert just did it so that when he drove back to Charleston he could remember the scene, but that doesn't

mean it wasn't used -- I'll proffer that he wasn't using any calculations. In fact, he didn't do any calculations. He basically analyzed what their expert did. So if he's trying to -- I think that it misleads the jury especially when my associate is in it. I mean, among other things.

MR. HANNA: To the extent that there's anything misleading about it before it's shown the Court can give an instruction to the jury that it's -- the only purpose upon which it is to be used by them is simply to see what it looks like going the speed he said he was going in the direction he was going.

No one purports that it's supposed to show exactly where the cow was or anything like that, other than what the scene looks like. And, again, it's particularly important to me because I think it will show that there is only one hill to crest, okay. You know, and it's clear which hill we're talking about.

THE COURT: That's probably a factual dispute and I don't want to get into that. I don't have an opinion on the facts, as my charges always says.

MR. BOGGS: Judge, one deal. This is a two -- he's essentially trying to show how it is to be perceived by a motorcycle rider to the jury but it's only two dimensional. It's not three dimensional. And so you

can't factor in shadow, and all the things. So it does not depict for the jury what existed then and there.

These that we're going to get into aren't being offered to show that. These that we've shown as a frame of reference point. And so they have -- they can see the scene. They've seen where it is. They've got pictures, still photos. And so I just -- it's not necessary and it misleads them because Mr. Patterson is standing there and you can see him. It wasn't -- they didn't say, All right -- they didn't put a cow out there. They didn't measure it. They didn't measure, all right, what's a hundred feet. Mr. Olson --

I assume you're Mr. Olson?

MR. OLSON: I am.

MR. BOGGS: Okay. How you doing?

All right, that Mr. Olson did. He's got cones, he measured. That's what those pictures show. And so I just think that it's not appropriate. We had no intent to use it. We disclosed it because he has to give his whole file.

THE COURT: I think it's probative. I don't think it's prejudicial. I don't think it can be offered for anything other than -- and subject to the things you said. It's not same time of year, time of day, time of anything, the shadows are different, it may have been

overcast versus cloudy. No, it doesn't, but it does show the road. It does show the path of travel by your client. I don't see how it's not probative.

MR. BOGGS: Well, it shows the area after the accident. Judge, I mean, it's akin to me taking a video on yesterday and walking Mr. Darby's fence and finding a hole in it, which I have pictures from Richard Marshall that he did have a hole in it last week, it's the same thing.

THE COURT: Do you want to go frame by frame and look for the holes?

MR. BOGGS: Sir, it's not -- I mean, I'm just ---

THE COURT: I mean, you all have argued such obscure points. It's amazing how the roles reversed here over the lunch hour.

MR. BOGGS: Over the lunch hour?

THE COURT: Yeah.

MR. HANNA: It's rare.

MR. BOGGS: So you would allow it to come in as impeachment of my expert?

THE COURT: No. Not as impeachment. I don't see how it's impeachment at all. How is it impeachment?

MR. HANNA: I'm not suggesting it's impeachment. I'm merely suggesting it shows that ---

THE COURT: I missed that.

MR. HANNA: --- he took it. That's why it's the appropriate person to put it in through because he's the one that did the video.

THE COURT: I didn't understand it to be impeachment.

MR. HANNA: It's not intended to be.

THE COURT: Where is that coming? You all got to the tell me what's going on because I don't understand how it would be impeachment. That came from somewhere and that hadn't been pitched to me yet, the impeachment issue.

MR. HANNA: I'm not suggesting it is.

MR. BOGGS: It came from my expert.

MR. HANNA: I don't know what he's saying. All I I'm saying is that ---

MR. BOGGS: It coming from my expert. He's going to say, Did you make a video, and he's going to put it in.

MR. HANNA: Did you make a video? What does the video show? Let's show the video. That's it.

MR. BOGGS: Thought it was going to be a simple afternoon.

THE COURT: I mean, I don't see how it's prejudicial. I mean, all the other photographs have been let in. There have been none of the date of the

accident. All of them have been representations of other times and -- you know, other times, and weather, and two dimensionality, and all that is already in the photographs.

MR. BOGGS: Subject to my objection. All right. Plaintiff rests.

THE COURT: All right. You going make any motions?

MR. HANNA: Are we not calling the witness?

MR. BOGGS: It's my witness.

MR. HANNA: I understand. I'm not saying, you know ---

THE COURT: Sure.

MR. HANNA: Yes, I do ---

THE COURT: You're not going to call him?

MR. BOGGS: Not right now.

THE COURT: Okay.

MR. HANNA: Okay. Yes, Your Honor, I would move for a directed verdict in this case first on the basis that there is no competent evidence upon which a reasonable jury can find that the cow in question belongs to Mr. Wayne Darby.

There is absolutely -- the only evidence that we have in this case is proximity and in order for the jury to find the proximity alone, that that's his -- that it's his cow, is nothing but rank speculation, okay. And to

let in the issue of, again, who owned the cow, I'm unaware of any evidence in the case other than proximity that would state that it was his cow.

And, again, that would -- the basis -- I'm sorry. I'm combobulating because I wasn't prepared all of a sudden to argue this part. I'm not getting it out as well as I'd like to. But anyway, I don't think there's any evidence upon which a reasonable jury can find that it's his cow other than through speculation, and the speculation would be that the cow -- you know, again, proximity.

There has been some evidence perhaps. And, again, I don't -- you know, to the extent that there is evidence that he was negligent, again, I would move for a directed verdict also on the grounds that there is no evidence that Mr. Darby was negligent on the date in question.

The only evidence of potential negligence in this case has consistently been negligence that he may have done, which I don't concede was negligence, but, you know, given all reasonable inferences to the plaintiff, it all happened on some other occasion with no evidence at all that the same thing was going on at the time of the accident, and without any evidence that something was going on on the date of the accident there is no way upon which a reasonable jury could find without, again,

speculating or making what we all know is a very impermissible inference that because he was negligent on some other day he must have been negligent on this day.

This whole case is based upon the idea that, you know, he doesn't herd his cows right. On some other day he may have left the fence down, on some other day something happened, but no evidence has been produced yet as to anything he may or may not have done on the date in question. And the fact, again, not conceding with that, the fact that he might have been on other occasions has no bearing at all whether he was negligent on this occasion.

As a further argument on the negligence argument is, is that because -- I just want to make it more clear. You also not only have to prove negligence but that the negligence was the proximate cause of the injury in question. And, again, all the evidence of negligence in this case is based upon negligence on some other occasion, none of which could possibly be the proximate cause of the injury complained of in this case. And I believe that would be all the bases upon which I could possibly move for a directed verdict at this time.

THE COURT: All right. Mr. Boggs?

MR. BOGGS: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. BOGGS: Judge, we don't need a video of what happened to prove negligence against Mr. Darby, as you've heard countless testimony from fact witnesses of how he did business, how he didn't do business. You've heard from Mr. Darby, his admissions that he had a cow out. The next day he said he had a cow out, the day before or so, but he has -- his credibility is subject to interpretation or assessment by the jury.

The fact that he said that he fixed the fence but, oh, I fixed the fence but it was over here, and the fact that the expert -- I mean, there's so many issues. There's so many reasons that you've heard that in a light most favorable to the nonmoving party it's just -- respectfully, I don't see any way that a verdict can be directed.

The expert that was admitted in animal science testified that Mr. Darby's practices were unreasonable at the time of the accident, and he also stated that proximity is a factor. He also stated that the way he was feeding them was a factor. He also said that the drought was a factor and that would have put him on more notice. His overall business, the way he does business is an indicator of how he was doing business on July 24th, 2008.

Judge, just before you text while driving for 30 years and -- I won't even go there, Judge. That's a jury argument. But, Judge, in a light most favorable to the plaintiff, taking everything, evidence, pictures, testimony and expert testimony his motion should be denied.

THE COURT: All right. Mr. Bolt, go tell the jury we'll get them in here in a minute but we've had an issue I've had to the consider, and to be patient with us. If they want to go smoke a cigarette, let them smoke a cigarette. I'm going to take a minute.

THE BAILIFF: All right.

THE COURT: I had those two cases in my hand to read them again, the Reid and was it Martin, that other case? I had them on the desk and I meant to bring them back in here. I'm going to go back there and read them one more time.

MR. HANNA: It's Oconee Mills --

THE COURT: Yeah, I've got them both.

MR. HANNA: Yes. Yes. Reid V. Clark.

THE COURT: All right. I'll be right back.

(WHEREUPON, a brief recess was taken.)

THE COURT: All right. Mr. Hanna, respectfully, I'm going to decline your motion. I think there's enough evidence presented that a jury can consider that

question, and I think that you all -- I don't have you all's interrogatories but isn't that the first question, whose cow was it? Yes or no?

MR. HANNA: Yes, that's been ---

THE COURT: It's his burden of proof. He's put forth a very circumstantial case.

MR. HANNA: Understood.

THE COURT: He's allowed to do that. And a jury will decide whether or not his circumstances meet the burden upon him. So we'll go forward.

MR. HANNA: Understood. Thank you.

THE COURT: Bring the jury.

MR. BOGGS: At that time, I might have a motion before Mr. Olson testifies.

THE COURT: Okay. All right. Now, get the jury.

MR. BOGGS: Judge, may I formally rest on the record, in front of the jury?

THE COURT: Oh, yeah.

(WHEREUPON, the jury enters the courtroom at approximately 2:42 p.m.)

THE BAILIFF: All present, Your Honor.

THE COURT: Ready?

MR. BOGGS: May it please the Court. At this point in time the plaintiff would rest.

THE COURT: All right. Thank you, Mr. Boggs.

Mr. Hanna, you may call your witnesses.

MR. HANNA: The defense will call Wayne Darby to the stand.

THE COURT: Mr. Darby, come forward. And out of an abundance of caution I want the clerk to swear you in again.

JERRY WAYNE DARBY, after having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HANNA:

Q. I think you did this earlier but just state your full name for the record again.

A. Jerry Wayne Darby.

Q. Mr. Darby, where were your born?

A. Gray Court.

Q. And where were you raised?

A. In Gray Court.

Q. How long have you lived here in Laurens County?

A. All my life except for a year when I served in Vietnam.

Q. Okay. And where do you live? What's the address?

A. 2149 Burdette Road.

Q. And what kind of work do you do?

A. Construction work and cattle farming.

Q. Are you a member of a church?

THE COURT: I sustain that.

BY MR. HANNA:

Q. Are there other farmers -- I'm not sure how that's leading. Are there other farmers that have cattle in your area.

A. Yes, sir.

Q. Focussing on a two to three mile radius, what other farmer are there?

A. Ray Stoddard, Sonny Stoddard, Boyd Stoddard, Terry Varner, Harry Hays.

Q. Okay.

MR. BOGGS: Objection to relevance, Judge, unless that's --

THE COURT: I'm going to allow it.

BY MR. HANNA:

Q. Do you ever move your cattle from one pasture to another?

A. Yes, sir.

Q. And why do you move them from one pasture to another?

A. You have better grass on the other side.

Q. Do you ever allow your cattle to simply roam free?

A. No, sir.

Q. Focussing on the time frame of July 24th, 2008 or back, okay, what precautions did you take to keep your

cattle enclosed in their pastures?

A. Maintained the fences.

Q. Back in the summer of 2008 how often were you checking your fences?

A. At least a couple times a week.

Q. Okay. What if there's a bad weather, a storm or ---

A. Definitely go out after bad weather or storm.

Q. And why would you want to do that?

A. Because of tree limbs coming down.

Q. Is there anyone who helps you with your cattle and checking your fences?

A. My dad.

Q. I think we talked about him. What are some of the circumstances under which -- let me take a step back. Do cows ever get out despite the precautions you take?

A. Yes.

Q. What are some of the circumstances of which you are aware, again focussing on July 24th, 2008 and back, some of the circumstances which you are aware that would cause cattle to get out?

A. Tree limbs falling on fences, or I have had the county cutting beside the road and when they get down to the bridge they cut the end post off with the bush hog and tear the fence off and keep on going. And I have had

cars run through fences and leave the scene and never say a word about it.

Q. When you learn that you've had an escaped animal out of its enclosure what do you do?

A. Go get it up and find out where it got out and fix it.

Q. Okay. Have you ever received a call from either Laurens County or a neighbor about a cow being out, again prior to ---

A. Yes, sir.

Q. Have you ever gone to look at the cow that you were told was out and found that it wasn't yours?

A. Yes, sir.

Q. What other farmers' cows have you discovered out when you, yourself, have been called?

A. Sonny Stoddard's, Mr. Whitmire's, Harry Hays ---

MR. BOGGS: Judge, I object to relevance if this is outside the time that you ---

MR. HANNA: I think my question specifically was before July 24th, 2008.

A. Right.

MR. BOGGS: But, Judge, I thought we were ---

THE COURT: Restricted for the one year. I'm not certain you said that. You did on several questions thus far but ---

---

MR. BOGGS: On that particular one I didn't hear ---

THE COURT: Rephrase your question.

MR. HANNA: I misunderstood what you were saying. I apologize.

BY MR. HANNA:

Q. In the one year prior to July 24th, 2008 do you recall ever getting a call where you went and it was someone else's cow? Can you specifically say that?

A. I cannot remember back exactly.

Q. Okay.

MR. BOGGS: Move to strike everything that was said in his answer prior to qualifying his response.

THE COURT: All right. And I think I'll grant your motion.

I think the jury understands that I've made a preliminary ruling that the testimony you all are to consider is July of '07 to July of '08, the behavior. That's what we're looking at and evaluating. There's plenty of other time beyond that but that's not been presented to you. So to the extent that question wasn't responsive disregard it.

BY MR. HANNA:

Q. Now, let's talk some about on or about July 24th, 2008. There's been a lot of talk in this case about how

best of your knowledge what was the condition of the electric fence surrounding the pasture located there at Dials Church and Cooley Road?

A. I couldn't find anything wrong with it.

Q. Was the electricity working?

A. Yes, sir.

Q. Did you check it?

A. Yes, sir.

Q. Did you walk the perimeter of the fence?

A. What I couldn't ride I did.

Q. And did you find any defects at all?

A. No, sir.

Q. Could you find anywhere at all in that pasture where a cow might have gotten out?

A. Not in that pasture.

Q. Did you notice any missing cows at all?

A. No, sir.

Q. Did you find any injured cows?

A. No, sir.

Q. Did you look for any ---

A. Yes, sir. Yes, sir, I sure did.

Q. Did you make a diligent search?

A. Yes, sir.

Q. Do you believe that one of your cows was involved in this incident?

walk up and down that street every day -- or not every day but every so often.

We heard from Malinda Griffin, the appraiser. She was there on Dials Church Road 13 days prior to the accident. The red mark, she said as she was coming in this direction, the real flat direction, that about the same time of evening, about the same place there were a bunch of cows in the road feeding, 13 days prior to the accident.

We heard from Niles Wood, the young man who was also part of the Green Pond Fire Department -- or Volunteer Fire Department. He said he saw the cows jump the fence, twice. He said that he knew to call Mr. Darby from his grandfather. He saw cows on Cooley Road and he knew to call Mr. Darby because he lived in the area. Not because Mr. Darby lived in the area but because Niles Wood had lived in the area basically all his life.

Now, he also testified about the scene and talked about how across the street is where the helicopter was. And keep in mind, Chief Shields and Niles Wood, they said their primary purpose was to save his life, not hunt for cows or verify that there was a breach. They had a different job and they did it. Don't let the defendant blame them for not doing his job.

We talked about Terry Burdette. Again, I mentioned

him earlier. We talked about how he picked up the bike. The bike had cow poop and black hair on it. That's what he perceived. He saw it at night, took it to his garage, and he didn't look at it or study it again. He didn't lie. He said what he perceived.

Then we heard from Jeff Hollifield, the C. S. I. guy. You got to have one of those in every case these days, but he was necessary. He said, I took the cow -- or I took what was on the bike, studied it, it's a cow. Not only that, that he took the hairs and said they were bovine, a cow. So I don't think there's any argument it was a cow and none has been made that it wasn't a cow. But what he also said was he studied the feces and found that they had been eating dirt and leaves.

Now, when I asked him about the color he said it appeared dark but when he looked at it through a microscope with a backlight, you know how it lights up under a microscope, he said, In all actuality it's brown.

Keep in mind that registered Black Angus don't have brown hair.

Now, somewhere in there, maybe right after, I'm trying to keep them in order, but we heard from Thomas Graham. You'll recall he lives down near the racetrack, T. G., down there. He said that he's friends with Wayne Darby, and you could sense that he didn't want to be

here, much like Rebecca Willis, but he didn't lie. He wasn't direct but he didn't lie.

He said most importantly that he knows whose cows are in the area, that he's been living there, I think 20 years, and that he wasn't surprised that the accident happened or wasn't surprised to hear of the accident.

And, quite frankly, even though he didn't have any direct knowledge of the accident in question he didn't say he wasn't surprised about this case. If he's known Wayne Darby for 20 years he sure didn't offer anything to defend him in the way he does business.

Now, we heard from Jimmy Miller, Mr. Marshall's partner, testified at different times, confirmed everything his partner said. Like him or not, when he herded those girls down the street it was pretty funny. I call them the girls. I mean, this case can't get any better in terms of all the vernacular, and trust me there was more that you didn't even hear.

But he said, I herded the girls, you know, waved them down the street. He's the one that said they hopped back in. A couple of them hopped back into Darby's pasture. He confirmed everything Richard said.

In fact, he probably even went further than what Richard said in terms of his overall talking about how the barbed wire was rusty on that field, how -- or,

excuse me, on that pasture, and how he was more explicit about the general state of disrepair. And, again, I'm not asking you to jump all the way from what Richard Marshall and Jimmy Miller said about what they saw a month before.

I do want you to connect the dots. But it's like in my three-year-old son's book compared to my five-and-a-half-year-old daughter's book, you know, as you get a little older the dots get further apart, so they trust you a little bit more. I mean, this might be the one-year-old book, okay.

It's not because of A, it's not because of B, it's not because of C, it's not because of D, it's not because of E, on down, until probably triple A or triple D. It's not because any one of those that you need to say he was negligent, because that's not what we have to show. Add them all up. You could write a book with all those letters.

I'm not asking you to jump far, I'm not asking you to jump an electric fence. I'm asking you to take a step. It's a reasonable inference that Mr. Darby is at fault, was negligent.

Let's go back to the beginning. His own attorney says, Negligence is carelessness. I agree with him. So then it becomes, do you think Wayne Darby was careless?

Do you think Wayne Darby was reasonable in how he acted?

Wayne Darby doesn't know what happened on July 24th, 2008 either. So for him or his attorney to get up here and say something definitive is wrong. He was at work, and if he wasn't at work he testified that when he got off work in the summer in those evenings, he testified that he was out working the fields. Well, between 6:30 and dark on July 24th, 2008 he was nowhere to be found.

You heard through deposition Mr. Harrison. Mr. Harrison lives in the area. Said he lived right there on Dials Church Road. Said he lived there, I think his deposition was 55 years, a long time. And he had seen cows out often, and he also thought that they were Wayne Darby's.

Now, Mr. Harrison couldn't be here but his deposition of sworn testimony is as if he's sitting right there. He didn't lie. He didn't say, Well, I saw Wayne Darby's cows out that night. But every time he did he thought they were Wayne Darby's.

Now, yet another character and who I have liked getting to know, much like I've liked getting to know Mr. Darby because these cattlemen have all these stories. They have all these experiences that you and I don't have. But the one I'm talking about is Michael Worrell,

then left the scene where somebody is about to -- could have died you know what we call that person? We call that a criminal. Where do we put criminals? Prison.

Well, I submit to you there's the Darby prison, but in our prisons we lock the door, the warden doesn't give him a key. In the Darby prison the prisoners are in control. They come and go as they please and the warden doesn't care. And if that happened in one of our prisons you'd blame the warden if he gave the key to the prisoner. Blame the warden now. Thank you.

THE COURT: Ms. Wakester, I've got about a 20, 25 minute instruction. You all want a brief break to stretch your legs, come back and read the instructions or you want to go now?

FEMALE JUROR: Let's just keep going.

THE COURT: All right. Keep going. That's why I asked.

All right. Now, if I were really, really bright I'd have all this memorized. I'm not. I know most of the law but I don't know all the particulars and I want to make certain I get the particulars correct. For that reason I'm going to read and talk. I'll read some and talk some. And if I read and that insults you I apologize but I'm trying to get it right because it's -- explain to you all what you all's duties are and

responsibilities in considering the evidence. It's not always simple but converting the legalese into English can be tricky.

In any event, regarding this case, Ms. Wakester and ladies and gentlemen of the jury, the lawyers have provided you with the summaries of what they believe the evidence has shown. I remind you that during this trial you and I have had certain duties to undertake and perform.

As the trial judge it's been my responsibility to preside over the trial of the case and I've also had the duty to rule upon the admissibility of certain pieces of evidence which have been offered, and you are to only consider the evidence which has been presented and admitted in this trial.

If there was any testimony ordered stricken from the record during the trial then you must disregard that testimony entirely and you are to only consider the testimony which was presented from the witness stand right here and the exhibits which have been made part of the record in this case, and any stipulations which the attorneys have made.

Now, as I have an additional duty to charge you all today the law which is applicable in this case, and it is your duty as jurors to accept the law as I state it to

you. If you all have reason to believe the law is otherwise you must disregard what you believe it is or should be and you must take it as I instruct it to you.

In every case tried before this Court the jury becomes the sole and exclusive judges of the facts. As the trial judge I'm not allowed to comment upon or make any statement about the facts in this case, since that is your province. You are the sole judges of the facts.

And please do not take from anything I have said or done, or any of my rulings that I have an opinion about the facts because that is not my job. It is your job to determine the facts.

Now, this case was originally started when the plaintiff, Mr. Farrow, brought this action and filed in Laurens County against Mr. Darby. He filed what was called pleadings, and they are legal papers initiating the lawsuit. In the pleadings, Mr. Farrow alleged that Mr. Darby owed him a duty to keep his domestic animals or his cows within his pastures and not upon the highways.

Mr. Darby filed a response to the pleadings, which is called in legal terms an answer to the complaint, that he owed no duty. Now, by filing the answer to the complaint is a general denial. That means the defense denied all the claims made by the plaintiff. By base of this then that would place upon the plaintiff the burden

of proving all the elements of his case in his cause of action.

Now, we discussed in the jury qualifications that this was a week of Civil Court and not Criminal Court. In the Criminal Court the burden upon the State to prove someone is guilty of a crime is quite different. I won't tell you what that burden is but it is different.

In a Civil Courtroom, which is this, the burden of proof upon a plaintiff to prove his case is called a preponderance of the evidence. And preponderance of the evidence in English means the greater weight of the evidence. It is evidence which on the whole shows a fact attempted to be proved by the plaintiff more likely true than not true.

Many people understand this definition of preponderance of the evidence by imagining a set of scales in their mind's eye. Now, if you all do that, you imagine the set of scales on Lady Justice, and you believe that the scales after considering and weighing and deliberating over all the evidence, if you believe after all that evidence presented that the scales remain even or they tip even slightly in favor of the defendant then the plaintiff has failed to meet his burden of proof and would not be entitled to recover in this case.

On the other hand, if the scales tip slightly in

favor of the plaintiff then the plaintiff will have met its burden of proof and you should return a verdict for the plaintiff.

Now, the preponderance of the evidence is not determined by the number of witnesses called. It is determined by the greater weight of all the evidence. And when you evaluate evidence you must consider the evidence fairly and without emotion. You must weigh it and consider it and do what is just.

Now, there are two types of evidence generally presented during trials. In this trial we have had both. There is direct evidence and there is circumstantial.

Direct evidence is testimony of a person who has actual knowledge of a fact such as an eyewitness. It's evidence which immediately establishes the main fact sought to be proved.

Now, circumstantial evidence is a little different. It is a proof of a chain of facts and circumstances indicating the existence of another fact.

Circumstantial evidence is based upon inference and not on personal knowledge or observation. It is proof that has not actually established the fact in question but it describes something else from which you may either reasonably infer the truth of the fact or at least reasonably infer an increase in the probability that the

fact is true.

For circumstantial evidence to be sufficient to warrant the finding of the fact the circumstances must lead to the fact with reasonable certainty. The facts and circumstances should be considered in the light of ordinary experience and common sense. The existence of a fact cannot be based upon speculation, surmise or conjecture.

Now, the law makes absolutely no distinction between the two types of evidence, that being direct and circumstantial, nor is a greater degree of certainty or proof required to show regarding circumstantial evidence greater than direct. They are equally able to be weighed by you, the jury.

Now, in considering evidence you must also, because of the way the testimony was presented, consider and determine credibility of witnesses who have testified in this case. And credibility in legal terms is simply this; believability. It is your duty as jurors to evaluate the evidence and determine which evidence convinces you as to its truth.

Now, in determining the believability of a witness, or any of the witnesses who have testified in the case, you may believe one witness over others, several witnesses over one, part of the testimony of one witness

and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether the witness has an interest in the result of the trial, whether the witness is prejudice toward either plaintiff or the defendant; the opportunity the witness has to have seen the matters and things about which the witness has testified, and the way the witness acts upon the witness stand.

Now, in this case we have had testimony from a deposition of a witness which was taken outside the courtroom. That witness was not actually present before you but the deposition was taken in a manner prescribed by law and you will consider that testimony from that deposition just as if the witness were here upon this witness stand testifying.

You may take this deposition testimony in connection with all other testimony and assess the credibility of that witness from anything that is in the record that will aid you in doing so.

You can consider the deposition evidence along with the other testimony of the other witnesses who have appeared in person and determine from all the evidence in this case, whether the witness is present by deposition

or exhibits in the case, what the truth of this controversy is according to how you find the facts in this case.

Now, also, there's been testimony of expert witnesses, which I described to you briefly during their presentation. The rules of evidence normally do not permit lay witnesses or ordinary nonexpert witnesses to express opinions; however, the exception exists as to expert witnesses.

And I defined for you during the trial that a witness who has education, experience and has become an expert in some area of art, science, profession may offer his opinion or her opinion on the subject the witness claims to be an expert in, and may also give you the reasons for the opinion.

Now, you should consider testimony of any of the expert opinions given by the witnesses like any other evidence. Give it the weight you think it deserves. And if you decide that an expert opinion is not based upon sufficient education or experience, or if you decide the reason given in support of the opinion are not sound or that the opinion is outweighed by other evidence you may then disregard that opinion in its entire ty.

An expert witness's testimony is to be given no greater weight than that of any other witnesses simply

because he is an expert, and you do not have to accept an expert's opinion even though it is uncontradicted.

Now, when a witness is called, an expert witness is called by either of the parties, he is expected to be paid and should be paid. You should not take into consideration the fact that a witness is paid unless there's some evidence appearing from the evidence which would fully and reasonably convince you that the testimony of a witness has been influenced because of the sum which he has been paid to appear as a witness.

Additionally, if the opinions of the expert are relied on to establish proximate cause, which I will define later, the expert must state with reasonable certainty that in his or her professional opinion that the plaintiff's injuries most probably resulted from negligence of the defendant.

It is not necessary that an expert use certain words as most probably. It is enough for the expert to state that it is in the expert's professional opinion that the defendant's negligence was most likely one among the possible causes of the plaintiff's injuries.

Now, in this case the plaintiff claims that the defendant was negligence and he should be compensated by the -- I'm sorry, was negligent and should compensate the plaintiff for the injuries which he has suffered as a

result of the defendant's negligence.

In order to prove a defendant was negligent the plaintiff must prove by a preponderance, which I've already defined, or the greater weight of the evidence four things. First -- I'm sorry, three things. Damages is not in this because we've agreed on damages.

The plaintiff must prove by a preponderance or the greater weight that the defendant owed the plaintiff a duty of care. Second, the plaintiff must prove by a preponderance of the evidence that the defendant breached this duty of care by a negligent act or omission.

Now, negligence means the person has done something that a reasonable person would not have done or has failed to do something that a reasonable person would have done. We have also defined the word negligence as careless.

Finally, the plaintiff must prove by a preponderance of the evidence that the damages were proximately caused by the defendant's breach of that duty. Proximate cause is something that produces a natural chain of events which in the end brings about the injury. It is the direct cause of the injury.

Now, to prove that the defendant's negligence proximately caused the plaintiff's injury the plaintiff must first prove causation in fact. And this is proven

by showing that the injury would not have occurred but for the defendant's negligence.

The plaintiff must also prove the legal cause, and the legal cause is proven by showing that the injury was foreseeable, meaning that the injury occurred as a natural and probable consequence of the defendant's negligence. The plaintiff must prove that the injury from -- that some injury from the defendant's negligence was foreseeable. He does not have to prove that the particular injury that occurred was foreseeable; however, the defendant cannot be held responsible for things which could not be expected to happen.

Now, regarding the duties of people in South Carolina. Our Supreme Court has defined certain duties of parties owed in situations such as this. So I instruct you that the owner or keeper of a domestic animal is bound to take notice of the general propensities of a class to which the animal belongs. Insofar as such propensities are of a nature likely to cause injury he must exercise reasonable care to guard against them and to prevent injuries which are reasonable to be anticipated from them.

Under our code of laws, the books behind me, Section 47-7-110, which I believe you all have been shown an exhibit, it states and provides in pertinent part that

it shall be unlawful for the owner or manager of any domestic animal of any description to willfully or negligently to prevent any such animal to run at large beyond the limits of his own lands, or the lands leased or occupied or controlled by him.

Now, this statute imposes a duty to exercise reasonable care in maintaining one's domestic animals. This statute does not impose an absolute duty to prevent escape of livestock from one's custody and control, and more than a showing of the presence of unattended animals on the highway is required.

To recover under this statute the plaintiffs must offer evidence from which you, the jury, could infer at least negligence in permitting an animal to stray if such violation proximately caused the injuries or damages to the plaintiff.

I instruct you further that the violation of a statute will support a recovery of damages if such a violation proximately caused the injuries or damage complained of.

Now, regarding the conduct of an operator of a vehicle upon our highways; the basic standard of care by which the conduct of a driver is to be judged is that of a reasonably prudent person under the same or in similar circumstances. This standard applies in this State

regardless of the driver's experience in operating the vehicle.

Now, I instruct you further that one is under the duty to exercise reasonable diligence for his own care and his own safety.

I instruct you further that a person using the public roads in this State owes a duty to keep proper lookout for other persons or objects upon the highway. The duty is not merely one of looking and one of observation -- I'm sorry. Let me read that correctly. The duty is not merely one of looking or one of observation.

In the exercise of due care or caution for the safety of themselves or others a person must look in such an intelligent and careful manner as to enable him to see a person or object upon the highway. A person is careless if he fails to keep a proper lookout or fails to see what a person of ordinary care and prudence would have seen.

Now, by the defendant's responsive pleadings he also has brought into play what alleges to be the negligence of the plaintiff in contributing to the injuries. The defendant claims that the plaintiff's own negligence was a proximate cause to the plaintiff's injuries. And if you find that the defendant was

negligent you must also consider whether the plaintiff was negligent.

The defendant must prove by a preponderance or likewise a greater weight of the evidence that the plaintiff breached a duty of care which proximately caused his own injuries. The same law which I've told you in using to deciding whether the defendant was negligent should also be used in deciding whether the plaintiff was negligent.

Now, where the cause of the plaintiff's damages may be reasonably attributed to an act for which the defendant is not liable the plaintiff has failed to carry the burden of proof in establishing that his own damages where the proximate result of the defendant's conduct.

Now, if you find that the negligence of both, the plaintiff and the defendant, proximately caused the plaintiff's injuries you must then decide how much the negligence of the plaintiff contributed to the plaintiff's injuries, and how much the defendant's negligence contributed to the plaintiff's injuries.

In deciding these percentages of negligence of the plaintiff and the defendant you may consider several factors. Among other things, the following factors may be utilized by you, the jury: Whether each party's conduct was only inadvertent or whether it was engaged in

an awareness of the danger involved; the magnitude of the risk created by each party's conduct; the significance of the goal that the party was in trying to reach, and the need in trying to achieve the goal in that matter; each party's capabilities and abilities to realize and eliminate the risk involved; the particular circumstances confronting each party at the time the conduct occurred, such as the existence of an emergency requiring a quick decision; the relative closeness of the cause or relationship of the negligent conduct of the defendant and the harm to the Plaintiff; and whether the conduct of either party involved a violation of a safety statute or regulation.

Now, regarding the damages. In this case, as has been mentioned throughout, the parties have entered into an agreement that the damages need not be addressed by you, the jury. This is not to be construed in any way other than the parties have attempted to shorten this trial and have stipulated between them and the Court that the agreement shall dictate what happens once you, the jury, make your decisions about this case.

Now, I can tell you the Court welcomes such agreements, especially in cases like this where the parties agree that plaintiff Farrow was injured but not to agree as to the cause, which is why you are involved

in this case.

Their agreement allowed Mr. Farrow to summarize his injuries and his treatment. But had damages not been agreed to there would have been other witnesses, treating physicians and all that sort of thing which would have needed to be called to establish the damages portion of this trial.

Again, this agreement was agreed to by both parties and presented to the Court so that you, the jury, could focus upon the questions which have been presented to you.

Now, Ms. Wakester and other members of the jury, as you retire to begin your deliberations I wish to express the hope that each of you will be mindful of the importance of your responsibility. You are not called on to serve as jurors very often. You as a group are acting for this Community and this State and it is my job to ensure that everyone that comes before my Court is treated fairly and to see that justice is done. And then your job is to make certain that the verdict is just.

Now, please understand I'm not going to try to tell you all how to decide the case. I've already told you, the law does not allow me to take opinions -- or make opinions upon the facts. You, the jury, are the judges of the questions of fact. It would be highly improper

for me to try to influence you to that end.

Now, I must instruct you that whatever verdict you reach will be the result of you going in the jury room and confining your considerations to just a couple things: The evidence presented in the trial in this courtroom and applying the law as I have instructed to you, and nothing else; weighing that evidence fairly and impartially and reaching a unanimous verdict.

Now, this is the verdict form which should be very similar to the form you all have seen enlarged on the screen over here. It's fairly simple to follow as you go down the questions to try to answer.

Now, all 12 jurors must agree on the verdict. Your verdict cannot be based upon any sympathy, passion, prejudice or emotion, so only consideration of the evidence which has been presented.

Now, I presented a very lengthy instruction to you regarding the law. So I'll tell you several things. The lawyers have the ability to make suggestions for areas of law which I have either skimmed over, and not in depth enough as they believe the instructions may be, I may have omitted one particular area of the law which they believe needs to be addressed or instructed to you.

So when I ask you to step back to the jury room I will take comments from them and they may say, Judge,

regarding the issue of, will you please make certain that this is addressed more particularly.

And it may be that I bring you back in here and give you a little specific instruction to that end, because I was working on this instruction as the lawyers were making their concluding comments, and I put it together to present to you in that fashion.

And so they may have -- it's their case, and they've been working on it for two years. I've had it now four days. And so they are very much attuned to the issues and to the laws because it is their case and their clients' case respectively.

Now, if after you all begin your deliberations you wish to hear testimony, again my court reporter can replay it.

Now, if you need to hear instructions on the law again I can reinstruct you if there's a question as to what I said or what my instructions were. I'll be more than happy to bring you all back out and say the comparative negligence is weighing each party's respective fault in deciding, and obviously the percentages of fault have to add to a hundred because there can't be some leftover number.

If you have any particular question about the law or the instructions or seeing or hearing some further

testimony write that down, hand it to Mr. Bolt and he'll bring it to me. And the lawyers and I can consider it, and the court reporter can consider it and perhaps we can streamline the thing. You all come back in and the testimony is cued back up, or there may be a question you'll ask to which I'll say, Please confine your decision upon the facts which you have heard. That is the common question, is where is such and such witness. What would they have said?

I can't answer that other than they weren't here and you got to decide based on what they presented. What you all have heard is what you are going to hear. If you need to rehear something I can allow that but I can't go bring in another witness.

Now, to that end, still do not begin discussing the case until you get the exhibits and the verdict form handed back to you. So until that time you all are still free to talk about the weather, and your children, and your jobs but not about the case yet.

Now, if there are no further instructions from the lawyers and the evidence comes back to you, you all may begin your deliberations.

Now, you all, as soon as you all get back there first thing I need you to decide, if Laurens County is going to buy your lunch today while you're deliberating

do you all want to order a couple pizzas, or a sandwich, or something from the Palmetto? So you all decide that. If so, either place, Mr. Bolt can help get the orders together fairly quickly so we can do that. All right?

So you all step back to the jury room and await further instructions, but make that decision first about what you would like to eat.

(WHEREUPON, the jury leaves the courtroom at approximately 11:58 p.m.)

MR. BOGGS: You're not going to believe it.

THE COURT: I'm good?

MR. BOGGS: You're not going to believe it, for once in this whole trial.

THE COURT: You all agree?

MR. BOGGS: We agree. We'll start singing Kumbaya and start playing the bongos.

THE COURT: I just handle that.

MR. BOGGS: I know. I mean, do you want us to argue about something else?

THE COURT: No, no, no, no. Please feel free not to.

MR. HANNA: First time in two years. I have no problem with the charge, Judge.

THE COURT: Okay. I tried to get it like we agreed to, and we spent an hour and it went smoother than I

thought it would.

MR. BOGGS: I'll tell you, the only thing I have a problem with is that you gave them a choice for lunch because I was hoping go back there and come right back out.

MR. HANNA: I think that was assumed that if they don't want lunch they don't have to have it.

THE COURT: Oh, yeah. We can tell them.

Mr. Bolt, if they don't want lunch and they just want to work around it that's fine, too. I don't want to push lunch on them.

All right. You all want to inventory your stuff with the court reporter, and we'll be off the record.

THE COURT: All right, guys. I'm going to put this on the record that you all have evaluated and confirmed that all the exhibits admitted have been compiled, the verdict form is the one you all agreed to and it will be submitted to the jury two minutes after 12:00, or as soon as they get back there.

(WHEREUPON, the trial of this case was recessed at approximately 12:02 while awaiting a verdict from the jury.)

THE COURT: I have a response. I'm going to make this communication part of the record.

MR. BOGGS: Yes, sir, please.

THE COURT: The jury would like to be reinstructed by the Court on preponderance and the other question as to the verdict, does the decision have to be unanimous, which the obvious answer, it absolutely does.

It would be my intent to recharge on the issue or point of law of preponderance. I'm going to call it up real quick. I have the charge still on the computer, and print that out. Bring them in, read it to them, the verdict has got to be unanimous, then give it to them and send them back. Got any issues with that?

MR. HANNA: None from defense.

MR. BOGGS: No, sir, none from the plaintiff.

Judge, for my sake, may I look at what you're going to give before you give it to them.

THE COURT: No.

MR. BOGGS: All right. Thanks.

(LAUGHTER)

THE COURT: I'll let you all read it for a moment before I bring them in here.

(PAUSE)

THE COURT: You all believe that to be a correct statement of law?

MR. BOGGS: Yes, sir.

MR. HANNA: Yes.

THE COURT: It's simple. It's one page and I'm

going to give it to them.

MR. BOGGS: Yes, sir.

THE COURT: All right. Bring them to me.

(WHEREUPON, Court's Exhibit Number 16, a Note From the Jury, was marked and made a part of the record.)

(WHEREUPON, the jury enters the courtroom at approximately 2:15 p.m.)

THE COURT: All right. I've read your question. I've sent you a response and I've read your second question, which is more definitive, and I've made it a part of the record. So it goes there. If you write another question use another sheet of paper.

And to define and answer your question regarding preponderance of the evidence: Preponderance of the evidence is the burden of proof in a civil case. A preponderance simply means the greater weight of the evidence. It is evidence which as a whole shows the fact sought to be proved is more likely true than not true.

And many people remember the definition of a preponderance of the evidence by imagining a set of scales in their mind's eye.

After all of the evidence has been presented by both sides if the scales remain even or if they tip ever so slightly in favor of the defendant then the plaintiff has failed to meet its burden of proof and would not be

entitled to recover in the case.

On the other hand, if the scales tip slightly in favor of the plaintiff the plaintiff has met its burden of proof and you should return a verdict for the plaintiff.

Now, the preponderance of the evidence is not determined by the number of witnesses. It is determined by the greater weight of all the evidence, no matter which its source. And when you evaluate all the evidence you must not act through emotion. You must weight and consider the evidence as it's been presented to you and do what's just.

Now, I prepared, printed out to send back with you all the definition of preponderance because that's my normal practice. I don't give you my whole charge but if you ask me questions I'll give you specific answers.

So the other question on your thing was does your verdict and answer to each question have to be unanimous. And there's quite simply, yes, it does.

I'll hand this definition to you and ask you to retire and continue deliberations. And, again, if you have any other questions send them to me in writing and we'll deal with them as we have to.

(WHEREUPON, the jury leaves the courtroom at approximately 2:20 p.m., and the trial of this case was

recessed while awaiting a verdict from the jury.)

THE COURT: Got get them.

(WHEREUPON, the jury enters the courtroom at approximately 3:15 p.m.)

THE COURT: All right. You all got a verdict?

THE FORELADY: Yes, sir.

THE COURT: You don't need to read it. Is your verdict unanimous?

THE FORELADY: Yes.

THE COURT: Mr. Bolt.

(WHEREUPON, the bailiff handed the verdict to the Court.)

THE COURT: All right. Ms. Lancaster.

THE CLERK OF COURT: Your Honor, in the case of William David Farrow, Jr. and Karen W. Farrow vs. Jerry W. Darby, case number 2008-CP-30-1120, question one is do you find by the preponderance of the evidence that the defendant, Jerry W. Darby, was the owner of the alleged cow involved in the accident with the plaintiff, William David Farrow? The answer is yes.

Question number two: Do you find that the defendant, Jerry Darby, was negligent and that such negligence proximately caused the plaintiff's injuries? The answer to that question is yes.

Question number three: Do you find that the

plaintiff, William David Farrow, was also negligent in that his own negligence proximately caused his own injuries? The answer to that question is yes.

Question number four: If you've answered yes in the previous question number three then you are to answer this question: In causing the accident what percentage of negligence was attributable to the defendant, Jerry W. Darby, and what percentage was attributable to the plaintiff, William David Farrow? The defendant, Jerry W. Darby, is 65 percent; the plaintiff, William David Farrow, is 35 percent. Signed by the foreperson, Donna M. Wakester, February 3rd, 2011.

Ladies and gentlemen, if that be your verdict would you please indicate by raising your right hand.

(WHEREUPON, all hands were raised.)

THE COURT: Mr. Hanna, would like the jury polled?

MR. HANNA: Yes, Your Honor.

THE COURT: All right. Sorry, Ms. Lancaster.

(WHEREUPON, the jury was polled.)

THE COURT: All right. Any other issue for the jury before I ---

MR. HANNA: None from defense.

MR. BOGGS: None from plaintiff.

THE COURT: You all's alternate stayed and waited on you. She's still here. She was curious.

All right. I got a couple issues for the lawyers. You all step back in the jury room. I want to come back and speak to you all very briefly. So you all step back there. You all's duty is done and you all will be free to go shortly.

(WHEREUPON, the jury leaves the courtroom at 3:20 p.m., and a brief recess was taken.)

THE COURT: All right. I do enjoy speaking with them and thanking them. I said, Look, you all reached a 12 member unanimous verdict and it's -- when 12 people reach a consensus on something it's generally a good decision. I mean, it's just hard to get 12 people to reach a consensus on anything. They did and so they've got nobody to apologize to about reaching a decision.

And I also told them you all may contact them and send them questionnaires or letters, how did we do, what could we have done different, any like that. They could answer it or not answer it. It was their decision.

But they did a very fine job and we thanked them for not letting their phones ring while we're doing the case and not laughing at the cow jokes and that sort of thing. Anyway, it was a good group and they are glad to be done and not having to come back tomorrow.

All right. Do we have any post-verdict motions?

MR. HANNA: Your Honor, may we have 10 days to file

any post-trial motions?

THE COURT: Absolutely.

MR. HANNA: I don't think that we will but if it would be at all possible to do that that would be ideal.

MR. BOGGS: I just would ask for -- whenever it's served and filed with you I would ask for at least two business days to respond, preferably five.

THE COURT: Very reasonable.

MR. BOGGS: I mean, I don't want to delay things, obviously.

THE COURT: Well, do this ---

MR. HANNA: I don't either, and for the record I think that there will not be any. I think that we are going to live with this, but I think this is better that I not start -- I don't file anything.

MR. BOGGS: Okay. But just -- and Geov has always been good with this, just anything sent to you, please just contemporaneously e-mail me, will be fine.

MR. HANNA: Understood.

THE COURT: I mean, you know, the jury did remark, said, Those lawyers fought vigorously but they seemed to get along. I said, They do get along. I mean, you all did. You all have, continued to do so and I'm impressed with the way you all have handled very professionally an unusual case because I enjoyed you all's appearance, all

be it a little longer than we anticipated.

MR. BOGGS: Well, yes, sir. Thank you.

THE COURT: All right. So ten days, and an extra three until you get a response.

MR. HANNA: Understood.

THE COURT: You said ten or seven?

MR. HANNA: I said ten.

THE COURT: Ten is fine. I want to make sure I said correctly. Normally Caitlin is beside me writing it down.

MR. HANNA: So just for my understanding, is today day one or tomorrow?

THE COURT: Tomorrow is day one. I don't count today.

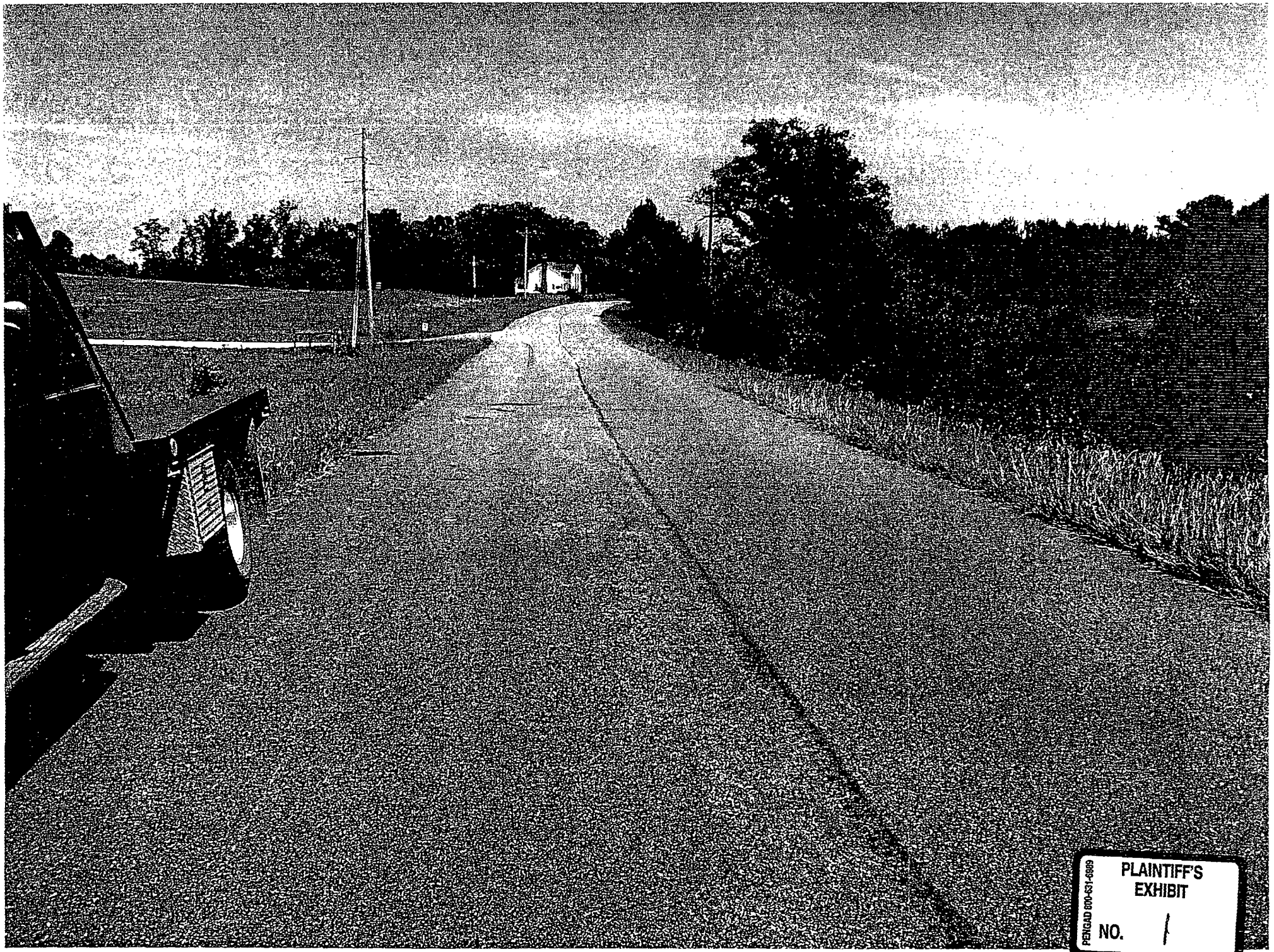
MR. HANNA: I always get confused about that. Thank you, Judge.

THE COURT: All right. Thank you all very much.

MR. HANNA: Nothing further from defense.

(WHEREUPON, the trial of this case was concluded.)

* * END OF VOLUME III * *



PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 1

CAD Incident: 2008-00045005
Phone : 864 876-3511
Name : WILLIS, REBECCA
Address : 1475 DIALS CHURCH RD
Community: GRAY COURT
Jurisdctn:
Intersect:
SubDivisn:

ESN : 0708
Law : SHERIFF
Fire : GREENPOND
EMS : MEDIC 3
Rescue:
Disp : 1
Source: 911

L F E R
13
17 18 16
M3



CAD Call Times: UNDEFINED CODE

Incoming Call: 07/24/2008 20:48:53
Call Created : 07/24/2008 20:48:58
Call Send Time : 20:51:53
Call Dispatch Time: 20:50:42
Call Enroute Time : 20:53:56
Call Arrival Time : 21:02:13
Call Clear Time : 21:54:47
Call Closed :07/24/2008 21:54:47

Created By: GBAILEY
Sent By : GBAILEY
Event : 1050
Law :
Fire :
EMS :
Rescue:

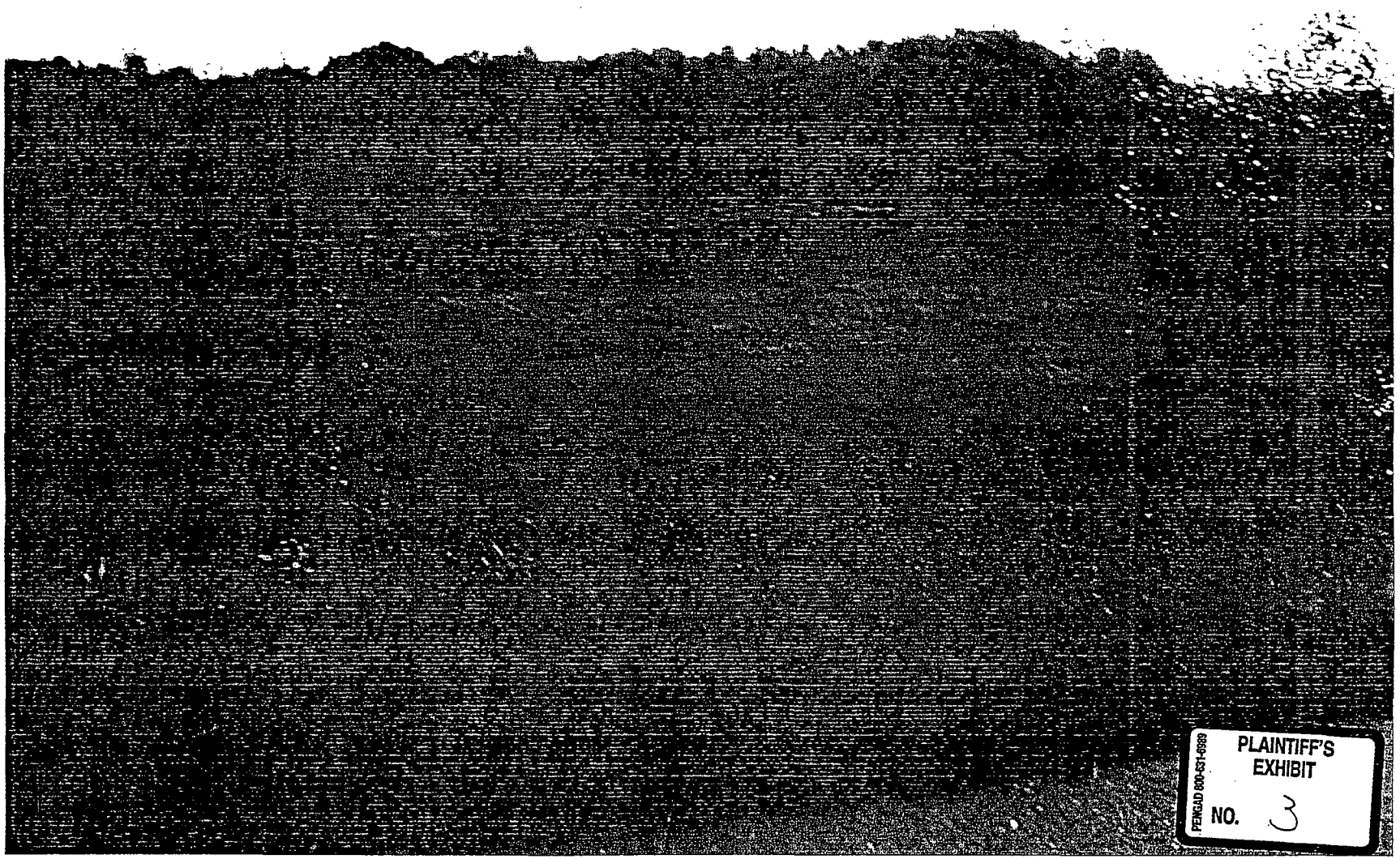
Pos:005 DISPATC
Action:
Language:

Original Dispatch Remarks:
RT PAST THIS LOCATION, PERSON HAS WRECKED A MOTORCYCLE, IS I
N THE RD, NOT SURE ON EMS

Vehicle Information

UNIT	DEPT	STATUS/DSP/CASE	LOCATION/REMARK	USER	DATE	TIME
M1	E01	DSP	0000006975	CLOVE	07/24	20:50:42
17T	F17	DSP	0000000172	CLOVE	07/24	20:50:46
SCHP1	L05	DSP		GBAIL	07/24	20:51:45
M1	E01	LOG	ACK CALL	CLOVE	07/24	20:52:47
SQ3	E18	DSP		CLOVE	07/24	20:53:31
M1	E01	1017		CLOVE	07/24	20:53:56
17T	F17	1017		CLOVE	07/24	20:54:56
17T	F17	1023	1701	CLOVE	07/24	21:02:13
SQ3	E18	1017	ENRT @1053	CLOVE	07/24	21:04:06
SQ3	E18	1023		CLOVE	07/24	21:04:10
MTRANS	E13	DSP		CLOVE	07/24	21:08:25
MTRANS	E13	LOG	343670 820948	CLOVE	07/24	21:09:44
M1	E01	1023		CLOVE	07/24	21:10:04
MTRANS	E13	1017	7 MIN ETA	CLOVE	07/24	21:17:34
SCHP1	L05	108		CLOVE	07/24	21:17:40
MTRANS	E13	1023		CLOVE	07/24	21:26:41
MTRANS	E13	LOG	ENRT C36	CLOVE	07/24	21:41:00
SQ3	E18	SIG93	COM TERM	CLOVE	07/24	21:49:19
M1	E01	SIG93	NO TRANS	CLOVE	07/24	21:49:37
MTRANS	E13	108		CLOVE	07/24	21:51:20
17T	F17	108	BK IN SERV	CLOVE	07/24	21:54:45
SQ3	E18	EMS#	0000006977	CLOVE	07/24	21:56:05

This is certified a true copy of the original document
Sandra K Brock Notary Public of SC - Expires 7-14-20


PLAINTIFF'S
EXHIBIT
NO. 3
PENGAD 800-631-6989

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 5

July 2008

July 2008

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August 2008

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jun 29 - Jul 5	**Jun 29**	**30**	**Jul 1**	**2**	**3**	**4**	**5**
Jul 6 - 12	**6**	**7**	**8**	**9**	**10**	**11**	**12**
Jul 13 - 19	**13**	**14**	**15**	**16**	**17**	**18**	**19**
Jul 20 - 26	**20**	**21**	**22**	**23**	**24**	**25**	**26**
Jul 27 - Aug 2	**27**	**28**	**29**	**30**	**31**	**Aug 1**	**2**

725

PLAINTIFF'S EXHIBIT NO. 6

PENRAD 800-631-6989

=L-I-V-E-S-T-O-C-K=	===B U Y E R====	==========	==========	==========	--TOTAL--
-TAG HD DES	NUMB NAME--------	--WEIGHT---			
6426 1 BLK HI	S 114 102	480	480	50.00 L	240.00
			======		==========
			480		240.00
1					
STE 1	480	240.00 480	50.00	240.00	
008 M & M CATT 1 FE		.00	7.00		

9/17/07 GRAND TOTAL GROSS-- 1 240.00

==========	==========	=======	========	========	========	==========	==========
OMMISSION	CHECK/OFF	YARDAGE	-INSUR-	FEE/WAT	-------	VOL/DED	-NET/CHECK--
12.00	1.00	1.00	.43			7.00	218.57

APPRECIATE YOUR BUSINESS!!!

WAYNE DARBY

6211

S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMETON, SC 29697

NO. 94507

PLAINTIFF'S EXHIBIT NO. 7

PENGAD 800-631-6989

6,698.14+
1,037.00+
1,605.21+
5,950.01+
609.38+
1,165.10+
218.57+
5,785.05+
14,420.25+
12,273.96+
49,761.67*

0.*

CEDAR RIDGE SIMMENTAL
1083 Crawford • Gray Court, SC 29645 • (864) 682-3308 • Fax (864) 682-5911

Wayne Pinckney

INVOICE

YOUR ORDER NO	INVOICE NO	DATE
		9-2-07

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
70	Hips (11,560 x 38c 11327	1.005	12,291 96
20	Chick Off	1.00	20 00
	Pd Ped	613.60	
	9-11-07		
	pd		
	2103		
	ck #		
		SUB TOTAL	
		TAX	
		TOTAL	12,271 96

CEDAR RIDGE SIMMENTAL
1083 Ora Road • Gray Court, SC 29645 • (864) 682-3308 • Fax (864) 682-5911

Wayne Darby

INVOICE

YOUR ORDER NO	INVOICE NO	DATE

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
20	Steers (12840 x .98 = 12583	1.14½	14440.25
20	Cluck Off	1.00	20.00
	SUB TOTAL		
	TAX		
	TOTAL		14420.25

CEDAR RIDGE SIMMENTAL
1083 Ora Road • Gray Court, SC 29645 • (864) 682-3308 • Fax (864) 682-5911

Wayne Darby

INVOICE

YOUR ORDER NO	INVOICE NO	DATE

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
9	Steers (5526 x .98 = 5415	1.07	5794.05
9	Cluck Off	1.00	9.00
	SUB TOTAL		
	TAX		
	TOTAL		5785.05

728
10/29/2008 11:38 8648 .83 KEITHMARTINEI MENT PAGE 22

-TAG	HD	DES	NUMB	NAME		--WEIGHT---			--TOTAL--	
6771	1	BLK	S1540	50	GAR,R	515	515	96.00 L		494.40
6772	1	BLK X	H 17	6	00000	600	600	93.00 L		558.00
6773	1	BLK W/F	S 124	42	W	515	515	100.00 L		515.00
6774	1	HOL	S 121	H	PONDE	615	615	62.50 L		384.38
6775	1	BLK THI	H 119	4X	TOM	390	390	82.00 L		319.80
6776	1	BLK X	H 119	54	TOM	540	540	91.00 L		491.40
6777	1	EYE	H1540	8	GAR,R	530	530	50.00 L		265.00
6778	1	BLK	H 21			545	545	91.50 L		498.68
6779	1	RED SHO	H 121	4X	PONDE	440	440	79.00 L		347.60
6780	1	PLN	S1588	0		585	585	39.00 L		228.15
6781	1	BLK THI	H 119	4X	TOM	385	385	94.00 L		361.90
6782	1	SFT	H 107	2	JW	490	490	74.00 L		362.60
6783	1	BLK	H 111	47X	RC	465	465	94.00 L		437.10
6784	1	PLN THI	H 111	32	RC	290	290	80.00 L		232.00
6785	1	BLK	S 124	42	W	500	500	110.00 L		550.00
6786	1	BLK X	H 20			500	500	84.00 L		420.00
6787	1	BLK THI	B 111	42	RC	455	455	92.00 L		418.60
6788	1	RED HUM	S1588	0		555	555	58.00 L		321.90
	18						8,915			7,206.51

STE	6	3,285	2,493.83	547	75.92	415.63
HEF	11	5,175	4,294.08	470	82.98	390.37
BUL	1	455	418.60	455	92.00	418.60

9/01/08 GRAND TOTAL GROSS-- 18 7,206.51

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	FEE/WAT	-------	VOL/DED	---NET/CHECK--
216.00	18.00	18.00	12.98	18.00			6,923.53

FEEDER CALF SALES: AUGUST 26 @ 7:00 PM

WAYNE DARBY 6211

P&S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 106340

729

PRODUCT #U459 MCBEE To Reorder: 1-800-482-2331 or www.mcbeeinc.com

=LIVESTOCK=				BUYER						TOTAL
COD----	TAG	HD	DESC	NUMB	NAME		WEIGHT			
2344	1	RED		H8387	6X	675	675	80.00	L	540.00
2345	1			C 117	5 C L	1145	1,145	50.00	L	572.50
2346	1	BLK		C 68	V	1035	1,035	52.00	L	538.20
	3						2,855			1,650.70

HEF	1	675	540.00	675	80.00	540.00	
COW	2	180	1,110.70	1090	50.95	555.35	

[illegible]	CHECK	CL	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible] TOTAL GROSS-- 3 1,650.70

COMMISSION	CHECK	ARDAGE	VOL/DED	NET/CHECK
34.50				1,[illegible]

E WILL BE CITSEIL

WAYNE LARRY

&B/CODES: O-OFFICER B-BONDED-BUYER E-EMPLOYEE M-MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO. INC.

[illegible] NO. 84404

29 Steers 18345 Gr. Wt
18270 1.5%
623 Avg
18270
x 1.12
20,328.75

20,328.75
9,757.78
30,086.53

17 Herfs 9215 Gr. Wt.
9077 1.5%
534 Avg
9077
1075
9757.78

MARTIN & MARTIN CATTLE CO., INC. 14691

Customer Service
1-800-033-3796

Darby

3, 2275
3, 1735
5, 2760
3, 1845

Darby

8, 5195
8, 4965
3, 2285
5, 2625
9, 4610

33 Head

0.* 0.*

30,086.53+
5,375.33+
8,026.85+
345.22+
1,395.55*
2,895.90+
48,125.38*

Calves

MARTIN & MARTIN CATTLE CO. INC.

P.O. BOX 21
WILLIAMSTOWN, KS 67057

--COD			DESC	NUMB	NAME	B U Y E R	--WEIGHT--			--TOTAL--
7294		1	LK-	S	116 651	EAST	685	685	100.00 L	685.0
7295		1	LK-	S	156 575	CPC	610	610	107.00 L	652.7
7296		1	LK-	S	116 450	EAST	520	520	106.00 L	551.2
7297		1	HA-	S	156 475	CPC	515	515	105.00 L	540.7
7298		1	LK-	S	156 475	CPC	505	505	106.00 L	535.3
								2,835		2,964.9

STE 5 2,835 2,964.95 567 104.58 592.99

51127

GRAND TOTAL GROSS 5 2,964.9

VOLUNTARY

COMMISSION SELF D-DAIRY E-OTHER

THANK YOU BUYERS

WAYNE P&S/CODES: B=BONDED-BUYER E=EMPLOYEE M=MARKET SUPPORT

NO. 511

=L-I-V-E-S-T-O-C-K=				===B U Y E R====				==========			==========
OD----	-TAG	HD	DESC	-----	NUMB	NAME--------	--WEIGHT--		--------		--TOTAL--
	5777	1	CHA-W/F		H 107	4X JW	425	425	107.00	L	454.75
	5778	1	CHA-		H 156	45 CPC	475	475	100.00	L	475.00
	5779	1	CHA-		S 108	55X BAR	540	540	104.00	L	561.60
	5780	1	BLK-		H 116	46 EMER	505	505	107.00	L	540.35
	5781	1	BLK-		H 116	55 EMER	570	570	100.00	L	570.00
	5782	1	BLK-W/F		S1540	20 GAR,R	560	560	105.00	L	588.00
	5783	1	BLK-W/F		H 111	48X RC	535	535	106.00	L	567.10
	5784	1	BLK-		H 116	46 EMER	530	530	109.50	L	580.35
	5785	1	BLK-		S 108	55 BAR	590	590	107.00	L	631.30
	5786	1	BLK-		H 111	46X RC	495	495	110.00	L	544.50
		===						5,225			5,512.95
		10									
STE		3		1,590	1,780.90	563 105.38	593.63				
HEF		7		3,635	3,732.05	505 105.57	533.15				

GRAND TOTAL GROSS 10 5,512.95

COMMISSION	CHECK/OFF	YARDAGE	INSUR	FED/WAT		VOL/DED	--NET/CHECK--
105.00	10.00	8.00	6.62	8.00			5,376.33

T SERVICES AVAILABLE EVERY MONDAY

WAYNE DARBY 620-

S/CODES: O-OFFICER B-BONDED BUYER E-EMPLOYEE M-MARKET SUPPORT

MARTIN & MARTIN CATTLE CO INC NO. 80398

OD	TAG	HD	DE	SC	NUMB	NAME		--WEIGHT---		--------	--TOTAL--
				C	110	1		1305	1,305	46.50 L	606.83
4243	1	BLK		S	111	451	RC	450	450	113.00 L	508.50
4251	1	CHA	K	S	116	400	EMER	445	445	131.00 L	582.95
4252	1	BLK	N F	H	118	45X	MERID	460	460	102.00 L	469.20
4253	1	CHA		S	111	451	RC	475	475	110.00 L	522.50
4254	1	BLK		H	119	36	TOM	365	365	112.00 L	408.80
4255	1	BLK		H	121	38X	PONDE	395	395	95.00 L	375.25
4256	1	CHA	N F	H	107	25	JW	330	330	128.00 L	422.40
4257	1	BLK		H	116	55	EMER	540	540	100.00 L	540.00
4258	1	BLK		H	119	36	TOM	430	430	116.00 L	498.80
4259	1	BLK		S	116	350	EMER	375	375	139.00 L	521.25
4260	1	CHA		H	111	41X	RC	430	430	113.00 L	485.90
4281	1	BLK		H8387		IX		385	385	112.00 L	431.20
4282	1	BLK	TEN	H	156	39	CPC	435	435	105.00 L	456.75
4376	1	BLK		H	156	39	CPC	415	415	110.00 L	456.50
4377	1	BLK	K	H	118	47X	MERID	480	480	105.00 L	504.00
4378	1	BLK	N F	S	111	62	RC	730	730	64.50 L	470.85
4425	1	CRP									
	17								8,445		8,261.68

STE	5	4	75	2,606.05	495	105.29	521.21
HEF	11	4	65	5,048.80	474	109.23	458.98
COW	1	1	05	606.83	1705	46.50	606.83

9/04/ GRAND TOTAL GROSS 17 8,261.68

COMMISSION	CHECK/CE	RDAGE	INSUR	RAT	VOLUNTARY	NET/CHECK
181.50	17 00	13.60	9.95	12.80		8,028.85

T SERVICES AVAILAB EVERY MONDAY

WAYNE DARBY 6211

S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC. MO. 80145

=L-I-V-E-S-T-O-C-K=					===B U Y E R===					==========
D----	-TAG	HD	DESC-	----	NUMB	NAME--------	--WEIGHT---		--------	--TOTAL--
1331		1	BLK-		S 108	10 BAR	205	205	175.00 L	358.75
	===						======			==========
	1							205		358.75
STE		1		205	358.75		205 175.00	358.75		

OMMISSION CHECK-OFF

T SERVICES-CATTLE

S/CODES- D-DEDUCT

MARTIN & MARTIN CATTLE CO. INC.

NO. 74002

| =L-I-V-E-S-T-O-C-K= | | | | | | | | ===B U Y E R=== | | | | | | | |

MARTIN & MARTEN CATTLE CO., INC.
P.O. BOX 21 I-V-E-S-T-O-C-K= ===B U Y E R=== WILLIAMSTON, SC 29697

-COD-	TAG	RD	DESC	----	NUMB	NAME--------	--WEIGHT---		--------	--TOTAL--
	4758	1	RED-A		C8921	1 SP	1200	1,200	51.00 L	612.00
	4759	1	CEA-A		C9362		1185	1,185	50.00 L	592.50
		2						2,385		1,204.50
COW		2		2,385	1,204.50	1192	50.50	602.25		

TOTAL GROSS 2 1,204.50

COMMISSION	CHECK/D	BRAND	INSUR	VOLUNTEER	NET/CHECK
24.00					

THANK YOU FOR YOUR BUSINESS
HAYNES DAIRY
S/CODES

NO. 507012

==========	=L-I-V-E S-T-O-C-K=	===B U Y E R===	==========	==========	==========
--COD----	-TAG HD DESC------	NUMB NAME--------	--WEIGHT---	--------	--TOTAL--
4228	1 CHK	C 110 6	1205 1,205	50.00 L	602.50
	1		1,205		602.50

COW 1 1,205 602.50 1205 50.00 602.50

TOTAL GRADED TOTAL GROSS 1 602.50

COMMISSION

12.00

ET SERVICES

WAYNE DAILEY

&S/CODES

MARTIN MARIETTA CATTLE CO. INC.

NO.

0-*
1-173.86*
587.18*
460.83*
2,221.87*

COD	TAG	HD	DES	C	NUMB	NAME	WEIGHT			TOTAL
6586		1	BLK	C	110	1	990	990	48.00 L	475.20
		1						990		475.20
COW		1			990	475.20	990	48.00	475.20	

=L-I-V-E-S-T-=C-K=	===B U Y E R===	--WEIGHT---		--TOTAL--
D---- -TAG HD DESC-	---- NUMB NAME----			
4120 1 RED-	C8921 1	1090 1,090	59.00 L	643.10
		1,090		643.10
1				
COW 1	1,090 643.10	1090 59.00	643.10	
008 M & M CATT 1 FR	.00 7.00			

12/17/07 GRAND TOTAL GROSS-- 1 643.10

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	PEE/WAT		VOL/DED	---NET/CHECK--
12.00	1.00	1.00	1.16	1.00		7.00	619.94

E WILL BE CLOSED DECEMBER 24TH & DECEMBER 31ST!!! HAPPY HOLIDAYS

WAYNE DARBY 6211

&S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 98330

10/29/2008 11:38 8648 (303 KEITHMARTINE (MENT PAGE 12

0124963

BROWN PACKING COMPANY, INC. GAFFNEY, SOUTH CAROLINA 29342

RAY WAYNE DARBY

: 091907

ate	Head	Weight	Cost	Coss	Feed	eight	Cattle Assess	Other	ELST	Net Check
1/2007	3	1,600	,[illegible].00				3.00			1,501.00

REMITTANCE ADVICE

Wayne Darby

THE CHECK ENCLOSED IS IN PAYMENT OF ITEMS LISTED BELOW

BROWN PACKING COMPANY
P.O. Box 130 • Tel. 489-5723
Gaffney, S.C. 29340

REFERENCE NUMBER	DESCRIPTION	WEIGHT		DISTRIBUTION ACCOUNT	AMOUNT
3	Calves	1600	94		1504.00
				C/A	3.00
					1501.00

IA PRINT & IMAGING, Gaffney, SC

0118140

BROWN PACKING COMPANY, INC. GAFFNEY, SOUTH CAROLINA 29342

WAYNE DARBY

010207

ate	Head	Weight	Cost	Cogg	Feed	ight	Cattle Assess	Other	ELST	Net Check
3/2007	1	914	96 84				00			967.84

REMITTANCE ADVICE

Wayne Darby

THE CHECK ENCLOSED IS IN PAYMENT OF ITEMS LISTED BELOW

BROWN PACKING COMPANY
P.O. Box 130 • Tel. 489-5723
Gaffney, S.C. 29340

TE	REFERENCE NUMBER	DESCRIPTION	WEIGHT	DISTRIBUTION ACCOUNT	AMOUNT
					96784

GRA PRINT & IMAGING, Gaffney, SC

=LIVESTOCK=				==BUYER==				--TOTAL--
COD	-TAG	HD	DESC	NUMB NAME	--WEIGHT---			
	3036	1	BLK-DOWN	C 114 30	990	990	50.00 L	495.00
	3037	1	BLK-	C1240	1055,	1,055	54.50 L	574.98
		2				2,045		1,069.98
	COW	2	2,045	1,069.981022	52.32	534.99		

008 M & M CATT 2 FR .00 14:00

12/10/07 GRAND TOTAL GROSS-- 2 1,069.98

COMMISSION	CHECK/OFF	CARDAGE	-INSUR-	FEE/WAT	-------	VOL/DED	---NET/CHECK--
24.00	2.00	2.00	1.92	2.00		14.00	1,024.06

E APPRECIATE YOUR BUSINESS!!!

WAYNE DARBY- 6211

&S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 98023

0.*
619-94+
1,501-00+
967-84+
1,024-06+
466-03+
4,578-87*

=L-I-V-E-S-T-O-C-K= ===B U Y E R=

-COD-	-TAG	HD	DESC-	NUMB	NAME	--WEIGHT---			--TOTAL--
9405		1	ELK	C 20	2	790	790	61.00 L	481.90
		1					790		481.90

COW 1 790 481.90 790 61.00 481.90

-COD-	-TAG	HD	DESC	NUMB	NAME		--WEIGHT--			--TOTAL--
B	843	1		C2910	5	CA	1040	1,040	45.00 L	468.00
B	844	1		C2910	5	CA	1285	1,285	46.00 L	591.10
	845	1		C2939	91X	RC	1135	1,135	49.00 L	556.15
B	846	1		C2910	5	CA	1035	1,035	43.00 L	445.05
B	847	1		C2910	5	CA	1180	1,180	46.00 L	542.80
B	848	1		C 5	1	BR	1135	1,135	46.00 L	522.10
B	849	1		C 5	6	BR	1240	1,240	42.00 L	520.80
B	850	1		C8685	3	COX	1105	1,105	43.50 L	480.68
B	851	1		C2910	5	CA	1255	1,255	46.00 L	577.30
B	852	1		C 5	6	BR	1210	1,210	42.00 L	508.20
B	853	1		C 5	6	BR	1075	1,075	44.00 L	473.00
B	854	1		C 5	6	BR	1385	1,385	46.00 L	637.10
B	855	1		C 5	6	BR	1255	1,255	45.00 L	564.75
		13						15,335		6,887.03

COW 13 15,335 6,887.03 1179 4.91 529.77

Thank you
Bill & Jackie

1/16/07 GRAND TOTAL GROSS-- 13 6,887.03

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	0100010	00010	VOL/DED	--NET/CHECK--
156.00	13.00	13.00	6.89				6,698.14

ARE OPEN ON MONDAY 9:00AM TIL 9:00PM TO RECEIVE LIVESTOCK

WAYNE DARBY 6458

CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

055895

CHEROKEE COUNTY LIVESTOCK, INC.
PO BOX 67
HONEA PATH, SC 29654

SALE EACH TUESDAY 10 A.M.

==========	=L-I-V-E-S-T-O-C-K=			===B U Y E R===		==========	==========	==========
-COD-----	-TAG	HD	DESC	------	NUMB	NAME----------	--WEIGHT---	--TOTAL--
1949		1	BLK	W/F	C 114	5 C	1205 1,205	45.00 L 542.25
1950		1	CHA		S 108	41 BA	440 440	123.00 L 541.20
		===					======	==========
		2					1,645	1,083.45

STE		1	L	440		541.20	440	123.00	541.20	
COW		1	L	1205		542.25	1205	45.00	542.25	
----------										
008 M & M	CATTLE	CO								

=======L-I-V-E-S-T-O-C-K=			===B U Y E R====	========WEIGHT---		=========	--TOTAL--
COD----	-TAG HD DES-		NUMB NAME--------				
3032	1 RED-W/F		H 116 51 LEM	545	545	96.00 L	523.20
3033	1 PLN-HAS		H 114 2	315	315	64.00 L	201.60
3034	1 BLK-		H8387 3X	350	350	109.00 L	381.50
3035	1 CHA-HAS		S 156 451 CPC	445	445	109.00 L	485.05
3608	1 BLK-EAR		C 117 5 CARL	900	900	50.00 L	450.00
3609	1 BLK-X		H 116 45 LEM	470	470	94.00 L	441.80
3610	1 PLN-HAS		H 20 6X	375	375	77.00 L	288.75
3611	1 BLK-		S 116 450 LEM	470	470	116.00 L	545.20
3612	1	-BRT	H 111 43X RC	425	425	88.00 L	374.00
3613	1 BLK-		H 116 46 LEM	485	485	105.00 L	509.25
3614	1 BLK-		H 116 51 LEM	530	530	102.00 L	540.60
3615	1 CHA-HAS		S 116 505 LEM	515	515	106.00 L	545.90
3616	1 BLK-TRN		H 116 35 LEM	375	375	104.00 L	390.00
3617	1 BLK-		H 107 4XX JW	495	495	104.00 L	514.80
	===				======		==========
	14				6,695		6,191.65
STE	3	1,430	1,576.15 476	110.22	525.38		
HEF	10	4,265	4,165.50 436	95.43	416.55		
COW	1	900	450.00 900	50.00	450.00		

008 M & M CATT 14 FR .00 24.00

9/03/07 GRAND TOTAL GROSS-- 14 6,191.65

========== COMMISSION	======== CHECK/OFF	======= CARDAGE	======= -INSUR-	======= FEE/WAT	======= -------	========== VOL/DED	========== ---NET/CHECK--
168.50	14.00	14.00	11.14	10.00		24.00	5,950.01

E APPRECIATE YOUR BUSINESS!!!

WAYNE DARBY 6211

&S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 93826

==== =L-I-V-E-S-T-O-C-K= ===B U Y E R====									
COD---- -TAG HD DES---	--- NUMB NAME--------	--WEIGHT---						--TOTAL--	
5596 1 BLK	S 107 6 JW	600	600	104.00	L	624.00			
===		======				==========			
1		600				624.00			
STE 1	600	624.00	600	104.00	624.00				

8/06/07 GRAND TOTAL GROSS-- 1 624.00

=========	==========	=====	========	========	========	==========	============
MMISSION	CHECK/OFF	RDAGE	-INSUR-	FEE/WAT	-------	VOL/DED	---NET/CHECK--
10.50	1.00	1.00	1.12	1.00			609.38

APPRECIATE YOUR BUSINESS!!

WAYNE DARBY 6211

/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 92326

=L-I-V-E-S-T-O-C-K=			===B U Y E R====					--TOTAL--
-COD----	-TAG	HD	DESC-----	NUMB	NAME--------	--WEIGHT---		
2989		1	BLK	S 156 605	CPC	625	625 107.00 L	668.75
2990		1	BLK	S 116 400	LEM	450	450 117.00 L	526.50
		2				1,075		1,195.25
STE		2	1,075	1,195.25	537 111.19	597.62		

				TY-PTY GRAND TOTAL GROSS-->			2	1,195.25
COMMISSION	CHECK OFF	CARDAGE	INSPECT	FEE/WAI		VOL/DED		---NET/CHECK---
21.00	2.00	2.00	2.15	2.00				1,166.10

E APPRECIATE YOUR BUSINESS!!!

WAYNE DARBY 62[illegible]

&S/CODES: O-OFFICER B-BONDED-BUYER E-EMPLOYEE M-MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC. NO. [illegible]

MARTIN & MARTIN CATTLE CO., INC.
CUSTODIAL ACCOUNT FOR SHIPPERS PROCEEDS
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697
PHONE (864) 226-9014 FAX (864) 226-9640

BB&T
SOUTH CAROLINA
67-160-532

NO. 104972

THREE THOUSAND THREE HUNDRED SIXTY ONE & 24/100 DOLLARS

PAY TO THE ORDER OF

DATE AMOUNT

4972 6211

7/28/08 $***3,361.24

WAYNE DARBY
2149 BURDETTE RD.
GRAY COURT SC 29645

MARTIN & MARTIN CATTLE CO., INC.
VOID AFTER 90 DAYS

Joel T. Martin

⑈00104972⑈ ⑆053201607⑆0005123920845⑈

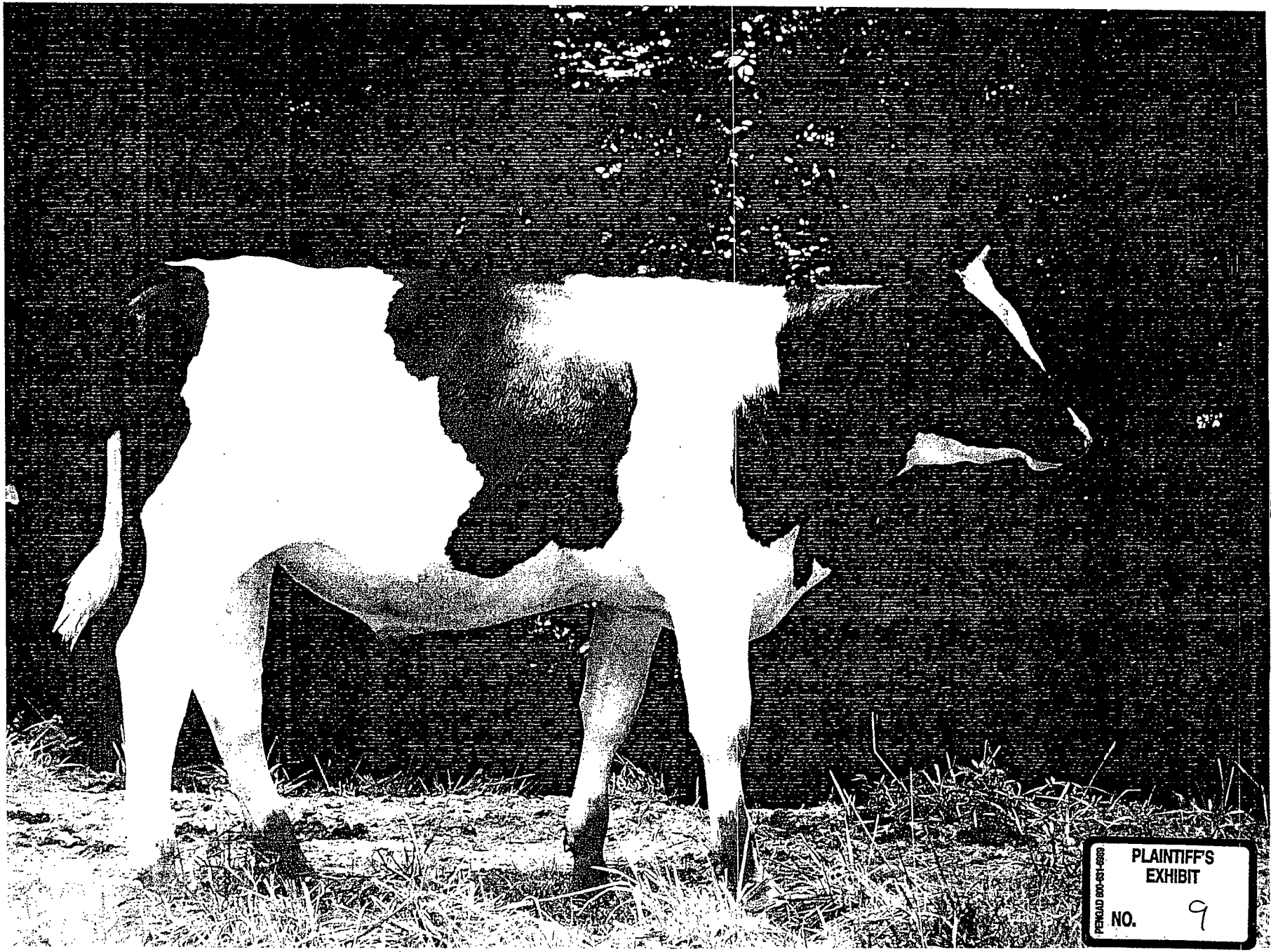
Security Features:
Details on back.

ENDORSE HERE

Wayne Darby

PLAINTIFF'S EXHIBIT NO. 8

PENGAD 800-631-6989



PLAINTIFF'S EXHIBIT NO. 9

PENGAD 800-631-6989

751

PLAINTIFF'S EXHIBIT NO. 10

PENGAD 800-631-6989

52

PLAINTIFF'S EXHIBIT NO. 11

PENQUAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 12

PENCAD 800-631-6989

PLAINTIFF'S
EXHIBIT
NO. 13

PLAINTIFF'S EXHIBIT NO. 14

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT NO. 15

FENQUAD 800-631-6989

PLAINTIFF'S EXHIBIT NO. 16

PENGAD 800-631-6989

758

PLAINTIFF'S EXHIBIT NO. 17

PENCAD 800-631-6989

759

760

PLAINTIFF'S EXHIBIT NO. 18

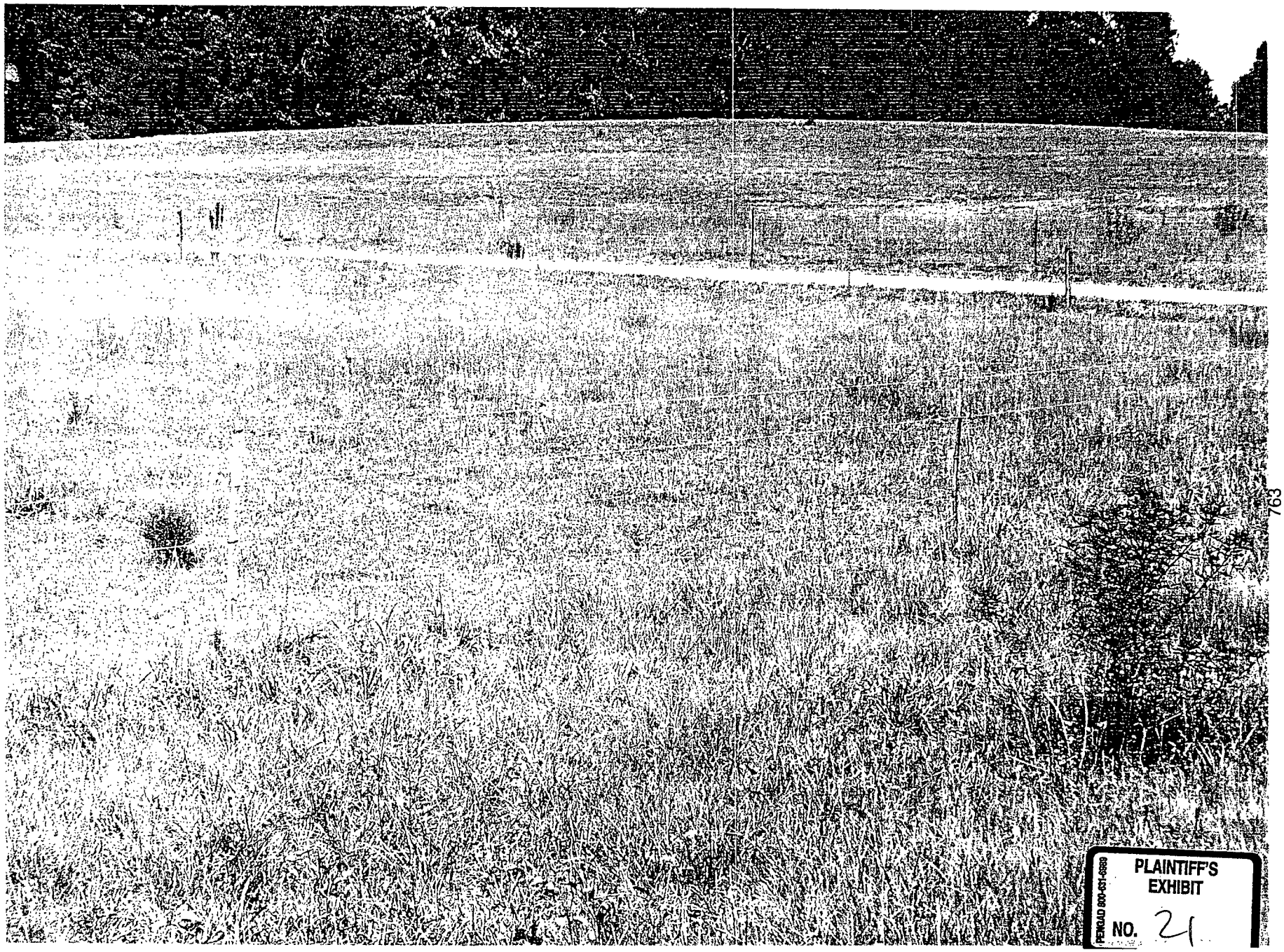
PEIKJAD 800-451-6969

PLAINTIFF'S EXHIBIT NO. 9

PENCAD 800-631-6989

PLAINTIFF'S EXHIBIT
NO. 20
PENTAD 800-451-5888

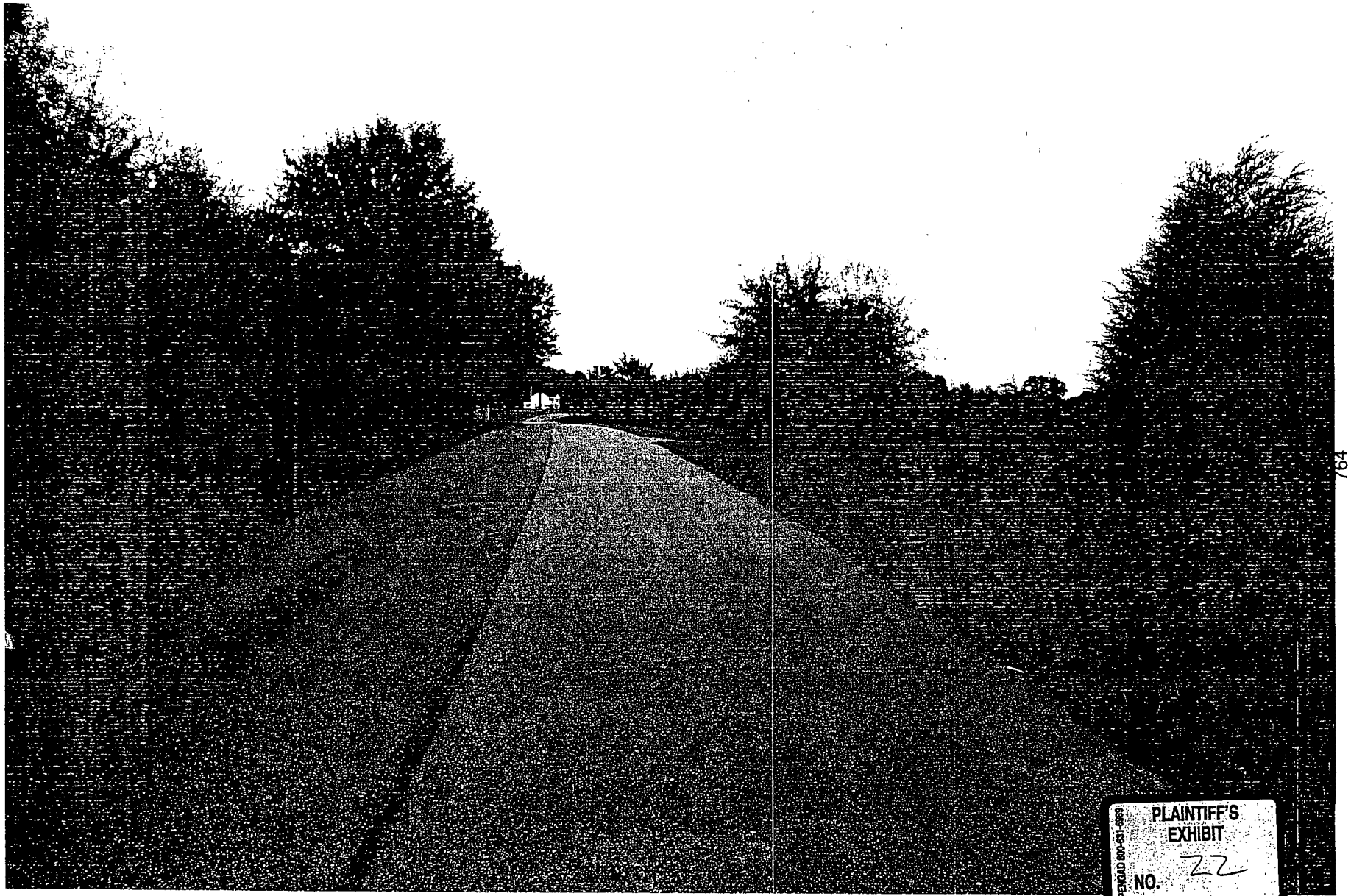
762



763

PLAINTIFF'S EXHIBIT NO. 21

PENDAD 800-631-6989



PLAINTIFF'S EXHIBIT NO. 22

PEIKOLD 800-631-6989

764

(1)

31	F	10-16
~~40~~		~~10-18~~
39	F	10-19
2	F	10-21
28	B	10-21
~~4~~		~~10-23~~
19	F	10-28
20	F	10-28
622	B	10-28
23	B	10-29
38	F	10-30
44	B	10-30
1	B	10-31
23	B	10-31
33	B	11-1
78	F	11-1
54	F	11-1
79	F	11-2
73	F	11-8
74	F	11-9
676	B	11-9
4054	B	11-10

PLAINTIFF'S EXHIBIT NO. 23

PENGAD 800-631-6989

(2)

~~708~~	F	11-10
4	B	11-10
32	B	11-10
81	B	11-10
56	B	11-10
83		11-10
14	B	11-11
18	B	11-12
264	F	11-12
No Tag	B	11-13
67	F	11-14
83	B	11-15
40	F	11-16
30	B	11-17
686	B	11-17
26	B	11-20
891	B	11-21
57	B	11-22
No Tag	B	11-23
31	B	11-23
T37	B	11-24
89	B	11-24

696	B	11-24
85	F	11-25
21	B	11-24
82	B	11-27
91	F	11-28
82	B	11-29
67	B	11-29
90	B	11 29
T37	F	11-30
38	F	12-1
94	B	12-1
43	F	12-2
96	B	12-3
15	F	12-3
175	B	12-4
6	B	12-4
87	B	12-5
40	F	12-7
97	B	12-7
N-Tag	B	12-7
99	B	12-7
18	B	12-8
93	B	12-9

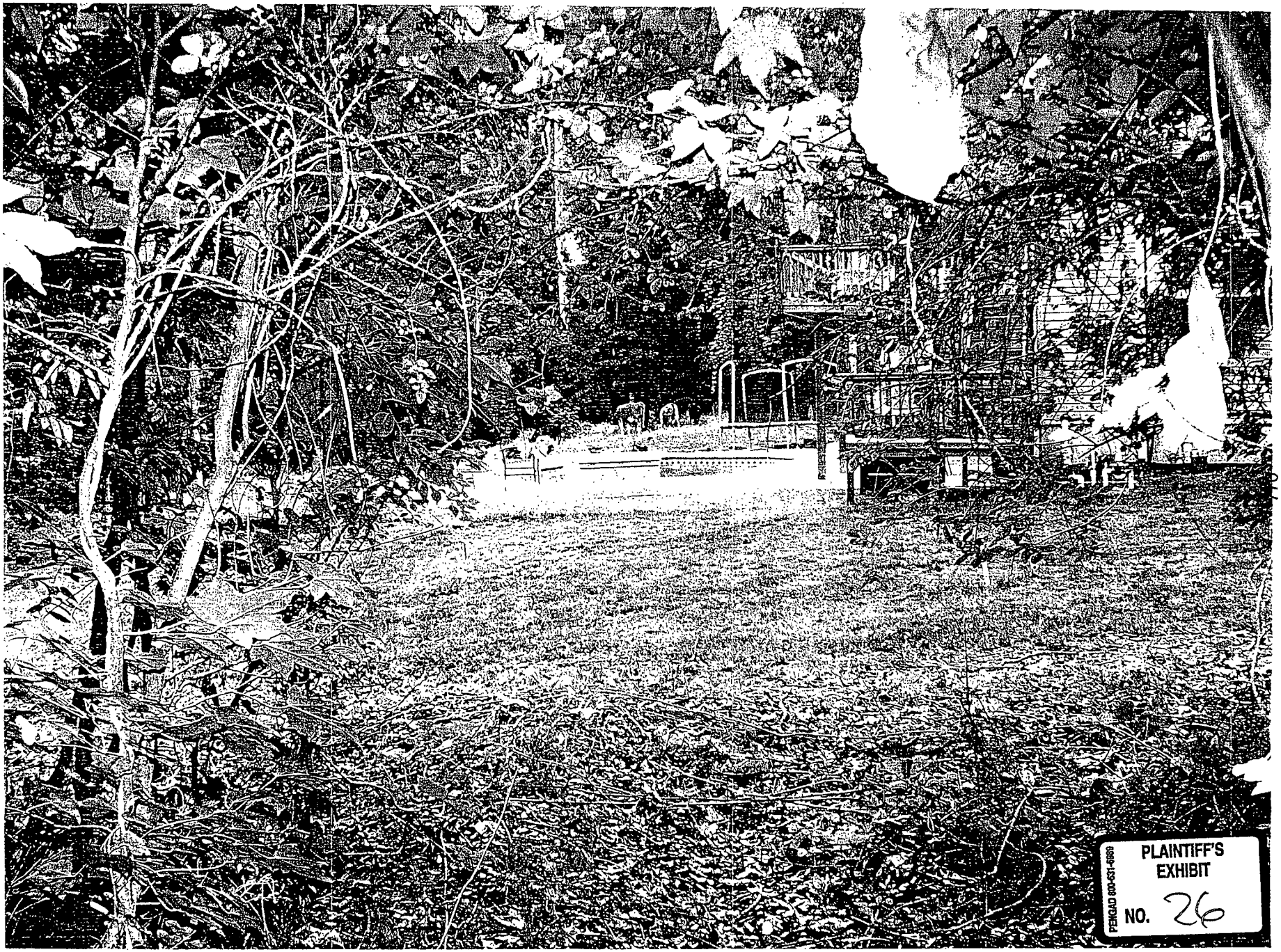
(4)

80	F	12-9
167	B	12-10
21	B	12-11
44	B	12-10
~~169~~		~~12-10~~
~~31~~	~~B~~	~~12-11~~
100	B	12-11
48	F	12-12
34	B	12-13
47	F	12-16
98	F	12-19
92	B	12-21
612	B	12-28
48	F	1-7
25	F	1-10
2	F	1-31
89	F	2-4
No Tag	F	2-4
No Tag	B	2-9



Dial Church Rd. from the Bridge

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT NO. 24


PLAINTIFF'S
EXHIBIT
NO. 26
PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT NO. 27

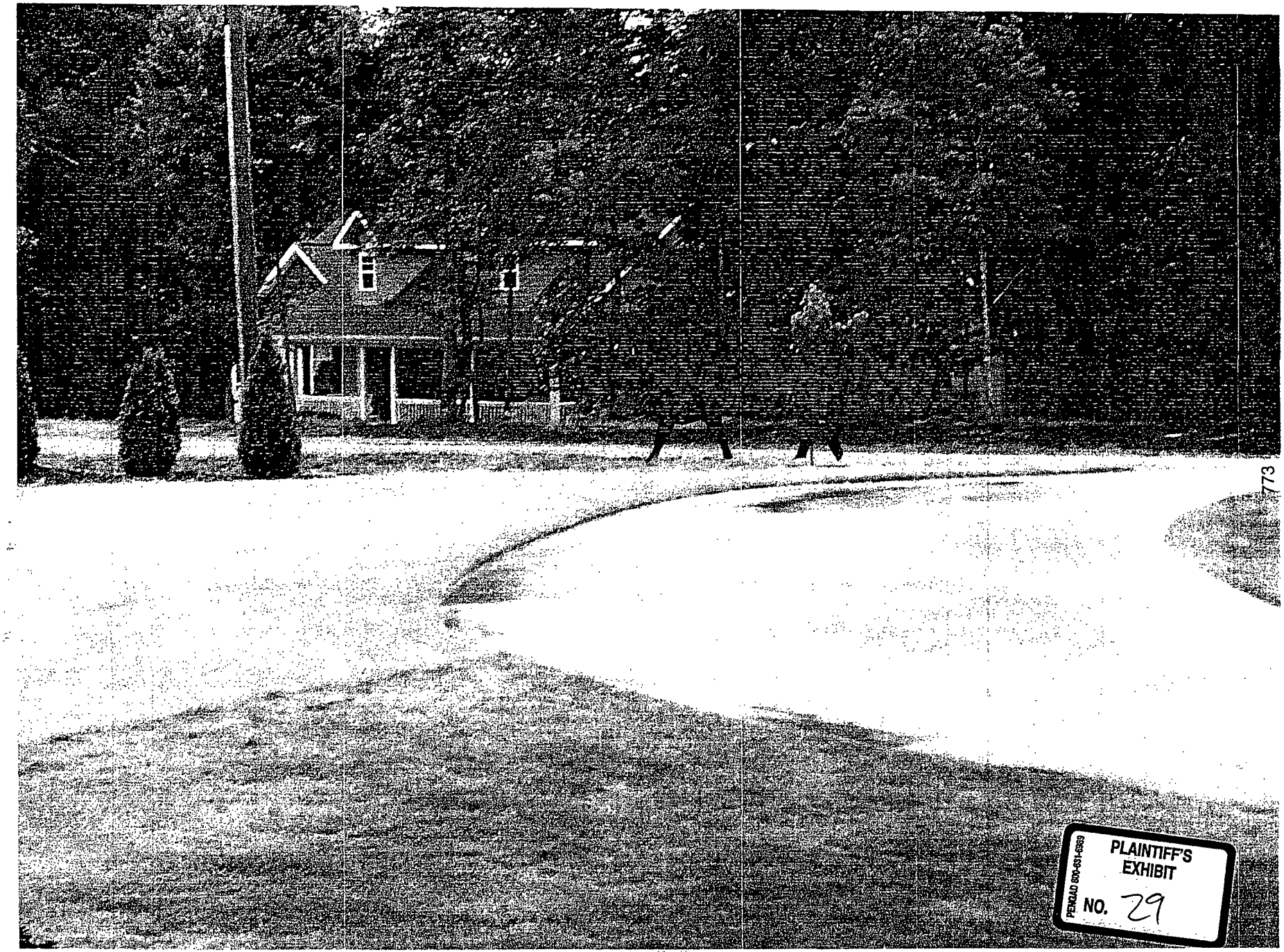
PENDAD 800-631-6989

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 28

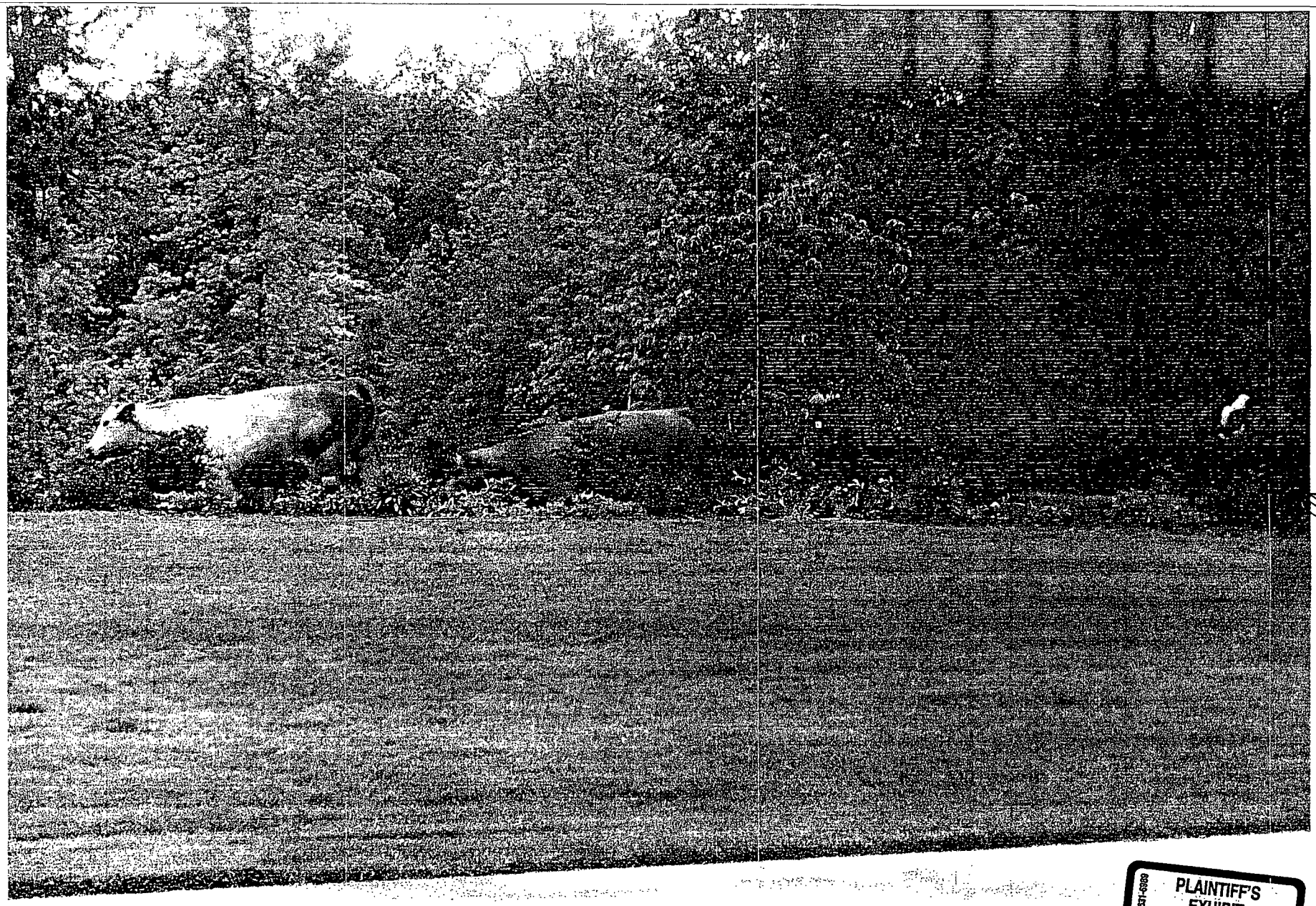
772



773

PERMLAD 800-631-6989

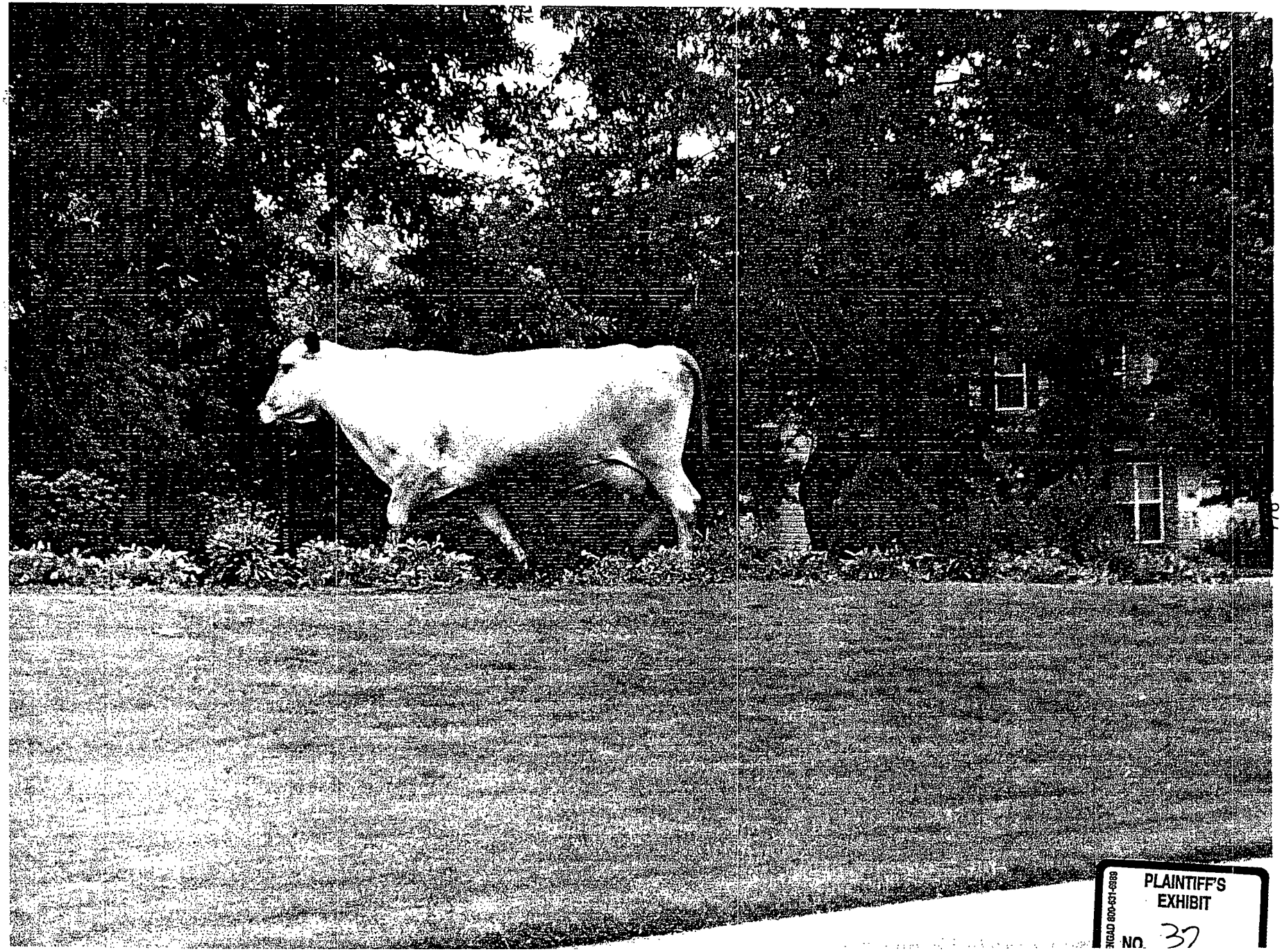
PLAINTIFF'S EXHIBIT NO. 29



PLAINTIFF'S EXHIBIT NO. 30
PENGAD 800-631-6989

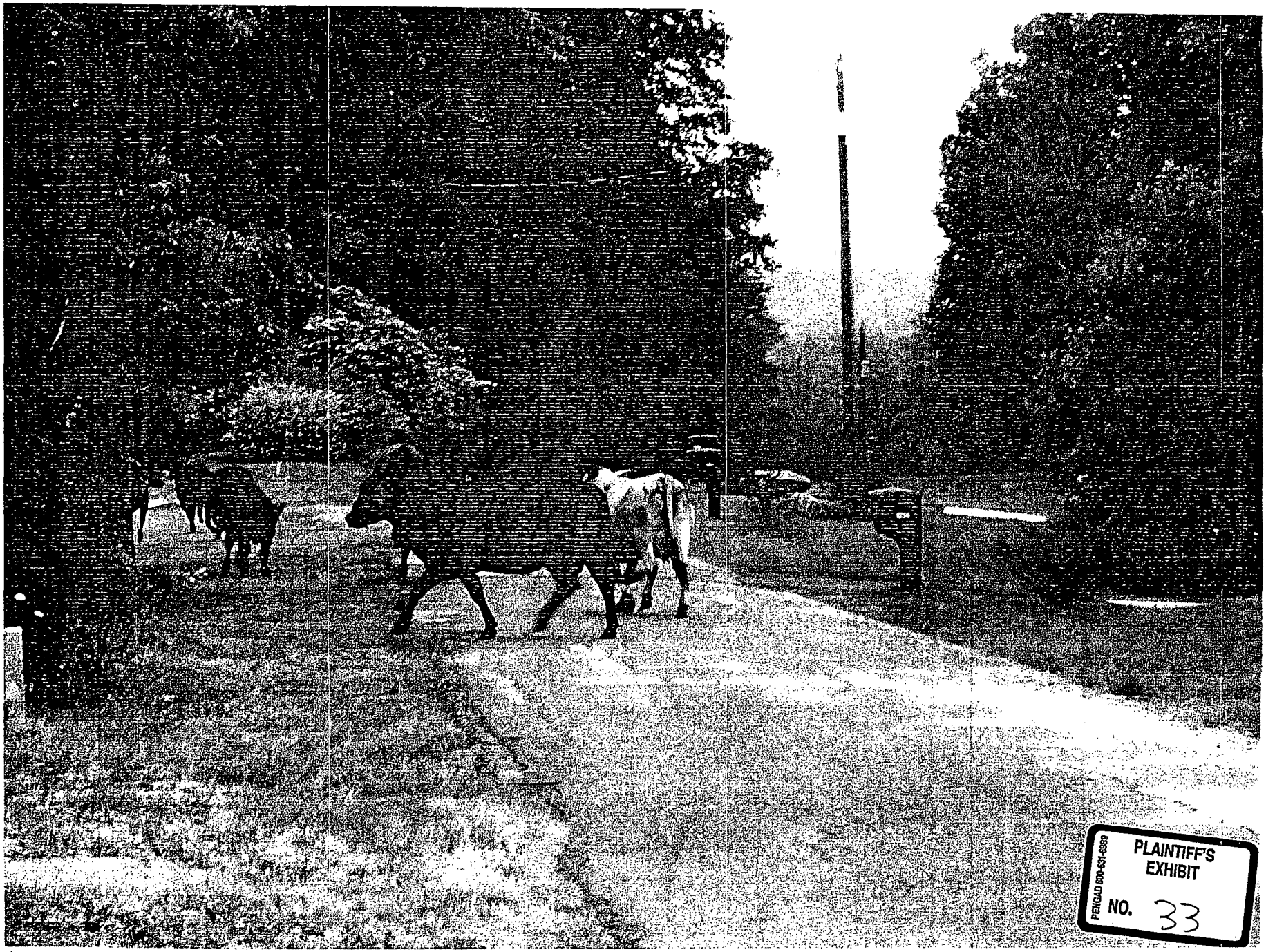
PENGAD 800-631-6989

PLAINTIFF'S
EXHIBIT
NO. 31



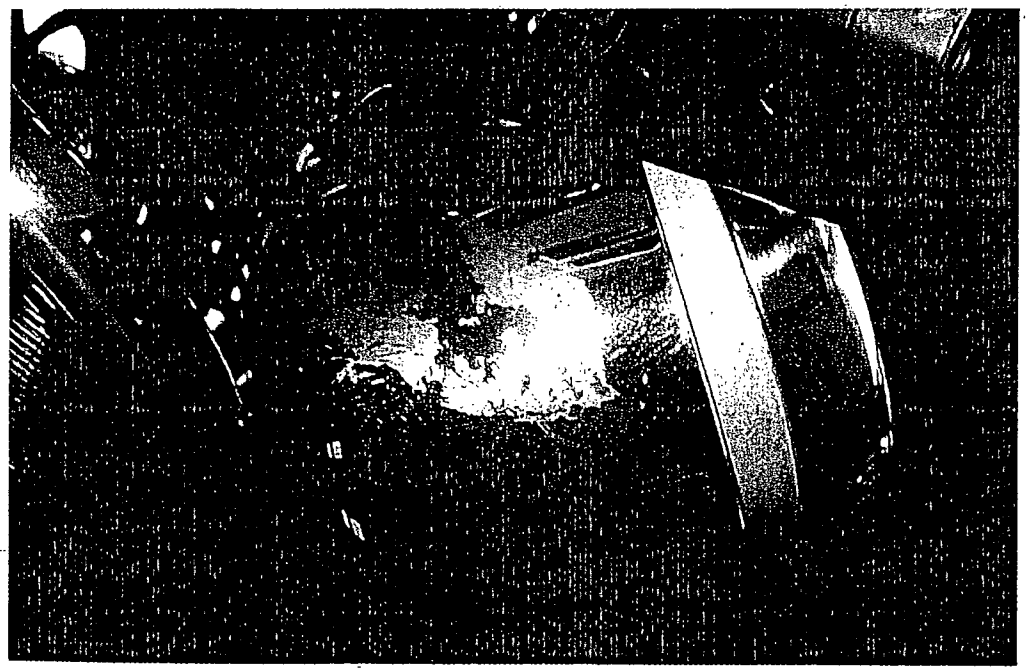
PLAINTIFF'S EXHIBIT NO. 37

ACAD 800-431-0888

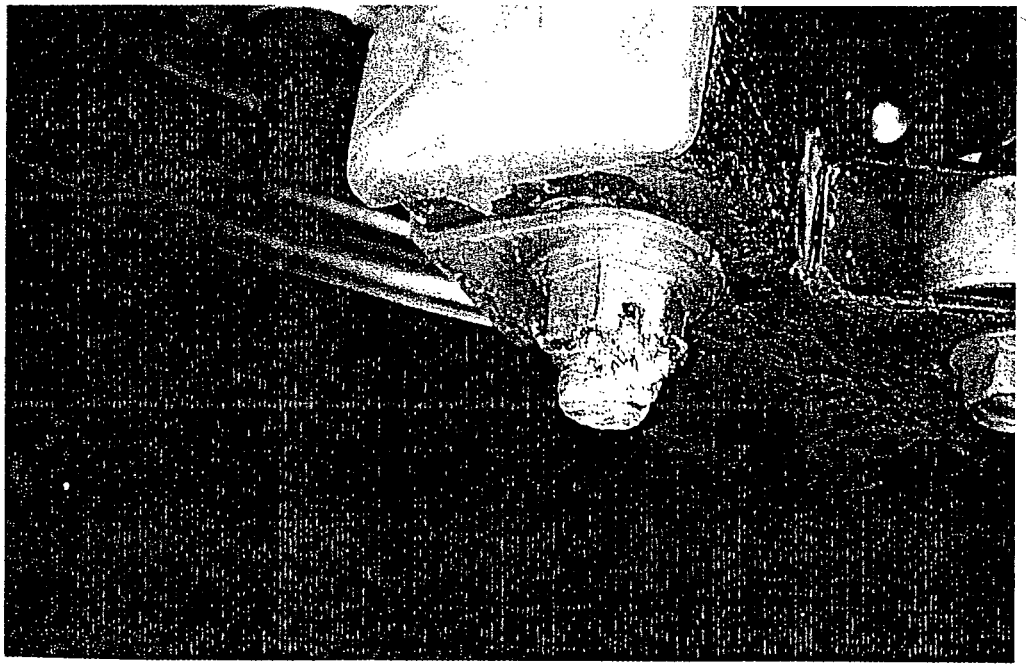


PLAINTIFF'S EXHIBIT NO. 33

PENGAD 800-631-6989







Micro Analytical

110 East Butler Road, Suite I
Mauldin, SC 29662

e-mail MicroAnaly@aol.com

Telephone (864) 631-2224
Cell Phone (864) 325-2288

Mr. Cameron Boggs
Boggs Law Firm
102 West Stone Avenue
Greenville, SC 29609

Laboratory Report

Case # 08-151 Date 9-10-08

Examination Requested

Micro Analytical was asked to examine a motorcycle in the custody of Burdett's Towing located in Waterloo, SC. The motorcycle exhibits accident damage and is said to have collided with an animal. The specific request was to examine fecal material and any other foreign trace evidence located on the motorcycle to possibly determine a source of the material with respect to species.

Laboratory Tests Performed

A white Suzuki motorcycle (VIN: JSINJ48AXY2101726) was examined on Friday, August 29, 2008 at Burdett's Towing in Waterloo, SC. The motorcycle was photographed before any samples were collected. Damaged portions of the motorcycle and areas bearing what appeared to be fecal material and hair were of particular interest. Samples of the fecal material were collected using razor blades, and the hairs were collected using forceps. Each sample was placed into a small envelope, sealed, and labeled.

The hair samples and fecal material were examined at low magnification using a stereomicroscope. Each hair sample was mounted for microscopical analysis using refractive index immersion oils and subsequently examined using polarized light microscopy (PLM). Portions of the fecal material were dispersed and also prepared for microscopical analysis using PLM. Photomicrographs of the samples were taken at various magnifications.



Laboratory Results

The foreign debris removed from the motorcycle includes singular hairs, tufts of hair, hair fragments, and fecal material. The most suitable evidence present for determining species appears to be the hair samples. Approximately twenty-five (25) hairs and hair fragments were collected and examined. The hair samples present are animal hairs and are consistent with those of a cow (or bull). By examining the morphological features of a hair microscopically, cow hair can be differentiated from that of a horse, deer, dog, cat, rabbit, squirrel, fox, raccoon, or any other common species.

The fecal material is dry, brittle, and easily dispersed for testing. Particulate matter detected in the fecal material includes cellulosic fibrous debris, trichomes, quartz mineral grains, and one portion of a feather. The cellulosic debris is consistent with grass or other non-woody plant material. Trichomes are small hair-like particles that are present on the leaves of plants. Quartz is the primary component of sand. One particle type that is notably absent in the debris is starch. Grains of starch, especially cornstarch, are commonly present in feed for livestock.

The fact that many of the cow hairs are broken, crushed, or deformed in some way indicates blunt trauma or force. Some of the hairs were found to be embedded in crevices of the motorcycle, and as a result, difficult to remove. Additionally, some of the hairs exhibit anagen phase roots (as opposed to telogen phase or bulbous roots), which means that the hairs were in an early growth stage and not ready to naturally fall out. These observations suggest that the hairs were forcibly removed and not simply shed in a natural manner.

Respectfully Submitted,

Jeffrey M. Hollifield
Chemical Microscopist

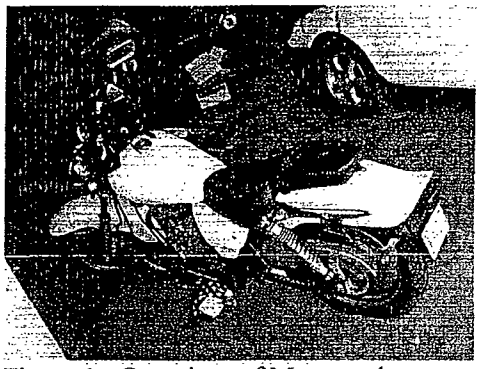


Figure 1. Overview of Motorcycle

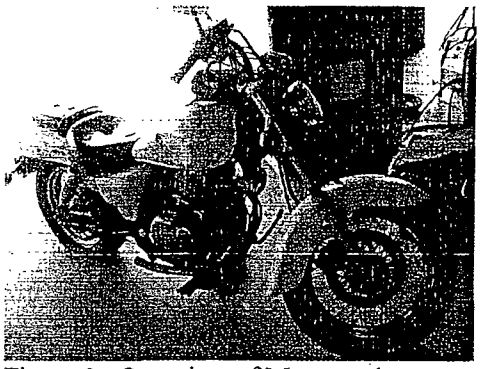


Figure 2. Overview of Motorcycle



Figure 3. License Plate

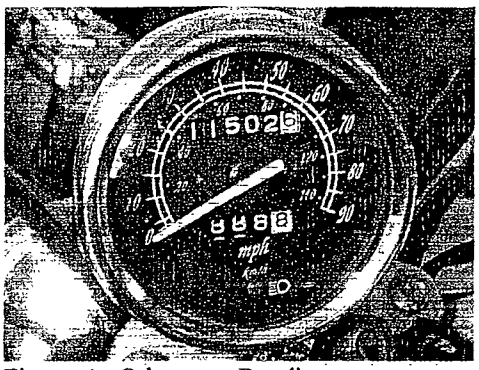


Figure 4. Odometer Reading



Figure 5. Front of Motorcycle

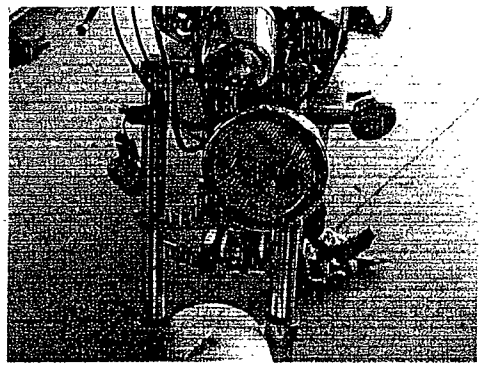


Figure 6. Damage to Front End

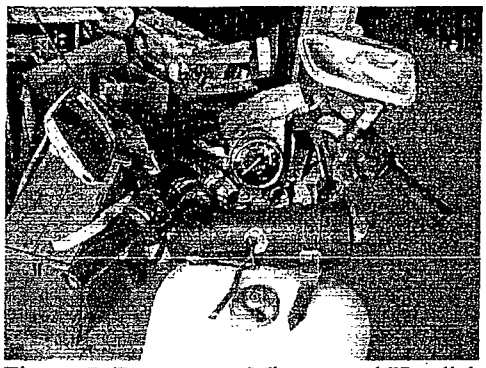


Figure 7. Damage to Mirrors and Handlebars

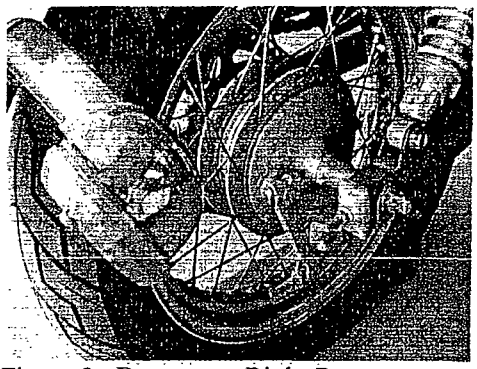


Figure 8. Damage to Right Rear Turn Signal Shaft

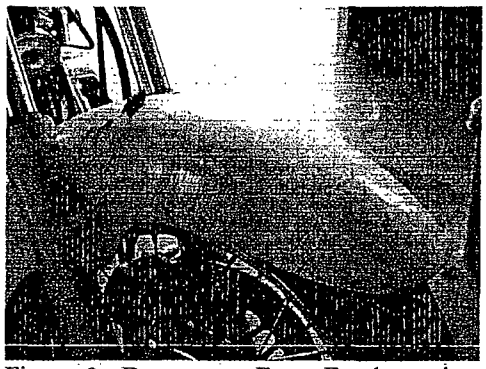


Figure 9. Damage to Front Fender and Feces on Front Fender

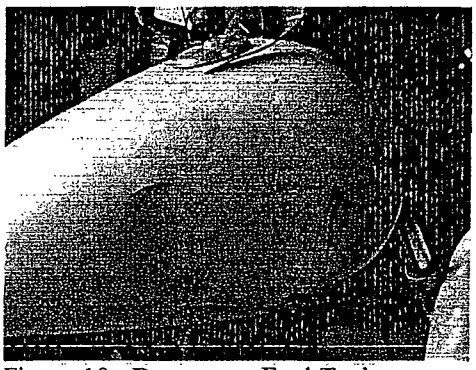


Figure 10. Damage to Fuel Tank

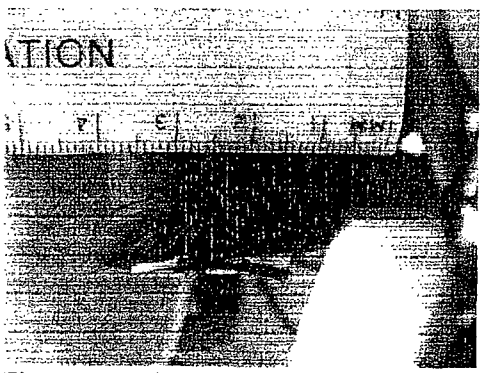


Figure 11. Abrasion on Right Handlebar

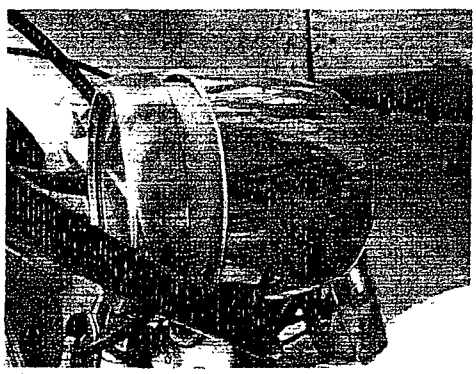


Figure 12. Damage to Speedometer



Figure 13. Feces on Front Fender



Figure 14. Hair and Feces on Front Fender

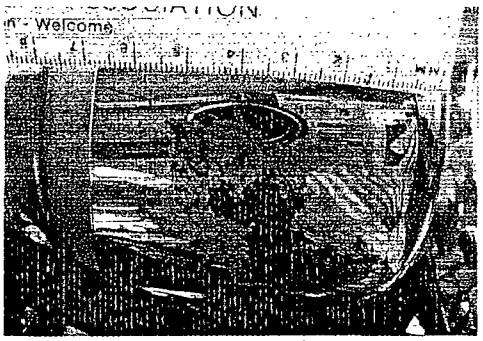


Figure 15. Feces on Speedometer

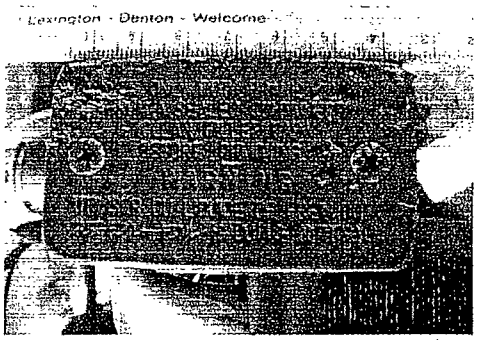


Figure 16. Feces Near Instrument Panel

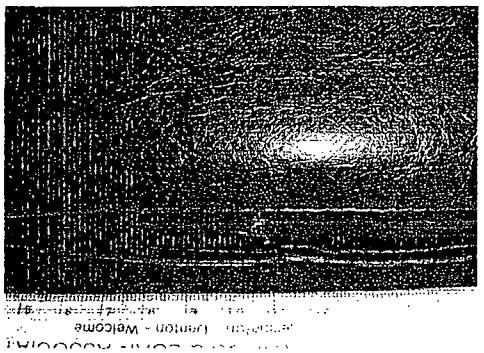


Figure 17. Feces on Leather Seat

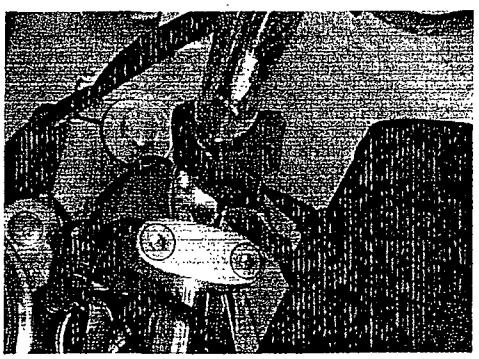


Figure 18. Feces on Handlebar

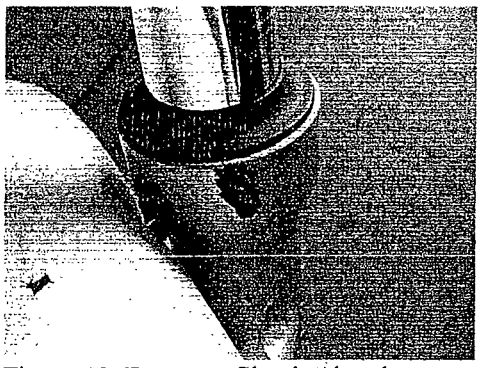


Figure 19. Feces on Shock Absorber

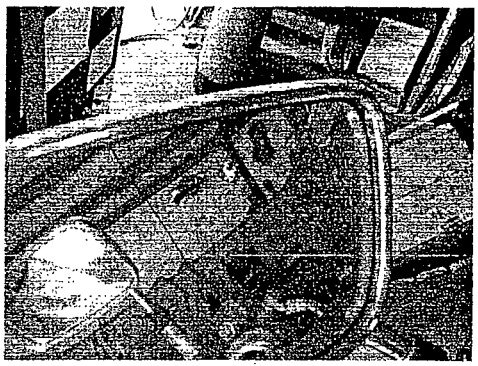


Figure 20. Feces on Left Mirror

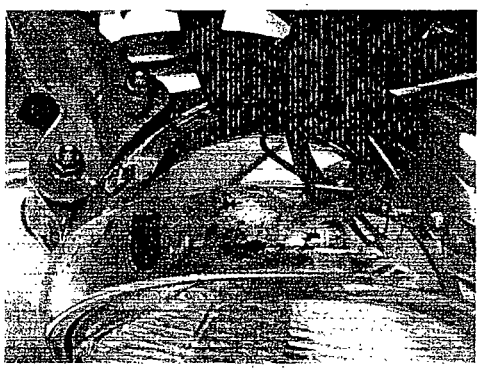


Figure 21. Feces on Headlamp

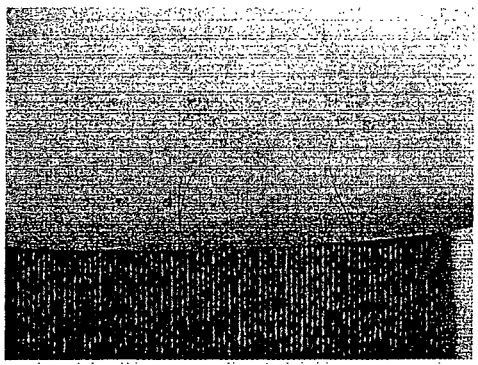


Figure 22. Hairs on Front Fender

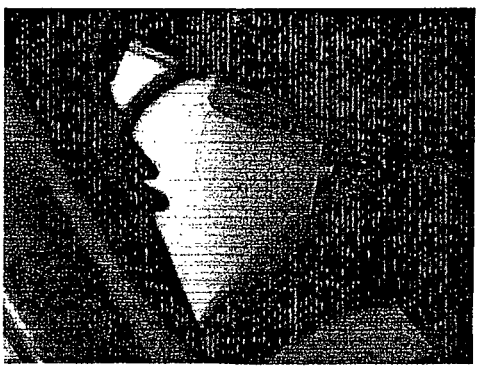


Figure 23. Hairs Beneath Frame

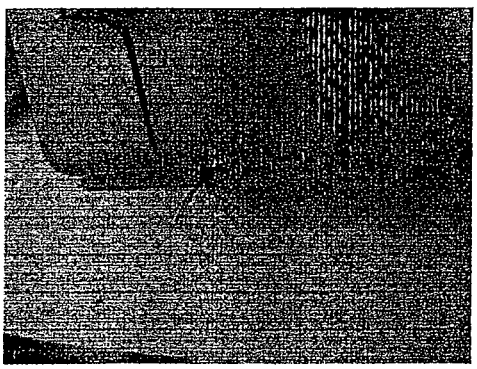


Figure 24. Tuft of Hairs Beneath Frame

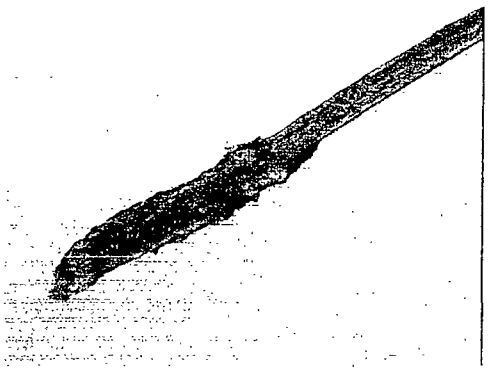


Figure 25. Root of Hair

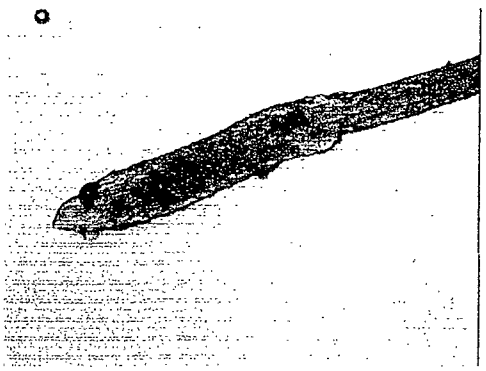


Figure 26. Root of Hair

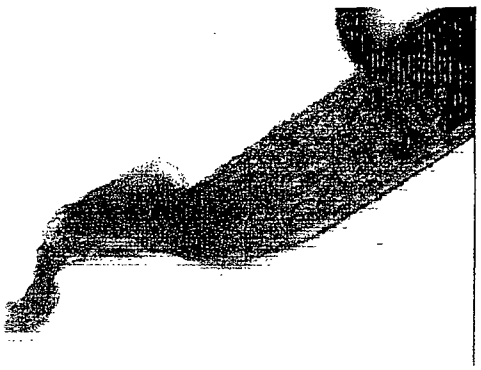


Figure 27. Forcibly Removed Hair
Anagen Phase Root



Figure 28. Tapered Tip of Hair

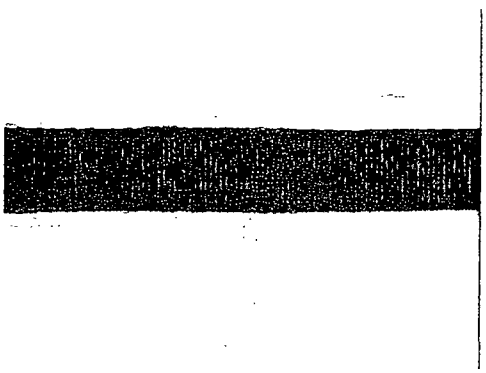


Figure 29. Scales Along Edge of Hair

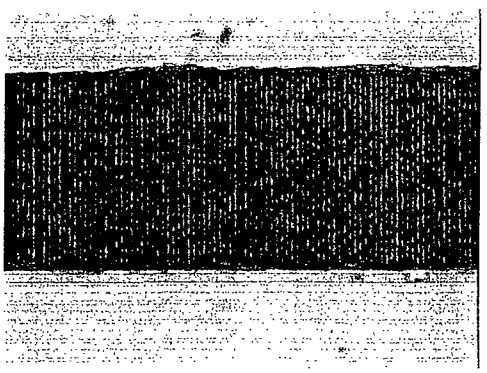


Figure 30. Scales Along Edge of Hair

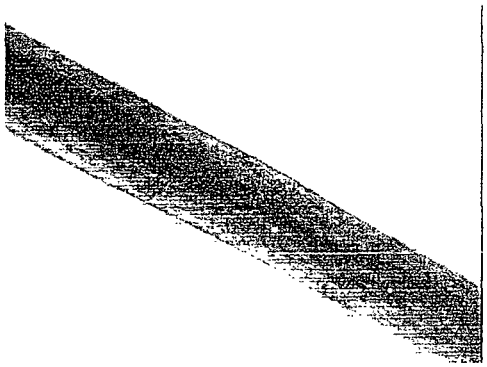


Figure 31. Medulla Near Root End

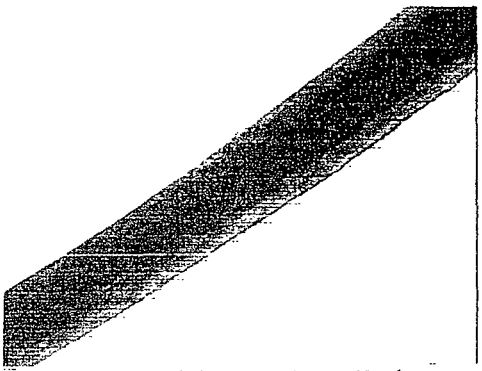


Figure 32. Medulla Near Root End

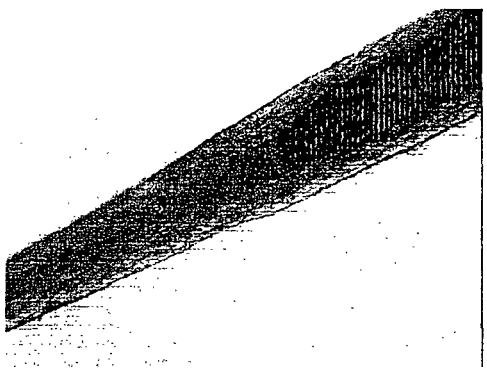


Figure 33. Widening of Medulla



Figure 34. Hair Pigment and Medulla

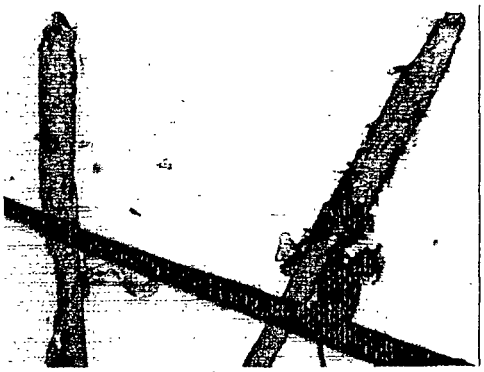


Figure 35. Tuft of Hairs from Bike

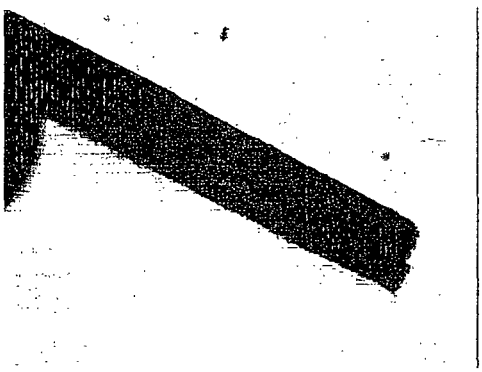


Figure 36. Broken End of Hair

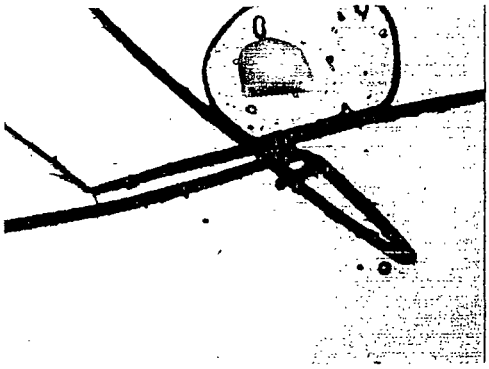


Figure 37. Crushed Hairs From Bike

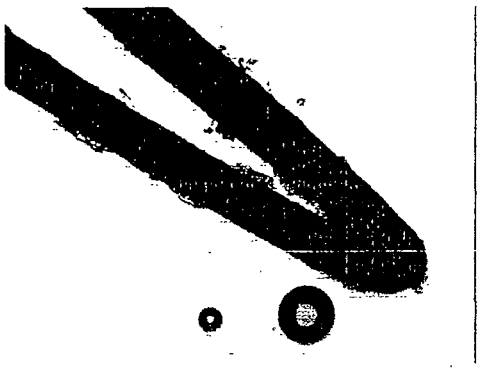


Figure 38. Crushed Hair from Bike



Figure 39. Crushed Tip of Hair



Figure 40. Crushed Tip of Hair

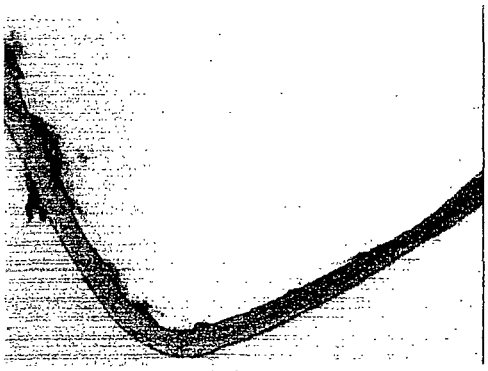


Figure 41. Bent Hair from Bike



Figure 42. Particles from Feces

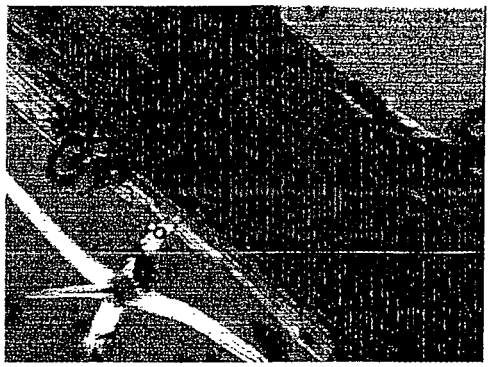


Figure 43. Grass and Trichome from Feces



Figure 44. Mass of Trichomes from Feces



Figure 45. Debris from Feces

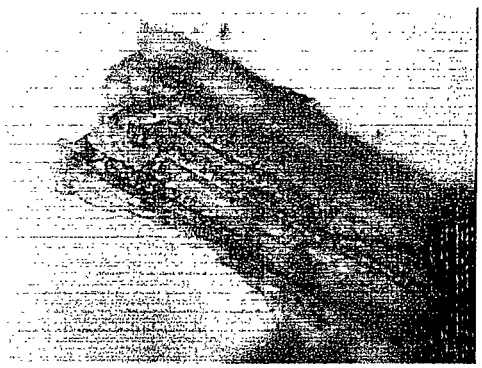


Figure 46. Grass from Feces

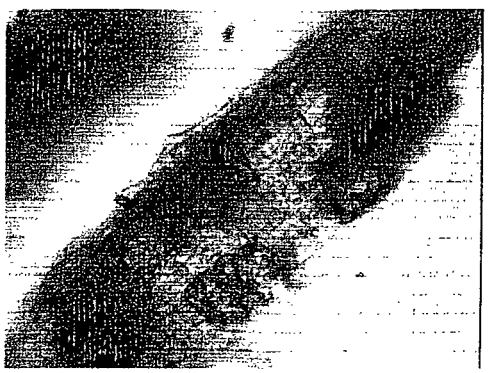


Figure 47. Parenchyma Cells of Grass

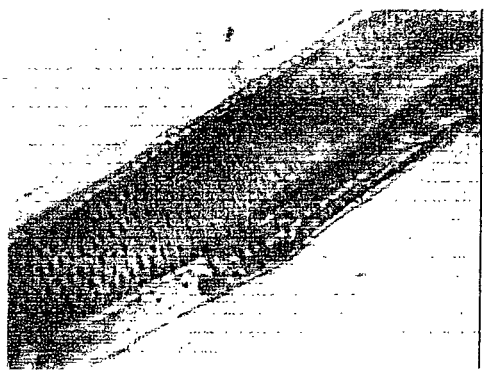


Figure 48. Cellulosic Plant Material

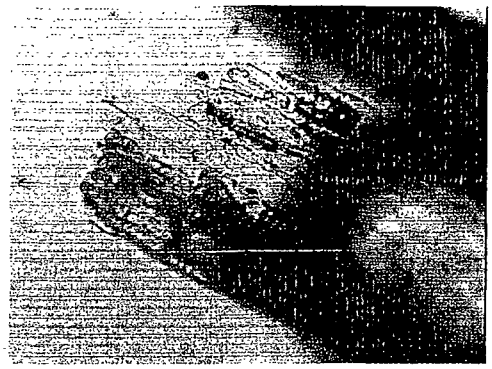


Figure 49. Grass from Feces

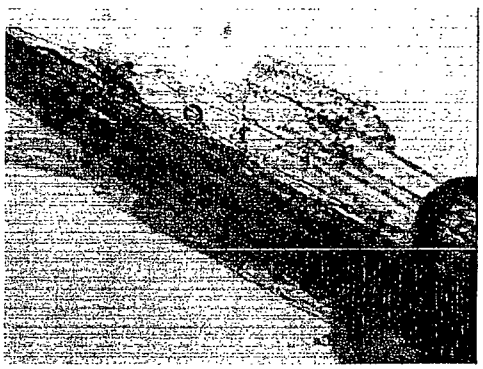


Figure 50. Grass from Feces

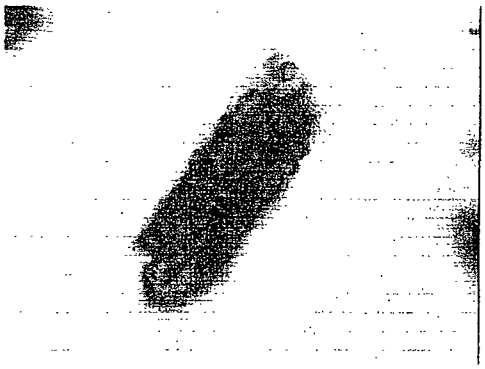


Figure 51. Cellulosic Plant Material from Feces



Figure 52. Cellulosic Plant Material from Feces

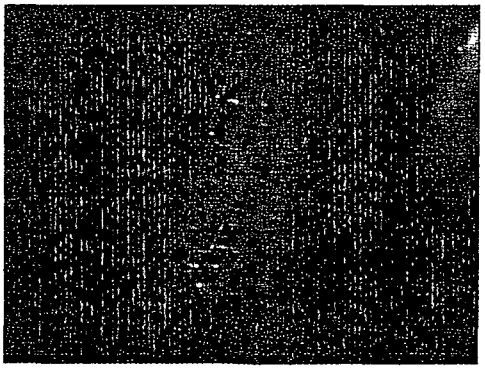


Figure 53. Parenchyma Cells of Grass

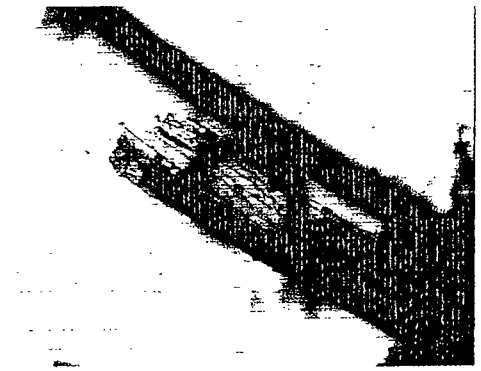


Figure 54. Grass on Hair from Feces

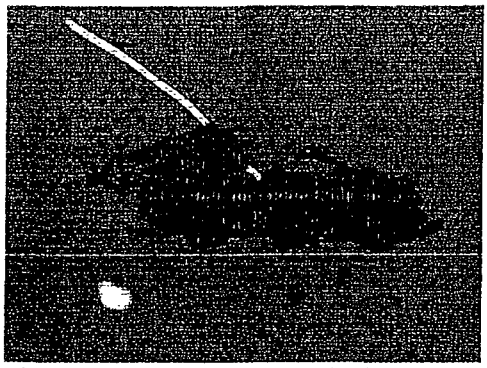


Figure 55. Trichome, Grass, and Quartz Grain from Feces



Figure 56. Feather Fragment from Feces

LABCORP - 3000

HRP/ABLE TASK FORCE, INC
924 BRIGHTMOOR DR
MATHEWS, NC 28105

Specimen Number
0796093830
Phone: (704) 716-1121
abletfi@bellsouth.net;roshell

Account Number: 177880

Date Coll: 7/24/08 | Employee Name: FARROW,WILLIAM | Gender: Not Given | Age: Not Given

Date Sent: 7/25/08 | Employee ID: [redacted]

Current Date Sent: 7/25/08 | Form ID: 0796093830 | Test Reason: PRE EMPLOYMENT

Clin Info:

TEST	LAB	UI	UI

Drug	Result	ScreenCutoff	ConfirmCutoff
AMPHETAMINES	Negative	001000	000500
Cocaine Metabolite	Negative	000300	000150
Marijuana Metabolite	Negative	000050	000015
OPIATES	Negative	002000	002000
Phencyclidine	Negative	000025	000025

Collection Site Info:

Neil J. Dash, MD
CERTIFYING MRO

PLAINTIFF'S EXHIBIT NO. 39

PENGAD 800-631-6989

CONFIDENTIALITY STATEMENT

This Electronic Message contains information from Neil J. Dash, MD-Medical Review Officer created by Neil J. Dash, MD-Medical Review Officer and is confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately by telephone at (800)

02/18/2009 15:18 7047161128 SANDY PAGE 03/03

Customer Service: 800-833-9984

[illegible]
RECORDS
1904 ALEXANDER DRIVE
RTP, NC 27709
3000

SPECIMEN ID NO. 0796093830

LAB ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.
[illegible]ABLE TASK FORCE
ATTN: SANDY HAUPT
904 BRIGHTMOOR DR
RALEIGH NC 28405
919-719-1181
FAX
Location

B. MRO Name, Address, Phone and Fax No. 1778EQ
DOCTORS REVIEW SERVICES
DR NEIL J DASH
546 FRANKLIN AVENUE
MASSAPEQUA NY 11758
800-526-9341 FAX: 800-547-2966

C. Donor SSN or Employee I.D. No. 216-11-7941 33

D. Reason for Test: ☒ Pre-Employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Periodic ☐ Other

Laboratory Corporation of America
[illegible] Woods Lake Rd, Ste 210
Greenville, SC 29607
Location # 93054
(864) 235-7204 Phone
(864) 295-7674 Fax

E. Collection Site Address

Collector Phone No.

Collector Fax No.

F. Donor Identification Verified By: ☒ Photo I.D. ☐ Employer Representative

STEP 2: TO BE COMPLETED BY COLLECTOR

Read specimen temperature within 4 minutes. Is temperature between 90° and 100°F? ☒ Yes ☐ No. Enter Remark Below. Split Specimen Collection ☐ Yes ☒ No

REMARKS:

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY COLLECTOR AND DONOR

G. Daytime Phone No. 824-130-348 Evening Phone No. ( ) - Date of Birth: 5/3/74

H. TEST(S) REQUESTED BY EMPLOYER:

I authorize the collection of this specimen for the purpose of a drug screen. I acknowledge that the specimen container(s) was/were sealed with tamper-proof seal(s) in my presence; and that the information provided on this form and on the label(s) affixed to the specimen container(s) is correct. I authorize the laboratory to release the results of the test to the company identified on this form or its designated agents.

(PRINT) DONOR'S NAME (FIRST, MI, LAST)	SIGNATURE OF DONOR	INITIAL	MONTH	DAY	YEAR
William D. Farrow, Jr.	William D. Farrow, Jr.	D.F.	07	24	2008

STEP 5: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY LABORATORY

I certify that the specimen given to me by the donor identified on this form was collected, labeled, sealed, and released to the Delivery Service noted in accordance with applicable requirements.

X [illegible] Time of Collection: 4:13 AM (PM)
Signature of Collector

[illegible] Watson Date (Mo/Day/Yr.): 7/24/08
(PRINT) Collector's Name (First, MI, Last)

SPECIMEN BOTTLE(S) RELEASED TO: LCA Courier
Name of Delivery Service Transferring Specimen to Lab

RECEIVED AT LAB:

X
Signature of Accessioner

(PRINT) Accessioner's Name (First, MI, Last) Date (Mo/Day/Yr.) / /

Primary Specimen Bottle Seal Intact
☐ Yes
☐ No, Enter Remark Below

SPECIMEN BOTTLE(S) RELEASED TO:

COPY 4 - EMPLOYER COPY - BLUE

LabCorp

02/18/2009 15:18 7047161120 SANDY PAGE 02/03



Boggs_8279

PLAINTIFF'S EXHIBIT NO. 40
PENGAD 800-631-6989



Boggs_8279

PLAINTIFF'S EXHIBIT NO. 41
PENDAD 800-631-6989

Plaintiffs' Exhibit No. 42 – Aerial Large Board Photograph

Oversized Exhibit on File with Trial Court

COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT. # 2-1-11
DATE: 2-22-11

802

COURT'S
EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-3-11

803

COURT'S
EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11

COURT'S
EXHIBIT NO. 4
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11

COURT'S
EXHIBIT NO. 5
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11

COURT'S
EXHIBIT NO. 6
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11

STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS)

William D. Farrow, Jr., and Karen W. Farrow,

Plaintiffs,

-vs- C.A. No.: 2008-CP-30-1120

Jerry W. Darby,

Defendant.

COPY

DEPOSITION OF JOHN WILLIAM HARRISON
May 1, 2009

PURSUANT to Notice and/or agreement between the parties, the deposition of **John William Harrison,** called by the Plaintiffs, was taken commencing at the hour of 12:01 p.m. on Friday, May 1, 2009, at the Law Offices of Younts, Alford, Brown & Goodson, 210 South Main Street, Fountain Inn, South Carolina.

SUE N. HAYNIE, Reporter

G. W. Coleman Associates
Post Office Box 9177 • Greenville, South Carolina 29604
803/233-2341

APPEARANCES:

THE BOGGS LAW FIRM
102 West Stone Avenue
Greenville, South Carolina 29609
BY Wayne Patterson, Esquire

.....On behalf of the Plaintiffs

HOWSER, NEWMAN & BESLEY, L.L.C.
1508 Washington Street
P. O. Box 12009
Columbia, South Carolina 29211
BY Rowland P. Alston, III, Esquire

.....On behalf of the Defendant

ALSO PRESENT:

William D. Farrow
Karen W. Farrow

STIPULATIONS:

This deposition is taken pursuant to the South Carolina Circuit Court rules of Civil Procedure; reading and signing of the deposition by the witness are hereby waived.

Exhibits:

There were no exhibits to this deposition.

INDEX OF EXAMINATION

By Mr. Patterson . . . . . Page 4
By Mr. Alston . . . . . Page 16
By Mr. Patterson . . . . . Page 18
By Mr. Alston . . . . . Page 20

JOHN WILLIAM HARRISON, having first been duly sworn to tell the truth, testified as follows:

EXAMINATION

By Mr. Patterson:

Q: Mr. Harrison, my name is Wayne Patterson and I represent David and Karen Farrow. They're present here today. This is a situation, I'm sure you're familiar with it, where Mr. Farrow was involved in an automobile accident, an accident allegedly with a cow. Do you understand that that's what we're here today to talk about?

A: Yeah.

Q: Also present is Mr. Rowland Alston, III. He's an attorney that represents Mr. Darby. I'll be asking you some questions and then Mr. Alston will have a chance to ask you some questions. Have you ever given a deposition before?

A: No.

Q: Just a few ground rules. This is a testimony, it is sworn testimony. It's just like you're in court. If you don't understand the question, just please ask me, I'll try to elaborate or clear it up with you. If you don't understand anything, just please let me know and we'll clarify it. Could you give us your full name and your address, please, sir?

A: John William Harrison.

Q: Mr. Harrison, are you employed?

A: No, I'm retired.
Q: You're retired from where?
A: City Tire and Recapping in Laurens.
Q: And how long did you work there?
A: Sixteen and a half years.
Q: And do you know Mr. Darby?
A: Yeah.
Q: And how do you know him?
A: I've known him all his life. He lives right close to me there.
Q: Are you or any of your family related to Mr. Darby?
A: No.
Q: And the accident that we're here today, are you familiar with the location of the accident?
A: Yeah.
Q: Did you go to the scene of the accident?
A: Soon after it happened, yeah.
Q: Soon after it happened. Could you describe what you saw at the scene of the accident?
A: When I got there, I saw the motorcycle laying about halfway in the road down on its side, and I saw Mr. Farrow in the ditch on his back. I didn't see any animal or anything like that. And that was about it.
Q: Okay. Could you describe a little further Mr.

Farrow's condition?

A: Well, he looked like that he might have been kind of addled, shook up. He had one leg up, drawn up, and he was complaining about it.

Q: Where was the motorcycle in relation to him and in relation to the road?

A: I'd say that it was probably ten feet from him and it was on a little bit more on that side of the road where he was in the ditch than the other side. It didn't like much of being in the middle of the road.

Q: Now, if you're coming from Dials Church down Dials Church Road, my understanding is the accident happened shortly before you get to Cooley Road, is that correct?

A: That's right.

Q: If you're coming that way, which side of the road was Mr. Farrow laying on?

A: He was on the left side coming from Dials Church.

Q: Coming from Dials Church, he was on the left-hand side?

A: Uh-huh (affirmative response).

Q: And the motorcycle was approximately in the middle of the road?

A: Approximately.

Q: Do you know which way he was traveling at the time?

A: I think he was probably coming from Dials Church.
Q: But you don't know?
A: No.
Q: Where do you live in relation to the accident?
A: Approximately one quarter or maybe a little better than that on the left-hand side of the road.
Q: And how long have you lived there?
A: About 55 years.
Q: So you're familiar with everybody that's in the area then?
A: (Nods head).
Q: And do you travel Dials Church Road on a regular basis?
A: Yeah.
Q: How many times a day would you say you go up and down Dials Church Road?
A: Maybe two or three.
Q: Two or three times a day. All right, sir. If you are coming from Dials Church and you're coming in that direction which is north, could you tell me what is on the left-hand side of the road at the accident scene?
A: Just before you get to Cooley Road, there's a fence, pasture fence, and pastures all the way, all the way up to my house nearly. There's one house between the scene and my house. Before you get to my house there's one house

more on the left.

Q: At the scene of the accident, going that direction on the left-hand side, the pasture you described, as you travel this road two or three times a day, is it normal to see cows in that pasture?

A: Yeah.

Q: Do you have any knowledge as to who those cows belong to?

A: They belong to Darby.

Q: Do you know of anybody else that has cows in that immediate area?

A: No.

Q: Have you seen in the general area of Cooley Road and Dials Church in your 55 years that you've lived there, have you seen cows out of this pasture that you describe on the left-hand side?

A: I have.

Q: And were those cows, where were they in relation to the road?

A: Well, they were between the fence on the shoulder of the road.

Q: And about how many times have you seen cows out in this area?

A: Well, I hardly know. Every once in a while, but I don't know just how often.

Q: Okay. Well, I mean, is it more than five?
A: Over how many years?
Q: Well, let's say in the last ten years. Do you have any ...
A: I imagine, yeah, I've seen them that many times.
Q: You've seen them more than five. Would you have seen them as many as 20 times in the last 10 years?
A: No.
Q: Not as many as 10. All right. When you see cows out in the road, the times that you've noticed them, are they in the vicinity of Cooley Road? Is that where you've seen cows out?
A: I have seen them out there, yes.
Q: Have you seen them out in any other location?
A: Yes.
Q: Where have you seen them out?
A: Down towards the creek further down Cooley Road. I've seen them down that way.
Q: Is that still adjacent to the same pasture that we were discussing that you said Mr. Darby has cows in?
A: Uh-huh (affirmative response).
Q: So as I understand it, Cooley Road is kind of more at the top of the hill and then at the bottom of the hill you have a creek with a bridge. Is that correct?
A: That's right.

Q: So at the times you've seen cows out, you've seen them between Cooley Road and the creek. Is that correct, sir?

A: I have.

Q: Is that the same area where the accident occurred?

A: Yeah.

Q: When you saw these cows out, did you notify anyone?

A: Yes, I have from time to time.

Q: And do you remember who you notified?

A: Most of the time I called Darby's mother.

Q: Okay. Do you have any idea how many times you called Mr. Darby's mother?

A: Not too many because there's other people that watch out and notify them, too, I think, if they see something out.

Q: Do you know who any of these other people would be that may have notified them?

A: No.

Q: So you don't have any idea who?

A: No.

Q: Besides Mr. Darby's mother, is there anyone else that you've ever notified about the cows being out?

A: I think maybe I've talked to Wayne. Most of the time he's gone. That's the reason I called his mother.

Q: So most of the time you can't get in touch with Mr. Darby, so you call his mother?

MR. ALSTON: Object to the form.

Q: You can answer.

A: Yes.

Q: And you understand that this accident was back in July of last year, so you know when the accident occurred, you said you went down to it. Have you seen cows out in this general area any time in the, say the previous six months prior to the accident or do you remember seeing cows out any?

A: No, I don't.

Q: What was the weather conditions down on Dials Church Road six months prior to the accident?

A: Weather conditions?

Q: Yes, sir.

A: When the accident happened?

Q: Well, no, I'm talking about like over the period of time, the six months say from January to July, what was the weather like in the Dials Church Road area?

A: Just normal summer weather.

Q: Normal summer weather. Did you have a lot of rain?

A: No, we didn't.

Q: Would you describe it as a drought?

A: Yeah.
Q: Do you farm, Mr. Harrison?
A: No.
Q: You don't farm. Okay. Did you notice the conditions of the grass and hay? I know that is all farm area down there. Did you notice the condition of the grass or the hay or the trees or the vegetation in the area during the six months prior to the accident?
A: Overall, we had a dry summer, had a dry spring, so everybody was wanting rain. I can say that.
Q: Did you have to get out and cut your grass?
A: I did occasionally, yeah.
Q: As much as you have in the past?
A: No.
Q: A lot less than you have in the past?
A: I don't know. I don't know that.
Q: I'm not trying to trick you or anything else. Again, is there anyone else in the area that travels this road on a regular basis that you know of? I know we've talked about you said you understood there were others that may have notified them. Do you have anybody specifically other than Darby's mother that you know that may have seen the cows out or got called about cows out or anybody else in the area that you might could identify for us?
A: The Thomason boys, they watch out for those

cattle.

Q: Do they help Mr. Darby with the cattle?

A: I think they did occasionally when he was transferring from one pasture to another I think they helped him some.

Q: And what are their names?

A: Johnny Thomason.

Q: And do you remember the other one's name?

A: Jerry Thomason.

Q: So Johnny and Jerry?

A: Yeah.

Q: And you say they helped when he transferred them?

A: I think they did some.

Q: I mean, if you don't know, that's fine, but was it likely that people in the area if they couldn't get in touch with Mr. Darby's mother would call the Thomasons? I mean, if you don't know, that's fine.

A: I don't know.

Q: Don't know. Mr. Harrison, let's go back to when the accident happened. I know you said Mr. Farrow was laying in the ditch. Was there anybody else? When you went down, do you have any idea about how long after or how did you find out about the accident?

A: They was a lady pulled in my yard and told me about it. She had three small children with her. She said,

"I couldn't get out to help him any way." Says, "He's hurt, but he's not dead because he's moving." That's how I found out about it.

Q: What did you do then?

A: I went down there.

Q: Did you call 911?

A: Somebody, I don't know who it was, had already called.

Q: Already called. And were there any first responders down at the scene when you arrived?

A: I think I was about the only one, about the first one there.

Q: You were the first one there. Well, after you arrived, what agencies responded to the accident, do you know?

A: They was several of them. Green Pond Fire Department. They was several that showed up right away.

Q: How was Mr. Farrow transported from the scene of the accident?

A: A plane, a helicopter I think.

Q: Did you see the helicopter?

A: Yeah.

Q: And did it just come and land in the road?

A: No, it landed in the field right across the road.

Q: Right across from the road. And so he was

actually air lifted from the scene rather than being put in an ambulance and carried like you would normally expect to be done?

A: Yeah.

Q: This field that the helicopter landed in, do you know who owns that field?

A: Well, it was in a pasture.

Q: It was in a pasture.

A: Darby owns that.

Q: And Darby owns that. Okay. Have you ever seen any cows in that pasture where the helicopter landed?

A: No.

Q: Do you know what use is made of that pasture?

A: What was that question?

Q: Do you know what use is made of that pasture?

A: I think he uses it for hay.

Q: Uses it for hay. Was there any bales of hay in the pasture at the time or do you remember?

A: I really don't know.

Q: Do you know of any other friends or family that have complained about cows being out in the area of Cooley Road and Dials Church Road?

A: No, I don't know of any.

MR. PATTERSON: All right, sir, Mr. Harrison. That's really all the questions I have. Answer any

questions that Mr. Alston has.

EXAMINATION

By Mr. Alston:

Q: Mr. Harrison, I should be brief. My name is Rowland Alston. I represent Mr. Darby. Do you know what it was that Mr. Farrow collided with when he got in that accident?

A: No.

Q: Do you know a gentleman by the name of Sonny Stoddard?

A: Yeah.

Q: Does he own cows in that area?

A: Yeah, he's approximately a mile and a half above there.

Q: How about Ray Stoddard, do you know him?

A: Yeah.

Q: Does he own cows in that area?

A: He owns cows, but they're not in that area.

Q: Where are they?

A: They're above that scene probably a mile and a half or two miles.

Q: How about Boyd Stoddard, does he own cows?

A: Yeah.

Q: And where are his cows located?

A: He owns a dairy up approximately two or three miles above there would be his nearest cattle I guess.
Q: He doesn't have any beef cattle?
A: Do I have any?
Q: No, I'm sorry. Boyd Stoddard, you said he has a dairy. Does Boyd have any beef cattle that you know of?
A: I think he does have, but they're miles away. He don't keep them in the pastures with his dairy cattle.
Q: How about Harry Hayes, do you know him?
A: Yeah.
Q: And does he live near you or does he have a pasture near you?
A: No.
Q: Do you know if he owns any cows or not?
A: I really don't.
Q: How about Terry Varner, do you know who that is?
A: Yeah.
Q: Does he own cows in that area?
A: Some distance from there, yeah.
Q: Do you know about how far, approximately?
A: Probably a mile and a half, something like that.
Q: And, finally, Earl Whitmire, do you know him?
A: No, I don't know him.
Q: Can you spell the last name of the two boys that helped Mr. Darby? You said Thompson or Thomason. How do

you spell their last name, do you know?

A: It's T-h-o-m-a-s-o-n.

Q: And you also testified, I believe, the lady with three small children came up in your yard and told you about this accident. Do you know that lady's name?

A: Let's see. Her name is --- I should know it. Jamie Willis's wife is who it was.

Q: And are those the Willises that live in the area?

A: Yes, sir.

MR. ALSTON: Do you have any follow up?

MR. PATTERSON: Yes.

EXAMINATION

By Mr. Patterson:

Q: Mr. Harrison, when you arrived at the accident scene, did you see any evidence of any animal being at the scene? Did you see any hair or cow poop or deer poop or any other evidence as to what may have caused the accident?

A: I saw some, I didn't know what kind of poop it was, but it was something in the road there.

Q: A little bit or a lot?

A: It wasn't a whole lot.

Q: I know Mr. Alston had asked you about several other people in the area that have cows and you know where most of those people are located, correct?

A: (Nods head).

Q: Have you ever seen cows out at any of these other locations?

A: No, I don't think I have.

Q: So I just want to be clear. The only time you have seen cows out as many times as you go up and down Dials Church Road two and three times a day is between the creek and Cooley Road adjacent to Mr. Darby's pasture?

MR. ALSTON: Objection to the form.

Q: You can answer.

A: Say that again.

Q: Okay. Have you seen cows out anywhere else besides the section of road between Cooley Road and the creek at the bottom of the hill?

MR. ALSTON: Same objection.

A: I don't think so.

Q: Don't think so. And I believe it was your testimony that you've seen them out in that area more than 5 but less than 20 times?

MR. ALSTON: Objection to the form.

A: Yeah.

Q: Is that your testimony?

A: Yeah.

MR. PATTERSON: All right. That's all.

EXAMINATION

By Mr. Alston:

Q: When you're saying that you have seen cows out in that area more than 5 but less than 20 times, over how many years are you talking about?

A: Several years. He's been using that pasture for a good many years and occasionally you see one out.

MR. ALSTON: That's all I have.

(There being no further questions, the deposition concluded at 12:24 P.m.)

STATE OF SOUTH CAROLINA)

: C E R T I F I C A T E

COUNTY OF GREENVILLE)

Be it known that I took the deposition of JOHN WILLIAM HARRISON;

That I was then and there a Notary Public in and for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 20 pages is a true and correct transcript of the testimony given in this matter;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 19th day of May, 2009.

Sue N. Haynie
Notary Public for South Carolina
My Commission Expires: 12/19/11

COURT'S
EXHIBIT NO. 8
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11

465 Washington Street
Barnwell, SC 29812

803-259-2361 (Home)
803-300-1360 (Cell)
803-541-0510 (Fax)
Mibekfarms@bellsouth.net

Michael A. Worrell, PhD.

Experience

2001-Present MiBek Farms, Inc Barnwell, SC

Owner/Operator

- Stocker/Backgrounder – Cattle operation
- Perennial Peanut Hay – Premium hay production
- MiBek Beef – Natural - Pasture Raised-Dry-aged Beef

1991-2001 Clemson University Clemson, SC

Associate Professor of Animal Science

- Tenured
- Research Scientist – Ruminant Nutrition
- Research Scientist – Pasture Management

1991-2001 Barnwell, SC

Ranch/Nutritional Consultant

1995-1996 Massey University New Zealand

Visiting Professor

- Sabbatical – Pasture management

1985-1991 Clemson University Clemson, SC

Assistant Professor of Animal Science

- Research Scientist – Ruminant Nutrition
- Research Scientist – Pasture Management

1979-1981 Kanapaha Ranch Gainesville, FL

Cattle Manager

Education

1978 University of Florida Gainesville, FL
- Bachelor of Science

1982 University of Florida Gainesville, FL
- Masters of Science

1985 University of Nebraska Lincoln, NE
- Doctor of Philosophy

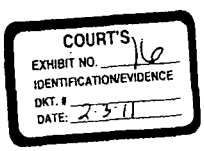
COURT'S EXHIBIT NO. 9
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-2-11

Personal	Married to the former Rebecca J. Melton ▪ Daughter – Kelsey L. Worrell ▪ Son – M. Garrett Worrell
Professional Organizations (Past/Present Memberships)	American Society of Animal Science, American Dairy Science Association, American Forage and Grassland Association, Gamma Sigma Delta, Ellenton Agricultural Club, South Carolina Cattlemen's Association, Salkehatchee Cattlemen's Club, Southern Pasture Improvement Association.
Other Organizations (Past/Present Memberships)	Institutional Animal Care and Use Committee (Clemson University, V. Chair; 1995-96: Chair; 1997-98). Beef Cattle Research Committee (Clemson University, Chair; 1995-98). Rotary Club (Barnwell, SC, Charter Member: V. President, 1994-95: SoA 1993-94, 1996-97: Program Committee, Chair; 1991-92: Information Committee, Chair, 1990-92). Barnwell County Hospital Board of Trustees (Barnwell, SC. – V. Chair of the Board, 1997-98: Joint Conference Committee, Chair, 1994-96: Finance Committee, V. Chair, 1994-96: Chair, 1996-98).
Publications	In excess of 100 peer reviewed journal articles, scientific abstracts, theses, technical and popular interest articles.

We need question #1 explained more in detail specifically preponderance of the evidence

Would you like to be re-instructed on preponderance of evidence by the Court or would you like a short written instruction on this issue, or both?

We would like to be reinstructed by the Court does #1 have to be unanimous?



CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Charles E. Carpenter, Jr.
Carmen V. Ganjehsani
CARPENTER APPEALS AND TRIAL SUPPORT, LLC
1201 Main Street, Suite 980
Columbia, SC 29201
(803) 758-2886

George V. Hanna, IV
HOWSER, NEWMAN & BESLEY, L.L.C.
1508 Washington Street
Post Office Box 12009
Columbia, SC 29211
(803) 758-6000
ATTORNEYS FOR APPELLANT
JERRY W. DARBY

July 6, 2012.