

**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 I OF II (pp. 1-407)**

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RECEIVED
JUL 26 2012

SC Court of Appeals

FARROW V. DARBY
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STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
C/A NUMBER: 08-CP-30-1120

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

Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

SPECIAL VERDICT FORM

1: 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?

NO _____ If "No", STOP and deliberate no further.

YES ☒ If "Yes", go on to Question No. 2.

2: Do you find that the Defendant, Jerry Darby was negligent, and that such negligence proximately caused the Plaintiffs' injuries?

NO _____ If "No", STOP and deliberate no further.

YES ☒ If "Yes", go to Question No. 3.

3: Do you find that the Plaintiff, William David Farrow, was also negligent and that his own negligence proximately caused his own injuries.

NO _____ If "No", STOP and deliberate no further.

YES ☒ If "Yes", go to Question No. 4.

4. If you have answered "Yes" to the previous 3 questions, then you are to answer this question:

In causing the accident, what percentage of negligence was attributable to Defendant Jerry W. Darby and what percentage was attributable to Plaintiff William David Farrow? (This percentage must add up to 100%)

Defendant Jerry W. Darby: 65 %

Plaintiff William David Farrow: 35 %

2-3-2011
DATE

Donna M. Walcott
JURY FOREPERSON

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS

William David Farrow, Jr. and
Karen M. Farrow,

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 -CP- 30 - 1120

Jerry W. Darby,

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Order

Dated at _____, South Carolina, this _____ day of _____, 20____.

PRESIDING JUDGE

This judgment was entered on the 24th day of March, 20 11, and a copy mailed first class this 24th day of March, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Cameron L. Logg, Esq.

George V. Hanna, IV, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn M. Lancaster
CLERK OF COURT (E)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF LAURENS) CIVIL ACTION NO.: 2008-CP-30-1120

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

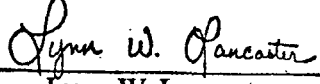
Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

A TRUE COPY OF ORIGINAL

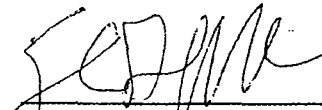

Lynn W. Lancaster
Laurens County CCCP & GS

ORDER

Having considered the Post-Trial Motions made by the Defendant the Court finds as follows:

1. Motion for a New Trial under Rule 59 on the grounds that the verdict is against the greater weight of the evidence is respectfully denied;
2. Motion for a New Trial under Rule 59 on the grounds that the verdict is against the applicable law is respectfully denied;
3. Motion for New Trial under Rule 59 on the grounds that the verdict is against the weight of the evidence and applicable law is respectfully denied;
4. Motion for New Trial under Rule 59 on the grounds that the Court erred in admitting evidence which was prejudicial is respectfully denied; and
5. Motion for New Trial under Rule 59 on the grounds that the Court erred in excluding evidence which was prejudicial is respectfully denied.

IT IS SO ORDERED.


Eugene C. Griffith, Jr., Judge

Dated: March 23, 2011

At Newberry, South Carolina

01/08/2009 10:34

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KEITHMARTINEQUIPMENT

PAGE 12

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

William David Farrow Jr. and
Karen W. Farrow

Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

) IN THE COURT OF COMMON PLEAS

) NEWCASTER

) THE EIGHTH JUDICIAL CIRCUIT

) P 12:32

) CASE NO: 2008-CP-30- 1120

) SUMMONS

TO: THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to file an answer to the Complaint with the Clerk of Court and forward copy of said answer to the address below within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

The Boggs Law Firm

Cameron G. Boggs, Esq.
Post Office Box 65
Greenville, SC 29602-0065
(864) 233-8066

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KEITHMARTINEQUIPMENT

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STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

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

Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

) IN THE COURT OF COMMON PLEAS

LYNN W. LONCASTER

) THE EIGHTH JUDICIAL CIRCUIT

2008 DEC 19 P 12:32

) CASE NO: 2008-CP-30- 1120

LAURENS COUNTY

) COMPLAINT

) (Jury Trial Requested)

The Plaintiffs above-named, complaining of the Defendant above-named, would respectfully allege and show unto this Honorable Court:

GENERAL ALLEGATIONS

1. That the parties hereto and the subject matter hereof are within the jurisdiction of this Honorable Court.
2. That the Plaintiffs, William D. Farrow, Jr. ("David") and Karen W. Farrow ("Karen") are citizens and residents of the County of Laurens, State of South Carolina and are husband and wife.
3. That the Defendant is a citizen and resident of the County of Laurens, State of South Carolina.
4. That at all times material, the Defendant owned and/or leased properties adjacent to Dials Church Road, near the town of Gray Court in the County of Laurens, State of South Carolina.
5. That Dials Church Road is and at all times mentioned was a public street and highway within the County of Laurens, State of South Carolina.

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6. That at all times material, the Defendant was owner of certain cows that he kept in a pasture on the above said properties or that said cows had access to the pastures for feeding or grazing.

7. That at all times material, Defendant had knowledge of the dangerous propensity of the cows to escape from said pastures.

8. That at all times material, Defendant had the cows in his care and keeping, had duties with regard to taking care of and preventing injury to others and was required to perform the duty to prevent the cows from endangering motorists traveling on Dials Church Road.

9. That at all times material, Defendant was bound by the general provisions of The Code of Laws of South Carolina and specifically S.C. Code Ann. 47-7-110 (Supp. 2007).

10. That at all times material, the Defendant had actual knowledge of the dangerous propensity of the cows to escape from the pasture and had the right to and could have removed them from the premises and ended the dangerous condition.

11. That at all times material, upon information and belief, the persons in the neighborhood near Dials Church Road complained of the dangerous propensities of Defendant's cows to escape from said pasture, and those persons relayed to Defendant their concerns and fears that the cows were a danger to motorists.

12. That on or about July 24, 2008, at or about 7:30 p.m., Plaintiff William David Farrow, Jr. ("David") was operating a motorcycle on Dial's Church Road adjacent to Defendant's pastures when one of Defendant's cows suddenly entered the roadway directly in front of David's motorcycle.

CWB
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13. That, although David was operating his motorcycle in a safe and cautious manner and without negligence, he collided with Defendant's cow.

14. That as a result of said collision, David suffered injuries to his body, including but not limited to his right leg, a cracked sinus cavity, strained paraspinal muscles, knee injuries, closed head injury, sensitivity and excessive swelling, injury to his muscles, and suffered other injuries to his body including headaches, neck pain and blurred vision. That the injuries were so severe that air ambulance personnel were called to airlift him to the hospital.

15. That as a result, David was seriously injured, he suffered mental and physical distress, pain, suffering, anguish and anxiety. The Plaintiffs are informed and believe that some of the injuries are permanent, that they have caused and will in the future cause David to lose economic value in the nature of loss of earning capacity, wages, economic opportunity and the value of services he performs in the home.

PLAINTIFF WILLIAM DAVID FARROW, JR.'S FIRST CAUSE OF ACTION
(Negligence)

16. The Plaintiffs incorporates herein the General Allegations set forth above.

17. The Defendant was negligent, reckless, wanton, careless and grossly negligent at the time and place above mentioned in the following particulars:

- (a) in keeping, maintaining and harboring the cow with knowledge that it had a dangerous propensity to escape the pasture;
- (b) in failing to remove the cow from the premises or keep it fenced or penned up in such a way that it would not be dangerous to motorists;
- (c) in that Defendant knew or should have known that the cow had a dangerous propensity to escape and in fact, Defendant had actual knowledge that it had

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KEITHMARTINEQUIPMENT

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such a propensity and did nothing to prevent the cow from injuring motorists;

(d) in negligently and recklessly failing to keep the cow penned up, locked up, tied up or otherwise away from motorists on a public highway;

(e) in failing to use the degree of care and caution that a reasonably prudent owner, keeper, or harbinger would have used under the circumstances then and there prevailing;

(f) in failing to take corrective action or otherwise restrain the cow or keep it from escaping the pasture after being informed of its dangerous propensity in advance of July 24, 2008, all of which were the direct and proximate causes of the injuries and damages suffered by David.

PLAINTIFF WILLIAM DAVID FARROW, JR.'S SECOND CAUSE OF ACTION
(Violation of S.C. Code Ann. § 47-7-110)

18. The Plaintiffs incorporate herein their General Allegations and the allegations of their First Cause of Action not inconsistent with this cause of action.

19. The Defendant was negligent, reckless, wanton, careless and grossly negligent at the time and place above mentioned in the following particulars:

(a) in violation of the statutes and laws of the State of South Carolina and in direct violation of S.C. Code Ann. § 47-7-110 (Supp. 2007) by negligently permitting the above cow to run at large beyond the limits of his own land.

PLAINTIFF KAREN W. FARROW'S FIRST CAUSE OF ACTION
(Loss of Consortium)

20. The Plaintiffs incorporate herein their General Allegations and the allegations of their First and Second Causes of Action not inconsistent with this cause of action.

21. On July 24, 2008, David was driving a motorcycle which was

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KEITHMARTINEQUIPMENT

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traveling in a northerly direction on Dials Church Road when Defendant's cow suddenly entered the roadway causing a collision.

22. As a result of the collision, David suffered serious injuries resulting in loss of consortium to Karen.

23. The injuries and damages to Karen as a result of injuries inflicted upon David were proximately due to and caused by the negligence of the Defendant.

WHEREFORE, the Plaintiffs are informed and believe that they have suffered substantial injuries, some that may be permanent and that they are entitled to actual damages, punitive damages, costs of this action and such other and further relief as the trier of fact may deem just and proper. Plaintiffs are informed and believe they are entitled to punitive damages in a substantial amount by virtue of the knowing and reckless disregard of the safety of others and the statutory violation on the part of the Defendant above mentioned and his grossly negligent and reckless conduct, all in an appropriate amount.

Respectively submitted,

The Boggs Law Firm

Cameron G. Boggs, Esq.
Post Office Box 65
Greenville, SC 29602-0065
(864) 233-8066

ATTORNEY FOR THE PLAINTIFFS

Greenville, S.C.
December 12, 2008

CGB
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6. The Defendant denies the allegations of Paragraph Eight (8) of the Complaint and would defer to the common and statutory laws of the State of South Carolina with regard to any duties allegedly owed to the Plaintiffs.

7. Paragraph Nine (9) of the Complaint purports to set forth a legal conclusion, and as such, no response is required by the Defendant. However, to the extent Paragraph Nine (9) alleges wrongdoing, same is denied.

8. The Defendant denies the allegations contained in Paragraphs Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14) and Fifteen (15) of the Complaint.

9. As to the allegations contained in Paragraph Sixteen (16) of the Complaint, the Defendant incorporates the allegations contained in Paragraphs One (1) through Eight (8) of this Answer as if the same were set forth herein in the entirety.

10. The Defendant denies the allegations contained in Paragraph Seventeen (17) of the Complaint.

11. As to the allegations contained in Paragraph Eighteen (18) of the Complaint, the Defendant incorporates the allegations contained in Paragraphs One (1) through Ten (10) of this Answer as if the same were set forth herein in the entirety.

12. The Defendant denies the allegations contained in Paragraph Nineteen (19) of the Complaint.

13. As to the allegations contained in Paragraph Twenty (20) of the Complaint, the Defendant incorporates the allegations contained in Paragraphs One (1) through Twelve (12) of this Answer as if the same were set forth herein in the entirety.

14. The Defendant denies the allegations contained in Paragraphs Twenty One (21), Twenty Two (22) and Twenty Three (23) of the Complaint.

FOR A SECOND DEFENSE

15. Any injuries and damages sustained by the Plaintiffs as set forth in the Complaint, upon information and belief, were due to and caused by the sole negligence, recklessness, willfulness and wantonness of the Plaintiff, William David Farrow, Jr. in one or more of the following particulars:

- a. In failing to maintain a proper lookout;
- b. In failing to maintain proper control of his vehicle;
- c. In failing to maneuver his vehicle to avoid contact with any objects or animals in the roadway;
- d. In operating a vehicle with faulty equipment;
- e. In failing to use brakes properly;
- f. In driving at a speed that was too fast for conditions then and there existing;
- g. In failing to observe the road and traffic conditions then and there existing;
- h. In failing to exercise that degree of care and caution which a reasonable and prudent person would have exercised under the same or similar circumstances;
- i. In failing to take evasive action; and
- j. — In additional particulars that may be revealed during discovery and/or in the evidence at trial.

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

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

18. Even assuming the Defendant was careless, negligent, grossly negligent, willful, wanton or reckless in any respect, which is expressly denied, and even if any such conduct on his part operated as a greater than fifty (50%) cause of the accident and the Plaintiffs' resulting injuries and damages, if any, which is also expressly denied, the Defendant is entitled to a determination as to the percentage which the Plaintiffs' negligent, grossly negligent, reckless and willful conduct contributed to this accident and to a reduction of any amount awarded to them by an amount equal to the percentage of their own negligent, grossly negligent, reckless, willful and wanton conduct.

FOR A FIFTH DEFENSE

19. All risks and dangers, if any, connected with the accident referred to in the Complaint, were open, obvious and apparent and were known to or should have been known to the Plaintiffs, and the Plaintiffs were perfectly competent to judge the safety and risk arising out of or connected with operating a motorcycle, which risk was assumed and appreciated by the

Plaintiffs and for which the Defendant is not liable, and therefore, the Defendant affirmatively pleads assumption of the risk on the part of the Plaintiffs as a complete bar and defense to this action.

FOR A SIXTH DEFENSE

20. Any injury or damage sustained by the Plaintiffs as a result of the matter alleged in the Complaint, upon information and belief, could not be avoided, and the Defendant pleads an unavoidable accident as a complete bar and defense to this action.

FOR AN SEVENTH DEFENSE

21. Any injuries and damages sustained by the Plaintiffs arising out of the incident referred to in the Complaint, resulted solely, upon information and belief, from the sole acts and omissions of a third party, which sole acts or omissions or intervening acts or omissions were the proximate cause of any injuries or damages sustained by the Plaintiffs, and therefore the Defendant has no liability to the Plaintiffs, and the Complaint should be dismissed with prejudice.

FOR AN EIGHTH DEFENSE

22. The Defendant is informed and believes the Plaintiffs had the last clear chance to avoid the accident and therefore plead the last clear chance as a defense to the Plaintiffs' cause of action.

FOR A NINTH DEFENSE

23. The provisions of the United States and the South Carolina Constitutions bar any claim on behalf of the Plaintiffs' for punitive damages.

24. That Plaintiffs' claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3, of the South Carolina

Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

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

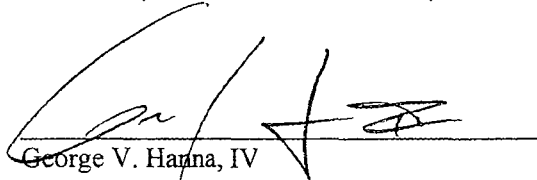
26. That the Plaintiffs' claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution, in that the amount of punitive damages is based upon the wealth of the Defendant.

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

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

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

BY:

A handwritten signature in black ink, appearing to read "George V. Hanna, IV", is written over a horizontal line.

George V. Hanna, IV
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(803) 758-6000
ATTORNEYS FOR DEFENDANT

January 21, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS) C/A NUMBER: 08-CP-30-1120

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

Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

PRETRIAL AGREEMENT

The Plaintiffs and the Defendant herein have fully investigated the facts and circumstances with reference to the personal injury claim arising out of an accident on July 24, 2008 and considering all the facts and circumstances of the case, both parties believe it would be in their best respective interests to enter into a proposed partial settlement ("high-low agreement") prior to the trial of this matter to partially settle Plaintiffs' claims.

The parties have negotiated a proposed high-low agreement in which said Defendant has agreed, regardless of the outcome of this case, to pay to Plaintiffs at least \$50,000.00 for a low and no more than \$750,000.00 as a high. The amount of this settlement is confidential and will not be disclosed to the jury. This agreement shall be incorporated into the final judgment of the Court and shall be enforceable by this Court. The parties believe the partial settlement is fair, reasonable, and request that the Court approve this agreement.

The parties fully understand that they have a legal right to try this lawsuit before a jury without any high-low partial settlement agreement, and that, in such event; the Plaintiff might recover an amount greater than \$750,000.00, or an amount less than \$50,000.00 or any amount in between. With the full understanding of their legal right to try this lawsuit without a high-low agreement, the parties wish to proceed to trial under the conditions set forth in this agreement.

I. Issues to be Submitted to the Jury or Decided by the Court

The parties agree that this agreement is a full settlement as to the issue of Plaintiffs' damages. Therefore, the parties agree that the only issues presented to the jury will be related to the issue of liability. The parties would waive reference to the special verdict form attached hereto as Exhibit 1 ("verdict form"), as to the specific liability issues that will be decided by the jury or determined by the Court on a dispositive motion.

The Parties agree to the following method of awarding damages based upon the jury's answers on the verdict form or upon the Court's determination of a dispositive motion:

1 

- 1) If the jury answers "NO" to question number 1, or the Court determines that no reasonable juror could answer "YES" to question number 1, the Plaintiffs will receive \$50,000.
- 2) If the jury answers "YES" to question number 1, but answers "NO" to question number 2, or the Court determines that no reasonable juror could answer "YES" to question number 2, the Plaintiffs will receive \$50,000.
- 3) If the jury answers "YES" to questions number 1 and 2, but "NO" to question number 3, or the Court reaches this result on the determination of a dispositive motion, the Plaintiffs will receive \$750,000.
- 4) If the jury answers "YES" to questions number 1, 2 and 3 and finds that the Plaintiff is 51% or more at fault, or the Court reaches this result on the determination of a dispositive motion, the Plaintiffs will receive \$50,000.
- 5) If the jury answers "YES" to questions number 1, 2 and 3 and finds that the Plaintiff is 50% or less at fault, or the Court reaches this result on the determination of a dispositive motion, the Plaintiffs will receive \$750,000 reduced by the percentage of the Plaintiffs fault as determined by the jury.

II. Evidence of Damages

Plaintiffs agree that either Plaintiffs or their counsel will read into the record the list of Plaintiff William Farrow's damages attached hereto as Exhibit 2 ("damage list"). Plaintiffs will be limited in their testimony to discussing only those items listed on the damage list. The Court shall instruct the jury that typically damages are determined by them, but in this case, in the event the jury determines the Defendant is at fault, the damages have been agreed upon by the parties. The Court shall not instruct the jury as to the consequences of their responses to any of the four questions on the verdict form.

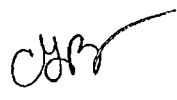
III. Payment

Payment to the Defendant will be made within fourteen days of the jury's verdict. Upon receipt of payment, Plaintiffs agree to execute a general release for any and all claims against the Defendant arising out of this action.

IV. Motions or Appeal

The parties retain the right to appeal and the right to make any and all other dispositive motion(s) and/or post trial motion(s) as they would otherwise be entitled to make. In the event of an appeal by the Defendant, Plaintiffs shall be paid the low within fourteen days of the verdict.

V. Mistrial

2.  

In the event of a mistrial or deadlock jury, this agreement shall remain in full effect and controlling in any subsequent trial.

VI. No Admission of Liability

It is further understood and agreed that the execution of this Agreement and the fulfillment of its terms, including the tendering of the payment set forth herein, is a compromise of a doubtful and disputed claim and is not to be construed as and does not constitute an admission of liability on the part of either party.

VII. Attorney fees and Costs

Each party shall bear their own attorney fees and costs for this action.

VII. No Presumption against Drafter

The parties acknowledge that this Agreement is the product of mutual negotiation and that, in the event of a dispute as to its meaning; there shall be no presumption against the drafter of the document or any provision herein.

VII. Governing Law

This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina, and any claims asserted under this Agreement shall be brought exclusively in the Eight Judicial Circuit of the Court of Common Pleas of the State of South Carolina.

VIII. Entire Agreement

This Agreement constitutes the complete agreement among the parties as to its subject matter and supersedes any preceding discussions or agreements on all or part of such subject matter. The parties specifically agree that the low is the low and that the high is the high and that no pre or post trial interest is to be considered or awarded. In addition, the parties agree that the previously filed offers of judgment are to be considered null and void and that neither party is eligible for costs or an award of interest pursuant to the offers of judgment, irrespective of the outcome at trial. Any representations or promises with respect to the subject matter of this Agreement and not specifically contained in this Agreement are not valid or binding on the parties. Each party represents and acknowledges that, in executing this Agreement, it has not and does not rely on any representation, statement, inducement, promise or warranty not contained in this Agreement. No parol evidence shall be offered or admitted to modify, construe or interpret this Agreement, which the parties agree is clear and unambiguous as to its terms. Any modification to the terms of this Agreement must be in a single writing signed by the parties.

IX. Counter Execution

This Agreement may be executed in multiple counterparts each of which shall be considered an original, but all of which together shall constitute one and the same instrument. The parties agree that their respective signatures will be effective and will have the same force and effect as an

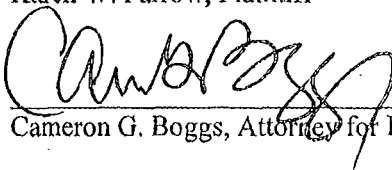
3.  

original, upon receipt of a facsimile copy of a party's signature to the Agreement by the attorneys for the other parties.

All of the parties who have signed this Agreement have: a) carefully read the entire Agreement, b) are of sound mind, c) have had this Agreement fully explained by the parties' attorney, d) fully understand its contents, e) entered into this Agreement voluntarily and with full authority, f) have not been pressured or coerced to enter into this Agreement, g) believe the terms of this Agreement to be fair and, h) will be bound by all of the terms of this Agreement.

For the Plaintiffs:

_____(Seal)
William David Farrow, Jr., Plaintiff

_____(Seal)
Karen W. Farrow, Plaintiff

Cameron G. Boggs, Attorney for Plaintiffs

For the Defendant:

_____(Seal)
J. Wayne Darby

American National Property and Casualty
Company (Seal)

By: _____

Its: _____

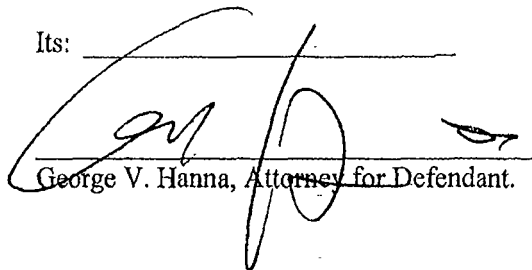

George V. Hanna, Attorney for Defendant.

EXHIBIT 1

CAB

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LAURENS) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
) C/A NUMBER: 08-CP-30-1120

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

Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

SPECIAL VERDICT FORM

1: 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?

NO _____ If "No", STOP and deliberate no further.

YES _____ If "Yes", go on to Question No. 2.

2: Do you find that the Defendant, Jerry Darby was negligent, and that such negligence proximately caused the Plaintiffs' injuries?

NO _____ If "No", STOP and deliberate no further.

YES _____ If "Yes", go to Question No. 3.

3. Do you find that the Plaintiff, William David Farrow, was also negligent and that his own negligence proximately caused his own injuries.

NO _____ If "No", STOP and deliberate no further.

YES _____ If "Yes", go to Question No. 4.

CYB

G241

4. If you have answered "Yes" to the previous 3 questions, then you are to answer this question:

In causing the accident, what percentage of negligence was attributable to Defendant Jerry W. Darby and what percentage was attributable to Plaintiff William David Farrow? (This percentage must add up to 100%)

Defendant Jerry W. Darby: _____%

Plaintiff William David Farrow: _____%

DATE

JURY FOREPERSON

CHB CH

EXHIBIT 2

CHB

Gm

1. On July 24, 2008 the plaintiff was transported to a hospital from the scene of the accident for treatment of his injuries.
2. The plaintiff was hospitalized due to these injuries.
3. While hospitalized Plaintiff was diagnosed with and underwent treatment for a right tibial fracture, a cracked sinus cavity and a closed head injury (concussion) and symptoms of vertigo.
4. After his discharge from the hospital, Plaintiff was treated for back pain, neck pain, post concussion syndrome, and right leg pain.
5. Plaintiff has now reached maximum medical improvement but has residual complaint from his injuries.
6. Mrs. Farrow believes she has had a loss of consortium since the accident, since her husband was unable to provide the services, companionship, love and affection enjoyed before the accident. This encompasses many items, not limited to their social life, services rendered in supervising the household and change in the number and frequency of acts of affection, love and sexual intercourse.

CYB

Gum

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS) C/A NUMBER: 08-CP-30-1120

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

Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

DEFENDANT'S MOTION IN LIMINE

LAUREN COUNTY
CLERK OF COURT

2011 JAN 27 A 8:24

LYNN W. LANCASTER

PLEASE TAKE NOTICE that the Defendant, Jerry W. Darby, by and through his undersigned attorneys, will argue before the Presiding Judge of the Court of Common Pleas, Eighth Judicial Circuit, at a time and place to be designated by the Court for an order determining that the following evidence is not admissible on the following grounds and therefore may not be offered or referred to during trial of this matter:

1. Testimony from purported expert witness, Michael Worrell, PHD should be excluded on grounds that he is not competent to testify as an expert.

2. Testimony from any witness which relates to prior or subsequent incidents of stray cattle at or near the intersection of the accident should be excluded as irrelevant, or if relevant, should be excluded on grounds of prejudice, confusion, or waste of time.

3. Testimony from Edward F. Blackburn and photographs purportedly taken by Blackburn in April or May of 2010 should be excluded as irrelevant, or if relevant, should be excluded on grounds of prejudice, confusion, or waste of time. Furthermore, much of Blackburn's testimony should be excluded as improper hearsay evidence.

4. Records of 911 calls made to report cows loose in the area should be excluded on the basis that they are improper hearsay evidence and on grounds that the records are irrelevant, or if relevant, should be excluded on grounds of prejudice, confusion, or waste of time.

5. Testimony from Teula Chapman and photographs taken on August 6, 2008, should be excluded on grounds that this evidence is irrelevant, or if relevant, should be excluded on grounds of prejudice, confusion, or waste of time.

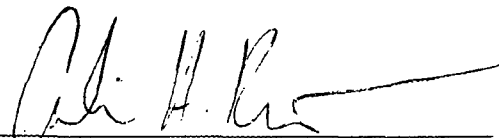
6. Lay testimony regarding opinions of electric fences should be excluded under Rule 701, SCRE.

7. Gerald McDevitt's opinion regarding the issues of contributory negligence and comparative negligence is not relevant because it is based on an assumption that is in direct contradiction to the Plaintiff's own assertion regarding the time and light conditions when the accident occurred.

This Motion is further based upon the pleadings, the discovery responses of the parties, the depositions taken in this case, and a Memorandum of Law to be filed subsequently.

Respectfully submitted,

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

BY: 

George V. Hanna, IV
Caroline H. Raines
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
ATTORNEYS FOR DEFENDANT

January 25, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	THE EIGHTH JUDICIAL CIRCUIT
William D. Farrow, Jr. and Karen W. Farrow,	)	
Plaintiffs,	)	CASE NO: 2008-CP-30-1120
vs.	)	PLAINTIFFS' REPLY AND
	)	MEMORANDUM OF LAW IN OPPOSITION
Jerry W. Darby,	)	TO DEFENDANT'S MOTION IN LIMINE
Defendant.	)	

FACTS AND PROCEDURAL BACKGROUND

On the evening of July 24, 2008, Plaintiff William D. (David) Farrow, Jr. was operating a motorcycle northbound on Dial's Church Road in Gray Court, South Carolina. As Farrow drove past a pasture containing Defendant's cows, he collided with a cow in the roadway. The first responders to the accident were from the Greenpond Volunteer Fire Department. Greenpond received the call from Laurens 911 at 8:50 pm and arrived on the scene at 9:02 pm. Based on the seriousness of Farrow's injuries, a Medtrans helicopter was requested and Farrow was airlifted to Greenville Memorial Hospital.

On December 19, 2008, the Plaintiffs filed a Complaint alleging that the Defendant was negligent and in violation of S.C. Code Ann. § 47-7-110 and Defendant timely filed an Answer. Defendants subsequently filed for Summary Judgment based on no issues of material facts which was denied by the Court. On January 25, 2011, Defendant filed a Motion in Limine asking the Court to determine the admissibility of evidence on seven issues.

DISCUSSION

I. Standard of Review

The admission of evidence is within the sound discretion of the trial judge. Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 480, 623 S.E.2d 373, 375 (2005). A motion in limine may be used in civil matters “to gain a ruling excluding evidence which is irrelevant.” 75 Am. Jur. 2d Trials § 102 (Supp. 2005).

II. Dr. Michael Worrell is Qualified to Testify as an Expert Witness in the Field of Animal Science.

The test for qualification of an expert is a relative one that is dependent on the particular witness’s reference to the subject. Lee v. Seuss, 318 S.C. 283, 457 S.E.2d 344 (1995). Dr. Worrell has a PhD in Animal Science with a specialty in Ruminant Nutrition for animals such as cows. For over fifteen years Dr. Worrell has taught Animal Science for Clemson University. In addition, he has over fifty years of experience with livestock. See Affidavit of Dr. Worrell.

Here, the Plaintiff claims that the Defendant was negligent. In order to prove negligence, the Plaintiff must show that his injury was foreseeable and occurred as a natural and probable consequence of the Defendant’s negligence. Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil*, 2009, § 20-2. Dr. Worrell will testify that the Defendant breached the standard of care of a reasonable cattleman and it was foreseeable that one of the Defendant’s cows would escape and cause injury. The standard of care of a reasonable cattleman is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. Rule 702, SCRE.

Furthermore, the Defendant has raised the defense of comparative negligence. Dr. Worrell will testify as to the natural and normal behavior of a bovine when it escapes from the herd and encounters a motorized vehicle such as a motorcycle. Dr. Worrell is eminently

qualified by virtue of his education, knowledge, and experience to testify as an expert in the field of Animal Science. Since his testimony is relevant to this case, his testimony as an expert is admissible evidence.

III. Testimony as to Prior or Subsequent Incidents of Stray Cattle are Admissible Evidence.

Evidence of similar acts is admissible in South Carolina where there is some special relation between them which would tend to prove or disprove some fact in dispute. JKT Company, Inc. v. Hardwick, 274 S. C. 413, 265 S.E.2d 510 (1980). "It is simply a rule of relevance, logic, and common sense." Brewer v. Morris, 269 S. C. 607, 239 S. E. (2d) 318 (1977).

Here, the fact in dispute is the negligence of the Defendant in permitting the cow involved in the accident to run at large beyond the limits of his own land. In Reed, the South Carolina Supreme Court held that evidence the horses involved in an automobile accident had escaped on five previous occasions was properly admitted. Reed v. Clark, 277 S.C. 310, 286 S.E.2d 384 (S.C. 1982). The Reed decision is directly on point and the evidence of prior or subsequent escapes of cattle is relevant admissible evidence.

Defendant argues that the evidence should be excluded since (a) that there is no evidence that the particular cow involved in the accident had a propensity to escape and the evidence of previous escapes does not create an issue of fact as to Defendant's negligence; (b) that just because the stray cattle were adjacent to Defendant's pasture or that he was seen herding them back into his pasture is no proof that the cattle were his; and (c) that the previous sightings are too remote in time.

(a) Evidence of Prior Escapes is Admissible Even Where the Escape Does Not Involve the Same Animal and Prior Escapes are Relevant to Show Negligence.

The South Carolina Court of Appeals addressed these exact same issues in Oconee Roller Mills, Inc. v. Spitzer, 300 S.C. 358, 387 S.E.2d 718 (Ct. App. 1990). That Court held evidence a cow owner's cows had escaped from his farm was relevant on issue of owner's negligence in guarding his cows and was thus admissible in negligence action brought by truck driver and truck owner for personal injury and property loss arising out of cow-truck collision, regardless of whether prior incident involved same cow. Therefore, based on the applicable case law, Defendant's argument is without merit and the evidence is admissible.

(b) Evidence That the Stray Cattle Were Adjacent to Defendant's Pasture is Sufficient Evidence for a Reasonable Juror to Conclude that the Cattle Were the Defendant's, Therefore the Evidence is Admissible.

Defendant argues that the evidence of prior stray cattle should be excluded because the witnesses cannot say with certainty that the cattle belonged to the Defendant. There are two types of evidence that are admissible in a trial, direct evidence and circumstantial evidence. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000). The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. State v. Needs, 333 S.C. 134, 156 n.13, 508 S.E.2d 857, 86 n.13 (1998).

Here, Defendant admits that he is the only party that keeps cows on either side of Dials Church Road. *Deposition of Jerry Wayne Darby, May 1, 2009, p. 44*. Defendant further admits that cattle will usually stay close when they get out. *Deposition of Jerry Wayne Darby, p. 58*. Mr. Harrison testified that he had lived in the area for fifty five years and that the Defendant was the only one with cattle in the immediate area. *Deposition of John William Harrison, May 1, 2009, p. 8*. Dr. Worrell will testify that the natural and normal behavior of a bovine when it escapes from the pasture is to stay close and return to its pasture.

Cattle do not come with the name of their owner painted on their side. The evidence of the stray cattle immediately adjacent to the Defendant's pastures is at least some competent evidence that the cattle are his. Because the Defendant is the only owner of cows in the immediate area and because he has been seen herding stray cows back into his pasture, there is sufficient evidence for a reasonable juror to infer that the stray cattle in the previous escapes belonged to the Defendant. Therefore, the evidence of the prior escapes is relevant circumstantial evidence and admissible as such.

(c) The Previous Sightings of Stray Cattle are Close in Time to the Accident and are Admissible.

"Proof of the existence of other facts, the occurrence of other events, and acts or conduct upon other occasions which have a relevant and material bearing upon a fact in issue before the Court are always admissible in evidence, except as its admissibility may be affected by some of the exclusionary rules of evidence." Citizens Bank of Darlington v. McDonald, 202 S.C. 244, 24 S.E.2d 369 (S.C. 1943) (citing 20 Am.Jur., 281, paragraph 303).

The Defendant testified that he had a bovine escape the day before the accident. *Deposition of Jerry Wayne Darby*, p. 97. Malinda Griffin testified that she observed stray cows on Dial's Church Road on July 11, 2008, only thirteen days prior to the accident. *Deposition of Malinda Griffin*, Feb. 16, 2010, p. 11. The defendant testified that he had another bovine escape six months prior to the accident. *Deposition of Jerry Wayne Darby*, p. 48. Niles Wood testified that he saw the Defendant's cows out of the pasture once or twice a year. *Deposition of Niles Wood*, March 8, 2010, p. 13. Harrison testified that he had seen the Defendant's cows out on Dial's Church Road in the vicinity of the accident "every once in awhile". *Deposition of John William Harrison*, p. 8.

Contrary to the Defendant's argument, there are numerous sightings of stray cattle that

are not too remote in time and the evidence is directly relevant to the issues of notice and negligence. Therefore the evidence of previous sights of stray cattle is relevant and admissible.

IV. Blackburn's Testimony as to the Condition of the Defendant's Fencing is Admissible Evidence.

Here, the Defendant admits that when a cow gets out and into a road it could be dangerous and that he has a duty to keep them in. *Deposition of Jerry Wayne Darby*, p. 79. The Defendant testified that he monitored the pasture's electric fencing and often checked it with a tester to determine the voltage, sometimes two or three times a week. *Deposition of Jerry Wayne Darby*, p. 92.

The practice the Defendant follows in maintaining his fences is a material issue of fact. Contradictory evidence to a material issue of fact is relevant and admissible even if it involves solely the credibility of the witness. *Halloran v. Virginia Chemicals Inc.*, 393 N.Y.S.2d 341, 347 (1977). Therefore, the testimony of Blackburn is admissible evidence as rebuttal evidence.

V. Records of 911 Calls are Not Hearsay.

Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth the activities of the office or agency are not excluded by the hearsay rule. Rule 803(8), SCRE. Furthermore, hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801, SCRE. Where a statement is not offered to prove truth of matter asserted but solely to prove notice, which is a state of mind, the hearsay rule does not apply. *Hawkins v. Pathology Assocs.*, 330 S.C. 92, 498 S.E.2d 395 (Ct.App.1998) (allowing admission of letters, an anniversary card, and video).

Here, the 911 records are admissible as a public record. They are also admissible since they are being offered not to prove that the Defendant had stray cattle on a particular date but that the Defendant or his agents were put on notice of stray cattle.

VI. The Testimony from Teula Chapman and Photographs are Admissible.

Records of regularly conducted activity such as a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity are not excluded by the hearsay rule. Rule 803(6), SCRE. "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina." Rule 803(6), SCRE.

On August 6, 2008, approximately two weeks after the accident, Ms. Chapman met with the Defendant and took pictures of the accident scene, the fencing, the pasture and the Defendant's cattle. Defendant admits that he discussed the accident with Ms. Chapman and was present when the pictures were taken and confirms that the pictures were of his cattle that were present in the pasture at the time of the accident. *Deposition of Jerry Wayne Darby, p. 87.*

Plaintiffs allege that the cow involved in the accident belonged to the Defendant and that he was negligent in the care of his cattle. Defendant has denied that the cow was his or that he was negligent. Pictures of the accident scene, the fencing, the pasture and the Defendant's cattle are relevant to show the type of cattle in the pasture, the condition of the Defendant's fencing and pasture at a time close to the date of the accident. The testimony of Teula Chapman is admissible as relevant evidence and the pictures are admissible as records kept in the regular course of business.

VII. Lay Testimony Regarding Electric Fencing is Admissible.

"Lay witnesses are permitted to offer testimony in the form of opinions or inferences if the opinions or inferences are rationally based on the witness' perception, and will aid the fact-finder in understanding testimony, and do not require special knowledge." State v. Douglas, 380 S.C. 499, 502, 671 S.E.2d 606, 608 (2009).

Here, the witnesses are testifying from their own perception and experience with electric fences. The properties of electricity are within the knowledge of the average layperson and the testimony will be based on the witnesses' personal observations.

VIII. Gerald McDevitt is an Expert in Motorcycle Safety and His Opinion is Relevant Evidence.

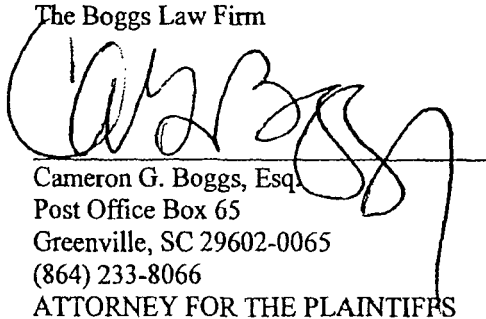
Defendant mischaracterizes the testimony of the Plaintiff as to the time of the accident. When asked about the accident, the Plaintiff stated that he couldn't say a specific time. *Deposition of William David Farrow, Jr., August 21, 2009, p. 38.* Defendant also incorrectly states that 8:00 p.m. is the time the accident was called in. According to the 911 report, the accident was reported to Laurens County by Rebecca Willis at 8:49 p.m. *Laurens County 911 report of July 24, 2008.* The Plaintiff and his motorcycle were in the roadway and easily visible to any passing motorist. The best evidence of the time of the accident is the actual time the accident was reported. The Defendant did not ask Mr. McDevitt whether his opinion would change if the accident happened at 7:00 o'clock instead of 8:00 o'clock. Since there is no evidence that his opinion would change even if the accident occurred earlier, his testimony is admissible.

CONCLUSION

Defendant's Motion in Limine should be denied in its entirety since the evidence proffered by the Plaintiff is relevant since it tends to establish and make more probable the matter in controversy. Defendant has failed to show that any prejudice to the Defendant outweighs the probative value of the evidence. In addition, the Defendant has failed to show how the evidence would confuse the jury or be a waste of time.

Respectfully submitted,

The Boggs Law Firm

A large, stylized handwritten signature in black ink, appearing to read 'C. Boggs', is written over a horizontal line.

Cameron G. Boggs, Esq.
Post Office Box 65
Greenville, SC 29602-0065
(864) 233-8066
ATTORNEY FOR THE PLAINTIFFS

Greenville, S.C.
January 28, 2011

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS) EIGHTH JUDICIAL CIRCUIT
C/A NUMBER: 08-CP-30-1120
2011 FEB 17 P 3:30

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

Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

LAURENS COUNTY
CLERK OF COURT
**DEFENDANT'S POST TRIAL
MOTIONS**

PLEASE TAKE NOTICE that the Defendant, Jerry W. Darby, by and through his undersigned attorneys, will move before the Presiding Judge of the Court of Common Pleas, Eighth Judicial Circuit, on the tenth (10th) day after service hereof or at such time and place as is convenient to the Court and counsel for an Order granting this Defendant's Post Trial Motions, the Defendant hereby makes the following motions:

1. Motion for Judgment Notwithstanding the Verdict pursuant to Rule 50 on the same grounds as previously advanced at trial;
2. Motion for a New Trial pursuant to Rule 59 on the grounds that the verdict is against the greater weight of the evidence;
3. Motion for a New Trial pursuant to Rule 59 on the grounds that the verdict is against the applicable law;
4. Motion for a New Trial pursuant to Rule 59 on the grounds that the verdict is against the weight of the evidence and the applicable law;
5. Motion for a New Trial pursuant to Rule 59 on the grounds that the court erred in the admission of evidence which was prejudicial and more than harmless error. Specifically, the court allowed evidence that did not bear a special relation to a fact in dispute because the testimony proved absolutely nothing about a particular cow's propensity to escape or a theory as to what Darby did or failed to do on the date in question that could have caused a cow of his to escape. Witnesses with testimony of this type include, but are not limited to: Malinda Griffen, Richard Marshall, Niles Wood, Thomas Graham, Harry Hays, John William Harrison and Jimmie Miller. The evidence in question from these

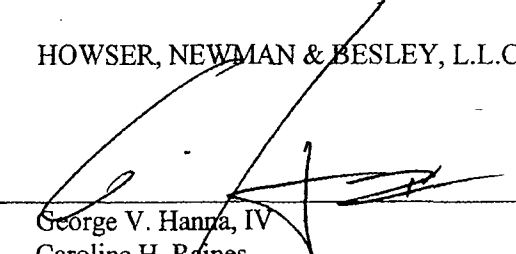
witnesses includes, but is not limited to: incidents of prior stray cattle sightings at the Cooley Road Pasture, incidents of prior stray cattle sightings at the Burdette Road Pasture, evidence related to alleged poor fencing conditions at the Burdette Road Pasture, evidence related to alleged poor herding techniques, lay opinion evidence related to the frequency with which Darby's cows escape.

6. Motion for a New Trial pursuant to Rule 59 on the grounds that the court erred in the exclusion of evidence which was prejudicial and more than harmless error. Specifically, the court failed to allow into evidence testimony related to cattle straying from neighboring farmers pastures.

This motion is further based upon the evidence at trial, the arguments of counsel at trial, the memorandum in support of the Defendant's Motion in Limine, and arguments at the hearing on Defendant's Motion in Limine.

Respectfully submitted,

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

BY: 

George V. Hanna, IV
Caroline H. Raines
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
ATTORNEYS FOR DEFENDANT

February 16, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	THE EIGHTH JUDICIAL CIRCUIT
	)	
William D. Farrow, Jr. and	)	
Karen W. Farrow,	)	
	)	
Plaintiffs,	)	CASE NO: 2008-CP-30-1120
	)	
vs.	)	
	)	
Jerry W. Darby,	)	RETURN IN OPPOSITION TO
	)	DEFENDANT'S POST TRIAL MOTIONS
Defendant.	)	
	)	

Plaintiffs, William D. Farrow, Jr. and Karen W. Farrow, by and through their attorney, respond to the Defendant's Post Trial Motions and respectfully request that the Court deny the Defendant's motions in their entirety.

I. Defendant's First Motion for Judgment Notwithstanding the Verdict Should be Denied.

In ruling on motions for JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *Strange v. South Carolina Dep't of Highways and Pub. Transp.*, 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (S.C. 1994). The motion should be denied where either the evidence yields more than one inference or its inference is in doubt. *Id.*

Plaintiffs, in their case in chief, presented sufficient physical and eyewitness testimony for the jury to find that the cow involved in the accident belonged to the Defendant. Plaintiffs also presented sufficient eyewitness and expert testimony whereby the jury could find the Defendant negligent in tending to and guarding his cattle. Here, the Plaintiffs met their burden of proof and the jury verdict was not in error. Therefore, Defendant's Motion for JNOV should be denied.

II. Defendant's Second Motion for a New Trial on the Grounds that the Verdict is against the Greater Weight of the Evidence Should be Denied.

The thirteenth juror doctrine is a vehicle by which the trial court may grant a new trial absolute when he finds that the evidence does not justify the verdict. This ruling has also been termed granting a new trial upon the facts. *Youmans ex rel. Elmore v. South Carolina Dept. of Transp.*, 380 S.C. 263, 670 S.E.2d 1 (Ct. App. 2008). When considering the sufficiency of the evidence, "the facts and circumstances shown should be reckoned with in the light of ordinary experience and such conclusions deduced therefrom as common sense dictates." *Leek v. New South Express Lines*, 192 S.C. 527, 7, S.E.2d 459, 462 (S.C. 1940).

The judge, sitting as the thirteenth juror, is able to assess the credibility of the witnesses and the sufficiency of the evidence. Here, the Defense's case was based on the claim by the Defendant that none of his cows were injured and that he properly cared for his cattle. As to the first issue, Defendant maintained throughout discovery and in his sworn trial testimony that he had not sold any cattle in the month following the accident. However, Plaintiffs produced uncontroverted evidence that the Defendant did sell cattle only four days after the accident.

As to the second issue, Defendant testified that he inspected and maintained his fences. He also testified that he fed his cattle every other day. Plaintiffs produced evidence that the Defendant did not properly maintain his fences, albeit at another location. Plaintiffs' expert testified that the amount of feed being provided to Defendant's cattle, based on being fed every other day, was insufficient considering the number of cows and the condition of the pasture. Furthermore, Plaintiffs' expert testified that the Defendant was careless in caring for and guarding his cattle. On cross-examination, the Defendant admitted that it had actually been three days since he fed the cattle. Most importantly, Defendant stated that his own, entire testimony could not be relied upon.

The Court properly charged the jury, both generally and specifically after a question, as to the Plaintiff's burden of proof by the preponderance of the evidence. There is no indication of confusion on the part of the jury as to the burden of proof or the sufficiency of the evidence. There is also no indication that they were unable to properly assess the credibility of the witnesses. Therefore, Defendant's Motion for a New Trial should be denied.

III. Defendant's Third Motion for a New Trial on the Grounds that the Verdict is Against the Applicable Law Should be Denied.

The South Carolina Court of Appeals addressed a similar case in *Oconee Roller Mills, Inc. v. Spitzer*, 300 S.C. 358, 387 S.E.2d 718 (Ct. App. 1990). That Court held evidence a cow owner's cows had previously escaped from his farm was relevant on issue of owner's negligence in guarding his cows and was thus admissible in negligence action brought by truck driver and truck owner for personal injury and property loss arising out of cow-truck collision, regardless of whether prior incident involved same cow.

In *Reed*, the South Carolina Supreme Court held that evidence of a prior escape, even if that escape was from a different pasture, was relevant in determining the negligence of the owner. *Reed v. Clark*, 277 S.C. 310, 286 S.E.2d 384 (S.C. 1982). Therefore, based on the applicable case law, Defendant's argument for a new trial is without merit and the Defendant's Third Motion for a New Trial should be denied.

IV. Defendant's Fourth Motion for a New Trial on the Grounds that the Verdict is Against the Weight of the Evidence and the Applicable Law Should be Denied.

Defendant's Fourth Motion for a New Trial should be denied for the reasons set forth in I, II and III, *supra*.

V. Defendant's Fifth Motion for a New Trial on the Grounds that the Court Erred in the Admission of Evidence Which was Prejudicial Should be Denied.

Evidence of similar acts is admissible in South Carolina where there is some special

relation between them which would tend to prove or disprove some fact in dispute. *JKT Company, Inc. v. Hardwick*, 274 S. C. 413, 265 S.E.2d 510 (S.C. 1980). "It is simply a rule of relevance, logic, and common sense." *Brewer v. Morris*, 269 S. C. 607, 239 S. E. (2d) 318 (S.C. 1977).

Here, under the cloak of prejudice, the Defendant is arguing that the Court should not have admitted circumstantial evidence in order to prove negligence on the part of the Defendant. However, the case law in this state makes it clear that negligence may be established by circumstantial evidence. *Thornton v. Seaboard Air Line Ry. Co.*, 98 S.C. 348, 82 S.E. 433 (S.C. 1914) (It is not necessary that the evidence should bear directly upon the issue. It is admissible if it tends to prove the issue, or constitutes a link in the chain of proof, although alone it might not justify a verdict in accordance with it.); *see also, Watson v. Cox Bros. Lumber Co.*, 203 S.C. 125, 26 S.E.2d 401 (S.C. 1954) (Negligence may be established by circumstantial evidence as well as by positive evidence).

The admission of evidence of Defendant's prior acts was proper. Therefore, the Defendants Fifth Motion for a New Trial should be denied.

VI. Defendant's Sixth Motion for a New Trial on the Grounds that the Court Erred in the Exclusion of Evidence Which was Prejudicial Should be Denied.

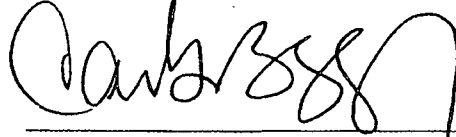
The Defense made a Motion in Limine to exclude certain evidence as to the straying of cattle. The Court granted that motion to the extent that any such evidence would be limited to one year prior to the accident. In its case in chief, the Defense did not offer any testimony as to the straying of cattle from neighboring farmer's pastures within the prior year. It appears that the Defense is objecting to its own Motion in Limine. Therefore, Defendant's Sixth Motion for a New Trial should be denied.

Conclusion

The Defendant is attempting to circumvent the jury process by arguing that the factual determinations should be decided by the Court. Arguably, all of the above motions and motions in limine were waived by Defendant's failure to object to Plaintiff's Request to Admit, number 4 (see attached), wherein Defendant admitted that from 2006-2010, there were calls received about stray cows. Defendant's admissions were made a part of the court record. With said admission and failure to restrict any time period, it is inferable that Defendant opened the door to discussion of any events during that time period and thus, is barred from complaining about any alleged prejudice for a certain time period, even though this Court restricted the time to the year preceding the accident. For whatever reason available to the Court, all of the Defendant's Post Trial Motions should be denied and the jury verdict upheld.

Respectively submitted,

The Boggs Law Firm LLC



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ATTORNEY FOR THE PLAINTIFFS

Greenville, S.C.
February 16, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	EIGHTH JUDICIAL CIRCUIT
COUNTY OF LAURENS	)	C/A NUMBER: 08-CP-30-1120

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

Plaintiffs,

vs.

Jerry W. Darby,

Defendant.

**DEFENDANT'S ANSWERS TO
PLAINTIFFS' REQUESTS FOR
ADMISSION TO DEFENDANT**

**TO: CAMERON G. BOGGS, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS, AND
THE PLAINTIFFS:**

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Defendant, above-named,
responds to the Request to Admit by the Plaintiff dated March 31, 2010,

REQUEST 1: Admit that the Defendant leased the property adjacent to the Plaintiff's
accident adjacent to Dials Church Road, near the town of Gray Court in the County of
Laurens, South Carolina.

RESPONSE: Admit.

REQUEST 2: Admit that the Defendant owned cattle kept in the pasture adjacent to
the scene of the accident.

RESPONSE: Admit

REQUEST 3: Admit that the Plaintiff had a collision with a cow on July 24, 2008.

RESPONSE: Defendant does not have sufficient information to admit or deny this request
because no cow or other kind of animal was discovered at the scene of the accident.

REQUEST 4: Admit that the Defendant, and/or his Mother or Father, have received
numerous phone calls from Laurens County 911 services concerning their cattle being loose
during each of the calendar years 2006-2010.

RESPONSE: Defendant cannot admit or deny what phones calls may or not have been
received by either of his parents. However, Defendant does admit that he has received calls
regarding loose cattle from time to time over the years. He denies that the cattle that were out were

always his.

REQUEST 5: Admit that the Defendant's mother received a call from Laurens County 911 on July 7, 2008 concerning three (3) black cows in the road on Dials Church Road.

RESPONSE: Defendant cannot admit or deny what phones calls may or not have been received by either of his parents.

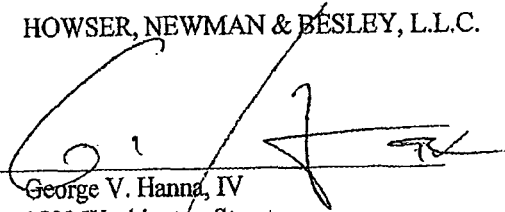
REQUEST 6: Admit that maintenance of the fences in his owned and leased pastures are Defendant's sole responsibility

RESPONSE: Admit.

REQUEST 7: Admit that a fence was found damaged following the accident.

RESPONSE: Denied.

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

BY: 

George V. Hanna, IV
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000
ATTORNEYS FOR DEFENDANT

April 10, 2010

Rec'd 7-5-11

1 State of South Carolina)
2 County of Laurens) Court of Common Pleas
3) 2008-CP-30-1120
4 William D. Farrow, Jr, and)
5 Karen W. Farrow)
6 vs.) Transcript of Record
7 Jerry W. Darby,)
8 Defendant)

9
10 January 28, 2011
11 Laurens, South Carolina
12

13 B E F O R E: -
14 Honorable Eugene C. Griffith, Jr., JUDGE.
15

16 A P P E A R A N C E S:
17
18 Cameron Boggs, Esq.
19 Attorney for the Plaintiff
20
21 George V. Hanna, IV, Esq.
22 Attorney for the Defendant.
23

24 Joy E. Holston
25 Official Court Reporter

1 THE COURT: All right, who wants to go first.

2 MR. BOGGS: This is Mr. Hannah's motion but I am
3 ready.

4 MR. HANNAH: I am ready too, Your Honor. Are you
5 ready for us.

6 THE COURT: Go ahead.

7 MR. HANNAH: Just for the record, my name is George
8 Hannah, sitting next to me is Carrie Raines, we are both
9 the attorneys for the defendant, Jerry W. Darby in this
10 case. I want to start with, just kind of mention, you may
11 or may not recall us, I think it was this very same
12 courtroom we had a summary judgment motion a while back.
13 And the end of it you said this was a really interesting
14 case, you hope we couldn't settle so that we can try it.
15 You got your wish, Judge, we are here and it will be fun
16 no matter what happens.

17 THE COURT: How long ago was that motion, six or
18 eight months ago.

19 MR. HANNAH: I don't remember, it was close to a year
20 ago, I think. Sometime ago, you had a different law clerk
21 then, I do recall that. Other than that I really don't
22 remember. I had filed a motion in limine in this case and
23 the purpose in it is to try to void with every single
24 witness in the case, basically having to send the jury out
25 and argue about what they say or can't say before they get

1 on the stand. Okay. As you may recall, this is the case,
2 involves allegation of a motorcycle which impacted with an
3 animal which was allegedly a cow. And it is alleged to
4 have belonged to my client who has a pasture next to it.

5 THE COURT: It is a cow, isn't it?

6 MR. HANNAH: There is hair found, no one has ever
7 identified the cow in the incident. Okay. That is
8 undisputed fact that no one can say what cow it was or
9 where it came from or anything like that. Okay.

10 THE COURT: But it is a cow, isn't it?

11 MR. HANNAH: Again, that is their burden of proof,
12 Your Honor, an alleged cow. I will submit there will be
13 evidence, forensic evidence saying there were cow hairs on
14 the bike and people saying there was cow feces and that
15 kind of stuff. Again, most likely was. I can't just
16 admit that it was, okay. Be that as it may, what we have
17 got here is we have basically taken some twenty-five
18 depositions in this case. Okay. All of which are random
19 folks that live up and down the road and around the area
20 in which this accident occurred. Okay. And each one of
21 these people have testified to various cow sitings and
22 there are kinds of different stuff that have testified to.
23 And I think where we want to really start here, without
24 going from witness to witness, I think we are seeking
25 broad categories in the types of testimony that the

1 witnesses may offer and basically we were hoping to get
2 today's preliminary ruling from you as to what you think
3 about that kind of evidence such that certain witnesses
4 can be limited all together or certain categories of what
5 these people may say will be eliminated. And quite
6 frankly my motion is written in the broadest possible way
7 because I don't know what the plaintiff's intend to try to
8 put up. All I know is the kind of stuff I heard witnesses
9 say. Okay. And basically what we are dealing with here
10 is evidence that at other times that cows were out. And
11 there are two cases that South Carolina appellate courts
12 have ruled on which I believe are instructive to this and
13 that is where I think we need to start. Okay. There are
14 two cases out there that talk about stray animal sitings
15 and whether or not they are admissible and the parameters
16 upon which that the admissibility was found. Okay. The
17 first case is the case of Reed versus Clark and again I
18 have handed up copies through your, to your law clerk, one
19 for each of y'all. That is a 1982 case. That case
20 involves horses escaping. And the second case is called
21 Ocone Roller Mills versus Spitzer and that one involves a
22 cow, they both involve stray domesticated animals. The
23 Clark Case, like I said, I am going to talk about what is
24 common in both cases. Okay. In both cases one thing that
25 is common is that they, the issue of whose animal it was,

1 not an issue. That is critical, okay, in other words the
2 farmer in both cases showed up and said that is my horse
3 or he showed up and said that was my cow. It was a dead
4 cow, injured animal at the scene, everybody, that was not
5 an issue. Okay. So, the issue in the case was whether or
6 not the farmer was negligent in letting the animal out of
7 his enclosures. That was the issue in both cases. In the
8 Clark case which was is the horse case, the evidence that
9 was let in, okay, involves evidence that the same exact
10 horse that was involved in the accident had been out on at
11 least five other occasions. He had been out of different
12 pastures, different places and the farmer in that case
13 argued was a different pasture, you can't let it in, this
14 and that is different. The bottom line was that it was
15 the same cow, excuse me, the same horse. Therefore the
16 Court held and what the case is saying is that the
17 evidence of these previous times are admissible if there
18 is a quote, "special relationship between the incident
19 that happened", you know, plus whatever the other incident
20 is. In that case the special relationship was the fact
21 that the same exact horse had been getting out in various
22 places. Okay. Therefore it was probative of the
23 propensity of this particular animal to escape, okay. And
24 the fact that it was a different fence or a different
25 field or whatever, that didn't matter because the issue

1 they were arguing was that this particular horse liked to
2 get out and the farmer should have been on notice about
3 that. And also in that case, in both cases there was a
4 and this is even I think even more critical because in
5 this case it was admitted that we don't know what cow it
6 is so it would be impossible to argue that some specific
7 cow had a propensity. Okay. I think that is universally
8 acknowledged. The more important aspect though is in each
9 case they had a specific theory upon which they tried the
10 case as to how the cow or horse got out. And in the Reed
11 case there was a trampled fence that was found. And it
12 was apparently right next to the road and they knew that
13 this particular horse liked to get out, hung out there a
14 lot and the farmer should have been on notice that his
15 fence was weak in this particular area and this horse was
16 likely to get out. Now, in the Oconee Mills case what
17 happened is is that the theory upon which the plaintiff
18 tried the case is they had something called a cattle bar
19 and I don't know if you are familiar with that term but it
20 is basically a thing on the, it would be on the ground--

21 THE COURT: I am familiar with that.

22 MR. HANNAH: I won't get into that then. And the
23 theory upon which the case was tried was that the cattle
24 bar was deficient and was not working any more. And that
25 is critical to understand to the argument I am about to

1 make. Okay. The evidence that was let in was one other
2 instance nine months prior some cows had gotten out of the
3 man's property. And in that case the farmer argued was
4 not the same cow, Reed says it has got to be the same and
5 the Court held, no, it doesn't have to be the same animal.
6 However, the critical factor is is that when the evidence
7 was, when they were herding the cows back into the
8 enclosure at least one cow went across the allegedly
9 deficient cattle bar. Now, the farmer said, no, no,
10 someone pushed it across and that really wasn't what
11 happened. And the Court said that is for the jury to
12 decide what happened, okay. The bottom line is it is the
13 same spot, therefore it is relevant, the fact that a few
14 months before some cow had arguably gone out of the same
15 exact place and the theory of the case was is that is
16 where the cow came out in the roadway. Now, let's now
17 jump to his case. I have already discussed that no one
18 knows what cow it was. So, there is no way you can argue
19 under any circumstances the special relationship has to do
20 with some specific cow that is always getting out and that
21 Mr. Darby should have known about this cow and done
22 something to prevent it or take it to the slaughter house,
23 whatever it was he would have done. Which then brings us
24 to, okay, then what is the plaintiff's theory as to how
25 the cow is getting out. In other words, I submit to the

1 Court that for something previous to come in there has to
2 be, that is the relationship to the theory upon which in
3 this case the cow is coming out. I will be quite frank
4 with you, I probably have the most ethic reports that you
5 could ever write in a case to the insurance company about
6 this case, trying to describe the evidence and everything.
7 And to this day I cannot articulate what it is they are
8 going to try to say that is the theory upon which the cow
9 got out. And I am very interested to hear that very
10 shortly when I sit down and let them argue about this.
11 The bottom line is that to my knowledge they have no
12 theory upon with the cow, all we know is that a cow was in
13 the road and it was near my client's property. There are
14 all kinds of, now they start talking about the categories
15 in evidence. The first category I think categorially
16 should not come in is if somebody saw some cow out on the
17 road after the date upon which this accident occurred,
18 okay, it doesn't matter, at this point we are not talking
19 who we really know whose cow it is or where it got or
20 anything. I would argue that any evidence of cows getting
21 out after the accident occurred are completely irrelevant
22 regardless of how it got out, whose cow, whatever. That
23 should be no evidence at all that this should come in. If
24 you agree with that there is a multitude of stuff that we
25 can ignore in this case. Now, let's move to cow sitings

1 that came before the incident. Okay. What we have is
2 that frequently what the person wants to say is that I
3 drove by the field one day, I saw a cow in the road. We
4 would say, well, do you know whose cow it is. No, I don't
5 but I assume it belongs to the farmer right there.
6 Critical factor, I assume it does. Why do you assume
7 that, because of the proximity, it was out right here, it
8 must be his cow. And so you have a whole bunch of people
9 talking about stuff who want to say they saw a cow loose
10 in the road but they don't know specifically whose cow it
11 was. They assume it to be my client's cow because of the
12 proximity to where his fields to where this cow was seen,
13 sometimes more than one cow. Then if you move on, some of
14 them did say, well, I think it was a cow because I saw him
15 with the cow which arguably that is better evidence. Then
16 you go on to ask these people, do you know how that
17 particular cow or cows got out of the enclosure. In other
18 words, you have got after, before, and then of the
19 before's. You have got some people that can't identify,
20 they saw it but they don't really know whose it is.

21 THE COURT: This is subcategory number two--

22 MR. HANNAH: Yes, this is a broad category.

23 THE COURT: The first subcategory, they can't say
24 whose cow it is.

25 MR. HANNAH: Yes, they do not know whose cow it is.

1 They just saw one in the general area. Second one is they
2 saw it with, Mr. Darby was seen with the cow. Okay.
3 Within that category we then have the issue of and it is,
4 do you know how that cow specifical got out that you saw.
5 Because admittedly, no matter who you ask in this case
6 there is no question that sometimes cows get out because
7 they, a car wrecked and went through the fence. Okay.
8 And if the cows all run out there then that is hard, that
9 is I dare say that is not negligence, okay, unless you let
10 that condition last for a long time. There can be a storm
11 in which a fence, you know a tree limb falls on the fence
12 creating a breach, cows get out. The point is, you don't
13 know where the cow got out, you can't say whether or not,
14 it would be speculation as to whether or not on that
15 particular occasion if a cow got out because it was
16 negligent upon which a cow got out. That makes sense.
17 The mere case, the case law, there was a case within the
18 last six months that all come out saying that the mere
19 presence of a cow in the road is insufficient. You have
20 to show negligence. Do you follow, if the cow was on the
21 road at some other time, yet there is no theory upon which
22 it came out and again this is where we get back to the
23 Ocone Mills case. In that case the specific instance
24 that they let in bore relationship to the theory of the
25 case which is the cattle bar is deficient. Saw a cattle

1 go across the guard nine months prior to the accident,
2 that is at least some evidence that it was deficient. In
3 this case what you have is a bunch of people saying, I saw
4 cows in the road, I don't know where the cow came from, no
5 idea where it came out of. But I saw Mr. Darby with the
6 cow. And then we have some evidence where there are a few
7 witnesses who they know where the cow came out. In other
8 words, there is a couple of guys that live down the road
9 from a different pasture than Mr. Darby. He basically has
10 four main pastures one of which is right next to the
11 accident and then there is one that is kind of between and
12 then there is one on the roadway, it is like two and a
13 half miles away. Okay. But as the crow flies it is
14 closer but to ride there it is further. And what these
15 fellows have said is that I saw him moving the cows from
16 one enclosure to the other. Okay. And I don't know how
17 familiar you are, but you usually have fences that are
18 kind of right on one, against each other. They testified
19 that he would open the fences up and shoot them across,
20 okay. And then eventually after the initial ones would go
21 he would go find the stragglers and there would be one
22 there at the gates and he would drive his truck like into
23 the pasture to look for the stragglers. And what these
24 fellows basically testified to is that some of them came
25 out during that time and then went somewhere they

1 shouldn't have. In other words, walked down the road as
2 opposed to going to the other pasture.

3 THE COURT: So was negligent to maintain a fence
4 which is negligence in leaving the gate open.

5 MR. HANNAH: That is the allegation, okay, whether or
6 not, for the benefit of this argument let's assume that in
7 fact was the negligent way to do that. Let's assume that
8 to be true. I am not conceding that if all of this comes
9 in but we are going to argue vehemently it isn't. However
10 the purposes of the argument, assume that is the case.
11 The point is is on some other day, some other time Mr.
12 Darby was negligent in letting the cow out there. There
13 is no evidence, not one shred that he was in fact doing
14 this activity on or even near the date of the incident.
15 So the mere fact that he was negligent on some other
16 occasion, okay, should be completely inadmissible to show
17 the idea that he was negligent on this occasion when there
18 is no relationship at all to the manner in which the cow
19 got out. In other words, he, that is like saying I ran 20
20 red-lights last week therefore I must have ran a red-light
21 today. That is like saying that a criminal has robbed 10
22 stores previously, that is all that is. Basically the
23 inference they want to draw is is that because he has been
24 bad on all of these other occasions he must have been bad
25 on this occasion. However, again, I would concede that

1 these cases do stand for the proposition that if they had
2 evidence that Mr. Darby, for instance, had been moving his
3 cows on that date or the day before. That would be
4 evidence, the fact that he had gone in on other occasions
5 may be relevant. In fact, probably is admissible but that
6 is not the case here. The same thing, there is a witness
7 who says I was walking down the road one time and I saw a
8 cow come out of the woods and went through a hole in the
9 fence. This is on a pasture that is not even the pasture
10 next to where the accident occurred. Okay. This is some
11 other pasture but still he says I actually saw it, there
12 was a hole in the fence and came out. Again, without some
13 evidence that that same fence had a hole in it, okay, that
14 is where the cow came out. In other words, if that is the
15 theory of the case then perhaps that comes in. But not
16 just because it happened on some other date. Okay.
17 Assume it is negligent to let that out. The fact that it
18 happened on some other occasion at some other spot when
19 that is not the specific theory upon which this case is
20 going to be tried. I am not sure, I think the theory is,
21 it happened a whole bunch of other times therefore it must
22 have happened this time. That is what I truly believe the
23 plaintiff's theory is. Okay. Maybe they got some other
24 theory. But again, because we have heard so many things
25 about cows getting out here, getting out there, he is

1 moving them, he is not moving them. I have a hard time
2 understanding what it is they think he did on this date.
3 And the point being is, I believe the incidents of cows
4 getting out, I have covered all the different categories.
5 Whether or not they were saw in the road and there is some
6 evidence that Darby was with the cow or whatever. Then
7 you move into, even among those things, most of the time
8 they have no idea how the cow got out. And the few times
9 I was able to pin somebody down, this is specifically how
10 the cow went in or out of the fence, it doesn't appear to
11 bear any relationship at all to what may have happened on
12 the date of the incident. Yes, and I forgot to mention
13 this. Some of the incidences of cows prior or like five
14 or ten years before. Okay. And he may not be trying to
15 prove that stuff and I have only heard what I heard.
16 Okay. Some old fellow has lived on the road 55 years.
17 Okay. My client is by that same road since 1970. So,
18 when he is out there, well, I saw some cows out a couple
19 of times a year. I am hoping we are not looking at
20 evidence of something that happened in 1970. But to the
21 extent that it is real remote we would argue that as an
22 additional grounds upon which some of the things should
23 not come in. Now, there are some incidences, I saw a cow
24 out three months before or two weeks before the accident.
25 And then we move into these arguments, they can't even see

1 whose cow it was. They don't know where it came from,
2 that kind of thing. And I want the record to be clear,
3 something was within the year, I am not suggesting that is
4 too remote. My remoteness argument is based upon stuff
5 that was multiple years before which there has been an
6 abundance of testimony. I am kind of being paranoid, I
7 don't know really what the plaintiff is going to put in.
8 From these arguments and once we hear, kind of how you
9 view this I think that will answer a lot of other
10 questions that I have got in this case. You want me to
11 keep going or do you want to address the issue of stray
12 cows first.

13 THE COURT: Stray cows first. Departmentalize a
14 little bit.

15 MR. BOGGS: Yes sir, thank you. May it please the
16 Court, Judge. Generally, Judge, it is not my intent to
17 elicit any testimony that I don't think is relevant to the
18 case and I don't think I can show tied into my theory of
19 my case. And so while I am glad to be here and I am glad
20 we are trying to trim any possible fat on the case because
21 Geov and I have been trying to do that with an alternate
22 agreement that we will present to Your Honor at a later
23 time, not about these issues but about damages and such.
24 But honestly I think this is premature for you to, and I
25 know we are starting big and going to go down as you rule.

1 But your power runs through the trial. Unless we are
2 going to call these witnesses and proffer them right now
3 it is really premature to make these blanket assertions.
4 Obviously, Judge, I think you will know it when you hear
5 or see it or I present it, if it is not relevant. The
6 recent case that Mr. Hannah touched on that says you must
7 show negligence, well, this case is about negligence. We
8 have alleged negligence and we have alleged violation of a
9 statute. The negligence and the case that he referred to,
10 the plaintiff's lawyer in that particular case for some
11 reason conceded there was non-negligence and went forward
12 on a different statute talking about strict liability.
13 And so he lost and so that is apples and oranges. In this
14 case I have alleged general negligence in keeping,
15 maintaining, harboring a cow with knowledge that had a
16 dangerous propensity to escape. And failing to remove the
17 cow from the premisses, to keep a fence penned up and that
18 the defendant knew or should have known that the cow had a
19 dangerous propensity to escape and he had actual knowledge
20 that it had such a propensity and did nothing to prevent
21 it. And negligently and recklessly failed to keep it
22 penned up, locked up, tied up or otherwise away from
23 motorists on a public highway. And next is failing to use
24 the degree of care and caution that a reasonable prudent
25 owner, keeper or harborer would have used under the

1 circumstances then and there prevailing. And then finally
2 failing to take corrective action or otherwise restraining
3 a cow, keep it from escaping from the pasture after being
4 informed of its dangerous propensity in advance of July
5 24th of 2008. And that is all under general negligence.
6 We have alleged violation of code section 47-7-110 which
7 says essentially that one who intentionally or negligently
8 allows their livestock to roam at large is, it says they
9 are subject to a criminal fine. Obviously, that wouldn't
10 go before the jury but that specific statute is at the
11 heart of several of these other cases. Now, one could
12 argue in a typical statute violation, you say it is per
13 se, a violation. But in this particular statute, because
14 it says willfully or negligently, then I would show
15 negligently. And note that is the theory of our case, the
16 two theories and they sort of interpose. I guess you
17 could say the violation of the statute falls under the
18 general negligence because you have to show negligence. I
19 have no evidence that Jerry Wayne Darby willfully sent
20 this cow out in the middle of the road to stand there
21 while my client was driving down the road. And so to
22 paint a general picture of what Mr. Hannah is seeking to
23 do, he is essentially saying there should be a band on
24 circumstantial evidence. I mean, as you know, Judge,
25 there is direct and circumstantial. Just because I don't

1 have a picture of the cow with a brand that says, property
2 of Jerry Wayne Darby, I escaped fifteen minutes ago right
3 there, that doesn't mean I can't prove negligence. And I
4 don't see the restrictions that Mr. Hannah sees but that
5 is, you know, that is why we are on opposite sides of the
6 table. Mr. Hannah says he is paranoid about what I will
7 bring out, there is a lot of stuff out there of people
8 just talking. I mean, what they think and my intention is
9 to restrict testimony to what I think is necessary, to
10 prove negligence in both of my causes of action which
11 includes prior bad acts by Mr. Darby. You know, the only
12 way, I will start in order. The only way that I would
13 think that any after accident escapes come into play would
14 be if it shows that it is consistent with Mr. Darby's way
15 of doing business or that Mr. Darby says that he took
16 precautions after the accident. But I just think, Judge,
17 my intent is to show things prior to the accident but I
18 should be able to get into things after the accident where
19 it is justified. And where and when that is justified I
20 won't know until we try the case. But before the accident
21 cow sitings there, I have a witness that says that
22 thirteen days prior to the accident she was driving down
23 Dials Church Road in the immediate vicinity of the wreck
24 and there were ten cows or several cows in the middle of
25 the road about the same time of night. I have a witness

1 that will say that they saw, twelve cows out about a month
2 before and that they know they were Mr. Darby's. The
3 first witness didn't know whose they were, she was heading
4 down the road. I have witnesses that will say that they
5 live right down the road and his cows are out all of the
6 time. And, yes, they might say that five years prior to
7 the accident but they are going to say up until the
8 accident. It is not just five years and I am not focusing
9 on the five years prior. Mr. Darby himself admitted that
10 he had had a cow out not only six months prior but he
11 admitted the one out the day before, maybe two days before
12 but when I questioned him and it is in my brief that he
13 had one out possibly that same day. And so, Judge, this
14 is the way he does business. I am not, I have an expert
15 that will testify how and I guess that is part of his
16 motion in limine that we need to address. But I have an
17 expert that is prepared to testify about what a reasonably
18 prudent cattleman, I think they are called a person of
19 animal husbandry should do. He has a farm, he admitted to
20 having 45 cows and 43 calves in that pasture right in
21 front of the accident. And when I say right in front, I
22 mean the middle of the road is probably from me to that
23 table right there, Judge, with the fence being that table.
24 It abuts the road. There is a pasture there, a pasture
25 on, about a fifty to one-hundred yards up and there is a

1 pasture to the right all of which are in the dominion and
2 control of Mr. Darby. Judge, I can get into everything
3 the expert is going to say about cow behavior but again I
4 think that might be later in this motion or again during
5 the trial. Yes, you have cows out but don't know whose
6 they are. But you do have cows out with Darby present.
7 Sometimes you know where they got out, sometimes you
8 don't. The mere fact he is negligent on another occasion
9 should, doesn't mean it is incumbent here. You yourself,
10 Judge, brought up the criminal case of Lyle evidence. And
11 I, common scheme or plan, habit, just basic general, just
12 failures doesn't keep out this evidence especially where
13 courts have said in these two cases and courts across the
14 country have agreed that evidence of prior
15 inadequatenesses can be brought to the jury's attention and
16 it is a jury question. And I think that is why we are
17 here and that is why you ruled the way you did in summary
18 judgment last year. And so I can go on about this, Judge,
19 but I am not, I know what he is trying to do and I can get
20 as specific as you want but just generally it should be
21 denied. And I would submit to Your Honor, even if you
22 rule against me, I still I think I am entitled to proffer
23 the evidence next week.

24 THE COURT: Let me ask you this. I think it was
25 represented that there were two dozen or more depositions

1 taken. And certainly you are not going to ask them all to
2 come up and ask how many cows have you seen, go through
3 that. I mean, I would guess any experienced lawyer would
4 know you need to get to the point with the jury.

5 MR. BOGGS: I will submit to you, Judge, that is why
6 this agreement we keep talking about, I mean we are not
7 even getting the damages in front of the jury. We have
8 agreed to submit four questions or whatever it ended up
9 being, it is four. Was it Mr. Darby's cow, was Mr. Darby
10 negligent, was Mr. Darby the owner, was he negligent, was
11 the plaintiff comparative, did he have any negligence and
12 if so then allocate the percentage. We are taking damages
13 out of the equation otherwise I would have Oliver Wood,
14 lifecare planner, the doctor. I am not going to call
15 everybody. Judge, in fact I have got a board in my office
16 that has been dry erased. I have never tried a case in
17 front of you but I don't think a jury wants to hear about
18 cows more than probably two, it may take three days just
19 from start to finish. But my goal is not to be here past
20 Wednesday because I don't think any juror in any case
21 these days wants to sit here especially when they get
22 what, \$30.00 dollars a day.

23 THE COURT: They don't get that kind of money.

24 MR. BOGGS: I didn't mean to grand strand. A lot of
25 this is premature, Judge, and I think you are picking up

1 on that and it is not my intent to bring in one witness
2 that all they know is they saw a cow out in 2009. I am
3 going to bring a witness in that if they saw one in 2009
4 they had better have seen one prior unless the 2009
5 incident was where Jerry Wayne Darby did something
6 specific that I can tie in through his testimony.

7 MR. HANNAH: May I address one more thing.

8 THE COURT: Yes, you may.

9 MR. HANNAH: Two things that I failed to mention this
10 before. I just want to make sure it is on the record. As
11 counsel mentioned there are really two issues related to
12 my client and what we are, what our defenses are. One of
13 them is the, whether he even owned the cow at all. And I
14 want to be clear that we categorically object to any
15 evidence coming in, any of this prior incidents coming in
16 is evidence that the cow belonged to my client on the date
17 in question. Okay. I can see how possibly some of it
18 would be relevant to whether or not if they determine that
19 it was in fact my client's cow. As to whether or not he
20 was negligent for letting it out. These other incidences
21 do go to the heart of that but we are going to ask, some
22 of it comes in. We are going to be asking for a limiting
23 instruction as to the ownership issue.

24 THE COURT: You don't believe that there is an
25 eyewitness that was out there that saw a cow in close

1 proximity in time to the accident and to say that was
2 Darby's cow.

3 MR. HANNAH: There is no question, the only witness
4 that can even say that they saw a cow at all is the
5 plaintiff.

6 THE COURT: And he doesn't know who owns it.

7 MR. HANNAH: No.

8 THE COURT: Well, kind of the feeling I have right
9 now is that I believe that the only witnesses who are
10 going to provide testimony is the one who saw Darby out in
11 the road with the cow in and around handling these cows
12 and that kind of thing unless the farmers were there and
13 happened to have good knowledge of Darby's herd. I don't
14 think it is going to benefit Mr. Boggs at all. I was
15 riding in the road and saw a cow out there, I don't know
16 whose it was and it was a mile away. I don't see how it
17 is going to benefit.

18 MR. BOGGS: Judge, just to clarify, I do have a
19 witness that I intend to call that says the cows were
20 right there on Dials Church Road and the way, but that
21 witness won't say they are Mr. Darby's. My expert will
22 say that the tendencies of cows who have escaped
23 especially with all the circumstances going on in 2008 and
24 with the pastures and things like that that it is more
25 likely than not and a jury may infer that it was Darby's

1 cows.

2 THE COURT: But that was in close proximity--

3 MR. BOGGS: That was thirteen days.

4 THE COURT: Okay. That is I think, I think we are
5 going to have to listen to this stuff before I will be
6 able to make a ruling. But my general feeling is anything
7 close in time, close in proximity area is probably going
8 to come in because it is his burden of proof. There is
9 nobody out there that saw the brand on the cow that day
10 including the motorcycle can say that was Darby's cow.
11 That is going to be a puzzle Mr. Boggs has got to put
12 together.

13 MR. HANNAH: Understood and again I want the record
14 to be clear, I am not, this is a motion in limine, okay.
15 And they clearly, no matter what you say today that
16 doesn't prevent him and all I am really trying to do is
17 and may end up being this way. Okay. That every single
18 witness that comes in here we will have to send the jury
19 out. And then we are going to have to hear what they have
20 got to say. And I am going to make my arguments the same
21 arguments I am making now again and I am concerned that if
22 we--

23 THE COURT: Here is what we will do. I mean I am
24 going to let you have a standing motion and we will
25 proffer each witness. But I am, you don't have to make

1 your whole argument again. I have got your argument. You
2 can ask questions and all right, right there I have got an
3 objection on and you state your objection. We are going
4 to make it simple.

5 MR. HANNAH: My concern is if we are constantly
6 sending the jury out so that, so the testimony you proffer
7 that it looks like I am hiding something. And in fact all
8 I am trying to hide, if you want to use that word is, is
9 that these people are talking about some cow that they
10 saw. They don't know whose it is and they can't say where
11 it came from. No one is even addressing the second part
12 of my argument which I think is critical which is he
13 ignored it. Even if you can say it was his cow in the
14 road doesn't there have to be some evidence of where it
15 actually came from. It sounded to me like what he wants
16 to say is, is because he is just generally negligent he
17 must have been negligent on this date. And again I don't
18 think, that that is an proper inference at all that can be
19 drawn. Who cares if he was negligent on some other date,
20 some other pasture. If it has no relationship to what
21 they think happened this time, did it come out of the
22 Cooley road pasture, did it come out of this other
23 pasture. Where do they think this cow came from. If the
24 theory is it came out of the pasture right next to the
25 road then the fact that he let a cow out of some other

1 pasture, some other time shouldn't be relevant.

2 MR. BOGGS: It is not offered to prove that he was
3 negligent on the day in question. It is offered to show
4 that his cattlemanship or cattlemanness is generally
5 negligent. And that it is up to me to show that on a
6 particular date and time that it is more likely than not
7 and that the jury can infer that he was negligent then. I
8 can tell you, he admitted that he repaired a place in the
9 fence, he didn't say where. The insurance company sent an
10 investigator out within two weeks and found a place down
11 the line and he says it is electrified and that is a whole
12 other issue. This is not a textbook formula. And with
13 all due respect to Mr. Darby, I am going to be able to
14 paint a picture of just, where a jury can say he was
15 negligent based on the circumstances then and there
16 exhibited at that time. But, Judge, there is going to be
17 testimony that if a fence is not electrified that cows can
18 get through it. There is going to be testimony that if,
19 even if there is a down place, if it is a calve they can
20 crawl through it. There is going to be testimony that
21 even if the fence is fine there is going to be testimony
22 that if he is not feeding them enough they are going to
23 get out when they are hungry. And, Judge, it is going to
24 show that here is the fence, here is their pasture where
25 they are hungry and right here between the fence and the

1 road which is probably six feet is some lush green grass.
2 I don't know if you know anything about cows but I have
3 learned about them, they are like people. If they got a
4 turkey sandwich right there and there is filet mignon
5 right here they are going to go for it. So you have to
6 give them a little bit of something that keeps them happy.
7 And not only are the cows here but across Dials Church
8 Road is at least 20 1200 pound bails of hay that are Mr.
9 Darby's that he goes down and gets and brings up and puts
10 in the field to feed them. And so we have got a guy
11 testify that the bails of hay weren't big enough or
12 weren't sufficient to keep these people happy. I am going
13 to paint a picture and trust me, it is difficult but I
14 have got a burden and I am going to meet it and if I don't
15 you will say, wait a minute, that is out. And I will live
16 with that. But it is hard for you to rule, I understand
17 what he is getting at and it is, and it is nothing
18 personal against me, he is trying to do his job. But I
19 just don't, I am not going to elicit any testimony that I
20 can't tie into my theory of my case. And so and I think
21 all of this gets to the jury for them to decide. And then
22 he can argue, hey, I don't have the cow. I wish I did
23 because I probably would have a check right now. But I
24 don't have to have it to prove my case.

25 MR. HANNAH: And I want to be clear, I am not saying

1 that he does have to have the cow. If the theory is that
2 he was underfeeding the cows that is now the theory. But
3 again, it is some other guy on some other day saw him, you
4 know, six months before moving the cows from one pasture
5 to the other and one got out. What is that relevant to
6 his theory of the case. That is the part I am still not
7 understanding, exactly where are they claiming, what are
8 they going to say as to what happened. What is the
9 theory. And I will concede that once we know the theory
10 some of the stuff will be relevant. The question is what
11 it appears to be is they just want to let in all of a
12 bunch of stuff about he is just generally not a good
13 farmer. So he must not have been good, he might have let
14 them out over here, he might have let them out over there.
15 At some point they have got to commit to a theory about
16 this case. And the theory, then we can determine, this is
17 the difficulty that I have and I know you are having is
18 because I don't know exactly what he wants to say. Again,
19 these two pastures that we have heard tons of testimony
20 about, each one, they are not that close. So, the idea is
21 that cows don't ever go very far and they must come out of
22 the Cooley Road pasture and then he is negligent about
23 that. What does it matter what he did in some other
24 pasture, some other place that they are not claiming the
25 cow came out. That is what these cases stand for using a

1 special relationship between the prior incident and the
2 incident that happened on the date the injury occurred.
3 And without some relationship between the two general
4 facts that he was, did something at some other time
5 shouldn't be admissible. I understand we are going to
6 have, despite my best efforts we are going to end up to
7 proffer every single witness. If there is not some
8 consistent theory, okay, the mere fact that the poor
9 cattleman, there is no evidence that he was moving his
10 cows for instance. Why does that matter. That couldn't
11 have been what happened this day. Not a chance. You know
12 what I am saying and so why are we hearing about that.
13 So, the question whether this is a three day trial or a
14 half day trial is completely dependent upon exactly what
15 we want to, if all they had to prove is that Mr. Darby had
16 some cows get out at some point, they have got that.

17 THE COURT: How old is this guy.

18 MR. HANNAH: He is 62.

19 THE COURT: I thought he was 80.

20 MR. HANNAH: His dad who helps him may be 80. Let me
21 move on to my other arguments so we kind of get them out
22 there. There are, I am going to come back to the next one
23 last because I think it is important to talk about this
24 other stuff first. There is, there is some specific
25 evidence that was brought about by the expert. He hired

1 an investigator two years after the accident. Okay. Went
2 out over a period of time and basically walked up to the
3 fence and kind of touched it and says, I wasn't shocked.
4 Okay. And he has basically testified that on six to ten
5 occasions, over this month long period he found that the
6 fence wasn't electrified. And again this is some time
7 after the accident. To me the fact that the fence didn't,
8 was or wasn't working or whatever a couple of years after
9 the incident to me seems, it is highly prejudicial. To
10 put in something like that it has no relevance, couldn't
11 possibly have relevance to what happened on the day in
12 question. And it is two years later and remote. And the
13 guy also took a bunch of statements that--

14 MR. BOGGS: I will tell you, he is not going to talk
15 about these statements unless somebody changes their
16 testimony that he took the statement from. But I don't
17 even think, nothing is coming in about the statements.

18 MR. HANNAH: I didn't think so. Quite frankly if
19 someone is inconsistent then it is a different reason you
20 would let in the fact that he heard them say something
21 else at another time. But unless my client opens the door
22 somehow, okay, and makes broad proclamations about how he
23 still to this day is the greatest farmer ever and never
24 lets his fence down it shouldn't be relevant to what
25 happened on this day. And then something about the fence

1 being non-electrified months later, in fact years later I
2 don't think that should come in at all. And then that is
3 a specific instance that we can deal with now and quite
4 frankly ties in some of what his expert wants to say and
5 other things. But in the end we have got a beef with that
6 specific piece of evidence.

7 MR. BOGGS: Again generally after or subsequent to
8 remedial measures or any after behavior would not be
9 generally admissible but in this particular case I think
10 there will be testimony that the fences are in the same
11 general condition and maintained in the same general way
12 by checking and things like that. And that is the only
13 way I think I would even try to bring that in. That is
14 one I think I have maybe higher, there must be good reason
15 preceding his testimony for me to even be able to bring
16 that up and I don't think I need it unless, it depends on
17 what certain witnesses say. Okay. So, I mean, I don't
18 concede that he is right, I concede that--

19 THE COURT: Let's say you don't call him unless you
20 have to.

21 MR. BOGGS: Unless it proved, Judge before I put him
22 up I will say, Judge, this is one of the witnesses. But I
23 can see where what Ed found out by grabbing the fences
24 last year would not, there is no way it is coming in
25 unless a lot of things happen prior to it. So, if those

1 things don't happen through the course of testimony in the
2 trial then it won't even be a witness.

3 THE COURT: I think you are probably waiting to here
4 Mr. Darby's testimony.

5 MR. BOGGS: Exactly.

6 MR. HANNAH: Some of this stuff is kind of--

7 MR. BOGGS: I think honestly we need to move on. It
8 is not my intent to bring that in.

9 MR. HANNAH: The only way I can really see that
10 coming up is if counsel sets him up. What about your
11 fences now, of course I am going to object to that as it
12 doesn't matter. Okay. But so a lot of it will have to do
13 with what it is you let him ask a question like that and
14 then setting him up to bring in some witness. But I
15 assure you that I am not going to ask him anything about
16 that and have instructed him not to.

17 MR. BOGGS: We will deal with that on Monday.

18 MR. HANNAH: Whether or not you asked him in his
19 deposition and again the fact that he testified to you
20 asking, you asked him in his deposition and he said, I
21 think my fences are great. If he doesn't testify to that
22 on the stand I don't see how the fact that he said some
23 question got asked in the deposition is relevant to what
24 happens here. I think it has got to happen here before it
25 comes in. I can only see it happen by him setting it up.

1 THE COURT: He can see to that. If it is the
2 testimony other than what he anticipates.

3 MR. HANNAH: We move on, there is a bunch of, that he
4 subpoenaed some sort of 911 records that came from Laurens
5 County 911 people and there are a stack of them and some
6 of them after, some are before. And what he asked was, is
7 that in some sort of two mile, I believe the question,
8 based upon what we received, in a certain radius of the
9 intersection that this accident happened produce every
10 single 911 record you have got dating back, I think the
11 oldest one is 2005. Okay. Perhaps a little bit earlier.

12 MR. BOGGS: I will cut them off, Judge, it is not,
13 unless there is some admission or some testimony that
14 opens the door the only ones that I will have, that I
15 would even intend to use would be where I have the person
16 who called 911. That is my intent right now. Now, Darby
17 gets up there and says, yeah, I have been getting calls
18 all of the time. And I am not saying he said that but I
19 mean, you know, who knows what is said. But unless the
20 person is up there I am not planning on going through all
21 of this. I am going to ask the witness, this says you
22 called, this has your name, your phone number. Did you
23 call 911, why did you call them. And so I don't, that
24 eliminates a lot of them.

25 MR. HANNAH: I understand. And even then though, if

1 the witness is here, he called 911 what is the point in
2 the record at all. I just don't see and again we are
3 going to get into the mini trials, this guy called and I
4 think it is Darby's cow. Does he really know, well I
5 don't know. But it was near by.

6 THE COURT: We are not going to play any 911
7 recordings.

8 MR. BOGGS: No, no.

9 MR. HANNAH: In the documents itself, no matter which
10 home it is a lot of them mentioned my client's name, okay,
11 but there is no, I agree that the guy can say he called if
12 otherwise that incident is admissible. And my point is
13 that the record itself lends credence to something that
14 may not, there is a danger in letting it in.

15 MR. BOGGS: What he is worried about, Judge, is a lot
16 of times some of these witnesses calls 911 and say, do you
17 know whose cow it is. And they say no and say, well it is
18 probably Wayne Darby's. And they say here is his number
19 or we will call Mr. Darby or something like that. The one
20 main witness that called five or six times I think, I am
21 going to have proper means by which for him to say it got
22 to the point where he said in his deposition the other
23 day, Darby, I had called and leave a message, nobody
24 returned my call so I had to call 911. And I didn't tell
25 them who it was, they said it was probably Wayne Darby.

1 THE COURT: We might have to hear that testimony.

2 MR. HANNAH: I understand and that is the part I am
3 beefing about is, is that where this guy is going to say
4 somebody else told me. How can you possibly know whose
5 cow it is. That is just rank hearsay.

6 THE COURT: But there is testimony that, eyewitness
7 called Darby and left a message and to call back and I
8 called 911.

9 MR. HANNAH: That is different. I am talking about
10 the record and what the record reports say and what he was
11 told by them is different. Okay, we will move on from
12 there. It sounds like that is a semi-non issue. All I
13 know is that I have got this pile of records that was sent
14 to me.

15 THE COURT: Hold on a second, I need a quick break.

16 (WHEREUPON, a short break was taken.)

17 MR. HANNAH: The next one is quite frankly the way we
18 have written is photographs. After the incident occurred
19 the insurance carrier retained an independent adjustor,
20 Crawford and Company to go take a look at the cows and
21 that sort of thing. And then basically what she found in
22 one photo was that they are walking the fence line in the
23 area right next to where the accident occurred. He has
24 got, the fencing is what you call high tensile electric
25 wire fence. It has got five strands, spaced and et

1 cetera. And the bottom strand is a ground wire and not
2 hot. And between two posts the wire was laying on the
3 ground. And we are moving to exclude the evidence, what I
4 am trying to say is she took some pictures, that may be
5 relevant if we get into his expert and that kind of thing
6 as to what the guy looked like at the time. But I am not,
7 that is really not my issue. The issue is clearly the
8 wire on the ground. Okay. And our point is that, it is a
9 couple of weeks after the incident. Okay. We have
10 numerous witnesses who are on the scene the night of the
11 accident, et cetera. And then the scene of the accident
12 where this wire went down is the exact same place that all
13 of these people were. And they all say that, that they
14 were concerned about the condition of the plaintiff but
15 they also did look around to see where this cow may have
16 come from and all of that kind of stuff. And no one can
17 testify that this condition existed on the date of the
18 accident. It is a couple of weeks later. And our point
19 is that it is prejudicial, it is remote and there is no
20 relationship to the condition of the fence on the day in
21 question. There is nobody can state, the only testimony
22 that there is in the record would be that those who looked
23 at it said it looked fine, didn't detect anything wrong
24 with the fence.

25 MR. BOGGS: Judge, may it please the Court. This

1 person's name is Chapman, I don't know if you mentioned
2 that. This is the picture he is talking about just so you
3 know. Their insurance companies initial investigator, she
4 went out there, went with Mr. Darby, Mr. Darby's testimony
5 has always been that there is nothing wrong with my fence.
6 I didn't fix my fence right there. And this is within
7 August 6th, thirteen days of the accident. It just goes,
8 again, it is not so far remote in time. The fence was
9 allegedly was okay. These people they are talking about
10 they didn't see a problem in the fence, Judge, they got
11 out there after dark. My client was airlifted, it was
12 pitch dark and so while they did say they didn't see any
13 problems with the fence in the daylight in this picture I
14 submit there is no way you can see that at night anyway.
15 I mean just quite frankly.

16 THE COURT: I didn't see anything looking at it
17 myself.

18 MR. BOGGS: Well, I think and that is why I wanted
19 her to testify as to what she saw. It is my understanding
20 that apparently a wire below this wire, the three
21 obviously is right there but apparently there is a bottom
22 wire that is hanging or either this wire is hanging. And
23 I am not trying to mislead the Court. If she testifies
24 that she took this picture on August 6th and there have
25 been no material changes then I think a jury to hear that

1 and to say that, infer with the totality of everything
2 with all, everything I am going to introduce. I don't see
3 where it is that prejudicial. I am not going to say,
4 ladies and gentlemen of the jury, because this is here we
5 know that is where the cow got out. That is not what I am
6 saying. And so I am not trying to keep it too simple,
7 Judge, but I think it is.

8 THE COURT: We will have to wait and see that one
9 when it gets here.

10 MR. BOGGS: Okay.

11 MR. HANNAH: Just so the record is clear as well, it
12 is not just the emergency responders. In fact the
13 plaintiff's wife and step son, in fact counsel himself
14 went out there like two days after the wreck and he sent
15 me pictures that he himself took, fifty of them out there
16 on the scene. They didn't see this either. No one, I
17 guarantee you if the plaintiff himself is out there after
18 the wreck and saw that they wouldn't take that picture.
19 There is a picture of all kinds of other stuff they took
20 in the exact same area with no evidence that the fence
21 looked like that. And yet we have got something, even
22 after all of that investigation, a subsequent
23 investigation found one strand on the ground. If there
24 was some evidence, I also want to make sure that the
25 record is clear if that is not their theory of where the

1 cow came out of it, they are not saying that is where it
2 came out then what in the world is the deal. I mean,
3 there has got to be a theory as to how the cow got out.
4 Okay. I submit that and what that theory is is highly
5 relevant to what other evidence should come in. If that
6 is the theory then maybe it is relevant.

7 THE COURT: I have listened to you, you want a
8 specific place, time where the cow got out. And his
9 response is consistent with being general negligent proper
10 animal husbandry. Something along those lines. I
11 understand where y'all don't see eye to eye but I don't
12 think I can rule on that right now. I am not saying you
13 are not wrong or right to declare where the negligent
14 event was.

15 MR. HANNAH: I understand and again in the end,
16 whether we do it today or we do it somehow, the sole point
17 you are going to have to make a decision on whether or not
18 that matters. You know what I am saying. Then I can
19 appeal, if it goes wrong, we have got to have a ruling and
20 I am dead clear and I want the record one-hundred
21 percent--

22 THE COURT: You don't tink he can show that?

23 MR. HANNAH: He can't show that. We all know that,
24 that is why he wants to talk about maybe it happened here,
25 because they can't. That is the whole point. The

1 argument that I am making is whether or not you agree with
2 it that these cases don't stand for this proposition, that
3 is not necessary. You might say that. And I have to live
4 with that.

5 THE COURT: Here is the thing. I am probably going to
6 go along with him and tell you, try the case and appeal it
7 one time rather than saying you are right and him
8 appealing on the summary judgment and say that is not the
9 law and come back and try it then. I mean, that is kind
10 of, it is one of the two.

11 MR. HANNAH: Maybe he has got a theory that came out
12 of the, which pasture it came out of. If he can't say the
13 specific spot, y'all at least should have a pasture that
14 you think it came out of. Right now it is generally
15 negligent. Moving on there is a whole bunch of these
16 random witnesses we have talked about and several of them,
17 again, this is not something I would ever ask. And all of
18 these questions were listed by them. So maybe they don't
19 intend to do this. But they were general, what do you
20 think about electric fences. And some guy, he also owns
21 cows. And he would say, well, I don't like them, I don't
22 think they work very well. And then I would be like, do
23 you know anything about Mr. Darby's electric fence. No, I
24 don't know anything about that. I just don't like it.
25 That kind of stuff. Okay. There is just random negative

1 testimony that generally certain witnesses who also own
2 cows and even a lot of these first responders that come
3 out, when you ask them what they do, they all have got
4 cows too. They grew up with them or their granddaddy had
5 cows, they all seem to have some more cows knowledge than
6 I ever did. Okay. And they got opinions about electric
7 therefore he must have been negligent.

8 THE COURT: I think lay opinions will be difficult to
9 get in.

10 MR. HANNAH: Okay.

11 MR. BOGGS: The more I sit here the more I have to
12 reveal my trial strategy. I think Your Honor can probably
13 rule at the appropriate time. I mean I will tell him, I
14 think what he is talking about there has been witnesses, I
15 think like three that said that I asked them about a
16 picture that we had taken and they say, well, that fence
17 wouldn't work. Well, unless that guy is a fence engineer
18 I am not going to ask him that. Now, I will tell you
19 this, the one time that I think it should come in is Billy
20 Miller walks up and down Burdette Road which is also a
21 pasture and maintained by his client. I asked him if he
22 could tell what kind of fence it was and he said, I said
23 was it electrified and he said there is no way it is
24 electrified. And I said, how do you know that. And he
25 said the way it was designed. And I said, do you have any

1 special training. He said, and in Rule 701 says that the
2 witnesses testimony form of opinion limited if they are
3 rationally based on the perception of the witness or
4 helpful to a clear understanding of the witnesses
5 testimony and did not require special knowledge. I mean,
6 if he perceives and he is walking right beside the fence
7 and I think electricity, whether something is electrified,
8 I think even Mr. Darby, if you put this grass close to the
9 electric fence, you can tell if it is electrified. That
10 doesn't require me to have an electric engineering degree
11 from Clemson. And so I don't, it is not a foundation of
12 my case but it may come out. But I am not going to ask
13 Niles Wood or whoever it was, the first responder that
14 sort of had cow knowledge. At some point you have got to
15 try the case.

16 MR. HANNAH: Just for what it is worth. A particular
17 fence that he was just talking with this fellow, his name
18 is Jimmy Miller, that fence is not intended to be electric
19 anyway. My client just has a barbed wire fence. The
20 fence wasn't suppose to be electric and didn't appear to
21 be electric. That is not even a point of the issue in the
22 case. And there is three pastures in the area and one of
23 which has only got a barbed wire fence around it, not
24 electric. Okay. We will move past that. Again, I am
25 looking at all of this evidence. quite frankly the

1 evidence I am actually referring to, these are the
2 depositions that we took before the other day, we are
3 dealing with their opinions about fencing. We had pages
4 of discussion about what they thought about fences.

5 MR. BOGGS: Well, if they are from the experts--

6 MR. HANNAH: Not from the experts.

7 MR. BOGGS: The layman's.

8 MR. HANNAH: Yes. The day I was in Laurens at Mr.
9 Turner and Burney's office, whoever got deposed there, he
10 asked every one of them what their opinions about fences
11 were. And that is what I am so, everybody deposed on that
12 day, like ten people, all gave some kind of testimony
13 about what they thought about electric fences all of which
14 I think is irrelevant and shouldn't be in, basically most
15 of them didn't like. Okay. Next we will move on to, I am
16 going to go back to number one and deals with the expert
17 and it is almost like I don't know why we are bothering
18 because nothing is being, we have got to try the case to
19 make sure, before we really understand this. But when you
20 get to the animal husbandry expert or whatever it is,
21 whatever you want to call him. A lot of what he relies
22 upon in making his opinions is stuff that we have been
23 arguing about today that I saw is not relevant. Okay.
24 And for instance, one of his stated basis for stating that
25 my client was not a very good cattleman and didn't keep

1 his cattle in very well was the evidence of the two years
2 later where the expert or the investigator came and found
3 that the fence wasn't electrified. And he basis his
4 opinion on the fact that my client doesn't do a good job
5 in keeping his fence on some evidence that it sounded to
6 me like the plaintiff wasn't going to try to put in unless
7 I opened the door. Okay. Yet if that is in fact the
8 basis for his opinions then that is problematic. The
9 expert himself looked at the totality of the record and
10 basically--

11 MR. BOGGS: Judge, I am sorry to interrupt but his
12 motion says he is not qualified to be an expert. And so,
13 if we are skipping that part and going to what he is
14 relying on then are they saying he isn't qualified to be
15 an expert.

16 MR. HANNAH: What I am getting at is that ultimately,
17 when you finally boil down all of his testimony, okay,
18 basically what he wants to say and I am not saying the guy
19 doesn't have a PhD. What I am getting at is when you get
20 down to the substance of his opinion, it happened next to
21 his property, cows don't normally go very far so I believe
22 it had to have been his cows. That is the ultimate
23 conclusion the jury is meant to infer in this case. And
24 that is what I am objecting to. If he gets to the extent
25 of how much you feed a cow, some of the stuff the guy

1 says, it depends on how it all comes out. If there is
2 certain questions they want to ask him which may be
3 relevant to what, I don't think it is even a problem for
4 the guy to say cows don't normally go far. But him to say
5 it is my opinion in this case, it was your client's cow
6 because it happened right next to his property. That is
7 where I have got a problem, that is basically, that is
8 what the jury is suppose to be doing in this case.

9 THE COURT: You said it two different ways. He is
10 going to present an opinion based upon all of these facts,
11 cows don't wonder far, isn't that about as far as you
12 think you can go.

13 MR. HANNAH: I am really ultimately beefing about the
14 fact that he wants to say, the ultimate conclusion that he
15 wants to be able to say, I don't deny that an expert could
16 and he would definitely know more than the average juror
17 about what a cow might do when he gets out, what a cow
18 might do when he is hungry. That sort of thing. Then to
19 go so far as to conclude that it had to be my client's
20 cow, that is what I am beefing about. And ultimately if
21 that is the point of his testimony then it should be
22 excluded. That is exactly what we are asking the jury to
23 do in this case. And if an expert makes that, gives that
24 opinion and the jury is likely to give undue weight.

25 MR. BOGGS: What he is saying, Judge, is that my

1 theory of the case is based upon not only cows typical
2 behavior and Mr. Darby's behavior as a cattleman, my
3 expert is an expert in cow behavior, he has a PhD in
4 animal science. Then he taught for 15 years at Clemson.
5 And, Judge, his speciality is ruminant nutrition. If
6 ever, you open up and say this is my dream expert, now he
7 hasn't testified before and I think he will say on the
8 stand, he will probably never testify again. I found him,
9 it is not like he is in the experts wanted book. I found
10 him, talked to him and I said this is the guy.

11 THE COURT: I believe that is the truer
12 representation that I have heard today.

13 MR. BOGGS: What is that.

14 THE COURT: You were lucky to find him.

15 MR. BOGGS: And he is in Barnwell, he has a farm in
16 Barnwell. What he wants you to say is that he doesn't
17 like what my expert is opining to. And so get your own
18 expert, he doesn't have one. That is what experts do,
19 they read it and if he thinks it is false or improper that
20 is what cross-examination is or another expert. I don't
21 want to get into what he is going to say because I, I mean
22 it is in here. Your Honor, again, you will hear it. And
23 I can tell you right now I wouldn't be calling him if I,
24 Doctor, based on the fences being bad according to my
25 investigator a year after can you formulate an opinion. I

1 mean, no, no. There is no way I would do that, his own
2 admission is he can get into all of this other stuff.
3 Now, if the testimony comes out as we talked about,
4 condition of the fences before, during, after and that is
5 available for him to calculate. I mean you can have an
6 opinion with different basis.

7 THE COURT: Nobody can testify that this was Darby's
8 cow, nobody can, is that right.

9 MR. BOGGS: It is not necessary to prove my case.

10 THE COURT: I understand. Based on everything you
11 have done whose cow was it, in your opinion. That is the
12 question that you--

13 MR. BOGGS: Is he challenging him as an expert. He
14 didn't answer my question.

15 THE COURT: I don't think so.

16 MR. HANNAH: No.

17 MR. BOGGS: As an expert and I am going to offer him
18 as an expert in animal husbandry, I probably won't say
19 that because that sounds awful. But I mean animal science
20 which is what animal husbandry, essentially everything had
21 to do with a cow and especially in this guy's speciality
22 in ruminant nutrition which means cow, sheep, other
23 things, deer. But based on his standing, an expert in
24 this area, has he formulated an opinion about the events
25 of this case and he can say, yes, it is more likely or

1 whatever the language is he is going to use. And I am
2 going to say, Doctor, that doesn't mean it is one-hundred
3 percent true, no. But his automobile expert, he is trying
4 to say my guy should have slowed down and avoided the cow
5 and he is basing it on a specific point. But then he
6 admits the cow is probably moving. So, you know, I am not
7 trying to exclude him. He had a right, in fact, Judge, I
8 think there is a recent Supreme Court case where an expert
9 got excluded and they said it was prejudicial to the
10 losing, the party that lost their expert where it was a
11 questionable call.

12 THE COURT: That is Judge Miller's case up in
13 Greenville you are talking about?

14 MR. BOGGS: I think so, yes. Essentially there is a
15 recent case and I think it is even more recent but it was
16 about you have, he let an expert in, in that case he
17 qualified someone as an expert that he shouldn't have.
18 Limiting an expert's testimony. I am not asking him to
19 say that, you know, they shouldn't of had cows here. It
20 was better suited for baseball. He is not an expert in
21 that.

22 MR. HANNAH: When I deposed him his opinion was and I
23 finally found it, is more likely than not the cow belongs
24 to Darby. Okay. And the reason for it, he said, I still
25 believe proximity is a major factor involved here. I

1 believe when more likely than not, it had to have been
2 from the field right there and so it must be Darby's cow.
3 Again, you could put in evidence as the, I just think it
4 is improper for the expert himself to then go and that is
5 why I am saying, that is not something that an expert,
6 that is a conclusion we want the jury to draw. He is
7 commenting on the ultimate issue in the case. And it is
8 basically, I would argue that if proximity is all you have
9 got then that is basically speculating that it is his cow.
10 And my concern is is that if the expert is allowed to say,
11 I believe it is his cow, I have got all of these
12 credentials. I just feel like it happened next to his
13 property, it has to be his cow. The jury is going to buy
14 that and that is an improper question upon which to ask
15 him. They can argue. That is in fact what I think they
16 are going to do is, it was close, does the jury believe
17 that it was his cow. But to let and you heard the expert
18 say, cows don't go far, cows do this, cows do that. To
19 have the expert himself to opine than nothing more than
20 proximity. That is his argument. I deposed the guy for
21 like five hours.

22 MR. BOGGS: Judge, the rationale behind proximity, he
23 said in his deposition and it was very lengthy. This is
24 one sentence taken out. He thinks that the greatest
25 factor because of his specialized training and what cows

1 do in animal science. It is not, well, it has got to be
2 his cow because it happened right here, this close. That
3 is not what he is saying and that is what he is trying to
4 get you to see. So, he is not giving an expert opinion.

5 THE COURT: I am going to wait and listen to some of
6 this. I understand your objection so I will be listening
7 for it. And I am not denying, I am not granting. We will
8 get to that. I do understand what your concern is.

9 MR. BOGGS: The rule just says if scientific,
10 technical or otherwise specialized knowledge will assist
11 the tryer of fact then an expert with such skill and
12 knowledge can give an opinion. We are talking about an
13 opinion. And you are going to give a charge that says,
14 just because somebody is an expert, and he is saying PhD
15 guy from Florida. You are going to tell the jury expert
16 testimony you can give whatever weight you want to. Just
17 because he has got more degrees than a thermometer it
18 doesn't mean he is right or wrong.

19 MR. HANNAH: Everything is fair game in the legal
20 business here. One thing I learned about being a lawyer
21 is you can plagiarize like crazy and it is actually
22 encouraged and okay. The final issue we have got and then
23 we will be done. This is moving away from all the cows.
24 We are not at the issue, you may remember about the
25 comparative negligence hearing a long time ago.

1 Subsequent I have an expert from which I was basing my
2 arguments about. And then the counsel hired their own
3 accident reconstruction guy and I am really, there is one
4 part of his and I am going to be clear, I am not saying
5 the guy is not an expert who can testify about actual
6 reconstruction case. But one specific part of his
7 testimony is what I am objecting to. And basically he
8 had, came up with this little chart where he believed the
9 sun to be at the time of the accident and how you can
10 throw in all of these shadows on the road and all of this
11 stuff. And it would make it hard to see and basically it
12 goes to the issues and the assumptions that my expert may
13 have made about timing and the ability to recognize what
14 was ahead. Okay. The real point is is that the timing
15 upon which he is basing his opinion, when you come down to
16 it, when I asked to do it, it was like why are you
17 assuming this time. Because the lawyer told me. That is
18 really what it come down to, okay. And I said did you
19 even read the plaintiff's, deposition of the plaintiff
20 about what time he said. Basically we all know here. The
21 only guy who was out there, okay, is the plaintiff
22 himself. Okay. So, what time the plaintiff said the
23 wreck happened and what he himself said about the lighting
24 condition. For them to put an expert on to basically
25 completely ignore what the plaintiff says. The plaintiff

1 says it would happen at approximately 7:00 o'clock and
2 then the sun was still out and the lighting conditions
3 weren't an issue. Okay. Then this guy wanted to go, no,
4 no, it was late, it was 8:00 o'clock and he has got these
5 fancy exhibits showing where the sun would be and he is
6 talking about all of this stuff that would happen. I said
7 wouldn't the lighting conditions be a lot better earlier
8 in the day. And he said, yes, it would be. The bottom
9 line is, they have got this exhibit and fancy testimony
10 and it is all based upon something that is completely not
11 in the record. And I know you will have to wait and hear
12 to see if that happens. That is highly prejudicial from
13 my side of the case and would confuse the jury about what
14 time it was. And I would submit that sort of evidence
15 shouldn't be coming in because it is not based, it is zero
16 evidence about that other than apparently one of these
17 lawyers that is when the wreck happened.

18 THE COURT: Is that going to be an issue.

19 MR. BOGGS: All I can say is what is good for the
20 goose is good for the gander. I mean, their expert says
21 broad daylight. My client testifies that he thinks, he
22 remembers, keep in mind he hit his head. Okay. And he
23 never said I know for a fact, I had a broken watch and it
24 said 6:45. He said it was daylight but it was still at
25 least after 6:30, the sun is up, there are trees along

1 this. So, everything is subjective. And what we do know
2 is that and I put that in my brief is that a 911 call was
3 received at 8:48 p.m. by the first time anybody called and
4 that was the lady that drove by and saw him laying in the
5 road. My expert used 8:00 o'clock, his expert used broad
6 daylight. And only time will tell and I know that is a
7 recurring theme but he had to pick a time to make a study.
8 And he can ask him, what if it was 6:45, would any of this
9 change. I don't think is excluded, and if it should be
10 excluded then his expert--

11 THE COURT: Y'all have a range of 7:00 to quarter to
12 9:00. And the accident didn't happen at quarter to 9:00,
13 he laid there for a little bit.

14 MR. HANNAH: I can tell you this, Judge, let's take a
15 step back how I established a time. He didn't hit his
16 head until he got in the wreck and he had a pretty good
17 memory, we will go through this when he is on the stand.
18 What did you do that day, he went to work, he went to
19 Greenwood, came home, it was about 6:00 o'clock and he
20 decided to go visit his grandfather's grave. He said it
21 takes about seven minutes to drive from his house to
22 there. He said he stayed there maybe thirty minutes. And
23 he is coming back when he gets in the accident. I would
24 submit that is a fairly accurate record even though he
25 doesn't know if it is precisely 6:45 or 7:00. And even

1 remotely suggest it was an hour later when, the longest he
2 stayed in the cemetery was thirty minutes. And it only
3 took him seven minutes to get home and he hadn't gotten
4 there yet. How could that possibly be any time other than
5 that.

6 MR. BOGGS: Judge, do you have my memo.

7 THE COURT: I do.

8 MR. BOGGS: If you will look at tab 14 and this is my
9 client's deposition, page 38. And at the top Geov is
10 asking about time but the best you can recall what time do
11 you think it was approximately when the accident happened.
12 My client, I can't say a specific time. I don't remember
13 a time like that. I do know that I would guess before in
14 the neighborhood of 7:00 because the sun was not going
15 down. I know that. And then Geov went on and pinned him
16 down to 6:30ish. You were there fifteen, twenty, thirty
17 minutes and basically rolling back home when this
18 happened. So, I mean, I see what he is saying. That to
19 pick a specific time might be too harsh on, if the time is --
20 the only way my expert could opine about his theory. But
21 again, it is, for him to bring up and I want us to be,
22 you only picked 8:00 because your lawyer picked, heck,
23 7:00 to 9:00 is 8:00. You know, pick 8:00. Is he suppose
24 to pick every minute and maybe he can on the stand if Geov
25 wants him to. I don't think it excludes the expert

1 testimony. It might, you know, impeach him. I am glad we
2 are here today so you can get up a speed on the case and
3 be thinking about cows and all over the weekend. I hope
4 you are not. All of this is just sort of trial and error
5 and hopefully there is no error. And I am not seeking
6 error because I don't want to try this again.

7 THE COURT: Everything y'all brought before me is
8 depending on what you do and who you call. And so I am
9 going to ask y'all to do this for me, the one thing I have
10 had trouble, some lawyers try to get by with. When you
11 have an objection, give me one reason, one word of
12 relevance and then stop. I don't want any talking of
13 objections going in front of the jury. Y'all have got
14 plenty of issues and generally it is the same issue. It
15 is prejudicial he is claiming and you are claiming it is
16 all relevant, probative, just circumstantial. And so we
17 are going to kind of follow that. I don't want talking
18 objections in front of the jury. That would cause more
19 harm both ways. Single word objections, I will make a
20 ruling. I will tell the jury, I have spoke to the lawyers
21 last week and we spoke of this issue, if you need a
22 sidebar you get it. This courtroom is set up well for a
23 sidebar. I will ask y'all to comply with that rule and I
24 will try to keep things moving. Y'all had something else?

25 MR. HANNAH: We did. Following along with what you

1 are saying there. For instance, if somebody is called to
2 the stand that I have, I don't know what he is going to
3 ask. This is one of the reasons I was hoping to get some
4 kind of general guidelines. If he is able to get the
5 question out of his mouth about something that I object
6 and I am doing that with every witness. Again, if he says
7 I am going to call Joe Blow as a witness and I know that
8 he has got four things he said that I object to. Should
9 we approach and have the jury not hear it. You need to
10 actually hear what they want to say before you can decide
11 if they can say it. And do we need to do that with the
12 jury sitting there or do we need to, have a mini trial
13 about it outside of their presence.

14 MR. BOGGS: That is not what you said as I took it.
15 If something comes up and he doesn't like the question I
16 am asking that he says objection and that is it and we
17 approach. Or if you know where it is going and remember
18 it you say denied or sustained.

19 THE COURT: Now, if we get to a group, a line of
20 facts he believes is coming up what I would like to do is
21 if we have to proffer something, if we can proffer one or
22 two. Once you get past Mr. Darby and that sort of thing,
23 they are going to be pretty similar. Once I make a ruling
24 on the first proffer I think we are going to be pretty
25 consistent.

1 MR. BOGGS: The last thing I want to do is start and
2 stop. Like it is the morning and I know which witnesses I
3 plan on calling in the afternoon. Judge, if we are going
4 to take a two hour break we might want to come back
5 earlier before the jury gets here and handle it then. I
6 want it to be smooth.

7 MR. HANNAH: That is my concern too.

8 THE COURT: I want to minimize wasting their time so
9 if we take a longer lunch break and give them two hours
10 and a half and we spend an hour proffering so we don't
11 start and stop, I don't want to treat the jury like we are
12 herding cows.

13 MR. HANNAH: I think you are right. Once we proffer
14 one or two witnesses you will have a very good flavor of
15 the kind of stuff we are talking about here and it won't
16 be necessary to add the next guy.

17 MR. BOGGS: He said proffer, I am not going to
18 proffer anybody unless the trial, the way I think the
19 trial is going to flow I don't think I will have to
20 proffer anybody.

21 THE COURT: Once we have a flavor of it we can do
22 that.

23 MR. BOGGS: That would be detrimental to my case if I
24 have to proffer everybody. I have no plan to try to sneak
25 it in before you can rule.

1 MR. HANNAH: That is what I am getting at. I am not
2 suggesting every witness needs to have that happen. The
3 first time you call a random witness to the stand that is
4 not the plaintiff or not my client, some neighbor, that
5 will be the first time you can truly hear what it is that
6 guy really wants to say and that they know about it. And
7 my concern is that if you ultimately rule that certain
8 questions are admissible, go in any way, what we will to
9 do first is the cat is already out of the bag.

10 THE COURT: If we start the trial Monday. The jury
11 is coming in at 10:30. We will pick a jury for you so
12 that you can look at somewhere around noon, it may be that
13 we can pick a second jury for the second trial. I don't
14 know yet. Y'all have got first chair. If we start first
15 thing after lunch, do your openings and call your first
16 several witnesses my guess would be that your first
17 witness will be your lengthiest. Once we get through the
18 first non-plaintiff, non-defendant, we get to the cows in
19 the road and I don't know or do know they are Darby's or
20 whatever, that type of witness, if it gets late in the
21 afternoon we will stop and come back earlier in the
22 morning. And let you pitch it out there and bring the
23 jury in at 10:00 rather than 9:00 and we will hear what
24 you are going to say and you can make an objection. And
25 by then we will have a pretty good idea of where I am

1 going to go with it.

2 MR. BOGGS: I am not going to sabotage the trial by
3 sneaking something in by, I know what his concerns are.
4 Some of those same witnesses that he has concern for have
5 other relevant information that that might be all I want.
6 So, I mean, I don't want to stop, proffer and then say the
7 nine things that I want and then he have a problem. I
8 might say do my nine things in the flow of the trial. And
9 say, Judge, sidebar. And I am going to ask him, do you
10 have a problem with it.

11 THE COURT: That would be the easier way.

12 MR. BOGGS: I do too.

13 MR. HANNAH: I am not saying, Mr. Wood, he had some
14 thing and drove by and saw a cow leap on over the fence.
15 If he is going to ask him about it, before you are going
16 to ask that question, if you know I object that is when we
17 agree we are going to have a discussion with you.

18 MR. BOGGS: When I perceive a question is coming that
19 is just so blatantly offensive to him I am going to do it.
20 But I am human, he has got to listen to me too. I would
21 say, have you been through this area before and if he
22 says, wait a minute, objection, relevance. Then we go and
23 I will try to avoid that but he has got to do his job. I
24 think part of this whole thing we are trying to try the
25 case before the case starts. And I trust you, Judge, that

1 is why you have the robe.

2 THE COURT: I want it to go smoothly.

3 MR. BOGGS: There was another agreement.

4 MR. HANNAH: May I approach and this is a very
5 lengthy document, it is not a signed version that we are
6 going to execute it here momentarily.

7 THE COURT: Just briefly scanning over it, this is
8 the same as you have?

9 MR. BOGGS: Yes, sir.

10 THE COURT: I think y'all are wise to have as many
11 of the lose ends tied as you can.

12 MR. BOGGS: It boils down, did they bridge the gap
13 between the cow and Darby, that is what this case is
14 about. And we and it is such a fundamental difference,
15 that is why we can't settle it. And no disrespect, they
16 believe one thing and we believe another and we think we
17 can prove our case and that is why we are so far apart.

18 MR. HANNAH: If you move forward. The verdict we
19 would like to submit to the jury is exhibit 1 which is
20 sort of the back of the document. He and I went back and
21 forth on the exact language that it would say. Basically
22 I was a law clerk for a Judge many years ago and kind of
23 followed the basic format that I had seen.

24 THE COURT: If this would go here and this would go
25 there.

1 MR. HANNAH: And this document just sets forth that,
2 it tells us how you figure out what money you get based
3 upon how the answers are done to the questions. Does that
4 make sense. The part two there was some discussions, we
5 were talking about doing a high low, how much, since we
6 are not trying damages what evidence at all can you talk
7 about. And he and I have talked probably more than I care
8 to admit about this and there is a list on the back and we
9 talk exactly about what it is his client is going to be
10 saying. The fact that he based in fifteen minutes of Mr.
11 Farrow's deposition and said I did this and I did that, I
12 am not going to be objecting just so he can have a full
13 picture to the jury. As we were trying to agree to this
14 he was saying, I am not agreeing to try it without being
15 able to put something in. We went back and forth at
16 length about that.

17 THE COURT: Are y'all going to give the jury that?

18 MR. BOGGS: No. It says, but the key word is
19 discuss. Geov wanted my client not to get up there and
20 talk three hours about all of his pain and suffering. And
21 is part of the reason they agreed to an amount. But I
22 never gave up nor does this give up my client's right to
23 tell his story. And we are limited to what Geov has said.

24 MR. HANNAH: If it is okay with you, Judge, I think
25 the best way to do it is I know what he and I have

1 discussed in length. It will be up to me, I will say, if
2 he gets out of line and starts mentioning something that
3 we don't think we agreed to then we can ask for a sidebar
4 and we will talk about that. But I don't ever intend to
5 ever object during that testimony and let the man tell a
6 story.

7 THE COURT: Y'all can say, we both agree the man was
8 hurt on a motorcycle and we want y'all to answer the
9 question for us and these are the questions. Are y'all
10 going to discuss the verdict sheet up front.

11 MR. BOGGS: I would caution against that for fear
12 that what if you rule a certain way, if you direct, let's
13 say the expert testimony from one of the other causes you
14 concern and those specific questions don't make it. I
15 think that is in there too. It says as to the specific
16 liability issues that are decided by the jury or
17 determined by the Court on depositive motion. So, my
18 intention is to talk about the verdict form after we, at
19 the closing, yes. I am going to say, ladies and gentlemen
20 of the jury, this is as simple as a motorcycle versus a
21 cow but it is not that easy. And in a typical civil case
22 you would have to show, blank, blank, blank and blank.
23 But to move things along the parties have agreed that you
24 don't have to talk about damages, we aren't going to
25 mention the amount, we are not going to mention the low,

1 any of that. And I guess, again, when it is time to do
2 the charges we would want you to say, now, remember what
3 the lawyers said that in a typical civil case you would
4 have to find this. If you have reached this point you
5 would have to then determine damages. But by agreement of
6 the parties that is not, you don't need to worry about
7 that.

8 THE COURT: That is almost, where you can't mention
9 insurance. And some Judges says, look, we understand
10 there is insurance out there, y'all don't have to deal
11 with that because that is a legal issue. Y'all decide who
12 is at fault and what the percentages are and all the
13 insurance stuff, that is for insurance companies to decide
14 and we will deal with that later rather than not mention
15 it. You mention it and say y'all don't have to worry
16 about it.

17 MR. BOGGS: I would love for you to mention
18 insurance by the way but you can justify that that would
19 be great. It is not our intention to bring that up.

20 MR. HANNAH: The only thing, again, it sets it
21 forward. The only reason I mentioned that was I wanted
22 you to understand that he was going to talk some about
23 damages, not ad nauseam or anything but I am hopeful it
24 will be on my burden to say something and that he wouldn't
25 get involved. Some Judges will do more objecting than the

1 lawyers do. And at least during that part, if you are
2 inclined to do that then let the man talk, let me object
3 so that--

4 MR. BOGGS: And, Judge, it is only fifteen minutes,
5 maybe ten. I am not going to waste their time with it but
6 it is part of who he is and his credibility to me. And I
7 would never give up my client's to being himself. And
8 that is part of them accessing who they want to believe.

9 MR. HANNAH: And the only part that is in here that
10 would matter from your perspective of the charge is that
11 not to, we don't want to explain to the jury what if,
12 their job is to answer the questions and that you as a
13 matter of law will do, based upon the agreement, will
14 figure out what to do with that. That goes without
15 saying.

16 THE COURT: I will explain to the jury, we have given
17 y'all this factual question and all of this other. If
18 this insurance thing comes up it does not come before
19 y'all today, just decide these questions. All the
20 insurance issues I get to deal with that. Since y'all
21 don't have any money on here this is the perfect case to
22 say something like that if you are going to say it. They
23 don't know what it is, how bad he is injured cost wise.

24 MR. BOGGS: When they hear what happened to him they
25 are going to know that he is messed up bad. And Geov can

1 say, listen this guy was messed up. And Geov, to his
2 credit, he has never questioned my client's injuries.
3 That is why we are keeping life care planners, Oliver
4 Wood, the jury is not going to want to hear that after
5 they hear all of these people talking about cows.

6 THE COURT: Does it suit y'all to be here before
7 10:30 Monday to mark your exhibits with Mr. Young who will
8 be the court reporter for my next month.

9 MR. HANNAH: No, we don't mind coming early and going
10 through the exhibits.

11 THE COURT: I would rather him mark them and let him
12 keep track of those.

13 MR. HANNAH: I just thought of something based on
14 what you said. I don't intend to mention the verdict form
15 but I do intend to mention that there are certain
16 questions that we are going to be asking. I am not going
17 to mention the form itself. That is the purpose of being
18 here, was it my client's cow, was he negligent and then
19 was the plaintiff negligent.

20 THE COURT: Do y'all want me to mention those in my
21 preliminary?

22 MR. BOGGS: No, sir. I think what he wants to argue,
23 he can argue any defense he wants to but the problem I
24 have with you talking about comparative before it is even
25 presented is that it gives more credibility, I think that

1 is something he has the burden. Obviously anything that I
2 am alleging that is why we are here, you have to mention
3 that.

4 THE COURT: I am going to allow the jury to have
5 water and candy if they need it. I will have them a
6 basket of candy. I think if you will check with attorneys
7 that have tried cases in front of me, I let them try their
8 case. It is your case, not mine, that is what I am going
9 to do.

10 MR. BOGGS: Is there any electronic media that is
11 here or bring what you want.

12 THE COURT: The Solicitor's office has a wireless if
13 you can borrow that from them. You can bring any
14 electronic that you would like. Anything else?

15 MR. BOGGS: That is all, Your Honor.

16 MR. HANNAH: No sir, Your Honor.

17 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

18

19

20

21

22

23

24

25

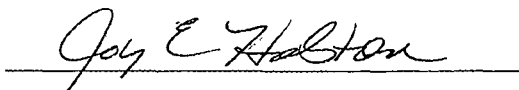
CERTIFICATE OF REPORTER

State of South Carolina)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the
Eighth Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete transcript of record of the proceedings had in
Court of Common Plea Non-Jury and evidence introduced in
the trial of the captioned case, relative to appeal, in
Laurens County, South Carolina on the 28th day of January,
2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 29, 2011



Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

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
) ** Volume I **
) Plaintiffs,)
) V.)
Jerry W. Darby,) Defendant.)

January 31 - February 1, 2011

Laurens, South Carolina

B E F O R E:

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

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SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

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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

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
<u>For the Plaintiff:</u>			
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.
<u>For the Plaintiff:</u>			
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
<u>For the Defendant:</u>			
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

1 All right. That being the case, Mr. Boggs, you may
2 call your first witness.

3 MR. BOGGS: Thank you, Your Honor. I call Rebecca
4 Willis to the stand.

5 Ms. Wills, if you'll come around to be sworn.

6 REBECCA E. WILLIS, after having been duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BOGGS:

10 Q. Ms. Willis, can you state your full name for the
11 record, please.

12 A. Rebecca Evans Willis.

13 Q. And do you reside in Laurens County?

14 A. Yes, sir.

15 Q. Okay. And do you recall the events of July 24th,
16 2008?

17 A. Yes, I did.

18 Q. Okay. And specifically calling your attention to
19 that evening, where were you headed in relation to where
20 the accident occurred?

21 A. I was on my way home.

22 Q. And were you traveling on Dials Church Road?

23 A. Yes.

24 Q. Were you headed from the church north ---

25 A. Yeah.

1 Q. --- if you will?

2 All right. And can you explain to the jury what
3 you saw that day.

4 A. I just saw the motorcycle in the road, and we
5 stopped and looked and saw a man in the ditch. And I saw
6 that he wasn't moving and so -- do you want me to tell
7 them what I did next?

8 Q. Oh, yeah. Sure.

9 A. So I went to my husband's grandparents, live two
10 houses down from where the accident was. And I had my
11 three small children with me, and so I didn't stop. I
12 went to their house and called 911.

13 Q. Okay. So when you -- just to make sure I
14 understand. You said you saw the motorcycle in the
15 roadway?

16 A. Right.

17 Q. And you're talking about Dials Church Road; is that
18 correct?

19 A. Yes.

20 Q. And was it on the right side of the road or the
21 left side of the road?

22 A. It was more to the left. Toward the middle to the
23 left of the road.

24 Q. And that is -- you're heading north?

25 A. To my left.

- 1 Q. Would be in the oncoming lane of traffic?
- 2 A. Right.
- 3 Q. Dials Church Road is how many lanes?
- 4 A. Two.
- 5 Q. Two. And you said in your testimony that you
- 6 stopped but did you actually stop and get out or just
- 7 slow down?
- 8 A. Just slowed down almost to a stop, maybe a stop. I
- 9 don't remember that part.
- 10 Q. All right. Do you remember what time it was?
- 11 A. No.
- 12 Q. Okay. Was it in the evening?
- 13 A. I'm pretty sure it was in the evening.
- 14 Q. Now, you said you had your three kids with you; is
- 15 that correct?
- 16 A. Right.
- 17 Q. And why didn't you stop immediately and get out to
- 18 see if he was hurt?
- 19 A. Well, I was just afraid with it being that type of
- 20 accident I didn't know if it may be something that they
- 21 didn't need to see.
- 22 Q. So you went up to your -- where did you go to?
- 23 A. To my husband's grandparents' house.
- 24 Q. And I believe his name is Harrison; is that
- 25 correct?

- 1 A. Yes.
- 2 Q. And can you see his house from where the accident
3 scene was?
- 4 A. I'm not sure. It's not far.
- 5 Q. Okay. And do you recall how far from Cooley Road
6 you saw the -- excuse me. Is Cooley Road up on the left?
- 7 A. Yes. Past where the motorcycle was.
- 8 Q. And the accident happened prior to Cooley Road,
9 right?
- 10 A. Right.
- 11 Q. And so do you know how far away from Cooley Road it
12 was?
- 13 A. No.
- 14 Q. When you went up to your grandfather-in-law, for
15 lack of a better term, Mr. Harrison's house, did you call
16 911 immediately?
- 17 A. Yes.
- 18 Q. And I'd like to show you, if I may, it hasn't been
19 marked yet but this is what purports to be a report and
20 it has your name on it. Do you see that up there?
- 21 A. Uh-huh.
- 22 Q. Is that your phone number?
- 23 A. No.
- 24 Q. Okay. Whose phone number is that?
- 25 A. It's -- I guess it's his grandparents' number. I

- 1 don't know that right off.
- 2 Q. Well, that's all right. Did you place a call? You
- 3 just said you did, right?
- 4 A. From their landline, yes.
- 5 Q. And would it -- well, let me ask you to look at
- 6 this time right here. You see that?
- 7 A. Uh-huh.
- 8 Q. Now, that's military time. Can you read military
- 9 time?
- 10 A. If I thought about it for a few minutes I could.
- 11 Q. Do you agree with me that says 8:48 and 53?
- 12 A. Yeah.
- 13 Q. So 8:48 and 53 in the evening. It says 20:48, but
- 14 do you agree 8:48, 53?
- 15 A. I really was thinking it was earlier than that
- 16 actually, but I know I was pretty sure it was evening.
- 17 Q. But you do know that you saw the accident, slowed
- 18 down, took your kids away from it and called immediately,
- 19 right?
- 20 A. Right.
- 21 Q. Okay. So do you have any evidence that it wasn't
- 22 8:48 in the evening?
- 23 A. No. No.
- 24 Q. All right. Now, did you go back to the scene?
- 25 A. I turned around and went back.

- 1 Q. Okay. Did you take your kids with you?
- 2 A. Yes, I did.
- 3 Q. Okay. And did you notice -- well, let me show you
- 4 another picture, if I may -- or show you a picture. Can
- 5 you identify what's in this picture, the location?
- 6 A. Yeah.
- 7 Q. What intersection does that appear to be?
- 8 A. That's Cooley Road.
- 9 Q. And does this look -- is this taken from the same
- 10 direction that you were headed?
- 11 A. Yeah.
- 12 Q. And just let the record reflect I was showing her
- 13 plaintiff's proposed exhibit number one.
- 14 Now, ma'am, is this photo facing in the same
- 15 direction as the direction you were traveling?
- 16 A. Yeah.
- 17 Q. Now, obviously, this picture is daytime, correct?
- 18 A. Right.
- 19 Q. And all I'm asking you, is this approximately the
- 20 scene of where you saw the motorcycle in the road?
- 21 A. Yeah.
- 22 Q. All right. Can you tell exactly where it was from
- 23 this picture?
- 24 A. I can't tell -- tell exactly where the motorcycle
- 25 was?

- 1 Q. Yes.
- 2 A. Yeah. No.
- 3 Q. Okay. And obviously the truck that's in there,
4 that wasn't there at the time?
- 5 A. Right. No.
- 6 Q. Did you talk to my client?
- 7 A. No.
- 8 Q. Can you identify him today?
- 9 A. I can today. I've since met him.
- 10 Q. Is that the man that was laying on the side of the
11 road?
- 12 A. I know that now but I wouldn't have ---
- 13 Q. But you didn't know that then?
- 14 A. No.
- 15 Q. Okay. When you came back was there anybody else
16 there?
- 17 A. Someone else had stopped at that point and I told
18 them that I'd called 911.
- 19 Q. Okay.
- 20 A. And they were asking him if he was okay.
- 21 Q. Did you -- when you came upon my client was that
22 car there the first time you drove by?
- 23 A. No.
- 24 Q. So for all you know you were the first person to
25 find the scene?

1 A. Yeah.

2 Q. And did you get the name of whoever it was that
3 stopped?

4 A. No.

5 Q. Did they stay, or do you know?

6 A. I don't know.

7 Q. How long did you stay at the scene?

8 A. I probably did not come to a complete stop because,
9 again, I was just ---

10 Q. When you came back?

11 A. When I came back, yeah.

12 Q. Okay. All right. Were any first responders there?

13 A. No.

14 Q. So when you pulled away nobody was there?

15 A. The other car was still there.

16 MR. BOGGS: Okay. Nothing further.

17 CROSS-EXAMINATION

18 BY MS. RAINES:

19 Q. Hi, Ms. Willis. How are you?

20 A. Good.

21 Q. Can you describe -- and I know you went over it
22 just a moment ago. Can you describe for me again the
23 route that you took going from -- you went from Dials
24 Church. Can you describe that for me again, please.

25 A. Yes. I was just coming from the direction of Dials

- 1 Church, just on that straightaway.
- 2 Q. And while you were going that direction did you see
- 3 any cows?
- 4 A. In the pasture.
- 5 Q. In the pasture? And which pasture did you see
- 6 cows? Was this right when you were by the accident scene
- 7 or much further back?
- 8 A. They are in the pasture ahead of the accident
- 9 scene.
- 10 Q. Ahead of accident scene. And what time of day do
- 11 you think it was when you got there?
- 12 A. I know it was late evening. We were coming home
- 13 from Bible school. So I know it was later in the
- 14 evening.
- 15 Q. And was there still light outside?
- 16 A. Yes.
- 17 Q. And what time as far as the daylight that was
- 18 available? Was it starting to get very dark? Was it
- 19 closer to dark, or was it closer to daylight? Can you
- 20 recall?
- 21 A. I don't really recall.
- 22 Q. Did you happen to see what -- from your vantage
- 23 point when you were approaching the scene what Mr. Farrow
- 24 had hit?
- 25 A. No.

- 1 Q. Do you know when the actual accident happened?
- 2 A. As far -- just -- not -- I don't remember, you
- 3 know, exactly the date and all. What I know is what you
- 4 all have told me.
- 5 Q. As far as how long before ---
- 6 A. Oh, before.
- 7 Q. Before you got to the scene when the actual
- 8 accident had occurred.
- 9 A. I don't know for sure but it appeared to have
- 10 happened right as I got -- you know, right before I got
- 11 there.
- 12 Q. And what led you to believe that it had happened
- 13 right before you got there?
- 14 A. Just the fact that no one was there. No one had
- 15 stopped.
- 16 Q. No one had stopped. But is there anything other
- 17 than the fact that no one had stopped that would lead you
- 18 to believe that ---
- 19 A. No.
- 20 Q. --- it had just occurred?
- 21 So you didn't actually see it?
- 22 A. No.
- 23 Q. And you didn't actually hear anything that had
- 24 happened?
- 25 A. No.

- 1 Q. When you drove by did you see any cows outside of
2 any enclosures?
- 3 A. No.
- 4 Q. Did you at any point see any cows outside of any
5 enclosures?
- 6 A. No.
- 7 Q. And did you see any other evidence of there being a
8 cow there?
- 9 A. No.
- 10 Q. Did you have any idea that it was, in fact, a cow?
- 11 A. No.
- 12 Q. Did you know what it was that Mr. Farrow had hit?
- 13 A. No. I didn't know he had hit anything.
- 14 Q. And when you went back to the scene is that all the
15 same? Did you see anything then that would give you any
16 clue as to what he had hit?
- 17 A. No.
- 18 Q. Did you at any time see anything that would have
19 told you what he had hit?
- 20 A. No.
- 21 Q. And as far as when you were driving by, there was a
22 fence? So there was a pasture next to the area of the
23 accident and there was a fence there?
- 24 A. Yes.
- 25 Q. Did you see anything wrong with that fence?

1 A. No.

2 Q. Did you at any time see anything wrong with any
3 fence in the area?

4 A. No.

5 Q. And did you make any effort to examine the fence
6 though?

7 A. No.

8 Q. Okay. Of course. So you can't tell us today
9 whether the fence was in perfect working order or not,
10 you just wouldn't know?

11 A. No. I wouldn't know.

12 Q. But you did not personally observe any breach in
13 the fence on the side of Dials Church Road?

14 A. No.

15 Q. And when you came back you only saw one other
16 person out there that evening; is that correct?

17 A. Yeah.

18 Q. And to this day do you have any idea who that
19 person was?

20 A. No.

21 Q. And just to go over a few questions to finish this
22 off here then we'll be through to focus in on the
23 accident. Do you know absolutely anything about anyone's
24 cattle being loose outside of their proper enclosure on
25 the evening of July 24th, 2008?

1 A. No.

2 Q. And so it follows that you have no knowledge of
3 Mr. Darby's cattle being loose from their pastures on
4 July 24th, 2008?

5 A. No.

6 Q. And do you have any personal knowledge of a breach,
7 damage or defect existing in the fence enclosing
8 Mr. Darby's pastures on July 24th, 2008?

9 A. No.

10 Q. And do you have any personal knowledge of Mr. Darby
11 having injured cow on or after July 24th, 2008?

12 A. No.

13 Q. And do you have any knowledge of anyone having an
14 injured cow at that time?

15 A. No.

16 MS. RAINES: One moment. I think I'm about
17 through.

18 No further questions.

19 MR. BOGGS: Just briefly, Judge.

20 THE COURT: All right.

21 REDIRECT EXAMINATION

22 BY MR. BOGGS:

23 Q. Ma'am, you testified -- she went in depth about any
24 cow sightings. You said you saw cows; is that correct?

25 A. Yes.

1 Q. And if I can approach and show you what I've marked
2 as a plaintiff's exhibit, proposed exhibit one. You said
3 that there were cows -- I think you said.

4 MR. HANNA: Your Honor, objection on leading.

5 THE COURT: I'll sustain that. Just rephrase your
6 question.

7 MR. BOGGS: Yes, sir.

8 BY MR. BOGGS:

9 Q. Where did you say you saw cows?

10 A. Well, I guess what I should say is normally cows
11 are in this pasture. I cannot say if I saw cows that
12 night.

13 Q. Well, how do you know normally cows are in that
14 pasture?

15 A. Because that's where I live and I go up and down
16 that road every day and there are usually cows in there
17 unless something is being done to the field where they
18 can't be in it, in the pasture.

19 Q. Okay. So do you know whose cows are in that
20 pasture? Do you have personal knowledge of that?

21 A. I've assumed always that they were Darby's,
22 Mr. Darby's.

23 Q. Well, there's no sign there that says Darby's
24 pasture, right?

25 A. Right.

- 1 Q. So you base that off ---
- 2 A. Just with the ---
- 3 Q. --- your familiarity ---
- 4 A. Right.
- 5 Q. -- with the area?
- 6 A. The community, uh-huh.
- 7 Q. Let me ask you this. You drove all the way up
- 8 Dials Church Road from Dials Church. Did you see -- did
- 9 you pass any cows along the way?
- 10 A. I don't know. I don't remember that.
- 11 Q. Okay. Would you have -- well, let me ask you this.
- 12 You drove past -- you stopped, drove past, came back,
- 13 just for a second, then I assume you turned around and
- 14 went home up north, north Dials Church Road?
- 15 A. No. I kept going ---
- 16 Q. You kept going back towards church?
- 17 A. --- back toward the church, yeah.
- 18 Q. Okay. Didn't see any cows then, did you?
- 19 A. Not loose cows.
- 20 Q. Okay. Well, where did you see cows?
- 21 A. In the pasture.
- 22 Q. Right there to your right?
- 23 A. Right.
- 24 Q. Mr. Darby's pasture?
- 25 A. Yes.

1 MR. BOGGS: Nothing further, Judge.

2 THE COURT: Ms. Raines, anything else?

3 MR. HANNA: Nothing further, Your Honor.

4 MS. RAINES: Nothing further, Your Honor.

5 THE COURT: You may step down.

6 We're right at an hour. It would be a good time to
7 break.

8 Ladies and gentlemen, I'm going to let you all have
9 a quick break. We've been here not quite an hour but
10 I've been in the courtroom an hour. I'll let you all
11 step back in the back about 10 minutes. As soon as you
12 all are ready we'll get you all back out here. But
13 please remember my instructions, don't begin discussing
14 the case. We'll see you back in a few minutes.

15 (WHEREUPON, the jury leaves the courtroom at
16 approximately 2:37 p.m.)

17 THE COURT: All right. We'll stand in recess about
18 10 minutes.

19 (WHEREUPON, a brief recess was taken.)

20 THE COURT: Are you ready?

21 MR. HANNA: Yes, sir.

22 THE COURT: Mr. Hanna, just so I cannot confuse my
23 court reporter. I think you are allowed to question the
24 witness and object but I can't have both of you working
25 the same witness.

1 MR. HANNA: Did we do that?

2 THE COURT: You all both stood in unison and said,
3 No more questions.

4 MR. HANNA: I'm sorry. I'm sorry. I apologize.

5 THE COURT: I don't know if you could have
6 rehearsed it any better. But you objected to a question.

7 MR. HANNA: Oh, I'm sorry. I understand. I
8 apologize.

9 THE COURT: I don't care which one of you does it
10 just do your job singularly.

11 MR. HANNA: If what I'm hearing -- you're not
12 talking about when I said, No question? You're taking
13 about my objection that shouldn't have been made if she
14 was questioning?

15 THE COURT: Right.

16 MR. HANNA: Got you.

17 THE COURT: That's what I understand the rule to
18 be.

19 MR. HANNA: Understood.

20 THE COURT: But you all both did stand. I mean, I
21 don't know if you could have rehearsed it any better.
22 You both stood and said, No further questions, at the
23 same time. It was really nice.

24 MR. HANNA: I assure you we haven't rehearsed it.

25 THE COURT: All right. Ready?

1 (WHEREUPON, the jury enters the courtroom at
2 approximately 2:50 p.m.)

3 THE BAILIFF: All present, Your Honor.

4 THE COURT: All right. You ready to continue?

5 MR. BOGGS: Yes, Your Honor.

6 THE COURT: All right, Mr. Boggs.

7 MR. BOGGS: May it please the Court.

8 THE COURT: Yes, sir.

9 MR. BOGGS: We call Jim Shields to the stand,
10 please.

11 JAMES L. SHIELDS, after having been duly
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BOGGS:

15 Q. Mr. Shields, state your full name for the record,
16 please.

17 A. James Lawrence Shields.

18 Q. And with whom are you employed.

19 A. I'm employed with Lockheed Martin at the Donaldson
20 Center, but I am a presently the chief of Station 17 --

21 THE COURT: Scoot your chair up a little. And if
22 you can, speak just a little bit slower and clearer so my
23 court reporter, and particularly the 13 jurors can hear
24 you.

25 BY MR. BOGGS:

- 1 Q. I believe you said you were employed at Lockheed
2 Martin; is that correct?
- 3 A. Correct.
- 4 Q. And then what did you say?
- 5 A. I'm also the chief of Station 17 Green Pond
6 Volunteer Fire Department.
- 7 Q. Okay. And how long have you been with Green Pond
8 Volunteer Fire Department?
- 9 A. Approximately 13 years.
- 10 Q. And what is your capacity or do you have a title
11 there?
- 12 A. I'm a chief.
- 13 Q. And were you the chief as of the date of the
14 accident, which has been stated to be July 24th, 2008?
- 15 A. No, on that such incident I was -- at the time I
16 was the assistant chief.
- 17 Q. Okay. Now, did you -- were you working that night
18 or were you on duty that night?
- 19 A. We were at a meeting that night, a monthly meeting.
- 20 Q. Okay. And where were you meeting?
- 21 A. At the fire department.
- 22 Q. Okay. And did you have an opportunity to respond
23 to a call?
- 24 A. Yes, I did.
- 25 Q. Okay. I'd like to show you the 911 report for

1 Rebecca Willis' call, which I've marked for
2 identification as Plaintiff's 2. Can you identify that
3 document?

4 A. Yes, I can. This is a CAD report from Laurens
5 County central.

6 Q. You called it a CAD report? What does that stand
7 for?

8 A. Computer aid design.

9 Q. Have you had an opportunity to review or see one of
10 those reports before?

11 A. Numerous occasions.

12 Q. Okay. And can you -- and regarding that particular
13 document is that -- is it of some significance to you?

14 A. This is the incident report from the night of
15 Mr. Farrow's accident.

16 Q. And do you routinely review such reports and is
17 information that you provide included in those reports?

18 A. Yes, it is.

19 Q. Do you recall or by looking at that report to
20 refresh your memory do you recall what time you responded
21 to a call?

22 A. The call had at 20:50.

23 Q. And for us nonmilitary folks that's 8:50 p.m.?

24 A. Correct.

25 Q. And what time -- can tell from that form what time

- 1 you responded?
- 2 A. We went in route at 20:54.
- 3 Q. 20:50?
- 4 A. Four.
- 5 Q. Four. And does it say what time you arrived at the
- 6 scene?
- 7 A. 21:02.
- 8 Q. So at 9:02 you were at the scene?
- 9 A. That's correct.
- 10 Q. Okay. And which direction did you arrive at the
- 11 scene? I mean, which way did you go to get there?
- 12 A. I came off Green Pond, made a left onto Cooley and
- 13 made a right onto Dials Church Road.
- 14 Q. Okay. So if I can -- I'd like to show you what's
- 15 been marked Plaintiff's -- for identification purposes,
- 16 Plaintiff's Exhibit 1. Does that accurately show the
- 17 intersection you just described of Dials Church and
- 18 Cooley Road?
- 19 A. Yes, it does.
- 20 Q. Okay. So the road that intersects with Dials-
- 21 Church, that's the road you came from?
- 22 A. Correct.
- 23 Q. And you took a right towards the accident scene?
- 24 A. Right.
- 25 Q. Okay. And what did you find there?

1 A. When we first arrived on the scene I saw a
2 gentleman flagging us down as to his location. Probably
3 50 to a hundred feet after we made the right-hand turn
4 observed the motorcycle laying on the road and Mr. Farrow
5 laying in the ditch.

6 Q. Now, as you were coming from Cooley Road would
7 Mr. Farrow have been first or the motorcycle have been
8 first?

9 A. The motorcycle would have been first.

10 Q. Are you -- well, I want to make sure I have this
11 right. Do you know which direction the motorcycle was
12 facing?

13 A. Towards Dials Church.

14 Q. And was it in the road?

15 A. Yes, it was in the road.

16 Q. And you found Mr. Farrow in the ditch?

17 A. Ahead of the motorcycle, correct.

18 Q. Okay. And was Mr. Farrow conscious?

19 A. He was going in and out of consciousness.

20 Q. Okay. Now, did you speak with him?

21 A. Yes, I did.

22 Q. What was his condition?

23 A. His condition, it was -- he was altered. He was
24 going in and out of consciousness. I asked him what had
25 happened. He had made a statement to the fact that he

1 had hit a cow. I was more concerned about what was going
2 on with him. He was having difficulties breathing. I
3 administered O-2. I ordered a long board stretcher,
4 collar. I was more concerned about his well being and
5 preceded to ---

6 Q. I'm sorry. I didn't catch that last part.

7 A. I proceeded to care for him.

8 Q. Okay. And did you notice anything -- or so your
9 immediate concern was for him, is that correct?

10 A. Correct.

11 Q. It's not your job to diagnose what his maladies are
12 or any injuries or anything like that, is it?

13 A. No, sir.

14 Q. But you said you administered O -- Oxygen. Is that
15 what you said?

16 A. Yes, sir. He was having difficulty breathing.

17 Q. Okay. And, now, did you put him or assist him and
18 place him on an ambulance or what happened?

19 A. Correct. We put him on a long board. We secured
20 him, put splitter straps on him, maintained the C-spine
21 by putting a collar around his neck. We blocked his
22 head, taped his head to the board. While we were doing
23 that, medics were in route. His condition was worsening.
24 Upon arrival of the medics seeing -- they determined that
25 he was, what we call going south, fast, and they ordered

- 1 a life flight.
- 2 Q. Okay. They ordered a life flight?
- 3 A. Correct.
- 4 Q. Is that what you call it? Is that essentially air
- 5 trans ---
- 6 A. Air trans.
- 7 Q. --- or an air ambulance ---
- 8 A. Correct.
- 9 Q. --- for lack of a better term? Is it a helicopter?
- 10 A. Uh-huh.
- 11 Q. And did the helicopter come and take him to the
- 12 hospital?
- 13 A. Yes, it did. The helicopter was dispatched and we
- 14 set up an L-Z on the pasture on the adjacent side of the
- 15 road.
- 16 Q. What's an L-Z?
- 17 A. Landing zone.
- 18 Q. Okay. You are very soft spoken as compared to me.
- 19 So I just want to make sure. So essentially you showed
- 20 up, he was there, you treated him, you got him prepared
- 21 to leave and then you had to call an ambulance -- I mean,
- 22 excuse me, an air trans because you were concerned?
- 23 A. Correct.
- 24 Q. Did you have an opportunity to look at the
- 25 motorcycle after you treated David?

1 A. Yes, I did.

2 Q. Did you notice anything about its condition?

3 A. Yes, I did.

4 Q. And what did you notice?

5 A. I noticed a significant amount of feces on the
6 motorcycle, brown hair, black hair, white hair, long
7 hair. When he said that he had hit a cow it would
8 indicate that he hit a cow.

9 Q. Did -- I mean, based on your being there what was
10 your perception of what kind of feces it was?

11 A. Cow.

12 Q. Okay. Now, you don't have any special training or
13 anything in that, do you?

14 A. No, sir, I don't.

15 MR. BOGGS: Okay. Judge, I would move what has
16 been previously marked as Plaintiff's 1, which is a photo
17 of Dials Church, and Plaintiff's 2, the 911 report, into
18 evidence.

19 MR. HANNA: The picture without objection. We
20 would object to the 911 call document going into
21 evidence. It's irrelevant, containing hearsay, and other
22 reasons that I could go into.

23 MR. BOGGS: Judge, we'll move on at this time.

24 THE COURT: Well, the picture is in. I'll hear
25 further counsel argument on Exhibit 2 when we take our

1 next break, but I don't think it's imperative to get it
2 in right now.

3 MR. BOGGS: No, Your Honor. We can move on right
4 now.

5 THE COURT: Okay.

6 (WHEREUPON, Plaintiff's Exhibit Number 1, a
7 Photograph, was admitted in evidence.)

8 MR. BOGGS: Nothing further.

9 THE COURT: All right.

10 CROSS-EXAMINATION

11 BY MS. RAINES:

12 Q. Mr. Shields, how are you doing today?

13 A. Good. You?

14 Q. I'm doing fine. Thank you.

15 My name is Carrie. I'm just going to follow up
16 with you a couple questions. The route that you
17 described taking to the accident, can you tell me the way
18 you went again?

19 A. I made a right out of my fire department. I made a
20 right onto Green Pond Road. I made a left onto Cooley.
21 I made a right on Dials Church.

22 Q. And while you were going down that way did you see
23 any cows?

24 A. No, ma'am. I did not observe any cows.

25 Q. So you didn't see them in any enclosures and

1 pastures nearby?

2 A. No, ma'am.

3 Q. And you didn't see them out roaming around
4 anywhere?

5 A. No, ma'am.

6 Q. And do you have any knowledge of when the actual
7 accident happened?

8 A. All I can go by is what the prior witness said was
9 upon her arrival and the time the call came in to my fire
10 department.

11 Q. So other than that information you have no way to
12 know when the collision actually occurred?

13 A. No, I don't.

14 Q. And when you got there what time of day was it?

15 A. It was coming dusk. It was about 9:02, in the
16 evening.

17 Q. But there was still some daylight out; is that
18 correct?

19 A. It was coming dusk. Correct.

20 Q. And when you got to the scene you said there was
21 some evidence that it was a cow?

22 A. Correct.

23 Q. Can you tell me again what color were those hairs
24 that you saw?

25 A. The hairs were significant of a cow's tail, long,

1 brown, blonde -- brown, black and white.

2 Q. And are you certain you saw all three; brown, black
3 and white?

4 A. I'm a hundred percent certain.

5 Q. And other than the hair, the cow hair and the feces
6 that you described, was there any other evidence of a cow
7 having been there?

8 A. Other than what I saw on the motorcycle, no.

9 Q. And I understand you were caring for Mr. Farrow but
10 you didn't happen to look up or look around and see any
11 cow tracks or anything like that, did you?

12 A. Ma'am, my job was caring for Mr. Farrow. I took a
13 significant look at the accident scene after he was
14 transported and that's when I saw what I saw.

15 Q. Yes, sir. Yes, sir. And understanding that that
16 was your job but you just didn't happen to look up and
17 see a problem with the fence, did you, sir?

18 A. I did not observe it. I wasn't looking for it.

19 Q. Yes, sir. And in the field next to where the
20 accident occurred you mentioned that you landed the
21 helicopter there?

22 A. Correct.

23 Q. And, sir, understanding that it was not your main
24 job and that you had much more pressing concerns but you
25 didn't happen to look up and see cow tracks there?

1 A. No, I did not see no cow tracks. That was an
2 unfenced pasture we landed the helicopter in.

3 Q. And you didn't see any cows in that pasture?

4 A. No, ma'am.

5 Q. And are you aware of anyone looking along that
6 fence and looking for a breach or a defect in there that
7 evening?

8 A. No, I was not. I reported to highway patrol what
9 Mr. Farrow said to me. He may have done a report. I'm
10 not sure.

11 Q. But to your knowledge no one found a defect in the
12 fence?

13 A. To my knowledge, no.

14 Q. And do you know anything about anyone's cattle
15 being loose outside of their proper enclosures on the
16 evening of July 24th, 2008?

17 A. No, ma'am. I do not.

18 Q. So it follows then that you have no personal
19 knowledge of Mr. Darby's cows being outside of their
20 enclosures?

21 A. Other than have been down Cooley Road and Dials
22 Church Road on numerous occasions and seeing cows in the
23 pasture before.

24 MS. RAINES: Your Honor, I -- I'm --

25 THE COURT: I'm going to let you rephrase your

1 question.

2 Just answer the question she asks you.

3 MS. RAINES: Thank you. Thank you very much, Your
4 Honor.

5 BY MS. RAINES:

6 Q. On the evening of July 24th, 2008, do you have any
7 knowledge of Mr. Wayne Darby's cattle being loose outside
8 of their proper enclosure?

9 A. No.

10 Q. Do you have any personal knowledge of a breach,
11 damage or defect existing in the fence of Wayne Darby's
12 pasture on the night of July 24th, 2008?

13 A. No.

14 Q. And do you have any personal knowledge of anyone
15 having an injured cow in July of 2008?

16 A. No, I do not.

17 Q. And so it follows then that you have no knowledge
18 of Mr. Darby having an injured cow in July 2008?

19 A. That is correct.

20 MS. RAINES: Your Honor, if I could have just one
21 moment please.

22 No further questions.

23 THE COURT: All right.

24 MR. BOGGS: Briefly, Your Honor.

25 THE COURT: All right.

1 REDIRECT EXAMINATION

2 BY MR. BOGGS:

3 Q. Now, opposing counsel was asking you about Med
4 Trans and where the pasture. I'd like to show you a
5 picture, and we'll -- for identification purposes we'll
6 call this Plaintiff's Number 3.

7 (WHEREUPON, Plaintiff's Exhibit Number 3, a
8 Photograph, was marked for identification only.)

9 BY MR. BOGGS:

10 Q. Now, when you said the pasture about the helicopter
11 landing, was it the fence pasture or was it a different
12 pasture?

13 A. It was the pasture adjacent to the pasture on the
14 right side of the road. It was across the street.

15 Q. Across the street from Cooley Road; is that
16 correct?

17 A. Correct.

18 Q. So in looking at Plaintiff's 1 where Cooley Road
19 comes out you're talking about the pasture on the right
20 side of this picture; is that correct?

21 A. Correct.

22 Q. Now, in looking at what has been marked for
23 identification as Plaintiff's 3, is that the pasture?

24 A. That would be the pasture that the helicopter
25 landed in.

1 Q. Do you recognize -- what do you recognize those
2 things to be that I'm pointing at?

3 A. Rounds bales.

4 Q. Round bales of hay?

5 A. Rounds bales of hay.

6 Q. Does that picture accurately -- reasonably,
7 accurately depict the condition of that pasture on the
8 night in question?

9 A. Yes, it does.

10 Q. Now, do you remember those hay bales being there?

11 A. I cannot say that I absolutely saw those hay bales.
12 Like I said, by the time the helicopter landed it was
13 dark.

14 Q. Exactly. Calling your attention back to what's
15 been marked for identification Plaintiff's 2. Can you
16 tell when Med Trans helicopter arrived on the scene?

17 A. Med Trans arrived on the scene at 9:26 in the
18 evening.

19 Q. Okay. And so if they arrived at 9:26 it's fair to
20 assume that Mr. Farrow wasn't loaded on until after that
21 time; is that correct?

22 MS. RAINES: Objection to the leading.

23 A. Correct.

24 THE COURT: Well, rephrase your question.

25 BY MR. BOGGS:

1 Q. Did you put Mr. Farrow on the helicopter before it
2 got there?

3 A. No.

4 Q. Okay. So would he have been put on the helicopter
5 after 9:26?

6 A. That would be correct.

7 Q. Okay. Now, was it darker at 9:26 than it was when
8 you first got there?

9 A. Significantly.

10 Q. Was it pitch dark?

11 A. Yep.

12 Q. All right. Now, would you have looked for anything
13 before Mr. Farrow -- and when I say anything, like cows,
14 fencing, what have you, before Mr. Farrow was taken to
15 the hospital?

16 A. No. I would not have.

17 Q. Okay. So when you -- after 9:26, for sure, after
18 you just said it was pitch black, that's when Mr. Farrow
19 would have left, right?

20 A. That's correct. The helicopter landed at 9:26. It
21 probably took us about five minutes to get him out of the
22 ambulance, load him on the helicopter and he was gone.

23 Q. Can you tell from that record when the ambulance --
24 excuse me, when the air trans left?

25 A. Looks like Med Trans left at 21:41.

1 Q. And, again, 9:41?

2 A. Correct.

3 Q. Now, they asked you whether you saw any cows or any
4 fencing problems. So the earliest you would have looked
5 for that would have been 9:42 or 9:41?

6 A. Correct.

7 Q. Now --

8 MS. RAINES: Objection to leading.

9 MR. BOGGS: I'm sorry? I didn't hear them.

10 THE COURT: State your objection.

11 MS. RAINES: He's already answered the question. I
12 was just objecting to leading.

13 THE COURT: I'm going to let him answer the
14 question.

15 BY MR. BOGGS:

16 Q. Okay. Now, what kind of vehicle did you arrive at
17 the scene in?

18 A. I arrived in my P-O-V.

19 Q. Okay. And what's a P-O-V?

20 A. Personally owned vehicle.

21 Q. Does it have a siren?

22 A. Yes, it does.

23 Q. Did you have that siren activated when you got
24 there?

25 A. Yes, I did.

- 1 Q. Were there other vehicles that had lights and/or
2 sirens?
- 3 A. No, sir.
- 4 Q. Did the ambulance get to the scene before air
5 trans?
- 6 A. Yes. The ambulance arrived on the scene before Med
7 Trans.
- 8 Q. All right. Did the ambulance have a siren running?
- 9 A. Yes, it did.
- 10 Q. Did it have red lights flashing?
- 11 A. Yes, it did.
- 12 Q. Okay. Now, I assume the helicopter made noise,
13 too?
- 14 A. Uh-huh.
- 15 Q. Okay. Now, they asked you about fencing and cows.
16 Do you have any prior knowledge of cows or cattle?
- 17 A. I have knowledge of livestock, yes.
- 18 Q. And how do you know -- what knowledge do you have
19 of livestock?
- 20 A. I was on the rodeo circuit for about 15 years.
- 21 Q. So you're familiar with livestock animals?
- 22 A. Correct.
- 23 Q. All right. So does it surprise you that there were
24 no cows around --
- 25 MS. RAINES: Objection to relevancy.

1 THE COURT: I think it's relevant. Go ahead.

2 BY MR. BOGGS:

3 Q. Does it surprise you that after your siren was
4 going, the ambulance had been there and that the
5 helicopter landed in close proximity to where the pasture
6 was, does it surprise you based on your life experiences
7 in the rodeo that the cows weren't around?

8 A. Not a bit.

9 MR. BOGGS: Judge, I would move into evidence the
10 pasture where the -- the picture of the -- I'm sorry,
11 Judge. It's the Plaintiff's Exhibit Number 3, where this
12 is the pasture across the street where the helicopter
13 landed.

14 MR. HANNA: Without objection.

15 MS. RAINES: No objection.

16 (WHEREUPON, Plaintiff's Exhibit Number 3, a
17 Photograph, was admitted into evidence.)

18 MR. BOGGS: I'd like to publish both of these to
19 the jury, if I may.

20 THE COURT: All right.

21 MR. BOGGS: We're going to take this up later,
22 Judge?

23 THE COURT: Uh-huh.

24 MR. BOGGS: I have no further questions. Oh,
25 excuse me, Judge.

1 BY MR. BOGGS:

2 Q. Oh, the times on this 911 sheet, based upon your
3 use of these in your -- as a volunteer fireman and as
4 chief, and based on your experience, do those accurately
5 reflect the times as you recall them and as were reported
6 to 911, and the subsequent report?

7 A. Yes, they do.

8 MR. BOGGS: Nothing further, Judge.

9 MS. RAINES: Nothing further, Your Honor.

10 THE COURT: All right. You may step down.

11 MR. BOGGS: I'd ask that he be excused, Judge.

12 THE COURT: Any objection to that?

13 MR. HANNA: No.

14 MS. RAINES: No objection.

15 MR. BOGGS: Okay. Your Honor, at this time we call
16 the defendant, Jerry Wayne Darby, to the stand.

17 THE COURT: Mr. Darby, come forward and be sworn.

18 JERRY WAYNE DARBY, after having been duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. BOGGS:

22 Q. Mr. Darby, can you state your full name for the
23 record, please.

24 A. Jerry Wayne Darby.

25 Q. Prior to this accident did you know David Farrow?

- 1 A. Yes, sir.
- 2 Q. Okay. Did you know him personally?
- 3 A. No, sir. Knew his daddy personally.
- 4 Q. Knew his daddy. Okay.
- 5 Now, do you raise cattle?
- 6 A. Yes.
- 7 Q. Would you consider it your business?
- 8 A. Yes, sir.
- 9 Q. Okay. Is this your main source of income?
- 10 A. No, sir.
- 11 Q. What is your main source of income?
- 12 A. Drive a dump truck and lowboy for H & H Grading.
- 13 Q. Okay. And a dump truck obviously dumps dirt?
- 14 A. Dirt, rock.
- 15 Q. And you said a dough boy?
- 16 A. Lowboy.
- 17 Q. A lowboy. Okay. Tell us what that does.
- 18 A. Hauls equipment.
- 19 Q. I'm sorry?
- 20 A. Hauls equipment.
- 21 Q. Okay. Now, in what has been marked previously as
- 22 Plaintiff's Number 1 -- never mind. I'll move on. We'll
- 23 wait for the jury to finish looking at that but -- now,
- 24 do you earn more money from H & H than you do from your
- 25 cattle business?

1 A. No.

2 MR. HANNA: Objection. Relevance.

3 THE COURT: Sustained.

4 BY MR. BOGGS:

5 Q. Well, I just asked you if it was your main source

6 of income being a cattleman, right, and you said no?

7 A. I have to have the income from the company to make

8 ends meet.

9 Q. Okay. All right. All I was asking is which do you

10 make more doing, raising cattle or working for H & H?

11 MR. HANNA: Again, objection, irrelevant.

12 MR. BOGGS: Judge, he said he runs a business, that

13 the cattle were his business. I'm not going to ask him

14 about how much I just ---

15 THE COURT: Which business -- which income is

16 greater and we'll move on.

17 MR. BOGGS: Yes, sir.

18 BY MR. BOGGS:

19 Q. Which ---

20 A. I would not know until I checked my tax returns

21 each year, which one was greater than the other one.

22 Q. Well, in 2008 do you know which one made you more

23 money?

24 A. No, sir, I do not.

25 Q. Well, is it fair to say that in the grading

1 business you would work more -- it's more, I guess based
2 on when they need you?

3 A. Yes, sir.

4 Q. You don't work 40 hours a week, 52 weeks a year for
5 them, do you?

6 A. No, sir.

7 Q. Do you work more in the wintertime or the
8 summertime?

9 A. Summertime.

10 Q. Do you know how much you were working for H & H
11 during the summer of 2008?

12 A. No, sir.

13 Q. Well, let me ask you this...

14 (WHEREUPON, Plaintiff's Exhibit Number 4, H & H
15 Grading Document, was marked for identification only.)

16 BY MR. BOGGS:

17 Q. I'd like you show you a document that I've marked
18 for identification purposes only.

19 A. Right.

20 Q. As Plaintiff's Exhibit 4, and ask if you can
21 identify the subject matter that is on that form.

22 A. It's a payroll for 7-3-08 to 7-24-08, each week.

23 Q. Okay. And calling your attention -- is it for you?

24 A. Yes, sir.

25 Q. All right. Now, do you recognize it as being from

- 1 H & H Grading?
- 2 A. Right.
- 3 Q. And do you recognize the column that says R-E-G
- 4 period, H-R-S period?
- 5 A. Right.
- 6 Q. Do you take that to mean regular hours?
- 7 A. Right.
- 8 Q. Okay. Now, can you -- in reviewing these numbers
- 9 does this accurately reflect the number of hours that you
- 10 worked and were paid for by H & H Grading in July 2008?
- 11 A. I'd say it does.
- 12 Q. Now, isn't it true and based on your review of that
- 13 that you averaged at least 50 hours a week?
- 14 A. Except for that week, on 7-3.
- 15 Q. Well, on 7-3 it says you worked 45 hours, correct?
- 16 A. Right.
- 17 Q. And then 7-10 says you worked 64 hours -- 64 and a
- 18 half hours.
- 19 A. Sixty-four and a half.
- 20 Q. And 7-17 says you worked 56 hours.
- 21 A. Right.
- 22 Q. And in 7-24 it says you worked 56 hours.
- 23 A. Right.
- 24 Q. Okay. Do you agree with those numbers?
- 25 A. Yes, sir.

- 1 Q. I mean, you turned your time in, right?
- 2 A. My boss man keeps my time.
- 3 Q. Well, but you tell him what you work, right?
- 4 A. He knows. He's right beside me.
- 5 Q. I'm sorry?
- 6 A. He's right beside me, usually.
- 7 Q. Okay. Well, and you expect to get paid when you go
- 8 to work there, right?
- 9 A. Yes, sir.
- 10 Q. Okay. So you want your hours to be correct, right?
- 11 A. Right.
- 12 Q. Okay. Well, you didn't change those hours and say
- 13 they are wrong?
- 14 A. No, sir.
- 15 Q. If you had worked more they'd say more, right?
- 16 A. That's right.
- 17 Q. If you can turn to page two, and again, this is a
- 18 three-page document. I don't want to know, I'm not
- 19 trying to ask you how much it is, okay? I just want you
- 20 to know that before I ask this question. But do you
- 21 agree -- do you recognize that document?
- 22 A. W-2 form.
- 23 Q. A W-2?
- 24 A. Right.
- 25 Q. Is it yours?

- 1 A. Mine.
- 2 Q. For year 2008?
- 3 A. I was trying to find it.
- 4 Q. Look down at the bottom in the middle in big
5 numbers.
- 6 A. 2008.
- 7 Q. Okay. Now, do you recall receiving this?
- 8 A. Yes, sir.
- 9 Q. And you said you pay your taxes.. So this is what
10 you use ---
- 11 A. To go on with taxes.
- 12 Q. To go to your accountant or to do your taxes
13 yourself, right? And you would have combined this with
14 your farm business ---
- 15 A. Right.
- 16 Q. --- to do your taxes, right?
- 17 Now, in looking at the number on that form, and
18 again, I don't want to know, did you make more from your
19 farming business in 2008 than as listed on this W-2 from
20 H & H Grading?
- 21 A. I wouldn't know until I went back to my taxes.
- 22 Q. Okay.
- 23 A. I can't remember back that far.
- 24 Q. All right. Well, let me ask you this. How do you
25 make money from your farming business? How do you know

- 1 -- or, excuse me. How do you make money in your farming
- 2 business?
- 3 A. Raising calves.
- 4 Q. Raising calves?
- 5 A. Calves and selling them.
- 6 Q. Okay. So you only sell calves?
- 7 A. And cull cows.
- 8 Q. And what?
- 9 A. Cull cows. Wore out cows.
- 10 Q. Wore out cows?
- 11 A. They will not have another calf.
- 12 Q. And they are called culls?
- 13 A. Culls.
- 14 Q. Spell that for us.
- 15 A. C-u-l-l-s.
- 16 Q. Okay. Now, I assume you sell the culls cow to the
- 17 slaughter house?
- 18 A. Usually goes through the barn. Sometimes we carry
- 19 them to Brown Packing.
- 20 Q. Okay. Brown Packing up in Gaffney?
- 21 A. Gaffney.
- 22 Q. Okay. Now, where do you sell the calves?
- 23 A. About 10 of us farmers will market our cattle
- 24 together ---
- 25 Q. You need to slow down so she can take down your

1 words. I'm sorry. It's just hard to hear some of the
2 things you're saying.

3 A. Okay. About 10 of us sell our cattle together
4 through Benji Hunter.

5 Q. Okay.

6 A. We ship them to Kansas.

7 Q. Okay.

8 A. He controls it.

9 Q. Okay.

10 A. When one trailer leaves out there are liable to be
11 six to eight different farmers on that trailer. When he
12 gets his check ever how many numbers each farmer has he
13 divides it up and pays us.

14 Q. So it's your testimony -- well, where does he sell
15 them? Does he drive to Kansas?

16 A. No. Sells them through a buyer.

17 Q. Okay. And the buyer, is that up at -- where?

18 A. I don't know where he's at. Probably Kansas.

19 Q. Okay. So is that the only place that you sell
20 cows?

21 A. The cull calves go through stockyard.

22 Q. The culls calves go through the ---

23 A. Light weight calves, you know, the miscolored
24 calves, the big eared, the big sheaf calves that they
25 don't want them to load. We cull them out ourself

- 1 because we know if we put them on the load and they go to
2 Kansas he's going to cull them, send them to the
3 stockyard and just send us a small check.
- 4 Q. Okay. So essentially you pull out the misfit cows,
5 the calves?
- 6 A. The calves. Right.
- 7 Q. All right. Now, talking about calves, we're not
8 talking about -- I mean, it's a young cow, right?
- 9 A. Right, 750, 800 pounds.
- 10 Q. Seven-fifty, 800 pounds?
- 11 A. Right, with the biggest ones.
- 12 Q. That would be the max size for a calf?
- 13 A. Right.
- 14 Q. Based on your experience?
- 15 A. Right.
- 16 Q. How long you been in the cattle industry?
- 17 A. Since 1970.
- 18 Q. And so do you work your cattle business alone?
- 19 A. We work together.
- 20 Q. Who's we?
- 21 A. Different farmers; Ben Benji, Bill Hunter. We help
22 each other.
- 23 Q. Do they help you?
- 24 A. Right, and I help them.
- 25 Q. On your farm?

- 1 A. I help them.
- 2 Q. Okay. Now, who else helps you? Do you have any
- 3 employees?
- 4 A. No. My dad.
- 5 Q. You just said dad?
- 6 A. Dad.
- 7 Q. And I believe his name is James Wilton Darby?
- 8 A. Right.
- 9 Q. And how old is he?
- 10 A. He's 82.
- 11 Q. Eighty-two. Okay. How is his health?
- 12 A. He's getting bad.
- 13 Q. How was his health as of July 24th, 2008?
- 14 A. He was in pretty good shape.
- 15 Q. So before we move on, you get money from Benji
- 16 Hunter -- not from him but you pull together calves?
- 17 A. Right.
- 18 Q. He puts them on a truck and somehow they get to
- 19 Kansas where they are bought?
- 20 A. Right.
- 21 Q. And then you receive a check -- or Benji receives a
- 22 check for the whole truckload?
- 23 A. Right.
- 24 Q. And then he's got records?
- 25 A. Right.

- 1 Q. And then Benji cuts you a check?
- 2 A. Right.
- 3 Q. And where does that check come from, what business?
- 4 Does it come from Benji Hunter?
- 5 A. Comes from Benji Hunter.
- 6 Q. And does Benji Hunter -- Do you take -- where do
- 7 you put any money you make on your ---
- 8 A. In Palmetto Bank.
- 9 Q. Palmetto Bank: And I'll get to that in a little
- 10 while. Is that the account that says -- I think it says
- 11 Jerry Wayne Darby, farm account?
- 12 A. Right.
- 13 Q. Do you have any other accounts with Palmetto Bank?
- 14 A. No, sir.
- 15 Q. Do you have a personal account with Palmetto Bank?
- 16 A. No, sir.
- 17 Q. Is that your checking account?
- 18 A. That's my checking account.
- 19 Q. I mean, that's the only one?
- 20 A. That's the only one.
- 21 Q. Only one you had in 2008?
- 22 A. Only one.
- 23 Q. Still only one?
- 24 A. Only one.
- 25 Q. All right. So any kind of money you get that you

- 1 put in the bank goes in that bank?
- 2 A. Right.
- 3 Q. Okay. And so it's your testimony that you -- is it
- 4 your testimony that you only make money through Benji
- 5 Hunter or the Brown's Packing?
- 6 A. Or stockyards.
- 7 Q. What is a stockyard, for somebody like me?
- 8 A. A sale barn.
- 9 Q. A sale barn?
- 10 A. Right.
- 11 Q. Okay. And what stockyard do you use?
- 12 A. M & M in Anderson.
- 13 Q. M & M in Anderson. Okay. All right. And I'll get
- 14 back to that in a second. I want to ask you about your
- 15 business in general. So you said you don't have any
- 16 employees, right?
- 17 A. No.
- 18 Q. And do you have a business phone or just your house
- 19 phone?
- 20 A. Just the cell phone.
- 21 Q. Just a cell phone. Does that ring at the house?
- 22 A. Yeah, it rings in there.
- 23 Q. Okay. Is that the same phone you've had since
- 24 2008?
- 25 A. No. Last year ---

- 1 Q. Go ahead.
- 2 A. Last year I dropped it in water and just damaged it
- 3 and had to buy a new one.
- 4 Q. And that was a poor question by me. Do you have
- 5 the same phone number that you had since 2008?
- 6 A. Right.
- 7 Q. All right. And is that the only phone number that
- 8 was associated with you or your cattle business?
- 9 A. Yeah.
- 10 Q. Back in 2008?
- 11 A. Yes, sir.
- 12 Q. Now, I guess you don't have a secretary?
- 13 A. No.
- 14 Q. Are you married?
- 15 A. No, sir.
- 16 Q. Does anybody live with you?
- 17 A. No, sir.
- 18 Q. Do you have an office or is it your house and your
- 19 barn?
- 20 A. My house and my barn.
- 21 Q. Okay. Do you have a -- well, you only have a cell
- 22 phone?
- 23 A. Right.
- 24 Q. When was the last time you had a landline? Do you
- 25 know what a landline is?

- 1 A. Right.
- 2 Q. When is the last time you had one?
- 3 A. Oh, it's probably been several years since it's
- 4 worked.
- 5 Q. Okay. So you don't pay a bill to AT&T or somebody
- 6 like that?
- 7 A. I still write the bill but the phone just don't
- 8 ring. It's still hooked up it just don't ring. I don't
- 9 ever use it.
- 10 Q. So you pay -- who is it, Laurens Co-op, or who is
- 11 it?
- 12 A. Piedmont Rural.
- 13 Q. Okay. So you pay a bill every month to who?
- 14 A. Piedmont Rural telephone.
- 15 Q. Rural. Okay. All right. I have trouble with that
- 16 word. I'm sorry. Do you write a check to them every
- 17 month out of your Palmetto Bank Account?
- 18 A. Yes, sir.
- 19 Q. So you pay for a phone that you don't use?
- 20 A. That's right.
- 21 Q. Okay. And is that number -- what's that phone
- 22 number?
- 23 A. 876-3439.
- 24 Q. Okay. And so if I were to dial that you wouldn't
- 25 answer?

- 1 A. No, sir.
- 2 Q. Because it doesn't ring?
- 3 A. It doesn't ring.
- 4 Q. You got a phone plugged into the wall?
- 5 A. I got to keep it though to make satellite work.
- 6 Q. You got to keep it to make the satellite work?
- 7 A. Right.
- 8 Q. TV?
- 9 A. My Direct TV.
- 10 Q. All right. Now, do you have an answering machine
- 11 hooked up to that?
- 12 A. No, sir.
- 13 Q. Okay. So there's no answering machine. Well, do
- 14 you have voicemail on your cell phone?
- 15 A. Yes, sir.
- 16 Q. Do you know how to operate that?
- 17 A. Yes, sir.
- 18 Q. Do you use it?
- 19 A. Yes, sir.
- 20 Q. When somebody calls you and leaves a message do you
- 21 call them back?
- 22 A. Right.
- 23 Q. All right. And what are the last four digits of
- 24 that number? Last four. I don't want the first three.
- 25 What are the last four?

- 1 A. Of the?
- 2 Q. Cell phone.
- 3 A. 8500.
- 4 Q. 8500. Is that the same number you had in 2008?
- 5 A. Right.
- 6 Q. Okay. Now, where does your cattle business
- 7 operate, what pastures?
- 8 A. They operate in all of them.
- 9 Q. In all of them?
- 10 A. Yeah.
- 11 Q. Well, no. No. I'm sorry. Where are the pastures
- 12 that you use for cattle?
- 13 A. Dials Church, Burdette and Cooley Road.
- 14 Q. Okay.
- 15 A. Currys Lake.
- 16 Q. And what?
- 17 A. And Currys Lake.
- 18 Q. Currys Lake. All right. I'd like to show you some
- 19 pictures. We've been working with these throughout,
- 20 haven't we?
- 21 A. Right.
- 22 Q. So this isn't the first time you've seen them?
- 23 A. No, sir.
- 24 Q. So we've been using this picture, and I'll submit
- 25 for the record, I'll just say that it's an aerial photo.

- 1 A. Right.
- 2 Q. And you've seen it before, right?
- 3 A. Yes, sir.
- 4 Q. We used it in your deposition, right?
- 5 A. Right.
- 6 Q. And several others. Now, do you agree with me that
- 7 this long road is Dials Church Road?
- 8 A. Yes, sir.
- 9 Q. Do you agree with me that this road right here is
- 10 Cooley Road intersecting it?
- 11 A. Yes, sir.
- 12 Q. Now, you said you keep cows in the pastures on
- 13 Dials Church Road. Now, isn't it true that you have cows
- 14 -- as you're coming up from Dials Church, the same way
- 15 David was coming, on the left would be the first pasture;
- 16 is that correct?
- 17 A. That's right.
- 18 Q. And, in fact, we've talked about before these
- 19 little black marks are what?
- 20 A. Cows.
- 21 Q. Okay. Or dark marks. I think there's some brown,
- 22 black, what have you. Now, who owns that pasture?
- 23 A. Ms. Freeland.
- 24 Q. Okay. Now, do you lease that from her?
- 25 A. Yes, sir.

1 Q. Are you the only one that uses it?

2 A. Yes, sir.

3 Q. Are you the only one that keeps cattle in it?

4 A. Yes, sir.

5 Q. All right. Now, just past Cooley Road is another

6 pasture. Do you agree with me there?

7 A. Right.

8 Q. Who owns that?

9 A. Ms. Freeland.

10 Q. Okay. Do you lease that?

11 A. Yes, sir.

12 Q. Do you keep cows in it?

13 A. Yes, sir.

14 Q. Okay. Are you the only one that controls that?

15 A. Right.

16 Q. You're the only one that keeps cows in it ---

17 A. Only one that keeps ---

18 Q. --- or cattle?

19 A. --- cows in it.

20 Q. And if I use the term cow wrongly please correct me

21 but when I say cow for purposes of these questions I mean

22 just bovines.

23 A. Right.

24 Q. Like your attorney said earlier. Now, this pasture

25 along here, across the street, so where Cooley

1 intersects, Cooley would be facing this pasture. Now,
2 who owns that?

3 A. My mother.

4 Q. And her name is Juanita?

5 A. Juanita.

6 Q. Okay. And does she let you use it?

7 A. Yes, sir.

8 Q. You don't own it, right?

9 A. No, sir.

10 Q. But you are the only one that can use that pasture,
11 right?

12 A. Right.

13 Q. Now, does it have a fence around it?

14 A. It's in bad shape. Cars kept running into it right
15 there at the end of Cooley Road and I couldn't keep it
16 up, so I have just cut hay off of it.

17 Q. Okay. And for us city boys cut hay means create
18 these big rounds bales, right?

19 A. Yes, sir.

20 Q. Do you create -- do you have a hay baler that does
21 square bales or rectangle bales?

22 A. Yes, sir.

23 Q. You do? But in this field do you do those or do --
24 go ahead.

25 A. Rounds bales.

- 1 Q. Rounds bales. Now, how big are those? Do you
2 know?
- 3 A. Twelve, 1500 pounds.
- 4 Q. Twelve to 1500 pounds. All right. And does this
5 picture -- I'll show you Plaintiff's 3 that's in
6 evidence, all right. Now, that's one we've been using
7 throughout this trial and having depositions, talking
8 about the case, right?
- 9 A. Right.
- 10 Q. Does that fair and accurately depict the hay in
11 your field on or about, or close to July 24th, 2008?
- 12 A. Yes, sir.
- 13 Q. Okay. So, in fact, I think that was taken shortly
14 after the accident; is that correct?
- 15 A. Right.
- 16 Q. And you agree -- did you go out to the accident
17 scene?
- 18 A. I was out there the next day.
- 19 Q. The next day. All right. On July 25th, 2008, is
20 that the way that field looked ---
- 21 A. Yes.
- 22 Q. --- where you keep your hay? Do you think that
23 accurately depicts the number of hay bales that were out
24 there at that time?
- 25 A. Yes, sir.

1 Q. Okay. Do you think it accurately depicts -- excuse
2 me for grabbing it from you, but the grass on the side of
3 the road?
4 A. Yes, sir.
5 Q. Okay. Do you maintain that grass?
6 A. No, sir. The state highway does.
7 Q. Okay. So I'd also like to show you Plaintiff's
8 Exhibit 1, all right. That's already into evidence. I
9 believe that's your truck on the left, isn't it?
10 A. Right.
11 Q. Okay. So I guess you were out there whenever that
12 picture was taken?
13 A. Right.
14 Q. I think that was taken sometime after the accident,
15 right?
16 A. Right.
17 Q. Okay. Well, I'm going to get back to questions in
18 a minute. I'd like to show you a wider view, and I know
19 you've seen it before. Can you see it through the
20 plastic?
21 A. It's hard.
22 Q. Okay. Well, let me bring it closer to you, okay.
23 And if I have to I'll remove the plastic.
24 MR. BOGGS: Madam Court Reporter, do you need to
25 see it at all?

1 BY MR. BOGGS:
2 Q. Now, can you see it now? Can you see it better
3 now?
4 A. Yeah.
5 Q. How about if I tilt it like that?
6 A. That's better.
7 Q. Okay. The glare I'm sure.
8 I'm sorry, Judge, it's just hard to show it to
9 everybody.
10 Now, sir, do you agree with me that this is just a
11 wider view of essentially the same area?
12 A. Yes, sir.
13 Q. Okay. This would be the hay pasture?
14 A. Right.
15 Q. This would be?
16 A. Cattle pasture.
17 Q. Cattle pasture owned by Ms. Freeland?
18 A. Right.
19 Q. Now, my understanding, that is coming up Dials
20 Church Road, right?
21 A. Right.
22 Q. Okay. On the left there's a bridge somewhere down
23 here, right?
24 A. Right.
25 Q. Okay. And there's a road right there. What's that

- 1 road called? Is that Hayes?
- 2 A. That would be Hayes Road.
- 3 Q. So coming from Dials Church, Hayes Road will be on
- 4 the left. Where does your pasture begin?
- 5 A. At the bridge.
- 6 Q. The bridge right here?
- 7 A. Right.
- 8 Q. I'm going to draw a bring right there. Does that
- 9 accurately depict or approximately depict it?
- 10 A. Yes, sir.
- 11 Q. Okay. So this pasture that you said was
- 12 Ms. Freeland's, now where does it end, back here?
- 13 A. In the corner.
- 14 Q. Right in this corner?
- 15 A. Right.
- 16 Q. Now, I know this isn't exact. And does it follow
- 17 in creek right here ---
- 18 A. Right.
- 19 Q. Is that a creek? Okay.
- 20 A. Pumpkin Branch.
- 21 Q. What was that word?
- 22 A. Pumpkin Branch.
- 23 Q. Oh, Pumpkin Branch Creek.
- 24 A. Yep.
- 25 Q. Also known as Punkin [sic]?

1 A. Punkin.

2 Q. Yeah. That's the way my son would say it.

3 All right. Now, this is pasture one -- or, excuse

4 me. Is this the first pasture you mentioned?

5 A. Right.

6 Q. Okay. I'm going to put a one right there.

7 A. Right.

8 Q. I'll put an F for Freeland. F-1, okay, just so we

9 can talk about it right now.

10 A. Right.

11 Q. Okay. So in this pasture -- well, excuse me. I'm

12 going to go -- this pasture goes right down on the other

13 side of Cooley and goes this way. Where does it stop?

14 A. About that first house.

15 Q. Right there?

16 A. Yeah, right there.

17 Q. And does it go up this way?

18 A. Yep, and behind the house.

19 Q. Behind the house, and this way?

20 A. Back to the woods.

21 Q. Back just to the woods or all the way ---

22 A. No, just back to the woods.

23 Q. Back to the woods. Okay. Now, does it go around

24 up here, along the tree line?

25 A. About the end of the pond will be a driveway to

1 Ms. Freeland's house. It follows the driveway. That
2 pasture would.

3 Q. That pasture would. So like right here?

4 A. Right there. Yeah.

5 Q. Okay. And does it go sort of like -- approximately
6 like that?

7 A. Approximately like that.

8 Q. Okay. And we'll call that F-2.

9 A. Right.

10 Q. Now, let the record reflect that as you go up Dials
11 Church Road from the bridge, away from the church, on the
12 first pasture on the left we've drawn F-1 for
13 Ms. Freeland's first pasture. And that's one of the ones
14 you lease, right?

15 A. Right.

16 Q. And then let the record reflect that after you go
17 past Cooley Road on your left there's what we've marked
18 as F-2, and I'll tell you this isn't permanent so -- but
19 just that's why I'm reading it into the record, okay?

20 A. Right.

21 Q. You lease that pasture from Ms. Freeland. You keep
22 cows there, too, right?

23 A. Right.

24 Q. And for lack of better -- just, does your pasture
25 go all the way around here on the opposite side of Dials

- 1 Church Road?
- 2 A. To the -- it follows the creek.
- 3 Q. Is this the creek right here?
- 4 A. Yes, sir.
- 5 Q. Okay. So does it go all the way over here?
- 6 A. No.
- 7 Q. Where does it cut?
- 8 A. Where you see the clear air, cleared land.
- 9 Q. Right here?
- 10 A. Yeah, and come down in the corner.
- 11 Q. Okay. So like that?
- 12 A. All right. Get to the woods, go straight to the
- 13 creek.
- 14 Q. Like that?
- 15 A. Something like that.
- 16 Q. Is that fair enough?
- 17 A. That's close.
- 18 Q. Okay. And this is just to help us ---
- 19 A. Right.
- 20 Q. --- know what we are taking about. So as you come
- 21 up Dials Church Road across the bridge, go up the hill,
- 22 and once you get to Cooley Road right across from that is
- 23 this pasture, and we'll mark that for everybody to know
- 24 just D for Darby, right?
- 25 A. Right.

- 1 Q. Fair enough?
- 2 A. That's right.
- 3 Q. And you don't lease that but you use it, right?
- 4 A. Right.
- 5 Q. Okay. Now, I believe you said you had one on
- 6 Burdette Road, right?
- 7 A. Right.
- 8 Q. Okay. And I'll move in a second. Is it fair to
- 9 say that Burdette Road is right here?
- 10 A. Yes, sir.
- 11 Q. And is your house right here?
- 12 A. Yes, sir.
- 13 Q. Okay. I'm going to put J-D on that, okay.
- 14 Now, who uses the land between F-2 and that
- 15 Burdette Road?
- 16 A. I do.
- 17 Q. Okay. Does it follow this tree line?
- 18 A. Yes, sir.
- 19 Q. Okay. Approximately?
- 20 A. Up to the road.
- 21 Q. Okay. So what is -- that your pasture? Do you own
- 22 that?
- 23 A. The bottom side is Ms. Freeland's. The upper side
- 24 is mine.
- 25 Q. Okay. So when you say bottom side, in relation to

1 -- if I was to turn on Burdette Road, which is the black
2 line, and go down Burdette Road, where is the upper part
3 that belongs to Ms. Freeland?

4 A. I'd have to get up to show you.

5 Q. Well, I'll tell you what. Let me make it simple.
6 Do you use -- whoever's pasture it is, do you use all
7 this land for cattle?

8 A. Yes, sir.

9 Q. By lease or by deed, right?

10 A. Right.

11 Q. Okay. So whoever -- and I guess it's like right
12 here; isn't that right?

13 A. Yeah, something like that.

14 Q. Okay. So this is cattle as well?

15 A. Right.

16 Q. Okay. Now, on the other side of Burdette Road, do
17 you own that property?

18 A. One spot is Ms. Freeland's, another spot is mine.

19 Q. And this pasture along this tree line is fenced,
20 right?

21 A. That's mine.

22 Q. That's yours because it's close to your house. All
23 right. And so how about -- there's -- it looks like
24 Burdette Road, pasture, a little pond and then pasture.
25 Do you use all of that area?

- 1 A. Yes, sir.
- 2 Q. Okay. Now, and that's all Ms. Freeland's?
- 3 A. Right below the small piece is Ms. Freeland's.
- 4 Q. Okay. I'm going to put F-3.
- 5 A. Go to the back corner right there on the small
- 6 piece.
- 7 Q. Right here?
- 8 A. No.
- 9 Q. Right here?
- 10 A. Right at the corner of it.
- 11 Q. Right here? I'm sorry.
- 12 A. On back. Let me show you.
- 13 Q. I'm sorry, bud.
- 14 A. Right there (indicated).
- 15 Q. Right here?
- 16 A. Straight to the creek.
- 17 Q. Okay. Right here, straight to the creek. Who owns
- 18 that?
- 19 A. Ms. Freeland, on the left.
- 20 Q. So essentially we've talked about three pastures
- 21 that touch onto Dials Church, right?
- 22 A. Uh-huh. Yes, sir.
- 23 Q. We're taking about one pasture that is part yours,
- 24 part Ms. Freeland's that surrounds her house, right?
- 25 A. Right.

- 1 Q. And there's a pond back there?
- 2 A. Right.
- 3 Q. And then that is abutted by Burdette Road?
- 4 A. Right.
- 5 Q. And then you've got F-3, which is Ms. Freeland's,
- 6 and JD, which is two pastures that are side-by-side on
- 7 the opposite side of Burdette Road?
- 8 A. Right.
- 9 Q. All right. Now, where is Curry's Lake Road?
- 10 A. Out of Laurens.
- 11 Q. Is it near here? Does it touch any of these
- 12 pastures?
- 13 A. No, sir.
- 14 Q. Do you keep cattle there?
- 15 A. Yes, sir.
- 16 Q. Did you keep cattle there back in 2008?
- 17 A. No, sir.
- 18 Q. Okay.
- 19 A. I had them all at the house.
- 20 Q. Had them all at the house. And when did you start
- 21 keeping cattle at Currys Lake Road?
- 22 A. Last year.
- 23 Q. Okay. Last year.
- 24 A. We bought some cattle and put them back there. I
- 25 was just cutting hay off it.

- 1 Q. Now, all these areas I've marked, which is D for
2 Darby's and just pasture, right -- I mean, just hay.
3 With your permission I'm going to write hay on that,
4 okay?
- 5 A. I'd write hay.
- 6 Q. All right. F-1, F-2, then on Dials Church, the
7 place where I wrote cattle, F-3, and JD all are where
8 cows are?
- 9 A. Right.
- 10 Q. And they are all owned by you?
- 11 A. Right.
- 12 Q. And then we're talking about as of July 24th, 2008?
- 13 A. Right.
- 14 Q. Now, you said you leased that from Ms. Freeland,
15 correct?
- 16 A. Right.
- 17 Q. Now, did you pay her out of that same checking
18 account we're talking about?
- 19 A. Yes, sir.
- 20 Q. Did you -- is there a written lease?
- 21 A. No, sir. Verbal.
- 22 Q. I'm sorry?
- 23 A. Verbal.
- 24 Q. Verbal. Okay. Did you -- how long have you been
25 leasing it?

1 A. Leasing it from them ever since they bought it back
2 in probably the mid 80's.

3 Q. Okay.

4 A. And I also leased it before they bought it, back to
5 1970.

6 Q. Okay. Now, I'd like to show you, again, you said
7 you went out to the accident scene at the time -- the
8 next day?

9 A. Next day.

10 Q. July 25th. And Plaintiff's Exhibit 1, is that
11 where the accident scene was?

12 A. Yes, sir.

13 Q. Okay. Now, did you see remanents -- or, excuse me.
14 Did you see evidence of an accident there?

15 A. Just skids, scuff marks in the road there.

16 Q. Okay. Was it -- I'd like to show you what's been
17 marked for identification as Plaintiff's Number 5.

18 A. Yes, sir.

19 Q. Is that the scuff marks?

20 A. Yes, sir.

21 Q. It looks -- I mean, would you describe it as a
22 superficial mark or almost like something that dug into
23 the ground? Dug into to the road, rather.

24 A. Dug into the asphalt.

25 Q. Okay. So and you perceive that to be where the

1 accident was?

2 A. Yes, sir, that's what I could assume.

3 Q. Okay. Do you know how far away from Cooley Road
4 that was?

5 A. No, sir.

6 Q. Okay. But you didn't go out there the night of the
7 event, right?

8 A. No, sir.

9 Q. Okay. Does this fair and accurately depict the
10 scuff mark that you saw on July 25th, 2008?

11 A. Yes, sir.

12 Q. And are you in this area often?

13 A. Yes, sir.

14 Q. All right. Was this a new scuff mark or ---

15 A. Yes, sir, new.

16 Q. Or new dig mark, whatever?

17 A. Whatever.

18 MR. BOGGS: Okay. I've move this into evidence,
19 Judge, as Plaintiff's 5.

20 Any objection?

21 MR. HANNA: No objection.

22 THE COURT: Without objection.

23 (WHEREUPON, Plaintiff's Exhibit Number 5, a
24 Photograph, was admitted into evidence.)

25 BY MR. BOGGS:

1 Q. Now, on Plaintiff's 5 the mark that's dug into the
2 ground is that facing -- there's a little bit of grass up
3 here.

4 A. Right.

5 Q. Is that the Freeland pasture side of Dials Church?

6 A. I do not know.

7 Q. Okay. That's fair enough.

8 A. Not enough visual stuff there to tell.

9 Q. Do you remember?

10 A. No, sir.

11 Q. Okay. That's fine. Now, you went out there the
12 next day, right?

13 A. Yes, sir.

14 Q. Okay. And did you know that someone had said they
15 had hit a cow?

16 A. His wife came by the house, and her son, and
17 mid-morning they told me that he fell. He hit a cow out
18 there on Dials Church Road, and that's when I went out
19 there and checked.

20 Q. All right. So do you remember what day of the week
21 it was?

22 A. No, sir, not back that far.

23 Q. But it was the day after, you're sure?

24 A. The day after.

25 Q. And you were at home?

- 1 A. No, sir, just had pulled up in the yard and they
2 pulled up behind me.
- 3 Q. But it was mid-morning?
- 4 A. Mid-morning.
- 5 Q. So were you working the day after the accident?
- 6 A. No, sir, been over at Owens getting some feed.
- 7 Q. Okay. And I'd like to show you -- I'll tell you it
8 says July 2008. Does that help you determine what day of
9 the week July 24th was?
- 10 A. A Thursday.
- 11 Q. Okay. And so the day you learned about it was
12 Friday, July 25th, right?
- 13 A. Right.
- 14 Q. So if you were at home mid-morning on Friday the
15 25th you said you didn't work that day, right?
- 16 A. No, sir.
- 17 MR. BOGGS: Okay. Move this in as Plaintiff's 6.
18 Do you have a problem with that?
- 19 MR. HANNA: I guess not, no.
- 20 MR. BOGGS: Why? I mean --
- 21 THE COURT: We'll take judicial notice that the
22 24th of '08 ---
- 23 MR. HANNA: I'm not sure what the ---
- 24 THE COURT: --- is a Thursday.
- 25 MR. BOGGS: Okay.

- 1 BY MR. BOGGS:
- 2 Q. So you didn't work on July 25th. Did you work on
- 3 that Saturday?
- 4 A. No, sir.
- 5 Q. All right. So the week of July 24th where you
- 6 worked 56 hours, did you work four 12's or more than
- 7 that? Are you familiar with the term four 12's?
- 8 A. Yes, sir.
- 9 Q. Okay. So you worked 56 hours and you only worked
- 10 four days that week, right?
- 11 A. Right.
- 12 Q. Okay. So then Monday, Tuesday, Wednesday and
- 13 Thursday you worked a total of 56 hours?
- 14 A. I guess. That's what's on there.
- 15 Q. Okay. Well, you didn't work Friday, you didn't
- 16 work Saturday. Did you work on Sundays?
- 17 A. No, sir.
- 18 Q. Do you know what time you went to work on July
- 19 24th, 2008?
- 20 A. Six o'clock.
- 21 Q. Six o'clock in the morning?
- 22 A. Yes.
- 23 Q. Okay. And what time did you get up?
- 24 A. A little after five.
- 25 Q. And what did you do before you went to work?

- 1 A. Got ready, stopped by the store and got a cup of
2 coffee and went down to the boss man's house.
- 3 Q. Okay. So when prior to July 24th -- excuse me.
4 What time did you get home that night?
- 5 A. I don't remember.
- 6 Q. You don't remember?
- 7 A. No, sir.
- 8 Q. Okay. What did you do on July 24th concerning the
9 care and feeding of your cattle?
- 10 A. They were already fed the day before.
- 11 Q. All right. You fed them at what time the day
12 before?
- 13 A. About dark.
- 14 Q. About dark. What time is about dark?
- 15 A. Oh, about 8:30.
- 16 Q. Now, on July 24th, 2008 in F-1, right beside the
17 accident scene, were you keeping cattle there, the
18 one ---
- 19 A. Yes, sir.
- 20 Q. Ms. Freeland's number one?
- 21 A. Right.
- 22 Q. Okay. Do you know how many cattle you had there?
- 23 A. That day?
- 24 Q. On or about July 24th, 2008.
- 25 A. I think it was 45 cows and 23 calves.

1 Q. Okay. Do you remember the -- during this case
2 we've both exchanged information. Do you remember that?

3 A. (Nodded).

4 Q. Okay. And there are certain questions I asked you
5 through your lawyer.

6 MR. BOGGS: Judge, I know it's been about an hour
7 and I'm going to be -- I'm not nowhere near finished. I
8 mean, I'm fine with a break if that suits Your Honor.

9 THE COURT: All right. Well, I better keep my word
10 to the jury. We've been going about an hour. You all
11 want to step back to the jury room and have a quick
12 break? We've been going about an hour, maybe a little
13 bit longer. Let's take about 10, 15 minutes and we'll
14 get you back out here. And remember, as we did before,
15 don't begin discussing the case.

16 If you all want some water and you want to bring it
17 back in the bottle you can. You all can step to the jury
18 room.

19 The rest of us stand at ease.

20 (WHEREUPON, the jury leaves the courtroom at
21 approximately 3:50 p.m., and a brief recess was taken.)

22 MR. HANNA: Just for what it's worth, I looked at
23 that 911 record. That one did not have some of the same
24 problems as we discussed on Friday and I'm okay with that
25 one. It was a knee jerk reaction on my part worrying

1 about it when it apparently wasn't as big as a deal as I
2 thought.

3 MR. BOGGS: Well, then as soon as we come back in
4 I'll put it in just so the jury knows it's in. And then
5 the calender, you said you took judicial notice ---

6 THE COURT: That the 24th was a Thursday.

7 MR. BOGGS: Well, I was just going to put this
8 calender in as an exhibit. Is that a ---

9 THE COURT: I can't see how it would be
10 prejudicial.

11 MR. HANNA: I mean, that's the whole -- it kind of
12 took me by surprise. That's what I was trying to run
13 through my head. I can't -- upon further reflection I
14 don't see how that has any -- I mean, I'm sure there's
15 some point to it but not one that I can object to.

16 MR. BOGGS: Well, Judge, it's just been my
17 experience any time I put a document in somebody's hand,
18 you know, that there's no objection, I just always try to
19 make it an exhibit and so that's the only reason.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 4:18 p.m.)

22 THE BAILIFF: All present, Your Honor.

23 THE COURT: All right. You may continue.

24 MR. BOGGS: Thank you, Your Honor. May it please
25 the Court. During break we discussed pending exhibits 2

1 and 6, and I think without objection they are now moved
2 into evidence.

3 THE COURT: They are in evidence.

4 MR. BOGGS: All right. Thank you, Judge.

5 (WHEREUPON, Plaintiff's Exhibit Numbers 2 and 6
6 were admitted into evidence.)

7 BY MR. BOGGS:

8 Q. All right. Mr. Darby, just before we took a break
9 I asked you how many cows you had in pasture F-1, which
10 is the big one immediately beside the accident scene, and
11 I think you said 45 cows and 23 calves. Is that what you
12 said?

13 A. I believe I did but I'm wrong with those calves.
14 It's 43.

15 Q. Forty-three. Okay. And so there were 88 total
16 head of cattle in that pasture as of July 24th, 2008?

17 A. Different sizes.

18 Q. I'm sorry?

19 A. Different sizes.

20 Q. Yeah. Forty-five cows, 43 calves.

21 A. Right.

22 Q. And you said calves, the biggest size is 750
23 pounds?

24 A. Probably.

25 Q. On average?

- 1 A. On average probably 300, on the light side.
- 2 Q. And so how big are the cows?
- 3 A. Oh, probably a thousand pounds.
- 4 Q. Okay. On average or above?
- 5 A. On average.
- 6 Q. Okay. Now, before we move on, you mentioned
- 7 culling the calves earlier; is that right?
- 8 A. When we gather them, yeah, we cull them.
- 9 Q. Okay. What does culling entail. I mean, how do
- 10 you cull?
- 11 A. By the size, smaller calves, and big ears, and big
- 12 sheaves and all. Our buyers on the trailer load lot do
- 13 not want those odd looking calves on there.
- 14 Q. So you mean if you have big ears you are odd
- 15 looking?
- 16 A. You are in the cattle business.
- 17 Q. In the cattle business?
- 18 A. It's got too much Brammier [sic] influence in it.
- 19 Q. I'm sorry?
- 20 A. Too much Brammier influence in it and you'll have a
- 21 big sheaf on the steer and they do not like that.
- 22 Q. What word are you saying?
- 23 A. Sheaf.
- 24 Q. No, no, Brammier?
- 25 A. Brammier influence. Brammier blood.

1 Q. Okay. Well, I'm glad I'm not a cow, okay.

2 Now, when you cull these calves do you plan on

3 doing that?

4 A. Well, when we gather them there's always some culls

5 in there.

6 Q. I guess you said you only -- you call them culls?

7 A. Right.

8 Q. And those are the misfits ---

9 A. Right.

10 Q. --- for lack of a better word, right?

11 A. Right.

12 Q. So, I mean, do you have a system in which you

13 gather the misfits?

14 A. Just eyeball them.

15 Q. Now, so all the good ones go to Kansas?

16 A. Right.

17 Q. Out of your farm?

18 A. Right.

19 Q. All the bad ones either ---

20 A. Goes to the stockyard.

21 Q. And that's the one, M & M?

22 A. M & M.

23 Q. Okay. And I think -- is that over in Pelzer, or

24 where is it?

25 A. Anderson.

- 1 Q. Anderson. Williamston?
- 2 A. Yes, sir.
- 3 Q. Okay. Anderson County. So M & M is the only place
- 4 you take the misfits?
- 5 A. Right.
- 6 Q. Okay. So back to my original question. I mean,
- 7 you know this was July. We're taking about July 24th.
- 8 Is it like the first part of the month you say all right,
- 9 time to get rid of the misfits, or how does it work?
- 10 A. Well, whenever we get ready to get a load sold
- 11 we'll have to get them up, and while we've got them up
- 12 you just as well go on and get rid of the misfits.
- 13 Q. Okay. So does that mean that the only time you get
- 14 -- cull the misfits, the only time you get those is when
- 15 you are taking the good ones away?
- 16 A. Sometimes we pull the heifers, the first-calf
- 17 heifers' calves off early because they are pulling the
- 18 young cows down, and try to give her time to recover and
- 19 put some weight back on before she has a calf and usually
- 20 sell them in July or first of August, maybe a month
- 21 before we pull all of them.
- 22 Q. Okay. And so that would be like one or two?
- 23 A. Probably be 10 to 12.
- 24 Q. Okay. Now, did you cull any calves on or about
- 25 July 24th, 2008?

- 1 A. I think it was after that I sold some of the first
2 calf heifers in August.
- 3 Q. In August?
- 4 A. Yes, sir. I'd have to check my records.
- 5 Q. Okay. Well, talking about checking your records,
6 we asked you questions all throughout this trial, right?
- 7 A. Right.
- 8 Q. I mean throughout this case in preparation for this
9 trial.
- 10 A. Right.
- 11 Q. And so we asked you to look at your records and we
12 asked questions through your attorney about your
13 business, right?
- 14 A. Right.
- 15 Q. And do you recall providing the answers to my
16 questions through your attorney?
- 17 A. Yes, sir.
- 18 Q. Did you provide full answers to my questions
19 through your attorney?
- 20 A. Right.
- 21 Q. And did you review the records you are taking
22 about?
- 23 A. At the time.
- 24 Q. At the time?
- 25 A. At the time.

1 Q. Well, I mean, if I asked you did you sell any cows
2 July, August, September, October 2008, whether cows,
3 calves, injured, regular, whatever, you got that
4 question, right?

5 A. Yes, sir.

6 Q. And, in fact, I think I asked it two or three
7 times, didn't I?

8 A. Right.

9 Q. And so you would have gone to your records that you
10 had, right?

11 A. Found it and showed it to you.

12 Q. Found it and showed it to me. Okay. Now, do you
13 recall providing me with, I think it is 24 pages, 24
14 pages of records?

15 (PAUSE)

16 And, Mr. Darby, if I may interrupt what you are
17 reviewing, and I'll give you a chance to review whatever
18 you want, but just to move things along I'll tell you
19 this. I asked your lawyer and you, essentially, for all
20 receipts or documents for the sale of any cattle during
21 July, August, September, October of 2008.

22 A. Yes, sir.

23 Q. And your lawyer's response was, See the attached
24 documents, 24 pages.

25 A. Right.

1 Q. And I'll submit to you that that's what I have that
2 you've given me.

3 A. Yes, sir.

4 Q. Now, are those the documents you provided to your
5 lawyer?

6 A. Yes, sir.

7 Q. Are those the documents you looked into your
8 records, found and that's all that you have on selling
9 cows?

10 A. That's all I have that year on selling cows.

11 Q. Okay. Now, I'd like to call your attention to some
12 of the documents.

13 And, Judge, I have an extra copy if you want to
14 follow along.

15 The first page looks like -- if you look in the
16 middle right here, looks like a receipt from M & M or
17 Martin and Martin Cattle, right?

18 A. Right.

19 Q. Williamston, South Carolina. Looks like 9-17-07.

20 A. Right.

21 Q. Okay. Isn't it true that when you sell cows they
22 issue a check that day?

23 A. Right.

24 Q. At M & M?

25 A. Right.

- 1 Q. Okay. So that's not July, August, September,
- 2 October 2008, is it?
- 3 A. No, sir.
- 4 Q. All right. In fact, going through in order as they
- 5 appear it looks like there's a Cedar Ridge
- 6 S-i-m-m-e-n-t-a-l. Is that Simmental?
- 7 A. Simmental.
- 8 Q. Is that an auction place?
- 9 A. That's Benji Hunter.
- 10 Q. I'm sorry?
- 11 A. Benji Hunter.
- 12 Q. Okay. And that's -- but still, that's September
- 13 2nd, '07, right?
- 14 A. Which page?
- 15 Q. That's the second page, yeah.
- 16 A. Yeah, 9-2.
- 17 Q. Okay. And I'll ask you to turn to the fourth page.
- 18 It looks like this is from Martin and Martin.
- 19 A. All right.
- 20 Q. That one right there. You see that?
- 21 A. Yes, sir.
- 22 Q. See in the middle of the page it says 9-1-08?
- 23 A. Yes, sir.
- 24 Q. And I'll submit to you that page three was from the
- 25 Cedar Ridge Simmental and doesn't have a date on it,

- 1 okay. The page four that I was taking about, M & M, did
2 you get paid \$7200 for several cows?
- 3 A. Yes, sir.
- 4 Q. Okay. Now, were all those calves?
- 5 A. Calves.
- 6 Q. Okay. Those were the misfits?
- 7 A. Those were off the first calf heifers I had in one
8 pasture. I pulled them off because the cows were getting
9 pulled down real low.
- 10 Q. Yeah.
- 11 A. And to try to get them recovered. There were
12 probably four or five that I should have kept to put on
13 the trailer load that were good calves but it was after
14 that before we caught the main herd and I did not want to
15 confine four or five calves and have to feed them there
16 at the house until we got ready for them. So I just sent
17 them onto the barn and got rid of them all out of that
18 one pasture on the same day.
- 19 Q. And so you said you raise cows to make money so
20 it's a good way to get some money in your account, right?
- 21 A. Right.
- 22 Q. Okay. And so you got calves around, need money, go
23 sell them, right?
- 24 A. Right.
- 25 Q. Okay. The next page after that in the middle, it's

1 harder to see, I'll tell you, but it looks to me like it
2 says '07. You see that right there? It's very hard to
3 read. And we'll move on. Move to that next page. It
4 looks like page six of those 24 pages. Is that -- do you
5 see that handwritten stuff at the top?

6 A. Right.

7 Q. Okay. Is that your handwriting?

8 A. No, sir.

9 Q. That's not?

10 A. No, sir.

11 Q. Do you know, did you sell 27 steer -- steers?

12 A. Twenty-nine.

13 Q. Twenty-nine. Did you sell them on that date?

14 A. Sold them personally to Joey Martin.

15 Q. So you got 20,000?

16 A. Right.

17 Q. And Joey Martin is M & M, Martin and Martin?

18 A. He owns Martin and Martin.

19 Q. All right. And so when was that? I don't see a
20 date on that.

21 A. I don't either.

22 Q. Okay. Did that occur between July 1st and
23 September 30th, 2008?

24 A. I can't remember. Ain't no date on it.

25 Q. Okay. Well, turning the page after that

1 handwritten Joey Martin I'll show you another receipt,
2 and towards the bottom down here where it says grand
3 total it looks like 2006, right?
4 A. Yes, sir.
5 Q. Okay. And the next page, about the same place,
6 that's very hard to read, Martin and Martin. Again,
7 2006, right?
8 A. Right.
9 Q. The next page, September 2006, Martin and Martin,
10 right?
11 A. Right.
12 Q. The next page looks like -- I can see 2-20 but I
13 don't see the year. Do you agree with me that is
14 February 20th of whatever year it is?
15 A. Right.
16 Q. Well, that's not a July through September 2008, is
17 it? And just to move along I'll go through all these.
18 Just to note, there is a Brown Packing.
19 A. They are Brown Packing.
20 Q. Brown Packing in there but I don't see a date on
21 that one. And the dates on these others, would you agree
22 with me that there's no other date that's in 2008 much
23 less July through September 2008? Would you agree with
24 me on that?
25 A. Yes, sir.

- 1 Q. Now, and these are all the documents you provided
2 to me, right?
- 3 A. Right.
- 4 Q. And these are based on your records, right?
- 5 A. Right.
- 6 Q. And so you keep the records, right?
- 7 A. Right.
- 8 Q. All right. And you keep all records you get of the
9 cows you sell, right?
- 10 A. Right.
- 11 Q. And so based upon these records did you sell any
12 cows, culled, misfit, pretty, ugly, fat, skinny,
13 whatever, between July 24th and the date that's in there?
14 I think it was September 1st, 2008.
- 15 A. The first one?
- 16 Q. Well, there was only one from 2008, right? There's
17 page four, September 1st, 2008. Is that the only time
18 you sold cows?
- 19 A. That was the first time that year I sold cows.
- 20 Q. Calves, culled ---
- 21 A. Calves.
- 22 Q. --- pretty, ugly, whatever?
- 23 A. They were off the first calf heifers.
- 24 Q. Okay. So it's your testimony that you didn't sell
25 anything to Martin and Martin, any culled calves between

1 the date of the wreck and September 1st?
2 A. Not any records I've got of it.
3 Q. Okay. Well, that's not what I'm asking.
4 A. I don't remember. I ain't got no records of it.
5 Q. Okay. Well, I asked you for all your records,
6 right?
7 A. That's all I have.
8 Q. All right. And I asked you if you sold any cows
9 and you said, Here are our records.
10 A. That's right.
11 Q. And my question to you, did you sell any cows
12 between July 24th and September 1st, 2008?
13 A. Not that I know of.
14 Q. And if you don't know it then nobody would know it,
15 right?
16 A. Right. I'd have a record of it.
17 MR. BOGGS: Okay. Judge, I'd like to move that
18 into evidence, the 24-page grouping, as number 7.
19 MR. HANNA: Without objection.
20 THE COURT: Without objection.
21 (WHEREUPON, Plaintiff's Exhibit Number 7, Cattle
22 Sale Documents, were marked and admitted into evidence.)
23 BY MR. BOGGS:
24 Q. I'd like to show you a document and see if you can
25 identify it.

- 1 A. A check to Martin and Martin.
- 2 Q. What's the date on it?
- 3 A. 7-28.
- 4 Q. And looking at Exhibit 6, when was 7-28?
- 5 A. Monday.
- 6 Q. The Monday after what? When was the accident?
- 7 A. The 24th.
- 8 Q. Okay. And you stated earlier Martin and Martin is
- 9 on Mondays, when they hold their auction, right?
- 10 A. Right.
- 11 Q. So July 28th is the first time you could have sold
- 12 cows after this accident?
- 13 A. Yes, sir. I should have a bill on it.
- 14 Q. Okay. Well, Martin and Martin wouldn't write you a
- 15 check for nothing, would they?
- 16 A. That's right. I should have a bill.
- 17 Q. I'm sorry?
- 18 A. I should have a bill.
- 19 Q. And the only thing you sold them is cows, right?
- 20 A. Right.
- 21 Q. Or calves?
- 22 A. It was a good many, \$3300.
- 23 Q. Isn't it true you sold them seven cows the Monday
- 24 after the accident?
- 25 A. Yes, sir, got a check and got it dated.

- 1 Q. Did you have any cows out the day of the accident?
- 2 A. Not that I know of.
- 3 Q. Not that you know of?
- 4 A. No, sir.
- 5 Q. Well, if anybody would know it would be you, right?
- 6 A. Right.
- 7 Q. Did you have any cows out immediately before the
- 8 accident?
- 9 A. No, sir.
- 10 Q. You had no cows out. How about a day before the
- 11 accident?
- 12 A. No, sir.
- 13 Q. How about two days before the accident?
- 14 A. I don't think so.
- 15 Q. And when I say cow, remember, I'm talking about
- 16 cows, calves, steer, whatever. Did you have any bovine
- 17 out the day of the accident?
- 18 A. No, sir.
- 19 Q. The day before?
- 20 A. No, sir.
- 21 Q. The day before that?
- 22 A. I had one, that one day that week out. I can't
- 23 remember which day.
- 24 Q. Do you remember your deposition?
- 25 A. Yes, sir.

- 1 Q. Okay. Do you remember taking to Karen Farrow the
2 day after the accident?
- 3 A. Yes, sir.
- 4 Q. Did you tell her that you had been out tending to a
5 calf recently?
- 6 A. Yes, sir, I remember now.
- 7 Q. You remember now?
- 8 A. Yes, sir.
- 9 Q. Okay. We've been talking about this case two and a
10 half years, haven't we?
- 11 A. Yes, sir.
- 12 Q. Okay. And you're under oath, right?
- 13 A. Yes, sir.
- 14 Q. So you remember telling her that you had a cow out,
15 or a calf out, or a bovine out near the date of the
16 accident?
- 17 A. Down below the house.
- 18 Q. Down below your house?
- 19 A. My house on ---
- 20 Q. Okay. On Burdette Road, right?
- 21 A. --- Burdette.
- 22 Q. Burdette Road, right?
- 23 A. Right.
- 24 Q. Okay. And how did that calf get out?
- 25 A. Some fishermen been slipping in and fishing in the

- 1 pond and broke a strand of wire.
- 2 Q. Did you see them?
- 3 A. I saw the car down there.
- 4 Q. You saw what?
- 5 A. A car down there parked on the side of the road. I
- 6 knew they was down there fishing.
- 7 Q. So it's your testimony that you knew they were down
- 8 there fishing and you saw a car down there?
- 9 A. Yeah.
- 10 Q. And you knew how where would they be?
- 11 A. At the pond.
- 12 Q. And you knew how would they get in?
- 13 A. Crawl through the fence.
- 14 Q. Okay. And did you know that crawling through the
- 15 fence might hurt the fence?
- 16 A. Yes, sir.
- 17 Q. So it's your testimony that you didn't do anything
- 18 about it?
- 19 A. Went down there after that.
- 20 Q. After they left?
- 21 A. Found the calf out, put him up, fixed the fence.
- 22 Q. So you found the calf yourself?
- 23 A. Yes, sir.
- 24 Q. Nobody called you?
- 25 A. No, sir.

- 1 Q. You mentioned earlier all you had was a cell phone
2 that worked. Your mom and dad are living, correct?
- 3 A. Right.
- 4 Q. We talked about that. If they had to call you who
5 would they call? What number would they call, the cell?
- 6 A. The cell phone.
- 7 Q. Okay. And if they left you a message you would
8 check it, right?
- 9 A. Right.
- 10 Q. Now, and one of the things you said earlier --
11 well, let's go back to that cow, that calf that was out.
12 So how long was it before you went down there and messed
13 with that calf, or went and chased -- did you chase those
14 guys off?
- 15 A. No, sir.
- 16 Q. You just let them fish?
- 17 A. Let them fish. I waited after they left, went down
18 there to check and seen the calf out.
- 19 Q. Okay. So this is Burdette, so it was down near
20 F-3, because there's a pond. Where is the pond, right
21 back down here?
- 22 A. Right.
- 23 Q. Okay.
- 24 A. Down toward the creek.
- 25 Q. And what day was that, that that calf was out?

1 A. I can't remember but it was one day that week,
2 probably the first of the week.

3 Q. Well, the first of the week we know now would be
4 the 24th -- excuse me, the 20th, right?

5 A. Right.

6 Q. Excuse me. Let's look at it because I'm confused.
7 Monday would be the 21st.

8 A. Right.

9 Q. Okay. Do you consider that first of the week?

10 A. Yes, sir.

11 Q. Now, you told -- you remember at your deposition?

12 A. Yes, sir.

13 Q. Okay. And I asked you, Do you admit that you had
14 some cows out that day?

15 And you said, Not that day.

16 And I said, Well, I mean, the 24th.

17 And you said, I've had some before.

18 And I said, When you told her -- talking about
19 Ms. Farrow -- that you had some cows out, when were you
20 talking about?

21 You said, Probably the day before.

22 And I said, Well, she came to you on the 25th. So
23 were you talking about the 24th?

24 You said, No, sir, the day before the accident.

25 A. Yes, sir, the day before that.

1 Q. Okay. And let me ask you this. You ever had any
2 cows out prior to the accident on Dials Church Road?

3 A. Had some on Cooley Road but not ---

4 Q. On Cooley Road?

5 A. Yes, sir. Down around Ms. Freeland's house. The
6 ponds rise up in dry weather and goes down and they walk
7 around the fence and up in her yard.

8 Q. Okay. Well, let me ask you this. Was it dry in
9 2008?

10 A. Yes, sir.

11 Q. In fact, it was real dry, wasn't it?

12 A. Right. Yes, sir.

13 Q. Would you have called it a drought?

14 A. Yes, sir.

15 Q. Now, do you normally -- were you having -- excuse
16 me. In a wet summer would you have to feed your cows?

17 A. No, sir.

18 Q. So in July 2008, that summer, were you having to
19 feed them?

20 A. Yes, sir.

21 Q. And how often were you feeding them?

22 A. A couple of bales every other day, sometimes more
23 often depending on how much they eat. If they cleaned it
24 up we fed them some more. If they hadn't in two days,
25 hadn't cleaned it all up wasn't no need in wasting

- 1 anymore and putting it out there.
- 2 Q. When you say bales, you talking about these big
- 3 round things, right?
- 4 A. Round bales.
- 5 Q. Now, you mentioned earlier they are 1200 to 1500
- 6 pounds?
- 7 A. Twelve to 1500 pounds.
- 8 Q. Well, in your deposition you said they're 1200
- 9 pounds.
- 10 A. Well, just depends on who's baling them.
- 11 Q. You baled them?
- 12 A. Sometimes I hire somebody else to bale them.
- 13 Q. Well, that's not what you said earlier?
- 14 A. Well, this year I did.
- 15 Q. 2011 or 2008?
- 16 A. Eleven.
- 17 Q. Okay. What about 2008?
- 18 A. I baled those.
- 19 Q. So were those 1200-pound bales?
- 20 A. They'd be probably 1200.
- 21 Q. Okay. So when you said 1200 to 1500 earlier, it's
- 22 1200?
- 23 A. Twelve hundred. I was just ---
- 24 Q. All right. Did you -- and forgive me if I -- did
- 25 you feed your cows on -- or your cattle on July 24th,

1 2008? I think you said no, right?

2 A. No, fed them the day before.

3 Q. Okay. Now, how much did you put out in the F-1?

4 A. Two round bales.

5 Q. Two round bales for 88 head of cattle?

6 A. Right.

7 Q. Now, do the calves come first or cows usually get

8 to the hay first?

9 A. Together.

10 Q. Together?

11 A. Mixture.

12 Q. Just mixture?

13 A. Yes, sir.

14 Q. Okay. Well, I mean, when you put them out do you

15 spread out the bales or you just put them in a circle?

16 A. Just spread them out.

17 Q. How do you spread them out?

18 A. With a front-end loader. Put one in one spot and

19 one in another so they won't be tromping all over each

20 other trying to get to it. I don't line it up.

21 Q. Well, when I say spread it, do you leave it

22 generally in a circle?

23 A. Close to the woods.

24 Q. Well, on this picture right here -- and this is the

25 overhead of the Cooley intersection. What are those

1 circles made by, do you think?

2 A. Where I fed hay back in the winter.

3 Q. Back in the winter?

4 A. Yes, sir.

5 Q. Okay. So back in the winter you fed in the middle,

6 back in the summer you put by the woods?

7 A. By the woods.

8 Q. Is that so there's shade?

9 A. So there's shade.

10 Q. All right. Now, even down here by the woods

11 there's hay out?

12 A. Right.

13 Q. Okay. You don't spread it out, do you?

14 A. Put it in different spots, but that's where it

15 looks like some of them are together on top of each

16 other, is probably where a bale had been put out

17 previously and they didn't clean it all up and I set

18 another bale on top of it. I mean, they don't eat it all

19 in these rounds bales.

20 Q. Well, they are like -- I mean, cows have feelings,

21 too, I guess is the way you say it?

22 A. Well, they have a taste.

23 Q. Yeah, they have a taste.

24 A. And they will not eat all of a round bale, and they

25 always leave some.

- 1 Q. Well, but they usually leave the stuff that gets
- 2 mixed in with dirt, right?
- 3 A. And the manure, too.
- 4 Q. Well, I would hope so.
- 5 A. Yeah.
- 6 Q. Now, if given the choice would your cows rather
- 7 have green grass or hay?
- 8 A. Green grass.
- 9 Q. There wasn't much green grass in your pasture in
- 10 2008, was there?
- 11 A. No, sir.
- 12 Q. In fact, that's why you're having to feed them,
- 13 right?
- 14 A. Right.
- 15 Q. And that was costing you money, wasn't it?
- 16 A. Yes, sir.
- 17 Q. And these bales of hay cost money, don't they?
- 18 A. Right.
- 19 Q. What do they cost?
- 20 A. Oh, 25 to 30 dollars, depending on what quality it
- 21 is.
- 22 Q. Okay. So when I said do you spread out these
- 23 bales, you go get one?
- 24 A. Right.
- 25 Q. Pull it down there from this pasture over here,

- 1 right?
- 2 A. Right.
- 3 Q. And that's the one off across ---
- 4 A. Across the road.
- 5 Q. Driving them down with your tractor. And when I
- 6 say spread out, you put it down in a place, right?
- 7 A. Right.
- 8 Q. You don't undo the bale and spread it out like the
- 9 width of this room, do you?
- 10 A. No, sir.
- 11 Q. I mean, how big is this bale? Would it fit ---
- 12 A. Four-by-five.
- 13 Q. About this wide across?
- 14 A. Right.
- 15 Q. So about this --- so it's this big around
- 16 (indicated)?
- 17 A. Right.
- 18 Q. Okay. Now, and you don't spread it out?
- 19 A. No, sir. I didn't back then. I'm doing it now. I
- 20 got an unroller.
- 21 Q. You got them on a what?
- 22 A. I got an unroller.
- 23 Q. An unroller?
- 24 A. Right now.
- 25 Q. And I assume that unrolls the bale?

- 1 A. It unrolls the bale.
- 2 Q. Okay. Now, so you put two bales, and there's no
3 grass for them to eat, right?
- 4 A. Right.
- 5 Q. Two bales this big, approximately, the width of my
6 arms in a circle, right?
- 7 A. Right.
- 8 Q. And how tall are they when you put them out? You
9 put them down flat-ways, right?
- 10 A. Right.
- 11 Q. All right. So how tall are they, the same as a
12 square bale?
- 13 A. Five. Five-foot.
- 14 Q. So it's five-feet tall, five-feet across ---
- 15 A. Four feet.
- 16 Q. Four feet across and circular?
- 17 A. Right.
- 18 Q. And it's your testimony that your 88 cows can fit
19 around those two bales?
- 20 A. They don't fit around them all at the same time.
- 21 Q. Okay. Well, do the cows usually get there first?
- 22 A. Cows and calves usually come together.
- 23 Q. Okay. Now, in this picture ---
- 24 A. A mixture.
- 25 Q. This picture, the overhead of the one with the --

1 focussing more -- we'll call it the closer view as
2 opposed to the bigger view, okay. These cows you can see
3 down there, now, it looks to me that obviously you can
4 see the darker ones better.

5 A. Right.

6 Q. Did you have black cows in there?

7 A. Yes, sir.

8 Q. As of July 24th, 2008?

9 A. Yes, sir.

10 Q. Did you have brown cows in there?

11 A. Yes, sir.

12 Q. Did you have multicolored cows in there?

13 A. Reds and white, and black and whites.

14 Q. Okay. I'd like for you to look at some pictures.

15 Well, let me ask you before I move on to that. You said
16 you came out the day after the accident, that was the
17 first time you went to the accident scene. Did you see
18 anything in the road other than the gouge mark?

19 A. That's all.

20 Q. Did you see any cow manure?

21 A. I can't remember.

22 Q. Okay. Did you -- based on what had been told to
23 you and based on the gouge marks and the fact that there
24 was an accident did you believe then that Mr. Farrow had
25 hit a cow?

- 1 A. I didn't know.
- 2 Q. Okay. So if you didn't know you had no reason to
- 3 believe that one of your cows got out, right?
- 4 A. I went and checked.
- 5 Q. Where did you check?
- 6 A. In the pasture, in F-1.
- 7 Q. F-1?
- 8 A. Right.
- 9 Q. So did you go count all 88?
- 10 A. Went down at dinnertime and they were all in the
- 11 creek and couldn't count them because they were in the
- 12 water and in the bushes, and later on that afternoon I
- 13 got to riding through them and trying to count them.
- 14 They were real hard to count when you got that many cows
- 15 in the pasture, but I did not have a cow walking and
- 16 balling with a full bag of milk. I did not have a calf
- 17 crying, hunting his momma.
- 18 Q. I'm sorry to interrupt you, but before you get to
- 19 crying, what was the first part? You didn't have a cow?
- 20 A. Walking and balling for her calf. You know, if I
- 21 was missing a calf this cow would have a full bag of
- 22 milk. She'd be missing her baby, in other words.
- 23 Q. She'd be upset?
- 24 A. That's right.
- 25 Q. Cows have feelings. Well, so what you are saying

1 is because all your cows, you think, were accounted for
2 and no momma was missing her baby ---

3 A. No momma was upset.

4 Q. --- that it's not possible that one of your cows
5 got out on Dials Church Road that David hit?

6 A. I don't believe it is.

7 Q. Well, but just because all your cows are allegedly
8 back in the pasture doesn't mean one didn't get out and
9 go back in?

10 A. I don't know how it got back in.

11 Q. Well, can cows jump fences?

12 A. Unless they fly. They would have to be running
13 real hard, and hard and fast and maybe come off the top
14 of a bank to clear a five-foot fence.

15 Q. All right. Well, would a spooked cow jump through
16 a fence?

17 A. He might.

18 Q. Would he jump over a fence?

19 A. He'd most likely jump through it.

20 Q. All right. We're going to get to your fence in a
21 minute. All right. Now, I'd like to show you some
22 pictures that I guess will be marked for identification
23 as 9, 10, 11, 12, 13, 14.

24 (WHEREUPON, Plaintiff's Exhibit Numbers 9 through
25 14, Photographs, were marked for identification only.)

- 1 A. Yes, sir.
- 2 Q. Okay. Now, do you recognize those cows?
- 3 A. They are mine.
- 4 Q. In fact, you said you were out and you looked at
- 5 the cows on July 25th to see if you had one missing or
- 6 injured, or anything like that?
- 7 A. Right.
- 8 Q. All right. Now, just because you didn't see one
- 9 injured or missing -- well, wait, let me strike that.
- 10 Just because you didn't see one injured doesn't mean a
- 11 cow wasn't hit by a motorcycle, right?
- 12 MR. HANNA: Objection. Calls for speculation.
- 13 A. I don't know.
- 14 Q. Well, let me ask you this. Have you ---
- 15 THE COURT: Wait a minute.
- 16 MR. BOGGS: I'm sorry. I'll move on. I'm sorry,
- 17 Judge.
- 18 THE COURT: Well, let me make a record. I sustain
- 19 the objection. You can rephrase and move on.
- 20 MR. BOGGS: Okay.
- 21 MR. HANNA: Thank you.
- 22 BY MR. BOGGS:
- 23 Q. Have you had an opportunity to see a cow that had
- 24 been hit by an object, like a truck, for instance?
- 25 A. No, sir, I haven't.

- 1 Q. Have you ever bumped into one of your cows with a
- 2 truck?
- 3 A. I had one that kicked me in my heart one time.
- 4 Q. So you climbed in your truck and bumped it?
- 5 A. No, she was in the lot.
- 6 Q. She was what?
- 7 A. In the catch pen.
- 8 Q. In a lot?
- 9 A. In a lot. We was working them.
- 10 Q. Okay. But my question to you, so you climbed in
- 11 your truck after he kicked you in the heart?
- 12 A. No.
- 13 Q. Well, my question to you was have you ever had an
- 14 opportunity to hit a cow with your truck?
- 15 A. Hit a cow?
- 16 Q. Bump into it?
- 17 A. Oh, yeah ---
- 18 Q. That's the way you heard, isn't it?
- 19 A. Trying to shove them out the gate.
- 20 Q. Trying to shove them with your truck, right?
- 21 A. Ease them towards -- ease them towards the gate
- 22 with it, you know, a straggler or something like that.
- 23 Yeah.
- 24 Q. Well, a straggler means somebody is missing, right?
- 25 A. No. His momma done went across the road.

- 1 Q. Okay.
- 2 A. Then I got to get that ---
- 3 Q. Was she bumped?
- 4 A. Bump him up there to the gate to get him to go
- 5 across the road to his momma.
- 6 Q. So my question to you is, you've had plenty of
- 7 experience in your herding, bumping a cow with a truck?
- 8 A. Right.
- 9 Q. Did you injure him?
- 10 A. No. I don't injure my own cows.
- 11 Q. Well, so it's possible for a cow to come into
- 12 contact with a truck many times and not show injury,
- 13 right?
- 14 A. Yep.
- 15 Q. So my question to you ---
- 16 A. It depends on how hard you hit him.
- 17 Q. Exactly.
- 18 A. It depends on the impact.
- 19 Q. All right. So, again, you didn't see injured cows
- 20 the day after the accident?
- 21 A. No, sir.
- 22 Q. But that doesn't mean nobody bumped them?
- 23 A. No, sir.
- 24 MR. HANNA: Objection. Calls for speculation.
- 25 Q. Based on your experience as a cattleman and based

1 on your years of bump --

2 MR. BOGGS: I'm sorry, Judge.

3 THE COURT: I'm going to rule. I'm going to
4 sustain the answer and you may rephrase.

5 MR. BOGGS: I apologize.

6 THE COURT: It's all right.

7 BY MR. BOGGS:

8 Q. Based on your years as a cattleman --

9 MR. BOGGS: I was moving on ---

10 THE COURT: I understand.

11 BY MR. BOGGS:

12 Q. Based on your years as a cattleman, based on your
13 experience of herding cows by bumping them, and I'm
14 asking you, you been in this business 30 years?

15 A. Yes, sir.

16 Q. So you've seen cows that have been bumped by a
17 truck, which is bigger than a motorcycle?

18 A. Right.

19 Q. And they weren't injured, right?

20 A. No, sir.

21 Q. So --- I'll move on.

22 THE COURT: Forty years.

23 MR. BOGGS: I'm sorry?

24 THE COURT: Forty years.

25 MR. BOGGS: Forty?

1 THE COURT: 1970.

2 MR. BOGGS: Oh, 40. Yes, sir. I'm 40 years. I
3 get it. That was the year I was born. Sorry.

4 BY MR. BOGGS:

5 Q. Now, after the 25th when you went and looked at all
6 those cows did you -- when was the next time you went
7 back to the accident scene?

8 A. I can't remember back then.

9 Q. All right. Well, didn't you -- weren't you there
10 on August 6th when Ms. Chapman took pictures of the
11 accident scene?

12 A. Yes, sir.

13 (WHEREUPON, Plaintiff's Exhibit Numbers 15 through
14 21, Photographs, were marked for identification only.)

15 BY MR. BOGGS:

16 Q. Now, I'd like to have you look through these.
17 They've been marked as 15 through 21 for identification.

18 (PAUSE)

19 Do you recognize those?

20 A. Yes, sir, the scene of the accident.

21 Q. That's the scene of the accident and those were
22 taken on August 6th, correct?

23 A. Right.

24 Q. All right. And on Number 15, did you have an
25 opportunity to walk right near there?

- 1 A. Yes, sir.
- 2 Q. All right. What do those brown spots look like?
- 3 A. Manure.
- 4 Q. All right. Did you believe it to be manure?
- 5 A. Yes, sir.
- 6 Q. You believe it to be a certain type of manure?
- 7 A. Yes, sir.
- 8 Q. What kind?
- 9 A. Looked like cow.
- 10 Q. Cow?
- 11 A. Right.
- 12 Q. Now, is that inside or outside your pasture?
- 13 A. Outside.
- 14 Q. Do you see cows walking down Dials Church Road
- 15 often?
- 16 A. No, sir. We've had a lot of trailers go through
- 17 there.
- 18 Q. Okay. So this cow manure right by the accident
- 19 scene, you have no explanation for it?
- 20 A. No, sir.
- 21 Q. Okay. Now, was that cow manure there when you went
- 22 there the next -- the day after the accident?
- 23 A. Yes, sir.
- 24 Q. Okay. Well -- well, I'll move on. Now, on
- 25 Plaintiff's 16, is that more manure in the road?

- 1 A. Yes, sir.
- 2 Q. Cow manure?
- 3 A. Yes, sir.
- 4 Q. Is that at the accident scene?
- 5 A. Yes, sir.
- 6 Q. Seventeen looks like a close-up of manure?
- 7 A. Right.
- 8 Q. Is that still cow manure?
- 9 A. Yes, sir.
- 10 Q. Okay. Now, 18, the accident scene, is that still
- 11 the accident scene?
- 12 A. Yes.
- 13 Q. And what appears to be a vehicle up there facing
- 14 south?
- 15 A. I can't even tell.
- 16 Q. Well, when you compare it with 20?
- 17 A. That's my truck.
- 18 Q. That's your truck. You're facing south towards the
- 19 church, right?
- 20 A. Right.
- 21 Q. So if you were coming from Cooley you'd take a
- 22 right, go right past the accident scene, a little off the
- 23 side of the road, right?
- 24 A. Right.
- 25 Q. So based upon this, is it fair to say that the

- 1 gouge -- are these the gouge marks in number 20?
- 2 A. Yes, sir.
- 3 Q. And the same -- well, you don't see them ---
- 4 A. Don't see them.
- 5 Q. Can you see them up here on number 18?
- 6 A. I barely can see it.
- 7 Q. Okay.
- 8 A. Yes, sir. That's a better ---
- 9 Q. Do you feel like 20 is a close-up of 18?
- 10 A. Right.
- 11 Q. Now, based upon the fact that your car is facing
- 12 south, right?
- 13 A. Right.
- 14 Q. And the gouge marks are coming towards Cooley Road,
- 15 the intersection of Cooley Road, right?
- 16 A. Right.
- 17 Q. Would you agree with me that they were -- could you
- 18 tell that they started from the other side of the road
- 19 and came towards Cooley Road? Can you tell that?
- 20 A. Looks like it started in the center.
- 21 Q. Well, I mean, yeah, but if I was standing in the
- 22 center they would be going -- if I'm facing north they
- 23 would be going towards Cooley Road, right?
- 24 A. Yes, sir.
- 25 Q. Towards your pasture, right?

- 1 A. Right.
- 2 Q. All right. Did you believe those or did you learn
3 those to be from that motorcycle?
- 4 A. I thought.
- 5 Q. Okay. And 19 is just another picture of it?
- 6 A. Right.
- 7 Q. We went through 20. Now, Number 21, that's from
8 August 6th, 2008?
- 9 A. Yes, sir.
- 10 Q. Is that your pasture?
- 11 A. Right.
- 12 Q. Is that F-1, the corner of it?
- 13 A. The corner of it.
- 14 Q. Corner of F-1?
- 15 A. Right.
- 16 Q. We're taking about right here?
- 17 A. At Dials Church and Cooley Road.
- 18 Q. Cooley. All right. Now, this fence right here, is
19 that the fence that you have all the way around?
- 20 A. No.
- 21 Q. Okay. What kind of fence is that right there?
- 22 A. High tensile.
- 23 Q. Okay. Now, is that not all the way around?
- 24 A. No, sir.
- 25 Q. Okay.

- 1 A. It goes to the creek and stops.
- 2 Q. Goes to the creek and stops. Does it go up Cooley
- 3 Road?
- 4 A. Yes, sir.
- 5 Q. Okay. Now, this grass right here, is that good
- 6 grass for cows to eat?
- 7 A. It's dry grass. They will eat it. The Brammier
- 8 influenced cows will.
- 9 Q. The what?
- 10 A. The Brammier cows will.
- 11 Q. Brammier. How do you spell Brammier?
- 12 A. B-r-a-m-m-i-e-r [sic].
- 13 Q. Okay. Now, is that a type?
- 14 A. It's a type.
- 15 Q. Okay.
- 16 A. Florida cattle, mostly.
- 17 Q. So the Florida cows, they'll eat the dry grass?
- 18 A. They'll eat dry grass.
- 19 Q. They are probably used to it down in Florida,
- 20 right?
- 21 A. Right.
- 22 Q. Okay. Now, were all 88 of your cows Brammier cows?
- 23 A. Not all of them.
- 24 Q. Okay. Now, so would a cow -- based on your
- 25 experience as a cattleman with over 40 years of

1 experience, now, will a cow want to eat this -- what did
2 you call this grass?

3 A. Dry grass.

4 Q. Well, dry. That's easy.

5 A. Dry weather grass.

6 Q. I thought it was a fancy name. All right. This
7 dry grass, if a cow was standing there in that fence with
8 this dry grass and then -- would you agree with me
9 there's green grass right by the road?

10 A. Yes, sir.

11 Q. All right. Would that make them want green grass?

12 A. Yes, sir.

13 Q. Okay. What kind of cows typically escape?

14 A. It just depends.

15 Q. Well, would you say based on your experience, 40
16 years of experience, that a hungry cow wants to escape?

17 A. Yes, sir.

18 Q. And isn't it true that a hungry cow, if it's
19 escaping because its hungry, is going to go where the
20 grass is, right?

21 A. Right.

22 Q. So calling your attention back to Plaintiff's
23 Exhibit 1, that grass on either side of the road near the
24 scene of the accident, would a hungry cow that only had
25 dry hay, or dry ground, or nothing at all, would it be

1 inclined to eat the grass on either side of the road?

2 A. Yes, sir.

3 Q. And, in fact, cows, isn't it true, based on your
4 experience when cows eat they eat and sort of walk along,
5 right?

6 A. Right.

7 Q. And so if cows had grass on either side of the road
8 it wouldn't be unusual for them to walk back and forth,
9 would it?

10 A. No, sir.

11 Q. Now, if a cow escaped from your pasture because it
12 was hungry would it go any further than that grass right
13 there?

14 MR. HANNA: Objection. Calls for speculation.

15 Q. Based on your --

16 MR. BOGGS: Judge, I'll rephrase it.

17 THE COURT: Sustained. Rephrase.

18 MR. BOGGS: I'm sorry.

19 BY MR. BOGGS:

20 Q. Based on your years of experience if you had a cow
21 in this pasture in 21, F-1, with this dry grass, and it
22 got out because it was hungry would you expect it to stop
23 and eat right there on the side of the road?

24 A. Yes, sir.

25 MR. HANNA: Same objection.

1 MR. BOGGS: Based on his 40 years of experience.

2 MR. HANNA: Also arguing facts not into evidence,
3 assuming facts not into evidence.

4 THE COURT: I'm going to sustain and let you
5 rephrase it, but he can testify because he has 40 years
6 experience as to his knowledge of what he's observed.

7 MR. BOGGS: Okay.

8 (PAUSE)

9 I'm trying to remember how I asked it the first
10 time I said it.

11 BY MR. BOGGS:

12 Q. The hungry cow, based on your experience, 40 years
13 of experience, if the hungry cow left any pasture inside
14 a fence, okay, and got out and there was dry hay or just
15 this type grass in it, and there was this type green
16 grass on the outside, would you expect it, based on your
17 experience, to be eating on the side of the road right
18 outside where the green grass is?

19 A. Yes, sir.

20 Q. Now, you said tensile fencing was the type of
21 fence -- and I guess 21 is the best to show it, tensile
22 fencing is the type of fence you had?

23 A. Tensile.

24 Q. Okay. High tensile. Now, was it electrified?

25 A. Yes, sir.

1 Q. All right. I believe -- all right. Getting back
2 to the questions I asked you. You answered that -- I
3 asked you, Please provide detailed information concerning
4 the high tensile electric fence used on the property.

5 And we're talking about F-1.

6 A. F-1.

7 Q. And please provide this information on the fence as
8 of July 24th, 2008 and advise of any -- well, and just
9 please provide the type. Okay.

10 And you said, New Zealand high tensile, five strand
11 electric fence, top four electric. The bottom strand is
12 dead.

13 A. Right.

14 Q. Now, is that the way -- or is that the type fencing
15 you had on this pasture at that time?

16 A. Yes, sir.

17 Q. All right. Now, you stated that you had that type
18 fencing along Dials Church, down Cooley Road and just it
19 stops at the creek, right?

20 A. Right.

21 Q. Okay. Now, do you have electric fencing around
22 F-2?

23 A. Yes.

24 Q. Did you have electric fencing or the same type as
25 of July 24th, 2008?

1 A. Right.

2 Q. Did you have electric fencing where it says cattle,
3 and that would be the area that we talked about owned by
4 you, owned by her, owned by Ms. Freeland, around her
5 house?

6 A. Yes, sir, on Burdette. Between Cooley Road and
7 Burdette.

8 Q. Between Cooley Road and Burdette? Along the creek
9 or up here, or up here ---

10 A. Up there. Up there.

11 Q. Okay. Except where her creek -- the little pond is
12 behind her house, right?

13 A. Right.

14 Q. Because when -- or was it electrified across the
15 pond back there?

16 A. After the water went down far enough to where I
17 could stand up I put a strand across there and stopped
18 them from getting in her yard.

19 Q. Okay. But what you were saying was when the pond
20 was down that's behind her house the cow could just walk
21 under there, right?

22 A. Right.

23 Q. Because the water was so low?

24 A. She would go to the end of the fence that goes into
25 the pond and walk around it.

- 1 Q. She, Ms. Freeland, or she, the cow?
- 2 A. The cow.
- 3 Q. Okay. All right. Just making sure.
- 4 Now, on Burdette Road in the cattle pasture, the
- 5 cattle, the same one, is Burdette Road electrified ---
- 6 A. Yes, sir.
- 7 Q. --- up to Burdette? Okay. Now, this pasture F-3
- 8 and JD, are either of those electrified?
- 9 A. One small one is and the rest of it's barbed wire
- 10 to the creek.
- 11 Q. So JD is electrified?
- 12 A. Yes, sir.
- 13 Q. That is the small one. And F-3 is not electrified?
- 14 A. Barbed wire.
- 15 Q. That's barbed wire, barb wire. All right. And
- 16 that's where you said you had the cow out?
- 17 A. Yeah.
- 18 Q. Shortly before the accident?
- 19 A. Right.
- 20 Q. Whether some day before the accident. All right.
- 21 Now, let me ask you. You ever had any cows out
- 22 before the accident, other than that day?
- 23 A. Yes, sir.
- 24 Q. How often?
- 25 A. Well, they get out.

- 1 Q. They get out, right?
- 2 A. Right.
- 3 Q. Okay. And how often?
- 4 A. It depends.
- 5 Q. It depends?
- 6 A. Yeah.
- 7 Q. Okay. How old is that fence over on Burdette Road?
- 8 A. The electrified or the barbed wire?
- 9 Q. The barbed wire.
- 10 A. It's old.
- 11 Q. It old?
- 12 A. Right.
- 13 Q. Did you hang it?
- 14 A. No, sir.
- 15 Q. How long has it been there, 40 years?
- 16 A. Forty years.
- 17 Q. Is it ---
- 18 A. I patch it.
- 19 Q. You patch it?
- 20 A. Yes, sir.
- 21 Q. Yourself?
- 22 A. Yes, sir.
- 23 Q. Okay. Now, back to the electric fencing. Did you
- 24 -- you said you patched Burdette Road, right?
- 25 A. Right.

1 Q. To the barb wire at F-3?

2 A. Right.

3 Q. Now, F-1, F-2 and the cattle where there's electric
4 fence, do you maintain that?

5 A. Yes, sir.

6 Q. Okay. Now, are you solely responsible for
7 maintaining that fence?

8 A. Yes, sir.

9 Q. Okay. And what is your normal maintenance
10 procedure for that fence?

11 A. Make sure all the insulators are on and not broken,
12 and, you know, the posts is up.

13 Q. Okay. And insulate -- where would I find an
14 insulator on ---

15 MR. HANNA: May we approach briefly.

16 THE COURT: You may.

17 All right, folks. This is one of those times you
18 all can stand up and stretch.

19 (WHEREUPON, a sidebar was had.)

20 MR. BOGGS: May it please the Court?

21 THE COURT: Yes, sir.

22 BY MR. BOGGS:

23 Q. Mr. Darby, let me rephrase that question before you
24 answer it. Okay. As of July 24th, 2008, which was the
25 substance of my question in the interrogatory where you

- 1 told me about New Zealand high tensile wire, okay, and
2 which is depicted right here, okay, and I asked you how
3 do you test it. And what I meant to say, and I
4 apologize, how did you test it on or before the date of
5 the accident, which was July 24th, 2008, okay? And you
6 mentioned something about you check the insulators?
- 7 A. Insulators, make sure they didn't have any shorts
8 or any breaks in it, or anything on it.
- 9 Q. Okay. Now, how often did you do that?
- 10 A. Oh, at least a couple times a week.
- 11 Q. Okay. And during the summer of 2008 prior to the
12 accident which days of the week did you do it?
- 13 A. I don't remember back that far.
- 14 Q. And I think what I was asking you is in this
15 picture, which is Exhibit 21, where can I see -- you're
16 calling it insulator, like insulation in a house, right?
- 17 A. Right.
- 18 Q. Okay. Where is the insulator on that fence?
- 19 A. I can't show you along there because that's just
20 wooden backs. The post is over on Cooley Road.
- 21 Q. Yes, sir.
- 22 A. The wooden post.
- 23 Q. Yes, sir.
- 24 A. That's where the insulators are.
- 25 Q. Okay. Now, I'm seeing on another post up Cooley

1 Road it looks like a little black object. Is that an
2 insulator?

3 A. No, that's wheat.

4 Q. That's what?

5 A. Oh, the little black object on that post?

6 Q. On the post.

7 A. Yes, sir, that's the insulator.

8 Q. Okay. So those are insulators. Are they like
9 rubber or something?

10 A. Plastic.

11 Q. So how big is F-1, how many acres?

12 A. A hundred acres.

13 Q. How much electric fence do you have on two sides --
14 or is it three sides of it or two sides?

15 A. Two. Probably be two miles.

16 Q. Two miles. All right. In this little picture
17 there's two posts. So it looks like there's at least
18 eight insulators, right? How do you test the insulator?

19 A. You just walk by and make sure it's not arcing,
20 and, you know, you can tell if it's shorted out.

21 Q. Okay. So you walk by it and see if it's not
22 arcing?

23 A. Yes.

24 Q. That's an electrical term, right?

25 A. The best time to do it is late in the evening about

1 dusk, dark.

2 Q. Why is that the best time to do it?

3 A. You'll see it arcing.

4 Q. You can see?

5 A. Right.

6 Q. Okay. So it's your testimony that two times a week

7 you walk the two miles?

8 A. No, drive it.

9 Q. You drive it. So and you inspect it by looking at

10 it to see if you see it arcing?

11 A. Right, and also check it with a tester.

12 Q. Okay. So I guess you don't check it with a tester

13 from inside your car?

14 A. No. I have to get out and check, hook it to it.

15 Q. So on F-1 the two -- you said two times a week. So

16 prior to that Thursday the 24th what days did you test

17 the fence in F-1?

18 A. I can't remember back that far.

19 Q. Well, I mean, did you have a system? Did you do

20 Monday, Tuesday ---

21 A. No, sir. I didn't write it down every day.

22 Q. Okay. Well, and so how many -- how much distance

23 in electric fencing do you have that you check twice a

24 week?

25 A. Oh, probably three or four miles.

- 1 Q. Three or four mile. So you just drive around and
- 2 see if you see it arcing, and then where do you get out
- 3 and test it?
- 4 A. At the gate.
- 5 Q. So you test it at the gate?
- 6 A. Right.
- 7 Q. All right. Where is the gate on F-1?
- 8 A. Cooley Road.
- 9 Q. Cooley Road. Is it right there on Cooley right
- 10 near the ---
- 11 A. No. No, sir. It's probably 200 yards out.
- 12 Q. So somewhere just halfway up or ---
- 13 A. Probably less. More toward Cooley Road.
- 14 Q. More towards Dials Church Road?
- 15 A. Dials Church Road.
- 16 Q. Okay. So that's the only gate on it?
- 17 A. Yes, sir, the only one down at the creek.
- 18 Q. Down at the creek up here?
- 19 A. Below the preacher's house.
- 20 Q. And that's up Cooley Road almost to the creek?
- 21 A. Right.
- 22 Q. So you got a gate up here and a gate closer to
- 23 Dials Church?
- 24 A. Right.
- 25 Q. All right. So you just test at the gate?

- 1 A. There and at the charger.
- 2 Q. At the charger. Where is the charger on that F-1
- 3 pasture?
- 4 A. Right below the accident, the accident scene.
- 5 Q. Right here? Isn't it in the trees?
- 6 A. Yes, sir.
- 7 Q. Along the tree line?
- 8 A. Yes, sir.
- 9 Q. If you take -- let me show you another one, if I
- 10 can find it real quick. You need some more water?
- 11 A. No. I'm fine.
- 12 (WHEREUPON, Plaintiff's Exhibit Number 22, a
- 13 Photograph, was marked for identification only.)
- 14 BY MR. BOGGS:
- 15 Q. I'm going to show you what's being marked for
- 16 identification as Plaintiff's Number 22. Now, do you
- 17 recognize that photo? Excuse me. Do you recognize what
- 18 that photo depicts?
- 19 A. Yeah. It's Dials Church Road.
- 20 Q. In fact, it's closer to the church looking up
- 21 towards the -- that's the white house past Cooley Road
- 22 you can see in the distance there, right?
- 23 A. Right. Yes, sir.
- 24 Q. So it's looking in the same direction if you are
- 25 leaving the church?

- 1 A. Right.
- 2 Q. Where David allegedly was heading from, right?
- 3 A. Right.
- 4 Q. Okay. And on the left there there's some trees,
5 right?
- 6 A. Right.
- 7 Q. Okay. Is that -- I mean, to be honest -- well,
8 were those trees there in some way, shape or form on July
9 24th, 2008?
- 10 A. Yes, sir.
- 11 Q. Okay. Now, is that where the battery power, the
12 charger is for the fence on F-1?
- 13 A. Yes, sir.
- 14 Q. Now, what color is that battery pack?
- 15 A. At the time of the accident or now?
- 16 Q. At the time of the accident.
- 17 A. Be a brown with a silver panel on top.
- 18 Q. Okay. Now, how big is the battery?
- 19 A. The battery?
- 20 Q. The battery itself?
- 21 A. It's a small 12-volt battery. Probably four inches
22 wide and maybe a foot long.
- 23 Q. Okay. Does it sit -- I'll move on. So that's
24 where you test?
- 25 A. There and at the gate.

- 1 Q. And at the gate?
- 2 A. And other places.
- 3 Q. How do you test?
- 4 A. With a tester.
- 5 Q. And you don't know when you tested prior to the
- 6 accident on that pasture?
- 7 A. Probably the weekend before.
- 8 Q. So it had been since?
- 9 A. Probably three or four days.
- 10 Q. Saturday or Sunday?
- 11 A. Probably -- I don't know. One of the two.
- 12 Q. Okay. So since -- so on the 24th that would have
- 13 been at least four days, right?
- 14 A. Right.
- 15 Q. And did you test any of the other pastures that you
- 16 maintain and have cattle in?
- 17 A. Over at the house.
- 18 Q. Over at the house?
- 19 A. On Burdette.
- 20 Q. On Burdette. Did you test F-2?
- 21 A. No, sir, wasn't no cows in there.
- 22 Q. Did you test cattle area?
- 23 A. Right.
- 24 Q. So when you said Burdette over at the house you
- 25 weren't talking about JD. You were taking about cattle?

- 1 A. Right.
- 2 Q. And you had cattle in F-1 and cattle in cattle?
- 3 A. Right.
- 4 Q. At the time of the accident?
- 5 A. Right.
- 6 Q. All right. And how far do you exactly test it with
- 7 the tester? What do you do?
- 8 A. Hook a wire to it.
- 9 Q. Okay. Like a battery tester you'd have at the
- 10 house?
- 11 A. Handheld, and you have to stick a ground in the
- 12 ground. You stick a ground in first before you hook it
- 13 to the wire.
- 14 Q. Okay. And does it read a voltage?
- 15 A. Right.
- 16 Q. Okay. And how do you have the -- or, excuse me.
- 17 How much voltage are you looking for?
- 18 A. As long as you've got a two to two-three you're in
- 19 good shape.
- 20 Q. A two or two-three?
- 21 A. Right.
- 22 Q. Is that 2.3?
- 23 A. 2.3.
- 24 Q. And what does that recommend in terms of reading?
- 25 A. (There was no response).

- 1 Q. I mean, how many volts is that?
- 2 A. Oh, I don't know. I couldn't tell you.
- 3 Q. So you don't know how many it's supposed to be?
- 4 A. No. I don't know how many it is.
- 5 Q. Did you read the instructions when you had this
- 6 fence put up?
- 7 A. I built them. Me and George, Jr. did.
- 8 Q. So do you recall -- or, excuse me. Based on your
- 9 40 years experience -- and how long have you been using
- 10 this electric fence, prior to this accident?
- 11 A. Ten years.
- 12 Q. So based on your 10 years familiarity with that
- 13 electric fence what is a reading that keeps cows in?
- 14 A. I don't know.
- 15 Q. You don't know?
- 16 A. No, sir.
- 17 Q. Well, why do you read it?
- 18 A. Make sure it's working.
- 19 Q. Well, just because it's working doesn't mean it
- 20 keeps cows in, right?
- 21 MR. HANNA: Objection. Calls for speculation.
- 22 MR. BOGGS: I just ---
- 23 THE COURT: Rephrase that question.
- 24 BY MR. BOGGS:
- 25 Q. All right. So your testimony was -- I think I

1 heard you right. You said you don't know what reading it
2 has to be to keep cows in, right?
3 A. It probably would be different for all different
4 animals.
5 Q. Okay. Well, what is it -- when you say different
6 animals; cow, calf or cow, horse, or what?
7 A. Longer haired.
8 Q. Huh?
9 A. Longer haired.
10 Q. Do you have long-haired cows and short-haired
11 cowed?
12 A. Sometimes.
13 Q. Well, what -- for the cows that were in your
14 pasture as of July 24th, 2008, these pictures, 11 through
15 -- excuse me, 9 through 14, it looks like, what kind of
16 setting or what kind of voltage reading do you need on
17 your fence to make sure these cows stayed in?
18 A. Probably a two, two-three.
19 Q. And how do you know that?
20 A. Check it.
21 Q. But I asked you if -- what it had to read to keep
22 them in and you said you don't know.
23 A. I don't know how high it's supposed to go.
24 Q. You don't know how high what's supposed to go? Do
25 you understand my question?

1 A. Yes, sir.

2 Q. All right. When you read it and it says 2 to 2.3
3 is it your testimony that you're saying that's enough
4 voltage to keep your cows in?

5 A. Yes, sir.

6 Q. Okay. Now, and why do you check it two times a
7 week?

8 A. Just check it.

9 Q. Okay. Now, do you check it on Monday, Tuesday,
10 typically, or you check it on Friday, Saturday,
11 typically, or what?

12 A. Usually on the weekend.

13 Q. Okay. So during the week you don't test it?

14 A. No, sir, not unless I'm -- find a break in it or
15 something and I have to replace it and then check it.

16 Q. Well, have you found a break in it and had to
17 replace it in F-1?

18 A. No, sir.

19 Q. Ever?

20 MR. HANNA: Objection.

21 Q. Excuse me. Prior to leading up to the accident?

22 A. Not that I know of, no, sir. I do take it down on
23 Dials Church Road and lay it down on the ground when I do
24 not have any cows in there, when I'm putting out sludge
25 to get to trucks in.

- 1 Q. All right. And sludge is something like sewer
2 based?
- 3 A. Western Carolina.
- 4 Q. It's from the sewer authority that's spread out.
5 Is that like fertilizer?
- 6 A. Yes, sir.
- 7 Q. But back to my question. You said, I think, that
8 you wouldn't -- I mean, why do you test it?
- 9 A. See if it's working.
- 10 Q. Okay. Well, why do you test it twice a week?
- 11 A. Or whenever, through there.
- 12 Q. Well, you said twice a week.
- 13 A. Close to it.
- 14 Q. Okay. And why do you test it twice on the weekend?
- 15 A. To make sure it's working. That's when I'm there,
16 and if I'm off during the week I check it then.
- 17 Q. Well, you weren't off during this week, were you?
- 18 A. No.
- 19 Q. Leading up to the accident?
- 20 A. No.
- 21 Q. So you didn't checked it, right?
- 22 A. Right.
- 23 Q. And you said that you checked it on weekends,
24 typically, right?
- 25 A. Right.

1 Q. So do you habitually check it only on weekends? Do
2 you know what habitually means, habit?

3 A. Right.

4 Q. Do you habitually check it only on weekends when
5 you are working?

6 A. When I'm not working.

7 Q. I'm sorry. Excuse me. When you are working during
8 the week do you habitually only check it on weekends?

9 A. Right.

10 Q. And do you work most of the time -- most of your
11 work as a grader is during the summer?

12 A. Right.

13 Q. So it is fair to say that during summer months,
14 which July 24th was in the summer, right?

15 A. Right.

16 Q. 2008. Does that mean that you habitually during
17 that summer and prior summers tested the fence only on
18 weekends?

19 A. Right.

20 Q. Okay. Now, is it sound -- excuse me. Based on
21 your 40 years of experience and 10 years with electric
22 fencing if you don't test the fence for four days at
23 least you don't know whether it's working or not, right?

24 A. Right.

25 Q. Okay. So as of July 24, 2008, because you hadn't

1 checked it since the weekend before, you don't know if
2 it's working, do you?
3 A. No, sir.
4 Q. And the electric fence, does it have barbed wire on
5 it?
6 A. No, sir.
7 Q. What's the only thing an electric fence can do to
8 keep a cow in?
9 A. It'd shock them.
10 Q. Okay. Now, if you don't know it was working you
11 don't know that they stayed in there, do you?
12 MR. HANNA: Objection. Speculation.
13 MR. BOGGS: He said he didn't know if it was
14 working, Judge.
15 THE COURT: He can testify whether he knew that or
16 not.
17 MR. BOGGS: Okay.
18 MR. HANNA: The question was whether or not he
19 didn't -- it was the second part of the question that I'm
20 objecting to not the part ---
21 MR. BOGGS: I'll move on. I'll move on.
22 THE COURT: Sustained, and he's moving on.
23 MR. BOGGS: Thank you. Judge, we're about that
24 time. You want to -- and I'm not going to finish today.
25 THE COURT: Let's go and break.

1 All right. Ladies and gentlemen, I want you all to
2 make a decision right now here in the courtroom as to
3 what time you all want to start in the morning.

4 FEMALE JUROR: Nine o'clock.

5 THE COURT: Nine o'clock. That's when I want to
6 start. All right. We'll have coffee for you. You all
7 get here a little before nine. You can have coffee, and
8 you may have something to eat. I don't know. They
9 Generally do, Laurens feeds you pretty well. Well, they
10 do me. That's why I'm so heavy. So you all be in the
11 jury room a few minutes to nine and we'll get started
12 nine o'clock sharp. All right.

13 And remember, don't begin discussing the case. You
14 all go home tonight and you can tell -- and put your
15 notepad in the jury room, and that's for your benefit
16 only. Nobody takes notes but for your benefit. You know
17 that? I mean, seriously, but you can't discuss your
18 notes when you're back in the jury room.

19 Talk about anything with your family. Tonight if
20 they say what kind of case you on, Judge Griffith said
21 don't talk about it. Blame it on me. Leave it here.
22 All right. You all go to the jury room. Put your pads
23 up and we'll see you in the morning.

24 (WHEREUPON, the jury leaves the courtroom at
25 approximately 5:28 p.m.)

1 THE COURT: All right. Mr. Darby, I'm certain
2 Mr. Hanna will explain to you that you are under oath and
3 you're going to be a witness when we start back in the
4 morning, and I'm going to caution you not to speak very
5 long or if at all with Mr. Hanna, anything you all talk
6 about tonight, because you're still under oath.

7 MR. DARBY: Still under oath.

8 THE COURT: And you're still under examination by
9 Mr. Boggs. Mr. Boggs can ask you. It's free game. So I
10 would suggest to you you follow Mr. Hanna's advice. All
11 right?

12 MR. DARBY: Yes, sir.

13 THE COURT: We'll see you in the morning.

14 MR. DARBY: Yes, sir.

15 (WHEREUPON, the trial of this case was recessed for
16 the day.)

17 Tuesday, February 1, 2011

18 THE COURT: Everybody ready to go to work?

19 MR. BOGGS: Yes, sir. May it please the Court. I
20 know we're going to resume Mr. Darby's testimony. I plan
21 on putting into evidence Numbers 8 through 22. Nine
22 through 22 are pictures. Number 8 was the check from
23 M & M Cattle, Martin and Martin Cattle.

24 THE COURT: All right.

25 MR. BOGGS: Mr. Hanna indicated he might have a

1 problem with it. If we can resolve that without having
2 to, you know, bring them in and take them out. I just
3 wanted to see if there was an issue with it.

4 THE COURT: Those have already been identified or
5 not?

6 MR. BOGGS: Yes, sir, been identified and testified
7 to.

8 THE COURT: Mr. Hanna, I'll hear you.

9 MR. HANNA: All the cow pictures, 9 through 14, I
10 don't object to. Fifteen through 21 I don't object to.
11 Twenty-two is a picture that was taken, I believe, like,
12 last year of the road, and as long as that's clear, you
13 know, that that's not -- that picture was taken within
14 the last couple months as opposed to nowhere near
15 contemporaneous. So as long as that's clear in the
16 record that that's when that picture was taken I don't
17 have problem with it. Does that make sense?

18 THE COURT: Sure. Well, can we just write on that
19 picture the date of photograph and just put a date on it,
20 or estimate October of '10 or ---

21 MR. HANNA: I can tell you whenever I deposed
22 Mr. McDevitt he had been up there like either the day
23 before -- and that was recently.

24 MR. BOGGS: Is it sufficient to write fall of 2010
25 on it?

1 MR. HANNA: Is that when I deposed him?

2 MR. BOGGS: Yeah. I mean it was...

3 THE COURT: And that would be close enough. Could

4 we use after?

5 MR. HANNA: I can't remember all the stuff ---

6 THE COURT: I think that would be a fair -- it's

7 not the date after the accident.

8 MR. BOGGS: And if you recall, Judge, I asked

9 Mr. Darby about if this was described ---

10 MR. HANNA: October 21. I think he was there the

11 day before I deposed him.

12 MR. BOGGS: How about October 2010?

13 MR. HANNA: Okay.

14 MR. BOGGS: May I write upon the exhibit?

15 THE COURT: Sure.

16 MR. HANNA: Or just write on the back.

17 THE COURT: Yeah, put photo taken October 2010, and

18 I think that would suffice if a juror were to examine it

19 and, Oh, yeah, this was just ---

20 MR. HANNA: I'm not saying it's really any

21 different but, you know, to the extent it -- bottom line

22 is it's bunched with a whole bunch of photos that were

23 taken, like, within two weeks.

24 THE COURT: Okay. What about the receipt for the

25 cows?

1 MR. BOGGS: It's just a check. It's not really a
2 receipt.

3 MR. HANNA: I mean, you know, I don't like that
4 document but -- I mean, I'm not going to agree on the
5 record. You can rule however you want but I don't want
6 the record to say that I ---

7 THE COURT: I think under 403 it's probative and
8 probably not unduly prejudicial, so I'll let it in.

9 MR. HANNA: Understood. I mean, you ---

10 MR. BOGGS: And when we start back I'll just put on
11 the record that I move these in, in front of the jury,
12 and then I'll state that 9 through 21 were taken August
13 6th, 2008, because that was in the record, and I think
14 that -- without having to write it on each one.

15 MR. HANNA: I think there's only a few photos that
16 I'm aware of in the case that were not taken very close
17 to the time and I think it's easier to mark those as
18 being different than to try to mark the abundance of
19 other ones. I think we can just assume they were close
20 unless there's something on it otherwise. So far every
21 photo that's in was taken right around the time of the
22 accident other than that one.

23 THE COURT: All right.

24 MR. HANNA: So it's, you know -- I'm not sure it
25 matters a whole hill of bean s difference at all other

1 than the trees had a couple years to grow.

2 MR. BOGGS: And I think I said that.

3 MR. HANNA: I understand. My point is when they
4 get back there later looking at it they may not remember
5 which one that was.

6 MR. BOGGS: Well, I'll tell you what, if I put
7 anything in that you want me to write on the back of just
8 let me know.

9 MR. HANNA: I will.

10 THE COURT: And if you want to go back during
11 cross-examination, This picture was taken, and write them
12 on the back and just say the date is October of -- or
13 August of '08, October of '10. I don't see how that
14 harms anybody.

15 MR. HANNA: I don't think it does. My point is
16 that every other picture, there's like 20 pictures in
17 now, all of them were taken within two weeks but that
18 one, and that's why that one is marked separately.

19 THE COURT: Okay, and you can say that. If you all
20 want to say that.

21 MR. HANNA: Yes. Yes.

22 THE COURT: And you all say, Well, we've agreed
23 that these pictures were taken pretty close to the wreck
24 except this one and we've got the number on the back of
25 it.

1 MR. HANNA: Right.

2 THE COURT: I think that helps.

3 MR. BOGGS: I'll clarify it on the record in front
4 of them.

5 THE COURT: Okay.

6 MR. HANNA: And I've got some that were taken
7 sometime between that time and the wreck but aren't as
8 close.

9 MR. BOGGS: Well, a lot of these pictures are going
10 to come in with experts, Judge, and so it will be
11 explained when they were taken.

12 THE COURT: Okay.

13 MR. BOGGS: Thank you.

14 THE COURT: All right. Bring the jury.

15 MR. HANNA: Should Mr. Darby go back?

16 THE COURT: Yeah. Mr. Darby, come back around.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 9:20 a.m.)

19 THE BAILIFF: All present, Your Honor.

20 THE COURT: All right. You all ready to go to
21 work? Anybody else need a notepad? I know we got one
22 back there taking notes. Anybody else want one? You
23 don't have to. I'm going to keep asking, but if you see
24 something you want, if you want water in here you can
25 bring a bottle of water in here. I want you all to be

1 comfortable so we keep this thing moving. All right.

2 All right. Mr. Darby, he did go home last night
3 and got to sleep, but he's still on the witness stand and
4 he's still under oath.

5 All right. Mr. Boggs?

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

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. BOGGS:

11 Q. Morning, Mr. Darby.

12 A. Morning.

13 Q. We talked at length and during your testimony we
14 went through what had been previously marked Plaintiff's
15 Exhibits 8 through 22. Do you recall those, the various
16 photos and the copy of the check?

17 A. Yes, sir.

18 MR. BOGGS: Judge, at this time I would move
19 Exhibits 8 through 22 into the record, and I would state
20 that -- just for clarification, pictures -- exhibits
21 which are pictures 9 through 21 were taken on August 6th,
22 2008, and the Plaintiff's Exhibit Number 22, which we
23 just questioned on the location of the solar panel, was
24 taken -- and it's written on the back, photo taken
25 October 2010.

1 THE COURT: So the pictures of the cows all were
2 taken around '08, and the picture of the road and the
3 solar panel was recently?

4 MR. BOGGS: Yes, sir.

5 THE COURT: Okay.

6 MR. BOGGS: And then, of course, Exhibit 8 is the
7 check from Martin and Martin Cattle. I'd put those into
8 evidence at this time.

9 THE COURT: All right. I'll admit those under 403.

10 (WHEREUPON, Plaintiff's Exhibit Numbers 8 through
11 22 were admitted into evidence.)

12 MR. BOGGS: Permission to publish to the jury?

13 THE COURT: Sure.

14 BY MR. BOGGS:

15 Q. Now, Mr. Darby, since we took a break I just want
16 to make sure of a couple of things. You stated that on
17 the day of the accident F-1 you had -- all the cows in
18 there belonged you, correct?

19 A. Right.

20 Q. Okay. And when your cows are in this pasture they
21 are free to roam anywhere up to the fence, right?

22 A. Right.

23 Q. Okay. Now you went out to the accident scene on
24 the 25th. How far away is a cow from the accident scene
25 when it's standing right there by the fence?

- 1 A. How many feet?
- 2 Q. Yeah. Yes, sir.
- 3 A. Probably 50 feet.
- 4 Q. Okay. Well ---
- 5 A. I didn't measure it.
- 6 Q. You didn't measure it?
- 7 A. No, sir.
- 8 Q. Well, calling your attention to Exhibit 1.
- 9 A. Probably 50 feet.
- 10 Q. Okay. Do you recall in your deposition when you
- 11 were asked basically the same question?
- 12 A. That's been a long time ago.
- 13 Q. Okay. Well, has the distance changed since your
- 14 deposition?
- 15 A. No, sir.
- 16 Q. Okay. The fence hasn't been moved, right?
- 17 A. No.
- 18 Q. All right. Isn't it true in your deposition you
- 19 said it was 10 feet from the inside of the fence to the
- 20 place of the accident?
- 21 A. I can't remember but if that's what I said in the
- 22 deposition I stand corrected.
- 23 Q. Okay. So instead of 50 it's 10?
- 24 A. Probably 10.
- 25 Q. Now, you also said yesterday that in F-1, the

- 1 pasture immediately beside the accident, you had 45 cows
2 and 43 calves on the date of the accident, right?
- 3 A. Yes, sir.
- 4 Q. Now, is that all the cows you owned as of July
5 2008?
- 6 A. No, sir.
- 7 Q. All right. And how many cows did you own?
- 8 A. -I can't remember back that far but it's in my
9 deposition.
- 10 Q. Okay. Well, was it approximately 185, I think?
- 11 A. I think so.
- 12 Q. Somewhere in that number?
- 13 A. Somewhere in that number.
- 14 Q. Okay. So how many pastures were you using on July
15 24th?
- 16 A. Three.
- 17 Q. Three. Okay. And when I say using I mean ---
- 18 A. Cows in them.
- 19 Q. Have cows in them.
- 20 A. Right.
- 21 Q. So not only did you have the 88 head of cattle in
22 F-1, 45 cows, 43 calves, that leaves approximately a
23 hundred more, right?
- 24 A. Right.
- 25 Q. Okay. Where were the others in relation to each

- 1 pasture?
- 2 A. Probably at the house, across Burdette, and up at
- 3 Ms. Vissage's (ph). There was some heifers up there.
- 4 Q. Now, you said at the house across Burdette. So
- 5 across from the house, Burdette?
- 6 A. No, on the same side of the house.
- 7 Q. So F-3?
- 8 A. Right.
- 9 Q. In F-3, how many do you think you had in there?
- 10 A. Probably 30 cows, and I don't really remember.
- 11 Q. Okay. Well, you said you had them in three
- 12 pastures. So F-1 you had 88. That's what you've said
- 13 all along. Then F-3 -- I'm looking where are the other
- 14 hundred, approximately.
- 15 A. They were in that pasture and up at Ms. Vissage's.
- 16 You hadn't got that marked.
- 17 Q. Okay. Well, tell me where Ms. Vissage's is?
- 18 A. At the end of Burdette, straight across.
- 19 Q. The end of Burdette, straight across?
- 20 A. Right.
- 21 Q. Okay. You keep cattle there?
- 22 A. I did back then.
- 23 Q. Okay. And what's her name?
- 24 A. Vissage.
- 25 Q. Okay.

- 1 A. Vissage's Auto Parts in Greenville.
- 2 Q. Okay. And is it this whole field?
- 3 A. I can't see ---
- 4 Q. I'm sorry.
- 5 A. Bring it to me.
- 6 Q. Yeah. I'll bring it to you. I can't guarantee you
- 7 that it won't fall apart but I'll bring it to you.
- 8 Just for everybody's edification, because I know
- 9 what it is because I drew it and I think you know what it
- 10 is because you lived it, but this is Dials Church Road,
- 11 correct?
- 12 A. Right.
- 13 Q. And the church will be down here?
- 14 A. Right.
- 15 Q. And Fountain Inn side will be up there?
- 16 A. Right.
- 17 Q. And I said yesterday, essentially, this was north
- 18 and this was south?
- 19 A. South.
- 20 Q. Okay. Even though it might be not exactly, but so
- 21 if you're coming up Dials Church Road on the left is
- 22 Ms. Freeland's pasture?
- 23 A. Right.
- 24 Q. F-1?
- 25 A. F-1.

- 1 Q. And that's yours that you lease ---
- 2 A. Right.
- 3 Q. --- and you are in control of? This pasture to the
- 4 right with a D, is for Darby, is just where you had hay,
- 5 and I've gotten written hay?
- 6 A. Right.
- 7 Q. Right? And you're in control of that, too?
- 8 A. Right.
- 9 Q. And we're talking about the time of the accident.
- 10 A. Right.
- 11 Q. And today, right?
- 12 A. And today, too.
- 13 Q. F-2 is another Freeland farm -- or, excuse me,
- 14 pasture.
- 15 MR. BOGGS: Can everybody see this to some extent?
- 16 And I'm -- all right. Now, I hate to keep moving.
- 17 BY MR. BOGGS:
- 18 Q. And then up here is a pasture that wraps from down
- 19 Cooley Road. This is Cooley Road, right?
- 20 A. Right.
- 21 Q. And you said that the picture that I showed you had
- 22 the accident scene where? Approximately right there?
- 23 Not to scale but ---
- 24 A. Close to it.
- 25 Q. Close to it. All right. I'm going to put just a

- 1 star right there. Okay.
- 2 A. Yeah.
- 3 Q. That's where the accident was.
- 4 A. Right.
- 5 Q. You agree with that?
- 6 A. Yes, sir.
- 7 Q. And so this cattle farm -- or, excuse me, the place
- 8 marked cattle is part yours, part Ms. Freeland's, if I
- 9 recall correctly?
- 10 A. Right.
- 11 Q. And so then this is Burdette Road. In this circled
- 12 area with JD is where you live, right?
- 13 A. Right.
- 14 Q. And as you go down Burdette Road away from Dials
- 15 Church on the right there's a JD field, which is your
- 16 Darby field, right?
- 17 A. Right.
- 18 Q. That you own and it's fenced, right?
- 19 A. Right.
- 20 Q. And it has good fencing, as you said?
- 21 A. Yes, sir.
- 22 Q. All right. And then on the right past the good
- 23 fencing is F-3, which is another Freeland field, right?
- 24 A. Right.
- 25 Q. And you have dominion and control over that,

1 have ---

2 A. Right.

3 Q. --- since then? All right. And so I guess my

4 question to you, we've established in F-1 you had cows.

5 A. Right.

6 Q. Okay. I'll put a C with a circle. All right?

7 A. Right.

8 Q. And you just said that there were cows in F-3,

9 right?

10 A. Right.

11 Q. All right. And then on up Dials Church Road, you

12 said at the end of Burdette, there's a Ms. Vissage, and

13 that's V-i-s-a-g-e, right?

14 A. V-i-s-s-a-g-e.

15 Q. Two S's?

16 A. (Nodded).

17 Q. All right. Now, is all this pasture hers?

18 A. Right.

19 Q. Okay.

20 A. That's right.

21 Q. I'm going to put a V on it for Vissage. Now, how

22 many cows do you have in there?

23 A. Probably 24, and 24 calves.

24 Q. So -- well, I have C up here. You had 45, plus 43,

25 right?

- 1 A. Uh-huh.
- 2 Q. Then you had -- you are saying now Vissage -- in
- 3 the Vissage farm you had how many?
- 4 A. Twenty-four heifers and 24 calves.
- 5 Q. Just a general question, the numbers generally
- 6 match up because there's one calf for every momma, right?
- 7 A. Some of them, yeah. Some of them lose them and
- 8 sometimes I keep them over. Like in that pasture we're
- 9 short calves there.
- 10 Q. Right here you're short two?
- 11 A. Right.
- 12 Q. But I guess in general you try to have a pasture
- 13 with one momma and one calf?
- 14 A. Right.
- 15 Q. I mean, in a perfect world there would be a momma
- 16 for every baby, right?
- 17 A. That's right.
- 18 Q. And a baby for every momma? Okay. Now, so you got
- 19 cows here, right?
- 20 A. Right.
- 21 Q. C, circle. Now, did you lease that property?
- 22 A. Yes, sir.
- 23 Q. Okay. So you paid her to use her property?
- 24 A. Right.
- 25 Q. And were you in charge of those cows?

- 1 A. Yes, sir.
- 2 Q. Okay. So -- and this is on July 24th, 2008?
- 3 A. Right, still lease it.
- 4 Q. Still lease it. All right. So that's about 48,
- 5 that's 88, 120, 136. So you have about 185?
- 6 A. The rest of them there was in three.
- 7 Q. Okay. So put -- what's that, approximately 50?
- 8 A. Uh-huh.
- 9 Q. Okay. Now, all these cows were under your sole
- 10 control at the time of the accident?
- 11 A. Right.
- 12 Q. Okay. And all these cows were your responsibility
- 13 at the time of the accident?
- 14 A. Right.
- 15 Q. Well, let me ask you this. Since you had cows in
- 16 three different pastures and you are the only one that's
- 17 -- I mean, basically you are the only one that cares for
- 18 them, right?
- 19 A. Daddy checks on them when I'm gone.
- 20 Q. Okay. Well, when you're gone, where are you gone?
- 21 A. Working.
- 22 Q. Just to work?
- 23 A. Working.
- 24 Q. Now, how do you mark your cows?
- 25 A. Ear tags.

1 Q. Ear tags. Okay. Do you mark all of them?

2 A. I haven't got them all marked as of now, right now.

3 Q. I'm sorry?

4 A. I haven't got them all marked as of now. But, yes,

5 sir, we try to mark them all.

6 Q. Okay. Well, in July of 2008 did you have all of

7 them marked?

8 A. Yes, sir.

9 Q. Okay. How were they marked?

10 A. With an ear tag.

11 Q. Okay. And what was on the ear tag?

12 A. A number.

13 Q. A number?

14 A. Yes, sir.

15 Q. And did it say Darby?

16 A. Depends on if it was just a clear identification

17 tag or if I done went and put the I. D. tags on. If I

18 put I. D. tags on it it had Darby Farm on the back of it,

19 and I cannot remember at the time if I done I. D.'d them

20 or we I. D.'d them when we loaded them.

21 Q. Well, you don't have like a scanner on there or

22 anything? You know what a scanner is?

23 A. Yes, sir.

24 Q. I mean, like where you can -- like a bar code where

25 you can scan it?

- 1 A. No, sir.
- 2 Q. So it's not like -- and do they have G. P. S. on
- 3 the tag?
- 4 A. On the cattle I. D. tags they can track that calf.
- 5 Q. Well, that's not what I'm asking. Does it -- do
- 6 you know what G. P. S. is?
- 7 A. Yes, sir.
- 8 Q. Okay. So, like, you can't sit in the your house,
- 9 pull up on the -- do you have a computer?
- 10 A. No, sir.
- 11 Q. So if you had a computer or somebody that you knew
- 12 had one they couldn't pull up and say, all right, cow
- 13 number six is in pasture F-3 at any time, right?
- 14 A. No, sir.
- 15 Q. And so the way you inventory your cow is just look
- 16 to see if they are all there, right?
- 17 A. Right.
- 18 Q. Now, what's the total acreage of F-1, F-3 and
- 19 Ms. Vissage's land?
- 20 A. F-1 is a hundred acres.
- 21 Q. Okay. And ballpark.
- 22 A. And the rest of Ms. Vissage's land -- the whole
- 23 total of Ms. Vissage's land is 285 acres.
- 24 Q. How much do you use?
- 25 A. All of it, except for the house. Probably 10 acres

- 1 cutout.
- 2 Q. So this, Ms. Vissage's land, where V is?
- 3 A. It's probably 55 acres.
- 4 Q. Fifty-five. Is all that fenced in?
- 5 A. Yes, sir.
- 6 Q. What kind of fencing is on that?
- 7 A. Old barb wire and hard wire.
- 8 Q. All barb wire and all hard wire?
- 9 A. Right.
- 10 Q. Well, how big is D, which is the hay field?
- 11 A. Twenty-five acres open.
- 12 Q. Okay. And then whose land is -- or, excuse me.
- 13 What's this wooded area between D and Ms. Vissage's land?
- 14 A. The Thompson estate.
- 15 Q. Thompson estate. All right. Is there any cows on
- 16 there?
- 17 A. No, sir, no fence around it.
- 18 Q. No fence around it, no cows. Are there any cows
- 19 back here behind D?
- 20 A. Yes, sir -- no, not at the time.
- 21 Q. At the time there weren't?
- 22 A. No, sir.
- 23 Q. In fact, down here at the bottom is the old
- 24 Mileback Raceway?
- 25 A. Right.

- 1 Q. Okay. And then is there a landfill near that?
- 2 A. Right.
- 3 Q. So when you add up F-1, F-2, the cattle field, F-3,
- 4 JD and V how many acres?
- 5 A. I haven't totaled it.
- 6 Q. Okay. But ---
- 7 A. A good bit.
- 8 Q. Okay. Now, I'd like to hand you what's been marked
- 9 for identification as Plaintiff's Exhibit Number 23. Do
- 10 you recognize that document?
- 11 A. Yes, sir.
- 12 Q. Okay. Now, do you recall me asking you through
- 13 discovery, through your attorney for copies of any
- 14 records on how you keep up with your cows?
- 15 A. Yes, sir.
- 16 Q. Is that what you provided to me?
- 17 A. That's what I provided to you.
- 18 Q. And is that an accurate depiction of all the
- 19 records you have concerning your cows as of July 24th,
- 20 2008?
- 21 A. Of that year, yes, sir.
- 22 Q. When you say that year, what do you mean?
- 23 A. '08.
- 24 Q. '08. For the whole year?
- 25 A. Yes, sir.

- 1 Q. Do you agree with me that there's not 188 -- or
2 180, whatever the exact total you have, there's not
3 enough numbers to match up to that?
- 4 A. I haven't added these up. How many is here?
- 5 Q. Well, I can count them with you, but you agree they
6 are about the same number on each page, give or take?
- 7 A. Yes, sir.
- 8 Q. Well, on the first page there's 1, 2, 3, 4, 5, 6,
9 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20. And
10 so there's four pages, right?
- 11 A. Right.
- 12 Q. So at most there's 80 to 90 numbers here, right?
- 13 A. Right.
- 14 Q. Okay. And this is -- that document in your hand is
15 supposed to represent your numbering system or tagging
16 number for all the cows you have, correct?
- 17 A. Right.
- 18 Q. Okay. So when I asked you earlier if you had all
19 your cows marked and you said yes, was that true?
- 20 A. I had a couple here with no tags. They lost it.
- 21 Q. Well, you agree with me you're about a hundred
22 short?
- 23 A. No, sir, this is a cow and calf.
- 24 Q. I'm sorry?
- 25 A. This is a cow and a calf.

- 1 Q. A cow and a half?
- 2 A. Right.
- 3 Q. Okay. So ---
- 4 A. This is -- on the first page it's cow 31 with a
- 5 female calf. It has not been identified yet. That's
- 6 when she was born.
- 7 Q. Okay.
- 8 A. I wrote down the birth date when they were born,
- 9 10-16.
- 10 Q. Okay.
- 11 A. You do not put a tag in a newborn calf of mine
- 12 because that cow puts you back in the truck if you grab
- 13 that calf.
- 14 Q. When do you put a tag on a calf?
- 15 A. Probably two to three months old before we run them
- 16 through the chute, vaccinate your cow with your cattle
- 17 master, and vaccinate your calf with Bowshield and
- 18 Blackleg, rattle groin (ph), castrate him and tag him.
- 19 Q. All right. So it's your testimony that however
- 20 many calves you had didn't have tags because they were
- 21 too young?
- 22 A. These records here, yes. This is right. They
- 23 hadn't been identified yet.
- 24 Q. Well, that's the only records you provided to me;
- 25 isn't that true?

- 1 A. Right.
- 2 Q. Okay. And that's the only records you have, right?
- 3 A. Yes, sir.
- 4 Q. Okay. So if I may ask you to look at page one. So
- 5 what you're saying, based on your testimony here, the
- 6 first cow, number 31, is a female, right?
- 7 A. She had a female calf.
- 8 Q. Had a female calf. And that calf was born on
- 9 10-16?
- 10 A. Right.
- 11 Q. And was that 10-16-07 or 10-16-08?
- 12 A. '07.
- 13 Q. Okay. So at the time of the accident that
- 14 particular calf was almost a year old?
- 15 A. Yes, sir.
- 16 Q. Okay. Well, you just said that you don't tag the
- 17 calf until after they are two to three months old. So
- 18 why didn't this particular calf have a tag?
- 19 A. We hadn't got him up and give him a tag yet.
- 20 Q. But he was old enough, right?
- 21 A. Not at 10-16.
- 22 Q. But I'm talking about --
- 23 A. He had just been born.
- 24 Q. But at 7-24-08 he was old enough.
- 25 A. Well, he was tagged probably around Christmas.

- 1 Q. Christmas of when?
- 2 A. Of '07.
- 3 Q. Well, the accident didn't happen until July 24th,
- 4 2008, right?
- 5 A. Right.
- 6 Q. And obviously I didn't ask you for the evidence of
- 7 how you tagged them until after the accident, right?
- 8 A. Right.
- 9 Q. So and if you tagged them in December of '07 why
- 10 don't you have the number recorded?
- 11 A. I didn't write it down.
- 12 Q. Let me call your attention to what's been marked as
- 13 Plaintiff's Exhibit Number 13. See that brown cow
- 14 looking at the picture, or looking at the photographer?
- 15 A. Right.
- 16 Q. All right. Is that a cow or a calf?
- 17 A. Cow.
- 18 Q. That's a what?
- 19 A. Cow.
- 20 Q. Cow, c-o-w, right?
- 21 A. Right.
- 22 Q. Okay. Let me see that picture again, if you don't
- 23 mind.
- 24 All right. Are those ears big or small?
- 25 A. On the cow?

1 Q. Yeah. The brown one right there looking at us.

2 A. Small.

3 Q. Okay. Now, can you see the entire ears?

4 A. Yes, sir.

5 Q. Where on that picture does that cow have a tag?

6 A. She's missing it.

7 Q. Okay. Now, may I see that again, please, sir.

8 The cow beside it -- or, excuse me, the bovine

9 animal beside it, the brown and white one, is that a cow

10 or a calf?

11 A. The brown and white one?

12 Q. See the brown one we just talked about?

13 A. Yes, sir.

14 Q. This one right beside it, right here.

15 A. That's a calf.

16 Q. That's a calf?

17 A. Right.

18 Q. Okay. Now, how about this tan one back here? Is

19 that a cow or a calf?

20 A. That one?

21 Q. Yeah -- no, the tan. Tan.

22 A. That's a cow.

23 Q. That's c-o-w?

24 A. Right.

25 Q. Okay. Does it have a tag on it?

- 1 A. No, sir.
- 2 Q. Okay. So that's two, right?
- 3 A. Right.
- 4 Q. Okay. How about this white one right here?
- 5 A. Calf.
- 6 Q. Calf?
- 7 A. Calf.
- 8 Q. Okay. How about this black one right here, black
- 9 with the little white on its head?
- 10 A. I can't really see his whole body. I can't tell.
- 11 Q. Can't tell. Isn't it true that you had more than
- 12 two cows without tags?
- 13 A. Yes, sir.
- 14 Q. Then why did you only tell me you only had two cows
- 15 with no tags?
- 16 A. I didn't know, didn't remember.
- 17 Q. Well, you had all the time to answer, right?
- 18 A. They lose them sometimes.
- 19 Q. Well, you keep up with your cows on a regular
- 20 basis, right?
- 21 A. Try to.
- 22 Q. Even leading up to the accident you were doing it,
- 23 right?
- 24 A. Right.
- 25 Q. Best you could, right?

- 1 A. Yes, sir.
- 2 Q. All right. Well, if you see a tag off don't you
- 3 retag it?
- 4 A. Not until it comes in the chute.
- 5 Q. Well, let me ask you this. When -- you said on the
- 6 cow born 10-16-07 would have had a tag on it 12-07,
- 7 right, December '07?
- 8 A. If we tagged him.
- 9 Q. Well, you just ---
- 10 A. I don't remember back then.
- 11 Q. Isn't it true you didn't tag all your cows?
- 12 A. I didn't tag all the cows ---
- 13 Q. Why didn't you say that in your discovery response?
- 14 A. --- until I shipped them. I couldn't remember back
- 15 that far.
- 16 Q. What it boils down to, you don't know how many cows
- 17 you got, where they are, what they look like, what number
- 18 is on them or anything, do you?
- 19 A. Yes, sir.
- 20 Q. And as of July 24th, 2008 you didn't know what you
- 21 had, where you had it or where it was, did you?
- 22 A. I did. I wasn't missing none.
- 23 MR. BOGGS: Move this into evidence, Judge, number
- 24 23..
- 25 MR. HANNA: Without objection.

1 THE COURT: All right. Without objection 23 is in.
2 (WHEREUPON, Plaintiff's Exhibit Number 23, a Cattle
3 Inventory List, was marked and admitted into evidence.)
4 BY MR. BOGGS:
5 Q. How long before the accident had these 88 cows been
6 in F-1?
7 A. I can't remember.
8 Q. Well, you move them monthly -- or, excuse me, how
9 often do you move them?
10 A. Whenever they get ready to go and we got a better
11 grass on the other pasture.
12 Q. Okay. Well, had they been in there at least 30
13 days?
14 A. Probably ---
15 Q. Prior to the accident?
16 A. Probably a couple weeks.
17 Q. Okay. Well, in your deposition do you recall
18 saying that they had been in there 30 days?
19 A. I don't remember.
20 Q. Well, did you lie in your deposition?
21 A. No, sir.
22 Q. Okay.
23 A. I stand corrected.
24 Q. All right. Stand correct -- or sit corrected,
25 right? And so they had been there at least all of the

- 1 month of July?
- 2 A. Right.
- 3 Q. And in July, we talked about yesterday, there was a
- 4 drought, right?
- 5 A. Yes, sir.
- 6 Q. Would you call it a severe drought, based on your
- 7 40 years of experience?
- 8 A. It was a real bad drought.
- 9 Q. Okay. Now, in a drought, based on your experience
- 10 and based on what you did in July of 2008, would you feed
- 11 the cows more or less?
- 12 A. All they'd eat.
- 13 Q. All they'd eat?
- 14 A. Right. If they didn't clean it up I didn't give
- 15 them none, they didn't eat it all. Didn't want to waste
- 16 any hay.
- 17 Q. How much are the 88 cows worth?
- 18 A. I don't really know. Probably a thousand dollars a
- 19 piece.
- 20 Q. So you got \$88,000 worth of cattle in there?
- 21 A. Probably a thousand per pair.
- 22 Q. Well, at least ---
- 23 A. Would be 45.
- 24 Q. Forty-five thousand at least?
- 25 A. Yes, sir.

- 1 Q. But the cow can keep producing another \$500 a year,
2 right?
- 3 A. Five to six.
- 4 Q. Five to \$600 a calf?
- 5 A. Yes, sir.
- 6 Q. And is that how you know that on Exhibit 8 where
7 you got 3300 -- \$3,361.24 that you sold approximately
8 seven calves?
- 9 A. Right.
- 10 Q. Four days after the accident?
- 11 A. Yes, sir.
- 12 Q. Okay. So what's more valuable in that field to
13 you, the cattle or the hay?
- 14 A. The cattle.
- 15 Q. Well, you said the hay costs what, 20 something?
16 You could sell it for how much a bale?
- 17 A. Twenty-five, \$30 a bale.
- 18 Q. But you get yours free, right?
- 19 A. No, sir.
- 20 Q. Well, I mean, you cut it?
- 21 A. I cut it but it's not free.
- 22 Q. Well, you got to ---
- 23 A. You got expense in it.
- 24 Q. --- pay for gas in the tractor and things like
25 that, right?

- 1 A. And the baling.
- 2 Q. The bottom line is you had -- looking at Exhibit 3
- 3 you had all those bales of hay right there, right?
- 4 A. Yes, sir.
- 5 Q. Available to feed your cattle?
- 6 A. I was feeding them.
- 7 Q. In a severe drought?
- 8 A. I was feeding them.
- 9 Q. And you said you're feeding them all they could
- 10 handle?
- 11 A. All they would clean up.
- 12 Q. Well, when you found the calf out a couple days
- 13 prior to the accident -- was it a cow or calf?
- 14 A. A calf.
- 15 Q. All right. Was it feeding outside the fence?
- 16 A. Yes, sir.
- 17 Q. Is it your testimony that you had provided the
- 18 same, all they could eat, to those cattle, too?
- 19 A. Yes, sir.
- 20 Q. You said that yesterday when you went to the
- 21 accident scene the day after the accident, July 25th,
- 22 right?
- 23 A. Right.
- 24 Q. You went there. You said after the accident -- I
- 25 asked you if you had any cattle missing. You said no,

- 1 you went to F-1 and looked and said none were missing;
2 isn't that true?
3 A. Right.
4 Q. Did you go to the other pastures and see if any
5 were missing?
6 A. Yes, sir.
7 Q. And how did you count those, just by sight?
8 A. Yes, sir.
9 Q. Did you use a hand counter or anything?
10 A. No, sir.
11 Q. Now, you described during my questioning everything
12 you did on July 25th, going to the accident scene, seeing
13 -- you said you saw cow feces, went and inventoried your
14 cows, right?
15 A. Right.
16 Q. Did you do anything else on that date?
17 A. The day after?
18 Q. Yeah.
19 A. I can't remember.
20 Q. Did you do anything else to see if you had any cows
21 that had escaped?
22 A. Check the fence.
23 Q. How did you check the fence?
24 A. Road it, walked it.
25 Q. Road it and walked it?

1 A. Where I couldn't ride, on that one particular
2 pasture.
3 Q. Which one?
4 A. F-1.
5 Q. F-1?
6 A. Right.
7 Q. Okay. Did you fix any fences?
8 A. No, sir.
9 Q. Now, also yesterday we had talked about -- let me
10 ask you one thing first. I'd like to show you a picture
11 and I'll tell you this is from -- not from 2008. It's
12 from a later date, but do you recognize that picture?
13 Obviously, it has writing down at the bottom, but do you
14 recognize it without the writing?
15 A. It's the bridge on Dials Church Road.
16 Q. And so that would be down at the bottom of the
17 hill?
18 A. Right.
19 Q. Okay. And it's facing north?
20 A. North.
21 Q. Away from the church?
22 A. Right.
23 Q. And is that pasture or that land on the left there,
24 is that the beginning of your pasture, approximately?
25 A. Yes, sir.

1 Q. Okay. And does that accurately depict the way
2 Dials Church Road looks?

3 A. Yes.

4 Q. On the date of the accident?

5 A. At that point.

6 Q. Not including -- not counting the growth of the
7 trees but just the road and the fact that your pasture is
8 right there on it?

9 A. Right.

10 MR. BOGGS: Okay. I'd move 24 into evidence,
11 Judge.

12 MR. HANNA: As long as ---

13 MR. BOGGS: And I'll write on the back -- and
14 honestly, Judge, I'll just put 2010. I'm not sure when
15 it was taken.

16 MR. HANNA: That's fine. Again, without objection
17 as long as it's ---

18 THE COURT: It's a couple years after the accident?

19 MR. BOGGS: Yes, sir.

20 (WHEREUPON, Plaintiff's Exhibit Number 24, a
21 Photograph, was marked and admitted into evidence.)

22 BY MR. BOGGS:

23 Q. Now, towards the end yesterday, as I about started
24 a minute ago, about the battery and charger, and solar
25 panel on the fence, on F-1, you were describing it, I

1 think, or we were about to when we broke. Can you
2 describe -- I showed you a picture of before you get to
3 the accident scene coming up Dials Church and you said
4 that the battery and the solar panel was on the left side
5 of the road in F-1, right?

6 A. Right.

7 Q. How far before Cooley Road is that battery pack --
8 or, excuse me, that charging setup?

9 A. Around the top of the hill.

10 Q. Okay. So which hill?

11 A. The one above the bridge.

12 Q. Okay. So in the one I just showed you, Number 24?

13 A. Right about the top of the hill there, on the left.

14 Q. Okay. All right. And I'm going to ask you,
15 describe slowly how you have the battery and the solar
16 panel set up and how you had it at the time of the
17 accident, okay. And before you do that, is that one
18 panel -- and I think you said was for all of F-1 on Dials
19 Church and Cooley, right?

20 A. Right.

21 Q. That provides power for those two sides because
22 that's only where the other electric fence is?

23 A. Right.

24 Q. All right. Now, describe how it was set up.

25 A. It's in a metal box with a solar panel on top of it

1 and it's hung on two nails on a post.

2 Q. Okay.

3 A. With ground -- with a wire going to the ground rod

4 and a wire going to the fence.

5 Q. Okay. Now, was that setup inside -- or where was

6 it in relation to the fence? Inside the fence or outside

7 the fence?

8 A. Inside the fence.

9 Q. I'm sorry?

10 A. Inside the fence.

11 Q. Okay. And why did you have it inside the fence?

12 A. I had it inside of the fence with one strand of

13 wire around it so the cows could not get to it.

14 Q. Now, where -- how was that wire -- so you said you

15 got -- you got, like, a battery pack, right?

16 A. Right.

17 Q. Is it this big?

18 A. Not quite that big.

19 Q. Not quite that big. But let's just approximate

20 right now. Then I think you said there was a solar panel

21 sitting on top, right?

22 A. On top.

23 Q. Then it's got wires coming from it just like if

24 you're charging a battery of the car, right?

25 A. Right.

- 1 Q. And do they have charges?
- 2 A. No, it's got little ole screws on it and you stick
- 3 the wire in it and tighten it up.
- 4 Q. On here?
- 5 A. On the charger.
- 6 Q. Okay. Then coming out from it does it have wires
- 7 with clamps?
- 8 A. No, sir. That one didn't.
- 9 Q. That one didn't?
- 10 A. The one on it now does.
- 11 Q. The one on it now does. Okay. So at the time of
- 12 the accident you had essentially a battery box solar
- 13 panel. I assume facing the sun, right?
- 14 A. Right.
- 15 Q. Okay. It was inside the fence. So if here's the
- 16 fence and here's the sun the panel is facing that way.
- 17 Does it face the setting sun?
- 18 A. The setting sun.
- 19 Q. In fact, there's trees on the side of the fence,
- 20 right?
- 21 A. Right.
- 22 Q. So it's facing the setting sun and it's inside the
- 23 fence, and then you said you had a wire. How is that
- 24 wire set up?
- 25 A. It's on two T-posts with an insulator on it.

- 1 Q. Is that the wire that charges the fence?
- 2 A. No, sir. It's just hooked to it to keep the cows
- 3 from getting to the charger and pulling the wire off of
- 4 it.
- 5 Q. Okay. Now, would that be in the air or would that
- 6 be on the ground, that wire?
- 7 A. That wire?
- 8 Q. Uh-huh.
- 9 A. It's probably about three foot off the ground.
- 10 Q. So about right here?
- 11 A. Yeah.
- 12 Q. About my waist, I guess?
- 13 A. Probably a little lower.
- 14 Q. A little lower?
- 15 A. Right there.
- 16 Q. About right there?
- 17 A. Right.
- 18 Q. So why did you put that there?
- 19 A. To keep the cows from getting to the charger.
- 20 Q. Okay. Now, is that -- how long did you have that
- 21 -- the setup you had, that's what you describe as it was
- 22 set up on July 24th, 2008?
- 23 A. Right.
- 24 Q. And how long had it been set up like that?
- 25 A. A good while. I can't remember.

- 1 Q. More than a year?
- 2 A. Probably. It's still set up.
- 3 Q. Still set up?
- 4 A. Yes, sir.
- 5 Q. Just that way, just a different battery?
- 6 A. Just a different charger.
- 7 Q. Now, did you ever have any problems prior to July
- 8 the 24th, 2008 with that charger setup?
- 9 A. No, sir.
- 10 Q. You never had any cows get out because of the way
- 11 that charger was set up?
- 12 A. No, sir.
- 13 Q. Do you recall in your deposition that approximately
- 14 six months prior to the accident you said a cow, a calf
- 15 had got out on Dials Church Road pasture?
- 16 A. I can't remember back then.
- 17 Q. Do you recall in your deposition that you said --
- 18 MR. BOGGS: One moment, Judge. I'd like to find
- 19 the exact words.
- 20 BY MR. BOGGS:
- 21 Q. I asked you, Have you ever had a cow -- and we're
- 22 on page 47 of your deposition at line 23, have you ever
- 23 had a cow get out of the pasture before?
- 24 No, sir.
- 25 Never?

1 Well, I had before, is what your answer was.

2 And I said, That's what I'm saying.

3 Yes, sir, you said.

4 When did a cow get out of that pasture?

5 We're taking about F-1, remember?

6 A. Right.

7 Q. Okay. I'm talking about along here.

8 You said, Probably six months before the accident.

9 You said, Probably six months before, period.

10 I asked you, Was the fence in the same condition as

11 it was in July of 2008?

12 Yes, sir. Just like you just testified to.

13 I said, Did you find a fisherman leaving the gate

14 open? Did you find any cause for the cow getting out six

15 months before the accident?

16 You said, answer, and I quote, A calf pulled the

17 wire off the charger. The charger was still working but

18 it wasn't connected.

19 Then you went on to say, I put the wire back on and

20 ain't had any more problems.

21 A. I don't remember it now.

22 Q. Okay. So you had a calf out. How did you learn

23 that calf was out?

24 A. Rode down the road and seen him.

25 Q. I'm sorry?

- 1 A. Rode down the road and seen him.
- 2 Q. Okay. And so you rounded him up?
- 3 A. Yes, sir.
- 4 Q. Or her? Was it a him or a her?
- 5 A. I can't remember.
- 6 Q. All right. Did it have a tag on it?
- 7 A. Can't remember.
- 8 Q. All right. And you put him in the gate and then
- 9 you went -- what did you do?
- 10 A. Went and checked the charger.
- 11 Q. Why did you check the charger?
- 12 A. I always do.
- 13 Q. Okay. So you found that the calf had pulled
- 14 off ---
- 15 A. Or somebody had.
- 16 Q. Well, your testimony was that the calf ---
- 17 A. It was kind of chewed.
- 18 Q. It was kind of chewed?
- 19 A. Yes, sir, or he pulled it off. Didn't see him do
- 20 it.
- 21 Q. Didn't see him do it. Well, your testimony was a
- 22 calf had done it, right?
- 23 A. I think so. I don't know.
- 24 Q. Well, based on your 40 years of experience and the
- 25 fact that you set up this battery charger, and you have

1 this fence, and these are your calves your testimony was
2 the calf had pulled it off the charger, right?

3 A. That's right.

4 Q. Now, in asking you about this battery you said that
5 it's set up the same now as it was then, except for
6 different type battery, right?

7 A. Different charger.

8 Q. Different charger. All right. I'd like to show
9 you what's been marked for identification as Number 25.
10 Is that the battery ---

11 MR. HANNA: Your Honor, I'm going to object on the
12 basis of relevance that we're dealing with the -- I can
13 tell by looking at it that's not the current charger but
14 -- that's the current charger and not the old one.

15 MR. BOGGS: Is he testifying or can I ask a
16 question? I'm sorry, judge, but I haven't even ---

17 THE COURT: Lay your foundation and then I'll
18 address the objection.

19 MR. BOGGS: Okay.

20 MR. HANNA: Thank you.

21 BY MR. BOGGS:

22 Q. Now, you just testified that the system is set up
23 today like it was in July of 2008, right?

24 A. Right.

25 Q. Okay. Now, what does that picture right there

- 1 show?
- 2 A. The new charger.
- 3 Q. Okay. You said the new charger?
- 4 A. The new charger.
- 5 Q. How many chargers have you put on it since the
- 6 accident?
- 7 A. Just this one.
- 8 Q. So the setup that you have right there with the
- 9 charger, the solar panel and the wires ---.
- 10 A. Right.
- 11 Q. --- is that the same way that you had the charger,
- 12 the previous charger set up on July 24th, 2008?
- 13 A. No, sir.
- 14 Q. Okay.
- 15 A. It's back here on the post.
- 16 Q. I'm sorry?
- 17 A. It was back here hanging on the post on the fence.
- 18 Q. It was hanging on the post?
- 19 A. Right.
- 20 Q. Now, do you have a ---
- 21 MR. HANNA: I again object on the basis of
- 22 relevance of anything about this charger.
- 23 THE COURT: All right. You all can stretch a
- 24 minute.
- 25 (WHEREUPON, a sidebar was had.)

1 BY MR. BOGGS:

2 Q. Mr. Darby, I'll take this back from you so we can
3 just move on.

4 So back to the wire that was the protection wire,
5 okay, back in July 24th, 2008, and by protection wire --
6 I mean, what was the wire that -- what did you call the
7 wire that was set up so the cows couldn't affect it?

8 A. It was protecting that new charger. There wasn't
9 one around the old charger. It was hanging on the post.
10 Wouldn't need one.

11 Q. I'm confused, and I apologize. So we got to go
12 back now. All right. I thought you said as of July
13 24th, 2008 the battery charger that was hanging on the
14 fence, right, or hanging on the post, right, had a wire
15 around it?

16 A. It did not. I was confused. It just has it around
17 the new one.

18 Q. So on the date of the accident?

19 A. It was hanging up high on the post with two wires
20 coming out, one going to the ground and one going to the
21 fence.

22 Q. And it's your testimony that six months prior with
23 that same setup as the date of the accident a calf just
24 came up and knocked it off and that's how it got out?

25 A. Yes, sir.

- 1 Q. Just to be clear again ---
- 2 A. Yes, sir.
- 3 Q. I'm going to ask you again. Was there a protective
- 4 charge or wire around the battery on July 24th, 2008?
- 5 A. No, sir.
- 6 Q. Are you sure?
- 7 A. I'm pretty sure.
- 8 Q. Okay. Pretty sure?
- 9 A. I'm sure, didn't need one. It was hanging high.
- 10 Q. Did you change the height of the battery from the
- 11 six month prior incident to the date of the accident? Do
- 12 you understand my question?
- 13 A. No, sir.
- 14 Q. You said six months prior to the accident at this
- 15 same location where the battery post is for this field
- 16 where you had 88 cows on the date of the accident, six
- 17 months prior the battery was hanging there, right?
- 18 A. Right.
- 19 Q. You said that a calf -- when I helped you remember,
- 20 you said that a calf had knocked off the protection wire
- 21 and got out, but then you just said there was no
- 22 protection wire.
- 23 A. He pulled the wire off the charger.
- 24 Q. So pulled one of the main wires off the charger?
- 25 A. Right.

- 1 Q. Like, again, if you're trying to charge a battery
2 in a car and you take one off?
- 3 A. Right.
- 4 Q. So the calf did that?
- 5 A. Right.
- 6 Q. You got the calf, put him back in, fixed,
7 reattached the charger?
- 8 A. Right.
- 9 Q. Did you move -- from that incident, did you move
10 the battery pack higher, or lower, or move it at all?
- 11 A. No, sir.
- 12 Q. And you testified yesterday and again today that
13 it's your habit, your custom, the way you do business to
14 check these fences, right?
- 15 A. Yes, sir.
- 16 Q. And how often you do that?
- 17 A. A couple times a week.
- 18 Q. All right. And we established yesterday that you
19 hadn't done it prior to the accident since the prior
20 weekend, right?
- 21 A. No, sir.
- 22 Q. And including in checking in that habit and
23 habitually checking your fences you check the charger and
24 the solar panel?
- 25 A. Right.

- 1 Q. Can you check it from outside the fences?
- 2 A. Outside the fences?
- 3 Q. Yeah.
- 4 A. No, sir.
- 5 Q. Okay. And now that event that was six months prior
- 6 with the battery incident that we just talked about,
- 7 that's a different one than the one you told Karen Farrow
- 8 about and different from what you testified to yesterday,
- 9 right?
- 10 A. A different place.
- 11 Q. Different place. That was up in the barbed wire
- 12 fence on F-3, right?
- 13 A. Right.
- 14 Q. What did you do to fix that fence?
- 15 A. Re-spliced the wire that was broken.
- 16 Q. The 40-year-old barbed wire?
- 17 A. Yes, sir, might of put a new strand up. I can't
- 18 remember, but I replaced it.
- 19 Q. You might have?
- 20 A. I think.
- 21 Q. Well, do you keep barbed wire on hand?
- 22 A. I used to, yes, sir.
- 23 Q. Well ---
- 24 A. I have a roll at the house.
- 25 Q. All right. At any point in time during this case

- 1 did you state that you had replaced barbed wire?
- 2 A. No, sir.
- 3 Q. Now, you said you had fixed that fence on F-3 prior
- 4 to the accident, right?
- 5 A. Right.
- 6 Q. I think a day before the accident or a day before.
- 7 Did you fix any fence under your dominion and control at
- 8 any time immediately after the accident?
- 9 A. No, sir.
- 10 Q. So when you first learned there was an accident on
- 11 the 25th, rode the fences, you didn't check anything?
- 12 A. I did. I checked it.
- 13 Q. Excuse me. You didn't fix anything.
- 14 A. Didn't fix anything.
- 15 Q. I apologize. Do you recall me sending your
- 16 attorney what were called requests to admit?
- 17 A. No, sir. I don't recall it.
- 18 Q. Okay. Well, you've spoken with your attorney at
- 19 length during this trial. We established that, right?
- 20 A. Right.
- 21 Q. In preparation for the trial, correct?
- 22 A. Yes, sir.
- 23 Q. Do you recall the question -- excuse me. I need to
- 24 ask you something else first. I apologize. I'll move
- 25 on.

1 THE COURT: While we're at a good stopping point
2 there I just want to explain to the jury the discovery
3 process. You all keep referring to certain things.

4 Ladies and gentlemen, this is so you all
5 understand. This is rules of procedure, kind of the
6 guidelines on how to file a case and when things are due
7 in the court and when they got to exchange documents.

8 Prior to the case coming to court to be tried like
9 this before you all each side has an opportunity to ask
10 questions, send written questions, sit people down and
11 put them under oath and ask questions. That's a
12 deposition.

13 There are interrogatories. They are, Please
14 produce me any reports, or charts, or income tax returns.
15 Anything they want to see they can ask each other before
16 the case comes to trial. They get to see. It's called a
17 discovery process. Tell me everything you all intend to
18 prove in the case, and one side has to give the other,
19 both sides have to give one another.

20 So that's the discovery interactions the lawyers go
21 through, and it's so when depositions are taken with the
22 parties, which you all have heard those questions, Do you
23 remember your deposition? Well, that's like a testimony
24 under oath that the attorneys get to ask every witness
25 questions of that sort.

1 Requests to admit are just that, admit that the
2 accident occurred on July 24th, 2008. Yes. Things like
3 that. So that's part of the discovery process that these
4 attorneys have gone through getting the issues for you
5 all to consider prepared for this week.

6 So the attorneys keep referring to that. It's
7 legalese to you all. I just want you to understand what
8 they are talking about.

9 All right. You may continue.

10 MR. BOGGS: Thank you, Judge. And I apologize to
11 the Court. I got ahead of myself.

12 BY MR. BOGGS:

13 Q. I meant to call your attention to the
14 interrogatory, okay. And those are the questions,
15 written questions that the Judge just talked about.

16 A. Right.

17 Q. Do you recall those? We've been talking about
18 those.

19 A. Right.

20 Q. Okay. And I asked specifically at number 20 on
21 page 4 of your defendant's answers to plaintiff's first
22 set of interrogatories, I asked, What efforts have you
23 made to correct the condition which plaintiff contends
24 caused the accident in question?

25 Your answer was, None, since the defendant denies

1 that a condition under his control was a cause of the
2 accident and also denies that the plaintiff collided with
3 a stray cow from the Dials Church Road pasture.

4 And you go on to say through your attorney, The
5 defendant did replace an electric fence at the Burdette
6 pasture after the accident; however, the defendant also
7 denies that the plaintiff collided with a stray cow from
8 the Burdette Road pasture.

9 So did you tell your attorney that you had replaced
10 an electric fence on Burdette Road immediately after the
11 accident?

12 A. I built a new one, yes, sir.

13 Q. You built a new one?

14 A. Right.

15 MR. HANNA: Objection. We may need to approach.

16 THE COURT: All right. I'll tell you what. This
17 will be a good time for a break. We've been going for
18 about an hour. So we'll discuss that, let the jury have
19 some coffee or Diet Coke, whatever they want.

20 You all can take a break. Remember, don't begin
21 discussing the case. I told Mr. Bolt I didn't realize
22 there were some people -- I changed the rule a little bit
23 to Mr. Bolt. I had to apologize yesterday. He tells
24 everybody no cell phones at all and I told you all
25 differently, you all can bring them into the jury room.

1 If you all need to make a call -- remember, you
2 can't talk about the case, but if you need to call work
3 to check on something you can do that, you need a smoke
4 break, you can step outside. So as soon as you all are
5 done with that you all let him know and I'll get you back
6 in here because I think that will take longer than the
7 attorneys need. So it's kind of I'm working on you all's
8 time.

9 But if you need a cell phone he'll give you a
10 place. If you need a cigarette he'll give you a place.
11 As soon as you all are done attending to you all's
12 business let me know through him and we'll get you back
13 in here, okay? You all head out. Don't talk about the
14 case.

15 (WHEREUPON, the jury leaves the courtroom at
16 approximately 10:18 a.m.)

17 THE COURT: All right. Mr. Hanna?

18 MR. HANNA: Okay. The interrogatory, my objection
19 goes to the manner -- he mischaracterizes -- this is why
20 I didn't want to say this on the record because you were
21 very specific about not making speaking objections.

22 THE COURT: I did, and I appreciate that. I
23 recognize you following my directions.

24 MR. HANNA: There's one thing I can do in life is I
25 can follow directions. But in other words, he asked --

1 he reads the interrogatory, then he goes back to say you
2 said immediately after the accident, and there's nothing
3 in the question that asks about whether or not it was
4 immediate ---

5 THE COURT: I agree with that.

6 MR. HANNA: --- the time frame or anything like
7 that.

8 THE COURT: You going to use his words use his
9 words.

10 MR. BOGGS: I apologize. Judge, but I think it's
11 still -- I would respectfully argue that it still comes
12 in. I said, What efforts have you made to correct the
13 condition the plaintiff contends caused the accident in
14 question. Then talks about none. But the defendant did
15 replace an electric fence at the Burdette Road pasture
16 after the accident, and if I said immediate I'm sorry.

17 THE COURT: All right. That's fair enough.

18 MR. HANNA: And I'm not suggesting that he can't
19 read the interrogatory. It's the characterization, it's
20 a mischaracterization of what the response was is what
21 I'm objecting to.

22 THE COURT: I agree with you. So to the extent he
23 mischaracterized I sustain your objection and will
24 caution both of you. If you all are going to use the
25 discovery process be specific.

1 MR. BOGGS: And I apologize to the Court.

2 THE COURT: That's all right.

3 MR. BOGGS: I mean, we've been saying immediately.

4 I mean ---

5 THE COURT: Oh, you've been going at it a long
6 time.

7 MR. BOGGS: Yes, sir.

8 THE COURT: We'll take a short break.

9 MR. BOGGS: Now, Judge, I think there's an issue we
10 might want to talk about before we do.

11 THE COURT: All right.

12 MR. BOGGS: I almost brought up -- I almost went
13 into the requests to admit. I got off script. The
14 request to admit that I'm talking about, I put in request
15 number four, I said, Admit that the defendant and/or his
16 mother or father have received numerous phone calls from
17 Laurens County 911 Services concerning their cattle being
18 loose during each of the calendar years 2006 through
19 2010.

20 The response, The defendant cannot admit or deny
21 what phones -- it has phone calls. It's a typo, may or
22 may not have been received by either of his parents;
23 however, defendant does admit that he has received calls
24 regarding loose cattle from time to time over the years.
25 He denies that the cattle were out were always his.

1 I know that asks about 2006, 2010 but it's a
2 request to admit. There was an answer made. That's an
3 admission. There's no -- I mean ---

4 THE COURT: Well, how about this. I mean, can you
5 characterize your question in basically the way the
6 answer is. Certainly it will be a leading question but
7 would you agree -- would you admit that you received
8 numerous calls -- whatever those words were, over the
9 years 6, 7, in some sense.

10 MR. HANNA: The exact wording is he has received
11 calls, and the bottom line is I don't understand why
12 we're getting to this when he hasn't even asked the man
13 if he's got the call from 911 yet. Depending on what his
14 answer is would depend on whether or not you need to
15 impeach him with some evidence from the thing. I believe
16 his answer will be yes ---

17 MR. BOGGS: Hold on.

18 MR. HANNA: -- I have.

19 MR. BOGGS: Woah.

20 THE COURT: All right. Remember my cautionary
21 instruction. I don't want to trample upon my court
22 reporter. She's good ---

23 MR. HANNA: Sorry.

24 THE COURT: --- but she can't do two at the same
25 time.

1 All right. I don't know what question you're going
2 to ask but assuming you do and he denies it certainly
3 you'd go to the request to admit.

4 MR. BOGGS: I'm sure he's not going to deny it now
5 but in this trial who knows.

6 THE COURT: Well, sometimes issues get resolved in
7 spite of us. I don't think you all anticipated that.

8 MR. BOGGS: Oh, yes, sir.

9 THE COURT: All right. Let's take a quick break
10 and when they are ready -- when the jury is ready we'll
11 get ready.

12 (WHEREUPON, a brief recess was taken.)

13 THE COURT: Okay. Bring them in.

14 (WHEREUPON, the jury enters the courtroom at
15 approximately 10:33 a.m.)

16 THE BAILIFF: All present, Your Honor.

17 THE COURT: You may continue.

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

20 BY MR. BOGGS:

21 Q. I believe where we were, Mr. Darby, is I was asking
22 about your interrogatory response and in my hasty reading
23 I may have injected a word, and I apologize to everyone.
24 But the question was, What efforts have you made to
25 correct the condition which plaintiff contends caused the

1 accident in question?

2 The pertinent sentence, I'll read it again in full,
3 None since the defendant denies that a condition under
4 his control was a cause of the accident and also denies
5 that the plaintiff collided with an astray cow from the
6 Dials Church Road pasture.

7 The defendant did replace an electric fence at the
8 Burdette Road pasture after the accident; however, the
9 defendant also denies that the plaintiff collided with a
10 stray cow from the Burdette Road pasture.

11 So we're talking about the cattle pasture?

12 A. It would be between the cattle pasture and my
13 property.

14 Q. All right. And where is your property on our
15 document?

16 A. Right there where your finger is.

17 Q. Right at the end of the woods?

18 A. On up. No. Right there.

19 Q. Right there?

20 A. See that ---

21 Q. Where there's a tree line right there?

22 A. A tree line.

23 Q. So we need to add to my masterpiece?

24 A. Right. You're getting better.

25 Q. Fallback career.

- 1 A. Uh-huh.
- 2 Q. All right. So right along there?
- 3 A. Yes, sir.
- 4 Q. So that's JD, too?
- 5 A. Yes.
- 6 Q. Or JD, also?
- 7 A. Right.
- 8 Q. Okay. We'll call JD-1 by your house, JD-2 across
- 9 the street from your house.
- 10 A. Okay.
- 11 Q. Fair enough?
- 12 A. Fair enough.
- 13 Q. So where was the fence, the electric fence that you
- 14 were fixing?
- 15 A. Just where you drew [sic] on that property line.
- 16 Q. Right there?
- 17 A. Right there, cross the fence.
- 18 Q. I'm sorry?
- 19 A. Cross fence.
- 20 Q. Cross fence?
- 21 A. Right, inside the pasture.
- 22 Q. Inside. Oh, okay. And without getting too
- 23 technical that means there's another fence inside the
- 24 pasture?
- 25 A. Another fence outside the pasture.

- 1 Q. Okay. Outside the pasture?
- 2 A. Out of the fence I just put up.
- 3 Q. So that's double-fenced?
- 4 A. It helps me get cattle to the house, to catch them.
- 5 Q. Sort of like a corral?
- 6 A. It's kind of funneling them into the lot.
- 7 Q. Okay. So you fixed the fence on JD-2, the inside
- 8 fence. That's the only one that's electrified, right?
- 9 A. No. JD-2 on the perimeter is electrified, too, and
- 10 down Burdette Road on the left side.
- 11 Q. But in JD-2 you said there's two fences, one the
- 12 inside fence, the other is sort of like ---
- 13 A. Cross fence.
- 14 Q. -- a channel or corral?
- 15 A. Yes.
- 16 Q. Both of those fences are electrified?
- 17 A. Yes, sir.
- 18 Q. Okay. And did you have any cows there on July
- 19 24th, 2008?
- 20 A. No, sir.
- 21 Q. And what was wrong with that electric fence?
- 22 A. It was growed [sic] up and the wire was broken. I
- 23 just tore it all done and put a new one up.
- 24 Q. All right. And so I asked what efforts have been
- 25 made to correct the condition there, and you said you

- 1 fixed this fence after the accident.
- 2 A. Right.
- 3 Q. Well, was it -- when was it after the accident?
- 4 A. I can't remember.
- 5 Q. Okay. Could it have been before the accident?
- 6 A. I don't believe so.
- 7 Q. Do you know so?
- 8 A. I don't know. That's been a long time ago, but I
- 9 did replace one fence.
- 10 Q. Now, this X mark or this star is where you said
- 11 approximately represents where the accident was, right?
- 12 A. Yes, sir.
- 13 Q. And you've been maintaining this field for cattle
- 14 for all 40 years?
- 15 A. Since 1970.
- 16 Q. So you've had -- that pasture has been yours by
- 17 lease, or what have you, since 1970, and that you check
- 18 on them, you ride by every day, right?
- 19 A. Not every day.
- 20 Q. Okay. But you check on them regularly. That's
- 21 your habit, right?
- 22 A. (There was no response).
- 23 Q. Have you ever seen anyone else's cows in the road
- 24 at the area of the accident?
- 25 A. Down at the creek, down at the bridge on Dials

- 1 Church.
- 2 Q. But in the vicinity of the accident?
- 3 A. No, sir.
- 4 Q. Because how far down is it to Dials Church bridge?
- 5 A. Probably a quarter of a mile.
- 6 Q. And that's the picture that we ---
- 7 A. Yes, sir.
- 8 Q. So however far this is --
- 9 MR. BOGGS: And permission to publish to the jury
- 10 Exhibit Number 24?
- 11 THE COURT: Sure.
- 12 BY MR. BOGGS:
- 13 Q. So you've seen other people's cows down there?
- 14 A. Right.
- 15 Q. Okay. And did you know who they were?
- 16 A. Harry Hays.
- 17 Q. Harry Hays. And I don't know that I've asked you
- 18 this but on this -- on our masterpiece here have you -- I
- 19 think we talked about in a break that Harry Hays is on
- 20 past the bridge on down Dials Church Road, this road
- 21 right here. Can you see it, Mr. Darby?
- 22 A. Yes, sir.
- 23 Q. Past the bridge there's a road right here.
- 24 A. Right.
- 25 Q. Is that Hayes Road?

- 1 A. Yes, sir.
- 2 Q. And, again, this is Dials Church on down here. And
- 3 so does Mr. Hays live up in this area where I'm circling?
- 4 A. Right.
- 5 Q. And I believe his family lives there, right?
- 6 A. Right. There's a daughter that lives in a trailer
- 7 and he lives in a trailer.
- 8 Q. But just in that general area I'm going to put an
- 9 H, okay?
- 10 A. Okay.
- 11 Q. That's all Hays' family property?
- 12 A. Right.
- 13 Q. Is that where he keeps his cow?
- 14 A. Yes, sir.
- 15 Q. Cattle?
- 16 A. Yes, sir.
- 17 Q. Now, isn't it true that Harry Hays only has
- 18 registered Black Angus cows?
- 19 A. I don't know if they are registered but they are
- 20 Black Angus.
- 21 Q. Okay. Well, at the time -- when did you see his
- 22 cow out down at the vicinity of the bridge?
- 23 A. When, that year?
- 24 Q. I asked you if you had ever seen one out that
- 25 didn't belong to you in the vicinity of the accident.

- 1 You said you saw Harry Hays' down by the bridge. Okay.
- 2 A. Yes, sir.
- 3 Q. At the time -- whenever you've seen Harry Hays' cow
- 4 down by the bridge was it registered Black Angus?
- 5 A. Yes.
- 6 Q. In fact, that's the only kind he has, right?
- 7 A. Right.
- 8 Q. Anybody else's cows you seen at the vicinity of the
- 9 accident?
- 10 A. No, sir.
- 11 Q. And where exactly was that calf that you saw that
- 12 got out six months prior to the accident?
- 13 A. Burdette. Burdette Road.
- 14 Q. Six months prior? We were taking -- we talked
- 15 about two incidents.
- 16 A. Oh.
- 17 Q. The one a couple days before you said was Burdette,
- 18 right?
- 19 A. Burdette.
- 20 Q. Which is over here. And the one you said that
- 21 escaped because it pulled away the battery ---
- 22 A. It would be down toward the creek.
- 23 Q. Down here?
- 24 A. No, sir.
- 25 Q. Down here?

- 1 A. Cooley.
- 2 Q. Cooley Creek?
- 3 A. Right.
- 4 Q. All right. So do you know which calf pulled off
- 5 the ---
- 6 A. No, sir. I don't know which one.
- 7 Q. Did any of your calves have any burn marks on their
- 8 mouths or anything?
- 9 A. No, sir.
- 10 Q. Well, would the voltage of the protection wire that
- 11 was pulled off, would it be the same as what would be
- 12 passing through the fence?
- 13 A. Going from the charger to the fence?
- 14 Q. The protection wire that you said was pulled off,
- 15 and you said you saw gnaw marks.
- 16 A. No, it was insulated.
- 17 Q. It was insulated?
- 18 A. Right.
- 19 Q. So you've seen no other cows in the vicinity of the
- 20 accident that belonged to anybody else?
- 21 A. No, sir.
- 22 Q. And would you agree with me that you've only seen
- 23 Harry Hays' down at the bottom of the hill?
- 24 A. He's had a bull in my pasture and I had to get it
- 25 out.

- 1 Q. Okay. He had a bull in your pasture.
- 2 A. I don't know where it got in my pasture but I
- 3 carried it all the way to the house and caught him. He
- 4 came over and I picked it up -- he loaded it on a trailer
- 5 and carried it back home, but really he done it three
- 6 times.
- 7 Q. Was that a registered Black Angus bull?
- 8 A. Yes, sir.
- 9 Q. Okay. And from H to F-1 there's woods down there,
- 10 right?
- 11 A. Right.
- 12 Q. Who owns that property?
- 13 A. I do not know.
- 14 Q. Is it fenced?
- 15 A. No, sir.
- 16 Q. And its border between H and F-1 is a creek, right?
- 17 A. Right.
- 18 Q. And so have you ever seen a bull walk up in the
- 19 vicinity of the accident?
- 20 A. I haven't seen him.
- 21 Q. Now, you saw him in the pasture, right?
- 22 A. Right. He was breeding my heifers.
- 23 Q. He was breeding your heifers. He was looking for
- 24 action?
- 25 A. Yes, sir.

- 1 Q. Isn't it true that when cows wander they are
2 typically hungry -- or based on your 40 years of
3 experience isn't it true that they are usually hungry or
4 looking for action?
- 5 A. Yes, sir.
- 6 Q. Well, did you get calves as a result of his ---
- 7 A. No, sir.
- 8 Q. Oh, you didn't?
- 9 A. I aborted them.
- 10 Q. You -- oh, okay. You aborted them. Okay. Well,
11 let me ask you that. Was that before the accident or do
12 you recall?
- 13 A. I don't recall, been over several years.
- 14 Q. Well, it was in F-1, right?
- 15 A. Right.
- 16 Q. So it's your testimony that you knew it was Harry
17 Hays' cow?
- 18 A. Yeah.
- 19 Q. Or bull?
- 20 A. Bull.
- 21 Q. And you boarded it up and took it all the way over
22 to Burdette Road to your barn?
- 23 A. Right.
- 24 Q. And when you say you boarded it up, you put it on a
25 trailer and took it over there?

- 1 A. No, sir. I rode the whole herd over there.
- 2 Q. Okay.
- 3 A. Through all the pastures.
- 4 Q. Through all the pastures, including him?
- 5 A. Right. He followed the cows.
- 6 Q. Okay. So you mentioned earlier when you are gone
- 7 your dad would help. Is that what you said?
- 8 A. Yes, sir.
- 9 Q. So when you're gone if something happens, if a cow
- 10 gets out or whatever -- has a cow ever gotten out prior
- 11 to the accident?
- 12 A. Yes.
- 13 Q. You agree with me now.
- 14 A. Right.
- 15 Q. Okay. Then if something happens like that do you
- 16 ever -- what's somebody supposed to do if they think it's
- 17 your cow?
- 18 A. Call daddy.
- 19 Q. Call daddy?
- 20 A. Right.
- 21 Q. Well, what number would they call, his house
- 22 number?
- 23 A. House number.
- 24 Q. I thought you said yesterday that they would only
- 25 call you?

- 1 A. Well, they call them, too.
- 2 Q. They call him, too?
- 3 A. Right.
- 4 Q. So do they call your momma, too?
- 5 A. Yes, sir, whoever answers the phone.
- 6 Q. All right. Are they authorized to talk about your
- 7 cows when you are not around?
- 8 A. Yes, sir.
- 9 Q. Okay. And so isn't it true that people have called
- 10 your momma and daddy over the years about your cows being
- 11 out?
- 12 A. Yes, sir.
- 13 Q. And isn't it true that they had called you over the
- 14 years prior to the accident about your cows being out?
- 15 A. Yes, sir.
- 16 Q. And did your momma and/or daddy relay messages to
- 17 you ---
- 18 A. Yes, sir.
- 19 Q. --- when people call?
- 20 A. Right.
- 21 Q. And if you were at work would you leave work and go
- 22 get the cow?
- 23 A. Sometimes.
- 24 Q. Sometimes?
- 25 A. Most of the time daddy put them up.

- 1 Q. Okay.
- 2 A. Or if it was mine. A lot of times it wasn't mine.
- 3 Q. But sometimes it was?
- 4 A. Sometimes it was.
- 5 Q. All right. And each of those times did you find
- 6 how the cows got out?
- 7 A. Yes, sir.
- 8 Q. How is that?
- 9 A. Tree fell on the fence.
- 10 Q. Okay.
- 11 A. Had to cut it off and fix it.
- 12 Q. Do you know -- do you recall who had called you
- 13 over the years, anybody in particular?
- 14 A. Laurens dispatch.
- 15 Q. Would it be the 911 people? What do you believe to
- 16 be dispatch?
- 17 A. Laurens County.
- 18 Q. Okay. So Laurens County 911?
- 19 A. I guess.
- 20 Q. Okay.
- 21 A. They didn't say.
- 22 Q. And did they call you? Do you know how they
- 23 learned to call you?
- 24 A. Captain Bill paid (ph) them.
- 25 Q. I'm sorry?

1 A. Captain Bill paid the Laurens County Sheriff. I
2 asked the dispatcher one night at three o'clock in the
3 morning. I said, Why do you all always call me?
4 She said, Captain Bill paid. Said call you, you
5 the only man that get up and go run them out of the road,
6 and I've been pegged with that ever since.
7 Q. You been what?
8 A. Pegged with that ever since.
9 Q. Well, in fact, you just admitted that when people
10 call that sometimes they are your cows, right?
11 A. Sometime, and I need to go check.
12 Q. I'm sorry?
13 A. I need to really go check to make sure they are not
14 mine or they are mine.
15 Q. That's part of the cattle business, right?
16 A. Part of the cattle business.
17 Q. And when these people call it's the vicinity of
18 F-1, F-2, D, cattle, JD-1, JD-2, F-3 and V, right?
19 A. And Currys Lake Road.
20 Q. I'm sorry?
21 A. Currys Lake Road.
22 Q. Which you own the pasture over there?
23 A. I own the pasture over there.
24 Q. Okay. You touched on it earlier when we were
25 talking about getting the bull back to the barn, but do

- 1 your cows stay in the same pastures?
- 2 A. No, sir.
- 3 Q. All the time?
- 4 A. Rotate them.
- 5 Q. You rotate them?
- 6 A. Rotate them.
- 7 Q. All right. What's your rotation schedule?
- 8 A. No schedule.
- 9 Q. No schedule, just -- well, on the day of the
- 10 accident you said F-1, F-3 and V had cattle, right?
- 11 A. F-1 ---
- 12 Q. F-3?
- 13 A. --- 3 and V.
- 14 Q. And V?
- 15 A. Right.
- 16 Q. Okay. So is there any methodology to move them?
- 17 When did you move them -- or, excuse me. Forget after
- 18 the accident. Before the accident where did they move
- 19 from?
- 20 A. Across the road.
- 21 Q. The cattle pasture went to F-1?
- 22 A. Right.
- 23 Q. Where did the F-3 come from?
- 24 A. They stayed there.
- 25 Q. They stayed there?

- 1 A. Uh-huh.
- 2 Q. You don't rotate that one. Okay. Do you ever herd
3 cattle in F-3? Do you ever move cattle from the cattle
4 pasture to F-3?
- 5 A. Yes, sir.
- 6 Q. Okay. And how many gates -- do you do it through
7 gates?
- 8 A. Right.
- 9 Q. Do you have cattle guards?
- 10 A. No, sir.
- 11 Q. What is a cattle guard?
- 12 A. A pipe across the road where you can see through
13 and you can drive a truck across it ---
- 14 MR. HANNA: Your Honor, I'd like to --
- 15 A. --- but the cow won't cross it.
- 16 MR. HANNA: --- approach on this line of
17 questioning.
- 18 THE COURT: All right. Very good.
- 19 You all can stretch.
- 20 (WHEREUPON, a sidebar was had.)
- 21 MR. BOGGS: May it please the Court?
- 22 THE COURT: Yes, sir.
- 23 BY MR. BOGGS:
- 24 Q. Mr. Darby, you just testified, or we've talked
25 about that you move your cows from pasture to pasture.

1 A. Right.

2 Q. And I think in your deposition -- I asked you this
3 earlier, that the cows had been in F-1, at your
4 deposition you said 30 days, approximately.

5 A. About 30.

6 Q. And then I think today you said maybe at least two
7 weeks, but you don't have an exact calender schedule,
8 right?

9 A. No, sir.

10 Q. It's not like you wake up on the first of each
11 month and say I got to move the cows?

12 A. No, sir.

13 Q. But do you know when exactly you moved the cows
14 prior to the accident?

15 A. After the accident or before?

16 Q. Prior to the accident?

17 A. Prior, before?

18 Q. Yeah.

19 A. Probably 30 days.

20 Q. Okay. So how did you move them -- not only how did
21 you move them then but how do you typically move the cows
22 from ---

23 MR. HANNA: Your Honor, just I want to -- again, I
24 know what you said over there but I want to make a -- you
25 know, this is over my objection and that we will make a

1 record of it afterwards. But I just want to make sure
2 I'm not contemporaneously saying something ---

3 THE COURT: I think your objection will be properly
4 noted on, I think it was basically irrelevance.

5 MR. HANNA: Understand.

6 THE COURT: All right. Fair enough.

7 MR. HANNA: Paranoid about making a record. That's
8 all.

9 BY MR. BOGGS:

10 Q. Well, you -- when I asked you about how you got the
11 bull up you said you herded them all back over there.

12 A. Right.

13 Q. Okay. And so is the way that you herded then when
14 the bull was in your pasture, herded your whole herd and
15 Mr. Hays' bull, the way you did that, is that the way you
16 do it all time?

17 A. I call them, go to the gate and call them and blow
18 the horn, and usually late in the evenings when it's cool
19 they all in the woods and everything and they come to me.
20 I have a few stragglers. The momma has done gone across
21 the road. I have to get in there with the truck and ease
22 them, maybe nudge them a little bit to get them on up to
23 the gate, and once they see the gate open they'll go
24 across the road.

25 Q. All right. So when you're talking about a gate,

1 correct me if I'm wrong, just following logic that you
2 would open a gate on one pasture and open a gate on the
3 other?

4 A. Right.

5 Q. Okay. You'd open them at the same time otherwise
6 they couldn't get in, right?

7 A. Right.

8 Q. And so when I asked you about a cattle guard you
9 said it was a pipe or some sort of -- essentially, like a
10 coral?

11 A. A cattle guard, it covers -- it takes the place of
12 a terra-cotta pipe. You got a ditch with a cover with
13 pipe on it. Cattle can see through it and will not cross
14 it but a truck will cross it.

15 Q. So do you use that when you move your cattle from
16 herd to herd?

17 A. No, sir.

18 Q. Or from pasture to pasture?

19 A. No, sir.

20 Q. So when you open a gate on one side to one pasture
21 and open a gate to the other do you leave the gates open?

22 A. Yes, sir.

23 Q. Okay. And so in this hundred acre pasture, for
24 example, when you are moving the cattle out and this is
25 -- and I'm asking you how you did it prior to the

1 accident, okay? If you're moving cattle from F-1, say,
2 across Cooley Road into cattle, the field we have cattle
3 that was empty at the time of the accident, you said you
4 might have a straggler, right?

5 A. Yes, sir.

6 Q. Okay. Well, on this side of F-1, the farthest away
7 from Cooley, can you see the road where you have the gate
8 that goes over across Cooley Road?

9 A. Yes, sir.

10 Q. Okay. So at every point in this pasture you can
11 see?

12 A. No, sir. You go on top of the hill and you can't
13 see.

14 Q. There's hills and valleys ---

15 A. Valleys and gullies.

16 Q. In fact, we've already established that from the
17 scene of the accident down to bridge is ---

18 A. Straight down.

19 Q. -- a steep hill or straight down?

20 A. Yes, sir.

21 Q. So the pasture flows down to the hill?

22 A. Right.

23 Q. So they can be in your pasture down the hill and
24 you can't see them, right?

25 A. Right.

- 1 Q. And that's a hundred-acre tract?
- 2 A. Right.
- 3 Q. So you've got most of them going across, your
- 4 testimony, right?
- 5 A. Uh-huh.
- 6 Q. But if there's a straggler would you walk down
- 7 there or would you drive during all this?
- 8 A. Drive.
- 9 Q. So you stayed in your truck while you herd all
- 10 these?
- 11 A. Right.
- 12 Q. So you got the cattle going, and the majority of
- 13 them once it's open it's open and goes, right?
- 14 A. Right.
- 15 Q. But if you have a straggler you got to drive the
- 16 pasture to get all the stragglers out. You don't leave
- 17 one by itself, do you?
- 18 A. If I leave one usually an hour later he's up there.
- 19 I go back and check.
- 20 Q. But your intent is to move them all, right?
- 21 A. Move them all.
- 22 Q. Every time you move them?
- 23 A. Yes, sir.
- 24 Q. That's why you move them, right?
- 25 A. Right.

- 1 Q. And they like to be together. So you leave -- do
2 you leave gates open and drive down around the pasture,
3 whichever pasture it is, during herding process?
- 4 A. Not unless daddy is sitting in the road watching
5 the gates because I could have some cows come back.
- 6 Q. You could have some cows come back?
- 7 A. Come back.
- 8 Q. Well, let me ask you this. If your daddy is not
9 there and those gates are open and you are back getting a
10 straggler is it possible for cows to get out?
- 11 A. If I leave there to go back checking for stragglers
12 I shut them.
- 13 Q. You shut them?
- 14 A. Right.
- 15 Q. Every time?
- 16 A. Yes, sir.
- 17 Q. Prior to the accident?
- 18 A. Yes, sir.
- 19 Q. Is it your custom and habit -- in fact, is it your
20 policy to shut it every time that you leave the gates to
21 go back into the field to get a straggler?
- 22 A. If I've got cows right there close to the gate,
23 yes, sir.
- 24 Q. Well, the only reason they'd be open is to be close
25 to the gate to move them, right?

1 A. They usually done went on to cross the top of the
2 hill grazing.

3 Q. So you drive them up, get out, close the gate in
4 the new pasture and then go back in and get the others?

5 A. Get the stragglers.

6 Q. That's your policy?

7 A. Yes, sir.

8 Q. That's what you've done every time in your 40 years
9 of cattle business?

10 A. Sometimes I have one real close and I can see the
11 gates, I'll leave them open, go in there and get that
12 calf and drive him right across the road.

13 Q. All right. But when you drive in the pasture to
14 get a straggler where you can't see the gates you always
15 shut the gates?

16 A. One.

17 Q. The new pasture?

18 A. Right.

19 MR. BOGGS: Okay. One moment, please, Judge.

20 (PAUSE)

21 MR. BOGGS: Judge, I'd like to publish Number 23 to
22 the jury. I don't know if it's been published yet.

23 THE COURT: It's been admitted but hasn't been
24 published.

25 MR. BOGGS: Okay.

- 1 BY MR. BOGGS:
- 2 Q. I'd like to show you Plaintiff's Exhibit Number 10,
- 3 and you admitted that those are your cows. I believe the
- 4 picture was taken August 6th, 2008?
- 5 A. Yes, sir.
- 6 Q. And those are taken from F-1, correct?
- 7 A. Right.
- 8 Q. And are those the same cows that had been in the
- 9 pasture at the time of the accident?
- 10 A. Right.
- 11 Q. Okay. So on July 24th, 2008 those cows and others,
- 12 the 88 cows and calves, those were in this pasture,
- 13 right?
- 14 A. Right.
- 15 Q. Now, this cow right here, what color is that cow in
- 16 the middle there?
- 17 A. Black and brown.
- 18 Q. Black and brown?
- 19 A. Right.
- 20 Q. So it would have black and brown hair?
- 21 A. Yes, sir.
- 22 Q. And do you have any cows that have a combination of
- 23 black, brown and white hair?
- 24 A. Yes, sir.
- 25 Q. And were those in the pasture, F-1, at the time ---

1 A. Some of them.

2 Q. --- of the accident? Some of them?

3 A. Yes, sir.

4 MR. BOGGS: Mr. Darby, I think I'm done right now,
5 okay. So please answer any questions your attorney might
6 have for you at this time.

7 MR. HANNA: We would reserve our questioning of
8 Mr. Darby until our case in chief.

9 THE COURT: Fair enough. You all understand, as I
10 told you --

11 Mr. Darby, you can step down while I tell the jury
12 this.

13 MR. DARBY: Thank you, sir.

14 THE COURT: The plaintiff gets to go first, and the
15 defense gets to go second. So when the plaintiff
16 finishes calling all his witnesses then the defense may
17 call its, and that's what Mr. Hanna has told me, is he's
18 going to ask him questions but on their half of the case,
19 and that way -- he can do that because the order of the
20 witnesses. So Mr. Boggs will continue calling witnesses.
21 He's not done yet but he's just done with Mr. Darby for
22 the time being.

23 MR. BOGGS: The plaintiffs calls Malinda Griffin to
24 the stand.

25 MALINDA GRIFFIN, after having been duly

1 sworn, testified as follows:

2 MR. HANNA: Your Honor, we would object to this
3 witness's testimony in toto on the grounds of relevance
4 and prejudice, as described in length at the motion
5 hearing on last Friday.

6 MR. BOGGS: And just -- this is one that ---

7 THE COURT: Let's don't make a record quite yet.
8 When we do we will.

9 (WHEREUPON, a sidebar was had.)

10 DIRECT EXAMINATION

11 BY MR. BOGGS:

12 Q. Could you please state your full name for the
13 record.

14 A. Malinda Griffin.

15 Q. And, Ms. Griffin, despite what your shirt says can
16 you tell the Court with whom you are employed.

17 A. I'm self-employed as a real estate appraiser and
18 paralegal.

19 Q. Okay. And did you have an opportunity to drive on
20 Dials Church Road July 2008?

21 A. I did.

22 Q. Do you recall exactly what day it was?

23 A. It was Friday, July the 11th.

24 Q. And do you recall approximately what time you were
25 driving down Dials Church Road?

1 A. It was late in the evening about dusk. So that
2 would have been about eight o'clock.

3 Q. And without going into great deal, do you know why
4 -- how do you know it was that time?

5 A. I was on my way to an appraisal assignment.

6 Q. Isn't it true that most -- or, excuse me, are
7 most ---

8 MR. HANNA: Objection. Leading.

9 THE COURT: Don't lead.

10 BY MR. BOGGS:

11 Q. When are most appraisals done?

12 A. During the day.

13 Q. Okay. Was this a typical appraisal for you?

14 A. No, sir. It was a litigation appraisal and I was
15 measuring noise from a local racetrack, and so I had to
16 go during the time of operation of the racetrack.

17 Q. So you had to go on Friday night about eight
18 o'clock?

19 A. I had to go on Friday night about eight o'clock.

20 Q. Now, and you say this was July 11th, 2008?

21 A. Yes.

22 Q. Which direction did you travel?

23 A. I traveled on Dials Church Road off of Highway 14.

24 Q. Okay.

25 A. Off of Highway 14 side.

- 1 Q. So you were headed towards the church?
- 2 A. Yes.
- 3 Q. Okay. And do you recognize this aerial view of the
- 4 area?
- 5 A. Yes.
- 6 Q. Okay. And I'll submit to you that my great red
- 7 line is Dials Church Road.
- 8 MR. BOGGS: Come on over, Geov. I'm sorry.
- 9 BY MR. BOGGS:
- 10 Q. So what you just said is you were traveling from
- 11 right to left on our TV screen here ---
- 12 A. Yes.
- 13 Q. --- or on our display add.
- 14 Now, I notice an oval dirt thingy down there.
- 15 Would that be a racetrack?
- 16 A. That's the racetrack.
- 17 Q. Okay. So was your appointment in the vicinity of
- 18 the racetrack?
- 19 A. Yes.
- 20 Q. Now, do you recognize this road with black as
- 21 Burdette Road?
- 22 A. It is.
- 23 Q. Okay. Do you recognize this red line on top of
- 24 that particular road as Cooley Road?
- 25 A. That's correct.

1 Q. When you were traveling down Dials Church towards
2 the racetrack and church end what, if anything, did you
3 come upon on the night of July 11th, 2008?

4 A. Traveling down Dials Church Road past the star
5 where Cooley Road is and go two inches to -- yeah, right
6 about there, there were cows in the road and on the side
7 of the roads which was -- I had to stop my car to get --
8 and blow the horn and yell to get them so I could pass
9 through to get to my assignment.

10 Q. Okay. Now, did you -- you said cows with an S?

11 A. Cows, yes.

12 Q. Okay. So approximately -- I'm going to put a red
13 star approximately right there.

14 A. Yes.

15 Q. Does that generally reflect where you saw the cows
16 in the road?

17 A. Yes.

18 Q. Now, you recall how many there were?

19 A. No.

20 Q. I'm sorry?

21 A. I didn't count them.

22 Q. Were they just standing in the middle of the
23 road -- or, excuse me. What were the cows doing?

24 A. Some were just standing in the road, some were
25 eating grass on the side of the road outside the fence.

- 1 Q. Okay. And are you sure of the location?
- 2 A. I am. I measure things, you know, when I'm driving
- 3 on what other houses I've appraised, and you've got a
- 4 triangle drawn right there on the right that's got a C on
- 5 it, I think, to your right.
- 6 Q. (Indicated).
- 7 A. Yeah.
- 8 Q. Right here?
- 9 A. Yeah, I appraised that house ---
- 10 Q. Let the record reflect you're taking about the
- 11 pasture marked as V.
- 12 A. Yeah. I've appraised that house before. So I just
- 13 passed that house, and I've done appraisals on Cooley and
- 14 Burdette as well. But I know that I was getting close to
- 15 the creek to the bridge.
- 16 Q. Okay. So someplace past ---
- 17 A. Cooley.
- 18 Q. Someplace past Cooley. And let me show you an
- 19 exhibit. This has previously been entered as Plaintiff's
- 20 24, which has been represented ---
- 21 A. The bridge.
- 22 Q. The bridge, looking back the way you were
- 23 traveling ---
- 24 A. Right.
- 25 Q. --- is that correct?

1 A. Yes.

2 Q. And so were the cows down by the bridge or were
3 they -- where were they ---

4 A. No, they were not ---

5 Q. --- in representation to that picture?

6 A. They were at the -- when you were at the top of the
7 hill there's a cleared area right there.

8 Q. Okay.

9 A. And that's where it would have been, on the night
10 that I was there.

11 Q. Okay. Ma'am, do you remember what color cows you
12 saw on July 11th?

13 A. They were -- the ones that -- I think they were
14 brown, dark brown. They might have been black, or there
15 could have been ---

16 Q. Were they different colors?

17 A. Yeah. They were different colors.

18 Q. Does anything stick out in your memory about the
19 description of the cows? I mean, in terms of -- do you
20 remember if they were specific colors?

21 A. No. I don't remember if they were specific colors.

22 Q. Fair enough. Please answer any questions that
23 Mr. Hanna might have for you.

24 A. Yes, sir.

25

CROSS-EXAMINATION

- 1 BY MS. RAINES:
- 2 Q. How are you doing today?
- 3 A. Good. Thank you.
- 4 Q. You just discussed a couple incidents of seeing
5 some cows out on the road.
- 6 A. I did.
- 7 Q. Any of those times do you have any personal direct
8 knowledge of who the owner of that cow was?
- 9 A. No.
- 10 Q. And do you have any personal direct knowledge of
11 how that cow or those cows might have gotten out?
- 12 A. No.
- 13 Q. And when you saw the cows you mentioned that you
14 stopped.
- 15 A. They were blocking my path.
- 16 Q. So you didn't hit the cows?
- 17 A. No.
- 18 Q. You were able to stop in enough time?
- 19 A. In my car, yes.
- 20 Q. About how fast were you going?
- 21 A. Thirty.
- 22 Q. And the evening of July 24th, 2008, do you have any
23 knowledge whatsoever of a motorcycle accident that
24 happened on Dials Church Road that evening?
- 25 A. No.

1 Q. Do you know anything about anyone's cattle being
2 loose outside of their proper enclosure on the evening of
3 July 24th, 2008?

4 A. No.

5 Q. So it would follow then that you don't know
6 anything about Mr. Darby's cattle being outside of their
7 enclosure on that evening?

8 A. I don't know whose cows was out on the 11th when I
9 was traveling down the road.

10 Q. Do you have any knowledge of anyone having an
11 injured cow in 2008?

12 A. No.

13 Q. In July 2008. And so it follows then that you have
14 no personal knowledge of Wayne Darby's cattle being
15 injured in July of 2008?

16 A. No.

17 MS. RAINES: Nothing further, Your Honor.

18 MR. BOGGS: Quite brief.

19 REDIRECT EXAMINATION

20 BY MR. BOGGS:

21 Q. All right. You saw more than one cow, right?

22 A. Yes.

23 Q. Do you recall how many?

24 A. Probably six or eight at least.

25 Q. Okay. Now, I showed you 24, Exhibit 24, which is

1 the view up the hill from Dials Church Road, right?

2 A. Yes.

3 Q. Is that a steep hill, to your recollection?

4 A. I wouldn't want to walk it.

5 Q. Okay. Now, describing the area opposing counsel

6 asked if you stopped because you saw the cows in road,

7 right?

8 A. Yes.

9 Q. And you were able to stop, right?

10 A. Yes.

11 Q. Well, can you describe whether the -- can you

12 describe the terrain as you approached the direction you

13 were approaching in. When you come by the Vissage's

14 property is it flat or is it hilly?

15 A. It's all flat and it's open, and I had plenty of

16 vision to be able to see to make a determination to slow

17 down and stop, and I wasn't traveling fast to begin with.

18 MR. BOGGS: Thank you. No further questions.

19 MS. RAINES: Nothing further.

20 THE COURT: All right. Thank you so much.

21 THE WITNESS: Thank you.

22 MR. BOGGS: Judge, we call Richard Marshall to the

23 stand.

24 MR. HANNA: And, again, Judge, we object to this

25 witness' testimony in toto for the relevance, prejudice

1 and all the other things that I've previously put on
2 record.

3 THE COURT: Very well. All right. I'm going to
4 overrule the objection.

5 MR. HANNA: Understood about this.

6 MR. BOGGS: Subject to the prior pretrial ruling.

7 Mr. Marshall, please step forward and be sworn.

8 RICHARD MARSHALL, after having been duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BOGGS:

12 Q. State your full name for the record, please.

13 A. Richard Marshall.

14 Q. And I would guess from your shirt that you work for
15 Eagle Appraisal?

16 A. Yes, I do.

17 Q. And how long have you been an employee there?

18 A. Almost six years.

19 Q. I'm going to move this close to you because we have
20 this plastic over it. But where do you reside?

21 A. 1245 Burdette Road.

22 Q. Okay. Now are you familiar with where Mr. Darby,
23 the defendant, has his pastures on Burdette Road?

24 A. Yes.

25 Q. All right. You drive by them frequently?

- 1 A. Yes.
- 2 Q. Okay. Have you had occasion to walk Burdette Road?
- 3 A. Yes.
- 4 Q. And how long you been living on Burdette Road?
- 5 A. Almost six years.
- 6 Q. Can you see this?
- 7 A. Yes.
- 8 Q. Okay. So do you recognize that black line as
- 9 Burdette Road, as tracing Burdette Road?
- 10 A. The black line?
- 11 Q. Yes. There's several black lines. This one, where
- 12 my finger is going. The black line right here. Do you
- 13 recognize that as Burdette Road?
- 14 A. I believe so. I don't see the curve in the bridge.
- 15 Q. Oh, okay. I'm sorry, the plastic. Do you see
- 16 houses at the end of Burdette Road?
- 17 A. Yes. Okay.
- 18 Q. Do you see -- what are these things up here?
- 19 A. I don't have a clue.
- 20 Q. Okay. Well, I'll move on. Do you recognize this
- 21 aerial view?
- 22 A. Yes.
- 23 Q. What is it of?
- 24 A. The neighborhood I live in.
- 25 Q. And do you recognize this area as your neighborhood

1 up here?

2 A. Yes. Okay. Okay. Now I understand ---

3 Q. I'm sorry. And I apologize. I don't know what you

4 can see because of the glares and such. So, now, is

5 this ---

6 A. Yes. That is my subdivision up there.

7 Q. And is that on Burdette Road?

8 A. Yes.

9 Q. Okay. And so did you have occasion -- and you've

10 lived there for how long?

11 A. Almost six years.

12 Q. All right. And so you obviously travel Burdette

13 Road on a regular basis?

14 A. Every day.

15 Q. Okay. And you said you walked on a regular basis?

16 A. Yes.

17 Q. And would you walk up towards Dials Church Road?

18 MR. HANNA: Objection, leading.

19 Q. Excuse me. Which direction would you walk when you

20 went walking?

21 A. Both to Dials Church Road and to Stoddard Mill

22 Road.

23 Q. Stoddard Mill Road is up above at the top of the

24 picture?

25 A. It's outside the top of the picture.

- 1 Q. Okay. So how far -- when you walked up towards
- 2 Dials Church how far would you walk?
- 3 A. 1.1 mile from my house to Dials Church Road.
- 4 Q. So you'd walk all the way up there, turn around and
- 5 walk back?
- 6 A. Sometimes.
- 7 Q. Okay. Then did you have occasion to walk and drive
- 8 and traverse Burdette Road prior to July 24th, 2008?
- 9 A. Yes.
- 10 Q. All right. And did you have occasion to see
- 11 Mr. Darby's cows in the pastures on either side of
- 12 Burdette Road prior to July 24th, 2008?
- 13 A. I've seen cows out there, yes.
- 14 Q. Do you know them to be Mr. Darby's?
- 15 A. No.
- 16 Q. Okay. Do you know Mr. Darby?
- 17 A. I've met him.
- 18 Q. Okay. Have you talked to Mr. Darby prior -- excuse
- 19 me. Had you talked to him prior to July 24th, 2008?
- 20 A. Yes.
- 21 Q. Had you talked to his dad prior to July 24th, 2008?
- 22 A. I believe so.
- 23 Q. Okay. And why do you say you believe so?
- 24 A. There's been a couple people that we've talked to
- 25 that I thought were the Darby family.

- 1 Q. Okay.
- 2 A. I didn't know whether it was Mr. Darby or his
- 3 father.
- 4 Q. Okay.
- 5 A. Particularly.
- 6 Q. Well, do you recognize this gentleman in the blue
- 7 shirt over here?
- 8 A. Yes.
- 9 Q. Okay. Who is that?
- 10 A. Mr. Darby.
- 11 Q. And do you know that person to be Wayne Darby?
- 12 A. Yes.
- 13 Q. All right. So when you talked to another gentleman
- 14 that you thought was his dad it wasn't him, right?
- 15 A. Yes.
- 16 Q. Now, what were those conversations about prior to
- 17 July 24th, 2008?
- 18 A. Just general neighborhood discussions.
- 19 Q. Okay. And what activities have you seen Mr. Darby
- 20 and/or his cows engaged in prior to the accident?
- 21 A. Assuming the cows are his I've seen him herding the
- 22 cows, feeding the cows, driving a pick-up truck through
- 23 the pastures.
- 24 Q. Okay. Have you personally observed him herding the
- 25 cows?

1 A. Yes.

2 Q. Now, and when you say herding the cows, what does
3 that mean to you? What are you trying to ---

4 A. Moving them from one pasture to another pasture.

5 Q. Okay. So, for example, where I have cattle on the
6 one side of Burdette Road and I've got the F-3 ---

7 MR. HANNA: Your Honor, I again object to testimony
8 about the moving of the cattle on the basis of relevance
9 and prejudice.

10 THE COURT: I'm going to overrule it and let you go
11 ahead.

12 MR. BOGGS: Thank you.

13 THE COURT: Subject to our limitations we discussed
14 last Friday.

15 MR. BOGGS: Yes, sir.

16 BY MR. BOGGS:

17 Q. Now, just to make sure. I asked you prior to the
18 accident did you observe Mr. Darby herd his cows.

19 A. Yes.

20 Q. Do you remember exactly when?

21 A. No.

22 Q. Was it on a regular basis?

23 A. Three or four times.

24 Q. Three or four times?

25 A. In the two years ---

- 1 Q. Prior to the accident ---
- 2 A. Yes.
- 3 Q. -- that you lived there?
- 4 A. Yes.
- 5 Q. Okay. Now, can you describe how he was herding his
- 6 cattle between pastures?
- 7 A. The gates -- well, there's several different
- 8 pastures. There's several pastures on the left side of
- 9 Burdette Road and there's several pastures on the right
- 10 side of Burdette Road.
- 11 Q. Okay. And I'm sorry to interrupt. When you say
- 12 left side are you going towards your house or towards
- 13 Dials Church?
- 14 A. Looking at that picture.
- 15 Q. Okay. So I'll submit to you that this is to
- 16 represent a pasture that we've called JD-2, okay? And
- 17 this is to represent a pasture called cattle, okay?
- 18 A. Okay.
- 19 Q. On the left side. And then this is to represent a
- 20 pasture called JD-1, and right below it is F-3, a
- 21 different pasture, okay? Does that reflect what you
- 22 generally just described?
- 23 A. Yes.
- 24 Q. Now, which specific pastures did you see him moving
- 25 cattle between?

- 1 A. JD-1 to F-3.
- 2 Q. Okay. I'm sorry.
- 3 A. JD -- the bottom left one.
- 4 Q. JD-2?
- 5 A. JD-2 to cattle.
- 6 Q. Okay.
- 7 A. JD-1 to JD-2, or JD-2 to JD-1.
- 8 Q. Okay. So you saw him moving cattle between fields
- 9 on either side of the street?
- 10 A. Yes.
- 11 Q. And across Burdette Road?
- 12 A. Yes.
- 13 Q. Okay. Now, calling your attention to when he moved
- 14 cattle across Burdette Road. What did you observe was
- 15 his technique to do -- or did you happen upon him when he
- 16 was herding cattle across the road?
- 17 A. I seen the cattle moving across the road.
- 18 Q. Okay.
- 19 A. Both the gates on the left-hand side going into
- 20 JD-1 and the fence coming out of JD-2.
- 21 Q. Okay.
- 22 A. It may be cattle to F-3. Anyway, the fences are
- 23 open on both sides of the road.
- 24 Q. Okay. And so you're sure with your own two eyes
- 25 prior to July 24, 2008 you saw a gate open on one side

1 and a gate open on the other in some of these pastures?

2 A. Yes.

3 Q. Did you see Mr. Darby standing there?

4 A. His father was there at least once.

5 Q. All right. Did you see the gates open when his

6 father wasn't there?

7 A. Yes.

8 Q. Were there cows moving across the road?

9 A. There was a pick-up truck in one of the fields

10 herding the cattle or encouraging them to move out of one

11 pasture.

12 Q. Okay. Did you see -- could you see the truck?

13 A. Sometimes I can, sometimes I can't.

14 Q. And when you can't is the truck in the pasture?

15 A. I can't see it.

16 Q. Okay. So there's a time at least once prior to the

17 accident that you came upon the fences being open ---

18 MR. HANNA: Objection, leading.

19 MR. BOGGS: I was just sum -- I was summarizing.

20 THE COURT: All right. Well, try not to lead.

21 MR. BOGGS: Yes, sir.

22 BY MR. BOGGS:

23 Q. So the time that the truck was down and you

24 couldn't see it, and the gates were open, so you're

25 assuming the truck was down there. Was there anybody at

- 1 the gate?
- 2 A. On one occasion, no.
- 3 Q. Okay. And were the cows moving across the road?
- 4 A. They were -- I didn't see any -- they were already
- 5 in the one pasture, the one they were going to.
- 6 Q. Okay. Did you see any cows loose?
- 7 A. No.
- 8 Q. Okay. But you did see the gates open?
- 9 A. Yes.
- 10 Q. All right. Now, is there anyone else that you know
- 11 of on Burdette Road that keeps cows?
- 12 A. No.
- 13 Q. In 2008, prior to the accident in July, on July
- 14 24th, did you see cows out of their pastures on July --
- 15 excuse me, did you see cows out of their pastures on
- 16 Burdette Road?
- 17 A. When?
- 18 Q. Prior to the accident.
- 19 A. Yes.
- 20 Q. Okay. Do you recall a specific date?
- 21 A. June 21st, 2008.
- 22 MR. BOGGS: May I approach, Your Honor?
- 23 THE COURT: Yes, sir.
- 24 BY MR. BOGGS:
- 25 Q. Mr. Marshall, I'd like to show you some photos that

1 I'm marking for identification as Plaintiff's 26 through
2 33. And you can unclip them. I'm sorry. Can you
3 identify those photos?

4 A. Yes. I took them.

5 Q. You took them. Do you remember when you took them?

6 A. About 7:30 in the morning June 21st, 2008.

7 Q. Now, we took your deposition prior to the trial,
8 correct?

9 A. Yes.

10 Q. And at that deposition you couldn't remember when
11 you took those photos, correct?

12 A. Correct.

13 Q. And the attorneys asked you to go check. Have you
14 checked since that time to verify when you took those
15 photos?

16 A. Yes, that's when I said ---

17 Q. Is that how you know it today?

18 A. Exactly.

19 Q. Now, what do those photos describe?

20 A. They show that there are cows in the neighbor's
21 yard, in my yard, next to my car, running up the side of
22 my yard of the driveway, next to my driveway, in Burdette
23 Road, more cows in Burdette Road, and more cows in
24 Burdette Road.

25 Q. And what did you do about all those cows in your

1 road -- or, excuse me, in your neighborhood?

2 A. I was taking pictures and trying to get them out of

3 the yard, back to where -- down the hill towards the

4 farm.

5 Q. Okay. And did you call anyone?

6 A. I didn't that day.

7 Q. You didn't that day?

8 A. Correct.

9 Q. And what is your phone number?

10 A. 864-404-5898.

11 Q. All right. And whose phone number is ---

12 A. I'm sorry. That's my cell phone.

13 Q. Okay. What's your home number?

14 A. 864-409-0880.

15 Q. Were you present in your house when a call was made

16 to 911?

17 A. On several occasions, yes.

18 Q. Okay. On this particular occasion on 6-21-08?

19 A. Yes, I was.

20 Q. And do you know who called 911?

21 A. I don't recall.

22 Q. All right. Did you count the number of cows that

23 were out on that date?

24 A. Not -- I can't give you a total.

25 Q. Okay. This's fine. If I can have those back.

1 I'd move Plaintiff's Exhibit 26 through 33 into
2 evidence.

3 MR. HANNA: I'd object on the basis of relevance.

4 THE COURT: I'm going to allow them, and I
5 understand your objection. We discussed it Friday.

6 (WHEREUPON, Plaintiff's Exhibit Numbers 26 through
7 33, Photographs, were admitted inside evidence.)

8 BY MR. BOGGS:

9 Q. And, again, all of these were taken June 21st,
10 2008?

11 A. Yes.

12 Q. Prior to the accident did you have occasion to see
13 -- or when you were walking or driving did you have an
14 occasion prior to the accident to see the condition of
15 the cows in the pasture, at Mr. Darby's pastures?

16 A. Yes.

17 MR. HANNA: Objection, relevance.

18 MR. BOGGS: I think we might need to ---

19 THE COURT: Uh-huh.

20 Again, you all may stretch, stand up, do whatever.

21 (WHEREUPON, a sidebar was had.)

22 THE COURT: We'll take a short break. You all step
23 back to the jury room, use your cell phones, smoke break,
24 whatever you need. And I've got a thing I need to take
25 up right know, so I'll call for you all. All right.

1 Don't begin discussing the case, as I instructed you
2 before.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 11:33 a.m.)

5 THE COURT: For the record, we had a sidebar
6 conference regarding some testimony which Mr. Hanna has
7 fashioned an objection in regards to issue regarding an
8 injured cow and perhaps another issue which we have not
9 yet discussed at sidebar.

10 An objection having been made and testimony having
11 not been put on the record I would like to hear that
12 testimony proffered outside the jury's presence in order
13 to make an -- or attempt to make a proper ruling. Does
14 that accurately reflect our conversation?

15 MR. BOGGS: Yes, sir, that does.

16 MR. HANNA: That does, yes, sir.

17 MR. BOGGS: And not only was there an -- is there
18 proffered testimony right now, it's going to be like
19 different sections that need to be proffered that I
20 hadn't even approached yet. What I was about to ask
21 him --- I'm trying to remember.

22 THE COURT: It was about the observation.

23 MR. HANNA: It was about the injured cow.

24 MR. BOGGS: Oh, the injury. Yes, sir. Thank you.

25 DIRECT EXAMINATION

1 BY MR. BOGGS:

2 Q. Mr. Marshall, have you had an -- as you've been
3 traveling up and down Burdette Road did you have occasion
4 to observe the condition of Mr. Darby's cattle?

5 A. Yes.

6 Q. And, now, you moved there in 2006?

7 A. Yes.

8 Q. And the accident was on July 24th, 2008. You know
9 that, right?

10 A. I've been told.

11 Q. Okay. Now, prior -- during that time, prior to the
12 accident, did you have an opportunity to observe the
13 condition of his cattle?

14 A. Yes.

15 Q. Now, in your deposition you brought up a --

16 And, Judge, I'm doing this for purposes of proffer
17 not -- I'm going to lead him but just to move it along.

18 In your deposition you brought up an injury that
19 you noticed to the back, I guess left quarter -- back
20 quarter -- the hip, if you will, of a cow?

21 A. Yes.

22 Q. Now, at the deposition you could not testify as to
23 when exactly that was. Do you know -- as of today can
24 you say for certain that the condition you saw, that hip
25 injury, was prior to July 24th, 2008?

- 1 A. I can't tell you that.
- 2 Q. Okay. Was it in 2008?
- 3 A. I don't recall the exact time frame.
- 4 Q. Well, you said in your deposition two to three
- 5 years ago.
- 6 A. Two to three years ago.
- 7 Q. Okay. And was that ---
- 8 A. I mean, I can't tell you whether it was before the
- 9 accident or after the accident.
- 10 Q. Okay. Well, was it -- are you sure that it was in
- 11 2008?
- 12 A. I'm fairly sure, yes.
- 13 Q. Well, what did you see?
- 14 A. There was a cow about a hundred yards from the road
- 15 that was ---
- 16 Q. In which pasture?
- 17 A. In -- right about where the C is on cattle.
- 18 Q. On cattle? So in the cattle pasture?
- 19 A. Actually, more towards the top of it. More towards
- 20 the stream.
- 21 Q. Okay. Up here?
- 22 A. Up in there.
- 23 Q. Okay.
- 24 A. There was a cow there that had been there -- was
- 25 there for several days by itself, obviously had a

1 difficult time moving, was not with the other cows, and
2 the back end of the cow, one of the hipbones was
3 protruding above the back is all I ---

4 Q. Almost like if I have my elbow sticking out? Is
5 that what you're -- it was under the skin?

6 A. It was a hundred yards away. There was a lump on
7 the back end of the cow that shouldn't be there.

8 Q. Did you see it on more than one occasion?

9 A. It was a couple days, yes.

10 Q. Do you recall the color of the cow?

11 A. It was a dark color. I don't know whether -- I
12 couldn't tell you the exact color.

13 Q. Well, in an attempt to help refresh your memory was
14 it before or after you took the pictures that are now in
15 evidence from 6-21-2008?

16 A. I don't recall.

17 Q. And you saw it on more than one occasion?

18 A. Yes.

19 Q. What was the duration?

20 A. At least four or five days.

21 Q. Okay. Did you ask Mr. Darby about it?

22 A. I talked with either Mr. Darby or his father.

23 Q. Okay.

24 A. And, again, I don't recall.

25 Q. Is this the one that had the --

1 A. No.

2 Q. Okay.

3 MR. HANNA: That would be the best testimony we've
4 heard.

5 MR. BOGGS: You might want to hear it, Judge, but
6 it might be offensive.

7 BY MR. BOGGS:

8 Q. Okay. I just wanted to make sure because I didn't
9 want -- so did you voice your concerns about the injury?

10 A. Yes.

11 Q. Okay. And ---

12 A. I basically said that the cow obviously is in pain
13 and that's about it, because it wasn't moving.

14 Q. Okay. And was there a response?

15 A. The gentleman said, yeah, they've been trying to
16 round the cow up and get it to slaughter.

17 MR. BOGGS: That's the extent of it, Judge, of that
18 particular segment.

19 THE COURT: Well, on that segment I'm probably not
20 going to allow it because of the timing.

21 MR. BOGGS: Understood. I hear you.

22 THE COURT: All right.

23 BY MR. BOGGS:

24 Q. Now, did you have occasion to phone 911 at other
25 times other than 6-21-2008?

1 A. Yes.

2 Q. And were they -- isn't it true they were after the
3 accident?

4 A. Yes.

5 Q. And did you call -- why did you call 911?

6 A. Specifically for the cows. I mean, I've called 911
7 on other occasions.

8 Q. But on the occasions concerning this case did you
9 call about cows being out?

10 A. Yes.

11 Q. Similar to the situation on 6-21-2008?

12 A. Yes. I dialled 911 and said there are cows in the
13 road.

14 Q. Okay.

15 MR. BOGGS: And, Judge, we have records from
16 12-14-08, 5-7-09, 7-16-09 and 12-22-09 where Mr. Marshall
17 -- or a call was placed from his -- either his cell or
18 his phone number. So they are after the accident. I
19 think it shows his habitual activity. I know they are
20 after the accident. So that's why we're proffering that
21 evidence at this time.

22 And, Judge, again, I call your attention to that
23 request to admit. The admission, we asked from 2006,
24 2010. They -- and I don't know if you need a copy. They
25 didn't object ---

1 THE COURT: I got it.

2 MR. BOGGS: They didn't object, and they did say
3 they did have cows out there in that time, and they
4 didn't move to strike. And so I realize they've made a
5 motion in limine for any after-wreck occurrences but one
6 could argue, I guess me being the one, that the door was
7 open by failure to object to that request to admit
8 because that is an admission and so...

9 THE COURT: I don't think -- I'm going to be con --
10 I'm trying to be consistent with my ruling so I don't
11 rule in the alternative, but I don't want testimony after
12 the fact of the incident, good, bad or indifferent. I'm
13 not going to let him say what good things he did nor you
14 say what bad things or fairs he had. So as of the date
15 of the accident I just don't think that testimony
16 regarding, basically anything other than he got good
17 medical treatment, but as far as the factual situation
18 let's just steer clear of that.

19 MR. BOGGS: Well, Judge, just for the record then I
20 would argue that any objection made based on the
21 relevance and/or after conduct -- excuse me, not on the
22 relevance but on the relevance of after-wreck events or
23 conduct should come in because his admission opened the
24 door, and that would just be sort of like a blanket
25 argument, respectfully, as he made his blanket motions in

1 limine, and I know he's just renewing those every time.

2 THE COURT: All right. Well ---

3 MR. HANNA: I would like to address that specific
4 statement just so the record is clear.

5 THE COURT: All right. Address it then rule.

6 MR. HANNA: Understood. The question admittedly
7 had asked for admit that the cows -- you received calls
8 from these time frames, and the answer is very specific.
9 It doesn't say admitted nothing. It says, Defendant does
10 admit that he has received calls regarding loose cattle
11 from time to time over the years, okay.

12 To the extent that we somehow by accident -- you
13 know, I don't think that the answer is specific enough to
14 even make the argument that he's trying to make with the
15 admission, is would be our argument, is that the fact
16 that Mr. Darby himself on the stand admitted the same
17 thing. He's got -- and he's been a cattleman 40 years.

18 THE COURT: I generally agree with you and I've
19 already ruled.

20 MR. BOGGS: Yes, sir.

21 THE COURT: The date of the incident. We're going
22 to not have any further testimony on any prior stuff. As
23 long as it's close in timing I'll consider it. If it's
24 far away in timing before, probably not going to allow
25 it, just so you'll know when you're calling your

1 witnesses the general --

2 MR. BOGGS: I don't foresee that as an issue.

3 THE COURT: And if you'd like to make certain you
4 note your objection to allow the after-incident behavior,
5 or observation, or cause you're welcome to make that
6 record as it comes up.

7 MR. BOGGS: Well, honestly, Judge, if I had thought
8 about that last week I would have made it then but, I
9 mean, you know, things sort of evolve. I'll proffer one
10 more thing.

11 BY MR. BOGGS:

12 Q. Mr. Marshall -- actually, two more things. Going
13 back to the time prior to the accident that you walked up
14 and down or traversed Burdette and saw Mr. Darby's
15 cattle, did you ever have an opportunity to see cattle
16 out prior to the accident?

17 A. Yes.

18 Q. I think that's been established. Now, did you have
19 an opportunity to observe the fencing on either side of
20 Burdette Road as you were walking and/or driving?

21 A. Yes.

22 Q. Okay. And I believe you were asked at the
23 deposition last week if F-3, which is as you're leaving
24 your house on the left side where -- if it was
25 electrified, and you said indeed it was not -- I mean,

1 I'm just trying to move this along.

2 MR. HANNA: I think the record is clear it's a
3 barbed wire fence ---

4 MR. BOGGS: Yeah. The record has been clarified --
5 the record has been clarified --

6 I'm sorry, Madam Court Reporter.

7 BY MR. BOGGS:

8 Q. The record has been clarified that it was not
9 electrified, but the barbed wire, did you observe the
10 barbed wire fence?

11 A. Yes.

12 Q. And prior to the accident did you have occasion to
13 notice the condition of the barbed wire fence?

14 A. There had been breaches in the barbed wire.

15 Q. And those are -- are you sure that they were prior
16 to the accident?

17 A. Yes.

18 Q. Now, since the deposition you e-mailed me some
19 current photos?

20 A. Yes.

21 Q. And I'd like to -- when did you take these photos?

22 A. Last week.

23 Q. All right. And by last week, I believe your
24 deposition was Tuesday?

25 A. So either Wednesday or Thursday.

1 Q. And are these of the barbed wire fence?

2 A. Yes.

3 Q. Pasture F-3 on or map?

4 A. Yes.

5 Q. And did they -- how long were they -- or let me
6 show them to you.

7 MR. BOGGS: And, Judge, I know these aren't going
8 to come in subject to your ruling but these are recent
9 photographs, and subject to my prior objection I'd like
10 to put them in the record for identific -- or proffer, or
11 however.

12 MR. HANNA: Are they Court's exhibits ---

13 MR. BOGGS: Court's exhibit. What would you like
14 to call them?

15 THE COURT: For the purpose of this proffer we'll
16 call them Court's exhibits one through however many you
17 have.

18 MR. HANNA: Your Honor, just whenever we're done
19 with the proffer just to make -- I would like to -- and I
20 know we did this on Friday but I'd like to make a
21 contemporaneous statement as to what -- some of the
22 sidebars we had a minute ago to more fully put on the
23 record what it is I'm objecting to.

24 THE COURT: All right.

25 (WHEREUPON, Court's Exhibit Numbers 1 through 6,

- 1 Photographs, were marked and made a part of the record.)
- 2 BY MR. BOGGS:
- 3 Q. These pictures one through six.
- 4 A. Yes.
- 5 Q. Have been marked for Court's identification only.
- 6 Are those the ones that you took last week?
- 7 A. Yes.
- 8 Q. And do those fair and accurately depict the photos
- 9 you took ---
- 10 A. Yes.
- 11 Q. --- or the scenes that you saw?
- 12 A. Yes.
- 13 Q. Can you describe them in order, please.
- 14 A. Looking westbound on Burdette Road ---
- 15 Q. Would be number one?
- 16 A. Roughly where the C is on that map.
- 17 Q. The C up here?
- 18 A. Yeah, it's ---
- 19 Q. And that would be in F-3 ---
- 20 A. Right.
- 21 Q. --- with a circle on it?
- 22 A. Yeah.
- 23 Q. Okay.
- 24 A. This one is looking west.
- 25 Q. Okay.

1 A. Exhibit Number 2 is the actual barbed wire looking
2 from the street into the pasture.

3 Q. Okay.

4 A. Exhibit 3 is another picture of that same fence, as
5 is Number 4, as is Number 5, and Number 6 is the GPS
6 coordinates at that spot.

7 Q. Is that from your car?

8 A. From my car GPS.

9 MR. HANNA: I've seen them. I don't need them. I
10 may have stashed them.

11 Q. Can you describe the barbed wire?

12 A. There's four layers of barbed wire and three of
13 them are sitting broken, and one is almost on the ground.

14 Q. Are they rusty?

15 A. Yes.

16 Q. Have you seen new barbed wire there in the past
17 month?

18 A. Not in that particular location.

19 Q. Okay. Briefly, you obviously took pictures of the
20 fence as it existed last week?

21 A. Yes.

22 Q. Have you had occasion prior to the accident to
23 observe the fence in any specific condition on that?

24 A. Again, there's been breaches in the fences all
25 along from my house all the way out to the pastures, on

1 various occasions.

2 Q. Prior to 2008?

3 A. Yes.

4 Q. And do you recall how long they went without being
5 fixed?

6 A. No.

7 Q. Okay. Do you recall if they went -- if they were
8 fixed the very next day?

9 A. I can't recall.

10 Q. Fair enough. Did you have another -- prior to 2008
11 -- or, excuse me. Prior to the accident, did you have
12 any cows out? And I think there was an incident in 2006,
13 and I know that's leading right now, but to call your
14 attention to 2006, I think there was testimony in your
15 deposition.

16 A. Yes.

17 Q. Okay. And can you describe that for us?

18 A. Not specifically. I mean, I've seen cows out in
19 the street.

20 Q. Okay. And where were they out in the street?

21 A. Up around my house again.

22 Q. Okay. And that was right after you moved in?

23 A. Shortly after.

24 MR. BOGGS: Judge, I have nothing further, as to
25 the proffer.

1 THE COURT: All right. And so my ruling on your
2 proffer is we wouldn't allow that because it's after the
3 event or the incident which is the subject here. Is that
4 what you all understood? I want to make certain we're
5 clear on that.

6 MR. HANNA: I understood that the injured cow
7 testimony was out, that any calls that he wanted to talk
8 about that were after 2000 -- or, excuse me, after the
9 accident were out, then you haven't specifically ruled
10 about the 2006 incident there.

11 MR. BOGGS: The last thing he mentioned, he saw
12 cows out in 2006 on the road -- or on --

13 BY MR. BOGGS:

14 Q. Was it on Burdette or -- I mean, was it in front of
15 your house? Is that what you said?

16 A. There was one -- they were in my side yard.

17 Q. Okay. Is that the time --

18 MR. BOGGS: And, again, Judge, I know this is
19 leading right now.

20 BY MR. BOGGS:

21 Q. Is that the time where they -- that it was wet and
22 they trampled the yard?

23 A. That was June-ish; May, June, July of 2007.

24 Q. Okay.

25 A. And I remember that was because we put in another

1 set of -- another part of the sodded lawn, were watering
2 it heavily and cows came up out of the bottom of the
3 pasture and left deep footprints.

4 Q. That's enough.

5 MR. BOGGS: Generally, Judge, am I allowed to go
6 back to 2006, 2007? That's what it boils down to.

7 THE COURT: I'm going to say not. I want to keep
8 in close timing. And I don't have a yardage meter on how
9 far back but I'd say 12 months, which would allow you in
10 2007 then, wouldn't it, for that fall?

11 MR. BOGGS: But I haven't asked -- I don't know --
12 well, now, he said it was spring because he was planting
13 flowers and grass. So that was outside a year.

14 THE COURT: Okay.

15 BY MR. BOGGS:

16 Q. Isn't that right? It was outside of a year?

17 A. It was spring to summer of 2007. I again don't
18 know the dates.

19 Q. That's fine.

20 MR. BOGGS: I can't remember if I have to ask him
21 any more questions, you know, in front of the jury now
22 based on your ruling.

23 MR. HANNA: I still want to address a couple
24 things.

25 BY MR. BOGGS:

1 Q. I had brought up -- you had brought up breaches in
2 the fence prior to 2008, right?

3 A. Yes.

4 Q. And do you now if any of those were during 2008?

5 A. I can't remember specific dates.

6 Q. Okay. Fair enough.

7 THE COURT: Are you done with your proffer?

8 MR. BOGGS: Yes, sir.

9 THE COURT: All right. Briefly, Mr. Hanna.

10 MR. HANNA: I understood, and I want to make it
11 clear before I even start talking I understand what you
12 said and this is not made in an effort to make you change
13 your mind or anything. It's an effort to just make sure
14 I've protected the record.

15 The first issue was the herding testimony and,
16 again, the specific argument I'm making is, is that
17 whether or not -- you know, for the purposes of this
18 argument I'll even concede that they have produced some
19 evidence that argue would be negligent in moving the cow;
20 however, without any evidence at all that Mr. Darby was
21 actually moving cattle sometime around the date of the
22 accident it is completely irrelevant as to what happened
23 on the day of the accident and whether a cow got out.

24 And, again, I've been making this argument about --
25 you know, from the Oconee Mills and the Reid case that

1 the Court is articulating you need to have a special
2 relationship. And, again, this testimony of generally
3 cows getting out, even if it's close in time if there is
4 no specific link between the theory of this case and what
5 happened on the date of the incident I would argue that
6 all of those incidents should not be let in.

7 And, again, I understand you are letting those in
8 but the point is, is that -- again, on the herding, I
9 think I made that, and then I want to address something.
10 Again, I'm not sure -- and I won't even say it. As far
11 as his saying he's generally seen the fence in poor
12 condition but not sure when, is that coming in? If it's
13 not I don't want to say -- there's nothing for me to say
14 about that. I got more to say but ---

15 MR. BOGGS: I think he said he couldn't tell which
16 time.

17 MR. HANNA: Okay.

18 MR. BOGGS: So I don't know that I can get in your
19 window. So I think I'm done with him. I'd like to talk
20 the him in front of jury and say, Hey, I'm done ---

21 MR. HANNA: I get to cross him, too, so ---

22 MR. BOGGS: Yeah. Oh, yeah. I forget about that.
23 Yeah, yeah.

24 MR. HANNA: Understood. Okay. I've got nothing
25 more to say about that.

1 MR. BOGGS: And as to the herding argument he made,
2 it goes to credibility, too, because Mr. Darby testified
3 something different than what he described.

4 MR. HANNA: Understood but, again, what happened
5 is, is I make an argument that you shouldn't get into at
6 all and ---

7 MR. BOGGS: You're talking about before Darby?

8 MR. HANNA: Before Darby even was asked about it I
9 made an argument that he should -- that it's irrelevant,
10 highly prejudicial. Then we set him up to say something,
11 then all of a sudden now some other witness is able to
12 get it in because it's potentially impeaching his
13 credibility. But, again, I think going back in time it
14 should never have been asked in the first place.

15 THE COURT: I understand, and you're protecting
16 your record. We will allow it.

17 MR. HANNA: I'm not arguing with you. I want to
18 make that clear.

19 THE COURT: Even if you are, it's too late.

20 MR. HANNA: I've clerked for a judge and I
21 understand the worse thing you can do is keep arguing
22 when the Judge -- you know, I'm not trying to change your
23 mind. I'm just protecting the record.

24 THE COURT: All right. So you're about finished
25 with him, subject to a question or two.

1 You need to cross-examine him. That shouldn't take
2 us after the 12 o'clock hour.

3 MR. HANNA: I won't be more than three minutes
4 tops, okay.

5 THE COURT: All right. Give me the jury.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 11:58 a.m.)

8 THE BAILIFF: All present, Your Honor.

9 THE COURT: All right. Ready to continue.

10 MR. BOGGS: May it please the Court?

11 THE COURT: Yes, sir.

12 BY MR. BOGGS:

13 Q. Mr. Marshall, I can't remember exactly where we
14 were but we had talked about events that occurred prior
15 to the accident July 24th, 2008; is that correct?

16 A. Yeah, I believe.

17 Q. In the year prior to July 24th, 2008, and that's
18 from July 25, 2007 through July 24, 2008, did you have an
19 opportunity to observe the condition, the general
20 condition of the fence as you traveled daily up and down
21 Burdette Road, and by fence I'm talking about the fences
22 on Mr. Darby's pasture?

23 A. Yes.

24 Q. All right. And restricting your testimony solely
25 to the year prior to the accident, okay, what was the

1 general condition of those fences on a daily basis?

2 A. There have been breaches in those fences.

3 MR. BOGGS: Okay. No further questions.

4 THE COURT: All right. Mr. Hanna.

5 CROSS-EXAMINATION

6 BY MR. HANNA:

7 Q. Mr. Marshall, very briefly. Early on your direct
8 testimony you described some of the herding technics that
9 you had seen, correct?

10 A. Yes.

11 Q. Do you have any evidence at all that Mr. Darby had
12 been moving any cows on or about July 24th of 2008?

13 A. I have no idea what dates.

14 Q. I understand, but bottom line is that no matter how
15 he did it when you observed him on these previous times
16 you have no evidence to offer this jury that that
17 particular activity was going on anywhere near the date
18 of the accident, correct?

19 A. I have no idea when I saw him doing the herding.

20 Q. Understood. Understood. Now, on the incident that
21 -- you had some photographs that you took on or about
22 June 21 of 2008. Do you have any idea where those cows
23 escaped from their pasture?

24 A. They came up from behind my house.

25 Q. Okay. Did you actually go back down there and see

1 what the condition of the fence was that may have allowed
2 those cows to escape?

3 A. No.

4 Q. So is it fair to say that you don't know if a tree
5 had fallen on the fence?

6 A. I have no idea what the condition was.

7 Q. Understood. Bottom line is you just don't know?

8 A. Right.

9 Q. Do you have any idea whether or not whatever the
10 condition was that allowed those cows to escape that that
11 same condition still existed on or about July 24, 2008?

12 A. I have no idea.

13 Q. I want to focus you now on the date of July 24,
14 2008. Do you actually have any firsthand knowledge about
15 the motorcycle accident that bring us all here today?

16 A. No.

17 Q. Do you have any personal knowledge that Mr. Darby
18 had a cow escape any of his enclosures on or about that
19 specific date?

20 A. No.

21 Q. Do you have any knowledge that there was something
22 wrong with the fencing around the Cooley Road pasture on
23 or about that date?

24 A. No.

25 Q. I do believe I'm done. One second.

1 MR. BOGGS: Just briefly, Judge.

2 THE COURT: No, no.

3 MR. BOGGS: I thought he said -- I couldn't hear.

4 I though he said I believe I was done.

5 MR. HANNA: I do believe I'm done but I would like

6 one moment to confer with co-counsel just to be

7 absolutely sure.

8 (PAUSE)

9 MR. HANNA: I do have one more question, and I

10 apologize.

11 BY MR. HANNA

12 Q. How far is -- you know, when you described there

13 were some cows in your yard, if you were to leave your

14 yard and then walk down the road -- you said it's 1.1

15 miles to Dials Church?

16 A. Yes.

17 Q. How much further is it if you then take a right on

18 Dials Church to the accident scene?

19 A. I don't know where the accident occurred.

20 Q. Assume it occurred right at Cooley Road and Dials

21 Church.

22 A. A thousand feet.

23 MR. HANNA: Okay. No further questions.

24 THE COURT: Redirect.

25 REDIRECT EXAMINATION

- 1 BY MR. BOGGS:
- 2 Q. You testified that on June 21st, 2008 that the
- 3 cattle came up from behind your house?
- 4 A. Yes.
- 5 Q. So as you go up Burdette in the neighborhood are
- 6 you on the right or the left?
- 7 A. I'm on the right-hand side.
- 8 Q. Okay. Are you the first -- how many houses are
- 9 there on the right prior to your house?
- 10 A. From the stream there's one.
- 11 Q. Okay. So can you identify your house on this
- 12 picture?
- 13 A. That's my house (indicated).
- 14 Q. Okay. There's two visible houses, right? Yours is
- 15 the second one, just like you testified, right?
- 16 A. I'm sorry. That's mine (indicated).
- 17 Q. I'm sorry. Yeah, come on down. It's difficult.
- 18 A. That's my house (indicated).
- 19 Q. Did I circle right where you marked?
- 20 A. Yes.
- 21 Q. I'm going to put an M for Marshall, okay. So your
- 22 house is where this red circle is with the M that looks
- 23 like a B or a three, right?
- 24 A. Yes.
- 25 Q. And you said the cows came up from behind your

1 house?

2 A. Yes.

3 Q. Came up the side of it. And so what's behind your

4 house right here? It looks like a bunch of trees. What

5 is it?

6 A. I have about 1200 feet down to the stream.

7 Q. Okay. Is the stream -- is the stream at the top --

8 where is the stream?

9 A. I believe the stream is definitely here and goes

10 approximately like this (indicated).

11 Q. Okay. So it cuts through what you perceive to be

12 Mr. Darby's F-3 pasture and then comes up behind your

13 house?

14 A. Yes. I mean, the stream is here (indicated).

15 Q. Okay. Let the record reflect you're pointing to

16 inside the cattle pasture and across under Cooley Road;

17 is that correct?

18 A. Burdette Road.

19 Q. Excuse me. Burdette Road. Sorry, man. Thank you.

20 Under Burdette Road onto pasture F-3, then exiting

21 pasture F-3 along a tree line outside of F-3, what has

22 been marked as F-3 here; is that correct?

23 A. Yes.

24 Q. So do you -- Mr. Hanna asked you if there was a

25 fence breach that you saw down behind your house. Have

- 1 you walked down to the stream?
- 2 A. Not recently.
- 3 Q. All right. But at the time of the breach, was
- 4 6-21-2008, did you go down to the stream?
- 5 A. Not -- not -- I can't remember particular dates.
- 6 Q. Okay. Well, is there a fence along the stream
- 7 between your property and Mr. -- between the stream and
- 8 Mr. Darby's pasture?
- 9 A. I don't have a fence on my property on that side.
- 10 Q. Do you know if there's a fence down there, I guess
- 11 is what I'm saying?
- 12 A. I don't know.
- 13 Q. The fences you were describing as breached were
- 14 along Burdette Road, correct?
- 15 A. Along Burdette Road and -- can I point?
- 16 Q. Sure. Please.
- 17 A. Right in here next to my neighbor's house the cows
- 18 are eating kudzu (indicated).
- 19 Q. Okay. So there is a fence -- if I may, is the
- 20 fence all the way from the bridge to your neighbor's
- 21 house?
- 22 A. Yes.
- 23 Q. Okay. I'm going to draw that with a red line. And
- 24 you said there's a breach there, right?
- 25 A. I've seen them there, breaches, yes.

1 Q. Prior to the accident did you see cows in that area
2 on the other side from the bridge up to your neighbor's
3 house?

4 MR. HANNA: Objection. Clarify the specific time
5 frame.

6 Q. Prior to the accident within a year.

7 A. The area that you've just written in red, that's
8 very heavily wooded.

9 Q. Okay. But you said you saw breaches to the fence
10 there at the time the cows were out in your yard.

11 A. Yes.

12 Q. That's what I took your testimony to be.

13 A. Yes.

14 Q. Okay. So at the time -- did you see cows come
15 through that breach or was there just a breach there?

16 A. I did not see the cows come through the breach.

17 Q. Okay. During the time frame of July 25th, 2007
18 through July 24, 2008 did you have an occasion to see
19 cows in that area that is between the red line marking
20 the breached fence beside your neighbor's house and the
21 black line which has been used to mark the boundary of
22 pasture F-3?

23 A. No.

24 Q. Okay. Do you know who owns that land?

25 A. No.

1 MR. BOGGS: I have nothing further.

2 MR. HANNA: No further questions from the defense.

3 THE COURT: All right.

4 MR. BOGGS: I'd ask that he be excused, please.

5 THE COURT: All right. You may step down.

6 MR. HANNA: Without objection he may be excused.

7 THE COURT: All right. Mr. Boggs, you got another

8 short witness?

9 MR. BOGGS: Judge, let me see if he's here. I've

10 got people that are supposed to be here. I'd like ---

11 THE COURT: If we have another like a 10 -- 15 or

12 20 minute witness we'll go to 12:30 or so and take a

13 lunch break.

14 MR. BOGGS: Yes, sir. I'll see who's here.

15 (WHEREUPON, Mr. Boggs leaves the courtroom.)

16 THE COURT: Ladies and gentlemen, for you all's

17 understanding, there's not a timing out there regarding

18 foremen and people living in the area, and that's some of

19 the conferences I've been having with the attorneys, is I

20 think a year to the incident, that time frame, and that's

21 why they are couching their questions, that's part of

22 what I've done, You all tell the jury a year up to date

23 and let's forget about -- if you don't know, you don't

24 know. Just so you all understand why they are doing what

25 they are doing.

1 (WHEREUPON, Mr. Boggs returns to the courtroom.)

2 MR. BOGGS: This is Mr. Terry Burdette.

3 TERRY D. BURDETTE, after having been duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BOGGS:

7 Q. Please state your full name for the record.

8 A. Terry Douglas Burdette.

9 Q. And what is your occupation?

10 A. I own and operate a wrecker service and auto
11 salvage in Waterloo.

12 Q. Okay. What's the name of it?

13 A. Burdette Auto Sales and Towing.

14 Q. Now, did you have occasion to respond to a call on
15 the night of July 24th, 2008?

16 A. Yes, sir.

17 Q. Okay. Who called you out?

18 A. The highway patrol.

19 Q. Okay. And do you recall where you were dispatched
20 to?

21 A. Dials Church Road in Gray Court.

22 Q. Okay. And do you recall --

23 MR. BOGGS: I'm sorry, Judge. I'm trying to do two
24 things at once and not hold up the jury. The Court's
25 indulgence one second?

1 THE COURT: Sure.

2 MR. BOGGS: Judge, I apologize again. I put them
3 where I could find them which means I can't find them.

4 (PAUSE)

5 MR. BOGGS: Ah-ha.

6 THE COURT: They were where they were supposed to
7 be.

8 MR. BOGGS: Sorry. All right. Sorry. Here we go,
9 again.

10 BY MR. BOGGS:

11 Q. You responded to a call on Dials Church Road?

12 A. Yes, sir.

13 Q. And what was the purpose of you going out there?

14 A. To pick up an accident -- or a wreck for the
15 highway patrol.

16 Q. Do you have any personal knowledge as to what
17 happened that night, personal knowledge?

18 A. Personal knowledge?

19 Q. Yes.

20 A. I didn't before I got there.

21 Q. I mean, you didn't see it happen, right?

22 A. No, sir.

23 Q. What did you see once you got there?

24 A. A wrecked motorcycle.

25 Q. Okay. Did you collect the motorcycle?

- 1 A. Yes, sir.
- 2 Q. Can you describe the scene?
- 3 A. Well, the motorcycle had wrecked in the road. The
4 highway patrol, I guess had stood it back up on its
5 stand.
- 6 Q. Okay.
- 7 A. It wasn't laying down on the ground when I got
8 there.
- 9 Q. Okay.
- 10 A. A country road, maybe on a -- I think on the
11 left-hand side of the fence.
- 12 Q. Okay. And I'm going to show you what's been
13 previously entered into evidence as Plaintiff's Exhibit
14 Number 1. Do you recognize that intersection?
- 15 A. Yeah. It looks familiar.
- 16 Q. Well, when you got there was it light or dark?
- 17 A. It was dark when I got there.
- 18 Q. It's been represented by other witnesses that this
19 is the general scene of the accident on Dials Church Road
20 and Cooley Road. Does that help your memory?
- 21 A. Yes, sir.
- 22 Q. Okay. And does this look like where you responded
23 that night?
- 24 A. Yeah.
- 25 Q. Okay. All right. That's all I'm trying to get

1 from you.

2 A. Okay.

3 Q. Now, I'd like to hand you a series of photos.

4 A. Okay.

5 Q. That will be marked 34, 35, 36 and 37. Yes.

6 Because these are smaller photos I'm going to put you a
7 sticker on the back so you can find which one I'm talking
8 about, okay?

9 A. Okay.

10 THE COURT: As he's marking those, the reason we
11 mark all those, we're making a record, as I told you
12 earlier. The court reporter, she's the one in charge of
13 all that. She keeps an inventory of what comes in and
14 what you all get to see. You all have all this in the
15 jury room when you get to deliberate.

16 Everything has been admitted and numbered so that
17 any time something is discussed it's exhibit number
18 whatever. And Ms. Hanks is in charge of keeping track of
19 those, showing what comes in and what the numbers are so
20 we can figure out exactly how many you all get to review.
21 So that's the purpose of that. That's why Mr. Boggs
22 keeps using Ms. Hanks' exhibit numbers because they are
23 hers but the State buys them for her.

24 Anyway, go ahead.

25 (WHEREUPON, Plaintiff's Exhibit Numbers 34 through

- 1 37, Photographs, were marked for identification only.)
- 2 BY MR. BOGGS:
- 3 Q. I'll ask that you look at 34 as I hand it to you,
- 4 then I'll hand you the others. Can you describe Number
- 5 34?
- 6 A. It's the speedometer housing on the motorcycle.
- 7 Q. Okay. Is that the -- excuse me. Did you pick up a
- 8 motorcycle at the scene of the accident?
- 9 A. Yes, sir.
- 10 Q. Did you take it back to your garage?
- 11 A. Yes, sir.
- 12 Q. And you identify the speedometer -- or what did you
- 13 call it, speedometer housing?
- 14 A. Speedometer housing.
- 15 Q. Okay. Is that the speedometer housing of the
- 16 motorcycle that you collected?
- 17 A. Yes, sir.
- 18 Q. Okay. I'd like to show you Number 35, please.
- 19 What does that picture show?
- 20 A. That's the gas tank.
- 21 Q. Okay. Does that fair and accurately depict the gas
- 22 tank of the motorcycle you towed?
- 23 A. Yes, sir.
- 24 Q. Do you have any independent knowledge who the
- 25 motorcycle belongs to?

- 1 A. I do now. I didn't at the time.
- 2 Q. Essentially, is that the motorcycle that you
- 3 collected from the scene of the accident on Dials Church
- 4 Road on 7-24-08?
- 5 A. Yes, sir.
- 6 Q. Okay. Show you Number 36. Can you identify that?
- 7 A. Yeah. That's the wheel arm for the rear tire.
- 8 Q. Okay. What is a wheel arm, for somebody like me?
- 9 A. It's what holds the wheel to the chassis of the
- 10 motorcycle.
- 11 Q. So if the wheel is going this way it sort of sticks
- 12 out on either side?
- 13 A. Yes.
- 14 Q. Do you know if that's the right wheel arm or left?
- 15 A. If you're sitting on the motorcycle that would be
- 16 the right.
- 17 Q. Okay. And finally I'll show you Number 37. Do you
- 18 recognize that?
- 19 A. Yeah. That's the motorcycle.
- 20 Q. Okay. And, again, all those are of the same bike,
- 21 either parts of it or whatever?
- 22 A. Yes, sir.
- 23 MR. BOGGS: Now, I'd move those into evidence, I
- 24 think without objection, Judge.
- 25 MR. HANNA: Correct.

1 THE COURT: Without objection, they are admitted.

2 (WHEREUPON, Plaintiff's Exhibit Numbers 34 through
3 37, Photographs, were admitted into evidence.)

4 BY MR. BOGGS:

5 Q. Now, how long has this bike -- is this bike still
6 at your shop?

7 A. Yes, sir.

8 Q. Okay. Do these pictures fair and accurately depict
9 the condition of the bike at the time of the accident?

10 A. Yeah.

11 Q. Okay. And did you alter in any way the condition
12 of the bike from the time you took custody of it to the
13 -- did you intentionally alter the way ---

14 A. No, sir.

15 Q. Okay. Now, did you carry it -- did you cover it up
16 and put it in a big plastic bag with red tape on it like
17 C. S. I.?

18 A. No, sir.

19 Q. Okay. How did you carry it to your shop?

20 A. I carried it on the back of the rollback, and then
21 dumped it inside the shop. I mean, it never sat out in
22 the weather.

23 Q. When you say you dumped it you ---

24 A. Yeah, let the bed down. I didn't dump. I mean ---

25 Q. Yeah. Yeah. No. I was just making sure.

- 1 A. I rolled it in the shop.
- 2 Q. That might be another issue.
- 3 A. Yeah.
- 4 Q. All right. So long story short, there's some stuff
- 5 on this bike, right?
- 6 A. Yes, sir.
- 7 Q. Okay. What did you think it was when you first saw
- 8 the bike?
- 9 A. Cow manure.
- 10 Q. Why did you think it was cow manure?
- 11 A. That's what it was.
- 12 Q. What else is on the bike? Was there anything else
- 13 on the bike?
- 14 A. There was some hair on the -- laying on the seat
- 15 when I got there to the scene.
- 16 Q. Okay. Now, did you purposely remove any hairs from
- 17 the bike?
- 18 A. No.
- 19 Q. Okay. Did you personally put any hairs or anything
- 20 else on the bike?
- 21 A. No, sir.
- 22 Q. Okay. Did anyone put anything on the bike since
- 23 the date of the accident?
- 24 A. No, sir.
- 25 Q. Okay. Well, let me finish. Now, somebody else

1 came there and -- did anyone else come and examine the
2 bike?

3 A. Yes. Some guys come and took some samples from the
4 bike.

5 Q. Okay. Now, did they take samples from the bike of
6 the items that appear in these pictures?

7 A. Yes, sir.

8 Q. The cow feces and ---

9 A. Cow manure, yeah.

10 Q. How about did you see them take hairs and stuff
11 like that?

12 A. I didn't really see them take a hair but, you know,
13 they could have.

14 Q. Were there hairs there to be taken?

15 A. Yes, sir.

16 MR. BOGGS: Okay. I'd like to publish these to the
17 jury, please.

18 BY MR. BOGGS:

19 Q. Do you remember the gentleman's name that came and
20 took samples?

21 A. No, sir.. I don't remember his name.

22 Q. Would it have been -- well, was it a gentleman by
23 the name of Jeff Hollifield?

24 A. That could have been him.

25 Q. Okay.

1 A. I'm not good at remembering names.

2 Q. That's fine. Thank you.

3 MR. BOGGS: I believe that's all right now, Judge,
4 of this witness.

5 THE COURT: All right. Ms. Rains?

6 MS. RAINES: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. RAINES:

9 Q. Hi, Mr. Burdette. Can you describe to me again
10 just briefly the route you took on your way to the
11 accident.

12 A. I came up Neily Ferry. I hit Fairview and I turned
13 on 101 toward Gray Court, then turned left on Dials
14 Church Road there at the church.

15 Q. And did you see any cows while you were traveling
16 down that way?

17 A. No, sir. I mean, no, ma'am. I'm sorry.

18 Q. And did you see any cows once you got there,
19 outside, or anywhere at all?

20 A. No, ma'am.

21 Q. And do you have any knowledge of any cows being out
22 at all that evening?

23 A. No, ma'am.

24 Q. And you weren't the first person on the scene,
25 correct?

- 1 A. No.
- 2 Q. And so when you got there about how many people
3 were on the scene?
- 4 A. I think just a couple of troopers were there.
- 5 Q. And if I recall correctly you said that the bike
6 had been moved by the time you got there?
- 7 A. They had stood it up out of the road, I think.
- 8 Q. And you recall seeing some hair on that?
- 9 A. Yeah. There was a patch of hair laying on the
10 seat.
- 11 Q. Do you recall what color the hair was?
- 12 A. It was black.
- 13 Q. It was black? Are you certain it was black?
- 14 A. Yes, ma'am.
- 15 Q. Did you see any other color hairs?
- 16 A. No. I didn't see any other.
- 17 Q. And did you see any evidence at the accident scene
18 of any cow tracks?
- 19 A. No. It was in the highway.
- 20 Q. Did you see any evidence of any breach in the
21 fence?
- 22 A. No.
- 23 Q. And you hauled the motorcycle back to your shop.
- 24 Does anyone else have access to your shop?
- 25 A. My girlfriend, and I had a guy that worked for me

1 at the time.

2 Q. And about how long was it in your shop before
3 somebody came to see it?

4 A. I can't really remember. Maybe a week or two.

5 Q. And who came to see it?

6 MR. BOGGS: Objection to relevance. Judge, may we?

7 THE COURT: Sure.

8 And you all may stretch, if you like.

9 (WHEREUPON, a sidebar was had.)

10 BY MS. RAINES:

11 Q. Before the hair samples, before someone came to
12 collect the hair samples had anyone else been in to see
13 the bike?

14 A. Mr. Boggs come in, I think.

15 Q. And anyone else other than that?

16 A. Not that I know of.

17 Q. Did you personally see any hairs other than the
18 black hair you saw the evening of the accident? Did you
19 see any hairs other -- after that time?

20 A. What do you mean? Like on the bike?

21 Q. On the bike, around the bike.

22 A. I think there was some black hairs on the bike,
23 yeah.

24 Q. Other than the black hairs you saw did you see any
25 other hairs anywhere?

1 A. That night?

2 Q. Afterwards. Do you specifically recall afterwards
3 seeing hair on the bike or do you just specifically
4 recall that night?

5 A. No. I think there was some black hairs on the
6 bike, too.

7 MS. RAINES: Okay. Nothing further. Thank you.

8 THE COURT: Mr. Boggs, recross?

9 MR. BOGGS: Briefly.

10 REDIRECT EXAMINATION

11 BY MR. BOGGS:

12 Q. When you got on the scene it was dark, right?

13 A. Yes, sir.

14 Q. Okay. And concerning the bike, the people that
15 came out, they came to examine the bike, correct?

16 A. Yeah.

17 Q. Including me. Did you see me put any manure on the
18 bike?

19 A. No.

20 Q. Did you see me put any hair on the bike?

21 A. No.

22 Q. Did you see anybody put any hair on the bike?

23 A. No.

24 Q. Did you see anybody alter the bike?

25 A. No, sir.

1 Q. I mean, did you microscopically look at the bike?

2 You don't ---

3 A. No. No.

4 Q. Okay. I mean, did you get down and stick your nose
5 right close to the cow manure and hair and all ---

6 A. No.

7 Q. --- and look at the bike? Would you have any
8 reason to?

9 A. No, sir.

10 Q. Is that your purpose, your garage's purpose?

11 A. No.

12 MR. HANNA: Objection.

13 MR. BOGGS: Strike that. I caught myself before I
14 even asked it. No further question.

15 THE COURT: Ms. Raines, anything else?

16 MS. RAINES: No further questions.

17 THE COURT: All right, Mr. Burdette. You may step
18 down.

19 MR. BOGGS: Permission that he be excused? And,
20 Judge, just for a matter of planning, I think that we may
21 have some matters of law ---

22 THE COURT: Okay.

23 MR. BOGGS: --- to put on the record before we get
24 started -- or either before we leave or just so for
25 planning purposes with the jury.

1 THE COURT: All right. Let's do this. Let's take
2 a lunch break. I want you all back in the jury room
3 before two o'clock. So that will give you an hour and 33
4 minutes, about an hour and a half. You all got an extra
5 long lunch break. Do whatever you need to do. Don't
6 discuss the case.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 12:28 p.m.)

9 THE COURT: For you all's purposes, would it suit
10 you all to get back by 1:30 and we discuss those issues?
11 That will give my court reporter at least an hour.

12 MR. BOGGS: Yes, sir.

13 (WHEREUPON, a lunch break was taken.)

14

15 ** END OF VOLUME I **

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C E R T I F I C A T E

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I, Sharon L. Vizer-Hanks, Official Court Reporter for
the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete transcript of record of all the
proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
31st day of January, and the 1st day of February 2011.

I do further certify that I am neither of kin, counsel
nor have an interest to any party hereto.

November 25, 2011



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER