THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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

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

RESPONDENTS,

versus

Jerry W. Darby, **APPELLANT.**

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

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

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

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

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

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FARROW V. DARBY

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

February 1 & 2, 2011

Laurens, South Carolina

B E F O R E:

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

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

Cameron G. Boggs, Esquire

Wayne Patterson, Esquire

Attorneys for the Plaintiffs

George V. Hanna, IV, Esquire

Caroline H. Raines, Esquire

Attorneys for the Defendant

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

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1 Tuesday, February 1, 2011

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

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

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

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

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

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

1 his. Okay.

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

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

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

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

1 will have testimony that Mr. Blackburn took the hairs off
2 Harry Hays' cow, that he took about a hundred to
3 Mr. Hollifield. Mr. Hollifield tested about 20 of them,
4 okay, 20 percent, and that all of those were
5 distinguishable in -- out of vagueness, color and size to
6 the hairs that were tested off the bike, okay.
7 I am not -- and then as an expert in forensic
8 science when I asked him if they appear to be different
9 to him, as an expert in forensic science. I'm not going
10 to ask him to make -- I'm not going to say, Do you have
11 an opinion as to whether the cows were the same or not?
12 I'm not going to ask him that.
13 Am I ---
14 MR. PATTERSON: We're not going to ask him that.
15 MR. BOGGS: I was just making sure I knew what I
16 wasn't going to ask. My brains over here have to make
17 sure. And so I see what he's saying but I don't think
18 I'm asking that.
19 I think that in the deposition Geov was doing his
20 job, and I understand what he's saying, but I think that
21 I'm going to have Harry Hays come testify that he has
22 registered Black Angus and that all his cows are black.
23 Okay. I'm going to have -- you know, I think Geov can
24 cross-examine and say, Well, you didn't check -- and I
25 think you did this very well in the deposition, You

1 didn't check the hip or you only got hairs from the neck.
2 And so it's not a determination that -- he is not
3 qualified to say that the Black Angus hairs, because he
4 hasn't tested -- I mean, he hadn't studied the totality
5 of Black Angus hairs. Okay. I'm trying to dumb it down
6 for myself, but we're not making the leap that he thinks
7 we're trying to make.
8 THE COURT: All right. So he tested hairs off the
9 motorcycle and then somebody else retrieved hairs from
10 Harry...
11 MR. HANNA: From one of Harry Hays' cows.
12 THE COURT: And they were similar in 18
13 characteristics but different in two. So what you don't
14 want him to say is therefore I can exclude they are not
15 Harry's cows, they must be someone else's?
16 MR. HANNA: Yes. That's what -- I mean, I don't
17 see -- other -- and if that is not where they are going
18 then there is no probative or relevance to this at all.
19 I mean, who cares about the hairs unless -- you know, the
20 only possible argument anybody wants to make is because
21 they are different in these ways they can't have been
22 Harry Hays' cows.
23 THE COURT: I thought the purpose was it was not an
24 animal other than a cow. They are bovine hairs;
25 therefore, they had to be a cow.

1 MR. BOGGS: That's the way it -- that's the first
2 report.
3 MR. HANNA: The first report says that and, you
4 know, we had our own expert examine them and came to the
5 exact same conclusion he did. They were bovine hairs.
6 So I'm not challenging the fact that the hairs he removed
7 were bovine.
8 I'm challenging this evidence of the -- you know,
9 basically you got -- from our perspective there's --
10 Harry Hays lives right around the corner, okay. He will
11 testify that his cows get out a lot. He's a very elderly
12 guy. In fact, he'll go, Sometimes I leave my gate open
13 and they just get out. Okay. And he's got black cows.
14 There's some black hair found on the bike.
15 You know, again, I'm not saying it was his cow but
16 it creates doubt as to whether or not it was my client's
17 cow. And then for them to bring in somebody to say --
18 you know, with this forensic stuff to suggest that they
19 couldn't be his cows when, you know, I asked him the
20 ultimate question and he can't say it, therefore ---
21 THE COURT: You don't think he ought to be able to
22 say, based upon my opinion, professional opinions these
23 hairs didn't come from Harry's cows? You don't want him
24 saying that.
25 MR. HANNA: I don't want him -- and I think that

1 because he can't say that Harry -- that to a reasonable
2 degree of certainty that the hairs collected from Harry
3 Hays' cow are for sure different than the cow that was
4 collected from the bike, to put in any evidence about his
5 examination of Harry Hays' cows is highly prejudicial,
6 confusing and should not come in.
7 THE COURT: Well, are you going to bring in Harry's
8 cows?
9 MR. HANNA: Excuse me?
10 THE COURT: Are you bringing Harry's cows in?
11 MR. BOGGS: Am I?
12 THE COURT: Either of you.
13 MR. HANNA: My client testified that Harry Hays has
14 had cows out in the same general area. That's already
15 happened. I'm not calling Harry Hays as a witness, but
16 if they bring Harry Hays in here I'm going to ask him,
17 Have you ever had your cows out? He's going to go, As a
18 matter of fact, they have been out.
19 THE COURT: And that's fair.
20 All right. So tell me what you want to use the
21 expert for again on the second phase, the second test.
22 MR. BOGGS: The hairs compared from the wreck
23 versus the hairs from Mr. Hays are different in
24 coarseness and color. That's simple. And he's an expert
25 in forensic science and he can testify to that.

1 THE COURT: All right. Mr. Hanna, tell he why he
2 can't say that, if he's going to say something that
3 simple, In my opinion, the hairs I examined from the
4 motorcycle versus the hairs I retrieved from Harry's cows
5 are distinguishable with coarseness and thickness?
6 MR. BOGGS: Coarseness and color.
7 THE COURT: Coarseness and color.
8 MR. HANNA: Make sure we're saying the right thing.
9 He's the one right there. The bottom line is, is that
10 the inference upon which the jury will then attempt to
11 draw, and that I think that they may argue or whatever,
12 that's out there now in evidence is, is that they can't
13 be the same hair when in fact he can't say that.
14 You know, he says it could of -- you know, if they
15 collected hair off of some other part of the hair I can't
16 say that it wasn't different. He admitted to me -- you
17 know, I went into all kinds of detail about does it
18 matter what part of the ---
19 THE COURT: You're saying -- they're saying if you
20 got the hair of the tail versus the back, versus the
21 chest it may be different in coarseness or some
22 distinguishable characteristic?
23 MR. HANNA: And he can't rule that out; therefore,
24 he can't say that it wasn't the same cow.
25 MR. BOGGS: Judge, I'm going to have Harry Hays

1 here to testify, and he's elderly, I mean, for lack --
2 he's getting a ride up here. He's going to be here like
3 2:45. So I have some witnesses I can call if you want to
4 hear from him first.
5 But I also tell you that I have a cow expert or the
6 Ph.D. guy, even though he's from the University of
7 Florida, as you noted last week, that will testify -- I
8 mean, he can testify about the color of cow hair. And so
9 I'm not asking this forensic expert to testify to
10 anything other than what he's an expert and able to do.
11 And, I mean, is the question I'm asking you about
12 that, is that based on your expertise and forensics?
13 MALE IN AUDIENCE: It is.
14 MR. BOGGS: And, Judge, I'm sorry to do that while
15 he's back there but it's ---
16 MR. HANNA: Again, I just would argue that it's ---
17 MR. BOGGS: I think we're splitting hairs, no pun
18 intended.
19 MR. HANNA: We are.
20 THE COURT: I don't have a beef with this issue but
21 I want to make certain we get it clear. Isn't that what
22 we said last week a bunch of times?
23 MR. BOGGS: I don't know. I don't know what we
24 said.
25 MR. HANNA: I didn't hear what you just said. I'm

1 deaf.

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

3 MR. BOGGS: Oh, he kept saying that.

4 MR. HANNA: She said that there was no pun intended

5 but she noted that I mentioned that many times.

6 THE COURT: We've been herding the jury in and out

7 of the courtroom so many times.

8 MR. BOGGS: Herding them. I just hope the bailiff

9 doesn't, you know, bump into them with his chair to herd

10 them in through the door.

11 THE COURT: He generally doesn't bump into them to

12 get them to go in that chute, and I don't want to go

13 through the chute.

14 MR. HANNA: I don't either. If you are a man and

15 you go through the chute nothing good comes out of that.

16 THE COURT: No, sir.

17 MR. HANNA: But anyway ---

18 THE COURT: I think I want to listen to it first.

19 I understand your argument and I think if you stop where

20 in color and coarseness and, you know, stop there I think

21 that's probably going to be okay. But I want to hear. I

22 think I want to hear from Mr. Hays first.

23 MR. HANNA: Understood. And, you know, obviously

24 as soon as that -- this is, again, the beef -- the beef,

25 but I got what it is, is that I feel compelled in order

1 to adequately represent my client and then go on and say,
2 You can't -- I'm going to ask those questions. You know,
3 You can't say it's not the same kind, can you? He's
4 going to go, I can't. And as soon as he says that, you
5 know, if that's the ultimate deal with whether he elicits
6 that question or me, if that's his answer I don't think
7 any of it should come in.
8 THE COURT: Okay. I understand. All right. I'm
9 going to step out for a brief break, and we're off the
10 record.
11 MR. BOGGS: Judge, can we go back on the record? I
12 have some -- I have a witness named Teula Chapman, who
13 did an investigation, and seven of her -- eight -- or all
14 but one of her pictures came in. She was the one that
15 was there with Mr. Darby on August 6th.
16 She's prepared to come testify as to what they saw.
17 There was a problem in the fence, all right, but it was
18 after the accident. And so I don't think -- subject to
19 your ruling I don't think it would come in.
20 I would like to proffer the picture and her -- I
21 mean, I don't want to call her down here just to have her
22 testify for five minutes on proffer. I think Geov and I
23 agree that she showed up, took pictures of the fence that
24 day and that's the picture, that the picture is how it
25 was on August 6th, but I don't think it should come

1 before the jury so ---

2 THE COURT: Well, can you all not agree that if she

3 were proffering the testimony the testimony would show

4 condition after the fact, and you all can agree to that?

5 MR. HANNA: Yes.

6 MR. BOGGS: And then I'll put that in as a Court

7 exhibit, that one photo.

8 MR. HANNA: She's been deposed. And, in fact, you

9 know, to the extent it matters you could agree we could

10 make it an exhibit, what her deposition testimony is. I

11 think it would be identical.

12 MR. BOGGS: Yeah.

13 THE COURT: How about that? You could submit the

14 deposition testimony as a Court's exhibit as the proffer.

15 MR. BOGGS: Okay. And I'm not prepared to -- I

16 haven't highlighted what I want yet but I'll have that

17 done by ---

18 THE COURT: That's fine ---

19 MR. BOGGS: Before the end of the case.

20 THE COURT: Okay.

21 MR. BOGGS: And one other thing. Just subject to

22 your prior ruling, Mr. Blackburn, my investigator, or who

23 has helped me as an investigator in this case, did a test

24 on the -- a very scientific test on the fence and that

25 for about a month he would go out and grab the wire and

1 test it and see if it was on. That was April of last
2 year.
3 Is that right, April?
4 MR. BLACKBURN: April or May.
5 MR. BOGGS: April or May. And I know what you
6 previously ruled but I -- respectfully, I would like to
7 cut put on the record that he -- you know, he -- that
8 challenges really the credibility and the, like I said,
9 the habitual testing that Mr. Darby speaks of. Now, I
10 know it's after the accident but I would -- and I'm not
11 fighting for it, just protecting the record.
12 Now, Geov and I could probably get together and
13 come up with something similar to Chapman because he was
14 deposed and so ---
15 THE COURT: Well, I mean, don't you have an
16 opportunity to rebuttal if Mr. Darby testifies
17 further ---
18 MR. BOGGS: Sure.
19 THE COURT: --- regarding how he maintains his
20 fence and that way you could get it in?
21 MR. BOGGS: Yes, sir. But I would like to proffer
22 it prior to closing in case he doesn't. I mean, you
23 know, in case they don't ---
24 THE COURT: If he doesn't I'll allow that.
25 MR. BOGGS: Okay.

1 MR. HANNA: Agreed. I think you should be allowed
2 to proffer whatever you need to.
3 MR. BOGGS: So move along. Are you challenging --
4 I'm sorry, Judge.
5 Ed took the Hays hairs. Are you challenging the
6 chain of custody because Ed -- the only thing Ed can
7 testify to is that he took the hairs.
8 MR. HANNA: To the extent that -- again, if you ---
9 MR. BOGGS: I'll call him. I'll call him briefly.
10 MR. HANNA: The only thing is to establish that he
11 only got them from the one cow and from the one part of
12 the body ---
13 MR. BOGGS: I'll call him. That's fine.
14 THE COURT: Be right back.
15 MR. BOGGS: Sorry, Judge.
16 (WHEREUPON, a brief recess was taken.)
17 THE COURT: You all ready?
18 MR. HANNA: Yes, sir.
19 THE COURT: All right. Bring them to me.
20 (WHEREUPON, the jury enters the courtroom at
21 approximately 2:08 p.m.)
22 THE BAILIFF: All present, Your Honor.
23 THE COURT: I hope you all had a good lunch. We'll
24 continue.
25 MR. BOGGS: Thank you, Your Honor. May it please

1 the Court. We call Niles Wood to the stand.

2 THE COURT: Okay.

3 NILES W. WOOD, after having been duly sworn,

4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BOGGS:

7 Q. Please state your full name for the record.

8 A. Niles Wesley Wood.

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

10 for?

11 A. Century Plastics.

12 Q. Okay. And are you a member or were you a member of

13 the Green Pond Volunteer Fire Department?

14 A. Yes.

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

16 2008?

17 A. Yes.

18 Q. Okay. Did you respond to the accident?

19 A. Yes.

20 Q. Did it involve -- do you remember this gentleman

21 seated right here with the beard?

22 A. Yes.

23 Q. Okay. Do you recall his name?

24 A. Mr. Fowler.

25 Q. Would it be Mr. Farrow?

1 A. Farrow, yes.
2 Q. Okay. You didn't know his name, did you? Is that
3 him that was sitting there?
4 A. Yes, sir.
5 Q. Okay. You sure about that?
6 A. Yes, sir.
7 Q. Okay. Is this the first time you testified?
8 A. Yes, sir.
9 Q. Okay. Well, just remember to breathe, okay?
10 A. Okay.
11 Q. Now, where were you when you got the call to come
12 out?
13 A. I was at the fire department.
14 Q. Okay. And where is that located?
15 A. That's 87 Winding Hollow Road.
16 Q. Winding Holler?
17 A. Hollow.
18 Q. Hollow Road. Okay. I'm sorry. In which direction
19 did you travel to get to the scene of the accident?
20 A. Green Pond Road, took a left onto Cooley Road, and
21 then right onto Dials Church Road.
22 Q. Okay. And how off of -- how far did you travel on
23 Dials Church? I mean, did you go very far?
24 A. Just a couple hundred feet.
25 Q. Okay. Was anybody else there when you got there?

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

1 you remember exactly where it was?
2 A. Yes. It was -- it was right off as you turn onto
3 Dials Church Road.
4 Q. Okay. So once you turned -- you made a right from
5 Cooley to Dials Church then it was right there?
6 A. Yes.
7 Q. Okay. And I'm not going to ask you anymore
8 questions about feet, okay?
9 A. Okay.
10 Q. Can you tell us about Mr. Farrow's condition. I
11 mean, was it serious or was it ---
12 A. It was serious.
13 Q. Okay. Did you personally call for an ambulance?
14 A. No. They was already in route. They was ---
15 Q. Okay. Were you present when the ambulance got
16 there?
17 A. Yes, sir.
18 Q. Did the ambulance take him?
19 A. No, sir.
20 Q. What took him away?
21 A. The helicopter.
22 Q. Okay. And do you recall where the helicopter
23 landed?
24 A. Yes, sir.
25 Q. Okay. I'm going to show you what's been marked as

1 Plaintiff's Exhibit 3. Do you recognize that field?
2 A. Yes.
3 Q. Okay. Is that where the helicopter landed?
4 A. Yes.
5 Q. Now, did you happen to notice anything about the
6 motorcycle that night?
7 A. I noticed it had damage to the front of it and it
8 had hair.
9 Q. Okay. Anything else?
10 A. Not that I recall. I was --
11 Q. When you drove up Cooley Road did you see any cows
12 in the area?
13 A. No, sir.
14 Q. All right. And you said it was almost dark?
15 A. Yes, sir.
16 Q. Could you see very far into the pastures?
17 A. No, sir.
18 Q. Was your attention on looking for cows?
19 A. No, sir.
20 Q. Before you got to the scene did you have any reason
21 to look for cows?
22 A. No, sir.
23 Q. After you got to the scene did you have any reason
24 to look for cows?
25 A. No, sir.

1 Q. Now, on the day of the accident -- excuse me. Do
2 you live in this area?
3 A. Yes, sir.
4 Q. Do you know this gentleman over here in the denim
5 shirt?
6 A. Yes, sir.
7 Q. Who is that?
8 A. Wayne Darby.
9 Q. All right. And how do you know him?
10 A. Through my grandfather.
11 Q. Okay. What's your grandfather's name?
12 A. Doug Wood.
13 Q. I'm sorry?
14 A. Doug.
15 Q. Oh, Doug Wood. Okay. Now, on the same day as the
16 accident had you been in that area?
17 A. Yes. I come home that way.
18 Q. Okay. So which way would you -- where had you been
19 coming home from?
20 A. I been coming off of 101 to Cooley.
21 Q. Okay. And so you would have been traveling the
22 same way you came from the accident -- I mean, when you
23 were responding to the accident?
24 A. No.
25 Q. Oh, which way would you be coming from?

1 A. I'm coming the opposite way.
2 Q. So you'd be going 101 down by the church?
3 A. Yes, sir.
4 Q. Okay. So you'd be going up Dials Church Road?
5 A. Yes.
6 Q. Okay. Then you said you were taking a left on
7 Cooley?
8 A. Yes.
9 Q. Okay. Earlier -- do you remember what time it was
10 earlier that day?
11 A. It was about four o'clock.
12 Q. Okay. And were you headed to the station, I guess,
13 or what were you doing?
14 A. I was heading home.
15 Q. Okay. So did you see cows in the pasture on the
16 left side as you were going up Dials Church Road?
17 A. I can't recall. I wasn't ---
18 Q. Okay. That's fine. Did you see cows in any
19 pasture at the time of when you were driving through
20 there?
21 A. No, sir.
22 Q. All right. I'll call your attention to your
23 deposition, Niles?
24 A. Okay.
25 Q. And I asked you -- and I know you're nervous, okay?

1 A. Okay.
2 Q. Do you now if there were any cows in either pasture
3 while you were out there?
4 Earlier that day I traveled that road and there was
5 cows in one of the pastures.
6 Okay. That's what you said in your deposition,
7 okay?
8 A. Okay.
9 Q. Is that -- which one is accurate? What you said in
10 your deposition or -- I know it's been two and a half
11 years.
12 A. The one that was in the deposition.
13 Q. Okay. Now, do you remember which pasture you were
14 talk -- if you took -- if you were taking Dials Church
15 Road and took a left on Cooley do you recall which
16 pasture you were talking about in your deposition?
17 A. It would have been the left.
18 Q. Okay. And my hand is on F-1, is what we were
19 taking about. That's what we named it earlier. Is that
20 where?
21 A. That's correct.
22 Q. If you're going up Dials Church that's the first
23 pasture on the left, and then you turn on Cooley and it's
24 still on the left?
25 A. That's correct.

1 Q. Is that the one you're taking about?
2 A. Yes.
3 Q. Okay. Now, how often do you travel up and down
4 this road?
5 A. Probably three or four times a week.
6 Q. Okay. And how long you been traveling?
7 A. For ever since that I reckon remember riding in the
8 car.
9 Q. Okay. Now, how old are you now?
10 A. Twenty-three.
11 Q. Okay. So at the time of accident you were, what,
12 21?
13 A. Yes.
14 Q. Okay. So when you were 20 or 21, leading up to
15 this accident, and more specifically from July 25th, 2007
16 through July 24th, 2008, the date of the accident, did
17 you have an opportunity to -- or did you ever see cows
18 outside of the pastures in this vicinity of the accident?
19 A. Yes.
20 MR. HANNA: Object on relevance ground, same.
21 THE COURT: All right. That's consistent with my
22 prior ruling.
23 MR. HANNA: Yeah. Understood. I just don't want
24 to ---
25 THE COURT: I'll overrule it.

---

1 BY MR. BOGGS:
2 Q. And where did you see those cows out? Were they on
3 Cooley Road? Excuse me. Which road were they on when
4 you saw them?
5 A. Cooley.
6 Q. And did you have an opportunity to -- excuse me.
7 Based on you living there all your life and based on
8 where they were whose cows do you think they were?
9 A. Mr. Darby's.
10 Q. And what did you do about it?
11 A. I went to his house.
12 Q. Did you see Wayne?
13 A. Yes.
14 Q. All right. Did you talk to him about it?
15 A. Yes.
16 Q. What did he say to do?
17 A. He said he'd take care of it.
18 Q. All right. Now, did you notice -- when you saw
19 those cows did you notice where they went after you saw
20 -- you saw them out of the pasture, right?
21 A. Uh-huh.
22 Q. What were they doing outside of the pasture?
23 A. They was walking along the edge of the road.
24 Q. All right. When you drove by did they do anything?
25 A. When I drove by they -- I stopped and they hopped

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

1 Q. All right. And so it's your testimony that -- you
2 said there were two cows?
3 A. Yes.
4 Q. It's your testimony that the two cows jumped over
5 this fence?
6 A. Yes.
7 Q. You saw that with your own two eyes?
8 A. Yes.
9 Q. Are you familiar with electric fences?
10 A. Not real familiar.
11 Q. Did you have occasion to see cows out in this
12 vicinity of the accident at any other point in time from
13 January -- excuse me, July 25th, 2007 through July 24,
14 2008?
15 A. Yes.
16 Q. You did see them during that year?
17 A. Yes.
18 Q. Okay. Do you recall when it was?
19 A. No, sir. It was in springtime.
20 Q. Was it in the -- where was it?
21 A. It was on Cooley Road down towards the bridge.
22 Q. So down towards the creek down there?
23 A. Yes, sir.
24 Q. All right. Do you know whose cows they were?
25 A. Yes, sir.

1 Q. How do you know that?
2 A. Because they went back in.
3 Q. How did they go back in?
4 A. They hopped over the fence.
5 Q. Again?
6 A. Yeah.
7 Q. All right. How long you been around cattle?
8 A. All my life, ever since I can remember.
9 Q. Is that the first time you've seen cows jump over a
10 fence?
11 A. No, sir.
12 Q. So did it surprise you?
13 A. No, sir.
14 Q. Did you go tell Mr. Darby that day?
15 A. There was two or three times that I've went and ---
16 Q. Hold on. That's not -- I appreciate your
17 willingness to answer, but on that day that you saw in
18 2000 -- between July 25th, 2007 and July 24th, 2008, the
19 one where you saw them down by the creek -- and I'm sorry
20 to interrupt, but just on that specific occasion when you
21 saw them hop the fence, you know, you told us two
22 occasions, on the second one did you go notify Mr. Darby?
23 A. No, sir.
24 Q. Okay. So based on those two times and during that
25 year that I talked to you about did Mr. Darby's cows --

1 or the cows that you perceived to be Mr. Darby's that
2 went back into Mr. Darby's pasture, did they have any
3 trouble getting back into his pasture?
4 A. No, sir.
5 MR. BOGGS: Please answer any questions the defense
6 might have.
7 CROSS-EXAMINATION
8 BY MS. RAINES:
9 Q. Hi, Mr. Wood. How are you doing?
10 A. Good.
11 Q. When you were traveling to the accident scene on
12 July 24th, 2008 do you recall seeing any cows out that
13 evening?
14 A. No, ma'am.
15 Q. And once you got there did you see any cows out
16 anywhere?
17 A. No, ma'am.
18 Q. And when you were traveling around earlier that day
19 you testified -- do you actually remember seeing cows out
20 and where you saw them in any specific pasture at four
21 o'clock on July 24th, 2008?
22 A. No.
23 Q. But do you know that you did not see them outside
24 of a pasture?
25 A. Yes.

1 Q. So they were inside an enclosed area?
2 A. Yes.
3 Q. And you, yourself, you own some cows; is that
4 correct?
5 A. Yes.
6 Q. And where are the pastures that you have, where you
7 keep your cows?
8 A. Closer to Green Pond Road side ---
9 Q. About how many miles from the star here?
10 A. It's probably two and a half.
11 Q. Two and a half miles?
12 A. Yes.
13 Q. How many cows do you have?
14 A. We have -- or I have -- there's 16 right now.
15 Q. Sixteen?
16 A. Yes.
17 Q. And your grandfather has some, too?
18 A. Yes.
19 Q. And where is your grandfather's pasture?
20 A. He's got some there and then some on Highway 101.
21 Q. So there's some two -- did you say two and a half
22 miles from where the star is about there?
23 A. Yes.
24 Q. Your grandfather has some there?
25 A. Yes.

1 Q. And how many does your grandfather have?
2 A. Probably 25.
3 Q. And what color are your cows that you have?
4 A. Multi-colored, reddish colored, red and white,
5 black, tan colored.
6 Q. And what about your grandfather's, the same?
7 A. About the same.
8 Q. And you are a cattle farmer? You've had some cows
9 for a number of years; is that right?
10 A. Yes, ma'am.
11 Q. Have cows of yours ever gotten out before?
12 A. Yes, ma'am.
13 Q. Does it happen from time to time?
14 A. Yes, ma'am.
15 Q. And when they get out can you usually tell how a
16 cow got out?
17 A. Yes.
18 Q. What are some of the reasons that cows get out?
19 A. Tree fall on the fence, deer run through the fence,
20 not well-maintained fence.
21 Q. Have you ever had a not well-maintained fence?
22 A. Yes.
23 Q. And tell me about that.
24 A. About the?
25 Q. About fence that you had that ---

1 A. It was ---
2 Q. --- was problematic?
3 A. It was old and been up for five, six years.
4 Q. And was that on the property that was two and a
5 half miles from...
6 A. No, ma'am.
7 Q. It was on a different property?
8 A. Yes, ma'am.
9 Q. Different pasture. You said a moment ago that you
10 had seen some of Mr. Darby's cows out.
11 A. Correct.
12 Q. Can you say definitively that any of those cows
13 that you saw out were within the year proceeding July
14 24th, 2008? And I'm talking about July 24th, 2007 to
15 July 24th, 2008.
16 A. Yes.
17 Q. And which date can you say specifically, or you can
18 say that you saw on that time frame?
19 A. Yeah. It was springtime. It was -- I really don't
20 know ---
21 Q. So there was just that one time in the springtime?
22 A. Yeah.
23 Q. You said that you talked to Mr. Darby before about
24 cows; is that correct?
25 A. Correct.

1 Q. And you recall having your deposition taken?
2 A. Yes.
3 Q. I'm going to show you your deposition testimony,
4 and you were asked, I believe, when -- I'll read the
5 question to you and you tell me if this is how you recall
6 answering at your deposition.
7 The question is: When you mentioned that you had
8 some cows and had called Mr. Darby about his cows could
9 you be more specific about when it is you've called and
10 told him that there were cows out in the road?
11 And tell me if this is what you recall your answer
12 being. Actually, there's been a couple of times that I
13 went to his house and also a couple of times that my
14 grandfather has called him.
15 And next question: What I mean is can you tell me
16 when that happened?
17 Answer: It's been four or five years ago.
18 So having heard your deposition testimony can you
19 say that from -- that that's correct, that it's been four
20 or five years since your deposition was taken that anyone
21 notified you or that you discussed with -- let me ask
22 that again. I'm sorry. Has it been four or five years
23 since when you had your deposition taken that you had
24 talked to Mr. Darby about having cows out?
25 A. No. Could you repeat the ---

1 Q. That's what it sounds to me like you said in your
2 deposition, it's been four or five years when you were
3 asked when you talked to Mr. Darby about him having cows
4 out. You said it's been four or five years.
5 A. Correct.
6 Q. So can you specifically say that that's wrong, that
7 it wasn't? Are you telling us it wasn't four to five
8 years?
9 A. It was -- it had been in the past and then leading
10 up to that time.
11 Q. So it was a while ago though. You can't say that
12 you talked to him within a year of that accident,
13 correct?
14 A. Correct.
15 Q. When you got to the scene of the accident that
16 night what color hair did you see? You mentioned you saw
17 some hairs?
18 A. Yes, ma'am.
19 Q. What color were those hairs?
20 A. They was black.
21 Q. Any other color at all?
22 A. No, ma'am.
23 Q. Only black. And when you got there did you know if
24 the motorcycle engine was still hot?
25 A. No, ma'am. I didn't check.

1 Q. You don't know one way or another?
2 A. No, ma'am.
3 Q. And when you got there did you see any loose cows?
4 A. No, ma'am.
5 Q. Did you see any cow tracks?
6 A. No, ma'am.
7 Q. Did you see anything other than the hairs that was
8 any evidence of a cow?
9 A. No, ma'am.
10 Q. The cow feces as well?
11 A. Yeah.
12 Q. Right. Correct. But other than that?
13 A. No.
14 Q. And you didn't happen to -- and understanding you
15 were taking care of your patient and doing your job, but
16 you didn't happen to look up and notice any problems with
17 the fence there?
18 A. No, ma'am.
19 Q. So to your knowledge nothing was wrong with that
20 fence?
21 A. Correct.
22 Q. And to your knowledge nobody else noticed anything
23 wrong with that fence?
24 A. Correct.
25 Q. And to your knowledge nobody saw any loose cows?

1 A. Correct.
2 Q. And the other time, that one time you said in the
3 spring, the only one time within the year in the
4 springtime that you had said you seen cow out there you
5 knew it was Mr. Darby's because of location?
6 A. Correct.
7 Q. And that's all? I mean, you didn't see an I. D.
8 tag on it or anything like that?
9 A. No. There was other cattle out in the pasture.
10 Q. Have you ever known Mr. Darby to help other people
11 retrieve their cattle?
12 A. Yes.
13 Q. Has he ever helped you retrieve your cattle?
14 A. Yes.
15 MS. RAINES: No further questions. Thank you.
16 MR. BOGGS: Just follow-up, Judge. May it please
17 the Court?
18 THE COURT: All right.
19 REDIRECT EXAMINATION
20 BY MR. BOGGS:
21 Q. Now, you said you own cattle. Do you tag all your
22 cattle?
23 A. Most of them.
24 Q. Okay. Now, you said that you thought it was
25 Mr. Darby's because it was close to Mr. Darby's fence and

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

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

1 A. No, sir.
2 Q. Are you trying to hurt him with your testimony?
3 A. No, sir.
4 Q. Are you telling the truth?
5 A. Yes, sir.
6 Q. Okay. Now, you've said today of two incidents that
7 you saw cows jumping within a year prior to the accident.
8 A. Correct.
9 Q. All right. Now, are you sure it was a year prior
10 to the accident that you saw those two incidents?
11 A. It could have been a little bit further length of
12 time than that but I'm ---
13 Q. Could it have been a little bit shorter length of
14 time than that?
15 A. Yes.
16 Q. Okay. So when she brought up your deposition
17 testimony about, Actually, it's been a couple of times I
18 went to his house and also a couple of times that my
19 grandfather has called him, and she asked you about
20 those, that's more than two times. So there's been more
21 than two times over the years, hadn't there?
22 A. Yes.
23 Q. In fact, can you name the number of times there
24 have been over the years prior to the accident?
25 A. No, sir. It's probably four or five times.

1 Q. Well, how did you know to call Mr. Darby the first
2 time you ever called him?
3 MS. RAINES: Object, Your Honor. Can we have a
4 sidebar, please?
5 MR. BOGGS: She opened the door, Judge.
6 (WHEREUPON, a sidebar was had.)
7 MR. BOGGS: May it please the Court?
8 THE COURT: Yes, sir.
9 BY MR. BOGGS:
10 Q. Concerning the phone call -- or concerning the
11 contact with Mr. Darby. How did you know to -- how did
12 you first learn to contact Mr. Darby for cows in that
13 area?
14 A. Through my grandfather.
15 Q. Okay. Now, in your experience with the cows
16 jumping the fence do you know of any reason why the cow
17 would jump the fence?
18 A. Just the reasons that we talked about before of ---
19 Q. Well, I mean, I don't think we talked about it
20 before. You said you drove by and the cows jumped the
21 fence.
22 A. Yes.
23 Q. Okay. Did you honk the horn?
24 A. No, sir.
25 Q. Did they -- do you know if -- I'll call your

1 attention to your deposition, okay. All right. Just so
2 we move on. And I said -- or someone said, In your
3 experience do cows -- why would they jump a fence?
4 And the answer was: Being spooked or scared.
5 A. Correct.
6 Q. Is that your testimony today?
7 A. Correct.
8 MR. BOGGS: All right. No further questions.
9 MS. RAINES: Nothing further from this witness,
10 Your Honor.
11 THE COURT: All right. You may step down.
12 MR. BOGGS: Judge, just for planning purposes. I'm
13 going to call a witness that's not involved with the
14 legal issues we might have to address and then I want to
15 go ahead and get that out of the way so he can leave.
16 I call Thomas Graham to the stand.
17 THE COURT: Very well. Come forward and be sworn.
18 JAMES THOMAS GRAHAM, after having been duly
19 sworn, testified as follows:
20 DIRECT EXAMINATION
21 BY MR. BOGGS:
22 Q. Can you state your full name for the record,
23 please.
24 A. James Thomas Graham.
25 Q. Mr. Graham, I believe you and I met during the

1 pendency of this case; is that correct?
2 A. That's correct.
3 Q. And you probably can't see too well through these
4 hieroglyphics here but I'll submit to you that this is an
5 aerial view of Dials Church Road area, okay?
6 A. Okay.
7 Q. Do you live near Dials Church Road?
8 A. Yes, I do.
9 Q. Okay. And if you were leaving the church headed
10 away from it on Dials Church Road, I guess that's from
11 101, where would your house be? Give me general
12 directions to your house from Dials Church.
13 A. If you go on Dials Church Road approximately three
14 eighths of a mile and take a right on Dot Simmons Road.
15 Q. Okay. And so there's been talk -- are you familiar
16 with the fact that there's a bridge on Dials Church Road?
17 A. Yes, I am.
18 Q. Okay. I'll show you Plaintiff's Exhibit Number 24.
19 That's a piece of evidence that has been testified to
20 show from the bridge looking up Dials Church Road. Are
21 you familiar with that?
22 A. Yes, I am.
23 Q. Does that accurately depict what that exhibit
24 appears to be?
25 A. Yes.

1 Q. Or claims to be?
2 A. Yes. That's accurate.
3 Q. That bridge on this diagram had been pointed out is
4 right about here where this mark is, okay, and talking
5 about approximately. Can you -- and this may have
6 shifted a little bit, but you agree in general that
7 that's where the bridge is that you are looking at?
8 A. Yes.
9 Q. And is Dot Simmons Road before that bridge or after
10 that bridge?
11 A. Before the bridge ---
12 Q. As you're leaving from the church. Okay. In fact,
13 do you live near the racetrack down here?
14 A. Yes. It's close to the racetrack.
15 Q. On the racetrack side?
16 A. No, on the -- back up.
17 Q. Okay.
18 A. Right there.
19 Q. All right. Right here (indicated). In this
20 general area?
21 A. That's it. That's where I live.
22 Q. I'm going to put T-G, okay. Or is it -- you go by
23 Thomas?
24 A. Thomas. Yes, I do.
25 Q. Okay. Thomas Graham. All right. Now, how long

1 have you been living there?
2 A. Since 1989.
3 Q. Okay. So 21 years now almost?
4 A. Yeah, about, correctly.
5 Q. That's it. I'm not going to draw anymore. I know
6 everybody is disappointed.
7 Now, so you've had an opportunity to travel back
8 and forth over the 20 years?
9 A. Yes, I have.
10 Q. All right. And do you know who owns or who has
11 pastures at the intersection of Cooley Road and Dials
12 Church Road?
13 A. Yes, sir, I do.
14 Q. Do you know who owns them?
15 A. Yes.
16 Q. Who is that?
17 A. Ms. Freeland.
18 Q. Okay. Do you know who possesses them or leases
19 them?
20 A. To the best of my knowledge, Wayne Darby.
21 Q. Well, during the time for the 20 years you've been
22 living there have you known anybody else to keep cow --
23 or, excuse me. Have you known Mr. Darby to keep cows
24 over there?
25 A. Yes, I have.

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

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

1 A. Vaguely, but I'm sure -- you know, I told the
2 truth. So I'm sure I can.
3 Q. Okay. Do you recall the question where I said, And
4 do you remember saying that you had formed an ---
5 MS. RAINES: Object. Opinion and character
6 evidence.
7 MR. BOGGS: Judge, can we come to the -- we need to
8 talk about this one.
9 (WHEREUPON, a sidebar was had.)
10 BY MR. BOGGS:
11 Q. Mr. Graham, you said you've been living there 20
12 years. Have you seen cows out during the time that
13 you've lived in the Dials Church -- where you've lived?
14 MS. RAINES: Objection, Your Honor.
15 THE COURT: I'm going to allow it subject to our
16 conversation. I've got some parameters out there.
17 MS. RAINES: Well, just to be protected for the
18 record. I'm sorry.
19 A. Yes, I have.
20 Q. And based upon your daily travel, and you said at
21 least twice a day for 21 years, when you heard there was
22 an accident near the intersection of Dials Church Road
23 and Cooley Road were you surprised?
24 A. No, I wasn't.
25 Q. Were you surprised to hear that there was an

1 alleged accident between a motorcycle ---
2 MS. RAINES: Objection, Your Honor.
3 MR. BOGGS: I was just ---
4 THE COURT: It's all right. Your objection is
5 noted regarding the timing and relevancy and probative
6 value because of the prejudicial effect it may have. Is
7 that ---
8 MS. RAINES: Yes, Your Honor.
9 THE COURT: All right. Then I'll allow him to ask
10 the question as characterized. I haven't quite heard his
11 full question but let me hear it all the way in full.
12 Q. You just said you weren't surprised there was an
13 accident. Were you surprised there was an accident
14 alleged to have happened between a motorcycle and a cow?
15 A. No.
16 MR. BOGGS: Please answer any questions that the
17 defense might have.
18 MS. RAINES: No further questions for this witness,
19 Your Honor.
20 THE COURT: All right. Mr. Graham, thank you so
21 very much.
22 Anybody want to keep him here?
23 MR. BOGGS: No, sir. He can be released.
24 THE COURT: You may go.
25 MR. BOGGS: Judge, I think everybody is here. I

1 think you wanted to have some more conversation on the
2 law of what the -- how that potential testimony might go.
3 THE COURT: I think that's fair enough.
4 All right. Let's take a brief break. So, ladies
5 and gentlemen, please step back in the back. I'll call
6 you in a moment. I got a few things I want to hear first
7 to make sure I set the parameters, like I described to
8 you all before. So don't discuss the case. Step in the
9 jury room and we'll call you back in a few moments.
10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 2:55 p.m.)
12 THE COURT: All right. Regarding the conversation
13 at sidebar, there was testimony headed in the direction
14 from the lay witness neighbor that he had seen cows over
15 the years and he was confined to the one year prior, 12
16 months prior. Then it was getting to, Would you consider
17 cows in the road to be dangerous, and that's when it
18 stopped and we had a conversation at sidebar and each
19 party expressed their prejudicial effect of having cows
20 over 20 years, and they are always out there, how
21 dangerous to be. I suggested that the question be
22 characterized in a fashion to the witness, Were you
23 surprised when you heard there was a wreck between a cow
24 and a motorcycle. And I think that was more or less
25 accurately presented by Mr. Boggs, subject to the

1 defense's objection, and the question was answered no,
2 and without further explanation. So I was surprised by
3 that singular answer but nonetheless that created fewer
4 problems for me.
5 MR. BOGGS: May it please the Court. Judge, we
6 would proffer testimony at this time from Mr. Harry Hays.
7 I believe it's H-a-y-s.
8 Is that right, Mr. Hays, no E in there?
9 And essentially the testimony we'd proffer would be
10 towards the fact that he only owned registered Black
11 Angus on July 24th, 2008, and I think he has 80 cows.
12 Is that right? Do you recall how many you had on
13 that day?
14 THE COURT: Hang on, so we can be clear. You all
15 want to put him on the witness stand and put him under
16 oath? That way we've got it done, or you want to do it
17 with your deposition?
18 MR. BOGGS: I was just saying that the only
19 question I'm going to ask to proffer is about the
20 registered Black Angus. This relates to what we talked
21 about earlier prior to going back with live testimony.
22 So due to his health I didn't want to walk him up. I
23 just want to sort of summarize. Then if you wanted to
24 hear from Mr. Blackburn, who took hairs from Mr. Hays,
25 and then Mr. Hollifield's testimony. So I just wanted to

1 clear that up before we got into that testimony and see
2 what problems we have, what exclusions you might have or
3 might rule upon, or what have you.
4 THE COURT: All right. Let me hear you all
5 regarding that line and three tie-ins.
6 MR. HANNA: Well, I think the objection goes to
7 what Mr. Hollifield is going to say about the hair, okay.
8 I will concede that Mr. Hays is going to testify that he
9 has these registered Black Angus cows, okay. I don't
10 think we need to put him up there. I'll concede -- I
11 know he's going to say that, okay. I've heard him say it
12 before. I'm confident he'll say it again.
13 Then I know that I've heard Mr. Blackburn say he
14 went out, collected the hairs and how he collected them.
15 And it really comes down to what you're going to let --
16 whether we're going to let Hollifield talk about that. I
17 think that's the part that ought to be proffered but if
18 we need to proffer all three in a row we can.
19 MR. BOGGS: No. Judge, you stated that when
20 Mr. Hays gets here we'll deal with it. So he got here
21 and I just want to -- so I didn't know what you wanted.
22 THE COURT: Yeah. I think Mr. Hays -- I don't
23 think anything he's going to say is going to be outside
24 my restrictions thus far and Mr. -- red necktie. I can't
25 remember ---

1 MR. BOGGS: Mr. Blackburn.

2 THE COURT: Retrieved hairs from the cow. No

3 prejudicial effect there. The prejudicial effect is the

4 ultimate question to Mr. Hollifield is ---

5 MR. HANNA: Well, to be more accurate, because when

6 I asked him the ultimate question he cannot say that I

7 think that there's no -- I'm objecting to any of the

8 evidence of the collection. Mr. Hays can testify, okay,

9 I mean, about being in the neighborhood. He's got more

10 to say than just he's got some cows, okay.

11 But as far as Mr. Blackburn collecting the hairs or

12 what happened once they got collected, based upon the

13 inability to say that they weren't the same cow it's

14 highly prejudicial that this testimony come in. And,

15 anyway, I think it can mislead the jury.

16 MR. BOGGS: Judge, you going to sign up to the cow

17 case special judge for the state?

18 THE COURT: Apparently so to the extent it's going

19 to be a big issue.

20 MR. BOGGS: And, again, Judge, I'm not asking him

21 to make a -- I'm asking him to make a scientific opinion

22 about what he looked at. The weight of it can be argued

23 by Mr. Hanna, and I don't see how it's prejudicial if he

24 says based on his scientific knowledge it looks one way.

25 One set of hairs look one way, another set of hairs look

1 another. That's all.

2 THE COURT: All right. And so he can't say either

3 way they were not or they absolutely were Mr. Hays' cows?

4 He can say they are not ---

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

6 THE COURT: Just similar characteristics.

7 MR. BOGGS: The hairs that he tested. All I'm

8 going to ask him is that the hairs that he tested were

9 different in color and coarseness from the ones he tested

10 off the bike, and that's it. I mean, I'm going to ask

11 him, you know, obviously about bovine but I think that's

12 not even -- that's on the initial set.

13 MR. HANNA: That's not my beef.

14 THE COURT: If he stops there where does that put

15 you?

16 MR. HANNA: Well, again, you know, that's going to

17 then have me have to say, well, the idea that there's

18 something different about the hairs immediately brings

19 up, well, it just couldn't have been Mr. Hays' cow.

20 Okay. My point is that when I asked, Can you say to a

21 reasonable degree of certainty whether or not these are

22 -- you say they are not the same cow, he says, No. I

23 can't say that.

24 Therefore, if he's unwilling to go all the way,

25 okay, with the testimony none of it should come in.

1 That's what I'm saying. It's not proper expert witness
2 testimony.
3 MR. BOGGS: Judge, I recall they had brought up the
4 idea and through his testimony Mr. Darby said that
5 Mr. Hays had cows out down at the bridge, for lack of a
6 better place. They've also alleged that the accident was
7 caused by a thirty party. And so if we're talking about
8 inferences I've got to defend any inferences even as a
9 plaintiff. So I just respectfully assert that I am not
10 asking him to do anything outside of his expertise.
11 He knew this was coming. If he wanted to test the
12 hairs he could have tested the whole body, found
13 something. You know, and he mentioned he had an expert
14 look at things. So he had the opportunity. They never
15 declared an expert but I'm sure he just checked it out to
16 see if he needed to declare one but obviously ---
17 THE COURT: Did Mr. Hollifield compare the hair
18 samples towards any of the cows out of the pasture from
19 Mr. Darby?
20 MR. HANNA: No. All he did was check one cow that
21 Mr. Hays had.
22 MR. BOGGS: Judge, Mr. Hays has only one type of
23 cow.
24 THE COURT: He's got six Black Angus.
25 MR. BOGGS: Six or however many Black Angus,

1 registered Black Angus, and that's the way it's been and
2 that's the way it is. Now, my animal science expert will
3 be able to testify as to any typing but it's not -- I
4 mean, I'm not sure what I'm going to ask him yet. I'm
5 talking about the animal science expert.
6 And, Judge, if they aren't going to argue that it
7 was Harry Hays' cow then we're good.
8 MR. HANNA: I don't purport to know whose cow it
9 was, and I don't have to prove anything. All this talk
10 about I should go test some hairs, I should go this or
11 that, it ain't my job. Okay.
12 My job is simply to cast doubt on what he's saying,
13 and I'm going to cast doubt by suggesting and, you know,
14 but before this case is over there's going to be
15 testimony that there are numerous cow owners along this
16 road, all of whom have had cows get out before.
17 The only one who happens to be nearby is Mr. Hays.
18 I am not saying it's Mr. Hays' cow. I'm merely
19 suggesting that for them to suggest that it had to be my
20 guy's cow because it happened right next to his pasture,
21 why couldn't it have been one of these other guys' cows?
22 I mean, it's as likely.
23 MR. BOGGS: And my cattle expert -- or my animal
24 science guy will tell you why, and tell the jury why.
25 MR. HANNA: I understand, and we're going to argue

1 about him when he gets here. That's a whole nother
2 argument we got.
3 THE COURT: All right. Here's what I'm going to
4 allow. I'm going to allow the expert to testify that the
5 hair is bovine and then -- there are 20 qualities that
6 the hair was analyzed with and two of them were
7 dissimilar and 18 are similar; is that right? But that
8 means the hairs are not exact matches; is that correct?
9 MR. HOLLIFIELD: They are definitively both from
10 the same species. They are both cattle hair. The
11 characteristics of color and coarseness are completely
12 different for all the hairs I examined, but I cannot
13 exclude all Black Angus hairs. That's the bottom line.
14 THE COURT: All right. Can I ask this question of
15 the expert, Mr. Hollifield. If you had the cow that
16 actually did this and he was located with a broken leg
17 and you tested his hairs would those show up exact
18 matches to the hairs off the motorcycle?
19 MR. HOLLIFIELD: No. There's a lot of variation or
20 at least some variation among hairs from a given animal
21 or person.
22 THE COURT: All right. So if we had the cow and
23 the motorcycle hairs then they wouldn't match up because
24 of the variations? That's going to be an ordinary
25 finding in your field?

1 MR. HOLLIFIELD: It would be.

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

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

8 MR. HOLLIFIELD: Which could be done, yes.

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

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

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

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

1 seems to be -- how is that relevant if it can't match up?
2 MR. BOGGS: Let me see if my next thought holds
3 water.
4 (PAUSE)
5 MR. BOGGS: We're just talking about the third
6 thing, Judge. Judge?
7 THE COURT: Yes.
8 MR. BOGGS: The end result.
9 Right, Geov? Just the last comparison of Hays'
10 versus cow?
11 MR. HANNA: Yeah, in other words, I want to be --
12 in case the record isn't clear, the only thing that -- I
13 have no problem with him taking the stand and saying that
14 he tested these hairs, the ones he pulled off the bike,
15 and then whatever he wants to say about that. Okay.
16 But I deposed him in length and I think that is
17 absolutely proper testimony. Okay. In fact, I had
18 another guy test it and it came to the same exact
19 conclusion he did. Okay. I'm only talking about the
20 comparison of the hair between Mr. Hays' cow and the
21 original sample. That is it, just to be clear.
22 THE COURT: All right. How about -- Mr. Boggs, I
23 think, can you live with -- I mean, this is my likely
24 ruling, unless you think of something I haven't
25 considered yet. Eliminate or restrict the testimony

1 regarding the comparison between the Hays' cow and the
2 hairs on motorcycle. You exclude that and you let him
3 testify within his field.
4 MR. HANNA: In other words, don't talk about the
5 Hays' hairs at all?
6 THE COURT: Nope.
7 MR. HANNA: That's okay.
8 MR. BOGGS: Mr. Hays can talk about the Hays' hair.
9 MR. HANNA: Yeah, I'm not saying ---
10 MR. BOGGS: I was just making sure.
11 MR. HANNA: And, again, I'm not suggesting you
12 can't argue -- you know, you can't have Mr. Hays say that
13 he's got Black Angus or whatever. That's a different
14 deal.
15 MR. BOGGS: Judge, honestly, I can live with any of
16 your rulings, I think. I'd rather -- I mean ---
17 THE COURT: Well, I mean ---
18 MR. BOGGS: I paid for an opinion, I want to use
19 it. No, I'm just -- you know what I'm saying.
20 THE COURT: I'm with you, very much so.
21 MR. BOGGS: I paid for his time. Okay. Do we need
22 to -- well, Mr. Hays is here but he's -- I mean, I know
23 Mr. Hays needs to get home. Do you need to cross-examine
24 him or can we just put on the record that he's got Black
25 Angus?

1 MR. HANNA: I want to ask him about his cows now,
2 too ---
3 MR. BOGGS: Okay.
4 MR. HANNA: You know, if you want that in he's got
5 to come testify. Okay. It will be short. I can't
6 imagine it will any more than 10 minutes, once we
7 actually start.
8 MR. BOGGS: Okay.
9 THE COURT: You all need a break? We need a small
10 break.
11 MR. BOGGS: Five minutes, maybe.
12 (WHEREUPON, a brief recess was taken.)
13 THE COURT: You all ready? You ready?
14 MR. BOGGS: I think so.
15 THE COURT: All right. Go get them, Mr. Bolt.
16 (WHEREUPON, the jury enters the courtroom at
17 approximately 3:21 p.m.)
18 THE BAILIFF: All present, Your Honor.
19 THE COURT: All right. Mr. Boggs?
20 MR. BOGGS: Thank you, Your Honor. May it please
21 the Court?
22 THE COURT: Yes, sir.
23 MR. BOGGS: I call Mr. Harry Hays to the stand.
24 THE COURT: All right, Mr. Hays. Please come
25 forward and be sworn, Mr. Hays.

1 HARRY H. HAYS, JR., after having been duly
2 sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MR. BOGGS:
5 Q. Mr. Hays, please state your full name for the
6 record.
7 A. Harry H. Hays, Jr.
8 Q. And how do you spell Hays?
9 A. H-a-y-s.
10 Q. No E. Thank you. And where do you live?
11 A. 982 Hayes Drive, Gray Court.
12 Q. Okay. And is that -- is Hayes Drive off of Dials
13 Church Road?
14 A. Yes, it is.
15 Q. All right. And do you and some of your family
16 members live in the same general area?
17 A. Yes.
18 Q. How long you lived there?
19 A. Oh, 35 years.
20 Q. You know that guy over there in the denim shirt?
21 A. Been knowing him all my life. Well, not all my
22 life. Ever since I moved there.
23 Q. Yes, sir. You all friends?
24 A. Yes, sir.
25 Q. Okay. Now, do you -- on or about July 24th, 2008

1 did you own any cattle?
2 A. Yes, I did.
3 Q. Okay. And do you recall how many you had?
4 A. Best of my knowledge six.
5 Q. All right.
6 A. At the time.
7 Q. I'm sorry?
8 A. At that time.
9 Q. Okay. And do you recall what type cattle you had?
10 A. Registered Black Angus.
11 Q. All right. Is that the type cattle you've always
12 owned?
13 A. No.
14 Q. All right. At the time of July 24th, 2008 is that
15 the only type cattle you owned?
16 A. Yes.
17 Q. All right. And were your Black Angus, registered
18 Black Angus cattle a certain color?
19 A. Black. Yes.
20 Q. All right. Do they any other color hair than
21 black?
22 A. No.
23 Q. Did they on July 24th, 2008?
24 A. No.
25 MR. BOGGS: Please answer any questions that the

1 defense might have.

2 CROSS-EXAMINATION

3 BY MS. RAINES:

4 Q. Hi, Mr. Hays. Just a couple. Do you know anything

5 at all about this motorcycle accident that occurred on

6 July 24th?

7 A. I can't hear you.

8 Q. I'm sorry, sir. I'll speak up. Do you know

9 anything, do you have any personal firsthand knowledge of

10 a motorcycle accident that occurred on July 24, 2008?

11 Did you see anything that night?

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

13 Q. And I don't want to go into what you heard but just

14 from your knowledge you don't know anything?

15 A. No.

16 Q. And you don't know anything about Mr. Wayne Darby's

17 cows being out that day; is that correct?

18 A. No.

19 Q. And you don't know anything about Mr. Wayne Darby

20 having any problems with his fence that day; is that

21 correct?

22 A. No.

23 Q. And have you ever as a cattle farmer -- and you've

24 had cattle for some period of time; is that right?

25 A. Yes.

1 Q. And as a cattle farmer have on occasion has your
2 cattle ever gotten out before?
3 A. Yes.
4 Q. Is that something that just generally occurs every
5 so often?
6 A. Yes.
7 MR. BOGGS: Your Honor, I'm going to object to
8 outside the scope of direct testimony.
9 THE COURT: I sustain that.
10 MS. RAINES: One moment please, Your Honor.
11 BY MS. RAINES:
12 Q. Mr. Hays, do you have any knowledge of Mr. Darby
13 ever helping other farmers get their cattle back in?
14 A. No.
15 MR. BOGGS: Object. Outside the scope of direct.
16 THE COURT: I'm going to sustain that, also.
17 MS. RAINES: Nothing further, Your Honor.
18 THE COURT: Any redirect?
19 MR. BOGGS: No, sir. Nothing.
20 THE COURT: Mr. Hays, thank you very much.
21 MR. BOGGS: I ask that he be excused, please.
22 THE COURT: Certainly.
23 MR. BOGGS: Thank you, Mr. Hays.
24 MR. HAYS: You're welcome.
25 MR. BOGGS: I call Jeff Hollifield to the stand,

1 please.

2 JEFFREY M. HOLLIFIELD, after having been

3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BOGGS:

6 Q. Please state your full name for the record.

7 A. My name is Jeffrey Morris Hollifield,

8 H-o-l-l-i-f-i-e-l-d.

9 Q. I'm sorry I mispronounced it. What is your

10 occupation?

11 A. I own and operate Micro Analytical, which a private

12 forensics lab in the Greenville area. I do work for

13 local state and federal law enforcement agencies, for

14 attorneys, for insurance companies, and also examine

15 contaminants in commercial products for industry, and

16 then I also teach chemistry and forensic science at

17 Greenville Technical College as an adjunct instructor.

18 Q. And do you have a position title with your company

19 or are you just owner and operator?

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

21 lab.

22 Q. Okay. And how long have you been running Micro

23 Analytical?

24 A. A little over 14 years.

25 Q. And were you contacted about your services for this

1 case?
2 A. I was. In August of '08 Mr. Boggs' office
3 contacted me and asked me if I could collect some samples
4 from a motorcycle and do some laboratory analysis.
5 Q. And what academic degrees do you hold that allow
6 you to serve in that purpose?
7 A. My training or background is in chemistry and
8 microscopy, which is using microscopes to do analysis. I
9 have a bachelor's degree in chemistry, a master's degree
10 in chemistry, both for Furman University; and then I have
11 a master's in microscopy from McCrone Research Institute
12 in Chicago, and then I also worked for 10 years at the
13 SLED crime lab in Columbia as analyst or chemist.
14 Q. And can you describe microscopy?
15 A. Yes. My expertise is in the area of analyzing
16 small pieces of evidence or trace evidence. That
17 includes things like textile fibers, hairs, paint
18 pigments, glass, installation, soil, that sort of thing.
19 So the microscopy is using various types of microscopes
20 to do chemical analysis and to identify small particles
21 and where they may have come from.
22 Q. And what's your aggregate amount of time you've
23 been in this field?
24 A. Twenty-four years.
25 Q. And do you have -- have you had the opportunity to

1 serve as an expert in other cases?
2 A. I have.
3 Q. And what was your declared expertise in those
4 particular cases?
5 A. Two areas: Trace evidence, which is the area that
6 I just described, identifying small particles
7 microscopically and chemically; and the other area is
8 drug identification.
9 Q. Okay. In this particular case did you apply your
10 prior -- excuse me, your prior experience in trace
11 evidence?
12 A. I did, yes.
13 Q. And microscopy in analyzing trace evidence?
14 A. That's correct.
15 Q. And how many times do you think you've been an
16 expert on trace evidence and microscopy?
17 A. I've testified 173 times. Roughly half of those
18 have been in trace evidence.
19 MR. BOGGS: Okay. Judge, at this time I'd like to
20 offer -- or excuse me. I'd like to approach the witness.
21 BY MR. BOGGS:
22 Q. I'd like to hand you your C. V. or curriculum vitae
23 that you provided to me. Is that an accurate copy of the
24 extent and -- is that your full C. V.?
25 A. It is. That's current. Yes, sir.

1 Q. Okay. And does it show your prior experience and
2 education, and things related to your expertise?
3 A. It does.
4 MR. BOGGS: Judge, at this time I'd ask that the
5 court reporter mark this as the next exhibit, and offer
6 it into evidence.
7 MR. HANNA: Your Honor, we would object to the
8 C. V. itself coming into evidence. He can certainly
9 testify as to his qualifications but I can't see how
10 putting in his resume, in essence, has any probative
11 value to anything that the jury is going to have to
12 decide later. They can hear what his background is.
13 Quite frankly, I don't object to him being
14 qualified as an expert in the field of -- the trace
15 evidence field that he has described, but to put the
16 C. V. in, I think, is improper.
17 THE COURT: And you were offering as an expert in
18 which field?
19 MR. BOGGS: In trace evidence.
20 THE COURT: All right. We'll qualify him as an
21 expert in the field of microscopy, which is the study of
22 trace evidence.
23 MR. BOGGS: Yes, sir. All right.
24 THE COURT: And I don't think his resume needs to
25 go in.

1 MR. BOGGS: Okay. Well, and, Judge, I'd like to
2 summarize it. I was just trying to avoid going through
3 it, but I think out of --
4 BY MR. BOGGS:
5 Q. Have you participated in continuing education?
6 A. I have.
7 Q. Okay. And have you participated in law enforcement
8 in subsequent training to your education?
9 A. Yes. I completed the police academy when I was an
10 employee of SLED and served in law enforcement for 10
11 years.
12 Q. And have you published papers or articles
13 concerning your fields of study?
14 A. I have. I've published several articles in the
15 area of microscopy and trace evidence.
16 MR. BOGGS: Thank you, Judge. I was trying to skip
17 ahead, and I apologize. Your Honor, he's been qualified
18 as an expert. I'd ask that he be able to give an opinion
19 about this case upon further foundation.
20 THE COURT: All right.
21 BY MR. BOGGS:
22 Q. Sir, did you collect any samples from the
23 motorcycle that was involved in the accident?
24 A. I did. On August the 29th of '08 I went to
25 Burdette's Towing. Made an appointment with a fellow

1 named Randy and then I went there and took photographs of
2 a motorcycle that was in the garage there and then I
3 collected samples from the motorcycle, myself.
4 I collected what appeared to be hair samples and
5 also some fecal material samples from various parts of
6 the motorcycle. I collected those samples with tweezers
7 and razor blades, put them in small envelopes and then
8 labeled everything and took them back to the lab for
9 analysis.
10 Q. From those samples were you able to determine the
11 type of animal that was involved in the accident with the
12 motorcycle?
13 A. Yes, sir. With respect to hair analysis, it's
14 possible to determine if it's a human hair or an animal
15 hair. These were animal hairs. And if it's an animal
16 hair it's also possible microscopically to determine what
17 species it is, and I found that these were bovine or
18 cattle hair as opposed to other species or other animals.
19 Q. And what color were the hairs?
20 A. I examined approximately 25 hairs and also hair
21 fragments. All the ones that I looked at appeared to be,
22 in reflected light, meaning light shining on top of the
23 sample, they appeared to be brown in color. When you
24 look at them microscopically you also use transmitted
25 light, light coming up from beneath going through the

1 sample, and they appeared reddish in color when I looked
2 at them that way. But they visually and with reflected
3 light they appeared to be brown, all of them.
4 Q. Okay. Did you look at those same hairs non
5 microscopically?
6 A. I did. I looked at them visually and noted the
7 color and the length of the hair and general appearance
8 of the hair.
9 Q. Were all the hair that you tested, were they just
10 all sitting on top of the bike or where did you find the
11 hairs on the bike?
12 A. They were from various parts of the bike. I did
13 collect every hair that I saw. I don't know that I
14 obtained every hair that was on the bike but I did
15 collect all the ones that I could see visually. I took
16 them mostly from the fender, from the headlight that was
17 on the bike, and also from around the front of the
18 handlebars and underneath the bike as well.
19 Q. When you got to Burdette's and you took pictures
20 did it appear that the bike had been cleaned in any way?
21 A. No, it didn't.
22 Q. Did you clean it in any way, other than removing
23 specimens?
24 A. Other than removing the samples, no, I didn't.
25 Q. Okay. Did you also examine the feces?

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

1 exclusively and completely from the hair analysis itself.
2 That's all.
3 Q. In your field of study and your field of expertise
4 is it readily accepted to determine whether it was bovine
5 or not solely by analyzing the hair?
6 A. That's accepted practice, yes, sir.
7 Q. Now, you mention quartz. What are quartz mineral
8 grains, or what would that mean to a non expert in
9 microscopy in trace evidence?
10 A. The presence of the quartz, which is a component of
11 sand or soil, suggests -- as well as the grass and the
12 leaves, suggests that the diet of the animal was outdoor,
13 eating grass or eating near the ground. That's what that
14 evidence suggests, as opposed to finding a lot of corn
15 starch, which would suggest that the animal might be
16 grain fed inside a barn.
17 Q. So in other words -- I just want to make sure I
18 understand it. At some point in time the cow that
19 produced that feces had eaten some dirt?
20 A. Correct.
21 MR. BOGGS: One second, Judge, please.
22 I have no further questions at this time,
23 Mr. Hollifield. Please answer any questions that
24 Mr. Hanna or his team might have.
25 CROSS-EXAMINATION

1 BY MR. HANNA:
2 Q. How you doing, Mr. Hollifield?
3 A. Okay. Thanks.
4 Q. Is it Holyfield (ph) or ---
5 A. Either one.
6 Q. Okay. Every time I hear Hollifield I think of
7 Evander Holyfield, the boxer. Okay. Just I want to kind
8 of cover probably some of the same ground but I'll be as
9 brief as I can. First of all, I understand that you did
10 not collect the hairs nor the fecal material off the
11 motorcycle until approximately one month after the
12 accident; is that correct?
13 A. I don't know that I have the actual date of the
14 accident.
15 Q. Assume the accident to have been on July the 24th
16 of 2008.
17 A. Yes, sir, that would be correct because this was
18 August 29th of '08. Yes.
19 Q. So a little over a month. And the collection
20 process took place at a fellow named Terry Burdette's
21 garage?
22 A. That's correct.
23 Q. And just so you're clear, you don't know how the
24 motorcycle got to that garage, do you?
25 A. I have no idea.

1 Q. Okay. You have no idea who may have had access to
2 the motorcycle prior to the time you examined it,
3 correct?
4 A. No. It was located indoors but it was in an open
5 garage area when I arrived.
6 Q. Okay. And in essence what I understand your
7 testimony to have been is you examined this hair and
8 determined it came from cow, right?
9 A. That's correct.
10 Q. Isn't it true that based upon the investigation
11 that you have done so far in this case that it is not
12 possible to determine which specific cow the hair you
13 collected came from; is that correct?
14 A. That's correct.
15 Q. And isn't it true that absent running a full
16 D. N. A. scan and having a sample cow to get a hair from
17 and then run a D. N. A. scan against what you have
18 collected it wouldn't be possible to determine the
19 precise cow?
20 A. That's right. I could identify from the hair the
21 species but I can't assign that to any one particular cow
22 without a D. N. A. exam.
23 Q. Okay. Do you know what part of the animal the
24 hairs you collected from came? Do you have an opinion
25 about that?

1 A. To a certain degree, yes. There are several
2 different types of hairs that are on animals, just in
3 general. There are whiskers like on a cat. You have
4 tail hair on a cow, which would be very, very course and
5 not like these.
6 But in general animals have two -- on their body
7 they have two types of hairs. They have what are called
8 guard hairs, and those are the hairs that we see visually
9 and those are the ones that you use to identify species,
10 whether it's dog, cat, cow, horse or deer.
11 The second type of hair is called a fur hair or
12 wool hair, and those are very short fine hairs that cover
13 the body and that serves as an installation against wet
14 and cold. So these hairs that I collected from the
15 motorcycle were all guard hairs, which are the outer
16 hairs that are used to identify the animal and species.
17 Q. And based upon your examination you could rule out
18 that it came from a tail; isn't that right?
19 A. That's correct. They are not from the tail of a
20 cow.
21 Q. Understood. And you didn't find any -- other than
22 the hair and fecal material you didn't find any blood or
23 any other type of body fluid on that bike, did you?
24 A. No, I didn't. I didn't see any blood or any body
25 tissue.

1 Q. And just so we're clear, of the hairs you collected
2 all the ones you looked at were brown, correct?
3 A. Of the 25 I looked at they were all brown. Yes,
4 sir.
5 Q. You did not find any black hairs when you got
6 there?
7 A. No, sir.
8 MR. HANNA: Okay. I have no further questions.
9 Thank you very much.
10 THE COURT: Any redirect?
11 MR. BOGGS: Just briefly.
12 REDIRECT EXAMINATION
13 BY MR. BOGGS:
14 Q. Did you verify that the motorcycle that you
15 inspected, that he was just asking, that it was the
16 motorcycle involved in the accident?
17 A. I recorded the V. I. N. number and tag number and
18 the odometer display so that that could certainly be
19 matched to whatever motorcycle is in question.
20 Q. And I think you mentioned it earlier, did you --
21 you took pictures as you were doing this?
22 A. I did.
23 Q. To record everything that Mr. Hanna and I had asked
24 about?
25 A. Yes. I took photographs at the garage of various

1 parts of the motorcycle, including those things I just
2 mentioned.
3 Q. And did you incorporate those into your report?
4 A. I did.
5 Q. Or did you write a report?
6 A. Yes, I did.
7 Q. Based on your investigation of this issue?
8 A. I did.
9 Q. Okay. And did you incorporate those photos into
10 the report?
11 A. Yes, I did.
12 Q. And did you bring that report with you?
13 A. I did.
14 MR. BOGGS: And, Judge, I would ask that we be
15 allowed to move this report into evidence?
16 MR. HANNA: Again, I think that the substance of
17 his testimony has been testified to on direct and on
18 cross. I believe that the report itself is not proper
19 evidence to go into the jury.
20 THE COURT: All right. Let me see it.
21 (WHEREUPON, the document was handed to the Court.)
22 THE COURT: I think I'll allow it to go in.
23 (WHEREUPON, Plaintiff's Exhibit Number 38, a
24 Report, was marked and admitted into evidence.)
25 BY MR. BOGGS:

1 Q. Now, Jeff, you mentioned, I think, Mr. Hanna
2 testified touched upon it, if not I still want to ask
3 you, the hairs that you found and pulled, and I think
4 they are reflected in figure 24 of your report on page
5 six?
6 A. Yes, sir.
7 Q. And can you describe what that picture is of?
8 A. Yes. Figure 24 is a photo of the underneath side
9 of the motorcycle and what it shows is a tuft of hair,
10 like a clump or several hairs twisted together that are
11 wedged up into one of the crevices underneath the bike.
12 Q. And also in your report on same page, figure 22 and
13 23, what do those show?
14 A. Figure 22 reflects hairs that are on the fender of
15 the motorcycle. Figure 23 again reflects some hairs that
16 are wedged up into the crevices underneath the
17 motorcycle.
18 Q. And based upon your experience and your expertise
19 in trace evidence were you able to form an opinion about
20 how those hairs were attached to the motorcycle?
21 A. Well, they were -- they had to be ---
22 MR. HANNA: I believe this would be outside the
23 scope of our cross-examination and not proper subject for
24 redirect.
25 MR. BOGGS: I believe -- well, I'm sorry.

1 THE COURT: I tend to agree with him.

2 MR. BOGGS: He would be subject to recall until --

3 and I'm still -- I mean, do we need to talk over there?

4 It would be a brief conversation.

5 THE COURT: All right. When was the last time we

6 had a break, ma'am? Do you all need one?

7 THE FOREPERSON: We're okay.

8 THE COURT: All right.

9 (WHEREUPON, a sidebar was had.)

10 BY MR. BOGGS:

11 Q. In general, Mr. Hollifield, do the pictures in your

12 report accurately reflect what you found and did you

13 report them as such?

14 A. They do.

15 MR. BOGGS: Okay. No further questions.

16 Permission to publish, Judge?

17 THE COURT: Yes, sir.

18 MR. HANNA: No further questions from the defense.

19 MR. BOGGS: Judge, the plaintiff calls Jimmy Miller

20 to the stand.

21 JIMMY W. MILLER, after having been duly

22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BOGGS:

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

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

1 Q. Okay. So whenever he moved in you moved in?
2 A. Correct.
3 Q. Same length of time. Now, just because we've
4 talked about it when you haven't been here and just so
5 you know, all right, this black line has been testified
6 to be Burdette Road, which you just confirmed. Okay?
7 A. Okay.
8 Q. And that's your house up there?
9 A. Yes.
10 Q. Okay. We have shown that Mr. Darby lives where it
11 says JD-2. Can you see that?
12 A. Yes.
13 Q. And do you know that without me tell -- did you
14 know that without me telling you ---
15 A. Yes.
16 Q. --- where Mr. Darby lives? And can you point out
17 Mr. Darby in the courtroom.
18 A. (Indicated).
19 Q. He was hiding from you. Is that him?
20 A. Yes. He had his hand over his face and I couldn't
21 see him.
22 Hi, Wayne.
23 Q. Now, I want to tell you that we've come up with
24 names for pastures and the one next to Mr. Darby's house
25 we called JD-1.

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

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

1 Q. Excuse me, Mr. Miller.
2 A. Yes.
3 Q. Will you just say, like, the exhibit number and
4 just a brief description.
5 A. Okay. Exhibit 26.
6 Q. Yes.
7 A. Okay. These are cows in the next-door neighbors
8 yard, the Zowitski's (ph).
9 Q. Okay. Do you recall what date that was?
10 A. The 21st of June.
11 Q. Okay. 2008?
12 A. Yes.
13 Q. Okay. And how do you know that?
14 A. From the date stamp that's on the pictures from the
15 camera when they were taken.
16 Q. Okay. So since your deposition you went back and
17 you and Richard looked at your camera -- or at your
18 records and ---
19 A. Correct.
20 Q. Were you present when that photo was taken? Were
21 you at your house?
22 A. I believe I took these pictures. Okay. Exhibit 26
23 and 27, I believe I took those pictures.
24 Q. Okay. Is it a camera that you share with
25 Mr. Marshall?

1 A. Yes.
2 Q. Okay.
3 A. So either one of us could have taken the picture
4 but I think these two pictures I may have taken.
5 Q. Were you both there that day?
6 A. Yes.
7 Q. Okay. Now, again, go through Number 27. It
8 appears to be a bunch of cows. Do you recognize where
9 they are?
10 A. Yes.
11 Q. And where is that?
12 A. That's on the south side of the Zowitski's
13 property.
14 Q. Okay. And the Zowitski's are your next-door
15 neighbors ---
16 A. Correct.
17 Q. --- as you go from your house towards Mr. Darby's
18 -- or, excuse me, towards Dials Church Road?
19 A. Correct.
20 Q. And Number 28, the one that shows a cow and the
21 car, whose car is that?
22 A. That's Richard's Chevy.
23 Q. So is that cow on your property?
24 A. Yes.
25 Q. Now, you don't know whose cows these are, do you?

1 A. No.
2 Q. I mean, do you know what a cow tag is?
3 A. Yes.
4 Q. Okay. Do you see any cow tags on those -- on that
5 particular one, particular cow?
6 A. I do not.
7 Q. Okay. Going back to Number 27. Are there any cow
8 ear tags readily apparent?
9 A. No.
10 Q. On any of the cows?
11 A. There could be on the closest one here. There
12 seems to be a spot on the ear but I can't see if it's a
13 tag or not.
14 Q. In general do you recall with your own eyes without
15 these pictures seeing many cow ear tags on that day?
16 A. I can't recall.
17 Q. Okay. Fair enough.
18 A. It's something I wasn't looking for.
19 Q. I got you. Number 29, can you identify where this
20 cow is?
21 A. It's in our front yard.
22 Q. Okay. And Number 30 looks like two, three cows.
23 Can you identify where those are?
24 A. Those are in the front of the house.
25 Q. Okay. And Number 31 looks like one, two, three,

1 four, five, six, maybe six cows?
2 A. Correct.
3 Q. Can you identify where those are?
4 A. Those are directly in front of the house.
5 Q. All right. Now, are you a cattle farmer?
6 A. I am not.
7 Q. Okay. So this isn't your cattle farm, right?
8 A. No, it is not.
9 Q. Now, Number 32 looks like a cow. Where is that
10 cow?
11 A. The cow is directly on top of the flower bed in
12 front of the house.
13 Q. And all these were 6-21-08?
14 A. Correct.
15 Q. All these pictures?
16 A. Yes.
17 Q. Now, on Number 33, can you identify the road that
18 the cows are on?
19 A. That's Burdette Road.
20 Q. And there's a white cow in the middle of the road,
21 or lighter colored cow. Is it facing back towards Dials
22 Church Road?
23 A. Yes. They are heading down the hill where the
24 stream is.
25 Q. Okay.

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

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

1 Q. Okay. In the year prior to the accident, so from
2 July 25th, '07 through July 24th, '08, had you had cows
3 out in the road before ---
4 A. Yes.
5 Q. --- this date, 6-21-08?
6 A. Yes.
7 Q. All right. Only on those occasions, during that
8 one year time span, had you attempted to call who you
9 thought to be the owner of the cows?
10 A. Yes. Well ---
11 Q. I'm sorry.
12 A. During that period of time?
13 Q. Yes.
14 A. No.
15 Q. Did you -- well, let me ask you this. Based upon
16 cows being out before did you formulate an opinion of
17 whose these cows belonged to?
18 MR. HANNA: Objection, calls for speculation.
19 THE COURT: As to the form of the question I'll
20 sustain. Rephrase your question.
21 MR. BOGGS: All right.
22 BY MR. BOGGS:
23 Q. Where did the cows go -- you said you chased them
24 -- or, excuse me. You and Richard walked behind them,
25 right?

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

1 Q. Okay. Did you follow the other cows that went down
2 the road?
3 A. I'm sorry. There were so many occasions that
4 happened with this I have to put things in the timeline
5 that you are looking for.
6 Q. Okay. Do you remember your deposition recently?
7 A. Yes.
8 Q. Okay. Have you on occasion walked behind cows that
9 you've seen loose down Burdette Road towards Dials Church
10 Road?
11 A. Yes.
12 Q. Okay. On this specific occasion, which was
13 6-21-08, do you recall if you walked behind any of the
14 cattle that were loose down towards Dials Church Road?
15 A. Yes.
16 Q. Okay. Once you got down, I believe there's been
17 testimony as to a bridge on Burdette Road.
18 A. Yes.
19 Q. Okay, as you go back towards Dials Church.
20 A. Correct.
21 Q. Did you walk with the cows on this particular
22 occasion across the bridge?
23 A. I did not cross the bridge. I just went down to
24 the bridge.
25 Q. Did the cows cross the bridge?

1 A. Some of them.
2 Q. Okay. Where did some of the cows go that didn't
3 cross the bridge?
4 A. There were a couple of cows that did not want to go
5 across the bridge.
6 Q. Okay. Did you hit them?
7 A. No.
8 Q. Did you yell at them?
9 A. No.
10 Q. Did you ask them nicely to move?
11 A. Well, I refer to them as the girls.
12 Q. Okay. Fair enough. And what did the girls do?
13 A. The girls finally decided that they didn't like my
14 presence there, so they bolted into a piece of pasture
15 just before the -- just before the bridge on the
16 left-hand side.
17 Q. Okay.
18 A. And just plowed through the fence.
19 Q. All right. Now, you said some of them went that
20 way, right?
21 A. Right.
22 Q. What kind of fence was there?
23 A. Old barbed wire fence.
24 Q. Okay. Now, what did the others that didn't go
25 through that fence, what did they do?

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

1 saw cows out?
2 A. There were numerous times.
3 Q. Okay.
4 A. That I saw cows. Usually the cows if they weren't
5 in our yard we kind of herd them out to Burdette and they
6 would head down to where the pastures are.
7 Q. Okay.
8 A. And the reason that I didn't go across the bridge
9 is because I just -- you know, I just assumed that they
10 were Wayne Darby cows, and after calling 911 they were in
11 a safer place there than they were in the neighborhood
12 where there are children playing. So we just -- that's
13 as far as I went, as far as my responsibility.
14 Q. Okay. Now, I asked you, after you walked down
15 there did you see cows out as you were traveling on
16 Burdette Road, during that year?
17 A. Yes.
18 Q. On the separate occasion than the one with the
19 pictures?
20 A. Well, several times I was driving.
21 Q. Okay.
22 A. I wasn't walking but I was driving.
23 Q. During that time span ---
24 A. Yes.
25 Q. --- that I've been asking about?

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

1 THE COURT: I understand your beef.
2 MR. BOGGS: It slipped. Finally it slipped. I
3 think we're all too tired for humor.
4 BY MR. BOGGS:
5 Q. Okay. You were taking about herding -- or you saw
6 cows going from one pasture to another?
7 A. Correct.
8 Q. During the time frame I'm asking?
9 A. Yeah.
10 Q. All right. Describe what you saw. You brought
11 that up when I asked if you saw a cattle out. So
12 describe what you saw.
13 A. On occasion the cows would be herded from either
14 the left-hand pastures to the right-hand pastures, and
15 vice versa.
16 Q. As you're facing Dials Church Road, leaving your
17 house and heading to Dials Church Road?
18 A. Heading up the hill. There's several gates. Some
19 of them are just -- they are wire gates, and the cows
20 would be herded from the left-hand pasture to the
21 right-hand pasture and when this happens occasionally
22 there's a stray that heads down the road, which I've
23 encountered coming up the hill when they are going from
24 one pasture to the other.
25 Q. Okay. Have you had occasion to see -- be on the

1 road when you see Mr. Darby participating in the movement
2 of the cattle?
3 A. He's generally in his truck.
4 Q. Okay. So when you've seen him were the gates open
5 or closed?
6 A. Well, to get the cows from one pasture to the other
7 they have to be open.
8 Q. Fair enough. Now, was there a guard put up between
9 the gates, between one pasture and another?
10 A. You mean across the road?
11 Q. Yeah.
12 A. No.
13 Q. All right. When the gates are open do they form a
14 corral when they open? I mean, you know, is there a
15 barrier to where cows can't go up and down the road, if
16 they wanted to?
17 A. No.
18 Q. Okay. And, now, did you -- were you exactly right
19 there waiting on this to be completed?
20 A. Well, there were times that the gates were open and
21 there were no cows going across it.
22 Q. Okay. Did you see cows in both pastures when the
23 gates were open?
24 A. Yes.
25 Q. Did you see Mr. Darby from the road?

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

1 and that sort of thing.
2 Q. In the year prior to the accident did you have
3 occasion to call Mr. Darby for any reason?
4 A. No.
5 Q. Okay. In the year prior to the accident did you
6 notice any problems with Mr. Darby's cattle that were
7 easily noticed by you as you were traveling up and down
8 the road?
9 A. No.
10 MR. BOGGS: He said, No.
11 MR. HANNA: Okay.
12 A. Not during that time frame.
13 Q. Okay. How often did you -- you said you walked
14 during the nicer weather months. Is that what you said?
15 A. Well, as long as the weather is reasonable I go for
16 a walk up and down the road and pick the trash up and
17 that sort of thing.
18 Q. Including the year prior to the accident?
19 A. Yes.
20 Q. And how often do you think you walked during that
21 year?
22 A. Anywhere from three to seven times a week.
23 Q. And when you walk did you -- I mean, Burdette is a
24 single -- almost -- how big is the road?
25 A. Two trucks cannot pass on it without somebody

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

1 cows go across the stream and over into that other area
2 so...
3 Q. Was the condition of the fencing on the left side
4 better or worse or the same as the condition of the
5 fencing on the right side?
6 A. Well, neither one of the fences were in great
7 shape, but the one on the left side ---
8 Q. Go ahead.
9 A. It was in disrepair a lot of times.
10 Q. During the year that I'm asking about?
11 A. Yes.
12 Q. Okay. And when you say disrepair, what did you
13 see?
14 A. Actually saw the fence on the ground.
15 Q. Okay. And when you saw the fence on the ground or
16 problems that you say is disrepair would that -- how long
17 would that -- those problems, how long would those
18 problems stay there; do you recall?
19 A. Well, the section that's up by the Zowitski's, that
20 continued. That could continue for months on -- in fact,
21 I went and put the fence back -- you know, tried to stand
22 it back up.
23 Q. Does that have barbed wire?
24 A. It's a combination of -- it's old barbed wire.
25 Q. Okay.

1 A. And I think there may be some just plain wire
2 involved in some of it.
3 Q. And I think what you're talking about has been
4 marked with the red line on up across the bridge.
5 A. Correct.
6 Q. I'd ask you, please, to restrict your testimony to
7 on the Dials Church side of the bridge, okay?
8 A. Okay.
9 Q. Just because -- well, just please restrict your
10 testimony. So the general disrepair that you mentioned
11 earlier, were you talking about on the Dials Church side
12 of the bridge as well?
13 A. Yes. It wasn't as severe as the other ends.
14 Q. Okay. When you saw disrepair, what you saw was
15 disrepair, what did you see?
16 A. Gaps in the fence.
17 Q. Okay.
18 A. Where the fence was either on the ground or part of
19 it was broken loose.
20 Q. Okay. When you saw that, say on the day you saw
21 it, call that day one, did you have occasion to go back
22 on a later day, still within this year, and see the same
23 occurrence or the same disrepair?
24 A. Yes.
25 Q. Okay.

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

1 really, when you are walking you have a chance to see
2 things that you can't see it when you're whizzing by in a
3 car ---
4 Q. Yeah, but if you were driving along and looking at
5 the fence to make sure it was good, well, all I'm saying
6 is from where you were standing you could be in a car and
7 see it, right?
8 A. Yes.
9 Q. Okay. I mean, you weren't walking up by the fence,
10 right? You were on a walk in the middle of the road --
11 or in the road?
12 A. Well, if you're picking trash up you're just a
13 matter of feet from the fence and that's generally how,
14 you know.
15 Q. Okay. Fair enough but -- I'm not trying to trick
16 you. I just want to know. Can what you saw that you
17 deemed to be disrepair, could it have been seen if you
18 were standing in the road looking at the area that you
19 say is dis ---
20 A. Oh, yes.
21 MR. HANNA: Objection, speculation.
22 THE COURT: Asked and answered.
23 MR. BOGGS: He answered. I'm done. Thank you.
24 Oh, wait a minute, Judge. I apologize.
25 BY MR. BOGGS:

1 Q. When you saw the cows in the road on 6-21-2008 did
2 you believe them to belong to any certain person, your
3 personal belief?
4 A. I believe they belonged to Wayne Darby.
5 Q. Why didn't you call him directly?
6 A. Because prior to that date there was several
7 incidences where I had called Mr. Darby and he didn't
8 return the call.
9 MR. BOGGS: No further questions.
10 THE COURT: Cross-exam.
11 CROSS-EXAMINATION
12 BY MR. HANNA:
13 Q. Mr. Miller, on the time that you testified to a few
14 moments ago about the pictures there on June 21, 2008, do
15 you know from where those cows came, how they escaped the
16 enclosure?
17 A. That's two questions. Where did they come from? I
18 don't know.
19 Q. I'm clarifying. I wasn't clear. What I mean to
20 ask is the second question. Do you know how they escaped
21 the enclosure?
22 A. No.
23 Q. So it's fair to say you don't know if a fence -- if
24 a tree had fallen on the fence?
25 A. No.

1 Q. Okay. The occasions when you described the herding
2 technique and a cow getting out, do you recall that
3 testimony?
4 A. Yes.
5 Q. Do you know whether or not or can you say whether
6 or not Mr. Darby had been moving any cow in that manner
7 on or about July the 24th, 2008?
8 A. Explain about.
9 Q. Start on that date.
10 A. No.
11 Q. The day before?
12 A. I can't recall what went on on a specific --
13 whether there was a problem or whether he was herding
14 cattle on that particular date or not. I can't recall.
15 Q. The point is, you can't say with any degree of
16 certainty at all that he was herding any cows on that
17 day, correct?
18 A. No.
19 Q. Okay. Do you know whether or not Mr. Darby had a
20 cow loose on July the 24th of 2008?
21 A. No.
22 Q. Do you know whether or not the fence around the
23 Cooley Road pasture down by Dials Church and Cooley Road
24 had any defect, breach on or about July 24, 2008?
25 A. No.

1 MR. HANNA: That's all the questions I have of this
2 witness. Thank you very much.
3 REDIRECT EXAMINATION
4 BY MR. BOGGS:
5 Q. When the cows were out, including that date, did
6 anyone come claim the cows or say they were missing any
7 cows?
8 A. No.
9 Q. Can you say the fence on the Burdette Road had
10 breaches in it on July 2008?
11 MR. HANNA: I'm going to object that that's outside
12 the scope of anything asked on direct examination.
13 MR. BOGGS: I think we already talked about the
14 stuff. I mean ---
15 MR. HANNA: That's you talked about ---
16 THE COURT: I think he talked about whose cows they
17 were.
18 MR. HANNA: I was very careful.
19 MR. BOGGS: Wait a minute. Woah, woah. Are you
20 objecting to my first question or this question?
21 THE COURT: That question.
22 MR. HANNA: I'm not objecting to the one you asked
23 already. I'm objecting to the one he hasn't answered
24 yet.
25 THE COURT: The condition of the fence on the date

1 of the incident, I think is question.

2 MR. HANNA: Yes, it is. I don't think I mentioned

3 the Burdette Road pasture.

4 THE COURT: You didn't.

5 MR. BOGGS: My recollection is that he did talk

6 about it. I'll move on, Judge. No worries. Nothing

7 further.

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

9 Let's take a break. You all go out and take a few

10 minutes and relax. Don't discuss the case. I don't let

11 you do that yet.

12 (WHEREUPON, the jury leaves the courtroom at

13 approximately 4:30 p.m., and a brief recess was taken.)

14 MR. BOGGS: I don't have a live witness that I can

15 fit into the remaining time.

16 THE COURT: All right.

17 MR. BOGGS: But I do have some testimony by

18 deposition that we could read, and I know that's not

19 exciting. It's Mr. Harrison who can't be here because

20 he's not in good health.

21 MR. HANNA: I can go ahead and give a preemptive

22 strike. When this fellow was -- I don't know what part

23 they want to read and exactly the part of what I believe

24 they want to read is where they went through a litany of

25 questions about have you seen cows before, and basically

1 all he could say was that he had seen in the past 10
2 years more than five but less than 20, and that's the
3 extent of his specificity in his testimony.
4 MR. BOGGS: He's kin to Mr. Graham and Mr. Hays,
5 but, you know, Judge, it wasn't specified but at the same
6 time he had a chance to cross-examine him. He didn't ask
7 did you -- well, I can't remember what you asked. So I
8 don't want to mislead, and it wasn't Mr. Hanna. It was a
9 prior lawyer with their firm but --
10 THE COURT: The horse already got out of the barn
11 that time.
12 MR. BOGGS: Sir? The horse had already gotten out
13 of the barn that time? Yeah, that's funny.
14 MR. HANNA: I'll be honest with you, I think that
15 at the time it never dawned on us that we would depose
16 every soul within a three-mile radius of the case and nor
17 did I know the extent of their testimony.
18 You know, we hadn't thought -- you know, a lot of
19 the arguments I'm raising now did not come into my pee
20 little brain until I realized the extent of how many
21 people were going to be trying to say stuff.
22 THE COURT: All right. So the substance of his
23 testimony is that he lived out there for numerous years
24 and seen cows out from time to time but he was never
25 restricted as to do you have any specific memories of the

1 last 12 months and offered that question because that
2 question was never fashioned to him that way, but he'd
3 seen cows out there before on the road?
4 MR. BOGGS: Yes, sir.
5 MR. HANNA: He basically said -- I can read to you
6 what exactly. About how many times have you seen cows
7 out in that area? That was the question.
8 Answer: Well, I hardly know. Every once in a
9 while but I just don't know you often.
10 Okay. Well, I mean, is it more than five?
11 He says, Over how many years?
12 He says, Well, let's say in the last 10 years, do
13 you have any?
14 He says, I imagine I've seen them that many times.
15 Have you seen them more than five, have you seen
16 them as many as 20 times in last 10 years.
17 He says, No.
18 Not as many as 10. All right. When you see cows
19 out in the road, the times that you've noticed, were they
20 in the vicinity of Cooley Road?
21 I've seen them out there, yes.
22 Have you seen them in any other location?
23 Yes.
24 Where have you seen them?
25 Down the creek towards Cooley. Further down Cooley

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

2 MR. BOGGS: The question I'd like to start with is

3 page seven, question four. Where do you live in relation

4 to accident?

5 Approximately one quarter or maybe a little better

6 than that on the left-hand side of the road.

7 And how long have you lived there?

8 About 55 years.

9 So you're familiar with everybody that's in the

10 area?

11 He nods head.

12 And do you travel Dials Church Road on a regular

13 basis?

14 Yeah.

15 How many times a day would you say you go up and

16 down Dials Church Road?

17 Maybe two or three.

18 Two or three times a day. All right, sir. If

19 you're coming from Dials Church and you're coming in that

20 direction, which is north, could you tell me what is on

21 the left-hand side of the road at the accident scene?

22 Just before you get to Cooley Road there's a fence,

23 pasture fence, and pastures all the way, all the way up

24 to my house nearly. There's one house in between the

25 scene and my house. Before you get to my house there's

1 one house more on the left.

2 At the scene of the accident going that direction

3 on the left-hand side, the pasture you described, as you

4 travel this road two or three times a day is it normal to

5 see cows in that pasture?

6 Yeah.

7 Do you have any knowledge as to whose cows those

8 belong to?

9 They belong to Darby.

10 Do you know anybody else who has cows in that

11 immediate area.

12 No.

13 Honestly, I think that would be less offensive to

14 Geov. I mean, maybe ---

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

16 MR. BOGGS: Problem with that.

17 MR. HANNA: I mean, it's cumulative but I don't --

18 but other than that, no.

19 MR. BOGGS: Have you seen in the general area of

20 Cooley Road and Dials Church Road in your 55 years since

21 you've lived, have you seen cows out of this pasture that

22 you described on the left-hand side?

23 I have.

24 And were those cows, where were they in relation to

25 the road?

1 Well, they were between the fence on the shoulder
2 of the road.
3 And about how many times have you seen cows out in
4 this area?
5 Well, I hardly know. Every once in a while but I
6 don't know just how often. Then it goes on over the
7 years that Geov just read.
8 Judge, I'm fine if I could read to every once in a
9 while. I don't know just how often.
10 He's lived there 55 years. And, I mean, I know
11 it's not specific but it --
12 THE COURT: All right. If we limit it to that what
13 do you think about that, Mr. Hanna?
14 MR. HANNA: I mean, you know...
15 THE COURT: Let me ask you this. I mean, let me
16 rephrase that. Is this your last witness regarding the
17 cows and their behavior in the road?
18 MR. BOGGS: Yes, sir, I think. I mean, barring
19 anything that comes up I think I've got two experts and
20 my client tomorrow.
21 THE COURT: Okay. I mean, that probably wouldn't
22 influence -- this is the last one of the neighbors?
23 MR. BOGGS: I don't have any more of these type
24 people.
25 MR. HANNA: I guess, again, I'm concerned that by

1 saying I agree I'm somehow, you know -- you know how the
2 record is when you read appellate cases but, you know,
3 assuming something is coming in, okay, that's pretty --
4 you know, that's not all that offensive. I'll be honest
5 you.
6 THE COURT: Okay.
7 MR. BOGGS: And, honestly, Judge, before the trial
8 I told them Mr. Harrison is very sick and I plan to read
9 his testimony, and not that he's -- I plan on using this.
10 I don't have him here. Otherwise, I could have him here
11 and get more specific because at the time of the
12 deposition we didn't. And I know Geov didn't know what
13 your ruling would be but I think it's benign, and I'm not
14 going to -- obviously, I can't go any further. It's
15 there.
16 THE COURT: All right.
17 MR. BOGGS: So I propose ---
18 MR. HANNA: You're stopping at 17?
19 MR. BOGGS: I'm sorry?
20 MR. HANNA: Seventeen, is that what line you said?
21 MR. BOGGS: I'm stopping at line 25 on page 8, the
22 whole page 8.
23 MR. HANNA: Every once in a while. Okay. Got it.
24 THE COURT: It stops there at every once in a
25 while.

1 MR. HANNA: And is that it? Then I can read my
2 cross and that's it?
3 MR. BOGGS: Well, the sentence is, Every once in a
4 while, but I don't know just how often ---
5 THE COURT: Yeah. Okay.
6 MR. BOGGS: --- period.
7 MR. HANNA: And that's all you want to proffer?
8 MR. BOGGS: No. I want more but I'm willing to
9 give that if we just move it along.
10 MR. HANNA: What I mean is ---
11 MR. BOGGS: Oh, it's not a proffer. I want to read
12 it to the jury.
13 MR. HANNA: I am tired ---
14 THE COURT: What all you intend to present. What
15 he meant was is that all you intend to present through
16 this deposition?
17 MR. HANNA: Yes, that's exactly. Thank you.
18 THE COURT: You need a Red Bull, too.
19 MR. BOGGS: I need something in it. No, just
20 kidding. With it. Not in it.
21 THE COURT: Who do you want to read that?
22 MR. HANNA: I prefer if I would be allowed to read
23 -- you know, if I could read the cross that we did. I
24 can just read the question and answer, and he do it, too.
25 MR. BOGGS: What part are you going to read?

1 MR. HANNA: I'm going to read starting on page 16
2 starting with line 10, through page 17 line 21.
3 MR. BOGGS: If we can read the follow-up then on
4 page 18 line 23, I know Mr. Austin. And we can say, I
5 know Mr. Hanna has asked you about several other people
6 in the area that have cows and you know where most of
7 those people are located, correct?
8 He nods his head.
9 Have you ever seen cows out at any of those other
10 locations?
11 No, I don't think I have.
12 So I rehabilitated what he talked -- I think it's
13 -- that's all I would want to say.
14 MR. HANNA: That's fine. That would clearly be
15 within the course of what scope of what I'm about to ask.
16 THE COURT: All right. We're pretty clear as to
17 which Mr. Hanna is going to read, present.
18 MR. HANNA: Yes. I understand what he's going to
19 read, and subject to what we were talking about before
20 I'm okay.
21 THE COURT: Is he okay with what you want to
22 present?
23 MR. HANNA: As I understood it he's okay as long as
24 he can read that part in the redirect; is that right?
25 The God's honest truth is, Your Honor, I think what he's

1 really deciding is this stuff -- I don't think there's an
2 objection to the admissibility of it. It's whether or
3 not he wants to really read -- I think he's trying to
4 decide do I want to read the first part enough to let me
5 say what I asked, which is about other farmers in the
6 area. Does that make sense?
7 MR. BOGGS: Can I have one moment to talk to my
8 client for once during the trial?
9 MR. HANNA: It's going to be a different kind of
10 cross. I'm going to ask, Do you know another guy down
11 the road who's got cows, you know another guy? We're
12 eventually going to hear it anyway.
13 THE COURT: Well, you know, if someone leaves the
14 gate open and you open the door so-to-speak all kind of
15 things will come out.
16 MR. BOGGS: We're good. I'm good with it.
17 THE COURT: All right. How do you all intend to
18 present that? You going to read it and then...
19 MR. HANNA: Can we read our own questions?
20 THE COURT: Sure.
21 MR. BOGGS: That's fine.
22 MR. HANNA: You okay with that?
23 MR. BOGGS: Geov, can you give me your exact start
24 and stop?
25 MR. HANNA: Yes.

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

2 MR. HANNA: I didn't either but I'm starting here

3 on line 10.

4 MR. BOGGS: On page 16?

5 MR. HANNA: Yes.

6 MR. BOGGS: Do you know a gentleman?

7 MR. HANNA: Yes. And then stopping where he says

8 after right -- 21 on the next page, because the next few

9 questions he said he didn't know ---

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

11 right.

12 THE COURT: I would offer my law clerk to read his

13 park but she doesn't sound like an elderly man.

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

15 to question?

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

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

18 answer.

19 THE COURT: Okay. Bring the jury and we'll be done

20 for the day. This shouldn't take very long, should it?

21 Ten minutes?

22 MR. HANNA: If that.

23 (WHEREUPON, the jury enters the courtroom at

24 approximately 5:04 p.m.)

25 THE BAILIFF: All present, Your Honor.

1 THE COURT: All right. I'm going to tell the jury
2 what we're going to do.
3 All right. Ladies and gentlemen, we've got a very
4 short witness or a presentation of a witness. It's an
5 elderly gentleman who lives in the community. I don't
6 recollect his name. It doesn't matter, the lawyers will
7 tell you. Since he is very, I'm told ill, unable to
8 attend, his deposition was taken. So they have the sworn
9 testimony of several months ago, or some period of time
10 ago, questions he was asked by both attorneys.
11 So the attorneys are going to present the questions
12 they asked and the answers to which he responded, which
13 were done before a court reporter, just like Ms. Hanks,
14 and under oath. And so it won't take very long, and that
15 will be our last witness today and we'll go home and
16 start back in the morning. All right.
17 Mr. Boggs, introduce your witness.
18 MR. BOGGS: Thank you, Your Honor. May it please
19 the Court. We call, by way of reading deposition,
20 Mr. John William Harrison who was deposed on May 1st,
21 2009 under oath for purposes of giving a deposition to
22 record his testimony in this case. And I will read
23 beginning on page seven at line four.
24 (WHEREUPON, the deposition of John W. Harrison was
25 read into the record.)

1 MR. BOGGS: That's it. Ask that he be excused.
2 THE COURT: I think we can do that.
3 All right. That's it for the day. What time do
4 you want to start in the morning, nine again?
5 (WHEREUPON, various jurors nodded their heads.)
6 THE COURT: Nine again. All right. We'll see you
7 all in the morning. Be in the jury room before nine.
8 We'll get started at nine as sharply as we can. I'll
9 have my candy replenished. Please remember, don't begin
10 discussing the case. Thank you all so much. Have a good
11 evening.
12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 5:11 p.m.)
14 THE COURT: The court reporter has put in specific
15 lines and pages of the testimony you presented. Do you
16 all want to put the original deposition in to have that
17 in her possession?
18 MR. BOGGS: Yes, that would be great.
19 (WHEREUPON, Court's Exhibit Number 7, the
20 Deposition of Mr. John William Harrison, was marked and
21 made a part of the record.)
22 THE COURT: All right. See you all.
23 MR. BOGGS: Judge, we've been thinking about how
24 we're going to preserve the masterpiece or present it to
25 the jury. I don't think there's any way for that plastic

1 to go in there. I have copied it to the best of my
2 ability with only one mistake that is not really -- I
3 mean, it's an extra line but it doesn't have -- can be
4 easily avoided.
5 I'm going to ask that Your Honor consider
6 submitting this to the jury along with either the big
7 board or a clean picture of the board. I don't know if
8 the court reporter wants the big demonstrative into
9 evidence.
10 THE COURT: She does not.
11 MR. BOGGS: Then I would suggest this copy, which
12 is, you know, copied what is on the transparency and a
13 clean copy. And I was just going to bring that up now.
14 THE COURT: I don't think that's going to be a big
15 issue. If it's an accurate depiction that Mr. Hanna and
16 Ms. Rains can review then we'll probably let that go to
17 the jury room as a substitute for the big board.
18 MR. BOGGS: All right. I'd like to leave it with
19 the court reporter at this time.
20 THE COURT: Have they looked at it?
21 MR. BOGGS: Yes, sir, they have, but I don't think
22 they've compared it yet but I just ---
23 THE COURT: Well, give them an opportunity to do
24 that. I don't want to put them on the spot. They can
25 have until in the morning.

1 MR. HANNA: Well, more than anything I want to
2 think about whether or not I want to voice an objection.
3 I have no objection to an aerial photo that's either that
4 big one or one just like it going in. I am still mulling
5 over whether or not I'm going to articulate some kind of
6 objection to the one he's been drawing on going in.
7 THE COURT: Well, think about it. I don't need to
8 rule on it right now.
9 MR. HANNA: I understood in the end -- I don't know
10 if we want to -- he was talking about proffering some
11 testimony as well. Do we want to do that real quick
12 before we all go home? It was Mr. Blackburn and the
13 fence grabbing deal, and then there was the photos that
14 Ms. Chapman took. I could care less if we do it now or
15 later. I just didn't know. I mean, while we already let
16 the jury go this may be the prime opportunity to do it,
17 as much as none of us want to be here anymore.
18 MR. BOGGS: On Ms. Chapman, all I have is this
19 photo. That's all. I mean, obviously I think Geov would
20 stipulate that she would show up, that she took the photo
21 on August 6th, 2008, and that she found a problem in the
22 fence, but subject to your prior ruling even though this
23 was two week s after the accident I would want it to come
24 in as Court's to be on the record.
25 As far as Mr. Blackburn, I think we'll wait until

1 they present their case because I might have an argument
2 that it could come in. I mean, you know, I don't know
3 yet.
4 THE COURT: All right. We'll do that.
5 MR. BOGGS: You want to put this in as ---
6 MR. HANNA: Please.
7 MR. BOGGS: Okay. So Chapman, I think we already
8 have another Court's exhibit. So this would be Court's
9 Exhibit 8.
10 THE COURT: Court's Exhibit 8, and basically that
11 is also consistent with my ruling the year before date of
12 incident.
13 MR. HANNA: Understood.
14 THE COURT: Out of those parameters nothing is in
15 intentionally.
16 (WHEREUPON, Court's Exhibit Number 8, a Photograph,
17 was marked and made a part of the record, and the trial
18 of this case was recessed for the day.)
19 Wednesday, February 2, 2011
20 THE COURT: All right. You all ready to go?
21 MR. BOGGS: Yes, sir. My next witness is one of
22 the experts that we talked about last Friday, the Ph.D.,
23 Dr. Worrell, and I just wanted to see if he had any
24 preemptive problems or if we need to put something on the
25 record instead of taking the jury back out.

1 MR. HANNA: Just as a reminder that my real beef
2 with this, the ultimate conclusion because it happened
3 next to his property that, you know, it must be his.
4 Again, I think the rest of what he's going to say as far
5 as -- you know, is okay. I just have a problem with the
6 expert -- I don't think that that's the proper -- that's
7 what the jury is here to decide and is not the proper
8 subject of expert testimony to basically just say well,
9 it must be his because it happened next to his property.
10 MR. BOGGS: I don't think he would -- I don't think
11 his testimony is going to be that it must be his. It's
12 going to be that proximity is a factor on a stray cow
13 because especially if it's sitting there eating, and that
14 based on his expertise and the facts that he's reviewed
15 in his experience is that it's more likely than not that
16 it was Darby's cow because it happened right beside
17 Darby's pasture.
18 MR. HANNA: Understood. I stand corrected. I
19 still -- that doesn't change my objection.
20 THE COURT: You still don't like it.
21 MR. HANNA: No. No. I think, again, I believe
22 that to be -- I think that they can elicit the testimony
23 from him and that they can argue -- that's exactly what
24 they intend to argue to the jury in the end and this is
25 not a situation where, you know, it required -- in other

1 words, it is my belief that expert testimony would be,
2 for instance, he could say that of the standard of care
3 for a cattleman is X and he breached it in this way, and
4 I believe that, but then to have him go on and say it's
5 most likely his cow, that is not the proper subject of
6 expert testimony.
7 Again, I know I'm, quote, splitting hairs here but
8 there's a difference between the two types of opinions,
9 okay. And the opinion of, it happened close to his
10 property so it more than likely is his cow, anybody can
11 think. You don't need an expert to tell you that.
12 THE COURT: Well, I mean, we had the young man
13 yesterday said cows won't go far.
14 MR. HANNA: I understand.
15 THE COURT: I mean, he said that, the young man.
16 MR. HANNA: And that's what he'll say.
17 MR. BOGGS: But he's an expert in cattle behavior
18 so when proximity is part of cattle behavior based on his
19 expertise then that's a conclusion that an expert can
20 make. If he doesn't like it he can bring in his cow
21 expert to say that that doesn't mean a thing, and he can
22 cross-examine him, but it doesn't mean that he's excluded
23 from giving an opinion.
24 MR. HANNA: Again, you know, I want to be clear
25 that I think there's a difference between an expert

1 testifying as to the ultimate conclusion to be drawn in
2 the case and an expert to say that someone was negligent
3 and the reason for which they did it, you know.
4 MR. BOGGS: Judge ---
5 MR. HANNA: That's the basis for our ---
6 MR. BOGGS: Judge, his expert that he's going to
7 call, in all likelihood, about traffic engineering is
8 going to opine that my client should have avoided the
9 cow. Under his theory he shouldn't come in because that
10 directly bears on the outcome of the case.
11 THE COURT: Well, I think an expert can give their
12 opinion, and his expert is in the field of the animals.
13 And he can't say conclusively beyond every doubt,
14 absolutely, those type of words, but more probably than
15 not I think I'll allow that, just with the same respect
16 the expert anticipated that was going to say that could
17 have avoided the accident by taking -- seemed like you
18 all -- did you all tell me early on in this case that you
19 had an expert that was going to come in and say if he
20 just let his hand off the motorcycle would have slowed
21 down enough and missed the cow? Where did I hear that?
22 Did I dream that up?
23 MR. HANNA: That's me.
24 THE COURT: All right. I remember that from ten
25 months ago.

1 MR. HANNA: And, again, all he's saying is -- and I
2 think that the types of -- I think that that is apples
3 and oranges and you'll hear what we're getting at. But
4 all my guy did was take what the plaintiff himself said,
5 put it into -- you know, if you were going this fast and
6 you see it from this distance can you stop? You know, in
7 other words, are you going to wreck before you stop or
8 not? And the calculations show that you could have
9 stopped, okay. That's all it shows.
10 And you do need an expert in order to have the
11 sufficient expertise to know what the calculation is and
12 to add it together. You know what I'm saying? A
13 layperson can't do that.
14 THE COURT: All right.
15 MR. HANNA: Whereas -- you know, again, I
16 understand your ruling. I just want to make sure for
17 protecting the ---
18 THE COURT: I'm going to allow both of them.
19 MR. HANNA: Well, I understand and I'm just --
20 again, I'm protecting the record only at this point by
21 saying I believe that the -- we have a case here, it's
22 the case of McBeth V. Mills in which basically it was a
23 slip and fall case and the expert tried to say that when
24 a woman is wearing high heels she wouldn't normally walk
25 across a certain type of ground, and I think that's no

1 different than -- and the Court said that's not proper
2 expert testimony, okay. You know, I mean, that's just
3 anybody could figure that.
4 THE COURT: And what field was this expert
5 qualified in?
6 MR. BOGGS: High heel literati, sassiness.
7 THE COURT: Some sort of husbandry, I guess.
8 MR. BOGGS: Future husbandry.
9 MR. HANNA: I think it had to do with the design of
10 the sidewalk and that some of thing.
11 MS. RAINES: He had some testimony about also
12 yellow, the yellow sidewalk and how your eye wouldn't
13 catch that. Oh, it was ergonomics. Those are the
14 factors I'm talking about. That's the way you see, the
15 way you move, kind of that field, is what he was
16 qualified in.
17 MR. HANNA: And we would, like in this case -- that
18 case is just ---
19 MS. RAINES: So people behavior instead of cow
20 behavior.
21 MR. HANNA: The record in McBeth v. Mills ---
22 THE COURT: And was it allowed?
23 MR. HANNA: No. The Court held that that was
24 improper expert testimony, that the guy was saying
25 something anybody could say. You know, and that's the

1 point I'm getting at here is that he could say I'm an
2 expert in cows and cows don't normally go very far and
3 this and that and the other. I'm not saying that's not
4 -- but to then go on and say I think in this case it more
5 than likely or not was his because it happened next to
6 his property, that is what I'm objecting to, particularly
7 when ---
8 THE COURT: Let me see that case. That's
9 interesting.
10 MR. HANNA: Particularly when there's no other
11 evidence of a breach in the fence and I'm going to bring
12 all that out that normally in these cases when ---
13 MS. RAINES: I apologize. I handed you the wrong
14 case. This is a Fourth Circuit Court of Appeals case.
15 That case has the same holding but the facts are
16 different in that case but still says an expert can't
17 testify as to common knowledge, something that's within
18 the propensity of the jury. They both have the same
19 holding. The facts that I just described were from the
20 Fourth Circuit Court of Appeals case.
21 MR. BOGGS: Judge, I can assure you in this
22 particular matter that my expert is not going to testify
23 that because the cow was there it had to be Mr. Darby's,
24 just because it was there. There's a reason why the cow
25 was there and that is based on his knowledge and he can

1 give an opinion, and the cow -- he's not going to talk
2 about high heels.
3 THE COURT: All right. Here's what I'm going to
4 do. I think these cases, understanding the common sense
5 thing, and I think your question you want to ask,
6 Mr. Boggs, is the common sense question. And so I'm not
7 going to allow that question of well probably not was it
8 his cow. You can ask everything up to that, but reading
9 this, reading these two cases it seems to me that that is
10 -- juries can't -- or don't need assistance with common
11 sense, is kind of the analysis.
12 Cows in the area, cows go through fences, cows get
13 out and eat more grass, cows were near the property, cows
14 don't wander far, all those sort of things to me it's
15 common sense, what you want to prove.
16 MR. BOGGS: Well, with all due respect, Judge, if
17 that's your ruling and that's common sense then any
18 defense by Mr. Darby that it was someone other than his
19 cow, because there's no other cows in the area, should
20 not be allowed. And that's why I think it's dangerous
21 not just -- and I'm not trying to -- I'm saying this
22 respectfully, Judge.
23 THE COURT: I understand. You all have been very
24 respectful. I mean, you all have very diverse opinions
25 as to the law but very consistent opinions of the facts.

1 MR. BOGGS: Yes, sir.

2 THE COURT: I mean, you all are dead on the money.

3 You all are not factually arguing.

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

5 THE COURT: What do you anticipate them saying

6 regarding the cow?

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

8 cow.

9 MR. HANNA: I can tell you what we're going to say

10 about it, if it will help, but I think the inference he's

11 trying to draw, if you don't let the expert say that, I

12 don't think the two have anything do with each other.

13 The expert will also testify on cross that while

14 cows don't normally go very far they've been known to go

15 very far, that cows sometimes escape. He will say that

16 you almost always -- I think he will testify that every

17 time a cow escaped from his personal enclosure he's

18 always been able to tell where it got out from.

19 And, again, so the point I'm making and the whole

20 argument I'm making in this case is, is that while maybe

21 it's normally they do get here. Okay. You also in those

22 normal situations there's other factors that will be

23 involved, you know where it got out. There's

24 explanation. And the fact that there is no explanation

25 as how this particular cow got out that brings in the

1 realm of possibility that we have a cow that walked a
2 long way, just like they'll all say could happen.
3 THE COURT: All right. Now, you've -- there's a
4 factual issue out there as to conditions of the fence
5 because I've heard testimony that the fences were in good
6 state of repair and they were in a terrible state of
7 repair, and that laymen have seen the cows going in and
8 out of the fence. That's a factual issue.
9 I mean, I don't think you can say to the expert,
10 Assuming the fences are in good repair. I think you got
11 to preface everything with that, but assuming they're in
12 an average to below state of repair can you tell. I
13 think he can ask that question because I think that's a
14 factual question that you all presented me.
15 MR. HANNA: I want to make something clear that you
16 may not be picking up on, okay, which is all of the
17 evidence the fence being in disrepair is the fence on the
18 Burdette Road, which is approximately a mile and a half
19 away from where the accident is. And so, in other words,
20 if the theory is that a cow doesn't go very far that it
21 had to have come out of the fence that is in good shape,
22 okay, not out of the crappy fence.
23 And the moment that they want to start saying well,
24 it must have come out of the Burdette Road pasture then
25 why couldn't it have come out of Boyd Stoddard, Sonny

1 Stoddard, Harry Hays? They all live -- I mean, it's a
2 completely different argument, and that's where I get
3 back to what I've been saying all along about there's got
4 to be a theory of the case, okay. And if the theory is,
5 is that a cow only walks five feet from where he gets out
6 then it had to have come out of the Cooley Road pasture,
7 couldn't have come out of the other one.
8 THE COURT: I don't know about that but...
9 MR. BOGGS: He's clouding the issue. First of all,
10 I think my argument has been clear. My theory of my case
11 has been clear that there's a standard -- when you
12 undertake an act or a duty, or a business, or an
13 operation you have the reasonable standard of care, and
14 Geov said carelessness is negligence.
15 If he was careless and you allowed testimony to
16 come in because the case law says prior acts come in this
17 it doesn't mean that he did something wrong specifically
18 on that day but what it does mean is that the jury can
19 infer that his overall slackness was in place at the time
20 the accident occurred.
21 Now, my expert can testify that proximity, among
22 other factors, including the condition of the field,
23 things like that, which he's going to testify to lead to
24 his opinion, but once again, I'm not making the jump. He
25 was not there. None of us were there, but experts don't

1 have to be there to give an opinion about what happened.
2 That's why they are experts.
3 For a court to find a witness competent to testify
4 as an expert the witness only must be better qualified
5 than the jury to form an opinion on the particular
6 subject of the testimony.
7 I submit to you that a Ph.D. in animal husbandry is
8 better suited to talk about cattle behavior than the
9 jury, therefore is not common knowledge. And all this
10 started was about proximity. I don't want him saying
11 because it was right there it was Darby's but, Judge, his
12 expertise will tell you and the jury, the Court, the
13 record, the whole free world that that is an indicator
14 that if they are hungry and they are on the side of the
15 road outside the fence that they probably came from where
16 they were hungry from, and right there. And that's not
17 the sole -- proximity is not the end all, be all. It's
18 everything, and that's part of his expertise. So,
19 respectfully, I'd ask that you reconsider.
20 I feel that once he's qualified as an expert I can
21 ask him about his opinion, and Geov can then say, Now,
22 just because the cow is right there doesn't mean it's his
23 cow, does it. Enough said. That's called impeach ment.
24 THE COURT: All right. Well, here's -- I'm going
25 to see how the testimony goes but I don't want you to ask

1 the question more probably than not whose cow is it, that
2 question. I don't want you to ask that question.
3 MR. BOGGS: But he only asked about proximity. I
4 can ask that question about other factors, can't I?
5 THE COURT: Sure.
6 MR. BOGGS: Okay. So do you want me to say -- I
7 mean, I still want to ask about proximity. So, I mean,
8 do you want me to stop before I ask him about his
9 opinion?
10 THE COURT: No. What I'm telling you is this is --
11 I mean, I'm having a hard time because I don't have the
12 question in front of me. You all herd me up a chute
13 blind and I feel like I'm getting a couple shots. I
14 don't think you go to the very end and say, All right,
15 based upon everything you've seen whose cow was it, more
16 probable than not. That's the question I don't want you
17 to ask. I don't think you can do that.
18 MR. BOGGS: I can say as an expert in animal
19 science -- I mean, respectfully, Judge, I don't mean to
20 be talking about it, but I feel, and I think it's clear
21 under South Carolina jurisprudence about experts. Once
22 he's an expert, once he's reviewed and studied facts
23 about this case, once he knows facts in evidence, and
24 pictures in evidence, and based on his expertise I can
25 say, Based upon your expertise what is your opinion about

1 this case. And if that includes that it is more likely
2 than not that a cow right there came from Darby's field
3 because of blah, blah, blah, blah, blah, then that's a
4 valid opinion that should be introduced into the record
5 and before the jury. That's the -- I think he's trying
6 to cloud the picture by saying it's common sense, but if
7 he'll stipulate that the cow right there belonged --
8 probably belonged to Darby then that's a different matter
9 but I don't think ---
10 THE COURT: He ain't going to stipulate to that.
11 He's going to argue that hard.
12 MR. BOGGS: So it must not be that common sense.
13 THE COURT: All right. I think it's common sense.
14 MR. PATTERSON: Judge, may I interject something.
15 We've got the same -- exact same argument with his
16 expert. All his expert is going to say is that if he
17 could have seen the cow, if he could have seen the cow
18 450 feet away he could have stopped.
19 He didn't use any special knowledge, no
20 documentation as far as any, you know, learned papers or
21 treatise, or anything like that. The fact that if you
22 see something 450 feet away that you can stop, that's
23 common knowledge. He admits, their expert admits in his
24 deposition that all he used was the normal everyday laws
25 of gravity that every juror knows about.

1 So if you're going to excludes our expert from
2 making his conclusion you need to exclude his expert from
3 making his conclusion because that's all his conclusion
4 is, is that if the cow was in the road, which he doesn't
5 know, if the cow was in the road and if he saw it 450
6 feet ---
7 THE COURT: Well, can't you all argue obviously he
8 didn't see the cow?
9 MR. PATTERSON: But that's his testimony. That's
10 his expert testimony, which is common knowledge.
11 THE COURT: Why would anybody stay at speed when a
12 cow is in the road? I mean, you all aren't going to say
13 that? I'd be stunned -- I can't argue your case for you
14 but I'd be stunned if you all didn't say that, or pitch
15 that out there to the jury; Who would stay at full speed
16 or constant speed if they saw something? Nobody would.
17 That's common sense.
18 MR. BOGGS: That's our argument, Your Honor, that
19 if he's saying that if he saw it 450 feet away that he
20 could have stopped. He didn't use any special knowledge
21 about it. That's all his expert is going to say.
22 MR. HANNA: I respectfully disagree.
23 THE COURT: Well, all right --
24 MR. PATTERSON: It's in his deposition.
25 THE COURT: I understand where you all are going.

1 Let's let this testimony go, and I'm telling you not to
2 ask that last question and I don't think that should be
3 asked. You can ask anything but that.
4 MR. BOGGS: May I please have the specific question
5 that you are forbidding me to ask because ---
6 THE COURT: Based upon everything you've seen whose
7 cow was it more probably than not. That question.
8 MR. BOGGS: Based on everything or proximity ---
9 THE COURT: Well, that's what you ---
10 MR. BOGGS: Because his whole motion was about
11 proximity.
12 MR. HANNA: I can tell you, Judge, and I can find
13 the specific part of the testimony but that's what I
14 asked him, what was his basis for that opinion, and he
15 said that it was proximity. Okay. I mean, that's why
16 I'm saying that, but they are now wanting to say a bunch
17 of other stuff, too.
18 But the bottom line is, is that I don't see what --
19 this is the part I'm not getting from them is, is that
20 even though he says all that stuff you can then make a
21 very quality argument that based upon everything this man
22 said about what cows normally do, where they go, it's so
23 obvious what happened here. Okay.
24 And that's what the Judge is saying is, is that to
25 have him say what is so obvious based upon all the other

1 testimony you're going to elicit from him adds credence
2 to something that you don't have to be an expert to say
3 that. That's the whole thing. It's common sense once
4 all the other facts are out there.
5 MR. BOGGS: Were you talking to me?
6 MR. HANNA: I was talking to the Judge and saying
7 what you -- I mean, the bottom line is, is that you're
8 not preventing -- what I'm asking is not preventing you
9 from making the argument you want to make.
10 MR. BOGGS: I'd ask that you reserve your decision
11 until after the testimony, and then I won't ask the
12 question. We'll take a break and then we'll re --
13 because I think ---
14 THE COURT: That's fair enough. Just let's do it
15 that way because I'm telling you, it's hard anticipating
16 this stuff. You all, really, that's a difficult thing to
17 do. I'd rather ---
18 MR. BOGGS: Yes, sir.
19 THE COURT: --- guess at sentences of people than
20 do this.
21 MR. BOGGS: But aren't you glad I brought it up now
22 so you can start thinking about it? All right. We're
23 ready, Judge.
24 THE COURT: Go get them.
25 (WHEREUPON, the jury enters the courtroom at

1 approximately 9:35 a.m.)

2 THE BAILIFF: All present, Your Honor.

3 THE COURT: You all ready to go to work? I had to

4 get more candy. That was a good idea I got from Reno,

5 wasn't it? I'm going to have to try to figure out which

6 Judge told me that. The judges came in from all over the

7 country to talk to the 40 judges that were out there. We

8 had judges from Micronesia and all over the country. So

9 it was really neat. But that was a suggestion by one of

10 them from, I think Minneapolis. Anyway, we're ready to

11 get to work.

12 Mr. Boggs, it's still your case.

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

14 the Court. We call Dr. Michael Worrell to the stand.

15 MICHAEL A. WORRELL, PH.D., after having been

16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BOGGS:

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

20 please.

21 A. Michael Anthony Worrell.

22 Q. And what is your occupation?

23 A. I'm a cattleman at present.

24 Q. Okay. And where are you currently employed?

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

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

1 Bachelor of Science in Animal Science at University of
2 Florida. I have a Master of Science in Animal Science,
3 also at the University of Florida, with a specialty of
4 ruminate nutrition or cattle nutrition.
5 I have a Ph.D. from the University of Nebraska,
6 again in animal science, again with the specialty of
7 ruminate nutrition. Both my masters and my Ph.D.
8 programs were heavily influenced with agronomics, looking
9 at forages, forage quality, pasture management.
10 Subsequent to graduating at the University of
11 Nebraska I joined the faculty at Clemson University and
12 served on faculty for 16 -- almost 16 and a half years
13 obtaining tenure at the University and also a promotion
14 to associate professor before I left to start my own
15 private enterprise.
16 Q. Okay. Now, the terms you use I need to ask you
17 about. Now, can you describe for the jury what animal
18 science means.
19 A. Animal science is essentially the biology of
20 agricultural animals. It is an agricultural production
21 system.
22 Q. Including cows?
23 A. Including cattle.
24 Q. Now, you mentioned ruminate science. Tell me again
25 what ruminate is.

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

1 A. I was at the Blackville station, the Edisto
2 experiment station.
3 Q. Okay. Did that involve working on a farm or
4 maintaining farmland or cattle land?
5 A. Yes, sir. I was in charge of the cattle production
6 there from probably 1985 to 1995. That included not only
7 doing my own research there but it also -- including
8 coordinating with other researchers from campus, their
9 research projects and maintaining the integrity of the
10 management of the cattle herd.
11 Q. Now, have you been asked to be an expert witness
12 before today?
13 A. No, sir.
14 Q. And therefore you haven't testified in any cases
15 about your expertise, have you?
16 A. No, sir.
17 MR. BOGGS: Your Honor, at this time I would put
18 his resume into evidence. Based on your prior ruling I'd
19 just like to do that as a Court.
20 THE COURT: That will be fine.
21 (WHEREUPON, Court's Exhibit Number 9, a Resume, was
22 marked and made a part of the record.)
23 MR. BOGGS: Your Honor, pursuant to Rule 702 I'm
24 tendering Dr. Michael Worrell as a qualified expert
25 witness in the field of animal science with a specialty

1 in ruminate nutrition?

2 THE COURT: Any voir dire?

3 MR. HANNA: None from defendant.

4 THE COURT: He'll be so qualified.

5 All right. Ladies and gentlemen, this is -- I'm

6 not sure I explained this to you before, but there are

7 two types of witnesses. There's lay witnesses and expert

8 witnesses. Expert witnesses because of their experience,

9 training, study of a particular area can render opinions

10 in that particular field or study.

11 For instance, in a criminal case a fingerprint

12 expert can be qualified in locating fingerprints. That

13 sort of thing. Dr. Worrell has been offered as an expert

14 in the field of animal science and ruminate nutrition,

15 and he is so qualified to testify in that field.

16 BY MR. BOGGS:

17 Q. Dr. Worrell, before you testified in this case

18 we've been focussing on the events that led up to July

19 24th, 2008, and also going back only a year prior to

20 that, just for your knowledge. So I ask in your response

21 to any of my questions if you focus on facts that you --

22 or testimony from that time, okay?

23 A. Yes, sir.

24 Q. All right. Now, what was the weather like in South

25 Carolina in 2008?

1 A. We were experiencing a drought, a statewide
2 drought, very severe down in Barnwell, and I understand
3 much more severe up in the upstate all the way up towards
4 Clemson.
5 Q. Okay. I'd like to show you what's been marked as
6 Plaintiff's Exhibit Number 21 and I'll submit to you that
7 it's been determined or testified to that that was
8 Mr. Darby's pasture which was immediately beside where
9 the accident occurred on Dials Church Road July 24, 2008.
10 I'm also going to show you Plaintiff's Exhibit
11 Number 3, which is a pasture across Dials Church Road,
12 and for purposes of our discussion during the trial the
13 picture I showed you in Plaintiff's Exhibit 21 would be
14 F-1 on this diagram with this red line representing,
15 tracing Dials Church Road.
16 And the picture in Plaintiff's Exhibit 3 would be a
17 picture of the site -- excuse me, of the pasture that's
18 marked as D, and that's the one with the hay bales, hence
19 hay right here. I'll submit to you that those were --
20 those have been testified to be true and accurate
21 depictions of the conditions of the respective pastures
22 at the time of the accident.
23 Now, I'd also like to show you Exhibits 9 through
24 14, which are a series of pictures of cows, which there's
25 been testimony that those are cows that were in F-1 at

1 the time of the accident.
2 A. Yes, sir.
3 Q. And there's been testimony as well in F-1 that
4 there were a total of 45 cows and 43 calves in that
5 pasture.
6 A. Yes, sir.
7 Q. Now, calling your attention to the picture of F-1,
8 which I believe was Exhibit Number 21. Based on your
9 expertise can you describe what you see about the
10 condition of that pasture as it existed on or about July
11 24th, 2008.
12 A. The clearest way to describe it is a pasture that's
13 obviously suffering effects of drought and/or over
14 grazing.
15 Q. Now, based upon your expertise and review of that
16 picture is there enough grass in that pasture to feed 88
17 head of cow?
18 A. No, sir.
19 Q. All right. Without knowing more would you think
20 that based on your expertise that feeding would be
21 required?
22 A. Yes, sir.
23 Q. Now, is it unusual to have to feed cattle in the
24 summertime?
25 A. Yes, sir, in normal environmental conditions.

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

1 A. This is based a lot upon years of experience with
2 Clemson University, also a little bit of experience with
3 -- several years ago with actually Mr. Darby himself and
4 knowing the breeds of cattle that are very prominent up
5 in this area of the state.
6 Q. Well, let me interrupt you right there. You know
7 Wayne Darby?
8 A. Yes, sir. Well, I've met him many, many years ago.
9 Q. And what was the purpose of that meeting?
10 A. Actually, I purchased some calves from him.
11 Q. And how long ago was that?
12 A. 2002.
13 Q. Now, you talked about prior knowledge of buying or
14 what is typically up here. In looking at the pictures of
15 all the cattle were your thoughts confirmed -- or are
16 your thoughts confirmed in the type cattle you expected
17 to be up here?
18 A. Absolutely.
19 Q. Okay. So bottom line is what weight did -- I don't
20 want you to go through the exact multiplication and all
21 that. What was the approximate weight that you used for
22 these cows?
23 A. For the benefit of doing the calculations I think I
24 used 1150 pounds, which would be on the light side ---
25 Q. For the cows?

1 A. --- but that's my experience. Yes, sir.
2 Q. Is that for the cows?
3 A. That's for the cows.
4 Q. Okay. And what weight did you use for the calves?
5 A. I don't really recall that but probably somewhere
6 about 400 pounds.
7 Q. Okay.
8 A. 450 pounds.
9 Q. Would you consider that on the light side for that
10 time of year?
11 A. In the middle of the summer during a drought and
12 knowing the type of cattle probably a little bit on the
13 light side.
14 Q. Okay. So in other words, you did a conservative
15 determination?
16 A. Yes, sir. I tried to be conservative.
17 Q. And did you use certain standards in the cattle
18 industry for -- or what standards did you use to
19 determine -- to end up with your ultimate determination?
20 In other words, is there an amount of hay or grass or
21 intake that you use to reach this conclusion?
22 A. Yes, sir. There's many tables that have been
23 published by the National Research Counsel very well
24 known in the nutrition field that there is a requirement,
25 an intake requirement. That requirement actually varies

1 depending upon the quality of the feed itself, I. E.
2 whether it's a forage or where it's a grain.
3 It also varies upon the size of the animal and it
4 varies upon its production potential of the animal
5 itself. And what I mean by that, the milk production
6 potential of a female has a significant impact upon its
7 intake potential. I chose two and a half percent to make
8 it on a conservative basis again. This is probably --
9 was on the low side.
10 Q. Let me see if I understand that. So essentially if
11 the momma cow is feeding, milking the younger cow she
12 requires more food?
13 A. Yes, sir, that's true.
14 Q. Is that part of what you were just saying?
15 A. Yes, sir. And maybe just a little bit further as
16 well because the amount of milk that the dam produces
17 also will have an affect then on intake. So the more
18 milk she produces the more energy and protein she needs
19 to consume. And there's a growing body of evidence that
20 indicates that even just the potential of milk production
21 can have a varied impact on intake and maintenance
22 requirements of those animal s.
23 Q. When the cattle are fed hay will they all get an
24 equal amount of food?
25 A. That is a question that would be based upon how

1 much feed that's being provided, and this situation where
2 we're looking at the amount of feed that's provided I
3 would really refer to this to as a limit feed situation
4 during ---
5 Q. Before you go on can you explain what you mean by
6 limit feed situation.
7 A. Yes, sir. This is truly a common and can be a very
8 sound management practice where you actually allow the
9 body reserves or the fat covering of the cow to be like a
10 bank account for you. This is generally done in late
11 gestation, early winter where you have cattle that have
12 developed fat over the forage growing season, the pasture
13 season, and then you use that fat as to help maintain
14 that cow. So you're having that cow lose weight.
15 In a limit feed situation, in that situation the
16 cow is dry; in other words, she is not lactating. She's
17 generally in the third trimester of her pregnancy, and in
18 that situation where you have cattle that are in very
19 good flesh it is a smart and sound management practice.
20 Q. Okay. When is limit feeding unsound or when is
21 limit feeding not being -- never mind. When is limit
22 feeding unsound?
23 A. When you are trying to achieve a production level
24 from your animals itself, whether it's a growing animal
25 or and you're trying to get them to gain as much weight

1 as possible or whether it's a dam, a female that's
2 lactating and you want her to produce as much milk as you
3 can for the calf that she's raising.
4 Q. So if I were to tell -- there's been testimony that
5 a bale of hay that Mr. Darby used is about four-feet by
6 five-feet, I think is the testimony. I remember holding
7 my arms out and doing a circle.
8 A. Yes, sir.
9 Q. Is that consistent with your knowledge of hay, of
10 round bales of hay?
11 A. Yes, sir. Up in this area the bales are
12 significantly bigger than we make them down in our part
13 of the state. Four-foot to five-foot bales is common.
14 Q. Okay. Now, there's testimony that the two bales
15 were placed in the field and, in fact, there's testimony
16 that if you look closely you can just see where the bales
17 -- the remnants of bales have been, and that the
18 testimony that it's not spread out but just set there for
19 the cows to eat. Now, would that technique alone affect
20 how far 88 cows could feed on the hay?
21 A. Absolutely, and it depends on how close the
22 proximity of the two bales are and whether those remnants
23 that we see in the photo, whether those were over a
24 period of several weeks or months. The closer they are
25 together then you start having an affect of social

1 dominance in the availability of that feed for cattle
2 herd.
3 Q. When you say social dominance, does that mean,
4 like, only the strong will survive or survival of the
5 fittest? What do you mean by social dominance?
6 A. In all cattle herds there's definitely a social
7 hierarchy in terms of dominance that's established.
8 There's always one or two, or many boss cows that are
9 very dominant. In fact, the common vernacular is boss
10 cow. All the cattle know their -- essentially know their
11 place in this hierarchy. The hierarchy essentially goes
12 from the more aggressive dominant cows to the more less
13 aggressive, less dominant to timid, to calves.
14 Q. Based upon the way they were being fed and would a
15 calf be more likely or less likely to be able to eat its
16 share of hay.
17 A. When you limit feed that's essentially saying that
18 you are not allowing the entire herd equal access to the
19 feeds. So calves at the bottom of the social dominánce
20 would be the ones most likely to be excluded from the
21 feed.
22 Q. Are you able to look at the pictures of the cows in
23 the photos, I believe it's -- whatever exhibits, I think
24 it's 9 through 14, but those cattle exhibits, can you
25 tell from the picture alone anything about the nutrition

1 or the condition of the cows?
2 A. Yes, sir. Yes and no. I can say it that way.
3 Q. Okay.
4 A. After the point that these pictures were taken I
5 cannot tell what stage of energy balance that they are
6 in. In other words, I can't tell you that they are
7 gaining weight or losing weight. It would take a series
8 of photos over time to be able to distinguish that.
9 The condition score that they are in in these
10 photos look like to me -- and this is, again, an estimate
11 off of photos which is not as near as well as -- as good
12 as visual firsthand appraisal, their body condition score
13 fives, which is an adequate and a good body condition
14 score for momma cows.
15 And there is variation in this. There are some
16 cattle that look like they are carrying a little bit more
17 flesh and a few cattle that look like they're carrying a
18 little bit less which would then be consistent then with
19 a normal distribution of fat cover for the cattle.
20 Q. And because you are an expert I want to make sure I
21 understand. Is what you just said that some of them look
22 good, some of them look a little thin ---
23 MR. HANNA: Leading.
24 THE COURT: I'm going to let him lead here.
25 BY MR. BOGGS:

1 Q. I'm not trying to put words in your mouth. I just
2 want to make sure I understand what you just said.
3 A. No, sir, I didn't mean that.
4 Q. Well, tell me, can you dumb it down for me a little
5 bit? I'm sorry. Because what you just said, I took it
6 to mean something different, and if you just keep it --
7 or please tell me again what you just said in language
8 maybe a lawyer could understand.
9 A. First off, I'm sorry.
10 Q. No. No.
11 A. What I'm saying is there is variation in body
12 condition on these animals.
13 Q. Okay.
14 A. This is consistent with cattle management
15 regardless of the time of the year or whatever. Again,
16 the cattle that generally have higher condition scores
17 generally tend to be a little bit more dominant animals
18 or those that are less productive.
19 And it looked to me like in these pictures there
20 was a normal distribution of condition and my average
21 condition that I put on those cows were five which was,
22 at that point in time, that snapshot says to me that they
23 were in good production or good condition from a cattle
24 management animal husbandry standpoint.
25 Q. Okay. And when you use the term normal for cattle

1 management, and based on what you -- I think you just
2 said, does that mean that based on those pictures it's
3 what you would expect to find in these pastures?
4 A. And I can't say that.
5 Q. That's fine. If you can't say that then just tell
6 me. I'm trying to move it along but I'm still trying to
7 keep it straight.
8 MR. BOGGS: Judge can we approach?
9 THE COURT: Sure.
10 (WHEREUPON, a bench conference was had.)
11 BY MR. BOGGS:
12 Q. Okay, Doctor. Based on the amount of hay, based on
13 the amount of cattle, or number of cattle, based upon
14 what you called social dominance, and based upon the
15 date, the drought, do you think there were hungry cows
16 and calves in this pasture as of July 24th, 2008?
17 A. Yes, sir.
18 Q. Is that opinion based on a reasonable degree of
19 professional certainty?
20 A. Yes, sir.
21 Q. Would a reasonable cattleman have been feeding more
22 than what Mr. Darby was feeding?
23 A. Yes, sir.
24 Q. Now, just briefly. I'll hand up to you what's
25 marked Plaintiff's Exhibit Number 23. I'll submit to you

1 that there's been testimony that those approximate -- I
2 think there's approximately 80 numbers with corresponding
3 dates. It's been testified to mean that the left column
4 is tag numbers for the cows, the middle column is sex of
5 the -- it's been testified the sex of the calves, and the
6 right column would be date of birth for the calves, and
7 those dates would have started in 2007.
8 Now, there's testimony that none of the calves had
9 been tagged as of July 24th, 2008, those calves that are
10 listed in the right side.
11 A. Yes, sir. Yes, sir.
12 Q. Is it reasonable for a cattleman not to know how
13 many cattle he had?
14 MR. HANNA: Object to the form.
15 MR. BOGGS: Okay. I'll rephrase, Judge.
16 MR. HANNA: It's also assuming facts not in
17 evidence.
18 THE COURT: He can ask a hypothetical question.
19 MR. HANNA: Okay.
20 BY MR. BOGGS:
21 A. Would you ask the question again, please.
22 Q. I'll try. I'm not sure what it was. All right.
23 When Mr. Darby said that he had about 185 head of cattle,
24 okay, and he said that he -- after the accident he went
25 and inventoried his cattle by walking through the fields,

1 okay. When asked about the tagging he said that he had
2 most if not all tagged, but those were the records he
3 provided me, okay?
4 A. Yes, sir.
5 Q. Now, when asked why calves were not tagged he said
6 they should be tagged as they got older, probably like
7 the ones in November born in October when they are two or
8 three months should have been tagged, but these weren't,
9 okay. What based on your expert knowledge in this field,
10 what does that tell you about his proper maintenance of
11 the number of cattle and where they are?
12 A. Probably the -- one of the beginning courses in
13 cattle production, beef production involves the
14 instruction of proper identification of your animals.
15 Without proper identification of animals with large
16 numbers of dams it is impossible to keep straight which
17 dam belongs to which calf. It's impossible then to
18 ascertain the productivity level of that cow; in other
19 words, how much did that cow produce in terms of calf
20 weight.
21 It's like, if I can use a simile, when I was
22 growing up I used to play golf with my daddy and he
23 taught me to count all the strokes when I was playing
24 golf. And I, at 10 or 11 years old, I said, Well, daddy,
25 I can show a good score by not.

1 And he said, But you never know when you're getting
2 better or not if you don't count everything.
3 The same thing goes on with cattle the production.
4 If you do not use proper records and proper
5 identification you never know if you're improving your
6 cattle herd or not improving your cattle herd, and that's
7 the goal of all cattle management is to have as good a
8 cattle management as our resources allow.
9 The answer to your question, no, it is not good
10 practice to not identify your cattle, your calves either
11 at birth or very shortly after.
12 Q. The next question concerning this list. On Exhibit
13 23 it looks like the earliest birth date would be October
14 of 2007, and the latest birth date would be February of
15 2008, approximately. Does that tell you any information
16 about the calves as of July 24th, 2008 in terms of size?
17 A. Yes, sir. You're going to have a wide variation in
18 size depending on the age of calf. Essentially you have
19 a five-month breeding season, calving season that's going
20 on. So you will have calves that should have been weaned
21 somewhere in the sixth to six and a half month range to
22 calves are just now at the point of being weaned or
23 should be being weaned.
24 Q. Now, are you familiar with electric fences?
25 A. Yes, sir.

1 Q. And what experience do you have personally with
2 electric fences?
3 A. My entire farm is under electric fence.
4 Q. Okay. And how do you monitor your electric fences?
5 A. Two ways. I have an electric energy supplier to my
6 fences themselves that has idiot lights to ---
7 Q. Did you say idiot lights?
8 A. Yes, sir, idiot lights. Essentially like our cars
9 now instead of having gauges they just have lights that
10 tell you that you are overheated or whatever, but it has
11 lights on it that indicate the voltage that is being
12 outputted from that box. That is checked daily at my
13 farm. We actually use a fence tester that we will check
14 the fence twice a week.
15 Q. Now, just because a cattleman doesn't use what you
16 use doesn't mean he's not -- doesn't have reasonable
17 fences, right?
18 A. That's correct.
19 Q. Okay. So but based on your experience with
20 electric fences can a calf go through an electric fence
21 without there being any visible damage to the fence?
22 A. Absolutely.
23 Q. Will a cow or calf go through a fence?
24 A. Absolutely.
25 Q. Can a calf go through an electric fence even if it

1 has the power on it?
2 A. Yes, sir.
3 Q. Now, can a cow or calf jump and electric fence?
4 A. Yes, sir.
5 Q. Could it still jump it even if the electricity was
6 still on?
7 A. Yes, sir.
8 Q. Based on your experience if a cow was jumping a
9 fence what does it tell you about how it perceives the
10 fence? Strike that. Let me rephrase. What is the
11 purpose of an electric fence?
12 A. To maintain them in a set area.
13 Q. Okay. Now, how does electric fence properly work
14 in keeping cows in?
15 A. It is electricity that is the actual barrier. The
16 wire is not the barrier. It's the electricity.
17 Q. Okay. Now, you stated that a cow could go through
18 an electric fence when the electricity was on, right?
19 A. Yes, sir.
20 Q. And you stated a cow could jump over a fence if the
21 electricity was on?
22 A. Yes, sir.
23 Q. All right. Does that mean that -- excuse me.
24 Would a reasonable cattleman rely solely on the electric
25 fence to keep his cattle in?

1 A. I believe a reasonable cattleman using a proper
2 electric fence, yes, he would count on that. I count on
3 that every day.
4 Q. Now, do other factors about the care and treatment
5 of the cows inside the electric fence affect your
6 determination about the effectiveness of electric fences?
7 A. Yes, sir, but I don't think we can just restrict it
8 to electric fences. I think we have to talk about fences
9 in general. Why cattle leave enclosures is essentially
10 to either satisfy a basic need of be a feeding or a
11 drinking, thirst. There are times that they are trying
12 to escape a threat to them, and those are the primary
13 reasons. Now, bulls could have another reason as well.
14 Q. We've been talking about looking for action. Is
15 that what you are talking about?
16 A. Yes, sir.
17 Q. Okay. All right. So if they are hungry, thirsty,
18 looking for action then would an electric fence matter?
19 A. Probably not.
20 Q. Okay. Now, if a cattleman failed to properly feed
21 his cattle is that reasonable -- even though he had
22 electric fences, is that what a reasonable cattleman
23 should do?
24 A. I'm sorry, sir. I didn't understand.
25 Q. You said an electric fence in general should -- if

1 it's working, should keep a cow in, right?
2 A. Yes, sir.
3 Q. Okay. But if it's hungry then the fence doesn't
4 matter, right? Is that what you said?
5 A. Yes, sir.
6 Q. So if the cattleman fails to properly feed or care
7 for his animals is that reasonable even though he has an
8 electric fence around the property?
9 A. From an animal production, animal husbandry or from
10 a cattle management standpoint, no, it's not reasonable
11 to have hungry cattle.
12 Q. Okay. Now, there's been testimony -- or, excuse
13 me. Do you know what an arc is, in terms of electricity?
14 A. I believe that's when electricity is jumping from
15 one piece of wire to another or to one conductor to
16 another conductor.
17 Q. Okay. Now, can you see arcs by riding by fences?
18 A. At nighttime, I think so.
19 Q. Okay. Now, if you see arcs by riding by fences
20 does that mean that the electric fence is working?
21 A. It means there's electricity in the fence. It does
22 not mean you have an effective fence.
23 Q. So if I -- or there was a cattleman that road a
24 substantial length of fence and just eyeballed whether
25 arcs were there is that reasonable in keeping cattle in?

1 A. The arc would indicate to me you have a short and
2 it's a faulty insulator, and when you start having shorts
3 your voltage starts decreasing. The less voltage on it
4 the less effective the fence becomes.
5 Q. Whether there's electric fencing or whatever
6 fencing, if someone's cow are getting out on a regular
7 basis does that tell you anything about how that
8 particular cattleman guards his cattle?
9 A. Yes, sir.
10 Q. And what that?
11 A. It tells me that the enclosure, the security of
12 those animals themselves is not being properly done,
13 maintained.
14 Q. Is that particular cattleman being reasonable?
15 A. I don't believe so.
16 Q. Is that particular cattleman, if such occurrence is
17 going on, is he being careless?
18 A. If his cattle are getting out on a routine basis,
19 yes, sir, that's careless.
20 Q. Now, you said you check your electric fences every
21 day; is that right?
22 A. No, sir. I said I check my electric box, my
23 energizer every day.
24 Q. Okay. Now ---
25 A. Or I have one of my employees, one of my

1 part-timers do.
2 Q. Okay. So if a cattleman's practice is to test his
3 fence, whether by driving and looking for arcs or by
4 testing once or twice a week, is that sound cattle
5 management?
6 A. I cannot drive by my fences unless -- and see that
7 they are in working condition unless I see a tree on it.
8 The only way I can tell you that my fences are in working
9 condition is either looking at the energizer or putting
10 my actual fence tester on the wire itself.
11 Q. So if I were to tell you that a cattleman took a
12 tester and tested the voltage on July 20th but didn't
13 test it again until after July 24th is that reasonable in
14 terms of cattle management?
15 A. Yes, sir.
16 Q. It is reasonable?
17 A. A couple times a week on an electric fence,
18 particularly on an enclosure would be reasonable unless
19 you knew of some extenuating circumstances such as a
20 windstorm or a lightening storm, or something to that
21 sort of thing.
22 Q. Would it be reasonable for a cattleman who had had
23 cattle out on a regular basis to go at least four to five
24 days before checking the charge on the fence?
25 A. No, sir. Cattlemen that have cattle that escape

1 enclosures need to spend more -- or put more attention
2 into why the cattle are leaving that enclosure.
3 Q. Is it sound or reasonable in the cattle industry to
4 be gone over 14 hours a day from your cattle for several
5 days in a row?
6 A. Yes, sir. That's reasonable.
7 Q. Okay. So that in and of itself doesn't mean that
8 the cattleman is particularly unreasonable in his
9 behavior?
10 A. No, sir. In fact, that's a pretty common practice
11 here in South Carolina because most of our cattlemen have
12 outside employment and that employment keeps them away
13 from the farm, so they try to do the cattle raising on
14 their off times. So 12 to 14 hours being away from
15 cattle would be.
16 Q. Fair enough. Now, that same cattleman that had --
17 worked 56 hours in the previous four days had existing
18 escape problems, would you still say that that was
19 reasonable?
20 A. No, sir, I would not.
21 Q. Based on the fact that Mr. Darby did not tag all of
22 his cows and based on his records is there any way to
23 tell if he had a cow missing on July 24th, 2008?
24 A. I don't think I can answer that one.
25 Q. Okay. Well, is there any way to tell if all his

1 cattle were in there based on the records you've seen?
2 A. From what I've seen I have no knowledge of whether
3 Mr. Darby can individually identify 188 animals and know
4 exactly which ones are there and which ones aren't.
5 Without some sort of permanent identification, whether
6 it's an ear tag or not, then I don't believe it's
7 reasonable to assume that he can do that.
8 I personally, even with my cattle herd, and right
9 now I'm numbering about a hundred head, without that
10 permanent identification I cannot tell you if one is mine
11 or not and if one is missing without actually counting
12 the number in that field itself.
13 Q. Well, based on your expertise would a reasonable
14 cattleman keep up with how many cows he bought and sold?
15 A. Absolutely.
16 Q. Okay. Would a reasonable cattleman keep basic
17 records to know when he sold his cattle?
18 A. Absolutely. It would be a requirement as well
19 from --
20 Q. Now, I know you're university trained and educated
21 but do you have to go to college or have a Ph.D. to be a
22 reasonable cattleman?
23 A. No, sir.
24 Q. All right. And did you have -- how long you been
25 working with livestock?

1 A. I received my first calf when I was either six or
2 seven years old and I've been in the cattle industry ever
3 since, in one form or another. Better than 50 years.
4 Q. When you talk about reasonable cattlemen you're not
5 telling this jury that he had to have a Ph.D. to know
6 what I know, right?
7 A. No, sir, I'm not.
8 Q. Okay. Now, and one thing you mentioned earlier,
9 you said dams, and I think that's d-a-m-e-s like ---
10 A. No, d-a-m-s.
11 Q. D-a-m-s. Okay.
12 A. Right.
13 Q. And those are the momma cows?
14 A. Those are the female, yes, sir.
15 Q. I was just making sure. And is that what the
16 British call dames or ---
17 A. No, sir. I think that's something else.
18 Q. Okay. I'm just making sure. All right. Now, in
19 looking at the picture 21 -- or Exhibit 21 and Exhibit 3,
20 knowing that those true and accurately reflect the
21 condition of both the pasture inside the fence, the
22 roadside and the roadside and pasture across from the
23 pasture, can you compare the grass inside the pasture
24 with the grass outside the pasture and across the street?
25 A. Oh, absolutely. The forage availability inside

1 that pasture is very limited versus that that's on the
2 roadside or the right-of-way is quite extensive, even in
3 this draught situation. There is very little -- very
4 little grass availability for those cattle inside the
5 field.
6 Q. All right. Fair to say that no stray cows were
7 breaking into that pasture?
8 MR. HANNA: Object. Calls for speculation.
9 MR. BOGGS: I'll move on. I'll move on.
10 BY MR. BOGGS:
11 Q. So is there any truth to the old saying that the
12 grass is always greener on the other side of the fence?
13 A. Obviously in these pictures, yes.
14 Q. Okay. And given that you said hungry cows would
15 tend to try to find food, including outside the fence,
16 where would you expect to find a stray cow from
17 Mr. Darby's pasture?
18 A. I would expect it on that right-of-way, on one side
19 or the other. I'd expect it to be grazing, moving,
20 tasting -- the cattle actually taste grass and so what
21 they're doing is looking for the most immature, the
22 highest quality grass, so they will actually move around
23 as they graze to select the more nutritious grass.
24 Q. Now, the picture of all that hay across the field,
25 would a cow necessarily -- if it left the pasture looking

1 for food, would it necessarily walk all the way to the
2 hay out in the field, based on your expertise?
3 A. I don't believe that would happen.
4 Q. What do you believe would happen?
5 A. I believe that animal if it came from this pasture
6 that it would stay in the less grass at right-of-way, one
7 side of the road or at the other.
8 Q. Okay. And you mentioned that the cows eat standing
9 up or do they -- they have to bend over, right, to get
10 the grass?
11 A. Cattle generally are grazers. So they will
12 actually bend their head down while they are walking and
13 they are moving. There are times that you'll see -- and
14 it's just more of, I think a fun observation, you'll see
15 a cow laying down chewing its cud then reach over and
16 actually graze a little bit while it's laying down, but
17 that's not their normal behavior.
18 Q. So in other words cows eat different ways?
19 A. Essentially cattle eat standing up, they graze
20 standing up. If they came to eat out of feed bunk they'd
21 be standing up.
22 Q. Do they stand still while they graze?
23 A. Generally not.
24 Q. All right. Now, is there -- in the summertime
25 especially, especially it's fair to say it was hot since

1 it was a drought, is there a more typical time for cattle
2 to eat, you know, during different times of the day?
3 A. Absolutely. Cattle, they do their main grazing or
4 the main period of time for grazing earlier in the
5 morning and then later in the evening when it's cooled
6 off. This is accentuated in the summertime when the
7 temperatures are much more extreme. During the hot part
8 of the day they will look for a place where they can lay
9 down and start ruminating.
10 Q. Okay. In all of these opinions I've been asking
11 you about a reasonable cattleman and what he would do and
12 what not do, all of those are based on a reasonable
13 degree of professional certainty; is that correct?
14 A. Yes, sir.
15 Q. And that's in your industry?
16 A. Yes, sir.
17 Q. And in your realm of expertise?
18 A. Yes, sir.
19 Q. Okay. Now, when I asked you about buying and
20 selling cattle you started to say something about a
21 requirement to keep up with the sale of cattle and you
22 mentioned earlier agronomics. Again, does is require a
23 college education or in-classroom training to do what you
24 were taking about?
25 A. No, sir. Let me first address the agronomic part

1 of your question.
2 Q. Okay.
3 A. Agronomics is essentially your pasture or pasture
4 management, the types of grasses you use, the fertility,
5 or the putting the fertilization, the lime, correct
6 liming on your pastures and then following that up then
7 with managing those pastures.
8 There's very few individuals that would be true --
9 that are true cattlemen that actually would be true or
10 great grass farmers; however, the in-vogue classification
11 of cattlemen was to start thinking of us as not as
12 cattlemen but as grass farmers and we're harvesting the
13 grass using the animal itself.
14 So the agronomic standpoint that all cattlemen
15 should have a basic understanding of that, whether they
16 develop that understanding over years of experience,
17 whether they develop that understanding through a
18 university or a classroom setting or whether they've
19 employed the services of the extension service to help
20 them and enlist their aid in developing the knowledge of
21 pastures then they would not be following a good cattle
22 management program because that's encompassed in that
23 cattle management.
24 Q. So in other words before -- before we move to the
25 next part. So in other words, a reasonable cattleman

1 needs to know how to manage his pastures?
2 A. Absolutely.
3 Q. And so my double question was you started to say
4 something about requirement to keep up with sales of
5 cattle. What did you mean by that?
6 A. The Internal Revenue is very, very interested in
7 what we do with cattle sales and incomes.
8 Q. Okay. Now, when you were talking about the cow
9 getting out and likely grazing on the green grass picture
10 there, would that cow likely be standing in the road?
11 A. No, sir. There's not much grass in that road. So
12 he would probably be on the side grazing.
13 Q. Okay. So you would expect, based on your
14 experience, for the cow to be either on one side or the
15 other or crossing back and forth?
16 A. Definitely would be crossing back and forth.
17 Q. Okay. If a cow was standing on the side of the
18 road, say the right side of the road and heard a loud
19 noise, what would it likely do?
20 A. It would probably freeze and try to identify the
21 noise.
22 Q. Okay. If that cow was on the right side of the
23 road and was from the left side of the road where would
24 it likely go if it got scared and decided to move?
25 A. It would want the rejoin its herd mates or rejoin

1 his dam.
2 Q. Would it do so in a deliberate manner?
3 A. Oh, absolutely.
4 Q. I guess that was a poor choice of words?
5 A. I'm presupposing this, that the animal was spooked
6 or frightened. Yes, it would be very deliberate and be
7 very quick.
8 Q. Okay. Is there any way for a layman, a non cattle
9 person like you, to know how a cow is going to react to
10 when it's spooked?
11 A. A person without cattle experience I doubt it. I
12 wouldn't think it would be reasonable that they should
13 know.
14 Q. So if a layman approached a cow that was startled
15 would the cow -- could the cow appear to freeze but then
16 move quickly immediately after looking up?
17 A. Yes, sir.
18 Q. Are you familiar with registered Black Angus
19 cattle?
20 A. Yes, sir.
21 Q. Have you ever seen a registered Black Angus cow
22 with brown hair?
23 A. No, sir.
24 Q. If the cow in the accident did have brown hair on
25 some point of its body in your professional opinion would

1 you believe it to be a registered Black Angus cow?
2 A. No, sir.
3 Q. You've reviewed the pictures of Mr. Darby's cows
4 that we have?
5 A. Yes, sir.
6 Q. Did he have cattle with brown hair?
7 A. Yes, sir.
8 Q. Should a cattleman take reasonable care to be sure
9 that his cows do not get out?
10 A. Absolutely.
11 Q. And what would those measures be?
12 A. Obviously, maintenance and checking of the
13 enclosure would be the first foremost. If employing some
14 management techniques such as limit feeding that scrutiny
15 should even be intensified as well. That would be the
16 main.
17 Q. Okay. If a cattleman had a history of cows getting
18 out what would that indicate in terms of cattlemen taking
19 reasonable care?
20 A. It would indicate to me that proper maintenance is
21 not being maintained on his fence so reasonable care
22 would be questionable.
23 Q. If cattle had gotten out once in a particular
24 pasture or in any pasture are they more likely to get out
25 again or to attempt to get out again?

1 A. No, sir.
2 Q. Okay. Fair enough. How quickly should a
3 reasonable cattleman repair a breach in his fencing?
4 A. I would say immediately. Once they found cattle
5 out then without repairing it then your cattle get back
6 out again.
7 Q. You mentioned that it was not unreasonable for a
8 cattleman, especially in South Carolina, to be gone for
9 14, or 10, or significant hours of time. Isn't that what
10 you said? Excuse me. It was not unreasonable to leave
11 for a significant amount of time.
12 A. I think that's exactly what I said. Probably I
13 meant normal as well.
14 Q. Okay. Now, when that cattleman decides to leave
15 for that amount of time, whether it's for a job, trip,
16 what have you and is gone is it reasonable for a
17 cattleman not to have some way to -- excuse me. Is it
18 reasonable for that cattleman not to return calls that
19 are made to him about cattle being out?
20 A. Oh, gosh, no. I mean --
21 Q. And not necessarily am I asking should he call the
22 person back but is it reasonable for that cattleman not
23 to react to complaints of cattle being out?
24 A. As the cattle manager it's his responsibility to
25 insure the safety and security of his cattle herd. This

1 is part of the stewardship that we as cattlemen have and
2 as part of our animal husbandry practices. I believe
3 that if one ignores something that is contrary to being a
4 good steward then that would not be reasonable as a
5 cattleman.
6 Q. Is allowing a breach in fencing to go as long as a
7 week, careless behavior for a cattleman?
8 A. Absolutely, knowingly, knowingly letting it go for
9 a week.
10 Q. How about unknowingly by not checking for a breach?
11 A. Yes, sir.
12 Q. That's unreasonable?
13 A. It's unreasonable. If you have cattle getting out
14 not to understand where they are getting out from and
15 it's unreasonable not to check fences in a routine and
16 sufficient -- with sufficient scrutiny to identify any
17 breaches that might be in the fence, yes, sir.
18 Q. Now, if I were to tell you that an electric fence
19 was charged by solar panel and that solar panel was on
20 top of a battery box inside the pasture is that alone
21 unreasonable?
22 A. No, sir.
23 Q. Okay. If I was to tell you that that solar panel
24 and box was hanging on the inside of the fence and that
25 the wires connecting the charge were laying down going to

1 the fence is that alone unreasonable?
2 A. If that wire was insulated, no, sir.
3 Q. Okay. If I were to tell you that same setup and
4 there was a wire connected about two to three feet off
5 the ground with a charge to prevent cattle from getting
6 to the battery is that alone unreasonable?
7 A. No, sir.
8 Q. If that same setup had resulted in a cow or calf
9 removing that protective wire does that tell you or are
10 you able to say whether that was unreasonable or not?
11 Let me rephrase.
12 A. Please.
13 Q. If with that setup that you said was not
14 unreasonable, if a calf had removed that wire and gotten
15 out, talking about the wire that's to protect the
16 battery, if you use that same setup again without taking
17 any remedial measures is that reasonable cattle
18 management?
19 A. I would say no if it just happened the one time.
20 Q. Aren't cattle learned animals?
21 A. Learned like educated?
22 Q. Well, not learned as in educated but --
23 A. They can learn.
24 Q. They can learn?
25 A. Yes, sir.

1 Q. Now, and I believe you've already said that if the
2 cow gets out once -- or if the cow gets out once would it
3 try again?
4 A. And the first answer to that is no, but there's
5 caveats to that as well.
6 Q. What are those caveats?
7 A. If it's hungry, yes, sir, it'll try to get out
8 again. If it's thirsty it'll try to get out again.
9 Q. Okay. Is it reasonable for a cattleman to herd his
10 cattle across the street into another pasture without a
11 cattle guard?
12 A. No, sir.
13 Q. Is it reasonable for a cattleman to open ---
14 A. Excuse me, sir. Let me -- I may have misheard your
15 question, that last question.
16 Q. And essentially it was do you have to use a cattle
17 guard to ---
18 A. The answer to that is no. You do not need to use a
19 cattle guard.
20 Q. So that's not unreasonable?
21 A. No, sir. No, sir. I misspoke.
22 Q. That's all right. And there's no testimony that
23 one was used here so you aren't saying that was
24 unreasonable, correct?
25 A. Correct.

1 Q. But if the gates were open on one side of the road,
2 and the gates were open on the other side of the road,
3 and the gates were left unattended while those gates were
4 open is that sound and reasonable cattlemen practice?
5 A. No, sir.
6 Q. If the pasture is substantial, and some of those
7 pastures have been testified as a hundred acres, and the
8 gates were open and if that same cattleman was driving
9 around the pasture to get what has been deemed stragglers
10 in your opinion would that be careless?
11 A. Yes, sir.
12 Q. If a cow or calf is not moving where a cattleman
13 wants it to go is it reasonable for that cattleman to
14 bump the cow or calf with his truck or automobile?
15 A. I'm presupposing this is an intentional running
16 into the cow?
17 Q. Yes, sir.
18 A. No. I don't believe that's being a good steward or
19 being a reasonable cattleman.
20 Q. Is it careless?
21 A. It's pretty foolish.
22 THE COURT: Mr. Boggs, we're about quarter to an
23 hour. We've been going an hour an 15 with the jury. I
24 think it's a good time to take a break.
25 MR. BOGGS: Yes, sir. And we can take up the other

1 matter as well.

2 THE COURT: All right.

3 MR. BOGGS: Thank you, Judge.

4 THE COURT: You all can have a break. If you need

5 to use the phone or step outside for whatever your needs

6 may be. Step to the jury room and don't begin discussing

7 the case.

8 (WHEREUPON, the jury leaves the courtroom at

9 approximately 10:45 a.m., and a brief recess was taken.)

10 MR. HANNA: We were talking outside when you were

11 outside about he's got, I think, two more questions he

12 wants to ask which I don't believe run afoul of what

13 we're saying and just to make sure that you ---

14 MR. BOGGS: Let's not bring birds into it.

15 MR. HANNA: Bring what?

16 THE COURT: Birds in.

17 MR. BOGGS: Birds, fowl.

18 MR. HANNA: That's a real knee slapper there.

19 MR, BOGGS: They've all been knee slappers.

20 I have more than two questions but the two

21 questions -- may I put them on the record just so we have

22 continuity?

23 And, Doctor, don't answer now. I'm just telling

24 the Judge what I'm going to say.

25 What role does proximity play in determining where

1 a cow is from? Okay?

2 MR. HANNA: I'm saying I don't have a problem with

3 that.

4 MR. BOGGS: Does the fact that the accident

5 occurred at a certain location make it more or less

6 likely that a cow is from nearby the scene or farther

7 away?

8 THE COURT: I think that's okay.

9 MR. HANNA: I do, too.

10 MR. BOGGS: Okay. And I'll probably say before

11 that based on -- well, I'll just keep it general. I'll

12 just keep it general.

13 MR. HANNA: I think as long as it's there that's

14 not running -- getting into my beef, to keep it with the

15 right analogies here, with what I was complaining about

16 earlier, and I think it's consistent with the ruling you

17 were making prior to it. As long as he doesn't then say,

18 Well, is it Darby's cow? But clearly the inference from

19 that testimony -- I know his answer will be is that he

20 can argue that all day based upon that.

21 THE COURT: You know, seems all the work you all

22 have done in this case I still don't believe you didn't

23 do the DNA on something. I'm astound. I think those

24 questions are fine considering the question that I don't

25 believe you can ask is not one of those.

1 MR. HANNA: Right.

2 THE COURT: And I think those would be allowed.

3 MR. BOGGS: Okay. If I have the urge to ask

4 something other -- about that. I do have two more

5 questions I think clearly come -- I mean, that have

6 nothing to do with that.

7 THE COURT: All right. We ready?

8 MR. BOGGS: Just before we go, so we can have

9 continuity, I think we've talked about this, Judge, just

10 want to make sure.

11 (PAUSE)

12 MR. HANNA: Your Honor, to address the matter that

13 he's brought up. He's got some stuff when the plaintiff

14 goes up. He's got some pictures of some things,

15 etcetera. I don't object to using the pictures as

16 demonstrative evidence, you know, but I do object to them

17 going into evidence as something that the jury can -- I

18 mean, the fact that he's got a picture of the guy's x-ray

19 of the leg or whatever or the hardware I don't think

20 bears anything on what the jury needs to decide, but I

21 don't object to him showing it and using it as

22 demonstrative evidence. I do object to it going into the

23 record for the jury. I don't see how that could possibly

24 have any bearing on whether or not it was Darby's cow,

25 whether Darby was negligent or whether he was negligent.

1 MR. BOGGS: And, Judge, pursuant to our pretrial
2 agreement we are allowed to discuss and at no time did
3 we ---
4 MR. HANNA: I'm not saying ---
5 MR. BOGGS: Well, hold on. Let me finish.
6 MR. HANNA: Okay, okay, okay.
7 MR. BOGGS: I don't have big blowups of those
8 pictures. So as long as I can put them in their hands,
9 they can look at them in here and they are not in
10 evidence I can live with that. I agree. They don't need
11 them back in the jury room when it's time to decide but
12 they need to be able to see what he's talking about and
13 that was the gist ---
14 MR. HANNA: That's exactly ---
15 MR. BOGGS: Okay.
16 MR. HANNA: I'm not disagreeing with that. I'm
17 just saying when it comes to, you know, moving them into
18 evidence I'm going to object if you do.
19 MR. BOGGS: The's fine.
20 MR. HANNA: I'm not objecting to you showing it to
21 them. That's a totally different matter.
22 THE COURT: Is this like one or is this the one?
23 MR. BOGGS: That's the one.
24 MR. HANNA: That is the one. Be careful.
25 MR. FARROW: That was in me.

1 THE COURT: Those are some long screws.
2 MR. BOGGS: Yes, sir.
3 MR. HANNA: Understood, yeah.
4 MR. BOGGS: Okay, Judge. I think we can -- I think
5 we're good.
6 MR. HANNA: Yeah. That's not -- again, I think
7 we're all in agreement with that. That's not a problem.
8 THE COURT: We're going to allow them to be shown
9 to the jury for demonstrative purposes and they'll be
10 returned to the plaintiff.
11 MR. BOGGS: You can have the pictures because those
12 don't take up that much space. The only thing will be
13 returned will be the (indicated).
14 Now, there is a drug test where he went -- you
15 know, was tested and I have the results. That can go
16 into evidence, can't it?
17 THE COURT: I think you said that in the opening.
18 MR. HANNA: You said it was ---
19 THE COURT: That he was coming from an interview or
20 something, which he passed, kind of late in the
21 statement.
22 MR. BOGGS: I mean, yes, sir.
23 MR. HANNA: I'm not suggesting he didn't pass it.
24 I'm not saying he was high or something.
25 THE COURT: You want to let it in, it can go in.

1 MR. BOGGS: Okay. I would ask -- it has his Social
2 Security number, should I blacken that out before?
3 THE COURT: I would.
4 MR. BOGGS: So with the Court's permission?
5 (WHEREUPON, Plaintiff's Exhibit Numbers 39 through
6 42 were marked for identification only.)
7 MR. BOGGS: All right, Judge. And for further
8 planning purposes, I'll finish him, briefly. I got my
9 client and I've got another expert that shouldn't be as
10 long as this expert. So, I mean, just to help you
11 determine how long you want to go. I would hope we can
12 finish before lunch. If not, immediately after lunch,
13 okay, depending on Geov's cross-examination, of course,
14 and no way to limit him.
15 MR. HANNA: I don't intend to be remotely near the
16 length of any of this. I'm going to be brief on all
17 three witnesses.
18 THE COURT: I'll try not to be distracted and limit
19 his cross-examination.
20 MR. HANNA: I mean, we were just as at fault. In
21 fact, we were talking about it on the way home. I said
22 the Judge was very clear. He's a referee only and if we
23 didn't bring up the fact that he was incorrectly saying
24 the rule that's our own problem.
25 And, quite frankly, I would prefer it to be that

1 way. You know, if I'm dumb enough not to know then
2 that's just my own problem, but I much prefer a judge
3 like you than one who is constantly interjecting himself
4 into the proceedings. We've all been there and had one
5 of those guys. So nothing from us. It was our own
6 lesson learned.
7 THE COURT: I still can't believe we got it.
8 MR. HANNA: It sounded so good when he said it. I
9 was like, man, you know, that was smooth.
10 THE COURT: Always act like you know where you're
11 doing.
12 MR. BOGGS: What's that?
13 MR. HANNA: When you said that we were outside the
14 scope of your direct and limited our cross to that one
15 witnesses ---
16 MR. BOGGS: I never cease to amaze myself with what
17 comes out of my mouth, both good and bad.
18 MR. HANNA: It sounded really good. It wasn't
19 until like an hour later that I realized that the rule
20 said exact opposite.
21 MR. BOGGS: Well, it sounded good, and I blame it
22 on Wayne. Everything good that comes out is all my idea,
23 everything bad is all Wayne's fault.
24 But, Judge, I misspoke. In speaking with Wayne
25 about this, my expert, my last witness, if I could call

1 him after lunch it would make it go smooth. Does that
2 make sense, because he has drove up today? And that way
3 it will give me time.
4 Geov has demonstrative things that were from his
5 report, from his expert's report, and I think that in
6 meeting with my client over lunch or before we start this
7 afternoon and allowing him to just peruse those we can
8 use the same demonstratives and not be, well, this says
9 this. You know, I know it's what it says but just if we
10 could lay those out it will make it go better.
11 THE COURT: Just curiosity is going to kill the
12 cat. How many witnesses do you anticipate calling right
13 now? I'm not holding you to it at all.
14 MR. HANNA: At this point, I think I'm going to
15 call two witnesses.
16 THE COURT: Okay. So it is possible we get through
17 the testimony today?
18 MR. BOGGS: Yes.
19 MR. HANNA: I would love to be done with the whole
20 thing today, if possible but, you know. At the bare
21 minimum I'd like to be done with the testimony and argue
22 and charge in the morning.
23 MR. BOGGS: I'm fine with arguing and charging
24 tonight, if time allows. I don't want to be in a rush.
25 THE COURT: I don't like to be in a rush.

1 MR. HANNA: And, again, you know, I think that
2 sometimes -- what my old judge used to do sometimes if
3 it's like at four and we're done would give the jury the
4 option. Obviously, if they would rather be done tonight
5 and not come back. I don't know if that's an option to
6 them but frequently, you know -- if that's what they want
7 to do I'm willing to stay as long as it takes because I
8 would really like to be done.
9 MR. BOGGS: That's fine with me.
10 MR. HANNA: You know what saying? I'm also fine
11 with coming back.
12 MR. BOGGS: I mean, I think both of our wives and
13 our children are wanting us home as soon as possible.
14 We'll stipulate to that, mutually stipulate to that.
15 MR. HANNA: I get paid by the hour. So if we need
16 to come back so be it, you now, but I'm more than happy
17 to slug it out and finish today.
18 THE COURT: All right. Well, I'm generally not
19 inclined unless, you know, something I can't move for the
20 next day. I'm generally not inclined to push through and
21 make the jury inconvenienced past six o'clock. You know,
22 Friday night, oh, yeah, we'll do something different but
23 on a Wednesday, come back Thursday morning and get it
24 done, I'm probably more likely to come back Thursday
25 morning and get it done.

1 MR. BOGGS: And, Judge, I'm okay with a shorter
2 lunch break. It's not like I need two hours to meet with
3 my expert. So whenever we break now, after Mr. Farrow
4 testifies, an hour, hour and 15 minutes would be suffice.
5 THE COURT: Okay.
6 MR. HANNA: And I can have my guy here in an hour.
7 So as soon as we break I'll make sure that the witness
8 who is not present is in route.
9 THE COURT: All right. Bring the jury.
10 MR. HANNA: We'll at least get the testimony done.
11 (WHEREUPON, Court's Exhibit Number 10, Leg
12 Hardware, was marked and made a part of the record.)
13 (WHEREUPON, the jury enters the courtroom at
14 approximately 11:15 a.m.)
15 THE COURT: All right, Mr. Boggs. You may
16 continue.
17 MR. BOGGS: Thank you, Judge. May it please the
18 Court.
19 BY MR. BOGGS:
20 Q. Now, Dr. Worrell, based on your expertise when
21 you're looking at stray cattle what role does proximity
22 play in determining where a cow is from, based on your
23 reasonable degree of professional certainty?
24 A. If by the question you mean if I saw cow out on the
25 road?

1 Q. Uh-huh.
2 A. Whether it's a field that's in close proximity to
3 where that animal is at that point in time I would say
4 proximity has a great influence on it.
5 Q. Okay. So it's not the sole factor in determining
6 where a cow might be from?
7 A. Oh, no, sir.
8 Q. But does the fact that the accident occurred
9 between where it did, which was between F-1, D, F-2, and
10 right here on Dials Church Road, does the fact that the
11 accident occurred make it more or less likely that the
12 cow is from nearby the scene or farther away?
13 A. Nearby.
14 Q. Is that a reasonable degree of professional
15 certainty ---
16 A. Yes, sir.
17 Q. --- in your area?
18 Okay. Now, there's been testimony, and we may have
19 covered this but I want to make sure, that you said or
20 it's been said that cows get spooked when -- based on
21 certain circumstances, okay. What is it likely that a
22 cow that is involved in a collision or a cow that hears a
23 loud noise for it to defecate?
24 A. Absolutely.
25 Q. Okay. I mean, if they are scared they poop?

1 A. Yeah, amongst other times as well.
2 Q. Okay. So and I said scared but how does -- are
3 surprise, collision, loud noises factors that may spook a
4 cow based on your professional -- or, excuse me, your
5 expertise?
6 A. Yes, sir.
7 Q. Okay. Now, if a cattle -- excuse me. If at the
8 area of the accident there was sirens, lights -- or if
9 it's gotten dark, at the scene of the accident, there's
10 sirens, lights, helicopter landing in the field across
11 the street, would it be -- based on your expertise would
12 the cows be more or less likely to hang out by the fence
13 or to move farther away from the noise, or can you tell?
14 A. On that I can speculate, and that would be the best
15 I could do.
16 Q. Is your speculation based on your expertise and
17 your experience, and to a reasonable degree of
18 professional certainty?
19 A. No, sir.
20 Q. Okay.
21 MR. HANNA: I would object to any ---
22 MR. BOGGS: I'll stop. Okay.
23 BY MR. BOGGS:
24 Q. Now, one last thing. There was a report done by
25 essentially a C. S. I., a chemist, okay, or a forensic

1 analyst. And without reading this entire report I'll
2 tell you that he said that there was in the hairs that
3 were taken from the motorcycle, okay, he did a test on it
4 to see what it was, and he said it was bovine. And he
5 said that there was evidence of leaves in the excrement.
6 Now, based on your expert opinion to a reasonable
7 degree of professional certainty is that common for a cow
8 to have leaves in its system?
9 A. If we're referring to tree leaves, yes, it would be
10 very uncommon.
11 Q. Okay.
12 A. Grass, leaves, which that would be part of it.
13 Q. Okay. So talking about blades of grass, that's
14 obviously?
15 A. Yes, sir, that would be reasonable.
16 Q. Okay. But -- well, in the field that's depicted as
17 Mr. Darby's pasture, do you see any source of leaves that
18 would be appetizing to cattle?
19 A. No, sir.
20 Q. Based on all the factors that you've learned about
21 Mr. Darby's actions as a cattleman was he careless in the
22 management and guarding of his cows, and I'm asking you
23 with a reasonable degree of professional certainty?
24 A. Yes, sir.
25 MR. BOGGS: Please answer any question that

1 Mr. Hanna may have.

2 MR. HANNA: If it please the Court?

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. HANNA:

6 Q. I'm going to kind of jump around on some of the

7 topics you discussed previously. Let's start with

8 talking about some fencing. You are not testifying in

9 this case there's anything fundamentally wrong with the

10 fencing system Mr. Darby uses, are you?

11 A. No, sir.

12 Q. In fact, you, yourself, use a similar fence,

13 correct, electric?

14 A. Yes, sir.

15 Q. Okay. And would it be true to say that you have no

16 idea whether or not his fence was operating properly on

17 the date of the accident, do you?

18 A. That's correct.

19 Q. And would it be fair to say that if, in fact, it

20 was electrified and working properly on the date of

21 incident that it would be a barrier, as you discussed,

22 the electricity running through it?

23 A. Sir, with different caveat to that, if the voltage

24 was insufficient then it was not a barrier, regardless

25 whether electricity was running through it or not.

1 Q. Understand, but my question was very specific. Was
2 it working properly?
3 A. Okay. If it's working properly it should act as an
4 effective barrier.
5 Q. And, again, you have no evidence that it wasn't
6 working properly, do you?
7 A. No, sir, I don't.
8 Q. There was also some discussion on direct about some
9 herding techniques. Are you aware of any evidence in
10 this case that Mr. Darby was herding any cattle between
11 any of his pastures on or about the date of the accident?
12 A. No, sir.
13 Q. Would you agree with me, the fact even if you
14 assume that his herding technique is monumentally and
15 unbelievably negligent if he wasn't doing it any time
16 around the accident that would have no affect on a cow
17 getting out on this case?
18 A. That's correct.
19 MR. BOGGS: Objection. Calls for a legal
20 conclusion. I'll withdraw.
21 BY MR. HANNA:
22 Q. Let's talk some about the feeding.
23 THE COURT: Hang on one second. I want to rule on
24 that.
25 MR. HANNA: I'm sorry.

1 THE COURT: Did you make an objection?
2 MR. BOGGS: I did but he'd already answered, and if
3 he's moving on I withdrew it. Fair enough.
4 THE COURT: Fair enough. Withdrawn.
5 MR. HANNA: I'm absolutely done with that topic.
6 We're moving on, okay.
7 THE COURT: All right.
8 BY MR. HANNA:
9 Q. Again, feed. Okay. And there was some discussion
10 about some feed consumption calculations that you had
11 performed. Do you recall that?
12 A. Yes, sir.
13 Q. I want to make sure the jury is clear on what I
14 understand to be one of the fundamental underlying
15 assumptions of those calculations, and that is isn't it
16 true that you were assuming that the only thing that the
17 cows were eating when you performed those calculations is
18 the two bales of hay per every two days?
19 A. Yes, sir.
20 Q. And that means that you were assuming that there is
21 absolutely no other available source of feed?
22 A. Yes, sir.
23 Q. Okay. So that basically the assumption is, is that
24 there was absolutely nothing edible in the pasture F-1
25 that we've been discussing, correct? Is that correct?

1 A. No, sir. When you asked me about the assumption
2 that there was no other source of feed, yes, I did look
3 at the photo, and, yes, I am making that assumption that
4 there is not consumable forage availability for those
5 cattle.
6 Q. Are you aware that that is a hundred-acre pasture?
7 A. I am now but also I can only look at the pictures
8 and see.
9 Q. I understand, and that's what I'm getting at.
10 You've looked at one picture of one portion of the
11 pasture; isn't that accurate?
12 A. Yes, sir.
13 Q. Okay. Now, there was some photos of the cow. Do
14 you still have those up there with you?
15 A. Yes, sir.
16 Q. And I think they were marked Exhibits 9 through 14;
17 is that correct?
18 A. Yes, sir.
19 Q. Would you agree with me that -- and I think this
20 was clear on direct but I want to make sure. Would you
21 agree with me that the cows in those photos do not appear
22 to be underfed?
23 A. I agree with you that those cattle are in good
24 flesh condition.
25 Q. Understood. Okay. Now, let's talk some, there was

1 some discussion about cow behavior and what is normal or
2 not normal cow behavior, and I understood what you were
3 basically saying on direct was if a cow escapes and the
4 reason it escaped is that it's hungry it would typically
5 basically just start grazing on the first edible food it
6 could find; isn't that right?
7 A. It is my belief and my opinion that cattle will not
8 walk miles to graze when there is grass right in front of
9 them.
10 Q. Exactly and so ---
11 A. But that is not the same as your question.
12 Q. Okay. I mean, what I'm trying to say is, is that a
13 cow, if the reason it escaped was that it's hungry, going
14 to eat something -- I mean, if there's good food to eat
15 right there it's not going to walk ten miles to
16 McDonald's or -- that's a bad example, but it's not going
17 to go down, you know, five miles down the road and eat
18 some grass just like the grass it just went past?
19 A. I would agree with that.
20 Q. Okay. That's what I'm trying to say. I may not be
21 speaking technically enough in your field. And, in
22 essence, if the cow got out it would move around from
23 side-to-side across the road basically grazing and eating
24 grass in the general area it came out of?
25 A. That's what I believe.

1 Q. Okay. Now, if a cow happened to be in the roadway
2 and a motorist were to approach it would you agree with
3 me that the cow could stop and look and stop and going
4 from side-to-side?
5 A. Oh, yes.
6 Q. Would you agree with me that there are other
7 reasons that a cow may try to escape its enclosure other
8 than looking for food or water?
9 A. I think a -- yeah. Oh, absolutely. Yes.
10 Q. Okay. For instance, if a cow was new to a herd it
11 might get out and walk a long way trying to find its old
12 herd mates, correct?
13 A. That would be correct.
14 Q. If a bull were to escape from its pasture it could
15 be known to walk a long way in order to find a cow in
16 heat?
17 A. I believe so.
18 Q. And I've even heard -- and, you know, you may see
19 if you agree with this. I've even heard a cow in heat, a
20 female cow in heat may go a long way looking for a bull.
21 A. The definition of a long way would be debatable
22 but, yes, I think it's more apt for a bull to leave a
23 pasture than a cow to leave a pasture, but I wouldn't
24 preclude that possibility.
25 Q. Like one person in this case described that as

1 bulling. You ever heard of that phrase?
2 A. That's not bulling.
3 Q. Okay. What is bulling?
4 A. Bulling is when a female is in estrus and she's
5 standing and another female is mounting her.
6 Q. Okay. You learn something new every day. I
7 apologize. I'm just repeating what some other fellow
8 said to me.
9 Is it conceivable under certain circumstances that
10 a cow could travel more than a mile after it escaped its
11 enclosure? You ever heard of that happening ever?
12 A. No. I've not heard that.
13 Q. You've never heard of a cow walking more than a
14 mile?
15 A. No, sir, that wasn't the question.
16 Q. I'm sorry.
17 A. That wasn't your first question.
18 Q. Well, what was my question?
19 A. Your first question is escaping an enclosure and
20 walking a mile.
21 Q. I'm sorry. I apologize. Is it conceivable a cow
22 could walk several miles?
23 A. Yes, sir.
24 Q. For instance, if a cow, the bull escaped, how far
25 have you known a bull to go after it escaped looking for

1 a female?
2 A. The distances, I can't give you a real good answer
3 on but I know that the reason a bull would escape is
4 because he'd detect the pheromones in the air. So I
5 imagine how far he would go would be dependant upon the
6 wind currents and the direction of the wind. So if he's
7 picking up the pheromones that the female in estrus is
8 emitting then he might go as far as wherever that animal
9 is.
10 Q. So however far that is, is how far it would go?
11 A. Yes. I have no knowledge of how far pheromones can
12 go ---
13 Q. Understood.
14 A. --- and cattle still pick it up.
15 Q. Are you aware of testimony in this case from
16 several witnesses that the cow at the scene -- or the
17 hair that was found at the scene was black?
18 A. I am aware of tricolor.
19 Q. Well, some have said more than one color.
20 A. Yes, sir.
21 Q. Some have said black only.
22 A. No, sir. I'm not familiar with testimony of black
23 only.
24 Q. Would you agree that no matter what the cow color
25 was the mere fact that Mr. Darby had a cow the same color

1 does not necessarily follow that it was his cow in the
2 accident, correct?
3 A. Correct.
4 Q. You would agree with me that the cow, the actual
5 cow involved in this accident has never been identified,
6 correct?
7 A. That's my understanding.
8 Q. Would you agree with me that there is no evidence
9 of any breach in the fence surrounding the Cooley Road
10 pasture right next to the accident on the date of the
11 accident, correct?
12 A. Would I agree that there was no breach?
13 Q. That there is no evidence that you've heard about
14 in this case that on the date of the accident that there
15 was a breach in that fence.
16 A. I have no knowledge of a breach or lack of breach.
17 Q. You're not aware that Mr. Darby left a gate open on
18 that date, are you?
19 A. No, sir.
20 Q. Would you agree with me that there is absolutely no
21 evidence at all in this case of how the cow may have
22 gotten out of that pasture if it, in fact, came from the
23 Cooley Road pasture?
24 A. Would you repeat, please.
25 Q. You agree that if the cow, in fact, came from the

1 Cooley Road pasture that there is no explanation of
2 exactly how it got out?
3 A. To the best of my knowledge there's no explanation.
4 Q. You are a cattleman, correct?
5 A. Yes, sir.
6 Q. Have you ever had a cow get out?
7 A. Yes, sir.
8 Q. How?
9 A. Oh. I've had branches and trees fall down on
10 fences. I've had lightening hit fences that were
11 electrified and destroyed the electric box. I've had
12 cattle that actually were new cattle that were actually
13 fighting and developing their social hierarchy and one be
14 pushed through the fence.
15 Q. Would you agree with me that under normal
16 circumstances when a cow gets out there is an explanation
17 for how it, in fact, did escape?
18 A. I believe there's an explanation for every escape.
19 I may not find it but there's an explanation.
20 Q. Have you personally ever had a cow escape from one
21 of your pastures where you could not determine where it
22 got out from?
23 A. Could not determine where it got out from, that is
24 true. I've not -- there's -- actually, I think that I
25 have had an animal get out that I did not know exactly

1 where it got out from. So if one of those ---
2 Q. You have had that happen?
3 A. I believe that that's what I've had.
4 Q. On one occasion or are you not ---
5 A. Sir, I don't recall that.
6 Q. In other words, so what I'm hearing is, is that you
7 have been able to come up with an explanation of how it
8 got out each time you are aware of one getting out of
9 your pastures?
10 A. I tried very much to identify the reason and there
11 are -- there may be a time when you won't have a reason
12 that you can readily identify. And I'm not precluding
13 the possibility that one of mine didn't get out that way
14 then went back in the same way.
15 Q. Considering what you know about cow behavior,
16 motivations, etcetera, if you were driving down the road
17 and saw a cow in the roadway what would you recommend
18 someone do driving?
19 MR. BOGGS: Objection. Outside the realm of his
20 expertise.
21 THE COURT: I think that would -- he's testifying
22 as a cattleman, ruminate nutrition and not operating ---
23 MR. BOGGS: I think he can ---
24 MR. HANNA: Should we have a sidebar?
25 THE COURT: Yeah. You all may stretch, step up,

1 move around.

2 (WHEREUPON, a sidebar was had.)

3 BY MR. HANNA:

4 Q. And based upon your expertise if you were to come

5 upon a cow in the roadway is there any way to predict

6 which way it might go?

7 A. Yes, sir.

8 Q. And how would you go about predicting that?

9 A. The position on the road then the position of where

10 it's home field would be.

11 Q. Okay. What if you ---

12 A. However, if it's spooked and it's a young animal

13 then there's no way I can predict it.

14 Q. Understood. One moment, please, I think I'm done.

15 MR. HANNA: No further questions.

16 MR. BOGGS: May it please the Court. Quite

17 briefly.

18 REDIRECT EXAMINATION

19 BY MR. BOGGS:

20 Q. Dr. Worrell, he asked you if working properly you

21 said the fence would be an effective barrier but does an

22 effective barrier keep a hungry cow in?

23 A. No, sir.

24 Q. And he asked you about assuming only eating two

25 bales of hay. When you were talking -- when you were

1 analyzing the proper nutrition for Darby's fields did you
2 factor in, like, hay loss or unused hay and availability
3 of any grass in the field?
4 A. I factored in essentially the hay loss. Looking at
5 the aerial photos I could see which way the owner had fed
6 his animals. In other words, he just put the bales of
7 hay out there and not into any kind of hay rings
8 themselves. So differently a loss, and I assumed a 15
9 percent loss on trampling and where the animals defecated
10 and urinated on it. I think that's a low estimate on
11 that type of feeding.
12 Q. Okay. Now, is feed a term of art for the cattle
13 industry? I mean, when you feed a cow are you giving it
14 something that's not in the pasture or does feed include
15 what's in the pasture?
16 A. Well, feed is both a noun and a verb, in this case.
17 So when we refer to feed we could refer to something that
18 we brought or the pasture availability where the animal
19 would actually get feed from the pasture. Primarily it
20 is thought of as what the cattleman would bring to the
21 animal, whether it's in a grain form, or a hay form, a
22 silage form or whatever.
23 Q. Now, when you describe -- when he asked you about
24 and you said good flesh condition, that doesn't mean that
25 the cattle -- even if it's in good flesh condition, by a

1 standard that says it's in good flesh condition, that
2 doesn't mean it's not hungry or being underfed at the
3 time the picture was taken, does it?
4 A. No, sir, it doesn't.
5 Q. In fact, doesn't it mean that it's okay right now
6 but if it had been fatter a month before it's on the way
7 down, right?
8 A. Yes, sir. That's correct.
9 Q. Would the fact that someone only had Black Angus,
10 would that exclude their cattle if there were brown hair
11 found at the scene?
12 A. It would be my belief, yes, sir.
13 Q. And he asked you if you looked at one picture of
14 the pastures. You looked at several pictures. You just
15 have one picture right there; is that correct?
16 A. That's correct. I looked at several, the aerial
17 photos.
18 Q. When you had a cow out but couldn't find the reason
19 did you look diligently to find the reason?
20 A. Absolutely.
21 Q. When you didn't find a reason did you look a little
22 bit more?
23 A. Absolutely.
24 Q. Did you do more than go out in the pasture and see
25 if hey, looks like all my cows are here?

1 A. No, sir. I did a lot more than that.
2 Q. Would a reasonable person just go out there and say
3 yep, got them all, if they don't have any sort of proper
4 tagging system? Is that reasonable?
5 A. No, sir.
6 Q. Does that mean that they didn't have a cow out ---
7 A. No, sir.
8 Q. --- the day before?
9 A. No, sir.
10 Q. Now, when you had a cow out did you think it was
11 your responsibility for anything that cow did?
12 A. Absolutely.
13 Q. All right. Is it reasonable for a cattleman to be
14 responsible when his cows get out and they got out
15 improperly, or if they get out at all?
16 A. Yes, but there are acts of God. And this is what
17 we refer to with lightening or a tree falls on your fence
18 during a storm and the animal gets out then you've not --
19 at that point in time you've still done everything
20 reasonably and sound as you can to prevent that and
21 technically you are responsible because you own the
22 animal.
23 Q. Generally, as cattlemen and as a reasonable
24 cattleman, a reasonable cattleman responsible for their
25 cattle?

1 A. Yes, sir.

2 MR. BOGGS: No further questions.

3 THE COURT: Recross?

4 MR. HANNA: Just very briefly.

5 RECROSS-EXAMINATION

6 BY MR. HANNA:

7 Q. Do you have any idea when those aerial photos that

8 you were speaking of, that you studied, do you have any

9 idea of whether or not those are indicative of the

10 condition of the field on or about July 24, 2008?

11 A. My belief, those were taken shortly afterwards.

12 Q. And based upon what?

13 MR. BOGGS: Judge, may it please the Court. We'll

14 stipulate that they -- I don't think -- they were not

15 taken shortly afterwards, and I was not trying to elicit

16 testimony to that affect but the extent that it was I

17 certainly understand Mr. Hanna's concern.

18 MR. HANNA: And understood.

19 BY MR. HANNA:

20 Q. So to the extent you were relying on those photos

21 if they weren't taken at the time of the accident then

22 you would agree with me that you can't rely on those as

23 being indicative of how much edible food may or may not

24 have been in the pasture that day?

25 A. I think really the aerial photos would be very

1 difficult to ascertain forage availability on it
2 regardless; however, the photos, at least particularly
3 this one in 21 that shows that field itself, that is very
4 indicative, particularly in that particular spot of
5 forage availability.
6 Q. I understand and as we just already established
7 it's a hundred acres and you don't have photos of the
8 entire thing, correct?
9 A. Except when we go to the aerial.
10 Q. And that's my point. You can't rely on the aerial
11 as indicative of what the condition was at the time of
12 the accident. We don't even know when it was taken.
13 A. I have no knowledge.
14 MR. HANNA: Okay. That's all I've got.
15 FURTHER REDIRECT EXAMINATION
16 BY MR. BOGGS:
17 Q. You looked at the pictures of the cow --
18 MR. BOGGS: I'll move on, Judge. I'm done.
19 THE COURT: Very well. Dr. Worrell, your expert
20 testimony career is now over.
21 MR. WORRELL: I'm sorry?
22 THE COURT: Your expert testimony career is now
23 over.
24 MR. WORRELL: It is. Thank you, Judge.
25 THE COURT: Good luck to you.

1 Mr. Boggs?

2 MR. BOGGS: I'd call David Farrow to the stand.

3 THE COURT: Come forward and be sworn.

4 WILLIAM DAVID FARROW, JR., after having been

5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BOGGS:

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

9 David.

10 A. William David Farrow, Jr.

11 Q. And how old are you, David?

12 A. Forty-six.

13 Q. And where do you currently reside?

14 A. In Gray Court, South Carolina.

15 Q. And how long you been living in Gray Court?

16 A. I've lived in Gray Court my entire life.

17 Q. And have you been at the same address?

18 A. Except when they changed the 911 system, yes. I've

19 lived on the same acreage my entire life.

20 Q. And where are you currently employed?

21 A. I'm currently unemployed.

22 Q. Where did you last work a full-time job?

23 A. I worked at Pierburg.

24 Q. And where is that?

25 A. Pierburg is in South Chase Court in Fountain Inn,

1 South Carolina.
2 Q. And when did you last work there?
3 A. The date of the accident.
4 Q. And did you work anywhere else at the time of the
5 accident?
6 A. Yeah, I had a part-time job, also.
7 Q. And who was that with?
8 A. It was with a company called Able Task Force.
9 Q. And just briefly, what did you do for them?
10 A. Able Task Force was a company that contracted with
11 Home Depot to provide people to go and assemble gas
12 grills, wheel barrels, riding lawn mowers, mainly outside
13 garden equipment and patio furniture.
14 Q. So you essentially -- you put the stuff together
15 for the store itself, right, or did you go to people's
16 homes and put things together?
17 A. No, at the store.
18 Q. Now, can you tell the jury about your day on July
19 24th, 2008 before the accident, the reason we're here.
20 A. Yeah. I went to my primary job at Pierburg and
21 worked there. I had to go to a drug test, as ironic as
22 it sounds, afterwards because of formality for my
23 part-time job that they had entered into, I guess for
24 their insurance company earlier that year. So I drove up
25 there, took the test, came home, stayed for a little

1 while, decided I wanted to go visit my grandfather's
2 grave. I drove out there and stayed a little while and
3 then came home.
4 Q. All right. And ---
5 A. Well, I tried to come home. I got home about a
6 week later.
7 Q. What did you drive up to Greenville for the drug
8 test?
9 A. I drove the motorcycle.
10 Q. Okay. And what did you drive to the church -- or
11 to the grave site?
12 A. I drove the motorcycle.
13 Q. And where is that grave site?
14 A. It's at Dials Church.
15 Q. Now, I know the scene is not up but where exactly
16 is Dials Church?
17 A. Dials Church is at the very end -- for lack of a
18 better term, the very end of Dials Church Road at Highway
19 101.
20 Q. So did you travel Dials Church to get to -- did you
21 travel Dials Church Road to get to Dials Church?
22 A. Yes.
23 Q. And you said you were visiting your grandfather's
24 grave site?
25 A. Yes.

1 Q. And what was his name?
2 A. Furman Tucker.
3 Q. Okay. Is that something back in the time that you
4 did on a regular basis?
5 A. Probably a couple times a month.
6 Q. Okay. And before I get into that more, on the date
7 of the accident did you have a valid South Carolina
8 driver's license?
9 A. Yes, I did.
10 Q. And did you have a license to ride a motorcycle in
11 South Carolina?
12 A. Yes, I did.
13 Q. And what type of license was that?
14 A. It was a permit.
15 Q. Did that allow you to drive unconditionally during
16 daylight hours?
17 A. During day light, yes, sir.
18 Q. Okay. And was that your primary means of
19 transportation?
20 A. No. It wasn't the primary means.
21 Q. Okay. Is that why you only had a permit, or why
22 did you only have a permit?
23 A. I only had a permit because it wasn't the primary
24 means of transportation. It was just -- typically it was
25 used for just, you know, enjoyable riding but then when

1 gasoline got so high it became a little more frequent.
2 Q. Okay. Now, you went all the way down Dials Church
3 Road. Did you say that?
4 A. That's right.
5 Q. You left your house, went, I guess north to south?
6 MR. HANNA: Objection, leading.
7 MR. BOGGS: I'm sorry.
8 BY MR. BOGGS:
9 Q. Which way did you travel again to get to the
10 church?
11 A. Well, when I got on Dials Church Road I drove what
12 I understand now was south towards 101.
13 Q. And how often did you travel Dials Church Road?
14 A. At the time frame of the accident, as I said, about
15 twice a month.
16 Q. Okay. On the way to the church -- or did you drive
17 by what would then be the accident scene on the way to
18 the church?
19 A. Yes, I did.
20 Q. On the way to the church did you see anything out
21 of the ordinary near the intersection of Cooley Road?
22 A. No.
23 Q. Okay. Had you ridden your motorcycle on that route
24 before to the church?
25 A. Yes, I had.

1 Q. And how long did you stay at the church?
2 A. It wasn't very long, probably 30 minutes, at the
3 most.
4 Q. I'd like to show you what's been marked Plaintiff's
5 Exhibit 39. Can you identify it?
6 A. Yes, I can. This is the -- it's a copy of the
7 results of the drug test I took that afternoon and the
8 formality of paperwork you had to fill out.
9 Q. Okay. Now, did you -- I assume everything was
10 negative, right?
11 A. Oh, yeah.
12 Q. Now, on the second page that you describe is there
13 any information that can help you approximate what time
14 you were up in Greenville that day?
15 A. Yes. It says 4:13 p.m.
16 Q. Is that consistent with what you related to the
17 jury about being at work then going up there?
18 A. Yeah.
19 Q. Okay. And so do you remember how long you were
20 there?
21 A. For the drug test? I don't really remember. It
22 was a while. It was a little extensive.
23 Q. Okay. Well, you didn't get the results right then,
24 did you?
25 A. No.

1 MR. BOGGS: Move into evidence, Judge, I think
2 without objection.
3 THE COURT: I'll allow it.
4 (WHEREUPON, Plaintiff's Exhibit Number 39, a
5 Document, was admitted into evidence.)
6 BY MR. BOGGS:
7 Q. Now, I asked you if you'd ridden your motorcycle
8 before down that road and I think you said yes; is that
9 correct?
10 A. That's correct.
11 Q. Do you remember what time of day it was when you
12 left your grandfather's grave site?
13 A. It was before dark. Yeah.
14 Q. And going back to the exhibit I just handed to the
15 jury, there's a black mark on the front page where a pen
16 has gone through. What has been covered up up there?
17 A. Oh, that was my Social Security number. At least,
18 I hope it was. That's what you said it was going to be.
19 Q. All right. Now, so when you left the church where
20 were you headed?
21 A. When I left the church I was headed home.
22 Q. Okay. And what direction did you travel?
23 A. The opposite way that I came up Dials Church Road.
24 Q. Okay. Now, do you remember how fast you were going
25 as you were traveling Dials Church Road?

1 A. I didn't look at the speedometer but I always drive
2 on a normal country road on the motorcycle 35, 40 miles
3 per hour. That's typical.
4 Q. And what is the -- prior to reaching -- after
5 crossing the bridge what is the terrain of Cooley Road --
6 or, excuse me. Is there a grade on Dials Church Road as
7 you are approaching Cooley Road?
8 A. On Dials Church Road?
9 Q. Yes.
10 A. Yeah. It's a real steep, long hill. Yes.
11 Q. Now, do you know the speed limit on Dials Church
12 Road?
13 A. Yes, I do know. It's 45.
14 Q. Okay. And were you alert?
15 A. Oh, yeah.
16 Q. I mean, you been at work and driven to Greenville
17 and back. Were you tired or anything?
18 A. No. That's one thing, I wouldn't get on a
19 motorcycle without feeling like I can handle it because
20 it's hard enough to watch out for other people if you're
21 not able to do it for yourself.
22 Q. I got you. Now, were you wearing a helmet?
23 A. No, I wasn't.
24 Q. What, if anything, did you have on your head?
25 A. I had on gobbles that seal around your eyes to make

1 sure the wind doesn't affect where you're tearing or what
2 have you.
3 Q. And did you have anything else on your head?
4 A. I had what they call a do-rag, a wrap or whatever
5 of an American flag.
6 Q. Okay. And were you watching for obstacles in the
7 road?
8 A. Absolutely.
9 Q. Were there any shadows on Dials Church Road as you
10 were traveling away from the church?
11 A. There were shadows whenever the trees lined the
12 left side of the road as I was driving because the sun
13 was in that direction (indicated).
14 Q. I'm sorry? I couldn't hear you.
15 A. Because the sun was from that direction, so it
16 would have been shadowed by trees on the left side of
17 road.
18 Q. Okay. When you said from that direction you were
19 pointing to left; is that correct?
20 A. Yeah.
21 Q. Okay. Now, please tell the jury what happened as
22 you drove on Dials Church Road before it reaches Cooley
23 Road.
24 A. Same as I always have up until suddenly there was a
25 cow in the road. It was just there. And everything was

1 the same except for that.
2 Q. Where was the cow?
3 A. The cow was in my lane when I saw it.
4 Q. Okay. Now, did you see the cow prior to it being
5 in your lane of travel on Dials Church Road?
6 A. I didn't see it before then.
7 Q. I'd like to show you what's been marked as
8 Plaintiff's Exhibit Number 22. Can you describe what
9 this picture shows in terms of the contour of Dials
10 Church Road based on your experience traveling?
11 A. Yes, I can. This picture depicts the steep incline
12 that we previously talked about and what it's showing
13 though is the small hill that you encounter after you
14 basically get off of that initial angle, and then on
15 after that is when you can see straight ahead of you and
16 see into Cooley Road.
17 Q. Okay. So just to be sure. What it depicts to you
18 is a small hill. Is that what you said?
19 A. Yeah. That's what you see from the picture. Yeah.
20 Q. Now, did you have to go over what you say is a
21 small hill in Exhibit 22 before you came into contact
22 with the cow?
23 A. Yeah.
24 Q. Okay. So the accident -- you don't remember
25 hitting the cow prior to going over this last hill?

1 A. No.
2 Q. Is that, to your recollection, the last hill ---
3 A. Yeah.
4 Q. --- before the accident?
5 A. The one that you see in the distance there, yes.
6 Q. Okay. Not where the picture is taken from but what
7 it's looking at?
8 A. Right.
9 Q. Now, before you went over this last hill did you
10 see a cow?
11 A. No.
12 Q. Did you have any ideas where it came from?
13 A. Only afterwards. I mean, I would assume it came
14 from the pasture that was nearby.
15 Q. But you had no ideas where it came from? You have
16 no personal knowledge where it came from, right?
17 A. No, I don't.
18 Q. Any idea where it went?
19 A. No.
20 Q. Any idea about the size?
21 A. All I know is it was big enough that I didn't want
22 to hit it.
23 Q. Fair enough. Any idea about the color?
24 A. All I really remember is that it was dark. It was
25 large and it was dark.

1 Q. Okay. And one thing I didn't ask you. What kind
2 of bike were you riding, motorcycle?
3 A. It was a Suzuki, if I'm not mistaken, a 250. It's
4 not a really big bike. It's sort of like a -- like a
5 mini Harley. We called it the pig instead of the hog
6 because it looked like a little Harley.
7 Q. And I believe there's some pictures in from --
8 through Mr. Burdette. Is that the motorcycle that you
9 were riding?
10 A. Yeah.
11 Q. Have you seen those pictures?
12 A. Yes. Uh-huh.
13 Q. I'll show you. It's Exhibits 34 through 37. Is
14 that your motorcycle that you were riding that day?
15 A. Yes, it is.
16 Q. Okay. Now, after you saw the cow how did you
17 react?
18 A. After I saw the cow I tried to stop. I saw the cow
19 and all you have time to do is like breathing. It's
20 involuntary. You do what you know you need to do and
21 that's -- on a motorcycle it's very precarious because
22 you have more than one brake. You have a front brake and
23 a back brake. The front brake applied by the hand and
24 the back brake applied by your foot. And the front
25 always receives more of the pressure. That's just the

1 way it works, and it's a balance. You can't lock up
2 either brake or you lose it. You're on two wheels not
3 four, and I knew enough not to do that because I knew I
4 would get hurt if I did. So I tried to miss the cow.
5 Q. I'm sorry. What did you say just then? I couldn't
6 hear you. Repeat what you said. You said you knew
7 enough not to do that then what?
8 A. I knew enough not to do that, as far as locking up
9 the brakes because that would have caused me injury
10 without doubt. And so I tried to aim for where the cow
11 wasn't. That's all I had time to do.
12 Q. How much time did you have to react from the time
13 you first saw the cow in your lane of travel?
14 A. Hardly any. I mean, all I had time to do was try
15 to apply the brakes and aim for a different piece of
16 road.
17 Q. Okay. And there's a term that is called laying
18 down the bike. Do you know what that means?
19 A. Yes, I do.
20 Q. Did you attempt to lay down the bike?
21 A. No, I didn't.
22 Q. Okay. Do you remember where the bike ended up?
23 A. I don't remember that. I know what I've been told.
24 Q. Okay. Do you remember where you ended up?
25 A. Same answer. I remember what I'm being told, and

1 the reason I say this because I had a head injury and I
2 have memory problems. I hardly remember anything of the
3 accident scene after the impact.
4 Q. Now, at the accident scene do you remember talking
5 to any paramedics, or anybody, for that matter?
6 A. No, I don't.
7 Q. Do you know how long you were laying -- or, excuse
8 me. Do you know how long you were at the accident scene
9 after the accident happened before someone came along?
10 A. No, I don't.
11 Q. After you hit the -- do you remember hitting the
12 cow?
13 A. I don't remember hitting the cow. I remember
14 knowing I was going to hit a cow, and that's the last
15 thing I remember.
16 Q. Okay. After you remember knowing you were going to
17 hit the cow what is your next memory?
18 A. If you can call it a memory. It's not like when
19 you remember like a visual it's -- for some reason I seem
20 to have this memory in my head that -- like being almost
21 floating, and I assume that was, like, the motor -- or
22 not the motorcycle but the helicopter lifting off, but I
23 don't know that. That was my next memory. It's about
24 the only one I have there.
25 Q. Did you visit the scene of the accident after that

1 date or at a later date?
2 A. Yes.
3 Q. Do you have personal knowledge as to what's on the
4 right side in your direction of travel, on the right side
5 of Dials Church Road when you were heading away from the
6 church?
7 A. Yes. On the side of road it's a very narrow
8 shoulder and then it's a very steep drop off into the --
9 I don't remember what number the pasture was but it's the
10 one that they said that had the big round hay bales in.
11 Q. Does Exhibit 3 show what you just described?
12 A. Yes, it does.
13 Q. Okay. Now, how about as you're going up Dials
14 Church Road on the left? Do you have personal knowledge
15 as to what's on the left side of the road?
16 A. Yes, I do. That would be the pasture. There's a
17 -- well, before the fence for the pasture there's a wider
18 area of shoulder as opposed to the right side of it.
19 It's more level. There's a -- I don't know, maybe 15
20 feet of grass then the fence.
21 Q. Okay. Now, can you compare -- based on your
22 personal knowledge can you compare the two sides, I mean,
23 in terms -- how would you compare how the right side of
24 the road sits with the left side of the road, or vice
25 versa?

1 A. Well, like I said, there's much more -- it's not
2 really a shoulder. I guess it's the same level as the
3 pasture on the left side but the fence just changes the
4 shoulder from the pasture. So it's very level, almost
5 even with the road, maybe a little bit of a drop, but
6 just a gradual. Well, on the right side of the road, as
7 I said, you got a very narrow shoulder but then it drops
8 off really, really steep into some overgrowth.
9 Q. And I almost forgot one question. Before you had
10 hit the cow, or what you perceive as hitting the cow, did
11 you have any cow feces or hair on your body?
12 A. No, I didn't.
13 Q. Sorry, I had to ask. Now, you mention remembering
14 what you called a lifting sensation, and I think you said
15 you equated -- you thought it was the helicopter ride.
16 What is your next memory after that?
17 A. The next memory I have after that is I had asked
18 somebody to call my wife because she's -- I knew that I
19 was hurt pretty bad because I couldn't think of what I
20 wanted to think and I just wanted to call her.
21 Q. Now, while you were hospitalized did you undergo
22 any surgeries?
23 A. Yeah, I did.
24 Q. I'd like to show you a series of pictures.
25 (WHEREUPON, Court Exhibit Numbers 11 through 14,

1 Photographs, were marked and made a part of the record.)
2 BY MR. BOGGS:
3 Q. David, I'll show you what's been now correctly
4 marked as Courts 11 through 14. Can you identify just
5 briefly what each of those pictures depict.
6 A. Each one independent?
7 Q. Yeah, just quickly. I mean, you don't have to go
8 into detail.
9 A. The first one is a picture of me in the hospital
10 bed with obviously I've got a cervical color, I guess
11 you'd call it, a collar around my neck.
12 Q. That's okay. Just ---
13 A. Obvious damage to the leg.
14 Q. Yeah.
15 A. The second one is a close-up picture of the damage
16 that was done to my right leg. The next one, which would
17 be Number 13, is a closer picture of a grotesque
18 swelling, I guess you can call it, of the leg, and
19 sutures. And then the next one, which would be 14, would
20 be an x-ray of the leg with the fixture and the screws
21 showing through it.
22 Q. Okay. And does that one have your Social Security
23 number on it?
24 A. The last one?
25 Q. Yeah. The records up on top.

1 A. Yes, it does.
2 Q. Would you take a pen and just mark out your Social
3 Security number, please. I'm sorry about that.
4 A. (The witness complied).
5 MR. BOGGS: Permission to publish, as earlier
6 discussed?
7 THE COURT: Yes.
8 BY MR. BOGGS:
9 Q. Now, David, I don't know if I asked you, did you
10 have any surgeries while you were at the hospital?
11 A. While I was in the hospital, yes.
12 Q. Okay. And what -- obviously, you had some problems
13 with your leg. Did you have surgery on your leg?
14 A. Yes.
15 Q. And what was wrong with your leg?
16 A. It was broken, shattered. It's the bone that they
17 call the tibial plateau below the knee and to the ankle.
18 It's sort of -- the top part of it was were the worst
19 damage was. The bone sort of comes up and shelves into a
20 support for your knee and there was a lot of shattering
21 in there.
22 Q. Okay. And so did they install an apparatus, if you
23 will?
24 A. Yeah. They installed what almost looked like the
25 kickstand to the motorcycle if you look at it. I think

1 you -- the jury may see it later but it's a long rod made
2 out of a titanium plate and they -- I don't know the
3 exact number of screws, a fair number of screws, some of
4 them really, really long that they attached it to my
5 bone.
6 Q. Now, I'm going to show you what's been marked as
7 Court's Exhibit Number 10. First of all, this says
8 sterilization pouch. It's a sterile bag, isn't it?
9 A. As far as I know.
10 Q. Okay. Good. Can you -- well, just basically, is
11 this what was in your leg?
12 A. That's what they told me was this there, yeah.
13 Q. Is that what was given to you by your doctor?
14 A. Yes.
15 Q. Is that what's depicted, to your knowledge, in the
16 x-ray?
17 A. Yes.
18 MR. BOGGS: Permission to give it to the jury?
19 THE COURT: They may see it.
20 BY MR. BOGGS:
21 Q. All right, David ---
22 THE COURT: Let me explain to the jury what these
23 are.
24 These Court's exhibits are not matters that are
25 being challenged by either side. They are for you all to

1 see. They won't be in the jury room with you with the
2 evidence that is for the factual disputes because
3 everybody admits the leg was broken and it was repaired.
4 So that's kind of the purpose of those exhibits, for you
5 all's understanding, the difference.
6 MR. BOGGS: Thank you, Judge.
7 BY MR. BOGGS:
8 Q. Now, briefly, what other injures were treated
9 during your hospitalization?
10 A. Briefly?
11 Q. Briefly.
12 A. I had a severe closed-head injury, I had a cracked
13 sinus cavity, abrasions, of course. I had severe
14 vertigo. I had one time what they thought was a blood
15 clot that they had to rush me down and do the test like
16 they do on a woman when they test her for being pregnant
17 to make sure that that wasn't there because they thought
18 I might be going the wrong way as far as surviving.
19 Q. You talking about an ultrasound?
20 A. Yeah. Yeah. It was on my leg because they thought
21 there was a blood clot there.
22 Q. Okay.
23 A. Severe, very severe perispinal muscles which are
24 the muscles that hold up your head, basically.
25 Q. Get a little bit closer to that microphone.

1 A. Okay.
2 Q. You're very soft spoken.
3 A. I had ---
4 Q. Maybe not that close.
5 A. I had a very restricted movement to my neck up and
6 down and radially. I had a badly -- almost broken
7 knuckle -- or left -- right thumb.
8 Q. So essentially a lot of things were wrong and they
9 were treated during your hospital stay?
10 A. And then some of those things formed out into other
11 things after I got out.
12 Q. Well, how long were you in the hospital?
13 A. I was in the hospital for seven days.
14 Q. Okay. After you went -- I assume you went home,
15 right?
16 A. From the hospital, yeah.
17 Q. Did you ever have to go back into the hospital?
18 A. Yes, I did.
19 Q. Okay. And what was that for?
20 A. If I remember correctly, about one week after I got
21 home my wife had had enough and took me back because I
22 couldn't eat anything at all. I basically survived on
23 water and maybe a cracker here or there because -- I
24 don't know how to explain it, nobody has been able to
25 tell me but everything that was cooked in the house

1 smelled identically the same but it was a smell I'd never
2 smelled before and everything tasted like that smell, if
3 that makes any sense, because your smell and your taste
4 are so closely related, and I couldn't keep anything
5 down. I threw up everything that I tried to eat and I
6 lost a significant amount of weight in a quick amount of
7 time. And I woke up, I guess it was the next weekend, I
8 think, throwing up upon waking up, and she said, Enough
9 is enough, and took me back.
10 Q. Okay. Now, after the hospital were you treated for
11 any other injuries?
12 A. Yes.
13 Q. And after the hospital, the second visit, what
14 types of treatment did you have? Just briefly explain
15 the types of treatment.
16 A. I had physical rehabilitation with my leg after
17 they said I could put weight on it at the rehab center.
18 I had positional rehabilitation for severe vertigo. They
19 called it positional vertigo. There's different types.
20 I had physical therapy for the neck restrictions,
21 movements that I was taking about.
22 I had to go have MRIs taken because of the pains in
23 my head that just would not ever go away no matter how
24 much pain medication I took. I was prescribed to go to a
25 neuropsychological evaluation because of the short-term

1 memory problems and some motor skill problems I was
2 having in my right hand.
3 I had to go to an ENT because of problems with
4 vision, with distant vision, which I've never had prior
5 to the accident. I had a recurring noise, I think it was
6 mainly my right ear, that sounded like a busted speaker
7 would. It just came and went.
8 Q. And all those ---
9 A. That's off the top of my head.
10 Q. Well, I mean, bottom line is since the date of the
11 accident you've been through a lot and treated for
12 different injuries; is that correct?
13 A. Yes.
14 Q. Now, have you been prescribed medicines during this
15 time?
16 A. Yes.
17 Q. Were they necessary for the treatment?
18 A. Yes.
19 Q. Or the rehabilitation or what have you? Did you
20 always take your meds?
21 A. I definitely took the things that were pertinent to
22 having to heal me up. I did stop taking the pain
23 medication after the one week that I talked about because
24 when we went back to the hospital we didn't get a real
25 conclusion. All they would say was, Look, you know,

1 you've had a really, really bad accident and you're going
2 to have to endure some of these things.
3 And I needed some relief. So I didn't know
4 anything else to do but cut out what I'd never done
5 before, and that was the pain medication. So I just
6 stopped the pain medicine and just tried to endure it
7 with over-the-counter stuff to try to allow me to be
8 able to eat.
9 Q. Do you have any current course of treatment right
10 now or do you have anything that's, you know, scheduled
11 right now that you're doing on-going treatment?
12 A. The only thing that's really -- and I don't know if
13 you call it scheduled, but when the vertigo comes and
14 goes, there's no cure for that once you get it, and
15 anybody can get it, but I have it, and sometimes it's
16 worse than others over periods of time and what they
17 prescribe you to do is to do positional movements, which
18 basically amounts to -- I won't got into it real deeply
19 but what vertigo is kind of means that there's something
20 in your inner ear that gets out of place and it's not
21 operable. You can't fix it by going in there. All you
22 can do is move around and hope that it moves somewhere
23 else that it doesn't bother you. So occasional ly I'll
24 have to reproduce those type of movements and hope that
25 it diminishes.

1 Q. So essentially doctors have given suggestions for
2 what may come up ---
3 A. Right.
4 Q. Is that a fair assessment?
5 A. Yeah.
6 Q. They try to teach you how to deal with whatever you
7 have to deal with, right?
8 A. Right. And I do still have physical therapy for my
9 leg that they told me to continue to do at home.
10 Q. Okay, so at this point your doctor -- has your
11 doctor done all that can be done until some more time
12 passes and you know how your body is going to react?
13 A. Yes. Essentially, as a matter of fact, the plate,
14 the reason that it was out is a little unusual. They put
15 those in and don't intend to take them out, but in rare
16 occasions, such as mine, when you keep having
17 complications and you can't reach the maximum point of
18 recovery that you want to reach, which is as good as you
19 could be and not be restricted, that's done as a last
20 result, and we tried everything else before that. The
21 doctors decided to do that. So basically, you know,
22 after that you're as good as you're going to be.
23 And that's the same thing with the head injury.
24 The head injury, the neuro psychoanalysis evaluation
25 determined that you've got a problem but it's a brain

1 injury, and if it's an inoperable brain injury, which
2 mine is, your brain heals on its own over time.
3 Q. Okay.
4 A. And it's that progress -- progressive stage.
5 Q. How long was the plate in your leg?
6 A. It was up until spring of last year.
7 Q. So almost two years?
8 A. End of March, I think, if I'm not mistaken.
9 Q. Okay.
10 A. 2010.
11 Q. So bottom line, are you a hundred percent of the
12 way you were before this accident?
13 A. Oh, no.
14 Q. Okay.
15 A. No.
16 Q. Do you anticipate any future treatment that you may
17 have to endure?
18 A. I do now, probably, is because taking the plate out
19 doesn't seem to have done what we hoped it would do.
20 It's better than it was but I'm still -- I know I'm
21 nowhere near where the doctor hoped I would be by his own
22 statement, and I know I'm not anywhere where I hope or
23 want to be, or close to where I was.
24 Q. Well, how has it affected your life, physically?
25 A. Just about every way. You don't -- maybe some of

1 you or some of you all been there but you don't know that
2 unless you get this. It touches everything because --
3 family life, we have grandkids. Those of you who have
4 grandkids know how special they are.
5 (The witness appears to be upset.)
6 I'm sorry. Got a four year old and he's the light
7 of my life. Before the accident he would run, you know,
8 Pop, Pop, you're home. You know, and actually, you know,
9 you're a granddaddy. You throw him up in the air and you
10 run after him. And when you come home and he's doing
11 that, especially the first little while after I could
12 even get around on my leg, and you can't do that anymore,
13 he doesn't understand. And then you see the look in his
14 eyes and it's -- like I said, it doesn't make any sense
15 to you that I'm acting like I'm acting now but unless
16 you've been there you don't actually know how much it
17 impacts you. And that's just one example.
18 With his father, or my stepson, we threw football
19 all the time. I could run -- you know, I feel like I was
20 in decent shape for my age and I could run, catch the
21 ball, throw the ball, play tackle, or whatever, and I
22 can't run anymore. I just can't. I don't know any other
23 way to explain it other than that. If you've been there
24 you know. If you don't you probably can't relate. But
25 just everyday activities.

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1 Being a man, I've never -- I'm a very mechanical
2 person. That's what I've done all my life, as far as an
3 occupation. I've prided myself on not having to call
4 anybody to do things around the house, let alone the fact
5 we couldn't really afford it, but you do what you do.
6 And just some things that I can't do anymore, and I guess
7 that affects your pride. Then you go on to the
8 psychological thing, and I can go on. It's like a chain
9 reaction.
10 Q. Well, and you're aware of the agreement that we
11 have with the other side. The damages aren't going to be
12 determined by the jury and that they are just going to
13 focus on liability?
14 A. Yeah.
15 Q. And so, again, in summary, physically this has
16 affected you, your everyday life; is that fair?
17 A. Oh, yeah. Yeah.
18 Q. Okay. Now, during your treatment have you been
19 trying to -- well, you stated you hadn't been able to go
20 back to your job. Is that because you're physically
21 unable?
22 A. Yeah.
23 Q. Okay. Now, with the economy and all has there been
24 any job availability problems? I mean, have you been
25 looking for a job that you can take?

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1 A. Yeah.
2 Q. Okay. Have you been able to find one?
3 A. Not as of yet.
4 Q. Have you been taking any steps to better your
5 opportunity for a job?
6 A. Yeah.
7 Q. And what's that?
8 A. I've gone back to school, Greenville Technical
9 College.
10 Q. And are you seeking training that might lead to a
11 job that you can handle?
12 A. Yeah. That's what I've tried to map it out as. I
13 figured if I'm going to be out due to the injury and I
14 can at least get out then take advantage of the
15 opportunity and try to widen it because it looks like
16 that's what I'm going to have to do because I've been a
17 very physical person all my life, like I said, and now
18 limited. So I need to sort of broaden where I've been.
19 Q. All things considered, in a perfect economy or
20 perfect world, the way your leg is right now could you
21 have gone back to Pierburg and done the job you had
22 before?
23 A. No.
24 Q. Even today?
25 A. No.

1 Q. All right. Now, your wife has a claim for what's
2 called loss of consortium. Without getting into the
3 legal aspects of it, has she suffered as a result of your
4 injuries?
5 A. Oh, yeah.
6 Q. And I guess can you briefly explain that. I mean,
7 take as much time as you need but just summarize. Again,
8 that's part of damage so we have this agreement but tell
9 how it's affect -- your injuries have affected your home
10 life or your marriage.
11 A. Well, physically, as you can imagine, I can't move
12 around like I used to and probably the obvious thing that
13 you're going to think about is the marital relationship,
14 and I guess everybody knows what I'm talking about, in
15 the bedroom. I can't move like I used to move, without
16 being too nasty.
17 But there again -- and this may be a man thing,
18 when you can't do things that you used to do it makes you
19 feel like less of a man. And then she, of course, tries
20 to be her and the rest of me, that I can't be, and it
21 just -- that affects me mentally, and it frustrates me
22 and bothers me until it's gotten to the point where it's
23 just -- It's almost -- It's almost like something that
24 you have to plan and try to do right and it's just -- it
25 ruins that.

1 And aside from that, like I said, you asked about
2 her specifically. As I said, she tries to take up for
3 what I'm not able to do anymore, which she's wonderful
4 about that but that makes me feel even less than a man,
5 and I don't know how to explain it other than that. It
6 just compounds it mentally and the frustration sets in,
7 which makes her worse because it adds to her, and it's a
8 process that I guess she'd have to learn to deal with.
9 Q. Prior to the accident did you know Wayne Darby?
10 A. I knew him, yeah, not well though.
11 Q. How did you know him?
12 A. Just that we've lived in the same area all our
13 lives, acquaintances, passing in the road, waiving in the
14 road, what have you.
15 Q. When you drove down Dials Church Road any occasion
16 prior to the accident, up to the accident, did you know
17 specifically that that was Wayne Darby's pasture on
18 either side or around there?
19 A. Not specifically.
20 Q. Okay. Going back to the accident. What did you
21 try to do or what did you do to try and miss the cow?
22 What do you recall?
23 A. I did everything I could with the time I had, and
24 that was, as I said, I applied the brakes, tried not to
25 apply them too hard to where I'd lose control of the

1 motorcycle. I steered to where the cow wasn't at the
2 time, and that's all I had time to do.
3 Q. Why didn't you miss it?
4 A. He got to the same place that I was when we hit, is
5 all I can tell you. I couldn't avoid it.
6 Q. Did you try and hit it on purpose?
7 A. No.
8 Q. When you left that grave site and were heading home
9 on July 24th, 2008 is that where you thought your trip
10 would lead to?
11 A. Absolutely not.
12 Q. David, you know, if by some chance you are in the
13 same position again, let's hope not, riding a motorcycle
14 down the road under the same circumstances would you have
15 acted the same way?
16 A. Absolutely.
17 MR. BOGGS: Please answer any questions that
18 Mr. Hanna may have.
19 MR. HANNA: Please the Court?
20 THE COURT: Yes, sir.
21 CROSS-EXAMINATION
22 BY MR. HANNA:
23 Q. How are you doing, David?
24 A. Pretty good.
25 Q. I want to go back and focus on the events that

1 occurred immediately prior to the collision that we're
2 here about today, okay? And let's start with, you know,
3 I understand that you live close to the Dials Church,
4 correct?
5 A. Fairly close, yeah.
6 Q. Take, what, five, seven minutes to get from your
7 house to the Dials Church?
8 A. Yeah, probably seven to ten.
9 Q. Would you agree with me that it was somewhere
10 between 6:00 and 6:30 when you left your home to go to
11 Dials Church?
12 A. I don't really remember the time.
13 Q. Do you recall me taking your deposition in this
14 case?
15 A. Yes, I do.
16 Q. When I asked you in the deposition what time of day
17 are we talking about now, do you think, and again,
18 referring when you went to the church, you said, I'm not
19 absolutely sure. My guess, 6:00, 630.
20 Do you disagree with what you previously testified
21 to?
22 A. I don't disagree with what I testified to then as
23 being what I thought was the time then, but what I'm
24 saying is as of right now I don't recall exactly when
25 that was.

1 Q. I understand. Now, as we discussed, you rode from
2 your home to the cemetery on your motorcycle, correct, or
3 the motorcycle? I think technically it belongs to ---
4 A. Yeah, I rode the motorcycle.
5 Q. And that, again, took about seven minutes?
6 A. Yes.
7 Q. Okay. And you stayed at the cemetery somewhere 15
8 minutes to half an hour; is that accurate?
9 A. That's what was fairly typical for me.
10 Q. And you were heading back to your home when this
11 accident occurred; is that accurate?
12 A. That's right.
13 Q. So would you agree with me that based upon the
14 timeline we've been discussing that it was somewhere in
15 the neighborhood of 7:00 p.m. when this accident
16 occurred?
17 A. As I said, I don't remember times. All I know is
18 it was afternoon.
19 Q. It was still light, correct?
20 A. Yes.
21 Q. Now, it's my understanding that you were going
22 approximately 35 miles an hour immediately prior to the
23 accident; is that correct?
24 A. As I told Mr. Boggs, I don't recall looking at the
25 speedometer knowing exactly. All I know is that on

1 country roads I never drive, you now, anymore than 40
2 miles an hour.
3 Q. Understood. And, again, we've already
4 established -- I previously took your deposition and when
5 I did so and I asked you how fast do you think you might
6 have been going on that road, your answer was, I was
7 probably going 35.
8 You don't disagree with that, do you?
9 A. I don't disagree with what I said then. What I'm
10 saying is I don't ---
11 Q. I understand.
12 A. Forty miles an hour, 35 ---
13 Q. Bottom line is you previously testified under oath
14 that you were probably going 35?
15 A. Yes, I did.
16 Q. Okay. And, again, in fact, I expressed surprise
17 because I thought that was below the speed limit, I
18 believe. You may recall that. You are aware, I think as
19 you established on direct, the speed limit actually is 45
20 on that road?
21 A. Yes.
22 Q. So whether you were going 40 or 35 you were
23 definitely going under the speed limit?
24 A. That's right.
25 Q. Okay. Now, I think -- again, I think this was

1 established on direct but I want to make sure. When you
2 first laid eyes on the cow it was in the road; isn't that
3 accurate?
4 A. That's my memory, yes.
5 Q. Okay. But you don't know -- if I recall correctly,
6 you don't know which way the cow was heading. Like you
7 said, it was pointing towards the pasture with the bales
8 of hay or the other way, or heading towards you or going
9 away from you, do you?
10 A. No.
11 Q. And I think as we established there was some
12 photographs that showed kind of immediately prior to this
13 area where your accident occurred there's a long hill and
14 then it crests and opens up into more of a -- I'm not
15 going to say exactly straight but more straight that
16 flat. Is that accurate?
17 A. Somewhat. What happens is the road -- there's a
18 long hill, as you said, and that angle is pretty
19 consistent all the way up, then that angle changes. I
20 wouldn't say it flattens out but the elevation is
21 definitely not as steep. But then you come to another
22 slight hill, and then after over that hill that's where
23 the road actually flattens out until then you can see
24 past that white house on the other side of Cooley Road.
25 Q. Understood. And it's my understanding that as you

1 crested the hill you immediately saw the cow. Is that
2 accurate?
3 MR. BOGGS: Objection. Can we ---
4 THE COURT: Sure.
5 (WHEREUPON, a sidebar was had.)
6 BY MR. HANNA:
7 Q. We've been talking about the elevation and the
8 hill. Which hill were you referring to in your
9 deposition when you stated that you crested the hill and
10 immediately saw the cow?
11 A. The last hill before I hit the cow.
12 Q. Okay. Now, I think you testified you'd lived in
13 this part of the state your whole life, correct?
14 A. That's right.
15 Q. And you had some experience traveling up and down
16 this particular roadway; isn't that correct?
17 A. Yes.
18 Q. You had general knowledge there were cows in the
19 area, right?
20 A. Yes.
21 Q. However this is, to my understanding, the first
22 time you had personally ever witnessed one outside of its
23 enclosure and in the roadway, correct?
24 A. To the best of my memory, yeah.
25 Q. You don't know which part of your motorcycle

1 actually made contact with the animal, do you?
2 A. I don't remember by memory. I can hypothesize from
3 looking at the motorcycle, but, no.
4 Q. Again, I don't want you to hypothesize. I'm saying
5 by memory. Isn't it true that you have no personal
6 knowledge of any damage to the fence around the field
7 immediately adjacent to the accident on the date of the
8 accident?
9 A. That's true.
10 Q. And you can't identify the cow that was involved in
11 the accident, can you?
12 A. I've tried, but, no.
13 Q. Understood. One second. I think I'm done.
14 (PAUSE)
15 MR. HANNA: No further questions.
16 THE COURT: Any redirect?
17 MR. BOGGS: Just one. May it please the Court.
18 THE COURT: Sure.
19 REDIRECT EXAMINATION
20 BY MR. BOGGS:
21 Q. Even though you're familiar with cows in the area
22 did you have any special reason to be on the look out for
23 a cow where you found it in the road or where you hit it
24 in the road ---
25 A. No.

- - -

1 Q. --- on Dials Church Road?

2 MR. BOGGS: No further questions.

3 THE COURT: Any recross?

4 MR. HANNA: None.

5 THE COURT: All right. Mr. Farrow, you may step

6 down.

7 All right, ladies and gentlemen. I'm ready for a

8 lunch break. I hope you all are. It's 12:30. I'm going

9 to give you all until -- try to be back in the jury room

10 just before two o'clock and we'll get started back two

11 o'clock sharp. I've got an issue or two with the lawyers

12 and I don't know if I'm going to do it now or about 1:30,

13 but that's how we've been attending to some of the

14 Court's business with them to keep things moving for you

15 all. So you all be back in the jury room just before

16 2:00. You've got about an hour and a half. Don't

17 discuss the case.

18 (WHEREUPON, the jury leaves the courtroom at

19 approximately 12:33 p.m.)

20 THE COURT: All right. You all going to coordinate

21 your looking at exhibits with your respective witnesses?

22 MR. BOGGS: Yes, sir. I would just -- I mean,

23 basically what I need to do is confirm, and I have no

24 reason to doubt it. It's just those are the same

25 pictures that were in the report. And then I would just,

1 since they are blown up, with Geov's permission I'm going
2 to have my expert -- I was just going to have my expert
3 refer to these same photos so we're -- so both experts
4 are talking about the same demonstrative evidence. So
5 when we get back we'll look at them.
6 THE COURT: I think Mr. Hanna can represent he
7 didn't Photoshop those documents and trip you up.
8 MR. BOGGS: Well, I agree.
9 THE COURT: Certainly he's cleaver and maybe can do
10 that but ---
11 MR. BOGGS: Well, and honestly some of the wording
12 I may have a problem with that was in the report, until
13 there's a proper foundation laid.
14 THE COURT: Well, I'm just talking about the
15 photographs themselves, not the wording.
16 MR. BOGGS: Oh.
17 THE COURT: All right. We'll see you all. What
18 time you need back in the courtroom, for the benefit of
19 the bailiffs?
20 MR. BOGGS: At 1:30.
21 THE COURT: 1:30?
22 MR. BOGGS: An hour from now.
23 THE COURT: All right.
24 MR. BOGGS: If that's all right.
25 THE COURT: All right.

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1 (WHEREUPON, a lunch break was taken.)
2 THE COURT: I understand you all have an issue.
3 MR. BOGGS: Probably more than one. One to discuss
4 with you but many internally, I'm sure.
5 THE COURT: I'll take judicial notice of that.
6 MR. BOGGS: Thanks. Well, I don't know whose
7 motion. The witness I plan to call is an expert. His
8 name is Gerald McDevitt, seated right here. There's a
9 video he made of driving a motorcycle up Dials Church
10 Road for his reference, not for his use. It wasn't drawn
11 to scale. There's no -- excuse me, not drawn to scale.
12 But there was no measuring there was no -- it was
13 intended for use in Court.
14 Obviously, we gave them everything he had, because
15 that's what we're supposed to do. They want to use that
16 video I assume during cross and we think it's misleading,
17 prejudicial, a waste of the Court's time. What else have
18 you been saying throughout the trial? No, just kidding.
19 And also, Judge, one major problem -- or another major
20 problem is that Wayne is in the video. Wayne portrayed
21 -- Wayne, my associate, portrayed the mark, as you will.
22 THE COURT: The mark of the cattle?
23 MR. BOGGS: Well, the estimated position of the
24 cow, and so I just think that it has no probative value.
25 We can put on Mr. McDevitt and he'll testify as to what

1 he used to formulate an opinion and it was not the video.
2 THE COURT: All right. Mr. Hanna, what probative
3 value does it exist to show of relevant evidence?
4 MR. HANNA: What the video purports to show is,
5 again, he got on a motorcycle at Dials Church and
6 basically followed going 35 and you could see clearly on
7 the video that he's going the speed the plaintiff did and
8 he just follows the path up the road that the plaintiff
9 did, and the purpose for which I would want to show it
10 was and particularly based upon this confusing testimony
11 to, again, about two crests of hills and all that kind of
12 stuff, so that the jury can see for themselves exactly
13 what the roadway looks like.
14 There's been abundance of testimony in the case and
15 with all these pictures that they keep putting in that
16 other than a little bit of tree growth the road is
17 identical now than what it was then. And to the extent
18 that there was some confusion about at what point you --
19 stuff would become visible in the roadway ahead I think
20 it is highly probative.
21 Now, if we had not had the confusion moments ago
22 and it would have gone exactly as I suspected it would go
23 I wouldn't care about this video but now that we've
24 brought an issue in of ---
25 MR. BOGGS: I want to clarify the record. I don't

1 know what confusion he's referring to. The only
2 confusion may be on his interpretation of my client's
3 testimony deposition. So to the extent he's confused,
4 I'm not.
5 MR. HANNA: I never said you were confused.
6 MR. BOGGS: You said confusion on the record, and I
7 want the record to reflect I don't know what confusion
8 you're taking about.
9 THE COURT: All right.
10 MR. HANNA: I think that if the video is shown it
11 will show that there's only one possible hill that one
12 could crest, okay, and I think that it will -- anyway, I
13 think that it does help the jury understand what it looks
14 like. We've got all these pictures, what's wrong with a
15 video showing ---
16 MR. BOGGS: What's wrong with the video ---
17 MR. HANNA: And here is the video.
18 MR. BOGGS: My associate is standing in the road
19 and it shows him as he drives by, and it has no
20 scientific basis. It's basically my expert riding up the
21 road. And so -- I'm sorry.
22 THE COURT: How is it prejudicial to you?
23 MR. BOGGS: I'm sorry?
24 THE COURT: How is it prejudicial to you? I
25 mean ---

1 MR. HANNA: Can we let the Judge see it? Does it
2 work? Let's let the Judge see the video. There's two of
3 them.
4 THE COURT: Let's look at it.
5 (WHEREUPON, the video was played for the Court.)
6 THE COURT: All right. Explain to me again why
7 it's prejudicial? I mean, it's the scene. It would be
8 tantamount to putting the jury on a bus or van and riding
9 them out there at 35 miles an hours on the scene, and
10 I'll do that if you all request it but I'd rather not.
11 MR. BOGGS: Judge, under what -- how is he trying
12 to get it in?
13 MR. HANNA: Their expert did it. I'm just going to
14 ask him, Did you make a video, can we show the video?
15 That's all I plan to ask him. But the purpose of the
16 video is to show what the scene looks like.
17 MR. BOGGS: Judge, it's not the date in question,
18 it's not the time of year, it's not the time of day, it's
19 got my associate in it. It wasn't used by the expert.
20 It's not to scale. There's no markings. The markings
21 are clearly in his expert's materials. It's not
22 necessary to show the scene.
23 If they wanted to have it they should have done it.
24 My expert just did it so that when he drove back to
25 Charleston he could remember the scene, but that doesn't

1 mean it wasn't used -- I'll proffer that he wasn't using
2 any calculations. In fact, he didn't do any
3 calculations. He basically analyzed what their expert
4 did. So if he's trying to -- I think that it misleads
5 the jury especially when my associate is in it. I mean,
6 among other things.
7 MR. HANNA: To the extent that there's anything
8 misleading about it before it's shown the Court can give
9 an instruction to the jury that it's -- the only purpose
10 upon which it is to be used by them is simply to see what
11 it looks like going the speed he said he was going in the
12 direction he was going.
13 No one purports that it's supposed to show exactly
14 where the cow was or anything like that, other than what
15 the scene looks like. And, again, it's particularly
16 important to me because I think it will show that there
17 is only one hill to crest, okay. You know, and it's
18 clear which hill we're talking about.
19 THE COURT: That's probably a factual dispute and I
20 don't want to get into that. I don't have an opinion on
21 the facts, as my charges always says.
22 MR. BOGGS: Judge, one deal. This is a two -- he's
23 essentially trying to show how it is to be perceived by a
24 motorcycle rider to the jury but it's only two
25 dimensional. It's not three dimensional. And so you

1 can't factor in shadow, and all the things. So it does
2 not depict for the jury what existed then and there.
3 These that we're going to get into aren't being
4 offered to show that. These that we've shown as a frame
5 of reference point. And so they have -- they can see the
6 scene. They've seen where it is. They've got pictures,
7 still photos. And so I just -- it's not necessary and it
8 misleads them because Mr. Patterson is standing there and
9 you can see him. It wasn't -- they didn't say, All right
10 -- they didn't put a cow out there. They didn't measure
11 it. They didn't measure, all right, what's a hundred
12 feet. Mr. Olson --
13 I assume you're Mr. Olson?
14 MR. OLSON: I am.
15 MR. BOGGS: Okay. How you doing?
16 All right, that Mr. Olson did. He's got cones, he
17 measured. That's what those pictures show. And so I
18 just think that it's not appropriate. We had no intent
19 to use it. We disclosed it because he has to give his
20 whole file.
21 THE COURT: I think it's probative. I don't think
22 it's prejudicial. I don't think it can be offered for
23 anything other than -- and subject to the things you
24 said. It's not same time of year, time of day, time of
25 anything, the shadows are different, it may have been

1 overcast versus cloudy. No, it doesn't, but it does show
2 the road. It does show the path of travel by your
3 client. I don't see how it's not probative.
4 MR. BOGGS: Well, it shows the area after the
5 accident. Judge, I mean, it's akin to me taking a video
6 on yesterday and walking Mr. Darby's fence and finding a
7 hole in it, which I have pictures from Richard Marshall
8 that he did have a hole in it last week, it's the same
9 thing.
10 THE COURT: Do you want to go frame by frame and
11 look for the holes?
12 MR. BOGGS: Sir, it's not -- I mean, I'm just ---
13 THE COURT: I mean, you all have argued such
14 obscure points. It's amazing how the roles reversed here
15 over the lunch hour.
16 MR. BOGGS: Over the lunch hour?
17 THE COURT: Yeah.
18 MR. HANNA: It's rare.
19 MR. BOGGS: So you would allow it to come in as
20 impeachment of my expert?
21 THE COURT: No. Not as impeachment. I don't see
22 how it's impeachment at all. How is it impeachment?
23 MR. HANNA: I'm not suggesting it's impeachment.
24 I'm merely suggesting it shows that ---
25 THE COURT: I missed that.

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1 MR. HANNA: --- he took it. That's why it's the
2 appropriate person to put it in through because he's the
3 one that did the video.
4 THE COURT: I didn't understand it to be
5 impeachment.
6 MR. HANNA: It's not intended to be.
7 THE COURT: Where is that coming? You all got to
8 the tell me what's going on because I don't understand
9 how it would be impeachment. That came from somewhere
10 and that hadn't been pitched to me yet, the impeachment
11 issue.
12 MR. HANNA: I'm not suggesting it is.
13 MR. BOGGS: It came from my expert.
14 MR. HANNA: I don't know what he's saying. All I
15 I'm saying is that ---
16 MR. BOGGS: It coming from my expert. He's going
17 to say, Did you make a video, and he's going to put it
18 in.
19 MR. HANNA: Did you make a video? What does the
20 video show? Let's show the video. That's it.
21 MR. BOGGS: Thought it was going to be a simple
22 afternoon.
23 THE COURT: I mean, I don't see how it's
24 prejudicial. I mean, all the other photographs have been
25 let in. There have been none of the date of the

1 accident. All of them have been representations of other
2 times and -- you know, other times, and weather, and two
3 dimensionality, and all that is already in the
4 photographs.
5 MR. BOGGS: Subject to my objection. All right.
6 Plaintiff rests.
7 THE COURT: All right. You going make any motions?
8 MR. HANNA: Are we not calling the witness?
9 MR. BOGGS: It's my witness.
10 MR. HANNA: I understand. I'm not saying, you
11 know ---
12 THE COURT: Sure.
13 MR. HANNA: Yes, I do ---
14 THE COURT: You're not going to call him?
15 MR. BOGGS: Not right now.
16 THE COURT: Okay.
17 MR. HANNA: Okay. Yes, Your Honor, I would move
18 for a directed verdict in this case first on the basis
19 that there is no competent evidence upon which a
20 reasonable jury can find that the cow in question belongs
21 to Mr. Wayne Darby.
22 There is absolutely -- the only evidence that we
23 have in this case is proximity and in order for the jury
24 to find the proximity alone, that that's his -- that it's
25 his cow, is nothing but rank speculation, okay. And to

1 let in the issue of, again, who owned the cow, I'm
2 unaware of any evidence in the case other than proximity
3 that would state that it was his cow.
4 And, again, that would -- the basis -- I'm sorry.
5 I'm combobulating because I wasn't prepared all of a
6 sudden to argue this part. I'm not getting it out as
7 well as I'd like to. But anyway, I don't think there's
8 any evidence upon which a reasonable jury can find that
9 it's his cow other than through speculation, and the
10 speculation would be that the cow -- you know, again,
11 proximity.
12 There has been some evidence perhaps. And, again,
13 I don't -- you know, to the extent that there is evidence
14 that he was negligent, again, I would move for a directed
15 verdict also on the grounds that there is no evidence
16 that Mr. Darby was negligent on the date in question.
17 The only evidence of potential negligence in this
18 case has consistently been negligence that he may have
19 done, which I don't concede was negligence, but, you
20 know, given all reasonable inferences to the plaintiff,
21 it all happened on some other occasion with no evidence
22 at all that the same thing was going on at the time of
23 the accident, and without any evidence that something was
24 going on on the date of the accident there is no way upon
25 which a reasonable jury could find without, again,

1 speculating or making what we all know is a very
2 impermissible inference that because he was negligent on
3 some other day he must have been negligent on this day.
4 This whole case is based upon the idea that, you
5 know, he doesn't herd his cows right. On some other day
6 he may have left the fence down, on some other day
7 something happened, but no evidence has been produced yet
8 as to anything he may or may not have done on the date in
9 question. And the fact, again, not conceding with that,
10 the fact that he might have been on other occasions has
11 no bearing at all whether he was negligent on this
12 occasion.
13 As a further argument on the negligence argument
14 is, is that because -- I just want to make it more clear.
15 You also not only have to prove negligence but that the
16 negligence was the proximate cause of the injury in
17 question. And, again, all the evidence of negligence in
18 this case is based upon negligence on some other
19 occasion, none of which could possibly be the proximate
20 cause of the injury complained of in this case. And I
21 believe that would be all the bases upon which I could
22 possibly move for a directed verdict at this time.
23 THE COURT: All right. Mr. Boggs?
24 MR. BOGGS: Thank you, Your Honor. May it please
25 the Court.

1 THE COURT: Yes, sir.

2 MR. BOGGS: Judge, we don't need a video of what
3 happened to prove negligence against Mr. Darby, as you've
4 heard countless testimony from fact witnesses of how he
5 did business, how he didn't do business. You've heard
6 from Mr. Darby, his admissions that he had a cow out.
7 The next day he said he had a cow out, the day before or
8 so, but he has -- his credibility is subject to
9 interpretation or assessment by the jury.

10 The fact that he said that he fixed the fence but,
11 oh, I fixed the fence but it was over here, and the fact
12 that the expert -- I mean, there's so many issues.
13 There's so many reasons that you've heard that in a light
14 most favorable to the nonmoving party it's just --
15 respectfully, I don't see any way that a verdict can be
16 directed.

17 The expert that was admitted in animal science
18 testified that Mr. Darby's practices were unreasonable at
19 the time of the accident, and he also stated that
20 proximity is a factor. He also stated that the way he
21 was feeding them was a factor. He also said that the
22 drought was a factor and that would have put him on more
23 notice. His overall business, the way he does business
24 is an indicator of how he was doing business on July
25 24th, 2008.

1 Judge, just before you text while driving for 30
2 years and -- I won't even go there, Judge. That's a jury
3 argument. But, Judge, in a light most favorable to the
4 plaintiff, taking everything, evidence, pictures,
5 testimony and expert testimony his motion should be
6 denied.
7 THE COURT: All right. Mr. Bolt, go tell the jury
8 we'll get them in here in a minute but we've had an issue
9 I've had to the consider, and to be patient with us. If
10 they want to go smoke a cigarette, let them smoke a
11 cigarette. I'm going to take a minute.
12 THE BAILIFF: All right.
13 THE COURT: I had those two cases in my hand to
14 read them again, the Reid and was it Martin, that other
15 case? I had them on the desk and I meant to bring them
16 back in here. I'm going to go back there and read them
17 one more time.
18 MR. HANNA: It's Oconee Mills --
19 THE COURT: Yeah, I've got them both.
20 MR. HANNA: Yes. Yes. Reid V. Clark.
21 THE COURT: All right. I'll be right back.
22 (WHEREUPON, a brief recess was taken.)
23 THE COURT: All right. Mr. Hanna, respectfully,
24 I'm going to decline your motion. I think there's enough
25 evidence presented that a jury can consider that

1 question, and I think that you all -- I don't have you
2 all's interrogatories but isn't that the first question,
3 whose cow was it? Yes or no?
4 MR. HANNA: Yes, that's been ---
5 THE COURT: It's his burden of proof. He's put
6 forth a very circumstantial case.
7 MR. HANNA: Understood.
8 THE COURT: He's allowed to do that. And a jury
9 will decide whether or not his circumstances meet the
10 burden upon him. So we'll go forward.
11 MR. HANNA: Understood. Thank you.
12 THE COURT: Bring the jury.
13 MR. BOGGS: At that time, I might have a motion
14 before Mr. Olson testifies.
15 THE COURT: Okay. All right. Now, get the jury.
16 MR. BOGGS: Judge, may I formally rest on the
17 record, in front of the jury?
18 THE COURT: Oh, yeah.
19 (WHEREUPON, the jury enters the courtroom at
20 approximately 2:42 p.m.)
21 THE BAILIFF: All present, Your Honor.
22 THE COURT: Ready?
23 MR. BOGGS: May it please the Court. At this point
24 in time the plaintiff would rest.
25 THE COURT: All right. Thank you, Mr. Boggs.

1 Mr. Hanna, you may call your witnesses.

2 MR. HANNA: The defense will call Wayne Darby to

3 the stand.

4 THE COURT: Mr. Darby, come forward. And out of an

5 abundance of caution I want the clerk to swear you in

6 again.

7 JERRY WAYNE DARBY, after having been duly

8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. HANNA:

11 Q. I think you did this earlier but just state your

12 full name for the record again.

13 A. Jerry Wayne Darby.

14 Q. Mr. Darby, where were your born?

15 A. Gray Court.

16 Q. And where were you raised?

17 A. In Gray Court.

18 Q. How long have you lived here in Laurens County?

19 A. All my life except for a year when I served in

20 Vietnam.

21 Q. Okay. And where do you live? What's the address?

22 A. 2149 Burdette Road.

23 Q. And what kind of work do you do?

24 A. Construction work and cattle farming.

25 Q. Are you a member of a church?

1 THE COURT: I sustain that.
2 BY MR. HANNA:
3 Q. Are there other farmers -- I'm not sure how that's
4 leading. Are there other farmers that have cattle in
5 your area.
6 A. Yes, sir.
7 Q. Focussing on a two to three mile radius, what other
8 farmer are there?
9 A. Ray Stoddard, Sonny Stoddard, Boyd Stoddard, Terry
10 Varner, Harry Hays.
11 Q. Okay.
12 MR. BOGGS: Objection to relevance, Judge, unless
13 that's --
14 THE COURT: I'm going to allow it.
15 BY MR. HANNA:
16 Q. Do you ever move your cattle from one pasture to
17 another?
18 A. Yes, sir.
19 Q. And why do you move them from one pasture to
20 another?
21 A. You have better grass on the other side.
22 Q. Do you ever allow your cattle to simply roam free?
23 A. No, sir.
24 Q. Focussing on the time frame of July 24th, 2008 or
25 back, okay, what precautions did you take to keep your

1 cattle enclosed in their pastures?
2 A. Maintained the fences.
3 Q. Back in the summer of 2008 how often were you
4 checking your fences?
5 A. At least a couple times a week.
6 Q. Okay. What if there's a bad weather, a storm
7 or ---
8 A. Definitely go out after bad weather or storm.
9 Q. And why would you want to do that?
10 A. Because of tree limbs coming down.
11 Q. Is there anyone who helps you with your cattle and
12 checking your fences?
13 A. My dad.
14 Q. I think we talked about him. What are some of the
15 circumstances under which -- let me take a step back. Do
16 cows ever get out despite the precautions you take?
17 A. Yes.
18 Q. What are some of the circumstances of which you are
19 aware, again focussing on July 24th, 2008 and back, some
20 of the circumstances which you are aware that would cause
21 cattle to get out?
22 A. Tree limbs falling on fences, or I have had the
23 county cutting beside the road and when they get down to
24 the bridge they cut the end post off with the bush hog
25 and tear the fence off and keep on going. And I have had

1 cars run through fences and leave the scene and never say
2 a word about it.
3 Q. When you learn that you've had an escaped animal
4 out of its enclosure what do you do?
5 A. Go get it up and find out where it got out and fix
6 it.
7 Q. Okay. Have you ever received a call from either
8 Laurens County or a neighbor about a cow being out, again
9 prior to ---
10 A. Yes, sir.
11 Q. Have you ever gone to look at the cow that you were
12 told was out and found that it wasn't yours?
13 A. Yes, sir.
14 Q. What other farmers' cows have you discovered out
15 when you, yourself, have been called?
16 A. Sonny Stoddard's, Mr. Whitmire's, Harry Hays ---
17 MR. BOGGS: Judge, I object to relevance if this is
18 outside the time that you ---
19 MR. HANNA: I think my question specifically was
20 before July 24th, 2008.
21 A. Right.
22 MR. BOGGS: But, Judge, I thought we were ---
23 THE COURT: Restricted for the one year. I'm not
24 certain you said that. You did on several questions thus
25 far but ---

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1 MR. BOGGS: On that particular one I didn't
2 hear ---
3 THE COURT: Rephrase your question.
4 MR. HANNA: I misunderstood what you were saying.
5 I apologize.
6 BY MR. HANNA:
7 Q. In the one year prior to July 24th, 2008 do you
8 recall ever getting a call where you went and it was
9 someone else's cow? Can you specifically say that?
10 A. I cannot remember back exactly.
11 Q. Okay.
12 MR. BOGGS: Move to strike everything that was said
13 in his answer prior to qualifying his response.
14 THE COURT: All right. And I think I'll grant your
15 motion.
16 I think the jury understands that I've made a
17 preliminary ruling that the testimony you all are to
18 consider is July of '07 to July of '08, the behavior.
19 That's what we're looking at and evaluating. There's
20 plenty of other time beyond that but that's not been
21 presented to you. So to the extent that question wasn't
22 responsive disregard it.
23 BY MR. HANNA:
24 Q. Now, let's talk some about on or about July 24th,
25 2008. There's been a lot of talk in this case about how

1 best of your knowledge what was the condition of the
2 electric fence surrounding the pasture located there at
3 Dials Church and Cooley Road?
4 A. I couldn't find anything wrong with it.
5 Q. Was the electricity working?
6 A. Yes, sir.
7 Q. Did you check it?
8 A. Yes, sir.
9 Q. Did you walk the perimeter of the fence?
10 A. What I couldn't ride I did.
11 Q. And did you find any defects at all?
12 A. No, sir.
13 Q. Could you find anywhere at all in that pasture
14 where a cow might have gotten out?
15 A. Not in that pasture.
16 Q. Did you notice any missing cows at all?
17 A. No, sir.
18 Q. Did you find any injured cows?
19 A. No, sir.
20 Q. Did you look for any ---
21 A. Yes, sir. Yes, sir, I sure did.
22 Q. Did you make a diligent search?
23 A. Yes, sir.
24 Q. Do you believe that one of your cows was involved
25 in this incident?

- - -

1 walk up and down that street every day -- or not every
2 day but every so often.
3 We heard from Malinda Griffin, the appraiser. She
4 was there on Dials Church Road 13 days prior to the
5 accident. The red mark, she said as she was coming in
6 this direction, the real flat direction, that about the
7 same time of evening, about the same place there were a
8 bunch of cows in the road feeding, 13 days prior to the
9 accident.
10 We heard from Niles Wood, the young man who was
11 also part of the Green Pond Fire Department -- or
12 Volunteer Fire Department. He said he saw the cows jump
13 the fence, twice. He said that he knew to call Mr. Darby
14 from his grandfather. He saw cows on Cooley Road and he
15 knew to call Mr. Darby because he lived in the area. Not
16 because Mr. Darby lived in the area but because Niles
17 Wood had lived in the area basically all his life.
18 Now, he also testified about the scene and talked
19 about how across the street is where the helicopter was.
20 And keep in mind, Chief Shields and Niles Wood, they said
21 their primary purpose was to save his life, not hunt for
22 cows or verify that there was a breach. They had a
23 different job and they did it. Don't let the defendant
24 blame them for not doing his job.
25 We talked about Terry Burdette. Again, I mentioned

1 him earlier. We talked about how he picked up the bike.
2 The bike had cow poop and black hair on it. That's what
3 he perceived. He saw it at night, took it to his garage,
4 and he didn't look at it or study it again. He didn't
5 lie. He said what he perceived.
6 Then we heard from Jeff Hollifield, the C. S. I.
7 guy. You got to have one of those in every case these
8 days, but he was necessary. He said, I took the cow --
9 or I took what was on the bike, studied it, it's a cow.
10 Not only that, that he took the hairs and said they were
11 bovine, a cow. So I don't think there's any argument it
12 was a cow and none has been made that it wasn't a cow.
13 But what he also said was he studied the feces and found
14 that they had been eating dirt and leaves.
15 Now, when I asked him about the color he said it
16 appeared dark but when he looked at it through a
17 microscope with a backlight, you know how it lights up
18 under a microscope, he said, In all actuality it's brown.
19 Keep in mind that registered Black Angus don't have
20 brown hair.
21 Now, somewhere in there, maybe right after, I'm
22 trying to keep them in order, but we heard from Thomas
23 Graham. You'll recall he lives down near the racetrack,
24 T. G., down there. He said that he's friends with Wayne
25 Darby, and you could sense that he didn't want to be

1 here, much like Rebecca Willis, but he didn't lie. He
2 wasn't direct but he didn't lie.
3 He said most importantly that he knows whose cows
4 are in the area, that he's been living there, I think 20
5 years, and that he wasn't surprised that the accident
6 happened or wasn't surprised to hear of the accident.
7 And, quite frankly, even though he didn't have any
8 direct knowledge of the accident in question he didn't
9 say he wasn't surprised about this case. If he's known
10 Wayne Darby for 20 years he sure didn't offer anything to
11 defend him in the way he does business.
12 Now, we heard from Jimmy Miller, Mr. Marshall's
13 partner, testified at different times, confirmed
14 everything his partner said. Like him or not, when he
15 herded those girls down the street it was pretty funny.
16 I call them the girls. I mean, this case can't get any
17 better in terms of all the vernacular, and trust me there
18 was more that you didn't even hear.
19 But he said, I herded the girls, you know, waved
20 them down the street. He's the one that said they hopped
21 back in. A couple of them hopped back into Darby's
22 pasture. He confirmed everything Richard said.
23 In fact, he probably even went further than what
24 Richard said in terms of his overall talking about how
25 the barbed wire was rusty on that field, how -- or,

1 excuse me, on that pasture, and how he was more explicit
2 about the general state of disrepair. And, again, I'm
3 not asking you to jump all the way from what Richard
4 Marshall and Jimmy Miller said about what they saw a
5 month before.
6 I do want you to connect the dots. But it's like
7 in my three-year-old son's book compared to my
8 five-and-a-half-year-old daughter's book, you know, as
9 you get a little older the dots get further apart, so
10 they trust you a little bit more. I mean, this might be
11 the one-year-old book, okay.
12 It's not because of A, it's not because of B, it's
13 not because of C, it's not because of D, it's not because
14 of E, on down, until probably triple A or triple D. It's
15 not because any one of those that you need to say he was
16 negligent, because that's not what we have to show. Add
17 them all up. You could write a book with all those
18 letters.
19 I'm not asking you to jump far, I'm not asking you
20 to jump an electric fence. I'm asking you to take a
21 step. It's a reasonable inference that Mr. Darby is at
22 fault, was negligent.
23 Let's go back to the beginning. His own attorney
24 says, Negligence is carelessness. I agree with him. So
25 then it becomes, do you think Wayne Darby was careless?

1 Do you think Wayne Darby was reasonable in how he acted?
2 Wayne Darby doesn't know what happened on July
3 24th, 2008 either. So for him or his attorney to get up
4 here and say something definitive is wrong. He was at
5 work, and if he wasn't at work he testified that when he
6 got off work in the summer in those evenings, he
7 testified that he was out working the fields. Well,
8 between 6:30 and dark on July 24th, 2008 he was nowhere
9 to be found.
10 You heard through deposition Mr. Harrison.
11 Mr. Harrison lives in the area. Said he lived right
12 there on Dials Church Road. Said he lived there, I think
13 his deposition was 55 years, a long time. And he had
14 seen cows out often, and he also thought that they were
15 Wayne Darby's.
16 Now, Mr. Harrison couldn't be here but his
17 deposition of sworn testimony is as if he's sitting right
18 there. He didn't lie. He didn't say, Well, I saw Wayne
19 Darby's cows out that night. But every time he did he
20 thought they were Wayne Darby's.
21 Now, yet another character and who I have liked
22 getting to know, much like I've liked getting to know
23 Mr. Darby because these cattlemen have all these stories.
24 They have all these experiences that you and I don't
25 have. But the one I'm talking about is Michael Worrell,

1 then left the scene where somebody is about to -- could
2 have died you know what we call that person? We call
3 that a criminal. Where do we put criminals? Prison.
4 Well, I submit to you there's the Darby prison, but
5 in our prisons we lock the door, the warden doesn't give
6 him a key. In the Darby prison the prisoners are in
7 control. They come and go as they please and the warden
8 doesn't care. And if that happened in one of our prisons
9 you'd blame the warden if he gave the key to the
10 prisoner. Blame the warden now. Thank you.
11 THE COURT: Ms. Wakester, I've got about a 20, 25
12 minute instruction. You all want a brief break to
13 stretch your legs, come back and read the instructions or
14 you want to go now?
15 FEMALE JUROR: Let's just keep going.
16 THE COURT: All right. Keep going. That's why I
17 asked.
18 All right. Now, if I were really, really bright
19 I'd have all this memorized. I'm not. I know most of
20 the law but I don't know all the particulars and I want
21 to make certain I get the particulars correct. For that
22 reason I'm going to read and talk. I'll read some and
23 talk some. And if I read and that insults you I
24 apologize but I'm trying to get it right because it's --
25 explain to you all what you all's duties are and

1 responsibilities in considering the evidence. It's not
2 always simple but converting the legalese into English
3 can be tricky.
4 In any event, regarding this case, Ms. Wakester and
5 ladies and gentlemen of the jury, the lawyers have
6 provided you with the summaries of what they believe the
7 evidence has shown. I remind you that during this trial
8 you and I have had certain duties to undertake and
9 perform.
10 As the trial judge it's been my responsibility to
11 preside over the trial of the case and I've also had the
12 duty to rule upon the admissibility of certain pieces of
13 evidence which have been offered, and you are to only
14 consider the evidence which has been presented and
15 admitted in this trial.
16 If there was any testimony ordered stricken from
17 the record during the trial then you must disregard that
18 testimony entirely and you are to only consider the
19 testimony which was presented from the witness stand
20 right here and the exhibits which have been made part of
21 the record in this case, and any stipulations which the
22 attorneys have made.
23 Now, as I have an additional duty to charge you all
24 today the law which is applicable in this case, and it is
25 your duty as jurors to accept the law as I state it to

1 you. If you all have reason to believe the law is
2 otherwise you must disregard what you believe it is or
3 should be and you must take it as I instruct it to you.
4 In every case tried before this Court the jury
5 becomes the sole and exclusive judges of the facts. As
6 the trial judge I'm not allowed to comment upon or make
7 any statement about the facts in this case, since that is
8 your province. You are the sole judges of the facts.
9 And please do not take from anything I have said or
10 done, or any of my rulings that I have an opinion about
11 the facts because that is not my job. It is your job to
12 determine the facts.
13 Now, this case was originally started when the
14 plaintiff, Mr. Farrow, brought this action and filed in
15 Laurens County against Mr. Darby. He filed what was
16 called pleadings, and they are legal papers initiating
17 the lawsuit. In the pleadings, Mr. Farrow alleged that
18 Mr. Darby owed him a duty to keep his domestic animals or
19 his cows within his pastures and not upon the highways.
20 Mr. Darby filed a response to the pleadings, which
21 is called in legal terms an answer to the complaint, that
22 he owed no duty. Now, by filing the answer to the
23 complaint is a general denial. That means the defense
24 denied all the claims made by the plaintiff. By base of
25 this then that would place upon the plaintiff the burden

1 of proving all the elements of his case in his cause of
2 action.
3 Now, we discussed in the jury qualifications that
4 this was a week of Civil Court and not Criminal Court.
5 In the Criminal Court the burden upon the State to prove
6 someone is guilty of a crime is quite different. I won't
7 tell you what that burden is but it is different.
8 In a Civil Courtroom, which is this, the burden of
9 proof upon a plaintiff to prove his case is called a
10 preponderance of the evidence. And preponderance of the
11 evidence in English means the greater weight of the
12 evidence. It is evidence which on the whole shows a fact
13 attempted to be proved by the plaintiff more likely true
14 than not true.
15 Many people understand this definition of
16 preponderance of the evidence by imagining a set of
17 scales in their mind's eye. Now, if you all do that, you
18 imagine the set of scales on Lady Justice, and you
19 believe that the scales after considering and weighing
20 and deliberating over all the evidence, if you believe
21 after all that evidence presented that the scales remain
22 even or they tip even slightly in favor of the defendant
23 then the plaintiff has failed to meet his burden of proof
24 and would not be entitled to recover in this case.
25 On the other hand, if the scales tip slightly in

1 favor of the plaintiff then the plaintiff will have met
2 its burden of proof and you should return a verdict for
3 the plaintiff.
4 Now, the preponderance of the evidence is not
5 determined by the number of witnesses called. It is
6 determined by the greater weight of all the evidence.
7 And when you evaluate evidence you must consider the
8 evidence fairly and without emotion. You must weigh it
9 and consider it and do what is just.
10 Now, there are two types of evidence generally
11 presented during trials. In this trial we have had both.
12 There is direct evidence and there is circumstantial.
13 Direct evidence is testimony of a person who has
14 actual knowledge of a fact such as an eyewitness. It's
15 evidence which immediately establishes the main fact
16 sought to be proved.
17 Now, circumstantial evidence is a little different.
18 It is a proof of a chain of facts and circumstances
19 indicating the existence of another fact.
20 Circumstantial evidence is based upon inference and
21 not on personal knowledge or observation. It is proof
22 that has not actually established the fact in question
23 but it describes something else from which you may either
24 reasonably infer the truth of the fact or at least
25 reasonably infer an increase in the probability that the

1 fact is true.

2 For circumstantial evidence to be sufficient to
3 warrant the finding of the fact the circumstances must
4 lead to the fact with reasonable certainty. The facts
5 and circumstances should be considered in the light of
6 ordinary experience and common sense. The existence of a
7 fact cannot be based upon speculation, surmise or
8 conjecture.

9 Now, the law makes absolutely no distinction
10 between the two types of evidence, that being direct and
11 circumstantial, nor is a greater degree of certainty or
12 proof required to show regarding circumstantial evidence
13 greater than direct. They are equally able to be weighed
14 by you, the jury.

15 Now, in considering evidence you must also, because
16 of the way the testimony was presented, consider and
17 determine credibility of witnesses who have testified in
18 this case. And credibility in legal terms is simply
19 this; believability. It is your duty as jurors to
20 evaluate the evidence and determine which evidence
21 convinces you as to its truth.

22 Now, in determining the believability of a witness,
23 or any of the witnesses who have testified in the case,
24 you may believe one witness over others, several
25 witnesses over one, part of the testimony of one witness

1 and reject the remaining part of the testimony of that
2 same witness. You may believe the testimony of a witness
3 in its entirety or reject the testimony of a witness in
4 its entirety.
5 You may consider whether the witness has an
6 interest in the result of the trial, whether the witness
7 is prejudice toward either plaintiff or the defendant;
8 the opportunity the witness has to have seen the matters
9 and things about which the witness has testified, and the
10 way the witness acts upon the witness stand.
11 Now, in this case we have had testimony from a
12 deposition of a witness which was taken outside the
13 courtroom. That witness was not actually present before
14 you but the deposition was taken in a manner prescribed
15 by law and you will consider that testimony from that
16 deposition just as if the witness were here upon this
17 witness stand testifying.
18 You may take this deposition testimony in
19 connection with all other testimony and assess the
20 credibility of that witness from anything that is in the
21 record that will aid you in doing so.
22 You can consider the deposition evidence along with
23 the other testimony of the other witnesses who have
24 appeared in person and determine from all the evidence in
25 this case, whether the witness is present by deposition

1 or exhibits in the case, what the truth of this
2 controversy is according to how you find the facts in
3 this case.
4 Now, also, there's been testimony of expert
5 witnesses, which I described to you briefly during their
6 presentation. The rules of evidence normally do not
7 permit lay witnesses or ordinary nonexpert witnesses to
8 express opinions; however, the exception exists as to
9 expert witnesses.
10 And I defined for you during the trial that a
11 witness who has education, experience and has become an
12 expert in some area of art, science, profession may offer
13 his opinion or her opinion on the subject the witness
14 claims to be an expert in, and may also give you the
15 reasons for the opinion.
16 Now, you should consider testimony of any of the
17 expert opinions given by the witnesses like any other
18 evidence. Give it the weight you think it deserves. And
19 if you decide that an expert opinion is not based upon
20 sufficient education or experience, or if you decide the
21 reason given in support of the opinion are not sound or
22 that the opinion is outweighed by other evidence you may
23 then disregard that opinion in its entire ty.
24 An expert witness's testimony is to be given no
25 greater weight than that of any other witnesses simply

1 because he is an expert, and you do not have to accept an
2 expert's opinion even though it is uncontradicted.
3 Now, when a witness is called, an expert witness is
4 called by either of the parties, he is expected to be
5 paid and should be paid. You should not take into
6 consideration the fact that a witness is paid unless
7 there's some evidence appearing from the evidence which
8 would fully and reasonably convince you that the
9 testimony of a witness has been influenced because of the
10 sum which he has been paid to appear as a witness.
11 Additionally, if the opinions of the expert are
12 relied on to establish proximate cause, which I will
13 define later, the expert must state with reasonable
14 certainty that in his or her professional opinion that
15 the plaintiff's injuries most probably resulted from
16 negligence of the defendant.
17 It is not necessary that an expert use certain
18 words as most probably. It is enough for the expert to
19 state that it is in the expert's professional opinion
20 that the defendant's negligence was most likely one among
21 the possible causes of the plaintiff's injuries.
22 Now, in this case the plaintiff claims that the
23 defendant was negligence and he should be compensated by
24 the -- I'm sorry, was negligent and should compensate the
25 plaintiff for the injuries which he has suffered as a

---

1 result of the defendant's negligence.

2 In order to prove a defendant was negligent the
3 plaintiff must prove by a preponderance, which I've
4 already defined, or the greater weight of the evidence
5 four things. First -- I'm sorry, three things. Damages
6 is not in this because we've agreed on damages.

7 The plaintiff must prove by a preponderance or the
8 greater weight that the defendant owed the plaintiff a
9 duty of care. Second, the plaintiff must prove by a
10 preponderance of the evidence that the defendant breached
11 this duty of care by a negligent act or omission.

12 Now, negligence means the person has done something
13 that a reasonable person would not have done or has
14 failed to do something that a reasonable person would
15 have done. We have also defined the word negligence as
16 careless.

17 Finally, the plaintiff must prove by a
18 preponderance of the evidence that the damages were
19 proximately caused by the defendant's breach of that
20 duty. Proximate cause is something that produces a
21 natural chain of events which in the end brings about the
22 injury. It is the direct cause of the injury.

23 Now, to prove that the defendant's negligence
24 proximately caused the plaintiff's injury the plaintiff
25 must first prove causation in fact. And this is proven

1 by showing that the injury would not have occurred but
2 for the defendant's negligence.
3 The plaintiff must also prove the legal cause, and
4 the legal cause is proven by showing that the injury was
5 foreseeable, meaning that the injury occurred as a
6 natural and probable consequence of the defendant's
7 negligence. The plaintiff must prove that the injury
8 from -- that some injury from the defendant's negligence
9 was foreseeable. He does not have to prove that the
10 particular injury that occurred was foreseeable; however,
11 the defendant cannot be held responsible for things which
12 could not be expected to happen.
13 Now, regarding the duties of people in South
14 Carolina. Our Supreme Court has defined certain duties
15 of parties owed in situations such as this. So I
16 instruct you that the owner or keeper of a domestic
17 animal is bound to take notice of the general
18 propensities of a class to which the animal belongs.
19 Insofar as such propensities are of a nature likely to
20 cause injury he must exercise reasonable care to guard
21 against them and to prevent injuries which are reasonable
22 to be anticipated from them.
23 Under our code of laws, the books behind me,
24 Section 47-7-110, which I believe you all have been shown
25 an exhibit, it states and provides in pertinent part that

1 it shall be unlawful for the owner or manager of any
2 domestic animal of any description to willfully or
3 negligently to prevent any such animal to run at large
4 beyond the limits of his own lands, or the lands leased
5 or occupied or controlled by him.
6 Now, this statute imposes a duty to exercise
7 reasonable care in maintaining one's domestic animals.
8 This statute does not impose an absolute duty to prevent
9 escape of livestock from one's custody and control, and
10 more than a showing of the presence of unattended animals
11 on the highway is required.
12 To recover under this statute the plaintiffs must
13 offer evidence from which you, the jury, could infer at
14 least negligence in permitting an animal to stray if such
15 violation proximately caused the injuries or damages to
16 the plaintiff.
17 I instruct you further that the violation of a
18 statute will support a recovery of damages if such a
19 violation proximately caused the injuries or damage
20 complained of.
21 Now, regarding the conduct of an operator of a
22 vehicle upon our highways; the basic standard of care by
23 which the conduct of a driver is to be judged is that of
24 a reasonably prudent person under the same or in similar
25 circumstances. This standard applies in this State

1 regardless of the driver's experience in operating the
2 vehicle.
3 Now, I instruct you further that one is under the
4 duty to exercise reasonable diligence for his own care
5 and his own safety.
6 I instruct you further that a person using the
7 public roads in this State owes a duty to keep proper
8 lookout for other persons or objects upon the highway.
9 The duty is not merely one of looking and one of
10 observation -- I'm sorry. Let me read that correctly.
11 The duty is not merely one of looking or one of
12 observation.
13 In the exercise of due care or caution for the
14 safety of themselves or others a person must look in such
15 an intelligent and careful manner as to enable him to see
16 a person or object upon the highway. A person is
17 careless if he fails to keep a proper lookout or fails to
18 see what a person of ordinary care and prudence would
19 have seen.
20 Now, by the defendant's responsive pleadings he
21 also has brought into play what alleges to be the
22 negligence of the plaintiff in contributing to the
23 injuries. The defendant claims that the plaintiff's own
24 negligence was a proximate cause to the plaintiff's
25 injuries. And if you find that the defendant was

1 negligent you must also consider whether the plaintiff
2 was negligent.
3 The defendant must prove by a preponderance or
4 likewise a greater weight of the evidence that the
5 plaintiff breached a duty of care which proximately
6 caused his own injuries. The same law which I've told
7 you in using to deciding whether the defendant was
8 negligent should also be used in deciding whether the
9 plaintiff was negligent.
10 Now, where the cause of the plaintiff's damages may
11 be reasonably attributed to an act for which the
12 defendant is not liable the plaintiff has failed to carry
13 the burden of proof in establishing that his own damages
14 where the proximate result of the defendant's conduct.
15 Now, if you find that the negligence of both, the
16 plaintiff and the defendant, proximately caused the
17 plaintiff's injuries you must then decide how much the
18 negligence of the plaintiff contributed to the
19 plaintiff's injuries, and how much the defendant's
20 negligence contributed to the plaintiff's injuries.
21 In deciding these percentages of negligence of the
22 plaintiff and the defendant you may consider several
23 factors. Among other things, the following factors may
24 be utilized by you, the jury: Whether each party's
25 conduct was only inadvertent or whether it was engaged in

1 an awareness of the danger involved; the magnitude of the
2 risk created by each party's conduct; the significance of
3 the goal that the party was in trying to reach, and the
4 need in trying to achieve the goal in that matter; each
5 party's capabilities and abilities to realize and
6 eliminate the risk involved; the particular circumstances
7 confronting each party at the time the conduct occurred,
8 such as the existence of an emergency requiring a quick
9 decision; the relative closeness of the cause or
10 relationship of the negligent conduct of the defendant
11 and the harm to the Plaintiff; and whether the conduct of
12 either party involved a violation of a safety statute or
13 regulation.
14 Now, regarding the damages. In this case, as has
15 been mentioned throughout, the parties have entered into
16 an agreement that the damages need not be addressed by
17 you, the jury. This is not to be construed in any way
18 other than the parties have attempted to shorten this
19 trial and have stipulated between them and the Court that
20 the agreement shall dictate what happens once you, the
21 jury, make your decisions about this case.
22 Now, I can tell you the Court welcomes such
23 agreements, especially in cases like this where the
24 parties agree that plaintiff Farrow was injured but not
25 to agree as to the cause, which is why you are involved

1 in this case.

2 Their agreement allowed Mr. Farrow to summarize his
3 injuries and his treatment. But had damages not been
4 agreed to there would have been other witnesses, treating
5 physicians and all that sort of thing which would have
6 needed to be called to establish the damages portion of
7 this trial.

8 Again, this agreement was agreed to by both parties
9 and presented to the Court so that you, the jury, could
10 focus upon the questions which have been presented to
11 you.

12 Now, Ms. Wakester and other members of the jury, as
13 you retire to begin your deliberations I wish to express
14 the hope that each of you will be mindful of the
15 importance of your responsibility. You are not called on
16 to serve as jurors very often. You as a group are acting
17 for this Community and this State and it is my job to
18 ensure that everyone that comes before my Court is
19 treated fairly and to see that justice is done. And then
20 your job is to make certain that the verdict is just.

21 Now, please understand I'm not going to try to tell
22 you all how to decide the case. I've already told you,
23 the law does not allow me to take opinions -- or make
24 opinions upon the facts. You, the jury, are the judges
25 of the questions of fact. It would be highly improper

1 for me to try to influence you to that end.

2 Now, I must instruct you that whatever verdict you
3 reach will be the result of you going in the jury room
4 and confining your considerations to just a couple
5 things: The evidence presented in the trial in this
6 courtroom and applying the law as I have instructed to
7 you, and nothing else; weighing that evidence fairly and
8 impartially and reaching a unanimous verdict.

9 Now, this is the verdict form which should be very
10 similar to the form you all have seen enlarged on the
11 screen over here. It's fairly simple to follow as you go
12 down the questions to try to answer.

13 Now, all 12 jurors must agree on the verdict. Your
14 verdict cannot be based upon any sympathy, passion,
15 prejudice or emotion, so only consideration of the
16 evidence which has been presented.

17 Now, I presented a very lengthy instruction to you
18 regarding the law. So I'll tell you several things. The
19 lawyers have the ability to make suggestions for areas of
20 law which I have either skimmed over, and not in depth
21 enough as they believe the instructions may be, I may
22 have omitted one particular area of the law which they
23 believe needs to be addressed or instructed to you.

24 So when I ask you to step back to the jury room I
25 will take comments from them and they may say, Judge,

1 regarding the issue of, will you please make certain that
2 this is addressed more particularly.
3 And it may be that I bring you back in here and
4 give you a little specific instruction to that end,
5 because I was working on this instruction as the lawyers
6 were making their concluding comments, and I put it
7 together to present to you in that fashion.
8 And so they may have -- it's their case, and
9 they've been working on it for two years. I've had it
10 now four days. And so they are very much attuned to the
11 issues and to the laws because it is their case and their
12 clients' case respectively.
13 Now, if after you all begin your deliberations you
14 wish to hear testimony, again my court reporter can
15 replay it.
16 Now, if you need to hear instructions on the law
17 again I can reinstruct you if there's a question as to
18 what I said or what my instructions were. I'll be more
19 than happy to bring you all back out and say the
20 comparative negligence is weighing each party's
21 respective fault in deciding, and obviously the
22 percentages of fault have to add to a hundred because
23 there can't be some leftover number.
24 If you have any particular question about the law
25 or the instructions or seeing or hearing some further

1 testimony write that down, hand it to Mr. Bolt and he'll
2 bring it to me. And the lawyers and I can consider it,
3 and the court reporter can consider it and perhaps we can
4 streamline the thing. You all come back in and the
5 testimony is cued back up, or there may be a question
6 you'll ask to which I'll say, Please confine your
7 decision upon the facts which you have heard. That is
8 the common question, is where is such and such witness.
9 What would they have said?
10 I can't answer that other than they weren't here
11 and you got to decide based on what they presented. What
12 you all have heard is what you are going to hear. If you
13 need to rehear something I can allow that but I can't go
14 bring in another witness.
15 Now, to that end, still do not begin discussing the
16 case until you get the exhibits and the verdict form
17 handed back to you. So until that time you all are still
18 free to talk about the weather, and your children, and
19 your jobs but not about the case yet.
20 Now, if there are no further instructions from the
21 lawyers and the evidence comes back to you, you all may
22 begin your deliberations.
23 Now, you all, as soon as you all get back there
24 first thing I need you to decide, if Laurens County is
25 going to buy your lunch today while you're deliberating

1 do you all want to order a couple pizzas, or a sandwich,
2 or something from the Palmetto? So you all decide that.
3 If so, either place, Mr. Bolt can help get the orders
4 together fairly quickly so we can do that. All right?
5 So you all step back to the jury room and await
6 further instructions, but make that decision first about
7 what you would like to eat.
8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 11:58 p.m.)
10 MR. BOGGS: You're not going to believe it.
11 THE COURT: I'm good?
12 MR. BOGGS: You're not going to believe it, for
13 once in this whole trial.
14 THE COURT: You all agree?
15 MR. BOGGS: We agree. We'll start singing Kumbaya
16 and start playing the bongos.
17 THE COURT: I just handle that.
18 MR. BOGGS: I know. I mean, do you want us to
19 argue about something else?
20 THE COURT: No, no, no, no. Please feel free not
21 to.
22 MR. HANNA: First time in two years. I have no
23 problem with the charge, Judge.
24 THE COURT: Okay. I tried to get it like we agreed
25 to, and we spent an hour and it went smoother than I

1 thought it would.

2 MR. BOGGS: I'll tell you, the only thing I have a

3 problem with is that you gave them a choice for lunch

4 because I was hoping go back there and come right back

5 out.

6 MR. HANNA: I think that was assumed that if they

7 don't want lunch they don't have to have it.

8 THE COURT: Oh, yeah. We can tell them.

9 Mr. Bolt, if they don't want lunch and they just

10 want to work around it that's fine, too. I don't want to

11 push lunch on them.

12 All right. You all want to inventory your stuff

13 with the court reporter, and we'll be off the record.

14 THE COURT: All right, guys. I'm going to put this

15 on the record that you all have evaluated and confirmed

16 that all the exhibits admitted have been compiled, the

17 verdict form is the one you all agreed to and it will be

18 submitted to the jury two minutes after 12:00, or as soon

19 as they get back there.

20 (WHEREUPON, the trial of this case was recessed at

21 approximately 12:02 while awaiting a verdict from the

22 jury.)

23 THE COURT: I have a response. I'm going to make

24 this communication part of the record.

25 MR. BOGGS: Yes, sir, please.

1 THE COURT: The jury would like to be reinstructed
2 by the Court on preponderance and the other question as
3 to the verdict, does the decision have to be unanimous,
4 which the obvious answer, it absolutely does.
5 It would be my intent to recharge on the issue or
6 point of law of preponderance. I'm going to call it up
7 real quick. I have the charge still on the computer, and
8 print that out. Bring them in, read it to them, the
9 verdict has got to be unanimous, then give it to them and
10 send them back. Got any issues with that?
11 MR. HANNA: None from defense.
12 MR. BOGGS: No, sir, none from the plaintiff.
13 Judge, for my sake, may I look at what you're going
14 to give before you give it to them.
15 THE COURT: No.
16 MR. BOGGS: All right. Thanks.
17 (LAUGHTER)
18 THE COURT: I'll let you all read it for a moment
19 before I bring them in here.
20 (PAUSE)
21 THE COURT: You all believe that to be a correct
22 statement of law?
23 MR. BOGGS: Yes, sir.
24 MR. HANNA: Yes.
25 THE COURT: It's simple. It's one page and I'm

1 going to give it to them.

2 MR. BOGGS: Yes, sir.

3 THE COURT: All right. Bring them to me.

4 (WHEREUPON, Court's Exhibit Number 16, a Note From

5 the Jury, was marked and made a part of the record.)

6 (WHEREUPON, the jury enters the courtroom at

7 approximately 2:15 p.m.)

8 THE COURT: All right. I've read your question.

9 I've sent you a response and I've read your second

10 question, which is more definitive, and I've made it a

11 part of the record. So it goes there. If you write

12 another question use another sheet of paper.

13 And to define and answer your question regarding

14 preponderance of the evidence: Preponderance of the

15 evidence is the burden of proof in a civil case. A

16 preponderance simply means the greater weight of the

17 evidence. It is evidence which as a whole shows the fact

18 sought to be proved is more likely true than not true.

19 And many people remember the definition of a

20 preponderance of the evidence by imagining a set of

21 scales in their mind's eye.

22 After all of the evidence has been presented by

23 both sides if the scales remain even or if they tip ever

24 so slightly in favor of the defendant then the plaintiff

25 has failed to meet its burden of proof and would not be

1 entitled to recover in the case.

2 On the other hand, if the scales tip slightly in

3 favor of the plaintiff the plaintiff has met its burden

4 of proof and you should return a verdict for the

5 plaintiff.

6 Now, the preponderance of the evidence is not

7 determined by the number of witnesses. It is determined

8 by the greater weight of all the evidence, no matter

9 which its source. And when you evaluate all the evidence

10 you must not act through emotion. You must weight and

11 consider the evidence as it's been presented to you and

12 do what's just.

13 Now, I prepared, printed out to send back with you

14 all the definition of preponderance because that's my

15 normal practice. I don't give you my whole charge but if

16 you ask me questions I'll give you specific answers.

17 So the other question on your thing was does your

18 verdict and answer to each question have to be unanimous.

19 And there's quite simply, yes, it does.

20 I'll hand this definition to you and ask you to

21 retire and continue deliberations. And, again, if you

22 have any other questions send them to me in writing and

23 we'll deal with them as we have to.

24 (WHEREUPON, the jury leaves the courtroom at

25 approximately 2:20 p.m., and the trial of this case was

1 recessed while awaiting a verdict from the jury.)

2 THE COURT: Got get them.

3 (WHEREUPON, the jury enters the courtroom at

4 approximately 3:15 p.m.)

5 THE COURT: All right. You all got a verdict?

6 THE FORELADY: Yes, sir.

7 THE COURT: You don't need to read it. Is your

8 verdict unanimous?

9 THE FORELADY: Yes.

10 THE COURT: Mr. Bolt.

11 (WHEREUPON, the bailiff handed the verdict to the

12 Court.)

13 THE COURT: All right. Ms. Lancaster.

14 THE CLERK OF COURT: Your Honor, in the case of

15 William David Farrow, Jr. and Karen W. Farrow vs. Jerry

16 W. Darby, case number 2008-CP-30-1120, question one is do

17 you find by the preponderance of the evidence that the

18 defendant, Jerry W. Darby, was the owner of the alleged

19 cow involved in the accident with the plaintiff, William

20 David Farrow? The answer is yes.

21 Question number two: Do you find that the

22 defendant, Jerry Darby, was negligent and that such

23 negligence proximately caused the plaintiff's injuries?

24 The answer to that question is yes.

25 Question number three: Do you find that the

1 plaintiff, William David Farrow, was also negligent in
2 that his own negligence proximately caused his own
3 injuries? The answer to that question is yes.
4 Question number four: If you've answered yes in
5 the previous question number three then you are to answer
6 this question: In causing the accident what percentage
7 of negligence was attributable to the defendant, Jerry W.
8 Darby, and what percentage was attributable to the
9 plaintiff, William David Farrow? The defendant, Jerry W.
10 Darby, is 65 percent; the plaintiff, William David
11 Farrow, is 35 percent. Signed by the foreperson, Donna
12 M. Wakester, February 3rd, 2011.
13 Ladies and gentlemen, if that be your verdict would
14 you please indicate by raising your right hand.
15 (WHEREUPON, all hands were raised.)
16 THE COURT: Mr. Hanna, would like the jury polled?
17 MR. HANNA: Yes, Your Honor.
18 THE COURT: All right. Sorry, Ms. Lancaster.
19 (WHEREUPON, the jury was polled.)
20 THE COURT: All right. Any other issue for the
21 jury before I ---
22 MR. HANNA: None from defense.
23 MR. BOGGS: None from plaintiff.
24 THE COURT: You all's alternate stayed and waited
25 on you. She's still here. She was curious.

1 All right. I got a couple issues for the lawyers.
2 You all step back in the jury room. I want to come back
3 and speak to you all very briefly. So you all step back
4 there. You all's duty is done and you all will be free
5 to go shortly.
6 (WHEREUPON, the jury leaves the courtroom at 3:20
7 p.m., and a brief recess was taken.)
8 THE COURT: All right. I do enjoy speaking with
9 them and thanking them. I said, Look, you all reached a
10 12 member unanimous verdict and it's -- when 12 people
11 reach a consensus on something it's generally a good
12 decision. I mean, it's just hard to get 12 people to
13 reach a consensus on anything. They did and so they've
14 got nobody to apologize to about reaching a decision.
15 And I also told them you all may contact them and
16 send them questionnaires or letters, how did we do, what
17 could we have done different, any like that. They could
18 answer it or not answer it. It was their decision.
19 But they did a very fine job and we thanked them
20 for not letting their phones ring while we're doing the
21 case and not laughing at the cow jokes and that sort of
22 thing. Anyway, it was a good group and they are glad to
23 be done and not having to come back tomorrow.
24 All right. Do we have any post-verdict motions?
25 MR. HANNA: Your Honor, may we have 10 days to file

1 any post-trial motions?

2 THE COURT: Absolutely.

3 MR. HANNA: I don't think that we will but if it

4 would be at all possible to do that that would be ideal.

5 MR. BOGGS: I just would ask for -- whenever it's

6 served and filed with you I would ask for at least two

7 business days to respond, preferably five.

8 THE COURT: Very reasonable.

9 MR. BOGGS: I mean, I don't want to delay things,

10 obviously.

11 THE COURT: Well, do this ---

12 MR. HANNA: I don't either, and for the record I

13 think that there will not be any. I think that we are

14 going to live with this, but I think this is better that

15 I not start -- I don't file anything.

16 MR. BOGGS: Okay. But just -- and Geov has always

17 been good with this, just anything sent to you, please

18 just contemporaneously e-mail me, will be fine.

19 MR. HANNA: Understood.

20 THE COURT: I mean, you know, the jury did remark,

21 said, Those lawyers fought vigorously but they seemed to

22 get along. I said, They do get along. I mean, you all

23 did. You all have, continued to do so and I'm impressed

24 with the way you all have handled very professionally an

25 unusual case because I enjoyed you all's appearance, all

1 be it a little longer than we anticipated.

2 MR. BOGGS: Well, yes, sir. Thank you.

3 THE COURT: All right. So ten days, and an extra

4 three until you get a response.

5 MR. HANNA: Understood.

6 THE COURT: You said ten or seven?

7 MR. HANNA: I said ten.

8 THE COURT: Ten is fine. I want to make sure I

9 said correctly. Normally Caitlin is beside me writing it

10 down.

11 MR. HANNA: So just for my understanding, is today

12 day one or tomorrow?

13 THE COURT: Tomorrow is day one. I don't count

14 today.

15 MR. HANNA: I always get confused about that.

16 Thank you, Judge.

17 THE COURT: All right. Thank you all very much.

18 MR. HANNA: Nothing further from defense.

19 (WHEREUPON, the trial of this case was concluded.)

20

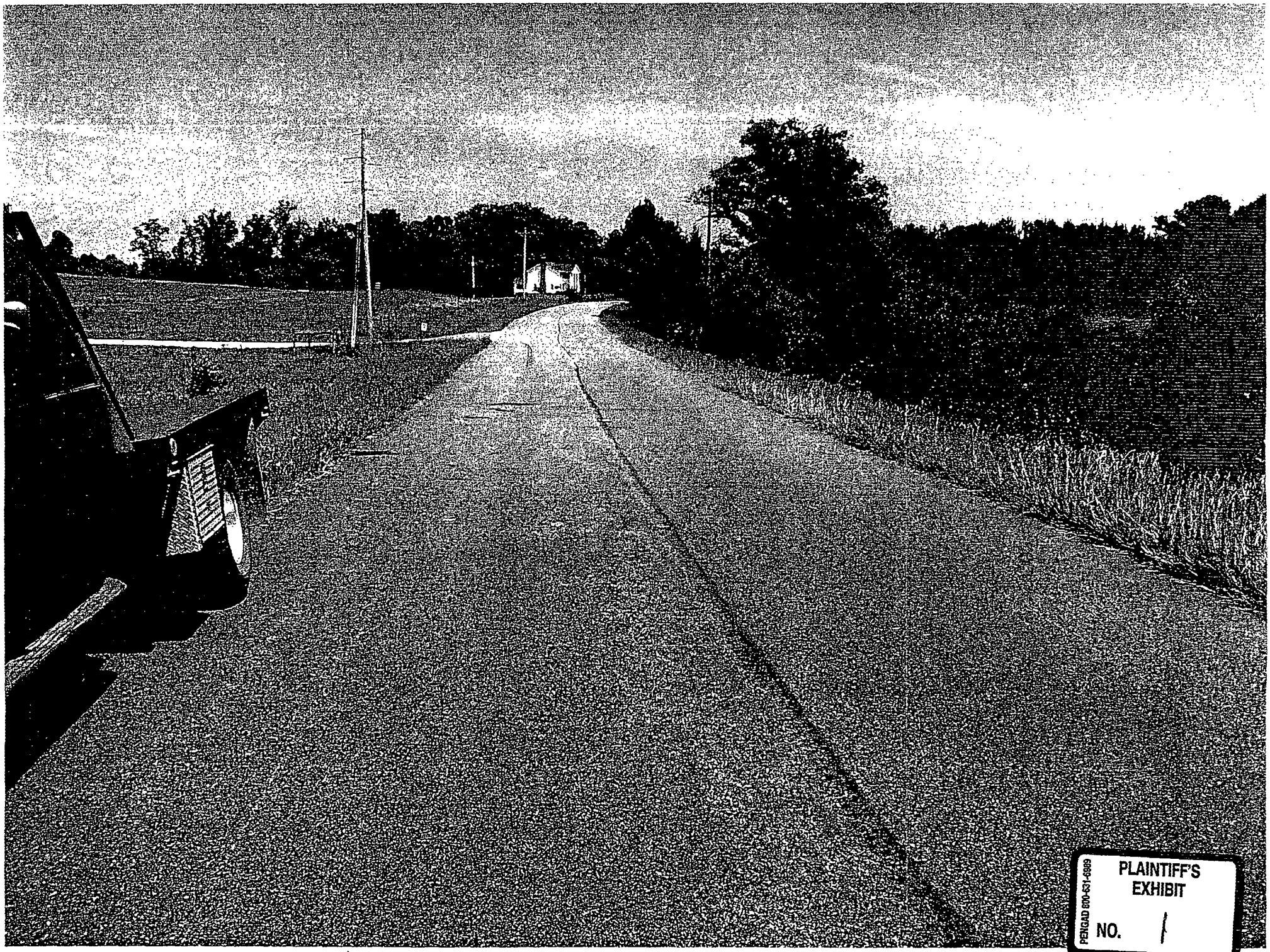
21 * * END OF VOLUME III * *

22

23

24

25



PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 1

CAD Incident: 2008-00045005
Phone : 864 876-3511
Name : WILLIS, REBECCA
Address : 1475 DIALS CHURCH RD
Community: GRAY COURT
Jurisdctn:
Intersect:
SubDivisn:

ESN : 0708
Law : SHERIFF
Fire : GREENPOND
EMS : MEDIC 3
Rescue:

Disp : 1
Source: 911

L F E R
13
17 18 16
M3

PLAINTIFF'S EXHIBIT NO. 2
PENGAD 800-631-6989

CAD Call Times: UNDEFINED CODE

Incoming Call: 07/24/2008 20:48:53
Call Created : 07/24/2008 20:48:58
Call Send Time : 20:51:53
Call Dispatch Time: 20:50:42
Call Enroute Time : 20:53:56
Call Arrival Time : 21:02:13
Call Clear Time : 21:54:47
Call Closed :07/24/2008 21:54:47

Created By: GBAILEY
Sent By : GBAILEY
Event : 1050
Law :
Fire :
EMS :
Rescue:

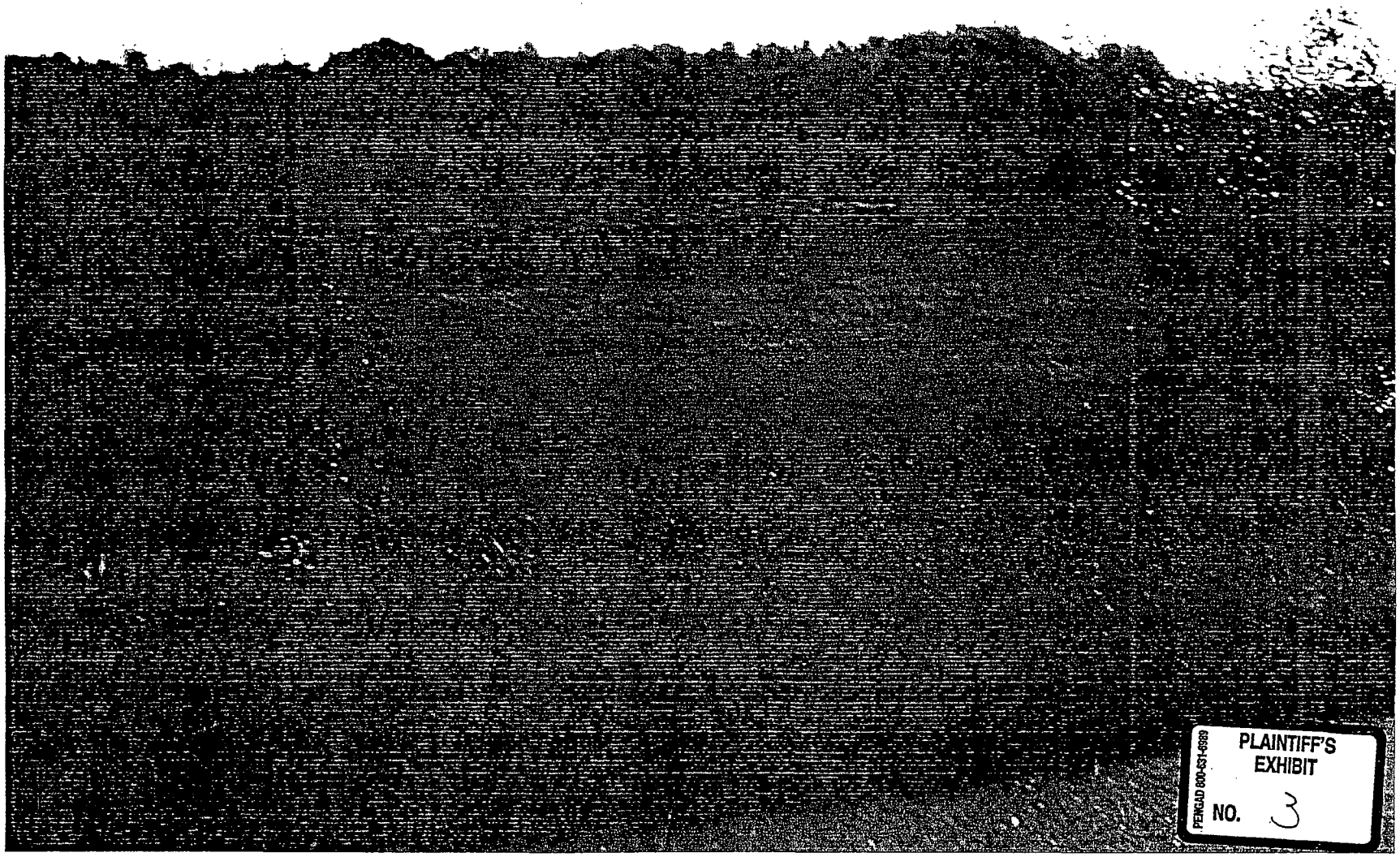
Pos:005 DISPATC
Action:
Language:

Original Dispatch Remarks:
RT PAST THIS LOCATION, PERSON HAS WRECKED A MOTORCYCLE, IS I
N THE RD, NOT SURE ON EMS

Vehicle Information

UNIT	DEPT	STATUS/DSP/CASE	LOCATION/REMARK	USER	DATE	TIME
M1	E01	DSP	0000006975	CLOVE	07/24	20:50:42
17T	F17	DSP	0000000172	CLOVE	07/24	20:50:46
SCHP1	L05	DSP		GBAIL	07/24	20:51:45
M1	E01	LOG	ACK CALL	CLOVE	07/24	20:52:47
SQ3	E18	DSP		CLOVE	07/24	20:53:31
M1	E01	1017		CLOVE	07/24	20:53:56
17T	F17	1017		CLOVE	07/24	20:54:56
17T	F17	1023	1701	CLOVE	07/24	21:02:13
SQ3	E18	1017	ENRT @1053	CLOVE	07/24	21:04:06
SQ3	E18	1023		CLOVE	07/24	21:04:10
MTRANS	E13	DSP		CLOVE	07/24	21:08:25
MTRANS	E13	LOG	343670 820948	CLOVE	07/24	21:09:44
M1	E01	1023		CLOVE	07/24	21:10:04
MTRANS	E13	1017	7 MIN ETA	CLOVE	07/24	21:17:34
SCHP1	L05	108		CLOVE	07/24	21:17:40
MTRANS	E13	1023		CLOVE	07/24	21:26:41
MTRANS	E13	LOG	ENRT C36	CLOVE	07/24	21:41:00
SQ3	E18	SIG93	COM TERM	CLOVE	07/24	21:49:19
M1	E01	SIG93	NO TRANS	CLOVE	07/24	21:49:37
MTRANS	E13	108		CLOVE	07/24	21:51:20
17T	F17	108	BK IN SERV	CLOVE	07/24	21:54:45
SQ3	E18	EMS#	0000006977	CLOVE	07/24	21:56:05

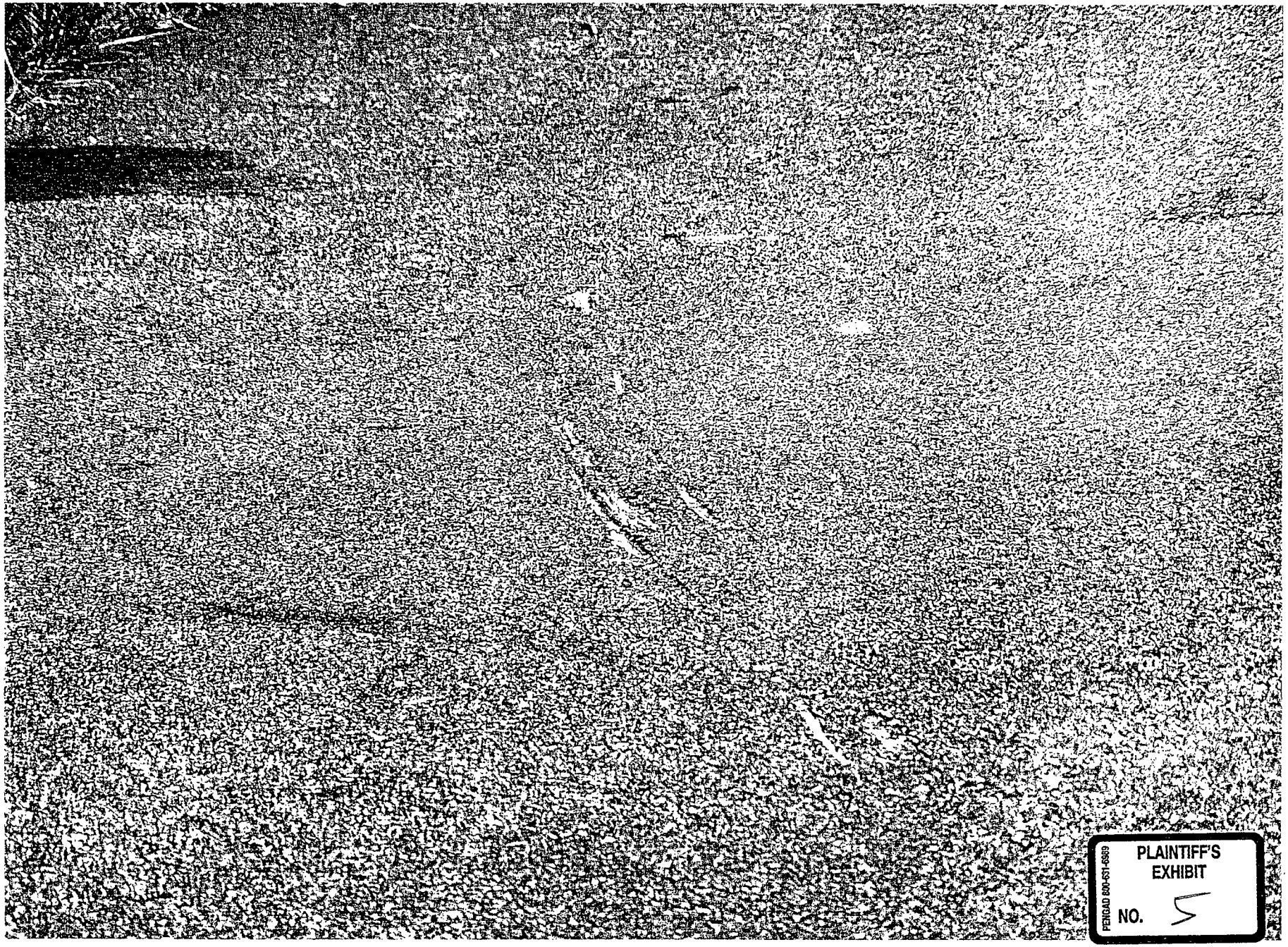
This is certified a true copy of the original document
Sandra K. Brooks Notary Public of S.C. Permanent expires 7.14.20



PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 3



PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 5

July 2008

July 2008						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August 2008						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jun 29 - Jul 5	Jun 29	30	Jul 1	2	3	4	5
Jul 6 - 12	6	7	8	9	10	11	12
Jul 13 - 19	13	14	15	16	17	18	19
Jul 20 - 26	20	21	22	23	24	25	26
Jul 27 - Aug 2	27	28	29	30	31	Aug 1	2

PLAINTIFF'S EXHIBIT
NO. 6
PENGAD 800-631-6989

725

=L-I-V-E-S-T-O-C-K= ===B U Y E R==== --TOTAL--
-TAG HD DES NUMB NAME-------- --WEIGHT--- 240.00
6426 1 BLK HD S 114 102 480 480 50.00 L 240.00
480 240.00
1
STE 1 240.00 480 50.00 240.00
006 M & M CATT 1 .00 7.00

9/17/07 GRAND TOTAL GROSS-- 1 240.00

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	FEE/WAT		VOL/DED	-NET/CHECK-
12.00	1.00	1.00	.43			7.00	218.57

APPRECIATE YOUR BUSINESS!!!
WAYNE DARBY 6211
S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 94507

PLAINTIFF'S EXHIBIT NO. 7
PENGAD 800-631-6989

6,698.14+
1,037.00+
1,605.21+
5,950.01+
609.38+
1,166.10+
218.57+
5,785.05+
14,420.25+
12,273.96+
49,761.67*

0.*

CEDAR RIDGE SIMMENTAL
1083 Crawford • Gray Court, SC 29645 • (864) 682-3308 • Fax (864) 682-5911

Wayne Darby

CR

INVOICE

YOUR ORDER NO	INVOICE NO	DATE
		9-2-07

QUANTITY	DESCRIPTION	UNIT PRICE		AMOUNT	
70	Hifer (11,560 x 3% 11,327	1.	085	12,291	96
20	Check Off	1	00	20	00
	Paid	613	60		
	9-11-07				
	pd				
	ck # 2103				
		SUB TOTAL			
		TAX			
		TOTAL		12,271	96

CEDAR RIDGE SIMMENTAL
1083 Ora Road • Gray Court, SC 29645 • (864) 682-3308 • Fax (864) 682-5911

Wayne Darby

INVOICE

YOUR ORDER NO	INVOICE NO	DATE

QUANTITY	DESCRIPTION	UNIT PRICE		AMOUNT	
20	Steers (12840 x .98 = 12583	1	147	14440	25
20	Chuck Off	1	00	20	00
	SUB TOTAL				
	TAX				
	TOTAL			14420	25

CEDAR RIDGE SIMMENTAL
1083 Ora Road • Gray Court, SC 29645 • (864) 682-3308 • Fax (864) 682-5911

Wayne Darby

INVOICE

YOUR ORDER NO	INVOICE NO	DATE

QUANTITY	DESCRIPTION	UNIT PRICE		AMOUNT	
9	Steers (5526 x .98 = 5415	1	07	5794	05
9	Chuck Off	1	00	9	00
	SUB TOTAL				
	TAX				
	TOTAL			5785	05

TAG	HD	DES		NUMB	NAME		WEIGHT				TOTAL
6771	1	BLK		S1540	50	GAR,R	515	515	96.00	L	494.40
6772	1	BLK	X	H 17	6	00000	600	600	93.00	L	558.00
6773	1	BLK	W/F	S 124	42	W	515	515	100.00	L	515.00
6774	1	HOL		S 121	H	PONDE	615	615	62.50	L	384.38
6775	1	BLK	THI	H 119	4X	TOM	390	390	82.00	L	319.80
6776	1	BLK	X	H 119	54	TOM	540	540	91.00	L	491.40
6777	1	EYE		H1540	8	GAR,R	530	530	50.00	L	265.00
6778	1	BLK		H 21			545	545	91.50	L	498.68
6779	1	RED	SHO	H 121	4X	PONDE	440	440	79.00	L	347.60
6780	1	PLN		S1588	0		585	585	39.00	L	228.15
6781	1	BLK	THI	H 119	4X	TOM	385	385	94.00	L	361.90
6782	1	SFT		H 107	2	JW	490	490	74.00	L	362.60
6783	1	BLK		H 111	47X	RC	465	465	94.00	L	437.10
6784	1	PLN	THI	H 111	32	RC	290	290	80.00	L	232.00
6785	1	BLK		S 124	42	W	500	500	110.00	L	550.00
6786	1	BLK	X	H 20			500	500	84.00	L	420.00
6787	1	BLK	THI	B 111	42	RC	455	455	92.00	L	418.60
6788	1	RED	HUM	S1588	0		555	555	58.00	L	321.90
	18							8,915			7,206.51

STE	6	3,285	2,493.83	547	75.92	415.63
HEF	11	5,175	4,294.08	470	82.98	390.37
BUL	1	455	418.60	455	92.00	418.60

9/01/08 GRAND TOTAL GROSS-- 18 7,206.51

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	FEE/WAT	-------	VOL/DED	---NET/CHECK--
216.00	18.00	18.00	12.98	18.00			6,923.53

FEEDER CALF SALES: AUGUST 26 @ 7:00 PM

WAYNE DARBY 6211

P&S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 106340

PRODUCT PL159 MCBEE To Reorder: 1-800-482-2331 or www.mcbeeinc.com

========= =L-I-V-E-S-T-O-C-K= ===B U Y E R=== ==========

COD----	TAG	HD	DESC	NUMB	NAME		WEIGHT				TOTAL
2344	1		RED	H8387	6X		675	675	80.00	L	540.00
2345	1			C 117	5	C L	1145	1,145	50.00	L	572.50
2346	1		BLK	C 68		V	1035	1,035	52.00	L	538.20
	---							------			==========
	3							2,855			1,650.70
HEF	1			675	540.00	675	80.00	540.00			
COW	2	2		180	1,110.70	1090	50.95	555.35			

[illegible]	CHECK	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible] GRAND TOTAL GROSS-- 3 1,650.70

==========	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
COMMISSION	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	VOL/DEP	NET/CHECK
34.50	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

E WILL BE CITED [illegible]

WAYNE LARRY [illegible]

&8/CODES: O-OFFICE [illegible] B-BONDED-BUYER E-EMPLOYEE M-MARKET-SUPPORT

MARTIN X MARTIN CATTLE CO. INC.

[illegible] ROCKER ROAD

[illegible] NO. 84404

14691

29 Steers 18345 Gr. Wt
18070 1.5%
623 Avg
18070
x 1.12
$20,328.75

17 Heifers 9215 Gr. Wt.
9077 1.5%
534 Avg
9077
1.075
$9757.78

20,328.75
9,757.78
$30,086.53

MARTIN & MARTIN CATTLE CO., INC.

14691

Customer Service
1-800-033-3796

Darby

3, 2275 S
3, 1730 H
5, 2760 H
3, 1845 H

Darby

8, 5195 S
8, 4965
3, 2285
5, 2625
9, 4610 H

33 Head

731

0.* 0.*
30.086.53+
5.375.33+
8.026.85+
345.22+
1.395.55+
2.895.90+
48.125.38*

Calves

MARTIN & MARTIN CATTLE CO. INC.
PO BOX 24
WILLIAMSTON, NC 27892

COD		S-T-O-C-K	ESC	NUMB	NAME	B U Y E R	WEIGHT			TOTAL
7294	1		ELK-	S 116	651	EAST	685	685	100.00 L	685.0
7295	1		ELK-	S 156	575	CPC	610	610	107.00 L	652.7
7296	1		ELK-	S 116	450	EAST	520	520	106.00 L	551.2
7297	1		CHA-	S 156	475	CPC	515	515	105.00 L	540.7
7298	1		ELK-	S 156	475	CPC	505	505	106.00 L	535.3
								2,835		2,964.9

STE 5 2,835 2,964.95 567 104.58 592.99

51127

GRAND TOTAL GROSS 5 2,964.9

TOWARD NET/CREDIT 2,835.9

COMMISSION 52.50 SEE DADDY CHUCK 4.00

THANK YOU FOR YOUR BUSINESS

WAYNE BRIDGERS

P&S/CODES: Q-OWNER B-BONDED-BUYER E-EMPLOYEE M-MARKET SUPPORT

NO. 511

=L-I-V-E-S-T-O-C-K=				===B U Y E R====								==TOTAL==
OD----	-TAG	HD	DESC------	NUMB	NAME--------		--WEIGHT---		--------			
5777		1	CHA-W/F	H 107	4X	JW	425	425	107.00	L		454.75
5778		1	CHA-	H 156	45	CPC	475	475	100.00	L		475.00
5779		1	CHA-	S 108	55X	BAR	540	540	104.00	L		561.60
5780		1	BLK-	H 116	46	EMER	505	505	107.00	L		540.35
5781		1	BLK-	H 116	55	EMER	570	570	100.00	L		570.00
5782		1	BLK-W/F	S1540	20	GAR,R	560	560	105.00	L		588.00
5783		1	BLK-W/F	H 111	48X	RC	535	535	106.00	L		567.10
5784		1	BLK-	H 116	46	EMER	530	530	109.50	L		580.35
5785		1	BLK-	S 108	95	BAR	590	590	107.00	L		631.30
5786		1	BLK-	H 111	46X	RC	495	495	110.00	L		544.50
								5,225				5,512.95
		10										
STE		3	1,590	1,780.90	563	105.38	593.63					
HEF		7	3,635	3,732.05	505	105.57	533.15					

GRAND TOTAL GROSS 10 5,512.95

COMMISSION	CHECK/OFF	MARDAGE	INSUR	FEE/WAT	VOL/DED	NET/CHECK
105.00	10.00	8.00	8.00	8.00		5,276.33

T SERVICES AVAILABLE EVERY MONDAY

WAYNE DARBY 6271

S/CODES: O-OFFICER B-BONDED BUYER E-EMPLOYEE M-MARKET SUPPORT

MARTIN & MARTIN CATTLE CO INC NO. 80398

=L-I-V-E-S-T-O-C-K= ===B U Y E R====

OD---- -TAG	HD	DESC	NUMB	NAME	--WEIGHT---		--------	--TOTAL--
4243	1	BLK-	C 110	1	1305	1,305	46.50 L	606.83
4251	1	CHA-K	S 111 451	RC	450	450	113.00 L	508.50
4252	1	BLK-W F	S 116 400	EMER	445	445	131.00 L	582.95
4253	1	CHA-	H 118 45X	MERID	460	460	102.00 L	469.20
4254	1	BLK-	S 111 451	RC	475	475	110.00 L	522.50
4255	1	BLK-	H 119 36	TOM	365	365	112.00 L	408.80
4256	1	CHA-W F	H 121 38X	PONDE	395	395	95.00 L	375.25
4257	1	BLK-	H 107 25	JW	330	330	128.00 L	422.40
4258	1	BLK-	H 116 55	EMER	540	540	100.00 L	540.00
4259	1	BLK-	H 119 36	TOM	430	430	116.00 L	498.80
4260	1	CHA-	S 116 350	EMER	375	375	139.00 L	521.25
4281	1	BLK-	H 111 41X	RC	430	430	113.00 L	485.90
4282	1	BLK-TN	H8387 1X		385	385	112.00 L	431.20
4376	1	BLK-	H 156 39	CPC	435	435	105.00 L	456.75
4377	1	BLK-K	H 156 39	CPC	415	415	110.00 L	456.50
4378	1	BLK-W F	H 118 47X	MERID	480	480	105.00 L	504.00
4425	1	CRP-	S 111 62	RC	730	730	64.50 L	470.85
	17					8,445		8,261.68

STE	5	2,475	2,606.05	495	105.29	521.21	
HEF	11	4,665	5,048.80	424	108.23	458.98	
COW	1	1,305	606.83	1305	46.50	606.83	

9/04/08 GRAND TOTAL GROSS 17 8,261.68

OMMISSION	CHECK/CF	YARDAGE	INSUR	FEE/HAT		VOL/DED	NET/CHECK
181.50	17.00	13.60	[illegible]	12.80			8,026.85

T SERVICES AVAILABLE EVERY MONDAY

WAYNE DARBY 6213

S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC. NO. 80145

```
=====  =L-I-V-E-S-T-O-C-K=  ===B U Y E R====  ==============================
D----  -TAG HD DESC-----  NUMB NAME--------  --WEIGHT---  --------  --TOTAL--
  1331      1 BLE-        S 108  10   BAR     205    205  175.00 L    358.75
          ===                                 ======                 ==========
            1                                   205                     358.75
STE         1      205      358.75  205 175.00  358.75
-----------------------------------------------------------------------------
```

OMMISSION

T SERVICES

S/CODES

MARTIN & MARTIN CATTLE CO. INC.

NO.

COD	TAG	HD	DESC	NUMB	NAME	WEIGHT			TOTAL
9651		1	-	H 119	41 TOM	370	370	120.00 L	444.00
9652		1	RED-	H 111	56X RC	535	535	96.00 L	513.60
9653		1	BLK-	H8387	4X	500	500	100.00 L	500.00
		3					1,405		1,457.60

HEF 3 1,405 1,457.60 468 103.74 485.86

8000 M.&M TRUC 3 FR .00 21.00

10/09/06 GRAND TOTAL GROSS 3 1,457.60

COMMISSION	CHECK/OFF	YARDAGE	INSUR	FEE/WGT		VOL/ADD	NET/CHECK
31.50	3.00	2.40	1.75	2.00		21.00	1,395.55

ET SERVICES AVAILABLE EVERY MONDAY

WAYNE DARBY 6214

&S/CODES: O=OFFICER B=BONDED BUYER E=EMPLOYEE M=MARKET SUPPORT

MARTIN & MARTIN CATTLE CO. INC.
1001 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 81518

10/29/2008 11:38 8648 03 KEITHMARTINEZ IENT PAGE 07

MARTIN & MARTIN CATTLE CO., INC.
PO BOX 21 I-V-E-S-T-O-C-K= ===B U Y E R====
WILLIAMSTON, SC 29697

COD	TAG	NO	DESC	NUMB	NAME		WEIGHT				TOTAL
4758		1	RED-X	C8921	1	SP	1200	1,200	51.00	L	612.00
4759		1	CHA-X	C9362			1185	1,185	50.00	L	592.50
		2						2,385			1,204.50
COW		2		2,385	1,204.50	1192	50.50	602.25			

GRAND TOTAL GROSS 2 1,204.50

COMMISSION CHECK/O BRACK INSUR VOLUNTEER NET/CHECK
24.00 1.80 1,178.46
THANK YOU FOR YOUR BUSINESS
HAYNE IDAHO
S/CODES: MARKET/PRICE

NO. 507012

========= =L-I-V-E S-T-O-C-K= ===B U Y E R==== ==========

--COD----	-TAG	HD	DESC------	NUMB	NAME--------	--WEIGHT---		--------	--TOTAL--
4228		1	CHECK	C 110	6	1205	1,205	50.00 L	602.50
		1					1,205		602.50

COW 1 1,205 602.50 1205 50.00 602.50

TOTAL GROSS 1 602.50

COMMISSION CERTIFICATE ORDER GUARANTEE NET CHECK
12.00 [illegible]
ET SERVICES [illegible]
WAYNE DAILY
&S/CODES [illegible] MARKET [illegible]

MARTIN MARTIN CATTLE CO. INC.
[illegible] NO. [illegible]

0.*
1,173.86+
587.18+
460.83+
2,221.87*

Cow

COD	TAG	HD	DESC	NUMB	NAME	WEIGHT			TOTAL
6586		1	BLL	C 110	1	990	990	48.00 L	475.20
		1					990		475.20
COW		1		990	475.20	990	48.00	475.20	

=L-I-V-E-S-T-O-C-K=			===B U Y E R===					--TOTAL--
D----	-TAG HD DESC-		---- NUMB NAME----		--WEIGHT---			
4120	1 RED-		C8921	1	1090	1,090	59.00 L	643.10
						1,090		643.10
	1							
COW	1	1,090	643.101090		59.00	643.10		
008 M & M CATT	1		.00	7.00				

12/17/07 GRAND TOTAL GROSS-- 1 643.10

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	FEE/WAT		VOL/DED	---NET/CHECK--
12.00	1.00	1.00	1.16	1.00		7.00	619.94

E WILL BE CLOSED DECEMBER 24TH & DECEMBER 31ST!!! HAPPY HOLIDAYS

WAYNE DARBY 6211

&S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 98330

10/29/2008 11:38 8648 303 KEITHMARTINE MENT PAGE 12

0124963

BROWN PACKING COMPANY, INC. GAFFNEY SOUTH CAROLINA 29342

RY WAYNE DARBY

: 091907

ate	Head	Weight	Cost	Cows	Feed	Freight	Cattle Assess	Other	ELST	Net Check
1/2007	3	1,600	1,[illegible].00				3.00			1,501.00

REMITTANCE ADVICE

Wyee Darby

THE CHECK ENCLOSED IS IN PAYMENT OF ITEMS LISTED BELOW

BROWN PACKING COMPANY
P.O. Box 130 • Tel. 489-5723
Gaffney, S.C. 29340

REFERENCE NUMBER	DESCRIPTION	WEIGHT		DISTRIBUTION ACCOUNT	AMOUNT
3	Calves	1600	94		1504.00
				C/A	3.00
				Net	1501.00

A PRINT & IMAGING, Gaffney, SC

10/29/2008 11:38 8648 003 KEITHMARTINEZ MENT PAGE 13

0118140

BROWN PACKING COMPANY, INC. GAFFNEY, SOUTH CAROLINA 29342

TO WAYNE DARBY

010207

ate	Head	Weight	Cost	Cogs	Feed	Freight	Cattle Assess	Other	ELST	Net Check
3/2007	1	914	9[illegible].84				[illegible].08			967.84

REMITTANCE ADVICE

Wayne Darby

THE CHECK ENCLOSED IS IN PAYMENT OF ITEMS LISTED BELOW

BROWN PACKING COMPANY
P.O. Box 130 • Tel. 489-5723
Gaffney, S.C. 29340

DATE	REFERENCE NUMBER	DESCRIPTION	HOURS	WEIGHT	RATE	DISTRIBUTION ACCOUNT	DISTRIBUTION AMOUNT
		[illegible]		[illegible]	[illegible]	[illegible]	[illegible]
							967.84

GRA PRINT & IMAGING, Gaffney, SC

COD	TAG	HD	DESC	NUMB	NAME	WEIGHT			TOTAL
	3036	1	BLK-DEN	C 114	30	990	990	50.00 L	495.00
	3037	1	BLK-	C1240		1055	1,055	54.50 L	574.98
		2					2,045		1,069.98

COW 2 2,045 1,069.981022 2.32 534.99

008 M & M CATT 2 FR .00 14.00

12/10/07 GRAND TOTAL GROSS-- 2 1,069.98

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	FEE/WAT		VOL/DED	---NET/CHECK--
24.00	2.00	2.00	1.92	2.00		14.00	1,024.06

E APPRECIATE YOUR BUSINESS!!!

WAYNE DARBY- 6211

&S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 98023

0.*
619-94+
1,501-00+
967-84+
1,024-06+
466-03+
4,578-87*

========= =L-I-V-E-S-T-O-C-K= ===B U Y E R= ==========
-COD---- -TAG HD DESC------ NUMB NAME------ --WEIGHT--- -------- --TOTAL--
9405 1 ELK- C 20 2 790 790 61.00 L 481.90
=== ====== ==========
1 790 481.90
COW 1 790 481.90 790 61.00 481.90

MMISSION 12.00 ARDASH 1.90 NET/CHECK
APPRECIATE WAYNE BARR
CODES: BONDED BUYER MARKET HOG
MARTIN MARTIN CATTLE CO INC
NO.

=L-I-V-E-S-T-O-C-K= ==B U Y E R==

-COD	-TAB	HD	DESC	NUMB	NAME		--WEIGHT--				--TOTAL--
B	843	1		C2910	5	CA	1040	1,040	45.00	L	468.00
B	844	1		C2910	5	CA	1285	1,285	46.00	L	591.10
	845	1		C2939	91X	RC	1135	1,135	49.00	L	556.15
B	846	1		C2910	5	CA	1035	1,035	43.00	L	445.05
B	847	1		C2910	5	CA	1180	1,180	46.00	L	542.80
B	848	1		C 5	1	BR	1135	1,135	46.00	L	522.10
B	849	1		C 5	6	BR	1240	1,240	42.00	L	520.80
B	850	1		C8685	3	CO	1105	1,105	43.50	L	480.68
B	851	1		C2910	5	CA	1255	1,255	46.00	L	577.30
B	852	1		C 5	6	BR	1210	1,210	42.00	L	508.20
B	853	1		C 5	6	BR	1075	1,075	44.00	L	473.00
B	854	1		C 5	6	BR	1385	1,385	46.00	L	637.10
B	855	1		C 5	6	BR	1255	1,255	45.00	L	564.75
		13						15,335			6,887.03

COW 13 15,335 6,887.03 1179 [illegible].91 529.77

Thank you
Bill & Jackie

1/16/07 GRAND TOTAL GROSS-- 13 6,887.03

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	1010001000010	VOL/DED	--NET/CHECK--
156.00	13.00	13.00	6.89			6,698.14

WE ARE OPEN ON MONDAY 9:00AM TIL 9:00PM TO RECEIVE LIVESTOCK

WAYNE DARBY 6458

CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

055895

CHEROKEE COUNTY LIVESTOCK, INC.
PO BOX 57
HONEA PATH, SC 29654

SALE EACH TUESDAY 10 A.M.

=L-I-V-E-S-T-O-C-K= ===B U Y E R

COD	TAG	HD	DESC	NUMB	NAME	WEIGHT				TOTAL
	1949	1	BLK-W/F	C 114	5	1205	1,205	45.00	L	542.25
	1950	1	CHA	S 108	41	440	440	123.00	L	541.20
		2					1,645			1,083.45

STE	1	440	541.20	440	123.00	541.20
COW	1	1205	542.25	1205	45.00	542.25

008 M & M CATT[illegible]

TOTAL GROSS 2 1,083.45

COMMISSION	[illegible]	VOL/DED	NET/CHECK
22.50	[illegible]	16.00	1,0[illegible].00

APPRECIATE YOUR [illegible]
WAYNE DARBY
S/CODES: O-OFFICER B-BONDED-BUYER E-EMPLOYEE M-MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.

NO. 86613

COD	TAG	HD	DESC	NUMB	NAME	WEIGHT			TOTAL
3032		1	RED-W/	H 116	51 LEM	545	545	96.00 L	523.20
3033		1	PLN-HA	H 114	2	315	315	64.00 L	201.60
3034		1	BLK-	H8387	3X	350	350	109.00 L	381.50
3035		1	CHA-HA	S 156	451 CPC	445	445	109.00 L	485.05
3608		1	BLK-EAR	C 117	5 CARL	900	900	50.00 L	450.00
3609		1	BLK-X	H 116	45 LEM	470	470	94.00 L	441.80
3610		1	PLN-HA	H 20	6X	375	375	77.00 L	288.75
3611		1	BLK-	S 116	450 LEM	470	470	116.00 L	545.20
3612		1	-HRT	H 111	43X RC	425	425	88.00 L	374.00
3613		1	BLK-	H 116	46 LEM	485	485	105.00 L	509.25
3614		1	BLK-	H 116	51 LEM	530	530	102.00 L	540.60
3615		1	CHA-HRT	S 116	505 LEM	515	515	106.00 L	545.90
3616		1	BLK-TRN	H 116	35 LEM	375	375	104.00 L	390.00
3617		1	BLK-	H 107	4XX JW	495	495	104.00 L	514.80
		14					6,695		6,191.65

STE	3	1,430	1,576.15	476	110.22	525.38
HEF	10	4,165	4,165.50	436	95.43	416.55
COW	1	900	450.00	900	50.00	450.00

008 M & M CATT 14 FR .00 24.00

9/03/07 GRAND TOTAL GROSS-- 14 6,191.65

COMMISSION	CHECK/OFF	CARDAGE	INSUR-	FEE/WAT		VOL/DED	NET/CHECK
168.50	14.00	14.00	11.14	10.00		24.00	5,950.01

E APPRECIATE YOUR BUSINESS!!!

WAYNE DARBY 6211

&S/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 93826

=L-I-V-E-S-T-O-C-K= ===B U Y E R==== --TOTAL--
COD---- -TAG HD DES---- NUMB NAME-------- --WEIGHT--- -------- 624.00
5596 1 BLK S 107 6 JW 600 600 104.00 L
600 624.00
1
STE 1 600 624.00 600 104.00 624.00

8/06/07 GRAND TOTAL GROSS-- 1 624.00

COMMISSION	CHECK/OFF	YARDAGE	-INSUR-	FEE/WAT		VOL/DED	NET/CHECK
10.50	1.00	1.00	1.12	1.00			609.38

APPRECIATE YOUR BUSINESS!!
WAYNE DARBY 6211
/CODES: O=OFFICER B=BONDED-BUYER E=EMPLOYEE M=MARKET-SUPPORT

MARTIN & MARTIN CATTLE CO., INC.
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697

NO. 92326

COD	TAG	HD	DESC	NUMB	NAME	WEIGHT			TOTAL
2989		1	BLK	S 156 605	CPC	625	625	107.00 L	668.75
2990		1	BLK	S 116 400	LEM	450	450	117.00 L	526.50
		2					1,075		1,195.25

STE 2 1,075 1,195.25 537 111.19 597.62

GRAND TOTAL GROSS 2 1,195.25

COMMISSION	CHECK OFF	YARDAGE	INSPECT	FEE/WAI		VOL/DRT	NET/CHECK
21.00	2.00	2.00	2.75	2.00			1,156.10

E APPRECIATE YOUR BUSINESS!!!

WAYNE DARBY

&S/CODES: O-OFFICER B-BONDED-BUYER E-EMPLOYEE M-MARKET SUPPORT

MARTIN & MARTIN CATTLE CO., INC.

NO. 61596

MARTIN & MARTIN CATTLE CO., INC.
CUSTODIAL ACCOUNT FOR SHIPPERS PROCEEDS
1901 CHEROKEE ROAD
WILLIAMSTON, SC 29697
PHONE (864) 226-9014 FAX (864) 226-9640

BB&T
SOUTH CAROLINA
67-160-532

NO. 104972

THREE THOUSAND THREE HUNDRED SIXTY ONE & 24/100 DOLLARS

PAY TO THE ORDER OF

4972 6211
WAYNE DARBY
2149 BURDETTE RD.
GRAY COURT SC 29645

DATE 7/28/08
AMOUNT $***3,361.24

MARTIN & MARTIN CATTLE CO., INC.
VOID AFTER 90 DAYS

Joel T. Martin

⑈00104972⑈ ⑆053201607⑆0005123920645⑈

ENDORSE HERE

Wayne Darby

07/30/2008 004 0003
15635-120 PALMETTO 06220116

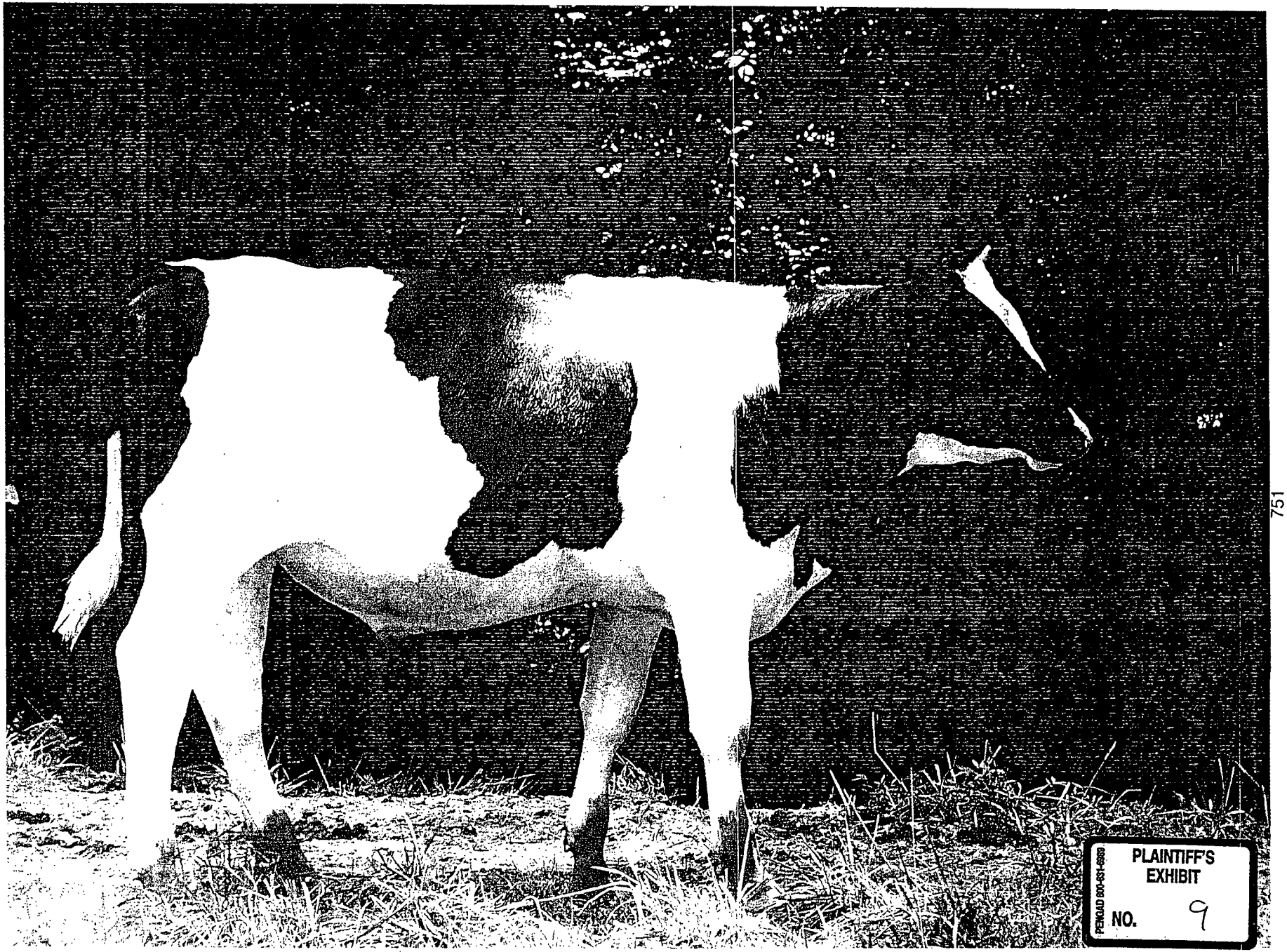
The security features listed below will be found on the front of this check. Please carefully review the following guidelines.

Security Features:
• Security Paper
• Chemically Sensitive Paper
• Secure Seven

Results of Document Alteration:
• Red Small Print on Back Reads "void after 90 days" to deter check alteration
• Signature Line May Appear Gray
• Absence of Pantograph Demonstrates Evidence of Check Alteration

PLAINTIFF'S EXHIBIT NO. 8

PENGAD 800-631-6989



PLAINTIFF'S EXHIBIT
NO. 9

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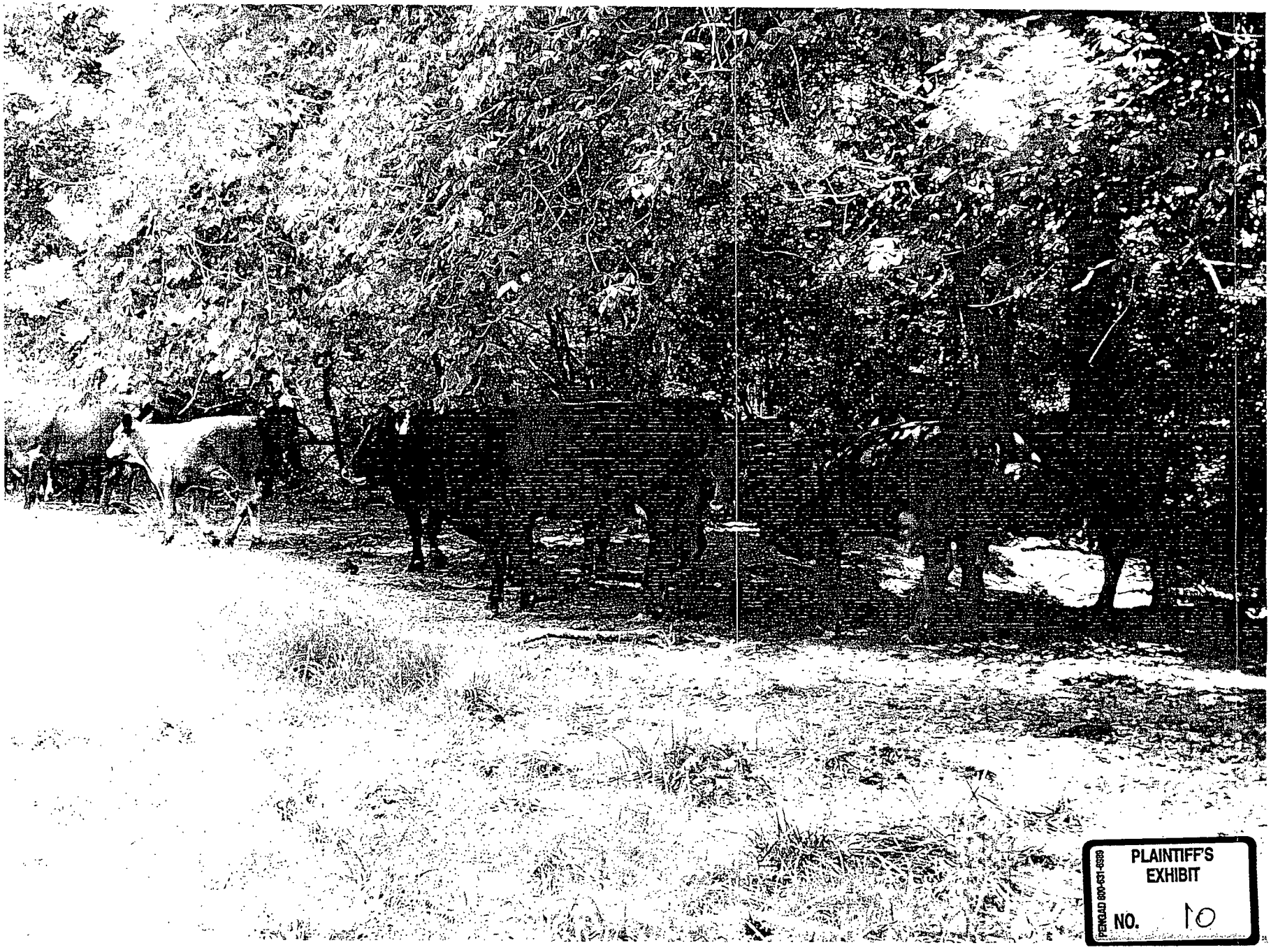

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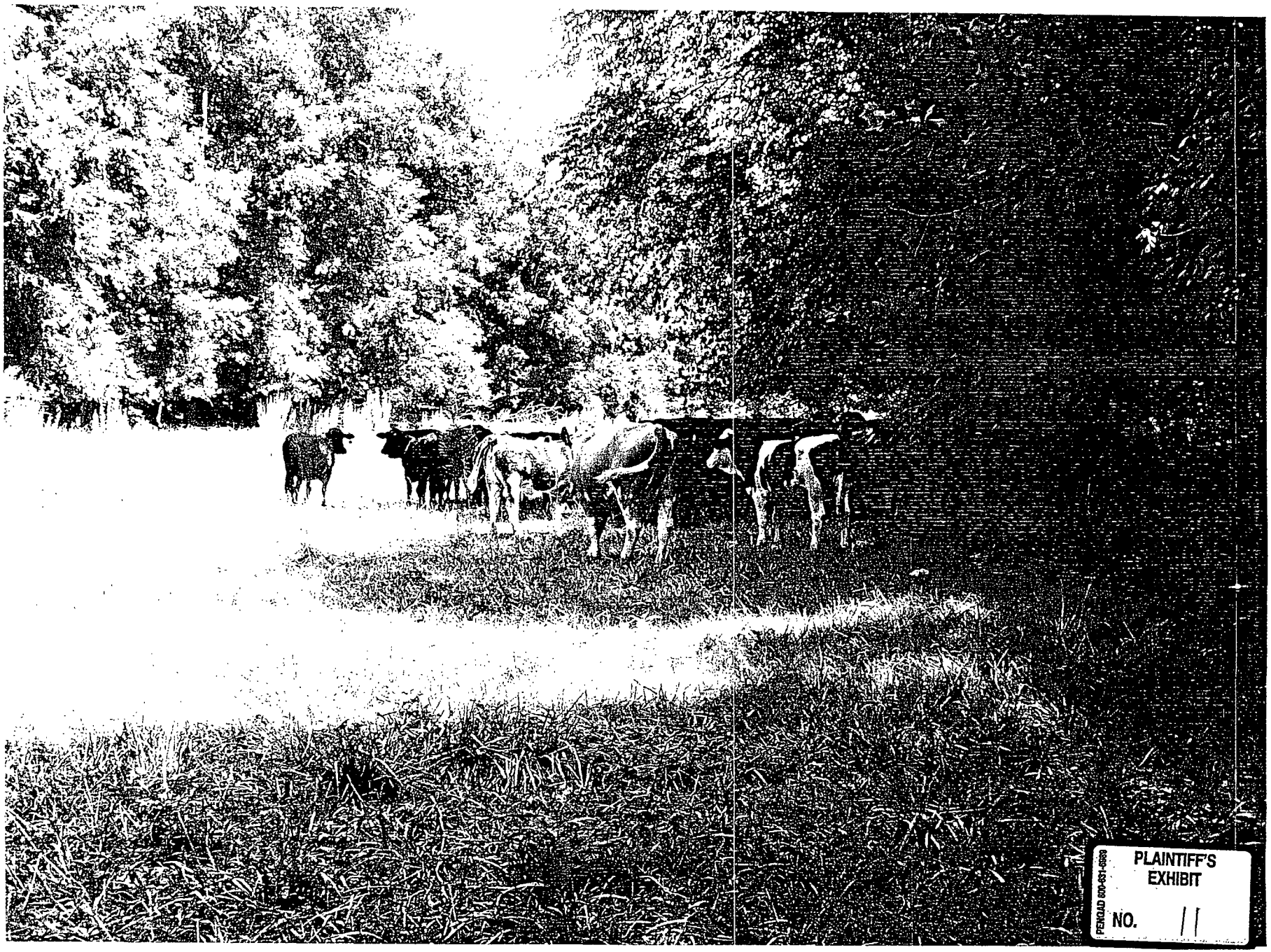

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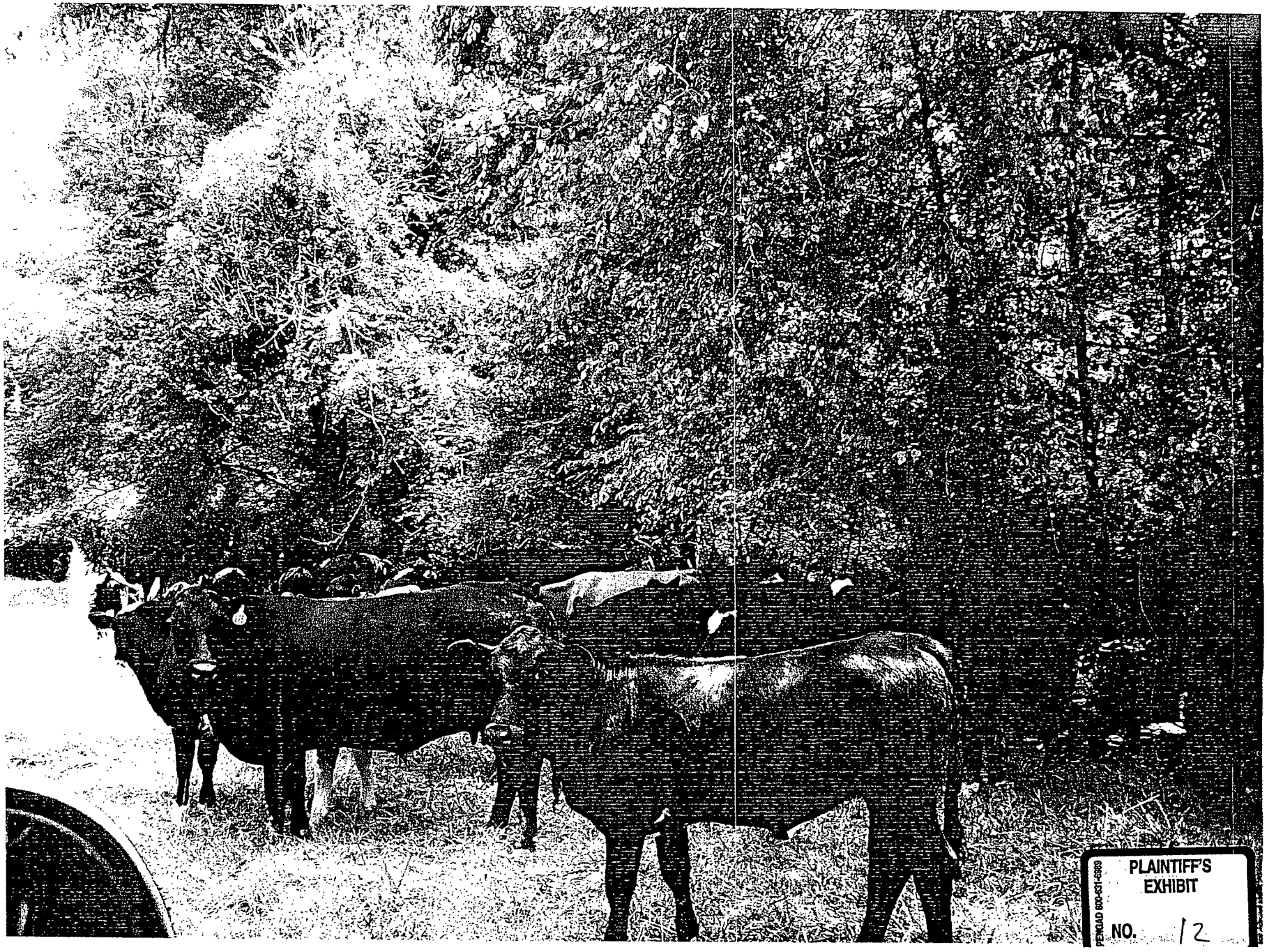


PLAINTIFF'S EXHIBIT

NO. 12

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT
NO. 13

PENGALD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 14

PENGAD 800-631-6989

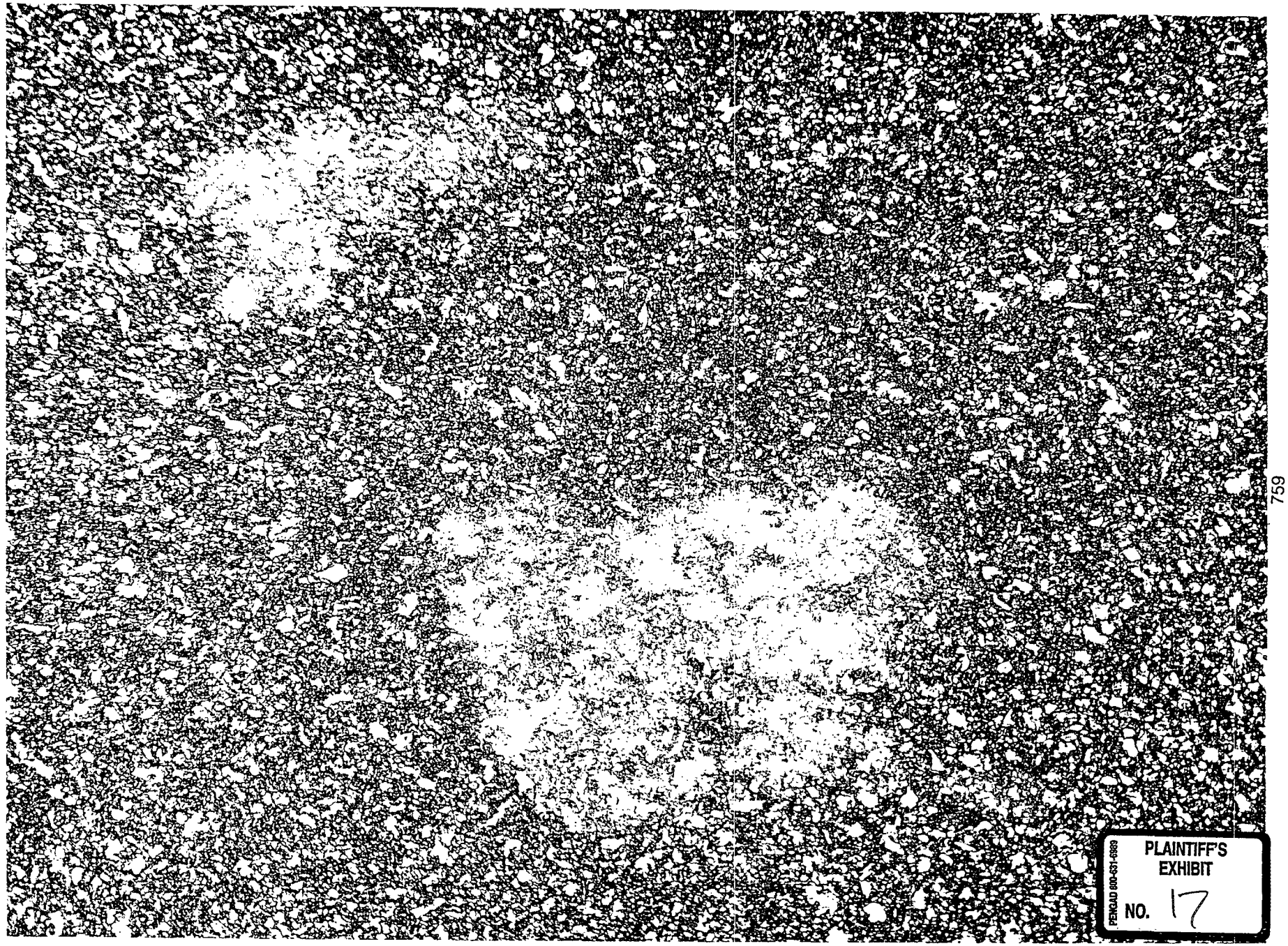
PLAINTIFF'S EXHIBIT NO. 15

PENGAD 800-631-6989

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 16



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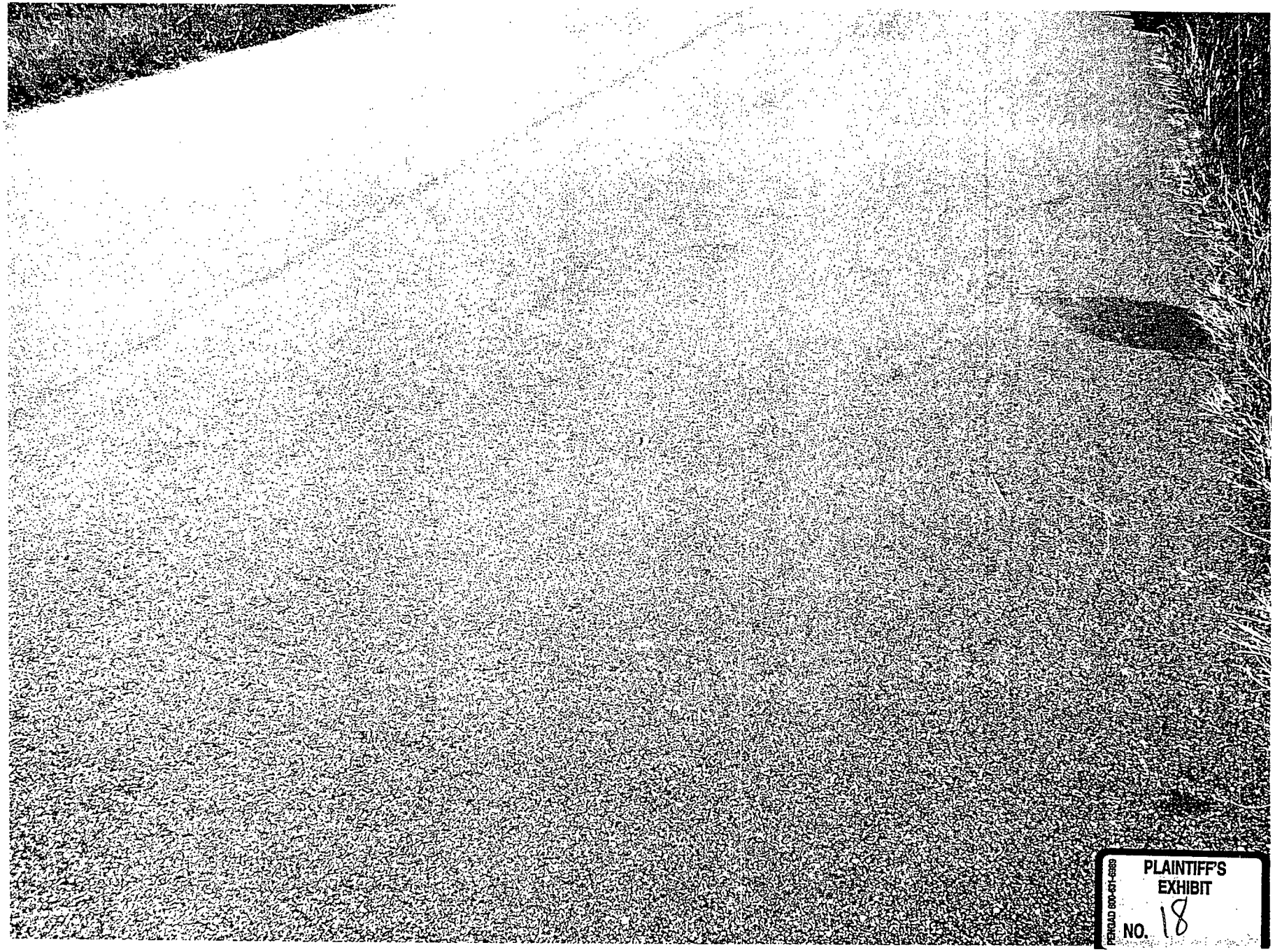

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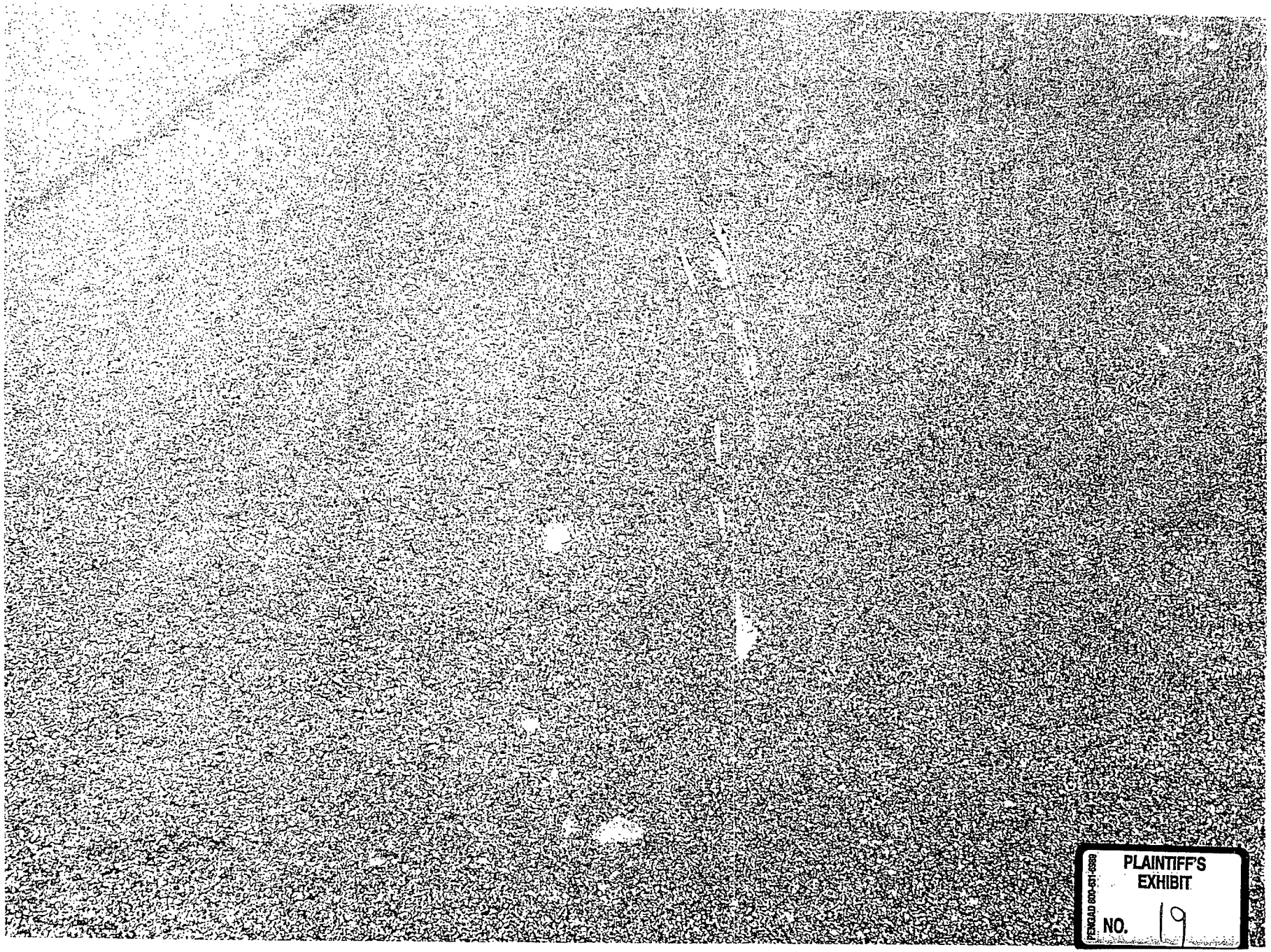

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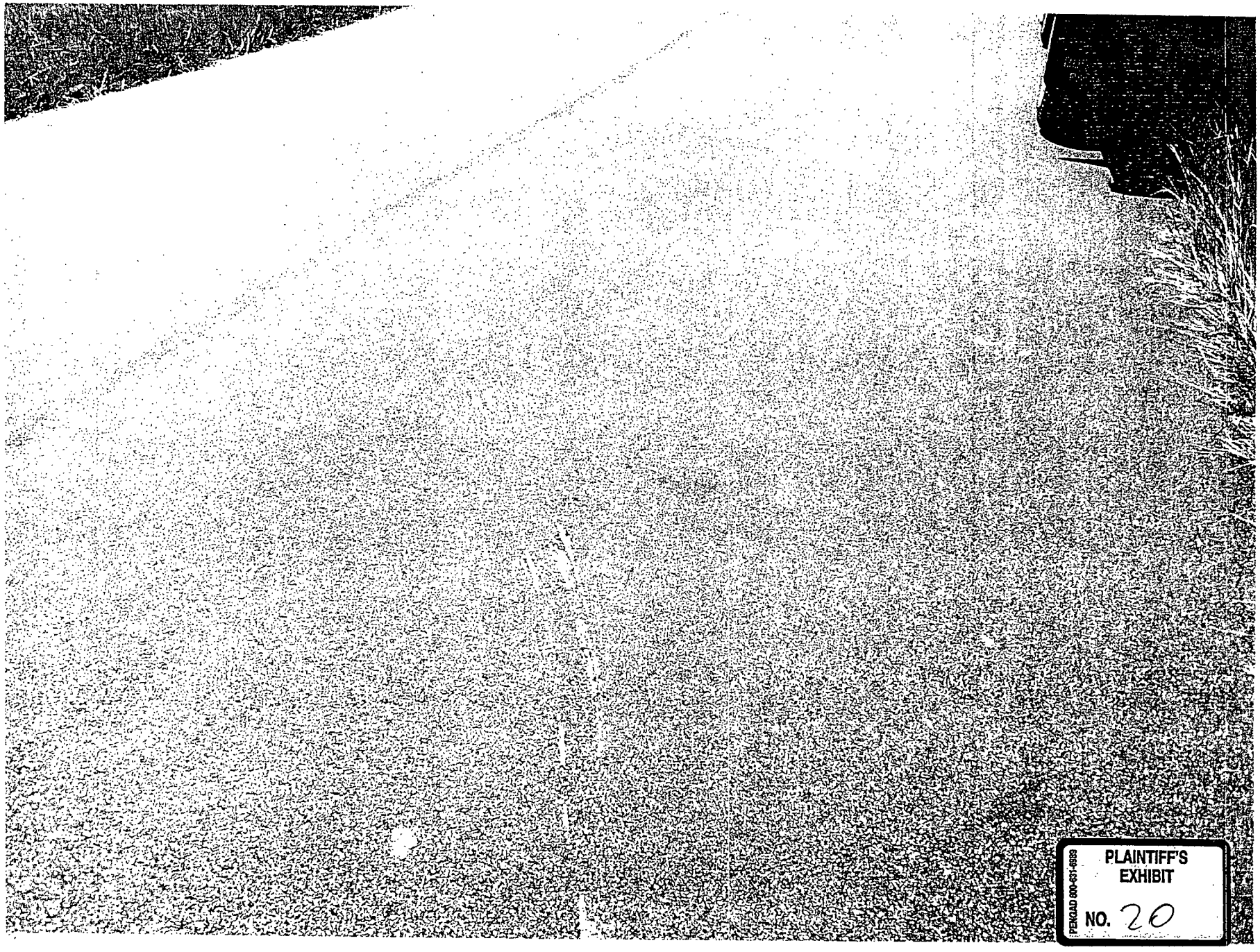
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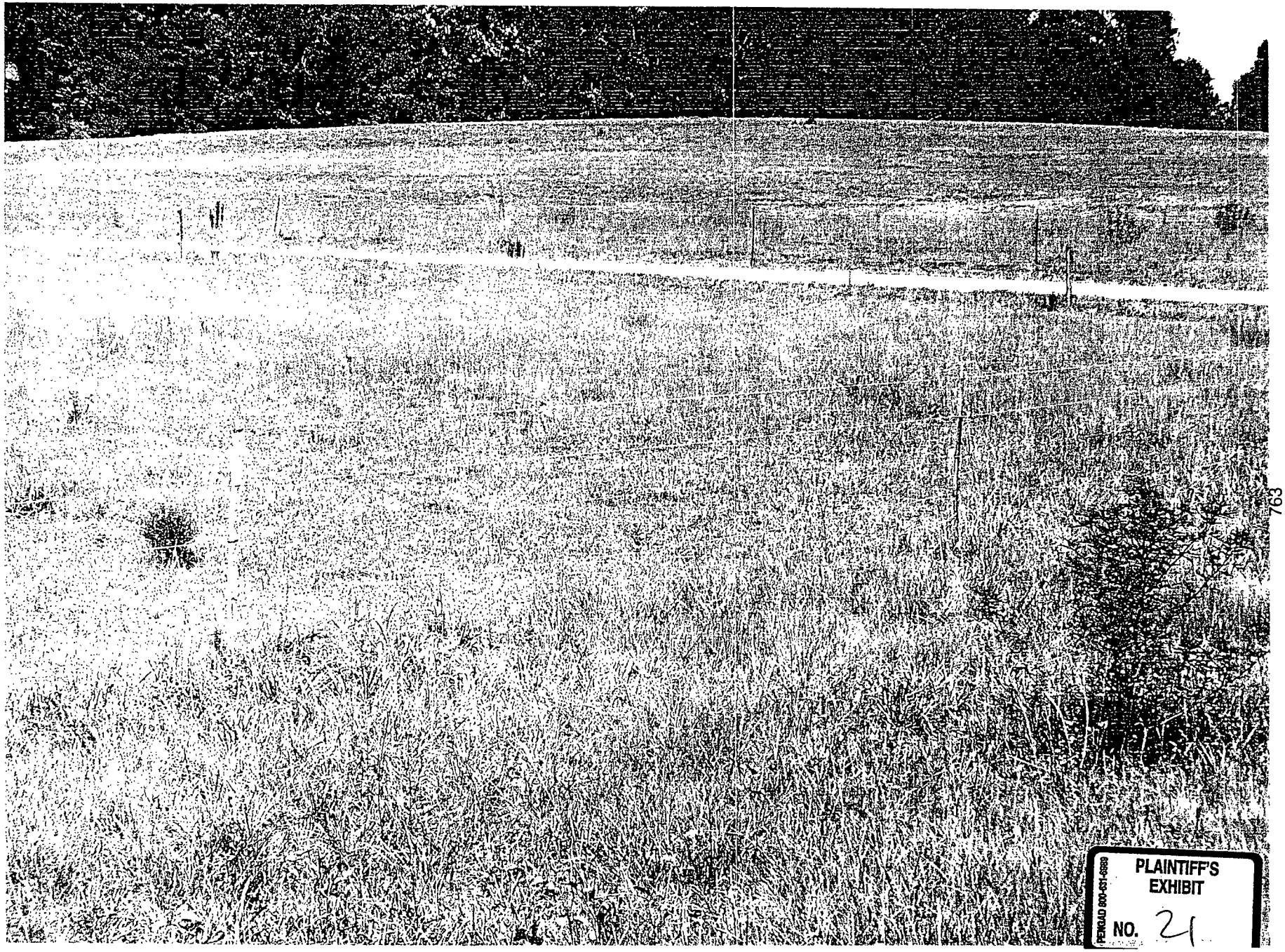
PLAINTIFF'S
EXHIBIT
NO. 20



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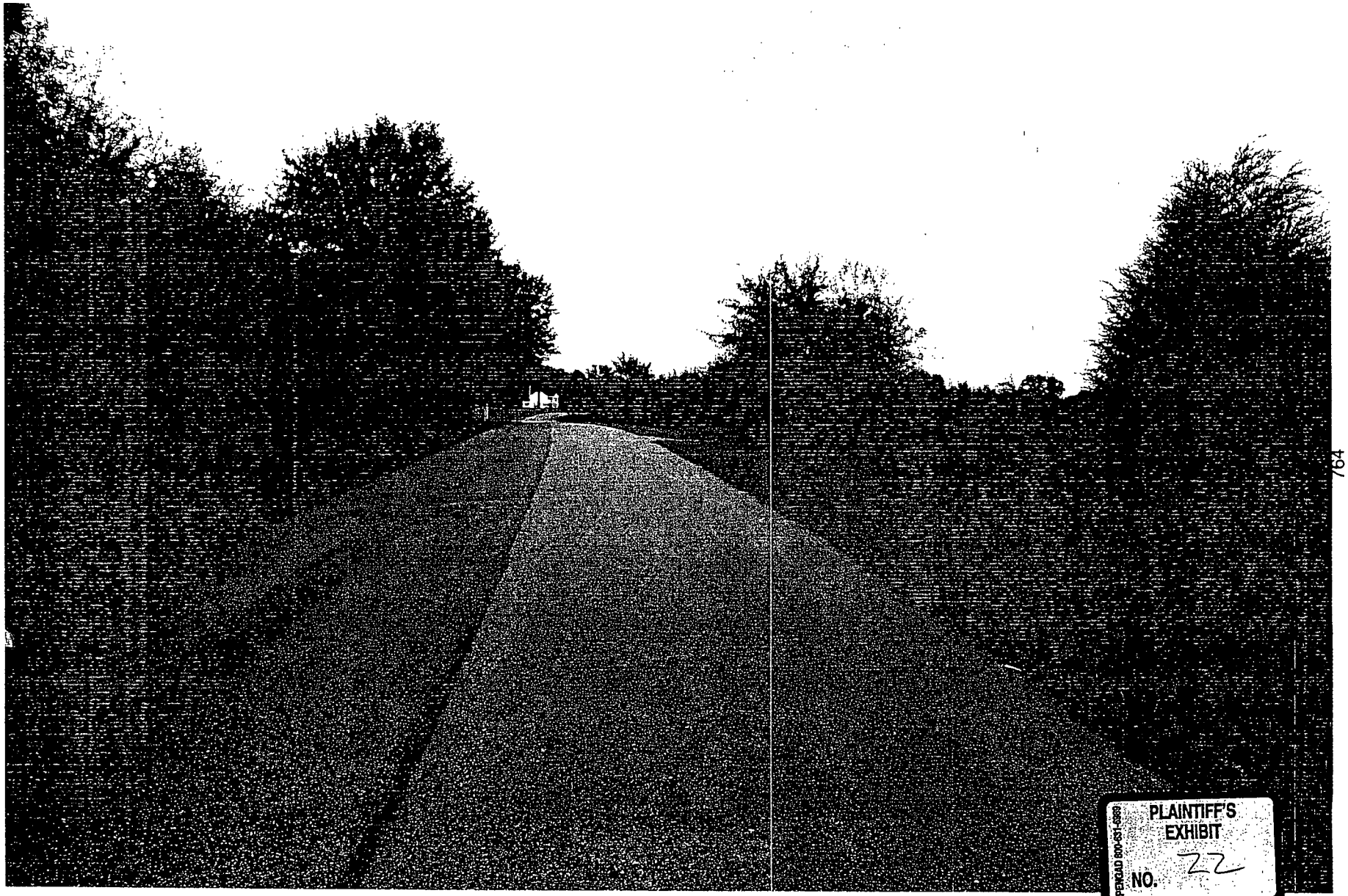


PLAINTIFF'S EXHIBIT NO. 22

PENGAD 800-631-6989

764

①

31	F	10-16
~~40~~		~~10-18~~
39	F	10-19
2	F	10-21
28	B	10-21
~~4~~		~~10-23~~
19	F	10-28
20	F	10-28
622	B	10-28
23	B	10-29
38	F	10-30
44	B	10-30
1	B	10-31
23	B	10-31
33	B	11-1
78	F	11-1
54	F	11-1
79	F	11-2
73	F	11-8
74	F	11-9
676	B	11-9
4054	B	11-10

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
NO. 23

(2)

no tag	F	11-10
4	B	11-10
32	B	11-10
81	B	11-10
56	B	11-10
83		11-10
14	B	11-11
18	B	11-12
264	F	11-12
no Tag	B	11-13
67	F	11-14
83	B	11-15
40	F	11-16
30	B	11-17
686	B	11-17
26	B	11-20
891	B	11-21
57	B	11-22
no Tag	B	11-23
31	B	11-23
T37	B	11-24
89	B	11-24

(3)

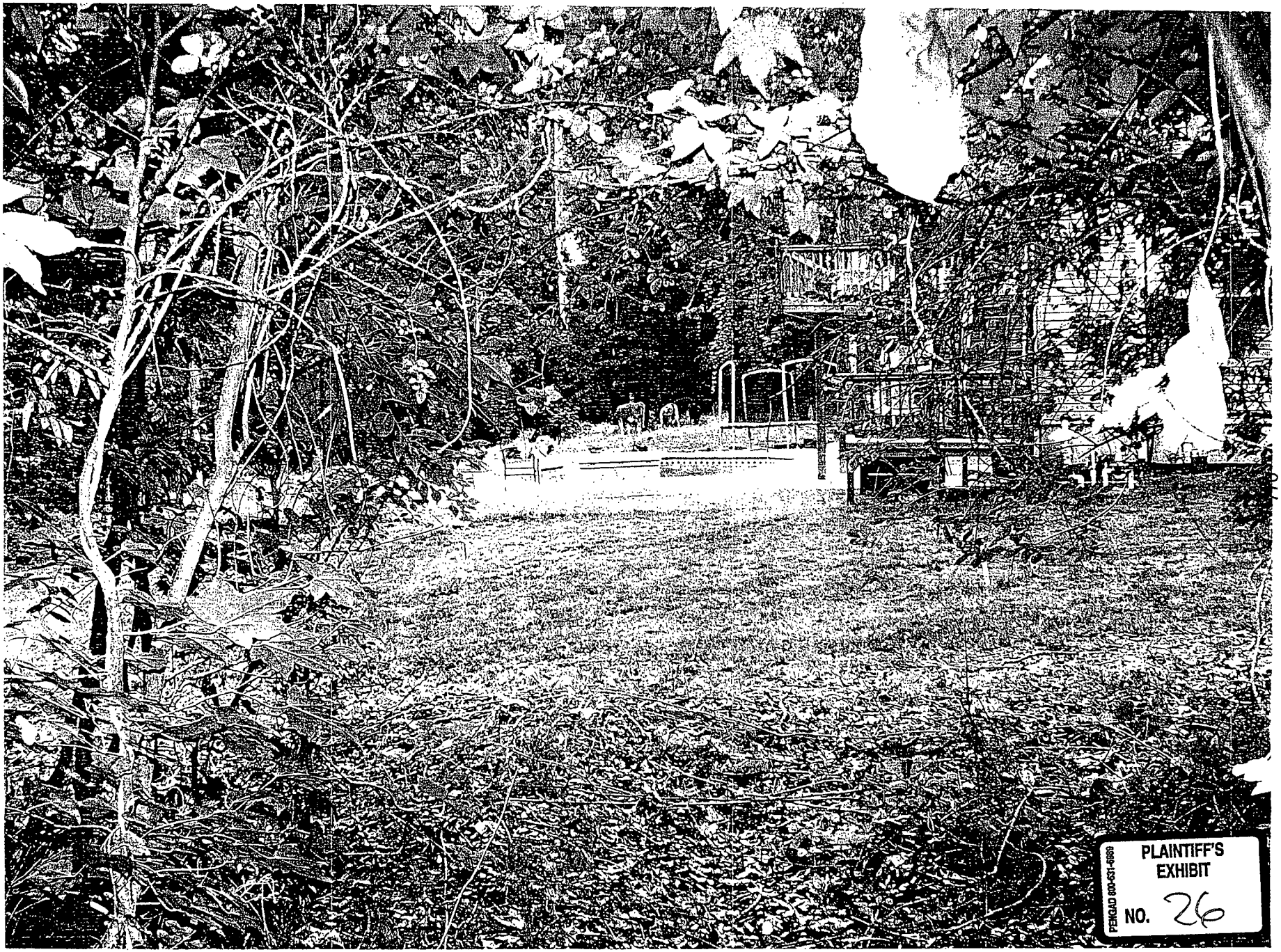
696	B	11-24
85	F	11-25
21	B	11-24
82	B	11-27
91	F	11-28
82	B	11-29
67	B	11-29
90	B	11 29
737	F	11-30
38	F	12-1
94	B	12-1
43	F	12-2
96	B	12-3
15	F	12-3
175	B	12-4
6	B	12-4
87	B	12-5
40	F	12-7
97	B	12-7
2-Tay	B	12-7
99	B	12-7
18	B	12-8
93	B	12-9

(4)

80	F	12-9
167	B	12-10
21	B	12-11
44	B	12-10
~~169~~		~~12-10~~
~~31~~	~~B~~	~~12-11~~
100	B	12-11
48	F	12-12
34	B	12-13
47	F	12-16
98	F	12-19
92	B	12-21
612	B	12-28
48	F	1-7
25	F	1-10
2	F	1-31
89	F	2-4
no Tag	F	2-4
no Tag	B	2-9

Dial Church Rd. from the Bridge

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
NO. 24



PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 26

PENGAD 800-631-6989

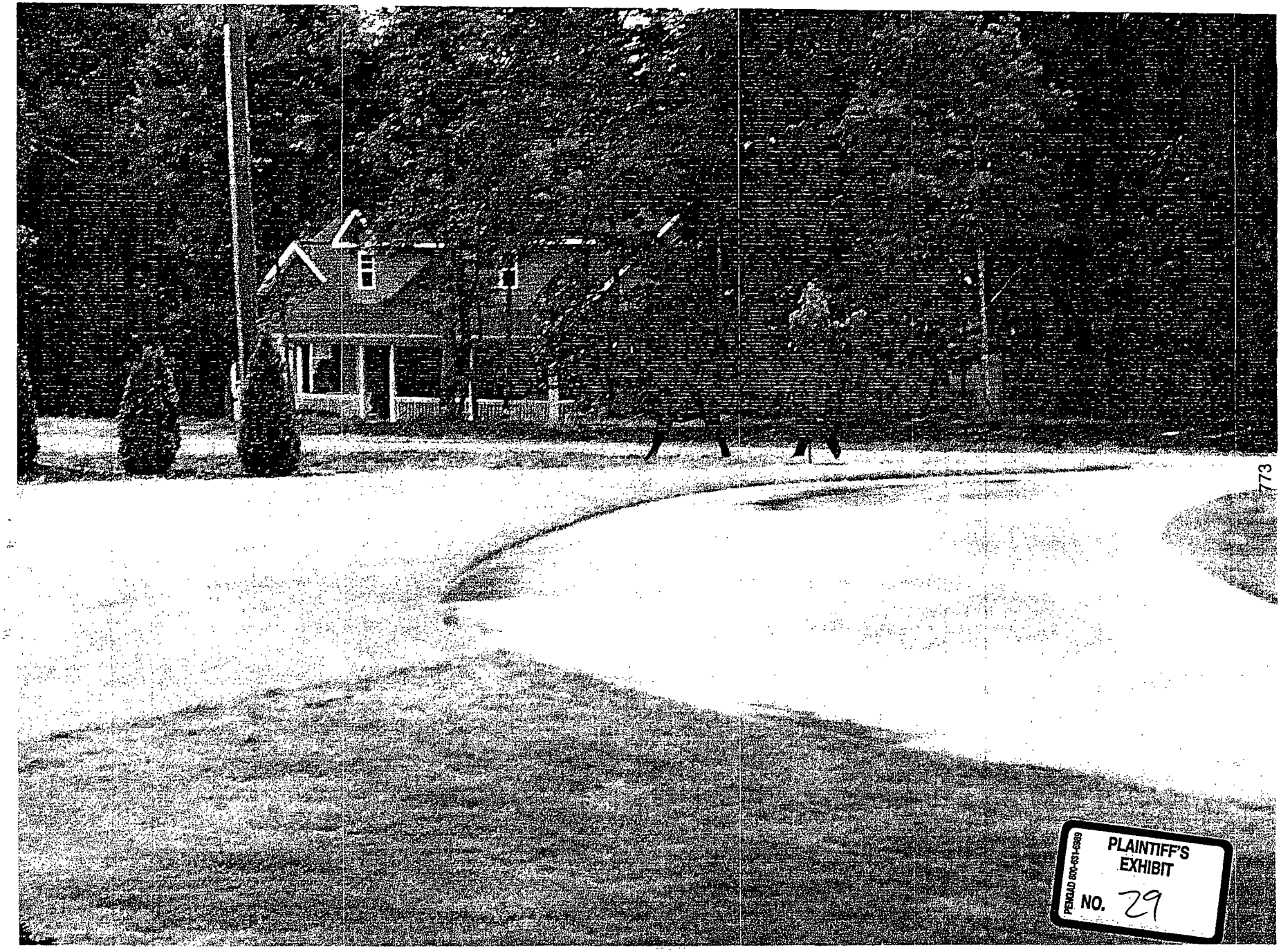
PLAINTIFF'S EXHIBIT

NO. 27

PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 28

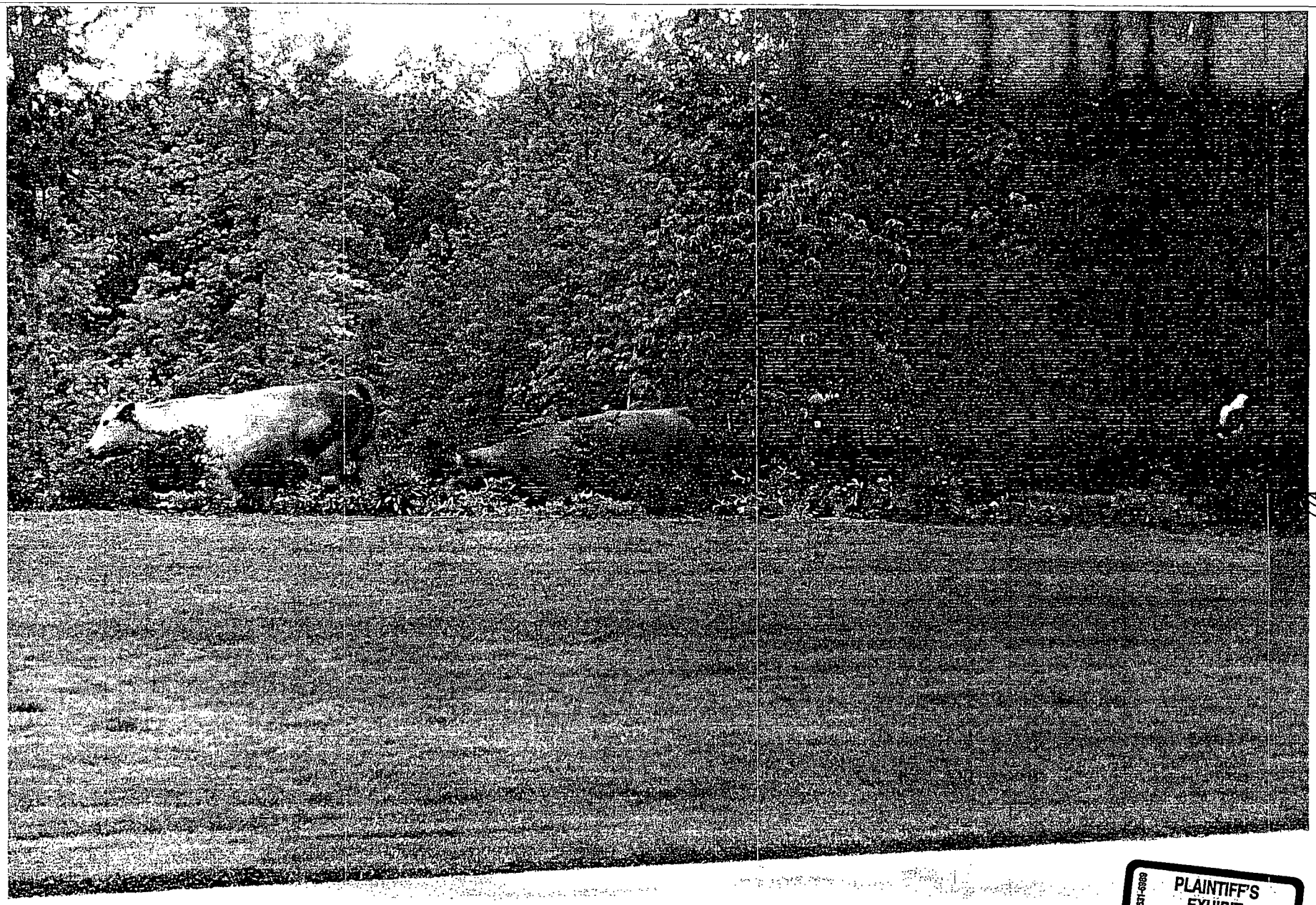


773

PERMLAD 800-631-6989

PLAINTIFF'S EXHIBIT

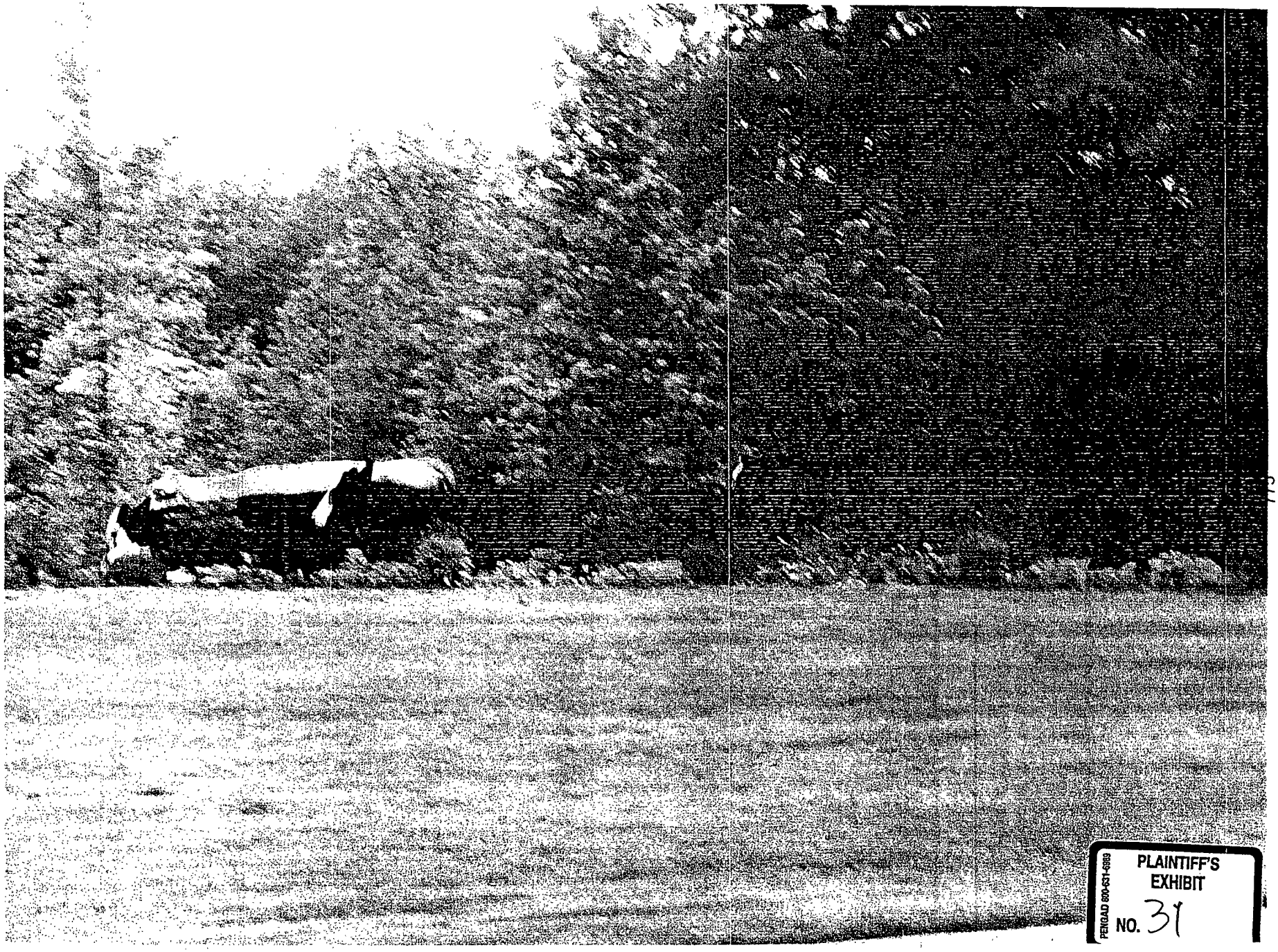
NO. 29



PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 30



PENGAD 800-631-6989

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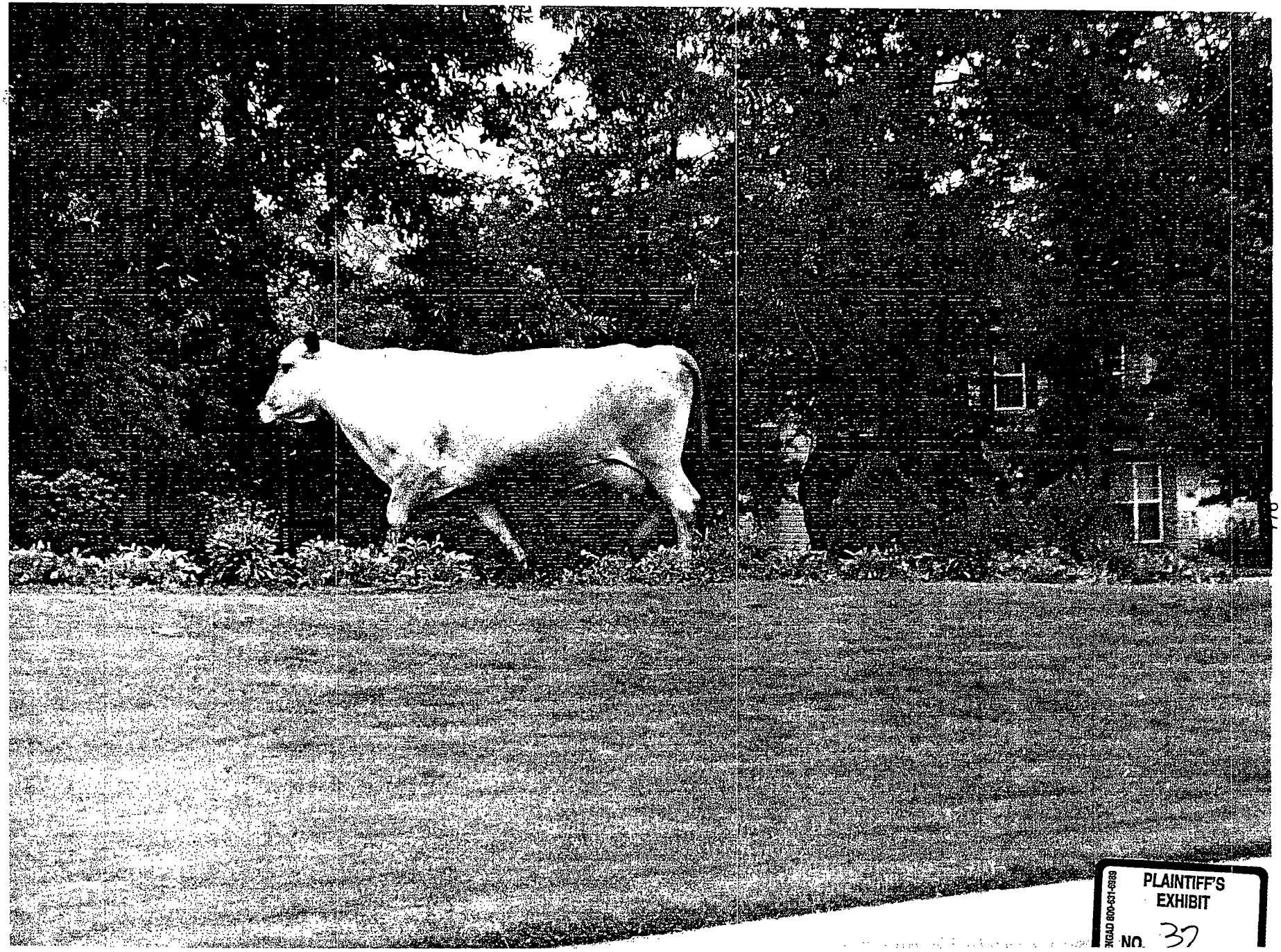


PLAINTIFF'S EXHIBIT

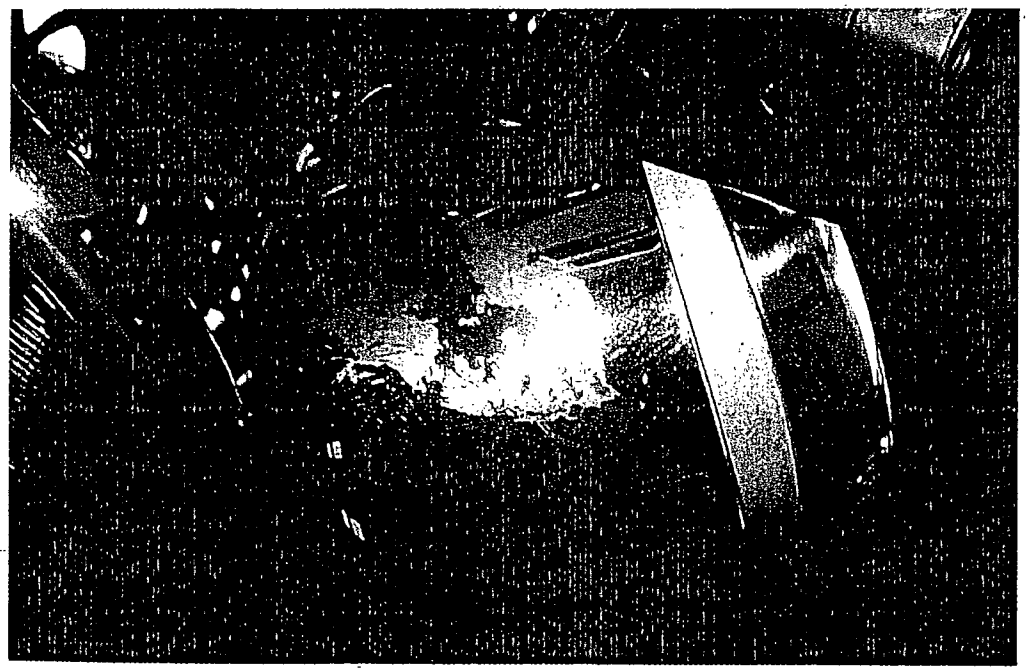
NO. 37

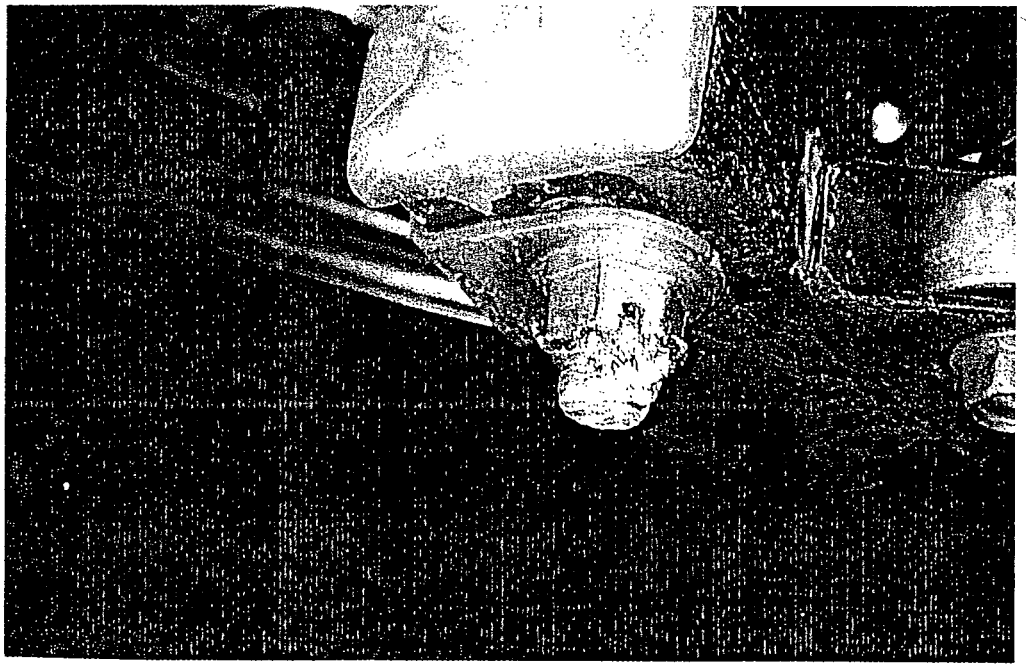
NGAD 800-631-6989

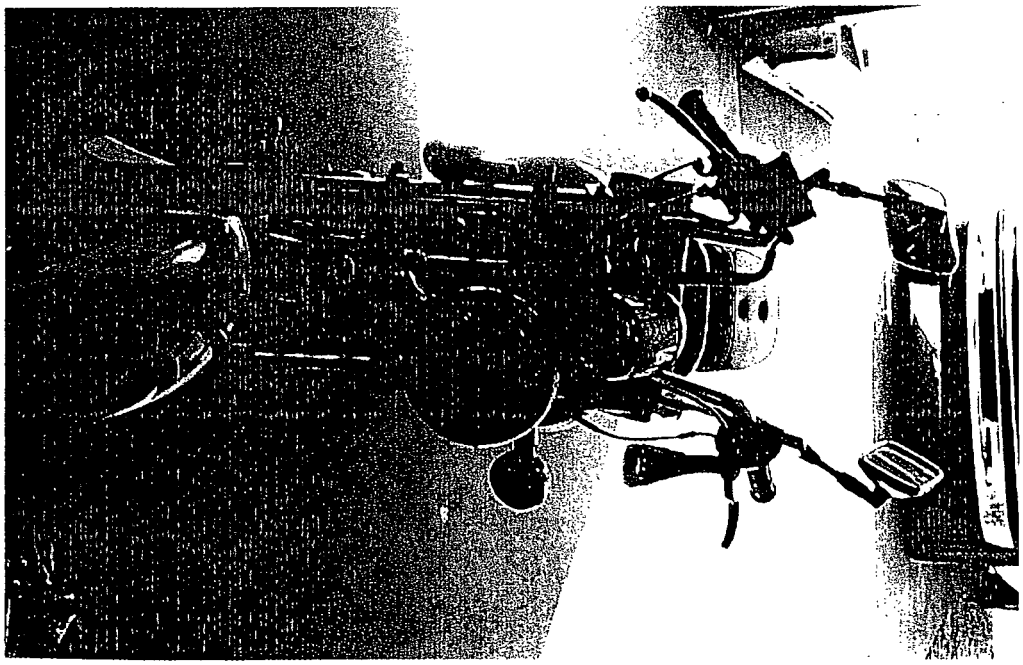
PENGAD 800-631-6989

PLAINTIFF'S EXHIBIT

NO. 33







Micro Analytical

110 East Butler Road, Suite I
Mauldin, SC 29662

e-mail MicroAnaly@aol.com

Telephone (864) 631-2224
Cell Phone (864) 325-2288

Mr. Cameron Boggs
Boggs Law Firm
102 West Stone Avenue
Greenville, SC 29609

Laboratory Report

Case # 08-151 Date 9-10-08

Examination Requested

Micro Analytical was asked to examine a motorcycle in the custody of Burdett's Towing located in Waterloo, SC. The motorcycle exhibits accident damage and is said to have collided with an animal. The specific request was to examine fecal material and any other foreign trace evidence located on the motorcycle to possibly determine a source of the material with respect to species.

Laboratory Tests Performed

A white Suzuki motorcycle (VIN: JSINJ48AXY2101726) was examined on Friday, August 29, 2008 at Burdett's Towing in Waterloo, SC. The motorcycle was photographed before any samples were collected. Damaged portions of the motorcycle and areas bearing what appeared to be fecal material and hair were of particular interest. Samples of the fecal material were collected using razor blades, and the hairs were collected using forceps. Each sample was placed into a small envelope, sealed, and labeled.

The hair samples and fecal material were examined at low magnification using a stereomicroscope. Each hair sample was mounted for microscopical analysis using refractive index immersion oils and subsequently examined using polarized light microscopy (PLM). Portions of the fecal material were dispersed and also prepared for microscopical analysis using PLM. Photomicrographs of the samples were taken at various magnifications.

PLAINTIFF'S EXHIBIT NO. 38

Laboratory Results

The foreign debris removed from the motorcycle includes singular hairs, tufts of hair, hair fragments, and fecal material. The most suitable evidence present for determining species appears to be the hair samples. Approximately twenty-five (25) hairs and hair fragments were collected and examined. The hair samples present are animal hairs and are consistent with those of a cow (or bull). By examining the morphological features of a hair microscopically, cow hair can be differentiated from that of a horse, deer, dog, cat, rabbit, squirrel, fox, raccoon, or any other common species.

The fecal material is dry, brittle, and easily dispersed for testing. Particulate matter detected in the fecal material includes cellulosic fibrous debris, trichomes, quartz mineral grains, and one portion of a feather. The cellulosic debris is consistent with grass or other non-woody plant material. Trichomes are small hair-like particles that are present on the leaves of plants. Quartz is the primary component of sand. One particle type that is notably absent in the debris is starch. Grains of starch, especially cornstarch, are commonly present in feed for livestock.

The fact that many of the cow hairs are broken, crushed, or deformed in some way indicates blunt trauma or force. Some of the hairs were found to be embedded in crevices of the motorcycle, and as a result, difficult to remove. Additionally, some of the hairs exhibit anagen phase roots (as opposed to telogen phase or bulbous roots), which means that the hairs were in an early growth stage and not ready to naturally fall out. These observations suggest that the hairs were forcibly removed and not simply shed in a natural manner.

Respectfully Submitted,

Jeffrey M. Hollifield
Chemical Microscopist

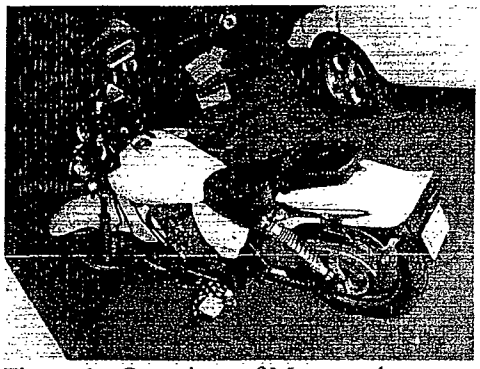


Figure 1. Overview of Motorcycle

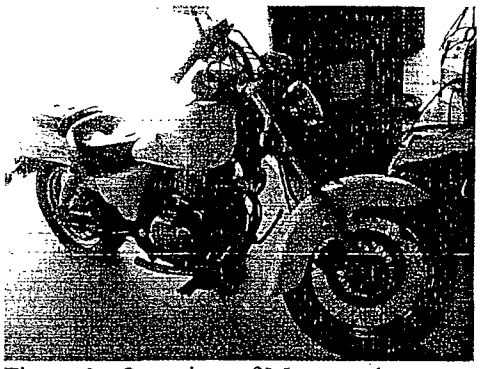


Figure 2. Overview of Motorcycle

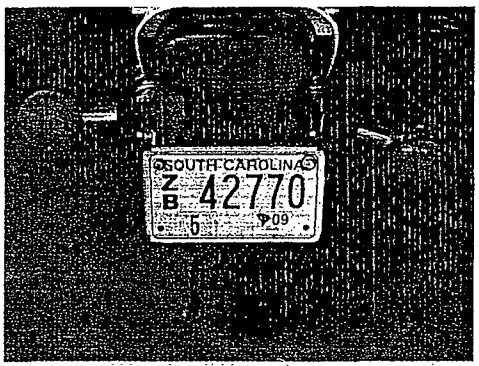


Figure 3. License Plate

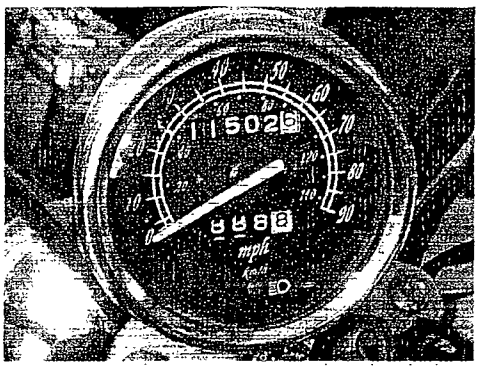


Figure 4. Odometer Reading

Figure 5. Front of Motorcycle

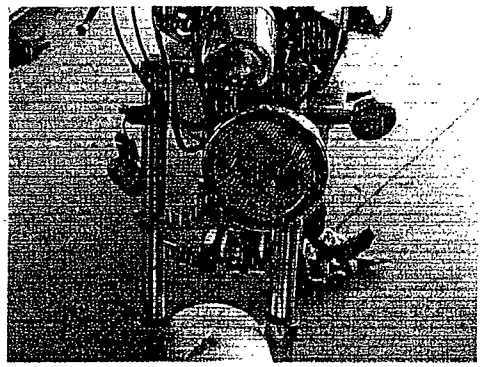


Figure 6. Damage to Front End

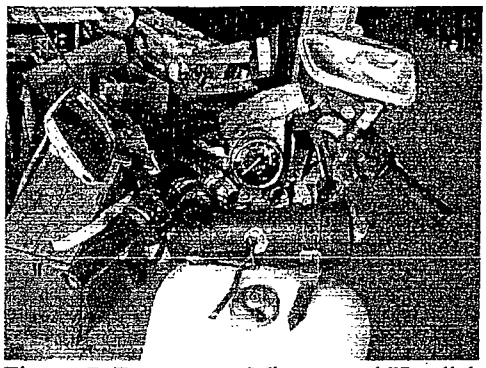


Figure 7. Damage to Mirrors and Handlebars

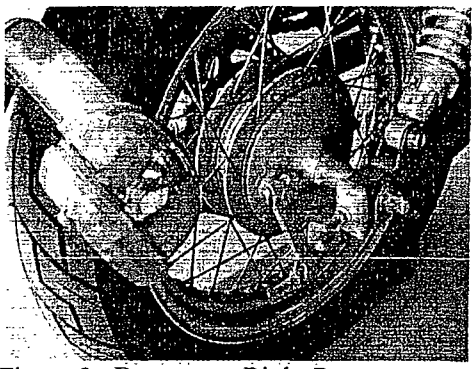


Figure 8. Damage to Right Rear Turn Signal Shaft

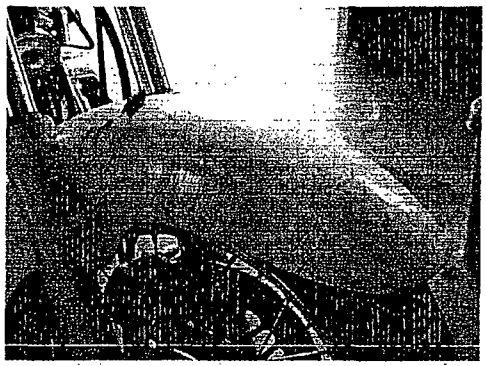


Figure 9. Damage to Front Fender and Feces on Front Fender

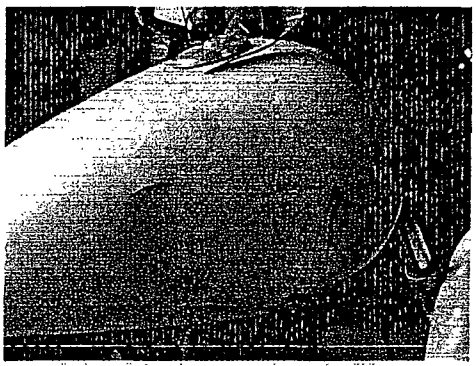


Figure 10. Damage to Fuel Tank

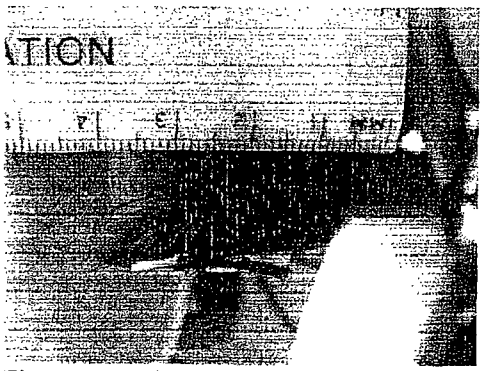


Figure 11. Abrasion on Right Handlebar

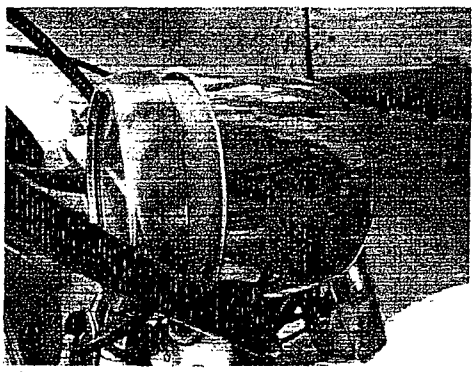


Figure 12. Damage to Speedometer

Figure 13. Feces on Front Fender

Figure 14. Hair and Feces on Front Fender

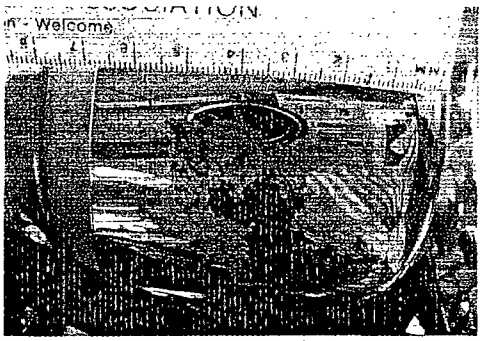


Figure 15. Feces on Speedometer

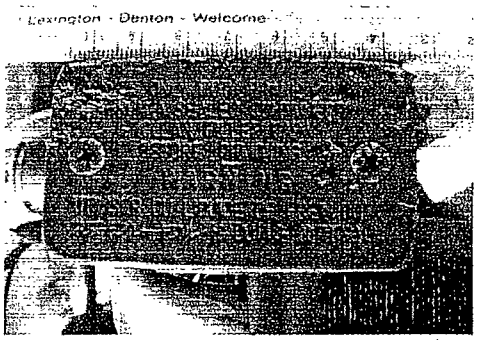


Figure 16. Feces Near Instrument Panel

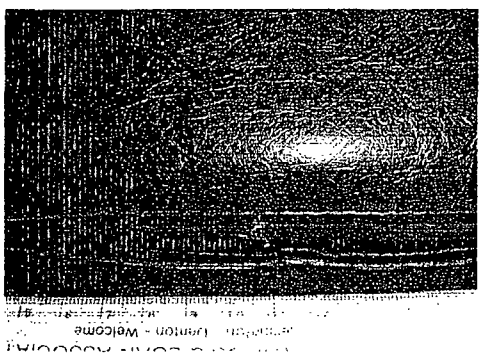


Figure 17. Feces on Leather Seat

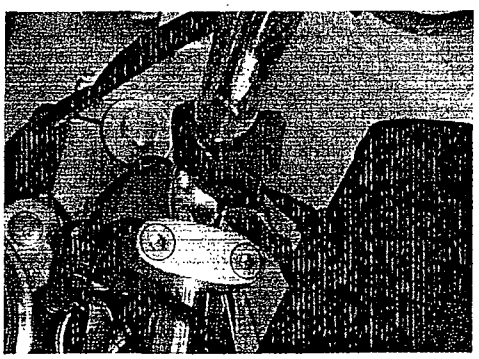


Figure 18. Feces on Handlebar

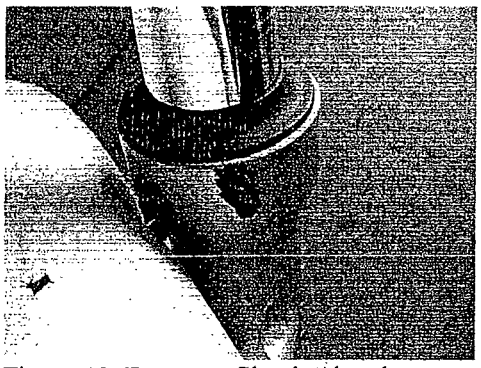


Figure 19. Feces on Shock Absorber

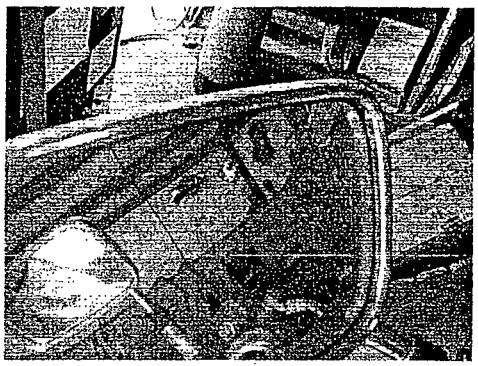


Figure 20. Feces on Left Mirror

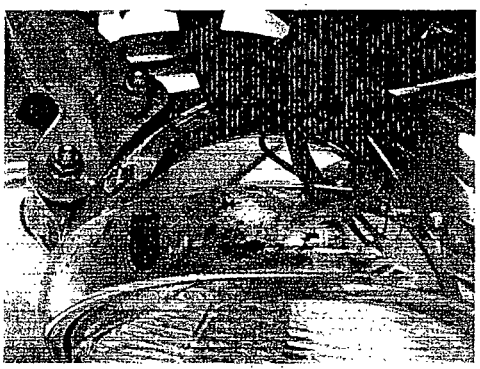


Figure 21. Feces on Headlamp

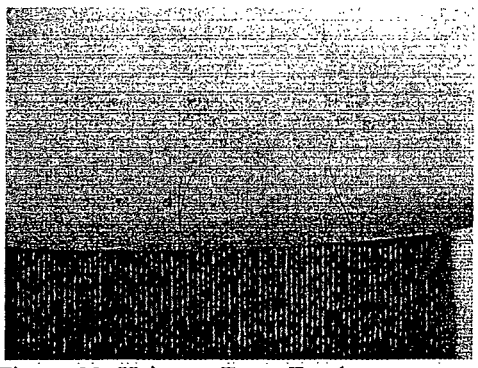


Figure 22. Hairs on Front Fender

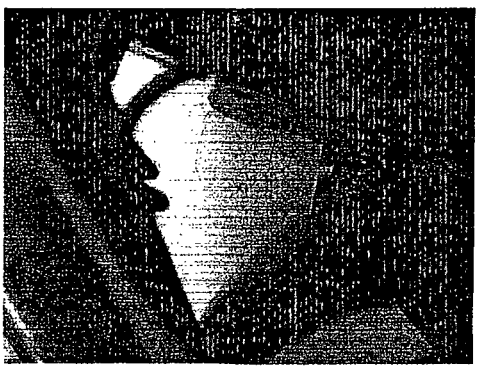


Figure 23. Hairs Beneath Frame

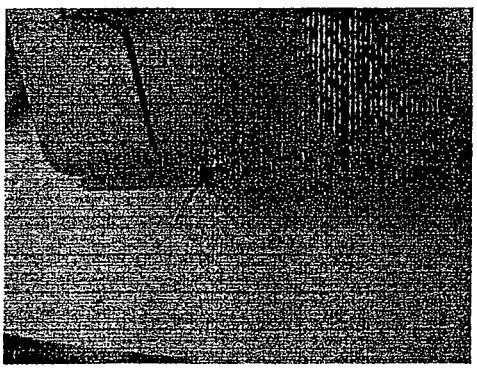


Figure 24. Tuft of Hairs Beneath Frame

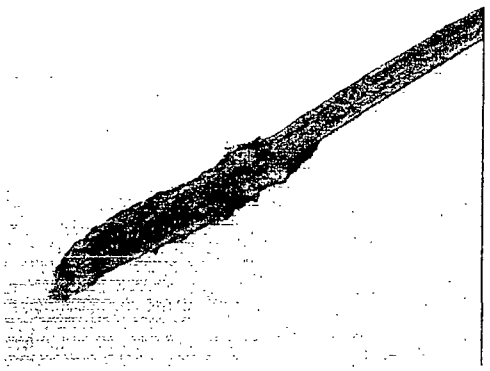


Figure 25. Root of Hair

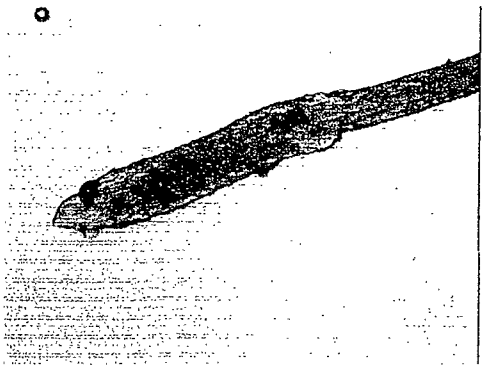


Figure 26. Root of Hair

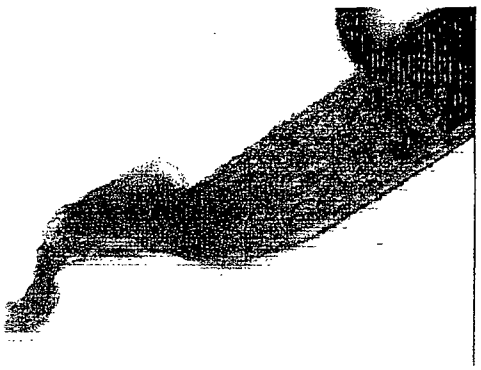


Figure 27. Forcibly Removed Hair
Anagen Phase Root

Figure 28. Tapered Tip of Hair

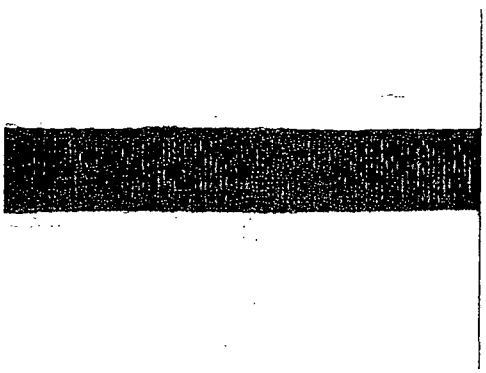


Figure 29. Scales Along Edge of Hair

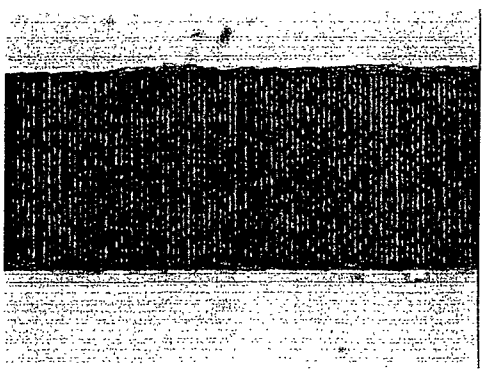


Figure 30. Scales Along Edge of Hair

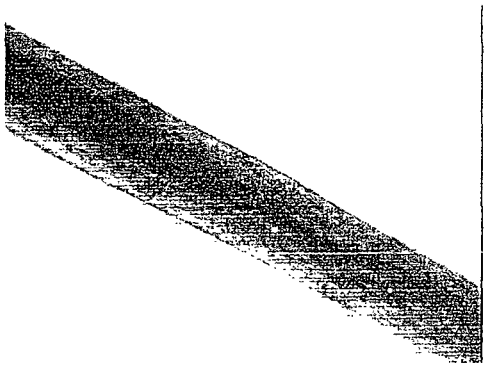


Figure 31. Medulla Near Root End

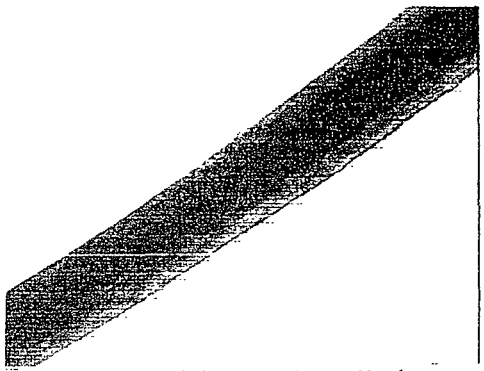


Figure 32. Medulla Near Root End

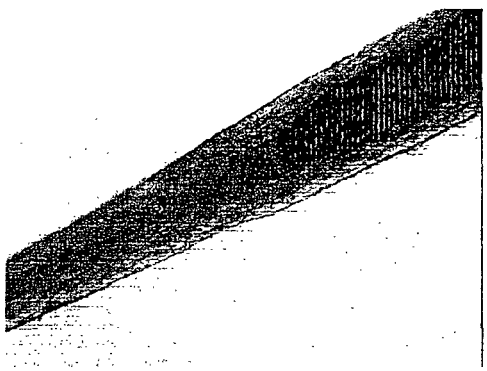


Figure 33. Widening of Medulla

Figure 34. Hair Pigment and Medulla

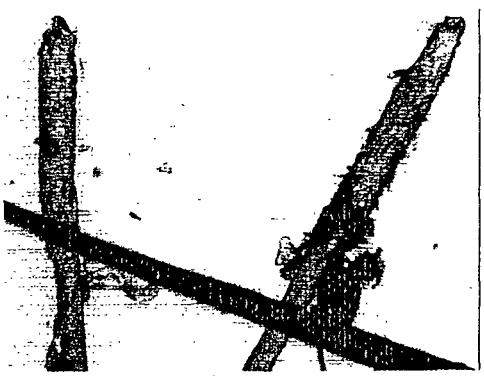


Figure 35. Tuft of Hairs from Bike

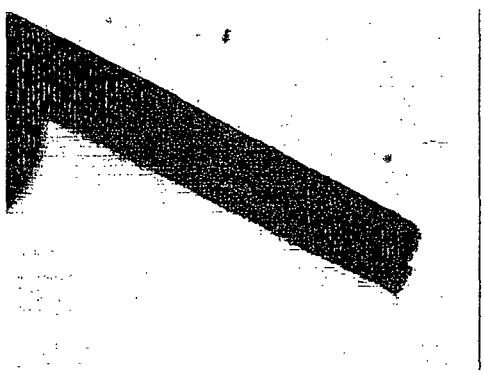


Figure 36. Broken End of Hair

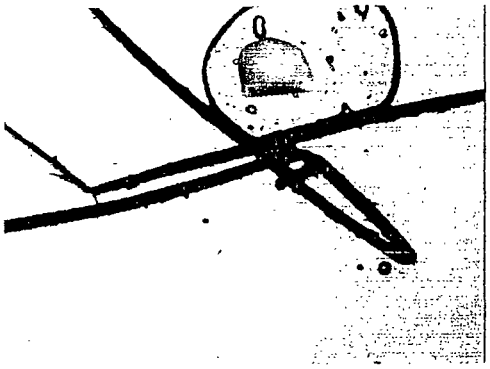


Figure 37. Crushed Hairs From Bike

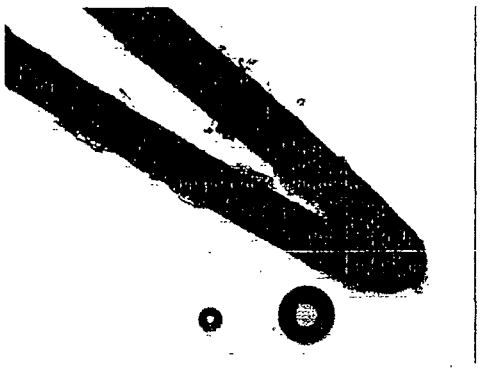


Figure 38. Crushed Hair from Bike

Figure 39. Crushed Tip of Hair

Figure 40. Crushed Tip of Hair

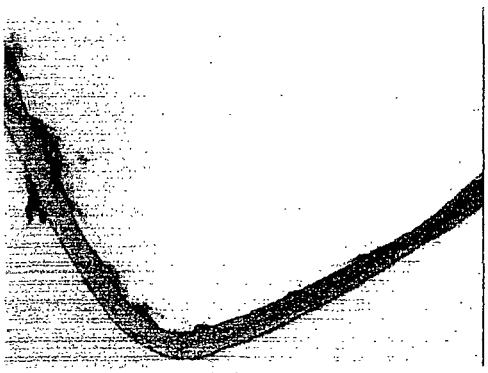


Figure 41. Bent Hair from Bike

Figure 42. Particles from Feces

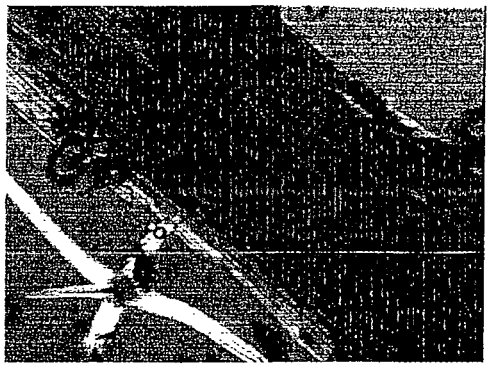


Figure 43. Grass and Trichome from Feces

Figure 44. Mass of Trichomes from Feces

Figure 45. Debris from Feces

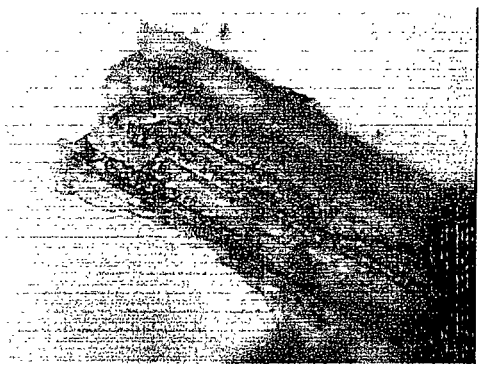


Figure 46. Grass from Feces

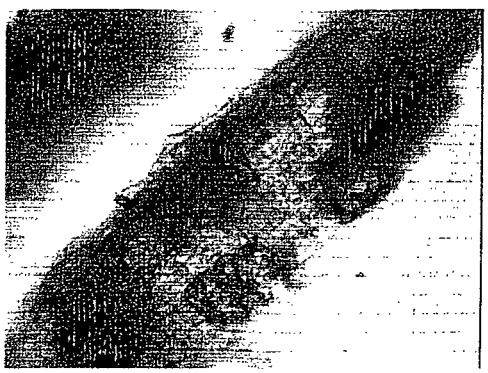


Figure 47. Parenchyma Cells of Grass

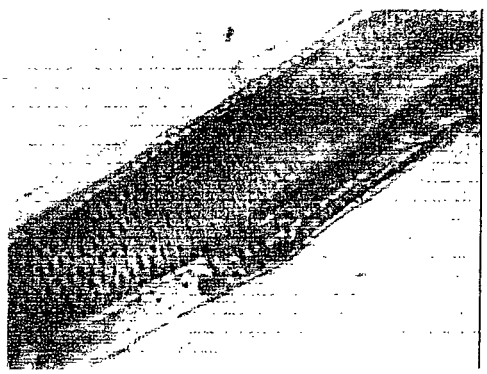


Figure 48. Cellulosic Plant Material

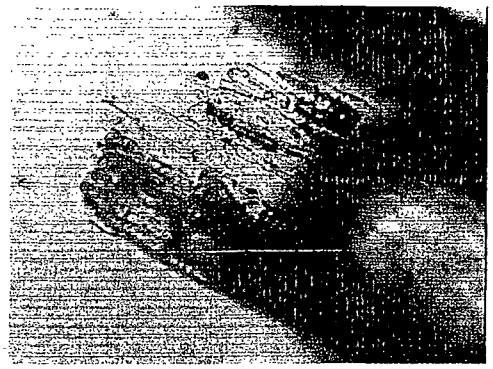


Figure 49. Grass from Feces

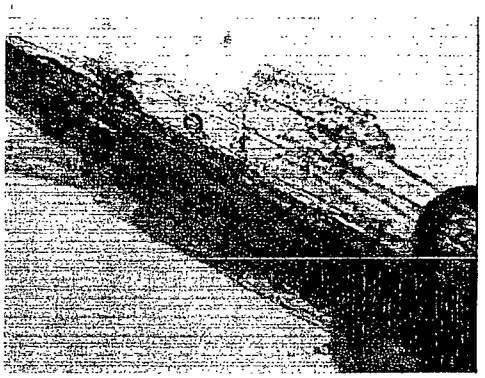


Figure 50. Grass from Feces

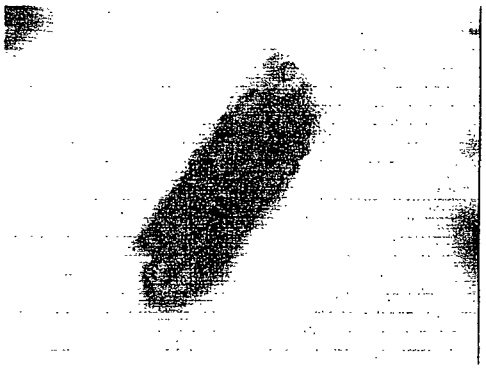


Figure 51. Cellulosic Plant Material from Feces

Figure 52. Cellulosic Plant Material from Feces

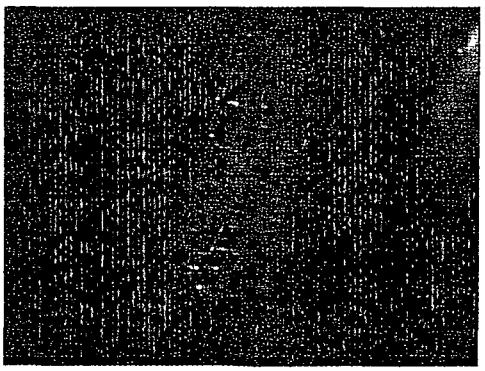


Figure 53. Parenchyma Cells of Grass

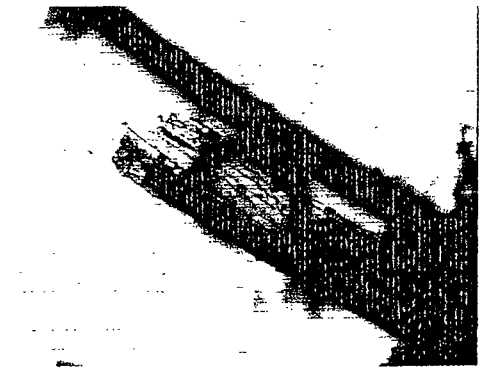


Figure 54. Grass on Hair from Feces

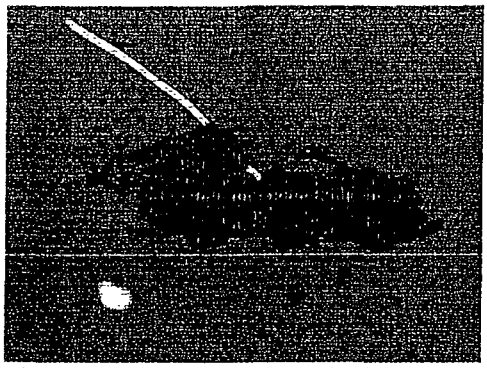


Figure 55. Trichome, Grass, and Quartz Grain from Feces

Figure 56. Feather Fragment from Feces

LABCORP - 3000

HRP/ABLE TASK FORCE, INC
924 BRIGHTMOOR DR
MATHEWS, NC 28105

Specimen Number
0796093830
Phone: (704) 716-1121
abletfi@bellsouth.net;roshell

Account Number: 177880

Date Coll: 7/24/08 Employee Name: FARROW,WILLIAM Gender: Not Given Age: Not Given

Date Sent: 7/25/08 Employee ID: [redacted]

Current Date Sent: 7/25/08 Form ID: 0796093830 Test Reason: PRE EMPLOYMENT

Clin Info:

TEST	LAB	UI	UI

Drug	Result	ScreenCutoff	ConfirmCutoff
AMPHETAMINES	Negative	001000	000500
Cocaine Metabolite	Negative	000300	000150
Marijuana Metabolite	Negative	000050	000015
OPIATES	Negative	002000	002000
Phencyclidine	Negative	000025	000025

Collection Site Info:

Neil J. Dash, MD
CERTIFYING MRO

PLAINTIFF'S EXHIBIT NO. 39
PENGAD 800-631-6989

CONFIDENTIALITY STATEMENT
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Customer Service: 800-833-9984

1904 ALEXANDER DRIVE
RTP, NC 27709

SPECIMEN ID NO. 0796093830

LAB ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.
PAYABLE TASK FORCE
ATTN: SANDY HAUPT
904 BRIGHTMOOR DR
MATTHEWS NC 28105
704-716-1181
FAX:
Location

B. MRO Name, Address, Phone and Fax No. 177BEC
DOCTORS REVIEW SERVICES
DR NEIL J DASH
546 FRANKLIN AVENUE
MASSAPEQUA NY 11758
800-526-9341 FAX: 800-547-2966

C. Donor SSN or Employee I.D. No. 214-84-7941 33

D. Reason for Test: [X] Pre-Employment [ ] Random [ ] Reasonable Suspicion/Cause [ ] Post Accident [ ] Periodic [ ] Other

E. Collection Site Address

Laboratory Corporation of America
25 Woods Lake Rd, Ste 2JK
Greenville, SC 29607
Collector Phone Location # 93054
(864) 235-7204 Phone
(864) 235-7674 Fax
Collector Fax No.

F. Donor Identification Verified By: [X] Photo I.D. [ ] Employer Representative

STEP 2: TO BE COMPLETED BY COLLECTOR

Read specimen temperature within 4 minutes. Is temperature between 90° and 100°F? [X] Yes [ ] No, Enter Remark Below. Split Specimen Collection [ ] Yes [X] No

REMARKS:

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY COLLECTOR AND DONOR

G. Daytime Phone No. 864-630-2348 Evening Phone No. ( ) - None Date of Birth: 5/13/64

H. TEST(S) REQUESTED BY EMPLOYER:

I authorize the collection of this specimen for the purpose of a drug screen. I acknowledge that the specimen container(s) was/were sealed with tamper-proof seal(s) in my presence; and that the information provided on this form and on the label(s) affixed to the specimen container(s) is correct. I authorize the laboratory to release the results of the test to the company identified on this form or its designated agents.

(PRINT) DONOR'S NAME (FIRST, MI, LAST)	SIGNATURE OF DONOR	INITIAL	MONTH	DAY	YEAR
William D. Farrow, Jr.	William D. Farrow, Jr.	D.F.	07	24	2008

STEP 5: CHAIN OF CUSTODY INITIATED BY COLLECTOR AND COMPLETED BY LABORATORY

I certify that the specimen given to me by the donor identified on this form was collected, labeled, sealed, and released to the Delivery Service noted in accordance with applicable requirements.

X Stephanie Watson — Signature of Collector — Time of Collection 4:13 AM PM
Stephanie Watson — (PRINT) Collector's Name (First, MI, Last) — Date (Mo/Day/Yr.) 7/24/08

SPECIMEN BOTTLE(S) RELEASED TO: LCA Courier — Name of Delivery Service Transferring Specimen to Lab

RECEIVED AT LAB:
X
Signature of Accessioner
(PRINT) Accessioner's Name (First, MI, Last) — Date (Mo/Day/Yr.) / /

Primary Specimen Bottle Seal Intact
[ ] Yes
[ ] No, Enter Remark Below

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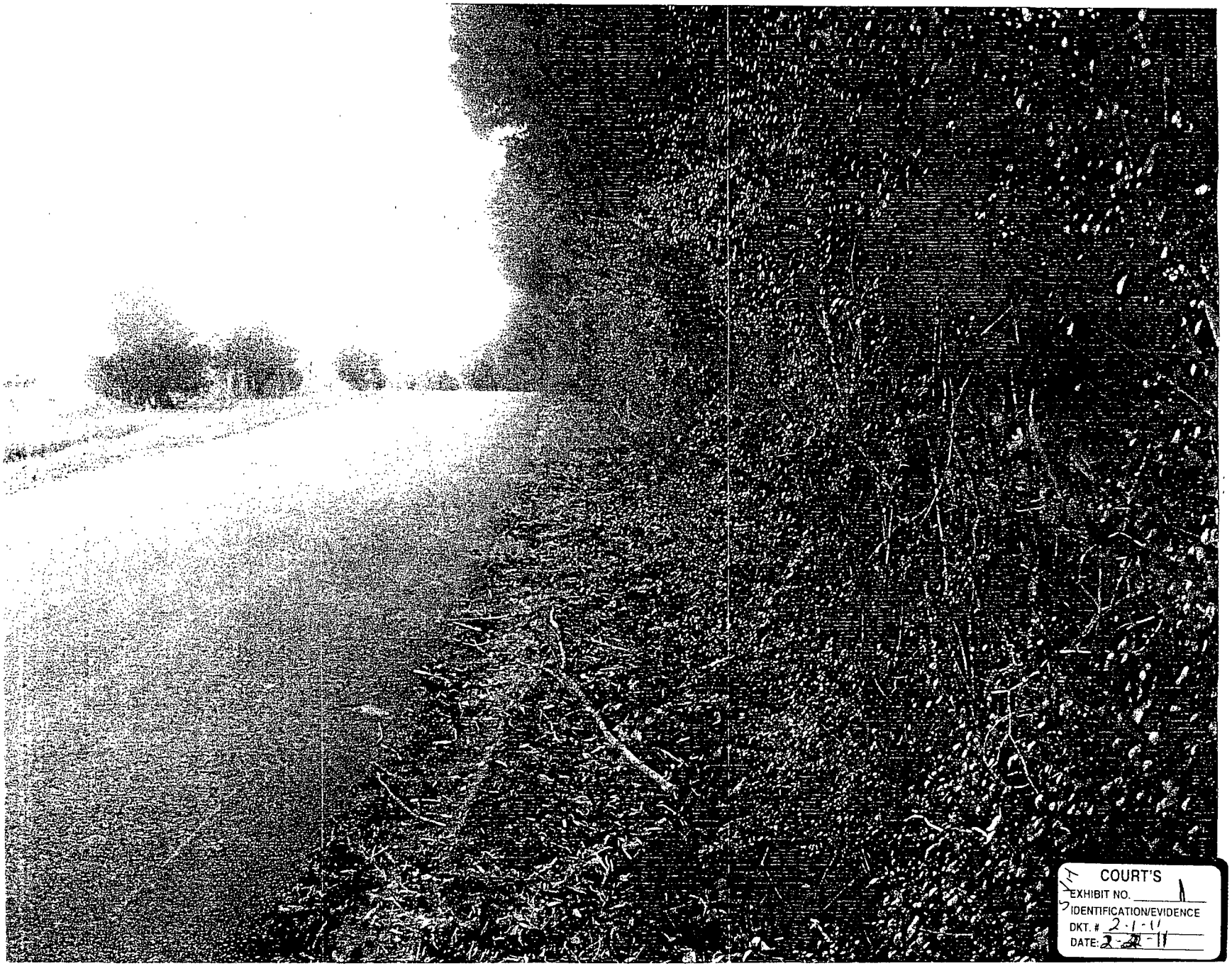
PLAINTIFF'S EXHIBIT

NO. 41

SVH 2-3-11

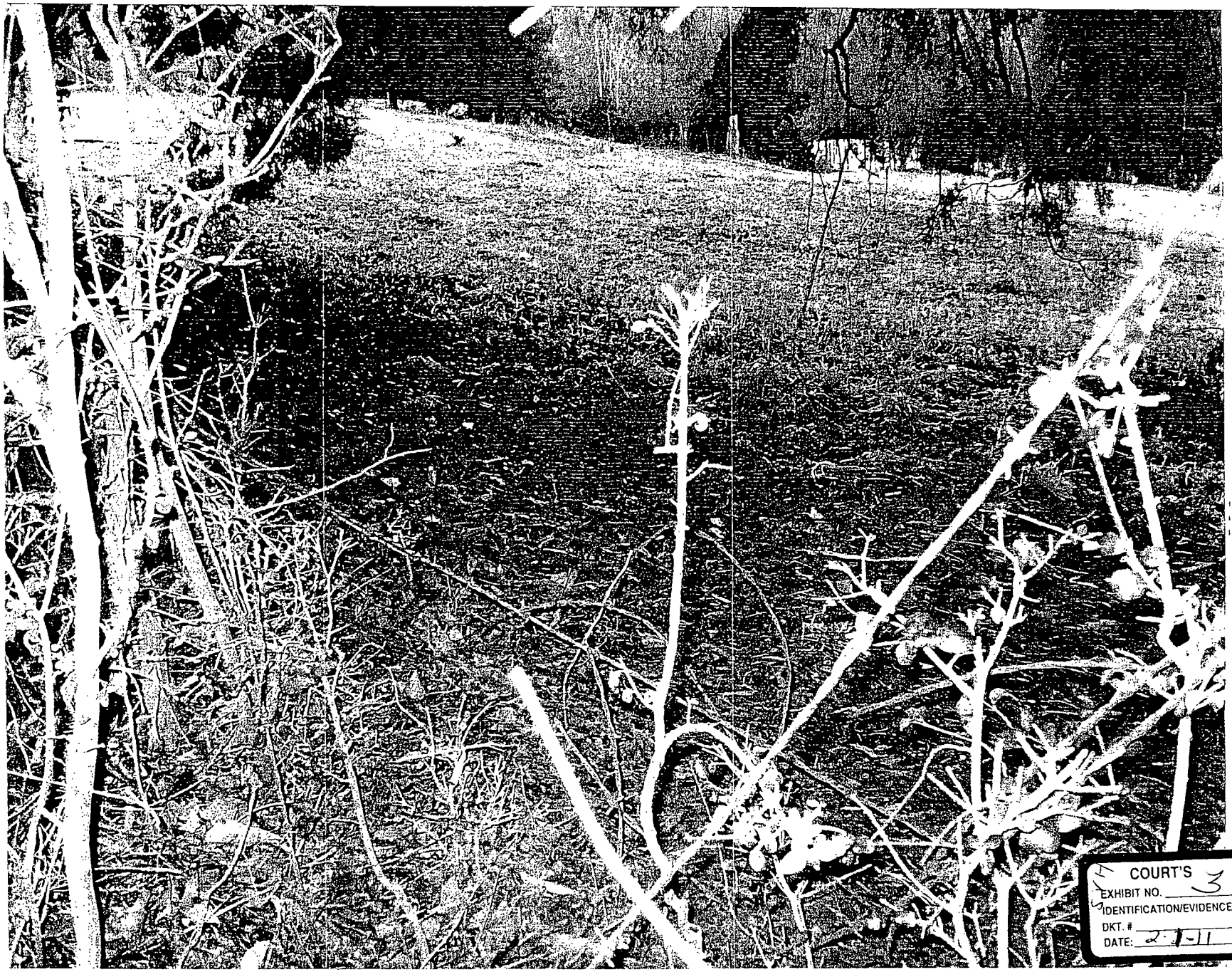
Plaintiffs' Exhibit No. 42 – Aerial Large Board Photograph

Oversized Exhibit on File with Trial Court



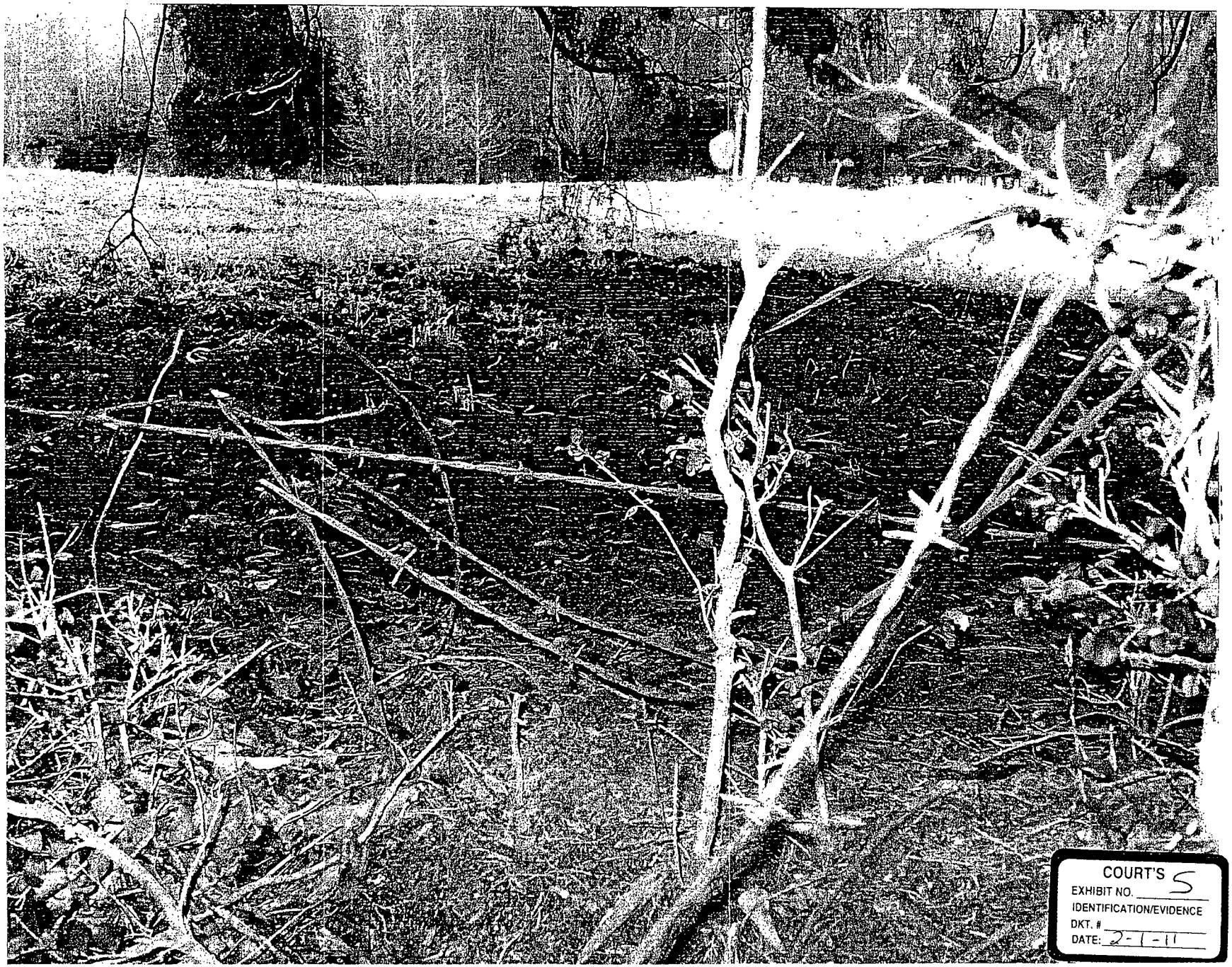
COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT. # 2-1-11
DATE: 2-22-11

COURT'S
EXHIBIT NO. 2
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-4-11

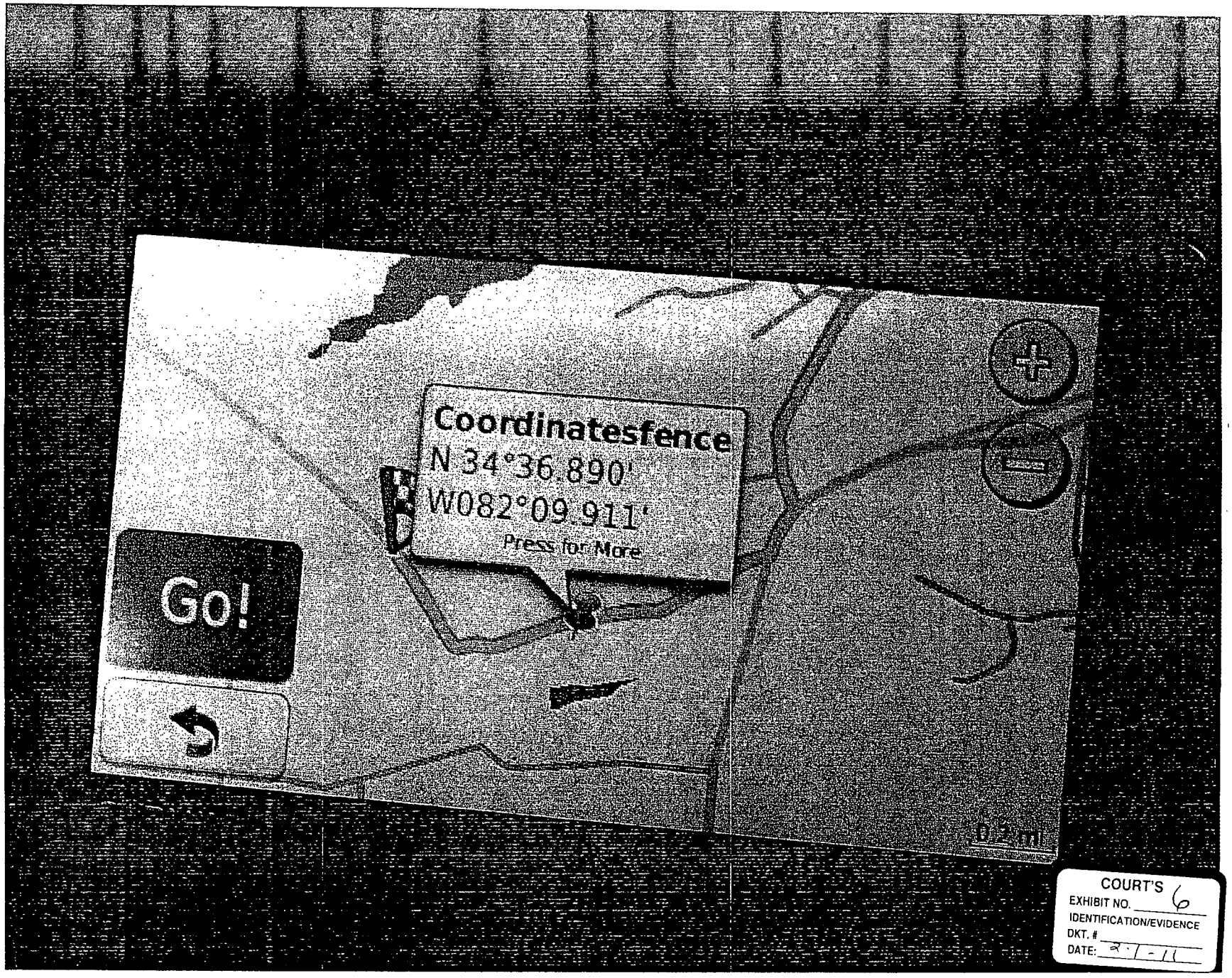


COURT'S
EXHIBIT NO. 3
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11

COURT'S
EXHIBIT NO. 4
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11



COURT'S
EXHIBIT NO. 5
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11



COURT'S
EXHIBIT NO. 6
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11

STATE OF SOUTH CAROLINA)
: IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS)

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

-vs-

Jerry W. Darby,
Defendant.

C.A. No.: 2008-CP-30-1120

COPY

DEPOSITION OF JOHN WILLIAM HARRISON
May 1, 2009

PURSUANT to Notice and/or agreement between the parties, the deposition of **John William Harrison,** called by the Plaintiffs, was taken commencing at the hour of 12:01 p.m. on Friday, May 1, 2009, at the Law Offices of Younts, Alford, Brown & Goodson, 210 South Main Street, Fountain Inn, South Carolina.

SUE N. HAYNIE, Reporter

G. W. Coleman Associates
Post Office Box 9177 • Greenville, South Carolina 29604
803/233-2341

APPEARANCES:

THE BOGGS LAW FIRM
102 West Stone Avenue
Greenville, South Carolina 29609
BY Wayne Patterson, Esquire

.....On behalf of the Plaintiffs

HOWSER, NEWMAN & BESLEY, L.L.C.
1508 Washington Street
P. O. Box 12009
Columbia, South Carolina 29211
BY Rowland P. Alston, III, Esquire

.....On behalf of the Defendant

ALSO PRESENT:

William D. Farrow
Karen W. Farrow

STIPULATIONS:

This deposition is taken pursuant to the South Carolina Circuit Court rules of Civil Procedure; reading and signing of the deposition by the witness are hereby waived.

Exhibits:

There were no exhibits to this deposition.

INDEX OF EXAMINATION

By Mr. Patterson . . . . . Page 4
By Mr. Alston . . . . . Page 16
By Mr. Patterson . . . . . Page 18
By Mr. Alston . . . . . Page 20

1 **JOHN WILLIAM HARRISON, having first been duly**
2 **sworn to tell the truth, testified as follows:**
3 **EXAMINATION**
4 **By Mr. Patterson:**
5 Q: Mr. Harrison, my name is Wayne Patterson and I
6 represent David and Karen Farrow. They're present here
7 today. This is a situation, I'm sure you're familiar with
8 it, where Mr. Farrow was involved in an automobile accident,
9 an accident allegedly with a cow. Do you understand that
10 that's what we're here today to talk about?
11 A: Yeah.
12 Q: Also present is Mr. Rowland Alston, III. He's an
13 attorney that represents Mr. Darby. I'll be asking you some
14 questions and then Mr. Alston will have a chance to ask you
15 some questions. Have you ever given a deposition before?
16 A: No.
17 Q: Just a few ground rules. This is a testimony, it
18 is sworn testimony. It's just like you're in court. If you
19 don't understand the question, just please ask me, I'll try
20 to elaborate or clear it up with you. If you don't
21 understand anything, just please let me know and we'll
22 clarify it. Could you give us your full name and your
23 address, please, sir?
24 A: John William Harrison.
25 Q: Mr. Harrison, are you employed?

A: No, I'm retired.
Q: You're retired from where?
A: City Tire and Recapping in Laurens.
Q: And how long did you work there?
A: Sixteen and a half years.
Q: And do you know Mr. Darby?
A: Yeah.
Q: And how do you know him?
A: I've known him all his life. He lives right close to me there.
Q: Are you or any of your family related to Mr. Darby?
A: No.
Q: And the accident that we're here today, are you familiar with the location of the accident?
A: Yeah.
Q: Did you go to the scene of the accident?
A: Soon after it happened, yeah.
Q: Soon after it happened. Could you describe what you saw at the scene of the accident?
A: When I got there, I saw the motorcycle laying about halfway in the road down on its side, and I saw Mr. Farrow in the ditch on his back. I didn't see any animal or anything like that. And that was about it.
Q: Okay. Could you describe a little further Mr.

1 Farrow's condition?
2 A: Well, he looked like that he might have been kind
3 of addled, shook up. He had one leg up, drawn up, and he
4 was complaining about it.
5 Q: Where was the motorcycle in relation to him and in
6 relation to the road?
7 A: I'd say that it was probably ten feet from him and
8 it was on a little bit more on that side of the road where
9 he was in the ditch than the other side. It didn't like
10 much of being in the middle of the road.
11 Q: Now, if you're coming from Dials Church down Dials
12 Church Road, my understanding is the accident happened
13 shortly before you get to Cooley Road, is that correct?
14 A: That's right.
15 Q: If you're coming that way, which side of the road
16 was Mr. Farrow laying on?
17 A: He was on the left side coming from Dials Church.
18 Q: Coming from Dials Church, he was on the left-hand
19 side?
20 A: Uh-huh (affirmative response).
21 Q: And the motorcycle was approximately in the middle
22 of the road?
23 A: Approximately.
24 Q: Do you know which way he was traveling at the
25 time?

1 A: I think he was probably coming from Dials Church.
2 Q: But you don't know?
3 A: No.
4 Q: Where do you live in relation to the accident?
5 A: Approximately one quarter or maybe a little better
6 than that on the left-hand side of the road.
7 Q: And how long have you lived there?
8 A: About 55 years.
9 Q: So you're familiar with everybody that's in the
10 area then?
11 A: (Nods head).
12 Q: And do you travel Dials Church Road on a regular
13 basis?
14 A: Yeah.
15 Q: How many times a day would you say you go up and
16 down Dials Church Road?
17 A: Maybe two or three.
18 Q: Two or three times a day. All right, sir. If you
19 are coming from Dials Church and you're coming in that
20 direction which is north, could you tell me what is on the
21 left-hand side of the road at the accident scene?
22 A: Just before you get to Cooley Road, there's a
23 fence, pasture fence, and pastures all the way, all the way
24 up to my house nearly. There's one house between the scene
25 and my house. Before you get to my house there's one house

1 more on the left.
2 Q: At the scene of the accident, going that direction
3 on the left-hand side, the pasture you described, as you
4 travel this road two or three times a day, is it normal to
5 see cows in that pasture?
6 A: Yeah.
7 Q: Do you have any knowledge as to who those cows
8 belong to?
9 A: They belong to Darby.
10 Q: Do you know of anybody else that has cows in that
11 immediate area?
12 A: No.
13 Q: Have you seen in the general area of Cooley Road
14 and Dials Church in your 55 years that you've lived there,
15 have you seen cows out of this pasture that you describe on
16 the left-hand side?
17 A: I have.
18 Q: And were those cows, where were they in relation
19 to the road?
20 A: Well, they were between the fence on the shoulder
21 of the road.
22 Q: And about how many times have you seen cows out in
23 this area?
24 A: Well, I hardly know. Every once in a while, but I
25 don't know just how often.

1 Q: Okay. Well, I mean, is it more than five?
2 A: Over how many years?
3 Q: Well, let's say in the last ten years. Do you
4 have any ...
5 A: I imagine, yeah, I've seen them that many times.
6 Q: You've seen them more than five. Would you have
7 seen them as many as 20 times in the last 10 years?
8 A: No.
9 Q: Not as many as 10. All right. When you see cows
10 out in the road, the times that you've noticed them, are
11 they in the vicinity of Cooley Road? Is that where you've
12 seen cows out?
13 A: I have seen them out there, yes.
14 Q: Have you seen them out in any other location?
15 A: Yes.
16 Q: Where have you seen them out?
17 A: Down towards the creek further down Cooley Road.
18 I've seen them down that way.
19 Q: Is that still adjacent to the same pasture that we
20 were discussing that you said Mr. Darby has cows in?
21 A: Uh-huh (affirmative response).
22 Q: So as I understand it, Cooley Road is kind of more
23 at the top of the hill and then at the bottom of the hill
24 you have a creek with a bridge. Is that correct?
25 A: That's right.

1 Q: So at the times you've seen cows out, you've seen
2 them between Cooley Road and the creek. Is that correct,
3 sir?
4 A: I have.
5 Q: Is that the same area where the accident occurred?
6 A: Yeah.
7 Q: When you saw these cows out, did you notify
8 anyone?
9 A: Yes, I have from time to time.
10 Q: And do you remember who you notified?
11 A: Most of the time I called Darby's mother.
12 Q: Okay. Do you have any idea how many times you
13 called Mr. Darby's mother?
14 A: Not too many because there's other people that
15 watch out and notify them, too, I think, if they see
16 something out.
17 Q: Do you know who any of these other people would be
18 that may have notified them?
19 A: No.
20 Q: So you don't have any idea who?
21 A: No.
22 Q: Besides Mr. Darby's mother, is there anyone else
23 that you've ever notified about the cows being out?
24 A: I think maybe I've talked to Wayne. Most of the
25 time he's gone. That's the reason I called his mother.

1 Q: So most of the time you can't get in touch with
2 Mr. Darby, so you call his mother?
3 **MR. ALSTON:** Object to the form.
4 Q: You can answer.
5 A: Yes.
6 Q: And you understand that this accident was back in
7 July of last year, so you know when the accident occurred,
8 you said you went down to it. Have you seen cows out in
9 this general area any time in the, say the previous six
10 months prior to the accident or do you remember seeing cows
11 out any?
12 A: No, I don't.
13 Q: What was the weather conditions down on Dials
14 Church Road six months prior to the accident?
15 A: Weather conditions?
16 Q: Yes, sir.
17 A: When the accident happened?
18 Q: Well, no, I'm talking about like over the period
19 of time, the six months say from January to July, what was
20 the weather like in the Dials Church Road area?
21 A: Just normal summer weather.
22 Q: Normal summer weather. Did you have a lot of
23 rain?
24 A: No, we didn't.
25 Q: Would you describe it as a drought?

1 A: Yeah.
2 Q: Do you farm, Mr. Harrison?
3 A: No.
4 Q: You don't farm. Okay. Did you notice the
5 conditions of the grass and hay? I know that is all farm
6 area down there. Did you notice the condition of the grass
7 or the hay or the trees or the vegetation in the area during
8 the six months prior to the accident?
9 A: Overall, we had a dry summer, had a dry spring, so
10 everybody was wanting rain. I can say that.
11 Q: Did you have to get out and cut your grass?
12 A: I did occasionally, yeah.
13 Q: As much as you have in the past?
14 A: No.
15 Q: A lot less than you have in the past?
16 A: I don't know. I don't know that.
17 Q: I'm not trying to trick you or anything else.
18 Again, is there anyone else in the area that travels this
19 road on a regular basis that you know of? I know we've
20 talked about you said you understood there were others that
21 may have notified them. Do you have anybody specifically
22 other than Darby's mother that you know that may have seen
23 the cows out or got called about cows out or anybody else in
24 the area that you might could identify for us?
25 A: The Thomason boys, they watch out for those

1 cattle.
2 Q: Do they help Mr. Darby with the cattle?
3 A: I think they did occasionally when he was
4 transferring from one pasture to another I think they helped
5 him some.
6 Q: And what are their names?
7 A: Johnny Thomason.
8 Q: And do you remember the other one's name?
9 A: Jerry Thomason.
10 Q: So Johnny and Jerry?
11 A: Yeah.
12 Q: And you say they helped when he transferred them?
13 A: I think they did some.
14 Q: I mean, if you don't know, that's fine, but was it
15 likely that people in the area if they couldn't get in touch
16 with Mr. Darby's mother would call the Thomasons? I mean,
17 if you don't know, that's fine.
18 A: I don't know.
19 Q: Don't know. Mr. Harrison, let's go back to when
20 the accident happened. I know you said Mr. Farrow was
21 laying in the ditch. Was there anybody else? When you went
22 down, do you have any idea about how long after or how did
23 you find out about the accident?
24 A: They was a lady pulled in my yard and told me
25 about it. She had three small children with her. She said,

1 "I couldn't get out to help him any way." Says, "He's hurt,
2 but he's not dead because he's moving." That's how I found
3 out about it.
4 Q: What did you do then?
5 A: I went down there.
6 Q: Did you call 911?
7 A: Somebody, I don't know who it was, had already
8 called.
9 Q: Already called. And were there any first
10 responders down at the scene when you arrived?
11 A: I think I was about the only one, about the first
12 one there.
13 Q: You were the first one there. Well, after you
14 arrived, what agencies responded to the accident, do you
15 know?
16 A: They was several of them. Green Pond Fire
17 Department. They was several that showed up right away.
18 Q: How was Mr. Farrow transported from the scene of
19 the accident?
20 A: A plane, a helicopter I think.
21 Q: Did you see the helicopter?
22 A: Yeah.
23 Q: And did it just come and land in the road?
24 A: No, it landed in the field right across the road.
25 Q: Right across from the road. And so he was

1 actually air lifted from the scene rather than being put in
2 an ambulance and carried like you would normally expect to
3 be done?
4 A: Yeah.
5 Q: This field that the helicopter landed in, do you
6 know who owns that field?
7 A: Well, it was in a pasture.
8 Q: It was in a pasture.
9 A: Darby owns that.
10 Q: And Darby owns that. Okay. Have you ever seen
11 any cows in that pasture where the helicopter landed?
12 A: No.
13 Q: Do you know what use is made of that pasture?
14 A: What was that question?
15 Q: Do you know what use is made of that pasture?
16 A: I think he uses it for hay.
17 Q: Uses it for hay. Was there any bales of hay in
18 the pasture at the time or do you remember?
19 A: I really don't know.
20 Q: Do you know of any other friends or family that
21 have complained about cows being out in the area of Cooley
22 Road and Dials Church Road?
23 A: No, I don't know of any.
24 **MR. PATTERSON:** All right, sir, Mr. Harrison.
25 That's really all the questions I have. Answer any

1 questions that Mr. Alston has.
2 ----------
3 EXAMINATION
4 By Mr. Alston:
5 Q: Mr. Harrison, I should be brief. My name is
6 Rowland Alston. I represent Mr. Darby. Do you know what it
7 was that Mr. Farrow collided with when he got in that
8 accident?
9 A: No.
10 Q: Do you know a gentleman by the name of Sonny
11 Stoddard?
12 A: Yeah.
13 Q: Does he own cows in that area?
14 A: Yeah, he's approximately a mile and a half above
15 there.
16 Q: How about Ray Stoddard, do you know him?
17 A: Yeah.
18 Q: Does he own cows in that area?
19 A: He owns cows, but they're not in that area.
20 Q: Where are they?
21 A: They're above that scene probably a mile and a
22 half or two miles.
23 Q: How about Boyd Stoddard, does he own cows?
24 A: Yeah.
25 Q: And where are his cows located?

1 A: He owns a dairy up approximately two or three
2 miles above there would be his nearest cattle I guess.
3 Q: He doesn't have any beef cattle?
4 A: Do I have any?
5 Q: No, I'm sorry. Boyd Stoddard, you said he has a
6 dairy. Does Boyd have any beef cattle that you know of?
7 A: I think he does have, but they're miles away. He
8 don't keep them in the pastures with his dairy cattle.
9 Q: How about Harry Hayes, do you know him?
10 A: Yeah.
11 Q: And does he live near you or does he have a
12 pasture near you?
13 A: No.
14 Q: Do you know if he owns any cows or not?
15 A: I really don't.
16 Q: How about Terry Varner, do you know who that is?
17 A: Yeah.
18 Q: Does he own cows in that area?
19 A: Some distance from there, yeah.
20 Q: Do you know about how far, approximately?
21 A: Probably a mile and a half, something like that.
22 Q: And, finally, Earl Whitmire, do you know him?
23 A: No, I don't know him.
24 Q: Can you spell the last name of the two boys that
25 helped Mr. Darby? You said Thompson or Thomason. How do

1 you spell their last name, do you know?
2 A: It's T-h-o-m-a-s-o-n.
3 Q: And you also testified, I believe, the lady with
4 three small children came up in your yard and told you about
5 this accident. Do you know that lady's name?
6 A: Let's see. Her name is --- I should know it.
7 Jamie Willis's wife is who it was.
8 Q: And are those the Willises that live in the area?
9 A: Yes, sir.
10 **MR. ALSTON:** Do you have any follow up?
11 **MR. PATTERSON:** Yes.
12 ----------
13 **EXAMINATION**
14 **By Mr. Patterson:**
15 Q: Mr. Harrison, when you arrived at the accident
16 scene, did you see any evidence of any animal being at the
17 scene? Did you see any hair or cow poop or deer poop or any
18 other evidence as to what may have caused the accident?
19 A: I saw some, I didn't know what kind of poop it
20 was, but it was something in the road there.
21 Q: A little bit or a lot?
22 A: It wasn't a whole lot.
23 Q: I know Mr. Alston had asked you about several
24 other people in the area that have cows and you know where
25 most of those people are located, correct?

A: (Nods head).

Q: Have you ever seen cows out at any of these other locations?

A: No, I don't think I have.

Q: So I just want to be clear. The only time you have seen cows out as many times as you go up and down Dials Church Road two and three times a day is between the creek and Cooley Road adjacent to Mr. Darby's pasture?

MR. ALSTON: Objection to the form.

Q: You can answer.

A: Say that again.

Q: Okay. Have you seen cows out anywhere else besides the section of road between Cooley Road and the creek at the bottom of the hill?

MR. ALSTON: Same objection.

A: I don't think so.

Q: Don't think so. And I believe it was your testimony that you've seen them out in that area more than 5 but less than 20 times?

MR. ALSTON: Objection to the form.

A: Yeah.

Q: Is that your testimony?

A: Yeah.

MR. PATTERSON: All right. That's all.

---

1 EXAMINATION
2 By Mr. Alston:
3 Q: When you're saying that you have seen cows out in
4 that area more than 5 but less than 20 times, over how many
5 years are you talking about?
6 A: Several years. He's been using that pasture for a
7 good many years and occasionally you see one out.
8 MR. ALSTON: That's all I have.
9
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23
24 (There being no further questions,
25 the deposition concluded at 12:24 P.m.)

STATE OF SOUTH CAROLINA)

: C E R T I F I C A T E

COUNTY OF GREENVILLE)

Be it known that I took the deposition of JOHN WILLIAM HARRISON;

That I was then and there a Notary Public in and for the State of South Carolina-at-Large;

That by virtue thereof, I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 20 pages is a true and correct transcript of the testimony given in this matter;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

WITNESS MY HAND AND SEAL this 19th day of May, 2009.

Sue N. Haynie
Notary Public for South Carolina
My Commission Expires: 12/19/11

COURT'S
EXHIBIT NO. 8
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-1-11

465 Washington Street
Barnwell, SC 29812

803-259-2361 (Home)
803-300-1360 (Cell)
803-541-0510 (Fax)
Mibekfarms@bellsouth.net

Michael A. Worrell, PhD.

Experience

2001-Present MiBek Farms, Inc Barnwell, SC

Owner/Operator

- Stocker/Backgrounder – Cattle operation
- Perennial Peanut Hay – Premium hay production
- MiBek Beef – Natural - Pasture Raised-Dry-aged Beef

1991-2001 Clemson University Clemson, SC

Associate Professor of Animal Science

- Tenured
- Research Scientist – Ruminant Nutrition
- Research Scientist – Pasture Management

1991-2001 Barnwell, SC

Ranch/Nutritional Consultant

1995-1996 Massey University New Zealand

Visiting Professor

- Sabbatical – Pasture management

1985-1991 Clemson University Clemson, SC

Assistant Professor of Animal Science

- Research Scientist – Ruminant Nutrition
- Research Scientist – Pasture Management

1979-1981 Kanapaha Ranch Gainesville, FL

Cattle Manager

Education

1978 University of Florida Gainesville, FL

- Bachelor of Science

1982 University of Florida Gainesville, FL

- Masters of Science

1985 University of Nebraska Lincoln, NE

- Doctor of Philosophy

COURT'S 9
EXHIBIT NO.
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-2-11

Personal	Married to the former Rebecca J. Melton ▪ Daughter – Kelsey L. Worrell ▪ Son – M. Garrett Worrell
Professional Organizations (Past/Present Memberships)	American Society of Animal Science, American Dairy Science Association, American Forage and Grassland Association, Gamma Sigma Delta, Ellenton Agricultural Club, South Carolina Cattlemen's Association, Salkehatchee Cattlemen's Club, Southern Pasture Improvement Association.
Other Organizations (Past/Present Memberships)	Institutional Animal Care and Use Committee (Clemson University, V. Chair; 1995-96: Chair; 1997-98). Beef Cattle Research Committee (Clemson University, Chair; 1995-98). Rotary Club (Barnwell, SC, Charter Member: V. President, 1994-95: SoA 1993-94, 1996-97: Program Committee, Chair; 1991-92: Information Committee, Chair, 1990-92). Barnwell County Hospital Board of Trustees (Barnwell, SC. – V. Chair of the Board, 1997-98: Joint Conference Committee, Chair, 1994-96: Finance Committee, V. Chair, 1994-96: Chair, 1996-98).
Publications	In excess of 100 peer reviewed journal articles, scientific abstracts, theses, technical and popular interest articles.

We need question #1 explained more in detail specifically preponderance of the evidence

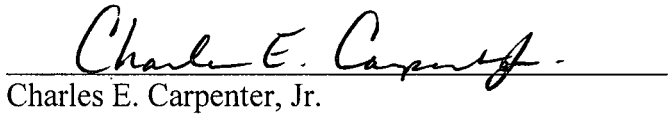
Would you like to be re-instructed on preponderance of evidence by the Court or would you like a short written instruction on this issue, or both?

We would like to be reinstructed by the Court does #1 have to be unanimous?

COURT'S EXHIBIT NO. 16
IDENTIFICATION/EVIDENCE
DKT. #
DATE: 2-3-11

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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

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

July 6, 2012.