

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Common Pleas Court  
Edgar W. Dickson, Circuit Court Judge

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Case No. 2009-CP-38-1258

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Aubrey Alexander..... Respondent

v.

South Carolina Department of Transportation.....Appellant,

---

**RECORD ON APPEAL**

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January 14, 2013

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**RECEIVED**

JAN 31 2013

**SC Court of Appeals**

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STATE OF SOUTH CAROLINA )

COUNTY OF ORANGEBURG )

AUBRY G. ALEXANDER, SR, )

Plaintiff, )

vs. )

SOUTH CAROLINA DEPARTMENT )  
OF TRANSPORTATION, )

Defendant. )

IN THE COURT OF COMMON PLEAS  
IN THE FIRST JUDICIAL CIRCUIT  
CASE NO. 2009-CP-38-1258

ORDER DENYING MOTION FOR  
JUDGMENT NOTWITHSTANDING  
THE VERIDCT AND GRANTING MOTION  
FOR NEW TRIAL *NISI ADDITUR*

FILED  
CLERK OF COURT  
ORANGEBURG COUNTY  
SOUTH CAROLINA

2012 FEB 13 PM 4:13

This personal injury case was filed on July 30, 2009 and tried before me in a jury trial on October 31<sup>st</sup> and November 1<sup>st</sup>, 2011. The case involved a collision between the Plaintiff and mowing equipment operated by an employee of the Defendant, South Carolina Department of Transportation. Plaintiff suffered personal injuries as a result of the collision, which occurred in Orangeburg County on July 23, 2008.

At the trial, the issue of liability was vigorously contested. Plaintiff presented evidence that the operator of the mowing machine allowed the machine to protrude into the road. There is evidence that a warning flag was missing from the equipment. Further, the evidence established that the required warning signs had not been placed on the highway to warn motorists of the mowing activity ahead. Defendant contended that Plaintiff was traveling too fast for conditions and did not take evasive action in order to avoid a collision with the machine. The jury rendered a verdict apportioning the negligence at 51% to the Defendant and 49% to the Plaintiff. The jury awarded damages of \$150,000.

ATTEST: TRUE COPY  
*Wynya B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY, SOUTH CAROLINA

After the verdict, Defendant filed a motion for JNOV on November 10, 2011. Plaintiff filed a motion for a new trial *nisi additur* on November 8, 2011. I have reviewed the memoranda

submitted by counsel, the case law and exhibits and considered the arguments of counsel at a hearing on December 19, 2011. I deny Defendant's motion for JNOV. Nothing in the record indicates a fundamental misunderstanding or error by the jury that could justify granting a JNOV to the Defendant. The jury accurately and competently analyzed the evidence that was presented and returned a fair and reasonable verdict on the subject of apportioning the liability between the parties.

I grant the Plaintiff's motion for new trial *nisi additur*. If a jury award is inadequate, the Court has the discretion to grant a new trial *nisi additur*. See *Easler v. Hejaz Temple*, 285 S.C. 348, 329 S.E.2d 753 (1985). Despite the jury deciding that Defendant was 51% responsible for the accident and the Plaintiff 49% liability, the award that was returned for the Plaintiff was not reasonable in light of the evidence of damages presented during the trial. The fact that the verdict awarded \$150,000 to the Plaintiff when there was \$200,000 in medical bills alone demonstrates that the verdict is clearly insufficient and grossly inadequate when considering the evidence. Therefore, the amount was inadequate and the Court grants Plaintiff a new trial *nisi additur* and adjusts the award to \$400,000.

In making the foregoing finding, I have relied on the facts concerning damages proven at trial. These include medical bills in the approximate amount of \$200,000. These expenses were clearly related to the accident and there was no contest concerning that fact. No objection or challenge was raised when the bills were introduced into evidence. Defendant has conceded that the bills were related to this accident. Furthermore, the Plaintiff who was 77 years old at the time of the accident suffered two broken legs and a broken arm in the accident. His fracture of the right femur was a grade one "open" fracture. His left tibia and fibula fractures were also open fractures, which required the placement of a metal rod.


Plaintiff was treated at hospitals in Columbia and Charleston and was in a rehab facility for approximately three months. His treating orthopedic surgeon, Dr. Demos, testified to a reasonable degree of medical certainty that his injuries adversely affected his quality of life and his level of pain and that his prognosis was poor for these aspects of damage. Although Plaintiff was no longer working at the time of the accident, he was unable to perform various tasks to care for himself and his home and property. He has been required to hire people to help him with property maintenance and now walks with a cane. I find that the Plaintiff suffered and continues to suffer significant pain and suffering over and above the medical expenses and other consequential damages that resulted from the accident. In closing arguments to the jury, counsel for Defendant candidly acknowledged that the Plaintiff had suffered significant damages. Further, at the motion hearing before me on December 19<sup>th</sup>, Defendant's counsel acknowledged that the damages awarded by the jury were inadequate. I have adjusted the award to \$400,000 and find that this is a reasonable amount in view of all the evidence. It is therefore

ORDERED that the Defendant's motion for JNOV is hereby denied, it is further

ORDERED that the Plaintiff's motion for new trial *nisi additur* is hereby granted and the award is adjusted to \$400,000.00. It is further

ORDERED that in view of the jury's findings as to apportionment of negligence, judgment is hereby entered in Plaintiff's favor in the amount of \$204,000.

IT IS SO ORDERED!

  
\_\_\_\_\_  
EDGAR W. DICKSON  
PRESIDING JUDGE

At Orangeburg, South Carolina

This 3<sup>rd</sup> day of February, 2012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 )  
 )  
 AUBRY G. ALEXANDER, SR, )  
 )  
 )  
 Plaintiff, )  
 )  
 )  
 vs. )  
 )  
 )  
 SOUTH CAROLINA DEPARTMENT )  
 OF TRANSPORTATION, )  
 )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 IN THE FIRST JUDICIAL CIRCUIT  
 CASE NO. 2008-CP-38-1258

**MOTION FOR NEW TRIAL**  
***NISI ADDITUR***

2008 AUG 8 AM 3:45  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

TO: THE HONORABLE EDGAR W. DICKSON, PRESIDING JUDGE FOR THE FIRST JUDICIAL CIRCUIT, AND PETE KUMALA, ESQUIRE, ATTORNEY FOR DEFENDANT, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION:

**YOU WILL PLEASE TAKE NOTICE** that pursuant to Rule 59, SCRCP, the Plaintiff above named hereby moves for new trial *nisi additur*. This motion is made on the ground that the jury verdict in the amount of one hundred fifty thousand dollars (\$150,000) is contrary to the law, unsupported by the facts and contrary to the Court's instructions. Although liability was seriously contested, Defendants admitted that Plaintiff was seriously injured and damaged as a result of the accident that occurred on July 23, 2008. Plaintiff admitted into evidence, without objection, over two hundred thousand dollars (\$200,000) in medical bills resulting from the accident. The court instructed the jury that it must return a full verdict for all of Plaintiff's damages, past and future, including intangible elements such as pain and suffering and loss of enjoyment of life. The jury's verdict, being less than the admitted medical bills, fails to compensate Plaintiff even for the tangible elements of damage. Plaintiff also introduced evidence of approximately two thousand five hundred dollars (\$2,500) per year in increased costs for home and yard maintenance because of his inability to perform these tasks.

ATTEST: TRUE COPY  
*Wynne B. Clark*  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

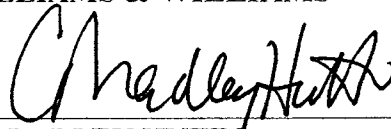
The Court is familiar with the evidence concerning damages. Plaintiff is informed and believes he is entitled to an *additur* in an amount not less than four hundred thousand dollars (\$400,000) to compensate him for all of his damages, and in the event that Defendant fails to accept the *additur*, for a new trial.

The Court has the power to grant a new trial *nisi additur* if the jury's verdict is inadequate and clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive including confusion over the law or instructions. See *Bailey v. Peacock*, 318 S.C. 13, 455 S.E.2d 690 (1995); *McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995); *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996).

**WHEREFORE**, Plaintiff prays for an *additur* in an amount not less than four hundred thousand dollars (\$400,000), or an amount deemed appropriate by the Court, to compensate him for all of his damages, and in the event that Defendant fails to accept the *additur*, for a new trial.

Respectfully Submitted,

**WILLIAMS & WILLIAMS**



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**LAW OFFICES OF PAUL E. TINKLER**

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(843) 853-4206 FAX  
ATTORNEYS FOR THE PLAINTIFF

At Orangeburg, South Carolina  
This 8 day of November 2011

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 AUBREY G. ALEXANDER, SR., )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SOUTH CAROLINA DEPARTMENT )  
 OF TRANSPORTATION, )  
 Defendant, )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT

CASE NO.: 2009-CP-38-1258

DEFENDANT'S MOTION FOR  
 JUDGMENT NOTWITHSTANDING THE  
 VERDICT

2011 NOV 13 PM 2:13  
 CLERK OF COURT  
 ORANGEBURG COUNTY

TO: PLAINTIFF AUBREY ALEXANDER AND HIS ATTORNEYS, PAUL E. TINKLER, ESQ. AND C. BRADLEY HUTTO, ESQ.:

You will please take notice that Defendant, South Carolina Department of Transportation (SCDOT) by and through undersigned counsel, will move before the Honorable Edgar W. Dickson, Judge of the Court of Common Pleas for the First Judicial Circuit, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Orangeburg County Courthouse, 190 Gibson Street, Orangeburg, South Carolina, for an Order of Judgment Notwithstanding the Verdict, this motions are made post-trial of the jury trial commenced on October 31, 2011 and with the jury's verdict being rendered November 1, 2011. This motion is to be based upon the applicable statutes and case law of South Carolina, pursuant to Rule 50 (b) SCRPC.

Upon the close of all the evidence, SCDOT moved for directed verdict on both aspects of Plaintiff's cause of action in negligence: failure to warn and negligence in the mowing operation itself. SCDOT had previously, at the end of Plaintiff's case, made similar motions. On both occasions, SCDOT's motions were denied. SCDOT asserts the grounds for its JNOV motion as follows:

[Signature]  
 CLERK OF COURT  
 ORANGEBURG COUNTY

***Negligence – Failure to Warn:*** Following presentation of all the evidence in this case, and considering all the evidence in a light most favorable to the non-moving party, it is clear that the only inference to be drawn is that the failure to place roadside “Mowing – Next 3 miles” signs on Highway 453, where Plaintiff’s collision occurred, could not have proximately caused the collision. The absence of the left-side red flag, from SCDOT’s mower, at the time of the collision, whether alone or in combination with the omitted roadside signs, could not have been a proximate cause of the collision.

In a negligence action, a plaintiff must show that the (1) defendant owed a duty of care to the plaintiff, (2) defendant breached the duty by a negligent act or omission, (3) defendant's breach was the actual and proximate cause of the plaintiff's injury, and (4) plaintiff suffered an injury or damages. Steinke v. South Carolina Dep't of Labor, Licensing and Reg., 520 SE 2d 142 (1999). SCDOT asserts in this motion for JNOV/New Trial, that it is entitled to judgment because Plaintiff has failed completely in his burden of proof on the essential element of proximate cause. “Proximate cause requires proof of causation in fact and legal cause. Causation in fact is proved by establishing the injury would not have occurred “but for” the defendant's negligence.” Rife v. Hitachi Construction Machinery Co. Ltd., 609 SE 2d 565 (Ct. App. 2005).

SCDOT has acknowledged that there were no “Mowing – Next 3 miles” roadside signs placed at the beginning of the stretch then being mowed, as is set forth in its Vegetation Control practice memorandum. (Plaintiff’s exhibit 1). However, the testimony reveals Plaintiff had visibility of at least a quarter mile, along Highway 453, and the Plaintiff testified that he saw the cloud of dust from about a quarter mile away, and believed it to be from mowing the shoulder by SCDOT. Eyewitness Patricia Walls testified specifically that she did see the mower, and that

Mr. Alexander must have seen it also, because she had to slow her speed when she came upon Mr. Alexander, who was following along behind the mower at about the same, slower speed.

Mr. Alexander's testimony confirmed that he saw the cloud, and even blamed the cloud for some obstruction of his forward vision, although he said the cloud had not completely occupied the portion of his lane directly in front of him. He acknowledged that he could not see through the cloud, but had no explanation why he drove forward, with the right side of his truck going through the cloud.

Most significantly, Mr. Alexander testified that he would have known no more from having seen a "Mowing - Next 3 miles" roadside sign than he already possessed from seeing the cloud of dust in which he believed there was a mowing operation. This testimony, singularly, not only justifies, but compels the conclusion that the failure to warn was not a proximate cause of the collision, and SCDOT's motion for JNOV must be granted.

Plaintiff also presented testimony that the requisite red flag was not present on the mower following the collision, and based a portion of the failure to warn case on the absence of the flag, despite testimony from tractor operator, Bookhart, that he periodically checks while mowing, and last saw the flag about 5 minutes before the collision. Taking the evidence in a light most favorable to Plaintiff, there can be but one conclusion as to the "missing" flag, which is reflected in the testimony of Plaintiff.

In response to questioning about the "missing" flag, Plaintiff candidly admitted that if the flag had been present in the proper location on the mower, he would not have been able to see it; acknowledging that it would have been obscured by the dust cloud. It is Plaintiff's own testimony that totally eliminates the ability to contend that, either the omitted roadside sign, or

the “missing” red flag, played any role in causing the collision. For this reason, directed verdict would have been appropriate and SCDOT urges that JNOV be granted.

The Court instructed the jury, upon SCDOT’s request, that “there is no duty to warn of dangers that are open and obvious.” Considering the Plaintiff’s testimony relating to his observing a cloud of dust, which he saw for a quarter mile, that he believed was a mowing operation, the law applicable to open and obvious dangers, furnishes additional compelling authority in support of both directed verdict and JNOV.

***Negligence – Mowing operation:*** “A plaintiff must identify a duty that the defendant has to protect him or her from a particular harm to merit consideration of his or her claim by a jury.” Nelson v. Piggly Wiggly Central, Inc. 701 SE 2d 776 (Ct App 2010).

Except for a single sentence contained in SCDOT’s Vegetation Control memo, (Plaintiff’s exhibit 1), Plaintiff has presented no evidence of the duty owed by SCDOT in the conduct of its roadside mowing operation. That sentence states: “ On other roads, encroachment on the travelway should be held to the minimum possible to satisfactorily accomplish mowing”. Plaintiff called no witness to describe the proper method for grass-cutting on highway shoulders nor to state that the encroachment described by Holman Bookhart was in any manner a deviation from the acceptable norm, but relied solely on the single sentence from the SCDOT memo quoted above. Plaintiff elicited no further definition of proper placement of the left side mower-wing with respect to the white edge line.

Absent evidence to define the proper standard for the mowing operation, Plaintiff cannot have proven any deviation by SCDOT from the appropriate methodology or standard of care, and cannot therefore succeed in establishing negligence on the part of SCDOT. Importantly,

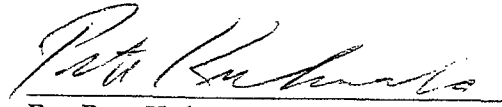
Plaintiffs have presented no evidence whatsoever that SCDOT's tractor operator, Holman Bookhart, breached any duty incumbent on him in his mowing operation. Without evidence of SCDOT's standard of care, and without evidence of deviation from that standard, Plaintiff has utterly failed in its burden of proof, and SCDOT's motion for JNOV must be granted.

Additionally, SCDOT asserts that those cases cited to the court in its directed verdict motions as well as in Requests to Charge, in particular dealing with motor vehicle drivers over driving their visibility support and justify the grant of JNOV. Those cases clearly demonstrate that Plaintiff's election to drive through the dust cloud through which he admittedly could not see, supported a determination of Plaintiff's negligence. In particular, the April 2011 decision in Ferrellgas v. Miller, 709 SE 2d 616 (2011), concluded that a driver proceeding into an intersection, despite having his vision at a stop sign being obscured, was negligent as a matter of law: "If a motorist cannot see what may be approaching from the left while [he is] stopped at a stop sign, the one thing a reasonable person does not do is take a chance and pull out to an area of potential danger ... in which [he] cannot see." The point of this citation is not that the motorist's vision was obscured by a stop sign, but that the motorist's vision was obscured, and he chose to proceed into that into which he could not see, as in the case at bar.

#### CONCLUSION

SCDOT urges this Honorable Court to consider the evidence in light of the law applicable to negligence actions, and recognizing the failures of proof by Plaintiff as to causation on the matter of failure to warn, and the failure of proof as to breach of duty on the matter of negligence in mowing, to grant to, SCDOT Judgment Notwithstanding the verdict. The evidence presented simply does not support either proximate cause or breach of standard of care.

HARVEY & KULMALA, LLC  
110 Main Street  
P. O. Box 705  
Barnwell, SC 29812  
(803) 259-5531



By: Pete Kulmala  
Attorney for Defendant, SCDOT

November 10, 2011  
Barnwell, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG	)	CASE NO. 2008-CP-38-1258
	)	
AUBRY G. ALEXANDER, SR,	)	
	)	
Plaintiff,	)	
	)	<b>PLAINTIFF'S RETURN TO DEFENDANT'S</b>
vs.	)	<b>MOTION FOR JUDGMENT</b>
	)	<b>NOTWITHSTANDING THE VERDICT</b>
SOUTH CAROLINA DEPARTMENT	)	
OF TRANSPORTATION,	)	
	)	
Defendant.	)	
	)	

TO: PETE KUMALA, ESQUIRE, ATTORNEY FOR DEFENDANT, SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION:

Plaintiff, in return to Defendant's Motion for Judgment Notwithstanding the Verdict, prays that Defendant's motion be denied. Defendant moved for directed verdict at the trial of this matter. The Court denied that motion on the ground that negligence and proximate cause were factual issues that needed to be resolved by the jury. The jury resolved those factual issues by finding that 51% of the fault was attributable to the Defendant and 49% was attributable to the Plaintiff. Plaintiff accepts this finding on the issue of liability and is informed and believes that the matter is purely one within the province of the jury.

**WHEREFORE,** Plaintiff prays that the Defendant's Motion for Judgment Notwithstanding the Verdict be denied.

Respectfully Submitted,

**LAW OFFICES OF PAUL E. TINKLER**



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 (843) 853-4206 FAX

**WILLIAMS & WILLIAMS**  
C. BRADLEY HUTTO  
1281 Russell Street  
Orangeburg, SC 29115  
(803) 534-5218  
(803) 928-5190 FAX

ATTORNEYS FOR THE PLAINTIFF

At Charleston, South Carolina

This \_\_\_ day of November 2011

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )  
 )  
Aubrey G. Alexander, Sr., )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
South Carolina Department of )  
Transportation, )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2009-CP-38-1258

**VERDICT FORM**

2011 NOV -2 A 9:58  
FILED FOR  
WRITING  
CLERK  
ORANGEBURG, SC

Please answer the following question(s) and the instructions provided on this verdict form.

1. Do you unanimously find by the preponderance or greater weight of the evidence that Defendant South Carolina Department of Transportation (hereinafter SCDOT) was negligent and this negligence was a proximate cause of Plaintiff Aubrey Alexander's injuries and damages? Please mark your answer with an "X."

  X   YES

OR

           NO

INSTRUCTIONS: If your Answer to Question one (1) is YES, then go on to Question two (2). If your answer to Question one (1) is NO, then stop. Sign and date the verdict form.

2. Do you unanimously find by the preponderance or greater weight of the evidence that the Plaintiff Aubrey Alexander was negligent and that his negligence was a proximate cause of his injuries and damages? Please mark your answer with an "X."

D.P. X

YES

OR

~~\_\_\_\_\_~~

NO

INSTRUCTIONS: If your answer to Question two (2) was YES, then go on to Question three (3). If your answer to Question two (2) was NO, then skip Question three (3) and go to Question four (4).

3. Please state what percentage of fault for the accident you unanimously find by the preponderance or greater weight of the evidence to have been attributable to the Plaintiff Aubrey Alexander and what percentage of fault for the accident you unanimously find by the preponderance or greater weight of the evidence to have been attributable to Defendant SCDOT. The percentages must equal 100%.

49 % Plaintiff Aubrey Alexander

+

51 % Defendant SCDOT

\_\_\_\_\_  
Total= 100%

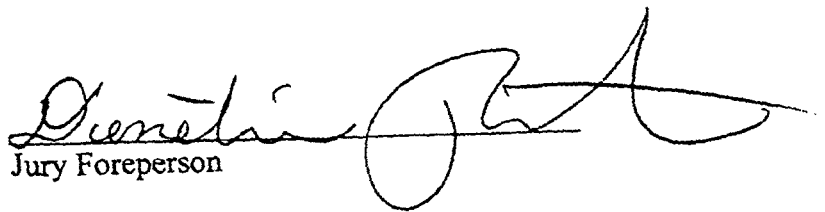
INSTRUCTIONS: If the percentage of fault that you assigned to the plaintiff is 51% or greater, then stop. Sign and date the verdict form. If the percentage of fault that you assigned to the plaintiff was less than 51%, then go on to Question four (4).

4. What amount of actual damages do you unanimously find by the preponderance or greater weight of the evidence that the Plaintiff Aubrey Alexander sustained as a result of the negligence on the part of Defendant SCDOT? Please write the number in the blank space below. If you answered Question three (3), do not reduce the amount of damages you award, if any, by either of the percentages set forth in your answer to Question three (3).

130,000 Dollars, Actual Damages.

PLEASE HAVE THE JURY FOREPERSON SIGN AND DATE THIS VERDICT FORM.

November 11/1/11

  
Jury Foreperson

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 )  
 AUBRY G. ALEXANDER, SR, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SOUTH CAROLINA DEPARTMENT )  
 OF TRANSPORTATION, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 IN THE FIRST JUDICIAL CIRCUIT  
 CASE NO. 2008-CP-38- 1258

**COMPLAINT**  
 (Motor vehicle accident)  
 Jury Trial Requested

The Plaintiff above named, complaining of the Defendant above named, hereby alleges:

1. The Plaintiff Aubry G. Alexander, Sr. is a resident of and is domiciled in the county of Orangeburg, state of South Carolina.
2. Upon information and belief, Defendant South Carolina Department of Transportation is a governmental entity operating in the state of South Carolina.
3. Upon information and belief, Defendant's servant, Holman Bookhart, was an employee of the Defendant South Carolina Department of Transportation and was acting within his scope of employment at all times during the accident.
4. That the parties hereto and the subject matter hereof are all within the jurisdiction of this Honorable Court.
5. That venue is properly had in the County of Orangeburg, State of South Carolina.
6. That on or about July 23, 2008, at or about 12:45 p.m., the Plaintiff was driving and operating a 1996 Chevrolet, bearing South Carolina license tag number 261 CEJ, and was traveling south bound on South Carolina Highway 453 (hereinafter "Hwy. 453") outside Holly Hill, South Carolina.

*[Faint circular stamp, possibly a court seal]*  
*[Handwritten signature]*  
 SOUTH CAROLINA

7. At the same time, Defendant's servant was driving and operating a 2007 John Deere tractor, and was also traveling south bound on Hwy. 453.

8. That the tractor being operated by Defendant's servant was affixed with bush hog mower decks on both sides of the tractor. The left side of the bush hog mower was intruding approximately two (2) feet onto Hwy. 453, but there were no warning flags or other warning devices present on the mower deck.

9. That Plaintiff was unable to see the bush hog mower intruding onto the highway, and Plaintiff's automobile struck the left side of the bush hog mower that was intruding onto the highway causing Plaintiff to lose control of his automobile.

10. That Plaintiff's automobile left Hwy. 453 and impacted a tree causing severe and extensive injury and damage to Plaintiff's person and property.

11. That the injuries and damages suffered by Plaintiff were due to and caused by, and were the direct and proximate result of the negligence, carelessness and recklessness of the Defendant's servant in the following particulars, to wit:

- a. In failing to post warning flags or other warning devices on the bush hog mower decks affixed to Defendant's tractor;
- b. In failing to use equipment that was capable of mowing the shoulder and staying off of the highway;
- c. In failing and omitting to use due care to protect the Plaintiff;
- d. In driving and operating the said tractor in a careless, reckless and willful manner upon the public highways of the State of South Carolina; and
- e. In failing to take all precautions required by the exercise of reasonable diligence.

12. That as a direct and proximate result of the negligence, carelessness, and recklessness of Defendant's servant, Plaintiff was seriously injured. Plaintiff was required to obtain extensive medical care and treatment and to expend substantial sums of money for the same.

13. The Plaintiff has been required to seek medical care and treatment, surgery, and physical therapy as a result of his injuries. The Plaintiff is informed and believes he will be required to continue medical care and treatment in the future and that he will require further surgeries due to the injuries sustained from the accident. The Plaintiff has been unable to perform his normal household duties and activities for a substantial period of time as a result of the accident. The Plaintiff has suffered severe pain and discomfort, together with mental and emotional distress and depression as a result of the accident. The Plaintiff has suffered, is suffering and is informed and believes that he will continue to suffer, all to his serious loss and damage in an amount to be determined by the jury, both actual and punitive damages.

**WHEREFORE**, Plaintiff prays for a judgment against the Defendant in a sum to be determined by the jury, both actual and punitive damages, together with the costs and disbursements of this action.

**LAW OFFICES OF PAUL E. TINKLER**

BY



PAUL E. TINKLER  
154 King Street, Third Floor  
Charleston, SC 29401  
(843) 853-5203  
(843) 853-4206 FAX  
ATTORNEY FOR THE PLAINTIFF

At Charleston, South Carolina  
This 29 day of July 2009

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ORANGEBURG )  
 )  
 AUBREY G. ALEXANDER, SR., )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 SOUTH CAROLINA DEPARTMENT )  
 OF TRANSPORTATION, )  
 Defendant, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FIRST JUDICIAL CIRCUIT

CASE NO.: 2009-CP-38-1258

**ANSWER OF SOUTH CAROLINA  
 DEPARTMENT OF TRANSPORTATION**

FILED FOR RECORD  
 VANITA B. CLARK  
 CLERK OF COURT  
 ORANGEBURG, SC  
 2009 OCT - 11 A 11:28  
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COMES NOW the Defendant, South Carolina Department of Transportation, responding to Plaintiff's Complaint, answering and asserting as follows:

1. Any allegation not hereinafter specifically admitted, denied, qualified, or otherwise explained is denied, and proof is demanded thereof.

**FOR A FIRST DEFENSE**

2. Upon information and belief, the allegations of Paragraph 1 are admitted. The allegations of Paragraph 2 are admitted.

3. Upon information and belief the allegations of Paragraph 3 are admitted.

4. The allegations of Paragraph 4 are admitted.

5. The allegations of Paragraph 5 are admitted.

6. Upon information and belief the allegations of Paragraph 6 are admitted.

7. Upon information and belief the allegations of Paragraph 7 are admitted.

8. Defendant admits so much of Paragraph 8 as alleges that Defendant's tractor was equipped with a 15 foot rotary mower deck, and that the left side of the deck extended onto the road surface. The remaining allegations of Paragraph 8 are denied.

9. Defendant admits so much of Paragraph 9 as alleges that Plaintiff's vehicle struck the left side of Defendant's mowing deck. The remaining allegations of Paragraph 9 are denied.

10. Upon information and belief, the allegations of Paragraph 10 are admitted.
11. The allegations of Paragraph 11 are denied.
12. Defendant denies so much of Paragraph 12 as alleges negligence, carelessness, and/or recklessness of the Defendant or its servant. Defendant is without sufficient information to form a belief as to the truth or falsity of the remaining allegations of Paragraph 12, and the same are therefore denied.
13. Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations of Paragraph 13, and the same are therefore denied.
14. In response to Paragraph 14, this Defendant craves reference to its responses set forth in paragraphs 1 – 13 above.

**FOR A SECOND DEFENSE**

15. Plaintiff has failed to allege facts sufficient to constitute any cause of action against this Defendant, and the Complaint must be dismissed pursuant to Rule 12(b)(6).

**FOR A THIRD DEFENSE**

16. Plaintiff has failed to allege any duty owed to the Plaintiff, other than a duty owed to members of the public at – large, and absent any such duty to the Plaintiff separate from the duty to the public, this action is barred by the Public Duty Rule.

**FOR A FOURTH DEFENSE**

17. Defendant, SCDOT, asserts that Plaintiff's injuries were a direct result of Plaintiff's own acts which were themselves negligent, and grossly negligent, and were the sole proximate cause of his injuries.

### **FOR A FIFTH DEFENSE**

18. Defendant, SCDOT, asserts that even if it is determined that SCDOT was negligent or grossly negligent in the manner alleged, which is expressly denied, Plaintiff is barred from recovery by his own negligence and/or gross negligence which contributed more than 50% to his injuries; additionally, if Plaintiff's own negligence/gross negligence is determined to be less than 50%, any award of damages to Plaintiff must be reduced according to the comparative proportion by which his injuries were proximately caused by his own negligence and/or gross negligence.

### **FOR A SIXTH DEFENSE**

19. This Defendant invokes the immunity from suit afforded to it pursuant to the exceptions to the waiver of sovereign immunity contained in the South Carolina Tort Claims Act §15-78-60(4), which provides that the governmental entity is not liable for a loss resulting from adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.

### **FOR A SEVENTH DEFENSE**

20. This Defendant invokes the immunity from suit afforded to it pursuant to the exceptions to the waiver of sovereign immunity contained in the South Carolina Tort Claims Act §15-78-60(5), which provides that the governmental entity is not liable for a loss resulting from the exercise of discretion or judgment of the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee.

### **FOR AN EIGHTH DEFENSE**

21. This Defendant invokes the immunity from suit afforded to it pursuant to the exceptions to the waiver of sovereign immunity contained in the South Carolina Tort Claims Act §15-78-60(15).

### **FOR A NINTH DEFENSE**

22. The injuries of which Plaintiff complains were the direct and proximate result of unavoidable circumstances that could not have been prevented by any person.

**FOR A TENTH DEFENSE**

23. The presence of the edge of the mowing deck/tractor in the southbound lane of Highway 453 was open and obvious to travelers on Highway 453.

**FOR AN ELEVENTH DEFENSE**


24. This defendant invokes the limitation of liability contained in the Tort Claims Act, section 15-78-120(a).

**FOR A TWELFTH DEFENSE**

25. This Defendant invokes the prohibition against punitive damages of the Tort Claims Act, section 15-78-120(b).

WHEREFORE, having fully answered the Complaint, this Defendant prays that this action be dismissed, for the costs of this action, and such other and further relief, as the Court deems just and appropriate.

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By: Pete Kulmala  
Attorney for Defendant, SCDOT

October 6, 2009  
Barnwell, South Carolina

1 WILLIAM LOCKLAIR - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Good afternoon.

4 A. Good evening.

5 Q. Would you state your full name again?

6 A. William Locklair.

7 Q. Mr. Locklair, you are employed by anybody at this time,  
8 or are you retired?

9 A. I'm retired.

10 Q. Alright. When you were employed, by whom were you  
11 employed?

12 A. South Carolina Department of Transportation.

13 Q. And back on July the Twenty-third of Two thousand and  
14 Eight, were you employed by the Department of  
15 Transportation?

16 A. I was.

17 Q. And what was your title at that time?

18 A. Resident Maintenance Engineer.

19 COURT REPORTER: Sir, would you speak up, please?

20 A. Resident Maintenance Engineer.

21 Q. I'm going to turn this towards you just a little bit.

22 COURT REPORTER: Rich, is this PA system on?

23 BAILIFF: Yes, ma'am.

24 COURT REPORTER: Okay, thank you, sir.

25 Q. And as a Resident Maintenance Engineer did you have

1 duties over maintenance issues in Orangeburg County?

2 A. Yes, sir.

3 Q. Okay. And are you familiar with South Carolina Highway  
4 Four Fifty-three?

5 A. Yes, sir.

6 Q. And are you aware that a part of that roadway runs from  
7 the city limits of the Town of Eutawville, down into Holly  
8 Hill, is that correct?

9 A. Yes, sir.

10 Q. And was it the role of the Department of Transportation  
11 on occasion to cut the grass along that highway?

12 A. It was.

13 Q. Okay. And I'm going to hand you what's been marked as  
14 Plaintiff's Exhibit Number One and ask you if you recognize  
15 that document?

16 A. I do.

17 Q. Alright. And can you read the title of it to the jury,  
18 please?

19 A. It says, "South Carolina Department of Transportation  
20 Vegetation Management Guidelines, Two thousand and Six."

21 Q. Okay. Alright, this is the cover of what's been marked  
22 as Exhibit Number Eight, that's a cover of that?

23 A. That's correct.

24 Q. Okay. And are these the guidelines that your department  
25 had adopted for use when you were engaged in mowing

1 activities during that time period?

2 A. Yes, sir.

3 Q. Okay. And you were familiar with the rules that were  
4 required at that point in time?

5 A. Yes, sir.

6 Q. Okay. Now, I want to ask you, if you would, if you'd  
7 turn to Page Six, and I also have a copy of that as Exhibit  
8 Number Nine, and right here, do you see where it starts with  
9 all capital letters, Mowing?

10 A. Yes, sir.

11 Q. Alright. Can you read that to the jury, what the rule  
12 is as it relates to that?

13 A. "Mowing. Signs submitted with standard W-Seven, dash,  
14 Three, A, Dash, Forty-two, next three miles. Signs shall be  
15 used on interstate and on primary and secondary routes  
16 greater than three miles long. Signs should be moved as  
17 necessary to remain within three miles of the mowing  
18 operation."

19 Q. That's fine. That's the part I wanted you to read.

20 A. Okay.

21 Q. And then, do you see where it says, "Standard Number W-  
22 Seven, dash, Three, A, Forty-two," right up here on the top  
23 line?

24 A. Yes, sir.

25 Q. And I'm going to ask you to turn over to Page Seven and

1 ask you if this W, C-Seven, Three, A, Forty-two, the mowing  
2 three miles ahead, that's a picture of the signs that y'all  
3 were supposed to use when you were mowing on the highway, is  
4 that right?

5 A. Correct.

6 Q. Okay. And then, finally, I want to go to Page Eight,  
7 which has been marked as Plaintiff's Exhibit Number Eleven,  
8 and at the top of that page, the first thing that has to do  
9 with the interstate, and we're not dealing with the -- you  
10 would agree, Highway Four Fifty-three is not an interstate,  
11 right?

12 A. It's a primary.

13 Q. Okay. So, if you'll read the second line there, and  
14 it's talking about the other, the non-interstate roads. It  
15 starts with, "On other roads," what does that say?

16 A. On other roads is where you want me to start?

17 Q. Right. Just read that sentence.

18 A. "On other roads encroachment on the travel way should be  
19 held to the minimum possible to satisfactorily accomplish  
20 mowing."

21 Q. Alright. So, let me talk to you about that a second.  
22 As part of your supervisory capacity over the mowing  
23 operations y'all had a standard, generally accepted practice  
24 as the tractors were going down the highway as to how, where  
25 they should set down the mower deck closest to the highway,

1 how close it was supposed to be, it was supposed to be all  
2 the way off, or what was the rule?

3 A. Well, if we had enough of shoulder we was always off the  
4 road.

5 Q. Okay. And then if, if -- and I don't want to put words  
6 in your mouth, you tell me if I'm wrong, but basically,  
7 sometimes it would be either trees or a highway department  
8 sign or a ditch or something that was such that it made the  
9 whole machine have to move closer to the highway, is that  
10 right?

11 A. That's correct.

12 Q. Okay. So, generally speaking, if there was enough room  
13 the tractor and the whole mower and everything was going to  
14 be off of the pavement?

15 A. Correct.

16 Q. Okay. But sometimes the mower deck that's closest to  
17 the roadway would have to come onto the pavement just  
18 because there wasn't enough room on the other side for it to  
19 keep going, is that right?

20 A. That's correct.

21 Q. Okay. And that's something that the operator would just  
22 have to, as he went down the highway, make observation as to  
23 where he needed to drive the tractor over and then back off,  
24 is that right?

25 A. Correct.

1 Q. Okay. Now, finally, I want you to read the last line on  
2 Page Eight, the very last line that starts with, "In  
3 addition to the above"?

4 A. "In addition to the above, the Fifteen foot mower shall  
5 have a red flag near the outer edge of each bat wing on a  
6 three foot long or greater staff.

7 Q. Alright. Let's talk about the term, bat wing, for a  
8 second. As I understand it, this was the type of mower that  
9 was involved in the accident on this day, it had wings on it  
10 on each side that could fold down, is that right?

11 A. That's correct.

12 Q. So, when the guidelines use the term bat wing, that's  
13 what it's talking about, it's those mower decks that can  
14 fold down, is that right?

15 A. That's correct.

16 Q. Alright. And y'all's requirements were that on those  
17 decks that went down, you were supposed to have red flags on  
18 each side, correct?

19 A. On each side and in the middle.

20 Q. And in the middle. And the ones on each side were  
21 supposed to be -- first of all, they're supposed to be red?

22 A. That's right.

23 Q. And they were supposed to be on a stick or a staff that  
24 was at least three feet high?

25 A. That's right.

1 Q. Okay. And these are guidelines that the department had  
2 adopted for use to make sure that mowing was done safely  
3 when your machines were near to the highway, is that right?

4 A. That's right.

5 Q. Okay. And finally, I think, you were not there that  
6 day, I mean, at the time of the accident?

7 A. I wasn't on Four Fifty-three but I was at work.

8 Q. Well, alright, fair enough. You got, you got called and  
9 alerted to the fact there had been an accident, but you did  
10 not observe the accident?

11 A. No.

12 Q. Okay. And I believe you actually, you did come out to  
13 the scene but it was after the accident had taken place, is  
14 that right?

15 A. That's correct.

16 Q. Okay.

17 MR. HUTTO: Alright, excuse me just one second.

18 Your Honor, I think, we've agreed, but we would move  
19 into evidence Exhibit Number One, which he's holding in his  
20 hand, and Exhibits Numbers Eight, Nine, Ten and Eleven,  
21 which are just enhanced copies of pages that are contained  
22 in Exhibit Number One.

23 THE COURT: And I believe that's without objection, is  
24 that correct, Mr. Kulmala?

25 MR. KULMALA: Could I see what the Nine, Ten and Eleven

1 are?

2 MR. HUTTO: The cover page and - - -

3 MR. KULMALA: What were those numbers?

4 MR. HUTTO: Six, seven, eight.

5 MR. KULMALA: No objection.

6 THE COURT: Plaintiff's One, and Plaintiff's Eight,  
7 Nine, Ten and Eleven are in evidence.

8 COURT REPORTER: Okay, I just heard him say something  
9 about six, but - - -

10 MR. HUTTO: I was saying that actually, as -- just to  
11 be clear, in the manual itself is Page Six, but we've  
12 labeled it as Exhibit Number Nine.

13 (Plaintiff's Exhibits One, Eight, Nine,  
14 Ten and Eleven marked and filed.)

15 Q. Let me just show you one other thing, which is Exhibit  
16 Number Two. When you went out to the scene after you had  
17 learned there had been an accident, is this the vehicle that  
18 was actually, that y'all had in use that day?

19 A. That looks like it.

20 Q. It looks like it. Okay.

21 MR. HUTTO: And Your Honor, we'd move to introduce  
22 Plaintiff's Number Two also, which is a photograph of the  
23 mowing tractor.

24 MR. KULMALA: No objection.

25 THE COURT: Alright, Plaintiff's Two.

1 (Plaintiff's Exhibit Two  
2 marked and filed.)

3 Q. And just for the record, that's a standard John Deere  
4 farm tractor, the tractor part is, is that right?

5 A. That's correct.

6 Q. Okay. And then the attachment to the tractor is what we  
7 referred to earlier, is the mower with the bat wings on it,  
8 is that right?

9 A. That's correct.

10 Q. Okay. Now, one of the things that's in those rules that  
11 it's supposed to have, it's supposed to have that sign that  
12 says, "Mowing" right here on the back, that's one of the  
13 rules, right?

14 A. That's correct.

15 Q. And another thing, it's supposed to have that orange  
16 triangle, slow moving vehicle triangle, that's supposed to  
17 be on the back?

18 A. That's correct.

19 Q. And then I believe up here on top of the tractor there's  
20 supposed to be like a light or something up there? It's not  
21 necessarily on all farm tractors, but y'all had that light  
22 onto the tractor?

23 A. That's correct. It's either there or somewhere on the  
24 tractor that can be seen visible.

25 Q. Alright, so there -- I didn't want to leave the

1 impression that there are only two rules. Y'all have lots  
2 of rules, but one is, you've got to have the light, one,  
3 you've got to have the triangular thing, one, you've got to  
4 have the mowing sign, but two other rules are that you're  
5 supposed to have the signs out that say, three miles ahead,  
6 and another one is, you're supposed to have the flags on  
7 each side, is that right?

8 A. That's correct.

9 MR. HUTTO: Okay. Thank you.

10 THE COURT: Alright, your witness, Mr. Kulmala.

11 MR. KULMALA: May it please the Court.

12 THE COURT: Yes, sir.

13 (NOTE: Blank lines on this page do not indicate any part of  
14 record has been omitted. Headers on testimony pages and  
15 hard page breaks between testimony are now required by the  
16 Court. See next ensuing page for sequential continuation of  
17 record.)

1 WILLIAM LOCKLAIR - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Good afternoon, Mr. Locklair.

4 A. Good evening.

5 Q. At the time of this incident, July Twenty-third, Two  
6 thousand Eight, you were the county, at least, the Holly  
7 Hill part of the county, Resident Maintenance Engineer?

8 A. Yes, sir.

9 Q. And you had been in that position for how many years?

10 A. At that time I think about eight years.

11 Q. Okay. Mr. Hutto has asked you a number of questions  
12 about this Vegetation Management Guidelines, correct?

13 A. Yes, sir.

14 Q. And the guidelines were in place in your office at the  
15 time, back in Two thousand eight?

16 A. Yes, sir.

17 Q. The questions that he asked you about the mowing next  
18 three miles, what, what is your understanding, from the time  
19 that you worked with DOT, as the reason for that type of  
20 sign, what would be the reason for having that type of sign?

21 A. It's an advance sign to let people know that we were out  
22 there mowing the shoulder of the road.

23 Q. And this, on Exhibit Number Two, that photo of your  
24 tractor with the left wing up, that was taken that day at  
25 the accident scene, correct?

1 A. Yes, sir.

2 Q. And that's, how high is that John Deere tractor, do you  
3 know, to the top of the roof?

4 A. I'm not sure how high that would be.

5 Q. It's a good bit higher than a car?

6 A. Very much higher than a car.

7 Q. And is that, is that something that if you're coming  
8 down the road and have got a pretty clean, clear day, is  
9 that something that's visible for a distance?

10 A. Yes, sir.

11 Q. When, when y'all are mowing, what does the mowing  
12 operation do as far as kicking up dust?

13 A. Well, it would be, I guess, how dusty it is or whether  
14 it's been dew, wet or whatever, you know. I can't say how  
15 much dust would be stirred up, because I don't know.

16 Q. Sometimes when you mow it doesn't, especially if the  
17 ground is damp or wet, then it wouldn't kick up dust?

18 A. It wouldn't kick up as much.

19 Q. And if you've got dry ground it might kick up a cloud of  
20 dust?

21 A. Sometimes it probably would.

22 Q. Do you, do you remember -- well, let me ask you this,  
23 when your grass gang, your mowing gang goes out in the  
24 morning for cutting grass, is there a check list or is there  
25 a responsibility before they go out that they inspect the

1 mower for operational equipment, you know, that it's running  
2 properly, the oil level, and so forth, and safety equipment?

3 A. Yes, sir.

4 Q. Is that a requirement that, that you check with our  
5 foreman to make sure that any information, any equipment  
6 that is deficient is reported or replaced?

7 A. Yes, sir.

8 Q. So, did you have, on the morning of July Twenty-third,  
9 any indication that there was one flag missing or not in use  
10 on Mr. Bookhart's tractor?

11 A. No, sir.

12 MR. KULMALA: That's all the questions that I have.

13 THE COURT: Anything on redirect?

14 MR. HUTTO: Yes, sir.

15 (NOTE: Blank lines on this page do not indicate any part of  
16 record has been omitted. Headers on testimony pages and  
17 hard page breaks between testimony are now required by the  
18 Court. See next ensuing page for sequential continuation of  
19 record.)

1 WILLIAM LOCKLAIR - REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. You said that every morning that you sent the mowers out  
4 y'all did a check list?

5 A. Yes, sir.

6 Q. Where is the check list for this day?

7 A. I don't know, it should be somewhere in the office.

8 Q. Okay. But we've been waiting on this case for three  
9 years, and nobody thought to bring the checklist here today?

10 A. Nobody asked me for it.

11 MR. HUTTO: I don't have any other questions.

12 THE COURT: Alright, Mr. Kulmala, anything on recross?

13 MR. KULMALA: Nothing on recross.

14 THE COURT: Alright, thank you, sir. I appreciate it,  
15 Mr. Locklair, you may step down. Thank you.

16 MR. HUTTO: Your Honor, we had subpoenaed him, and I  
17 don't know, do you want to keep him here? He's asking if he  
18 can leave?

19 MR. KULMALA: He's retired, I'm not going to infringe  
20 on his time any further.

21 THE COURT: Mr. Locklair, you're free to go, or you can  
22 stay, whichever one you want. Thank you, sir.

23 MR. LOCKLAIR: I'll go.

24 THE COURT: That was an easy answer. Thank you, sir.

25 Alright, call your next witness, please, sir.

1 MR. HUTTO: We would call Patricia Walls.

2 THE COURT: Okay.

3 CLERK: Raise your right hand. Would you state your  
4 name for the record, please?

5 WITNESS: Patricia Walls.

6 (Whereupon, Patricia Walls

7 is duly sworn.)

8 CLERK: Thank you.

9 THE COURT: Alright, get comfortable.

10 Okay, Mr. Hutto.

11 (NOTE: Blank lines on this page do not indicate any part of  
12 record has been omitted. Headers on testimony pages and  
13 hard page breaks between testimony are now required by the  
14 Court. See next ensuing page for sequential continuation of  
15 record.)

1 PATRICIA WALLS - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. You're Patricia Walls?

4 A. Yes.

5 Q. And where do you live?

6 A. One Fourteen Gissendaner Drive, Eutawville.

7 Q. Okay. And do you have, I guess, general knowledge of  
8 Highway Four Fifty-three that runs between Eutawville and  
9 Holly Hill?

10 A. Yes.

11 Q. Do you drive that road a fair amount?

12 A. Fairly frequently.

13 Q. Okay. And on the date of July the Twenty-third of Two  
14 thousand eight, did you have the occasion to be on that  
15 road?

16 A. Yes, I did.

17 Q. And, if you don't mind, tell us where were you headed  
18 that day?

19 A. My father and I were going to Holly Hill. We were just  
20 taking a ride, getting lunch.

21 Q. Alright. And so, you were going from your home in  
22 Eutawville, down Four Fifty-three, going to Holly Hill?

23 A. Right.

24 Q. And July Twenty-third, Two thousand and eight, I'm  
25 making the assumption it was like most other July days, it

1 was hot?

2 A. Very hot.

3 Q. Okay. And was it clear that day?

4 A. It was dry as a bone, and just, well, it was clear until  
5 I got to where the accident occurred, really.

6 Q. Okay. And to your -- Mr. Alexander was also a vehicle  
7 traveling on the highway that day. Did you know him, were  
8 you following him for any reason, was there any connection  
9 between you and him being on the same highway at the same  
10 time?

11 A. Not at all.

12 Q. Okay. And was there an occasion, though, where you came  
13 upon a vehicle that was in front of you?

14 A. Yes.

15 Q. At that time you didn't know who it was?

16 A. No.

17 Q. Okay. As it turned out, though, it was Mr. Alexander?

18 A. Right.

19 Q. Okay. So, on the, in the area of just -- I'm going to  
20 take you just prior to the accident, would it be fair to say  
21 that that roadway is relatively flat?

22 A. Yes.

23 Q. Relatively straight?

24 A. Yes.

25 Q. Okay. And do you know what the speed limit is in that

1 particular area?

2 A. I think it's Fifty-five.

3 Q. Okay. And in order to get behind a vehicle that turned  
4 out to be Mr. Alexander's, did you come upon him, did he  
5 turn out in the roadway in front of you, do you remember how  
6 you came to be behind him in the line of travel?

7 A. As my dad and I were driving we were going the speed  
8 limit, and then as we approached the DOT tractor which was  
9 in front of Mr. Alexander, which was going slow, we, you  
10 know, had to slow down, and just sort of were riding behind  
11 Mr. Alexander.

12 Q. Okay. So, just in the general flow of traffic you sort  
13 of caught up to him as you were coming down the roadway?

14 A. Correct.

15 Q. Okay. And if you would, Mr. Alexander was, do you  
16 remember what kind of vehicle he was in?

17 A. A pickup truck, black, I think.

18 Q. Alright. Do you remember if it was pulling or towing  
19 anything?

20 A. He had a trailer.

21 Q. Okay. Alright. So, as you're coming down the highway  
22 towards Holly Hill you see a truck in front of you pulling a  
23 trailer, and then up ahead of that at some distance could  
24 you see the mower, the tractor?

25 A. Absolutely, uh-huh.

1 Q. Now, right in that vicinity of where the accident  
2 happened, was there anything else going on that was, whether  
3 it was mowing or anything else that was creating anything  
4 unusual in the atmosphere?

5 A. Yes, actually, it was interesting because as we were  
6 coming around, I'll say the curve, you know, it's sort of a  
7 slight curve, there was a farmer who was mowing, cutting,  
8 whatever, on his land at the same time, and I remember  
9 seeing the big tractor over to my right that was not far  
10 away from me. But then, you know, I guess he made his turn  
11 around and was going the other direction. So - - -

12 Q. Now, this was a farming tractor you're talking about?

13 A. Yeah, on its acreage.

14 Q. Okay.

15 A. To my right, as I was coming around. And so, I noticed  
16 that there was a lot of grass, a lot of dust, it was very,  
17 it was just real dry and real hot. And, of course, I'm sure  
18 soil, too, was in the air.

19 Q. Okay. And if you would, just in your own words, just  
20 tell the jury, now that we've kind of set the scene, that  
21 you're following along behind Mr. Alexander and there's a  
22 mower up ahead. What happened, what did you see?

23 A. Well, we were just riding, my dad and I were taking our  
24 time, and we were not in any hurry. I saw Mr. Alexander get  
25 ready to go around the DOT truck, tractor, and as he went

1 around and started to accelerate his front tire, I think,  
2 the right side of it or the -- the front right tire, hit the  
3 deck, the downed deck on the DOT tractor. And then I  
4 noticed the trailer kind of fish tailing, and, of course,  
5 his truck went crazy and down into the embankment and hit  
6 the tree.

7 Q. Alright. So, after the impact between the front of his  
8 truck and the rear of the mower deck, or the side of the  
9 mower deck of the DOT equipment, did his truck go on around  
10 the tractor?

11 A. Yeah, I think so. It just -- uh-huh.

12 Q. Okay. And ended up in, sort of in the ditch or on the  
13 side of the road?

14 A. Yeah.

15 Q. Okay. Did you stop?

16 A. Of course, yes.

17 Q. Okay. And in the course of being there, I guess, did  
18 you check on people, call Nine One One, that kind of thing?

19 A. Yes.

20 Q. Alright. I'm going to show you what's been marked as  
21 Plaintiff's Exhibit Number Two and ask you if that appears  
22 to be a picture of the tractor with the mower behind it that  
23 was on the side of the road that day of the accident?

24 A. Yes.

25 Q. I'm going to also show you pictures, Plaintiff's Three

1 and Four, that appear to be the same tractor but from the  
2 opposite direction. Is that correct?

3 A. Yes.

4 Q. And then, I'm also going to show you Plaintiff's Exhibit  
5 Number Five, and ask you if that looks like it was the truck  
6 that Mr. Alexander had been driving after it went off the  
7 side of the road?

8 A. Yes.

9 Q. Okay. And you actually saw all of these things that are  
10 captured on these pictures that day when you were at the  
11 scene?

12 A. Yes.

13 MR. HUTTO: We'd move to introduce Plaintiff's Three,  
14 Four and Five, these photographs, into evidence, Your Honor.

15 THE COURT: Any objection?

16 MR. KULMALA: No objection.

17 THE COURT: Plaintiff's Three, Four and Five are into  
18 evidence.

19 (Plaintiff's Exhibits Three, Four  
20 and Five marked and filed.)

21 Q. Alright. As you were coming from Eutawville toward what  
22 ended up being the scene of the accident, did you see any  
23 signs that said, mowing three miles ahead, or mowing ahead,  
24 or beware of mowing, or anything like that?

25 A. No.

1 Q. Okay. And when you had a chance to get out and sort of  
2 step back and see what had happened, did you notice that on  
3 the back of the mowing deck there was a flag on the side  
4 closest to the ditch?

5 A. Yes.

6 MR. KULMALA: Your Honor, I would object to the  
7 continuing leading questions of this witness.

8 MR. HUTTO: Okay.

9 THE COURT: Just rephrase your question, please.

10 Q. What did you notice about any kind of markers on the  
11 actual mower itself?

12 A. Well, on the left side it was, I did not see a flag.

13 Q. And that would be the side that's now raised up?

14 A. Correct.

15 Q. Okay. Did that -- I mean, was that something that  
16 registered in your mind at that time when you saw it?

17 A. Yes. It was, I think, when I got the subpoena and I was  
18 realizing that we were coming to Court and giving thought to  
19 it again, I know that my dad and I discussed it when we were  
20 drive -- when the accident occurred, you know, because it  
21 happened so quickly, and I pulled over to the left side of  
22 the road, and I was saying, Dad, you wait right here, I'm  
23 going to go check things out and see if I can help this man.  
24 And I left the car running, and thank goodness, I had gotten  
25 a full tank of gas, and you know, it took hours waiting for

1 the policeman to take my report and everything. And my dad  
2 was, you know, very frail. And so, you know, I left the car  
3 running, I ran across the road, and I looked to the DOT guy,  
4 and I asked him what highway were we on, I didn't know the  
5 number. And when I called Nine One One they asked me our  
6 location, and I said, between Eutawville and Holly Hill, but  
7 I, you know, obviously, didn't know the road number. So, he  
8 had pulled over and raised that deck at that time, but my  
9 question was also, when Mr. Alexander went to go around the  
10 deck, he would have, it would not have been illogical to  
11 assume that the left side would have been raised when he was  
12 traveling with it because there was no grass to mow on the  
13 left.

14 Q. Right. Well, let me ask you that, how far -- and I know  
15 you maybe not could see exactly but maybe had some idea, how  
16 far out in the roadway was that mower deck, do you know?

17 A. Well, it was a couple of feet.

18 Q. Okay. So, it wasn't right on the little white line on  
19 the side of the road?

20 A. No.

21 Q. Okay. And in your observation then, did you ever see  
22 any flags other than the one flag that was on the side  
23 closest to the ditch?

24 A. No, I did not.

25 Q. Okay.

1 A. I never saw one in the road after the accident either.

2 Q. Right. Okay. So you didn't see one as it was  
3 progressing, and you never saw one that had become  
4 dislodged?

5 A. No.

6 Q. Okay. And would it be fair to say that after the  
7 accident many people, first responders, EMS, many people  
8 came and were around?

9 A. Yes.

10 Q. Okay. But you were there the whole time until the  
11 police officer got there?

12 A. Oh, absolutely.

13 MR. HUTTO: Excuse me one second. That's all the  
14 question I have at this time, Ms. Walls. Please answer any  
15 questions that Mr. Kulmala might have.

16 THE COURT: Alright, Mr. Kulmala, your witness.

17 (NOTE: Blank lines on this page do not indicate any part of  
18 record has been omitted. Headers on testimony pages and  
19 hard page breaks between testimony are now required by the  
20 Court. See next ensuing page for sequential continuation of  
21 record.)

1 PATRICIA WALLS - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Good afternoon, Ms. Walls.

4 A. Hi.

5 Q. It's been a while since we met for our deposition,  
6 hasn't it?

7 A. Yes, it has.

8 Q. You testified that you were coming the curve from  
9 Eutawville toward Holly Hill, and you were doing the speed  
10 limit?

11 A. Uh-huh, probably Fifty. I mean, I know, like I said, I  
12 was in no hurry because my dad and I were just out having a,  
13 going for lunch.

14 Q. And you testified a few minutes ago that you slowed down  
15 when you got behind Mr. Alexander?

16 A. Well, yes.

17 Q. And what was the speed that you slowed down to?

18 A. I don't really know, but it was pretty slow. I mean,  
19 the tractor was moving along, Mr. Alexander was behind the  
20 tractor, and I slowed down a lot, say to Twenty miles an  
21 hour, I don't know. I don't know how fast they travel, but  
22 I'm very cautious, I usually leave a lot of room between me  
23 and any other traffic that I'm behind, I don't like to  
24 tailgate people. So, when I saw them going slowly, I slowed  
25 down and gave them, you know what space I needed to.

1 Q. When you got behind Mr. Alexander you were already aware  
2 of, had already seen the tractor ahead of him?

3 A. Yes.

4 Q. And I believe you indicated that there was some dust and  
5 debris from the vicinity of the mower as well as dust and  
6 debris from a farm tractor off on the side?

7 A. Yes.

8 Q. And if I understand what you're saying, though, Mr.  
9 Alexander was following along sort of behind the tractor?

10 A. Uh-huh.

11 Q. Would that mean that he was going the same speed as the  
12 tractor?

13 A. Yes. Yes, he was riding along a minute or two, you  
14 know, when I got behind him we rode along for a minute or  
15 two with him behind the DOT tractor and me behind Mr.  
16 Alexander.

17 Q. Going the same speed as the mower and the tractor?

18 A. I'd say, yes.

19 Q. Okay. Is it possible that Mr. Alexander was going about  
20 the speed limit that is between fifty and fifty-five miles  
21 an hour at the time of the collision?

22 A. No, sir. He accelerated to go around the DOT tractor,  
23 but he was not speeding or riding close behind the truck, I  
24 mean, he was in a safe speed, safe distance behind the  
25 tractor. And I know we rode there for a minute, at least a

1 minute or two. I mean, I was just riding along and my dad  
2 and I were talking and he was in front of us and we were,  
3 you know, just moving along, and then he started to go  
4 around the tractor. And then he accelerated to go around  
5 the tractor.

6 Q. Did it appear to you that he was aware that there was a  
7 mowing tractor in front of him?

8 A. Yes.

9 Q. With him knowing that there was a mowing tractor in  
10 front of him creating a cloud of dust, what, what value  
11 would it be to having a sign a mile or two or three miles  
12 back saying, mowing ahead, what more information would get  
13 from the sign than from seeing the mower right in front of  
14 you?

15 A. None. It was obviously there.

16 Q. It was obviously there?

17 A. Yes.

18 Q. With a high green top and a light up on top, and a cloud  
19 of dust?

20 A. Uh-huh.

21 Q. So - - -

22 A. You couldn't miss it.

23 Q. In fact, it would have been easier to see the tractor  
24 than it would -- a mowing tractor than it would have been  
25 maybe to see a little sign on the side of the road two or

1 three miles earlier, right?

2 A. Uh-huh, yes.

3 Q. So, he didn't miss anything if he missed the sign?

4 A. No. The only thing the sign, what it might have done  
5 was given him a heads up three miles earlier, but he was  
6 well aware of the tractor, that the tractor was in front of  
7 him, I can, no doubt.

8 Q. If I understand your testimony today, his truck was  
9 proceeding behind the tractor about the same speed as the  
10 tractor?

11 A. Correct.

12 Q. Okay. And you also testified about not seeing a flag on  
13 the left wing?

14 A. Correct.

15 Q. I was a little bit confused during your testimony in  
16 response to Mr. Hutto's questions because you indicated that  
17 the left wing or bat wing was a couple of feet, I think you  
18 said a couple of feet into the roadway?

19 A. Yes, I think so.

20 Q. Now, you were behind Mr. Alexander's truck?

21 A. Correct.

22 Q. So, his truck was between you and the bat wing?

23 A. Correct.

24 Q. So, you couldn't see the left wing of the tractor while  
25 you were right behind Mr. Alexander?

1 A. No.

2 Q. So, is the two feet a guess?

3 A. Well, when Mr. Alexander accelerated to go around it  
4 and I saw him impact it, I did have the visible, I did see  
5 that the deck was down and he hit the deck and had a crash.

6 Q. That was at the point of impact?

7 A. Correct.

8 Q. And you don't know if his truck may have hit the tractor  
9 enough to tip it to the left or anything like that?

10 A. No, I don't think his truck could have moved the DOT  
11 tractor.

12 Q. But, I mean, you didn't see it before the impact, you  
13 only saw it from the impact on?

14 A. Correct.

15 Q. Now, let's talk about speed for a couple of minutes.  
16 After you stopped for the collision you spoke with Trooper  
17 McCarty, - - -

18 A. Yes.

19 Q. --- the Highway Patrolman?

20 A. Uh-huh.

21 Q. As a matter of fact, you gave him a statement?

22 A. Yes.

23 Q. You gave him a written statement?

24 A. Yes.

25 MR. KULMALA: May I approach, Your Honor?

1 THE COURT: You may.

2 Q. I'm going to hand you what I guess would be marked for  
3 identification, marked for identification as Defendant's  
4 Four?

5 A. Yes.

6 Q. Is that a copy of your statement?

7 A. Yes, it is.

8 Q. Now, the -- and this was you speaking to South Carolina  
9 Highway Patrol, Two:twenty-two P.M. on the afternoon of July  
10 Twenty-third?

11 A. Yes.

12 Q. And when you gave that statement to the highway  
13 patrolman you were telling him what you had observed an hour  
14 and a half or two hours earlier at the accident scene?

15 A. Yes.

16 Q. If you would, read the first sentence, that basically  
17 says what you were doing and where you were going, the first  
18 sentence of your statement, if you would, read that?

19 A. "I was driving with my father going to Holly Hill on  
20 Highway Four Fifty-three when the truck in front of me hit a  
21 big DOT mower."

22 Q. Okay. Your next sentence talks about dust. Would you  
23 read the sentence, please?

24 A. "There was a lot of dust and grass blowing around. I  
25 could not even see the part of the mower that was still in

1 the highway, but it extended into the road lane about one  
2 and a half to two feet."

3 Q. Okay. So, here we're talking about what we did just a  
4 few minutes ago that, that you believed that the bat wing  
5 was maybe a couple of feet into the roadway?

6 A. Correct.

7 Q. But you couldn't see it. Was it you couldn't see it  
8 because of the dust or you couldn't see it because the truck  
9 was in front of you?

10 A. I couldn't see through the truck in front of me.

11 Q. Okay. Would you read the next sentence, please?

12 A. "The man in the truck drove head-on at about Fifty miles  
13 per hour and hit the rear of the mower blade compartment."

14 Q. Okay. And that was your statement July Twenty-third,  
15 Two thousand and Eight, less than two hours after the  
16 accident?

17 A. Uh-huh.

18 Q. But your testimony today is that the truck was going  
19 about the speed of the DOT mower?

20 A. Well, he was riding behind it, and then he accelerated  
21 to go around it. And his acceleration was a little quick.  
22 He did put some gas to it and was getting ready to go  
23 around. At the time I was thinking that he was moving up  
24 pretty quick, but then, he didn't have a clear road so he  
25 hit the thing. But, I mean, he was driving behind the -- he

1 couldn't go Fifty miles an hour behind the tractor for a  
2 whole minute. I rode up behind him, he was already there,  
3 we rode in that configuration for maybe a minute or two  
4 when he got ready to go around, and he just, he gave it some  
5 gas, went to the left.

6 Q. On July Twenty-third, Two thousand Eight, you told South  
7 Carolina Highway Patrolman investigating this accident that  
8 he drove head-on -- let me make sure I read it correctly,  
9 "Head-on at about Fifty MPH and hit the rear of the mower  
10 blade compartment." Is that what your statement said?

11 A. Well, I guess rear is incorrect, but he hit the side,  
12 back side of the part that was down, the bat wing or  
13 whatever your guys call it. It was down, he went around, he  
14 accelerated and went head-on into it, and then his truck  
15 fish-tailed and wrecked.

16 Q. But the point is not only about head-on, but on that  
17 date, the date of the accident you said, about Fifty MPH,  
18 did you not?

19 A. I did.

20 Q. Okay. And that was before the lawsuit was filed, right?

21 A. It was.

22 Q. Okay. Now, you're here testifying in the lawsuit and  
23 your testimony has changed from Fifty miles an hour to now  
24 he had slowed down and you followed him for about a minute  
25 at whatever the speed of the tractor was, is that your

1 testimony today?

2 A. I am saying that when he hit the mower going  
3 approximately Forty-five to Fifty miles an hour, which I  
4 don't really know speeds when I'm not, you know, driving  
5 it, but when he accelerated to go around that truck he did  
6 accelerate pretty fast. It was a quick acceleration and he  
7 got some speed up and then he hit it hard. But I was behind  
8 him for a minute when he was riding behind the tractor, and  
9 I don't believe he was going Fifty miles an hour at that  
10 moment. I just think that he accelerated to about Fifty.

11 Q. Well, why did you tell the highway patrolman he was  
12 going Fifty miles an hour?

13 A. Well, at the time I had waited about an hour and twenty  
14 minutes to even write this up, and I was very nervous, and  
15 my daddy was not feeling well. And so, I sat down and I  
16 wrote this, and I do believe when he accelerated he got up  
17 to about Fifty. I didn't say in this that he was driving  
18 down the road at Fifty miles an hour, I really don't think  
19 anybody can ride behind a DOT tractor for any extended  
20 period of time and keep that speed.

21 Q. But less than two hours after the accident your estimate  
22 of his speed was head-on into the tractor at about Fifty?

23 A. Yes.

24 Q. Okay. Would you read the part of your statement that  
25 deals with the missing left side flag?

1 A. "He was pulling a trailer, I think the trailer fish-  
2 tailed left to right, then the truck swerved left to right  
3 and went over the embankment and hit a tree head on. I  
4 stopped and dialed Nine One One." I don't see anything  
5 about a flag.

6 Q. Okay. So, when you talked to the highway patrol on the  
7 date of the accident, less than two hours afterwards, you  
8 didn't tell the highway patrolman that, by the way, it's  
9 important that there should have been a flag there and I  
10 didn't see a flag?

11 A. No, actually, I did not think about that at the time,  
12 and he did not ask me if there was a flag present.

13 Q. But now, after the lawsuit was filed you remember that  
14 there was no flag?

15 A. Well, I was, I did this and then it was something, what,  
16 a year ago, that I had to give a deposition, and I was asked  
17 about a flag, and at that time I did not recall seeing one  
18 there when I, I mean, I wasn't trying to -- I don't know Mr.  
19 Alexander, I'm not trying to win a case for him, I'm only  
20 saying that what I saw, what I remember, and what I see in  
21 the photographs does make sense.

22 Q. On July Twenty-third, Two thousand Eight, it wasn't  
23 important enough to you, not seeing the flag, to tell the  
24 highway patrol?

25 A. The highway patrolman was present, I'm sure he would

1 have seen whether or not there was a flag present. I  
2 wasn't, I mean, I just wrote down what I could, and, to the  
3 best of my ability, and he advised me at the time that it  
4 was important that I write everything I could think that I  
5 needed to say because I would forget something later.

6 Q. Do you have any idea of the speed or velocity that a DOT  
7 mower runs when it's cutting grass on the shoulder?

8 A. No. It's slow.

9 Q. Would you be surprised that it would go as slow as five  
10 miles an hour or four miles an hour?

11 A. Yeah, I guess. I was thinking we were probably  
12 traveling Ten or Fifteen.

13 Q. Do I understand your testimony to be, from following the  
14 truck with Mr. Alexander down to whatever the speed of the  
15 DOT mower was, that he accelerated rather rapidly to pass  
16 the tractor?

17 A. Yes.

18 Q. And do you believe that he got up to Fifty miles an hour  
19 in that acceleration to get around the tractor?

20 A. I don't know, I don't know, I just know that he  
21 accelerated pretty quick, and it just seemed like he went  
22 from, you know, going very slow to getting some speed up and  
23 going, and if we were going five miles an hour and I thought  
24 we were going fifteen, then I supposed he got up to Thirty-  
25 five maybe instead of Fifty, I don't know, but it was just a

1 quick acceleration.

2 Q. The dust that y'all talked about, was that like a cloud  
3 of dust coming over onto the highway?

4 A. Yes, I guess so, there was dust everywhere, it was just  
5 really dry, I mean, so dry, so hot, and the, it was very  
6 hot, dry day.

7 Q. Could you see through the cloud of dust to what was on  
8 the other side of the dust?

9 A. Well, where I was I couldn't really see past the truck  
10 and past the tractor. I was just noticing that it was very,  
11 very dusty, and you know, that was my observance. I  
12 couldn't see past everything that was in front of me, no.

13 Q. What, what is your understanding of the prudent way to  
14 handle something like a cloud of dust and obscures your  
15 visibility on the roadway?

16 MR. HUTTO: Your Honor, I object to the question, I  
17 mean, she can testified to what she does sometimes but that  
18 doesn't, that's not probative to what the rule is.

19 MR. KULMALA: Well, I believe she can testify to what  
20 she does.

21 MR. HUTTO: Well, Your Honor, I -- but that's not  
22 relevant.

23 THE COURT: What is the relevance?

24 MR. KULMALA: Sir?

25 THE COURT: I'm going to sustain the objection. Okay?

1 MR. KULMALA: I think that's all the questions I have.

2 THE COURT: Okay. Thank you, sir.

3 Anything on redirect?

4 MR. HUTTO: Yes, sir.

5 (NOTE: Blank lines on this page do not indicate any part of  
6 record has been omitted. Headers on testimony pages and  
7 hard page breaks between testimony are now required by the  
8 Court. See next ensuing page for sequential continuation of  
9 record.)

1 PATRICIA WALLS - REDIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. Ms. Walls, I think I understand what you said, is that  
4 when Mr. Alexander's truck and the trailer he was pulling  
5 was in front of you, you could see the tractor but you  
6 couldn't actually see the mower?

7 A. Correct.

8 Q. Okay. And the first time you actually could see the  
9 mower was when he actually accelerated and moved to go  
10 around, is that correct?

11 A. Yes.

12 Q. Okay. And when you did get a chance to see the mower,  
13 how far into the highway would you estimate that he was  
14 extending?

15 A. A couple of feet I believe.

16 Q. And would it be fair to say, because you could not see  
17 it up until that point in time you don't know whether,  
18 before you could see it, it had been farther out or closer  
19 in, or the same place? I mean, you only know it when you  
20 saw it at that time, is that correct?

21 MR. KULMALA: Objection.

22 THE COURT: Wait. He has an objection.

23 MR. KULMALA: Again, I'm going to have to object to the  
24 leading nature of the question.

25 THE COURT: Okay. Alright.

1 MR. HUTTO: I can ask it again.

2 THE COURT: Okay. If you'd rephrase the question.

3 Q. Prior to your seeing the mower a foot and a half or two  
4 feet out in the road, do you know where it had been ten  
5 seconds before that?

6 A. I could not see it.

7 Q. Okay.

8 MR. HUTTO: Thank you.

9 THE COURT: Anything on recross?

10 MR. KULMALA: Nothing on recross.

11 THE COURT: You may step down. Thank you, ma'am,  
12 appreciate it.

13 MR. HUTTO: Your Honor, we would also that she be  
14 excused.

15 THE COURT: Alright. Yes, ma'am, you may be excused.  
16 You're welcome to stay but you, again, may be excused.  
17 Thank you, ma'am.

18 Alright, are you ready to call your next witness?

19 MR. TINKLER: Your Honor, Paul Tinkler. Plaintiff  
20 calls Aubrey Alexander, Senior.

21 THE COURT: Okay. Alright, yeah, Mr. Alexander, if  
22 you'd stop right there. Yes, sir, if you'd raise your right  
23 hand, please, sir, the Clerk's going to swear you in.

24 CLERK: Would you state your name for the record,  
25 please?

1                   WITNESS: Aubrey Gene Alexander.

2                   (Whereupon, Aubrey Gene Alexander  
3 is duly sworn.)

4                   CLERK: Thank you.

5                   THE COURT: Get comfortable, please, sir.

6                   Alright, Mr. Tinkler, your witness.

7                   MR. TINKLER: Thank you, Your Honor.

8                   (NOTE: Blank lines on this page do not indicate any part of  
9 record has been omitted. Headers on testimony pages and  
10 hard page breaks between testimony are now required by the  
11 Court. See next ensuing page for sequential continuation of  
12 record.)

1 AUBREY GENE ALEXANDER - DIRECT EXAMINATION

2 BY MR. TINKLER:

3 Q. You are Aubrey Gene Alexander?

4 A. Yes, sir.

5 Q. And Mr. Alexander, how old are you?

6 A. Eighty.

7 Q. What was your date of birth?

8 A. August Six, Nineteen Thirty-one.

9 Q. And where do you reside at the current time?

10 A. One thirty-one Hickory Springs Road, Eutawville, South  
11 Carolina.

12 Q. And how long have you been a resident of Eutawville?

13 A. Since First of February, Nineteen Ninety-one.

14 Q. February First, Nineteen Ninety-one?

15 A. Yes, sir.

16 Q. Now, you were born where?

17 A. In Dayton, Texas.

18 Q. What part of Texas is that, Mr. Alexander?

19 A. That's what they call East Texas, it's between Beaumont,  
20 Texas and Houston, Texas on Highway Ninety.

21 Q. Alright. And did you graduate from high school in the  
22 State of Texas?

23 A. Yes, sir.

24 Q. What year?

25 A. Nineteen Forty-nine.

1 Q. After graduating from high school what did you do with  
2 your time?

3 A. I worked at a grocery store, I worked at several service  
4 stations there in Dayton, it just wasn't no jobs around.  
5 This was right after ...

6 Q. Do you remember what year you graduated from high  
7 school?

8 A. Nineteen Forty-nine.

9 Q. Okay. And you say the jobs were sort of scarce at that  
10 time?

11 A. Yes, sir.

12 Q. And what did you do?

13 A. I went and joined the military, the Navy, in Nineteen  
14 Fifty, October of Nineteen Fifty.

15 Q. Where did you enlist in the Navy?

16 A. In Beaumont, Texas.

17 Q. And then where were you stationed?

18 A. They sent me to San Diego, California.

19 Q. And what did you do in the Navy, were you on a ship?

20 A. Yes, they transferred me back to South Carolina to a  
21 mine sweeper out of Charleston.

22 Q. And when did you come to the Charleston area with the  
23 Navy?

24 A. In Nineteen -- February of Nineteen Fifty-one.

25 Q. Alright. And how long did you remain in the Navy?

1 A. Three years, nine months and Twenty-eight days.

2 Q. Okay. And were you discharged at that time?

3 A. Yes, sir, honorable.

4 Q. Do you recall the date of your discharge?

5 A. July the Twenty-eighth, Nineteen Fifty-four.

6 Q. Alright. Where did you go after you were discharged,  
7 Mr. Alexander?

8 A. I went back to Dayton, Texas because jobs wasn't in  
9 Charleston at the time.

10 Q. Alright. And what kind of work did you do in Dayton,  
11 Texas, when you returned?

12 A. I worked with my dad and my younger brother with a  
13 construction company for approximately two months.

14 Q. Alright. And how many brothers and sisters did you  
15 have?

16 A. I had five brothers and four sisters.

17 Q. Alright. Now, did you ultimately get married and have a  
18 family?

19 A. Yes, sir, I got married in Charleston in Nineteen Fifty-  
20 two.

21 Q. And did you have children?

22 A. I had three sons.

23 Q. And what, can you give us the names of those three sons?

24 A. Aubrey is my oldest son.

25 Q. He's seated in the courtroom with the bow tie?

1 A. Yes, sir. I had a son named William Raymond. My  
2 youngest son was Donna Lee Alexander, deceased.

3 Q. And when did he pass away, Mr. Alexander?

4 A. Two thousand two, with cancer.

5 Q. Alright, Mr. Alexander, what I want you to do now is --  
6 well, tell us about your career, what did you do primarily  
7 after you began working full time?

8 A. I was, I got a job, well, I was a diesel mechanic in the  
9 Navy and that's what I thought I wanted to be, and I went to  
10 a diesel shop in Houston, but then I decided that wasn't, I  
11 didn't want to be a diesel mechanic. And then my oldest  
12 brother was working in a machine shop, and I stopped by to  
13 see him and he talked to them and they put me to work that  
14 week as a trainee. I worked there three years and about  
15 eight months. I got laid off for union activities, but I  
16 started at the bottom and in less than four years I was in a  
17 tool room and experimental lab.

18 Q. Alright. How long were you employed there at the Navy  
19 Yard?

20 A. At the Charleston Naval Ship Yard?

21 Q. Yes, sir.

22 A. Twenty-seven years and eight months, I believe.

23 Q. And when did you retire from the Navy Yard?

24 A. In, April Twenty-eighth of Nineteen Eighty-nine.

25 Q. Now, Mr. Alexander, do you recall the day of July the

1 Twenty-third, Two thousand and eight?

2 A. Yes, sir.

3 Q. Tell us, if you can remember, what the weather was like  
4 that day?

5 A. It was a nice, pretty, sunshiny day.

6 Q. On July the Twenty-eighth, Two thousand and eight, were  
7 you in good health?

8 A. Yes, sir.

9 Q. Now, you had seen doctors for various things?

10 A. Yes, sir, I had gall bladder surgery and I had a  
11 pacemaker put in and, because every time they would put me  
12 under my heart would fluctuate, so they put a pace maker in  
13 in Two thousand and seven.

14 Q. As of July Twenty-third, Two thousand and eight, Mr.  
15 Alexander, did you have anything wrong with your eyesight  
16 that prevented you from seeing?

17 A. Well, I had gone to the retina doctor the Twenty-first,  
18 and he told me I had Twenty-Twenty-five vision in my left  
19 eye.

20 Q. Is that doctor Virgil Alfaro in Charleston?

21 A. Yes, sir.

22 Q. Alright. And who was your primary doctor?

23 A. Dr. Don Swaggart?

24 Q. Also in Charleston?

25 A. Yes, sir.

1 Q. Alright. Now, in July of Two thousand and eight, or as  
2 of that time, can you tell us what kind of activities that  
3 you enjoyed or performed?

4 A. Well, I love to fish, deer hunt - - -

5 Q. Alright.

6 A. --- and I like to keep up my yard.

7 Q. Now, tell us about, exactly where you live and what kind  
8 of place it is?

9 A. I live on, going out of Eutawville, off of Highway Six,  
10 approximately two miles out of Eutawville headed towards  
11 Eutaw Springs or towards Moncks Corner - - -

12 Q. Alright.

13 A. --- off of Highway Six, it's probably a good city block  
14 off of Highway Six, up on a little hill there. I have two  
15 point three acres, and three tenths of an acre.

16 Q. And how did you maintain that property?

17 A. Well, I bought it in Eighty-five, and me and my son  
18 that's sitting here, my oldest son, helped me clear it to  
19 the point that I could move up there in Ninety-one.

20 Q. Now, after you cleared it with Gunter Aubrey, how did  
21 you maintain it?

22 A. Well, I had two lawn mowers and weed eaters, and I kept  
23 it up myself, I kept my -- I had to sprig grass, there was  
24 no grass there, it wasn't nothing but weeds and briers.

25 Q. Alright.

1 A. And we sprigged grass, sowed seed, I got a beautiful  
2 yard, and I kept it up with two riding lawn mowers and a  
3 weed eater.

4 Q. Now, Mr. Alexander, did you live by yourself in Two  
5 thousand and eight?

6 A. Yes, sir.

7 Q. Alright. I asked you about, if you were married, and I  
8 didn't ask you, were you also later divorced?

9 A. Yes, I was divorced in Nineteen eighty.

10 Q. Alright. And so, you lived by yourself in Eutawville in  
11 Two thousand and eight?

12 A. Yes, sir.

13 Q. Do you still live by yourself?

14 A. Yes, sir.

15 Q. Alright. Now, as of Two thousand and eight, who took  
16 care of your house, that sort of thing?

17 A. I did.

18 Q. Did you cook for yourself?

19 A. Yes, sir.

20 Q. Did you clean up?

21 A. Yes, sir, I kept my house clean, my yard clean.

22 Q. And I think I heard you say you liked to fish and go  
23 deer hunting?

24 A. Yes, sir.

25 Q. Where did you fish?

1 A. I fished in the lake right there out of, Lake Santee.

2 Q. And what kind of fish did you like to catch?

3 A. I used to love to catch the crappie and the brim.

4 Q. Alright. How often would you go?

5 A. Oh, sometimes when the fish was biting, every day.

6 Q. Okay. You don't like to go when they're not biting, do  
7 you?

8 A. No. Well, see, I had a lot of brothers and sisters, and  
9 we always had our family reunion on Memorial Day Weekend in  
10 Texas. I had hospital pans, and I'd catch brim and clean  
11 them and put them in these hospital pans and fill it with  
12 water and freeze them. I'd carry approximately a hundred  
13 and fifty brim in May to Texas for a family reunion. We'd  
14 cook half of them in May, and then I'd go back Labor Day  
15 weekend, and we'd cook the other half Labor Day weekend.

16 Q. Alright, now, do you have grandchildren that you - - -

17 A. Oh, yes, five.

18 Q. --- cooked for and that sort of thing?

19 A. Oh, yeah.

20 Q. Now, if you would, Mr. Alexander, tell the jury what you  
21 were doing on July the Twenty-third, Two thousand and eight,  
22 and what you remember about that morning?

23 A. Well, it was awful dry and hot, and my grass wasn't  
24 growing but the weeds was, and my lawn mowers was in Holly  
25 Hill at Thurmond Walker's shop, lawn mower shop. He had

1 both of my riding mowers over there. And I was on my way,  
2 he called me and told me he was going to Orangeburg to pick  
3 up parts or either, and see his wife, which she was in the  
4 hospital, and he was going to leave about one o'clock. And  
5 he asked me if I could be there to get my lawn mowers before  
6 one o'clock. And that's where I was on my way, to pick up  
7 my lawn mowers.

8 Q. Now, can you tell us, Mr. Alexander, had you traveled  
9 that road from your house to the lawn mower shop on other  
10 occasions?

11 A. Oh, many a days.

12 Q. And that's the road from Eutawville to Holly Hill?

13 A. Yes, sir.

14 Q. And do you remember the road number?

15 A. Four Fifty-three.

16 Q. And approximately how long on a normal day would it take  
17 you to travel that distance?

18 A. Probably Twenty to Twenty-five minutes.

19 Q. Alright. Now, do you recall when you left your house  
20 that day?

21 A. Well, it was right around Twelve o'clock.

22 Q. And did you have a trailer?

A. Yes, I was pulling one.

Q. And what were you driving?

A. A Nineteen Ninety-six Chevrolet Cheyenne four by four

1 pickup truck.

2 Q. Now, as you left Eutawville did you pass Sweatman's  
3 Barbecue?

4 A. Yes, I did.

5 Q. And right after Sweatman's you took a right or a left?

6 A. I kept a right on Four Fifty -- it's a curve there.

7 Q. Alright, there's a curve right there that goes into  
8 Highway Four Fifty-three?

9 A. Yes, sir.

10 Q. And tell us what happened after you got on Four Fifty-  
11 three there, what do you remember?

12 A. Well, I picked up Four Fifty-three right there in  
13 Eutawville. It ends right there in Eutawville.

14 Q. Right.

15 A. So, I was on it, like I said, going to Holly Hill,  
16 until I hit, got to Bush Ford Road, which is next to  
17 Avinger's Funeral Home. I was going to make a right there  
18 and go down, pick up Three Ten and make a left and go around  
19 Holly Hill pulling my trailer to go to Mr. Walker's lawn  
20 mower shop.

21 Q. Okay. And so, what do you remember after you passed  
22 Sweatman's?

23 A. Well, like I said, it was a beautiful sunshiny day and  
24 all of a sudden I see this cloud of dust halfway covering my  
25 side of the road, but I didn't see no tractor, I didn't see

1 the mower, all I seen was this cloud of dust a boiling.

2 Q. Now, you've heard the testimony of Ms. Pattie Walls,  
3 who was behind you?

4 A. Yes, sir.

5 Q. And is there anything about her testimony that is  
6 inaccurate, or that you want to correct?

7 A. Well, I don't know. I think I heard her say that I  
8 speeded up to try to go around the mower, to miss the mower?

9 Q. Okay.

10 A. I don't know if I speeded up or not, all I know, I tried  
11 to miss it. The right front tire of my truck hit that  
12 mower. She said head on, but it wasn't no head on.

13 Q. Now, Mr. Alexander, did you see a mower on the road?

14 A. When I saw it I whipped to the left to try to miss it,  
15 and it caught my right front tire and blew it out. I went  
16 across the center line and was fighting it to get it back on  
17 my side of the road because there was another curve ahead of  
18 me, two cars was coming. I was fighting it to get it back  
19 on my side of the road, and when it went to the right, it  
20 went to the right, and I hit this pine tree.

21 Q. Alright. Well, let me back up and ask you a couple of  
22 questions about that. Did you see any signs posted along  
23 the highway that said, mowing ahead?

24 A. No, sir.

25 MR. KULMALA: Your Honor, objection again, leading the

1 witness.

2 MR. TINKLER: It's not leading, Your Honor.

3 THE COURT: Well, what I'm going to do is, I will allow  
4 the question considering the witness's age and like that.  
5 Just, but I -- you know, if you would just rephrase your  
6 question so you're not suggesting the answer. Thanks.

7 Q. Mr. Alexander, what, if any, signs did you see warning  
8 you of mowing ahead?

9 A. None.

10 Q. Did you see any red flag on the left side of the mower  
11 deck?

12 A. No, sir.

13 Q. If you had seen a flag on the left side of the mower  
14 deck, Mr. Alexander, what would you have done differently?

15 A. I don't know unless I would have slowed down and tried  
16 to miss it. But I didn't see it.

17 Q. Now, tell us, what part of your vehicle came in contact  
18 with the mower deck?

19 A. My right front tire.

20 Q. And then what happened?

21 A. I lost control of my truck.

22 Q. Do you know what the speed limit was that day on Highway  
23 Four Fifty-three?

24 A. Fifty-five.

25 Q. Were you going within the speed limit?

1 A. Yes, I was going less than Fifty-five.

2 Q. Did you have your seat belt on, Mr. Alexander?

3 A. Yes, sir.

4 Q. Now, I believe you testified that the right front hit  
5 the left rear of the mower deck, is that right, the right  
6 front of your pickup truck hit the left rear of the mower  
7 deck?

8 A. No, sir.

9 Q. Well, tell me.

10 A. My tire is the only thing that hit the mower.

11 Q. The tire?

12 A. Just the tire.

13 Q. Alright. And then you, what happened to your vehicle?

14 A. Well, like I said, it started this swishing and swashing  
15 and I was losing control, and I was trying to get it to the  
16 right because it was two cars coming to me, and I was trying  
17 to get it out of the other lane back in my lane. And when  
18 it went to the right it went to the right and up over the  
19 embankment and it hit the tree.

20 Q. Now, Mr. Alexander, why didn't you see the mower deck  
21 and go around it?

22 A. It was so much dust and debris flying from it that I  
23 didn't see the mower or the tractor.

24 Q. Alright. Now, what happened after your truck went off  
25 the road, did it go off the road on the right or the left?

1 A. The right hand side of the road.

2 Q. Okay. And where did it come to rest?

3 A. Against a pine tree on my driver's side.

4 Q. Alright. If you will, tell the jury what you  
5 experienced as all this was happening?

6 A. Well, all I remember was the glass falling and hitting  
7 me, and the next thing I know, Ms. Pattie Walls was standing  
8 out there on the road and wanted to know if I was hurt. I  
9 told her, no, I'm not hurt, I just need some help to get out  
10 of the truck. I said, I can't, I can't loosen my seat belt,  
11 I need some help to get out of the truck.

12 Q. Mr. Alexander, why couldn't you loosen your seat belt?

13 A. My right shoulder was out of socket and fractured.

14 Q. Okay. Did you know that at the time?

15 A. No, sir.

16 Q. Alright.

17 A. I didn't know both legs was broke at the time. I was  
18 not hurting, I had no pain, and I asked her to call Nine One  
19 One and get me some help, get the rescue squad there, which  
20 she did. And then, the only number I could think of other  
21 was my friend, Ms. Elmira Sweatman. I asked her to call her  
22 to get - - -

23 Q. Is Ms. Elmira Sweatman the lady who's seated in the  
24 courtroom beside your son?

25 A. Right there, yes.

1 Q. Alright. Go ahead.

2 A. And she did that, and about that time this guy from the  
3 rescue squad got there. Oh, I can't think of his name off  
4 hand.

5 Q. Alright.

6 A. But he stood there and held me up. My driver's door was  
7 sprung open a little bit, and I told him if he would loosen  
8 that seat belt I could just slide right out and I'd be  
9 alright, just get me out of the truck. He said he didn't  
10 think I could get out, he said, I think your leg is pinned  
11 down here. My left leg was pinned.

12 Q. Alright.

13 A. But he couldn't tell because he couldn't see in there.  
14 And he was just holding me up in the truck. Well, finally,  
15 the rest of the rescue squad got there and they got the jaws  
16 of life out and they started -- it took them Forty-five  
17 minutes to cut me out of my truck, but I still wasn't in no  
18 pain, I wasn't hurting nowhere. The steering wheel had come  
19 across into the passenger seat and had my right leg pinned  
20 down, which was broke above the knee, which I didn't know.  
21 The break pedal had my left leg pinned back against the  
22 seat, and my right leg was broke just above the ankle, which  
23 I didn't know. And my left arm here was skinned all up, I  
24 don't know what caused that, I guess from the glass and the  
25 window when I jarred forward. But my air bag went off but

1 it was over in the passenger seat.

2 Q. Alright.

3 A. So, that's where the steering wheel wound up.

4 Q. Mr. Alexander, let me show you a large photograph that's  
5 been introduced into evidence as Plaintiff's Exhibit Number  
6 Five. Can you tell us what that is?

7 A. That's my truck.

8 Q. Okay. Was that the way it looked after the accident?

9 A. I don't know, I never see it after that.

10 Q. Okay. Now, how long were you in the truck before the  
11 jaws of life got you out?

12 A. Forty-five minutes.

13 Q. What happened next?

14 A. They took, got me out on a stretcher. Like I said, it  
15 was hot, real hot that day, and that's the worse pain I had  
16 was when they put me on that stretcher, because it was  
17 laying out there in the sun.

18 Q. Okay. Well, did they take you to the hospital in  
19 Orangeburg or what happened?

20 A. No, they carried me -- put me in the ambulance and  
21 carried me to Sweatman's Barbecue.

22 Q. Okay.

23 A. The helicopter - - -

24 Q. You weren't going there to eat barbecue, were you?

25 A. Oh, no, they had a helicopter there waiting on me.

1 Q. Alright. And what happened with the helicopter?

2 A. They flew me to Columbia.

3 Q. And where did you end up in Columbia?

4 A. I have no earthly -- it was the hospital, that's all I  
5 know.

6 Q. Alright. And how long were you at that hospital in  
7 Columbia, Mr. Alexander?

8 A. I think approximately a week, I'm not sure.

9 Q. What did they do for you there on the day that you  
10 arrived?

11 A. Well, the last thing I remember, they took me out of  
12 that ambulance, or out of the helicopter and put me in the  
13 ambulance, and carried me to the hospital, and when they  
14 rolled me in the hospital, that's the last thing I remember,  
15 I don't know, there was two or three of them gathered around  
16 me. I don't know if one of them gave me a shot or what, but  
17 that's the last thing I remember.

18 Q. Now, was your truck, were you able to get it fixed and  
19 drive it again?

20 A. No, sir, it totaled it.

21 Q. Now, did any friends or family members show up at the  
22 hospital that day?

23 A. Yes, sir, my son and Ms. Sweatman, my friend, and her  
24 youngest son.

25 Q. Alright. And at some point did you get transferred to

1 the Medical University of South Carolina?

2 A. Yes, sir, I think I was in Columbia about a week maybe,  
3 I don't know exactly how long. My son got me transferred to  
4 MUSC in Charleston so he wouldn't have to be running back  
5 and forth to Columbia every day or two.

6 Q. Did your son come and visit you in Columbia while you  
7 were there?

8 A. Oh, yes, sir.

9 Q. And did he come and visit you at MUSC while you were  
10 there?

11 A. Yes, sir.

12 Q. Do you remember how long you were at MUSC?

13 A. Well, I think approximately ten days. This happened, I  
14 know it was right after my birthday, August the Sixth, it  
15 was a couple of days after that, they moved me to a rehab  
16 center.

17 Q. And how, what was the name of that rehab center, if you  
18 recall?

19 A. Sir, I don't recall.

20 Q. Was it in Charleston?

21 A. Yes, sir, it was in Charleston.

22 Q. And do you recall the date that you finally got out of  
23 rehab?

24 A. Today was three years ago, the Thirty-first.

25 Q. Three years ago today?

1 A. October Thirty-first.

2 Q. Alright. So, let me just make sure I understand,  
3 between July the Twenty-third, Two thousand and Eight, and  
4 November First of Two thousand and Eight, you were out of  
5 your house?

6 A. Yes, sir.

7 Q. You were either at a hospital or rehab?

8 A. Rehab.

9 Q. Now, you mentioned your friend, Elmira Sweatman, how  
10 long have you known her?

11 A. Since Nineteen Ninety-six -- well, I'll say Ninety  
12 three, Nineteen Ninety-three, but we really got acquainted  
13 in Nineteen Ninety-six. It took me three years to talk her  
14 into going out with me.

15 Q. Mr. Alexander, let me show you what has been introduced  
16 into evidence -- no, it has not been introduced, it has been  
17 premarked as Plaintiff's Exhibit Thirteen, and just have you  
18 look at that for a moment, and you can flip through it.

19 A. Well, I think this is the medical bills.

20 Q. And is that a collection of your medical bills from this  
21 episode?

22 A. Yes, sir, for the first month.

23 MR. TINKLER: Your Honor, I would move that into  
24 evidence as Plaintiff's Number Thirteen.

25 A. This was for the first month.

1 MR. TINKLER: Alright. I'd move this into evidence as  
2 Plaintiff's Thirteen.

3 THE COURT: Any objection?

4 MR. KULMALA: No objection.

5 THE COURT: Alright, Plaintiff's Thirteen is in  
6 evidence.

7 (Plaintiff's Exhibit Thirteen  
8 marked and filed.)

9 A. My insurance and stuff would only pay for the first  
10 month because it was an accident.

11 Q. Alright. I'm not asking you about that right now, Mr.  
12 Alexander, so - - -

13 A. Okay.

14 Q. --- what the rules are, when I ask you a question that's  
15 when you give an answer and not - - -

16 A. Yes, sir.

17 Q. --- not until then.

18 A. Yes, sir.

19 Q. Okay. Now, how has this accident affected you, if it  
20 has at all?

21 A. Well, I was doing pretty good after I got out of rehab  
22 until my left leg got to hurting me so bad I couldn't walk.  
23 This leg has got a rod in it, and Dr. Demos finally decided  
24 that he had to go back, put me back into MUSC and take two  
25 screws out of that rod because I had a gap approximately an

1 eighth of an inch between the two bones, and it was like  
2 shin splints. I don't know if you've ever had shin splints,  
3 but when I'd get up and walk it was very painful. So, he  
4 took the two screws out so the bone could come together and  
5 heal.

6 Q. Alright, now, that was Dr. Demos at the Medical  
7 University?

8 A. Yes, sir.

9 Q. Alright.

10 A. And then - - -

11 Q. Are you still under his care?

12 A. No, sir.

13 Q. Alright.

14 A. That was in February of Two thousand and Nine, he took  
15 the screws out. Well, I guess after, I guess it was June,  
16 July, when arthritis took over my body.

17 Q. Now, tell us about that.

18 A. Well, I got where I couldn't, my knees hurt me so bad I  
19 couldn't walk. My shoulders hurt so bad that I couldn't do  
20 nothing, and my wrist and my hands.

21 Q. Mr. Alexander, what were your injuries that you suffered  
22 as a result of this accident?

23 A. My right shoulder was dislocated and fractured, my right  
24 leg was broke above the knee, they put a plate in there, my  
25 left leg was broke and they put a rod in it.

1 Q. Alright. Now, as a result of this accident -- well, you  
2 were discharged from the facility on or about November  
3 First, I think, how did you get back home to Eutawville?

4 A. My son picked me up and carried me home.

5 Q. Alright. After that did you drive?

6 A. Not for a year.

7 Q. Why is that, Mr. Alexander?

8 A. I was scared to even get in a car.

9 Q. Do you drive now?

10 A. Yes, sir.

11 Q. Where?

12 A. To the grocery store, maybe out to Ms. Sweatman's house.

13 Q. Okay.

14 A. As long as it ain't much traffic.

15 Q. Did you drive over here today from Eutawville?

16 A. No, sir.

17 Q. How did you get here?

18 A. Ms. Elmira and her son brought me.

19 Q. Today, Mr. Alexander, would you drive like you did that  
20 day to go to Walker's Lawn Mower Service, could you do that?

21 A. No, sir.

22 Q. And why is that?

23 A. Because I can't hook my trailer up and put my lawn mower  
24 on the trailer anymore.

25 Q. Alright, now, Mr. Alexander, as you walked up to the

1 witness stand, I believe -- may I see that -- is this cane  
2 something you had before the accident?

3 A. No, sir.

4 Q. How long have you had a cane?

5 A. Since my accident.

6 Q. And did you, did you at anytime walk with a walker?

7 A. Yes, sir, when I was in rehab they had me in a wheel  
8 chair for two months, and then, because I couldn't put any  
9 weight on my right leg for two months. So I didn't start  
10 putting any weight on my right leg until October, after Dr.  
11 Demos seen me and x-rayed it and all that, I couldn't --  
12 now, my left leg I could put weight on, you know, but my  
13 right one I couldn't. My right arm, they had it strapped  
14 here on account of my shoulder being fractured, it was  
15 strapped here. So, they had to wheel me around in a wheel  
16 chair for the first two months I was in rehab. And then  
17 after he released me they gave me a wheel chair and I got  
18 where I could roll it pretty good by myself. And after I  
19 got used to the wheel chair I got down to rehab one morning  
20 and they took my wheel chair away from me and handed me a  
21 walker. They said, you've got to start walking.

22 Q. Well, Mr. Alexander, do you still clean your house like  
23 you did before July Twenty-third, Two thousand and Eight?

24 A. No, sir.

25 Q. What do you do about that?

1 A. I have to hire somebody to clean my house.

2 Q. And what is the cost of hiring help to clean your house?

3 A. It runs from Fifty to Eighty bucks a month.

4 Q. Do you still go out and catch fish for the annual family  
5 reunion?

6 A. No, sir.

7 Q. Why not?

8 A. I can't get in my boat, so I sold it. I had a pontoon  
9 boat, I sold it. I gave my little fishing boat to my grand  
10 son in Georgia.

11 Q. Do you have a normal range of motion in your leg, do you  
12 have, can you move your legs the way you could before?

13 A. No, sir.

14 Q. Now, Mr. Alexander, you testified that at the time of  
15 this accident you felt no pain, is that correct?

16 A. From the accident I felt no pain, I had no pain until I

17 - - -

18 Q. Do you feel pain now?

19 A. Yes, from the arthritis.

20 Q. Tell us about your shoulder, is it, have you gotten  
21 better?

22 A. No, sir.

23 Q. How high can you lift it up?

24 A. I can raise it pretty good. I had the therapist that  
25 came after I got out of rehab for approximately eight weeks,

1 she got me a pulley, and I have to sit in a chair and pull  
2 my arms each day in and out and all this, for at least  
3 Thirty minutes a day. And then I have to do therapy with my  
4 legs, leaning onto the kitchen sink counter.

5 Q. Now, can you still use the weed eater and the lawn  
6 mower like you did before?

7 A. No, sir.

8 Q. What do you do about keeping your yard maintained?

9 A. I have to hire somebody to take care of my yard.

10 Q. And what does that cost you?

11 A. Well, sometime as much as a hundred dollars a month.

12 It's according to how much the grass grows, you know, and  
13 the weeds grow. If it's, like this summer we had a hot, dry  
14 summer, it didn't grow very much until when we started  
15 getting a few showers of rain.

16 Q. Alright, now, tell us about your sleep, did you ever  
17 have sleep problems since - - -

18 A. Every night.

19 Q. Pardon?

20 A. Every night.

21 Q. Alright, well, before the accident did you have sleep  
22 problem?

23 A. No, sir, I could go to sleep anywhere.

24 Q. Alright. What about, tell us about now, why can't you  
25 sleep?

1 A. Well, I like to sleep on my sides. If I lay on my right  
2 side, my right shoulder starts hurting and it wakes me up,  
3 I'm wide awake, I've got to turn over and get on the other  
4 shoulder. And by the time I get to sleep good it starts  
5 hurting, I've got to get off of it. And then my legs hurt,  
6 I can't get them comfortable in a bed sometimes.

7 MR. TINKLER: Bear with me one moment.

8 A. I don't rest too good.

9 Q. Mr. Alexander, was this accident your fault?

10 A. No, sir.

11 MR. TINKLER: Thank you. Please answer any questions  
12 Mr. Kulmala might have.

13 THE COURT: Mr. Kulmala, your witness.

14 (NOTE: Blank lines on this page do not indicate any part of  
15 record has been omitted. Headers on testimony pages and  
16 hard page breaks between testimony are now required by the  
17 Court. See next ensuing page for sequential continuation of  
18 record.)

1 AUBREY GENE ALEXANDER - CROSS-EXAMINATION  
2 BY MR. KULMALA:

3 Q. Good afternoon, Mr. Alexander.

4 A. Good afternoon.

5 THE COURT: Do you want to take a -- I don't know how  
6 long your cross-examination is going to be. Do you think,  
7 do you want the jury to take a break for a second, or do you  
8 think it would be ...

9 MR. KULMALA: It's Ninety minutes or Two, I think it's  
10 appropriate to take a break. That will be fine.

11 THE COURT: Alright. Ladies and Gentlemen, remember, I  
12 told you we'd try and take a mid-afternoon break. Well,  
13 we're going to take that now, but let me -- this is the  
14 thing I'm going to tell you each and every time. You have  
15 not heard the entire case, you cannot begin talking about  
16 the testimony you've heard. Okay, I'm going to excuse y'all  
17 and let y'all go back into the jury room so you can stretch  
18 your legs, and if anybody needs to go to the restroom you  
19 can do that, and then I'll get you back out here in about  
20 Ten minutes, I hope. Okay? Thank y'all.

21 Mr. Kulmala, I didn't mean to interrupt you, but I  
22 didn't want to -- okay.

23 (Whereupon, the jury retires  
24 to the jury room and the following  
25 takes place out of the presence

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of the jury.)

THE COURT: Alright, Mr. Alexander.

A. Yes, sir.

THE COURT: --- we're taking a short break.

A. Yes, sir, I know.

THE COURT: If you want to, you can step down but you can't talk to anybody about your testimony, do you understand that?

A. Yes, sir.

THE COURT: Alright, sir, but if you want to stretch, too, you can as well. Okay, we'll take about a Ten minute break.

(Recess)

THE COURT: Is the defense ready?

MR. KULMALA: Yes, sir.

THE COURT: Thank you, sir. Is the plaintiff ready?

MR. TINKLER: Ready.

THE COURT: Alright, bring the jury on back out.

And Mr. Kulmala, I thought they needed a break. I hope I didn't break your rhythm.

(Whereupon, the jury enters the courtroom and the following takes place in the presence of the jury.)

THE COURT: Alright, thank you, Ladies and Gentlemen,

1 we're now getting ready to continue with the testimony.

2 And Mr. Kulmala, your witness.

3 MR. KULMALA: May it please the Court.

4 THE COURT: Yes, sir.

5 Q. Good afternoon, Mr. Alexander.

6 A. Good afternoon.

7 Q. I want to ask you a few questions, and I hope I don't  
8 take too long and I hope it won't be too burdensome. And if  
9 I say something that's unclear to you just let me know and  
10 I'll try to make it clearer for you, sir.

11 A. Yes, sir.

12 Q. I want to ask you some questions about the date of the  
13 accident, July Twenty-third, Two thousand eight. That day  
14 you were going from Eutawville to Holly Hill to pick up your  
15 mower -- not your tractor but your mowing equipment?

16 A. Yes, sir.

17 Q. And what kind of traffic did you encounter on that, on  
18 your way toward Holly Hill?

19 A. There was no traffic.

20 Q. Okay. And the area we're talking about, we've described  
21 it a couple of times, after you made the right curve, the  
22 right hand curve you have pretty much a visible straight of  
23 way for, what, a quarter of a mile, a third of a mile?

24 A. About a quarter of a mile I'd say, yes, sir.

25 Q. And before the accident you were driving at what speed,

1 between Fifty and Fifty-five?

2 A. Yes, sir, probably around Fifty.

3 Q. Okay. And you said that you figured you could see  
4 probably clear a quarter of a mile - - -

5 A. Yes, sir.

6 Q. --- on the highway?

7 A. Yes, sir.

8 Q. And there was nothing that blocked your vision of the  
9 roadway?

10 A. No, sir.

11 Q. A little while ago you were asked a question by Mr.  
12 Tinkler about your eyesight, and you indicated your eye  
13 doctor in Charleston had said your vision is Twenty/Twenty-  
14 five?

15 A. Yes, sir.

16 Q. But you also have been diagnosed with, suffer from  
17 macular degeneration, is that correct?

18 A. Yes, sir.

19 Q. Okay. Earlier today Ms. Walls testified that she came  
20 behind you and followed you as you were basically following  
21 the tractor at whatever the speed the tractor was going for  
22 about a minute. Did you hear that?

23 A. Yes, sir.

24 Q. Okay. And that's not quite the way your speed happened  
25 that day?

1 A. No, sir.

2 Q. You were proceeding about Fifty or Fifty-five, and I  
3 think you just said more closer to Fifty?

4 A. Yes, sir.

5 Q. Okay. And at some point you saw the mowing operation,  
6 which mainly you saw a cloud of dust, I think?

7 A. Yes, sir.

8 Q. And you didn't, you said that you did not see the mower  
9 but you saw the cloud of dust?

10 A. Yes, sir.

11 Q. Okay. And when you got to where the mower was, or where  
12 the cloud of dust was you just kept on going straight ahead

13 - - -

14 A. No, sir.

15 Q. --- at about the same speed?

16 A. No, sir.

17 Q. Okay. That's not correct?

18 A. No, sir.

19 Q. Okay. What is it, what did you do when you got to where  
20 the cloud of dust was?

21 A. I went to the left to try to miss it.

22 Q. You went to the left to try to miss it?

23 A. Yes, sir.

24 Q. But you were still doing about Fifty?

25 A. Yes, sir.

1 Q. Okay. And - - -

2 A. That's to my knowledge.

3 Q. --- you didn't go completely around the dust cloud, did  
4 you?

5 A. Well, the dust cloud was not all the way across the  
6 road.

7 Q. But you didn't go all the way out to where you had clear  
8 sight, you went through part of the dust cloud?

9 A. I had clear sight on my side, the driver's side of the  
10 truck.

11 Q. But over on the passenger side of the truck the dust  
12 cloud was in front of you?

13 A. That's right.

14 Q. And the passenger side of the truck is the part of the  
15 truck that went through some of the dust cloud?

16 A. No, sir, -- the passenger side, yes, sir.

17 Q. The passenger side went through part of the dust cloud?

18 A. Right, sir.

19 Q. And you didn't know what was inside the dust cloud or  
20 how far it extended, but you saw the dust?

21 A. I saw the dust.

22 Q. But you didn't slow down?

23 A. Well, I don't know if I did or not, I can't answer that,  
24 I don't remember.

25 Q. And if I understand you correctly, you couldn't see the

1 mower because there was so much dust and debris coming from  
2 the mower?

3 A. Right, sir.

4 Q. And although you didn't necessarily see the mower you  
5 suspected, or believed that that's what was going on, that  
6 the DOT was cutting the grass?

7 A. Yes, sir, but I didn't realize that a bunch of the mower  
8 was hanging out on the pavement.

9 Q. But there was a bunch of dust coming into your lane?

10 A. Yes, sir.

11 Q. I believe you, are you sure that you didn't, that you  
12 tried to move over to the left?

13 A. Yes, sir. Sir, - - -

14 Q. You didn't -- it's your testimony you did try to move  
15 over to the left?

16 A. Yes, sir, If I hadn't of my back tire would have got  
17 blowed out, too.

18 Q. Okay.

19 MR. KULMALA: Your Honor, may I approach with Mr.  
20 Alexander's deposition? I have the original for the Court.

21 THE COURT: Yes, sir.

22 Q. Do you remember, I took your deposition back in April of  
23 Two thousand Ten?

24 A. Yes, sir.

25 Q. We met at Mr. Hutto's office and I asked you some

1 questions then?

2 A. Yes, sir.

3 Q. And the court reporter made a copy of your deposition.  
4 I'm going to hand it to you. Do you have, are you able to  
5 see to read?

6 A. No, sir, not without a magnifying glass, and I went  
7 yesterday, or Friday, and my eye doctor told me I needed to  
8 go get my glasses changed.

9 MR. KULMALA: Your Honor, in view of the limitation I'd  
10 inquire of the Court if I could read, and subject to the  
11 Court's review, that I'm actually reading it correctly - - -

12 THE COURT: Alright, sir.

13 MR. KULMALA: --- and allow him to hear the verbal  
14 testimony.

15 THE COURT: And Mr. Tinkler, have you got your copy to  
16 follow?

17 MR. TINKLER: I do, Your Honor. And what page are we  
18 on, Mr. Kulmala?

19 THE COURT: I think we're going to find out.

20 Q. Okay. On Page Forty-one of your deposition, Line  
21 Thirteen, my question, "You didn't attempt to move out of  
22 your lane?" Your answer, "No, sir, I didn't. I was, after  
23 I hit the mower and blew the tire out I was crossing the  
24 center line." So, Mr. Alexander, when I asked you that  
25 question back in April of Two thousand ten, your answer was,

1 you did not attempt to move out of your lane. If I  
2 understand you today you're saying you did try to move out  
3 of your lane.

4 A. Well, I don't remember what I said then, but I had to be  
5 moving to the left in order for my left rear tire not to hit  
6 the mower, I had to be moving away from it.

7 Q. Do you agree with me what you - - -

8 A. And I was pulling a trailer, and it would have got the  
9 trailer tire also. So, I had to be moving to the left, sir,  
10 I'm sorry if I made a mistake back in April of Two thousand  
11 and ten.

12 Q. Okay. So, you agree with me, though, that what you are  
13 saying today is different than what you said in April of Two  
14 thousand ten, about moving to the left?

15 A. Yes, sir.

16 MR. TINKLER: Your Honor, I'm not sure if this is the  
17 appropriate time, but in fairness, I think that counsel  
18 should also read Page Forty-nine, Line Three, and Three  
19 through Five.

20 THE COURT: Well, - - -

21 MR. KULMALA: I mean, wouldn't that be appropriate for  
22 redirect?

23 THE COURT: Yeah, I was just going to say, you'll be  
24 able to -- I'll make sure I remind you to cover that on  
25 redirect.

1 MR. TINKLER: Thank you, Your Honor.

2 THE COURT: Okay, thank you, sir. Alright. And Mr.  
3 Tinkler, since he can't read it, I'll allow you to do the  
4 same thing that Mr. Kulmala is doing. Okay, thank you, sir.

5 Q. Now, you also, at the time of the accident you believed  
6 that the dust was coming from a highway department mowing  
7 operation, is that correct?

8 A. Yes, sir.

9 Q. Okay. And you could not see through the cloud of dust?

10 A. No, sir.

11 Q. On Page Forty-six -- let me, let me ask you this, you  
12 did not slow down?

13 A. I don't know, I don't remember if I did or not, I don't  
14 know.

15 Q. Okay. I'm going to be reading on Page Forty-six,  
16 beginning at Line Three. My question to you was, "And you  
17 couldn't see the mower four feet or two feet, whatever the  
18 amount of the feet of the mower, you couldn't see that  
19 because it was completely hidden by dust?" Your answer was,  
20 "Right." My next question, "And the dust was in your lane?"  
21 Your answer as, "Right." My question, "Three or four feet?"  
22 Your answer again was, "Right." My question to you, "And  
23 you didn't slow down?" Your answer, "I seen no reason to  
24 slow down." So, do you agree with me then that your  
25 testimony today is different than it was in April, that is,

1 when I asked you in April, Two thousand ten, you didn't see  
2 any reason to slow down, and now your testimony as I  
3 understand it is, you don't remember whether you did or  
4 didn't?

5 A. Well, like I said - - -

6 MR. TINKLER: Your Honor, same objection. And I'll go  
7 over that on redirect.

8 THE COURT: Alright, sir. Thank you, sir.

9 Q. You had pretty good visibility of the location where the  
10 mower was, even though it was within that cloud of dust, is  
11 that correct?

12 A. Yes, sir.

13 Q. As a matter of fact, you saw the cloud of dust from as  
14 much as a quarter of a mile away?

15 A. No, sir, I didn't see it that far away, the cloud of  
16 dust, no, sir, I don't think so. I said it was a quarter of  
17 a mile from that curve to the next curve, and they was in  
18 between.

19 Q. Okay, I'm reading from Page Fifty-one, Line Twenty-one,  
20 my question to you, "But in that straight a way area  
21 depicted there on Exhibit One, that the, you feel pretty  
22 comfortable that you were able to see the cloud of dust from  
23 a quarter of a mile away or more?" Your answer, "Well, I  
24 could have seen -- I seen the cloud of dust when I come  
25 around this curve right here. It's a big curve right here,

1 I seen it." So, April of Two thousand ten, in your  
2 deposition you were acknowledging you saw the cloud of dust  
3 when you came around the curve, were you not?

4 A. Yes.

5 Q. And your answer today is different?

6 A. No.

7 Q. Okay. So, you acknowledge that you saw the cloud of  
8 dust then when you came around the curve?

9 A. Yes, sir. But it wasn't no quarter of mile, because  
10 it's a quarter of a mile between the two curves, and this  
11 was in between.

12 Q. But you saw the cloud of dust when you came around the  
13 curve?

14 A. Yes, in that curve, yes, sir.

15 Q. And when you saw it you suspected it was a mowing  
16 operation?

17 A. Well, I really didn't know what it was, but I suspected  
18 it was a mowing operation, but I wasn't sure.

19 Q. So, is it accurate to say that you were comfortable with  
20 whatever visibility you had of the cloud of dust that you  
21 felt comfortable not slowing down, not doing anything, just  
22 going straight through the cloud of dust?

23 A. I see no reason because I didn't know the mower was  
24 hanging out there three or four foot in the road. I wasn't  
25 expecting that.

1 Q. Okay. But, but with respect to whether you did anything  
2 or not, you didn't slow down, you just went - - -

3 A. I don't know if I did or not.

4 Q. But you felt comfortable going through the cloud of dust  
5 no knowing what was inside it?

6 A. Well, like I said, the cloud of dust wasn't on my side,  
7 the driver's side of the road, it was on the passenger side  
8 of the truck.

9 Q. But you felt comfortable with part of your car going  
10 through the cloud of dust even though you couldn't see  
11 inside it?

12 A. Yes, sir.

13 Q. Now, there's been some discussion about a flag not being  
14 present on the left side of the mower, but in this case it  
15 really wouldn't have made any difference, would it?

16 A. No, sir.

17 Q. Because you couldn't see the back end of the mower  
18 because of the cloud of dust, so you wouldn't have seen the  
19 flags?

20 A. I didn't see the lights either if it had lights on it,  
21 or the flag.

22 Q. And you were on your way to Holly Hill to pick up your  
23 mower. What was the time constraint that you had, what was  
24 the time frame you were trying to meet?

25 A. I was trying to be there before one o'clock to meet my

1 lawn mower man because he had to go to Orangeburg to pick up  
2 parts and see his wife where she was in the hospital.

3 Q. Now, you were supposed to be in Holly Hill by one  
4 o'clock or he was supposed to be in Orangeburg by one  
5 o'clock?

6 A. No, he was going to be there for me to pick up my mowers  
7 before one o'clock.

8 Q. So, when you ran through the cloud of dust and into the  
9 mower, then you would have been doing about fifty miles an  
10 hour?

11 A. Approximately, yes.

12 Q. And you hadn't been slowed down to the speed of the  
13 tractor the way Ms. Walls had said?

14 A. No, the tractor was moving slow, mowing. That mower  
15 ain't going no forty or fifty miles an hour mowing down the  
16 side of the road.

17 MR. KULMALA: Thank you, sir.

18 THE COURT: Redirect, Mr. Tinkler.

19 (NOTE: Blank lines on this page do not indicate any part of  
20 record has been omitted. Headers on testimony pages and  
21 hard page breaks between testimony are now required by the  
22 Court. See next ensuing page for sequential continuation of  
23 record.)

1 AUBREY GENE ALEXANDER - REDIRECT EXAMINATION

2 BY MR. TINKLER:

3 Q. Mr. Kulmala referred to your deposition, do you recall  
4 that testimony?

5 A. Yes, sir.

6 Q. And that was an event that took place at Mr. Williams's  
7 office, or Mr. Hutto's office here in Orangeburg?

8 A. Yes, sir.

9 Q. You sat down with a court reporter and they took your  
10 testimony down?

11 A. Yes, sir.

12 Q. And was that in April of Two thousand and ten?

13 A. Yes, sir, I believe so.

14 Q. And Mr. -- do you agree, now you can't, I understand  
15 that your eyesight has gotten such that you can't read right  
16 now, but if I tell you that the deposition was Seventy-two  
17 pages long, does that sound about right?

18 A. Yes, sir.

19 Q. Alright. Now, Mr. Kulmala asked you about your  
20 testimony at your deposition, about whether you slowed down  
21 or not. Do you recall that, those questions?

22 A. Yes, sir.

23 Q. Well, again, I'm reading from Page Forty-eight of your  
24 deposition, which is a page that Mr. Kulmala did not read to  
25 you, and he asked you, "You didn't slow down, did you?" at

1 Line Twenty-two, and you answered, "I don't remember if I  
2 did or not. I don't remember." Now is your testimony today  
3 that you don't remember whether you slowed down or not?

4 A. Yes, sir.

5 Q. Okay. Now.

6 COURT REPORTER: No or yes?

7 Q. What is your testimony, do you remember, as we sit here  
8 today, whether you slowed down or not, do you remember?

9 A. Yes, sir, I remember.

10 Q. And did you or not?

11 A. No, I don't know, I don't remember if I did.

12 Q. Alright. Now, the next thing Mr. Kulmala asked you  
13 about, moving to the left, do you remember him asking you  
14 about that?

15 A. Yes, sir.

16 Q. Alright. Now, he asked you about that on April the  
17 Ninth, Two thousand and ten, did he not?

18 A. Yes, sir.

19 Q. And he asked you on Page Forty-eight, Line Twenty-five,  
20 "You didn't start to move to your left until you were pretty  
21 close to the cloud?"

22 A. Yes, sir.

23 Q. And you said, "I believe so." And he asked you, "Do you  
24 believe that you were starting to move to the left at that  
25 point?"

1 A. Yes, sir.

2 Q. And your answer was, "Right."

3 A. Yes, sir.

4 Q. Now, is that also your testimony today?

5 A. Yes, sir.

6 MR. TINKLER: Thank you, that's all I have.

7 THE COURT: Alright. Anything on recross?

8 MR. KULMALA: I believe that's all.

9 THE COURT: Alright, Mr. Alexander, you may step down.

10 MR. ALEXANDER: Thank you, sir.

11 THE COURT: Alright. Now, is the plaintiff prepared his  
12 next witness?

13 MR. TINKLER: Your Honor, we'd call Aubrey Alexander,  
14 the Second.

15 THE COURT: Alright. Mr. Alexander, if you'd put your  
16 right hand on the Bible and raise your left hand, the Clerk  
17 is going to swear you in.

18 CLERK: Would you state your name for the record,  
19 please?

20 WITNESS: Aubrey Gene Alexander, The Second.

21 (Whereupon, Aubrey Gene Alexander, II,  
22 is duly sworn.)

23 CLERK: Thank you.

24 THE COURT: Alright, Mr. Tinkler, your witness.

25 MR. TINKLER: Thank you, Your Honor.

1 AUBREY GENE ALEXANDER, II - DIRECT EXAMINATION

2 BY MR. TINKLER:

3 Q. Mr. Alexander, how old are you?

4 A. Fifty-eight.

5 Q. And where do you live?

6 A. Charleston, South Carolina.

7 Q. Are you married?

8 A. Yes.

9 Q. And do you have any children?

10 A. One child.

11 Q. And what's his name?

12 A. Wade.

13 Q. And you are the son of Aubrey Alexander, Senior?

14 A. Yes, sir.

15 Q. What kind of business or occupation are you in?

16 A. I'm a real estate broker.

17 Q. With what company?

18 A. Daniel Ravenell Sutherbey's International.

19 Q. And where is that?

20 A. That's in Charleston.

21 Q. Alright, do you have any other activities?

22 A. I'm City Council Member for the City of Charleston.

23 Q. Okay. And in fact I think you've got an election coming  
24 up?

25 A. And I should be working on it right now, yes, sir.

1 Q. Good luck to you.

2 A. Thank you.

3 Q. Now, you've been present in the courtroom listening to  
4 the various testimony of the various witnesses today?

5 A. Yes, sir.

6 Q. What I'd like you to do, Mr. Alexander, is tell the jury  
7 what you remember about July the Twenty-third, Two thousand  
8 and eight?

9 A. I was in Charleston and received a phone call from Ms.  
10 Sweatman that I needed to go to Columbia, South Carolina, my  
11 father had been in a serious accident, and was being air  
12 lifted via helicopter. At that time she said, I can't  
13 believe he's alive, he shouldn't be. I drove to Columbia,  
14 and I'm not sure if it was in -- I don't think it was in ER  
15 because it was on an upper floor, and it may have been in  
16 one of those rooms where they kind of prep you prior to  
17 surgery. And I remember my father couldn't get his diabetic  
18 bracelet off, and -- I had bought it for him, it's a strange  
19 little hitch on it, so the nurses asked me to get it off,  
20 they couldn't get it off either. And he was fully conscious  
21 at that point in time, and I said, well, are you hurting?  
22 And he said, no. And I said, what do you mean, no? At that  
23 time he didn't know he had two broken legs but we could see,  
24 and he was fairly messed up. So, that was probably the most  
25 amazing thing I remembered was that he was not in any pain,

1 and sat there with two broken legs and his shoulder was  
2 fractured and he was fairly messed up.

3 Q. Alright. So, you saw him in what room when you arrived?

4 A. I think it was an O-R prep room.

5 Q. Okay. And did you have any interaction with his  
6 physicians or surgeons there at that time?

7 A. I spoke with the nurses that were around and they  
8 relaying the story of him not being in any pain, and I did  
9 speak to the orthopedist which was going to do the surgery.  
10 He was, actually, he was the game doctor for the University  
11 of South Carolina. And we had a short conversation before  
12 they took him back for surgery.

13 Q. Okay. Now, were you there during the entire surgery  
14 that day?

15 A. I stayed the entire time, got a room in Columbia, yes.

16 Q. Okay. Now, long did you remain in Columbia attending to  
17 your father?

18 A. Well, I'd go back and forth, sometimes I would spend the  
19 night, depending on what was going on with him, and  
20 sometimes I'd just drive home and then come back the  
21 following day sometime in the afternoon. I tried to get a  
22 little work done as well.

23 Q. How did he do after the surgery?

24 A. Well, he seemed physically, you know, as best you can be  
25 after that type of surgery. I did notice that he was having

1 foggy memory, I mean, I guess when he got to Charleston in  
2 particular he was telling somebody about a snow storm, and  
3 of course, it was August-September. So, you know, he  
4 thought he was home and it was snowing outside.

5 Q. Well, you mentioned Charleston, but how long did he  
6 remain in Columbia, if you recall, before he was moved to  
7 Charleston?

8 A. I guess about ten days, without going back and looking  
9 at the records. We had him transported just to make it  
10 easier for the family.

11 Q. And how long -- well, what was the reason for the move  
12 to Charleston?

13 A. Again, to make it easier for the family get there,  
14 friends, it was closer if he was in Charleston. I actually  
15 tried to get him to Roper but there was an agreement  
16 between, I call it Richland Memorial, I think it's called  
17 Palmetto something now, and the Medical University, being in  
18 the State system, so they could only transport to another  
19 state hospital.

20 Q. Now, how long, if you recall, did he remain in the  
21 hospital at MUSC?

22 A. Ten days, two weeks, before he was transferred to a  
23 rehab center.

24 Q. And who was taking care of him there, if you recall, at  
25 MUSC?

1 A. Well, there were a battery of doctors, and I wasn't real  
2 familiar with them. All of his physicians practiced at  
3 Roper Hospital.

4 Q. Okay. Did you ever meet Dr. Demos?

5 A. Yes, I did.

6 Q. And do you know what his specialty is?

7 A. He's an orthopedist, if I remember correctly.

8 Q. Now, where did he go from MUSC?

9 A. I think it was called NHC.

10 Q. And where is that located?

11 A. That's in Charleston, out on that new strip called Glenn  
12 McConnell Boulevard, just off of it.

13 Q. Okay. Do you know how long he remained there?

14 A. Somewhere around the first of November, it was quite a  
15 while.

16 Q. How often did you visit your father while he was either  
17 in the hospital or in rehab?

18 A. Usually, about every day. When he was in rehab I went  
19 over and I'd have lunch or come by at dinner time or  
20 sometime and check with the staff and see how he was  
21 progressing.

22 Q. If you will, just explain to the jury his course of  
23 recovery from July Twenty-third, to November the first?

24 A. Well, essentially, you had a man that couldn't walk and,  
25 you know, in extreme pain once he realized, I guess, what

1 occurred, and I guess, quite a lot of courage to be able to  
2 walk right now. In rehab it was progressive, you know,  
3 first in a wheel chair, and quite honestly, he's a very  
4 independent man so he didn't like any of it at all, from a  
5 wheel chair to one of those walkers with the tennis balls on  
6 it, to eventually, you know, to a cane, because he wanted to  
7 get back home.

8 Q. Alright. Now, can you explain to the jury what kind of  
9 contact did you have with your father, or your family have  
10 with your father before July Twenty-third, Two thousand and  
11 eight?

12 A. Oh, you know, lots of cook-outs, barbeques, he had a  
13 huge cooker, and he really made some great ribs and chicken,  
14 I'll tell you that. You know, Father's Day, birthdays, you  
15 know, family type holidays, we'd go up and get vegetables in  
16 the spring or peaches and, you know, he show us how to can,  
17 that's something that we didn't know how to do, you know,  
18 kind of sitting on the porch rocking and talking, that kind  
19 of thing. He'd put us to work running the tractors or  
20 running the weed eaters, raking, you know, pretty typical I  
21 guess you'd say. Kind of nice to go out in the country from  
22 the city. It was kind of a like a small vacation.

23 Q. Now, I think I heard him testify something about family  
24 reunions that would take place in Texas, did I hear that  
25 right?

1 A. Right, right.

2 Q. And did you attend any of those events?

3 A. On occasion, it's a little difficult having a son  
4 growing up at that period of time because, you know, you  
5 were in school still when they had the reunions, and he  
6 would pack up his truck with fish and all his cooking  
7 implements and head to Houston and have the reunion and cook  
8 for the family, and then drive back. And he did that up  
9 until the time of the accident.

10 Q. Alright, now, Mr. Alexander, if you will, tell us --  
11 well, have you observed your father since the accident at  
12 the same sort of level?

13 A. Well, he doesn't do the things he used to do. I mean,  
14 he used to fish all the time. In fact, you know, he'd take  
15 me fishing with him and he'd throw the line in around the  
16 stumps and he'd fish out and he'd pull out all the crappie  
17 and then he'd move up and say, you try it. And I'd never  
18 catch anything because I figured out he'd already caught all  
19 the fish that were under that stump. So, he didn't fish  
20 fair, I'll tell you that. So, we'd go fishing, he'd go  
21 hunting, you know, he'd take care of his yard. He was always  
22 traipsing off somewhere. He'd go up to the mountains to  
23 visit friends or, you know, go to Texas for reunions, or  
24 whether it was family reunions, and he's always go twice a  
25 year for school reunions. It was in a little, kind of

1 like a one room school house where they had a reunion for  
2 everybody that was there. So, he would make that drive to  
3 Texas as well. So, I guess, fairly typical of families.

4 Q. Now, does he cook the same way he did before?

5 A. No, actually, he supervises now.

6 Q. Okay.

7 A. So, you know, we'll do the cooking. I mean, he'll tell  
8 us how to prepare it, and then, you know, we'll get it on  
9 the grill, whether it's, you know, our family or Ms.  
10 Sweatman's family as well that, you know, he'll get you  
11 going and then you have to obey the rules of how to cook,  
12 you know, as described by him.

13 Q. Alright. Can you describe his level of activity before  
14 the accident and after the accident?

15 A. Oh, he was very active. Again, hunted, fished, he would  
16 throw, he would do cook-outs himself, invite Twenty, Thirty  
17 folks, you know, again, did his own yard work, he took care  
18 of himself, you know, very active for a Seventy something  
19 year old fellow. I mean, his family is, lives longer ages,  
20 if you will, his father died at Ninety-three, he had a  
21 sister that passed away two weeks before her Ninety-third  
22 birthday, and has one right now in Mason County, Texas,  
23 that's Ninety-one and will be Ninety-two in March. So, and  
24 she tells us, you know, she goes over to the senior center  
25 to take care of the old people. She's pretty feisty.

1 Q. Okay. Now, have you noticed any sort of personality  
2 changes since the accident?

3 A. Yeah, he's, he gets very emotional very quickly. I've  
4 noticed that he's somewhat angry many times for no real big  
5 reason. We'll have heated debates which we never had  
6 before. So, you know, I can tell those sort of things in  
7 particular. And sometimes he doesn't seem to understand  
8 things. But you know, it's, it's more of some kind of pent-  
9 up anger inside of him and it may be, you know, because of  
10 this incident, I'm not sure, but he was never really like  
11 that before, and he really had a great sense of humor, and  
12 every once in a while you'll see a glimmer of it, he'll make  
13 a comment that, you know, it will make you laugh. But for  
14 the most part, if you try to make a joke with him, it's like  
15 he doesn't get it anymore, if that makes sense.

16 Q. Was he able to walk without a cane before the accident?

17 A. Oh, yeah, yeah. He played with his little dog in the  
18 yard, he has an old Jack Russell, and if you know Jack  
19 Russells, they're full of energy, so, yeah.

20 Q. Was he able to drive anywhere he wanted to before the  
21 accident?

22 A. Yeah, absolutely.

23 MR. TINKLER: Thank you, Mr. Alexander, please answer  
24 any questions counsel might have.

25 THE COURT: Mr. Kulmala, your witness.

1 AUBREY GENE ALEXANDER, II - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Good afternoon, Mr. Alexander.

4 A. Yes, sir.

5 Q. I've got just a few questions for you. First, I  
6 understand your interest and concern for taking care of  
7 your father, and that's your primary mission, I think, at  
8 some of the stages and changes in life that we go through.

9 A. Absolutely, yes.

10 Q. And again, I commend you for looking after a parent.  
11 You are here to testify to basically changes in your father  
12 before and after the accident, or changes from the time of  
13 the accident to now?

14 A. Yes, sir.

15 Q. If I understand it, I know this is correct, that you  
16 were not at the accident scene at the time of the collision  
17 on July Twenty-third?

18 A. That's correct.

19 Q. Your awareness of the whole situation came about after  
20 you received the phone call?

21 A. That's correct.

22 Q. And as a good son would do, you were on the spot to get  
23 up to the hospital in Columbia?

24 A. As soon as we could get there, yes, sir.

25 Q. Some of the things that you've testified to, some of the

1 changes, you know, insofar as maybe being argumentative, or  
2 personality changes, do you agree that as people age  
3 personalities change whether or not there's something such  
4 as an accident that intervenes?

5 A. Apparently that could happen, I'm not a physician so I  
6 couldn't tell you for certain.

7 Q. And you're not going to -- you don't have the training  
8 or background to be able to say that because his personality  
9 is different now it was caused by, necessarily caused by the  
10 accident?

11 A. That's correct.

12 Q. It could be the natural passage of time, the onset of  
13 years?

14 A. Possibly.

15 Q. And physical limitations, too, that comes about as a  
16 result of -- some physical limitations naturally occur with  
17 passage of age?

18 A. Certainly.

19 Q. And again, some of the things that you've observed and  
20 commented on, they could be, and may well have been caused  
21 by the accident of July, Two thousand eight?

22 A. Certainly.

23 Q. But also again, without the ability to have a medical  
24 doctor to come in and say, this caused this, we can't say  
25 that all of the changes in your father came about as a

1 result of the accident?

2 A. Again, I'm not a physician so I couldn't answer that.

3 MR. KULMALA: That's all the questions I have, thank  
4 you.

5 THE COURT: Anything on redirect?

6 MR. TINKLER: Nothing further, Your Honor.

7 THE COURT: Alright, you may step down, Mr. Alexander.

8 MR. ALEXANDER: Thank you.

9 MR. TINKLER: One more witness, Your Honor, a short  
10 one.

11 THE COURT: Okay. Sounds good. That was going to be  
12 my question.

13 MR. TINKLER: Elmira Sweatman.

14 THE COURT: Okay. Place your left hand on the Bible  
15 and raise your right hand and the Clerk will swear you.

16 CLERK: State your name for the record, please.

17 WITNESS: Elmira Sweatman.

18 (Whereupon, Elmira Sweatman  
19 is duly sworn.)

20 CLERK: Thank you.

21 THE COURT: Get comfortable, Ms. Sweatman.

22 (NOTE: Blank lines on this page do not indicate any part of  
23 record has been omitted. Headers on testimony pages and  
24 hard page breaks between testimony are now required by the  
25 Court.)

1 ELMIRA SWEATMAN - DIRECT EXAMINATION

2 BY MR. TINKLER:

3 Q. Now, Ms. Sweatman, you weren't in this accident, were  
4 you?

5 A. No, sir..

6 Q. Okay. Well, what I want to ask you about is, well,  
7 first of all, let me hear a little bit about your  
8 background. Where do you live?

9 A. I live in, between Holly Hill, Eutawville and Vance-  
10 Santee, out in the country, right off of Four Fifty-three.

11 Q. Okay. Now, I understand the reason you are here in a  
12 neck brace today is because you recently had some surgery?

13 A. Yes, sir.

14 Q. Are you in any pain, or do you feel okay?

15 A. I'm fine.

16 Q. Are you under any sort of drugs that - - -

17 A. No, sir.

18 Q. --- bother you or affect your memory?

19 A. No, sir.

20 Q. Alright.

21 A. This just scares everybody.

22 Q. Okay.

23 A. They wouldn't let me in the bank, they said the alarm  
24 would go off, so I had to go to the window.

25 Q. Okay. Alright, now, how far from this scene of the

1 accident do you live?

2 A. I would say approximately three miles.

3 Q. Alright. And we've heard some testimony about this  
4 accident occurred at a place called Sweatman's, or near a  
5 place called Sweatman's. Is that any relation to you?

6 A. Yes, sir, my family, some of my family owned it at the  
7 time but since then it's been sold.

8 Q. Alright. Barbecue has gone down hill since then or not?

9 A. I guess so.

10 Q. Alright, well, how long have you known Mr. Aubrey  
11 Alexander, Senior?

12 A. Well, since Nineteen ninety-two. I met him at the post  
13 office in Eutawville, and he tapped on the window and asked  
14 me if I'd like to go out to eat, and I said, let me sleep on  
15 it. Well, he came in the store where I worked in Ninety-  
16 six, and he said, have you slept on it long enough, would  
17 you like to go out to eat?

18 Q. That was four years?

19 A. Yes, sir.

20 Q. And what did you answer then?

21 A. I said, yes.

22 Q. Alright. And so, what happened next as far as you and  
23 Mr. Alexander?

24 A. Well, we became real close friends. I'd have to say, we  
25 were the best dancers on the floor, we loved to dance, and

1 we probably miss that more than anything else, you know. We  
2 did lots of fishing together, we even hunted together, but  
3 we, he loved to go out to eat, and like I say, dance, and we  
4 had a group that met every weekend and we just had a ball.

5 Q. Where did y'all dance?

6 A. Santee.

7 Q. Alright. And did you ever travel with Mr. Alexander?

8 A. Yes, sir. In Nineteen Ninety-seven he and I left and  
9 went as far as Montana, and through the states, you know,  
10 spending the night. We tailgated, and we ate, you know, at  
11 restaurants some. And we went up through the Yellowstone  
12 National Park and we spent the night in Montana, and then  
13 went back the west side and went through Texas and we saw  
14 the three sisters that were still living at the time.

15 Q. Alright. Now, did he ever help you with any sort of  
16 tasks or work of any kind?

17 A. Yes.

18 Q. Tell me about that.

19 A. He would help me with, I wanted to put some landscaping  
20 and make some islands in my yard, and he helped me with  
21 that, and he helped build deer stands, you know, back in the  
22 woods to hunt. And we just did a number of fun things  
23 together, we didn't actually say it was work, you know, we  
24 made it fun.

25 Q. Alright. And so, you've known him since really

1 Nineteen Ninety-two?

2 A. Yes, sir.

3 Q. Alright. Now, tell me what you recall yourself about  
4 July Twenty-third, Two thousand and eight?

5 A. Well, I was, I had just left Mr. Alexander's house, and  
6 he told me he was going to Holly Hill to get, pick up two  
7 lawn mowers from Mr. Walker. So, I left, and when I got  
8 home I turned on the T.V., and about, I'm going to say  
9 Twelve:thirty, a quarter to one, I had my cell phone on  
10 charge in the kitchen, and at the same time my door bell was  
11 ringing. So, I went to answer the door bell, and it was  
12 two, a cousin and a friend. And she told me that Gene was  
13 in an accident, Aubrey, I call him Gene. Aubrey had been in  
14 an accident, and I said, where? And she was telling me.  
15 So, I said, well, let me get my car keys. And she said, no,  
16 you come ride with us. So, I jumped in with them, and we  
17 went down. And of course, it was a lot of cars on both  
18 sides of the road, and I just told her to stop and let me  
19 out. And I ran on, you know, down to where he was. And the  
20 car had, the truck, excuse me, had gone down into the ditch  
21 and then back up and it struck the pine tree, and he was  
22 sitting, just sitting in the truck. And the rescue squad, I  
23 told them, I said, I need to go down and let him know that  
24 I'm here. And they said, no, and they grabbed my arm. And  
25 I said, I'm going down. So, I kind of pulled away, and I

1 went down, and I said, Gene, and he turned his head, and I  
2 said, I just wanted to let you know that I'm here. And he  
3 said, okay. And he said, well, come here and help me undo  
4 this seat belt and I'll get out. And I said, no, you can't  
5 do that. So, I then stepped away. And of course, the EMT  
6 started, you know, using the jaws of life at the time, and I  
7 was getting on the phone calling his son, Aubrey, to let him  
8 know what had happened, and trying to find out where they  
9 were going to take him, and all this kind of stuff so I  
10 could let Aubrey know. And I guess all of the decisions  
11 were made, you know, for me to call back to Aubrey to let  
12 him know that we were going to Columbia.

13 Q. Did you hear, he testified that there was a, I think an  
14 EMS person who arrived on the scene first - - -

15 A. Yes.

16 Q. --- and then there was, the rest came later. Do you  
17 remember who that was there?

18 A. Gary Wooper.

19 Q. And who is that?

20 A. He is, he works with the, I think at this time they call  
21 it the Star Team, but he also works with the fire department  
22 and anytime there's a wreck or anything, you know, that's  
23 called out he's there.

24 Q. Alright, now, let me show you, Ms. Sweatman, a blow up  
25 of a photograph that's been entered into evidence as

1 Plaintiff's Exhibit Number Two, do you see that photograph?

2 A. Yes, sir.

3 Q. Is that an accurate depiction of the scene as you  
4 arrived that day?

5 A. Yes, sir. I don't recall the flag being there.

6 Q. Alright, now, is, in Exhibit Five that's in evidence, is  
7 that an accurate depiction of where you clambered down into  
8 the ditch to speak to your friend?

9 A. Yes, sir.

10 Q. And now, as you approached the intersection did you  
11 approach from the back of the tractor, that is, this  
12 direction, or did you approach from the front of the  
13 tractor, that direction?

14 A. I approached from the back.

15 Q. Like this?

16 A. Yes, sir.

17 Q. Okay. And how long did you remain there at the scene  
18 that day?

19 A. Well, of course, they said it took Forty-five minutes to  
20 get him out with the jaws of life, and my youngest son, I  
21 had gotten in touch with him for him to come and he and I to  
22 go to Columbia, you know, to meet Aubrey. And Mr. Alexander  
23 had a tool box and his tools were just everywhere, you know.  
24 So, I told my cousin, I asked her and her husband if she  
25 would be responsible, you know, for picking up and getting

1 the tools together and maybe by that time, I'm guessing,  
2 Forty minutes maybe had gone by, I'm guessing now, and they  
3 got him out and put him on the stretcher, and my son came  
4 up, and I, you know, I told him what had happened and all,  
5 and they left with Gene and went to Sweatman's Barbecue  
6 parking lot where he was medivaced to Columbia, I think at  
7 the time it's Palmetto Memorial, or whatever.

8 Q. Alright, now, when you arrived at the scene that day and  
9 went down to see him and speak to him, can you tell the jury  
10 what was his condition that you observed?

11 A. Well, he was just sitting there kind of hanging to the  
12 left, you know, and like I said before, he said, if you'll  
13 unhook this seat belt I can get out.

14 Q. Alright.

15 A. But he, he did not realize, I mean, he was in no pain,  
16 he was conscious, he was talking to everyone that, you know,  
17 was there talking to him, and he just, he just didn't  
18 complain at all about pain. And I think probably the motor,  
19 or whatever, was probably sitting on both legs the way it  
20 looked, you know. It wasn't a pretty sight.

21 Q. Alright, now, did you go to the hospital yourself?

22 A. Yes, I did. My son, my youngest son, Carl Sweatman, and  
23 I drove to Columbia and we kept calling and keeping in  
24 contact with Aubrey, and - - -

25 Q. Who arrived first, you or Aubrey?

1 A. Pardon me?

2 Q. Who arrived at the hospital first, you or Aubrey?

3 A. My son and myself.

4 Q. Before Aubrey?

5 A. Uh-huh.

6 Q. Okay.

7 A. And we got to the emergency room and we asked for Mr.  
8 Alexander, and they said, he's gone to trauma.

9 Q. Okay.

10 A. So, we asked directions and they gave us directions, and  
11 we went up to the trauma unit.

12 Q. Were you permitted to see him?

13 A. Yes, sir, and if I could back up a minute, when --  
14 Pattie Walls was on the phone at the time the door bell was  
15 ringing, - - -

16 Q. Yeah.

17 A. And - - -

18 Q. That's the witness who testified earlier today?

19 A. Yes. He had asked her to call me. I figured because I  
20 knew he had a pacemaker and what medications he was on, and  
21 you know, all this kind of stuff, that I could be of help  
22 there. So, anyway, he doesn't remember this he said, but he  
23 told Pattie Walls to call Nine One One, he remembers that,  
24 but, and he said, and call my wife, Elmira Sweatman.

25 Q. Y'all never have been married though?

1 A. No, sir.

2 Q. Okay.

3 A. And, but it helped out in the future, because when we  
4 got to the trauma unit and we walked over to the desk and  
5 the young lady said, ma'am, -- of course, you know, we were  
6 all nervous, the young lady said, ma'am, who are you here to  
7 see? And I said, well, tonight my husband, Aubrey  
8 Alexander.

9 Q. Now, you -- I've got to tell you, that can have serious  
10 consequences in the State of South Carolina, now, so - - -

11 A. Yeah, well, anyway, it was that night.

12 Q. So, don't go around saying that unless you mean it.

13 A. It worked that night.

14 Q. But it got you in the room?

15 A. Yes, sir.

16 Q. Alright. And what did you observe when you saw him in  
17 the room there?

18 A. Well, they had him covered with a sheet, and his  
19 shoulders and head, I would say, was propped up higher than  
20 the rest of his body. And my son, Carl, kind of stood  
21 behind the stretcher, and I stood to the side talking to  
22 him. And I kept asking him was he in any pain, and he kept  
23 telling me, no. He said, I don't feel a thing. And then my  
24 son came around and he said, Bubba, you're here, too? And  
25 then, it was like five minutes, Aubrey walked in. And I

1 just proceeded to give Aubrey all of his dad's personal  
2 belongings like his wallet and stuff like that.

3 Q. Did you, were you able to observe any of his injuries  
4 directly?

5 A. Yes. I told my son to keep talking to him, and I walked  
6 around the stretcher, and I pulled the sheet up, and his leg  
7 was just split open like a water melon, which I had already  
8 been told by the EMS before they loaded him in the ambulance  
9 that he would probably lose that foot.

10 Q. Alright. But he went to surgery that night?

11 A. Yes.

12 Q. And how has he done since the surgery?

13 A. Well, when he left Columbia and was transferred to MUSC,  
14 and then went to rehab - rehab is the best thing in the  
15 world for anybody, I would recommend it, he started doing  
16 real well. And when he got home I went over and just kind  
17 of put things in easy reach for him, you know, so he could  
18 start. First, I prepared some meals for him so he could  
19 start, you know, cooking and doing his own thing.

20 Q. But before he came home did you visit him in the  
21 hospital in Columbia?

22 A. I think I visited him about four times in Columbia.

23 Q. How about in Charleston?

24 A. In Charleston I probably, in MUSC I probably would say  
25 three times a week if not four, and on the weekend.

1 Q. And how about at the rehab facility?

2 A. At rehab it was at least three times a week, and once on  
3 the weekend, because he would always want me to come one day  
4 and have lunch with him during the week.

5 Q. Alright, now, can you, very quickly, because it is  
6 Halloween, we need to close this down, can you just tell the  
7 jury, if you would, the before and after picture of Mr.  
8 Alexander that you observed?

9 A. Well, when I met this man he was more fun than an  
10 Eighteen year old. Like I say, we went out dancing, we went  
11 out and ate supper together, we fished together, we camped  
12 together, we hunted together, we had family cook-outs,  
13 family get togethers just about every holiday that came  
14 about which his son's already told you, he is a good cook,  
15 and he is a good supervisor. But we always had fun whatever  
16 we did.

17 Q. Now, how about these days?

18 A. These days he does very little driving. Sadly to say,  
19 we do no dancing, we, he does no fishing, no hunting, he  
20 loves to watch the ball games on T.V., and I would say about  
21 now that's one of his highlights in life is watching the  
22 ball games on T.V., and usually, Friday and Saturday nights  
23 we go out to eat. And occasionally he'll come to church.

24 Q. Do you know who he pulls for?

25 A. Duke.

1 MR. TINKLER: Thank you, I have no further questions.

2 THE COURT: Anything on cross?

3 MR. KULMALA: Just a few.

4 THE COURT: Mr. Kulmala, your witness.

5 (NOTE: Blank lines on this page do not indicate any part of  
6 record has been omitted. Headers on testimony pages and  
7 hard page breaks between testimony are now required by the  
8 Court. See next ensuing page for sequential continuation of  
9 record.)

1 ELMIRA SWEATMAN - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Good afternoon, Ms. Sweatman.

4 A. Good afternoon.

5 Q. I believe I met you when we took your deposition back in  
6 Two thousand and ten?

7 A. Yes, sir.

8 Q. And you didn't have that uncomfortable device at that  
9 time?

10 A. No, sir.

11 Q. That looks quite uncomfortable.

12 A. It is, but three more weeks I'll be out of it.

13 Q. I'll try not to prolong your misery through any long  
14 questions. You mentioned when you met Mr. Alexander, I  
15 think you said he was more fun than an Eighteen year old?

16 A. Yes.

17 Q. And it was about Eighteen years ago that you met him?

18 A. Probably so, Ninety-three, yeah, yeah.

19 Q. Okay. About Eighteen years. So, he would have then  
20 been what, Sixty-one or Sixty-two?

21 A. Yes, sir.

22 Q. When I was questioning his son, one of the things I was  
23 asking about was the effects that time has on, on our  
24 bodies, all of us. Do you remember that questioning?

25 A. Yes, sir.

1 Q. I mean, do you agree with me that none of us are as  
2 young as we were Eighteen years ago?

3 A. Yes, sir.

4 Q. And some of the things that Mr. Alexander no longer does  
5 or no longer is able to do, do you agree that some of those  
6 things would come about as a result of the aging process  
7 generally?

8 A. I don't know. He's pretty tough.

9 Q. Okay.

10 A. He's very independent, he's a touch guy. A lot of  
11 people thought he would never come out alive. I just kept  
12 telling him, hang in there, you can do it, you can do it,  
13 you know. You're a man of God and God is leaving you here  
14 for something.

15 Q. And he's made a remarkable recovery, hasn't he?

16 A. Yes, sir, he has. But he went through a hard, hard time  
17 to get where he is today.

18 Q. But time takes its toll on all of us at some point in  
19 time, both mentally and physically?

20 A. Yes, sir.

21 Q. And although you've noticed some changes, and some  
22 changes may be more obviously related to the accident than  
23 others, right?

24 A. I would say, the changes that's made since the accident  
25 is to his body, his knees, his shoulders, his hands, I think

1 arthritis has really set in since the accident. As far as  
2 mind-wise, you heard all the dates that he read off. I'm  
3 not going to say that I don't have dementia or he has  
4 dementia or doesn't, we all, as you just said, as we get  
5 older, forget sometime, or we just simply do the opposite  
6 sometimes than what we're supposed to do, with age.

7 Q. Time is an equal opportunity employer?

8 A. Yes.

9 Q. And, and we all have to accept in some way or another  
10 the effects of time?

11 A. Right.

12 Q. And you mentioned arthritis, and there's more arthritis  
13 now than he had had prior to the accident, right?

14 A. Oh, definitely, definitely. I mean, he never complained  
15 of arthritis at all until the accident had happened.

16 Q. But he's also Eighty years old now, correct?

17 A. Well, that's true, and with being that old, whether he  
18 had the accident or not, I would think he would have  
19 arthritis, but I'm sure the accident has caused it to be  
20 worse, or come sooner.

21 Q. But you wouldn't be able to say with any degree of  
22 medical certainty, because you're not a doctor, so you  
23 wouldn't be able to establish that the accident caused this,  
24 or the accident caused that?

25 A. No, sir.

1 MR. KULMALA: Thank you, that's all the questions I  
2 have.

3 THE COURT: Thank you. Anything on redirect?

4 MR. TINKLER: Nothing further, Your Honor.

5 THE COURT: Alright. Thank you, Ms. Sweatman, you may  
6 step down.

7 What time do y'all want to start back in the morning?

8 MR. KULMALA: Nine:thirty.

9 MR. TINKLER: Nine, Nine:thirty, whatever you want to  
10 do.

11 THE COURT: Okay. I'll split the difference,  
12 Nine:fifteen.

13 Alright, Ladies and Gentlemen, we're going to take a  
14 break from the testimony today. I'd ask y'all to be back in  
15 the jury room at Nine:fifteen. Again, y'all know what I'm  
16 going to tell you now, you have not heard all of the  
17 testimony, you cannot talk about this case yet. Okay? And  
18 I'll see y'all tomorrow morning at Nine:fifteen and hope  
19 y'all have a good - - -

20 MR. KULMALA: Judge, - - -

21 THE COURT: Yes, sir.

22 MR. KULMALA: Could we go to Nine:thirty? My  
23 paralegal's had a death in the family and I've got just one  
24 person helping me with all this.

25 THE COURT: Oh, yeah, no problem. Nine:thirty. Y'all

1 be back in the jury room -- is that going to be good enough  
2 for you?

3 MR. TINKLER: Nine:thirty will work.

4 THE COURT: Okay. Nine:thirty in the morning, be back  
5 in the jury room. Again, have a happy Halloween, and don't  
6 talk about this case among yourselves or with anyone else.  
7 Okay? Thank y'all.

8 (Whereupon, the jury leaves  
9 the courtroom for the day  
10 and the following takes place  
11 out of the presence of the jury.)

12 THE COURT: Mr. Kulmala, if you need to -- Nine:thirty  
13 is fine?

14 MR. KULMALA: That's fine.

15 THE COURT: Okay. Alright.

16 (Recess for the day.)

17 DATE:

18 NOVEMBER 1, 2011

19 THE COURT: Is the plaintiff ready to proceed?

20 MR. HUTTO: Yes, sir.

21 THE COURT: Is the defense ready to proceed?

22 MR. KULMALA: The defense is ready.

23 THE COURT: Okay. Alright, I'm going to call the jury  
24 on out, then.

25 MR. HUTTO: Your Honor, - - -

1 THE COURT: Wait.

2 MR. HUTTO: We are ready to proceed but we're going to  
3 take up a matter or two with you.

4 THE COURT: Okay.

5 MR. HUTTO: One is, we have the, we'd like to pass up  
6 to you the mortality tables. Plaintiff is an Eighty year  
7 old male, seven point four nine years as to the number left.  
8 I'll hand it up. I don't know if it's your position, we  
9 need to mark that as an exhibit, and we think it's just a  
10 jury charge but - - -

11 THE COURT: Yeah. And usually, I just make it as a  
12 jury charge.

13 MR. HUTTO: Right.

14 THE COURT: I am happy to see the life expectancy after  
15 Eighty, though, you know, as I know Mr. Alexander is.

16 MR. HUTTO: Another thing, Your Honor, we're about to  
17 publish the deposition of the doctor and we want to pass up  
18 the original, I thought you would want to follow along with  
19 the text.

20 THE COURT: Okay. Alright, sir, thank you. Okay.  
21 Anything else?

22 MR. HUTTO: No, sir, other than that I think we're  
23 ready.

24 MR. KULMALA: With respect to the video deposition of  
25 the doctor, I do have two objections toward the end that

1 were objections just placed on the record, and, you know, I  
2 believe it would be appropriate that we consider and obtain  
3 a ruling on the objections.

4 THE COURT: Okay.

5 MR. KULMALA: And -- I'm getting my copy -- they occur  
6 on Mr. Tinkler's redirect when he posed a fact scenario and  
7 asked the doctor concerning - - -

8 THE COURT: What page are you on?

9 MR. KULMALA: I'm trying to get to that page. Page  
10 Forty-one, yeah, at the top of Forty-one. And the basis of  
11 my objection on that is, is, one part of it doesn't make too  
12 much difference, the assumption is driving a Ford F-One  
13 Fifty pickup truck, that, I mean, he was driving a Chevy, I  
14 think he said Cheyenne or Silverado, but also, the, he's  
15 asking for an impression that the injuries are consistent  
16 with the fact scenario, and we've got a couple of different  
17 velocities that seem to be at play here, and there's no  
18 velocity, no speed of the vehicle mentioned, and I don't  
19 know that there's enough information in that hypothetical or  
20 that situation posed to the doctor for him to be able to  
21 say, you know, I believe that the impact caused the, caused  
22 the injuries that he sustained, especially if we've got the  
23 testimony of Ms. Walls that they were going at the speed of  
24 the tractor and that he accelerated. And it appears Dr., I  
25 mean, Mr. Alexander believes he was doing somewhere in the

1 range of Fifty.

2 THE COURT: Alright. And who wants to -- Mr. Tinkler?

3 MR. TINKLER: Your Honor, I believe that, well first of  
4 all, I thought it was a Ford F-One Fifty, but if it's not -  
5 - -

6 MS. LONG: It was a Chevrolet.

7 MR. TINKLER: Oh, it was? But anyway, I think that's  
8 irrelevant, they're the same sort of pickup truck.

9 I believe all those facts are in evidence. I don't  
10 have to put every fact into evidence, I don't have to put  
11 the speed or the fact that some witness said he was  
12 accelerating. All I was trying to do was get from the  
13 doctor -- and we all know the answer to this question, Mr.  
14 Alexander's bones were broken by this wreck, and I was just  
15 trying to get the doctor to say the injuries were consistent  
16 with that, and he didn't just break them walking around the  
17 house or something. There's nothing objectionable about  
18 that question.

19 THE COURT: Alright, sir. Mr. Kulmala, anything else  
20 you want to add?

21 MR. KULMALA: Your Honor, as I've already stated, I  
22 believe it's inconsistent because it doesn't pose the  
23 velocity of the vehicle.

24 THE COURT: Well, and Mr. Kulmala, I realize it doesn't  
25 say anything about the speed, and speed, there has been some

1 different testimony about the speed, but as far as not  
2 letting the question go to the jury, I'm going to overrule  
3 our objection. I will note your objection on the record and  
4 preserve it in case you need to. Okay?

5 MR. KULMALA: Thank you, Your Honor.

6 THE COURT: Thank you, sir. Is that the only thing?  
7 Mr. Kulmala, is that the only thing?

8 MR. KULMALA: That's the only objection.

9 THE COURT: Okay.

10 MR. KULMALA: There was actually two objections, but  
11 they're essentially the same core.

12 THE COURT: Okay. Alright. Is that it, are we ready  
13 to go now?

14 MR. TINKLER: Yes, sir.

15 THE COURT: Okay. If you'll bring the jury on in.  
16 (Whereupon, the jury enters  
17 the courtroom.)

18 THE COURT: Good morning, Ladies and Gentlemen, I hope  
19 y'all had a happy Halloween, all treats and no tricks.  
20 Okay, we're getting ready to continue with the plaintiff's  
21 case today. I know I told y'all to be in here at  
22 Nine:thirty, I apologize for running late. We're running  
23 late because I left my glasses at home, so I had to go back  
24 home to get them. So, it's my fault, so I wanted y'all to  
25 know what was holding y'all up. And now we are ready to

1 proceed with the plaintiff's case.

2 Mr. Hutto -- Tinkler? Yes, sir.

3 MR. TINKLER: Your Honor, we conducted the deposition  
4 of Dr. Harry A. Demos in Charleston on January the  
5 Fourteenth, Two thousand eleven. He's an orthopedic surgeon  
6 and was involved in the care and treatment of Mr. Alexander.  
7 We'd like to present that to the jury at this time.

8 THE COURT: Okay. Thank you, Mr. Tinkler.

9 Ladies and Gentlemen of the jury, you are going to see  
10 a video deposition of Dr. Demos. It was taken -- Dr. Demos  
11 was placed under oath and so you are to give it the same  
12 consideration that you would give a witness testifying live  
13 from this witness stand. Okay? And can all of y'all see  
14 the screen? I realize we'll have to probably turn out the  
15 lights somewhat so y'all can see better, but - - -

16 MS. LONG: It will lighten up a little bit.

17 THE COURT: Oh, it will lighten up a little bit?

18 MR. LONG: Yes, sir.

19 THE COURT: Okay, well, then, maybe not. Okay.  
20 Alright.

21 (Whereupon, the videotaped  
22 deposition of Dr. Harry A. Demos  
23 is played to the jury as follows.)

24 VIDEOGRAPHER: We are now on the record. Today's date  
25 is January Fourteenth, Two thousand eleven. The time is

1 approximately eleven:fifteen a.m. This is the videotape  
2 deposition of Harry A. Demos, M.D., taken by counsel for the  
3 plaintiff. This deposition is taken in the matter of Aubrey  
4 G. Alexander, Sr., versus South Carolina Department of  
5 Transportation, State of South Carolina, County of  
6 Orangeburg, in the Court of Common Pleas for the First  
7 Judicial Circuit, Case Number 2009-CP-38-1258.

8 Counsel, please identify yourselves for the record.

9 MR. TINKLER: I'm Paul Tinkler, representing the  
10 plaintiff.

11 MR. KULMALA: I am Pete Kulmala representing S.C. DOT.

12 MS. CANNON: Kelley Cannon representing the South  
13 Carolina Department of Transportation under an under-insured  
14 motorist coverage.

15 VIDEOGRAPHER: Now will the court reporter please swear  
16 in the witness.

17 (Whereupon, Harry A. Demos, M.D.,  
18 being first duly sworn, testifies  
19 as follows:)

20 (NOTE: Blank lines on this page do not indicate any part of  
21 record has been omitted. Headers on testimony pages and  
22 hard page breaks between testimony are now required by the  
23 Court. See next ensuing page for sequential continuation of  
24 record.)

1 HARRY A. DEMOS, M.D., - DIRECT EXAMINATION

2 BY MR. TINKLER:

3 Q. You are Harry A. Demos, is that correct?

4 A. Correct.

5 Q. And what is your occupation?

6 A. I am an orthopedic surgeon at the Medical University of  
7 South Carolina and associate professor of orthopedic  
8 surgery.

9 Q. Where were you born and raised?

10 A. Charleston.

11 Q. And you went to high school in Charleston?

12 A. I went to high school on James Island.

13 Q. And what year did you graduate?

14 A. Nineteen eighty-three.

15 Q. And then you went on to college?

16 A. Clemson.

17 Q. And graduated?

18 A. Nineteen eighty-seven.

19 Q. And from there to medical school?

20 A. Correct, here in Charleston.

21 Q. At the University of ...

22 A. Medical University of South Carolina.

23 Q. Okay. And what year did you graduate from the Medical  
24 University of South Carolina?

25 A. Nineteen ninety-one.

1 Q. Did you specialize in any particular field of medicine?

2 A. I specialized in orthopedic surgery. After medical  
3 school I went up to Boston and did a year of orthopedic  
4 research, did my internship in Boston at Boston City  
5 Hospital and then Carney Hospital before going to  
6 Birmingham, Alabama, for three years for a junior-level  
7 orthopedic trauma fellowship that I did for three years  
8 before coming back to Charleston for my orthopedic  
9 residence.

10 Q. Was that at UAB?

11 A. It was at Carraway Hospital.

12 Q. In Birmingham?

13 A. In Birmingham.

14 Q. Okay. And so you came back to Charleston what year?

15 A. Nineteen ninety-six. Right, I was in residency here  
16 from Nineteen ninety-six to Two thousand.

17 Q. Alright. And after Two thousand, what happened?

18 A. I did an adult reconstructive fellowship, total joint  
19 fellowship in London, Ontario, and then came back on the  
20 faculty at the Medical University in Two thousand one.

21 Q. So have you been on the faculty of the orthopedic  
22 department at the Medical University of South Carolina since  
23 Two thousand one?

24 A. Yes, that's correct.

25 MR. TINKLER: At this point I would proffer Dr. Demos

1 as an expert witness.

2 MR. KULMALA: Expert in what?

3 MR. TINKLER: In the field of orthopedic surgery.

4 MR. KULMALA: I don't have any objection.

5 MR. TINKLER: Alright.

6 Q. Now, we're here today, Dr. Demos, to talk about the case  
7 of Aubrey Alexander. Have you had an opportunity to review  
8 any medical records before your deposition this morning?

9 A. I did.

10 Q. And what records do you have of Mr. Alexander?

11 A. I have a couple of progress notes from when he was seen  
12 originally in our hospital, excuse me, after he was  
13 transferred here. I have a surgery posting slip. I have a  
14 surgical note from the one operation that I did on him. I  
15 have office notes from when he was following up with me in  
16 my office and also a discharge summary from his original  
17 hospitalization here.

18 Q. Okay.

19 A. And I have radiology reports as well. I did not review  
20 all of the radiology reports.

21 Q. After reviewing your records can you tell us when you  
22 first became aware of Aubrey Alexander as a patient?

23 A. I believe the first time I actually met Mr. Alexander  
24 was when he came to my office, which would have been August  
25 Twenty-sixth, Two thousand eight. I was aware that he was

1 in our institution prior to that just from a conversation  
2 that I had with Dr. Doug Norcross, the trauma surgeon here,  
3 who saw me in the hallway of the operating room one day and  
4 told me, "We have got a patient that was transferred down  
5 from Richland that needs to follow up with you after he  
6 leaves the hospital." He was here -- he had already had his  
7 orthopedic injuries addressed at Richland and was here  
8 because of a problem with his GI system, with his ilheus,  
9 and that's why Dr. Norcross was taking care of him then. So  
10 it was basically just a matter of arranging follow-up.  
11 There are two notes from the residents that work on my  
12 service that saw him while he was in the hospital, and I  
13 don't know whether or not another faculty member was  
14 involved with him while he was in the hospital, but I never  
15 personally saw him while he was in the hospital, I just saw  
16 him in follow-up.

17 Q. Okay. Well, can you tell us then what was your role in  
18 dealing with Mr. Alexander?

19 A. Follow-up care of his fractures that were treated in  
20 Richland.

21 Q. Alright. And did you actually perform at any time a  
22 surgical procedure on him?

23 A. I did perform one surgical procedure, just a quick  
24 outpatient operation on Eight/Thirteen/Two thousand eight -  
25 I am sorry, that is incorrect -- February Sixth, Two

1 thousand nine, I did an outpatient surgery to remove one of  
2 the screws from his -- the rod that was in his tibia.

3 Q. Okay. So when you first saw Mr. Alexander then, he had  
4 a rod in his tibia?

5 A. Correct.

6 Q. Can you tell us what the history was, in as much detail  
7 as you are able to give, when he first became your patient?

8 A. From starting at that note and also filling in some  
9 details from the original consult note that was filled out  
10 by the residents, my understanding that he was involved in a  
11 motor vehicle accident on Seven/Twenty-three/Two thousand  
12 eight, had multiple injuries that were treated in Columbia  
13 at Richland Hospital by Dr. Guy, and then was transferred to  
14 the Medical University for his ilheus, for the bowel problem  
15 that he was having. His orthopedic injuries included an  
16 open Grade One femur fracture on the right side, an open  
17 tibia and fibula fracture on the left side, and a proximal  
18 humerus fracture on the right side.

19 Q. Alright. Well, let's -- if you will, demonstrate -- you  
20 have here a skeleton, and if we could pull this skeleton  
21 within view of the camera, or maybe the camera can focus on  
22 that. Can you first show or describe to us what you  
23 understand to be his femur injury, and show us --  
24 demonstrate if possible.

25 A. The femur is the large thigh bone. His femur fracture

1 was on the right side. We'll use this one. It's the large  
2 bone in the thigh. He had a distal, what we call  
3 supracondylar, meaning above -- right above the level of the  
4 knee joint, had a fracture through that area that once again  
5 had violated the skin, was an open injury, according to  
6 these notes.

7 Q. Is that called a compound fracture?

8 A. Used to be. We don't call it anymore because the term  
9 "compound" becomes so misused.

10 Q. Okay.

11 A. A lot of times people will consider comminuted  
12 fractures, highly broken fractures, they will consider those  
13 compound. So we no longer use the term "compound" We call  
14 them open fractures and closed injuries.

15 Q. The bone was sticking through the skin?

16 A. There was a violation of the skin. From what I - yes,  
17 Grade One open. A Grade One open fracture means there is a  
18 small laceration. It is not -- it is caused by -- usually  
19 caused by an inside-out injury, where a small piece of the  
20 bone sticks through the skin, but it's not a Grade Three  
21 fracture like what he had in his tibia where there is much  
22 more soft tissue destruction and visible bone when you look  
23 at it. With Grade One fracture you usually don't see bone  
24 when you are initially evaluating the patient. Once again,  
25 I was not part of that initial evaluation, so I don't know

1 how bad that injury was. All I have is the records that say  
2 Grade One fracture.

3 Q. Alright. Now, you also mentioned a tibia fracture?

4 A. Right. The tibia fracture, the tibia is the bone below  
5 that, and that was on the other side.

6 Q. That was on the -- you have been demonstrating on the  
7 right side.

8 A. The femur was on the right, the tibia was on the left,  
9 and the tibia and fibula -- the tibia is the big bone, and  
10 the fibula is the small bone in the leg, and this was a mid-  
11 shaft fracture, the middle portion. I think it was actually  
12 slightly below the mid-portion. We had a fracture through  
13 both the tibia and the fibula on that side, and that was an  
14 open fracture, Grade Three open fracture, meaning more than  
15 ten centimeters of soft tissue destruction, more exposed  
16 bone. And the tibia is a subcutaneous bone anyway. There  
17 is not a big muscle envelope around the tibia. You can feel  
18 your own tibia in the front of your leg. So the likelihood  
19 of that being an open fracture is a lot higher as opposed to  
20 the thigh, which is completely encased in muscle.

21 Q. Okay. And then you mentioned a fracture of the  
22 humerus, I believe?

23 A. Right.

24 Q. Can you show us where that was?

25 A. The humerus is the large bone in the upper part of the

1 arm, and his fracture was through the top part of that, what  
2 we call a two-part fracture, meaning that it was a single  
3 fracture line through there that stayed relatively non-  
4 displaced. The two fracture parts do not come far apart,  
5 and I do not believe he ever had any surgery on that. I  
6 think that was treated non-operatively with a sling.

7 Q. Okay. And again, he was initially treated for those  
8 fractures in Columbia, you were not directly involved in the  
9 treatment of those?

10 A. Correct.

11 Q. Alright. Now, when you saw Mr. Alexander for the first  
12 time, did you perform a physical exam?

13 A. I did.

14 Q. What did that reveal?

15 A. In addition to his physical, I went through a little bit  
16 of history in that initial note just to try to back up and  
17 find out what he was doing, where he was, what his weight  
18 bearing status, all of those type things were, and outlined  
19 a little bit of what he had done prior to coming into my  
20 office. I said that his right upper extremity had been in a  
21 sling and that he was still in the local nursing home or  
22 subacute rehab facility and coming to me for the first  
23 follow-up.

24 On his initial physical examination his shoulder was  
25 stiff. It would flex forward to about Sixty degrees of

1 forward motion, would come out to the side about Seventy  
2 degrees, and he was a little apprehensive to the range of  
3 motion of that. He had maintained a good range of motion of  
4 both of his knees from about Five to Ninety-five on the  
5 right and One hundred ten degrees on the left. His incisions  
6 were all healing nicely. He had a small area of eschar,  
7 which was some dried tissue, over the right knee incision,  
8 basically a scab is what it is, and that the nerves and  
9 blood vessels in his legs seem to be functioning normally at  
10 that point.

11 Q. Okay. Any other facts you want to tell us about his  
12 physical exam at that time?

13 A. That's all on the physical exam from that date.

14 Q. Okay. And that date again was what?

15 A. Eight/Twenty-six/O-eight.

16 Q. What did you do? What treatment was rendered for Mr.  
17 Alexander, if any, on that day?

18 A. We did get X-rays, and those X-rays already at that  
19 stage, even four weeks out from his injury, showed that he  
20 was already starting to heal, the proximal humerus. It was  
21 making new bone, and it was still in good alignment, which  
22 meant that he could start using it a little bit more. We  
23 could get him out of his sling and start doing some physical  
24 therapy. The femur and tibia fractures remained unchanged  
25 in alignment compared to the X-rays that he had had

1 initially after his surgery was done, but they did not show  
2 any evidence of callus. So the femur and the tibia  
3 fractures, the lower extremity fractures were not starting  
4 to heal yet, but the humerus fracture was, and that's not  
5 unusual. A fracture responds to motion as far as trying to  
6 lay down new bone. It is what we call secondary fracture  
7 healing. When -- if two pieces of bone are moving back and  
8 forth a little bit, they heal faster than if they're  
9 completely rock-stable rigid. That heals with primary bone  
10 healing. And it's a good thing that his humerus started to  
11 heal because the humerus -- the shoulder is very prone to  
12 becoming stiff, so at that point one of our primary goals  
13 was to start getting him moving his arm.

14 Now, the unfortunate thing with all of the stuff, since  
15 he had a broken arm and each of his legs were broken, it was  
16 very difficult to get him ambulating, so one of our initial  
17 goals was to try to get either one of those two fractures to  
18 heal as fast as we could so that we could start getting him  
19 walking.

20 Q. Did you refer him to physical rehab for that?

21 A. He was already -- he was still in the nursing home, so  
22 he was still getting his rehab in the nursing home. So I  
23 made some clarifications to what they were allowed to do. I  
24 said that he needs to remain touchdown weight bearing on the  
25 right lower extremity because of the amount of comminution

1 that he had. That was in his femur fracture. I said his  
2 shoulder was not ready to bear weight yet so that he  
3 couldn't start using his walker yet, so I did not think at  
4 that point he could start becoming ambulatory, but I did  
5 want him to start on range-of-motion exercises for his  
6 shoulder, pendulum exercises, which are just a type of  
7 range-of-motion exercises, and to get rid of the sling so  
8 that he could start moving his arm, and then my plan at that  
9 point was to see him back in four weeks with repeat X-rays  
10 to see if he could start walking.

11 Q. Okay. Now, you mentioned the term "comminution." Could  
12 you define that for us?

13 A. Comminution is when a piece is -- I mentioned that his -  
14 - I mentioned that his tibia fracture was broken pretty  
15 cleanly across, that his humerus fracture was essentially a  
16 two-part fracture, meaning two major pieces. The fracture  
17 of his femur was comminuted, meaning it's broken in multiple  
18 different pieces. So that's the definition of comminution,  
19 is when there are multiple fragments of bone.

20 Q. So your plan on that day was to have him return in four  
21 weeks, you say?

22 A. Correct.

23 Q. And did he return in four weeks?

24 A. He did.

25 Q. What was his condition four weeks later? What date

1 would that have been?

2 A. That was Nine/Twenty-three/O-eight, and at that point he  
3 was still in the nursing home because he was still unable to  
4 walk on his lower extremities.

5 Q. Okay.

6 THE WITNESS: If we could, we need to go off the  
7 record.

8 MR. TINKLER: Alright.

9 VIDEOGRAPHER: We will now go off the record. The time  
10 is approximately Eleven:thirty-one a.m.

11 (Recess)

12 (DIRECT BY MR. TINKLER RESUMES.)

13 Q. Dr. Demos, we were talking before a break about the  
14 visit in September of Two thousand eight. Have you said all  
15 you need to say about that particular visit?

16 A. No. September, Two thousand eight, is -- I think we  
17 just started talking about that. I mentioned he was still  
18 in the nursing home because at that time he was unable to  
19 bear weight. We did do another exam on him. His range of  
20 motion was improving in his shoulder. His X-rays showed  
21 that the fracture from the distal femur was starting to heal  
22 and that the proximal humerus was also healing well. Once  
23 again, the tibia was still slow to heal. So we allowed him  
24 to go to weight bearing as tolerated on both lower  
25 extremities. So that was a big step forward from him to be

1 able to allow full weight bearing and that he could use his  
2 right upper extremities to help with ambulation, meaning he  
3 could use it on a walker or other things like that, so that  
4 would have been a big change at that stage in the game as  
5 far as how much he was going to be able to do with physical  
6 therapy. I said in that note that I expect he will be  
7 discharged from the nursing home soon and he will need to go  
8 to outpatient therapy after that.

9 Q. Okay. To your knowledge, did he in fact go to  
10 outpatient therapy?

11 A. I would assume he did. Sometimes that doesn't happen  
12 the way it should when they leave a nursing home, though.  
13 The way I would know would be to look at my next note.

14 Q. And you saw him again when?

15 A. Eleven/Twenty-five/O-eight.

16 Q. So November Twenty-fifth, Two thousand eight, he came  
17 back to your clinic here at the Medical University?

18 A. Right.

19 Q. Alright. And what, how was he that day?

20 A. He seemed to be doing -- making appropriate progress.  
21 But in answer to your previous question, did he go to  
22 outpatient therapy, although that was my original plan for  
23 him. I said in my following note, "He has been discharged  
24 at home and is getting home physical therapy."

25 Q. Okay.

1 A. So instead of getting outpatient therapy, he was getting  
2 home therapy. He is complaining of stiffness in his right  
3 knee and in his right shoulder at that point.

4 Q. Alright. What treatment did you give that day?

5 A. We re-x-rayed everything. The femur fracture was  
6 healing in good position. He had some arthritis in his  
7 knee, not anything new or acute. The humerus fracture was  
8 healing, but the tibia once again had no evidence of healing  
9 at that stage, so that is when I called it a delayed union  
10 of his left tibia, healed right femur and humerus fractures,  
11 and we started him in outpatient therapy for his knee and  
12 shoulder, told him no restrictions on that. We talked about  
13 doing a procedure called dynamization of his nail, where we  
14 remove one of the screws and allow it to collapse, but we  
15 didn't want to do that until after the holidays, which I  
16 felt was appropriate because usually tibia fractures heal a  
17 lot more slowly than other fractures, especially the open  
18 tibia fracture, so there was no harm in letting him wait a  
19 little bit longer to see if it would heal on its own. So my  
20 plan for him was to see him back after the holidays and see  
21 where we stood. And we did -- I'm sorry.

22 Q. Did you see him in early Two thousand nine?

23 A. Yes. We did also get him in electrical bone stimulator  
24 to try to increase the amount of callus, the amount of  
25 healing of that tibia fracture. I saw him back on January

1 Twelfth. He was still having pain in his left leg. The  
2 fracture did not seem to be healing, still had the arthritis  
3 in his right knee, still had the stiffness in his right  
4 shoulder. The shoulder and the leg seemed to be the biggest  
5 issues at that point. X-rays, once again, showed that he  
6 had arthritis in his knee but that the fracture had healed.  
7 He did not have any more healing of the tibia fracture  
8 despite the use of the stimulator, so we talked about doing  
9 surgery to remove that screw and help to stimulate that to  
10 heal. Continued along with physical therapy, and I injected  
11 his shoulder with some DepoMedrol to help with the pain and  
12 stiffness he was having there.

13 Q. What is DepoMedrol?

14 A. It's an anti-inflammatory. It is cortisone. You hear  
15 about people getting cortisone injections. We gave him a  
16 cortisone injection in his shoulder.

17 Q. Alright. To your knowledge, did that give some relief to  
18 Mr. Alexander, or do you know?

19 A. I didn't really talk about it a whole lot in the next  
20 visit because we went from that visit to the operating room  
21 to take out the screw, and then by the time he came back we  
22 were focused more on the tibia than we were on the humerus,  
23 but I didn't -- the fact that I didn't mention it a whole  
24 lot in my whole note kind of makes me think that we didn't  
25 worry about it a whole lot.

1 Q. Okay. So you say he went from that visit on January  
2 Twelfth, Two thousand nine, directly to the operating room?

3 A. Well, no. I mean, he had that done -- I think we talked  
4 about the date on that earlier -- February Sixth.

5 Q. Okay. February Sixth is when you did the surgery, and  
6 the surgery was to take out the screw, I believe you said?

7 A. It was just an outpatient procedure just to remove one  
8 screw.

9 Q. After -- did you see him after you operated on him on  
10 February Sixth?

11 A. I saw him on February Twenty-third, and his chief  
12 complaint at that point was pain in his leg. He wasn't  
13 really worried about his shoulder a whole lot because the  
14 leg was bothering him so much. And the reason why the leg  
15 was bothering him is -- we spent a long time talking about  
16 this -- is that it was doing what it was supposed to do.  
17 The fracture had not united together, so by taking out one  
18 of the screws, what we were allowing it to do was, allowing  
19 it to collapse on itself so that the two pieces -- the two  
20 parts of the bone could be in good opposition to each other.  
21 Now, it still had the rod going down the inside, so it  
22 wasn't going to move away, but by walking on it, you  
23 compress that bone together and help stimulate it to heal,  
24 and when he walked on it, it hurt. So, his big problem when  
25 he came back on the Twenty-third was he was having a lot of

1 leg pain, and we spent a long time talking about that, what  
2 it was supposed to be able to do. I did not get X-rays at  
3 that point. He is allergic to a lot of pain medicines,  
4 Tylenol and codeine derivatives, so we had a little bit of  
5 trouble getting him on a good pain medicine to be able to  
6 control that, but, I mean, his shoulder wasn't the big  
7 issue. It was really the leg at that point.

8 Q. Okay. Now, when did you next see him after February  
9 Twenty-third?

10 A. March Twenty-third, Two thousand nine. I said the pain  
11 he was having last time has dramatically improved. He is  
12 walking with a cane outside of his house, doesn't use his  
13 cane at home. Still has some tenderness in his fracture  
14 site. Still has some tenderness where the nail went in.  
15 There was no prominence of the nail. The X-ray showed that  
16 the fracture did indeed collapse a couple of millimeters  
17 like it was supposed to, still had not healed, but it was  
18 collapsed and in a better position to heal. He was using  
19 the bone stimulator. He was complaining of stiffness and  
20 pain in multiple joints, shoulders, elbows, hands, wrists,  
21 knee, and he was due to see a rheumatologist in the near  
22 future about that.

23 Q. Okay. So after March Twenty-third, what happened with  
24 respect to his course?

25 A. June Fifteenth, no long has any pain in the tibia but

1 does use a cane because of his arthritis in other joints.  
2 He has seen Dr. Nussbaum and had injections in his knees and  
3 shoulders.

4 Q. Is Dr. Nussbaum a rheumatologist?

5 A. Rheumatologist, correct. He walked with a slow  
6 shuffling gait. Very apprehensive to me shaking his hand  
7 because of the arthritic pain he was having there. Appeared  
8 depressed, very tearful during the visit. X-rays of his  
9 tibia showed that it was in good alignment, there has been  
10 some collapse and a little bit of callus formation, meaning  
11 that was starting to heal. I told him to stay on the bone  
12 stimulator, follow up with Dr. Nussbaum for his arthritis,  
13 see his primary care doctor about his depression, and I  
14 scheduled him to come back in a year for a final set of X-  
15 rays.

16 Q. Okay. Did he come back to see you after June of Two  
17 thousand nine?

18 A. Came back four months later because he started having  
19 pain in his leg again, worse when he walked. X-rays looked  
20 identical to the other ones. He was starting to form some  
21 callus. He was frustrated that he still had pain. I told  
22 him a significant amount of pain -- you know, some of the  
23 pain could be from the fact that he had an open fracture,  
24 but it could be painful because it may not have completely  
25 united yet. We talked about doing another operation to do

1 either a bone graft or an exchange nailing, but neither he  
2 nor I were enthusiastic about that. He decided he was just  
3 going to keep dealing with it, keep walking on it, which is  
4 what I advised him to do. And after that, he came back in  
5 June for that one-year visit that I had talked about.

6 Q. That was June of Two thousand ten?

7 A. June of Two thousand ten, for what would have been my  
8 final visit with him.

9 Q. So you, as I understand it, did not see him between - -  
10 -

11 A. October and June.

12 Q. --- October of Two thousand nine and June of Two  
13 thousand ten?

14 A. Correct.

15 Q. What was his condition June of Two thousand ten?

16 A. His chief complaint was bilateral knee pain as well as  
17 multiple other joints, including his elbows, shoulders, and  
18 hands. Has been evaluated by Dr. Nussbaum. Has been on  
19 Prednisone. Did not have rheumatoid arthritis. The  
20 injection of his knee, felt that was helping. Once again,  
21 he appeared depressed. His skin was thin, hypersensitive.  
22 Examination of his knees revealed that he was crepitus with  
23 range of motion, indicative of arthritis. We X-rayed his  
24 tibia. It showed that it had completely healed. Okay, so  
25 all of the concerns about the tibia were gone.

1           My impression was multiple traumatic injuries from  
2 motor vehicle accident, including delayed union of the  
3 tibia, which is now healing, and degenerative arthritis in  
4 multiple joints. We talked about the arthritis in his  
5 knees, especially since I do specialize in joint replacement  
6 surgery. We talked about that. He was not interested in  
7 surgery. And to be honest, I think he would have a hard  
8 time getting through knee replacement surgery with his  
9 depression and the pain and all of the other things he was  
10 dealing with. He was going to follow up with Dr. Nussbaum.  
11 That was the last time I saw him.

12       Q. Okay. Now, when I asked you any questions about your  
13 opinions in this case, Doctor, do you understand that your  
14 opinions have to be based upon reasonable medical certainty?

15       A. Sure.

16       Q. And I think you said you were reviewing your notes, and  
17 you said something about a motor vehicle accident. My  
18 question is, do you have an opinion about whether or not the  
19 injuries for which you saw Mr. Alexander and treated Mr.  
20 Alexander were caused by the motor vehicle accident?

21       A. Short of any other explanation that would have caused  
22 them, then yes, I think that's what it is. Obviously, to a  
23 reasonable degree of medical certainty, based on what I  
24 reviewed, yes, it did. That's a difficult question to  
25 answer, but there was no other known event that occurred

1 that could have led to these injuries, as far as I know.

2 Q. Alright. Now, are you able, as of the last time you saw  
3 him, to state what his prognosis was at that time?

4 A. Let me back up a little bit to your previous question.

5 Q. Yes, sir.

6 A. I'm trying to go back and look, and I don't really have  
7 anything -- okay, I do have a note that says he was involved  
8 in a motor vehicle collision on Seven/Twenty-three as a  
9 restrained driver. So, yes, my reasonable degree of medical  
10 certainty is based on the discharge summary from the  
11 hospital. Yes, I do think that's the cause of his injuries.

12 Q. Okay.

13 A. I'm sorry.

14 Q. That's fine. Now, I was asking you, the last time you  
15 saw him was in June of Two thousand ten?

16 A. Yes.

17 Q. And are you able, based on the information in your  
18 records, to be able -- can you state what his prognosis was  
19 as of that date?

20 A. It is variable depending on what the prognosis of what  
21 we are discussing is. The prognosis for healing of his  
22 fractures is all very good because they are all healed.

23 Q. Okay.

24 A. He has normal bone in all of his fractures. The  
25 prognosis from the standpoint of his arthritis and

1 depression and other problems that he is having is pretty  
2 poor. Those things aren't going to get better. So his  
3 overall quality of life, the prognosis is poor, but the  
4 prognosis for the injuries that I was treating should not  
5 deteriorate with time, and those fractures are healed.

6 Q. So you are specifically talking then about the  
7 orthopedic injuries?

8 A. I am talking specifically about the orthopedic injuries  
9 that occurred as a result of what we're discussing. I mean,  
10 his arthritis is technically an orthopedic problem. Okay?  
11 And the prognosis for his knee arthritis without a knee  
12 replacement is not very good, but in my opinion, that's not  
13 related to anything that we're discussing now.

14 Q. Okay.

15 A. So the prognosis for his orthopedic problems encompasses  
16 a lot of things, but the prognosis for the orthopedic  
17 problems that were a result of the accident, specifically  
18 the fractures that we were treating all along, the prognosis  
19 for those is fairly good because they are now healed. They  
20 should not ever become unhealed. There is no increased risk  
21 of fractures or other problems. They were all extra-  
22 articular injuries, meaning they were outside of the joint,  
23 so I don't expect them to lead to ongoing problems or other  
24 things like that. Now, patients with fractures do have  
25 ongoing pain because it is not just a broken bone, it's

1 damage to all of the soft tissues and everything around the  
2 bone.

3 Q. Does that include nerves?

4 A. Yes, nerves and muscles and everything else all get  
5 damaged, especially when you are dealing with open  
6 fractures. So he very well could still have pain from those  
7 particular injuries, but the prognosis for the fracture is  
8 very good.

9 MR. TINKLER: I think I understand your answer. Thank  
10 you, Doctor.

11 Pete, do you have any questions for this witness?

12 MR. KULMALA: I only have a few questions.

13 (NOTE: Blank lines on this page do not indicate any part of  
14 record has been omitted. Headers on testimony pages and  
15 hard page breaks between testimony are now required by the  
16 Court. See next ensuing page for sequential continuation of  
17 record.)

1 HARRY A. DEMOS, M.C., - CROSS-EXAMINATION

2 BY MR. KULMALA:

3 Q. Dr. Demos, my name is Pete Kulmala. I am from Barnwell,  
4 South Carolina. I am representing DOT. I've got just a few  
5 follow-up questions, and I appreciate your taking the time  
6 to explain answers to the questions today, and I think that  
7 will make things fairly abbreviated.

8 I want to make sure that I had the correct number of  
9 visits that you had with Mr. Alexander, and I think your  
10 first visit was August Twenty-sixth of O-eight?

11 A. Yes.

12 Q. Second visit was September Twenty-third of O-eight?

13 A. Yes.

14 Q. Third visit on November Twenty-fifth of O-eight?

15 A. Yes.

16 Q. Fourth visit, January Twelfth of Two thousand nine?

17 A. Correct.

18 Q. And then on February Sixth, you had the nail removal?

19 A. Correct, I had a screw removal.

20 Q. I am sorry, screw removal.

21 A. From the nail.

22 Q. Then the fifth visit, separate from the screw removal,  
23 the fifth visit would have been February Twenty-third?

24 A. Correct.

25 Q. Sixth visit, March Twenty-third?

1 A. Correct.

2 Q. Seventh visit, June Fifteenth?

3 A. Correct.

4 Q. You had another visit, instead of a year later, a return  
5 visit in October of Two thousand nine?

6 A. Correct.

7 Q. And then a final visit in June of Two thousand ten?

8 A. Correct. That's everything that I have documentation  
9 of. I don't believe there were any other visits.

10 Q. Okay. And I want to make sure that I understand, toward  
11 the end of your testimony you were discussing the  
12 differences between orthopedic problems and the injuries,  
13 and I want to understand, the injuries would be the humerus  
14 fracture?

15 A. The humerus fracture, yes.

16 Q. The femur fracture?

17 A. Yes.

18 Q. And then the tibia fracture?

19 A. Correct.

20 Q. And the arthritis or crepitus that was discussed late in  
21 your testimony, you consider that to be an orthopaedic  
22 problem but not derivative of, not related to the injuries  
23 that you were treating?

24 A. Not directly related. You know, there are certainly  
25 circumstances where, you know, when you take somebody that

1 has multiple injuries and their quality of life suffers, and  
2 they deal with chronic pain for a course of a year and those  
3 things, well, their entire affect does change, okay? There  
4 is an amount of post traumatic stress and other things  
5 associated, depression, those type things. And the T.V.  
6 commercial is pretty accurate: there is pain from  
7 depression. Depression is a painful thing. So arthritis  
8 and those things that may have been pre-existing and that  
9 were perfectly tolerable for him, now in a deconditioned  
10 state and a depressed state are no longer tolerable. So,  
11 but those were not the problems that I directly -- said were  
12 directly attributable to his accident, but yes, he could  
13 have had exacerbation of those problems from having to deal  
14 with everything else that he dealt with.

15 Q. But you wouldn't state that there was an exacerbation --  
16 you wouldn't state an opinion of exacerbation of those  
17 problems to a reasonable degree of medical certainty based  
18 on the information that you have?

19 A. I don't have anything to say that he would not have  
20 still had -- he certainly well could have still had the  
21 arthritic problems independent of the accident. I think his  
22 quality of life, okay -- his quality of life and his level  
23 of pain to a reasonable degree of medical certainty is worse  
24 than it would have been otherwise because of the accident.

25 Q. In your examinations during the several office visits,

1 you evaluated or considered his range of motion?

2 A. Correct.

3 Q. And at the conclusion following your last visit of June  
4 of Two thousand ten, what was your assessment of his range  
5 of motion for the shoulder?

6 A. I didn't recheck his range of motion of his shoulder in  
7 June.

8 Q. Had he attained or achieved the range of motion within  
9 normal limits by the time of your last visit?

10 A. In his shoulder?

11 Q. Yes.

12 A. I don't know. I didn't re-evaluate his shoulder at that  
13 point. In fact, I don't think I re-evaluated his shoulder  
14 since the time we did the dynamization of his nail.

15 Q. You don't have any indication of his shoulder range of  
16 motion being unacceptable at any point of your treatment? I  
17 mean, after you had reached a point of - - -

18 A. Well, I have got that he was -- had his -- you know, I  
19 injected his shoulder. He saw Dr. Nussbaum, got his  
20 shoulder re-injected. It would be unusual to have a  
21 proximal humerus fracture treated non-operatively -- it  
22 would be unusual for it to end up with a normal range of  
23 motion, especially as stiff as it was, but I don't have a  
24 lot of indication from my lateral notes, you know, the notes  
25 over the course of the past year, that his shoulders were a

1 significant issue other than when I said he had arthritis in  
2 numerous joints, including his hands, wrists, shoulders,  
3 those type of things.

4 Q. By your January, Two thousand nine, visit, if I  
5 understood your testimony correctly, the focus had gone from  
6 shoulder discomfort, at which time I think that was when you  
7 had injected him with the cortisone, was it January of Two  
8 thousand nine?

9 A. That sounds right, yes.

10 Q. And the shoulder was no longer a focus then, the main  
11 focus was on the tibia?

12 A. Yes.

13 Q. And from January, Two thousand nine, forward, do you have  
14 any indication of problems with the recovery of the -- his  
15 recovery of the injury on the humerus joint -- the humerus?  
16 I'm sorry.

17 A. Yes, June of Two thousand nine, I said he is still using  
18 his cane because of arthritis in other joints, seeing Dr.  
19 Nussbaum, having injections in his knees and shoulders,  
20 still working on his home pulley system for his shoulder  
21 problems. So he was still having some pain at that point,  
22 but that fracture had healed. He was doing what he needed  
23 to do as far as his range of motion. He had an injection  
24 done by Dr. Nussbaum. There really wasn't an additional --  
25 there wasn't anything else I had to offer him on that.

1 Q. Okay. So as of that time, he was doing what he needed  
2 to do as far as his range of motion?

3 A. No, I didn't say that. I said he was doing what he  
4 needed to be doing as far as exercises and those type  
5 things. I never did mention -- I never anywhere said that  
6 he had re-achieved his normal range of motion through those  
7 latter notes.

8 Q. Okay.

9 A. But I didn't re-evaluate it. Okay? I didn't -- you  
10 know, he certainly may have, but I don't know because I  
11 don't have anything to tell you, yes, he has got normal  
12 motion of his shoulder, because I never did re-evaluate him.

13 Q. With respect to the right leg femur injury and the left  
14 leg tibia injury, had you evaluated -- do you use range of  
15 motion for injuries like that?

16 A. Not a great deal, not as much as for shoulder injuries  
17 because both of these injuries were extra-articular. Okay?  
18 These were injuries that were not in the joint. He had  
19 regained a reasonable degree of range of motion earlier, and  
20 I actually -- on my final exam I did check his range of  
21 motion again. Had full extension, One hundred ten degrees  
22 of flexion on the right, One hundred twenty on the left. So  
23 he had regained not the same range of motion that an  
24 eighteen year old would have but a fairly normal range of  
25 motion for a Seventy-nine year old man with knee arthritis.

1 That is a pretty good range of motion on both of those for  
2 the degree of arthritis that he had.

3 Q. I guess that is one of the questions that I have is, at  
4 the time you completed or ceased treating as of June of Two  
5 thousand ten, had you -- or had he reached a point that you  
6 were satisfied with his healing from the fractures that you  
7 had been treating for a person Seventy-seven or Seventy-nine  
8 years old?

9 A. Yes. There was no other additional intervention that I  
10 could have done to make it any better other than the  
11 discussion we had about knee replacement, which is not  
12 something I encouraged him to pursue and not something that  
13 I think is really related to his injuries.

14 Q. Would it be fair to say that with respect to the three  
15 orthopedic injuries that you treated that his healing had  
16 reached a point of -- from your standpoint, from his  
17 treating physician, -- of satisfaction with the healing?

18 A. Yes.

19 MR. KULMALA: I think that's all of the questions that  
20 I have. Thank you.

21 MR. TINKLER: Thank you. I have no further questions.  
22 I appreciate it.

23 (FURTHER CROSS-EXAMINATION BY MR. KULMALA.)

24 Q. One more question, I guess, and that would be, you had  
25 indicated your reference to notes from Palmetto Richland as

1 far as trauma room notes on the cause of his injuries?

2 A. I had mentioned that our discharge summary referenced --  
3 our discharge summary from the Medical University, not my  
4 team but from Dr. Norcross's team, referenced that he had  
5 had these injuries and was originally treated at Palmetto  
6 Richland. I did not -- I'm sure there are notes available,  
7 and they may have even be scanned into our system from the  
8 original trauma evaluation and everything up at Richland. I  
9 didn't reference those. I don't have those available to me.  
10 I don't know what those say.

11 Q. And your testimony today is based on your knowledge as  
12 an orthopedic surgeon, your treating him orthopedically, and  
13 you're not in a position to testify of the nature of the  
14 accident or the actual causation of the injuries other than  
15 that the injuries that you have observed?

16 A. I have no knowledge of the cause of the injuries other  
17 than the knowledge that these are injuries that we  
18 frequently see in high-energy trauma such as fall from a  
19 building or from an automobile accident or those type  
20 things. It's not trip-on-a-curb-and-fall-down type  
21 injuries. Having open fractures, these are high-velocity  
22 injuries. That's the only comment I can make. I don't know  
23 any details of the circumstances as to how he got those.

24 Q. I guess also, if you have no knowledge of the facts of  
25 the cause of the injuries, would it be fair to say you don't

1 have any knowledge of the cause or mechanism of the accident  
2 that Mr. Alexander claims to be injured in?

3 A. I do not know any details about the cause or the  
4 mechanism other than to say that this is a high-energy  
5 mechanism that is consistent with a motor vehicle accident,  
6 among other things.

7 Q. But you have no knowledge of what caused the accident?

8 A. No, I do not. No, I don't.

9 MR. KULMALA: Thank you.

10 (NOTE: Blank lines on this page do not indicate any part of  
11 record has been omitted. Headers on testimony pages and  
12 hard page breaks between testimony are now required by the  
13 Court. See next ensuing page for sequential continuation of  
14 record.)

1 HARRY A. DEMOS, M.D., - REDIRECT EXAMINATION

2 BY MR. TINKLER:

3 Q. In view of those questions, Doctor, I want to ask you a  
4 question. And I want you to assume for the purposes of this  
5 question that Mr. Alexander was driving a Ford F-One Fifty  
6 pickup truck down a country road in Orangeburg County, South  
7 Carolina, and I want you to assume that Mr. Alexander came  
8 into contact with a lawn mowing equipment operated by the  
9 Department of Transportation, and I want you to assume that  
10 as a result of that collision, Mr. Alexander's pickup truck  
11 went off the road from left to right and lodged in a ditch  
12 against a pine tree, and based on those assumptions, can you  
13 state whether the injuries for which you treated Mr.  
14 Alexander are consistent with that sort of motor vehicle  
15 accident?

16 MR. KULMALA: I object to that question.

17 A. Should I answer anyway?

18 Q. Yeah, go ahead.

19 A. Can I ask for some clarification?

20 Q. Sure.

21 A. You said he went from left to right. You mean he, based  
22 on these assumptions, is one of the assumptions that his  
23 vehicle - - -

24 Q. Crashed into - - -

25 A. --- went to the left side, went to the right side, and

1 which side of the vehicle struck the tree?

2 Q. Okay. I want you to assume that the front of the  
3 vehicle struck the tree on the right side of the roadway.

4 A. Okay.

5 Q. And my question is, is it consistent with that?

6 A. It is all consistent. It is consistent with numerous  
7 different things that can happen inside of a vehicle. There  
8 is no -- I mean, judging from the amount of energy that was  
9 imparted on his right side of his body versus what was on  
10 his left side of his body, I would say the majority of the  
11 energy absorbed by the car, the majority of the energy that  
12 he absorbed was more on the right side of the vehicle, and  
13 that is why I was asking was it an offset crash, did the  
14 right side of the vehicle hit the tree, because on -- to my  
15 -- my opinion about the mechanism is that the initial impact  
16 occurred to the right side of his body. Whether that is his  
17 body getting flung against the console or a dashboard or  
18 whatever else, the injuries on the left side did not seem as  
19 severe, but that is where he had the Grade Three open  
20 fracture, meaning there was something that caused a  
21 relatively large laceration on that side as well. It is all  
22 consistent with a frontal collision. It is consistent with  
23 a rollover. It is consistent with a lot of things that can  
24 happen inside the compartment of a vehicle. It was not  
25 consistent with an ejection because of the lack of upper

1 extremity trauma other than the shoulder.

2 Q. Yeah, and I want you to assume in that question, too - -

3 -

4 MR. KULMALA: Let me clarify because his answer got  
5 onto your question, and I didn't have an opportunity to put  
6 in an objection. I just want to make sure it is clear that  
7 my objection goes from the first question of these  
8 assumptions.

9 MR. TINKLER: I understand you object to the question.

10 Q. Again, I want you to assume that Mr. Alexander had to be  
11 extracted from the vehicle. He was not ejected.

12 Q. Okay. So, assuming all -- so if the question is  
13 assuming all of these things happened, are the injuries  
14 consistent with that? The answer is, yes.

15 Mr. TINKLER: Okay. Thank you. That's all I have.

16 MR. KULMALA: I don't have any further questions.

17 MR. TINKLER: Alright. Well, we appreciate you coming  
18 back to work after finishing your main job.

19 DR. DEMOS: I appreciate y'all being patient and eating  
20 a cafeteria lunch.

21 MR. TINKLER: No problem.

22 VIDEOGRAPHER: This concludes the videotape deposition  
23 of Dr. Harry Demos. The time is approximately One:fifty-two  
24 p.m. We are now off the record.

25 (End of videotaped deposition

1 of Dr. Harry A. Demos.)

2 THE COURT: Alright, Mr. Hutto, is the plaintiff ready  
3 to call it's next witness?

4 MR. HUTTO: We are.

5 THE COURT: Okay.

6 MR. HUTTO: We would call Danny McDaniel.

7 THE COURT: Okay. You know how to do this, don't you?

8 WITNESS: Yes, sir.

9 THE COURT: Alright, sir. The Clerk's going to swear  
10 you in.

11 CLERK: State your name for the record, please?

12 WITNESS: Danny Wayne McDaniel.

13 (Whereupon, Danny Wayne McDaniel  
14 is duly sworn.)

15 CLERK: Thank you.

16 THE COURT: Alright, Mr. McDaniel, if you'd get  
17 comfortable, please, sir.

18 WITNESS: Yes, sir.

19 THE COURT: Your witness, Mr. Hutto.

20 (NOTE: Blank lines on this page do not indicate any part of  
21 record has been omitted. Headers on testimony pages and  
22 hard page breaks between testimony are now required by the  
23 Court. See next ensuing page for sequential continuation of  
24 record.)

1 DANNY WAYNE McDANIEL - DIRECT EXAMINATION

2 BY MR. HUTTO:

3 Q. You're Danny McDaniel?

4 A. Yes, sir, that's correct.

5 Q. And Mr. McDaniel, what line of work are you in these  
6 days?

7 A. I'm a licensed private investigator, licensed by SLED  
8 here in South Carolina.

9 Q. Alright. And prior to becoming a licensed private  
10 investigator do you have any background in law enforcement?

11 A. Yes, sir, I'm a retired South Carolina Highway  
12 Patrolman.

13 Q. Okay. How many years did you work for the State Highway  
14 Patrol?

15 A. From Nineteen eighty-nine until Two thousand and two. I  
16 retired medically.

17 Q. Okay. And since that time you've pretty much been in  
18 the line of working for a private investigation company?

19 A. Yes, sir, I took about two days off, and went right back  
20 to work.

21 Q. Alright. And you are licensed by the State of South  
22 Carolina in that capacity?

23 A. Yes, sir, I am.

24 Q. And as a private investigator you are called upon to go  
25 out and look at various things and come back and report back

1 as to what you've found, is that correct?

2 A. Yes, sir, that's correct.

3 Q. Did you have the occasion, at my request, to go in  
4 connection with the DOT to go locate a mower that was the  
5 same dimensions and type that was involved in this accident  
6 on July the Twenty-third of Two thousand and eight?

7 A. Yes, sir, I did.

8 Q. And in your conversations with the Department of  
9 Transportation where did they tell you physically you could  
10 locate that mower that they were going to show you that was  
11 the same kind of mower that was involved?

12 A. At the Aiken DOT section shed in Aiken.

13 Q. Okay. And when you went there did you take some  
14 photographs of the type of mower that was involved in this  
15 accident?

16 A. Yes, sir, I did.

17 Q. I'm going to ask you to look at what's been marked as  
18 Plaintiff's Exhibit Number Six and Plaintiff's Exhibit  
19 Number Seven and tell me if those - - -

20 MR. HUTTO: Pete, I think you've seen these.

21 Q. --- are these photographs that you took?

22 A. Yes, sir, they appear to be.

23 Q. Alright. And would you tell the jury what is depicted  
24 in these two photographs?

25 A. It's the mower deck itself, it's a triple deck mower for

1 the, for the sides, the shoulders of the road, the medians,  
2 the interstate, you know, just various types of grass  
3 cutting that they need to do.

4 Q. Alright. And this is how it was displayed to you at the  
5 DOT section shed by DOT?

6 A. Yes, sir, that's correct.

7 Q. In other words, you didn't put it in this position when  
8 you asked it to see it, this is how they showed it to you?

9 A. This is how, yes, sir, that's correct.

10 Q. Okay. Now, and you photographed it as it sat on their  
11 property over at the Aiken office?

12 A. Yes, sir, I did.

13 Q. Okay.

14 MR. HUTTO: We'd move to introduce these.

15 THE COURT: Any objection?

16 MR. KULMALA: No objection.

17 THE COURT: Alright. Plaintiff's Six and Seven are in  
18 evidence.

19 (Plaintiff's Exhibits Six and Seven  
20 marked and filed.)

21 Q. There are -- in connection with what we asked you to do,  
22 we asked you to take some measurements of the equipment.  
23 Did you do that?

24 A. Yes, sir, I did.

25 Q. And you prepared your own little sketch, and I think

1 we've blown that up. Is this a copy of what's contained in  
2 your own sketch?

3 A. Yes, it is, and I've got the original right here.

4 Q. But, in other words, what's on - - -

5 MR. HUTTO: Can we mark this, please?

6 COURT REPORTER: Plaintiff's Exhibit Fifteen.

7 (Plaintiff's Exhibit Fifteen,

8 Blown up sketch,

9 marked for identification.)

10 Q. Okay. What we've now marked this as Plaintiff's  
11 Fifteen, is this a blow up of the sketch that you actually  
12 sketched out while you were there that day?

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

14 Q. Okay. And so, what -- if you would, just take us  
15 through, how did you calculate these measurements, what were  
16 you measuring and what were the measurements that you  
17 obtained?

18 A. Well, basically, what I did is, I actually measured the  
19 length of the mower itself from the longest point, and the  
20 width of the mower, the width of the mower with the flags  
21 that were on the mower when I went out there, and just  
22 various measurements on the mower.

23 Q. Okay.

24 A. For example, the dimensions of the flags, the tire sizes  
25 on the mower, the height of the deck on the mower, and the

1 two different sides.

2 Q. And that's what you recorded down there?

3 A. Yes, sir, that's correct, that's coming out the bottom,  
4 yes.

5 Q. Okay.

6 MR. HUTTO: We'd move to introduce this into evidence  
7 also.

8 THE COURT: Any objection?

9 MR. KULMALA: No objection.

10 THE COURT: No objection. Plaintiff's Exhibit Fifteen  
11 is in evidence without objection.

12 (Plaintiff's Exhibit Fifteen  
13 marked and filed.)

14 Q. Now, the only other thing I want to ask you, or call  
15 your attention to is, explain -- did you look at actually,  
16 as it relates to the two flags on either side of what, I  
17 guess you would call it the mower deck?

18 A. Yes, sir.

19 Q. Did you look at how they were attached to the mower  
20 deck, the flags themselves?

21 A. Yes.

22 Q. Can you explain that?

23 A. Yes, sir. What I was looking at is, and we actually  
24 took some pictures of it, is the type of device that secured  
25 the flags onto the mower deck. And it appeared to me that

1 it was a piece of square tubing similar to what they use to  
2 put up different signs on the side of the road that was cut  
3 off. It was one inch inside diameter square to two.

4 Q. Alright, and you point to that on this picture?

5 A. That's going to be it right there, right above the flag.

6 Q. How about, since it's kind of far away, how about step  
7 down here by the jury and - - -

8 MR. HUTTO: If that's okay?

9 THE COURT: You may.

10 Q. --- if you would just, we'll show these six, and then  
11 we'll show those. Will you show us that tubing?

12 A. This is a little piece of square tubing right here that  
13 is actually galvanized, you know, it appears that it was  
14 welded onto this mower deck.

15 Q. Same thing on the other side?

16 A. Yes, sir, exactly. And it's a square tubing but it's  
17 got a round dowel type rod, a one inch round dowel rod that  
18 fits down into it.

19 Q. Okay. And let's show these folks over here. Just point  
20 out the same thing?

21 A. This is the little piece of tubing, and it's the same on  
22 both sides, and it's just a piece of square tubing that  
23 looks like it's welded to the mower deck and it's made out  
24 of a galvanized material, and it's consistent with the, some  
25 of the poles they use to put up signs on the side of the

1 road.

2 Q. Okay. And the nature of the staff that the flags are  
3 attached to?

4 A. It's a round one inch wooden dowel, and it's a square  
5 hole, it fits a one inch hole inside that tubing.

6 Q. Alright, sir. -- You can have a seat back. Is there any  
7 type of fastener device or clamp or anything else that keeps  
8 this flag in that socket or does it just slide in and out?

9 A. It just slides in and out. I specifically looked at it  
10 to see if it might have been threaded, sort of like a bolt  
11 or something to tighten down on that flag to keep it in, or  
12 any other device that would hold the flag in, and it was  
13 nothing there. It appears that those holes in that tube  
14 were actually formed when the tube was either molded or  
15 made, or constructed or whatever.

16 Q. But there aren't any holes drilled completely through  
17 the - - -

18 A. The dowel to, like, put a pin in it with a little lock  
19 like you use on some farm equipment, or whatever, there was  
20 nothing there. It's just a round dowel in a square hole.

21 Q. And attached to the dowel is the reg flag?

22 A. Yes, sir, that's correct.

23 Q. Okay. Alright.

24 MR. HUTTO: Now, Mr. Kulmala may have some questions  
25 for you. Thank you.

1 WITNESS: Alright, thank you.

2 THE COURT: Anything on cross?

3 MR. KULMALA: I don't have any questions for this  
4 witness.

5 THE COURT: Mr. McDaniel, thank you, sir, you may step  
6 down.

7 Next witness.

8 MR. HUTTO: I think we might be finished. There might  
9 be one matter we'd like, if we could have a morning break  
10 now?

11 THE COURT: Okay. Alright, I'm sure the jury won't  
12 mind a morning break.

13 MR. HUTTO: Your Honor, may he be excused?

14 THE COURT: Oh, yes, sir, thank you, sir, you may be  
15 excused.

16 Ladies and Gentlemen, we're going to take our mid-  
17 morning break right now. Again, you have not heard all the  
18 testimony in this case, you cannot begin talking about this  
19 case. You can talk about Halloween or upcoming football  
20 games or anything else, but you cannot talk about the  
21 testimony you've heard in this case.

22 Alright, I'm going to excuse y'all and let y'all go  
23 back into the jury room for a while. Thanks.

24 (Whereupon, the jury retires  
25 to the jury room and the following

1 takes place out of the presence  
2 of the jury.)

3 THE COURT: Alright, Mr. Hutto, what's - - -

4 MR. HUTTO: Just one second.

5 THE COURT: Oh, okay.

6 MR. HUTTO: I wanted to do two things, Your Honor. One  
7 is, in their Answers to our Interrogatories they responded  
8 to one of our Interrogatories that no roadway signs were  
9 placed on Highway Four Fifty-three for shoulder grass  
10 cutting that day. In other words, they've admitted that in  
11 their Answers to Interrogatories. I didn't know whether  
12 they would stipulate to a one sentence thing that says, on  
13 July Twenty-third, Two thousand eight, no roadway signs were  
14 placed on Highway Four Fifty-three for shoulder grass  
15 cutting operation, or whether I need to actually read the  
16 question and answer into the record that establishes that.  
17 But I want to get that in through one mechanism or another.

18 MR. KULMALA: If he wants to publish that one sentence,  
19 I mean, you're not talking about making it an exhibit,  
20 you're just talking about publishing it to the jury?

21 MR. HUTTO: I'm just talking about publishing it as a  
22 stipulation, right.

23 THE COURT: Okay.

24 MR. HUTTO: And the other thing, Your Honor, before the  
25 jury comes back then, I would ask that, I just wanted to

1 check with Ms. Harry Dot and make sure we've got all of our  
2 exhibits that we actually marked into evidence. So, I can  
3 do that if we're going to actually take a break right now.

4 THE COURT: Yeah, we will.

5 MR. HUTTO: And I'll do that, and when we come back  
6 we'll, I'll publish this one stipulation and then we would  
7 intend to rest. And so, knowing that, if you want to go  
8 ahead and make our in between motions so we have that done  
9 during this break, that's fine, or if you want to break  
10 again ...

11 THE COURT: If it's alright with Mr. Kulmala, I'd just  
12 as soon go over the motions at that time rather than have  
13 them break, and then we can just go right on into your  
14 testimony.

15 MR. KULMALA: I'm not sure I understand what, are we  
16 talking about doing the motions now or ...

17 THE COURT: Well, after he has reviewed that, unless  
18 you just want me -- I mean, apparently, all they're going to  
19 do is come in, read the stipulation, and then go back out.

20 MR. KULMALA: I just wanted to understand the sequence.  
21 In other words, we're going to get the exhibits lined up and  
22 everything, take a short lawyer break, or whatever, and then  
23 before the jury comes back in we can do our motions?

24 THE COURT: Okay. Is that alright?

25 MR. KULMALA: That's fine.

1 MR. HUTTO: We can do that when we come back.

2 THE COURT: Okay. Alright. I'll give y'all a chance  
3 to go through the exhibits and make sure we've got them all.  
4 Okay? Alright, thank y'all.

5 (Recess)

6 MR. HUTTO: Ms. Harry Dot tells me the only exhibit I  
7 had not actually - - -

8 COURT REPORTER: There's one more that you needed to  
9 show me.

10 MR. HUTTO: Yeah. Okay. The video tape that we played  
11 for the jury had been marked as an exhibit, we had not  
12 placed it into the record. We would like to place the video  
13 tape of the doctor into the record, that's Exhibit Number  
14 Fourteen.

15 THE COURT: Any objection, Mr. Kulmala?

16 MR. KULMALA: No objection.

17 THE COURT: Okay.

18 MR. HUTTO: The other exhibit we had is actually just a  
19 blow up of the front page of the medicals, and it's Exhibit  
20 Twelve, but it's the same numbers that are actually on the  
21 exhibit that's already in evidence, but we'd like to put  
22 Number Twelve into evidence.

23 MR. KULMALA: That's the same thing as was the actual  
24 ...

25 MR. HUTTO: It's identical.

1 THE COURT: Okay. So, Plaintiff's Twelve is in  
2 evidence without objection.

3 (Plaintiff's Twelve and Fourteen  
4 marked and filed.)

5 MR. HUTTO: So, then, for the record, I think we've got  
6 into evidence Plaintiff's One through Fifteen.

7 COURT REPORTER: Yes, sir.

8 THE COURT: I believe that's correct. Okay.

9 MR. KULMALA: I believe the last number I've got was  
10 Fifteen.

11 THE COURT: Alright, and we'll let y'all take a break.

12 COURT REPORTER: Mr. Kulmala, how about your exhibits?

13 MR. KULMALA: I'm going to have probably just one.

14 COURT REPORTER: You want to just wait?

15 MR. KULMALA: I may or may not put it in, I mean  
16 there's a number of photos that would cover that anyway.

17 COURT REPORTER: Okay. I had to ask.

18 THE COURT: Alright, thank you, then we'll take a break  
19 for about ten minutes.

20 (Recess)

21 MR. TINKLER: Your Honor, we've got that all fixed up.

22 THE COURT: We're missing my co-counsel.

23 MR. TINKLER: Let me go see if I can run him down.

24 THE COURT: Mr. Hutto, Mr. Tinkler said y'all have got  
25 all of the exhibits straight. Now, y'all are not going to

1 call any other witnesses, is that correct?

2 MR. TINKLER: We'll put the stipulation in.

3 THE COURT: Right. That's correct.

4 MR. TINKLER: Yes, sir. And then it will be our  
5 intention to rest, so if the Court would like to go into the  
6 arguments at this time.

7 THE COURT: Alright. And so, and just for purposes of  
8 having the trial go smoothly and me having my -- let me go  
9 get my pen. This is one of my days, leave my glasses, leave  
10 my pen. I will eventually be, you know, ready to go. Just  
11 one second.

12 And so, Mr. Kulmala, are you going to be ready, do you  
13 want to argue your motions now?

14 MR. KULMALA: That would be fine.

15 THE COURT: Okay.

16 MR. KULMALA: Just so long as it's preserved at the  
17 appropriate point in the record after the close of the  
18 plaintiff's case.

19 THE COURT: Okay. Well, I'm going to note on the  
20 record, the only thing that he's going to put on the record  
21 right now is just the stipulation. And you are aware of  
22 what the stipulation is and you've agreed to that?

23 MR. KULMALA: That's correct.

24 THE COURT: I think if all the parties agree this is  
25 the appropriate place to do it so that we then don't have to

1 let the jury come in and go right back out.

2 MR. KULMALA: Sure.

3 THE COURT: Then, so we'll note on the record, the  
4 Court's intent is that this is the appropriate place for you  
5 to make your motion.

6 MR. KULMALA: Sure.

7 THE COURT: Oh, yes, sir.

8 MR. HUTTO: We would also like to make a motion, too.

9 THE COURT: Okay.

10 MR. HUTTO: We think, based on the evidence, taken in  
11 the light most favorable to them as the unmoving party, that  
12 it's clear that they violated their own safety guidelines in  
13 not placing the signs out. There is, actually, that's what  
14 the stipulation is going to say when we get back in and read  
15 it, that there were no warning signs out, and the first  
16 witness and Exhibit Number One clearly established that  
17 that's the rule. We think that that's negligence, per se,  
18 when you violate a known safety rule that's promulgated by  
19 the agency in charge of safety on the highways. So, we  
20 would ask for a directed verdict of liability in favor of  
21 the plaintiff.

22 THE COURT: Okay. Alright, Mr. Kulmala, do you want  
23 to address that?

24 MR. KULMALA: Well, first I want to address the  
25 language of the stipulation and say that there's no warning

1 signs out. That can be ambiguous, no road side warnings  
2 placed.

3 MR. HUTTO: It says, no roadway signs were placed. And  
4 the rule says that they're supposed to have, "Mowing three  
5 miles ahead," in the brochure. Right.

6 MR. KULMALA: My concern was, the reference to, no  
7 warnings, make it clear the type of warnings that we're  
8 talking about, because the vehicle had the lights and the  
9 signs, and there's a question about the flag. But, I mean,  
10 it's not that the word, any warnings whatsoever, there  
11 weren't any of those roadside signs placed. And to the  
12 extent counsel refers to negligence per se, I believe that  
13 the highway department is entitled to the benefit of the  
14 statute, I think it's Fifty-six, Five, Eight hundred, which  
15 basically prevents the operation while a DOT vehicle is  
16 working on the road, it essentially prevents the effects of  
17 negligence, per se. I'll have to pull -- I think I've got a  
18 copy of it in my computer, but I think that Fifty-six, Five,  
19 Eight hundred prevents this from being a case of negligence,  
20 per se.

21 And also, with respect to plaintiff's motion, the fact  
22 that absence of roadside warnings has not been demonstrated  
23 to be causally connected to the collision in this case, as a  
24 matter of fact, that would form the basis of the core of our  
25 motion for a directed verdict. And I will address both in

1 my motion if it please the Court.

2 THE COURT: Okay. If you do, I'll let you do that and  
3 then I'll make my rulings on both of them.

4 MR. KULMALA: The defendant would make a motion for a  
5 directed verdict on the portion of plaintiff's case dealing  
6 with negligence for failure to warn. The essence of that  
7 is, as I indicated, there's no evidence of causation. As a  
8 matter of fact, Mr. Alexander in his concluding comments on  
9 the cross-examination indicated that seeing the cloud of  
10 dust and suspecting and believing that it was a mowing  
11 operation, the absence of a mowing ahead sign out on the  
12 roadway prior to, whether a mile or two miles or whatever,  
13 would have had no, would have given him no more information  
14 than he already had, being there, looking at the cloud of  
15 dust, believing it to be a mowing operation. So,  
16 essentially, that deprives or takes out the element of  
17 causation as far as a causing factor. He saw the cloud,  
18 believed it to be mowing, he could see clearly ahead of him  
19 on his edge of the lane, but he recognized -- I'm sorry, he  
20 couldn't see through the cloud and he knows that the right  
21 side of his vehicle went through the cloud. So, you know,  
22 he made his decision with full knowledge that he was  
23 standing, or driving some distance behind a mowing  
24 operation, and so, the absence of the mowing ahead sign is  
25 essentially without effect in causing this accident.

1           With respect to the flag, which is also a part of the  
2 failure to warn, again, toward the end of his testimony in  
3 cross-examination he revealed that he wouldn't have seen the  
4 flag because of the dust. The indication from him was that  
5 there was a large amount of dust well into his lane,  
6 although not directly in front of him, and he would not have  
7 seen the left side warning flag because of the dust. So,  
8 whether the flag was there or not, by plaintiff's own  
9 admission, this is not one of plaintiff's witnesses, this is  
10 the plaintiff saying that the, seeing the cloud of dust,  
11 believing it to be a mowing operation, well, if I had had  
12 that other sign back a mile or so, that wouldn't have given  
13 me anymore information. Lack of causation there, the fact  
14 that he couldn't see the left side flag because of the cloud  
15 of dust, that was also a non-starter. So, as to plaintiff's  
16 case, they are without evidence of causation connecting the  
17 absence of warning signs to causation of the accident.

18           As to the, any other negligence such as the mowing  
19 operation itself, concerning the left rear wing being over  
20 the white line, plaintiffs introduced no evidence of  
21 violation of the standard of care owed by the highway  
22 department for doing that mowing operation. The closest it  
23 comes to, I think, is Page Seven or Eight of the Vegetation  
24 Control Guidelines which indicates that mowing should be --  
25 encroachment should be kept to the minimum extent possible

1 to adequately do the job. So, there's been no evidence of  
2 any violation of the standard insofar as the mowing. And  
3 these have to be looked at as two separate, I believe they  
4 have to be looked at as two separate cases. The failure to  
5 warn case doesn't have causal connection. And then, as to  
6 negligence in the mowing operation itself, there's been no  
7 showing whatsoever of the, of the standard of care that was  
8 to have been breached by the highway department. And on  
9 this subject I've got a number of case, some of them are  
10 cited in my charges, I'll hand up to the Court, going from,  
11 I think, a Nineteen Sixty-three Taylor case up to Two  
12 thousand eleven, a Supreme Court Opinion by Justice  
13 Kittridge, and I put in my Request to Charge, assumption of  
14 the risk, although that's not a separate defense anymore, as  
15 I understand, it's a component part of comparative  
16 negligence. But the essence of all of the cases and the one  
17 that Justice Kittridge wrote states it as a matter of law  
18 that essentially -- I'm sorry, that the Miller versus  
19 Ferrell Gas, and that has to do with a stop sign, and I'm  
20 confident that there are perceived differences between this  
21 situation and a stop sign. The essence of this is, you  
22 don't overdrive your visibility or your sight distance. And  
23 on page three of the Opinion, right before Head Note Four,  
24 Miller's response answers the question accurately, states  
25 the law, if a motorist cannot see what may be approaching

1 from the left while he's stopped at a stop sign, the one  
2 thing a reasonable person does not do is take a chance and  
3 pull out to an area of potential danger in which he cannot  
4 see. That was dealing with a stop sign, but the essence of  
5 the reasonableness rule is, you don't, you don't drive into  
6 or through something that you can't see and you don't know  
7 what you're getting into. And by his own testimony Mr.  
8 Alexander said, it was clear in front of me and, but it was  
9 not, but the cloud was over into his lane and he  
10 acknowledged that the right part of his truck went through a  
11 cloud that he couldn't see through. That is essentially an  
12 admission of contributory negligence. And if you look at  
13 some of these cases, gross negligence on the part of the  
14 plaintiff. So, with that in mind, you know, we move for a  
15 directed verdict as to the failure to warn and on negligence  
16 in the mowing operation itself. The other testimony that  
17 augments and supports this is Ms. Walls. Her testimony was,  
18 she was pretty clear, she absolutely could see the mower,  
19 and from her impression he knew that there was a mower there  
20 because he was, seemed to be following it at the same speed  
21 as the mower was going. And Ms. Walls also said that she  
22 would not get anymore information from a sign placed on the  
23 side of the roadway than was already possessed by her seeing  
24 the mower in front of her. The sign wouldn't tell her  
25 anything she didn't already know. It seemed that Mr.

1 Alexander was quite comfortable, even yesterday in his  
2 testimony, that the cloud wasn't right in front of him, he  
3 could see on his side of the truck, but he acknowledged that  
4 it was a cloud that he couldn't see through on the right  
5 side of the vehicle that he drove through. So, Your Honor,  
6 we would respectfully move for a directed verdict.

7 THE COURT: Okay. Anything in response?

8 MR. HUTTO: Just briefly, we think clearly it's a jury  
9 question, and the difference between what, the stop sign  
10 he's talking about, the stop sign was there. Here the flag  
11 on the side of the mower wasn't there. And so I think  
12 there's a clear distinction there, and it's a question for  
13 the jury.

14 THE COURT: Alright. Well, first of all, with regard  
15 to a directed verdict to the plaintiff about negligence,  
16 per se, in the violation -- no question, I think, that they  
17 didn't place the signs out, but I do think it is a question  
18 of fact for the jury to decide whether or not he knew or  
19 should have known what he perceived about the mower.

20 Likewise, the, it concerns me that the highway  
21 department failed to put out the signs. I realize that  
22 seeing the mower down the road might, he should still be  
23 aware of that. The only thing I can occasion from the  
24 testimony I've heard is that the sign would have, and I  
25 think maybe Ms. Walls said, would have put them on notice to

1 be of a heightened awareness before they went down the  
2 highway.

3 Now even having said that, there's no question that the  
4 mower was there, you know, but I think that again the  
5 decision about the case, about whether there is comparative  
6 negligence in this case or not is a jury question, it's a  
7 fact for the jury to determine. So, I'm denying your motion  
8 for a directed verdict as to both the failure to warn and  
9 the negligence standard. I will be charging that the person  
10 has a duty, the regular rules of the road, and I will review  
11 these to see if there are any other charges that would be  
12 appropriate.

13 MR. KULMALA: Your Honor, with all due respect, - - -

14 THE COURT: Yes, sir.

15 MR. KULMALA: The concluding testimony on cross-  
16 examination, the plaintiff essentially took out any jury  
17 question on that. He said that he would not have known  
18 anything more from a sign on the road -- this is, and I  
19 mean, I can't quote it, I mean, but that was the essence of  
20 his testimony, he would not have known anything more from a  
21 sign on the road than by being behind a cloud of dust which  
22 he believed to be a mowing operation. And with respect to  
23 the flag, he said, I wouldn't have seen the flag because it  
24 would have been inside the cloud of dust. So, Your Honor, I  
25 mean, there's, you know, essentially, the plaintiff is, by

1 his own testimony, taking failure to warn off the table.

2 THE COURT: And I note your argument but I'm going to  
3 stick with my ruling. Okay? And I'll preserve your  
4 objection for the record. Thanks. Okay?

5 MR. HUTTO: We're ready.

6 THE COURT: We're ready? And you're ready to begin  
7 right after that?

8 MR. KULMALA: Correct.

9 THE COURT: Okay, great. Okay, if you'll bring the  
10 jury on out. Thanks.

11 (Whereupon, the jury enters  
12 the courtroom.)

13 THE COURT: Mr. Hutto.

14 MR. HUTTO: Ladies and Gentlemen of the jury panel, the  
15 parties, the plaintiff and the defendant, have agreed to a  
16 stipulation of fact in the evidence. On July Twenty-third,  
17 Two thousand eight, no roadway signs were placed on the  
18 shoulder and we would like that to be in the record.

19 With that, Your Honor, we have no other witnesses at  
20 this time. The plaintiff rests.

21 THE COURT: Alright, Mr. Kulmala.

22 MR. KULMALA: Your Honor, we would call Mr. Holman  
23 Bookhart.

24 (Whereupon, Holman Bookhart  
25 is duly sworn.)

1 HOLMAN BOOKHART - DIRECT EXAMINATION

2 BY MR. KULMALA:

3 Q. Good afternoon, Mr. Bookhart.

4 A. Good afternoon.

5 Q. Mr. Bookhart, where do you work?

6 A. I work for the South Carolina Highway Department.

7 Q. And what kind of work do you do for the Highway  
8 Department?

9 A. I mow grass.

10 Q. Now, the mower that you drive, do you drive that most of  
11 the spring and summer, and then hand clearing in the colder  
12 months?

13 A. Yes, I have.

14 Q. I'm showing you Defendant's Exhibit One, and I want to  
15 ask you if you can recognize the mower that you were driving  
16 back in July of Two thousand and eight?

17 A. Yes.

18 Q. How long have you been driving that mower?

19 A. I think about three years, but not now.

20 Q. So you are not driving the same mower now?

21 A. That one right there is about two years old.

22 Q. What area of the State do you cut grass for the  
23 Department?

24 A. Orangeburg County.

25 Q. Is it all over Orangeburg County or just outside of

1 Holly Hill?

2 A. We go to Berkeley County and turn around. We cut  
3 primary and secondary roads. I basically cut the primary  
4 roads.

5 Q. Have you always had a morning start up ritual?

6 A. Yes. We do preliminary inspection, checking tires,  
7 lights, and I crank up making sure forward lights are  
8 working and head lights.

9 Q. What is the forward lights?

10 A. It is two in front and two in the back. I make sure we  
11 got some -- the equipment -- and I have a mowing sign on the  
12 back of the tractor and I have a mowing sign on the mower.

13 Q. And do you also have a light on there that's amber?

14 A. Something like that.

15 Q. And I can assume you do check the safety equipment on  
16 your mower and your tractor?

17 A. I check it before and after and when I start back. I  
18 got a mirror, rear view mirrors. I can see the tire and I  
19 can see the flag.

20 Q. And do you look at roadway lights in your mirror as you  
21 are cutting the grass?

22 A. Yes.

23 Q. And the flags -- when the mower is down you can see the  
24 flag over to the right, is that correct?

25 A. Yes, sir.

1 Q. And what holds the flags?

2 A. It's a cut -- oh, man.

3 Q. A piece of tubing?

4 A. No, there's no tubing, it's like a little piece of wire  
5 and thing, and we got, it's pushed down in there, and then  
6 we've got to bolt it from the bottom.

7 Q. You have to bolt it from the bottom?

8 A. Uh-huh, to hold it.

9 Q. Okay. And let me ask you this, in the Twenty years you  
10 have been working, grass cutting for DOT, had you ever had a  
11 car or a truck run into the back end of your mower?

12 A. No, sir, it's the first time.

13 Q. In Two thousand eight, July Twenty-third, Two thousand  
14 eight, was the first time?

15 A. Yes, sir.

16 Q. One of things when y'all are mowing, sometimes your left  
17 side is over the white line onto the highway, isn't that  
18 correct?

19 A. Yes, sir.

20 Q. And why is that?

21 A. It all depends on how much room we got on the right  
22 side.

23 Q. Okay. And what is your understanding of how you're  
24 supposed to cut when you have your wheel maybe going over  
25 the white line?

1 A. I don't understand what you're saying.

2 Q. How do you, is it okay under your understanding of DOT  
3 policy for you to have your left wheel over the white line?

4 A. Yes, sir, and I never got no complaints so I assume that  
5 it is.

6 Q. Okay. And that happens not just on Highway Four Fifty-  
7 three, but that happens on many roads when you're cutting  
8 the shoulder?

9 A. Well, like I said, if we don't have Fifteen feet, then  
10 it could be over the white line a little bit. If we've got  
11 Fifteen feet, we're right along the edge of the road.

12 Q. Well, what happens if you go further to the right when  
13 you are on Four Fifty-three?

14 A. Then I might as well be in the ditch, then I would have  
15 been kicking up dust. That right wing would have been  
16 kicking up dust then.

17 Q. So, farther to the right you get into a ditch line?

18 A. Yes, sir.

19 Q. Do you remember when you got, when your tractor was hit  
20 by Mr. Alexander's vehicle?

21 A. Yes, sir, somewhat.

22 Q. Tell the jury what you remember as far as how it  
23 happened?

24 A. I was, like, just cutting down the road, and all of a  
25 sudden I felt when it hit the wheel, and then he fish tailed

1 in front of me, and then he ran off the road into the ditch.

2 Q. Did you see him in the mirror before he hit?

3 A. No, sir.

4 Q. And at that time -- let me ask you this, had you  
5 recently looked in your rear view mirrors concerning  
6 roadway, white line, and the reg flag?

7 A. No, sir.

8 Q. How, when was, when did you last know that your red flag  
9 was present on the left back wing?

10 A. Maybe five or six minutes before that.

11 Q. Okay. And you hadn't done anything to take the flag  
12 off?

13 A. No, sir.

14 Q. And about how far over the white line, I believe you  
15 said you could look at the mirror and see where your mowing  
16 deck is as to the white line?

17 A. Yes, sir.

18 Q. About how far was your mowing deck over the white line  
19 the last time you looked before the accident?

20 A. About a foot.

21 Q. Okay. And what's the mowing speed when you're actually  
22 cutting, how fast does your tractor move?

23 A. About three to four miles per hour.

24 Q. Three to four miles per hour?

25 A. It depends on how thick the grass is.

1 Q. Can you, can you mow the shoulder running Fifty miles an  
2 hour?

3 A. No, sir.

4 Q. And can you cut the shoulder running Twenty-five or  
5 Thirty miles an hour?

6 A. No, sir.

7 Q. So, it all depends on the thickness of the grass, about  
8 three miles an hour?

9 A. Three miles per hour.

10 Q. You said that the left wing was about a foot over the  
11 white line the last time you looked?

12 A. Yes, sir.

13 Q. Is that, is that like the smallest amount you could be  
14 over the white line at that point and still be able to cut  
15 the grass properly?

16 A. Yes, sir.

17 MR. KULMALA: Thank you, that's all the questions that  
18 I have.

19 THE COURT: Cross-examination.

20 MR. HUTTO: Thank you.

21 (NOTE: Blank lines on this page do not indicate any part of  
22 record has been omitted. Headers on testimony pages and  
23 hard page breaks between testimony are now required by the  
24 Court. See next ensuing page for sequential continuation of  
25 record.)

1 HOLMAN BOOKHART - CROSS-EXAMINATION

2 BY MR. HUTTO:

3 Q. Good morning, Mr. Bookhart, how are you doing today?

4 A. Alright.

5 Q. This was your regular routine as far as one of your main  
6 duties at the highway department in the season when the  
7 grass was growing to cut the grass, is that right?

8 A. Yes, sir.

9 Q. Okay. And on that day you were going to cut the grass  
10 between Eutawville and Holly Hill on Four Fifty-three?

11 A. Yes, sir.

12 Q. You had cut that road before?

13 A. Yes, sir.

14 Q. Okay. And the, when you started that morning in your  
15 operation, did you put a sign up that said, mowing three  
16 miles ahead, or mowing ahead, or anything like that on the  
17 side of the road?

18 A. No, sir.

19 Q. Okay. And now, you've done that before, on other  
20 occasions you have put the sign up before?

21 A. On the interstate.

22 Q. Okay. It doesn't take a long time to put the sign up?

23 A. No, sir.

24 Q. Okay. But on that morning you did not put the sign up?

25 A. You wouldn't put the sign out there.

1 Q. Okay. And then, as far as your cutting the grass, if  
2 you can get all the way off the road without being in the  
3 ditch, basically, your tire will be right up along the edge  
4 of the pavement?

5 A. Yes, sir.

6 Q. But if there is, sometimes there might be like a speed  
7 limit sign or something, you've got to go around?

8 A. Yes, sir.

9 Q. Sometimes there might be a tree or a limb sticking out  
10 and you've got to go around?

11 A. Yes, sir.

12 Q. Sometimes the ditch bank actually comes closer to the  
13 road and you've got to move over, is that right?

14 A. Yes, sir.

15 Q. So, as you're going down the highway, from behind, you  
16 might be totally, with the wings down, you might be totally  
17 off the road, you might have to drift into the road, get  
18 back off the road, go some more, move back over, get back  
19 over, that's just how you have to do it to cut the grass on  
20 the side of the road, is that right?

21 A. Yes, sir.

22 Q. Okay. Now, you make that decision as to whether or not  
23 to move over to the left or not, based on what you see  
24 happening on the right side of the, where the mower blades  
25 are going to be, because that's dictating how far over

1 you've got to go, is that right?

2 A. Yes, sir.

3 Q. So, for the most part as you're driving this tractor  
4 you're having to look -- I know you've got to look straight  
5 ahead in general, but you have to keep a pretty sharp eye  
6 over to the right because that's what's making your decision  
7 about whether to move back and forth, is that correct?

8 A. Yes, sir.

9 Q. Okay. And you said -- I'll tell you what, excuse me one  
10 second. You said every morning when y'all got started you'd  
11 check out the tractor, make sure it's got gas, make sure  
12 it's got oil, make sure it's got different equipment that  
13 it's supposed to have, is that right?

14 A. Yes, sir.

15 Q. Alright. And -- I'll find the right picture here in a  
16 minute. Here we go. Alright, your tractor, I'll put it  
17 around here so maybe you can -- your tractor has got a light  
18 up on top?

19 A. Yes, sir.

20 Q. It's got lights up on top up here?

21 A. Four way flashers.

22 Q. Four way flashers, it's got a triangle in the back?

23 A. Yes, sir.

24 Q. It's got a mowing sign there?

25 A. Yes, sir.

1 Q. It's got a flag on this side?

2 A. Yes, sir.

3 Q. It's supposed to have a flag on that side but it's not  
4 there in this picture, is that right?

5 A. Right.

6 Q. And then, other -- and then you've already said that as  
7 far as being signs on the road you didn't put them out that  
8 day?

9 A. We wouldn't be putting out signs there.

10 Q. Right. The highway department did not put out signs,  
11 did they?

12 A. No.

13 Q. Okay. On that morning. Okay. And you, when you go  
14 through, I guess you check the air in the tires and check to  
15 make sure that the power hitch is hooked up and everything  
16 is working properly before you even start out, is that  
17 right?

18 A. Yes, sir.

19 Q. Do you take your mower out to the scene of where you're  
20 going to mow on the back of a truck or do you just drive it  
21 out there?

22 A. Well, drive them out there.

23 Q. Drive them out there. Alright. So, you would drive it  
24 from the equipment shed out to the section of road that  
25 you're going to mow?

1 A. Well, we normally start from where we're at at the shop,  
2 excuse me, and that day we park it out there somewhere so we  
3 don't have to do too much driving.

4 Q. I see. So, at the end of the night or whenever you're  
5 knocking off for one day you'll find a safe place to park  
6 the tractor overnight and when you get there the next  
7 morning you'll start up from where you were and just keep  
8 going?

9 A. Yes, sir.

10 Q. Okay. And you indicated that in the mornings when you  
11 got there and you went through your little checks to make  
12 sure that everything was right, you called it a check list,  
13 or he's called it a check list, is it actually a piece of  
14 paper that you check on or is it just a list that you go by?

15 A. It's a piece of paper to check to make sure that  
16 everything is ...

17 Q. And do you make a check list for every day?

18 A. Yes, sir.

19 Q. And you're supposed to keep those?

20 A. Yes, sir, we turn them in.

21 Q. Alright. So, as far as the one that's supposed to be  
22 turned in for this day, you don't know where it is?

23 A. No, sir.

24 Q. Okay.

25 MR. HUTTO: Thank you.

1 THE COURT: Okay, alright, anything on redirect?

2 MR. KULMALA: Your Honor, I just want to have that  
3 photo of the tractor, Exhibit One, admitted into evidence.

4 THE COURT: Any objection?

5 MR. HUTTO: No objection.

6 THE COURT: Defendant's Number One is in evidence  
7 without objection.

8 (Defendant's Exhibit One  
9 marked and filed.)

10 THE COURT: Anything else?

11 MR. KULMALA: No further questions from this witness.

12 THE COURT: Alright, thank you, sir, Mr. Bookhart, you  
13 can step down. Thank you, sir.

14 Are you ready to call your next witness?

15 MR. KULMALA: May we approach?

16 THE COURT: Yes, sir.

17 (Whereupon, a bench conference  
18 is had out of the hearing of  
19 the jury and court reporter.)

20 THE COURT: Are you through with your witness?

21 MR. KULMALA: Yes, sir.

22 THE COURT: Ladies and Gentlemen, I've got a matter --  
23 remember how I warned you every now and then we'd have  
24 things that I've got to talk about without y'all here? This  
25 is one of those times. Okay. I'm going to let y'all go

1 back into the jury room for a minute. Remember, you have  
2 not heard all of the testimony in this case, you cannot talk  
3 about the case. Y'all go back there for a few minutes and  
4 I'll let you know what our next step is. Okay? Thank  
5 y'all.

6 (Whereupon, the jury retires  
7 to the jury room and the following  
8 takes place out of the presence  
9 of the jury.)

10 THE COURT: Alright, Ms. Harry Dot, prior to the trial  
11 in this case there was; the defendant made two motions in  
12 limine that we discussed in the, in chambers before we came  
13 out. The first was with respect to the mowing ahead signs,  
14 and there was to be no testimony about subsequent remedial  
15 measures that the highway department now takes with regard  
16 to the mowing ahead signs. And the parties agreed not to do  
17 that, and that was carried forward in the testimony of this  
18 case, there was no testimony about that.

19 The other request by the defendant was for the jury to  
20 view the location of the scene between Highway Four Fifty-  
21 three, between Eutawville and Holly Hill. The defendant's  
22 position was that it was crucial to the jury's understanding  
23 of the case, etcetera, as far as seeing distances and just  
24 observing the scene. Do the parties, would the parties like  
25 to place their arguments on the record regarding this before

1 I rule?

2 Mr. Kulmala? Or do you want me to summarize it?

3 MR. KULMALA: I'll be happy to, Your Honor.

4 THE COURT: Yes, sir.

5 MR. KULMALA: Just basically, a straightforward simple  
6 reasoning for the request. The testimony is somewhat all  
7 over the place as far as between the two people who were out  
8 there, Mr. Alexander and Ms. Walls. If you want to take  
9 some literal extension of what Ms. Walls had testified, that  
10 she followed Mr. Alexander who was following the mower at  
11 whatever speed the mower was going, especially in light of  
12 what Mr. Bookhart said, he was driving three miles an hour,  
13 and the indication through cross-examination of Mr.  
14 Alexander was that he was driving about, between Fifty and  
15 Fifty-five, and I think then at some point, Fifty miles an  
16 hour. Ms. Walls also indicated that he accelerated. Mr.  
17 Alexander indicated that at one point that he could see the  
18 cloud of dust from right after he rounded the curve on the  
19 Eutawville end of that stretch. You know, I think that it's  
20 necessary and appropriate that the jury can see what the  
21 bird's eye view of the driver's perspective was coming into  
22 the accident scene, you know. So, I would respectfully  
23 request that we, we take the jury out there and let them see  
24 exactly what the lay of the land was.

25 THE COURT: Alright, and of course, we talked in

1 chambers that this would be a minimum of about two and a  
2 half hours to do that.

3 MR. KULMALA: I understand.

4 THE COURT: Okay. Alright. Alright, Mr. Hutto.

5 MR. HUTTO: Our position is this, that really, the lay  
6 of the land is not an issue in this case. Everybody has  
7 testified, it's relatively a straight stretch of road. The  
8 photographs which are in evidence which were taken that day  
9 at the scene under the atmospheric conditions or the  
10 sunlight and everything that was there show that it's a  
11 relatively straight stretch of road. The testimony of the  
12 different witnesses are, it's between from where the curve  
13 starts coming in at that straight stretch is a quarter of a  
14 mile to a third of a mile. And so, we don't think it's an  
15 issue. There are a lot of issues in this case, and he's  
16 recited some of them, but the condition of the roadway or  
17 the, I mean, this roadway is, as you can see from the  
18 photographs and from the testimony, the roadway is flat, the  
19 roadway is straight. We don't think there would be anything  
20 added by that, and I think it would just delay things. And  
21 we'd like to get this matter to the jury when the  
22 information is fresh in their minds as far as the testimony,  
23 and we don't see any benefit to come from a site view.

24 THE COURT: Yes, sir?

25 MR. KULMALA: Briefly, by way of response, I think that

1 the question of how far one could see and the amount of  
2 opportunity for the plaintiff to have seen and reacted to  
3 the mower or the dust cloud, whichever it was, I think  
4 that's something that's highly crucial to the jury's  
5 understanding of who was negligent.

6 THE COURT: But Mr. Kulmala, if we go out there, the  
7 only thing they're going to do is ride down the road. We  
8 can't take any testimony or do anything, is that correct?

9 MR. KULMALA: That's correct.

10 THE COURT: Okay. Alright, sir. Alright, let me tell  
11 you the way I'm looking at this. Generally speaking, I look  
12 at viewing as whether or not it's going to be helpful in  
13 determination to the jury. We've got photos in evidence, I  
14 think all the testimony has been, it's hot, clear, dry,  
15 dusty around the straight road, flat, no obstructions. To  
16 me it seems, and I've looked at Rule Four O Three, it seems  
17 to me that it would just be essentially a waste of time and  
18 cumulative to go out there. I thought humorously that I  
19 could take them out there for about three hours and tell  
20 them it was at your request, but I decided not to -- I'm not  
21 going to do that, I'm not going to take up three more hours  
22 of time to go out there and look at a scene that I think --  
23 this is just like any other accident case where we've got  
24 the photos and all that kind of stuff, and I don't see --  
25 there's nothing special about this scene that I think would

1 help the jury in making any kind of determination. I mean,  
2 if it was necessary for us to go out there and maybe find  
3 the scene and show how wide it was, or something like that,  
4 we've got testimony of that. So, with regard to your  
5 request that we go out there for a viewing, I'm going to  
6 deny that. I will preserve your objection for the record so  
7 that you can have it should you find it necessary in the  
8 future to need that objection preserved. Okay?

9 MR. KULMALA: Thank you, Your Honor.

10 THE COURT: Okay. Anything else from defendant or  
11 plaintiff? Yes, sir.

12 MR. KULMALA: Nothing else with respect to the motion  
13 to view, but in order to be efficient time-wise, you know,  
14 I'd say that my motions at the conclusion of -- and I don't  
15 have any other witnesses, my motion at the conclusion of all  
16 the evidence would be essentially the same. Subject to the  
17 additional testimony of Holman Bookhart, the legal rationale  
18 would remain the same as to all of it.

19 THE COURT: Alright. And I will note your continued  
20 motion for a directed verdict for the two reasons that you  
21 named. I'm going to maintain my decision and maintain your  
22 objection to my decision regarding those, so they will be  
23 preserved on the record. Same ...

24 MR. HUTTO: Will you note my motion, and my responses  
25 to his earlier motions?

1 THE COURT: Yes, sir, same, everything is preserved.  
2 Okay, now, are y'all going to be ready to go to the jury --  
3 we'll let them go to lunch and tell them to come back at  
4 two, which will give us time to make sure we go over the  
5 charges and like that?

6 MR. KULMALA: Right.

7 THE COURT: Okay. Alright. Bring the jury on back out  
8 here and I'm going to excuse them for lunch, and then we'll  
9 be ready to go.

10 (Whereupon, the jury enters  
11 the courtroom.)

12 THE COURT: Mr. Kulmala, you may continue.

13 MR. KULMALA: Alright, thank you, sir. The defendant  
14 rests.

15 THE COURT: Alright, Ladies and Gentlemen, the  
16 defendant has now rested. You have heard all the testimony  
17 in this case. We are now going to get ready to go forward  
18 with the closing arguments of counsel, of the attorneys, and  
19 my charge on the law. But since it is now right at lunch  
20 time what we're going to do first is eat lunch.

21 Now, even though you've heard all the testimony, you  
22 have not heard the closing arguments you have not heard me  
23 charge the law, so again, you cannot begin talking about  
24 this case. So, I'm going to give y'all -- we've got some  
25 other matters we've got to take care of, so I'm going to let

1 y'all have a little bit longer lunch hour than I would  
2 normally, and I will ask y'all to be back in the jury room  
3 at two o'clock. And then when y'all get back here at two  
4 we'll be ready to go, we'll do the closing arguments and  
5 charge, and then you can begin your deliberations. But  
6 until that time you cannot talk about this case.

7 Alright, see you back at two. Thank you.

8 (Whereupon, the jury leaves  
9 the courtroom and the following  
10 takes place out of the presence  
11 of the jury.)

12 THE COURT: Anything from the plaintiff?

13 MR. HUTTO: No, sir.

14 THE COURT: Okay. Anything from the defendant?

15 MR. KULMALA: Not at this time.

16 THE COURT: Okay, now you have given me the charges,  
17 your charges?

18 MR. HUTTO: I've got them.

19 MR. KULMALA: If they've got some I'd like to take a  
20 look at them.

21 THE COURT: Okay. And have you looked them over?

22 MR. HUTTO: Yes, sir, we don't think all of them are  
23 fitting, but some of them -- and some of them probably --  
24 actually, a lot of them are probably contained in your  
25 normal charge. And I think, I don't know if you want to

1 just ...

2 THE COURT: Well, let's go back in chambers and we'll  
3 just go over them. Okay.

4 MR. HUTTO: The only charge that we're going to ...

5 THE COURT: You had the life expectancy?

6 MR. HUTTO: The life expectancy table that we passed  
7 up, and we are going to ask you to charge that violation of  
8 department policy is negligence, per se.

9 THE COURT: Well, ...

10 MR. HUTTO: I know he cited a code section, I haven't  
11 looked at that yet, so ...

12 THE COURT: Well, I know he cited that but then --  
13 okay, well, we'll talk about it. Y'all come on back.

14 (Recess)

15 THE COURT: What I want to do, I'm going to go on the  
16 record, y'all have reviewed the verdict form, made a couple  
17 of changes in it, that's been reprinted. But I've got, I'm  
18 going to go over the jury charges with y'all, just so y'all  
19 will know, I'll do a general opening, you know, and then  
20 duties of judge and jury, preponderance of the evidence,  
21 direct and circumstantial evidence, credibility of the  
22 witnesses, expert witnesses, negligence, and then after the  
23 negligence charge I'm looking at your requests to charge.  
24 Okay, I'm charging Seven, Twelve and Seventeen, okay, out of  
25 your requests to charge. And part of what we went over in

1 chambers, I was either going to charge Seven or Eight, I  
2 decided to charge Seven, Twelve, and Fifteen, Sixteen and  
3 Seventeen were all similar, but I'm charging the statute,  
4 which is Seventeen. And I'm not charging Twenty-one and  
5 Twenty-two because it seems to run contrary to the  
6 stipulation and the facts in the case. So, I'm not going to  
7 do that. Then I'm going to charge assumption fo the risk,  
8 common law duties of drivers. I'm then going to charge that  
9 violation of the regulations, and I'm going to read it as we  
10 discussed it. Okay? And then I'm going to charge actual  
11 damages, personal injuries but I leave out any reference to  
12 wages. Pain and suffering, loss of enjoyment of life,  
13 respective damages, future damages, life expectancy table,  
14 comparative negligence, and then I close. And then y'all  
15 tell me everything, so hopefully everything will go  
16 relatively smoothly. Okay?

17 Yes, sir, Mr. Kulmala.

18 MR. KULMALA: You said you were going to charge the  
19 regulation?

20 THE COURT: Yes, sir.

21 MR. KULMALA: And I want to make sure I understand,  
22 what's Your Honor's decision as to charging negligence, per  
23 se?

24 THE COURT: Well, I'm charging, actually I've read  
25 those two cases, - - -

1 MR. KULMALA: Trevellis and Howard.

2 THE COURT: --- Howard, and my charge on, my charge on  
3 the violation of the regulations, the negligence, per se,  
4 goes along with the way I read the holding in Trevellis, and  
5 like that.

6 MR. HUTTO: You're not charging negligence, per se?

7 THE COURT: Well, I'm -- well, the way it reads, I read  
8 it, it says -- I am. It says, failure to follow the rule is  
9 negligence as a matter of law. If you find the defendant  
10 failed to follow this rule you must then decide whether the  
11 failure proximately caused the plaintiff's injury. Now,  
12 Trevellis has a longer discussion of that.

13 MR. KULMALA: But what they charge does that give  
14 essentially a regulation, a departmental regulation equals  
15 standing with either the common law duties or statutory  
16 duties, I think that's not anything I've every seen where an  
17 internal policy results in the equivalent of a statute.

18 THE COURT: Get Trevellis for me.

19 MR. KULMALA: It doesn't say that. I mean, I don't  
20 think that's in there, but ...

21 THE COURT: Okay. Mr. Hutto?

22 MR. HUTTO: We think what you just read to us that you  
23 were going to charge is an accurate statement of the law.

24 THE COURT: Have you got Trevellis?

25 MR. HUTTO: To speed things up, I don't really think it

1 makes a difference. If you want to take out, as a matter of  
2 law, and just read it as you said it without, as a matter of  
3 law, I don't think the jury is going to assess any real --  
4 I'm not going to make that a highlight in my argument  
5 anyway.

6 THE COURT: Negligence, if I do it that way, is that  
7 okay with you?

8 MR. KULMALA: If you use the language they have in  
9 there, I take that to mean that takes out the sting of it  
10 being as a matter of law.

11 THE COURT: Okay. That takes it out as being per se as  
12 well.

13 MR. KULMALA: Two other comments, if I may.

14 THE COURT: Yes.

15 MR. KULMALA: Your Honor said you're not going to  
16 charge Number Twenty-one, no duty to warn of dangers that  
17 are open and obvious, I think, I still maintain that that  
18 would be an appropriate charge, notwithstanding the issue  
19 about deviation from a violation of the policy, and I'd  
20 request that that be charged as well as the highlighted  
21 language from, was it Miller versus Ferrell Gas?

22 THE COURT: Which one was that?

23 MR. KULMALA: That was the Kittredge opinion from April  
24 talking about the reasonable thing to when you can't see.

25 THE COURT: With the stop sign, that's the stop sign

1 case.

2 MR. KULMALA: But not the language of the stop sign,  
3 it's talking about what the reasonable thing to do is on a  
4 sight distance situation.

5 THE COURT: Well, I think that's covered in my -- I  
6 mean, my opinion is that that's covered in my common law  
7 duties of the road where it talks about looking, you know,  
8 seeing, and reacting and all that kind of stuff. I think  
9 it's ...

10 MR. KULMALA: I think there's a little difference in,  
11 you know, I would certainly continue to request that charge,  
12 and ask that Your Honor do instruct that language  
13 specifically.

14 THE COURT: Well, I think what I would prefer to do is  
15 charge Twenty-one. I think this case is a stop sign case  
16 and so, I think it's covered. I will charge the no duty to  
17 warn of dangers that are open and obvious. Okay? But I  
18 don't, I still don't think that Miller-Ferrell Gas, I think  
19 that's covered, the duty to see and look and all like that  
20 is in there. And I understand ...

21 MR. KULMALA: Well, I think it goes one step further  
22 and it just basically advises what the reasonable and  
23 prudent thing to do is, and I don't think that's a  
24 commentary on the facts, it's, you know, this is a case  
25 involving somebody deciding to drive into a situation where

1 he doesn't know what lies ahead, and basically deciding to  
2 take the chance. I mean, Ferrell Gas is directly  
3 applicable, I believe.

4 THE COURT: Well, I ...

5 MR. KULMALA: This is about a person proceeding when  
6 they are going into a somewhat visual unknown, whether it's  
7 at a stop sign or going onto the highway obscured by a sign,  
8 or looking at a cloud of dust and not going around it but  
9 going partially through it.

10 MR. HUTTO: Your Honor, the difference, if I might ...

11 THE COURT: Oh, yes, sir.

12 MR. HUTTO: The difference, I think, is that the visual  
13 unknown, as he wants to call it, was created by them.  
14 They're the ones that didn't have the flag up. If they  
15 would have had the flag up it wouldn't be visually unknown.  
16 They're the ones that have created -- in that case there was  
17 a stop sign there. It would be different if there wasn't a  
18 stop sign there, but this case we, it's our contention, and  
19 we think that we've got enough evidence to clearly argue  
20 this, and not only inferences but eye witnesses say that at  
21 the time of the incident there was no flag there; therefore,  
22 if the flag hadn't been there, if the flag had been there  
23 you wouldn't have this issue. That is the issue in this  
24 case, and we don't, you know, while we take exception to  
25 your charging Twenty-one, I understand that little bit more

1 than I understand his request on this. Our exception to  
2 Twenty-one is that if it was an open and obvious situation  
3 why would they even develop rules, you wouldn't even need  
4 rules if it was open and obvious. But they have rules  
5 because it's not open and obvious, it is hazardous. So I  
6 understand why, and I accept why you're charging Twenty-one,  
7 but this next one just doesn't, doesn't have any relevance  
8 that I can see.

9 MR. KULMALA: I think it's totally irrelevant to the  
10 cause, the point is what's reasonable and prudent from a  
11 driver perspective, and whether the dust cloud is caused by  
12 the South Carolina Department of Transportation or sunlight  
13 in the eye of a driver obscuring his vision created by the  
14 hand of God, the point is that the driver is cautioned,  
15 what's prudent is not to drive where you can't see.

16 THE COURT: Okay. And I've heard the arguments of both  
17 of you. Okay? My charge on the common law duties of the  
18 road mentions that any person has, owes the duty to exercise  
19 ordinary care at all times. It says, you've got to be on a  
20 proper lookout, and you have to look in a careful and  
21 intelligent manner, and so, this case talks about, if he's  
22 at a stop sign, I realize some of the other sections about  
23 the sun, is blinded by the sun, but I'm not going to charge  
24 Miller versus Ferrell Gas, but I will note your objection to  
25 me not charging. Okay?

1 MR. KULMALA: Thank you, Your Honor.

2 THE COURT: And thank you. Alright, anything else?

3 MR. HUTTO: No, sir, we will open in full and preserve  
4 our reply.

5 THE COURT: Are you ready, Mr. Kulmala?

6 MR. KULMALA: The defendant's ready.

7 THE COURT: Alright. Bring the jury on out.

8 (Whereupon, the jury  
9 enters the courtroom.)

10 THE COURT: Alright, Lades and Gentlemen, you've heard  
11 all the evidence, all the testimony in this case. We're now  
12 getting ready to do the closing arguments of the attorneys.  
13 After they have done their closing arguments then I am going  
14 to charge you with the law. Then I will go over the verdict  
15 form with you, and then send you back into the jury room. I  
16 will then make sure with the attorneys that I have charged  
17 you properly. If I have charged you properly all the  
18 exhibits and the verdict form will go back into the jury  
19 room, and I will tell you to begin your deliberations. If  
20 there is something that I have told you wrong in charging  
21 you on the law I will bring you out here and make that  
22 correction and then send you back and send the exhibits and  
23 verdict form back there into the jury room and y'all can  
24 begin your deliberations at that time.

25 Again, Mr. Foreman, you're going to be the one in

1 charge of filling out the verdict form, and I will go over  
2 that with you after I've charge you on the law. Okay?

3 Alright, Mr. Hutto.

4 MR. HUTTO: Thank you, may it please the Court.

5 THE COURT: Yes, sir.

6 CLOSING ARGUMENT BY MR. HUTTO:

7 Mr. Foreman, and Ladies and Gentlemen of the jury, the  
8 first thing I want to do is just thank you for your patience  
9 and attention, your willingness to do your civic duty and  
10 serve on a jury. You never know when one day it might be  
11 you on the other side of this rail and you'll want citizens  
12 who are going to pay attention and do the right thing on  
13 that side of the rail. So, as we said in the beginning, you  
14 aren't here to reward any friends, you're not here to punish  
15 any enemies, you're here to do justice. That's what  
16 courtrooms in this country are all about. And Mr. Alexander  
17 thanks you for being here to listen to his case.

18 The Judge is going to tell you what the law is, and  
19 basically it goes like this. We have alleged, not that  
20 anybody intended to do anything wrong, accidents do happen.  
21 And we contend that in this case accidents happened because  
22 rules weren't followed. But we have to prove, and the  
23 burden is on the plaintiff to prove that the Department of  
24 Transportation, the highway department, had a duty to do  
25 something, and that they failed to do that duty, and as a

1 result of their failure to adhere to that duty somebody got  
2 injured. And those are basically what's called the four  
3 elements of negligence: they had an obligation or a duty to  
4 do something; they didn't do it; their failure to do it  
5 caused something to happen; and the thing that happened  
6 caused somebody to be hurt. So, I want to go through those  
7 things with you and show you that I believe we've proved our  
8 case.

9 Now, first of all, what duties did the highway  
10 department have? Anybody on the road at anytime has duties  
11 to follow the general rules of the road, stop at stop signs,  
12 go the speed limit, don't pass on yellow lines, stuff like  
13 that, the regular rules of the road. This was not a regular  
14 rules of the road situation, this was a mowing operation  
15 that they chose to conduct. And you know, the highway  
16 department can choose to conduct it any way they want to.  
17 You know what they could have done and they didn't have to,  
18 I'm not saying they had to, but they could have had a flag  
19 man out there. They could have had cones blocking off that  
20 whole area of the road. They could have put a detour sign  
21 up and said, don't go on this road right now, we're cutting  
22 the grass. They didn't do any of those things because they  
23 weren't required to by their own regulations. But what they  
24 did do is, they developed a set of regulations that they  
25 thought would be appropriate for those circumstances, and

1 they didn't follow those regulations. So, we're not trying  
2 to hold them to any greater standard than they need to be  
3 held to. If they wanted to they could have held themselves  
4 to a higher standard because they're the ones that, --  
5 SCDOT, this isn't somebody else that decided to issue these  
6 regulations, SCDOT issued these regulations, Vegetation  
7 Management Guidelines. And it's on Page one, -- if they  
8 wanted to say, in all cases where there's grass cutting on a  
9 highway there shall be a flag man, they could have put that  
10 in there. If they wanted to say, in all cases where there's  
11 road cutting on the highway, traffic won't be allowed until  
12 the road cutting is over with, they could have put that in  
13 there. If they wanted to ut in there that while road  
14 cutting is going on we can put up red cones along the way,  
15 they could have done that. But they didn't do any of those  
16 things, and we're not saying they had to do those things.  
17 But what they did do was, they said, you've got to do some  
18 other things, these are our own rules. Number One, mowing  
19 signs, like this one, and they even put a picture of it.  
20 Now, it's not -- this is not something so that you would  
21 have any confusion about it. They even, and the government  
22 will do stuff like this, be very careful about what they  
23 said, so, they said, mowing signs, like that Number Forty-  
24 seven Three o Eight, this one, shall be used on Interstate -  
25 - this is non-interstate, okay, primary and secondary roads.

1 This was a regular primary or secondary road. Okay? On  
2 routes greater than three miles long. So, it say that  
3 they're supposed to have signs out there. Remember, the  
4 last thing I did, and I read that stipulation that they  
5 agreed to, on July Twenty-third, Two thousand and eight, no  
6 roadway signs were placed on Highway Four Fifty-three for  
7 the shoulder grass cutting operation. They're not even  
8 trying to contend that they did that, because they didn't.  
9 But were they supposed to? Absolutely. Their rules said  
10 so, and Mr. Locklair, the first witness, said, these are the  
11 rules that we were supposed to follow. And you're going to  
12 have that into evidence, you're going to have these boards  
13 into evidence, you're going to have the entire Exhibit One  
14 into evidence, which is all of the rules, the whole, you'll  
15 have the whole manual in there, I'm not suggesting that you  
16 need to read it all, but it's all in there.

17 Another thing they say in here is that, on primary or  
18 secondary roads, encroachment on the travel-ways should be  
19 held to the minimum possible to satisfactorily accomplish  
20 the mowing. And they said, Mr. Locklair said, and I believe  
21 Mr. Bookhart agreed, unless the mower needed to be out in  
22 the highway they kept it off the highway, because what  
23 they're trying to do is cut the grass not cut the pavement.  
24 So, as long as they could keep it over on the grass they  
25 kept it on the grass, but as Mr. Bookhart pointed out,

1 sometimes they have to slide over into the roadway because  
2 there's a sign, because the ditch is wider, because there's  
3 a tree hanging out, for whatever reason they've got to -- it  
4 could even be a dead deer. I mean, there could be a lot of  
5 reasons where they'd have to move the mower blade out and go  
6 around something, and it would have to come out in the  
7 highway.

8 Now, there's no reason to believe, and there's no  
9 reason to think that Mr. Bookhart that day intentionally  
10 moved his mower deck out into the roadway to cause this  
11 wreck. There's just no reason to believe that happened.  
12 Similarly, there's no reason to believe that Mr. Alexander  
13 intentionally ran into the back of a mower to make this  
14 accident happen. Neither one of them intended this accident  
15 to happen, but it happened for a reason.

16 We contend that there were two violations here, and one  
17 I just talked to you about, there was no sign, and they  
18 stipulate that, saying, mowing ahead. What if there had  
19 been? Okay, what difference would it have made? Alright.  
20 This is, as some of you know, this is between Eutawville and  
21 Holly Hill, but it would be the same thing if I said this  
22 was between Bowman and Branchville or between Neeses and  
23 Norway. We living in a farming community, there are  
24 tractors out there, there are combines out there, there are  
25 cotton pickers out there. You don't know when you see a

1 farm implement, this was just a regular John Deere tractor  
2 up ahead, that this just isn't a farmer who's parked his  
3 tractor on the side of the road while he's changing, out in  
4 the field, or something else. But if you had that mowing  
5 sign ahead, you know, this isn't a farming operation going  
6 on, this is the highway department engaged in something that  
7 could be hazardous. They've engaged in mowing, which is  
8 throwing stuff out in the highway, I don't want to say,  
9 stuff, it's mostly grass but, you know, sometimes,  
10 unfortunately it's litter, other stuff going on, dust and  
11 debris. So, one thing we say they didn't do right, and they  
12 admit to it, they didn't have the sign up. They're supposed  
13 to have the sign up, didn't have the sign up.

14 Number Two, well, let me say this, we're not saying  
15 they did everything wrong either. This thing about having  
16 the little triangle on the back of the tractor, they had  
17 that, the mowing thing right there, they had that. The  
18 little light on top, they had that. And you know why it's  
19 important? Because everybody says they saw the tractor.  
20 Mr. Alexander saw the tractor, Ms. Walls saw the tractor,  
21 everybody saw the tractor. But what wasn't as clear is  
22 where was the mower deck? We know where the tractor was,  
23 it's big and it's up there, and it's got red markers on the  
24 top and a light on the top, but where is the mower deck amid  
25 the dust that's on the ground? Now, you know, when you

1 don't -- you don't know until you get closer whether this is  
2 a mower that's directly behind the tractor with no  
3 extensions beyond the wheels of the tractor, or if it's one  
4 that extends beyond the wheels of the tractor. But what  
5 their rules say is, when they're using those, what they call  
6 the bat wing Fifteen foot mowers, the Fifteen foot mowers  
7 shall, -- shall, not may, not should, but shall have a red  
8 flag near the outer edge of each bat wing on a three foot  
9 long or greater staff.

10 Now, we went out and sent Mr. McDaniel to look at a  
11 mower like the one that was in question, and he says that  
12 this part right here, okay, and you'll have this back there,  
13 the height of the mower deck, the height of the mower deck,  
14 Fourteen and a half inches, so, about that high off the  
15 ground, the mower deck. So, then the rule says that at the  
16 outer edge of each bat wing, which is the mower deck, you'll  
17 have a three foot long or greater, three foot or longer  
18 staff with a red flag on it. This is three feet long. If  
19 that had been on this mower deck -- it's down here, okay,  
20 Twelve to Fourteen inches off the ground. With no flag on  
21 it, that's what's there and you've got grass and all  
22 swirling around it. If you've got a three foot flag on it,  
23 all of a sudden, with a reg thing on the end, it's above the  
24 dust and debris, and it's demarcating where the edge of the  
25 mower is. That was not there that day, that was not there.

1           Now, we -- Mr. Bookhart said he put it on that morning,  
2 he follows his check list. And I asked Mr. Locklair, his  
3 supervisor, you know, this case has been going on, I mean,  
4 y'all have known about this case ever since it happened,  
5 where was this check list, where was it? I cannot find it,  
6 cannot bring it here, don't know where it is. Whether they  
7 had the check list in use that day, you know, it's something  
8 you do every day, and yes, you're supposed to do it every  
9 day, and whether they did it every day or not, that's a  
10 question that you have to decide. But we know this, Mr.  
11 Bookhart said that the last time he saw the flag was some  
12 five or six minutes, I think he said, before the accident  
13 took place. And that's why we sent Mr. McDaniel out, to  
14 show that there's really nothing that locks this flag into  
15 place, and that thing is bouncing up and down. Maybe there  
16 was a flag there at one point in time and it got jostled  
17 out. Or maybe there was no flag there at all. It really  
18 doesn't matter except at one crucial point, and that's the  
19 point at which Mr. Alexander comes around. And we know  
20 this, when he went around he said he saw no flag. Ms.  
21 Walls, who was right behind him, got out and said she saw no  
22 flag. When the highway department got there and moved the  
23 mower out of the road and folded this up, there's no flag  
24 there. And if they took it out, did they show anybody, did  
25 they take a picture of it, is it anywhere in any of these

1 photographs? No. Nobody knows that there was a flag there  
2 except that Mr. Bookhart said there had been one there five  
3 or six minutes earlier the best that he knew.

4 We contend to you that the evidence in this case from  
5 Mr. Alexander, from Ms. Walls -- and Ms. Walls is just, she  
6 just a lady driving along the road as anybody might be who  
7 happens to end up being a witness. You know, people don't  
8 set out early in the day to say, I think I'm going to go  
9 out and be a, you know, a witness today, I think I'll be a  
10 witness today. You know, it just happens sometimes that you  
11 end up being a witness. And you know, after you have  
12 figured out you're a witness, you really probably wish you  
13 had been paying a little bit better attention if you thought  
14 you were going to have to go back and explain it all later,  
15 because you don't know at the time that you're about to be a  
16 witness, that you're about to be a witness. But she came in  
17 here with nothing other -- nothing to gain or lose other  
18 than to tell the truth, and she said, you know, I questioned  
19 it at the time. When I saw it at the time, when I saw it  
20 happen, I said, wonder why that happened? Well, I thought,  
21 you know, there should be a flag there and there wasn't a  
22 flag there. The whole thing could have been avoided if they  
23 would have had a flag there. Who else knows that? DOT  
24 knows that.

25 DOT knows that they're supposed to have a flag there.

1 And they didn't just make this up for some unknown reason,  
2 these rules are designed to prevent accidents from  
3 happening. They think if they follow all these rules  
4 accidents will not happen. And they might be right. And if  
5 they had followed all of these rules, we wouldn't be here  
6 today. But they broke too many rules in this case. One is,  
7 they didn't put the mowing sign up. The judge will explain  
8 to you if they don't follow their rules that's negligence.  
9 And we've proved that to you.

10 Number Two is, they didn't have the flag on the mower  
11 sticking out three feet. It doesn't make any sense that if  
12 it had been there that Mr. Alexander would have hit the back  
13 of the mower. He hit the back of the mower because he  
14 didn't see the back of the mower because it was down on the  
15 ground with no flag on it like it was supposed to be.

16 Those are elements of negligence that you're going to  
17 have to decide. And there are not Twelve better people in  
18 this world to decide that, because you are the Twelve people  
19 that's heard all the evidence. And all we ask you to do is  
20 take the evidence as you've heard it and make a decision  
21 that you believe is fair and just. But as I told you  
22 before, there's no reason to believe that Mr. Bookhart  
23 intentionally slung his mower out to cause this wreck.  
24 There's no reason to believe Mr. Alexander just  
25 intentionally ran into the back of this mower. There had to

1 be a cause, and we submit to you, the cause was, they didn't  
2 follow their rules, they didn't have the flag on the back of  
3 the mower. If they had it wouldn't have happened, but they  
4 didn't, and it did happen.

5 So, what happens when it happens? Well, one thing is  
6 for sure, we can't go back and change the clock and say,  
7 well, let's do it all over again, and redo it, and it won't  
8 happen. It happened. Okay? So, the law says that in  
9 situations like that, what we have to do is come up with a  
10 way of compensating people. And in those cases we are  
11 entitled to put up a case for you for damages. Okay? And  
12 I'm going to talk to you about that in just a minute. But I  
13 want to talk to you, I don't know exactly what Mr. Kulmala  
14 is going to say, but he's a good lawyer, I'm sure he's going  
15 to say some good things that will make you think, and that's  
16 fine, because we want you to think about this case. But one  
17 thing he's going to say is, this is all Mr. Alexander's  
18 fault. It wouldn't have mattered if the sign was out there  
19 or not because, anybody could see that was mowing going on,  
20 it wouldn't matter at all. You know, it wouldn't matter if  
21 the flag was there because he just ran into the back of this  
22 mower. If you believe that, if you believe that this, that  
23 they didn't break any rules and it wouldn't have all  
24 mattered, then you don't have to make an aware to Mr.  
25 Alexander. You don't have to, nobody is making you make an

1           award to anybody. We think we've prove we're entitled to an  
2           award. But he's going to try and say it's all Mr.  
3           Alexander's fault, or at least partly Mr. Alexander's fault.  
4           He's going to say, first of all, it's all Mr. Alexander's  
5           fault. And then he's going to say, well, maybe it's not all  
6           his fault but it's at least part his fault.

7                     And you are the jury so you will decide that question.  
8           Was it all DOT's fault, was it all Mr. Alexander's fault,  
9           was both of them a little bit at fault? Were they  
10          Fifty/Fifty at fault? Were they Seventy-five/Twenty-five at  
11          fault? Were they Sixty/Thirty at fault, I mean, it's got to  
12          add up to a hundred, so Seventy/Thirty or Sixty/Forty. You  
13          can make that decision if you believe the evidence warrants  
14          that in this case. And the Judge will explain that to you.  
15          And Mr. Foreman, you will have it, but it's on a thing  
16          called the verdict form. Okay? And I'm going to run over  
17          it with you, the Judge is going to explain it in more  
18          detail.

19                    But you've got to answer One, Two, Three -- at the most  
20          Four questions. And y'all are going to have this form so  
21          you can read it in there, you're not going to have to  
22          memorize it as I'm talking to you or even as the Judge is  
23          talking to you, because he's going to give it to you. But  
24          the first question you have to decide is, was the Department  
25          negligent, did they do something wrong, did they break a

1 rule? And if so, did their breaking that rule cause this  
2 accident. Was it a proximate cause of this accident  
3 happening? And if you believe it was, then you will just  
4 check, or circle, yes. And then you move on to the next  
5 question.

6 And the next question was, was Mr. Alexander negligent,  
7 did he do something wrong that helped cause this accident?  
8 If the answer is no, then you go to Question Four. If the  
9 answer is yes then you go to Question Three. But all that's  
10 spelled out in here.

11 The reason I'm pointing this out is this, if you find,  
12 Number One, that they were, they didn't follow their rules,  
13 and that they were at fault, then we've proved that they  
14 were negligent. Now, they're going to contend that he was  
15 going too fast for conditions, or he should have slowed down  
16 more, I'm not sure exactly what he's going to argue, but  
17 they're going to argue something along those lines. And you  
18 might say, well, maybe so, maybe -- and if you believe it --  
19 we don't believe that, but if you believe that, then you  
20 mark that one yes. If you mark that one no, then you skip  
21 over Three, but if you mark that one yes then you move on to  
22 Question Three, which is, what's the percentages? Were they  
23 Eighty per cent at fault and he was Twenty per cent at  
24 fault? Were they Ninety per cent at fault, he was Ten per  
25 cent at fault? And you put that down and it clearly shows

1 it's got to total up to a hundred. But we don't think that  
2 that really applies in this case, but you might. And so we  
3 want to be fair about this, we want y'all to consider  
4 everything. If you consider it, that there's a little bit  
5 of blame on each side, you could put it in there. But if  
6 you decide that Mr. Alexander is Fifty-one per cent at fault  
7 or greater, in other words, more than half at fault, then he  
8 ain't going to get anything. Okay? So, if you think that  
9 he's entitled to something then his degree of fault has to  
10 be less than Fifty per cent. Okay? We think that his  
11 degree of fault is zero, because if the flag had been there  
12 he would have never hit that mower deck because he would  
13 have seen it. But you could see things differently. That's  
14 why we have jurors. That's why we have people to settle  
15 these disagreements. We believe it happened all one way,  
16 and they believe it happened all the other way. And maybe  
17 one of us is totally right, but maybe we're mostly right and  
18 they're a little bit right, or the other way around. And  
19 you can decide that.

20 And in the end, the last thing you've got to decide, the  
21 final thing you've got to decide is, what amount of actual  
22 damages do you believe he's entitled to? And the Judge is  
23 going to charge you about actual damages in this case. The  
24 judge is going to charge you that when you consider actual  
25 damages you basically are trying to put somebody back as

1 whole as you can. You're going to compensate them for what  
2 they wouldn't have had to endure if this all hadn't  
3 happened. And to do that you consider things like the  
4 medical bills, you consider things like the pain and  
5 suffering, the pain and suffering that he had while he was  
6 in the hospital, the pain and suffering that he's had up  
7 until today, the pain and suffering that he will have into  
8 the future. And this is the tricky thing about the law in  
9 South Carolina is, we've developed a table, and the table  
10 says, based on statistics of people in South Carolina, how  
11 long people will live. We heard evidence that Mr. Alexander  
12 comes from a family where he's got, you know, family members  
13 in the Nineties. But the law in South Carolina says that a  
14 male, and for you ladies it's a little bit longer for  
15 ladies, but for a male who is Eighty years old, they, by  
16 law, are presumed that they will live another seven and a  
17 half years. Okay? Seven point five years. And so, if you  
18 consider his future pain and suffering that he's going to  
19 have, remember Dr. Demos told you he's got some depression  
20 and mental anxiety, he's got pain that he's got to endure,  
21 that's called his future pain and suffering. Then, there's  
22 this bigger thing called the loss of enjoyment of life.  
23 What does that mean? Well, the loss of enjoyment of life  
24 for Mr. Alexander means this, he don't fish anymore and he  
25 loved it. He doesn't get to hunt anymore. He doesn't get

1 to take Ms. Elmira dancing anymore. He ha to get somebody  
2 to help him clean up his house and he used to do it on his  
3 own. He has to get somebody to help him with his yard and  
4 he used to be able to do that on his own. Loved to cook,  
5 can't cook like, maybe his son said he bosses around a good  
6 bit when he cooks but he doesn't get to actually do the  
7 cooking like he used to. He doesn't get to drive those  
8 distances like he used, doesn't get to go to those reunions  
9 driving himself, he might have to hire somebody to drive or  
10 might have to fly or take a train, but he doesn't get to  
11 drive like he used to. And he's got to use a cane. And  
12 none of this would have happened, we submit, if it hadn't  
13 been for DOT not following the rules on this particular day.

14 And so, think about this, Mr. Alexander, he got out of  
15 high school at a time when he looked around to see whether  
16 there were jobs. There really wasn't -- there were some  
17 jobs and he worked a few jobs, but he said, you know, for  
18 me, I think I just need to go ahead and go in the military  
19 and get myself some training. And he went in the military  
20 and he served his country. And when he got out he came back  
21 to Charleston and he married a lady and they had three  
22 children, and while he was living in Charleston he worked at  
23 the Naval Shipyard, he was a foreman tool maker down at the  
24 Naval Shipyard. Just think about this, the Naval Shipyard  
25 in the late Fifties and early Sixties and into the Seventies

1 when he was working there, the Naval Shipyard was doing  
2 important stuff, they were keeping up our submarine fleet,  
3 they were keeping up the ships that keep us safe during the  
4 cold war. This was a time when Russia was threatening us  
5 and he was down there working at the Naval Shipyard doing  
6 important stuff. And now, like all of us, he got to his  
7 retirement years and he was hoping to enjoy his retirement  
8 years. But because of this accident he can't. So, he's  
9 lost that enjoyment of life that he might reasonably expect  
10 that he worked so hard to get all those years, and that's  
11 worth something.

12 So, I'm going to show you something, and it's just an  
13 example because I'm not on the jury, you are. If I was on  
14 the jury I probably know how I'd go, but I'm not over there,  
15 y'all are. You've got to make a decision, you've got to  
16 decide actual damages. And the first thing that's  
17 undisputed and it's in evidence is, his medical bills were  
18 Two hundred thousand seven hundred and ninety Dollars. We  
19 think at a minimum you've got to award him his medical  
20 bills. The Judge is going to explain to you that part of  
21 the actual damages is his medical bills, Two hundred  
22 thousand seven hundred and ninety Dollars.

23 So, the next thing I talked to you about was his past,  
24 his pain and suffering. There is his past pain and  
25 suffering, okay, and the future pain and suffering.

1 Remember, the past pain and suffering is the time between  
2 the date of the accident and now, today. So, basically,  
3 from the end of July, Two thousand and eight, until, in  
4 essence, the end of October, Two thousand and eleven. So,  
5 that's three years and three months worth of past pain and  
6 suffering. What I'm going to suggest to you that there's a  
7 little bit of difference in that. Those first three months,  
8 those first Ninety days he actually was suffering and in a  
9 wheel chair with broken legs and in the hospital and later  
10 on in recovery, and while he was not even able to be at  
11 home, you've got to decide that pain and suffering during  
12 that brief months, I mean, what is that worth? And you may  
13 decide it was worth Twenty Dollars an hour, Five Dollars an  
14 hour, Ten Dollars an hour, I don't know what you think pain  
15 and suffering, when you've got two broken legs and a  
16 fractured shoulder is worth, but if you said even that it  
17 was worth Ten Dollars an hour. Ten Dollars an hour, Twenty-  
18 four hours a day is roughly Two hundred and fifty Dollars a  
19 day. Two hundred and fifty Dollars a day, that's seventy-  
20 five hundred Dollars a month times three month, or Two  
21 hundred and fifty Dollars a day times Ninety days comes out  
22 to Twenty-two thousand five hundred Dollars for his past  
23 pain and suffering while he was in the hospital. Okay?  
24 Then, there's that Thirty-six months from the end of October  
25 of Two thousand and eight until the end of October, Two

1 thousand and eleven, Thirty-six months. He's at home now,  
2 pain and suffering's not as much, -- you might think it's  
3 worth just as much, but you also might think it's not worth  
4 as much, maybe it's worth, you know, Six Dollars a day, Five  
5 Dollars an hour, or a day, however you want to figure it.  
6 But if you figure it based on, let's just say Five Dollars  
7 an hour, Twenty-four hours a day, that's a little over a  
8 hundred dollars, Hundred Dollars a day, Hundred Dollars a  
9 day during this period of time for those three months comes  
10 out to, let's see -- and y'all have your own ability to do  
11 your math. And while I did okay in math in school, it's  
12 been a long time, so if my math's wrong I'm not trying to  
13 fool you with my math, I'm just giving you examples.

14 Future pain and suffering, we know he's Eighty years  
15 old. The law says he'll live seven and a half more years.  
16 Seven and half more years, seven years, it's twelve months  
17 in a year, so seven times twelve is Eighty-four plus six  
18 months for a half year, that's Ninety months. Again, if you  
19 think a hundred dollars a day for his pain and suffering  
20 over that Ninety months comes out to Two hundred and seventy  
21 thousand Dollars.

22 Then loss of enjoyment of life, he can't dance, he  
23 can't fish, he can't hunt, he can't drive like he used to.  
24 Is that worth Two hundred Dollars a month, Five thousand  
25 Dollars a month, One thousand Dollars a month? I don't

1 know, you have to decide that. That's why we have the  
2 Twelve of you collectively to come to some decision about  
3 that. But I suggest, just to talk about something, a  
4 thousand dollars a month, you're not able to do those  
5 things, times, this is basically, it's three months plus  
6 Thirty-six months, plus Ninety months, or a hundred and  
7 Twenty-nine months. A hundred and twenty-nine months times,  
8 a thousand dollars a month, a hundred and twenty-nine  
9 thousand dollars.

10 Mental anguish. The doctor talked about it. He's got  
11 depression, he's got things that weigh on his mind. Is that  
12 worth Five hundred Dollars a month, is that worth Two  
13 hundred Dollars a month, is that worth One hundred Dollars a  
14 month? I don't know, but if you say Five hundred Dollars a  
15 month, it would be half of that amount so it would be Sixty-  
16 four thousand five hundred.

17 He said he had to pay somebody to do his housework, he  
18 said Fifty to Eighty Dollars a month. I'm just going to say  
19 somewhere in between that, Seventy Dollars a month. Seventy  
20 Dollars a month times twelve months, he'd pay somebody Eight  
21 hundred and forty Dollars a year times a hundred and twenty-  
22 nine months, or basically Eighty-four hundred Dollars for  
23 somebody to do his housework from the time of the accident  
24 up until the time the law says that -- Mr. Alexander, we  
25 hope you don't die at age Eighty-seven and a half, but

1 that's what the law says, that you can compensate him for.

2 And then his lawn care, he said about a hundred  
3 dollars a month, but we know, you know, you don't have to  
4 cut the grass every month and you don't have to rake the  
5 leaves every month, so even if you said half of those  
6 months, six months out of the year he had to get somebody to  
7 help him with his yard work. Six, that's Six hundred  
8 Dollars a year times the ten years would be Six thousand  
9 Dollars. Okay?

10 That's just one way of looking at this. I mean, you  
11 could look at it totally different, you could say, you know,  
12 his medical bills are Two hundred thousand Dollars, taking  
13 all those factors into account, I think the appropriate  
14 award would be four times his medical bills, three times his  
15 medical bills, you could look at it that way. I'm not  
16 telling you you have to look at this any way, because I'm  
17 not on the jury, you are. You can look at it any way you  
18 want to, but if you look at it taking all the factors that  
19 the Judge will tell you are appropriate factors you will  
20 look at his medical bills, you will look at his past pain  
21 and suffering, and I suggest to you that that Ninety days  
22 while he was in the hospital is worth a little bit more for  
23 pain and suffering than after that, because he's sitting  
24 there, can't move, he's got to have a wheel chair, got to  
25 have full time nursing and rehab care, the pain and

1 suffering after he's released up until now, the pain and  
2 suffering for the next seven and a half years that the law  
3 says he will live, his loss of enjoyment of life, you know,  
4 can't hunt, can't fish, had to sell his boat, doesn't get to  
5 get to dance -- best dancers on the floor, she said, he  
6 doesn't get to do that anymore, house work, he's got to pay  
7 somebody, I figure that's Seventy Dollars a month, you might  
8 think it should only be Fifty, you can adjust accordingly.  
9 Yard work, a hundred Dollars a month, I said times six of  
10 those months, you might think he's going to need somebody  
11 eight of those months, and it would be eight thousand  
12 instead of six thousand, but when you add that all up, Eight  
13 hundred and nine thousand one hundred and ninety, Ladies and  
14 Gentlemen, you could decide that's not enough, you could  
15 decide that's too much. You can come up with any amount  
16 that you believe will compensate him and make him whole for  
17 what happened to him as a result of the highway department's  
18 negligence on that day.

19 And I just will wrap this up, he's going to get to talk  
20 to you in just a minute, but we could have heard from some  
21 people we didn't hear from, and t ha's something to  
22 consider, too. The gentleman from the highway department  
23 who's over there today, he sat there the whole time and he  
24 hasn't testified, he could have gotten up here and said, I  
25 went back in the records and here's the check list. I

1 brought it to Court to show you. He didn't do that. They  
2 could have had people that went out to the scene that day,  
3 Mr. Locklair, the supervisor at the time, said, you know, I  
4 knew this was going to be something that I had to account  
5 for, and here is the flag. When I folded up the mower deck  
6 I took the flag off, or when we took it up it fell off, or  
7 whatever. But there's no evidence of any of that. The flag  
8 wasn't there at the time of this incidence. If it had been,  
9 don't you believe they would have had somebody here saying,  
10 I saw the flag, I saw the flag, it was right there. Out of  
11 all the pictures that we had, we only introduced a few. And  
12 look, they had pictures, they had people out there, and  
13 there's one -- the defense, the highway department could  
14 have put in any exhibits they wanted to that the law would  
15 allow, and they put in one. They put in one picture showing  
16 the mower with no flag on it, because the flag wasn't there.  
17 And what would have caused, what would have been the effect  
18 if that flag had been there? It would have been sticking up  
19 off that mower deck with a big red flag on it, Mr. Alexander  
20 would have been able to see it, and this accident would not  
21 have happened.

22 Ladies and Gentlemen of the jury, we submit to you  
23 that we have proved that the Department of Transportation  
24 had a duty, that they breached that duty, they didn't follow  
25 their own rules, that their failure to follow those rules

1 caused this accident, and as a result of this accident Mr.  
2 Alexander who was enjoying a pretty good retirement living  
3 down on the lake and right across, down there at Eutaw  
4 Springs, fishing when he wanted to, taking a lady that it  
5 took him three years to get to go out to supper with him out  
6 to dance when he wanted to, and he can't do those things  
7 anymore. And we're not here to tell you that he doesn't  
8 have some quality of life left, he does. He's a nice fellow  
9 and he's got some quality of life left. But as the doctor  
10 told you, he said, the doctor said, he's had a diminished  
11 quality of life because of these things. And he, you  
12 notice, I haven't even tried to heap on and say, oh, well,  
13 you know, all his arthritis was caused by this. It wasn't  
14 all caused by this, but the doctor said what? He said it  
15 could exacerbate it, he said it was an indirect cause that  
16 heightened that. We ain't even got into all that, because  
17 we think when you look at the two broken legs, severely  
18 broken legs and the shoulder that he's got to every day use  
19 that pulley and exercise for a half hour or so a day just to  
20 get his arm going, those are things that diminish a person's  
21 quality of life, and particular a person like Mr. Alexander  
22 who served his country and worked hard, as we all do, go  
23 about our daily chores and we look forward to those  
24 retirement years when you can spend time with your children  
25 and your grandchildren and do the things you've waited to

1 do, go to those reunions and cook those fish. Fish when you  
2 want to, hunt when you want to, take Ms. Elmira out hunting  
3 or dancing or camping, and you can't do those things  
4 anymore, you've lost something. And if somebody else is  
5 responsible for that loss, then you're entitled to be  
6 compensated for that. We say that Mr. Alexander is entitled  
7 to be compensated in this case, and we ask you to return a  
8 verdict in favor of the plaintiff. And to do that we ask  
9 you to mark that verdict form, yes, that you find the  
10 highway department was at fault, Number One. No, that you  
11 don't think he was at fault, and therefore, you can skip  
12 Question Three. And then the amount of damages. You could  
13 come about it a different way, and it's all been explained  
14 on here, but that's something that, you know what? When I  
15 sit down right now and as Mr. Alexander listens to this  
16 right now, we're not really worried about it because we  
17 believe y'all are going to do the right thing. We know that  
18 you've heard everything, you have the information that you  
19 need to make a good and fair decision, and that's all we ask  
20 you to do is just make a fair decision. We think you'll do  
21 the right thing in this case and return a verdict for the  
22 plaintiff.

23 Thank you very much.

24 THE COURT: Alright, thank you, sir.

25 Mr. Kulmala.

1 MR. KULMALA: Thank you, Your Honor, may it please the  
2 Court.

3 THE COURT: Yes, sir.

4 CLOSING ARGUMENT BY MR. KULMALA:

5 Good afternoon. We're at the stage probably that just  
6 about everybody's been waiting for now for a day and a half.  
7 I appreciate y'all being as attentive as you have been. The  
8 service, individual service on a jury is very important to  
9 our civilized system, and I personally thank you, and I  
10 know that the Department of Transportation also thanks you.

11 This is quite a complicated case in some ways or diffi  
12 - maybe I should say a difficult case. It's difficult  
13 because we've got Mr. Alexander out here who's got some very  
14 serious injuries, nobody's going to dispute the seriousness  
15 of the injuries. There's some fairly, fairly involved, not  
16 necessarily complicated but fairly involved legal principles  
17 the Judge is going to instruct you on the law here in just a  
18 few minutes. And his instruction will cover a number of  
19 things that you, as jurors, will be responsible to do.

20 One thing that I want you to understand and keep in  
21 mind is that you, the Twelve who will be deciding this case,  
22 are the judges of the facts. That means it's up to all of  
23 y'all sitting in the jury box to take everything that you've  
24 seen and heard over the last couple of days and what the  
25 Judge instructs you on the law. And Mr. Hutto, and I

1 presume Mr. Tinkler will also be talking to you, and what I  
2 say, we're just giving you some of our views and insights on  
3 the case, but what we say is not the law, and what we say is  
4 not evidence. All we're doing is giving sort of comments  
5 of, this may be one way you want to look at it.

6 One of the things that is in your responsibility is  
7 that all of the folks that have been up here testifying,  
8 it's for you to determine which witnesses and how much you  
9 believe. You are the judges of the credibility or  
10 believability of the witnesses. And that's important  
11 because there has been some testimony, and usually is in  
12 just about every case, but there's some testimony, the  
13 witnesses don't necessarily always be saying the same thing.  
14 And sometimes you've got witnesses from one side saying  
15 something different than a witness from the other side. and  
16 it's for y'all to decide, well, is that accurate, is there a  
17 problem with memory, is there a problem with what this  
18 person observed, is there a problem with vision, is there  
19 some bias, some reason why one witness would want to talk,  
20 say one thing about what they observed and another witness  
21 say something different? So, it's for you to determine what  
22 you find to be believable of what the witnesses have to say.

23 And another thing that the Judge will instruct you  
24 along these lines, and I want you to keep this in mind, that  
25 it's not every injury, it's not every time there's an

1 accident and somebody gets injured that it's the other  
2 person's fault. The, the burden in our case requires that  
3 the plaintiff, that's Mr. Alexander's side, prove by a  
4 preponderance of the evidence all of the components of a  
5 negligence case. But the Judge will instruct you that just  
6 because somebody is injured that doesn't mean that it's the  
7 other person's fault. What you, as jurors, will be able to  
8 do is to consider all of the testimony from the plaintiff's  
9 side, including the cross-examination, some of the questions  
10 I asked particularly of Ms. Walls and Mr. Alexander. Even  
11 though that did not come in through my witnesses, it's still  
12 evidence for y'all to consider in the case. And as you go  
13 through looking at the evidence in the case what we want you  
14 to keep in mind what is necessary to be established, what  
15 are the elements of the case? Standard law for negligence  
16 cases, and this is a negligence case, is that the plaintiff  
17 must prove duty, breach, and then -- breach of duty, in  
18 other words, that you didn't do what you were supposed to --  
19 duty is what you're supposed to do, breach of duty is you  
20 didn't do what you were supposed to do, and then, this is  
21 important, very important in this case, causation. Did the  
22 breach of duty, did your failing to do what you were  
23 supposed to do, did that cause the harm, or is there some  
24 other reason or explanation for what caused the harm? And  
25 as we go through this there will be an opportunity for you

1 to consider, well, did the fact that there weren't those  
2 road side signs, did that proximately cause? And that's  
3 another word the Judge is going to tell you, did that  
4 proximately cause the accident that resulted in his injury?  
5 And in a negligence case you can't go from a negligent act,  
6 something that you were supposed to do and didn't do, and  
7 somebody is injured, you've got to have the little bridge  
8 connecting, and that's proximate cause. And part of the  
9 information or the understanding of proximate cause is, is  
10 it a cause, in fact, did the thing you were supposed to do  
11 and didn't, did that actually result in the harm, or was  
12 there some other thing that might have caused the harm?  
13 What I'm getting at right now is, this case is about Mr.  
14 Alexander running into the DOT mower. And there's no secret  
15 that it's a pretty big, it's a pretty big mower. Nobody, I  
16 don't think we had any information on the height of it, but  
17 you can see, it's a pretty tall piece of equipment, a pretty  
18 big piece of equipment. The, what it boils down to is, is  
19 what difference would it have made? I think that's how you  
20 sum up this case in a nut shell. And I don't want to sound  
21 cavalier because Mr. Alexander was seriously injured, and  
22 you know, he's got, you know, good support from his son and  
23 Ms. Sweatman in helping him deal with the injuries, but when  
24 he ran into the mower was that because the signs weren't  
25 there on the roadside? You heard him testify yesterday, and

1 again, you know, we're looking at, like I said, a pretty  
2 good size piece of equipment here, he saw a cloud of dust,  
3 and he suspected or believed that the cloud of dust was  
4 coming from a mowing operation. And one question that he  
5 answered is probably the most telling testimony in this  
6 case, and that is, when I asked him about, well, would you  
7 have gotten anymore information by having a sign that said,  
8 mowing ahead, on the road back a mile or two miles behind  
9 you on the road? And he said, no. That's one of the  
10 crucial questions.

11 There's another similar question about flags. But keep  
12 in mind, he's behind, or at least he had laid eyes on this  
13 cloud dust that he believed was a mowing operation for a  
14 quarter of a mile, and he said he was driving Fifty miles an  
15 hour. Ms. Walls riding behind him said, well, I came up on  
16 him and he was going about the speed of the tractor. Well,  
17 Mr. Bookhart today said the tractor was doing three miles an  
18 hour. Even Mr. Alexander kind of, I don't know if he  
19 chuckled but he had a reaction when I said, were you going  
20 the speed of the tractor? No, those things go five or ten  
21 miles an hour. So, he knew that he was, you know, not  
22 following the speed of the tractor, but he was certainly  
23 aware that there was a cloud of dust and he was, believed it  
24 to be a mowing operation. Okay, so he acknowledges, if  
25 there had been a sign a mile or two miles up the road

1 saying, mowing ahead, that wouldn't have told him anymore  
2 than he already knew. I'm riding behind a big DOT mower,  
3 there's a cloud of dust.

4 And then an interesting question about the flag. Now,  
5 keep in mind that Mr. Bookhart did say, and he was, you  
6 know, he came in and testified, he should be out cutting  
7 grass today, I guess, but we had to bring him in here to  
8 explain how he runs his mower, but he said that the flag was  
9 in place probably about five minutes before, before the  
10 impact. And he's been mowing for Twenty years, hasn't had  
11 any, hasn't had any rear end collisions, he hasn't had any  
12 problems like this. But when I asked Mr. Alexander about  
13 the flag, remember what his testimony was, that he wouldn't  
14 have seen the flag because of the dust.

15 And he was -- you know, so what we're looking at here  
16 is, the plaintiffs are saying, DOT was negligent because we  
17 didn't put our signs up on the side of the road. Okay. Was  
18 that a proximate cause of the injury? Not really, because  
19 Mr. Alexander said that, that he didn't get anymore  
20 information from -- he wouldn't have gotten anymore  
21 information from the sign than from seeing the cloud of  
22 dust, and that he wouldn't have seen the flag because of the  
23 cloud of dust. The whole case revolves around the cloud of  
24 dust.

25 But then, we go another step into this. Okay. So, Mr.

1 Alexander is driving down the highway for approximately a  
2 quarter of a mile at about Fifty miles an hour. And this is  
3 basically two shots of the same view. You don't get much  
4 straighter than that. And Mr. Alexander acknowledged that  
5 it was a quarter of a mile, I think we may have had some  
6 testimony that it was maybe more than a quarter of a mile  
7 straight-of-way. Fifty miles an hour straight-of-way, clear  
8 sunny day, cloud of dust, you get up close to the cloud of  
9 dust. Now, there's something that you will have to  
10 reconcile when you get back into the jury room, Ms. Walls  
11 came in with, you know, to testify, and we need people to be  
12 volunteer witnesses, people who stop and see somebody in  
13 trouble and try to offer their assistance. But her  
14 testimony seems to have created some confusion because she  
15 essentially has got the vehicle slowing down, her vehicle is  
16 slowing down to follow the truck following the tractor at  
17 whatever the tractor speed was. That doesn't seem to pan  
18 out when you listen to Mr. Bookhart's testimony and when you  
19 listen to Mr. Alexander's testimony, he wasn't going that  
20 slow. Did he slow down? I was asking him some questions  
21 from what he had testified to earlier, and a couple of his  
22 answers were, I didn't see no reason to slow down. I didn't  
23 see, or I didn't attempt to change lanes. Did you try to go  
24 around the cloud? I didn't, -- I think his answer on the  
25 cloud was, and if you remember when I was talking to him,

1 the podium was over here, and he said, it was clear in front  
2 of me, the cloud wasn't in the lane right in front of me.  
3 But he did acknowledge the cloud was just over here, that  
4 part of his car, part of his truck went through the cloud.  
5 So, if you're in the driver's seat there, you know that it's  
6 a mowing operation and it's creating this big cloud of dust,  
7 you don't see the flags because you recognize the flags are  
8 hidden or obscured by the cloud of dust, going Fifty miles  
9 an hour, or about Fifty, and it's up to you to determine  
10 whether he slowed down or not, because the testimony seems  
11 to kind of go both ways. But generally, he was going Fifty,  
12 he couldn't remember specifically making a slow down or a  
13 lane change maneuver. Mr. Tinkler asked him some questions  
14 after I had gone through the deposition with him, and it  
15 was, essentially, he couldn't remember whether he took any  
16 evasive maneuvers or not. So, there's no real indication  
17 from him that he tried to get around the cloud. He decided  
18 to go straight -- and I don't know if he decided or if he  
19 didn't see, or what, but he acknowledged that the right part  
20 of his truck went through a cloud that he couldn't see  
21 through, and he hit the tractor.

22 Now, that's where your focus on, and attentiveness to  
23 what's been going on is important because that comes to the  
24 question of causation. What caused the accident? Was it,  
25 DOT didn't have signs up, the driver sees the mowing up and

1 decides, I'm going to drive through, partly through the  
2 cloud anyway? It seems that that's an important part of it.

3 Now, let's talk about, I mentioned earlier, as you  
4 judge the credibility of the witnesses, believability of the  
5 witnesses, there's something that, one of the things that  
6 you can consider in evaluating their testimony is not only  
7 their opportunity to observe things such as, if you recall,  
8 yesterday Mr. Alexander said he had just recently been to  
9 his eye doctor and he said, my left eye is Twenty/Twenty-  
10 five. He didn't say what his right eye was. He also  
11 acknowledged that he had been diagnosed, treated and  
12 suffering or enduring macular degeneration. And when I  
13 tried to go through his deposition testimony, if you recall,  
14 I laid the deposition on the counter here, and the Judge had  
15 to basically acknowledge that I was reading it correctly.  
16 So, was the decision to go forward, not seeing through the  
17 cloud, not being aware of the dimension of the cloud, was  
18 that affected in part by his vision? We really don't know  
19 that. That's for you to decide. But one thing is certain,  
20 is that he didn't lack information about what he was doing  
21 other than what was inside the cloud or how far inside the  
22 cloud. He knew that there was a mower, a mowing operation  
23 going on, and that's the key to this. Why did he stay at  
24 whatever speed, about Fifty miles an hour, and drive partly  
25 through the cloud? Why didn't he veer to the left? There

1 was no oncoming traffic. Why didn't he slow down until he  
2 could see what was inside the cloud? Ladies and Gentlemen,  
3 that's really a crucial point in this case. Please don't,  
4 don't think because DOT didn't have a whole cadre of people  
5 from Columbia and Orangeburg coming in here to testify that  
6 either this is not important or that nobody cares. I think  
7 there is a very serious concern about the injuries, but the  
8 truth of the matter is, there were three people at the time  
9 of the accident scene. They had Mr. Alexander who was first  
10 behind the mower tractor, they had Ms. Walls who was  
11 immediately behind, and then they had Mr. Bookhart who was  
12 driving the tractor. And he, he testified he didn't even  
13 see when the vehicle approached because he's got his job of  
14 watching where he's going ahead and watching to the side and  
15 looking in his mirror down on the, checking his alignment on  
16 the roadway. But there are really no other DOT people  
17 involved. Mr. Locklair was the maintenance engineer who  
18 came out to determine, you know, DOT's situation on the side  
19 of the road, but he wasn't there when it happened. So, it's  
20 up to you, Ladies and Gentlemen of the jury, to consider the  
21 testimony, the opportunities for people to see what went on.  
22 Keep in mind the law that the Judge is going to instruct  
23 you.

24 And another thing, in dispatching your role as jurors  
25 the basis for your decision needs to be, our law needs for

1 it to be based on the facts, the evidence and the law, not  
2 for anything such as sympathy, prejudice or envy or anything  
3 like that. So, while it's, it's comfortable to see someone  
4 in Mr. Alexander's situation, you feel comfortable saying,  
5 he got hurt, and it was probably DOT's fault, let's go ahead  
6 and award him what he's asking for. Your first duty is to  
7 consider what actually happened, what was the cause, and not  
8 just try to make someone whole when they had, you know, some  
9 responsibility, in this case. You know, I believe the facts  
10 really show, and it's for you to determine, it's for you to  
11 determine what the facts really show, but his, this is  
12 presented to you as a case about failing to warn. And, you  
13 know, it's not, it's not about failing to warn. As a matter  
14 of fact, the Judge is going to instruct you that there's  
15 really no obligation to warn of a hazard that's open and  
16 obvious. And in this case it was open and obvious.

17 Ms. Walls saw the tractor and the cloud of dust, and I  
18 believe she testified that she had seen, you know, the flag  
19 on the right wing of the mower, she couldn't see directly  
20 ahead of her, she couldn't see whether the flag was in place  
21 before the incident because Mr. Alexander's truck was  
22 between her and the mower. But the case really boils down  
23 to what, what was the reason that Mr. Alexander drove  
24 through the cloud of dust? And it's, I don't know that this  
25 is kind of a type, but you see how kids on a playground have

1 to see how deep a puddle is, you know. They have to step in  
2 it to see how deep it is. You've got a cloud of dust on the  
3 road in front of you, and you know that there's a big piece  
4 of equipment in there. Why not go clear around it? It's a  
5 question of maybe over driving your sight distance or over  
6 driving your visibility.

7 The, the plaintiff has presented a tablet or chart with  
8 rather substantial numbers on there, and the things that are  
9 listed as being included within damages, obviously, everyone  
10 recognizes that the medical bills are a direct payment out  
11 of -- a direct amount of money. In other words, the  
12 hospitals and doctors charge the amount that they charge.  
13 But each of the other components after that, when you get  
14 down to pain and suffering, past and future, loss of  
15 enjoyment of life, housework and lawn care, keep in mind  
16 that the -- first of all, unfortunately for Mr. Alexander  
17 and his family, you know, the, his treatment and hospital  
18 course, have resulted in a reasonably, you know, a  
19 reasonably good recovery. One of the things, though, that --  
20 one of the things that I asked Ms. Sweatman yesterday and  
21 that I asked Mr. Alexander, not Junior, Second, and also in  
22 Dr. Demos's deposition was essentially that there's not --  
23 nobody has a particular ability to give you a medical  
24 opinion how much the accident is responsible for changing  
25 his life. And I think one of the things that we were

1 talking about yesterday was that some of the changes that,  
2 that he's experiencing, I mean, I'm, you know, I'm getting  
3 on in years myself, you know, so I mean, I recognize what's  
4 coming, but we're not as young as we once were, and some of  
5 the changes are naturally coming about as a result of the  
6 aging process. And really, there's not anybody who  
7 testified that can say how much, what, to what degree has  
8 this accident changed things, to what degree has it caused  
9 pain and suffering? The doctor talked about arthritis, and  
10 he was not really able to say, he said, his arthritis would  
11 probably be a little bit more advanced, but he couldn't say  
12 whether it was, how much more because of the accident versus  
13 just the aging process. And that basically carries through  
14 for, for the other components, the loss of enjoyment of  
15 life. I know my own mother, when she got on up in years and  
16 she got into her nineties, but when she got on up in years  
17 she didn't, she didn't, was not able to continue doing a lot  
18 of the things that she did when she was in her Fifties,  
19 Sixties and Seventies. The only thing I would ask you to do  
20 is, is to, if you get to the stage where you're considering  
21 damages, you know, keep in mind that what's on the chart is  
22 simply Mr. Hutto's tabulation of a possible way, or  
23 recommended way of coming up with the money to compensate  
24 Mr. Alexander. But you don't even need to get to the  
25 damages stage if you recognize and understand, hey, driving

1 into that cloud, that was, you know, that was the result of  
2 a decision, and he already knew what he was facing, that he  
3 was dealing with a mower, and he chose to go through the  
4 cloud. As you look on the jury form you'll be able to see  
5 that you have an opportunity to recognize whether or not --  
6 the first page of the jury form will give you the  
7 opportunity to recognize that DOT, even if they were  
8 negligent, that the negligence, the failure to put up the  
9 sign, or if you believe that there was no flag in place at  
10 the time, if you believe that that was the cause of the  
11 accident, then -- I'm sorry -- if you believe that that was  
12 not the cause of the accident then you'll, I think you'll  
13 check, no, on the form. If you unanimously find by the  
14 preponderance or greater weight of the evidence that DOT was  
15 negligent and it's negligence was a proximate cause of Mr.  
16 Alexander's injuries and damages, so if you check, no, on  
17 that, that would be that even if we were negligent, it  
18 didn't cause the accident, didn't cause the harm. You can  
19 go on into, if you find that DOT was negligent, and if you  
20 find that Mr. Alexander was also negligent, then you get  
21 into the, how much was each involved? But, you know, one  
22 thing that I want to leave you with is, if you see a cloud  
23 of dust for a quarter of a mile and you're doing Fifty miles  
24 an hour, and you suspect and believe that it's a mowing  
25 operation, why in the devil would you drive through the

1 cloud?

2 Thank you.

3 THE COURT: Thank you, Mr. Kulmala.

4 MR. HUTTO.

5 MR. HUTTO: Thank you. May it please the Court.

6 THE COURT: Yes, sir.

7 FINAL CLOSING ARGUMENT BY MR. HUTTO:

8 Ladies and Gentlemen of the jury, y'all have heard  
9 about all you need to hear. The Judge is going to charge  
10 you on the law in this case. But he pointed out, you know,  
11 this whole case is about dust, or why didn't he veer to the  
12 left? What difference would it have made if we had done all  
13 those things? It would have made a big difference if they  
14 had followed their own rules. If they didn't need rules why  
15 do they have rules? They develop rules because they knew  
16 that they were basically creating a situation that is not  
17 normal. Normal is when there is nothing out on the highway  
18 but the highway itself, and the cars are driving on the  
19 highway following the rules of the road. This is a  
20 situation of why it would have made a difference. If that  
21 flag had been sticking up this far out of that cloud of dust  
22 he would have seen that flag. He thought he was passing a  
23 tractor on the side of the road pulling a mower. He had no  
24 idea that the wing was all the way out because there was no  
25 flag on it, like there's supposed to be, and that's what

1 their rules require.

2 We've proved that they didn't follow their rules. We  
3 believe that we've proved that he's entitled to a verdict in  
4 whatever amount y'all think is appropriate.

5 Thank you very much.

6 THE COURT: Alright, thank you, Mr. Hutto.

7 CHARGE BY THE COURT:

8 THE COURT: Mr. Foreman, and Ladies and Gentlemen of  
9 the jury - - -

10 Do you mind moving that over? I know Mr. Hutto doesn't  
11 want me to move it but ...

12 MR. HUTTO: No, you can, I'll move it for all of you,  
13 Judge.

14 THE COURT: Thank you, I appreciate it.

15 Alright. Y'all have heard all the evidence in this  
16 case. You've heard the arguments of the attorneys, and now  
17 it is my turn to tell you the law in this action.

18 Mr. Alexander, the plaintiff, claims he was injured by  
19 the actions of the South Carolina Department of  
20 Transportation, the defendant, and in bringing this law suit  
21 the plaintiff claims that the defendant should compensate  
22 him for his injuries. The defendant has denied  
23 responsibility and claims that the plaintiff is at fault.

24 During the trial you have -- I have certain duties to  
25 perform. As the trial judge I preside over the trial of

1 this case and rule on the admissibility of the evidence  
2 offered during the trial. You are to consider only the  
3 evidence before you, the testimony which has been presented  
4 from this witness stand, any exhibits which have been made a  
5 part of the record in this case, and any stipulations of  
6 counsel.

7 In every case the jury is the sole and exclusive judge  
8 of the facts. I cannot comment on or make any statement  
9 about the facts in the case. Since you are the sole judges  
10 of the facts, do not think by anything I have said during  
11 the trial that I have an opinion about the facts in this  
12 case. The law does not allow me to have an opinion, and I  
13 do not have one.

14 The burden of proof in this case is by a preponderance  
15 of the evidence. A preponderance of the evidence simply  
16 means the greater weight of the evidence. It is evidence  
17 which, as a whole, shows that the facts sought to be proved  
18 is more likely true than not true. This can be illustrated  
19 by imagining a set of scales. When the case begins the  
20 scales are even. After all the evidence has been presented,  
21 if the scales remain even, or if they tip even slightly in  
22 favor of the defendant, then the plaintiff has failed to  
23 meet his burden of proof and would not be entitled to  
24 recover in this case. On the other hand, if the scales tip  
25 even slightly in favor of the plaintiff, the plaintiff will

1 have met his burden of proof and you should return a verdict  
2 for the plaintiff. The preponderance of the evidence is not  
3 determined by the number of witnesses. Instead, it must be  
4 determined by the greater weight of all the evidence.

5 There are two types of evidence generally presented  
6 during a trial, direct evidence and circumstantial evidence.  
7 Direct evidence is the testimony of a person who claims to  
8 have actual knowledge of a fact such as an eye witness. It  
9 is evidence which immediately establishes the main fact to  
10 be proved. Circumstantial evidence is proof of a chain of  
11 facts and circumstances indicating the existence of a fact.  
12 It is evidence which immediately establishes collateral  
13 facts from which the main fact may be inferred.  
14 Circumstantial evidence is based on inference and not on  
15 personal knowledge or observation.

16 To determine the facts in this case you will have to  
17 evaluate the credibility, that means the believability of  
18 each witness. Some of the things you may consider as you  
19 decide whether or not believe a witness's testimony is, what  
20 was the manner and appearance of the witness who testified?  
21 Was he or she straightforward or hesitant in answering? Was  
22 the testimony of a witness consistent or inconsistent? How  
23 did the witness come to know the facts that he or she  
24 testified to? What was his ability to know these facts? Is  
25 there some reason a witness would want to give testimony

1 which would help or hurt one side or the other; in other  
2 words, was the witness biased or prejudiced? Was the  
3 testimony of a witness strengthened or weakened by other  
4 testimony or evidence? Throughout this process you have but  
5 one objective, and that is to seek the truth regardless of  
6 its source.

7 The rules of evidence ordinarily do not permit  
8 witnesses to testify to opinions or conclusions. An  
9 exception to this rule exists for witnesses we call expert  
10 witnesses. A witness who by education and experience has  
11 become expert in some art, science or profession may give an  
12 opinion as to the subject the witness claims to be an expert  
13 in and may also give the reasons for that opinion. You  
14 should consider any expert opinion given by a witness and  
15 like any other evidence give it the weight you think it  
16 deserves. If you decide that an expert witness's opinion is  
17 not based on sufficient education and experience, or if you  
18 decide that the reasons given in support of the opinion are  
19 not sound or that the opinion is outweighed by other  
20 evidence, you may disregard the opinion entirely. An expert  
21 witness's testimony is to be given no greater weight than  
22 that of other witnesses simply because the witness is an  
23 expert, and you do not have to accept an expert's opinion  
24 even though it is uncontradicted.

25 The plaintiff claims that the defendant was negligent

1 and should compensate the plaintiff for injuries he suffered  
2 as a result of the defendant's negligence. In order to  
3 prove that the defendant was negligent the plaintiff must  
4 prove four things by a preponderance or greater weight of  
5 the evidence:

6 First, the plaintiff must prove by a preponderance  
7 or greater weight of the evidence that the defendant  
8 owed the plaintiff a duty of care;

9 Next, the plaintiff must prove by a preponderance  
10 or greater weight of the evidence that the defendant  
11 breached that duty by a negligent act or omission.  
12 Negligence means that a person has done something that  
13 a reasonable person would not have done or has failed  
14 to do something that a reasonable person would have  
15 done in the same situation.

16 Third, the plaintiff must prove by a preponderance  
17 or greater weight of the evidence that he suffered  
18 damages as a result of the defendant's breach of duty.

19 And finally, the plaintiff must prove by a  
20 preponderance or greater weight of the evidence that  
21 the damages were proximately caused by the defendant's  
22 breach of duty. Proximate cause is something that  
23 produces a natural chain of events which in the end  
24 brings about the injury. It is the direct cause of the  
25 injury.

1           The plaintiff's burden of proof cannot be met by  
2           relying on the theory that the thing speaks for itself or  
3           that the very fact of injury indicates a failure to exercise  
4           reasonable care. Where the cause of the plaintiff's damages  
5           may be as reasonably attributed to an act for which the  
6           defendant is not liable as to one for which it is liable,  
7           the plaintiff has failed to carry the burden of establishing  
8           that his damages were the proximate result of the  
9           defendant's conduct.

10           A person shall not drive a vehicle on a highway at a  
11           speed greater than is reasonable and prudent under the  
12           conditions and having regard to the actual and potential  
13           hazards then existing. Speed must be so controlled to avoid  
14           colliding with a person, vehicle, or other conveyance, or on  
15           entering the highway, in compliance with legal requirements  
16           and the duty of a person to use due care.

17           There is no duty to warn of dangers that are open and  
18           obvious.

19           If you find that the plaintiff impliedly assumed risk  
20           inherent in the activity there is no duty to the plaintiff.  
21           In order to show that the plaintiff assumed the risk it must  
22           be shown that the plaintiff had knowledge of the facts  
23           constituting the dangerous condition, knew the condition was  
24           dangerous, understood and appreciated the nature and extent  
25           of the danger, and freely and voluntarily exposed himself to

1 the danger. The defendant has the burden of proving by a  
2 greater weight or preponderance of the evidence that the  
3 plaintiff assumed the risk.

4 Our common law rules of the road require the operator  
5 of a motor vehicle to use the same care that would have been  
6 exercised by a person of ordinary reason and prudence if  
7 that person was driving the same vehicle at the same time  
8 and place, and under the same circumstances.

9 A person using the public roads of this State owes a  
10 duty to exercise ordinary care at all times to avoid placing  
11 himself or others in danger, and to use like care to avoid  
12 an accident.

13 A driver on the public roads owes a duty to keep a  
14 proper lookout for other persons or objects upon the  
15 highway. This duty is not merely one of looking, but one of  
16 seeing. A driver must look in such a careful and  
17 intelligent manner as to enable him to see a person or  
18 object upon the highway which may reasonably be expected.

19 A person operating a motor vehicle is under a duty to  
20 keep it under proper control so as to be able to stop, slow  
21 down or turn in order to avoid colliding with other  
22 vehicles, pedestrians or obstructions lawfully on the  
23 roadway. A person who fails to keep a proper lookout or  
24 fails to keep his vehicle under proper control, or fails to  
25 see what a person of ordinary care would have seen is

1 negligent.

2 In this case the plaintiff claims that the defendant  
3 failed to follow regulations of the Department of  
4 Transportation. The regulation reads as follows:

5 "All signs mounted on portable sign supports shall  
6 have a minimum mounting height of five feet from the  
7 ground to the bottom of the sign.

8 Mowing signs supplemented with standard, 'next  
9 three miles' signs shall be used on primary and  
10 secondary routes greater than three miles long. Signs  
11 should be moved as necessary to remain within three  
12 miles of the mowing operations.

13 On primary and secondary roads less than three  
14 miles long they will be placed within a distance  
15 determined by the crew supervisor.

16 On primary and secondary roads encroachment on the  
17 travel-way should be held to the minimum possible to  
18 satisfactorily accomplish mowing. A standard slow  
19 moving vehicle emblem shall be mounted on the rear of  
20 the tractor in such a position that it can be clearly  
21 visible by vehicles approaching the mowing unit from  
22 the rear.

23 The following will be required for each tractor  
24 unit:

25 Two double faced, amber front, red rear flashing

1 lights prominently mounted on the rear wheel fenders.

2 One top mounted amber revolving light or flashing  
3 neon light visible from both directions. If a canopy  
4 is not used the light shall be mounted on a mast  
5 suitably attached to the tractor frame at an elevation  
6 slightly higher than the roll bar.

7 A sign reading 'mowing' on the rear of the unit,  
8 the sign shall be black legend on an orange non-  
9 reflectorized background, with minimum eight inch  
10 Series C letters.

11 In addition to the above the Fifteen foot mower  
12 shall have a red flag near the outer edge of each bat  
13 wing on a three foot long or greater staff."

14 If you decide that the plaintiff is entitled to a  
15 verdict your next step would be to decide how much money the  
16 defendant should be required to pay. Actual damages are to  
17 compensate the plaintiff for the plaintiff's injuries or  
18 loss, and to put the plaintiff as near as possible in the  
19 same position the plaintiff was in before the incident  
20 occurred. In other words, actual damages would be the  
21 actual losses and expenses which the plaintiff has suffered  
22 because of the defendant's negligence.

23 The plaintiff must prove that expenses caused by the  
24 injury were necessary and reasonable.

25 Actual damages for a plaintiff who has been physically

1 injured include pain and suffering, both past and future, as  
2 well as mental anguish, impairment of health or physical  
3 condition. In determining the amount of compensation for  
4 personal injuries it is proper to consider past and present  
5 aspects of the injury. This would include physically and  
6 mental pain and suffering, expenses incurred for necessary  
7 medical treatment, the loss of enjoyment of life suffered as  
8 a result of the injury, and any other losses which are  
9 reflected by the character of the injury. The injured party  
10 may recover for those future damages that are reasonably  
11 sure to result from the injuries. The principle underlining  
12 compensation for future damages is that only action can be  
13 brought, and therefore, only one recovery can be had. It is  
14 proper to include<sup>4</sup> in the estimate of future damages future  
15 medical expenses and pain and suffering which will with  
16 reasonable certainty result.

17 Pain and suffering compensates the plaintiff for  
18 physical discomfort and emotional response to the sensation  
19 of pain caused by the injury itself. There is no definite  
20 standard by which to compensate the plaintiff for pain and  
21 suffering. You have the authority to determine the amount,  
22 if any, to be allowed for pain and suffering. using calm and  
23 reasonable judgement to insure that the damages are just and  
24 reasonable in light of the testimony and evidence presented  
25 in this case.

1           Loss of enjoyment of life compensates the plaintiff for  
2 limitations on the plaintiff's ability to participate in and  
3 derive pleasure from the normal activities of daily life.

4           A plaintiff is never entitled to recover conjectural or  
5 speculative damages, but if you find the plaintiff is  
6 entitled to a verdict for actual damages your verdict should  
7 include an amount to cover any past, present and future  
8 damages which were proximately caused by the defendant. Any  
9 future damages must be reasonably certain to occur in the  
10 future as a result of the defendant's acts.

11           Actual damages need not be proven to a mathematical  
12 certainty or based on evidence of the precise amount of  
13 damages the plaintiff has suffered. Instead, the evidence  
14 must allow you to determine what amount of damages is fair,  
15 just and reasonable. Any future damages must be reasonably  
16 calculated to have resulted from the alleged injury or  
17 damage sustained in this case. Future damages must be  
18 reduced to their present cash value.

19           If you find that the plaintiff was permanently injured  
20 as a result of the defendant's actions you must then decide  
21 how, if at all, that injury will affect the rest of the  
22 plaintiff's life. A person's life expectancy is determined  
23 by a life expectancy table which is part of the laws of this  
24 State. The life expectancy table is only an estimate of the  
25 probable average remaining length of the life of all persons

1 in our State of a given age. The plaintiff is an Eighty  
2 year old male with a life expectancy, according to the life  
3 expectancy table, of Seven point Four Nine years. This fact  
4 is to be considered by you along with any other facts and  
5 circumstances in evidence bearing on the plaintiff's life  
6 expectancy, including occupation, habits and health at the  
7 time of injury in deciding the amount of damages to be  
8 awarded to the plaintiff.

9 The defendant claims that the plaintiff's own  
10 negligence proximately caused the plaintiff's injuries. If  
11 you find that the defendant was negligent you must then  
12 decide whether the plaintiff was negligent. The defendant  
13 must prove by a preponderance or greater weight of the  
14 evidence that the plaintiff breached a duty of care which  
15 proximately caused the plaintiff's injuries. The same law  
16 which I have told you to use in deciding whether the  
17 defendant was negligent should be used in deciding whether  
18 the plaintiff was negligent.

19 If you find that the negligence of both the plaintiff  
20 and the defendant proximately caused the plaintiff's  
21 injuries you must then decide how much the negligence of the  
22 plaintiff contributed to the plaintiff's injuries and how  
23 much the defendant's negligence contributed to the  
24 plaintiff's injuries. In deciding the percentages of  
25 negligence of the plaintiff and the defendant you may

1 consider, among other things, the following factors:

2 Whether each party's conduct was only inadvertent  
3 or whether it was engaged in with an awareness of the  
4 danger involved.

5 The magnitude of the risk created by each party's  
6 conduct, including the number of persons endangered and  
7 the possible severity of the injury.

8 The significance of the goal that each party was  
9 trying to reach and the need to achieve the goal in  
10 that manner.

11 Each party's capabilities and abilities to realize  
12 and eliminate the risk involved.

13 The particular circumstances confronting each  
14 party at the time the conduct occurred such as the  
15 existence of an emergency requiring a quick decision.

16 The relative closeness of the causal relationship  
17 of the negligent conduct of the defendant and the harm  
18 to the plaintiff, and whether the conduct of either  
19 party involved a violation of a safety statute or  
20 regulation.

21 I will give you written questions on a special verdict  
22 form for you to reach your verdict. The form will have  
23 spaces for you to write your decisions about the percentage  
24 of negligence, if any, of both parties which proximately  
25 caused the plaintiff's injuries.

1           The first question on the verdict form asks you to  
2           decide whether the defendant was negligent, and if so,  
3           whether the defendant's negligence was the proximate cause  
4           of the plaintiff's injuries.

5           Question Two asks the same question about any  
6           negligence by the plaintiff.

7           Question Three asks you to decide the percentage of  
8           each party's negligence which proximately caused the  
9           plaintiff's injuries. The percentages must add up to One  
10          hundred per cent. If the plaintiff's negligence was greater  
11          than the defendant's negligence the plaintiff would not be  
12          entitled to any damages and your verdict would be for the  
13          defendant.

14          If, however, you find that the plaintiff's negligence  
15          was equal to or less than the defendant's negligence, you  
16          would answer Question Four, which asks you to determine the  
17          total amount of damages suffered by the plaintiff.

18          Do not reduce the plaintiff's total damages based on  
19          the percentage of negligence of any party. After you have  
20          answered the questions I will compute the amount of damages  
21          for which the defendant is responsible based on the  
22          percentage of the defendant's negligence which you have  
23          decided proximately caused the plaintiff's injuries. You  
24          are to determine only the total amount of the plaintiff's  
25          damages and to enter that figure on the verdict form.

1           Now, I have declared the law to you through these  
2 instructions to help guide you to a just and lawful verdict.  
3 Whether some of these instructions will apply will depend  
4 upon what you find to be the facts. The fact that I have  
5 instructed you on various subjects in this case, including  
6 damages, must not be taken to, as indicating an opinion of  
7 this Court s to what you should find to be the facts or to  
8 which party is entitled to your verdict. Your verdict must  
9 represent the considered judgement of each juror. In order  
10 to return a verdict it is necessary that each one of you  
11 agree. Your verdict must be unanimous, all Twelve of you  
12 must agree on this verdict. Your verdict cannot be based on  
13 sympathy, passion, prejudice, emotion or any other  
14 consideration not in evidence in this case. Remember, you  
15 are not partisans favoring one party over another, you are  
16 the judges of the facts and your sole interest is to seek  
17 the truth from the evidence in this case.

18           Alright, Mr. Foreman, you have seen some -- y'all have  
19 seen the verdict form. I'm going to go over this with you.  
20 Okay? The verdict form has the case number on it, the  
21 plaintiff's name, the defendant's name, and it says, verdict  
22 form. It says, "Please answer the following questions and  
23 the instructions provided on this form.

24                   Question One, did you unanimously find by the  
25                   preponderance or greater weight of the evidence that

1 the defendant, South Carolina Department of  
2 Transportation, hereinafter, SCDOT, was negligent and  
3 this negligence was the proximate cause of the  
4 plaintiff, Aubrey Alexander's injuries and damages?  
5 Please mark your answer with an X." And then you'll put an  
6 X either for yes or no. Then the instructions say:

7 "If your answer to Question One is yes, go to  
8 Question Two. If your answer to Question One is no,  
9 then stop, date and sign the verdict form."

10 "Question Two. Do you unanimously find by the  
11 preponderance or greater weight of the evidence that  
12 the plaintiff, Aubrey Alexander, was negligent, and his  
13 negligence was the proximate cause of his injuries and  
14 damages? Please mark your answer with an X."

15 And you will again mark either yes or no. Then you look at  
16 the instructions:

17 "If your answer to Question Two was yes, then you  
18 go to Question Three. If your answer to Question Two  
19 was no, skip Question Three and go to Question Four."

20 Now, Question Three reads:

21 "Please state what percentage of fault for the  
22 accident you unanimously find by the preponderance or  
23 greater weight of the evidence to have been  
24 attributable to the plaintiff, Aubrey Alexander, and  
25 what percentage of fault for the accident you

1           unanimously find by the preponderance or greater weight  
2           of the evidence to have been attributable to the  
3           defendant, SCDOT? The percentages must equal One  
4           hundred per cent."

5           And then you would put a percentage figure for Mr. Alexander  
6           and a percentage figure for SCDOT. These two numbers must  
7           add up to One hundred per cent. Then you follow the  
8           instructions again:

9                        "If the percentage of fault that you assign to the  
10            plaintiff is Fifty-one per cent or greater, then you  
11            stop. You sign and date the verdict form. If the  
12            percent of fault you assign to the plaintiff was less  
13            than Fifty-one per cent you go on to Question Four."

14           Now, Question Four:

15                        "What amount of actual damages do you unanimously  
16            find by the preponderance or greater weight of the  
17            evidence that the plaintiff, Aubrey Alexander,  
18            sustained as a result of the negligence on the part of  
19            the defendant, SCDOT? Please write the number in the  
20            blank space below."

21           If you answered Question Three do not reduce the amount of  
22           damages you award, if any, by either of the percentages set  
23           forth in your answer to Question Three. This is the total  
24           damages if you get that far. Okay?

25           After you have done that you are to sign and date this.

1 And I put the date, November, I've left off the day and  
2 year. I'm hopeful that we will do this this month. But if  
3 it takes longer, we can take as long as you need. Okay?

4 JURY FOREMAN: Yes, sir.

5 THE COURT: Now, I'm not giving you the verdict form  
6 right now. And the reason I'm not giving you the verdict  
7 form is, I think I told y'all earlier today that after I  
8 charge you with the law I'll let y'all go back into the jury  
9 room, and even though you have now heard all of the evidence  
10 in this case, you've heard the closing arguments of the  
11 lawyers, you've heard me charge on the law, I've got to go  
12 over with the attorneys and make sure I've charged you  
13 properly on the law. I may have spoken -- I may have mis-  
14 spoken, or they may want me to correct something, and if  
15 that's the case I will bring you back out and make those  
16 corrections. If, however, I haven't made any mistakes, then  
17 the bailiff will bring the exhibits back into -- all the  
18 exhibits back into the jury room to you as well as the  
19 verdict form, and they will tell you to begin your  
20 deliberations.

21 Now, until that happens, you can't talk about this  
22 case. Okay? You cannot talk about this case until all the  
23 exhibits come back in and you get the verdict form. Okay?  
24 Hopefully it's just going to be a few more minutes. I know  
25 y'all are anxious to talk about it and I'm glad of that, but

1 we've got just a few more minutes. I'm going to let y'all  
2 go back into the jury room right now, and bear with me for  
3 just one more minute.

4 (Whereupon, the jury retires  
5 to the jury room and the following  
6 takes place out of the presence  
7 of the jury.)

8 THE COURT: Alright, Mr. Hutto, any ...

9 MR. HUTTO: Just renew our exceptions to open and  
10 obvious, and we'd just note that for the record. And the  
11 other thing is, we would agree that at this point, since  
12 everybody looked like they were doing okay, to waive the  
13 alternates at this point.

14 THE COURT: Okay. Okay, I'll note your objection.

15 And Mr. Kulmala, do you want me to preserve your  
16 objection to the ones that I didn't charge on your behalf?

17 MR. KULMALA: That's correct.

18 THE COURT: Alright, sir.

19 MR. KULMALA: And including, which is not written on  
20 the form, the Miller versus Ferrell Gas.

21 THE COURT: Yes, sir. Okay, your objections to the  
22 charge are noted in the record and preserved.

23 MR. KULMALA: Thank you.

24 THE COURT: Okay. Now, if y'all would check and make  
25 sure we've got all the exhibits, if y'all would get -- and

1 then we'll send them on back to the jury.

2 (Whereupon the alternate jurors  
3 enter the courtroom.)

4 THE COURT: Thank y'all. You know, y'all are the  
5 alternates in this case, and since we have the entire jury  
6 panel here we're not going to need you. So y'all are  
7 excused, y'all can leave or if y'all want to stay you're  
8 welcome to sit in the back and see what happens. But right  
9 now y'all are free to go. Thank you for being willing to  
10 serve on the jury. If you decide to go now, the good news  
11 is, you know the County will send you this large check that  
12 y'all can enjoy at some time, maybe at McDonald's. Alright,  
13 thank y'all very much, I appreciate it.

14 (Whereupon, the jury begins  
15 deliberations at 3:30 p.m.)

16 (Recess)

17 (Whereupon, a note is sent in  
18 from the jury at 4:20 p.m.)

19 THE COURT: Mr. Hutto, you just got here. Everybody  
20 has seen the question. I've had the suggestion that I could  
21 answer it yes, but it must be unanimous. And then I've had  
22 the suggestion that I read part of the charge when doing  
23 that. And I guess, I'm assuming that Question Three, in  
24 that part of the charge says, "Question Three asks you to  
25 decide the percentage of each party's negligence which

1 proximately caused the plaintiff's injuries. The  
2 percentages must add up to One hundred per cent." Or I can  
3 just say - - -

4 MR. HUTTO: My general impression of the question is  
5 that the ones that you can answer without injecting either  
6 yourself or an opinion you're supposed to answer the  
7 question. And I think the answer is, yes.

8 THE COURT: Mr. Kulmala, do you want me to just say,  
9 yes?

10 MR. KULMALA: I think either one, I guess, either, yes,  
11 or reread that part of the charge.

12 THE COURT: I'm going to let y'all talk to me to decide  
13 how y'all want to do it.

14 MR. HUTTO: My point is, they've already heard the  
15 charge.

16 THE COURT: Right.

17 MR. HUTTO: Based on hearing the charge they have this  
18 question.

19 THE COURT: Right.

20 MR. HUTTO: And it's a question that I don't think  
21 violates any comment on the facts by you to answer the  
22 question, and it doesn't suggest that - - -

23 THE COURT: I can just say, yes, so long as it adds up  
24 to a hundred per cent, or, yes, so long as it's unanimous,  
25 or just, yes?

1 MR. HUTTO: I think if you'll say, yes, so long as it's  
2 unanimous is fine.

3 THE COURT: What I'm going to do is, I might, I will  
4 just write that on here, yes, so long as it is unanimous.  
5 Is that alright, Mr. Kulmala?

6 MR. KULMALA: That's fine.

7 THE COURT: Okay.

8 COURT REPORTER: At the end be sure you bring that note  
9 and bring it back to me.

10 THE COURT: Alright. "Yes, as long as the decision is  
11 unanimous." If you will read that to them and then tell  
12 them I'm doing this rather than bring them all out, you're  
13 just going to read that answer, and then bring it back to  
14 me. Thank you.

15 (Court's Exhibit Two  
16 marked and filed.)

17 THE COURT: Alright, we're in recess until - - -

18 MR. HUTTO: Okay. That's not a follow up question?

19 THE COURT: No, no. I just had her read the answer and  
20 then bring it back. I've got to go frame this.

21 (Recess)

22 THE COURT: Is the plaintiff ready?

23 MR. HUTTO: Yes, sir.

24 THE COURT: Is the defense ready?

25 MR. KULMALA: Yes, sir.

1 THE COURT: Okay. Bring the jury on out, please.

2 (Whereupon, the jury returns  
3 with a verdict at 4:50 p.m.)

4 THE COURT: Mr. Foreman, has the jury reached a  
5 decision?

6 JURY FOREMAN: It was trouble but we got together.

7 THE COURT: Alright. Is it a unanimous decision?

8 JURY FOREMAN: Yes, sir.

9 THE COURT: Okay. Would you give the bailiff your  
10 verdict?

11 (Whereupon, the Court  
12 examines the verdict.)

13 VERDICT OF THE JURY:

14 THE COURT: Alright. In the case of Aubrey G.  
15 Alexander, Senior, Plaintiff, versus South Carolina  
16 Department of Transportation, Defendant, the answer to  
17 Question One regarding whether the defendant, South Carolina  
18 Department of Transportation, was negligent, and the  
19 negligence proximately caused the plaintiff's injuries, the  
20 answer of the jury was, yes.

21 Question Number Two regarding the, whether the  
22 plaintiff was negligent and was his negligence is a  
23 proximate cause of his injuries, the jury answered, yes.

24 With regard to Question Number Three, please state the  
25 percentage of fault for the accident that you unanimously

1 find attributed to both the plaintiff and to the defendant,  
2 as to the plaintiff, Aubrey Alexander, the jury determined  
3 Forty-nine per cent. As to the defendant, SCDOT, the jury  
4 determined Fifty-one per cent. Forty-nine and Fifty-one per  
5 cent.

6 Question Number Four, what amount of actual damages do  
7 you unanimously find that the plaintiff sustained as a  
8 result of the negligence of the defendant, SCDOT? And the  
9 amount of actual damages is One hundred and fifty thousand  
10 dollars.

11 Signed by the foreman and dated today.

12 Alright. Anything from the plaintiff?

13 MR. HUTTO: No, sir.

14 THE COURT: Okay. Anything from the defendant?

15 MR. KULMALA: At this time, no.

16 THE COURT: Alright. Ladies and Gentlemen of the jury,  
17 I appreciate your attention, I appreciate you listening, I  
18 appreciate your deliberations. This is the only case we  
19 have to try this week so y'all are now excused from jury  
20 duty. Thank y'all very much. Y'all have a good week.  
21 Appreciate it.

22 (Whereupon, the jury is  
23 excused.)

24 THE COURT: Yes, sir.

25 MR. HUTTO: Your Honor, at this time we would make a

1 motion for an additur, in the alternative, a new trial on  
2 the basis that the undisputed amount of the actual medical  
3 bills was Two hundred thousand. There would be no rational  
4 basis for the amount of the verdict to be less than that.  
5 Plus, I think there has to be some compensation for pain and  
6 suffering and the other factors, and we would like to --  
7 that is the basis of our motion and we would ask the Court's  
8 leave to follow that up with a written motion and brief to  
9 that end within the next whatever time the Court would set.

10 THE COURT: Well, usually, everybody is allowed ten  
11 days to file the appropriate motions, so I'll note your  
12 motion on the record. I'll allow you ten days in which to  
13 file that motion and any other motions that you would like  
14 to do.

15 MR. HUTTO: Thank you.

16 THE COURT: Mr. Kulmala.

17 MR. KULMALA: Your Honor, I'd at this time like to take  
18 the benefit of the ten days, and I'd be making a motion for  
19 JNOV on the grounds essentially of my directed verdict  
20 motions or in the alternative a motion for a new trial.

21 THE COURT: Well, y'all can both agree on a new trial  
22 now if you want to. No, I'm just - - -

23 MR. KULMALA: Sir?

24 THE COURT: I said, y'all both could agree on a new  
25 trial now if you wanted to, but I'll let y'all talk about

1 that.

2 MR. KULMALA: A new trial as well as a new trial on the  
3 Thirteenth juror.

4 THE COURT: Okay.

5 MR. KULMALA: And again, I'd like to invoke the ten  
6 days.

7 THE COURT: Yes, sir, you will have that as well. And  
8 get back to me after y'all file the motions and we'll  
9 schedule y'all for arguments.

10 Thank y'all very much, I enjoyed it.

11 MS. THOMS: Your Honor, can I also have ten days to  
12 file as the UIM carrier, if necessary?

13 THE COURT: Yes, ma'am,

14 COURT REPORTER: What is your name, ma'am?

15 MS. THOMS: I'm sorry. Jennifer Thoms.

16 THE COURT: Yes, sir?

17 MR. HUTTO: Can we go off the record now?

18 THE COURT: Yes. We're off the record.

19 (END OF TRANSCRIPT.)

1 DATE:

2 DECEMBER 19, 2011

3 THE COURT: Ms. Harry Dot, - - -

4 COURT REPORTER: Yes, sir.

5 THE COURT: --- this is Case Number 2009-CP-38-1258.  
6 It's Aubrey Alexander, Sr., Plaintiff, versus South Carolina  
7 Department of Transportation, Defendant, and this is the  
8 Department of Transportation's Motion for Judgement  
9 Notwithstanding the Verdict.

10 And Mr. Kulmala.

11 MR. KULMALA: Well, actually, Your Honor, I think we  
12 have two motions. I've got a motion for JNOV, and I think  
13 Brad's got a motion for additur.

14 THE COURT: Oh, okay, I didn't know that.

15 MR. KULMALA: And his actually was filed first, but I  
16 mean, you know, the issues are all sort of going to be aired  
17 at the same time.

18 THE COURT: Okay.

19 MR. KULMALA: I'm happy to proceed.

20 ARGUMENT BY MR. KULMALA ON MOTION FOR JNOV:

21 Your Honor, you know, we've made the motion for JNOV.  
22 I believe that the substantive reasons for asking for a  
23 judgement notwithstanding the verdict are fairly completely  
24 set forth in my written motion which was back, I think it  
25 was November Ten. Essentially, the way I saw the case is,

1 there were two potential areas of negligence, one being  
2 negligence in DOT's failure to warn concerning the mowing  
3 operation,-- two types of failure to warn. One was, there  
4 was no -- and there was a stipulation to that effect, no  
5 roadside sign that said warning, or mowing ahead next three  
6 miles. That was admitted to be the case that that warning  
7 sign was not in place. The other failure to warn had to do  
8 with the flag that was on the left, there was to be a flag  
9 on both wings, bat wings, if you would, of the mowing deck,  
10 and there was testimony that the one on the left side was  
11 not seen at or during the time of the collision. But Your  
12 Honor, the evidence in the case is pretty clear, and  
13 regardless of the jury's determination, finding of  
14 negligence there, the evidence is pretty clear that there's  
15 no causation, even if the warnings had not been in place,  
16 there's no evidence to connect the failure to warn with the  
17 incident. That is, Mr. Alexander testified in cross-  
18 examination concerning seeing the cloud, having a visibility  
19 of the cloud of dust for a quarter of a mile, more or less;  
20 that he expected or believed that to be a mowing operation;  
21 that if he had seen -- and this is crucial testimony, if he  
22 had seen a sign that said, warning or mowing ahead next  
23 three miles, it would not have given him anymore information  
24 than he already had, seeing the cloud of dust, believing it  
25 to be a mower. That right there essentially says that the

1 failure to warn did not have any causative relationship with  
2 the collision.

3 With respect to the flag, you know, he candidly  
4 acknowledged that with the mower being in the dust cloud  
5 that if the flag had been there displayed as the guidelines  
6 required it to be, he wouldn't have seen it because of the  
7 dust. And I'm sure Mr. Hutto is going to say, well, how can  
8 we take advantage of a dust cloud that we've created? But  
9 the number of cases that I cited, including the Two thousand  
10 eleven Kittredge opinion in Ferrell Gas basically puts the  
11 onus on a driver to not over drive visibility. In Ferrell  
12 Gas it was about a stop sign, and we had some colloquy about  
13 stop signs versus clouds of dust versus sunshine at the time  
14 of trial. But I believe that the message from the Ferrell  
15 Gas case and others earlier than that as well indicate that  
16 the driver has the responsibility to not drive into that  
17 which he cannot see. So, in a nutshell, that's our position  
18 on JNOV on the failure to warn.

19 As to the degree that there was negligence contended in  
20 the mowing operation, there's no evidence of the duty or  
21 breach of duty. There was a few pages from the vegetation  
22 control manual and the important line or part of a line that  
23 deals with the standard of care for a mowing operation is  
24 to, you know, mow as -- as close as practicable. Let's see,  
25 "On other roads encroachment of the travelway should be held

1 to the minimum possible to satisfactorily accomplish  
2 mowing." That single sentence from the Vegetation Control  
3 Manual is the only thing that comes close to defining what  
4 the duty of DOT was. And nobody brought in on the  
5 plaintiff's part an expert to testify to the standard of  
6 care for mowing operations, and it's SCDOT's view that  
7 that's a failure to establish the duty, which is, of course,  
8 one of the essential elements of negligence. So, as to the  
9 mowing itself, there's no establishment of the duty. We  
10 have the testimony of Mr. Bookhart that indicated that, how  
11 he was doing the mowing and how he guided the mowing deck,  
12 and so forth, to comply with that requirement. So, as to  
13 that there's no evidence of duty, can be no evidence of  
14 breach of duty, and we would ask the Court to grant us  
15 judgement notwithstanding the verdict.

16 THE COURT: Alright, thank you, sir.

17 Alright, Mr. Hutto.

18 ARGUMENT IN REPLY BY MR. HUTTO ON MOTION FOR JNOV:

19 Your Honor, these are essentially the same issues that  
20 were raised at the time that you ruled on the directed  
21 verdict motions, and we don't think anything has changed  
22 since that time. But specifically, we think it was a jury  
23 question as to the failure to warn, the absence of the flag  
24 on the mower deck and how far it should have stood up or  
25 protruded beyond what would have been any cloud there. The

1 manul that was put into evidence clearly establishes what  
2 their duties are as it relates to the motoring public, and  
3 that they are to have warning devices, and in particular in  
4 this case the mower deck flag which would have been clearly  
5 visible to the plaintiff had it been there. Again, we think  
6 it's a jury question.

7 THE COURT: Alright, sir.

8 ARGUMENT IN REPLY BY MR. KULMALA TO MOTION FOR JNOV:

9 The only thing I would add, Your Honor, is, I would  
10 request Your Honor sitting as Thirteenth juror, looking at  
11 the absence of evidence of those essential elements that the  
12 plaintiff must prove the absence of evidence of those  
13 elements, we would respectfully request the JNOV.

14 THE COURT: Alright, sir. And Mr. Hutto, you have  
15 filed a motion for additur?

16 MR. HUTTO: I did.

17 THE COURT: Okay.

18 MR. HUTTO: And you may or may not have a copy of it, I  
19 don't know.

20 THE COURT: No, I don't.

21 MR. HUTTO: Okay.

22 THE COURT: But I -- let me look and see if the Court  
23 file has one. You see, Mr. Kulmala was kind enough to send  
24 me a copy of that and his memorandum regarding that.

25 MR. HUTTO: I can hand it to you.

1 THE COURT: Oh, okay. Okay, fine.

2 MR. HUTTO: It's relatively short, so it shouldn't take  
3 you too long.

4 THE COURT: Is this my copy?

5 MR. HUTTO: No, sir, that's my copy, but you can use  
6 it. We'll make you a copy right after - - -

7 THE COURT: Well, okay, then I won't mark on this. I  
8 just wanted to make sure where I was with this since for  
9 some reason it, I don't think it's got, your motion has not  
10 actually made it to the file yet. Okay.

11 ARGUMENT BY MR. HUTTO ON MOTION FOR ADDITUR:

12 Your Honor, this is a case in which the jury found  
13 Fifty-one Forty-nine and issued a numerical number off a  
14 hundred and fifty, which when you apply those percentages,  
15 of course, come out mathematically to what they come out to.  
16 But what -- we contend that the medical bills that we  
17 introduced, Two hundred thousand seven hundred ninety  
18 Dollars, were uncontested that they were related directly to  
19 this; that there is no way that a jury could have returned a  
20 verdict less than the actual medical bills. There wasn't  
21 any testimony that there was any other cause to his problems  
22 other than this; and so we have asked you to consider an  
23 additur of Four hundred thousand Dollars. Of course, which  
24 when you apply -- you still have to apply the percentages to  
25 that, but we contend that clearly the medical bills were

1 uncontested. The doctor testified to his damages. So Two  
2 hundred thousand seven hundred and ninety we don't think a  
3 jury could have possibly given less than that. And in  
4 addition, we think we presented a case for pain and  
5 suffering and loss of enjoyment of life, mental anguish and  
6 those other things. Beyond that we also put in evidence  
7 about him having to pay somebody to his yard work and his  
8 house work because he couldn't do those things. And while I  
9 realize the issue of damages is generally left to the jury,  
10 there are cases, and this being one we think in which the  
11 only objective view of the damages are that they would have  
12 to be higher than a hundred and fifty thousand dollars  
13 because the medical bills were nearly Two hundred and one  
14 thousand Dollars. And so, we're asking you to give us an  
15 additur in this case, and then, of course, if they're  
16 dissatisfied with that they can ask for a new trial on that.

17 THE COURT: Alright. Mr. Kulmala.

18 ARGUMENT IN REPLY BY MR. KULMALA TO MOTION FOR ADDITUR:

19 Your Honor, I understand completely the motion of the  
20 amounts of the medical bills and the jury's award of less  
21 than that. I don't have any authority to contradict that  
22 the Two hundred thousand is essentially a base line to the  
23 degree that all of those medical bills had been incurred  
24 directly resulting from injuries or circumstances of the  
25 accident. The costs for anything and everything above and

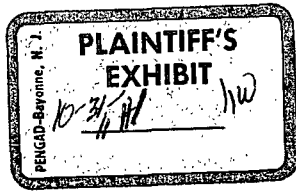
1 beyond that, however, I think are subject to the purview of  
2 the jury. The jury has spoken pretty clearly with their  
3 view of values in the case by voting on an amount of a  
4 hundred and fifty thousand. So, Your Honor, with respect to  
5 pain and suffering, past, future, the loss of quality of  
6 life, Your Honor, all of those things, I would respectfully  
7 request the Court to consider the jury's message in  
8 diminution and apply that to the costs above and beyond the  
9 actual medical expenses. Mr. Hutto was very, did an  
10 excellent job of putting up over Eight hundred thousand  
11 Dollars on the board, and the jury sent their message. So,  
12 I would respectfully ask the Court to consider if, if an  
13 additur is granted, to recognize the jury's message and make  
14 it minimal.

15 THE COURT: Alright, sir. Alright, Mr. Hutto, I'll  
16 make a copy of this and give it to you.

17 MR. HUTTO: Yes, sir.

18 THE COURT: I'm not going to rule on that, I am going  
19 to look back over my notes on everything and then tell y'all  
20 what I'm going to do with Alexander. Okay?

21 (END OF TRANSCRIPT.)



SCDOT

VEGETATION MANAGEMENT  
GUIDELINES



2006

SCDOT

**VEGETATION MANAGEMENT  
GUIDELINES**

**2006**

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## 1. OVERVIEW

The SCDOT Vegetation Management Program is “a decision-making and quality management process for maintaining roadside vegetation that integrates the needs of local communities, knowledge of plant ecology (and natural processes) and design, construction, and maintenance considerations. It also integrates monitoring and evaluation procedures, government statutes and regulations, and technology with cultural, biological, mechanical, and chemical pest control methods to economically manage roadsides for safety plus environmental and visual quality” (*How to Develop and Implement An Integrated Roadside Vegetation Management Program*, National Roadside Vegetation Management Association, IRVM Task Force, p. 1, March 1997).

The purpose of the SCDOT Vegetation Management Guidelines is to provide information necessary to maintain the Department’s roadsides in a manner that will provide a safe roadway, and be aesthetically pleasing while preserving the environment and natural beauty.

## **2. VEGETATION MAINTENANCE BY SCDOT OR ITS AGENTS**

### **2.1 ROUTINE MOWING**

#### **2.1.1 Purpose**

Mechanical mowing is an important tool used to maintain clear zones free of obstructions and to allow vehicles, which may leave the travelway, to recover. Mowing is also important in maintaining an aesthetically pleasing appearance of roadsides for the traveling public.

#### **2.1.2 Guidelines**

##### **2.1.2.1 General**

(Generally performed May 1 – September). All mowing operations shall be carried out in accordance with State law. Where there is a conflict between State law and SCDOT policy, State law shall govern. Mowing will generally begin on or about May 1. Selected areas may need to be mowed earlier if spring growth is rapid and vegetation growth is a safety hazard. This date may be later if spring growth is slow or if crimson clover plots have not seeded out.

In general, during the mowing season, interstates will be cut five times, and primary and secondary routes will be cut four times. The number of mowings will vary according to the growing season and available resources. Mowing heights will be no less than four (4) inches and no more than six (6) inches. (Cutting heights may be adjusted higher by the districts.) Successive cuts should begin when the grass height is approximately ten inches.

All mower blades shall be maintained in a sharp, good cutting condition. All machine mowers shall be operated in such a manner so as to prevent scalping, rutting, or other damage to the turf. Mowers are to be equipped with shields to preclude foreign objects from being thrown out from under the cutting unit housing. Tractors shall be equipped so as to conform to the prevailing Occupational Safety Health Act Standards.

##### **2.1.2.2 Traffic Control, Signs and Sign Stands**

(Refer to Typical XI & Typical XII). Traffic Control shall be required as per the latest edition of the Manual of Uniform Traffic Control Devices (MUTCD). Work shall be planned and carried out to minimize inconvenience to highway traffic.

All work zone traffic control devices, except for Category IV devices, shall comply with the requirements of the National Cooperative Highway Research Program Report 350 (NCHRP Report 350). An approved products list has been developed and only those traffic control devices listed on the "Approved Products List For Traffic Control Devices In Work Zones" are acceptable. This approved products list also includes the implementation dates and any special conditions or restrictions for each device. The approved products list is available on the following intranet website: [http://iwww.dot.state.sc.us/TrafEng/Products/NCHRP350List-\\_ALL2\\_.pdf](http://iwww.dot.state.sc.us/TrafEng/Products/NCHRP350List-_ALL2_.pdf)

All signs mounted on portable sign supports shall have a minimum mounting height of five (5) feet from the ground to the bottom of the sign.

“MOWING” signs supplemented with Standard W7-3a-42 “NEXT 3 MILES” signs shall be used on Interstate, and on Primary, and Secondary routes greater than three miles long. Signs should be moved as necessary to remain within three miles of the mowing operations. On primary and secondary roadways less than three miles long, they will be placed within a distance determined by the crew supervisor. Flagmen, warning signs, barricades, and/or other suitable protective devices shall be placed not less than five hundred (500) feet in each direction from the work site while loading or unloading materials or equipment.

## TYPICAL XI

### SIGN PLACEMENT

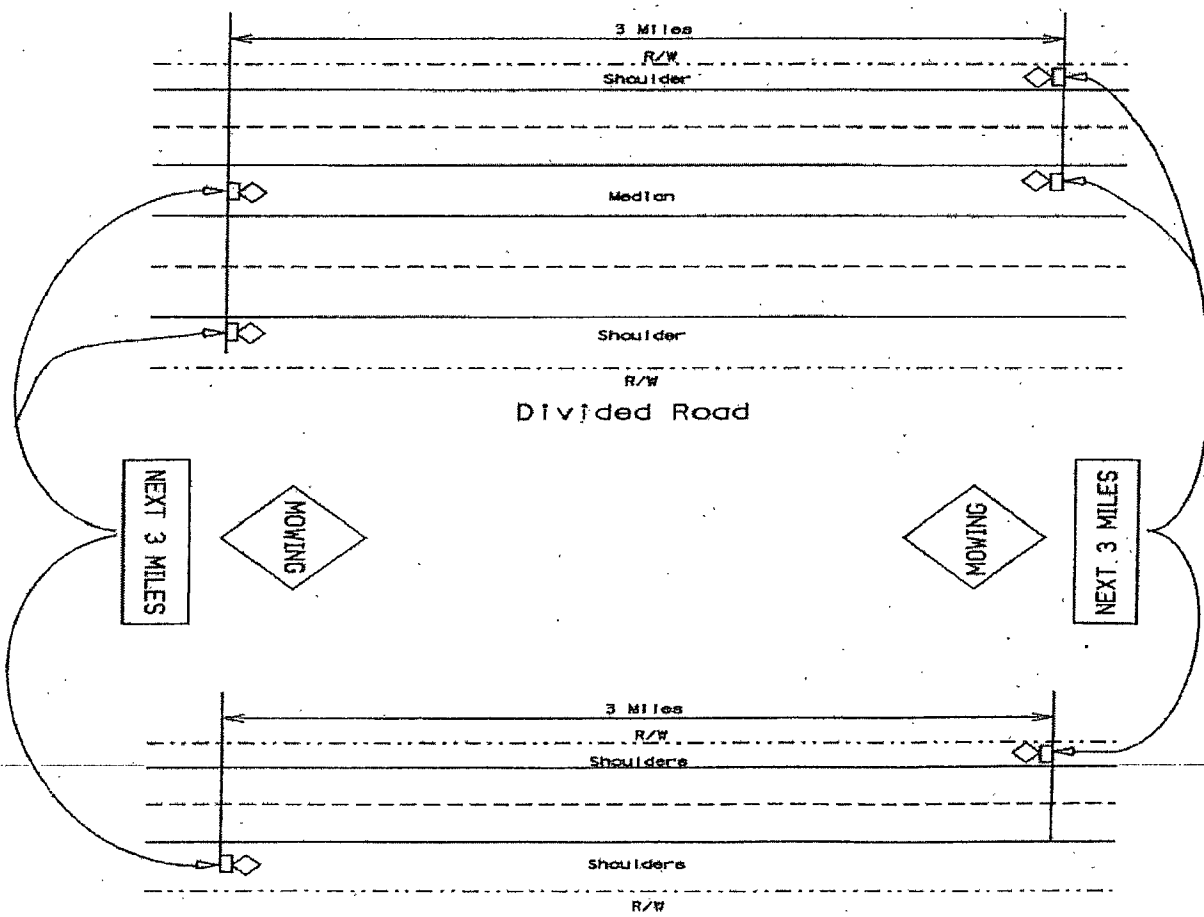
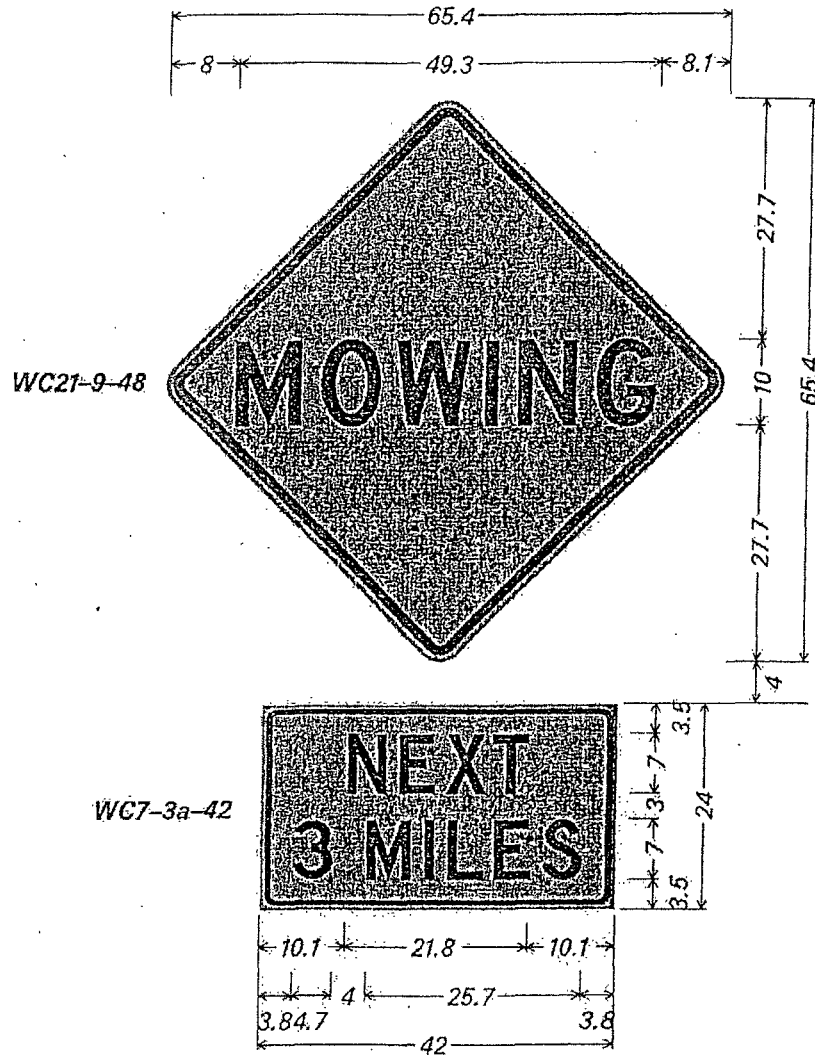


Diagram showing placement of warning signs

# TYPICAL XII

## SIGN DETAIL



48.0" across sides 3.0" Radius, 1.3" Border, 0.8" Indent, Black on Orange;

[MOWING] D;

1.9" Radius, 0.8" Border, 0.5" Indent, Black on Orange;

[NEXT 3 MILES] D;

Table of distances between letter and object lefts.

	M	O	W	I	N	G	
8.0	10.1	8.9	10.7	3.9	9.0	6.7	8.1

	N	E	X	T	
10.1	6.4	5.5	5.6	4.3	10.1

	3	M	I	L	E	S	
3.8	8.7	7.1	2.7	5.6	5.6	4.7	3.8

SIGN NO.: W 21-9-48 & WC7-3a-42

Mowing operations on the interstate should be conducted such that equipment does not encroach on the travelway. On other roads, encroachment on the travelway should be held to the minimum possible to satisfactorily accomplish mowing.

A standard slow moving vehicle emblem (SMV) shall be mounted on the rear of the tractor in such a position that it can be clearly visible by vehicles approaching the mowing unit from the rear. The following will be required for each tractor unit:

- Two double-face (amber front, red rear) flashing lights prominently mounted on the rear wheel fenders
- One top-mounted amber revolving light or flashing neon light visible from both directions. If a canopy is not used, the light shall be mounted on a mast suitably attached to the tractor frame at an elevation slightly higher than the roll bar
- A sign reading "MOWING" on the rear of the unit. The sign shall be black legend on an orange non-reflectorized background with minimum eight-inch series C letters. In addition to the above, the fifteen-foot mower shall have a red flag near the outer edge of each bat wing on a three-foot long or greater staff.

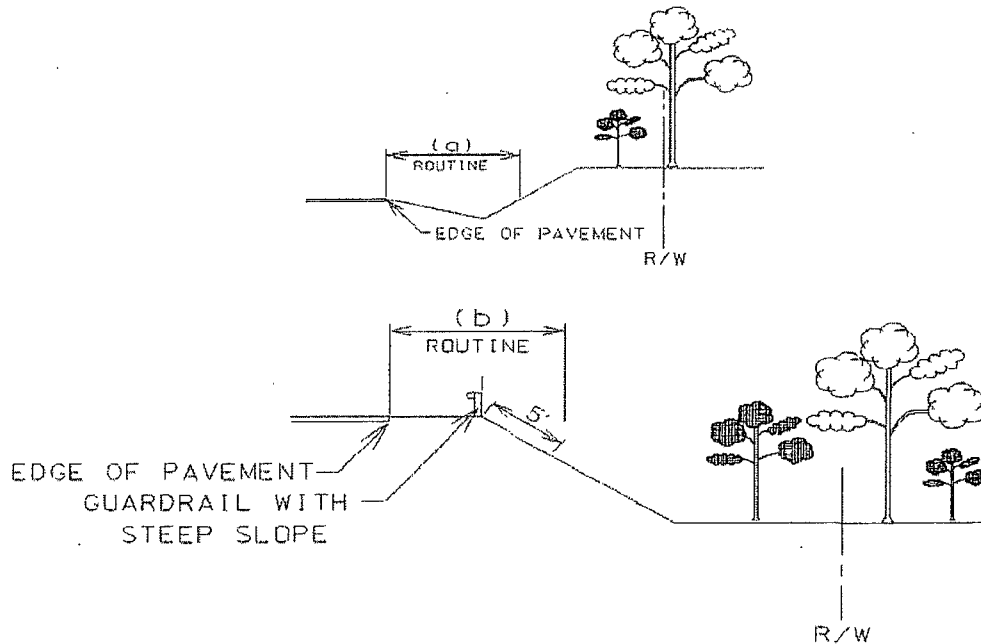
### 2.1.2.3 Interstate Routes

Interstate routes are designed for higher speeds and should have sufficient clear zones free of obstructions to allow for vehicles that may leave the travelway to recover.

#### 2.1.2.3.1 Interstate Shoulder

As shown in Typical I, interstate shoulders may be mowed up to thirty feet from the edge of pavement. If fill slopes or backslopes are steep, one swath of the mower or a minimum of five feet will be mowed on these slopes. Wildflower plots may be mowed as a means of controlling weeds or for dispersal of mature wildflower seeds. Wildflower plot perimeters may be maintained by one mower swath.

## TYPICAL I INTERSTATE SHOULDER



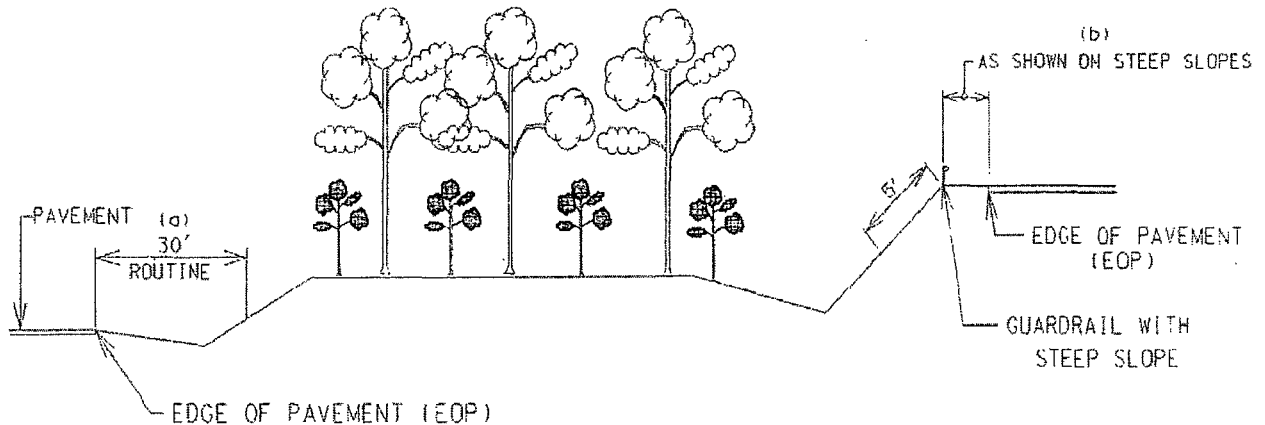
**(a) Routine mowing will be a maximum distance of thirty (30) feet from the edge of pavement where slopes permit. Where slopes are steep, mow to the slope and one swath of the mower or not less than five (5) feet on the slope.**

**(b) Where steep slopes exist and guardrail is present, routinely mow beyond the guardrail and a minimum of five (5) feet of the steep slope, no more than thirty (30) feet total.**

### 2.1.2.3.2 Interstate Median

As shown in Typical II, interstate medians are to be mowed thirty feet, from the edge of the existing pavement. Steep cut or fill slopes shall be treated the same as cut and fill sections described in Section 2.1.2.3.1, *Interstate Shoulder*. Wildflower plots may be mowed as a means of controlling weeds or for dispersal of mature wildflower seeds. Wildflower plot perimeters may be maintained by one mower swath.

## TYPICAL II INTERSTATE MEDIAN



**(a) Routine mowing will be a maximum distance of thirty (30) feet from the edge of pavement where slopes permit. Where slopes are steep, mow to the slope and one swath of the mower or not less than five (5) feet on the steep slope.**

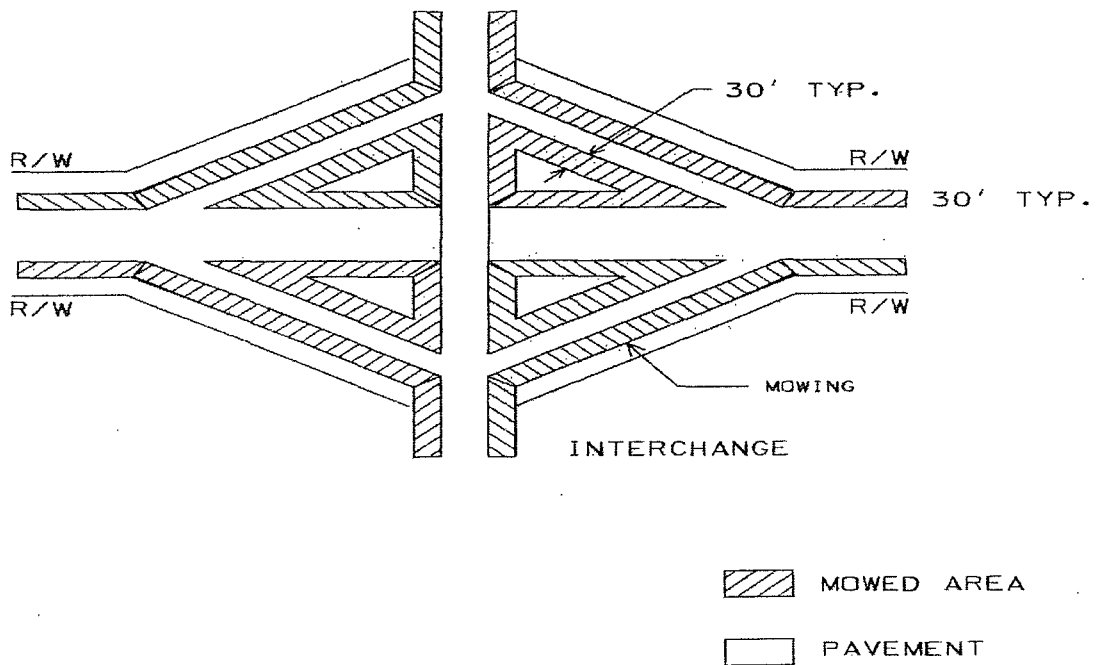
**(b) Where steep slopes exist and guardrail is present, routinely mow beyond the guardrail and a minimum of five (5) feet of the slope, no more than thirty (30) feet total.**

### 2.1.2.3.3 Interstate Interchange

As shown in Typical III, interstate interchange mowing includes the outer-most ramp and the identified mowing area between the ramp, the mainline and crossing route. Mowing shall be limited to thirty (30) feet from the edge of the pavement.

## TYPICAL III

### INTERSTATE INTERCHANGE



#### 2.1.2.3.4 Interstate Guard Rail and DOT Structures

Vegetation under and around guardrail, cable rail, and posts within the mowing limits shall be mowed when roadside (shoulder and median) mowing is completed on that section of road unless it is uniform in height to the surrounding mowed vegetation. When mowing is required around or under guardrail and DOT structures, it shall be performed within seven (7) calendar days of roadside mowing adjacent to that structure. Trapped areas between guardrail or cable rail gores shall be maintained to the mowing limits. Guardrail or DOT structures within the mowing limits with a steep back slope shall be maintained to the steep slope and a minimum of five (5) feet on the steep slope.

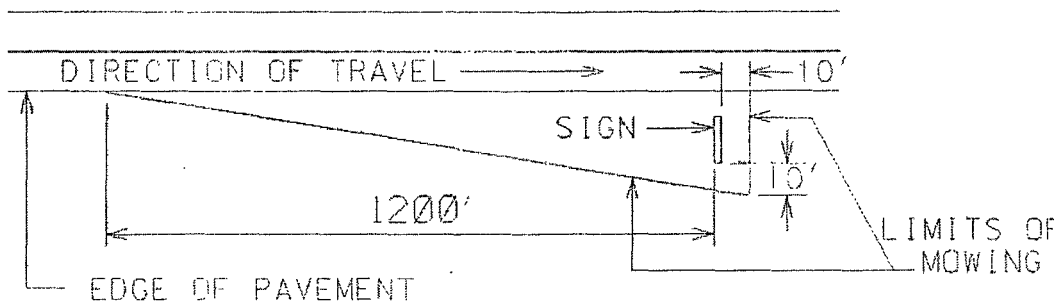
#### 2.1.2.3.5 Information and Guide Signs

Mowing at information and guide signs shall be in accordance with Typical IV and performed with all routine mowing cycles regardless of slope, guardrails, fence, cable rails and/or other DOT structures.

Interstate mainline sign locations shall be cleared to allow full view by approaching motorists for a minimum distance of 1,200 feet. Ramp panels shall be cleared to provide maximum sight distance.

### TYPICAL IV

#### SIGHT DISTANCE MOWING FOR INFORMATION / GUIDE SIGN

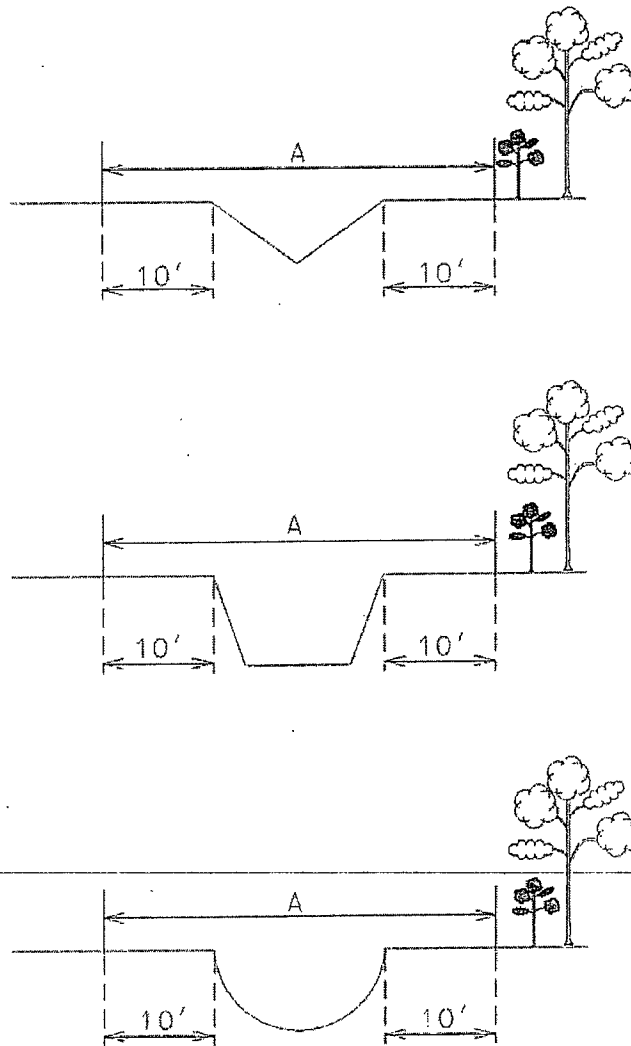


### 2.1.2.3.6 Interstate Ditch Mowing

Clearly defined drainage ditches that have been constructed along the interstate system will be mowed annually in order to maintain proper drainage. This will consist of mowing the entire ditch and ten (10) feet on each side of the ditch as shown in Typical V.

## TYPICAL V

### DITCH MOWING - INTERSTATE ROUTES



A) DITCH MOWING CONSISTS OF MOWING THE DITCH AND 10 FEET ON EACH SIDE OF THE DITCH.

#### 2.1.2.4 Primary and Secondary Routes

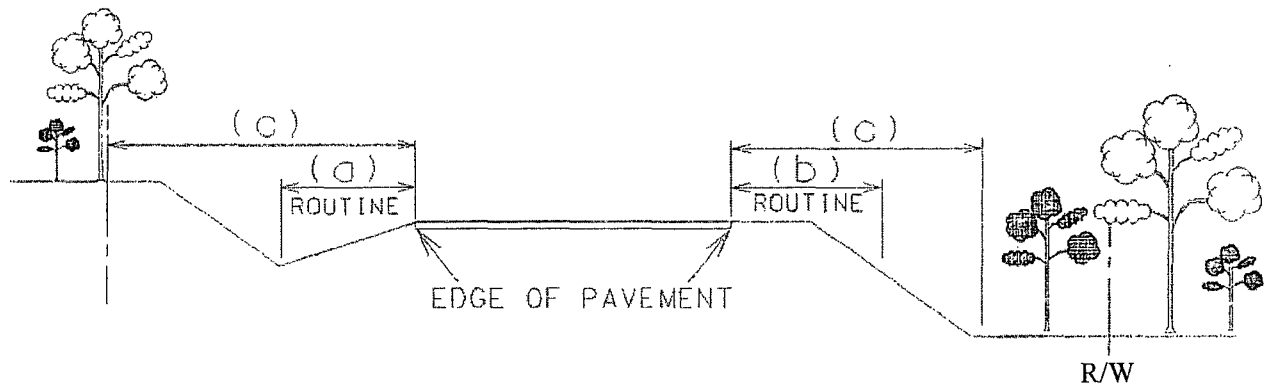
Primary and secondary routes should have sufficient clear zones free of obstructions to allow for vehicles that may leave the travelway to recover.

##### 2.1.2.4.1 Primary and Secondary Shoulders

Mow primary and secondary shoulders from the edge of pavement including the front slope of the ditch to the bottom of the ditch where the cross-section will permit. Mowing shall include sight areas and any other area necessary for safety. If fill slopes or back slopes of the shoulder are steep, mow to the steep slope and one (1) swath of the mower or a minimum of five (5) feet on the steep slope as shown in Typical VI.

## TYPICAL VI

### PRIMARY AND SECONDARY SHOULDERS



**(a) Routine mowing: Mild slopes - Mow entire shoulder and front slope of the ditch.**

**(b) Routine mowing: Steep slopes - Mow entire shoulder and a minimum of five (5) feet on the steep slope.**

**(c) Clean-up mowing: Mow entire established mowing pattern or to the right-of-way line.**

#### 2.1.2.4.2 Primary and Secondary Medians

The entire median of primary and secondary routes shall be mowed from the edge of the pavement unless a cut or fill slope is involved. If fill slopes or back slopes of the median are steep then mow to the steep slope and one (1) swath of the mower or a minimum of five (5) feet on the steep slope.

#### **2.1.2.4.3 Primary and Secondary Guard Rail and DOT Structures**

Vegetation under and around guardrail, cable rail, posts and/or other DOT structures within the mowing limits shall be mowed when roadside (shoulder and median) mowing is completed on that section of road unless it is uniform in height to the surrounding mowed vegetation. When mowing is required around or under guardrail and DOT structures, it shall be performed within seven (7) calendar days of roadside mowing adjacent to that structure. Trapped areas between guardrail or cable rail gores shall be maintained to the mowing limits. Guardrail or DOT structures within the mowing limits with a steep back slope shall be maintained to the steep slope and a minimum of five (5) feet on the steep slope.

#### **2.1.2.4.4 Primary and Secondary Clean-up Mowing**

Clean-up mowing shall include the area established for routine mowing and extends beyond these limits to established mowing patterns or right-of-way lines whichever is less. The established mowing pattern is the area with vegetation less than three (3) inches in diameter. All vegetation shall be mowed to a uniform height of no less than four (4) inches and no more than six (6) inches. All machine mowers shall be operated in such a manner so as to prevent scalping, rutting, or other damage to the turf.

## **2.2 RIGHT-OF-WAY CLEARING**

### **2.2.1 Purpose**

Right-of-way clearing is used to control vegetation in areas between the limit of routine mowing and the remaining right-of-way.

### **2.2.2 Guidelines**

(Generally performed January 1 – December 31). Right-of-way clearing may be performed on non-interstate routes. On non-interstate routes, the areas outside routine mowing areas should be cut on a yearly basis, as resources permit. When performing this work, mechanical mowers must remain parallel to the slope or existing ground. All machine mowers shall be operated in such a manner so as to prevent scalping, rutting or other damage to the turf.

**On interstates there will be no right-of-way clearing beyond the routine mowing limits except to maintain ditches.**

Right-of-way clearing will be accomplished regardless of slope, fence, guardrails, cable rails, posts, and/or other DOT structures.

Right-of-way clearing shall include the chipping of debris in place or removal and disposal within five (5) business days. All chipped debris shall be either removed from site or scattered to a maximum depth of six (6) inches. Chipped debris shall not be left in front of residential or business areas and shall be removed within seventy-two (72) hours. All chipped debris shall be less than one (1) foot in length and less than three (3) inches in diameter.

Trees or woody vegetation over three (3) inches shall be cut to ground level with a clean cut. No stumps shall protrude above ground level, however they do not have to be ground off. All vegetation other than trees shall be mowed to a uniform height of no less than four (4) inches and no more than six (6) inches.

Damaged slopes will be required to be reshaped and damaged areas reseeded as stated in the current edition of *SCDOT Standard Specifications for Highway Construction*.

Adequate provisions shall be made for the protection of the highway traffic at all times. The clearing operation shall obtain access to the work area from the frontage road when possible. If not possible, access shall be designated by the Engineer. All traffic control shall conform to the Manual of Uniform Traffic Control Devices (MUTCD). The primary route or interstate highway will not be affected by this work and no lanes on the primary route or interstate will be closed during the tree and brush removal. The work shall be planned and carried out so that there will be the least possible inconvenience to the highway traffic.

## **2.3 BRIDGE VEGETATION MOWING**

### **2.3.1 Purpose**

Bridge vegetation mowing is used to control non-ornamental vegetation occurring at bridges.

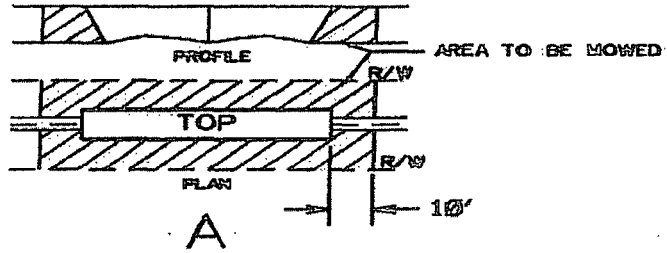
### **2.3.2 Guidelines**

(Generally performed January 1 – December 31). Natural (non-ornamental) vegetation occurring at bridges shall be maintained in accordance with Typical VIII. Bridge vegetation mowing will be accomplished regardless of slope, guardrails, fence, and cable rails. All vegetation shall be mowed to a uniform height of no less than four (4) inches and no more than six (6) inches. All equipment mowers shall be operated in such a manner so as to prevent scalping, rutting or other damage to the turf.

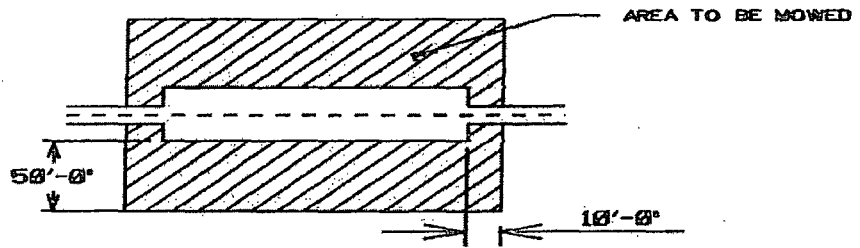
Bridge crossover vegetation growth will be controlled to limit vegetation to grasses and low-growing plants from ten (10) feet beyond the end of the bridge to the toe of the slope beneath the bridge.

# TYPICAL VIII

## BRIDGE VEGETATION MOWING



BRIDGE CROSSOVER



BRIDGE AT WATERWAY

## **2.4 FENCE CLEARING**

### **2.4.1 Purpose**

Clearing fences of vegetation is necessary to protect the integrity, performance and life of the fence.

### **2.4.2 Guidelines**

(Generally performed January 1 – December 31) Vegetation at fences shall be maintained in accordance with Typical IX. This will consist of clearing the entire fence of vegetation and (10) ten feet toward the adjacent interstate or primary route. This work will be accomplished regardless of slope, fence, guardrails, cable rails, or vegetation size. All machine mowers shall be operated in such a manner so as to prevent scalping, rutting or other damage to the turf. All equipment mowers shall be operated in such a manner so as to prevent damaging the fence.

Chipped debris shall be either removed from site or scattered to a maximum depth of six (6) inches. All chipped debris shall be less than one foot in length and less than three (3) inches in diameter. All vegetation less than three inches in diameter shall be mowed to a uniform height of no less than four (4) inches and no more than six (6) inches.

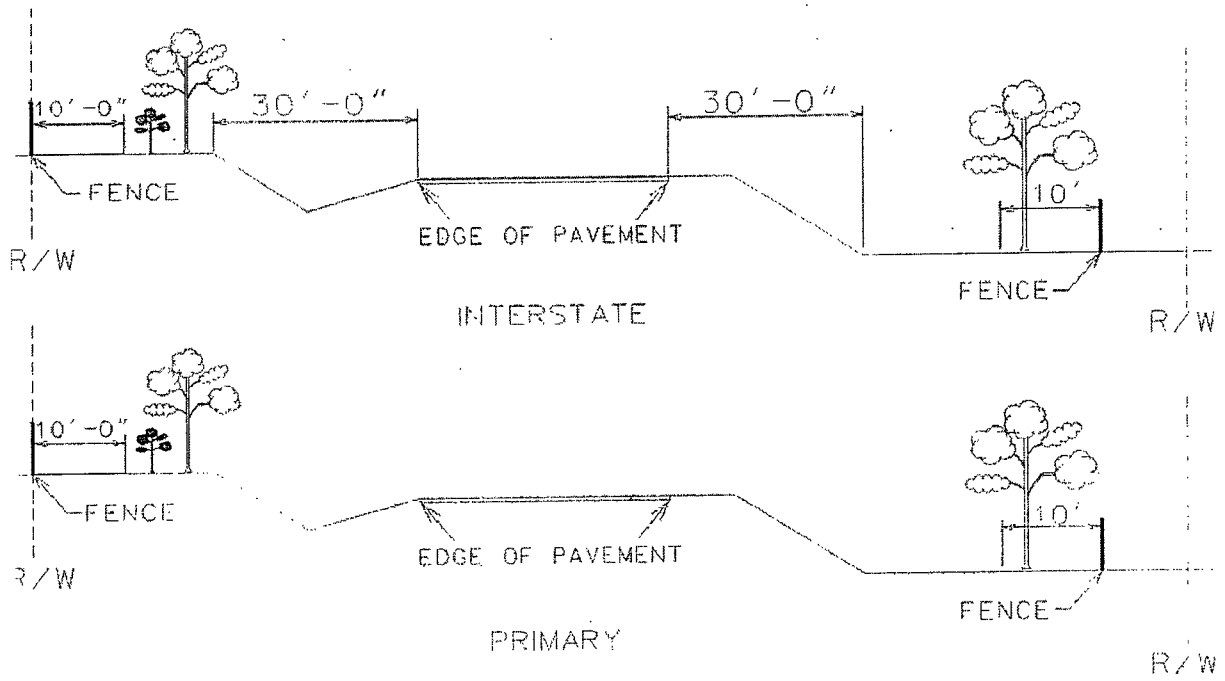
Trees/woody vegetation over three (3) inches in diameter shall cut to ground level with a clean cut. No stumps shall protrude above ground level, however they do not have to be ground off.

Adequate provisions shall be made for the protection of the highway traffic at all times. The clearing operation shall obtain access to the work area from the frontage road when possible. The primary route or interstate highway will not be affected by this work and no lanes on the primary route or interstate will be closed during the fence clearing or debris removal operation.

Fence damaged during this operation shall be repaired or replaced in accordance with SCDOT standards.

# TYPICAL IX

## FENCE CLEARING



## **2.5 TREE MAINTENANCE**

### **2.5.1 Purpose**

Trees along roadways are to be maintained in a safe manner for the protection of the traveling public.

### **2.5.2 Guidelines**

#### **2.5.2.1 General**

(Generally performed January 1 – December 31). Tree maintenance should be performed so as to preserve roadway features. **However, special procedures must be followed prior to the commencement of any right-of-way operations that would include the removal of significant trees.** Significant trees are considered to be mature hardwoods or flowering trees such as dogwoods or other ornamentals. Significant hardwoods are generally considered to be those with a caliper of twenty-four (24) inches or greater, but trees of smaller caliper around residences may be considered significant and should be treated accordingly. Every reasonable alternative should be considered prior to removing a significant tree. When an alternative is not available, the Resident Maintenance Engineer will make personal contact with the adjacent property owner whenever possible prior to the removal of any such tree from the right-of-way. Personal contact is understood to mean contact in person or by telephone. The property owner should always be informed as to the reasons for removing these trees.

Where possible, bridge sites should be maintained free of non-ornamental trees for the entire length of the bridge opening from right-of-way to right-of-way, or a fifty-foot limit where the right-of-way is greater than fifty feet from the outside edge of the bridge.

Tree trunks should not be allowed to encroach into clear zones.

Trees should not be allowed to grow in ditches.

Dead or diseased trees located on or off the right-of-way, which may fall onto the travel surface of the roadway, should be removed.

#### **2.5.2.2 Limb Trimming**

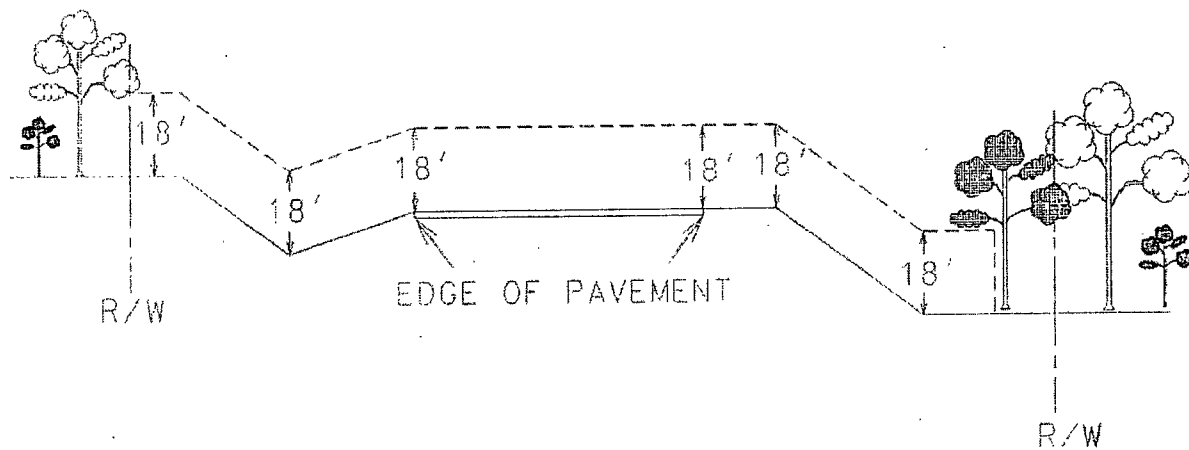
(Generally performed January 1 – December 31). The Engineer shall review all limb trimming locations for environmental concerns prior to work being performed. Limb trimming will be performed to maintain vertical clearance of eighteen (18) feet from the paved surface of the roadway or ground elevation of the shoulder or slope continuously to the tree line or right-of-way, whichever comes first as shown in Typical X. Trimming may also be performed to lesser heights beyond the shoulders to allow for the safe operation of equipment beneath the limbs for mowing, ditch maintenance, etc., up to ten (10) feet. Trimming will be performed to provide for clear sight distances. *Refer to the Typical Drawing IV for exceptions to trimming limits for Information and Guide Signs (Section 2.1.2.3.5).*

The equipment used for limb trimming shall leave a clean, neat cut. No rotary mower shall be used for limb trimming.

The limb trimming operation shall include the chipping of limbs in place or removal and disposal within five (5) business days. All chipped debris shall be either removed from site or scattered to a maximum depth of six (6) inches. All chipped debris shall be less than one (1) foot in length and less than three (3) inches in diameter.

Operations shall comply with applicable Occupational Safety and Health Administrations (OSHA) standards as well as state regulations.

## TYPICAL X LIMB TRIMMING



## **2.6 HERBICIDES**

### **2.6.1 Purpose**

Herbicides may be used to control undesirable roadside vegetation.

### **2.6.2 Guidelines**

Guidelines for approved herbicide products and applications are available in the most current edition of the *SCDOT Herbicide Operations Manual*. Respective herbicide labels and Material Safety Data Sheets (MSDS) are available via a link on the Director of Maintenance's IRVM intranet webpage.

**No bare ground treatments are permitted.**

Brownout should be minimized.

## **2.7 TURF CONVERSION**

### **2.7.1 Purpose**

Turf conversion replaces Bahiagrass along rights-of-way with Bermuda grass or Centipede grass. Bahiagrass, a species common to many areas of South Carolina, is one of the primary reasons necessitating mowing rights-of-way. The prolific nature of Bahiagrass can quickly and severely impede a motorist's safe distance of visibility. Bermuda grass and Centipede grass grow much lower to the ground than Bahiagrass thus maintaining safe visibility levels for drivers and potentially reducing the number of mowing cycles needed throughout the season.

### **2.7.2 Guidelines**

All guidelines for turf conversion will conform to the most current edition of the *SCDOT Standard Specifications for Highway Construction*. The *SCDOT Herbicide Operations Manual* provides guidelines for herbicide applications for turf conversion.

Where suitable, maintenance offices should consider converting roadside Bahiagrass to species that require less frequent mowing. The Director of Maintenance Office will provide additional guidelines as needed.

### **3. BEAUTIFICATION/ENHANCEMENTS BY SCDOT OR ITS AGENTS**

#### **3.1 WILDFLOWERS**

##### **3.1.1 Purpose**

Wildflowers play a significant role in the SCDOT Vegetation Management Program. Wildflowers aid in maintaining roadside areas, provide vibrant color in areas and may reduce driver boredom and fatigue along interstates.

##### **3.1.2 Guidelines**

Site selection is important to the future success of wildflower plantings. Wildflower plots are selected based on traffic volume, visibility, and geographical area. Sites should be large enough to accommodate equipment. Sites to be avoided include areas with steep slopes, narrow medians and ditches. Plots are generally along interstates and major highways and should be approved by the district, Resident Maintenance Engineer, and a representative from the Director of Maintenance Office. Species will be determined by the Director of Maintenance Office.

#### **3.2 COLORFUL SPACES**

##### **3.2.1 Purpose**

The Colorful Spaces Program is a volunteer program that allows SCDOT employees to enhance (i.e., landscape) roadside sites in the county where their respective office is located. Landscaping is an alternative for managing and improving vegetation on roadsides in South Carolina.

##### **3.2.2 Guidelines**

All Colorful Spaces plantings must adhere to SCDOT standards, setbacks, and guidelines for landscaping included in the Department's *Access and Roadside Management Standards*. The Director of Maintenance office will provide information annually regarding the program.

## **4. BEAUTIFICATION/ENHANCEMENTS BY NON-SCDOT ENTITIES**

### **4.1 Purpose**

SCDOT has initiated roadside vegetation management programs to allow non-SCDOT entities to beautify and enhance the State's highways. An encroachment permit is required for any vegetation management activity performed by non-SCDOT entities.

### **4.2 Guidelines**

#### **4.2.1 Beautification Projects**

SCDOT encourages beautification of roadsides. Proposed landscaping projects must be submitted on an *Application for Encroachment Permit- SCDOT Form 638* to the local Resident Maintenance Engineer in the respective county where the landscaping is to occur. A landscaping plan must be included with the application (i.e., scaled drawing) detailing all pertinent information including but not limited to:

- A plant materials list with common and botanical names
- Projected mature caliper
- Height and spread of the plants
- Plant quantities, approximate planting location, and approximate location of existing vegetation and other site elements
- Location and speed limit of the highway, and outdoor advertising sign (billboard) locations

The plan must be designed by a registered landscape architect or other qualified designer. Plans with extensive landscaping should have an irrigation system. Applicants shall furnish, install, and maintain all plantings. All plans must adhere to the guidelines for landscaping included in the Department's *Access and Roadside Management Standards*. Plans should be sensitive to the visibility of existing businesses and outdoor advertising. Plantings that have the potential to block permitted outdoor advertising signs are prohibited. District outdoor advertising coordinators must review plans that include outdoor advertising sign (billboards) locations.

The Resident Maintenance Engineer shall forward the application packet to their respective district for review. If the district concurs, the application shall then be submitted to the Director of Maintenance Office. The Director of Maintenance Office will seek advisement as necessary from the Office of Beautification Programs. Upon review by the Director of Maintenance Office, the application will be returned to the respective district with recommendations and a letter of concurrence or rejection. The district will review again before forwarding to the county maintenance office. No work will be allowed until the formal permit is approved by the Department and returned to the applicant. Special provisions may be stated in the encroachment permit application as per the discretion of the reviewers.

## **4.2.2 Adopt-an-Interchange Program**

Through the Adopt-an-Interchange Program, SCDOT partners with local government entities to enhance interchanges in their communities. These locations include key interstate interchanges and other controlled-access roadway interchanges. Adopt-an-Interchange is a matching funds program. The program may reimburse up to eighty (80) percent of the allowable expenditures for an approved project. The applicant must provide the remaining twenty (20) percent through direct funds, donated materials, or in-kind services that meet federal and program guidelines. The application process for the Adopt-an-Interchange Program will be administered by the Department's landscape architect in the Preconstruction Office. Applications will be accepted throughout the year and awarded in order of receipt until funds are exhausted.

- 4.2.2.1 If the applicant's interchange is within one of the State's ten metropolitan areas, the application must be submitted to the Metropolitan Planning Organization (MPO). The proposed project should be evaluated and approved by members of the MPO (primarily elected officials) and funded in the area's transportation improvement program (TIP). Once placed in the TIP, applications for Adopt-an-Interchange will be used to verify eligibility and prepare contracts. All applicants (both urban and rural areas) should include a letter from the local Resident Maintenance Engineer. This letter should say that the work appears to be feasible under our encroachment process. An encroachment permit will be required prior to the start of any landscaping work. The applicant must agree to long-term maintenance for landscaping and irrigation.
- 4.2.2.2 The most recent Adopt-an-Interchange application form must be used. Wherever possible, the space available on the application form should be used to provide the requested information. If information is attached, it must be provided in a format that can be easily copied. Also, applications must be unbound so they can be copied.
- 4.2.2.3 Enough detail must be provided in the project description so that the project can be clearly understood.
- 4.2.2.4 Supplemental information that gives a clearer picture of the impact of the project may be included, but additional information should be limited to phases of the project that are relevant to the spending of the funds sought.
- 4.2.2.5 At least one of the applicants must be a public agency, and the application must include a certification signature of a person with authority to commit that public agency to a contract.
- 4.2.2.6 Sources of matching funds must be indicated.
- 4.2.2.7 Funds spent prior to execution of the contract are not eligible for reimbursement and cannot be counted toward matching funds.
- 4.2.2.8 Project cost estimates must contain enough detail that the various cost elements of the project are clear. Detailed estimates on page 4 of the application, the "Project Cost" sheet, must be consistent with the cost shown on page 8, the "Funds Requested" sheet.

- 4.2.2.9 If work is proposed on or adjacent to a facility currently open to use by the public, an estimate of the amount needed to provide traffic control (signs, barriers, cones, temporary markings, etc.) during construction (or planting) should be provided.
- 4.2.2.10 The landscape plans, designed by a registered landscape architect, and a cost estimate should be included with the application. Plans will be reviewed by the SCDOT landscape architect for compliance and final approval will be determined by the Deputy State Highway Engineer. The applicant is responsible for the long-term maintenance and irrigation of the landscaped interchange. Plantings that have the potential to block permitted outdoor advertising signs are prohibited.

## **5. INTERSTATE COMMERCE VEGETATION**

### **5.1 Purpose**

Commercial and industrial development exists and is continuing to develop adjacent to controlled access highways. To enhance this development, SCDOT will allow controlled vegetation management on its rights-of-way to make these businesses more visible.

### **5.2 Guidelines**

- 5.2.1 An encroachment permit (SCDOT Form 638) will be required. All work must be completed within 12 months from the date the permit is issued.
- 5.2.2 The application must clearly state the extent of the work to be performed.
- 5.2.3 Only established commercial and industrial businesses or those under construction will be allowed to participate in this program. Outdoor advertising sign locations shall be excluded. Establishments that participate in this program shall not be allowed to qualify for off-premise advertising.
- 5.2.4 The extent of the area to be enhanced shall be limited to the right-of-way that immediately borders the applicant's property that is adjacent to the controlled access roadway (i.e., interstate). (Property line to property line and abutting the right-of-way line) that will allow full view of the business by motorists using the mainline of the interstate route as determined by the Department. Should this distance extend beyond the applicant's property line, the applicant must secure written permission from the adjacent abutting property owner(s) to enhance this extended distance.
- 5.2.5 No enhancement will be allowed within thirty feet of the edge of the interstate pavement mainline or ramps.

- 5.2.6 A performance and indemnity bond in the amount of \$5,000.00, or an equivalent guarantee as approved by the Department, is required, along with a completed SCDOT Performance and Indemnity Bond Form 672A (See Appendix 9.3). The bond or approved equivalent is to guarantee the completion of the work in accordance with the approved encroachment permit. The bond will be kept in the respective Resident Maintenance Engineer's office. When an approved guarantee other than a performance bond is accepted, such as a money order or cashier's check, it shall be promptly submitted using Form 3025A in the usual manner. The following entry should be made thereon: "To be deposited in Special Account Number 3900.950." When the work is successfully completed a Form 608 shall be submitted to reimburse the permittee, using the above account number as the charge code. The paperwork will be performed at the county level.
- 5.2.7 The degree of visibility enhancement allowed and subsequent replacement vegetation required will be determined on a case-by-case basis by the Department. In general, the degree of visibility enhancement allowed shall be limited to the removal of vegetation such as vines from controlled access fences, limbing of trees, removal of selected insignificant trees, and removal of underbrush. Assessment of significant trees will be conducted by the Department with the final determination administered by the Director of Maintenance Office. Every effort should be made to retain as many trees as possible. Limbing shall be performed as per the tree pruning and trimming methods stated in Section 2.5.2.2. In no case shall trees be limbed above a height of ten (10) feet from the existing ground surface. In order to prevent re-growth and subsequent creation of brush, trees approved for removal shall be cut flush with the existing soil surface, and the stumps removed or ground two (2) inches minimum below the existing soil surface, or chemically treated with an approved herbicide as specified in the encroachment permit. (Refer to Section 2.6 for herbicide guidelines.) The applicant should exercise care to not damage remaining vegetation while removing approved vegetation. All vegetative debris shall be removed and disposed of off-site by the applicant. Should the controlled access fence be in unsatisfactory condition after the approved work is completed, the applicant will be required to repair or replace the fence according to SCDOT standards. The fence shall not be down when workers are not on site.
- 5.2.8 No work shall be accomplished from the mainline side of the controlled access facility. Ingress and egress from the work area shall be made from private property and shall be so stated on the "Application for Encroachment Permit."
- 5.2.9 The applicant must adhere to State law(s) regarding interstate mowing.

### 5.3 Procedures

- 5.3.1 The property owner must contact the local SCDOT maintenance office to obtain an encroachment permit application.
- 5.3.2 The representative of the local SCDOT maintenance office and the applicant shall make an initial on-site inspection to determine the extent of the work to be performed within the right-of-way. During the initial site inspection, the county SCDOT representative shall document the existing vegetation and shall obtain digital images of the area. If no trees will be removed, the local SCDOT maintenance office may proceed with acceptance of the application and approval of the permit. In this case, the application packet shall comprise the following:
- Encroachment permit application
  - Sketch of the encroachment (right-of-way) area. At a minimum, the sketch must indicate the interstate route, the location of the business, the location of the controlled access fence, the location and dimensions of the affected right-of-way area, and location of outdoor advertising signs
  - Performance and indemnity bond
  - Performance and indemnity bond form
  - Record of existing vegetation.
- 5.3.3 If it is determined that the applicant desires to remove trees, the local SCDOT maintenance office shall notify the respective district office. If the district concurs, the district shall contact the Director of Maintenance Office to arrange a subsequent site visit.

Persons present at this site visit shall include the applicant, the Resident Maintenance Engineer (or designee), a district representative, and a representative of the Director of Maintenance Office. The degree of visibility enhancement allowed as well as requirements for replacement vegetation and shall be determined during this site visit by the SCDOT representatives. Once the extent of the work is agreed upon, the applicant shall then submit to the local SCDOT maintenance office:

- Encroachment permit application.
- Sketch of the encroachment (right-of-way) area. At a minimum, the sketch must indicate the interstate route, the location of the business, the location of the controlled access fence, the location and dimensions of the affected right-of-way area, and location of outdoor advertising signs
- Performance and indemnity bond
- Performance and indemnity bond form
- Landscaping plan (i.e., replacement vegetation plan where needed, as determined by the Director of Maintenance representative). The landscaping plan must adhere to the guidelines in the most current edition of *SCDOT Access and Roadside Management Standards* and Section 4.2.1 of this document.
- If the applicant desires to perform additional maintenance at the area, the applicant will need to enter into a maintenance partnership agreement (See Section 7). The applicant shall notify the local SCDOT maintenance office at least twenty-four (24) hours prior to performing maintenance within the right-of-way area.

- 5.3.4 The local SCDOT maintenance office shall review the application package, then forward it to the respective district for review. Upon review and concurrence by the district, the package shall be forwarded to the Director of Maintenance Office for review. In the event that a landscaping plan is required by SCDOT, the Director of Maintenance Office will consult with the Department's landscape architect for review of the plan. Upon review by the Director of Maintenance Office representative, the application package shall be returned to the district with recommendations and a letter of concurrence or rejection. The district will review again before forwarding to the local SCDOT maintenance office for final approval or rejection. NOTE: Special provisions may be stated in the encroachment permit application as per the discretion of reviewers.
- 5.3.5 Upon approval of the permit, the applicant and the county SCDOT representative shall visit the site and set the boundaries as indicated on the permit. At this on-site meeting, the county SCDOT representative will give the approval to proceed with the removal of the vegetation and subsequent landscaping as stated in the permit. All trees that are to remain shall be clearly flagged.

## **6. OUTDOOR ADVERTISING VEGETATION**

### **6.1 Purpose**

In an effort to maintain highway beautification in conjunction with proper land maintenance and to acknowledge the advertising industry's desire to maintain advertising displays, SCDOT will continue its vegetation maintenance program for Outdoor Advertising signs located adjacent to interstates and freeway primary federal-aid highways constructed to controlled access standards as defined by the Highway Advertising Control Act.

### **6.2 Guidelines**

#### **6.2.1 Scope**

In accordance with the authority of Section 57-25-140, all sign owners with outdoor advertising signs adjacent to South Carolina interstates and freeway primary federal-aid highways constructed to controlled access standards, who wish to maintain vegetation within SCDOT'S right of ways, will be required to comply with this policy for vegetation maintenance. Cooperation from these owners will be necessary to insure consistent maintenance of SCDOT right of ways.

#### **6.2.2 Policy**

6.2.2.1 Each location will be allowed a 500' longitudinal working area from each sign facing. The sign owner will develop a vegetation maintenance plan for this area. This plan may include a 300' clear-cut window within the 500' working area. This will allow the applicant to determine the most advantageous area to be cut to allow for the best visibility of the sign. However, SCDOT will review each application and reserves the right to determine the final location of the 300' window within the working area.

6.2.2.2 Any sign owner who wishes to cut vegetation on SCDOT right of ways will be required to apply for a permit and enter into a contract with SCDOT to participate in the vegetation program. Signs will be allowed to participate in this program once they have been in existence over two (2) years pursuant to Regulation 63-350(D). Regulation 63-350(D) prohibits vegetation maintenance in front of signs that have been permitted less than two (2) years.

6.2.2.3 The initial participation fee will be a non-refundable \$200.00 assessed for each location cleared. Thereafter, a non-refundable, minimum fee of \$200.00 to recover cost associated with maintaining each location will be assessed for each vegetation permit under this program. This fee may increase each year depending upon actual maintenance costs. These fees will be due September 1<sup>st</sup> of each year. One notice for remittance will be sent to each permittee/participant thirty (30) days prior to the due date. Any vegetation fee unpaid on October 1<sup>st</sup> will cancel the vegetation permit. Vegetation contracts are renewed annually with receipt of the assessed vegetation fee due September 1<sup>st</sup>.

6.2.2.4 Between August 1, 2005 and August 31, 2005 owners had the opportunity to withdraw permits from the program. Owners who did not withdraw by August 31, 2005 were required to remain

active. Owners who elected to withdraw permits from the program will not be able to re-permit their cancelled vegetation permits until September 1, 2010. The re-entry fee will be based on the averaged cost to maintain all locations at that time. Thereafter, a non-refundable, averaged annual fee to recover costs associated with maintaining each location will be assessed for each vegetation permit under this program. This fee may increase each year depending upon the actual maintenance cost. The 500-foot window may be adjusted on vegetation permits that exited the program before August 31, 2005 and are re-permitted after September 1, 2010.

- 6.2.2.5 Sign owners will be responsible for the costs and performance of the initial cutting and clearing of each sign location. After the initial cutting of all locations, SCDOT will be responsible for maintaining the locations during the contract period. This mowing will be in conjunction with the routine maintenance of the right of ways. Vegetation such as vines and small trees will be cleared from the fence adjacent to the 300' clear-cut window. Should the fence be in unsatisfactory condition after the clearing, the applicant will be required to repair or replace the fence.
- 6.2.2.6 SCDOT will use Vegetation Application Form 603, which will be required for each vegetation maintenance location. A comprehensive plan detailing the work to be performed must accompany each application. All information provided above the sketch block and description of work block must be typed.
- 6.2.2.7 It will be necessary for each applicant to submit a Performance and Indemnity Bond equal to or greater than the amount of their proposed contracted work for each location to be cut. A secured line of credit set up payable to SCDOT covering all work will also be acceptable. Also, new applicants must possess a Certificate of Insurance for general liability with limits not less than \$500,000.00 each occurrence, \$500,000.00 aggregate for bodily injury, and \$500,000.00 each occurrence, \$500,000.00 aggregate for property damage. The applicant shall name SCDOT as an additional named insured. A copy of the additional named insured endorsement must accompany the Performance and Indemnity Bond.
- 6.2.2.8 A standardized SCDOT Performance and Indemnity Bond form will be used to assist SCDOT in processing applications as quickly as possible. Bonds will be of an amount to cover ALL work to be done in conjunction with the submitted contract.
- 6.2.2.9 Only sign locations that are visible at the time of installation will be allowed to participate in the vegetation maintenance program upon their two-year anniversary of erection.
- 6.2.2.10 Any areas that may be deemed "protected corridors" by SCDOT will be reviewed by SCDOT to determine if vegetation maintenance will be feasible and limitations may be established before vegetation permits are issued. Planting of some type of vegetation consistent with the preservation of the corridor may be required at SCDOT's discretion.
- 6.2.2.11 Sign locations that cannot be accommodated under these specifications will be reviewed by SCDOT for resolution on a case-by-case basis.

### **6.2.3 Procedures**

The applicant must submit:

- Vegetation maintenance application (SCDOT Form 603) to the Outdoor Advertising Office.
- Vegetation maintenance plan with written justification for the extent of proposed work.
- Non-refundable initial permit fee per location made payable to SCDOT. Any check returned for insufficient funds must be resubmitted and any service fees paid within ten days of the letter of notification to applicant. Failure to pay fees within this period will result in the contract and vegetation permit and/or permits being cancelled.
- Performance and indemnity bond (format may be obtained from the Outdoor Advertising Office).
- Vegetation Window Agreement with Exhibit A listing all sign locations applicable to the agreement (For new Agreements).

6.2.3.1 Upon receipt of the application package, the Outdoor Advertising Office will review the application and bond for approval. The SCDOT District Outdoor Advertising Coordinator will field review all locations. SCDOT will mark the 500-foot longitudinal working area, measuring from the sign's support nearest the main traveled way along a line parallel with the main traveled way. The 300-foot window will then be marked according to the application and any trees that are to remain will be flagged and photographed.

6.2.3.2 Following completion of the field review, SCDOT will mail successful applicants a letter of approval. Vegetation permits will be valid for six months from the date of issuance. A one-time thirty-day extension may be granted at the discretion of SCDOT if the applicant can show extenuating circumstances beyond the applicant's control, were responsible for the delay.

### **6.2.4 Instructions Outlining Procedures to be Followed and Conditions of the Permit**

Procedures to be followed and conditions of the permit include, but are not limited to the following:

- No work under the permit can commence without a minimum advance notice of forty-eight hours to the appropriate SCDOT Outdoor Advertising Coordinator.
- No hardwoods (oak, hickory, etc.) in excess of six inches in diameter will be removed unless there are extraordinary circumstances warranting removal, such as hazard to life and/or property. All such removal cases will be thoroughly documented (by report and photographs) before any trees are removed.
- Work areas are to be accessed by applicant from the sign side (private property).
- All stumps are to be ground by applicant to a minimum of two inches below ground level.
- Areas with high banks, which cannot be easily maintained by routine mowing, will require the planting of a low growing grass, as recommended by the Resident Maintenance Engineer, at applicant's expense.
- All debris will be removed by applicant from the right-of-way and view of the traveling public before leaving the site.

- The applicant must complete cutting and clearing at one location in its entirety before beginning on a new location.
- No cedars or dogwood trees will be removed unless approval is granted by the SCDOT.
- All locations will be reviewed at completion for compliance.

Any violation of this policy or the Vegetation Window Agreement will be grounds for the termination of the agreement, cancellation of the vegetation maintenance permit, and cancellation of the outdoor advertising sign permit. Upon cancellation, the sign shall be removed at the sign owner's expense. If after thirty days the sign is not removed, SCDOT will have the sign removed and the sign owner shall reimburse SCDOT for all removal costs incurred. In addition, upon violation under this provision, the sign owner is not eligible for a sign permit within South Carolina in accordance with Section 57-25-140(I)(2) of S.C. Code of Law, 1976, as amended.

## **6.2.5 Special Provisions**

### **6.2.5.1 Removal of Non-Conforming Sign Structures**

Two vegetation control permit fees will be waived for the life of the contract for each SCDOT-permitted non-conforming sign voluntarily removed. All non-conforming sign structures to be removed must be at least 150 square feet. If less than 150 square feet, the removal of two non-conforming sign structures will be required to enact the ten-year waiver.

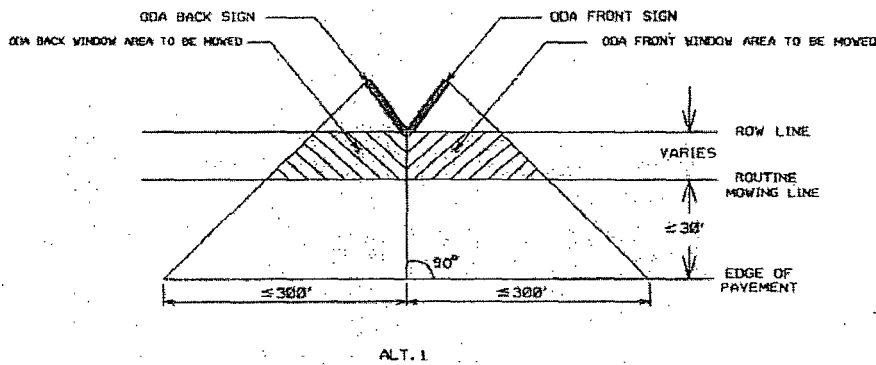
It is agreed that this waiver shall not be construed as a "taking" requiring just compensation and shall be excluded from the provisions in Section 57-25-180 of S.C. Code of Law.

### **6.2.5.2 Reduction of Sign Height**

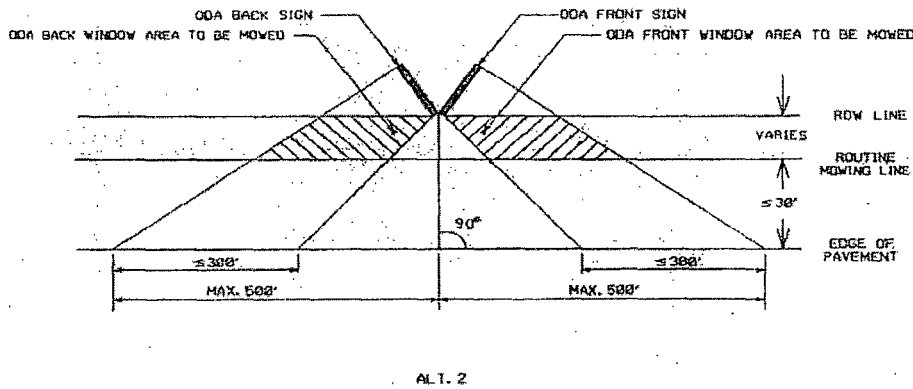
Any pre-existing conforming sign structure exceeding fifty feet in height, that is lowered to a height not to exceed fifty feet or fifty percent of its total height, whichever is lowest, will be allowed to participate in the vegetation maintenance program for ten years without charge upon verification and approval of the SCDOT. All heights will be measured from ground level.

### 6.2.6 Outdoor Advertising (ODA) Window Mowing

(Typical VII – A & B) All vegetation shall be mowed to a uniform height of no less than four (4) inches and no more than six (6) inches. All equipment shall be maintained in good cutting condition. All equipment shall be operated in such a manner so as to prevent scalping, rutting or other damage to the turf. No hardwood trees with a diameter of six (6) inches or greater shall be disturbed. Tree limbs overhanging into the ODA area shall not be mowed, pruned, or in any way disturbed.



**TYPICAL VII-A**  
DOUBLE FACE ODA SIGN  
0-300' Window



**TYPICAL VII-B**  
DOUBLE FACE ODA SIGN  
200-500' Window

**7. MAINTENANCE PARTNERSHIP AGREEMENT**

A fully executed maintenance partnership agreement is recommended for long-term maintenance performed on SCDOT right-of-way by any non-SCDOT entity. A blank copy of the Maintenance Partnership Agreement form is located in the appendix of this document.

**8. SUMMARY**

SCDOT is working diligently to maintain and improve roadside vegetation in South Carolina. The success of the Roadside Vegetation Program will require a team effort from all members of the SCDOT Division of Maintenance. Each District must work in close cooperation with the Director of Maintenance staff. This includes developing goals, scheduling vegetation management and improvement activities, and timely reporting of the activities involved in this program.

**9. APPENDIX**

**9.1 OUTDOOR ADVERTISING VEGETATION WINDOW AGREEMENT**

This Agreement is between the South Carolina Department of Transportation (hereinafter "SCDOT") and \_\_\_\_\_ (hereinafter "APPLICANT") for the cutting of vegetation on SCDOT'S right of way in front of each billboard facing owned by APPLICANT.

WHEREAS, this Agreement shall implement the Outdoor Advertising 300 Foot Vegetation Window and Maintenance Program (hereinafter "PROGRAM").

The parties to this Agreement hereby agree as follows:

**I. RESPONSIBILITIES, RIGHTS AND DUTIES**

**A. RESPONSIBILITIES, RIGHTS AND DUTIES OF APPLICANT**

1. APPLICANT must submit a vegetation maintenance permit application (SCDOT Form 603) for each sign site, along with appropriate fees, comprehensive vegetation removal plan, this Agreement, a Performance and Indemnity Bond or line of credit, and general Liability Insurance Certificate, to the SCDOT Outdoor Advertising office located at PO Box 191, 955 Park Street, Columbia, SC 29202 for approval and consideration in participating in the program.
  - a. No application will be reviewed unless all required documents listed above, including fee, are submitted.
  - b. This Agreement can reference one (1) or more approved vegetation maintenance permit applications. In that case, the sign permit number of each sign subject to the vegetation maintenance permit must be identified and attached to this Agreement as Exhibit "A".
  - c. The Performance and Indemnity Bond and/or line of credit must be approved by the Outdoor Advertising office prior to any clearing of right of way by APPLICANT.
2. Upon approval of the documents in subsection A.1, APPLICANT will be allowed to enter upon SCDOT'S right of way to cut the 300 foot vegetation window, as designated by SCDOT; provided, prior to and within forty eight (48) hours of entering upon SCDOT'S right of way, APPLICANT contacts the appropriate Outdoor Advertising Coordinator and gives notice of the approximate time that APPLICANT will enter upon SCDOT'S right of way.
3. APPLICANT agrees to cut vegetation under the following criteria:
  - a. APPLICANT will not cut hardwoods that are in excess of six (6) inches in diameter;
  - b. All hardwoods larger than six (6) inches in diameter must be examined by the District SCDOT Outdoor Advertising Coordinator to determine if they will hinder routine mowing;
  - c. All cutting by the APPLICANT will be performed from the sign side of the right-of-way (private property) to avoid distractions to the traveling public;
  - d. All cuttings and debris will be immediately removed from SCDOT's right-of-way by APPLICANT at APPLICANT's expense.

4. APPLICANT agrees to comply with all state, federal and local laws and regulations when issued a vegetation maintenance permit and accepted for participation in the PROGRAM.

B. RESPONSIBILITIES, RIGHTS AND DUTIES OF THE SCDOT

1. SCDOT Outdoor Advertising office will be responsible for reviewing the documents submitted under subsection A.1. by APPLICANT and determining whether APPLICANT is accepted for participation in the PROGRAM.

2. Upon approval of the documents in subsection A.1., SCDOT Outdoor Advertising Coordinator will mark the 300-foot vegetation window to be cut in front of each billboard facing.

**II. FUNDING**

A. There will be an initial fee assessed for participation in this PROGRAM per billboard location. The fee includes payment for the Vegetation Permit. Payment of the fee must be submitted with the vegetation permit application, comprehensive site plan, this Agreement, the Performance and Indemnity Bond/credit line, and Certificate of Insurance.

B. An annual processing fee per billboard location will be assessed for the routine mowing by the SCDOT. The annual fee may be paid by check made payable to the SCDOT and sent to the SCDOT Deputy Director of Strategic Planning, Finance and Administration Office. Payment of the annual fee is due on September 1st of each year. Failure to remit the annual fee by October 1st will terminate this Agreement and cancel the Outdoor Vegetation Maintenance Permit and Outdoor Advertising Sign Permit for that sign location. Upon cancellation of these permits, the sign owner will be required to remove the sign within thirty (30) days. If after thirty (30) days the sign is not removed, the SCDOT shall have the sign removed at the sign owner's expense.

C. APPLICANT agrees to procure a Performance and Indemnity Bond or line of Credit in the amount of contracted work and general liability insurance with limits of liability of not less than \$500,000.00 each occurrence, \$500,000.00 aggregate for bodily injury, and \$500,000.00 each occurrence, \$500,000.00 aggregate for property damage. The applicant shall name the Department as an additional named insured. A copy of the additional named insured endorsement must accompany the Performance and Indemnity Bond.

**III. INDEMNIFICATION**

To the extent allowed by law, APPLICANT agrees to indemnify and defend SCDOT against, and hold it harmless from any and all suits, demands, loss or liability, on account of or in connection with any injury, loss or damage to any person or property resulting, or claiming to have resulted from the cutting of the vegetation by APPLICANT or his/her servants, agents, employees, customers or visitors, or from the disposal or removal of the cuttings or debris by APPLICANT or his/her agents, or claimed to have resulted from APPLICANT'S or his agents' omission, fault, negligence, or other misconduct.

**IV. DURATION**

This Agreement between APPLICANT and SCDOT for a 300-foot vegetation window in front of each billboard facing owned by APPLICANT shall be automatically renewed annually with payment of the renewal fee, unless terminated by the SCDOT.

**V. TERMINATION OF AGREEMENT**

A. Failure of APPLICANT to meet the federal, state, or county laws and Regulations regarding outdoor advertising vegetation maintenance will terminate this Agreement.

B. Any violation of this Agreement or the Outdoor Advertising Vegetation Maintenance Policy or permit will be grounds for the termination of this Agreement, the cancellation of the vegetation maintenance permit, and the cancellation of the outdoor advertising sign permit. Within thirty (30) days of cancellation of the outdoor advertising sign permit under this provision, the sign shall be removed at the sign owner's expense. If after thirty (30) days the sign is not removed, the SCDOT will have the sign removed and the sign owner shall reimburse the SCDOT all removal costs. In addition, upon violation under this provision, the sign owner is not eligible for a sign permit within South Carolina in accordance with Section 57-25-140(I)(2) of the South Carolina Code of Laws, 1976.

C. In the event the APPLICANT through any cause fails to perform any of the terms, covenants, or provisions of this Agreement on its part to be performed, or if it for any cause fails to cut or clear the 500' designated working area in a reasonable manner, or if the APPLICANT violates any of the terms, covenants, or provisions of this Agreement, the SCDOT shall have the right to terminate this Agreement by giving thirty (30) days notice in writing of the termination and date of such termination to APPLICANT.

**VI. DISPUTES**

In any dispute concerning a question or fact in connection with the work or terms of this Agreement, or compensation therefore, the APPLICANT shall notify the SCDOT, in writing, of its dispute. A review the matter will be completed. The decision of the SCDOT'S Director in the matter shall be final and conclusive for both parties.

**VII. SUCCESSORS AND ASSIGNS**

SCDOT and APPLICANT each binds itself, its successors, executors, administrators, and assigns to the other party with respect to these requirements. Either party may assign its interest under this Agreement without the consent of the other. Such assignment shall not relieve either party from its obligations hereunder.

IN WITNESS WHEREOF, and in consideration of the mutual conveyance and promise between the parties hereto, we have hereunto set our hands and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

FOR SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Elizabeth S. Mabry, Executive Director

Recommended by:

\_\_\_\_\_  
Keith C. Melvin  
Director of Outdoor Advertising

FOR APPLICANT

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
APPLICANT

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

**9.2 MAINTENANCE PARTNERSHIP AGREEMENT**

SC Form \_\_\_\_ 2/17/00

THIS AGREEMENT is entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ (hereinafter "Business") and the South Carolina Department of Transportation (hereinafter "SCDOT").

WHEREAS, in accordance with Sections 57-3-110 (1) and (10), 57-3-650, 57-23-10, and 57-25-140, and the SCDOT's Policy of Vegetation Preservation on SC Highways, SCDOT is authorized to allow landscaping and beautification efforts on SCDOT right of ways;

WHEREAS, Business has previously obtained a SCDOT Encroachment Permit for the one-time right to access SCDOT's right of way for landscaping, beautification and/or enhancement. Said encroachment permit is described as follows:

Permit Number: \_\_\_\_\_ Date Issued: \_\_\_\_\_  
Location \_\_\_\_\_;

WHEREAS, SCDOT and Business are desirous of entering into this Agreement to grant a continuous license to the Business to enter the SCDOT's right of way to conduct routine maintenance of landscaping, beautification and/or enhancements permitted by the aforesaid encroachment permit;

NOW THEREFORE, in consideration of mutual promises, SCDOT and Business agree to the following:

1) SCDOT grants Business a license to enter onto the SCDOT right of way at the area defined by the encroachment permit. The purpose of the license to enter is limited to routine maintenance of the encroachment permit area. Such entry will be limited to the scope of the work identified in the encroachment permit. No additional encroachment beyond that contemplated by the original encroachment permit is allowed. If additional maintenance, enhancement and/or beautification efforts, different from the original scope of work identified in the encroachment permit, is requested, Business will be required to submit a new encroachment permit identifying the new scope of work. Entry onto SCDOT right of way pursuant to this agreement may be without notice to the SCDOT.

2) Business agrees to post all necessary traffic control devices and take all necessary precautions in conformance with SCDOT traffic control standards and as required by the SCDOT, along the SCDOT right of way prior to and during the performance of any routine maintenance, enh3) Business agrees that no work shall be accomplished from the mainline side of the highway. Ingress and egress from the work area shall be made from private property as identified on the encroachment permit.

4) Business agrees to indemnify and hold harmless the SCDOT from any and all claims, damages and liability arising or resulting from the Business' presence on and use of the SCDOT right of ways for routine maintenance, enhancement and/or beautification.

5) This Agreement shall not be modified, amended or altered except upon written consent of the parties. Neither party shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

6) This Agreement may be terminated upon thirty (30)-days written notice to the other party; however, in cases where the Business in not performing in accordance with this Agreement, SCDOT shall give written notice to Business of the failure in performance and, if the Business does not correct or cure the performance within three (3)-days-of-receipt-of-the-notice, SCDOT shall have the option to terminate this license immediately, and shall, thereafter, give written notice of such termination to the Business.

IN WITNESS HEREOF, the above parties have hereunto set their hands and seals.

SOUTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

By: \_\_\_\_\_

Its: \_\_\_\_\_

Recommended by: \_\_\_\_\_

Business

By: \_\_\_\_\_

Its: \_\_\_\_\_

**9.3 PERFORMANCE AND INDEMNITY BOND FORM**

South Carolina Department of Transportation Form No. 672A <b>PERFORMANCE AND INDEMNITY BOND</b>	Rev. 11-20-2000	Date Bond Executed:
Principal:		Bond Number:
Surety:		
Penal Sum of Bond (Express in words & figures):		Date of Contract:
Project S. C. File No(s):		Contract Number:

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL AND SURETY above named are held and firmly bound unto the South Carolina Department of Transportation, hereinafter called the Department, in the penal sum of the amount stated above which shall be equal to the full amount (100%) of the contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the principal entered into a certain contract with the Department, numbered and dated as shown above and hereto attached:

NOW, THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Department, with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

In Presence of: Witness (2 required) 1. _____ 2. _____	FOR INDIVIDUAL OR PARTNERSHIP PRINCIPAL _____ (seal) _____ (seal)
---	---

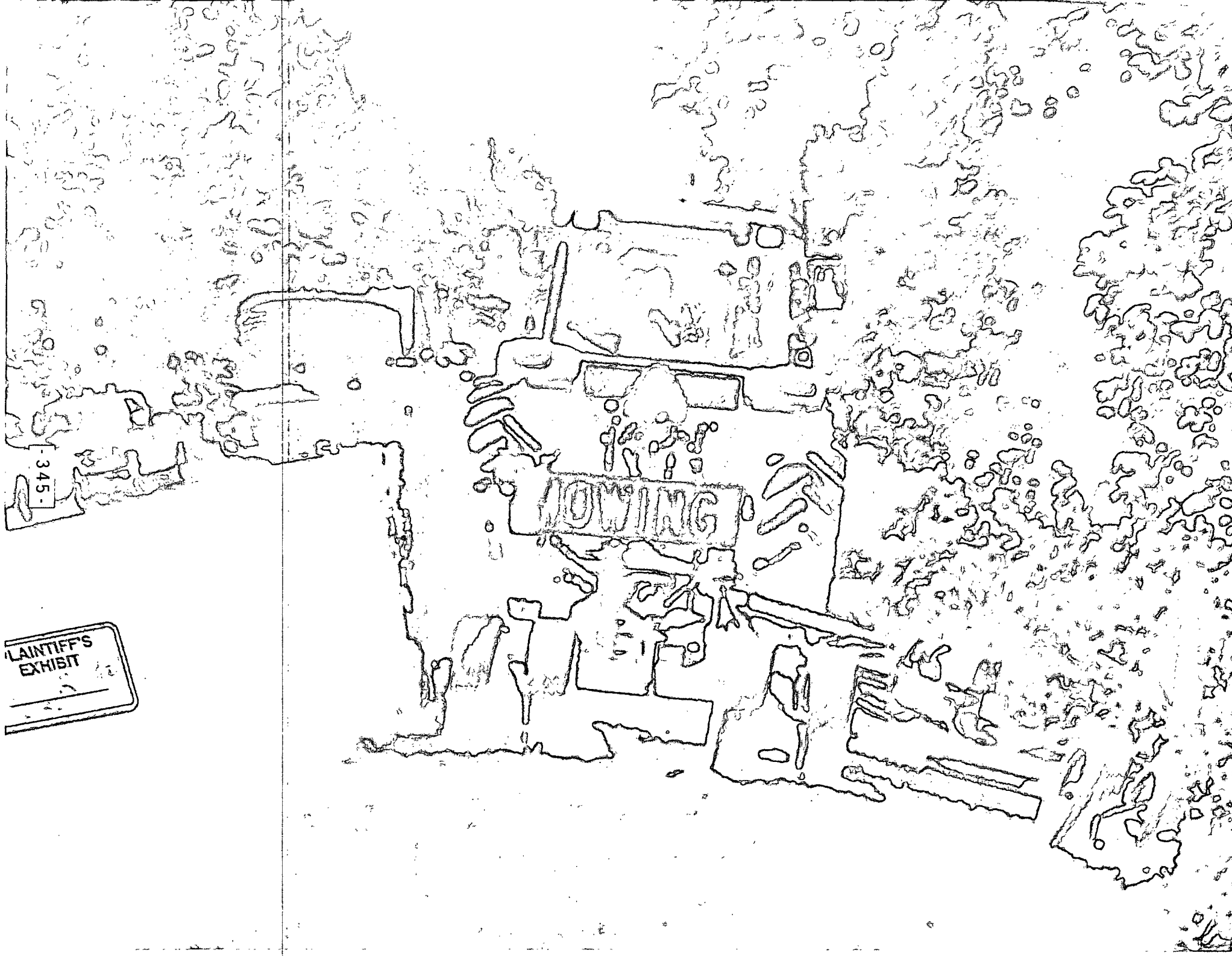
Attest _____ Corporate Secretary In Presence of: Witness (2 required) 1. _____ 2. _____	FOR CORPORATE PRINCIPAL _____ Corporation Name _____ Business Address By: _____ Title: _____ <div style="border: 1px solid black; padding: 2px; width: fit-content; margin-left: auto;">                     Affix Corporate Seal                 </div>
---	--

In Presence of: Witness (2 required) 1. _____ 2. _____	SURETY/INSURER _____ Surety/ Insurers Name _____ Business Address By: _____ Title: _____ <div style="border: 1px solid black; padding: 2px; width: fit-content; margin-left: auto;">                     Affix Corporate Seal                 </div>
---	--

## EXCERPT FROM SOUTH CAROLINA CODE OF LAWS

SECTION 57-5-1660. Amount of contractor's bonds. -

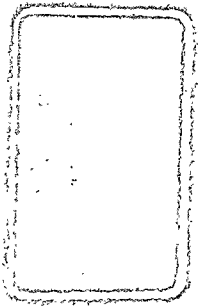
- (a) The South Carolina Department of Transportation shall require that the contractor on every public highway construction contract, exceeding ten thousand dollars, furnish the South Carolina Department of Transportation, county, or road district the following bond, which shall become binding upon the award of the contract to such contractor:
- (1) A performance and indemnity bond with a surety or sureties satisfactory to the authority awarding the contract, and the full amount of the contract, and in no case less than ten thousand dollars, for the protection of the South Carolina Department of Transportation, county or road district.
  - (2) A payment bond with a surety or sureties satisfactory to the awarding authority, and in the amount of not less than fifty percent of the contract, for the protection of all persons supplying labor and materials in the prosecution of work provided for in the contract for the use of each such person.
- (b) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which such a bond has been furnished under this section and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him; provided, however, that any person having direct contractual relationship with a sub-contractor but no contractual relationship expressed or implied with the contractor furnishing the bond shall have a right of action upon the bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied or for whom labor was done or performed. No suit under this section shall be commenced after the expiration of one year after the date of the final settlement of the contract.
- (c) Nothing in this section shall be construed to limit the authority of any contracting authority to require a performance bond or other security in addition to those specified in this section.



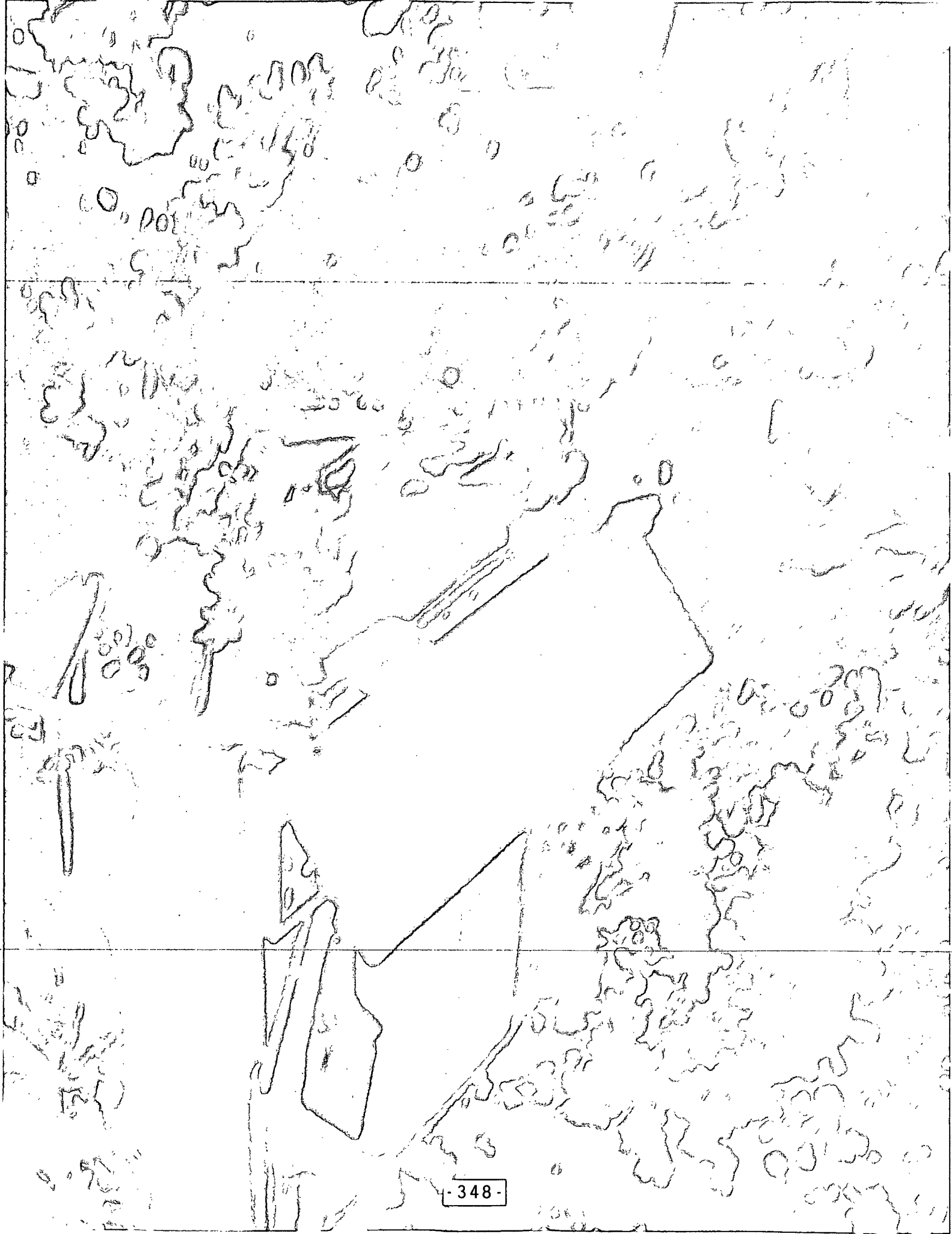
MOWING

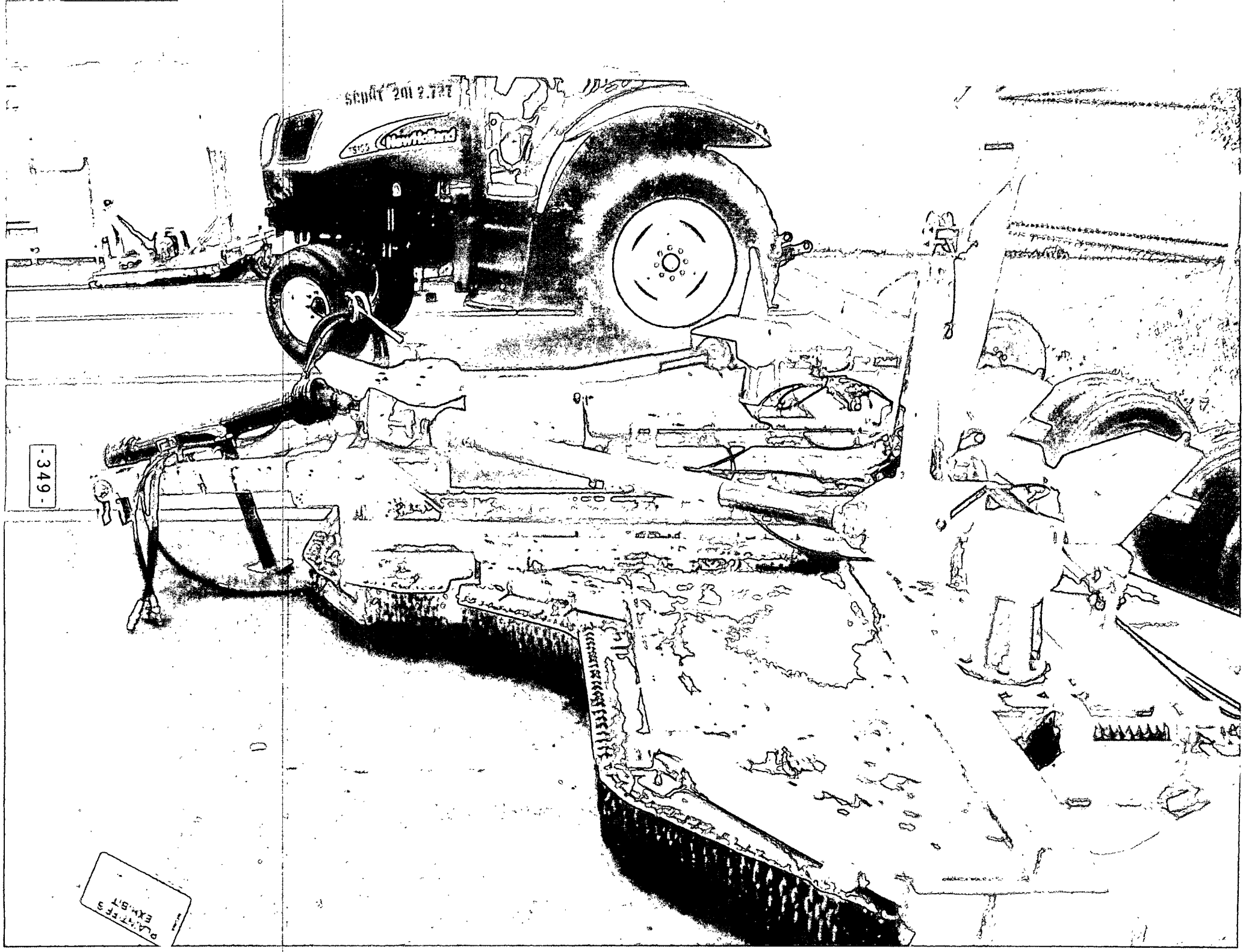
- 345 -

PLAINTIFF'S  
EXHIBIT



PLAINTIFF'S  
EXHIBIT 3



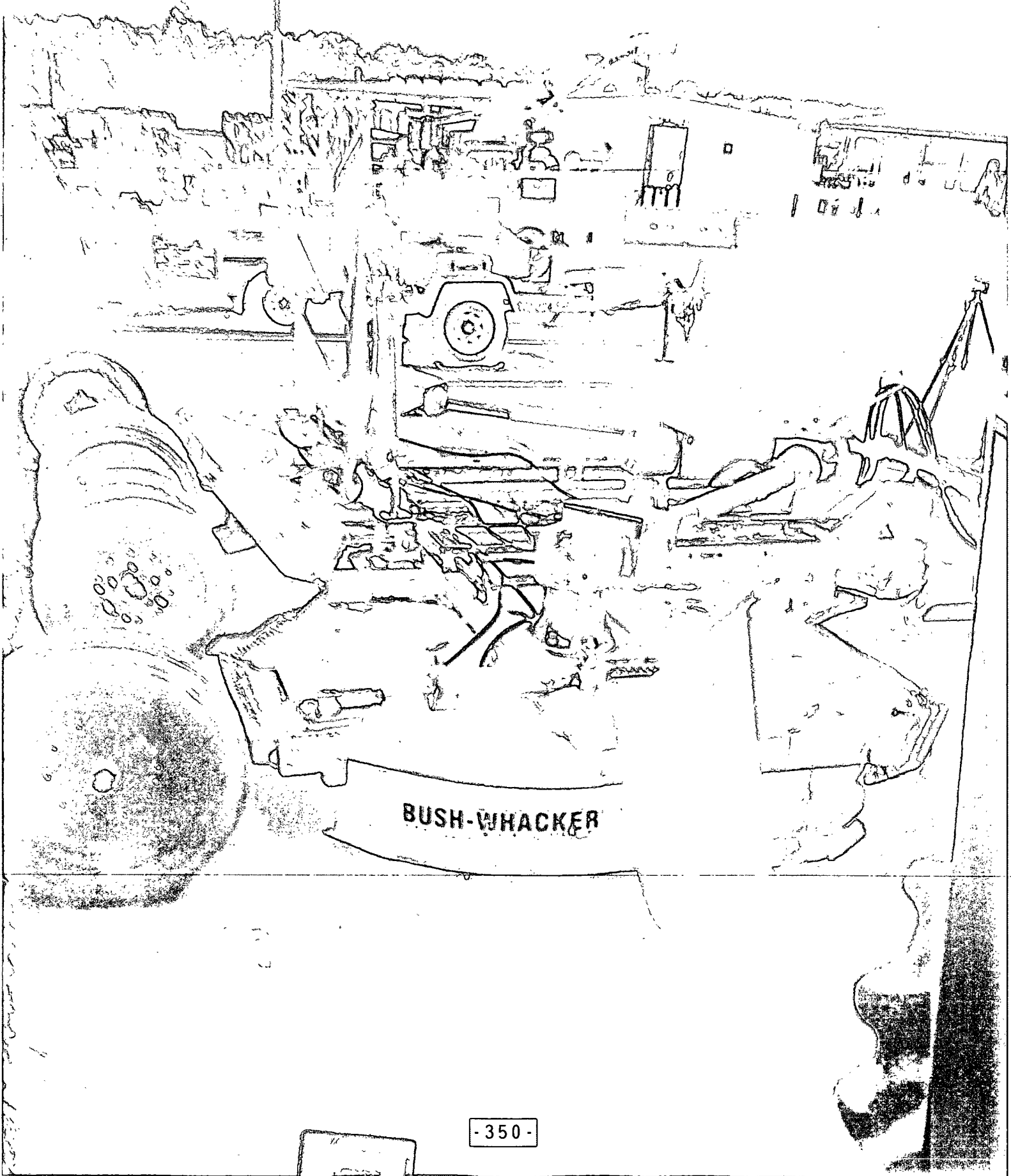


SCOUT 201 2.727

1966 Chevrolet

- 349 -

PLATES  
EXH. ST



BUSH-WHACKER

**SCDOT**  
**VEGETATION MANAGEMENT**  
**GUIDELINES**



**2006**

SCDOT

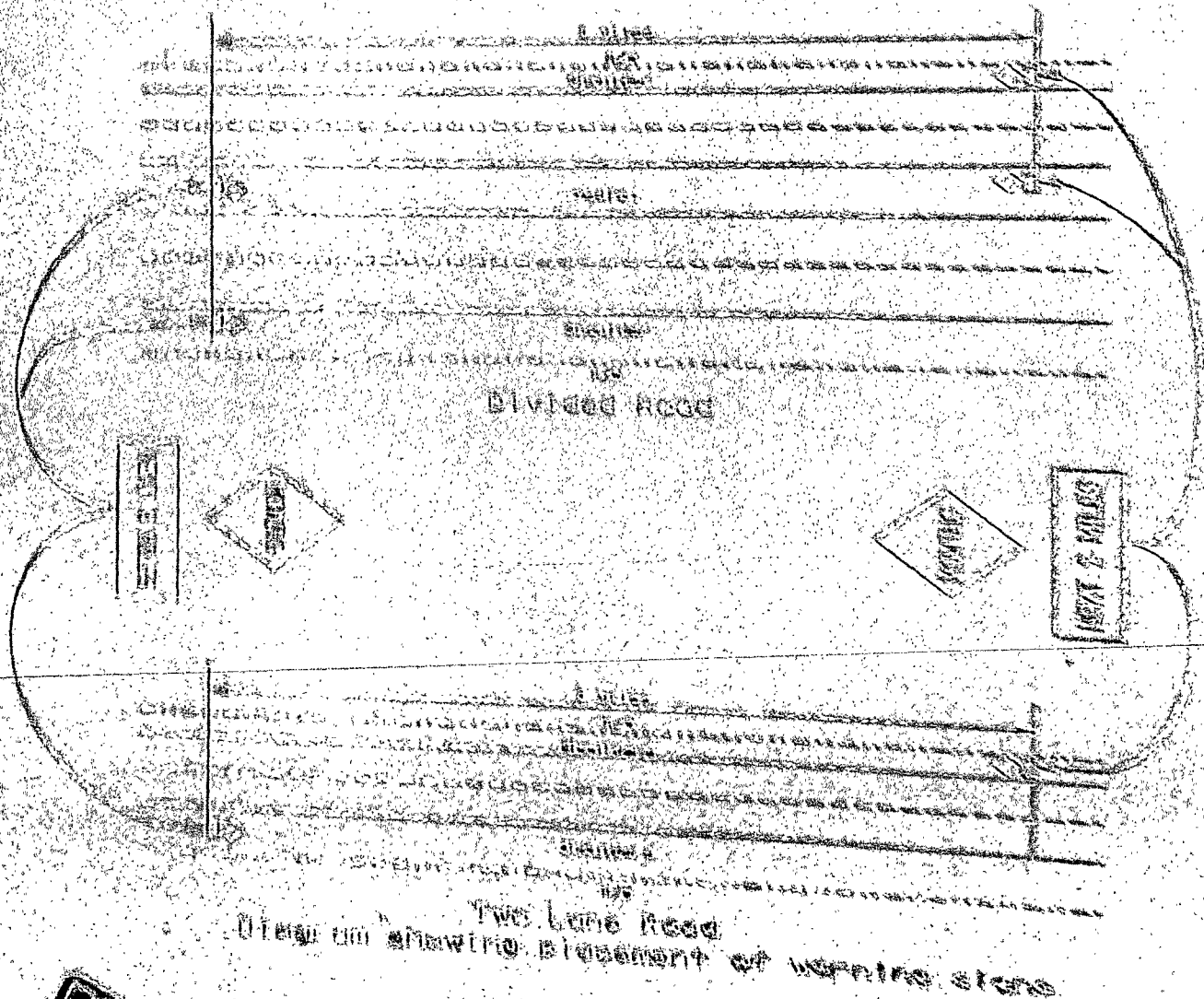
- 351 -



All signs mounted on portable sign supports shall have a minimum mounting height of five (5) feet from the ground to the bottom of the sign.

"NEXT 2 MILES" signs shall be used on Interstate, and on Primary, and Secondary routes greater than three miles long. Signs should be placed as necessary to remain within three miles of the mowing operations. On primary and secondary roadways less than three miles long, they will be placed within a distance determined by the crew on the plan. Flagmen, warning signs, barricades, and/or other suitable protective devices shall be placed not less than five hundred (500) feet in each direction from the work site while loading or unloading materials or equipment.

## TYPICAL XI SIGN PLACEMENT



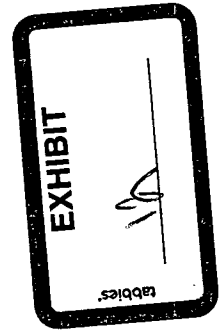


Mowing operations on the interstate should be conducted such that equipment does not encroach on the travelway. On other roads, encroachment on the travelway should be held to the minimum possible to efficiently accomplish mowing.

A standard slow moving vehicle emblem (SMV) shall be mounted on the rear of the tractor in such a position that it can be clearly visible by vehicles approaching the mowing unit from the rear. The following will be required for each tractor unit:

- Two double-face (amber front, red rear) flashing lights prominently mounted on the rear wheel fenders.
- One top-mounted amber revolving light or flashing neon light visible from both directions. If a canopy is not used, the light shall be mounted on a mast suitably attached to the tractor frame at an elevation slightly higher than the roll bar.
- A sign reading "MOWING" on the rear of the unit. The sign shall be black legend on an orange non-reflectorized background with minimum eight-inch series C letters. In addition to the above, the fifteen-foot mower shall have a red flag near the outer edge of each bat wing on a three to four foot long or greater staff.

# AUBRY ALEXANDER MEDICAL BILLS



DESCRIPTION:	DATE:	AMOUNT:
Palmetto Health Richland	7/23/08-7/29/08	\$108,926.10
Charleston Neuroscience Institute	7/28/08-9/15/08	\$2,226.49
MUSC		\$35,015.32
MUSC University Medical Associates		\$2,565.00
David Gregg, MD (adult cardiology)	7/29/2008	\$73.00
Edward Norcross, MD (trauma/critical care)	7/30/2008	\$189.00
Thomas L. Pope, MD (Radiology)	7/30/2008	\$52.00
Thomas L. Pope, MD (Radiology)	7/30/2008	\$52.00
Thomas L. Pope, MD (Radiology)	7/30/2008	\$51.00
Thomas L. Pope, MD (Radiology)	7/31/2008	\$57.00
Munazza Anis, MD (Radiology)	7/31/2008	\$88.00
Stuart M. Leon, MD (trauma/critical care)	8/2/2008	\$378.00
William F. Conway, MD (Radiology)	8/5/2008	\$42.00
Edward Norcross, MD (Trauma &CC)	7/31/2008	\$378.00
Christian Minshall, MD (trauma/critical care)	8/4/2008	\$189.00
Edward Norcross, MD (Trauma &CC)	8/4/2008	\$145.00
Harry A. Demos, MD (Orthopaedics)	8/26/2008	\$143.00
Thomas L. Pope, MD (Radiology)	8/26/2008	\$57.00
Thomas L. Pope, MD (Radiology)	8/26/2008	\$52.00
Thomas L. Pope, MD (Radiology)	8/26/2008	\$52.00
Christian Minshall, MD (trauma/critical care)	8/5/08-8/7/08	\$567.00
Rocky Mountain Holdings, LLC	7/23/2008	\$17,070.29
Pitts Radiology	7/23/08-7/29/2008	\$1,681.00
Anesthesia Consultants of Columbia	7/23/2008	\$2,175.00
NHC Healthcare	8/13/08-8/31/08	\$7,333.46
	9/1/08-9/30/08	\$11,353.61
	10/1/08-10/29/08	\$12,443.96
<b>Total Medical Bills:</b>		<b>\$200,790.23</b>

Aubry G. Alexander  
 Medical Bills

DESCRIPTION:	DATE:	AMOUNT:
<b>Palmetto Health Richland</b>	7/23/08-7/29/08	<b>\$108,926.10</b>
<b>Charleston Neuroscience Institute</b>	7/28/08-9/15/08	<b>\$2,226.49</b>
<b>MUSC</b>		<b>\$35,015.32</b>
<b>MUSC University Medical Associates</b>		
David Gregg, MD (adult cardiology)	7/29/2008	\$73.00
Edward Norcross, MD (trauma/critical care)	7/30/2008	\$189.00
Thomas L. Pope, MD (Radiology)	7/30/2008	\$52.00
Thomas L. Pope, MD (Radiology)	7/30/2008	\$52.00
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Thomas L. Pope, MD (Radiology)	7/31/2008	\$57.00
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Harry A. Demos, MD (Orthopaedics)	8/26/2008	\$143.00
Thomas L. Pope, MD (Radiology)	8/26/2008	\$57.00
Thomas L. Pope, MD (Radiology)	8/26/2008	\$52.00
Thomas L. Pope, MD (Radiology)	8/26/2008	\$52.00
Christian Minshall, MD (trauma/critical care)	8/5/08-8/7/08	\$567.00
		<b>\$2,565.00</b>
<b>Rocky Mountain Holdings, LLC</b>		
Transport to Richland Memorial Hospital	7/23/2008	<b>\$17,070.29</b>
<b>Pitts Radiology</b>	7/23/08-7/29/2008	<b>\$1,681.00</b>
<b>Anesthesia Consultants of Columbia</b>	7/23/2008	<b>\$2,175.00</b>
<b>NHC Healthcare</b>	8/13/08-8/31/08	\$7,333.46
	9/1/08-9/30/08	\$11,353.61
	10/1/08-10/29/08	\$12,443.96
		<b>\$31,131.03</b>
<b>Total Medical Bills:</b>		<b>\$200,790.23</b>



**PALMETTO HEALTH**  
**RICHLAND**  
 293 Greystone Blvd  
 First Floor  
 Columbia, SC 29210

IF PAYING BY CREDIT CARD, FILL OUT BELOW.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AMERICAN EXPRESS	DISC. VER.				VISA
CARD NUMBER			EXP. DATE		
FULL NAME (Please Print)			CCV CODE		
SIGNATURE					
PATIENT NAME AND ACCOUNT NUMBER				DATES OF SERVICE	
AUBRY ALEXANDER SR - R0820501338				07/23/2008 - 07/29/2008	
ACCOUNT BALANCE		TOTAL CHARGES		AMOUNT PAID	
\$108,926.10		\$108,926.10		\$	

STATEMENT DATE: 08/04/08

PAGE: 1 of 2

AUBRY ALEXANDER SR  
 131 HICKORY SPRING RD  
 EUTAWVILLE SC 29048-8949

PALMETTO HEALTH RICHLAND  
 C/O PAYMENT PROCESSING  
 PO BOX 402111  
 ATLANTA, GA 30384-2111

Please detach and return this portion with payment.

Dear Aubry Alexander Sr:

\*\*\* THIS IS NOT A BILL \*\*\*

Thank you for choosing Palmetto Health Richland as your healthcare provider.

This statement is a summary of charges and shows the insurances that will be billed on your behalf. Please review the insurance information located at the bottom right of this statement for accuracy and notify us of any changes that need to be made. Changes may be entered on the back of this form in the About Your Insurance Section, located above the Summary of Charges, and returned to us in the enclosed envelope or you may contact our Customer Service Representatives at 803-296-5098 or 800-243-7711.

Customer Service Representatives are available to assist you Monday through Friday from 8:30 a.m. to 5:00 p.m.. Palmetto Health offers financial assistance to the under insured or uninsured.

► ACCOUNT SUMMARY

Statement Date: 08/04/08  
 Service Date(s): 07/23/2008 - 07/29/2008  
 Account Number: R0820501338  
 Account Balance: \$108,926.10

► INSURANCE INFORMATION

Contact us if any of this information is incorrect. Please note only primary and secondary insurances are listed on this statement.

PRIMARY

Insurance: AUTO OWNERS  
 Name of Insured: AUBRY ALEXANDER SR  
 ID Number: 456463791

SECONDARY

Insurance: MEDICARE PART A  
 Name of Insured: AUBRY ALEXANDER SR  
 ID Number: 456463791A



Rx Date/Time  
Oct 27 08 02:52p

OCT-27-2008 (MON) 13:53  
Aubry G. Alexander II

843 852 0746  
843-852-0746

**HOSPITAL SUMMARY OF CHARGES**

Description	Amount	Description
INTENSIVE CARE	2220.00	
INTENSIVE CARE/POST ICU	8700.00	
PHARMACY/GENERAL	2212.00	
MED/SUR SUPPLIES	3076.00	
STERILE SUPPLY	1593.00	
SUPPLY IMPLANTS	15998.10	
LABORATORY	178.00	
LAB/CHEMISTRY	2296.00	
LAB/IMMUNOLOGY	808.00	
LAB/HEMATOLOGY	1230.00	
DX X-RAY	3799.00	
DX X-RAY/CHEST	792.00	
CT SCAN/HEAD	1467.00	
CT SCAN/BODY	11248.00	
OR SERVICES	16065.00	
ANESTHESIA	3826.00	
BLOOD/STOR-PROC	920.00	
RESPIRATORY SVC	531.00	
PHYSICAL THERAPY	590.00	
PHYS THERAPY/EVALUATION	646.00	
OCCUPATIONAL THERAPY	232.00	
OCCUPATIONAL THERAPY EVALUATIO	646.00	
EMERGENCY ROOM	1511.00	
PULMONARY FUNCTIONS-DIAGNOSTIC	2586.00	
EPO/DRUGS REQUIRING DET CODE	12493.00	
SELF ADMINISTERED DRUGS	1150.00	
TRAUMA RESPONSE LEVEL I	5887.00	
CAST ROOM	465.00	
RECOVERY ROOM	2482.00	
EKG/ECG	0.00	
PRO FEE/ANES RN	3178.00	
UNIDENTIFIED	0.00	
<b>TOTAL CHARGES</b>	<b>108926.10</b>	
<b>TOTAL INSURANCE PAYMENTS</b>	<b>0.00</b>	
<b>TOTAL ADJUSTMENTS</b>	<b>0.00</b>	
<b>TOTAL PATIENT PAYMENTS</b>	<b>0.00</b>	
<b>ACCOUNT BALANCE</b>	<b>108926.10</b>	

Date(s) of Service	- 358 -	Acco
10/27/08 07/00/0008	R INPATIENT	R08

**HOSPITAL SUMMARY OF CHARGES**

Description	Amount	Description	Amount
INTENSIVE CARE	2220.00		
INTENSIVE CARE/POST ICU	8700.00		
PHARMACY/GENERAL	2212.00		
MED/SUR SUPPLIES	3076.00		
STERILE SUPPLY	1593.00		
SUPPLY IMPLANTS	15998.10		
LABORATORY	178.00		
LAB/CHEMISTRY	2296.00		
LAB/IMMUNOLOGY	808.00		
LAB/HEMATOLOGY	1230.00		
DX X-RAY	3799.00		
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RESPIRATORY SVC	631.00		
PHYSICAL THERAPY	590.00		
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OCCUPATIONAL THERAPY	232.00		
OCCUPATIONAL THERAPY EVALUATIO	646.00		
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PULMONARY FUNCTIONS-DIAGNOSTIC	2586.00		
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CAST ROOM	465.00		
RECOVERY ROOM	2482.00		
EKG/ECG	0.00		
PRO FEE/ANES RN	3178.00		
UNIDENTIFIED	0.00		
<b>TOTAL CHARGES</b>	<b>108926.10</b>		
<b>TOTAL INSURANCE PAYMENTS</b>	<b>0.00</b>		
<b>TOTAL ADJUSTMENTS</b>	<b>0.00</b>		
<b>TOTAL PATIENT PAYMENTS</b>	<b>0.00</b>		
<b>ACCOUNT BALANCE</b>	<b>108926.10</b>		

Date(s) of Service	L - 359 -	Account Number
07/23/2008 - 07/29/2008	R INPATIENT	R0820501338

LOCATION: CHARLESTON NEUROSCIENCE T PT-0001 PAGE: 1

AUBRY G ALEXANDER  
131 HICKORY SPRINGS RD  
EUTAWVILLE SC 29048-8949

BILLING DATE: 09/02/08

AMOUNT DUE : 0.00

DISCHARGE DATE: 09/22/11

BILL TO: ALEXANDER AUBRY CHART #: 102441

DATE	POS	PROC	DESCRIPTION	CHARGES	CREDITS	BALANCE
09/02/08			BALANCE FORWARD A ALEXANDER			11.49
09/02/08	J9035		D VIRGIL ALFARO III MD AVASTIN INTRAOCULAR	60.00		71.49
09/02/08	67028		INJECTION OF EYE DRUG INTO VITR	670.00		741.49
09/02/08			MEDICARE SC # 725381 Filed			
09/15/08			MAILHANDLERS BENEFIT PLAN # 725382 Filed			
09/15/08			PAYMENT MEDICARE c# 725381		181.65-	559.84
09/15/08			Co-ins 45.41			
09/15/08			WRITE-OFF MEDICARE c# 725381 A ALEXANDER D VIRGIL ALFARO III MD		502.94-	56.90

# Law Offices of Paul E. Tinkler

154 King Street, 3<sup>rd</sup> Floor  
Charleston, SC 29401

Paul E. Tinkler | paultinkler@tinklerlaw.com

P.O. Box 366  
Charleston, SC 29402  
Phone: 843.853.5203  
Fax: 843.853.4206

## FACSIMILE:

To: <b>Charleston Neuroscience Institute Attn: Becca (billing)</b>	From: <b>Paul E. Tinkler</b>
Fax: <b>852-0845</b>	Pages: <b>3 (Including cover)</b> Date: <b>10/28/11</b>
Re: <b>Request for Billing statements for Aubry Alexander</b>	

Becca,

Thanks for talking to me this morning regarding Mr. Alexander's billing. I am attaching a release for us to get the billing statements from ~~7/23/03-9/15/08~~. Would you please fax them to me today at 853-4206? These are missing from our file and we need them to be included as an exhibit for the trial of this matter on Monday.

Thanks for your help!

Jennifer Helm  
Legal Assistant to Paul E. Tinkler

*Handwritten note:*  
Patient was only seen on 9/2/08 during the above date range.  
Thanks, Becca Smith

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via U.S. Postal Service. Thank you. *If you do not receive all pages indicated above, please call (843) 353-5203.*

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 103676987 UNIT #: 001366513-800-001

PATIENT: AUBRY G ALEXANDER

P/C: M7 P/T: Y ADM DATE: 07/29/08  
DIS DATE: 08/13/08

INS CODE COMPANY NAME  
ME30 MEDICARE A&B  
CN09 MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
99136053	PRIVATE		08/01/08	1	928.00
99136053	PRIVATE		08/03/08	1	928.00
99136053	PRIVATE		08/04/08	1	928.00
99136053	PRIVATE		08/05/08	1	928.00
99136053	PRIVATE		08/06/08	1	928.00
99136053	PRIVATE		08/07/08	1	928.00
99136053	PRIVATE		08/11/08	1	928.00
99136053	PRIVATE		08/12/08	1	928.00
110	** ROOM-BOARD/PVT	TOTAL		8	7424.00
99536559	INTERMEDIATE		07/29/08	1	1533.00
99536559	INTERMEDIATE		07/30/08	1	1533.00
99536559	INTERMEDIATE		07/31/08	1	1533.00
99536559	INTERMEDIATE		08/02/08	1	1533.00
99536559	INTERMEDIATE		08/08/08	1	1533.00
99536559	INTERMEDIATE		08/09/08	1	1533.00
99536559	INTERMEDIATE		08/10/08	1	1533.00
206	** ICU/INTERMEDIATE	TOTAL		7	10731.00
43018050	INJ/METOPROLOL TARTRATE/5 METOPROLOL TARTRATE 1 MG		07/29/08	1	11.00
43018050	INJ/METOPROLOL TARTRATE/5 METOPROLOL TARTRATE 1 MG		07/30/08	1	11.00
43018050	INJ/METOPROLOL TARTRATE/5 METOPROLOL TARTRATE 1 MG		07/31/08	1	11.00
43018050	INJ/METOPROLOL TARTRATE/5 METOPROLOL TARTRATE 1 MG		08/02/08	2	22.00
43018050	INJ/METOPROLOL TARTRATE/5 METOPROLOL TARTRATE 1 MG		08/03/08	3	33.00
43018050	INJ/METOPROLOL TARTRATE/5 METOPROLOL TARTRATE 1 MG		08/04/08	3	33.00
43018050	INJ/METOPROLOL TARTRATE/5 METOPROLOL TARTRATE 1 MG		08/05/08	1	11.00
43020700	INJ/HYDROMORPHONE HCL/213 HYDROMORPHONE INJ 2 MG/M	J1170	07/29/08	1	10.00

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORIT  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 103676987 UNIT #: 001366513-800-001

PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: I

ADM DATE: 07/29/08

DIS DATE: 08/13/08

ESTIMATE

INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
KUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	07/30/08	3	30.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	07/31/08	4	40.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	08/01/08	1	10.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	08/02/08	1	10.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	08/03/08	2	20.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	08/04/08	2	20.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	08/05/08	3	30.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	08/06/08	2	20.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	08/08/08	1	10.00
43020700	INJ/HYDROMORPHONE HCL/2IS HYDROMORPHONE INJ 2 MG/M	J1170	08/13/08	1	10.00
43024785	INJ/TUBERCULIN,PPD/5TU TUBERCULIN PPD 5 UNIT/0.		07/30/08	1	14.00
43055433	INJ/POTASSIUM CHL/1000ML SODIUM CHL 0.9%/KCL 20MB		07/30/08	1	42.00
43067321	INJ/FAMOTIDINE 10MG/ML 2M FAMOTIDINE 10 MG/ML IN		07/29/08	2	16.00
43067321	INJ/FAMOTIDINE 10MG/ML 2M FAMOTIDINE 10 MG/ML IN		07/30/08	3	24.00
43067321	INJ/FAMOTIDINE 10MG/ML 2M FAMOTIDINE 10 MG/ML IN		07/31/08	2	16.00
43067321	INJ/FAMOTIDINE 10MG/ML 2M FAMOTIDINE 10 MG/ML IN		08/01/08	2	16.00
43067321	INJ/FAMOTIDINE 10MG/ML 2M FAMOTIDINE 10 MG/ML IN		08/02/08	2	16.00
43067321	INJ/FAMOTIDINE 10MG/ML 2M FAMOTIDINE 10 MG/ML IN		08/03/08	2	16.00

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TYPE: DEMAND

PATCOM #: 103676987 UNIT #: 001366513-800-001

PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: I

ADM DATE: 07/29/08

DIS DATE: 08/13/08

INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
WALHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
BUTANVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/04/08	2	16.00
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/05/08	2	16.00
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/06/08	2	16.00
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/07/08	2	16.00
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/08/08	2	16.00
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/09/08	2	16.00
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/10/08	2	16.00
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/11/08	2	16.00
43067321	FAMOTIDINE 10 MG/ML IN INJ/FAMOTIDINE 10MG/ML 2M		08/12/08	2	16.00
250	** PHARMACY	TOTAL		66	646.00
37701588	S6120 D5 45SC IJ1000		07/30/08	1	27.00
37701802	IV FLUID NS 500ML		07/30/08	1	27.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		07/29/08	1	42.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		07/30/08	2	84.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		07/31/08	2	84.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/04/08	1	42.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/05/08	1	42.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/06/08	2	84.00

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PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: I

ADM DATE: 07/29/08  
DIS DATE: 08/13/08

INS CODE                      COMPANY NAME  
ME30                          MEDICARE A&B  
CN09                          MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
BUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/07/08	1	42.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/08/08	1	42.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/09/08	2	84.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/10/08	1	42.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/11/08	1	42.00
43025311	INJ/DEXTROSE 5%/D5.45/20K DSW/NACL 0.45% KCL 20ME		08/12/08	1	42.00
43025832	INJ/SODIUM CHLOR/0.45%/10 SODIUM CHLORIDE 0.45%		08/01/08	2	72.00
43025832	INJ/SODIUM CHLOR/0.45%/10 SODIUM CHLORIDE 0.45%		08/02/08	3	108.00
43025832	INJ/SODIUM CHLOR/0.45%/10 SODIUM CHLORIDE 0.45%		08/03/08	2	72.00
43025832	INJ/SODIUM CHLOR/0.45%/10 SODIUM CHLORIDE 0.45%		08/04/08	1	36.00
258	** IV SOLUTIONS	TOTAL		26	1014.00
37530631	KIT MANAGEMENT FECAL		08/02/08	1	933.00
37540994	FLEECE PADS STRYKER		08/01/08	1	64.00
37552377	LUBRICATH FOLEY CATH TRAY		08/05/08	1	32.00
37558673	SCD SLEEVE KNEE ONE SZ		07/30/08	1	71.00
37558723	COVER FOOT REGULAR		07/31/08	1	192.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		07/31/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/01/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/02/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/03/08	1	86.00

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PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: I

ADM DATE: 07/29/08

DIS DATE: 08/13/08

INS CODE  
ME30  
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COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/04/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/05/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/06/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/07/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/08/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/09/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/10/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/11/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/12/08	1	86.00
43699784	02 / SUPPLEMENTAL 02 THERAPY / DAY,		08/13/08	1	86.00
270	** MED/SURG SUPPLIES	TOTAL		19	2496.00
83800011	VENIPUNCTURE ALEXANDER, AUBRY	36415	07/30/08	2	38.00
83800011	VENIPUNCTURE ALEXANDER, AUBRY	36415	07/31/08	1	19.00
83800011	VENIPUNCTURE ALEXANDER, AUBRY G	36415	08/01/08	1	19.00
83800011	VENIPUNCTURE ALEXANDER, AUBRY G	36415	08/02/08	2	38.00
83800011	VENIPUNCTURE ALEXANDER, AUBRY G	36415	08/03/08	1	19.00
83800011	VENIPUNCTURE ALEXANDER, AUBRY G	36415	08/04/08	1	19.00
83800011	VENIPUNCTURE ALEXANDER, AUBRY G	36415	08/06/08	1	19.00

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ESTIMATE

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CNO9

COMPANY NAME  
MEDICARE AEB  
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AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
83800011	ALEXANDER, AUBRY G VENIPUNCTURE	36415	08/09/08	1	19.00
83800011	ALEXANDER, AUBRY G VENIPUNCTURE	36415	08/12/08	1	19.00
85311645	ALEXANDER, AUBRY G BASIC METABOLIC PANEL	80048	07/30/08	2	184.00
85311645	ALEXANDER, AUBRY G BASIC METABOLIC PANEL	80048	07/31/08	1	92.00
85311645	ALEXANDER, AUBRY G BASIC METABOLIC PANEL	80048	08/01/08	1	92.00
85311645	ALEXANDER, AUBRY G BASIC METABOLIC PANEL	80048	08/02/08	1	92.00
85311645	ALEXANDER, AUBRY G BASIC METABOLIC PANEL	80048	08/03/08	1	92.00
85311645	ALEXANDER, AUBRY G BASIC METABOLIC PANEL	80048	08/05/08	1	92.00
85311645	ALEXANDER, AUBRY G BASIC METABOLIC PANEL	80048	08/09/08	1	92.00
85311645	ALEXANDER, AUBRY G BASIC METABOLIC PANEL	80048	08/12/08	1	92.00
300	** LABORATORY	TOTAL		20	1037.00
85310696	ALEXANDER, AUBRY G MAGNESIUM	83735	07/30/08	1	53.00
85310696	ALEXANDER, AUBRY G MAGNESIUM	83735	07/31/08	1	53.00
85310696	ALEXANDER, AUBRY G MAGNESIUM	83735	08/01/08	1	53.00
85310696	ALEXANDER, AUBRY G MAGNESIUM	83735	08/03/08	1	53.00
85310696	ALEXANDER, AUBRY G MAGNESIUM	83735	08/06/08	1	53.00
85310696	ALEXANDER, AUBRY G MAGNESIUM	83735	08/09/08	1	53.00

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ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
BUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
85310696	MAGNESIUM ALEXANDER, AUBRY G	83735	08/12/08	1	53.00
85310748	PHOSPHOROUS ALEXANDER, AUBRY G	84100	07/30/08	1	31.00
85310746	PHOSPHOROUS ALEXANDER, AUBRY G	84100	07/31/08	1	31.00
85310746	PHOSPHOROUS ALEXANDER, AUBRY G	84100	08/01/08	1	31.00
85310746	PHOSPHOROUS ALEXANDER, AUBRY G	84100	08/03/08	1	31.00
85310746	PHOSPHOROUS ALEXANDER, AUBRY G	84100	08/06/08	1	31.00
85310746	PHOSPHOROUS ALEXANDER, AUBRY G	84100	08/09/08	1	31.00
85310746	PHOSPHOROUS ALEXANDER, AUBRY G	84100	08/12/08	1	31.00
85311637	HEPATIC FUNCTION PANEL A ALEXANDER, AUBRY G	80076	08/04/08	1	88.00
85340404	PREALBUMIN ALEXANDER, AUBRY G	84134	08/04/08	1	68.00
85340404	PREALBUMIN ALEXANDER, AUBRY G	84134	08/12/08	1	68.00
301	** LABORATORY/CHEMISTRY	TOTAL		17	812.00
85320354	HEMOGRAM & AUTODIFF ALEXANDER, AUBRY G	85025	08/03/08	1	74.00
85320372	HEMOGRAM ALEXANDER, AUBRY G	85027	07/30/08	1	42.00
85320372	HEMOGRAM ALEXANDER, AUBRY G	85027	08/01/08	1	42.00
85320372	HEMOGRAM ALEXANDER, AUBRY G	85027	08/02/08	2	84.00
85320372	HEMOGRAM ALEXANDER, AUBRY G	85027	08/06/08	1	42.00
85320372	HEMOGRAM ALEXANDER, AUBRY G	85027	08/12/08	1	42.00

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ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY		
305	ALEXANDER, AUBRY G ** LABORATORY/HEMOTOLOGY	TOTAL		7		326.00
85120145	WBC, FE	89055	08/03/08	1	24.00	
85120293	ALEXANDER, AUBRY G C DIFFICILE CYTOTOXIN	87324	08/03/08	1	96.00	
85120293	ALEXANDER, AUBRY G C DIFFICILE CYTOTOXIN	87324	08/04/08	1	96.00	
85120293	ALEXANDER, AUBRY G C DIFFICILE CYTOTOXIN	87324	08/05/08	1	96.00	
306	ALEXANDER, AUBRY G ** LABORATORY/BACT-MICRO	TOTAL		4		312.00
46730305	D/P SHOULDER COMP 2V	73030	07/31/08	1	312.00	
46731006	D/P WRIST, AP/LAT	73100	08/05/08	1	205.00	
46735502	D/P FEMUR AP/LAT	73550	07/30/08	1	318.00	
46735601	D/P KNEE AP/LAT	73560	07/30/08	1	233.00	
46735908	D/P TIB/FIB AP, LAT	73590	07/30/08	1	278.00	
46740221	D/P ABD SERIES COMP	74022	07/31/08	1	430.00	
320	** DX X-RAY	TOTAL		6		1776.00
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	07/30/08	1	85.00	
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	07/31/08	1	85.00	
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/01/08	1	85.00	
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/03/08	1	85.00	
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/04/08	1	85.00	
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/05/08	1	85.00	
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/06/08	2	170.00	

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MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 MICKROY SPRING ROAD  
COTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/07/08	2	170.00
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/10/08	2	170.00
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/11/08	1	85.00
43780386	THERAPEUTIC ACT/1on1 THERAPEUTIC ACTIVITY: TR	97530	08/13/08	1	85.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	07/30/08	1	73.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	07/31/08	1	73.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	08/01/08	1	73.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	08/03/08	1	73.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	08/04/08	1	73.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	08/05/08	1	73.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	08/06/08	1	73.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	08/09/08	2	146.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	08/11/08	1	73.00
43780410	THERAPEUTIC EXER/1:1/STRE THERAPEUTIC EXERCISE: ST	97110	08/13/08	1	73.00
420	** PHYSICAL THERAPY	TOTAL		25	1993.00
43780873	PT EVAL 30MIN SIMPLE EVALUATION: 30 MINUTES;	97001	07/30/08	1	162.00
424	** PHYS THERAPY/EVAL	TOTAL		1	162.00
43800028	SUP.THERAPEUTIC TR.	97110	07/31/08	1	73.00

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COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43800028	SUPERVISED THERAPEUTIC T SUP.THERAPEUTIC TR.	97110	08/01/08	1	73.00
43800028	SUPERVISED THERAPEUTIC T SUP.THERAPEUTIC TR.	97110	08/04/08	1	73.00
43800028	SUPERVISED THERAPEUTIC T SUP.THERAPEUTIC TR.	97110	08/06/08	1	73.00
43800028	SUPERVISED THERAPEUTIC T SUP.THERAPEUTIC TR.	97110	08/12/08	1	73.00
43800036	SUPERVISED THERAPEUTIC T SUP.FUNCTIONAL TRAIN	97535	08/05/08	1	73.00
43800036	SUPERVISED FUNTIONAL TRE SUP.FUNCTIONAL TRAIN	97535	08/08/08	1	73.00
43800036	SUPERVISED FUNTIONAL TRE SUP.FUNCTIONAL TRAIN	97535	08/13/08	2	146.00
430	** OCCUPATIONAL THERAPY	TOTAL		9	657.00
43800010	EVALUATION-BRIEF	97003	07/31/08	1	117.00
434	EVALUATION - BRIEF ** OCCUP THERAPY/EVAL	TOTAL		1	117.00
49500358	BLS TRANSPORT BASE NON-EM	A0428	08/13/08	1	330.00
49500523	AMBULANCE LOADED MILEAGE	A0425	08/13/08	7	70.00
540	** AMBULANCE GENERAL	TOTAL		8	400.00
43025519	INJ/POTASSIUM CHLORIDE/20 POTASSIUM CHLORIDE 2 MEQ	J3480	08/01/08	40	20.00
43025519	INJ/POTASSIUM CHLORIDE/20 POTASSIUM CHLORIDE 2 MEQ	J3480	08/02/08	60	30.00
43025519	INJ/POTASSIUM CHLORIDE/20 POTASSIUM CHLORIDE 2 MEQ	J3480	08/03/08	40	20.00
43025519	INJ/POTASSIUM CHLORIDE/20 POTASSIUM CHLORIDE 2 MEQ	J3480	08/04/08	20	10.00
43031848	INJ/METOCLOPRAMIDE HCL/10 METOCLOPRAMIDE 5 MG/ML	J2765	07/31/08	2	16.00

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MEDICAL UNIV HOSP AUTHORITY  
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ATLANTA, GA 31193-1854

PAGE: 11  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 103676987 UNIT #: 001366513-800-001

PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: I

ADM DATE: 07/29/08

DIS DATE: 08/13/08

INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43031848	INJ/METOCLOPRAMIDE HCL/10 METOCLOPRAMIDE 5 MG/ML	J2765	08/01/08	4	32.00
43031848	INJ/METOCLOPRAMIDE HCL/10 METOCLOPRAMIDE 5 MG/ML	J2765	08/02/08	2	16.00
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	07/29/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	07/30/08	12	392.04
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	07/31/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/01/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/02/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/03/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/04/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/05/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/06/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/07/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/08/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/09/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/10/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/11/08	6	196.02
43042332	INJ/ENOXAPARIN/30MG SYR ENOXAPARIN SODIUM INJ 30	J1650	08/12/08	6	196.02
43044445	INJ/ONDANSETRON HCL	J2405	08/01/08	4	7.00

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TYPE: DEMAND

PATCOM #: 103676987 UNIT #: 001366513-800-001

PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: I

ADM DATE: 07/29/08

DIS DATE: 08/13/08

ESTIMATE

INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

BSRV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43044445	ONDANSETRON HCL (PF) 2 M				
	INJ/ONDANSETRON HCL	J2405	08/09/08	4	7.00
43062322	ONDANSETRON HCL (PF) 2 M				
	INJ/POTASSIUM CHLOR/10MEQ	J3480	07/30/08	20	232.00
43062322	POTASSIUM CHLORIDE IN IS				
	INJ/POTASSIUM CHLOR/10MEQ	J3480	07/31/08	5	58.00
636	** DRUGS/DETAIL CODE	TOTAL		297	3584.32
43013754	TAB/METRONIDAZOLE/500		08/04/08	6	48.00
	METRONIDAZOLE 500 MG T				
43013754	TAB/METRONIDAZOLE/500		08/05/08	4	32.00
	METRONIDAZOLE 500 MG T				
43013754	TAB/METRONIDAZOLE/500		08/06/08	4	32.00
	METRONIDAZOLE 500 MG T				
43013754	TAB/METRONIDAZOLE/500		08/07/08	4	32.00
	METRONIDAZOLE 500 MG T				
43021336	TAB/OXYCODONE HCL/5		08/06/08	2	13.00
	OXYCODONE 5 MG TAB				
43021336	TAB/OXYCODONE HCL/5		08/07/08	1	7.00
	OXYCODONE 5 MG TAB				
43021336	TAB/OXYCODONE HCL/5		08/08/08	2	14.00
	OXYCODONE 5 MG TAB				
43021336	TAB/OXYCODONE HCL/5		08/09/08	2	14.00
	OXYCODONE 5 MG TAB				
43021336	TAB/OXYCODONE HCL/5		08/10/08	1	7.00
	OXYCODONE 5 MG TAB				
43021336	TAB/OXYCODONE HCL/5		08/11/08	1	7.00
	OXYCODONE 5 MG TAB				
43021336	TAB/OXYCODONE HCL/5		08/12/08	2	14.00
	OXYCODONE 5 MG TAB				
43021336	TAB/OXYCODONE HCL/5		08/13/08	1	7.00
	OXYCODONE 5 MG TAB				
43025493	TAB/POTASSIUM CHLORIDE/10		07/31/08	6	19.00
	POTASSIUM CHLORIDE 10 ME				

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TYPE: DEMAND

FATCOM #: 103676987 UNIT #: 001366513-800-001

PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: X

ADM DATE: 07/29/08

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INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43025584	TAB/POTASSIUM CHLORIDE CR		07/30/08	2	9.00
	POTASSIUM CHLORIDE 20 ME				
43030675	CAP/LOPERAMIDE HCL/2		08/06/08	2	16.00
	LOPERAMIDE HYDROCHLORIDE				
43030675	CAP/LOPERAMIDE HCL/2		08/07/08	4	32.00
	LOPERAMIDE HYDROCHLORIDE				
43030675	CAP/LOPERAMIDE HCL/2		08/08/08	4	32.00
	LOPERAMIDE HYDROCHLORIDE				
43030675	CAP/LOPERAMIDE HCL/2		08/09/08	3	24.00
	LOPERAMIDE HYDROCHLORIDE				
43030675	CAP/LOPERAMIDE HCL/2		08/10/08	3	24.00
	LOPERAMIDE HYDROCHLORIDE				
43030675	CAP/LOPERAMIDE HCL/2		08/11/08	4	32.00
	LOPERAMIDE HYDROCHLORIDE				
43030675	CAP/LOPERAMIDE HCL/2		08/12/08	4	32.00
	LOPERAMIDE HYDROCHLORIDE				
43030675	CAP/LOPERAMIDE HCL/2		08/13/08	1	8.00
	LOPERAMIDE HYDROCHLORIDE				
43030725	TAB/SIMETHICONE/80		08/06/08	4	24.00
	SIMETHICONE 80 MG CHEW				
43030725	TAB/SIMETHICONE/80		08/07/08	3	18.00
	SIMETHICONE 80 MG CHEW				
43030725	TAB/SIMETHICONE/80		08/08/08	3	18.00
	SIMETHICONE 80 MG CHEW				
43030725	TAB/SIMETHICONE/80		08/09/08	3	18.00
	SIMETHICONE 80 MG CHEW				
43030725	TAB/SIMETHICONE/80		08/10/08	6	36.00
	SIMETHICONE 80 MG CHEW				
43030725	TAB/SIMETHICONE/80		08/11/08	1	6.00
	SIMETHICONE 80 MG CHEW				
43030725	TAB/SIMETHICONE/80		08/12/08	2	12.00
	SIMETHICONE 80 MG CHEW				
43033802	INJ/INSULIN-NOVOLIN-NPH U	J1815	08/11/08	1	154.00
	INSULIN NPH HUMAN RECOMB				
43037464	CRM/TRIAMCINOLONE/.1CSO		07/31/08	1	29.00

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MEDICAL UNIV HOSP AUTHORITY  
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TYPE: DEMAND

PATCOM #: 103676987 UNIT #: 001366513-800-001

PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: I

ADM DATE: 07/29/08  
DIS DATE: 08/13/08  
ESTIMATE

INS CODE COMPANY NAME  
ME30 MEDICARE A&B  
CN09 MAILHANDLERS BENEFIT PLAN

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
KUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
43050624	TRIAMCINOLONE ACETONIDE TAB/CETIRIZINE/10MG		07/30/08	2	28.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		07/31/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/01/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/02/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/03/08	2	28.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/04/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/05/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/06/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/07/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/08/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/09/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/10/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/11/08	1	14.00
43050624	CETIRIZINE 10 MG TAB TAB/CETIRIZINE/10MG		08/12/08	1	14.00
43054782	INS/INSULIN ASPART/100U/M INSULIN ASPART 100 UNIT/		07/29/08	1	221.00
43054782	INS/INSULIN ASPART/100U/M INSULIN ASPART 100 UNIT/		07/30/08	1	221.00
637	** SELF ADMIN DRUG	TOTAL		105	1435.00
41260019	EKG 12-LEAD TRACING ONLY	93005	07/29/08	1	92.00

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PATIENT: AUBRY G ALEXANDER

F/C: M7 P/T: I ADM DATE: 07/29/08  
DIS DATE: 08/13/08  
ESTIMATE

INS CODE                      COMPANY NAME  
ME30                            MEDICARE A&B  
CN09                            MAILHANDLERS BENEFIT PLAN

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
730	ADULT ROUTINE EKG ** EKG/ECG	TOTAL		1	92.00
H200	MEDICARE PART A PYMT		09/04/08		8283.82-
W200	MEDICARE DRG CONT		09/04/08		25307.50-
H200	MEDICARE PART A PYMT		09/08/08		188.09-
W200	MEDICARE DRG CONT		09/08/08		164.89-
W697	MANAGED CARE CONT ADJUST		12/08/08		
H600	MANAGED CARE PAYMENT		12/08/08		
H600	MANAGED CARE PAYMENT		12/17/08		
W697	MANAGED CARE CONT ADJUST		12/17/08		
H600	MANAGED CARE PAYMENT		12/17/08		1024.00-
W697	MANAGED CARE CONT ADJUST		12/17/08		
H010	SELF PAY PYMT		02/09/09		47.02-
	PAYMENTS/ADJUSTMENTS	TOTAL			35015.32-

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MEDICAL UNIV HOSP AUTHORITY  
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TYPE: DEMAND

PATCOM #: 103676987 UNIT #: 001366513-800-001

PATIENT: AUBRY G ALEXANDER

P/C: M7 P/T: I

ADM DATE: 07/29/08  
DIS DATE: 08/13/08

INS CODE	COMPANY NAME
ME30	MEDICARE A&B
CN09	MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
ROTANVILLE, SC 29048

SUMMARY OF CHARGES

ROOM-BOARD/PVT	110	
8DAYS @ 928.00		7424.00
ICU/INTERMEDIATE	206	
7DAYS @1533.00		10731.00
PHARMACY	250	646.00
IV SOLUTIONS	258	1014.00
MED/SURG SUPPLIES	270	2496.00
LABORATORY	300	1037.00
LABORATORY/CHEMISTRY	301	812.00
LABORATORY/HEMATOLOGY	305	326.00
LABORATORY/BACT-MICRO	306	312.00
DX X-RAY	320	1776.00
PHYSICAL THERAPY	420	1993.00
PHYS THERAPY/EVAL	424	162.00
OCCUPATIONAL THERAPY	430	657.00
OCCUP THERAPY/EVAL	434	117.00
AMBULANCE GENERAL	540	400.00
DRUGS/DETAIL CODE	636	3584.32
SELF ADMIN DRUG	637	1436.00
EKG/ECG	730	92.00
TOTAL CHARGES		35015.32
PAYMENTS/ADJUSTMENTS		35015.32-
CURRENT BALANCE		.00

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MEDICAL UNIV HOSP AUTHORITY  
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ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 492606256 UNIT #: 001366513-711-010

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: K

ADM DATE: 02/06/09

DIS DATE: 02/06/09

ESTIMATE

INS CODE  
ME30  
C809

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY		
43020122	INJ/PROPOFOL/10I		02/06/09	1	32.00	
	PROPOFOL 10 MG/ML INJ					
43034669	INJ/BUPIVACAINE/EPINEPH/.		02/06/09	1	15.00	
	BUPIVACAINE 0.5% W/EPI 1					
43051093	INJ/LIDOCAINE 2%/200 MG A		02/06/09	10	8.00	
	LIDOCAINE 2% 20 MG/ML					
43067321	INJ/FAMOTIDINE 10MG/ML 2M		02/06/09	1	8.00	
	FAMOTIDINE 10 MG/ML IN					
250	** PHARMACY	TOTAL		13	63.00	
37933249	PACK CAR FURMCCAMIV MAIN		02/06/09	1	202.00	
270	** MED/SURG SUPPLIES	TOTAL		1	202.00	202.00
83600296	GLUCOSE PCK	82948	02/06/09	1	19.00	
	ALEXANDER, AUBRY G					
301	** LABORATORY/CHEMISTRY	TOTAL		1	19.00	19.00
36360014	OR PER MINUTE AMB		02/06/09	41	1722.00	
360	** OR SERVICES	TOTAL		41	1722.00	1722.00
43510171	ANES GEN AMB PER MIN		02/06/09	66	1716.00	
370	** ANESTHESIA	TOTAL		66	1716.00	1716.00
43020783	INJ/FENTANYL CITRATE/.25I	J3010	02/06/09	1	3.20	
	FENTANYL CITRATE (PF) 0.					
43045830	INJ/MIDAZOLAM/1MG	J2250	02/06/09	2	4.80	
	MIDAZOLAM 1 MG/ML INJ					
636	** DRUGS/DETAIL CODE	TOTAL		3	8.00	8.00
36500114	STEPDOWN RECOVERY		02/06/09	1	393.00	
36500155	GENERAL RECOVERY		02/06/09	1	642.00	
710	** RECOVERY ROOM	TOTAL		2	1035.00	1035.00
B200	MEDICARE PART A PYMT		02/25/09		1039.80-	
W200	MEDICARE DRG CONT		02/25/09		3388.10-	

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PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 492686256 UNIT #: 001366513-711-010

PATIENT: ROBYR G ALEXANDER

F/C: MN P/T: K ADM DATE: 02/06/09  
DIS DATE: 02/06/09

INS CODE ME30 CN09  
COMPANY NAME MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

ROBYR G ALEXANDER  
131 HICKORY SPRING ROAD  
BUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY
H600	MANAGED CARE PAYMENT PAYMENTS/ADJUSTMENTS	TOTAL	03/11/09	337.10- 4765.00-

PHONE INQUIRIES  
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MEDICAL UNIV HOSP AUTHORITY  
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PAGE: 3  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 492606256 UNIT #: 001366513-711-010

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: K

ADM DATE: 02/06/09

DIS DATE: 02/06/09

INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SUMMARY OF CHARGES

PHARMACY	250	63.00
MED/SURG SUPPLIES	270	202.00
LABORATORY/CHEMISTRY	301	19.00
OR SERVICES	360	1722.00
ANESTHESIA	370	1716.00
DRUGS/DETAIL CODE	636	8.00
RECOVERY ROOM	710	1035.00
TOTAL CHARGES		4765.00
PAYMENTS/ADJUSTMENTS		4765.00-
CURRENT BALANCE		.00

\*\*\*\*\* THIS IS NOT A BILL \*\*\*\*\*

We have filed your Medicare claim for the hospital charges listed above. After receiving payment, you will be responsible for any non-covered services, deductibles, co-payments, and/or co-insurance not covered by your insurance. If you have any questions, contact our office at (843) 792-2311 or (800) 598-0624.

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MEDICAL UNIV HOSP AUTHORIT  
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ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 249410903 UNIT #: 001366513-141-014

PATIENT: AUBRY G ALEXANDER

F/C: MM P/T: P

ADM DATE: 03/23/09

DIS DATE: 03/23/09

ESTIMATE

INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY		
46735908	D/P TIB/FIB AP.LAT	73590	03/23/09	1	278.00	
320	** DX X-RAY	TOTAL		1		278.00
H200	MEDICARE PART A PVMT		04/13/09		34.01-	
W200	MEDICARE DRG CONT		04/13/09		235.49-	
W975	SMALL BALANCE A/R W/O		06/03/09		8.50-	
H600	MANAGED CARE PAYMENT		06/04/09		8.50-	
W975	SMALL BALANCE A/R W/O		06/03/09		8.50-	
	PAYMENTS/ADJUSTMENTS	TOTAL			278.00-	

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PAGE: 2  
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PATCOM #: 249410903 UNIT #: 001366513-141-014

PATIENT: AUBRY G ALEXANDER

F/C: MM P/T: P ADM DATE: 03/23/09  
DIS DATE: 03/23/09

INS CODE ME30 CNO9  
COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
ESTANVILLE, SC 29048

SUMMARY OF CHARGES

DX X-RAY	320	278.00
TOTAL CHARGES		278.00
PAYMENTS/ADJUSTMENTS		278.00-
CURRENT BALANCE		.00

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MEDICAL UNIV HOSP AUTHORITY  
PO BOX 911854  
ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 252618517 UNIT #: 001366513-141-016

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: P

ADM DATE: 06/15/09

DIS DATE: 06/15/09

INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY		
46735908	D/P TIB/FIB AP.LAT	73590	06/15/09	1	278.00	
320	** DX X-RAY	TOTAL		1		278.00
H200	MEDICARE PART A PYMT		07/06/09		34.01-	
W200	MEDICARE DRG CMT		07/06/09		235.49-	
H600	MANAGED CARE PAYMENT		08/05/09		8.50-	
	PAYMENTS/ADJUSTMENTS	TOTAL			278.00-	

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PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 252618517 UNIT #: 001366513-141-016

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: P ADM DATE: 06/15/09  
DIS DATE: 06/15/09

INS CODE                      COMPANY NAME  
ME30                          MEDICARE A&B  
CN09                          MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SUMMARY OF CHARGES

DX X-RAY	320	278.00
TOTAL CHARGES		278.00
PAYMENTS/ADJUSTMENTS		278.00-
CURRENT BALANCE		.00

\*\*\*\*\* THIS IS NOT A BILL \*\*\*\*\*

We have filed your Medicare claim for the hospital charges listed above. After receiving payment, you will be responsible for any non-covered services, deductibles, co-payments, and/or co-insurance not covered by your insurance. If you have any questions, contact our office at (843) 792-2311 or (800) 598-0624.

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 257212977 UNIT #: 001366513-141-018

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: P

ADM DATE: 10/13/09

DIS DATE: 10/13/09

ESTIMATE

INS CODE  
ME30  
CN09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
RUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY		
46735908	D/P TIB/FIB AP.LAT	73590	10/13/09	1	278.00	
320	** DX K-RAY	TOTAL		1		278.00
H200	MEDICARE PART A PYMT		11/02/09		34.01-	
W200	MEDICARE DRG CONT		11/02/09		235.49-	
	PAYMENTS/ADJUSTMENTS	TOTAL			269.50-	

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 257212977 UNIT #: 001366513-141-018

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: P

ADM DATE: 10/13/09

DIS DATE: 10/13/09

INS CODE  
ME30  
CM09

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SUMMARY OF CHARGES

DX X-RAY	320	278.00
TOTAL CHARGES		278.00
PAYMENTS/ADJUSTMENTS		269.50-
CURRENT BALANCE		8.50

\*\*\*\*\* THIS IS NOT A BILL \*\*\*\*\*  
We have filed your Medicare claim for the hospital charges listed above. After receiving payment, you will be responsible for any non-covered services, deductibles, co-payments, and/or co-insurance not covered by your insurance. If you have any questions, contact our office at (843) 792-2311 or (800) 598-0624.

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 241827005 UNIT #: 001366513-141-002

PATIENT: AUBRY G ALEXANDER

F/C: TK P/T: A ADM DATE: 08/26/08  
DIS DATE: 08/26/08

INS CODE COMPANY NAME  
OT50 TRINITY MISSION H&R OF CH  
CNDY CNA MAILHANDLERS (NEIC) M  
ME30 MEDICARE A&B

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
46730305	D/P SHOULDER COMP 2V	73030	08/26/08	1	312.00
46735502	D/P FEMUR AP/LAT	73550	08/26/08	1	318.00
46735908	D/P TIB/FIB AP-LAT	73590	08/26/08	1	278.00
320	** DX X-RAY	TOTAL		3	908.00
H200	MEDICARE PART A PYMT		11/11/08		67.04-
W200	MEDICARE DRG CONT		11/11/08		512.20-
A911	ADM ADJ NO HINN/ABN		11/19/08		313.00-
H225	MEDICARE ADVANTAGE PYMT		12/05/08		16.76-
H200	MEDICARE PART A PYMT		05/13/09		
H200	MEDICARE PART A PYMT		05/13/09		67.04
W200	MEDICARE DRG CONT		05/13/09		512.20
	PAYMENTS/ADJUSTMENTS	TOTAL			328.76-

PHONE INQUIRIES MEDICAL UNIV HOSP AUTHORITY  
CALL: (843) 792-2311 PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 241827005 UNIT #: 001366513-141-002

PATIENT: AUBRY G ALEXANDER

F/C: TX P/T: A ADM DATE: 08/26/08  
DIS DATE: 08/26/08

INS CODE COMPANY NAME  
OT50 TRINITY MISSION H&R OF CH  
CIV09 CRA MAILHANDLERS (MEIC) M  
ME30 MEDICARE A&B

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SUMMARY OF CHARGES

DX X-RAY	320	908.00
TOTAL CHARGES		908.00
PAYMENTS/ADJUSTMENTS		328.76-
CURRENT BALANCE		579.24

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 242763951 UNIT #: 001366513-141-003

PATIENT: AUBRY G ALEXANDER

F/C: TX P/T: P

ADM DATE: 09/23/08

DIS DATE: 09/23/08

INS CODE  
OT50  
CN09

COMPANY NAME  
NHC FORMERLY TRINITY MISS  
CNA MAILHANDLERS (MEIC) M

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
46730305	D/P SHOULDER COMP 2V	73030	09/23/08	1	312.00
46735502	D/P FEMUR AP/LAT	73550	09/23/08	1	318.00
46735908	D/P TIB/FIB AP.LAT	73590	09/23/08	1	278.00
320	** DX X-RAY	TOTAL		3	908.00
H200	MEDICARE PART A PYMT		10/13/08		100.56-
W200	MEDICARE DRG CONT		10/13/08		782.30-
H225	MEDICARE ADVANTAGE PYMT		12/05/08		25.14-
H200	MEDICARE PART A PYMT		05/18/09		100.56
H200	MEDICARE PART A PYMT		05/18/09		
W200	MEDICARE DRG CONT		05/18/09		782.30
	PAYMENTS/ADJUSTMENTS	TOTAL			25.14-

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORIT  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 242763951 UNIT #: 001366513-141-003

PATIENT: AUBRY G ALEXANDER

F/C: TX P/T: P ADM DATE: 09/23/08  
DIS DATE: 09/23/08

INS CODE  
OT50  
CNO9

COMPANY NAME  
NHC FORMERLY TRINITY MISS  
CNA MAILHANDLERS (NBIC) M

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SUMMARY OF CHARGES

DX X-RAY	320	908.00
TOTAL CHARGES		908.00
PAYMENTS/ADJUSTMENTS		25.14-
CURRENT BALANCE		882.86

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORIT  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 245193974 UNIT #: 001366513-141-006

PATIENT: AUBRY G ALEXANDER

P/C: MN P/T: P

ADM DATE: 11/25/08

DIS DATE: 11/25/08

INS CODE  
NE30  
CN09

COMPANY NAME  
MEDICARE A&B  
CNA MAILHANDLERS (NEIC) M

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
46730305	D/P SHOULDER COMP 2V	73030	11/25/08	1	312.00
46735502	D/P FEMUR AP/LAT	73550	11/25/08	1	318.00
46735908	D/P TIB/FIB AP.LAT	73590	11/25/08	1	278.00
320	** DX X-RAY	TOTAL		3	908.00
H200	MEDICARE PART A PYMT		12/17/08		100.56-
W200	MEDICARE DRG CONT		12/17/08		782.30-
H600	MANAGED CARE PAYMENT		03/06/09		25.14-
H600	MANAGED CARE PAYMENT		03/04/09		
	PAYMENTS/ADJUSTMENTS	TOTAL			908.00-

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIT HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 245193974 UNIT #: 001366513-141-006

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: P ADM DATE: 11/25/08  
DIS DATE: 11/25/08

INS CODE  
ME30  
CNO9

COMPANY NAME  
MEDICARE A&B  
CNA MAILHANDLERS (MEIC) M

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
BOTAWVILLE, SC 29048

SUMMARY OF CHARGES

DX X-RAY	320	908.00
TOTAL CHARGES		908.00
PAYMENTS/ADJUSTMENTS		908.00-
CURRENT BALANCE		.00

\*\*\*\*\* THIS IS NOT A BILL \*\*\*\*\*

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PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 1  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 246730063 UNIT #: 001366513-141-008

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: P ADM DATE: 01/12/09  
DIS DATE: 01/12/09

INS CODE  
ME30  
CND9

COMPANY NAME  
MEDICARE A&B  
CWA MAILHANDLERS (NETC) M

ESTIMATE

AUBRY G ALEXANDER  
131 HISTORY SPRING ROAD  
EUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
46735643	D/P KNEE, COMP	73564	01/12/09	1	325.00
46735908	D/P TIB/FIB AP.LAT	73590	01/12/09	1	278.00
320	** DX X-RAY	TOTAL		2	603.00
H200	MEDICARE PART A PYMT		02/02/09		58.02-
W200	MEDICARE DRG CONT		02/02/09		517.98-
H600	MANAGED CARE PAYMENT		02/19/09		17.00-
	PAYMENTS/ADJUSTMENTS	TOTAL			603.00-

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 246730063 UNIT #: 001366513-141-008

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: P ADM DATE: 01/12/09  
DIS DATE: 01/12/09

INS CODE                      COMPANY NAME  
ME30                          MEDICARE A&B  
CNO9                          CNA MAILHANDLERS (NEIC) M

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SUMMARY OF CHARGES

DX X-RAY	320	603.00
TOTAL CHARGES		603.00
PAYMENTS/ADJUSTMENTS		603.00-
CURRENT BALANCE		.00

\*\*\*\*\* THIS IS NOT A BILL \*\*\*\*\*  
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PHONE INQUIRIES  
 CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
 PO BOX 931854  
 ATLANTA, GA 31193-1854

PAGE: 1  
 DATE: 11/09/09  
 TYPE: DEMAND

PATCOM #: 492638903 UNIT #: 001366513-711-011

PATIENT: AUBRY G ALEXANDER P/C: MN P/T: A ADM DATE: 02/02/09  
 DIS. DATE: 02/02/09

INS CODE COMPANY NAME  
 ME30 MEDICARE A&B  
 CW09 MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
 131 HICKORY SPRING ROAD  
 BUTAWVILLE, SC 29048

SERV CD	DESCRIPTION	CPT CODE	SERV DT	QTY	
85311645	BASIC METABOLIC PANEL	80048	02/02/09	1	92.00
300	** LABORATORY	TOTAL		1	92.00
85340404	PREALBUMIN	84134	02/02/09	1	68.00
301	** LABORATORY/CHEMISTRY	TOTAL		1	68.00
85360402	TRANSFERRIN	84466	02/02/09	1	71.00
302	** LABORATORY/IMMUNOLOGY	TOTAL		1	71.00
85320364	HEMOGRAM & AUTODIFF	85025	02/02/09	1	74.00
85330215	PROTHROMBIN TIME	85610	02/02/09	1	27.00
85330223	ACTIVTD PARTL THROMBOPLAS	85730	02/02/09	1	33.00
305	** LABORATORY/HEMOTOLOGY	TOTAL		3	134.00
46710208	D/P CHEST 2 VIEWS	71020	02/02/09	1	214.00
324	** RADIOLOGY/DX X-RAY/CH	TOTAL		1	214.00
41260019	EKG 12-LEAD TRACING ONLY	93005	02/02/09	1	92.00
730	** EKG/ECG	TOTAL		1	92.00
H200	MEDICARE PART A PYMT		02/23/09		131.49-
W200	MEDICARE DRG CONT		02/23/09		526.05-
H600	MANAGED CARE PAYMENT		03/11/09		13.46-
	PAYMENTS/ADJUSTMENTS	TOTAL			671.00-

PHONE INQUIRIES  
CALL: (843) 792-2311

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 931854  
ATLANTA, GA 31193-1854

PAGE: 2  
DATE: 11/09/09  
TYPE: DEMAND

PATCOM #: 492638903 UNIT #: 001366513-711-011

PATIENT: AUBRY G ALEXANDER

F/C: MN P/T: A

ADM DATE: 02/02/09

DIS DATE: 02/02/09

INS CODE  
ME30  
CND9

COMPANY NAME  
MEDICARE A&B  
MAILHANDLERS BENEFIT PLAN

ESTIMATE

AUBRY G ALEXANDER  
131 HICKORY SPRING ROAD  
EUTAWVILLE, SC 29048

SUMMARY OF CHARGES

LABORATORY	300	92.00
LABORATORY/CHEMISTRY	301	69.00
LABORATORY/IMMUNOLOGY	302	71.00
LABORATORY/HEMOTOLOGY	305	134.00
RADIOLOGY/DX X-RAY/CHEST	324	214.00
EKG/ECG	730	92.00
TOTAL CHARGES		671.00
PAYMENTS/ADJUSTMENTS		671.00-
CURRENT BALANCE		.00

\*\*\*\*\* THIS IS NOT A BILL \*\*\*\*\*  
We have filed your Medicare claim for the hospital charges listed above. After receiving payment, you will be responsible for any non-covered services, deductibles, co-payments, and/or co-insurance not covered by your insurance. If you have any questions, contact our office at (843) 792-2311 or (800) 598-0624.

# MUSC MEDICAL UNIVERSITY OF SOUTH CAROLINA

<b>PATIENT NAME:</b> AUBRY G ALEXANDER	<b>ACCOUNT #:</b> 103676987	<b>SERVICE FROM:</b> 7/29/08	<b>SERVICE TO:</b> 8/13/08	<b>STATEMENT DATE:</b> 9/10/08	<b>AMOUNT DUE:</b> \$1071.02	<b>DATE DUE:</b> 09/30/2008
---	--------------------------------	---------------------------------	-------------------------------	-----------------------------------	---------------------------------	--------------------------------

Thank you for choosing the Medical University Hospital Authority for your health care services. This bill is for **hospital services only**, and relates to services at one of our hospitals, emergency rooms, clinics, or specimens sent to our lab for processing. Visits to a physician in one of our provider-based clinics will generate a hospital charge. Charges for physician services at our locations are processed through the University Medical Associates at the numbers listed on the back of this letter.

According to our records, insurance has processed your claims, and the balance is now due from you. If this is not accurate, contact us immediately at the numbers listed below, otherwise, your **payment is due at this time**. If you are unable to pay in full, contact our office to discuss financial arrangements. If you are a **South Carolina resident**, you may be eligible for financial assistance with your hospital bill. If you would like to complete an "Application for Financial Assistance", please contact us at the telephone numbers below and we will be glad to forward you an application.

Sincerely, Hospital Patient Accounting Staff  
843-792-2311 or 800-598-0624

CHARGES		PMT DATE	PAYMENTS/ADJUSTMENTS	
PHARMACY	1450.00	09/04/08	MEDICARE PYMT/ADJUSTMENT	-33944.30
SUPPLIES & DEVICES	2496.00			
LABORATORY	2487.00			
DIAGNOSTIC RADIOLOGY	1776.00			
PHYSICAL THERAPY	2155.00			
OCCUPATIONAL THERAPY	774.00			
AMBULANCE	400.00			
OTHER PHARMACY	5230.32			
EKG/ECG	92.00			
ROUTINE CARE	18155.00			

PLEASE DETACH AND RETURN BOTTOM PORTION WITH YOUR PAYMENT



Hospital Patient Accounting  
MSC 819  
Charleston, SC 29425

14771-J988

14771-J988 \*TGNOY78LD000794

25

PAGE: 1

Please check box if below address is incorrect or insurance information has changed, and indicate change(s) on reverse side.

IF PAYING BY MASTERCARD, DISCOVER, VISA OR AMERICAN EXPRESS, FILL OUT BELOW.		
CHECK CARD USING FOR PAYMENT		
<input type="checkbox"/> MASTERCARD	<input type="checkbox"/> DISCOVER	<input type="checkbox"/> VISA
<input type="checkbox"/> VISA	<input type="checkbox"/> AMERICAN EXPRESS	
CARD NUMBER	SIGNATURE CODE	
SIGNATURE	EXP DATE	
STATEMENT DATE 9/10/08	PAY THIS AMOUNT \$1071.02	ACCT. # 103676987
PATIENT NAME AUBRY G ALEXANDER	SHOW AMOUNT PAID HERE	

6521890

0101

AUBRY G ALEXANDER  
PO BOX 32202  
CHARLESTON, SC 29417-2202

MEDICAL UNIV HOSP AUTHORITY  
PO BOX 932933  
ATLANTA, GA 31193-2933



**University Medical Associates**  
 1 Poston Road, Suite 350, Charleston, SC 29407-3431

Inquiries: Call (843) 792-6200 or (800) 868-5051  
 Monday - Friday, 8:00am - 5:00pm

|||||  
 AUBRY G ALEXANDER 2821 MB 0.369 AMECH  
 PO BOX 32202  
 CHARLESTON, SC 29417-2202

PATIENT: AUBRY G ALEXANDER		STATEMENT DATE: 09/22/08	
MAKE CHECKS PAYABLE TO: UNIVERSITY MEDICAL ASSOCIATES			
<input type="checkbox"/> VISA <input type="checkbox"/> MASTERCARD <input type="checkbox"/> AMERICAN EXPRESS <input type="checkbox"/> DISCOVER			
CARD NUMBER: _____			
EXP DATE: ___/___/___    SIGNATURE: _____			
ACCT #	AMOUNT OWED	AMOUNT DUE NOW	AMOUNT ENCLOSED
3-001366513	\$24.32	\$24.32	\$

MAIL PAYMENT TO:  
 UNIVERSITY MEDICAL ASSOCIATES  
 PO BOX 600077  
 RALEIGH, NC 27675-6077  
 |||||

0300013665130000002432092220080

Please review your insurance information on the reverse side,  
 and notify us of any changes.

Please tear off this portion and return with your payment

**STATEMENT OF UMA PROFESSIONAL SERVICES**  
 (AS OF SEPTEMBER 22, 2008)

ACCOUNT NUMBER: 3-001366513  
 PATIENT NAME: AUBRY G ALEXANDER

PAGE 1

THE FOLLOWING INVOICES DESCRIBE OUTSTANDING CHARGES FOR SERVICES RENDERED BY PHYSICIANS AND OTHER HEALTH CARE PROFESSIONALS AT UNIVERSITY MEDICAL ASSOCIATES. THE LEFT SIDE DESCRIBES THE SERVICES PROVIDED AND THE CHARGES FOR EACH SERVICE. THE RIGHT SIDE DESCRIBES PAYMENTS, ADJUSTMENTS AND THE AMOUNT YOU OWE. ANY HOSPITAL SERVICES WILL BE BILLED SEPARATELY.

INVOICE NUMBER: 5255261 <b>CHARGES</b>  PROVIDER: DAVID GREGG IV MD ADULT CARDIOLOGY  07/29/08 93010-ELECTROCARDIOGRAM ..... \$73.00 <b>TOTAL: \$73.00</b>		<b>PAYMENT ACTIVITY</b> 08/01/08 CLAIM SENT TO MEDICARE A & B 08/18/08 MEDICARE PAY/CONTRA-TAPE PAYMENT..... \$6.34 ADJUSTMENT..... \$65.07 08/18/08 BALANCE TRANSFERRED TO PATIENT 08/29/08 MANAGED CARE PMT/CONTR..... \$1.59 <b>AMOUNT DUE NOW..... 0.00</b>	
INVOICE NUMBER: 5259920 <b>CHARGES</b>  PROVIDER: EDWARD DOUGLAS NORCROSS MD TRAUMA & CRITICAL CARE  07/30/08 99232-SUBSEQ HOSPITAL CARE LEVEL II ..... \$189.00 <b>TOTAL: \$189.00</b>		<b>PAYMENT ACTIVITY</b> 08/01/08 CLAIM SENT TO MEDICARE A & B 08/18/08 MEDICARE PAY/CONTRA-TAPE PAYMENT..... \$48.64 ADJUSTMENT..... \$128.20 08/18/08 BALANCE TRANSFERRED TO PATIENT 08/29/08 MANAGED CARE PMT/CONTR..... \$12.16 <b>AMOUNT DUE NOW..... 0.00</b>	
INVOICE NUMBER: 5263286 <b>CHARGES</b>  PROVIDER: THOMAS L POPE MD RADIOLOGY  07/30/08 73550/26/GC-X-RAY THIGH 2 VIEWS ..... \$52.00 <b>TOTAL: \$52.00</b>		<b>PAYMENT ACTIVITY</b> 08/04/08 CLAIM SENT TO MEDICARE A & B 08/19/08 MEDICARE PAY/CONTRA-TAPE PAYMENT..... \$6.34 ADJUSTMENT..... \$44.07 08/19/08 BALANCE TRANSFERRED TO PATIENT 09/04/08 MANAGED CARE PMT/CONTR..... \$1.59 <b>AMOUNT DUE NOW..... 0.00</b>	
INVOICE NUMBER: 5263287 <b>CHARGES</b>  PROVIDER: THOMAS L POPE MD (CONTINUED ON REVERSE SIDE)		<b>PAYMENT ACTIVITY</b> 08/04/08 CLAIM SENT TO MEDICARE A & B 08/19/08 MEDICARE PAY/CONTRA-TAPE	

CONTINUED ON REVERSE SIDE ...

**UNIVERSITY MEDICAL ASSOCIATES PAYMENT POLICY**

THE AMOUNT DUE FROM PATIENT IS PAYABLE AND DUE UPON RECEIPT OF THIS STATEMENT. THIS AMOUNT REFLECTS CHARGES OR PORTIONS OF CHARGES NOT COVERED BY INSURANCE, INCLUDING DENIED CHARGES, CO-PAY AMOUNTS AND DEDUCTIBLES.

UMA WILL FILE CLAIMS TO EACH INSURANCE COMPANY ON RECORD AS A COURTESY TO YOU. YOU MAY NEED TO QUESTION YOUR INSURANCE COMPANY ABOUT THE AMOUNT PAID WHEN APPROPRIATE AND ASSIST US IN MAXIMIZING YOUR BENEFITS. ULTIMATELY, WE MUST HOLD YOU RESPONSIBLE FOR FULL PAYMENT OF ALL CHARGES ON YOUR ACCOUNT.

IF YOU ARE UNABLE TO PAY YOUR ACCOUNT IN FULL WITHIN 30 DAYS CONTACT OUR OFFICE TO DISCUSS PAYMENT ARRANGEMENTS.

A PROCESSING FEE WILL BE CHARGED ON EACH RETURNED CHECK.

**OUR RECORDS SHOW THE FOLLOWING INSURANCE INFORMATION.**

IF ANY INFORMATION HAS CHANGED, PLEASE NOTIFY US AT 843-792-6200 OR [TOLL FREE] 800-868-5051.

1. PRIMARY INSURER: MEDICARE  
SUBSCRIBER NAME: AUBRY G ALEXANDER  
POLICY NUMBER: 456463791A  
EFFECTIVE DATE: 08/01/96
2. SECONDARY INSURER: CNA MAILHANDLERS [NEIC] MC  
SUBSCRIBER NAME: AUBRY ALEXANDER  
POLICY NUMBER: 4105671  
EFFECTIVE DATE: 01/11/81
3. TERTIARY INSURER: NONE  
SUBSCRIBER NAME:  
POLICY NUMBER:  
EFFECTIVE DATE:

**STATEMENT OF UMA PROFESSIONAL SERVICES**

(AS OF SEPTEMBER 22, 2008)

ACCOUNT NUMBER: 3-001366513  
PATIENT NAME: AUBRY G ALEXANDER

PAGE 2

(CONTINUED FROM REVERSE SIDE)

**RADIOLOGY**

07/30/08 73590/26/GC-X-RAY LOWER LEG 2 VIEWS ..... \$52.00  
TOTAL: \$52.00

PAYMENT..... \$6.34  
ADJUSTMENT..... \$44.07  
08/19/08 BALANCE TRANSFERRED TO PATIENT  
09/04/08 MANAGED CARE PMT/CONTR..... \$1.59  
AMOUNT DUE NOW..... 0.00

INVOICE NUMBER: 5263288  
CHARGES

PROVIDER: THOMAS L POPE MD  
RADIOLOGY

07/30/08 73560/26/GC-X-RAY KNEE 1 - 2 VIEWS ..... \$51.00  
TOTAL: \$51.00

**PAYMENT ACTIVITY**

08/04/08 CLAIM SENT TO MEDICARE A & B  
08/19/08 MEDICARE PAY/CONTRA-TAPE  
PAYMENT..... \$6.34  
ADJUSTMENT..... \$43.07  
08/19/08 BALANCE TRANSFERRED TO PATIENT  
09/04/08 MANAGED CARE PMT/CONTR..... \$1.59  
AMOUNT DUE NOW..... 0.00

INVOICE NUMBER: 5266811  
CHARGES

PROVIDER: THOMAS L POPE MD  
RADIOLOGY

07/31/08 73030/26/GC-X-RAY SHOULDER MIN 2 VIEWS ..... \$57.00  
TOTAL: \$57.00

**PAYMENT ACTIVITY**

08/05/08 CLAIM SENT TO MEDICARE A & B  
08/20/08 MEDICARE PAY/CONTRA-TAPE  
PAYMENT..... \$6.65  
ADJUSTMENT..... \$48.69  
08/20/08 BALANCE TRANSFERRED TO PATIENT  
09/04/08 MANAGED CARE PMT/CONTR..... \$1.66  
AMOUNT DUE NOW..... 0.00

INVOICE NUMBER: 5271401  
CHARGES

PROVIDER: MUNAZZA ANIS MD  
RADIOLOGY

07/31/08 74022/26/GC-X-RAY ACUTE ABDOMEN ..... \$88.00  
TOTAL: \$88.00

**PAYMENT ACTIVITY**

08/06/08 CLAIM SENT TO MEDICARE A & B  
08/21/08 MEDICARE PAY/CONTRA-TAPE  
PAYMENT..... \$11.67  
ADJUSTMENT..... \$73.41  
08/21/08 BALANCE TRANSFERRED TO PATIENT  
09/04/08 MANAGED CARE PMT/CONTR..... \$2.92  
AMOUNT DUE NOW..... 0.00

CONTINUED ON NEXT PAGE ...

**STATEMENT OF UMA PROFESSIONAL SERVICES**

(AS OF SEPTEMBER 22, 2008)

**ACCOUNT NUMBER: 3-001366513**  
**PATIENT NAME: AUBRY G ALEXANDER**

INVOICE NUMBER: 5276240		<b>PAYMENT ACTIVITY</b>	
<b>CHARGES</b>		08/07/08 CLAIM SENT TO MEDICARE A & B	
PROVIDER: STUART M LEON MD TRAUMA & CRITICAL CARE		08/07/08 CLAIM SENT TO MEDICARE A & B	
		08/25/08 MEDICARE PAY/CONTRA-TAPE	
		PAYMENT..... \$97.28	
		ADJUSTMENT..... \$256.40	
08/02/08 99232-SUBSEQ HOSPITAL CARE LEVEL II .....	\$189.00	08/25/08 BALANCE TRANSFERRED TO PATIENT	
08/03/08 99232-SUBSEQ HOSPITAL CARE LEVEL II .....	\$189.00	09/16/08 MANAGED CARE PMT/CONTR.....	\$24.32
<b>TOTAL:</b>	<b>\$378.00</b>	<b>AMOUNT DUE NOW.....</b>	<b>0.00</b>

INVOICE NUMBER: 5281715		<b>PAYMENT ACTIVITY</b>	
<b>CHARGES</b>		08/08/08 CLAIM SENT TO MEDICARE A & B	
PROVIDER: WILLIAM F CONWAY MD RADIOLOGY		08/25/08 MEDICARE PAY/CONTRA-TAPE	
		PAYMENT..... \$5.76	
		ADJUSTMENT..... \$34.80	
08/05/08 73100/26/LT/GC-X-RAY WRIST 2 VIEWS .....	\$42.00	08/25/08 BALANCE TRANSFERRED TO PATIENT	
		09/12/08 MANAGED CARE PMT/CONTR.....	\$1.44
<b>TOTAL:</b>	<b>\$42.00</b>	<b>AMOUNT DUE NOW.....</b>	<b>0.00</b>

INVOICE NUMBER: 5297324		<b>PAYMENT ACTIVITY</b>	
<b>CHARGES</b>		08/13/08 CLAIM SENT TO MEDICARE A & B	
PROVIDER: EDWARD DOUGLAS NORCROSS MD TRAUMA & CRITICAL CARE		08/28/08 MEDICARE PAY/CONTRA-TAPE	
		PAYMENT..... \$97.28	
		ADJUSTMENT..... \$256.40	
07/31/08 99232-SUBSEQ HOSPITAL CARE LEVEL II .....	\$189.00	08/28/08 BALANCE TRANSFERRED TO PATIENT	
08/01/08 99232-SUBSEQ HOSPITAL CARE LEVEL II .....	\$189.00	<b>AMOUNT DUE NOW.....</b>	<b>\$24.32</b>
<b>TOTAL:</b>	<b>\$378.00</b>		

INVOICE NUMBER: 5331286		<b>PAYMENT ACTIVITY</b>	
<b>CHARGES</b>		08/22/08 CLAIM SENT TO MEDICARE A & B	
PROVIDER: CHRISTIAN TODD MINSHALL MD TRAUMA & CRITICAL CARE		09/09/08 MEDICARE PAY/CONTRA-TAPE	
		PAYMENT..... \$48.64	
		ADJUSTMENT..... \$128.20	
08/04/08 99232-SUBSEQ HOSPITAL CARE LEVEL II .....	\$189.00	A CLAIM FOR \$12.16 IS PENDING WITH YOUR INSURANCE COMPANY.	
<b>TOTAL:</b>	<b>\$189.00</b>		

INVOICE NUMBER: 5335678		<b>PAYMENT ACTIVITY</b>	
<b>CHARGES</b>		08/25/08 CLAIM SENT TO MEDICARE A & B	
PROVIDER: EDWARD DOUGLAS NORCROSS MD TRAUMA & CRITICAL CARE		09/10/08 MEDICARE PAY/CONTRA-TAPE	
		PAYMENT..... \$27.10	
		ADJUSTMENT..... \$111.13	
08/11/08 99231-SUBSEQ HOSPITAL CARE LEVEL I .....	\$145.00	A CLAIM FOR \$6.77 IS PENDING WITH YOUR INSURANCE COMPANY.	
<b>TOTAL:</b>	<b>\$145.00</b>		

INVOICE NUMBER: 5361178		<b>PAYMENT ACTIVITY</b>	
<b>CHARGES</b>		08/29/08 CLAIM SENT TO MEDICARE A & B	
PROVIDER: HARRY A DEMOS MD (CONTINUED ON REVERSE SIDE)		08/29/08 CLAIM SENT TO MEDICARE A & B	

CONTINUED ON REVERSE SIDE ...

# STATEMENT OF UMA PROFESSIONAL SERVICES

(AS OF SEPTEMBER 22, 2008)

ACCOUNT NUMBER: 3-001366513  
PATIENT NAME: AUBRY G ALEXANDER

PAGE 4

(CONTINUED FROM REVERSE SIDE)

ORTHOPAEDICS

08/26/08 99213/SC-EST PATIENT OFFICE VISIT LEVEL III ..... \$143.00  
TOTAL: \$143.00

08/29/08 CLAIM SENT TO MEDICARE A & B  
08/29/08 CLAIM SENT TO MEDICARE A & B  
09/15/08 MEDICARE PAY/CONTRA-TAPE  
PAYMENT..... \$45.06  
ADJUSTMENT..... \$86.68

A CLAIM FOR \$11.26 IS PENDING WITH YOUR INSURANCE COMPANY.

INVOICE NUMBER: 5366345  
CHARGES

PROVIDER: THOMAS L POPE MD  
RADIOLOGY

08/26/08 73030/26/RT-X-RAY SHOULDER MIN 2 VIEWS ..... \$57.00  
TOTAL: \$57.00

PAYMENT ACTIVITY

09/02/08 CLAIM SENT TO MEDICARE A & B  
09/17/08 MEDICARE PAY/CONTRA-TAPE  
PAYMENT..... \$6.65  
ADJUSTMENT..... \$48.69

A CLAIM FOR \$1.66 IS PENDING WITH YOUR INSURANCE COMPANY.

INVOICE NUMBER: 5366346  
CHARGES

PROVIDER: THOMAS L POPE MD  
RADIOLOGY

08/26/08 73550/26/RT-X-RAY THIGH 2 VIEWS ..... \$52.00  
TOTAL: \$52.00

PAYMENT ACTIVITY

09/02/08 CLAIM SENT TO MEDICARE A & B  
09/17/08 MEDICARE PAY/CONTRA-TAPE  
PAYMENT..... \$6.34  
ADJUSTMENT..... \$44.07

A CLAIM FOR \$1.59 IS PENDING WITH YOUR INSURANCE COMPANY.

INVOICE NUMBER: 5366347  
CHARGES

PROVIDER: THOMAS L POPE MD  
RADIOLOGY

08/26/08 73590/26/LT-X-RAY LOWER LEG 2 VIEWS ..... \$52.00  
TOTAL: \$52.00

PAYMENT ACTIVITY

09/02/08 CLAIM SENT TO MEDICARE A & B  
09/17/08 MEDICARE PAY/CONTRA-TAPE  
PAYMENT..... \$6.34  
ADJUSTMENT..... \$44.07

A CLAIM FOR \$1.59 IS PENDING WITH YOUR INSURANCE COMPANY.

INVOICE NUMBER: 5405929  
CHARGES

PROVIDER: CHRISTIAN TODD MINSHALL MD  
TRAUMA & CRITICAL CARE

08/05/08 99232-SUBSEQ HOSPITAL CARE LEVEL II ..... \$189.00  
08/06/08 99232-SUBSEQ HOSPITAL CARE LEVEL II ..... \$189.00  
08/07/08 99232-SUBSEQ HOSPITAL CARE LEVEL II ..... \$189.00  
TOTAL: \$567.00

PAYMENT ACTIVITY

09/12/08 CLAIM SENT TO MEDICARE A & B

A CLAIM FOR \$567.00 IS PENDING WITH YOUR INSURANCE COMPANY.

CONTINUED ON NEXT PAGE ...

STATEMENT OF UMA PROFESSIONAL SERVICES

(AS OF SEPTEMBER 22, 2008)

ACCOUNT NUMBER: 3-001366513  
PATIENT NAME: AUBRY G ALEXANDER

PAGE 5

THANK YOU FOR SELECTING MUSC PHYSICIAN SERVICES RENDERED BY UMA. PLEASE REMIT PAYMENT IN FULL TODAY TO KEEP YOUR ACCOUNT CURRENT. INSURANCE CLAIMS WHICH ARE NOT PAID WITHIN 30 DAYS ARE YOUR PERSONAL RESPONSIBILITY.

ACCOUNT SUMMARY

PATIENT PAYMENTS RECEIVED SINCE 08/24/08...	\$0.00	TOTAL ACCOUNT BALANCE .....	\$626.35
INSURANCE PAYMENTS RECEIVED SINCE 08/24/08.	\$389.31	LESS: AMOUNT PENDING WITH INSURANCE ...	\$602.03
		TOTAL AMOUNT DUE NOW .....	\$24.32

**ROCKY MOUNTAIN HOLDINGS LLC SE**

PO Box 530434

Atlanta Ga 30353-0000

**Customer Service: (888) 636-4438**

**Air Medical Transport Services provided by: Air Methods Corporation**

**Patient Name:** Aubry G Alexander  
**Run Number:** 08-65668  
**Notice Date:** September 8, 2008

**Date of Call:** 07/23/2008  
**Time of Call:** 13:21:49  
**From:** 33 21.689'n, 080 22.928'w, Holly Hill, Sc 29059  
**To:** Richland Mem Hospital - Sc

Aubry G Alexander  
 131 Hickory Spring Rd  
 Eutawville SC 29048-8949

**Primary Payor:** Auto Owners Ins

**Secondary Payor:** Medicare Of South Carolina

<u>Description</u>	<u>Qty.</u>	<u>Price</u>	<u>Contractual Allowance</u>	<u>Amount</u>
A0431 Helicopter Rotor Base	1	10,592.09	0.00	10592.09
A0436 Helicopter Rotor Miles	60	6,478.20	0.00	6478.20





**BALANCE DUE:** \$17,070.29

**Your insurance has not paid this claim, therefore,  
 you are responsible for payment in full on this account. Please contact them for status.  
 Se Habla Español.**

*Please refer to your run number on all correspondence. -- Please see the reverse side for insurance information. --*  
 Federal Tax ID #: 870533822 IPPLNET01INV09

\*\*\*DETACH LOWER PORTION AND RETURN STUB WITH YOUR PAYMENT. THANK YOU.\*\*\*

ROCKY MOUNTAIN HOLDINGS LLC SE  
 PO Box 530434  
 Atlanta Ga 30353-0000  
 ADDRESS SERVICE REQUESTED

IF PAYING BY CREDIT CARD, FILL OUT BELOW	
CIRCLE CARD USING FOR PAYMENT	   
CARD NUMBER	AMOUNT
SIGNATURE	EXP DATE

Please make checks payable to: Rocky Mountain Holdings Llc Se

September 8, 2008

**ROCKY MOUNTAIN HOLDINGS LLC SE**  
 PO Box 530434  
 Atlanta Ga 30353-0000

#BWNHRMD 0572778 061872744  
 #0908 2013 0030 7367# 08-65668-INV09



Aubry G Alexander  
 131 Hickory Spring Rd  
 Eutawville SC 29048-8949

PATIENT NAME			AMOUNT DUE
Aubry G Alexander			\$17,070.29
RUN NUMBER	DATE OF SERVICE	STATEMENT DATE	AMOUNT ENCLOSED
08-65668	07/23/2008	09/08/2008	\$

Rx Date/Time OCT-27-2008 (MON) 13:53  
 Oct 27 08 02:51p Aubry G. Alexander II

843 852 0746 P.001  
 843-852-0746 p.1

PITTS RADIOLOGY  
 PO BOX 7457  
 COLUMBIA, SC 29202-7457

STATEMENT BY VISA, MASTERCARD OR DISCOVER, FILL OUT BELOW

<input type="checkbox"/> VISA	<input type="checkbox"/> MASTERCARD	<input type="checkbox"/> DISCOVER
CARD NUMBER	EXP. DATE	AMOUNT
SIGNATURE		MUST INCLUDE 3 DIGIT SECURITY CODE FROM BACK OF CARD

Billing Questions: 1-866-481-7572  
 Patient Name: AUBRY ALEXANDER  
 Invoice #: 815554  
 PAY ON-LINE: [www.ezmedinfo.com//pitts](http://www.ezmedinfo.com//pitts)

STATEMENT DATE	PAY THIS AMOUNT	ACCOUNT NO.
08-27-08	\$1681.00	16343-QPITT

CHARGES AND CREDITS MADE AFTER STATEMENT DATE WILL AFFECT PAYMENT STATEMENT

SHOW AMOUNT PAID HERE \$

ADDRESSEE: 16812-93

AUBRY ALEXANDER  
 PO BOX 32202  
 CHARLESTON SC 29417-2202

MAKE CHECKS PAYABLE / REMIT TO:

PITTS RADIOLOGY  
 PO BOX 7457  
 COLUMBIA, SC 29202-7457



Please check box if above address is incorrect or insurance information has changed, and indicate change(s) on reverse side.

**STATEMENT**

PLEASE DETACH AND RETURN TOP PORTION WITH YOUR PAYMENT IN ENCLOSED ENVELOPE

DATE	CPT-MOD	PROV	SERVICE	LOC	PRIMARY INSUR.	AMOUNT	PAID BY ALL INS.	ADJUST	YOU PAID	YOU OWE
17-29-08	74160-26	28	CT ABDOMEN W/DYE	PALMETTO		215.00				215.00
17-29-08	72193-26	28	CT PELVIS W/DYE	PALMETTO		194.00				194.00
17-28-08	74000-26	15	X-RAY EXAM OF ABDOMEN	PALMETTO		34.00				34.00
17-28-08	71010-26	15	CHEST X-RAY	PALMETTO		31.00				31.00
17-24-08	73590-26	10	X-RAY EXAM OF LOWER LE	PALMETTO		30.00				30.00
17-24-08	73550-26	10	X-RAY EXAM OF THIGH	PALMETTO		28.00				28.00
17-24-08	73030-26	10	X-RAY EXAM OF SHOULDER	PALMETTO		30.00				30.00
17-24-08	71010-26	10	CHEST X-RAY	PALMETTO		31.00				31.00
17-23-08	70450-26	3	CT HEAD/BRAIN W/O DYE	PALMETTO		164.00				164.00
17-23-08	71250-26	3	CT THORAX W/O DYE	PALMETTO		190.00				190.00
17-23-08	73560-26	25	X-RAY EXAM OF KNEE, 1	PALMETTO		28.00				28.00
17-23-08	73590-26	25	X-RAY EXAM OF LOWER LE	PALMETTO		30.00				30.00
17-23-08	73020-26	25	X-RAY EXAM OF SHOULDER	PALMETTO		25.00				25.00
17-23-08	73070-26	25	X-RAY EXAM OF ELBOW	PALMETTO		28.00				28.00
17-23-08	73130-26	3	X-RAY EXAM OF HAND	PALMETTO		28.00				28.00
17-23-08	73590-26	3	X-RAY EXAM OF LOWER LE	PALMETTO		30.00				30.00
17-23-08	72125-26	20	CT NECK SPINE W/O DYE	PALMETTO		190.00				190.00
17-23-08	74150-26	3	CT ABDOMEN W/O DYE	PALMETTO		195.00				195.00
17-23-08	72192-26	3	CT PELVIS W/O DYE	PALMETTO		180.00				180.00

ADDITIONAL INFORMATION CONCERNING YOUR ACCOUNT  
 PLEASE CONTACT US IF YOU CANNOT PAY THIS BILL. THANK YOU.  
 RENDERING PROVIDER 3 IS DOUGLAS BULL  
 RENDERING PROVIDER 10 IS EDWARD GIZE  
 RENDERING PROVIDER 15 IS ZACHARY KILPATRICK, JR.  
 RENDERING PROVIDER 20 IS MATTHEW MARCUS  
 RENDERING PROVIDER 25 IS FRANCIS-NEUFFER  
 RENDERING PROVIDER 28 IS JOHN VADAPARAMPIL

TOTALS:							0.00	0.00	0.00	1681.00
---------	--	--	--	--	--	--	------	------	------	---------

DAYS	0 - 30	31 - 60	61 - 91	91 - 120	Over 120	ACCOUNT AGING	AMOUNT
	1681.00	0.00	0.00	0.00	0.00	Please Pay	\$1681.00

PITTS RADIOLOGY  
 PO BOX 7457  
 COLUMBIA, SC 29202-7457

Account No.: 16343-QPITT  
 Patient Name: AUBRY ALEXANDER

**PAY ON-LINE:**  
[www.ezmedinfo.com//pitt](http://www.ezmedinfo.com//pitt) 404



STATEMENT 10/09/08

NHC HealthCare - Charleston  
2230 Ashley Crossing Drive  
Charleston, SC 29414

If you have any questions regarding  
this statement, please call  
  
(843) 766-5228

Patient: Aubry G. Alexander

MR # 9901676

Aubry Alexander  
1400 Parkshore Dr.  
Charleston SC 29407

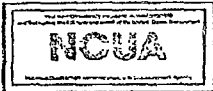
Amount Enclosed \$ \_\_\_\_\_

Please detach and return with your payment upon receipt of statement

Aubry G. Alexander

9/01/08	Balance Forward	0.00
Current Charges :		
9/01/08	9/30/08 29 days @ 128.00 Mcare Part A Coinsurance	3,712.00
Total Amount Due Upon Receipt		3,712.00

CHARLESTON AREA  
FEDERAL CREDIT UNION



NO. 246355

DATE	TELLER	TRANSACTION DESCRIPTION	ACCOUNT NUMBER	PREVIOUS BAL.	TRANSACTION AMT.	NEW BALANCE
20081009	1035-135	Share Withdrawal Ca	18252-0	2435.79	3712.00	5722.79
MINIMUM PERIODIC PAYMENT		PAYMENT DUE DATE	FREQUENCY OF PAYMENT	PERIODIC RATE	PERCENTAGE RATE	TRANSACTION PROCESSED BY:
						NETHA

Payee: NHC HEALTHCARE - CHARLESTON

\* Miscellaneous Fee: \$1.00

SIGNATURE Aubry G. Alexander DATE 10-20-08

VERIFY NO. 246355

Special Notice: payment due by October 18th!

Selection: (Center 5748, Sel S, Patient 456463791 , RPS \* , PPS \* , Sec Bus \* , Company \* , Product \* , Begin Date 1/01/2008 , End Date 4/30/2010 , RT D) 5748 Charleston Standard 6mo

	Avail PS	Company Name	ID#	Group	Begin Date	MCA Thru Date ADV Send Bill to Name & Addr
	Medicare A:		456463791A		8/01/1996	
	Medicare B:		456463791A		8/01/1996	
Alexander, Aubry G	M'care Adv: N/A					Alexander, Aubry
131 Hickory Spring Rd.	Medicaid: N/A					1400 Parkshore Dr.
Eutaville , SC	Tricare: N/A					Charleston , SC
29048	Mgd Care: N/A					29407
SS#	V/A: N/A					
MR# 990167	Hospice: N/A					Home Phone: (843)571-1559
DOB:	Insurance: MAILHANDLERS		4105671		1/01/2008	Alt Phone:
Adm: 8/13/2008	Dis:10/30/2008					
Tra:	Ret:					
	2nd Ins: N/A					
	3rd Ins: N/A					

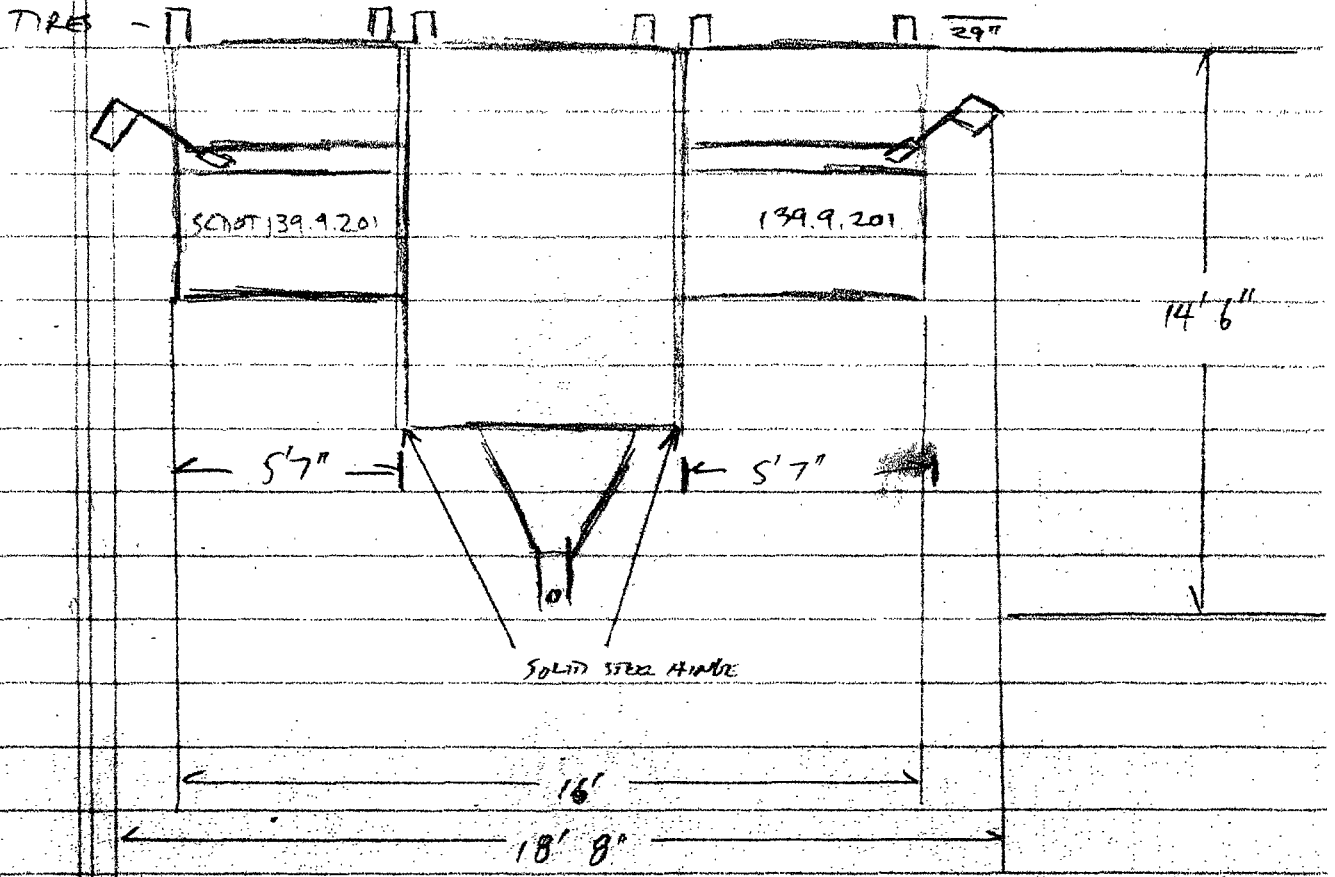
\*\*\*\* = Rev Journal Adj/Late Chg

From Dt	Thru Dt	Days	Description	Private	Medicare A	Mcaid-SNF	Mcaid-ICF	Medicare B	Insurance	Mgd Care	Other	Balance
Aug 2008												
8/13/08	8/26/08	14	MCA 14 Full RMLXX	381.19	0.00	5336.66	0.00	0.00	0.00	0.00	0.00	7777.66
8/27/08	8/31/08	5	MCA 05 Full RVLXX	399.36	0.00	1996.80	0.00	0.00	0.00	0.00	0.00	14077.46
Sep 2008												
9/01/08	9/11/08	11	MCA 01 Full RVLXX	399.36	0.00	3112.96	0.00	0.00	0.00	0.00	0.00	14407.42
9/01/08	9/30/08	PP	MCA 29 Coins	128.00	3712.00	0.00	0.00	0.00	0.00	0.00	0.00	14535.42
9/12/08	9/30/08	19	MCA 00 Full RVB02	366.35	0.00	4528.65	0.00	0.00	0.00	0.00	0.00	18687.07
Oct 2008												
9/01/08	9/30/08	PP	coins	01158	3712.00-	0.00	0.00	0.00	0.00	0.00	0.00	14975.07
10/01/08	10/11/08	11	MCA 00 Full RVB02	381.70	0.00	2790.70	0.00	0.00	0.00	0.00	0.00	17765.77
10/01/08	10/29/08	PP	MCA 29 Coins	128.00	3712.00	0.00	0.00	0.00	0.00	0.00	0.00	21477.77
10/12/08	10/29/08	18	MCA 00 Full RUB03	458.07	0.00	5941.26	0.00	0.00	0.00	0.00	0.00	27419.03
Nov 2008												
10/01/08	10/29/08	PP	coins	01234	3712.00-	0.00	0.00	0.00	0.00	0.00	0.00	23707.03
May 2009												
8/13/08	8/26/08	MCA	pymt 05/15/09 01806	0.00	5336.66-	0.00	0.00	0.00	0.00	0.00	0.00	18370.37
8/27/08	8/31/08	MCA	pymt 05/15/09 01806	0.00	1996.99-	0.00	0.00	0.00	0.00	0.00	0.00	16373.38
8/27/08	8/31/08	5	Medicare P/D Adj	0.00	0.19	0.00	0.00	0.00	0.00	0.00	0.00	16373.57
9/01/08	9/11/08	MCA	pymt 05/18/09 01807	0.00	3112.96-	0.00	0.00	0.00	0.00	0.00	0.00	13260.61
9/12/08	9/30/08	MCA	pymt 05/18/09 01807	0.00	4528.76-	0.00	0.00	0.00	0.00	0.00	0.00	8731.85
9/12/08	9/30/08	19	Medicare P/D Adj	0.00	0.11	0.00	0.00	0.00	0.00	0.00	0.00	8731.96
10/01/08	10/11/08	MCA	pymt 05/21/09 01808	0.00	2790.70-	0.00	0.00	0.00	0.00	0.00	0.00	5941.26
10/12/08	10/29/08	MCA	pymt 05/21/09 01808	0.00	5941.26-	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Current Balance 4/30/2010				0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

SCDOT # 139.9.201

BUSH WHACKER

LITTLE ROCK AAK.



\* FLAG MEASURES 25" x 24 1/2" x 36" PILE IS ROUND 1" DIAMETER

\* TIRES MEASURE 26 1/2" HIGH, GOOD YEAR 28 x 7.7

\* HEIGHT OF LEFT MOWER DECK 14 1/2"

\* HEIGHT OF RIGHT MOWER DECK 13 1/2"

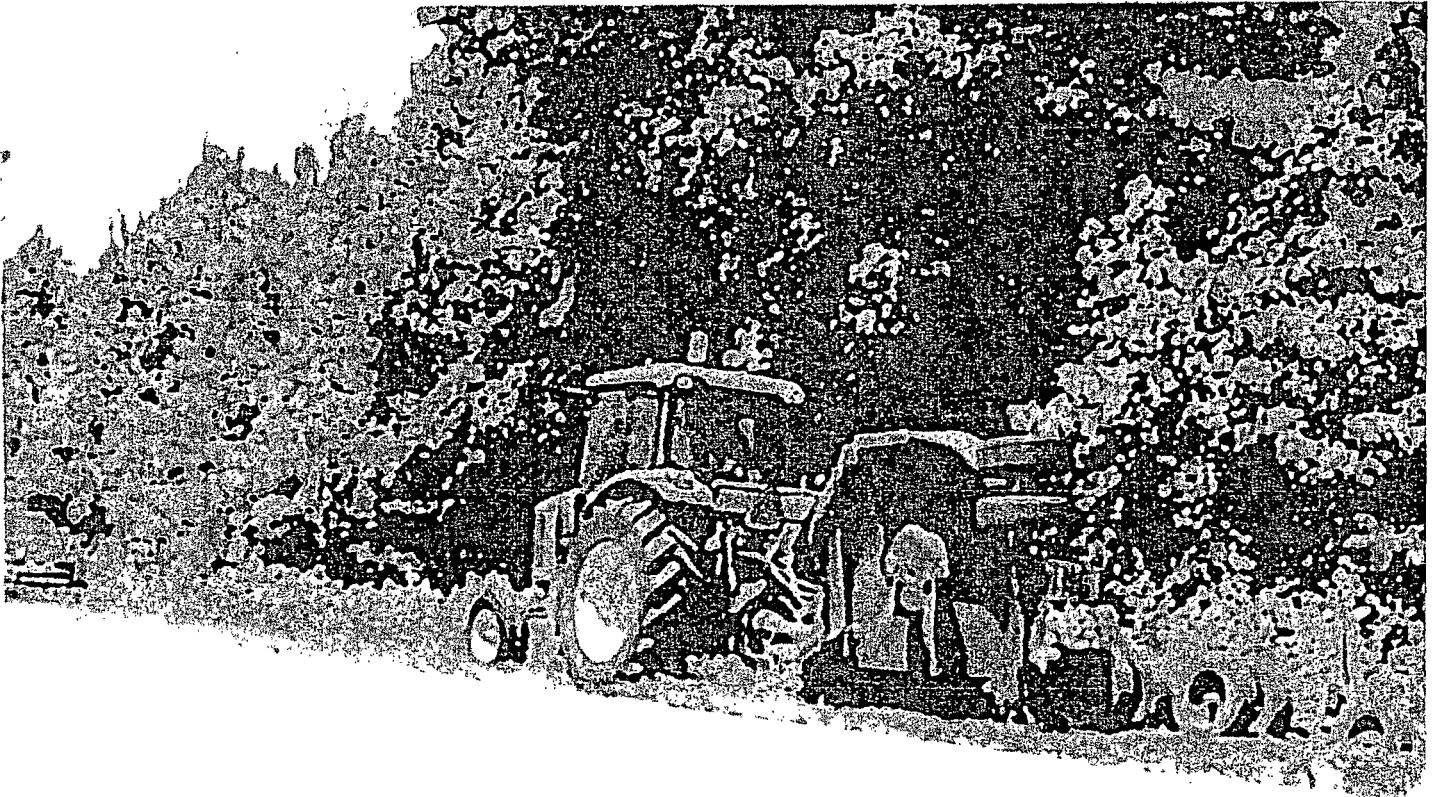
\* HEIGHT OF TIP OF FLAG FROM THE GROUND 34 1/2"

\* SQUARE TUBE TO HOLD FLAG 1" ID SQUARE X 3 1/2" LONG

*[Handwritten signature]*

PLAINTIFF'S  
EXHIBIT

15

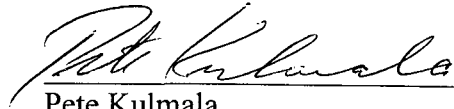


DEFENDANT'S  
EXHIBIT  
1. NW  
10-31-11

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.

January 14, 2013

A handwritten signature in cursive script, appearing to read "Pete Kulmala", is written above a horizontal line.

Pete Kulmala  
110 Main Street  
Post Office Box 705  
Barnwell, South Carolina 29812  
(803) 259-5531  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM ORANGEBURG COUNTY  
Common Pleas Court  
Edgar W. Dickson, Circuit Court Judge

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Case No. 2009-CP-38-1258

---

Aubrey Alexander..... Respondent  
v.  
South Carolina Department of Transportation..... Appellant,

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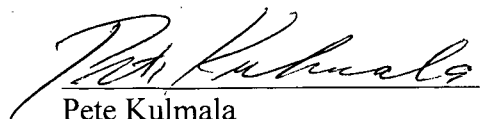
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I certify that I have served Appellant's Record on Appeal, on Respondent's Counsel, C. Bradley Hutto and Paul Tinkler, by depositing a copy in the United States Mail, Postage prepaid, on January 31, 2013, addressed as follows:

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January 31, 2013

**RECEIVED**

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**SC Court of Appeals**