

27292

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No.: 2017-002520

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SC Court of Appeals

Maurice Dawkins Appellant,

v.

James A. Sell Respondent,

**RECORD ON APPEAL
VOLUME II of II**

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**RECORD ON APPEAL
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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF HAMPTON 2011-CP-25-00252

MAURICE DAWKINS,)
)
 PLAINTIFF,) PARTIAL TRANSCRIPT
) OF RECORD
 VS.)
)
 JAMES A. SELL,) OCTOBER 12, 2017
) HAMPTON, SC
 DEFENDANT.)

B E F O R E:

HONORABLE ROGER YOUNG, JUDGE, AND A JURY

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

WILLIAM BARNES, III ESQUIRE
R. ALEXANDER MURDAUGH, ESQUIRE
Attorney for the Plaintiff

E. MITCHELL GRIFFITH, ESQUIRE
Attorney for the Defendant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

1 (The following proceedings were held
2 October 12, 2017, Hampton County, South Carolina, @
3 9:15 a.m. outside the jury's presence.)

4 THE COURT: Anything from the
5 Plaintiffs?

6 MR. BARNES: Your Honor, I guess just
7 briefly we would have some motions for a directed
8 verdict on two issues. First we would move on the
9 grounds of their defense of intervening or
10 superseding negligence. As the Court is well aware
11 and we have talked about throughout the trial, to
12 be an intervening or superseding negligence it has
13 to be unforeseeable. Based on the evidence that's
14 been elicited here in the courtroom it's basically
15 uncontradicted that it is foreseeable that when you
16 overturn a truck in the roadway somebody may come
17 along and hit it.

18 Additionally, we have previously
19 addressed the issues in Mr. Sell's cross-claim
20 against Pierce National and Owens. He alleged that
21 as a direct and proximate result of Mr. Owens'
22 actions he was injured. So to have that it clearly
23 has to be foreseeable.

24 As the Court is well aware,
25 foreseeability is determined by reasonable person

1 standard. Mr. Sell through his pleadings has
2 admitted that if someone's out on the side of the
3 interstate with a truck that is blocking the
4 roadway it is foreseeable that somebody may come
5 along and hit it. We also have a good Samaritan
6 statute that talks about helping people following
7 an accident. So clearly it's foreseeable under the
8 eyes of the law that someone is going to stop and
9 help which is the fact in this case.

10 And we believe that even viewing the
11 evidence in the light most favorable to Mr. Sell
12 that there is not an intervening or superseding
13 negligence because it is foreseeable and we believe
14 that that charge should not be given to the jury.

15 THE COURT: Would you like to respond
16 to that?

17 MR. GRIFFITH: Is he moving for a
18 directed verdict or he is moving to strike the --

19 THE COURT: I'm not exactly clear I
20 guess on that. What were you moving?

21 MR. BARNES: We are moving for a
22 directed verdict on their affirmative defense that
23 they have stated in their answer that based on the
24 foreseeability that's been put forth, it is clearly
25 foreseeable.

1 THE COURT: Is it an affirmative
2 defense or just part of the foreseeability aspect
3 of proximate cause?

4 MR. BARNES: They asserted it as an
5 affirmative defense in their answer and
6 cross-claim.

7 THE COURT: All right. Well, what do
8 you say?

9 MR. GRIFFITH: All right. Well, Judge,
10 that sort of -- I guess in just a minute, as soon
11 as I respond, I'm going to actually move for a
12 directed verdict also.

13 THE COURT: Why don't just you go ahead
14 and argue both ways.

15 MR. GRIFFITH: All right. Then, Judge,
16 at this time the Defendant would move for a
17 directed verdict on the grounds that the evidence
18 taken in the light most favorable to the Plaintiff
19 failed to show negligence as a matter of law that
20 was causing this particular accident that Mr.
21 Dawkins had with the Sell vehicle.

22 Obviously the facts as you heard them
23 is that Mr. Sell had an accident on the interstate
24 for which he accepted responsibility. Then
25 somewhere between five to ten minutes later after

1 the chain of events had been broken at least with
2 other cars and other tractor trailer trucks,
3 anywhere from one to three based on the evidence,
4 were able to stop and go around safely this
5 particular event.

6 Then what we have is Mr. Owens comes
7 along and violates at least two Federal Motor
8 Carrier Acts and two other safety standards. He is
9 the sole proximate cause of this accident.

10 So it is our position obviously that
11 there was no negligence on behalf of Mr. Sell that
12 caused this accident. There was an intervening act
13 of negligence as a matter of law and that Mr. Owens
14 was the sole proximate cause of this accident when
15 he failed to abide by the law and standards of a
16 professional driver. And as such, I think that his
17 motion should be denied and that our motion for a
18 directed verdict should be granted.

19 THE COURT: Well, I don't suppose it's
20 going to come as any great surprise I'm going to
21 deny both of them. I think the issue because of
22 the timing of how soon the second wreck occurred
23 after the first wreck is unclear, that it's a jury
24 question under these circumstances. So I will deny
25 them both.

1 MR. BARNES: Your Honor, I just want to
2 put on the record the second of those two grounds
3 and I think probably it will be subsumed in the
4 Court's ruling, but we were also going to move on
5 the issue of negligence as to Mr. Sell. And that
6 he I think admittedly was negligent in overturning
7 the Budget truck. I think the main defense is a
8 causation defense and so we believe that on the
9 evidence the Court should grant a directed verdict
10 on the issue of Mr. Sell's negligence and clearly
11 parties --

12 THE COURT: Well, when you say
13 negligence, that's a cause of action that consists
14 of duty, breach of duty and damages that are
15 proximately caused by the breach of the duty. So
16 to say he's negligent kind of wraps it up in the
17 whole thing. Now, whether or not he had a duty and
18 whether or not he breached that duty is another
19 thing. And then whether or not the damages that he
20 suffered were proximately caused by the breach of
21 that duty is another thing. So I'm not going to
22 charge that he is negligent certainly.

23 MR. BARNES: We would move, Your Honor,
24 I think you kind of saw where we were going with
25 that on the issue that he breached a duty in

1 overturning the truck, blocking both southbound
2 lanes in the rain at night and as a result it's an
3 issue of causation whether his negligence was a
4 proximate cause, not the only proximate cause in
5 this action. I think that he has admitted he takes
6 responsibility for blocking both southbound lanes.

7 THE COURT: What's your thoughts on --
8 are you conceding duty and breach of duty? Just
9 basically hanging your argument on proximate cause?

10 MR. GRIFFITH: I don't think that his
11 accident had anything to do with this accident. I
12 think that there clearly is a sole negligence
13 defense that is viable in this case, so I mean the
14 fact that I drove maybe 60 miles an hour on the way
15 up here and had I then been in an accident at the
16 stoplight up there, that's his argument, that my
17 negligence of driving 60 put me at the stoplight
18 when I ran it as opposed to when I had a green
19 light coming through.

20 These are two separate acts and I think
21 that what that is -- that's our position and that's
22 what we have moved for directed verdict as a matter
23 of law. And certainly based upon the evidence in
24 this case at a minimum his negligence, and I'm not
25 even saying it was negligence, he had an accident.

1 But that accident had nothing to do with Mr.
2 Dawkins' injuries or the accident that Mr. Owens
3 caused. So I think you have to submit everything
4 to the jury if you're going to submit anything. If
5 you are not going to direct a verdict for us, you
6 have got to submit it all to the jury.

7 MR. BARNES: Judge, briefly. They just
8 basically want two bites at the apple. Mr. Sell
9 admitted he accepts responsibility for turning over
10 the truck. But for Mr. Sell overturning the truck
11 Maurice does not stop and but for the southbound
12 lanes being blocked Mr. Owens doesn't collide.

13 So based on the law under proximate
14 cause Mr. Sell started these chain of events, his
15 negligence started this chain of events, so we
16 believe as to duty and breach that the evidence
17 viewed in the light most favorable to Mr. Sell
18 establishes that he was negligent.

19 THE COURT: Well, I'm not going to. I
20 am afraid it might confuse the jury as to the
21 distinction that he is bringing up that he is
22 denying he was negligent, and that even if he was
23 negligent it was really somebody else's negligence
24 that caused the accident. So I won't hinder that
25 argument by confusing them and saying he was

1 partially negligent in the first one and then
2 therefore you got to -- they might confuse that one
3 affecting his argument that there was -- somebody
4 else was negligent and caused it. Anything else
5 you want to say, Mr. Murdaugh? You are standing
6 up.

7 MR. MURDAUGH: No, I was just pouring
8 water. No, I don't need to be heard.

9 THE COURT: All right. Anything else
10 on the augments? Motions?

11 MR. GRIFFITH: Yes, sir, Your Honor.

12 THE COURT: What's that?

13 MR. GRIFFITH: We would renew our
14 motion for directed verdict on the issue of
15 economic loss or wage loss because the evidence
16 presented in the light -- taken in the light most
17 favorable to the Plaintiff fails to give the jury
18 any idea other than a speculative nature of how
19 they may award that. We would ask that that be
20 stricken as a matter of law.

21 THE COURT: Okay. Well, I denied it
22 yesterday. Same reason for why I deny it today.

23 MR. GRIFFITH: I understand that. I
24 just feel like I need to renew it.

25 THE COURT: No harm.

1 MR. GRIFFITH: Took care of the future
2 medicals.

3 At this time, Your Honor, I would make
4 a motion for a directed verdict on the issue of
5 punitive damages because the evidence taken in the
6 light most favorable to the Plaintiff in this case
7 failed to show that there was any willfulness,
8 recklessness, wantonness on behalf of Mr. Sell that
9 may have caused this --

10 THE COURT: Y'all didn't ask or request
11 a charge for that, are you? I assume that you are
12 not asking for it. I really don't see it as being
13 a punitive damages case.

14 MR. BARNES: Your Honor, we really
15 haven't addressed that. The Fairchild vs. SCDOT
16 case, and I believe I have copies that I can hand
17 up.

18 THE COURT: I know the statutes. Your
19 case law says well, you got a violation of the
20 statute and that is evidence of recklessness.
21 Doesn't mean it is automatically recklessness.

22 MR. BARNES: I think that's for the --

23 THE COURT: That's your argument and,
24 you know, sometimes you can ask for it and it is
25 really not that kind of case. But I think

1 sometimes it's a mistake. And I'm not making this
2 argument for you to ask for it in a case in which
3 it isn't, you might lose credibility with the jury,
4 but this is not my home turf so I don't know how
5 that plays out.

6 MR. BARNES: How about this, Your
7 Honor? How about we ask on the verdict form
8 whether the jury finds that Mr. Sell was reckless
9 or willful or wanton based on the language of the
10 Fairchild case regarding the statute violations and
11 if they do we have it bifurcated and then we can
12 argue on the issue of punitive damages following an
13 actual damage verdict. The statute that was
14 passed, I think it is 1532 -- Judge, Mr. Murdaugh
15 has advised me we are going to not pursue punitive
16 damages.

17 MR. MURDAUGH: After I advised him we
18 were.

19 THE COURT: That work for you?

20 MR. GRIFFITH: That works.

21 THE COURT: All right.

22 MR. GRIFFITH: And I would make a
23 motion under the statute, but it didn't take effect
24 until two years after this accident.

25 THE COURT: How about the charge? You

1 got anything in the charge?

2 MR. BARNES: Your Honor, from our
3 standpoint just a couple of issues. And I don't
4 know if the Court later intends to maybe give the
5 jury the charge, I know some judges do it
6 differently. On the caption Dennis Owens and
7 Pierce National are still listed.

8 THE COURT: I will take that off. That
9 should have come off.

10 MR. BARNES: They need to be taken off.
11 And there are also several instances in the charges
12 where there's plural Defendants instead of
13 Defendant.

14 THE COURT: All right.

15 MR. BARNES: And I have those marked so
16 I can work with Taylor to get those taken care of.
17 And I believe as far as the charges that the Court
18 sent, those are the only issues that we have. Mr.
19 Griffith sent some charges last night. We have
20 objections to those.

21 THE COURT: I haven't seen those. What
22 are they?

23 MR. BARNES: He is asking for several
24 of the --

25 THE COURT: Was it in that one that you

1 e-mailed or you sent me a separate one? I just got
2 the one saying here are the charges.

3 (Off-the-record conference.)

4 THE COURT: I am not going to do any of
5 those.

6 MR. GRIFFITH: May we be heard?

7 THE COURT: Sure.

8 MR. GRIFFITH: I certainly would ask
9 all three of them be charged, but at least the one
10 on experts and payment of experts. I think
11 certainly the evidence that was brought up
12 yesterday, I generally don't ask for it because
13 generally it is not made such a big deal of it in
14 the trial of the case that experts get paid. I
15 didn't even ask Dr. Stoddard what he was getting
16 paid. I just assumed everyone realized he was
17 getting paid for that.

18 There was about a third of the
19 cross-examination was on payment of my expert and I
20 think experts just like anybody else get paid. And
21 I think it's fair for the judge to charge them
22 because that is now evidence in the case.

23 So at least I think that one should be
24 charged. That's just a basic direct quote out of I
25 think Anderson charge book is where I found it.

1 MR. BARNES: Your Honor, the case that
2 Mr. Griffith cites is the case of Anderson v.
3 Campbell Tile Company. And I read the case this
4 morning and it doesn't have anything to do with
5 regard to the payment of experts and I have a case
6 of Washington vs. Rhett which is an unpublished
7 Court of Appeals opinion, and I know unpublished
8 opinions are not binding, but basically what it
9 talks about is it talks about a charge regarding
10 experts getting paid coming from the Anderson
11 charge book and it cites the Anderson vs. Campbell
12 Tile Company case. I'm reading from this opinion
13 here. It says, "However, Anderson is
14 distinguishable from this case for multiple
15 reasons, including his worker's compensation case.
16 It does not relate to the admissibility of evidence
17 and it does not contain the language Genesetta
18 requested or even similar language. Additionally,
19 Anderson mentions the payment of experts fees only
20 once specifically when listing it as one of seven
21 factors the Industrial Commission properly
22 considered in weighing expert testimony."

23 So there's -- and I have a copy of the
24 Campbell opinion that I can hand up where I have
25 highlighted where it references expert payment. So

1 we believe that the Anderson vs. Campbell Company
2 case does not even address the payment of experts
3 as it relates to the charge that Mr. Griffith has
4 proposed.

5 THE COURT: I think it's just one of
6 those things that you can argue, but I'm not going
7 to -- we got a charge on credibility and it
8 includes the normal things about bias and prejudice
9 or interest in the outcome and I just think that's
10 sufficient. I guess we also need to add a charge
11 in there for willful, wanton and reckless since we
12 are going to ask them to answer the question if
13 they find for Plaintiff.

14 MR. GRIFFITH: Judge, if I understood
15 their motion, they withdrew their request for
16 punitive damages.

17 THE COURT: I thought we agreed that we
18 would ask them to do -- on the jury form if they
19 find for the Plaintiff you find that the
20 Defendant's actions were the result of willful,
21 wanton and reckless conduct and if they said yes
22 then we would argue. Isn't that what you asked?

23 MR. BARNES: I did initially and then
24 we basically said we would withdraw any claims for
25 punitive damage.

1 THE COURT: I missed that part. Sorry.

2 MR. BARNES: Mr. Murdaugh gave me my
3 instructions.

4 MR. GRIFFITH: Maybe that was why I was
5 so agreeable.

6 THE COURT: I didn't hear that. Sorry.
7 So take the name out and on the front page make
8 sure the plurals are -- it's the correct number of
9 people that he's referring to. You know, this case
10 here I am not going to -- sometimes I give it to
11 the jury, sometimes I don't. Since I'm probably
12 not unless you ask me to give it to the jury when I
13 am reading it I will make sure I read it as one
14 Defendant. That way we can keep on track.
15 Anything else?

16 MR. GRIFFITH: Nothing from the
17 Defendant, Your Honor.

18 MR. BARNES: Nothing from the
19 Plaintiff, Your Honor.

20 THE COURT: Okay. Well, then we will
21 leave the verdict form as actual damages or for the
22 Defendant. Jury charge will be what you got last
23 night. How about go find Alex?

24 You get to open and close, 30, 45
25 minutes? Five or ten on the end?

1 MR. MURDAUGH: I think that's
2 probably --

3 THE COURT: Thirty, forty-five?

4 MR. GRIFFITH: I mean I don't go that
5 long, but --

6 THE COURT: I hope you don't either.
7 I'm going to start hacking and pretending I am
8 disgruntled after 45 minutes.

9 On page 7 of the jury charges we start
10 out with negligence as a matter of law. We start
11 the three -- I think we quote about five or six
12 statutes there. Since you all are not asking for
13 punitive damages those violations of statute
14 generally speaking are thrown in because you want
15 to ask for recklessness as a matter of law. And do
16 you have any problem with us just going with the
17 ordinary common law duties that are listed earlier
18 about -- where are they at, on page 5 under
19 standard of care? Operators, motor vehicle
20 requirements same standard of care, ordinary
21 prudent person driving, keep proper control of your
22 vehicle. The others all apply. They are there.
23 But I am just thinking it might cut it down.

24 MR. BARNES: Your Honor, we would ask
25 that they be charged because they do apply and had

1 we known --

2 THE COURT: I just thought I would
3 throw it out there. I didn't expect that you would
4 agree.

5 MR. BARNES: Because they do apply and
6 there's evidence in the record that he violated
7 these. Even though we may not be pursuing punitive
8 damages we think they are applicable as to actual
9 damages.

10 THE COURT: Asking is free usually.

11 (Brief pause.)

12 THE COURT: Everybody ready now?

13 MR. GRIFFITH: Defendant is ready.

14 MR. BARNES: Yes.

15 THE COURT: Okay. Let's get the jury.

16 (Whereupon the jury entered the
17 courtroom at 10:12 a.m.)

18 THE COURT: Folks, we are going to now
19 start into the final phase of the trial where we
20 have the closing arguments by the lawyers and then
21 I will charge you on the law, then you will retire
22 to consider what your verdict will be. Closing
23 arguments are again the lawyers getting up and
24 reviewing the evidence and the testimony that you
25 have heard and giving you a review of the law that

1 I will charge to you in an attempt to persuade you
2 to render a verdict on their client's behalf.

3 It is important that you remember what
4 the lawyers are saying is not to be considered by
5 you as evidence. They are only reviewing the
6 evidence that you heard. Each side you'll get the
7 chance to hear from. The rules say that since the
8 Plaintiffs have the burden of proof the Plaintiff
9 gets to open and close, so you will hear from the
10 Plaintiff's lawyer first, then you will hear from
11 the Defendant's lawyer and then the Plaintiff's
12 lawyer will have the opportunity to make a brief
13 reply. So without further ado, Mr. Murdaugh, you
14 may make your closing.

15 MR. MURDAUGH: Mr. Foreman, ladies and
16 gentlemen, good morning. Thank you all very much
17 for your three days and part of a fourth day. I
18 have been in this courtroom and tried a lot of
19 cases. This is a serious case. This man's life
20 changed on August 21st, 2010 when he basically had
21 his foot and ability to use his foot taken from
22 him. And it is a very serious matter. In of all
23 the cases that I have tried, working at the law
24 firm and as an assistant solicitor coming over
25 here, I have never seen a jury that was as

1 attentive and paying attention to everything as.
2 every one of these jurors was. There wasn't a
3 single person dozing off not paying attention and
4 so thank you for giving this matter the seriousness
5 that it deserves. I appreciate it. Mr. Dawkins
6 appreciates it and we thank you.

7 Now, let's get into the case and talk
8 to you about the meat of the case. Judge told you
9 that we have the burden of proof. We accept that
10 burden. Remember when I finish and Mr. Griffith
11 finishes, the judge is going to tell you what the
12 law is. And remember at the beginning you were
13 told that you are the sole judges of the facts and
14 he is the sole judge of the law. That means that
15 he is going to tell you what the law is and you
16 guys as judges of the facts are going to decide
17 what happened out there that day and what's
18 happened since that day and determine what the true
19 accurate factual scenario is and apply that to the
20 law. Okay? So you are the sole judges of the
21 facts.

22 We have the burden of proof because we
23 are the Plaintiff and that means we have to prove
24 to you what this case is about. And the burden in
25 this case is called preponderance of the evidence.

1 Not like in a criminal case where it's beyond a
2 reasonable doubt. And His Honor is going to tell
3 you that a preponderance of the evidence is when
4 you have scales of justice. If they tip ever so
5 lightly, 50.01 percent, we have met our burden.
6 That's what the law is. More likely than not. So
7 we accept that burden and we think that to
8 establish by well more than a preponderance of the
9 evidence that we have met our burden.

10 What do we have to prove? This is a
11 negligence case. And the judge is going to charge
12 you what negligence is, but it is basically four
13 things. We contend that Mr. Sell was negligent in
14 this case and that he caused damages to Mr.
15 Dawkins. The things the judge is going to tell you
16 we have to prove are a duty, in other words, Mr.
17 Sell had a duty, that he breached that duty, that
18 Maurice Dawkins was injured and that those injuries
19 were the proximate result of that breach.

20 All right. Let's talk about the first
21 one, a duty. Any time any one of us gets in a
22 vehicle we have a duty to operate it safely, a duty
23 to keep it under control. That duty exists to
24 other motorists, exists to the general public and
25 it is a duty when you get in the car.

1 So was there a breach of that duty? So
2 Mr. Sell when he got in that Budget truck and
3 started driving it, he had a duty to operate that
4 Budget truck in a safe manner, in a reasonable
5 manner and he owed that duty to the motoring
6 public.

7 Did he breach that duty? When Mr. Sell
8 was in that vehicle after being up from 8:00 and in
9 that vehicle from 11:00 until 3:50 with brief
10 pauses, breached that duty when he overturned that
11 vehicle, he lost control of the vehicle, and he
12 blocked the interstate highway.

13 Was Maurice Dawkins injured? Ladies
14 and gentlemen, that speaks for itself. The only
15 medical testimony you have seen, you have seen his
16 ankle and we will talk about that in some detail,
17 but clearly Maurice Dawkins was injured. And are
18 the injuries proximately caused by the breach?

19 Now, I want to talk to you about that
20 and I am going to read from the judge's charge.
21 You listen to the judge now. This is me telling
22 you what I believe the judge is going to tell you,
23 but in case any of this you think is different, you
24 listen to the judge, but here's what proximate
25 cause is, okay?

1 Don't be intimidated by this word
2 proximate cause. What is proximate cause? All
3 proximate cause is is it's direct cause, just the
4 cause. You know, the fact that there's this legal
5 term in front of it, you know, don't let that throw
6 you off. Every one of you are bright people. And
7 you come into this courtroom with your good common
8 sense. When you go back in that jury room, ladies
9 and gentlemen, use your good common sense, and you
10 decide what the cause of Maurice Dawkins' injuries
11 are. And understand this and the judge is going to
12 tell you, there can be more than one cause. And
13 this is very important, ladies and gentlemen. We
14 only have to prove to you that Mr. Sell's breach of
15 his duty was a cause. All right? A cause.

16 Here is some of the language about
17 proximate cause. Proximate cause is proving by
18 showing that the injury would not have happened but
19 for the Defendant's negligence. So in other words,
20 if Mr. Sell hadn't turned over that Budget truck,
21 Maurice would never have been on that roadway that
22 night when that tractor trailer came by. So but
23 for him blocking I-95 Maurice Dawkins would not
24 have been out there.

25 Another part of proximate cause.

1 Proximate cause is something that produces a
2 natural chain of events which in the end brings
3 about the injury. Mr. Sell started a chain of
4 events when he chose to keep driving in the
5 rainstorm and overturned and blocked I-95 causing
6 Maurice Dawkins to be on that highway.

7 Couple of things that are important is
8 that again I want to reiterate exactly what
9 proximate cause does not mean the only cause. The
10 Defendant's act can be a proximate cause of the
11 Plaintiff's injuries if it was at least one of the
12 direct concurring causes of the injury.
13 Foreseeability. Judge is going to tell you that's
14 the touchstone of proximate cause. And that's why
15 I kept asking all these people in this courtroom if
16 you remember during various examinations of
17 witnesses, we asked if you take a vehicle and you
18 block Interstate 95 is it foreseeable that you are
19 going to cause a collision. Not a person that's
20 come in this courtroom and testified other than
21 that. And use your common sense, ladies and
22 gentlemen. If you block an interstate it is
23 certainly foreseeable that you are going to cause a
24 collision. And even the expert admitted they got
25 laws for that. That's why they have minimum speeds

1 on an interstate. That's why you are not allowed
2 to stop on an interstate because the experts know
3 if you do, you are creating a hazard.

4 Now, Mr. Griffith will argue to you and have you
5 believe that this was an intervening act of
6 negligence on the part of Mr. Owens and that that
7 intervening negligence was the sole cause of the
8 injuries.

9 So let's talk about intervening
10 negligence. Again it comes down to in order to
11 decide whether an intervening act breaks the chain
12 of causation you must determine whether the
13 intervening act or omission was reasonably
14 foreseeable. So it all comes down to this again,
15 if you create a blockage on Interstate 95 is it
16 likely that you are going to cause a collision.
17 And add to that it is pitch black dark. It's 3:50
18 in the morning, and it is pouring rain.

19 So, ladies and gentlemen, we believe
20 that we meet our burden of proof on these issues
21 way more than simply a preponderance of the
22 evidence. But remember, preponderance of the
23 evidence is all we have to do.

24 Now, let's talk about exactly how this
25 case goes. And what impact that this has had on

1 Maurice Dawkins. One thing that stands for
2 certain, even Mr. Sell has told you Maurice Dawkins
3 is a wonderful person. One of the nicest people I
4 have ever met. Every person that we have talked
5 to, brought in this courtroom says Maurice Dawkins
6 is one of the hardest working people they have ever
7 known. And if there were people out there that
8 said otherwise Mr. Griffith you have seen through
9 these days is a great lawyer, they would have been
10 in this courtroom telling you that.

11 So it's undisputed that Maurice Dawkins
12 is a wonderful person. The fact that he is that
13 kind of person is the reason that we're here.
14 Because on August 21st, 2010, he stopped at 3:50 in
15 the morning to render aid to his fellow man.
16 Because that's the kind of person he is. And
17 that's what got us here because Interstate 95 was
18 blocked because of Mr. Sell's negligence and then
19 Mr. Owens coming along and plowing into him.

20 So how has this affected Maurice
21 Dawkins? Dr. Stoddard went through in detail
22 telling you exactly what his problems are with his
23 nerves, what he did, what he found, what caused it,
24 and told you, ladies and gentlemen, that Maurice
25 Dawkins is for the rest of his life going to have

1 pain. Going to have swelling in his foot. He
2 can't be on his foot more than an hour or two
3 before that starts in.

4 Now, does that mean Maurice can't be on
5 his foot for three hours or four hours? No, it
6 doesn't. It just means that he is going to be on
7 his foot with pain every day for the rest of his
8 life. Whereas his life used to be defined by
9 getting up early and working late, helping people,
10 doing things for his neighbors, doing things for
11 his church, it has now been defined by doing what
12 he can do. An hour or two or three or however much
13 he can be on his foot and it is defined by pain.
14 Every day ends with pain for Maurice Dawkins now.

15 Mr. Griffith wants to go into all of
16 these doctors that Maurice saw. The one thing that
17 I found -- Mr. Griffith seemed to be critical of
18 Maurice Dawkins for going to all these various
19 doctors when he was searching for something,
20 searching for something to give him some relief.
21 Something to help him feel better, something to
22 help him get back to work. He was critical of
23 that. But then later on when Maurice Dawkins had
24 periods where he wasn't going to the doctor for
25 months, a year at a time, one time in there, he is

1 critical of that too, ladies and gentlemen. Think
2 about that and notice those things.

3 And Mr. Griffith made an issue in
4 opening about the doctors that aren't here. Ladies
5 and gentlemen, Mr. Griffith has been through those
6 records. He questioned Dr. Stoddard on them. If
7 any of those doctors had anything different to say
8 as good a lawyer as Mr. Griffith is those doctors
9 would be here and testify.

10 Nothing in his examination changed Dr.
11 Stoddard's opinion that Maurice Dawkins has a
12 severe limitation, he has a permanent limitation,
13 and there's nothing that can be done for it. And
14 that's just the facts as they exist. He's going to
15 deal with this for the rest of his life.

16 And I just want to go through this
17 medical history with you real quick just to -- he
18 gets injured. He has -- and you remember the photo
19 of his left foot which is this Exhibit 1.20. After
20 his heel -- both heels were lacerated that night.
21 He goes to the doctor, this left foot becomes a
22 problem. The left foot becomes a problem. He gets
23 referred over to Providence to I think it was Dr.
24 Davis. Dr. Davis debrides it, cleans it out. And
25 after a month or so that heals up and then we have

1 his right foot. Now, his right foot despite
2 getting physical therapy which he said hurt, hurt
3 to do the physical therapy, but remember when Mr.
4 Griffith -- I can't remember who asked him, but
5 somebody asked Dr. Stoddard about was Maurice
6 compliant with the therapy. And you remember the
7 therapist talking about he was superbly compliant,
8 that he was working hard at the therapy. That's
9 because Maurice was trying to get better. He was
10 going to these doctors to try to get himself
11 better. And every one of these doctors have
12 medical bills and he has incurred medical bills
13 that he owes for these doctors.

14 He ultimately ended up with Dr. Harris
15 and he had it operated on when he was in Florida.
16 And you remember the picture when Dr. Harris
17 operated on him the first time and he had his heel
18 cut open and then you remember a picture that we
19 had with the staple in the back of his foot? What
20 exhibit is that? 1.24, that's his left heel. How
21 about 1.2? That's him in the hotel, 1.3. Let's go
22 to 1.3. There it is. That's his foot after he has
23 his surgery in Florida after this.

24 And, you know, understand at this time
25 Maurice Dawkins is -- Ms. Moses observes a

1 fortunately -- who must be a wonderful woman, Ms.
2 Moses observes Maurice and the difficulties that he
3 is having and she helps him get to doctors. She
4 helps him get to Florida. And he goes and he's
5 thinking he's going to get a surgery and he is
6 going to get better.

7 Well, lo and behold he has this surgery
8 and he is not getting any better. So he keeps
9 looking for doctors and he's continuing to look for
10 doctors to try to help him. And Dr. Stoddard, you
11 heard him say, there is nothing more that Maurice
12 Dawkins can do. And what he has got is what he has
13 got.

14 So how has this injury affected him? I
15 want to just go through these damages witnesses and
16 listen to what they said even though we hit on it
17 briefly. Hardest working man most of them have
18 ever seen. The most meticulous landscaper that
19 they have ever seen. Does wonderful work. Does a
20 wonderful job. You heard Mr. Burns the way he
21 relates to people, the way he interacted with
22 people, he would have no trouble building his
23 business up.

24 Which is a thing I want to talk to you
25 about. Mr. Dawkins had a couple of tragedies as

1 you remember he dealt with in '07 and in '09 that
2 had him away from his business. This issue of lost
3 wages, ladies and gentlemen, after listening to Dr.
4 Stoddard there should be no question but what the
5 man is not going to be able to work but a short
6 period of time each day. And there's no doubt that
7 he is not going to be able to get his business back
8 to where he would be able to get his business if he
9 wasn't injured. If he wasn't injured where he
10 would be able to have his business and get it back
11 to.

12 So in 2006 Maurice Dawkins -- and this
13 is important, when you have a small business it's
14 the revenues that you live on and you survive on.
15 Income is when they take the revenues that you earn
16 and from the work that you do, I get a little
17 worked up and hot, you have that -- the revenues
18 are what you go out and do the work and you make
19 the money. Then you have expenses, write-offs,
20 depreciation, those kind of things that go in and
21 get deducted from the receipts and then that's
22 what's left is listed as income.

23 And when you are a small business,
24 small businesses don't produce a lot of income.
25 And small business owners live off of what they

1 generate. They live off of that cash flow. And as
2 hard a worker Maurice Dawkins was before this, you
3 shouldn't have any doubt but what he was going to
4 be able to build his business back.

5 So, ladies and gentlemen, you go back
6 in the jury room and you decide if you don't
7 believe that had Maurice Dawkins not been injured
8 he would have never been able to get the business
9 built back up. He had gross receipts in 2006,
10 that's the last year he really worked full time,
11 before his first daughter died, he had gross
12 receipts of \$61,900. Generated \$61,000 in
13 revenues. All right?

14 Mr. Griffith wants to point to the
15 income as the important factor because the income
16 is low. But, ladies and gentlemen, again, income
17 comes after all those things come out of income,
18 taxes, deductions, expenses, depreciation on
19 equipment, I'm sure there are some other things,
20 but I'm not an accountant, but those things come
21 off of that to derive at income. His receipts were
22 61,000 in 2006. They dropped off in '07 because he
23 spent a lot time in California where his daughter
24 had been deceased, murdered and they couldn't solve
25 the murder and he was out there a lot. 2008 still

1 dealing with that. 2009 other daughter died, goes
2 to Jamaica, he's down there 2009 all the way
3 through the beginning of 2010. So in 2010 he comes
4 back in June. Around June he is working on the
5 church. You heard Mr. Burns. He is working
6 basically full time on the church and so in 2010
7 before the wreck he only generated \$5,130 in
8 receipts, but that's why, because he had been out
9 of the country, he had been in Jamaica and he spent
10 most of his time working on the church.

11 So, ladies and gentlemen, you go back
12 and you decide whether Maurice Dawkins would have
13 been able to build his business back if he hadn't
14 been injured in 2010. After he had finished
15 dealing with these two tragedies, he would have
16 been able to build that back to where he was when
17 he had receipts of 61,000 in 2006.

18 Now, ladies and gentlemen, again, we
19 believe that when you consider the evidence it is
20 clear that Mr. Sell set this in motion and when you
21 combine his negligence with Mr. Owens' negligence
22 you end up with Maurice Dawkins where Maurice
23 Dawkins is. And Maurice Dawkins' life has been
24 changed. He has been damaged and we are going to
25 talk about the damages in this case and how you

1 calculate those damages when you go back to your
2 jury room to decide what Mr. Dawkins should be
3 compensated for his damages if that's what you so
4 decide.

5 Now, how you decide that is totally and
6 completely up to you. You can use any method you
7 so choose. It is totally within your province.
8 Okay? I can't tell you how to do that. Totally up
9 to you. I can tell you that His Honor is going to
10 tell you what things you take into account when you
11 are trying to decide what damages to award an
12 individual.

13 And the first thing His Honor is going
14 to tell you is that he is entitled to his medical
15 expenses. He is entitled to his medical expenses.
16 And the testimony in this case and Exhibit 7 is
17 that his medical expenses are \$65,563.18. The next
18 thing His Honor is going to tell you is that if you
19 decide they were proximately caused he is entitled
20 to lost wages.

21 Now, there are two things in this case,
22 ladies and gentlemen, there are two time periods.
23 His Honor is going to tell you that a person is
24 entitled to damages up until today and from the
25 date of the wreck through today and entitled to

1 future damages. So we broke it down. It has been
2 August 21st, 2010, to today is 7.17 years.
3 Again, you have to decide what numbers to use. If
4 you decide to use a thousand dollars, you use a
5 thousand dollars. If you decide to use \$20,000,
6 you use \$20,000. I am simply showing you a method
7 and if you decide that had Maurice Dawkins not been
8 injured on August 21st, 2010, he would have been
9 able to earn \$8,000 more in a year, then you would
10 put in \$8,000 a year at 7.17 years from the date of
11 the wreck until today. So that calculation would
12 come to \$57,360.

13 His Honor is going to tell you that the
14 law provides -- the job under the law is to make an
15 injured person whole. If they hadn't been injured
16 how would they be able to make them whole. And you
17 can't undo it, you can't snap your fingers and take
18 his injury away. So you compensate him with
19 monetary damages and there are factors that go into
20 it. Mental anguish is one of the factors that His
21 Honor is going to tell you that you consider. And
22 what mental anguish, you know that is associated
23 with the mental aspect of being in pain.

24 And the law provides that this is a
25 damage because not only will pain break you

1 physically, but it will deplete you and destroy you
2 emotionally. Being in pain has an emotional drain
3 on a person and that's why the law provides for
4 these damages. Mental anguish is for knowing every
5 day when you wake up that there's nothing that can
6 be done to make you better. Mental anguish is for
7 knowing that or for that feeling when at the end of
8 the day and you used to get off work and feel like
9 a man after working from daylight to dark and have
10 that good feeling for accomplishing something,
11 mental anguish is for how you feel now when you
12 have spent most of the day in your house and you're
13 in pain at the end of the day from a couple of
14 hours that you were on your feet.

15 So I propose to you that in the
16 beginning when he's nonweight bearing he's having
17 physical therapy which is hurting him tremendously,
18 he is walking in a boot that at that point in time
19 his mental anguish is significantly worse than it
20 is now.

21 And, again, ladies and gentlemen, you
22 use the figure that you decide, but if you should
23 decide that \$45,000 a year which is, you know, less
24 than \$4,000 a month for having to deal with that is
25 appropriate, that could be 7.17 years, that would

1 be \$322,000 and some change.

2 The next thing the law tells you that
3 you are entitled to is loss of enjoyment of life.
4 And Your Honor is going to instruct you on that.
5 Loss of enjoyment of life would be not being able
6 to help the church, not getting fulfillment from
7 working, being homebound. Not being able to do the
8 things you enjoy, not being able to go and help
9 your neighbors, and again, that's 7.17 years from
10 the date of the wreck until the courtroom today.

11 And if you used a number of \$20,000
12 that would come to \$143,000. And what loss of
13 enjoyment of life is is like I said, it's not being
14 able to go help your neighbors and again that
15 pleasure that you used to get from going out and
16 doing those things for people; it is not being able
17 to help the church build that building. It's not
18 being able to go to the park on a Saturday because
19 you're in pain. It is not being able to go to a
20 movie with a friend at the end of a day after
21 working because you hurt. It's having to be in
22 your house in an afternoon during a regular day
23 when you would otherwise be out working and for the
24 feeling that that generates.

25 Next thing that His Honor is going to

1 instruct you that you are entitled to is pain and
2 suffering. Maurice's pain and suffering at the
3 beginning of this case was worse than it is now.
4 He has gotten to a point where he has learned to
5 deal with it in certain ways. He had the
6 surgeries. The recovery from the surgeries, the
7 multiple surgeries, the physical therapy, the foot
8 swelling, lacerated heel cord. You heard Dr.
9 Stoddard say a head injury, a shoulder injury, and
10 a left heel laceration also.

11 So he's to be compensated pain and
12 suffering for those. Ladies and gentlemen, you
13 decide the number to apply, but for 7.17 years,
14 \$50,000 that would be \$358,000. The judge is going
15 to tell you that Maurice Dawkins as a person is
16 entitled to recover future damages for pain and
17 suffering for injuries caused by another's
18 negligence. All right?

19 And the judge is going to tell you much
20 the same way as the federal government does sleep
21 studies and exams, statistics to determine when a
22 person becomes fatigued, they have statistics and
23 such to tell you what a reasonable life expectancy
24 is. And the judge is going to tell you that based
25 on those statistics a reasonable life expectancy in

1 this case are that the law of life expectancy in
2 this case is 24.79 years. So Mr. Dawkins would be
3 entitled to collect those same damages for every
4 day that he is going to deal with those issues into
5 the future. And again, that's 24.79 years.

6 Now, lost wages is a little bit
7 different because you don't typically work until
8 the end of your life. All right? And so when
9 you're considering future lost wages for purposes
10 of this demonstration only, I used age 65. If you
11 decide that because Maurice Dawkins was one of the
12 hardest working people that most people have ever
13 known he would have worked past age 65, you decide
14 that. You decide when. If you decide that he
15 would have retired at 60 it is totally within your
16 province. I use 65 because that's just a standard
17 retirement age. And, again, if you decide that
18 Maurice Dawkins would have gotten that business
19 built back and that he would have had that business
20 where he wanted it to be, then you would award
21 future damages that is \$12,000 a year, and this is
22 10.7 years, ladies and gentlemen, from today until
23 age 65. So you decide at what age or to what age
24 Mr. Dawkins should receive lost wages.

25 Next is future mental anguish and,

1 again, we have already talked about what mental
2 anguish is. But he is going to have those problems
3 for 24.79 years under the law. And, again, that's
4 for the anguish of being beaten down by pain. This
5 is the mental component that goes with having pain
6 every day, every step you take, every time you go
7 to the bathroom, every time you get up to go to the
8 refrigerator, every time you go out in the car.
9 And the thought process of knowing that you are
10 going to be in pain and anguish comes from what
11 that future compensation would be for.

12 Ladies and gentlemen, that's again
13 24.79 years. If you decided that \$1,250 a month,
14 \$1,250 a month is a fair trade off for what Maurice
15 Dawkins has now, then you would use \$1,250 a month
16 which is \$15,000 a year and that would be times
17 24.7 years or \$371,000.

18 So these are things y'all have to
19 decide. Y'all have to decide what is a fair trade
20 off or fair value for having the condition that he
21 has with the understanding that the law's duty is
22 to make him whole, make him where he would be if he
23 didn't have this injury. Loss of enjoyment of life
24 for future. Again, this is the inability to derive
25 pleasure from enjoyable activities. It's for the

1 way you used to like to help your daughter when you
2 could send her \$500 to help her with an expense and
3 you can't do that now. You lose that enjoyment.
4 It's the things that you can't do in life that give
5 you enjoyment because you're injured and you can't
6 do them and you aren't going to get any better.
7 And, again, you decide the value to put on that,
8 but if you decide \$10,000 a year, which is \$830 a
9 month, \$833 a month, if \$833 a month is a fair
10 value for losing the ability to engage in the
11 things that you enjoy, then use that figure and
12 over 24.79 years that would be \$247,000.

13 Lastly, his future pain and suffering.
14 And, again, ladies and gentlemen, that's one of the
15 biggest deals so we would propose that you consider
16 a different and larger value for that because
17 that's every time you put your foot down and feel
18 that pain, every time you have to go home because
19 you can't work a full day, it is the actual pain
20 that Dr. Stoddard testified that Maurice Dawkins is
21 going to have for the years of his life, pain that
22 he can't do anything about, pain that there is no
23 treatment for, pain that he did not have prior to
24 August 21st, 2010.

25 So, ladies and gentlemen, Mr. Griffith

1 is going to talk to you in a minute and then I will
2 get to talk to you again briefly one more time.
3 Before I sit down I am going to tell you one last
4 time, I thank you sincerely on my behalf. I thank
5 you for Maurice's behalf. You have been courteous,
6 you have been attentive and thank you for taking
7 this very serious matter very serious. Thank you.

8 THE COURT: Mr. Griffith.

9 MR. GRIFFITH: May it please the Court,
10 Mr. Murdaugh, Mr. Barnes, Mr. Foreman, ladies and
11 gentlemen of the jury, I also want to thank you for
12 your time and attention over the past three days.
13 Now we are here to close up and we're here to
14 summarize the case. You heard us on Monday make
15 our opening statements. Tell you what we thought
16 you could anticipate. And today we're here to make
17 our closing arguments.

18 Ladies and gentlemen, you are here to
19 be the conscience to tell us what the facts are in
20 this case. The judge is going to tell you in just
21 a few minutes what the law is. And what the law is
22 going to talk about is basically as the judge is
23 going to tell you that there's certain things that
24 the Plaintiff must prove in order to prove his
25 case.

1 The first of those is negligence. It's
2 a duty and then a breach of that duty. That means
3 do you have an obligation to someone else and then
4 did you breach that duty. Proximate cause
5 generally is something that we talk about in law
6 school but for. But for this accident these
7 injuries would not have happened. But for -- what
8 they are claiming is but for Mr. Sell's accident on
9 the interstate would Mr. Dawkins have had his
10 injuries. And then his damages. Mr. Murdaugh
11 spend a good bit of time talking about trying to
12 tell you how you can calculate those. But these
13 are damages that you have to make a decision on.

14 The judge is going to tell you you're
15 the judge of the facts and how you judge facts
16 because you may not have ever been a judge before
17 you came to court, but actually you do it all the
18 time. I told you the other day does somebody have
19 a bias, do they have an interest, what's their
20 credibility. The judge is going to charge you
21 about that. Does something make their testimony
22 believable or less believable. Whether it be an
23 expert or just a witness in the case. And then
24 just using your good common sense which is
25 something that you do every day when you meet

1 somebody. You determine whether I'm going to
2 believe this person, whether I think this person is
3 being truthful or honest. And, ladies and
4 gentlemen, as the judges then you have to apply the
5 facts as you find them to the law as the judge
6 gives you. But one of the things you need to
7 remember, you took an oath to be fair and
8 impartial. And that means that you got to be fair
9 and impartial to both parties. That is to Mr.
10 Dawkins and to Mr. Sell. This case is not about
11 the lawyers in the case, it is about Mr. Dawkins,
12 Mr. Sell, the facts that night and then you have no
13 friends to reward or enemies to punish in this
14 case. You have to be what's fair and reasonable.

15 As I told you earlier, one of the touch
16 words in the legal system that we learned from when
17 we were in law school and take our year of torts,
18 first year we were there, reasonable. What is the
19 reasonable man standard. That's negligence. What
20 would a reasonable person have done under the same
21 or similar circumstances. Reasonable. What is
22 reasonable in deciding whether this would have
23 happened but for that and then when it comes to
24 damages what are reasonable. You're the conscience
25 and, ladies and gentlemen, you have to make that

1 decision. What is reasonable in this case?

2 Now, I told you on Monday one of the
3 things I like, I like to read. I made this quote
4 on Monday because I took it from Will Rogers, is a
5 jury should decide a case the minute they are shown
6 it before the lawyers have had a chance to confuse
7 them.

8 Ladies and gentlemen, we have tried to
9 lay the case out here. But again I told you on
10 Monday and I think that we all agree, it's a fairly
11 simple case. But the Plaintiff has the burden.
12 And they talk about the burden and the scales and
13 the judge will probably use the scales as an
14 example, but I actually use this because my
15 daughter did this one for me because I don't have
16 that much IT skills, but I use the example of a
17 football field.

18 You got to start at the goal line and
19 you got to at least move the ball past the 50-yard
20 line. That's what the burden of proof is and you
21 got to come with the evidence in this case. And
22 that's what the Plaintiff has to come with. Now,
23 I'm first going to talk a little bit about what
24 they talked about from the income. You saw a large
25 number that they talked about what they would have

1 made, what they should have made. And I just want
2 to go back and say, you know, this is the evidence
3 that we have. This is what was testified to. Mr.
4 Murdaugh started talking about the depreciation and
5 the assets and, ladies and gentlemen, the burden of
6 proof is on the Plaintiff. Mr. Murdaugh said I'm
7 not an accountant. I'm not a CPA.

8 Well, could you have brought in a CPA?
9 Could you have brought an accountant? I have tried
10 many cases in this courtroom where they have an
11 economist come in and testify.

12 Ladies and gentlemen, they didn't bring
13 that evidence. What they brought was they don't
14 even have the tax returns in evidence, but they
15 testified to these numbers. And these are the
16 numbers that we have to go by. And quite frankly,
17 they will tell you that in 2009 or 2010 when this
18 accident happened that the business was going to
19 build. Ladies and gentlemen, I think that's
20 probably just speculation, but what I remember
21 about 2009 and 2010 is we were going into one of
22 the biggest recessions since the Great Depression.
23 But yet the Plaintiff would tell you we were going
24 to build this business that was going to be all
25 businesses.

1 Ladies and gentlemen, there are a lot
2 of businesses that are just starting to come back
3 from that recession. Ladies and gentlemen, you use
4 your common sense. You don't forget what was going
5 on in history when this took place. You have to be
6 the judge of that. If you decide I think that Mr.
7 Dawkins did lose some time from work, I think
8 probably right after the accident we saw his foot.
9 He lost some time. But how do you calculate that?
10 Because we really don't know. So it would be
11 speculation. Would we want to give him one year to
12 build his business back? Would we want to give him
13 the year after this accident when his business
14 actually apparently from an income standpoint
15 doubled? But that was the year after the accident.
16 There were a lot of reasons why he had business
17 problems before, but, ladies and gentlemen, you're
18 the judge of the facts. Could there have been an
19 accountant brought in? I guess there could.

20 What we did miss talking about or
21 hearing about just a minute ago is a lot about
22 Pierce National. This truck that ran into the
23 Budget truck. And that Budget truck I believe the
24 testimony of Trooper Rush was simply that was the
25 way it was when I got there and what we know from

1 the testimony is that truck was facing in the other
2 direction based on the testimony, that it was in
3 the other direction. So we know that this impact
4 that we see in this picture was hard enough to spin
5 the truck all way around. You can use your common
6 sense, ladies and gentlemen, about the impact that
7 took place there.

8 We know that the Pierce National truck
9 went on down the road a good bit after this impact.
10 Ladies and gentlemen, I'm not here to say Mr.
11 Dawkins is not a good guy. I met Mr. Dawkins on
12 several occasions. I have come to like Mr.
13 Dawkins. Mr. Sell testified on the stand. One of
14 the things he said is Mr. Dawkins came to my aid
15 and for that I appreciate it. Mr. Dawkins, we
16 heard from his family, from his friends, his
17 friends, not his family, but his friends that
18 worked in Columbia, that he's a hard worker. He's
19 dependable. He's a nice guy. I believe one of the
20 terms used was Teddy Bear. He's a good guy. We're
21 not here to say he's not a good guy. That issue is
22 not in dispute.

23 But, ladies and gentlemen, they came in
24 and they talked about the injuries and the damages.
25 We know that he had some injury. We know that he

1 hurt his foot. He hurt his left foot. His foot
2 recovered. We know that he had right foot
3 problems. They talked about the extent of his
4 injuries. We know that up for about four or five
5 years he had \$31,000 approximately. If you look at
6 the medical expense on Exhibit 7 you can see there
7 was about \$31,000 and then after he saw Dr.
8 Stoddard it goes to \$35,000. What did Dr. Stoddard
9 say? What we know about Dr. Stoddard is Mr.
10 Murdaugh sent him over there about five years, four
11 and-a-half years after the accident. He went for
12 one visit. He went to see him, not to treat and
13 then after a year he goes back and says I want to
14 get this surgery. I want to try this surgery. And
15 Dr. Stoddard came in and basically he talked about
16 an Achilles Tendon debridement. Basically went in
17 there and he said I saw scar tissue. From that we
18 know that he had been to Dr. Harris in Florida
19 before and had an operation on his Achilles Tendon.

20 But what did Dr. Stoddard not know?
21 And that's what the judge is going to tell you
22 about in looking at the law and the credibility of
23 witnesses. Dr. Stoddard testified I wasn't aware
24 from the prior MRI, because I asked him if he had
25 seen this MRI, he said yeah, I got it here

1 somewhere, but you show it to me. There's no
2 laceration on the MRI. What did the doctor say?
3 He did a pump bump removal. I asked him about that
4 because I remember I found it interesting that
5 generally they say the pump bump is right around
6 where the strap on a lady's heel comes. It comes
7 from something called a Haglund Disease or
8 deformity. So in any event I asked him about that.
9 I said Dr. Stoddard, okay, now this was a traumatic
10 pump bump and you had to remove it because the pump
11 bump came from the accident? Yes. But Dr.
12 Stoddard, I go, how come he has got bilateral
13 Haglund's Disease? Where did the left one come
14 from? He had it on both sides.

15 But Dr. Stoddard said well, I didn't
16 know that, but this is different and he explained
17 the difference, this is something that Mr. Dawkins
18 had on both sides. And then Dr. Stoddard said on
19 his first visit in 2014 I think he severed the
20 sural nerve. 2015 when he does the operation he
21 said no, that's not severed. I did an exploration
22 of the peroneal tendon. That was okay. That was
23 intact.

24 Ladies and gentlemen, Dr. Stoddard's
25 not in agreement with all the other doctors. I

1 pointed out because he did not know about the
2 laceration. He agreed Dr. Smith the orthopedic
3 surgeon that saw him within a year said he should
4 get a rest. He should rest, going to take a while
5 to recover, but he should recover. He was not
6 familiar with the MRI and he opined that the sural
7 nerve had been severed, but it was not.

8 Ladies and gentlemen, the judge told
9 you the other day that the Defendant has no burden.
10 He showed up here in court today. Mr. Murdaugh
11 said we should have brought a bunch of doctors.
12 Ladies and gentlemen, the burden of proof rests on
13 the Plaintiff. He made the argument we would have
14 brought them if they would have said something
15 good. Ladies and gentlemen, let's go back and
16 listen to the testimony and let's think about that
17 burden because you're not volunteers here. You
18 didn't just show up and hear there was court going
19 on in Hampton County. You got a subpoena. You
20 were required to come here.

21 In the opening statement Mr. Murdaugh
22 said I'm going to talk about money and that seems
23 to be what he talked a lot about. But the
24 Plaintiff has the burden of proof, and ladies and
25 gentlemen, you should require the evidence when

1 somebody comes and tells you this is a serious
2 case, a serious case. We saw evidence brought by
3 way of deposition. They could have brought doctors
4 by way of deposition. And let's look at the
5 doctors that came and testified. What did Dr.
6 Patel have to say? The Plaintiff take his
7 deposition? Did Dr. Patel drive down here like Mr.
8 Dawkins' friends from Columbia?

9 The evidence Dr. Patel gave you is
10 exactly what you see on the screen. The same for
11 Dr. Davis. The same for Dr. Smith. That Dr.
12 Stoddard agreed, said you just need to rest and it
13 should be okay. The same for Dr. McCain. And we
14 have traveled and taken depositions the same for
15 Dr. Harris. The Plaintiff has the burden of proof.
16 And the doctor they brought you was the doctor they
17 sent him to. No other doctors that treated him.
18 As a matter of fact, didn't even bring the
19 emergency room doctor from Hampton Regional Medical
20 Center. Mr. Dawkins didn't care for their
21 treatment.

22 Ladies and gentlemen, that's what
23 damages are. That's how you have to look at the
24 evidence to see if they brought you the evidence to
25 prove their case. Ladies and gentlemen, I heard

1 the Plaintiff ask for a huge number. And the way
2 they do that is called the per diem argument which
3 I hear in almost every case I try. And that per
4 diem argument is basically you take two numbers,
5 all you got to do is you fit one number in and you
6 multiply it out and get as big a number as you can.
7 I came in here. Mr. Murdaugh had talked on Monday
8 about a serious case, and he was going to talk
9 about money and today he asked for a huge number.
10 He didn't even total it up for you. I'm sure he
11 will when I sit down. I expected his number to
12 come in and him to say something huge in the
13 neighborhood of two or \$300,000. Ladies and
14 gentlemen, he went well overboard with that. Your
15 job as jurors is to do what's fair and reasonable.
16 You have to look at the evidence that was presented
17 and decide does this come to this amount. What is
18 fair and reasonable.

19 We are not here to make somebody rich.
20 Ladies and gentlemen, if that's the case, next time
21 you are driving down the interstate and see
22 somebody had an accident sitting there put a target
23 on. We are not here to make somebody rich, ladies
24 and gentlemen. You are here to do what's fair and
25 reasonable. Not to be a windfall, it is to

1 compensate. The way they argued it it is just a
2 simple way of using math although they said they're
3 not accountants. They used that simple formula one
4 times two equals two, but it's two times two is
5 four. We can put whatever numbers we want in to
6 get a number in front of you that say this needs to
7 be a big case. But, ladies and gentlemen, you came
8 here and you are entitled to the evidence. You
9 didn't hear the doctors that treated him that were
10 not referred by the lawyer. You heard the doctors
11 testimony from Columbia. Decide.

12 But, ladies and gentlemen, what I
13 really want to talk about, and the reason I talked
14 to you about injuries is because if I neglected
15 them then all we got to do is listen to what they
16 got to say and you can go back in the jury room and
17 say well, Mr. Griffith never talked about them. I
18 do want to talk about them. I don't think that's
19 an issue that you should get to because I think the
20 case is simpler than that. Like Will Rogers said,
21 let's don't get confused by it. But I can't ignore
22 it.

23 I could tell take a number in there and
24 say the medical expenses, maybe you want to take
25 that \$30,000, 31,000 and double it. Maybe you want

1 to give him two times the medical expenses. Maybe
2 you want to take the \$60,000 and double it. That's
3 a method of calculating damages. But that's simply
4 a method. Ladies and gentlemen, just as Mr.
5 Murdaugh used it to get a big number in front of
6 you, I can make that number whatever because
7 whatever I want to multiply it by. Maybe you want
8 to say some of these weren't necessary. Maybe you
9 want to say all of them were necessary. You,
10 ladies and gentlemen, you have to make that
11 decision.

12 Now, when we talk about the real issue
13 I think in this case you never get to the damages
14 because the Plaintiff's negligence is a breach of
15 duty to someone. Also, Mr. Murdaugh talked about
16 intervening acts of negligence. The judge is going
17 to charge you on negligence and intervening acts of
18 negligence. And an intervening act of negligence
19 is the one that the judge is going to charge you is
20 an intervening act which breaks the chain of
21 causation. You must determine if the intervening
22 act or omission was foreseeable or reasonably
23 foreseeable. Breaks the chain of causation.
24 Remember that term. Because the evidence in this
25 case that came in from Kristen Starnes, one of the

1 ladies that stopped, is pretty simple. She said we
2 were on the scene about ten minutes because the
3 question was asked whether you remember it. I know
4 when we read depositions you sit there go and this
5 is pretty boring stuff. But if you hear it and
6 listen to it one of the things that we got out of
7 that was the question, how long were y'all at the
8 scene before the time Mr. Owens hit the box truck.
9 I would estimate probably ten minutes. Twenty
10 other cars passed without incident. In that ten
11 minutes how many cars passed the question was
12 asked. Her answer was cars go around? Yes. Okay.
13 How many cars would you estimate? Probably
14 estimate 20 cars probably.

15 Ladies and gentlemen, that's a lot of
16 cars that got their cars under control driving down
17 the interstate. Not professional drivers, just
18 ordinary people that have the obligation to keep a
19 proper lookout and observe what's there to be seen.
20 Driving in the rain, but then also one of the
21 things we talked about, I heard Ms. Starnes say and
22 I think it is important for you to know at least
23 one other tractor truck passed the Budget truck.
24 How many tractor trucks passed? Or did any tractor
25 trailers pass? Yes. How many would you estimate?

1 One I know for sure. This is a professional driver
2 that came around that was doing everything he was
3 required to do, slowed down, got around. Ms.
4 Starnes said the tractor trailer truck came around.
5 Why did Mr. Owens not do that? Why did Mr. Owens
6 not stop? Ten minutes, chain of causation.

7 Is that chain broken? Well, let's see
8 what her husband said. They weren't married at the
9 time, but Joshua Sparkman. Traffic was backing up
10 before Owens crash and one of the things his answer
11 was I ran back to the truck. They were starting,
12 there was some traffic backing up. I could see
13 debris laying there. I noticed traffic was backing
14 up. Mr. Sparkman also said an 18-wheeler stopped,
15 18-wheeler asked us if we needed any help and we
16 told him no. How was that 18-wheeler able to make
17 the stop? Ask him how many cars came by and he
18 estimated oh, I don't know, I have no idea. Well,
19 I wasn't paying much attention. Was it more than
20 five? Yeah. More than ten. Probably, yeah.

21 This, ladies and gentlemen, again, the
22 question, maybe ten cars at least, one tractor
23 trailer truck, saw this happen and was able to get
24 around it. He felt safe in the Budget truck. He
25 said I felt safe there. I have been trained to do

1 it. I never thought anybody was going to get hit.
2 Mr. Dawkins saw the accident, safely stopped. He
3 was not hurt by the Budget truck.

4 Ladies and gentlemen, what we normally
5 see when we are going down the interstate, we've
6 been involved in some of these cases too. Is where
7 somebody is going down the interstate for some
8 reason where they run off the road and they have a
9 wreck and then what we have is maybe a chain
10 reaction. And that person that had that first
11 accident that wasn't keeping their car under
12 control, they caused the next car to hit, to slam
13 on brakes, boom, boom, boom, that's what is called
14 more than one cause. The person that hit you from
15 behind versus the person that stopped in front.

16 In this accident we don't have that
17 chain reaction. We have five to ten minutes and
18 that's the only evidence. Five to ten minutes. If
19 we take five minutes from now and say look at that
20 clock and in five minutes we look up and say jeez,
21 there was a wreck, cars have started to stop, has
22 the chain of events been broken?

23 Ladies and gentlemen, that's what you
24 as finders of fact have to decide. If you take
25 that five minutes and realize how long that is, and

1 double it to ten minutes. Mr. Dawkins was not hurt
2 by the Budget truck. It's not a chain reaction.
3 He went to the aid of Mr. Sell and his grandson.
4 Mr. Sell says I appreciate it. I thank him for
5 that. I thank the Sparkmans because they were
6 compassionate. Only when they were walking away
7 and he was right beside Mr. Sell, Mr. Sell and Mr.
8 Dawkins were hit. One of the telling things I
9 thought because Mr. Dawkins said I'm not sure why I
10 sued Mr. Sell. And maybe I did like a Baptist
11 preacher, I told you what I'm going to say, I said
12 it and then I said what I was going to say. In the
13 Baptist church we do it three times. Tell you what
14 you're going to say, say it, then tell you what you
15 heard.

16 Ladies and gentlemen, maybe I went over
17 it too many times, but it's right telling to me Mr.
18 Dawkins said I'm not sure why I sued him. That was
19 under oath more than three years ago when he said
20 that. And he said I left it to my lawyers. That
21 was his explanation today or yesterday. But he
22 also left his medical doctor that came and
23 testified to his lawyer too. I will say this
24 because jumping ahead they talked about my expert
25 who was getting paid. Dr. Stoddard have a reason

1 to come here? Did he have a surgery on the line?
2 Doubling the medical expenses. Everybody has got a
3 right to get paid for their time. I don't hold
4 that against Dr. Stoddard or my expert. But they
5 would tell you that.

6 Ladies and gentlemen, what I want to
7 talk about really is the real party at fault in
8 this case, that's the Pierce National people. And
9 the explanation I have heard is the white elephant
10 in the room. The white elephant in the room is a
11 metaphor or an idiom that basically means it's
12 here, we know it, we see it, but we don't want to
13 talk about it. Ladies and gentlemen, what I heard
14 from the Plaintiffs in their closing argument was
15 nothing about Pierce National. Nothing about
16 Dennis Owens. It was a white elephant. It was out
17 there and we know it.

18 So, ladies and gentlemen, why not talk
19 about it? There's the empty chair sitting over
20 there underneath the screen. What did Mr. Dennis
21 Owens do? He's a professional driver. He's
22 driving for commerce, he's regulated by the Federal
23 Motor Carrier Safety regulations. He has log
24 books. He's got a bill of lading. He's a
25 professional. What did John Pinckney talk about?

1 When you come in here one of the things is Mr.
2 Pinckney said we have got certain opinions and
3 these are the things that happened with Mr. Owens.
4 He was fatigued, he was driving in a hazardous
5 condition, he should have slowed, he failed to keep
6 a proper lookout and he overdrove his headlights.
7 Those were the four opinions he gave.

8 Federal Motor Carrier Safety
9 regulations do not apply to Jim Sell. That was
10 clear. But the Plaintiff wanted to draw up and say
11 let's see what his log book would look like. But
12 it didn't apply. And the one thing we heard about
13 when the Plaintiff crossed, he wouldn't want you to
14 say we apply to everyone, but that's not the law.
15 But what I did hear Mr. Pinckney say was when asked
16 about other logs he had a habit of doing this. He
17 had a habit of fudging on his records.

18 And, ladies and gentlemen, that's what
19 creates a danger on the road. That's why these
20 Federal Motor Carrier Safety Regulations are in
21 place for the driving safety of the public and the
22 driver himself. He violated those unquestionably.
23 In the bill of lading one of the things that came
24 up is you're like well, I never thought about a
25 bill of lading before. But it's got a lot of

1 information on it. What we know from that bill of
2 lading is that when Mr. Dennis Owens was at DAP
3 America the day before this accident, he was there
4 between 4:30 and 8:00 that night. But what did Mr.
5 Owens tell the federal government the day before
6 the accident? He put on his log books that he was
7 in his sleeper berth when we know for a fact he
8 couldn't have got this from a third party unless he
9 was there.

10 So we know from that when he was
11 actually at DAP he put down here that he was in his
12 sleeper berth, that line right there. And he
13 signed it.

14 The reason they keep these records is
15 they want to make sure that the drivers keep up
16 with their time so that you can audit them because
17 that's what Mr. Pinckney does. He goes back and
18 audits them. And the next morning at 1:00 what did
19 he say he was doing? He said he was loading at
20 1:00 a.m. when we know from the bill of lading that
21 he loaded the night before, that he didn't get his
22 ten hours worth of sleep. His records were false.
23 Mr. Pinckney said I looked at more records on
24 cross-examination and he had a habit of keeping
25 them false.

1 What did Mr. Owens tell you because
2 again another one of those boring depositions that
3 we read, but Mr. Owens said well, did he overdrive
4 his headlights because that was one of the things
5 Mr. Pinckney said he did wrong. That if you are
6 driving down the road in an 80,000-pound truck and
7 trailer or even without it even just in the cab,
8 you can only drive so fast that you can stop as far
9 as you can see.

10 You got to stop before you get to
11 something that you can see. So when that comes
12 into his headlights he ought to be able to stop.
13 Be it a person, a truck, a dog, an animal, does not
14 matter. He ought to be able to stop. Ladies and
15 gentlemen, what did Mr. Owens say? I drove down
16 95, had my lights on dim now. It's really dark. I
17 am driving just like looking at the lines of the
18 highway. His words were you can't drive fast when
19 you can't see real good.

20 What did he say he did? Well, how fast
21 were you going on 95? About 65, 67, so he slowed
22 down. Remember, though, he said that he was
23 governed at about 69 miles an hour so he came down
24 two miles an hour from his speed. And he said I
25 slowed down three miles an hour under the speed

1 limit. This is a man who just told you you can't
2 drive fast when you can't see. He was driving an
3 80,000 pound truck. If it hits something it's
4 going to cause some damage. How fast were you
5 going? Did he overdrive his headlights? You told
6 me, the question was you are going 45 feet away
7 when you realize the white line ran out. So either
8 he is going at 45 feet which if we translate into
9 15 yards, again, I hate to use the football analogy
10 because it's the fall, but ten yards is a first
11 down in football. He was one and-a-half times away
12 from ten yards. Maybe, maybe 45 feet here.
13 Fifteen yards from me to the wall of the jury box
14 before he ever noticed anything in front of him.

15 Was he keeping a proper lookout? Did
16 the other tractor trailer truck that got around
17 keep a proper lookout? Was he going too fast for
18 conditions? Did the other tractor truck keep his
19 truck under control? What was his speed?

20 Ladies and gentlemen, was that chain of
21 events broken by that time in this five or ten
22 minutes? If you remember I told you look at the
23 clock. That was ten minutes ago. Probably think I
24 have been talking for 30 minutes since then, but in
25 any event that's how time goes. That much time had

1 elapsed. How much closer were you when you
2 realized there's nothing in front of you? I
3 imagine the length of this room which was about
4 30 feet. Ladies and gentlemen, Mr. Owens overdrove
5 his headlights. He was going too fast for
6 conditions. He knew it was dark and rainy. He
7 didn't slow down. You can't go fast. Slowed down
8 barely. Notice something 30 feet away. Ladies and
9 gentlemen, he is clearly overdriving his
10 headlights. Overdriving too fast for the
11 conditions.

12 Mr. Dennis Owens, what did he do? Like Mr. Dawkins
13 said when he asked him did you ever say this?

14 Well, he failed to keep a proper lookout. I put
15 this in. At least Mr. Owens had said this
16 according to Mr. Dawkins that he failed to keep his
17 vehicle within the proper lane, failure to use the
18 brakes, stopped slow, too fast for conditions.

19 It's the degree of care that any reasonable person
20 should have used. And in operating with an utter
21 disregard and safety of others. Those were the
22 allegations not by my client, but those were the
23 allegations by Mr. Dawkins against Mr. Owens.

24 Starnes, three cars, 20 cars stopped,
25 one tractor trailer. Sparkman, ten cars, one

1 truck. Sell, cars were coming around. Dawkins
2 said he saw other cars coming around. Had that
3 chain of events been broken? Should a professional
4 driver have been able to see the hazard to be able
5 to avoid it? We know one, maybe three of them had
6 done it.

7 The time, five to ten minutes. I
8 talked about that a minute ago. Other trucks were
9 safely going around. Why did the tractor trailer
10 truck get around Mr. Sell's Budget truck? He
11 complied with the Federal Motor Carrier Safety
12 Regulations. And then we have got the Plaintiff's
13 expert to talk about Federal Motor Carrier Safety
14 Regulations. Same thing --

15 MR. MURDAUGH: Objection. I hate to
16 object, but there is just no evidence that --
17 that's just not the case.

18 MR. GRIFFITH: Well, ladies and
19 gentlemen, you listened to the evidence. You heard
20 that we asked a question of them in the
21 interrogatories that the judge talked about. They
22 listed an expert named David Daugherty and what
23 they said he was going to talk about was the
24 Federal Motor Carrier Safety Regulations. What did
25 we hear from him? The same thing we heard from the

1 doctors in Columbia.

2 The elephant in the courtroom is Mr.
3 Owens. He is not here. Plaintiffs don't want to
4 talk about it. They want to ignore those facts.
5 Ladies and gentlemen, a jury should get the case as
6 soon as they have heard it before we have a chance
7 to confuse you. We are not trying to confuse you.
8 We are trying to make sure you understand this
9 case. This case is about Pierce National. It's
10 about Dennis Owens. I hate to go through that.

11 Plaintiff, I do want to mention this,
12 Plaintiff talked about the cones, triangles,
13 flares. Jim Sell, was he reasonable. Gets out of
14 the truck, gets helped out of the truck. Mr.
15 Dawkins I think said that he looked a little bit
16 dazed. Ms. Sparkman said he looked a little bit
17 dazed. He thought he was in good shape. He was
18 concerned about his grandson. Was that reasonable?
19 Was that reason to be concerned about your
20 grandson? Should you run around and start putting
21 out flares? Cones. That he probably didn't even
22 know were in the truck. Never been told that.
23 Because he's not a professional driver. Pierce
24 National put Dennis Owens on this road. This is
25 the cause of the accident.

1 Ladies and gentlemen, the Plaintiff has
2 the burden. That burden is heavy. The judge told
3 you a minute ago and Mr. Murdaugh told you that
4 when I sit down I am not going to have a chance to
5 say anything else. Plaintiff gets to go first
6 because he has the burden. I talk because I have
7 no burden. And then the Plaintiff gets to go again
8 so he gets to talk to you twice.

9 Ladies and gentlemen, I used this
10 analogy. I have said it before. If you have seen
11 the movie 12 Angry Men. It's a wonderful movie.
12 It's about it starts off with a jury in a jury room
13 and that's what the case is about. Where one
14 person in that jury room starts saying what about
15 this. What about this.

16 Ladies and gentlemen, when you finish
17 being a judge of the facts and the judge charges
18 you on the law you then become a lawyer because you
19 can go in the jury room and say Mr. Murdaugh stood
20 up and he used that big number again and he did
21 this and he talked about that. And I can assure
22 you when I sit down the rules don't allow me to get
23 up again. But I am going to sit down and I'm going
24 to go I forgot this. I meant to tell them this.
25 Mr. Murdaugh is going to say something and I am

1 going to say what about this? But I can't do that
2 because the rules prohibit me, so you can go back
3 in there and you can be the voice of reason. And
4 you can say what would Mr. Griffith say? What did
5 the evidence show? Not what was the argument.
6 What did the evidence show?

7 And, ladies and gentlemen, when you do
8 that, you will go back in and you will render your
9 verdict. There's only going to be two verdicts on
10 the verdict form, one we find for the Plaintiff in
11 an amount. You don't break out all the things that
12 Mr. Murdaugh talked about and get the number real
13 high. You come back if you find that Jim Sell was
14 negligent and his negligence caused those injuries,
15 and if you find that Dennis Owens was not the
16 intervening act, that he was not an intervening,
17 and if you find that Dennis Owens was not the sole
18 proximate cause of his injuries, you will render a
19 verdict. And I told you Plaintiff made a
20 suggestion for a large verdict. Your number should
21 be fair and reasonable. But if you listen to the
22 evidence I don't think you to get to that point
23 because the other verdict forms said we find for
24 the Defendant.

25 Ladies and gentlemen, a verdict is a

1 verdict that speaks the truth. The empty chair is
2 the white elephant in the room. What was the cause
3 of this accident that injured Mr. Dawkins? We
4 thank him for what he did for Mr. Sell. But now
5 today we think he is pointing the finger at the
6 wrong chair. There's the chair right over there
7 Mr. Owens should be sitting in.

8 Ladies and gentlemen, a verdict that
9 speaks the truth in this case is a verdict for the
10 Defendant, Jim Sell. Thank you.

11 THE COURT: Mr. Murdaugh.

12 MR. MURDAUGH: Real brief, Your Honor.
13 Just a couple things. Mr. Dawkins through us in
14 the very beginning of this case, the fingers have
15 been pointed at exactly what I told you in the very
16 beginning. Same thing we continue here today, that
17 Mr. Owens was negligent and Mr. Sell was negligent.
18 So I just can't -- it's the only thing we have told
19 you the whole time.

20 Couple things I want to point out that
21 I think are important. First thing that I got to
22 do is there was a picture of a football field up
23 here when he was explaining the burden to you. And
24 I will tell you that is not the law. Mr. Griffith
25 showed you that to meet the burden we start off at

1 the goal line and go all the way out to the 50 and
2 if we get to the 50 then we have met our burden.
3 That's not the law. And the judge is going to tell
4 you. We start on the 50 yard line. It starts out
5 equal and even and if we get off of that 50 yard
6 line more likely than not, most probably, if we
7 move past that 50 yard line by an inch, a
8 centimeter, we have met our burden. So I want to
9 make sure that we have a good understanding of what
10 our burden of proof is and things that we have to
11 prove.

12 One thing is there's been a double
13 standard in this case from the get-go. Mr. Owens
14 is oh so at fault, oh so at fault. He's done
15 everything wrong, you know, the Federal Motor
16 Carrier regulations don't apply to Mr. Sell. But
17 the state law does and the state law requires you
18 to keep your vehicle under proper control at all
19 times. And if you get fatigued and you drive
20 fatigued and you lose control of that vehicle, you
21 are negligent. No if, ands or but. This case is
22 so simple and it's trying to get clouded up and
23 muddled up by all these issues about what you don't
24 see.

25 Ladies and gentlemen, we proved to you

1 everything we had to do. We brought Dr. Stoddard
2 in here to prove to you exactly what Maurice
3 Dawkins' injuries are, exactly how he treated them
4 and explained all of that to you. These other
5 doctors don't have anything to add and if there was
6 one negative thing in there Mr. Griffith would have
7 had them in here. If there was one thing where he
8 got injured somewhere else or he had a problem
9 before he got injured on August the 21st they would
10 have been here.

11 So, you know, at the beginning remember
12 what I asked you to do? I asked you to listen to
13 the evidence. The evidence. What Mr. Griffith
14 wants you to do is think about all these other
15 things that aren't evidence that might be something
16 to it just to plant these seeds of doubt in your
17 head because he knows that out there with all these
18 tort reform movements and all this talking to media
19 about --

20 MR. GRIFFITH: Your Honor --

21 THE COURT: Sustained.

22 MR. MURDAUGH: He knows that -- he
23 wants to get the jury to be skeptical, to be
24 skeptical of someone making a claim.

25 MR. GRIFFITH: Your Honor, again I'm

1 going to object.

2 THE COURT: I sustained his objection.
3 You are to disregard any statement that Mr.
4 Murdaugh made about tort reform movements, all
5 right?

6 MR. MURDAUGH: Now, Mr. Griffith said
7 that Mr. Dawkins is looking for a windfall. That
8 he is looking for a windfall. What the law charges
9 and what I have to do as his lawyer in representing
10 him is ask you to make Mr. Dawkins whole. Stand
11 up, Maurice.

12 MR. GRIFFITH: Judge, based on my
13 objection I think I have a matter of law I would
14 like to take up with the Court.

15 THE COURT: Okay. Folks, once he
16 finished we were going to take a break so we could
17 go to the restroom anyway. We are going to take a
18 break right now. Go ahead and take our break now
19 and go ahead and go to the restroom so when we come
20 back he finishes his argument and I will charge you
21 on the law and don't begin deliberations or
22 discussions.

23 (Thereupon, the jury exited the
24 courtroom at 11:35 a.m.)

25 MR. GRIFFITH: At this time I am going

1 to make a motion for a mistrial based upon the
2 argument of counsel. His inference regarding tort
3 reform is totally inappropriate. He knows that.
4 And in addition to that, the Plaintiff in their
5 pretrial motions in limine asked that that not be
6 referred to and then they chose to use it in their
7 closing. I think that's totally inappropriate and
8 highly prejudicial to my client in this case and as
9 a result I think I respectfully move for a mistrial
10 in this case.

11 THE COURT: How does it prejudice you?

12 MR. GRIFFITH: Judge, I think it
13 prejudices by the fact that Plaintiff actually
14 asked that it not be talked about. So they must
15 think it requires -- it creates some type of
16 prejudice as a result, then they tell me in their
17 closing they start to use it. I believe that it
18 could inflame the jury to some type of damage that
19 might not even be within their province of evidence
20 that they receive. Because now he has injected
21 clearly insurance into it because tort reform,
22 that's all they talk about is the insurance company
23 doing that. As a result Mr. Sell does have
24 insurance and I think that that would certainly
25 prejudice him.

1 THE COURT: Mr. Murdaugh.

2 MR. MURDAUGH: Judge, number one, it
3 wasn't in our motion in that and the judge has
4 already sustained his motion and corrected me.
5 Stopped me from doing it and I don't see where
6 there is any prejudice.

7 THE COURT: Well, I think it was
8 probably inadvertent on your part. I told the jury
9 to disregard it. I think it's one of those things
10 you can cut both ways and I am having a little bit
11 of trouble trying to figure how exactly it would
12 prejudice you. It's one of those things that could
13 actually cut both ways. I have told the jury not
14 to consider that. I'll tell them again. Well, I
15 don't want to draw attention to it. I told them
16 not to consider it and disregard it so I'm going to
17 deny the motion.

18 MR. GRIFFITH: Yes, sir.

19 THE COURT: All right. Why don't you
20 guys go to the restroom and when we get back we
21 will go into jury charge.

22 (A recess transpired.)

23 (Whereupon the jury entered the
24 courtroom at 11:42 a.m.)

25 THE COURT: Welcome back. Folks, we

1 will continue now with Mr. Murdaugh completing his
2 reply.

3 MR. MURDAUGH: Thank you, sir. What we
4 were talking about when you went out is this
5 casting of doubt about this case over things that,
6 you know, aren't here, you don't want to see.
7 Ladies and gentlemen, we brought the evidence here
8 to prove to you every single element of the case.
9 It was a duty, there was a breach of that duty,
10 that he's injured and that his injuries came from
11 that collision. We proved to you what the injuries
12 are. He does this because he knows juries are
13 skeptical of people filing lawsuits.

14 So I ask you use your common sense, use
15 your common sense to evaluate the evidence in this
16 case and don't go chasing after these smoke trails
17 that are put out about what isn't here.

18 Now, Mr. Griffith talked about the
19 damages. You know, my job is to present a serious
20 case and the law requires me to attempt to make Mr.
21 Dawkins whole.

22 Pull your leg up.

23 (The Defendant stood.)

24 You can sit back down. It's 11:45. He
25 has been sitting here. He drove from Columbia.

1 And his leg is so swollen that his sock is leaving
2 an impression. That's a serious case. This is a
3 serious case. The man's life has changed. I ask
4 you to go back there and you consider his damages
5 seriously.

6 I'm going to talk to you real quick
7 about a couple other things that Mr. Griffith
8 pointed out. Put up Exhibit 8. Ladies and
9 gentlemen, we said from the get-go you know what?
10 You decide what you think is fair and you think is
11 reasonable. In 2006 before he had the crises with
12 his family he had \$61,000 in receipts. That meant
13 he went out and worked and he got paid \$61,960. In
14 2007 he got paid 46,000, 2008, 45, 2009, 37 and you
15 heard why those went down because he had a death of
16 his daughter, he was in California for a
17 substantial period in 2007 and part of 2008. 2009
18 he was dealing with his daughter in the Bahamas,
19 had an aneurysm. He was gone for most of 2010 and
20 then he came back. He worked on the church. You
21 heard Mr. Burns. Mr. Burns said he worked so hard
22 he couldn't keep up with him, but he earned \$5,130.

23 The issue here is you go back and
24 decide if he had not received what you see right
25 there would he have been able to build that

1 business back up after 2010 and in 2011, '12, '13,
2 and '14, would his gross receipts have been more
3 than what you see on this piece of paper, would he
4 have been able to bring in money. So, ladies and
5 gentlemen, you go decide that.

6 Ladies and gentlemen, we would not be
7 here if Mr. Sell had not been negligent in
8 operating this truck. And this 24-foot box truck
9 is across I-95. Now Mr. Sell says hey, you know
10 what, Maurice? Thank you, thank you for stopping.
11 But then you remember he got offended, he got
12 offended when Mr. Barnes was asking him about his
13 negligence. But remember this too: When his
14 grandson made a claim he saw to it that was paid.
15 Has grandson made a complaint against him. Not
16 Owens, grandson made a complaint Mr. Sell, Mr. Sell
17 saw to it that his grandson's case was settled.
18 But yet thank you, Mr. Dawkins, but I don't take
19 any responsibility. Ask you to please go back
20 there, consider the law, consider the evidence and
21 make Mr. Sell take responsibility. Thank you.

22 THE COURT: Folks, you remember I
23 talked to you at the beginning of the trial. Some
24 of the things I am going to tell you now are
25 reviewing things we have talked about throughout

1 the trial. But I told you you have functions
2 during trial. I have functions during the trial.

3 One of my jobs is to be the judge of
4 the law. I preside over the trial, make sure both
5 sides get a fair trial, rule on things like what
6 can come into evidence, that sort of thing.
7 Evidence again being what people got up and said on
8 the witness stand, photographs, documents, that's
9 evidence. That's for you to consider now.

10 But I also now have the additional duty
11 of charging on what the law is that applies to this
12 kind of case.

13 Under the oath that you took at the
14 beginning of the trial you now have an obligation
15 to accept the law as I now charge it to you and if
16 it doesn't agree with what you think the law is or
17 what you wish the law was, well, under that oath
18 that you took you have an obligation to disregard
19 those things to apply the law as I now charge it to
20 you.

21 Now, you're the judges of the facts.
22 And I told you at the beginning of the trial you
23 are the sole judges of the facts. I can't comment
24 on what I think about this case or on the facts.
25 The law doesn't allow me to have an opinion about

1 the case. That's solely a matter for you to
2 determine how to resolve factual disputes. It is
3 your duty as jurors to determine the effect, the
4 value, the weight and the truth of the evidence
5 that got presented during this trial.

6 One of the things that you decide as a
7 juror is judging the credibility of witnesses.
8 Credibility simply means believability and it is
9 your duty as jurors to analyze and evaluate the
10 evidence and determine what evidence convinces you
11 of its truth.

12 Now, in determining the believability
13 of witnesses who testified in the case, you can
14 believe one witness over several witnesses or
15 several witnesses over one witness. You can
16 believe the testimony of a witness in its entirety
17 or you can reject the testimony of a witness in its
18 entirety. You can believe the testimony in part or
19 in whole. And if you believe part of it you can
20 still reject part of it and whatever you reject you
21 can still believe the rest of the testimony of a
22 witness. You can determine whether a witness has
23 exhibited any kind of interest in the case, any
24 bias, prejudice or any other motive in the case and
25 you can consider things like their answer or their

1 demeanor on the witness stand. In other words,
2 you're not bound to decide this case based on the
3 number of witnesses that are produced by one side
4 or the other.

5 And the fact that a witness's testimony
6 is not contradicted directly doesn't messily mean
7 that it is undisputed. You can consider the
8 inherent probability of testimony and credibility
9 of a witness. Uncontradicted testimony isn't
10 binding on you and you have the right to consider
11 it in light of all of the circumstances and give it
12 such weight, if any, that you think it deserves.

13 Now, I talked to you at the beginning
14 of the trial about the burden of proof and the
15 burden of proof in a case like this is what we call
16 a preponderance of the evidence which is also
17 called the greater weight of the evidence and it
18 just means that when viewed as a whole it shows
19 that a fact is -- that is sought to be proved is
20 more likely true than not the true. This is
21 illustrated by that set of scales we talked about
22 and when the case begins those scales are even.
23 After all the evidence has been presented, if those
24 scales tip even slightly in favor of the Plaintiff
25 the Plaintiff met its burden of proof and he is

1 entitled to a verdict.

2 In other words, at the end of the trial
3 in your mind if those scales are still even or
4 maybe you think they even tip in favor of the
5 defense, then the Plaintiff has not met the burden
6 of proof and the Defendant would be entitled to a
7 verdict.

8 Again, preponderance of the evidence
9 isn't determined by the number of witnesses that a
10 side produces. Instead it's determined by the
11 greater weight of all of the evidence. We also
12 have usually two types of evidence that's presented
13 in a trial. There's direct evidence and there's
14 circumstantial evidence. Direct evidence directly
15 proves the existence of a fact and it doesn't
16 require any deduction. Circumstantial evidence on
17 the other hand is proof of a chain of facts and
18 circumstances that simply indicate the existence of
19 a fact.

20 I also told you about expert witnesses
21 and told you at the beginning of the trial that we
22 don't normally let people come in and testify in
23 the form of giving their opinion to you about what
24 they think of a case.

25 We do make an exception for expert

1 witnesses and those are people who because of their
2 experience or their education or some kind of
3 specialized training in a field they rise to the
4 level of expertise and they are allowed to come
5 into court and they can give you their opinion and
6 they can state the reasons for this opinion.

7 Now, if you don't think that an
8 expert's opinion or you can give an expert's
9 opinion as much or as little weight as you think it
10 deserves and if you don't think it's based on
11 sufficient education or experience, or you conclude
12 that the expert's opinion is not sound or that it
13 is outweighed by other evidence then you can
14 disregard that opinion entirely. In other words,
15 you are not compelled to blindly accept an expert's
16 opinion and you have the right to consider it in
17 light of all of the circumstances and give it such
18 weight, if any, that you think it is entitled to.

19 I also talked to you about deposition
20 testimony and told you that that's simply testimony
21 that was taken under oath outside the courtroom.
22 It was preserved in writing. And you are to
23 consider that testimony the same as if it was
24 presented to you here live by a person testifying
25 in the courtroom.

1 Now, this case is brought to you under
2 a theory or cause of action that we call
3 negligence. In order to prove negligence Plaintiff
4 has to prove by a preponderance of the evidence, in
5 other words, got to prove it by the greater weight
6 of the evidence that the Defendant was negligent
7 and should compensate the Plaintiff for the
8 injuries the Plaintiff suffered as a result of the
9 Defendant's negligence.

10 In order to prove that a Defendant was
11 negligent the Plaintiff must prove by a
12 preponderance of the evidence the following things:
13 first, the Plaintiff has to prove the Defendant
14 owed the Plaintiff a duty of care. Plaintiff must
15 then prove by a preponderance of the evidence that
16 the Defendant breached that duty of care by a
17 negligent act or omission and that the Plaintiff
18 suffered damages as a result of the Defendant's
19 breach of that duty of care and then finally that
20 the Plaintiff's damages were proximately caused by
21 the Defendant's breach of duty.

22 So I am going to break down each one of
23 those elements in a little more detail for you. So
24 let's talk about standard of care. So Plaintiff
25 has got to prove that the Defendant owed a standard

1 of care to the Defendant and I will charge you that
2 in South Carolina the operator of a motor vehicle
3 is required to use the same care that would be used
4 by a person of ordinary reason and prudence if that
5 person were driving the same vehicle at the same
6 time and place and under the same circumstances.

7 The driver of an automobile also has a
8 duty to keep an automobile under proper control so
9 that the driver is able to slow down, stop or turn
10 an automobile to avoid colliding with other
11 vehicles, pedestrians or objects lawfully on the
12 road.

13 Now, let's talk about breach of a
14 standard of care. So the Plaintiff has to prove
15 the Defendant negligently departed from the
16 standard of care. Negligence is the failure to do
17 what an ordinary driver would do under the same or
18 similar circumstances would have done. In
19 considering whether or not the Defendants made a
20 reasonable decision -- the Defendant made a
21 reasonable decision, you must consider the decision
22 in relation to the facts as they exist at the time
23 and not in light of what hindsight may reveal.

24 Now, let's talk about this proximate
25 cause because that's a word you probably haven't

1 heard before. Sounds like a word you have heard,
2 but you probably haven't heard of the word
3 proximate cause before. So the Plaintiff has to
4 prove that the Defendant's negligence, in other
5 words, his breach of the standard of care,
6 proximately caused the Plaintiff's damages.
7 Proximate cause is something that produces a
8 natural chain of events which in the end brings
9 about the injury. It's the direct cause of the
10 injury.

11 In order to prove that a Defendant's
12 negligence was proximately caused by the
13 Plaintiff's injury, the Plaintiff must first prove
14 causation in fact. This is proven by showing that
15 an injury would not have occurred but for the
16 Defendant's negligence. The Plaintiff must also
17 prove legal cause and legal cause is proven by
18 showing that an injury was foreseeable. This
19 simply means that the injury occurred as a natural
20 and probable consequence of the Defendant's
21 negligence.

22 Plaintiff must prove that some injury
23 from the Defendant's negligence was foreseeable,
24 but does not have to prove that the particular
25 injury that occurred was foreseeable. However, the

1 Defendant cannot be held responsible for something
2 which could not be expected to happen. Proximate
3 cause doesn't mean the only cause. There may be
4 more than one proximate cause. The Defendant's act
5 can be a proximate cause of the Plaintiff's injury
6 if it was at least one of the direct concurring
7 causes of the injury.

8 Now, foreseeability is considered to be
9 the touchstone of proximate cause and this is
10 determined by looking to the natural and probable
11 consequences of the Defendant's act or omission.
12 Now, while foreseeability of some injury from an
13 act or omission is a prerequisite to establishing
14 proximate cause, the Plaintiff need not prove that
15 the Defendant should have contemplated the
16 particular events that occurred. It's not
17 necessary that the Defendant's negligence was the
18 sole proximate cause of the injury. Instead, it is
19 sufficient that the evidence establishes that the
20 Defendant's negligence is a concurring or
21 contributing proximate cause. Concurring causes
22 operate contemporaneously to produce the injury so
23 that it would not have occurred in -- it would not
24 have happened in the absence of either. In other
25 words, if the actor's conduct is a substantial

1 factor in the harm to another, the fact that he
2 neither foresaw nor should have foreseen the extent
3 of harm or the manner in which it occurred does not
4 negate his liability.

5 The burden of proof is a positive duty
6 which may not be met by showing injury alone.
7 Thus, if you find that the Defendant in this case
8 used due care and despite that Mr. Dawkins suffered
9 injury, the fact of injury alone is not evidence of
10 negligence. If the Defendant fails to demonstrate
11 this causal relationship then he fails to prove his
12 cause of action.

13 Now, a chain of causation between the
14 Defendant's negligence and the injury may be broken
15 by the independent intervening acts or omissions of
16 another person over whom the Defendant has no
17 control. In order to decide whether an intervening
18 act breaks the chain of causation you must
19 determine whether or not the intervening act or
20 omission was reasonably foreseeable by the
21 Defendant.

22 If, the intervening act or omission was
23 a probable consequence of the Defendant's
24 negligence, the Defendant is responsible for the
25 Plaintiff's injuries.

1 If however, you find that the
2 intervening act or omission was not foreseeable,
3 the Defendant is not liable unless his actions
4 alone would have caused the Defendant's or the
5 Plaintiff's injuries even without the intervening
6 act or omission.

7 Now, I'm going to read you some
8 statutes because the violation of statutes --
9 statutes set up a standard of care and Plaintiff
10 has claimed that some of these statutes have been
11 violated by the Plaintiff (sic) and that is
12 therefore evidence of a violation of the standard
13 of care.

14 Now, the Plaintiff claims the Defendant
15 failed to follow South Carolina Code
16 Section 56-5-1520 (A) which states a person shall
17 not drive a vehicle on a highway at a speed greater
18 than is reasonable and prudent under the conditions
19 and having regard to the actual and potential
20 hazards then existing.

21 Plaintiff also claims the Defendant
22 failed to follow South Carolina Code
23 Section 56-5-1900 (A) which states whenever any
24 roadway has been divided into two or more clearly
25 marked lanes for traffic the following rules in

1 addition to all others consistent herewith shall
2 apply. Section A, a vehicle shall be driven as
3 nearly as practical entirely within a single lane
4 and shall not be moved from the lane until the
5 driver has first ascertained that such movement can
6 be made with safety.

7 The failure to follow either of these
8 statutory rules is negligence as a matter of law.
9 If you find -- there are some other ones here I got
10 ahold of copies that did not have those in that.
11 Let me make sure I have got these right now.

12 The Plaintiff also claims the Defendant
13 failed to follow South Carolina Code
14 Section 56-5-4410 which states it is unlawful for
15 any person to drive or move or for the owner to
16 cause or knowingly permit to be driven or moved on
17 any highway any vehicle or combination of vehicles
18 which is in such unsafe condition as to render or
19 as to endanger person or property or which does not
20 contain those parts and is not at all times
21 equipped with lights, brakes, steering and other
22 equipment in proper condition and adjustment as
23 required in this article or which is equipped in
24 any manner in violation of this article or for any
25 person to do any act forbidden or fail to perform

1 any act required under this article.

2 Plaintiff also claims the Defendant
3 failed to follow South Carolina Code
4 Section 56-5-5310 which states no person shall
5 drive or move on any highway any vehicle unless the
6 equipment thereon is in good working order and
7 adjustment as required in this chapter and the
8 vehicle is in such safe mechanical condition as not
9 to endanger the driver or other occupant or any
10 person upon the highway.

11 Plaintiff also claims the Defendant
12 failed to follow South Carolina Code
13 Section 56-5-5060, which states no person shall
14 operate any motor vehicle, passenger truck,
15 passenger bus or truck tractor upon any highway
16 outside the corporate limits of municipalities at
17 any time from a half hour after sunset to a half
18 hour before sunrise unless there shall be carried
19 in such vehicle following equipment, at least three
20 flares or three red electric lanterns, each of
21 which shall be capable of being seen and
22 distinguished at a distance of 500 feet under
23 normal atmospheric conditions at nighttime. Each
24 flare which is a liquid called a liquid burning pot
25 torch shall be capable of burning for not less than

1 12 hours in a five mile an hour wind velocity
2 capable of burning in any air velocity from zero to
3 40 miles an hour. Every such flare shall be
4 substantially constructed so that as to withstand
5 reasonable shocks without leaking. Every flare
6 shall be carried in the vehicle in a metal rack
7 box. Every red -- every such red electric lantern
8 shall be capable of operating continually for not
9 less than 12 hours and shall be substantially
10 constructed so as to withstand reasonable shock
11 without breakage.

12 . Two, at least three red burning fuses
13 unless red electric lanterns are carried. Each
14 fuse shall be made in accordance with
15 specifications of the Bureau of Explosives New York
16 and so marked and shall be capable of burning at
17 least 15 minutes. Three, at least two red cloths
18 not less than 12 inches square with standards to
19 support them.

20 The Plaintiff also claims the Defendant
21 failed to follow South Carolina Code
22 Section 56-5-5080 which states as an alternate it
23 shall be deemed a compliance of Section 56-5-5060
24 in the event a person operating any motor vehicle
25 described shall carry in such vehicle three

1 portable reflector units foam standards of the type
2 approved by the Department of Public Safety. No
3 portable reflective unit shall be approved unless
4 it is so designed and constructed as to include two
5 reflectors, one above the other, each of which
6 shall be capable of reflecting red light clearly
7 visible from all distances within 500 to 50 feet
8 under normal atmospheric conditions at nighttime
9 when directly in front of lawful upper beams of
10 head lamps.

11 The Plaintiff also claims that the
12 Defendant failed to follow South Carolina Code
13 Section 56-5-590 which states whenever any motor
14 vehicle, passenger bus, truck trailer, trailer,
15 semi trailer or pole trailer is disabled upon any
16 traveled portion of any highway or the shoulder
17 thereof outside of any municipality at any time
18 when lighted lamps are required on vehicles the
19 driver of such vehicle shall display the following
20 warning devices upon the highway during the time
21 the vehicle is so disabled on the highway.

22 One, a lighted fuse shall be
23 immediately placed on the roadway at the traffic
24 side of the motor vehicle unless electric lanterns
25 are displayed, and two, within the burning period

1 of the fuse as promptly as possible, three, lighted
2 flares, pot torches or three electric lanterns
3 shall be placed on the roadway as follows: One at
4 a distance of approximately 100 feet in advance of
5 the vehicle, one at a distance of approximately 100
6 feet to the rear of the vehicle, each in the center
7 of the lane of traffic occupied by the disabled
8 vehicle and one at the traffic side of the vehicle
9 approximately ten feet rearward or forward thereof.

10 The failure to follow any of these
11 statutory rules is negligence as a matter of law.
12 If you find the Defendant failed to follow any of
13 these statutory rules, you must then decide whether
14 the failure proximately caused the Plaintiff's
15 injury.

16 Now, let us talk about damages. Now,
17 actual damages are also called compensatory
18 damages. And that means they are meant to
19 compensate and they are to make Mr. Dawkins whole
20 and to put him in the same position he was in prior
21 to the damages received insofar as this is
22 monetarily possible. In other words, actual or
23 compensatory damages include compensation for all
24 injuries that are naturally the proximate cause of
25 the alleged wrongful conduct. Actual damages are

1 awarded to Mr. Dawkins to compensate for his actual
2 loss or injury. Actual damages are such as will
3 compensate a party for injuries suffered or losses
4 sustained.

5 They are such damages as will simply
6 make good or replace the loss caused by the wrong
7 or injury. Actual damages are damages in
8 satisfaction of or in recompense for the loss or
9 injury sustained. The goal is to restore the
10 injured party as nearly as possible through payment
11 of money to the same position he was in before the
12 wrongful injury occurred. The amount of actual
13 damages is the amount needed to compensate the
14 Plaintiff for the losses proximately caused by the
15 Defendant's wrong so that the Plaintiff will be in
16 the position he would have been in if there had
17 been no wrongful injury.

18 Actual damages include compensation for
19 all injuries which are naturally the proximate
20 result of the alleged wrongful conduct of the
21 Defendant.

22 The existence, causation or amount of
23 damages cannot be left to conjecture, guesswork or
24 speculation; however, proof of the amount of loss
25 with absolute or mathematical certainty is not

1 required. Damages must be proved with a reasonable
2 degree of certainty.

3 The evidence presented by the Plaintiff
4 must enable you the jury to determine what amount
5 is fair, just and reasonable. Mr. Dawkins bears
6 the burden of proving by a preponderance of the
7 evidence that he is entitled to compensatory
8 damages. If you find the Plaintiff was injured due
9 to the negligent acts of the Defendant, Plaintiff
10 is entitled to be compensated fully for all
11 injuries directly or proximately resulting from
12 those negligent acts.

13 The person who suffers personal
14 injuries because of the negligence of another is
15 entitled to recover the reasonable value of medical
16 care and expenses incurred for the treatment of the
17 injuries to the time of trial. In determining the
18 amount of compensation for injuries suffered by the
19 Plaintiff you may consider and award past, present
20 and future damages. These would include such
21 things as out-of-pocket expenses, medical expenses
22 including physician and medications, any future
23 damages resulting from permanent injuries,
24 disfigurement, alteration of lifestyle, pain and
25 suffering, loss of enjoyment of life, psychological

1 trauma, mental anguish, mental distress,
2 apprehension, anxiety, emotional injury,
3 psychological injury and depression.

4 Mental anguish is something that a
5 person is entitled to recover for which is
6 something that is brought about by bodily injury
7 and suffering. When a person's negligence is
8 directly responsible for the physical injury to
9 another, the injured person may recover for both
10 actual physical injuries sustained and for mental
11 emotional suffering which flows as a natural
12 consequence of wrongful act. When connected with a
13 physical injury the term mental anguish includes
14 both the resultant mental sensation of pain and
15 also the accompanying feeling of distress, fright
16 and anxiety. That is mental anguish covers not
17 only pain associated with the injury, but also the
18 injury, the mental reaction to that pain and the
19 possible consequences of the injury.

20 Mental anguish is more than mere
21 disappointment, anger, worry, resentment or
22 embarrassment, although it may include all of those
23 and it includes the mental sensation of pain
24 resulting from such painful emotions as grief,
25 severe disappointment, indignation, wounded pride,

1 shame, despair, humiliation. Mental anguish can be
2 composed of fright, nervousness, grief, anxiety,
3 worry, mortification, humiliation, embarrassment,
4 terror or ordeal. If you find that Mr. Dawkins is
5 entitled to recover damages you may consider as an
6 element of these damages such mental anguish as you
7 find to a reasonable certainty will occur in the
8 future as a result of the injuries.

9 In assessing mental anguish you may
10 also take into account anxiety or worry about the
11 possible future occurrence or condition resulting
12 from the injuries that Mr. Dawkins received if you
13 are satisfied to a reasonable certainty that Mr.
14 Dawkins will suffer such anxiety and worry. You
15 may award damages for mental anguish where the
16 evidence shows for example, that Mr. Dawkins
17 suffered shock, fright, emotional upset or
18 humiliation as a result of the Defendant's
19 negligence.

20 Loss of capacity to enjoy life
21 resulting from personal injury is also a proper
22 element of damages and if you find evidence of loss
23 of enjoyment of life you can award damages for this
24 loss. Damages for loss of enjoyment of life
25 compensate for the limitation resulting from the

1 Defendant's negligence on the Plaintiff's ability
2 to participate in and derive pleasure from the
3 normal activity of daily life or for his inability
4 to pursue his talent, his recreational interests,
5 his hobbies or avocation. Loss of enjoyment of
6 life damages compensate the Plaintiff not only for
7 the subjective knowledge that he can no longer
8 enjoy all of life pursuits, but also for the
9 objective loss of his ability to engage in these
10 activities.

11 Mr. Dawkins cannot recover conjectural
12 or speculative damages; however, if you find that
13 the Plaintiff is entitled to a verdict for actual
14 damages, your verdict should include an amount to
15 recover any damages that the evidence shows will
16 reasonably -- be reasonably certain to occur in the
17 future. Future damages need not be proven to a
18 mathematical certainty and often must be
19 approximated. These future damages must be the
20 result of Mr. Sell's, Defendant's negligence. Any
21 future damages that you award must be reduced to
22 their present day value.

23 Now, I charge you that the Plaintiff,
24 Mr. Dawkins, was born on November 17th, 1962.
25 Under South Carolina law he has a life expectancy

1 of an additional 24.79 years. You can also
2 consider pain and suffering as a mental or material
3 element of damages on which to base a recovery.
4 Mr. Dawkins is entitled to compensation for his
5 pain and suffering directly resulting from the
6 Defendant's wrongful acts. Pain and suffering
7 awards compensate the Plaintiff for physical
8 discomfort and the emotional response to this
9 sensation of pain caused by the injury itself. In
10 making an estimate of damages to be awarded for
11 pain and suffering, you can consider the nature and
12 extent of the injuries and the suffering occasioned
13 by them and its duration or prospective duration,
14 the age, the health, the habits, the condition of
15 Mr. Dawkins before the injury as compared with his
16 conditions after and the Plaintiff's use of
17 sedatives and other drugs to relieve pain and their
18 effect. Pain and suffering has no market price.
19 It is not capable of exact measurement and there is
20 no fixed rule or standard by which damages for them
21 can be measured.

22 The amount of damages to be awarded for
23 pain and suffering must be left to the judgment of
24 you the jury. In addition, you may include such
25 damages for pain and suffering as is reasonably

1 certain and will of necessity result in the future
2 from the injury. Future pain and suffering on the
3 part of Mr. Dawkins and consequences of the injury
4 constitute a proper element of the damage which may
5 be allowed provided there is requisite certainty of
6 pain and suffering that will result in the future.

7 Now, I charge you that your verdict
8 cannot be based on sympathy, passion, prejudice or
9 emotion or on some other consideration not found in
10 the evidence. Finally, your verdict must be
11 unanimous which, of course, means all 12 jurors
12 must agree.

13 Now, Mr. Foreman, this is the verdict
14 form. You will see there are two possible verdicts
15 in the case. There's a verdict for the Plaintiff
16 and there's a verdict for the Defendant. If the
17 jury finds by unanimous decision that the Plaintiff
18 has met his burden of proof and is entitled to a
19 money award, you will write that -- check that
20 first block. You will see a dollar sign, write
21 that dollar amount in there, sign it, date it, let
22 the bailiff know you have reached a verdict.

23 On the other hand, if it's the jury's
24 unanimous decision that the Plaintiff has not met
25 his burden of proof, then you will check the second

1 block which says we the jury find for the Defendant
2 and you would sign and date there and let the
3 bailiff know.

4 I am going to send you back to the jury
5 room. Hold off on beginning your deliberations
6 just yet. I have to give the lawyers the
7 opportunity to tell me if I misspoke something.
8 Then we will get the evidence together. I will
9 send it back to you along with the verdict form and
10 the bailiff will tell you the judge says you can
11 begin your deliberations. Don't begin
12 deliberations until you get that back. Okay?

13 Now, when your lunch comes, I don't
14 know, it may be here yet, you can eat during your
15 deliberations. Or you can put your deliberations
16 aside and eat first, totally up to you. But in
17 order to deliberate all 12 jurors must be in the
18 jury room. So if someone needs to step out to go
19 smoke a cigarette or they want to eat outside or
20 whatever, cease deliberations until all 12 jurors
21 are in the jury room. You can have your lunch and
22 eat it through your deliberations if you desire.

23 Again, go back with the bailiff. Don't
24 begin until I send back the evidence along with the
25 verdicts in order to begin deliberations.

1 (Thereupon, the jury exited the
2 courtroom at 12:29 p.m.)

3 THE COURT: All right. Anything from
4 the Plaintiff?

5 MR. BARNES: Your Honor, we would just
6 obviously based on our directed verdict motion
7 renew our objection to the intervening negligence
8 charge and we renew that and put that on the
9 record.

10 THE COURT: All right.

11 MR. BARNES: And lastly I have not seen
12 the verdict form, but I just want to make sure that
13 given that --

14 THE COURT: I thought you had.

15 MR. BARNES: Given that Pierce National
16 and Owens were on the charge --

17 THE COURT: It is not on the verdict
18 form there. I don't know how it got on there.

19 MR. BARNES: I just wanted to make
20 sure.

21 THE COURT: Sure. Anything else from
22 the Plaintiff?

23 MR. BARNES: That's it.

24 THE COURT: From the defense?

25 MR. GRIFFITH: Yes, Your Honor. I just

1 simply take exception, I had submitted three
2 charges, two on the Federal Motor Carrier Safety
3 Act that I requested to be charged that were not
4 charged. I also requested one to be charged on
5 expert fees and it was not charged.

6 THE COURT: Yes.

7 MR. GRIFFITH: Thank you, Judge.

8 THE COURT: All right. Is all the
9 evidence together then?

10 (Thereupon, the jury began deliberating
11 at 12:33 p.m.)

12 THE COURT: Let the record reflect that
13 I have dismissed the alternates, let them have
14 their lunch and sent them gently on their way.

15 (Thereupon, the jury reached a verdict
16 at 1:41 p.m.)

17 THE COURT: We got everybody here?
18 Bring the jury in.

19 (Whereupon the jury entered the
20 courtroom at 1:55 p.m.)

21 THE CLERK: Mr. Foreman, you have
22 reached a verdict?

23 THE FOREMAN: Yes, we did.

24 THE COURT: Hand that to the clerk,
25 please. Is it a unanimous verdict?

1 THE FOREMAN: Yes, it is.

2 THE COURT: All right. In the case of
3 Maurice Dawkins versus James A. Sell the verdict is
4 for the Defendant. If this is, in fact, your
5 verdict would you please indicate that by raising
6 your right hands?

7 Let the record reflect that all the
8 jurors have raised their right hands. Thank you
9 very much. Let me thank you for your service,
10 folks, for this week. We ask people to come in and
11 do a difficult job and that is take time away from
12 your normal life and come in, listen to the
13 evidence and then make a decision. It is a hard
14 decision. These people understandably had their
15 day in court and you can see where the differences
16 were on it. It's obvious that you not only were
17 attentive during the trial, but you gave it good
18 deliberations. You didn't rush to a verdict. So
19 you have done everything that anybody could ask of
20 a juror. Showing up is important, but being a good
21 juror and participating and giving the case the
22 seriousness that it is due is really a lot of the
23 experience and so I thank you for that service.

24 You are now free for the rest of the
25 week. You don't have to call back. You don't have

1 to come in tomorrow. You might remember from
2 Monday when we were qualifying the jury that you
3 were -- you're now disqualified for the rest of the
4 year from being a juror. You are also exempt for
5 three years after this year from serving again.
6 But as you might remember, I also said you don't
7 have to exercise those.

8 So my hope is that you enjoyed the
9 experience enough that if you get called in the
10 next three years you want to do it again. At a
11 minimum I hope that you go back and tell your
12 people that you run into you really enjoyed the
13 jury experience. Most people when they get that
14 notice they go, you know, I really wish I could be
15 on a jury some other time. This just isn't a good
16 time.

17 My experience has been when they get it
18 and they get picked they really do enjoy the jury
19 service. They learn about the experience, they
20 learn about the process and I think feel better
21 about the legal system and the way the adversarial
22 process work. And I told you you listen to both
23 sides. You wait until the end to make up your
24 mind. That's a good way to go through life making
25 decisions I have found. I don't always follow it,

1 but I found it really works in my own life as well.

2 But people that have served on a jury
3 generally speaking have a good experience about it
4 and that's what we hope that you will go out and
5 tell people that you had a good experience being a
6 juror so that when they get the call they will also
7 come and participate. That's all we can ask and
8 you have been a wonderful jury. We have taken up
9 enough of your time so I won't talk any more.

10 Now, I will tell you just two things.
11 I have told you all week long you can't talk to
12 anybody, you can't put anything on social media or
13 anything like that. Those restrictions are lifted.
14 You can talk to anybody you want to. You can put
15 anything on social media that you want to.
16 Sometimes lawyers from the case might contact you
17 and say would you mind talking with me about the
18 experience so that they can learn more about what
19 they do or what you think in order to help them the
20 next time. It is perfectly fine to talk to lawyers
21 now that the case is over with. You are not doing
22 anything wrong if they call you and you talk to
23 them.

24 On the other hand, if you don't want to
25 talk to them just say I would rather not talk to

1 you and they won't bother you. Somebody from their
2 office might call you or something like that. But
3 you are not doing wrong if you talk to anybody,
4 including the lawyers. If you do post something on
5 social media tell them how good looking the judge
6 was, okay? Thank you for your service. If you
7 need anything for work the clerk's office can give
8 you a little slip telling these were the days that
9 you worked. Okay? Thank you very much for your
10 service.

11 (Thereupon, the jury exited the
12 courtroom at 1:58 p.m.)

13 THE COURT: All right. Well, I want to
14 say thank you for doing a very good, professional
15 job on both sides. It was an absolute pleasure to
16 be here this week. The clerk does a good job
17 running their court. You guys did a good job
18 presenting the trial. You have ten days to make
19 any post-trial motions if you want to. And I hope
20 we get the opportunity to do it again some day.

21 MR. GRIFFITH: Thank you, Judge.

22 (These proceedings were concluded at
23 1:59 p.m., October 12, 2017, Hampton County, South
24 Carolina.)
25

CERTIFICATE OF REPORTER

I, Ruth C. Weese, Registered Diplomat
Reporter for the State of South Carolina at Large,
do hereby certify that the foregoing transcript is
a true, accurate, and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 4th day of January, 2018 at
Charleston, Charleston County, South Carolina.

Ruth C. Weese

Ruth C. Weese
Registered Diplomat
Reporter



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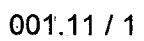
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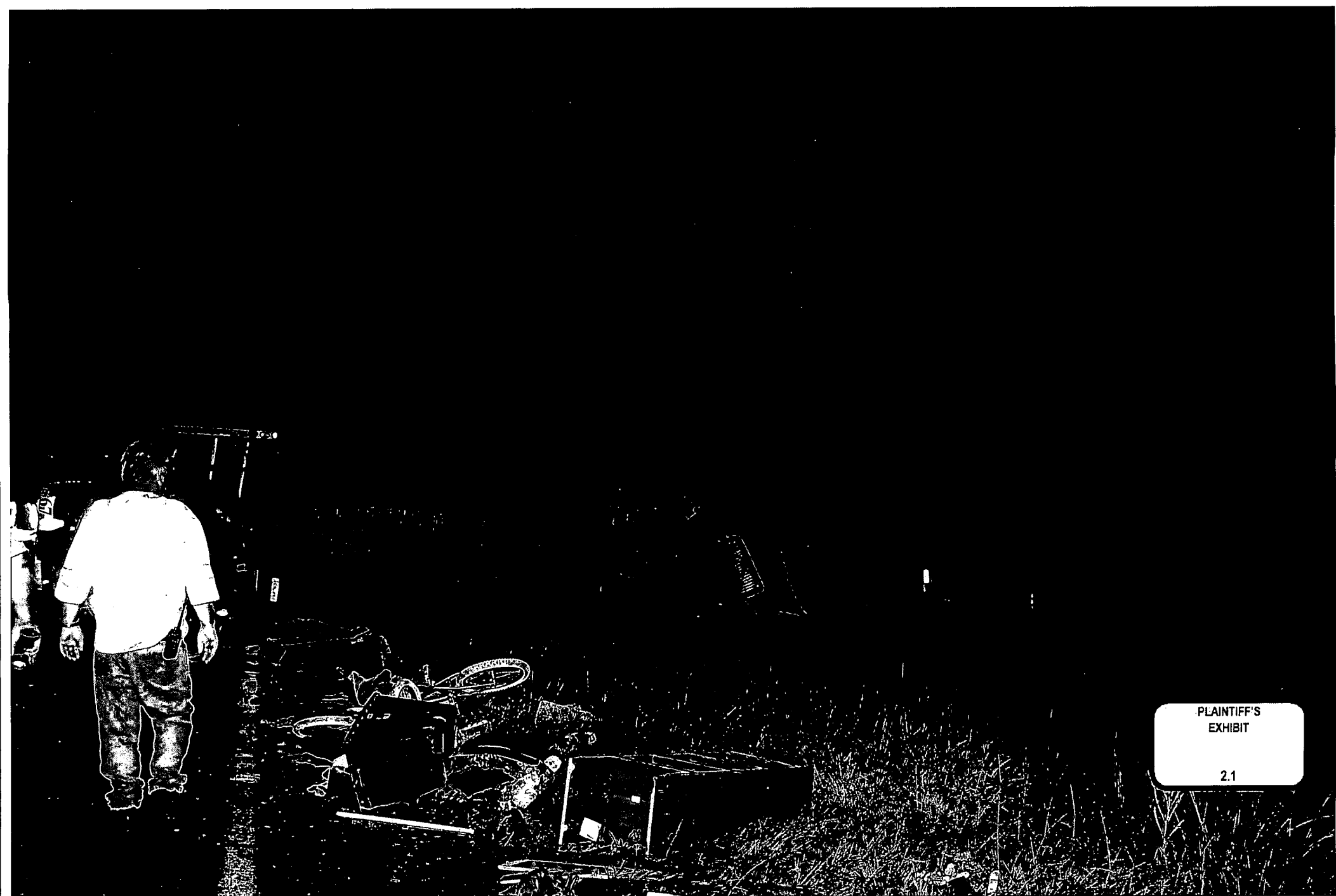


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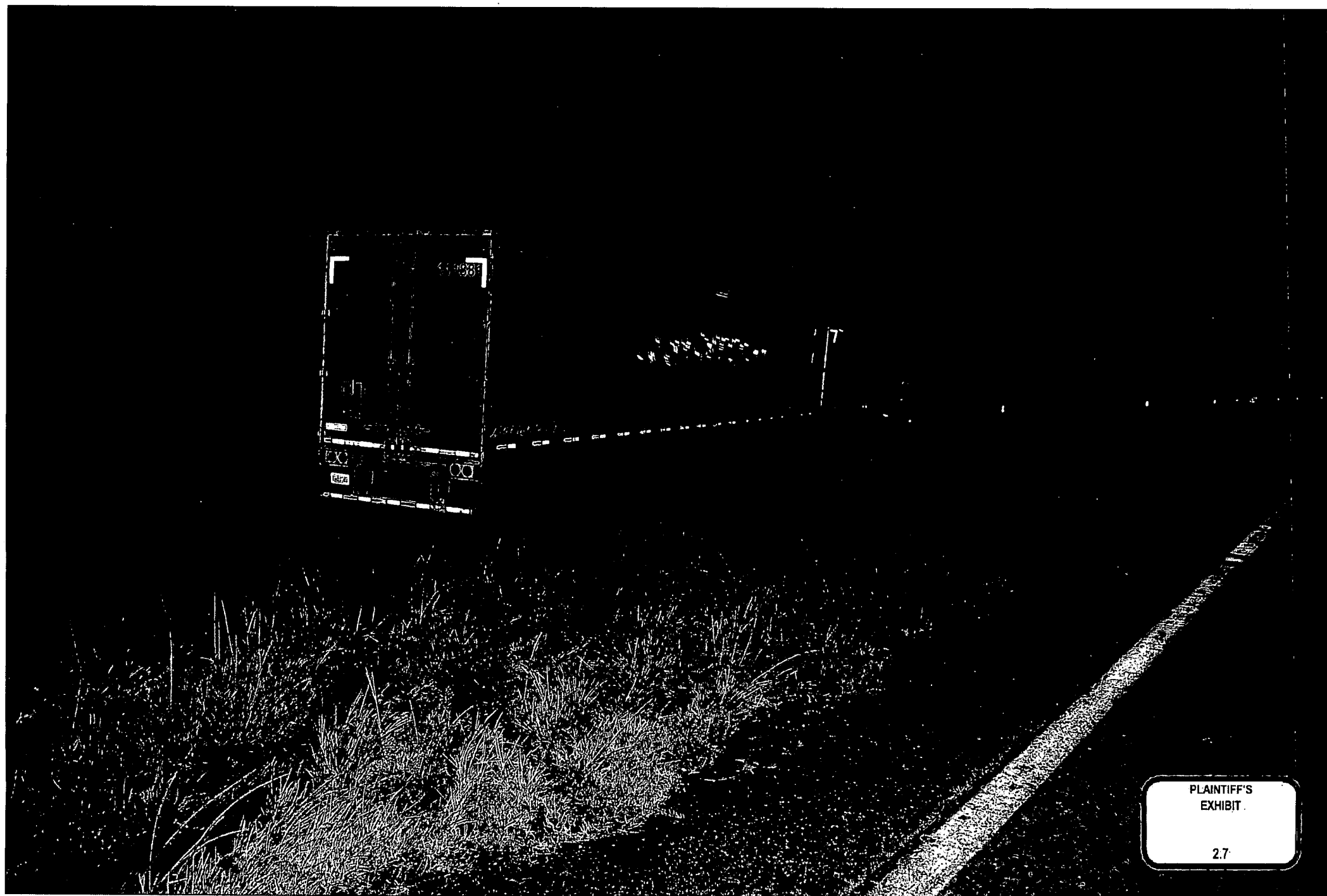


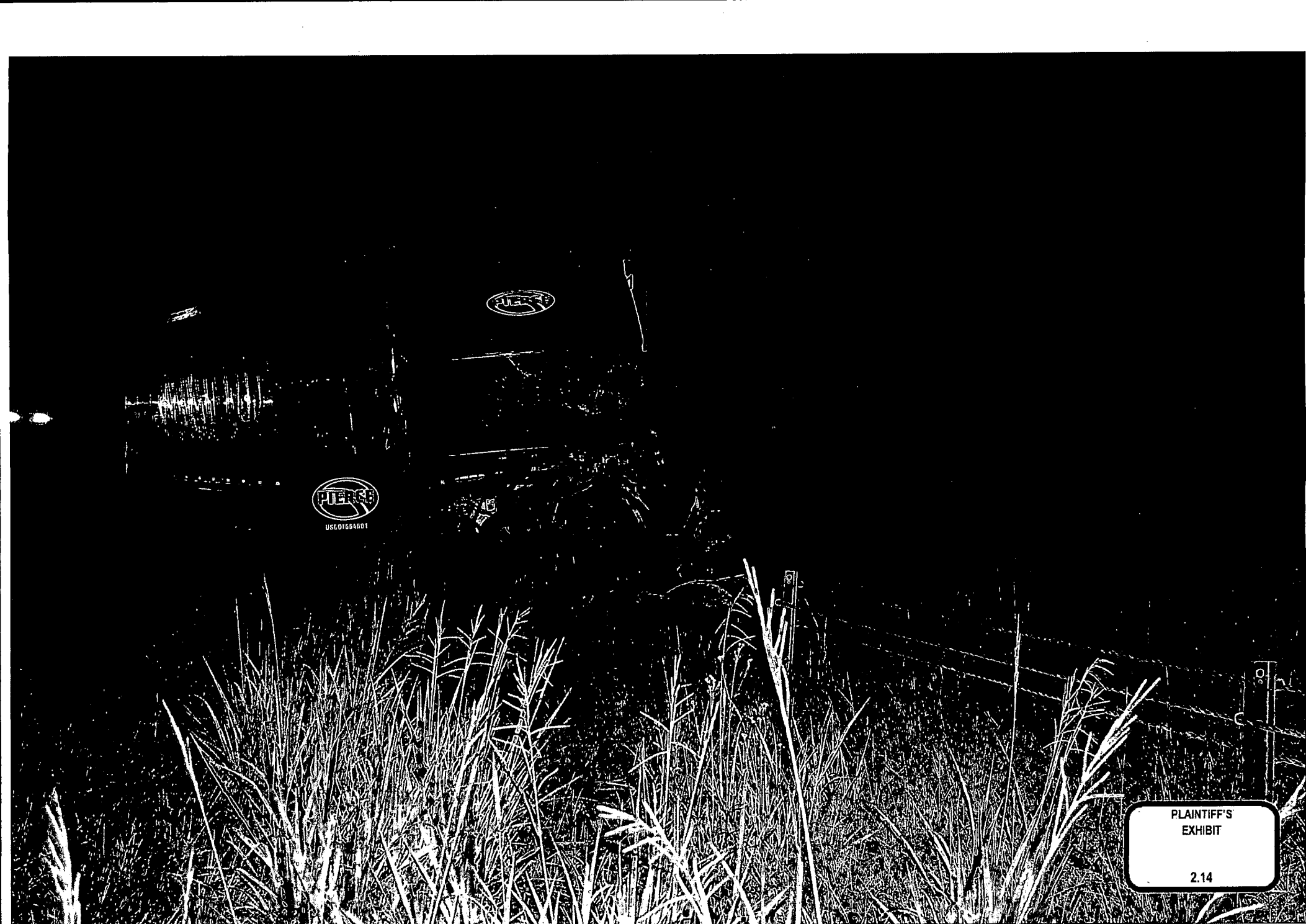


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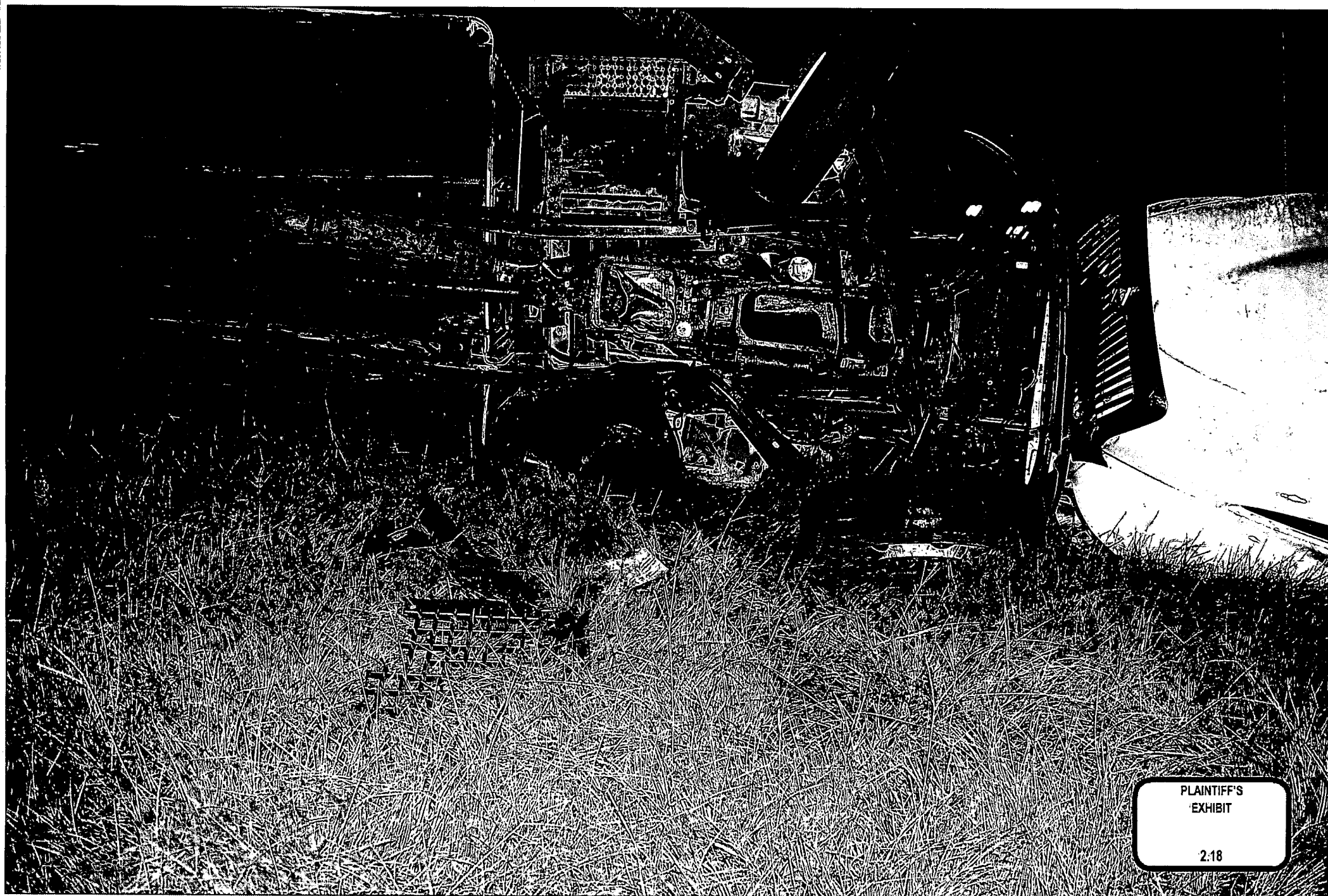




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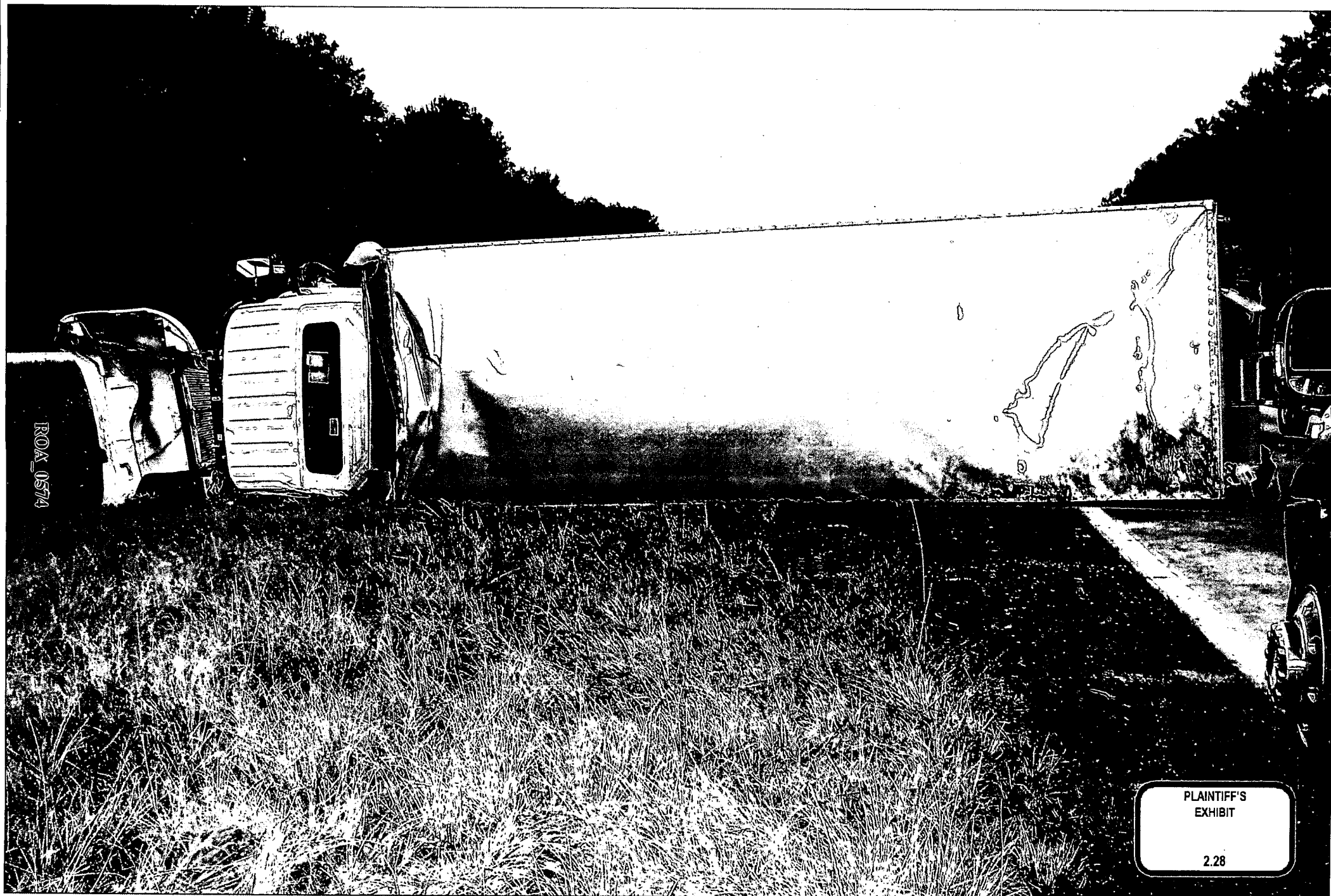




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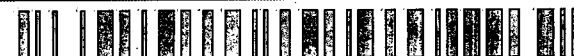
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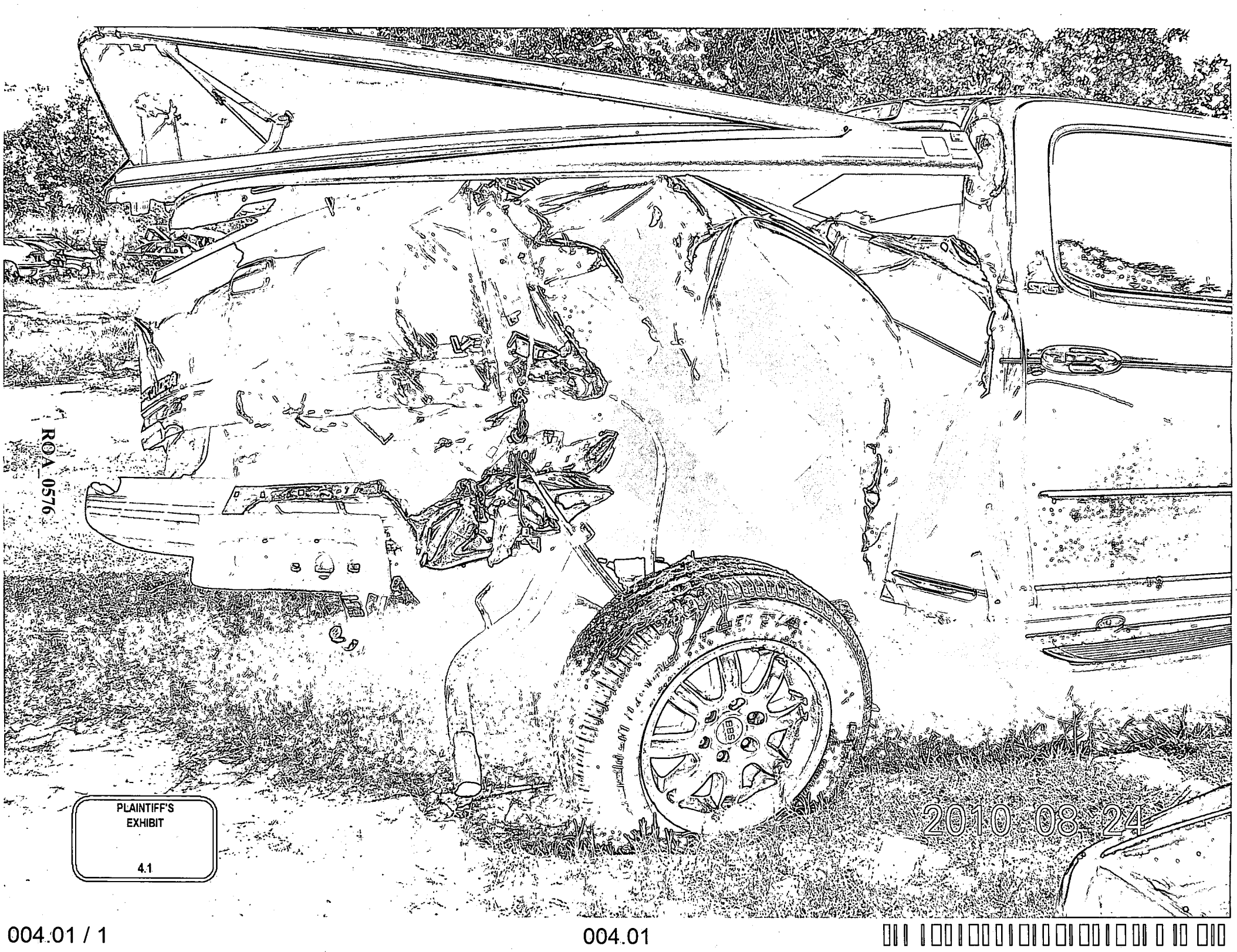




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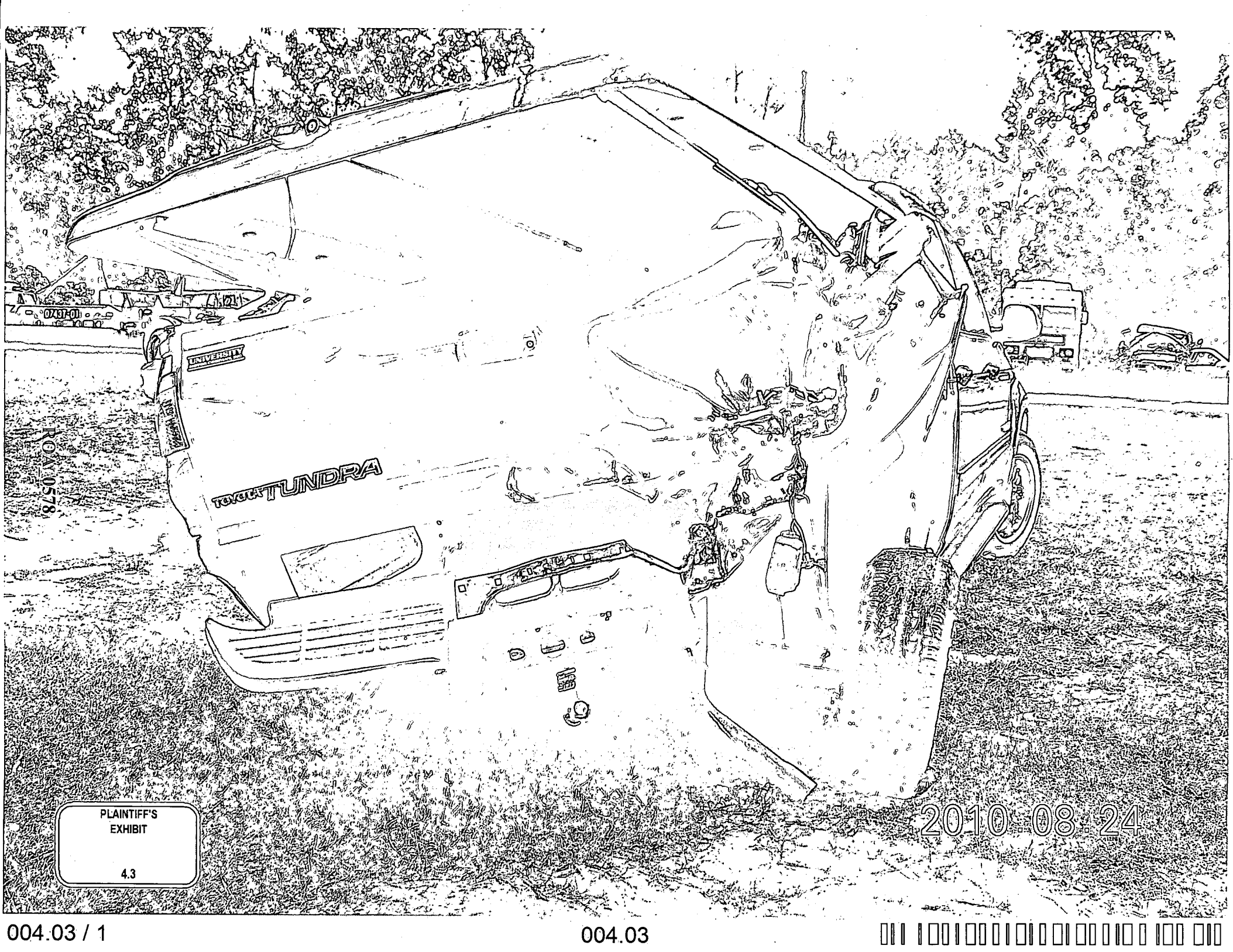
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UNDER 26,000 GVW
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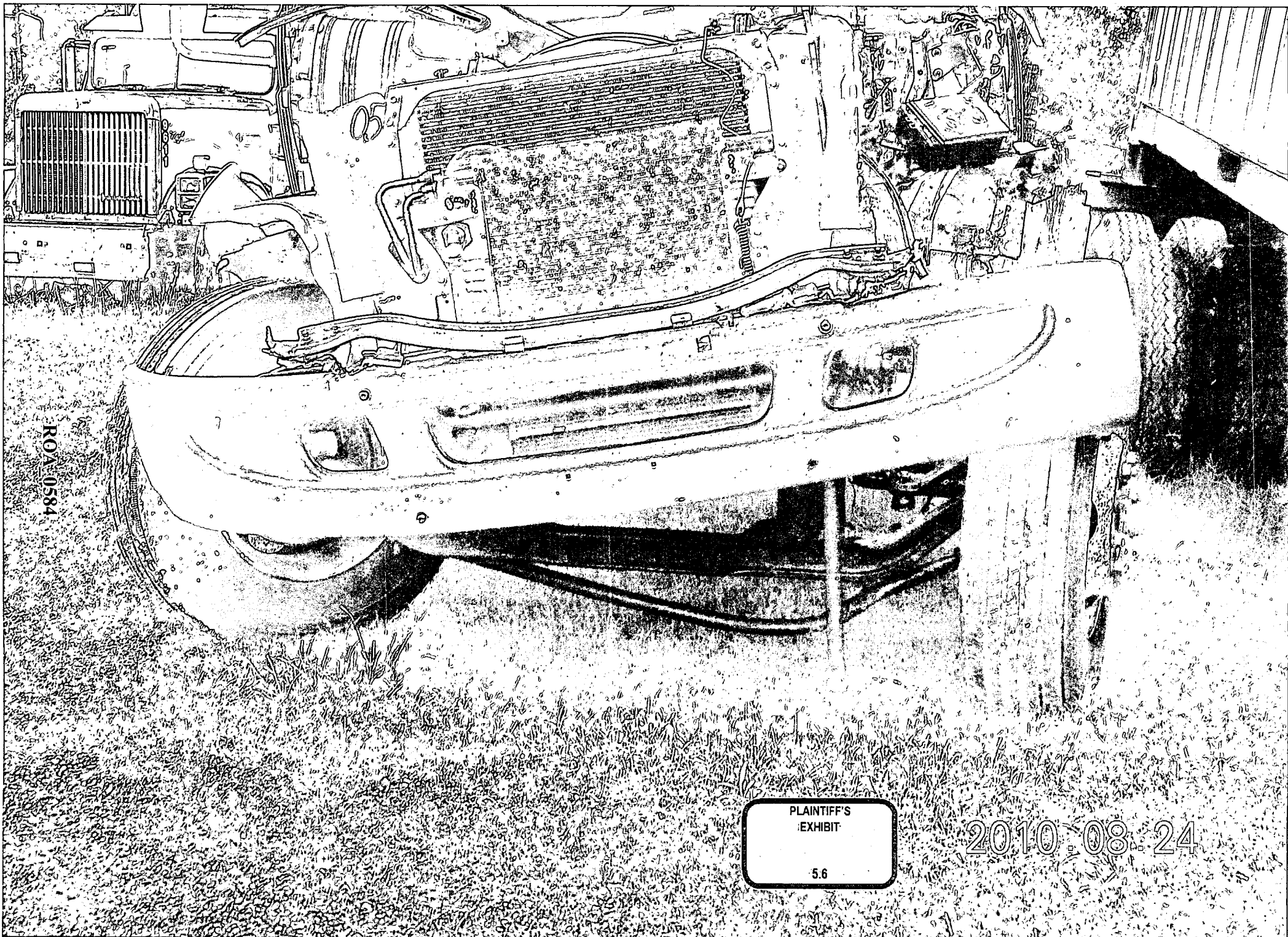


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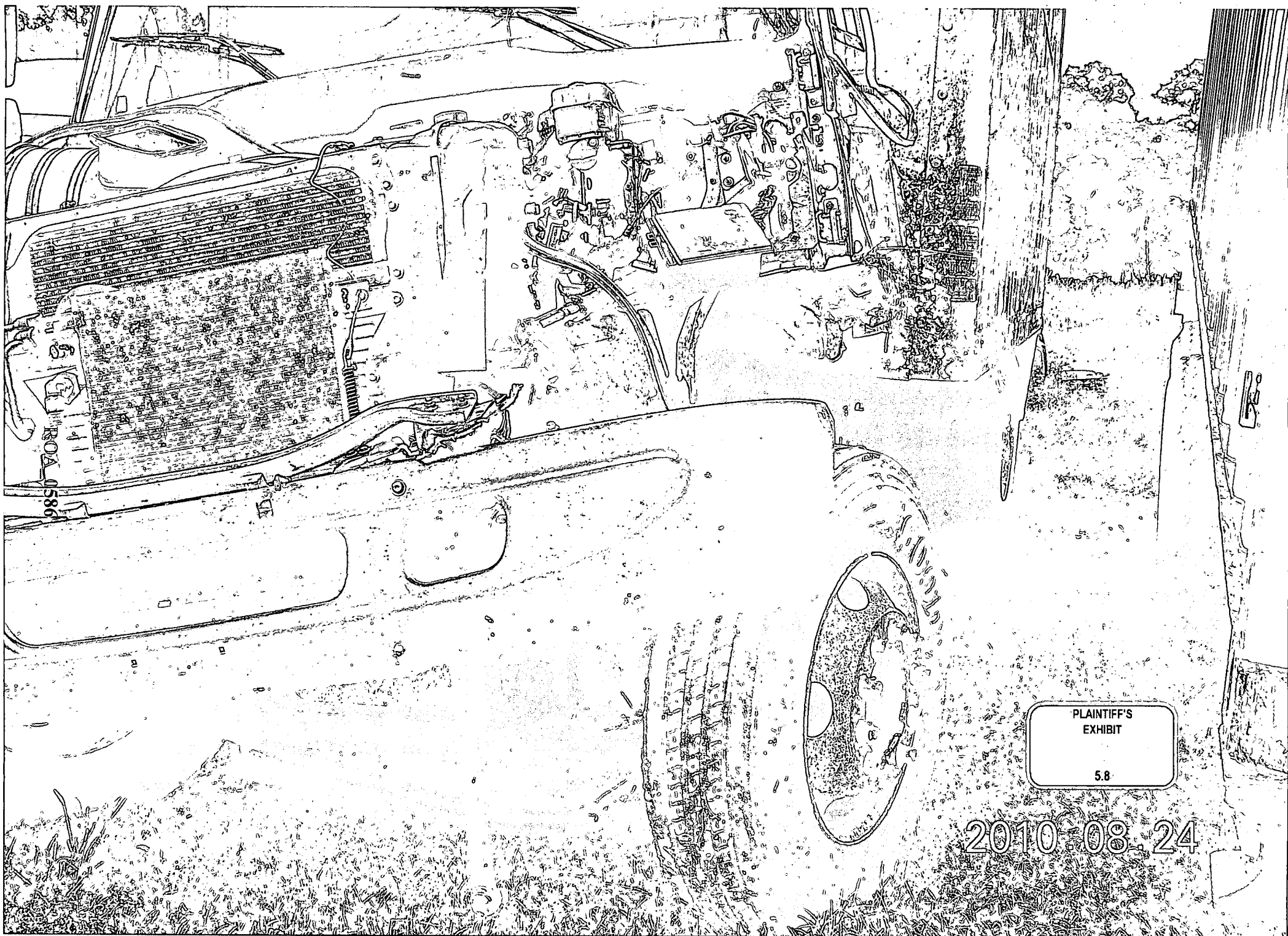
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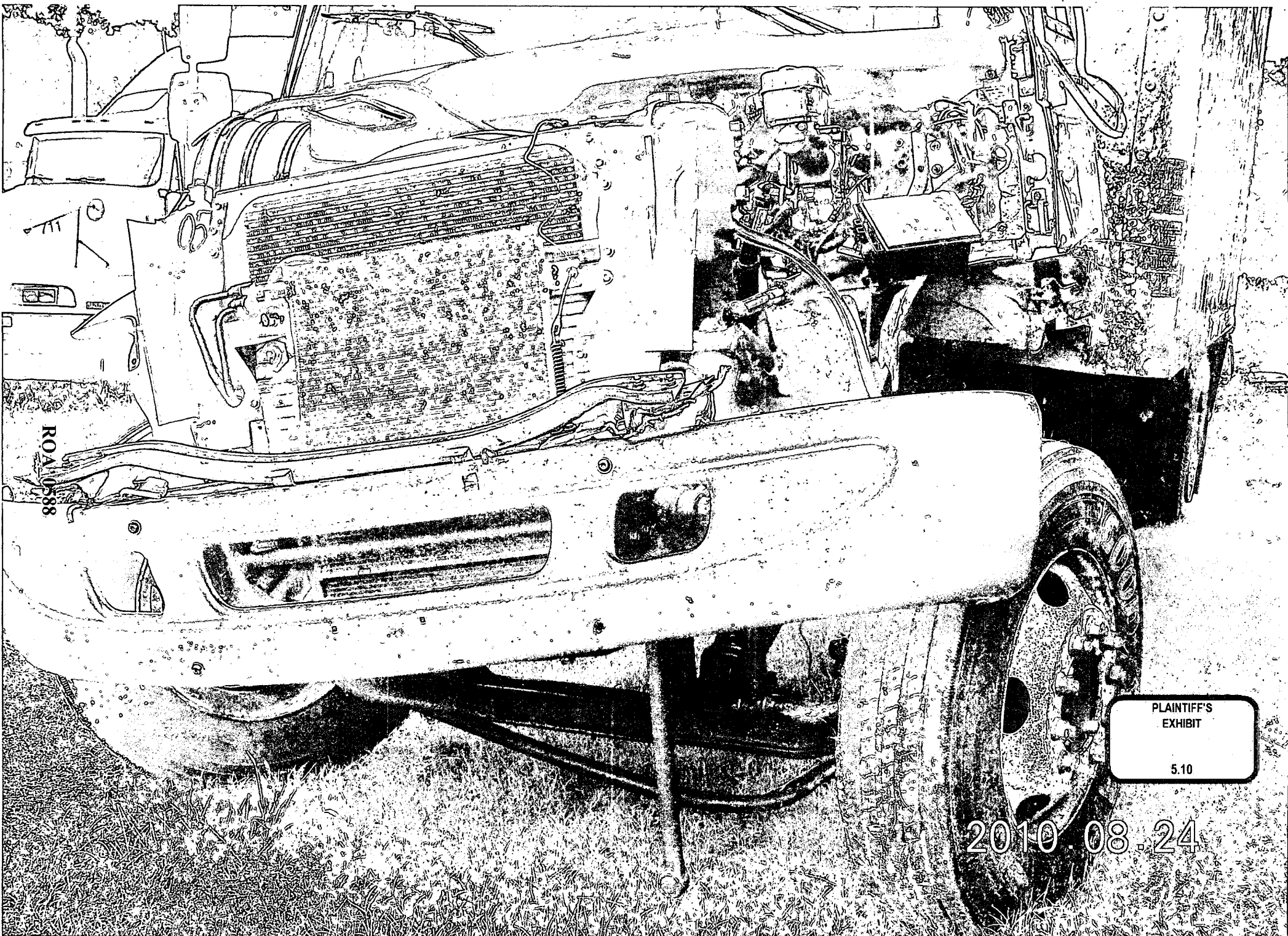


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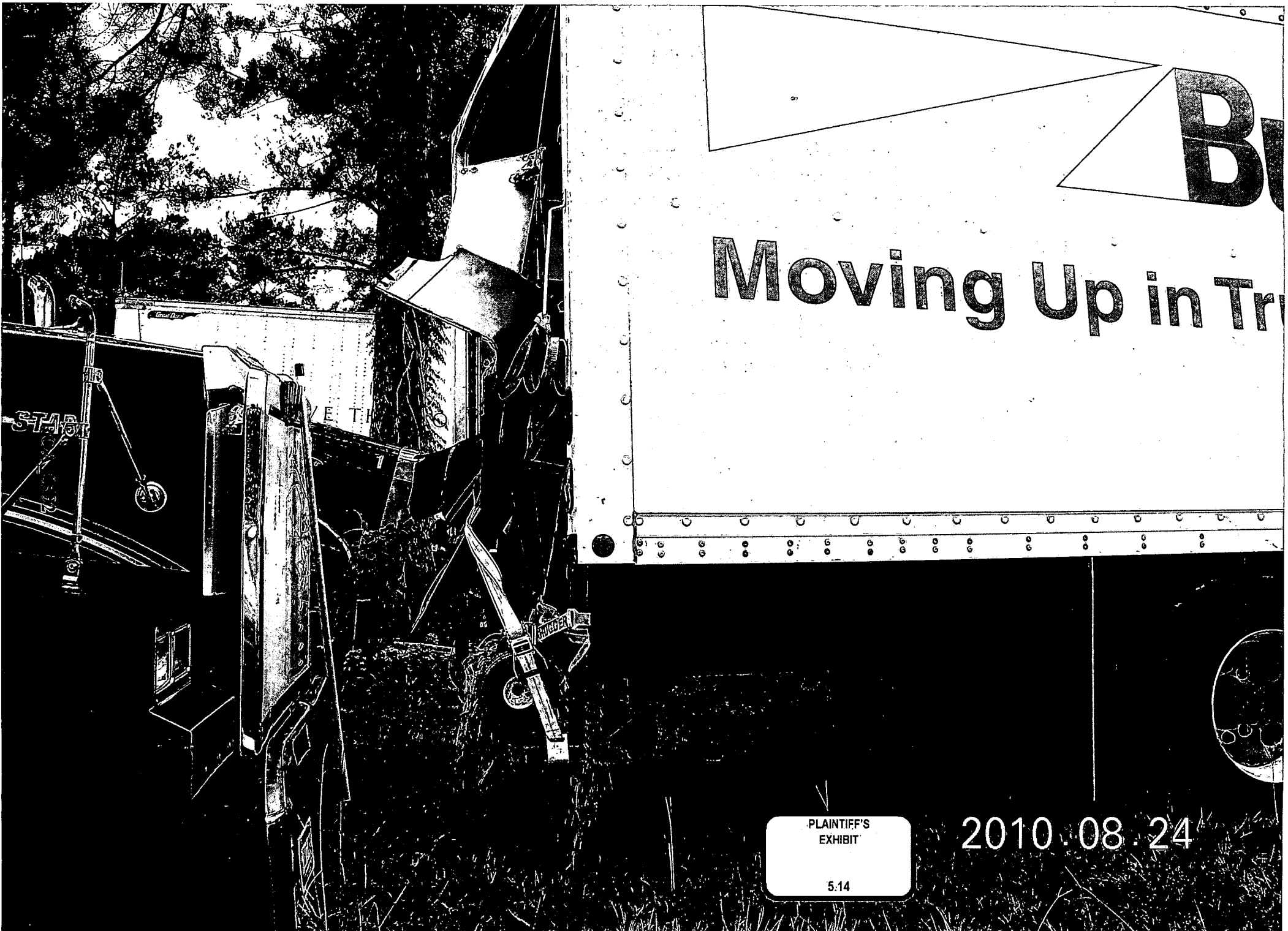
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2.220 KG
4.890 LB

28.260 KG
62.310 LB
33.2 CU.M.
1.170 CU.FT.

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MAX. GROSS TARE	30,480 KG
	67,200 LB
	2,220 KG
	4,890 LB

MAX. CARGO CU. CAP.	28,260 KG
	62,310 LB
	33.2 CU.M.
	1,170 CU.FT.

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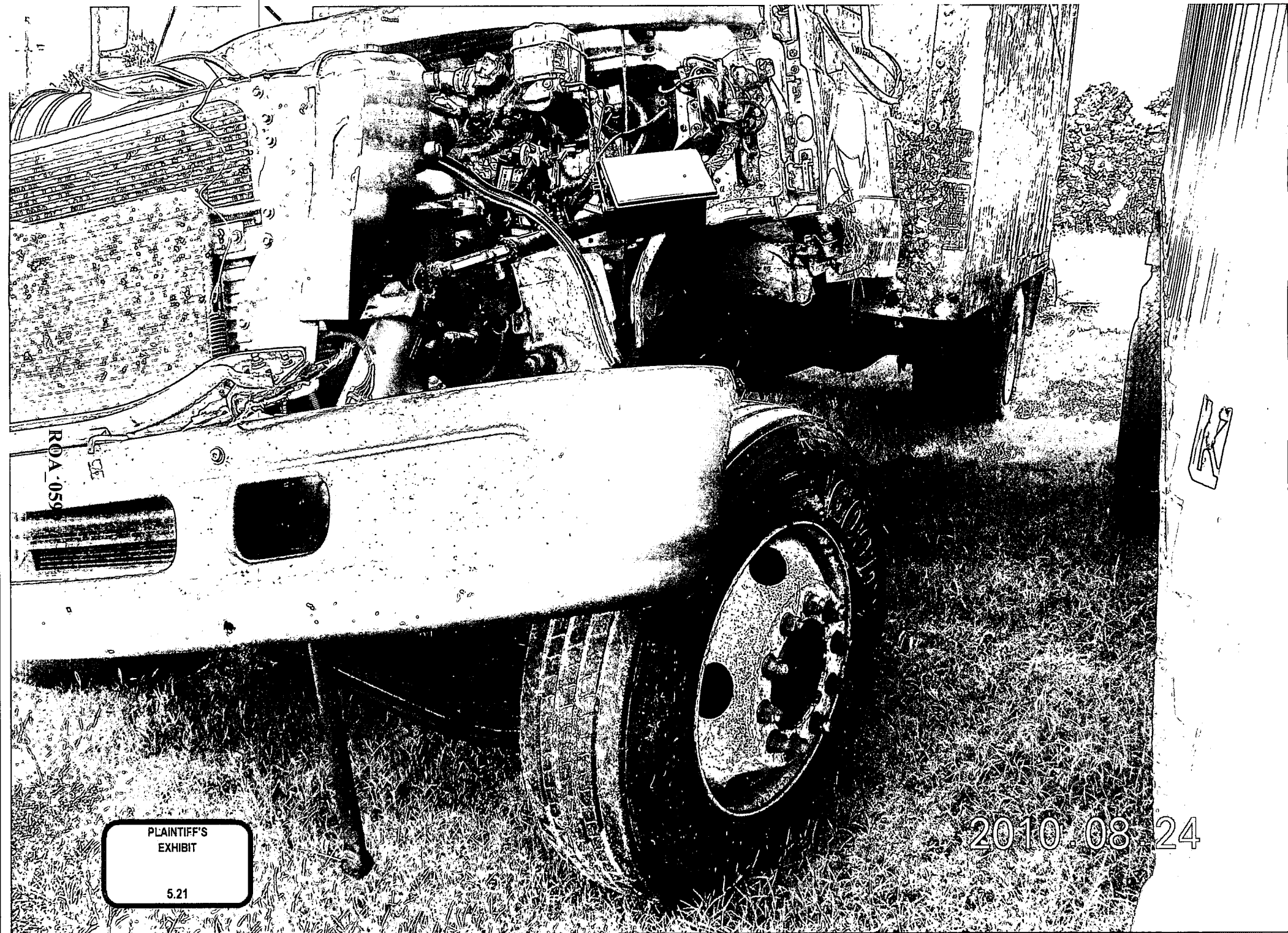
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Medical Expense Worksheet**Maurice Dawkins**

DOB: [REDACTED] 1962

Occurrence Date: 08/21/2010

PLAINTIFF'S
EXHIBIT

7

Provider	Service Date(s)	Costs Incurred
Jasper County EMS	8/21/2010	\$ 550.00
Richland County EMS	8/24/2010	\$ 550.00
Hampton Regional Medical Center	8/21/2010	\$ 5,449.15
Coastal Plains Physician Associates	8/21/2010	\$ 404.40
Beaufort Memorial Hospital	1/27/2015	\$ 2,666.00
Beaufort Memorial Hospital	4/1/2015	\$ 200.00
Beaufort Memorial Hospital	4/16/2015	\$ 16,057.29
Beaufort Memorial Hospital	5/21/2015	\$ 170.00
Lowcountry Medical Group, LLC	1/13/2014	\$ 963.00
Lowcountry Medical Group, LLC	1/27/2015	\$ 138.50
Lowcountry Medical Group, LLC	4/16/2015	\$ 7,775.00
Lowcountry Medical Group, LLC	4/23/2015	\$ -
Lowcountry Medical Group, LLC	4/30/2015	\$ 325.00
Lowcountry Medical Group, LLC	5/21/2015	\$ 44.00
Lowcountry Medical Group, LLC	6/29/2015	\$ -
Palmetto Health Richland Hospital	8/24/2010	\$ 1,555.00
Palmetto Health Emergency Physicians	8/24/2010	\$ 198.01
Pitts Radiology	8/24/2010	\$ 60.00
Eighth Street Foot and Ankle/Harris Foot & Ankle	2/1/2012	\$ 150.00
Eighth Street Foot and Ankle/Harris Foot & Ankle	9/7/2012	\$ 75.00
The Foot Institute	2/20/2012	
Sisters of Charity Providence Hospital	9/16/2010	\$ 2,219.07
Sisters of Charity Providence Hospital	10/7/2010	\$ 1,977.97
Sisters of Charity Providence Hospital	10/25/2010	\$ 2,126.46
Sisters of Charity Providence Hospital	11/18/2010	\$ 195.39
Sisters of Charity Providence Hospital	12/6/2010	\$ 305.76
Sisters of Charity Providence Hospital	12/10/2010	\$ 229.32
Sisters of Charity Providence Hospital	12/13/2010	\$ 63.75
Sisters of Charity Providence Hospital	12/16/2010	\$ 305.76
Sisters of Charity Providence Hospital	12/20/2010	\$ 305.76
Sisters of Charity Providence Hospital	12/21/2010	\$ 305.76
Sisters of Charity Providence Hospital	12/23/2010	\$ 305.76
Sisters of Charity Providence Hospital	12/27/2010	\$ 305.76
Sisters of Charity Providence Hospital	12/28/2010	\$ 305.76
Sisters of Charity Providence Hospital	12/30/2010	\$ 305.76
Sisters of Charity Providence Hospital	1/3/2011	\$ 229.32
Carolina Orthopaedic & Sports Medicine	8/23/2010	\$ 96.00
Carolina Orthopaedic & Sports Medicine	8/31/2010	\$ 72.00
Carolina Orthopaedic & Sports Medicine	9/7/2010	\$ 148.00
Carolina Orthopaedic & Sports Medicine	9/24/2010	\$ 148.00
Palmetto Imaging Downtown	9/8/2010	\$ 700.00
Palmetto Imaging Downtown	3/28/2011	\$ 3,300.00
Donen Davis Plastic Surgery, LLC	9/16/2010	\$ 93.00
Donen Davis Plastic Surgery, LLC	10/7/2010	\$ 260.00
Donen Davis Plastic Surgery, LLC	10/21/2010	\$ 60.00
Progressive Physical Therapy	2/21/2011	\$ 214.00
Progressive Physical Therapy	2/24/2011	\$ 144.00

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Progressive Physical Therapy	3/2/2011	\$	160.00
Progressive Physical Therapy	3/4/2011	\$	191.00
Progressive Physical Therapy	3/7/2011	\$	160.00
Progressive Physical Therapy	3/9/2011	\$	200.00
Progressive Physical Therapy	3/21/2011	\$	144.00
Progressive Physical Therapy	3/23/2011	\$	64.00
Progressive Physical Therapy	4/4/2011	\$	191.00
Progressive Physical Therapy	10/5/2012	\$	237.00
Progressive Physical Therapy	10/9/2012	\$	145.00
Progressive Physical Therapy	10/16/2012	\$	65.00
Progressive Physical Therapy	10/18/2012	\$	145.00
Progressive Physical Therapy	10/25/2012	\$	200.00
Progressive Physical Therapy	10/30/2012	\$	160.00
Progressive Physical Therapy	11/1/2012	\$	40.00
Progressive Physical Therapy	11/6/2012	\$	160.00
Progressive Physical Therapy	11/8/2012	\$	160.00
Progressive Physical Therapy	11/13/2012	\$	120.00
Progressive Physical Therapy	11/20/2012	\$	125.00
Progressive Physical Therapy	11/27/2012	\$	120.00
Progressive Physical Therapy	6/15/2015	\$	241.00
Progressive Physical Therapy	6/19/2015	\$	207.00
Progressive Physical Therapy	6/22/2015	\$	177.00
Progressive Physical Therapy	6/24/2015	\$	190.00
Progressive Physical Therapy	6/26/2015	\$	131.00
Progressive Physical Therapy	6/30/2015	\$	202.00
Progressive Physical Therapy	7/2/2015	\$	248.00
Progressive Physical Therapy	7/6/2015	\$	278.00
Progressive Physical Therapy	7/8/2015	\$	253.00
Progressive Physical Therapy	7/10/2015	\$	239.00
Progressive Physical Therapy	7/15/2015	\$	239.00
Progressive Physical Therapy	7/17/2015	\$	239.00
Progressive Physical Therapy	7/20/2015	\$	255.00
Progressive Physical Therapy	7/22/2015	\$	255.00
Walgreen's Pharmacy	9/15/10, 9/16/10	\$	301.08
McCain Orthopaedic Center, LLC	2/10/2011	\$	198.00
McCain Orthopaedic Center, LLC	3/14/2011	\$	65.00
McCain Orthopaedic Center, LLC	4/6/2011	\$	-
Moore Orthopaedic Clinic	11/8/2010	\$	382.00
Moore Orthopaedic Clinic	1/3/2011	\$	62.00
Univ. of Florida Jacksonville Physicians, Inc.	3/24/2011	\$	309.00
Univ. of Florida Jacksonville Physicians, Inc.	4/28/2011	\$	110.00
Univ. of Florida Jacksonville Physicians, Inc.	5/6/2011	\$	2,730.00
Univ. of Florida Jacksonville Physicians, Inc.	5/12/2011	\$	95.00
Univ. of Florida Jacksonville Physicians, Inc.	7/14/2011	\$	95.00
Univ. of Florida Jacksonville Physicians, Inc.	8/4/2011	\$	-
Charleston Pathology Beaufort	4/1/2015	\$	17.39
Lowcountry Anesthesia, PA	4/16/2015	\$	1,350.00
Charleston Pathology Beaufort	4/16/2015	\$	190.00
Beaufort CRNA Services	4/16/2015	\$	510.00
InMed Diagnostic Services of SC, LLC	2/15/2012	\$	1,155.00
Total Medical Costs		\$	65,563.18





DRIVER'S DAILY LOG

(24 HOURS)

8 / 20 / 2010
(Month) (Day) (Year)

Original - File at home terminal
Duplicate - Driver retains in his/her possession for eight days

PIERCE NATIONAL INC.

Name of Carrier or Carriers

30969 AL HWY. 55 - RED LEVEL, AL 36474

Main Office Address

Home Terminal Address

Total Miles Driving Today

Total Mileage Today

7773

111881

Truck/Tractor and Trailer Numbers or
License Plate(s) / State (show each unit)

I certify these entries are true and correct:

Driver's Full Signature

Co-Driver's Name

1. OFF DUTY

2. SLEEPER
BERTH

3. DRIVING

4. ON DUTY
(NOT DRIVING)

REMARKS

SHIPPING
DOCUMENTS:

B/L or Manifest No.
or

Shipper & Commodity

Enter name of place you reported and where released from work and when and where each change of duty occurred.

From: Georgetown S.C.

To: Moultrie, GA

USE TIME STANDARD AT HOME TERMINAL

© Copyright 2003 & Published by J. J. KELLER & ASSOCIATES, INC.

DRIVER'S VEHICLE INSPECTION REPORT

AS REQUIRED BY THE D.O.T. FEDERAL MOTOR CARRIER SAFETY REGULATIONS, I SUBMIT THE FOLLOWING:

DATE: 8-20-2010

TRACTOR/TRUCK NO.: 7773

TRAILER(S) NO(S): 111881

☒ I DETECT NO DEFECT OR DEFICIENCY IN THIS MOTOR VEHICLE AS WOULD BE LIKELY TO AFFECT THE SAFETY OF ITS OPERATION OR RESULT IN ITS MECHANICAL BREAKDOWN

☐ I DETECT THE FOLLOWING DEFECTS OR DEFICIENCIES IN THIS MOTOR VEHICLE AS WOULD BE LIKELY TO AFFECT THE SAFETY OF ITS OPERATION OR RESULT IN ITS MECHANICAL BREAKDOWN

INDICATE WHETHER DEFECTS ARE ON TRACTOR/TRUCK OR TRAILER - DESCRIBE DEFECT IN DETAIL, USE BACK SIDE IF NECESSARY.

DRIVER'S SIGNATURE: [Signature]

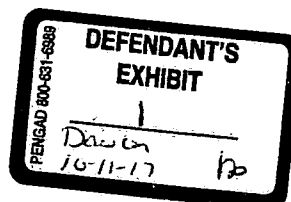
☐ ABOVE DEFECTS CORRECTED

☐ ABOVE DEFECTS NEED NOT BE CORRECTED FOR SAFE OPERATION OF VEHICLE

MECHANIC'S SIGNATURE:

DRIVER'S SIGNATURE: [Signature]

DATE: 8-20-2010





DRIVER'S DAILY LOG

(24 HOURS)

8/24/2010
(Month) (Day) (Year)

Original - File at home terminal
Duplicate - Driver retains in his/her possession for eight days

PIERCE NATIONAL INC.

Name of Carrier or Carriers

30969 AL HWY. 55 - RED LEVEL, AL 36474

Main Office Address

Total Miles Driving Today

Total Mileage Today

7773 111881

Truck/Tractor and Trailer Numbers or License Plate(s) / State (show each unit)

I certify these entries are true and correct:

Home Terminal Address

Driver's Full Signature

Co-Driver's Name

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
1. OFF DUTY																									
2. SLEEPER BERTH																									21.5
3. DRIVING																									2.25
4. ON DUTY (NOT DRIVING)																									12.5
REMARKS																									24

SHIPPING DOCUMENTS:

3005086947

B/L or Manifest No.

or Dqk-Quercy, Balc cotton

Shipper & Commodity

Enter name of place you reported and where released from work and when and where each change of duty occurred.

From: mondc corner S.C.

To: Walterboro S.C.

USE TIME STANDARD AT HOME TERMINAL

© Copyright 2003 & Published by J. J. KELLER & ASSOCIATES, INC.

DRIVER'S VEHICLE INSPECTION REPORT

AS REQUIRED BY THE D.O.T. FEDERAL MOTOR CARRIER SAFETY REGULATIONS, I SUBMIT THE FOLLOWING:

DATE: 8-24-2010

TRACTOR/TRUCK NO.: 7773

TRAILER(S) NO.(S): 111881

☒ I DETECT NO DEFECT OR DEFICIENCY IN THIS MOTOR VEHICLE AS WOULD BE LIKELY TO AFFECT THE SAFETY OF ITS OPERATION OR RESULT IN ITS MECHANICAL BREAKDOWN

☐ I DETECT THE FOLLOWING DEFECTS OR DEFICIENCIES IN THIS MOTOR VEHICLE AS WOULD BE LIKELY TO AFFECT THE SAFETY OF ITS OPERATION OR RESULT IN ITS MECHANICAL BREAKDOWN

INDICATE WHETHER DEFECTS ARE ON TRACTOR/TRUCK OR TRAILER - DESCRIBE DEFECT IN DETAIL, USE BACK SIDE IF NECESSARY.

DRIVER'S SIGNATURE: *Peter J. Jones*

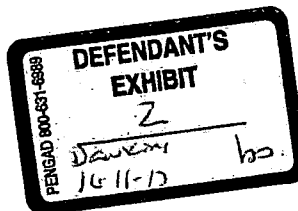
☐ ABOVE DEFECTS CORRECTED

☐ ABOVE DEFECTS NEED NOT BE CORRECTED FOR SAFE OPERATION OF VEHICLE

MECHANIC'S SIGNATURE:

DRIVER'S SIGNATURE: *Peter J. Jones*

DATE: 8-21-2010



DAK Americas

DAK Americas, LLC
RE: Fibers
5925 Carnegie Blvd.
Suite 500

addon

First Print 08/19/2010 15:04:59
C B A PGI Pending

16740937

Bill of Lading : 3005086947 08/19/2010

Ship to:

FRONTIER SPIN MILLS (81) - 0
PLANT 81
1700 Central Plank Road
Hwy 9
Wetumpka, AL 36092 US

S Trailer No. 11881

Subject to Section 7 of conditions of applicable bill of lading. If this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement. The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

(Signature of Consignor)

EMERGENCY CONTACT

For a chemical emergency (spill, leak, exposure, fire or accident) contact DAK Americas day or night by calling in USA CHEMTREC (800) 424-9300 (toll free) in area code (703) call 527-3387 and if outside USA, call your local operator & request a collect call to the UDA at 703-527-3387.

DEL BETWEEN 10 AM & 2 PM

Item	Material Product Description	No. of Packages	Gross Weight	Net Weight
0010	M122EN1 Dacron® Polyester Staple den. 1.20 - 1.30 dtex 1.250 in. - 32 mm Type 40A	61	44,765.4 LB 20,305.2 KG	44,625.1 LB 20,241.6 KG

Delivery date: 08/23/2010

STRAIGHT BILL OF LADING - SHORT FORM

INTERMODAL CERTIFICATION - ORIGINAL - NOT NEGOTIABLE
The property described below, in apparent good order, except as noted hereon and condition of contents of packages unknown, marked, consigned, and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry, to its usual place of delivery of said destination, if on its route, otherwise to deliver to another carrier on the route to said destination.

Page : 1 of 1
Carrier : CC
SCAC : CLBS
Sched. Ship date: 08/22/2010
Ship Point : DAK Americas, LLC
Cypress Warehouse

1800
20**Mail Freight Bills to:**

DAK Americas, LLC
Attn: Accounts Payable
P.O. Box 470408
Charlotte, NC 28247

Account Number : 336539320

Delivery Terms : PPD

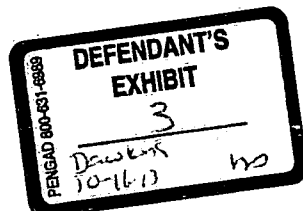
Prepaid

Our Order No. : 3002032743

Our Order Date : 07/29/2010

Customer PO No : 146040

Seal 7532260

**CARRIER INSTRUCTION**

DELIVER BY: 8/23 1000-1400
DRIVER INITIAL: 050

D.O.T. 356.7 VEHICLE CONDITION REPORT COMPLETED AND ACCEPTABLE

Driver's Full Name :

Dennis Owens

Appointment Date/Time:

8/20 @ 1800

Arrival Date/Time:

8/20 @ 1730

Departure Date/Time:

8/20 @ 2055

DRIVER HAS INSPECTED AND IS RESPONSIBLE FOR THE ARRANGEMENT OF THE LOAD AND ITS SUITABILITY FOR SAFE TRANSPORTATION.

DRIVER:

Dennis Owens

The description and weight indicated on this Bill of Lading are correct, subject to verification by the Eastern Weighing and Inspection Bureau or Western Weighing and Inspection Bureau according to agreement.

If lower freight charges result, the agreed or declared value of the property is hereby specifically stated by the shipper not to exceed the released value provision as permitted by RRO (Released Rules Order) 972 or as set forth in applicable tariffs.

This is to certify that above named materials are properly classified, described, packaged, marked, and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation, INTERMODAL CERTIFICATION, if applicable.

PER: DAK FIBERS, LLC, SHIPPER
Mary B. Nixon

92017

ROA_0605

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 11-CP-25-252
	)	
MAURICE DAWKINS,	)	
Plaintiff,	)	
	)	
	)	PLAINTIFF'S
	)	PRE-TRIAL BRIEF
v.	)	
	)	
JAMES A. SELL,	)	
Defendant.	)	

The Plaintiff, Maurice Dawkins, by and through his undersigned counsel, submits this pre-trial brief pursuant to Rule 16(c), SCRCP.

1. A concise, non-argumentative statement of the facts of the case.

The events giving rise to this action started on Friday, August 20, 2010 when James ("Jim") Sell was in the process of helping his son and daughter-in-law move from Columbus, OH, to Savannah, GA. Mr. Sell woke at approximately 8:00 on Friday, August 20, 2010. (Sell Depo. p. 65, ll. 6-9). Mr. Sell finished helping his son load the Budget Rental truck until about 11:00 am. (Sell Depo. p. 66, ll. 18-21). Mr. Sell and his son's family left Columbus for Savannah between 11:30-12:00. (Sell Depo. p. 67, ll. 17-21). Due to an issue with his son's vehicle, Mr. Sell stopped in Charleston, West Virginia, for approximately two hours while he helped his son change the vehicle's alternator. (Sell Depo. p. 68, ll. 3-16). Other than normal stops for fuel, Mr. Sell drove the Budget Rental truck with his then twelve-year-old grandson in the passenger seat continuously until the accident at 3:50 a.m., with the exception of two rest breaks that each lasted twenty to thirty minutes. (Sell Depo. p. 71, ll. 15-23).

Mr. Sell had never driven a truck as big as the Budget Rental truck. (Sell Depo. p. 20, ll. 11-13). Upon getting the truck in Columbus, OH, Mr. Sell noticed that the truck had

a tendency to sway or wander back and forth. (Sell Depo. p. 19, ll. 8-10). He assumed that was normal and knew he had to be careful with the truck. (Sell Depo. p. 19, ll. 11-13).

At around 3:50 a.m. on Saturday morning, August 21, 2010, near Yemassee, SC, Mr. Sell testified the truck's right wheel "dropp[ed]" in to the emergency lane. (Sell Depo. p. 19, ll. 15-16). Mr. Sell attempted to correct but the truck fishtailed and overturned. (Sell Depo. pp. 19-20). It was raining when Mr. Sell overturned the Budget Rental truck. (Sell Depo. p. 19, ll. 3-5). Maurice Dawkins of Columbia, SC, and the Sparkman family from Johnson City, TN, were separately traveling behind the Sell truck and stopped to help Mr. Sell and his grandson out of the vehicle. After Mr. Dawkins and the Sparkmans got Mr. Sell out of the vehicle, Mr. Sell seemed like he was going to pass out. (J. Sparkman Depo. p. 21, ll. 4-5; K. Sparkman Depo. p. 24, ll. 7-8, p. 28, ll. 23-25). Shortly after getting Mr. Sell and his grandson out of the vehicle, a Pierce National tractor trailer driven by Dennis Owens collided with the overturned Budget truck, thereby driving it into Mr. Dawkins, Mr. Dawkins' truck, Mr. Sell, Josh Sparkman, and Kristen Starnes Sparkman. Mr. Sell admitted during his deposition that "[s]ince I was driving the truck and no one else was involved, yes, I would have to accept responsibility" (Sell Depo. p. 24, ll. 18-23). Mr. Sell testified he was fatigued "to some extent" at the time of the collision. (Sell Depo. p. 73, ll. 9-10).

Jasper County EMS transported Mr. Dawkins to the Hampton Regional Medical Center, where he received treatment for lacerations to both heels. Mr. Dawkins received additional treatment and therapy on his right ankle without success. On May 6, 2011, Mr. Dawkins underwent surgery to repair his right ankle area at the University of Florida Hospital in Jacksonville, FL. Mr. Dawkins underwent another surgery on April 16, 2015,

with Dr. Leland Stoddard in Beaufort, SC. Dr. Stoddard noted that Mr. Dawkins “had a traumatic laceration to the posterior heel resulting in a laceration [to the] femoral heel cord.” Mr. Dawkins continues to experience pain, swelling, and discomfort with his right ankle and leg. He’s incurred \$65,563.18 in medical expenses.

Mr. Dawkins filed this action in the Hampton County Court of Common Pleas on June 15, 2011, against James A. Sell, Dennis Owens, and Pierce National. (Compl.). Mr. Sell answered and asserted a cross-claim against Dennis Owens and Pierce National. (Sell Ans. and CC). Sell’s Answer to Dawkins’ Second Amended Complaint asserted affirmative defenses of sole negligence of another, intervening/superseding negligence, and apportionment.¹ (Sell Ans. to 2d Amd. Compl. and CC). Mr. Sell and Mr. Dawkins reached a resolution with Pierce National and Dennis Owens on May 22, 2016. Mr. Dawkins’ claims against Pierce National and Dennis Owens were resolved while Mr. Sell had an underinsured motorist claim against Pierce National and Dennis Owens. Following the resolution of Dawkins’ claims against Pierce National and Owens, Dawkins filed a motion to sever his remaining claim against Sell and Sell’s cross-claim for UIM coverage against Pierce National and Owens. (Motion to Sever). The Court heard Dawkins’ motion to sever by telephone on June 21, 2016. The Court granted Dawkins’ motion to sever and set Sell’s cross-claim for UIM coverage against Pierce National and Owens for trial on July 11, 2016. Sell resolved his cross-claim on Friday, June 24, 2016. The sole remaining component left for trial is Mr. Dawkins’ claims against Mr. Sell.

2. An objective statement of the facts in controversy.

At this time, Plaintiff believes there are no facts in controversy.

¹ Since the claims against Pierce National and Owens are resolved, apportionment is not warranted if Sell intends to seek a set-off for the settlement from Pierce National and Owens.

3. The legal issues involved. This includes the law applicable to the causes of action and the defense.

Mr. Dawkins contends Mr. Sell was negligent, reckless, and careless in the following particulars:

- a) **In failing to keep a proper lookout;**
- b) **In failing to use the degree of care and caution that a reasonable prudent person would have used under the circumstances that existed;**
- c) **In failing to keep the vehicle under proper control;**
- d) **In driving too fast for conditions then and there existing; and**
- e) **In causing an accident that left a vehicle extending into a lane of travel, which resulted in motorists stopping to render assistance, and contributed to Plaintiff's injuries.**

(2d Amd. Compl. ¶ 11).

Through this negligent, reckless, and careless conduct, Mr. Sell violated South Carolina common law and several statutory provisions, including, but not limited to:

- S.C. Code Ann. § 56-5-1520(A) ("A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Speed must be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of a person to use care.");

- S.C. Code Ann. § 56-5-1900(a) ("Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply: (a) A vehicle shall be driven as nearly as practicable entirely within a

single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.”).

Although accepting responsibility for overturning the Budget truck, Mr. Sell asserts intervening/superseding negligence and sole negligence of another as affirmative defenses. Since he takes responsibility for overturning the Budget truck, Plaintiff contends sole negligence of another is not applicable in this case, and Mr. Sell’s sole defense should be intervening/superseding negligence. “A third party’s acts of negligence do not break the causal chain if the acts are foreseeable.” Small v. Pioneer Mach. Inc., 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App. 1997). “For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated.” Id. It is foreseeable that someone would stop and help another individual involved in an accident. See S.C. Code Ann. § 15-1-310 (Good Samaritan statute). Mr. Sell asserted a cross-claim against Owens and Pierce National for “directly and proximately” causing the injuries he sustained. (Sell Ans. and CC to 2d Amd. Compl. ¶ 41). According to Sell’s allegations and South Carolina law, Owens’ negligence would have to be foreseeable to make him liable to Sell, thereby not constituting an intervening/superseding cause.

4. A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

PLAINTIFF’S EXHIBITS

Exhibit 1:	Photographs of Maurice Dawkins’ Injuries
Exhibit 2:	Highway Patrol Photographs
Exhibit 3:	Photographs of the Accident Scene
Exhibit 4:	Photographs of Maurice Dawkins’ Truck
Exhibit 5:	Photographs of James Sell’s Budget Truck
Exhibit 6:	Photographs of Pierce National’s Truck

Exhibit 7: Maurice Dawkins' Medical Summary

Exhibit 8: Maurice Dawkins' Tax Returns

PLAINTIFF'S WITNESS LIST

1. Maurice Dawkins – Columbia, SC
2. Kristen Sparkman – Jonesborough, TN
3. Joshua Sparkman – Jonesborough, TN
4. Della Sparkman – Blackwater, VA
5. Ted Sparkman – Blackwater, VA
6. James Sell – Bluffton, SC
7. Officer P.D. Rush (SC Highway Patrol) – Walterboro, SC
8. Robert Pinelli (Paramedic) – Jasper County EMS – Ridgeland, SC
9. Roy Thompson (Paramedic) – Jasper County EMS – Ridgeland, SC
10. Leland Stoddard, MD – Beaufort, SC
11. Don Crews – Hampton, SC
12. Albert Moses – Columbia, SC
13. Paula Williams – Columbia, SC
14. Ray Burns – Columbia, SC
15. Dwight Hylton – Columbia, SC
16. Andrena Rowson – Columbia, SC
17. Cameron Jordan – Irmo, SC
18. Vinci Layton – Columbia, SC

5. Any unusual problems relating to evidence to be introduced, such as “Business Records as Evidence Act,” hearsay, use of depositions, etc.

At this time, Plaintiff intends to publish the deposition testimony of Joshua Sparkman, Kristen Starnes Sparkman, and Paula Williams. Plaintiff also has objections to Defendant Sell's deposition designations. Plaintiff will also have a motion *in limine*.

6. Any unusual question or matter which should be brought to the attention of the court.

Plaintiff is not aware of any unusual question that needs to be brought to the attention of the Court at this time.

7. A statement that settlement negotiations were attempted before the date of the trial hearing and the status of settlement negotiations.

The parties most recently mediated this case on June 13, 2016, following the resolution of the claims against Pierce National and Owens. The parties have not been able to resolve the claims.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: Wil. Barnes

R. Alexander Murdaugh
William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
(803) 943-2111
wbarnes@pmped.com

ATTORNEYS FOR THE PLAINTIFF

October 4, 2017
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 11-CP-25-252
	)	
MAURICE DAWKINS,	)	
Plaintiff,	)	
	)	
	)	PLAINTIFF'S
	)	MOTION IN LIMINE
v.	)	
	)	
JAMES A. SELL,	)	
Defendant.	)	

The Plaintiff, Maurice Dawkins, hereby moves, *in limine*, for an Order prohibiting counsel for the Defendant from introducing into evidence and from making any comment in the presence of the jury, directly or indirectly, in any manner whatsoever, concerning any of the matters set forth below:

1. **LAWSUIT FILED AGAINST AND SETTLEMENT FROM PIERCE NATIONAL AND DENNIS OWENS.** Any reference or suggestion that Plaintiff filed a lawsuit against Pierce National and Dennis Owens and has received or has been fully compensated from Pierce National and Dennis Owens. Plaintiff anticipates that Defendant will argue that Pierce National and Dennis Owens are solely responsible for the Plaintiff's damages. If Defendant intends to seek a set-off from any monies paid by Dennis Owens and Pierce National then any settlement is not relevant. Rules 401, 402, 403, SCRE. Smith v. Tiffany, 419 S.C. 548, 553, 799 S.E.2d 479, 482 (2017).

2. **TESTIMONY, ARGUMENT, OR EVIDENCE THAT THE ACTIONS OF DENNIS OWENS WERE UNFORESEEABLE.** Plaintiff seeks to preclude the Defendant from presenting testimony, evidence, or argument that the actions of Dennis Owens were unforeseeable. In his Answer to Plaintiff's Second Amended Complaint, Sell asserts an

affirmative defense of intervening/superseding cause. It is well established that “[a] third party's acts of negligence do not break the causal chain if the acts are foreseeable.” Small v. Pioneer Mach. Inc., 329 S.C. 448, 467, 494 S.E.2d 835, 844 (Ct. App. 1997). “For an intervening force to be a superseding cause that relieves an actor from liability, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated.” Id. In his cross-claim, however, Sell alleges that Pierce National and Owens’ negligence was a “direct and proximate cause of injuries to Sell and others.” (Sell Ans. to 2d Amd. Compl. and CC ¶ 41). “The touchstone of proximate cause is foreseeability which is determined by looking to the natural and probable consequences of the defendant's conduct.” Gause v. Smithers, 403 S.C. 140, 150, 742 S.E.2d 644, 649 (2013). Sell cannot allege in his Answer that he is not liable based on Owen’s unforeseeable conduct, while alleging in his Cross-Claim that Owens’ actions were foreseeable thereby making Owens liable. Sell is judicially bound by his allegations in the cross-claim that Owens’ negligence was foreseeable. Any testimony, evidence, or argument to the contrary goes against the allegations of Sell’s cross-claim.

3. **THE SOUTH CAROLINA TRAFFIC COLLISION REPORT.** S.C. Code Ann. § 56-5-1290 and § 56-5-1340.

4. **TRAFFIC CITATION ISSUED TO DENNIS OWENS AND/OR LACK OF CITATION ISSUED TO JIM SELL.** Dennis Owens was charged with driving too fast for conditions. (Owens Depo. p. 52, ll. 14-16). Mr. Owens did not contest the ticket and paid the fine. (Owens Depo. p. 53, l. 22 – p. 54, l. 7). Pursuant to S.C. Code Ann. § 56-5-6160 “[n]o evidence of conviction of any person for any violation of this chapter shall be admissible in any court in any civil action.” Similarly, if a conviction is not admissible, the lack of any charge to

Jim Sell is also inadmissible. The lack of any charge for a criminal traffic violation is not relevant and under a different burden of proof. Rules 401, 402, and 403, SCRE.

5. **ANY OTHER TRAFFIC CITATIONS OR AUTOMOBILE ACCIDENTS INVOLVING THE PLAINTIFF.** Any testimony, argument, or evidence of other traffic citations or automobile accidents involving the Plaintiff. Any other traffic citation or automobile accident involving the Plaintiff is not relevant or if relevant, unduly prejudicial. Rules 401, 402, and 403, SCRE.

6. **ANY OTHER LEGAL ACTION OR PROCEEDING INVOLVING THE PLAINTIFF, INCLUDING FAMILY COURT ACTIONS.** Plaintiff seeks to preclude any testimony, argument, or evidence of other legal proceedings involving the Plaintiff, including any family court actions. Such actions are not related to any issues involved in this case and are therefore not relevant. Rules 401, 402, and 403, SCRE.

7. **CRIMINAL CHARGES AND ARRESTS.** Plaintiff requests that Counsel for the Defendant be precluded from offering any testimony, evidence, or argument concerning past criminal charges, convictions, arrests, or the like of the Plaintiff. Such information is irrelevant to any issue in the case, and were such evidence relevant, the prejudicial effect greatly outweighs any probative value. (Rules 401/402/403/608/609, SCRE).

8. **COLLATERAL SOURCE PAYMENTS/BENEFITS.** Any reference or suggestion that Plaintiff has received, is entitled to receive, will receive, or will become entitled to receive, benefits of any kind or character from a collateral source, including, but not limited to, health insurance benefits, workers compensation, short-term disability, unemployment, or medical/personal injury protection coverage through the automobile coverage. Also, any

suggestion that any such benefit provider may have a lien or right of subrogation against any recovery by Plaintiff.

9. **EMPLOYMENT OF COUNSEL/FEEES AND DATE COUNSEL WAS RETAINED.** Any reference or suggestion regarding the time or circumstances under which Plaintiff employed his attorneys. Any reference or suggestion regarding the existence of a contingent fee arrangement between Plaintiff and their counsel is similarly irrelevant and immaterial. These matters are not relevant to the matters in issue at trial. Rules 401, 403 SCRE.

10. **UNRELATED CLAIMS OR INJURIES.** Any reference or suggestion that Plaintiff has had unrelated, prior or subsequent injuries, claims, suits, or settlements or the amounts thereof unless there is medical evidence to establish a causal relation to damages claimed by Plaintiff.

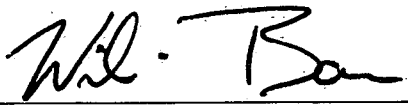
11. **FINANCIAL CONSEQUENCES OF JUDGMENT AGAINST DEFENDANT.** Any testimony or reference to the financial consequences of a judgment against the Defendant. The Defendant in this action has \$2,250,000.00 in liability insurance coverage. Any testimony or reference about the financial consequences of a judgment against the Defendant are not only incorrect but irrelevant. Rules 401, 402, 403, SCRE.

12. **PAYMENT OF JUDGMENT.** Any indication of any kind that Defendant will personally have to pay any judgment that may be entered in this case especially since this action involves liability insurance coverage.

13. **FILING THIS MOTION IN LIMINE.** Any reference or suggestion that this Motion has been presented to or ruled upon by the Court should be excluded. Defendant's counsel should be instructed not to suggest to the jury, directly or indirectly, that Plaintiff has sought to exclude any matters from evidence at trial.

14. **DATE SUMMONS AND COMPLAINT WAS FILED.** Any reference or mention of the date the summons and complaint was filed in this action. The events giving rise to this action occurred on August 21, 2010. The summons and complaint was filed on June 15, 2011. The date the summons and complaint was filed is not relevant to any issue in this case.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY: 

R. Alexander Murdaugh
William F. Barnes, III
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR THE PLAINTIFF

October 4, 2017
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 11-CP-25-252
	)	
MAURICE DAWKINS	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S OBJECTIONS AND
v.	)	COUNTER DESIGNATIONS
	)	FOR DENNIS OWENS
JAMES SELL,	)	
Defendant.	)	

THE PLAINTIFF, PURSUANT TO RULE 32, SCRCP, COUNTER DESIGNATES THE FOLLOWING TESTIMONY TO BE PUBLISHED FROM DENNIS OWENS' DEPOSITION:

Page 9, lines 8-18

Page 21, line 24 – Page 22, line 1

Page 24, lines 1-2

Page 31, line 16 – Page 32, line 12

Page 34, lines 17-22

Page 35, lines 22-25

Page 47, line 16 – Page 48, line 12

Page 67, lines 15-19

Page 68, lines 11-19

Page 84, line 8 – Page 86, line 8

THE PLAINTIFF, PURSUANT TO RULE 32, SCRCP, SUBMITS THE FOLLOWING OBJECTIONS TO DEFENDANT SELL'S DEPOSITION DESIGNATIONS:

Page 95, lines 11-19 – Rules 401, 402, 403, SCRE

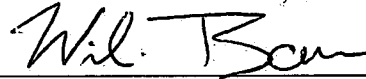
Page 95, line 24 – Page 99:5 – Rules 401, 402, 403, SCRE

Page 101, line 9 – Page 102, line 12 – Rules 401, 402, 403, SCRE

Page 104, line 5 – Page 105, line 18 – Rules 401, 402, 403, SCRE

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

BY:



R. Alexander Murdaugh
William F. Barnes, III
101 Mulberry Street East
Post Office Box 457
Hampton, SC 29924
Phone: (803) 943-2111
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ATTORNEY FOR THE PLAINTIFF

October 10, 2017
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

MAURICE DAWKINS,
Plaintiff.

v.

JAMES A. SELL, DENNIS J. OWENS,
AND PIERCE NATIONAL, INC.,
Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 11-CP-25-252

**PLAINTIFF'S SUPPLEMENTAL
ANSWERS TO DEFENDANT'S FIRST
SET OF INTERROGATORIES**

TO: KARL S. BREHMER, ESQUIRE, ATTORNEY FOR DEFENDANTS, DENNIS J. OWENS AND PIERCE NATIONAL, INC.:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: a) Maurice Dawkins

No written or recorded statement in possession of plaintiff or plaintiff's attorney. Mr. Dawkins is expected to testify to his knowledge of the events surrounding the accident, the extent of his injuries and expenses incurred as a result of the accident.

b) Kristen Starnes

Ms. Starnes gave a recorded statement to her insurer, State Farm in order to receive Med Pay coverage. This witness is expected to testify to the occurrence of events surrounding the accident.

c) Joshua Sparkman

No written or recorded statement in possession of plaintiff or plaintiff's attorney. Mr. Sparkman is expected to testify to his knowledge of the events surrounding the accident.

e) Della Sparkman

[REDACTED]
[REDACTED]

No written or recorded statement in possession of plaintiff or plaintiff's attorney. Mrs. Sparkman is expected to testify to her knowledge of the events surrounding the accident.

f) Ted Sparkman

[REDACTED]
[REDACTED]

No written or recorded statement in possession of plaintiff or plaintiff's attorney. Mr. Sparkman is expected to testify to his knowledge of the events surrounding the accident.

g) James A. Sell

[REDACTED]
[REDACTED]

No written or recorded statement in possession of plaintiff or plaintiff's attorney. Mr. Sell is expected to testify to his knowledge of the events surrounding the accident.

h) Dennis J. Owens

[REDACTED]
[REDACTED]

No written or recorded statement in possession of plaintiff or plaintiff's attorney. Mr. Owens is expected to testify to his knowledge of the events surrounding the accident.

i) Officer P. D. Rush
South Carolina Highway Patrol

Plaintiff's attorney in possession of Traffic Collision Report. Officer Rush was the investigating officer at the scene of the accident and is expected to testify to his investigation of the accident.

j) Jared T. Marx, M.D.

Palmetto Health Richland
[REDACTED]
[REDACTED]

Plaintiff's attorney in possession of medical records. Dr. Marx was a treating physician of plaintiff and is expected to testify to the extent of plaintiff's injuries and medical expenses incurred as a result of this accident.

- k) Subhash J. Patel, M.D.
Carolina Orthopaedic & Sports Medicine, P.A.
[REDACTED]
[REDACTED]

Plaintiff's attorney in possession of medical records. Dr. Patel was a treating physician of plaintiff and is expected to testify to the extent of plaintiff's injuries and medical expenses incurred as a result of this accident.

- l) Donen Davis, M.D.
Donen Davis Plastic Surgery, LLC
[REDACTED]
[REDACTED]

Plaintiff's attorney in possession of medical records. Dr. Davis was a treating physician of plaintiff and is expected to testify to the extent of plaintiff's injuries and medical expenses incurred as a result of this accident.

- m) W. Bret Smith, DO, MS
Moore Orthopaedics
[REDACTED]
[REDACTED]

Plaintiff's attorney in possession of medical records. Dr. Smith was a treating physician of plaintiff and is expected to testify to the extent of plaintiff's injuries and medical expenses incurred as a result of this accident.

- n) John Harris, DPM
UF Bone & Joint Center at Emerson
[REDACTED]
[REDACTED]

SUPPLEMENTAL ANSWER, 02/11/16:

- o) Robert Pinelli, Paramedic
Roy Thompson, Paramedic

Jasper County EMS
[REDACTED]
[REDACTED]

Plaintiff's attorney is in possession of medical records and bills. Mr. Pinelli and Mr. Thompson were Plaintiff's treating paramedics at the scene of the accident and are expected to testify to their knowledge of the Plaintiff's injuries as a result of this accident.

- p) **Paul Cagle, Paramedic**
Richland County EMS
[REDACTED]
[REDACTED]

Plaintiff's attorney is in possession of medical records and bills. Mr. Cagle was Plaintiff's treating paramedic and is expected to testify to his knowledge of the Plaintiff's injuries as a result of this accident.

- q) **Sonny Park, MD**
Hampton Regional Medical Center
[REDACTED]
[REDACTED]

Plaintiff's attorney is in possession of medical records and bills. Dr. Park was Plaintiff's treating emergency room physician and is expected to testify concerning the medical expenses incurred as a result of the accident and his diagnosis and prognosis of Plaintiff's injuries as a result of this accident.

- r) **Richard S. McCain, MD**
McCain Orthopaedic Center, LLC
[REDACTED]
[REDACTED]

Plaintiff's attorney is in possession of medical records and bills. Dr. McCain was Plaintiff's treating physician and is expected to testify concerning the medical expenses incurred as a result of the accident and his diagnosis and prognosis of Plaintiff's injuries as a result of this accident.

- s) **Leland Stoddard, MD**
Lowcountry Medical Group
[REDACTED]
[REDACTED]

Plaintiff's attorney is in possession of medical records and bills. Dr. Stoddard was Plaintiff's treating physician and is expected to testify concerning the medical expenses incurred as a result of the accident and his diagnosis and prognosis of Plaintiff's injuries as a result of this accident.

t) Don Crews
c/o PMPED

No written or recorded statement in possession of plaintiff or plaintiff's attorney. Mr. Crews took photographs of the Plaintiff's vehicle and accident scene and is expected to testify as to his observations.

u) Albert Moses
Columbia, SC 29201

No written or recorded statement in possession of plaintiff or plaintiff's attorney. Mr. Moses is a friend of the Plaintiff and is expected to testify regarding his observations and knowledge of Plaintiff's physical condition prior to and following the subject accident as well as the Plaintiff's character as an individual.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Medical records from:

- Palmetto Health Richland
- Carolina Orthopaedic & Sports Medicine, P.A.
- Coastal Plains Physician Associates
- Moore Orthopaedic Clinic
- McCain Orthopaedic Clinic
- UF Bone & Joint Center at Emerson
- Jasper County EMS
- Hampton Regional Medical Center
- Providence Hospital

Traffic Collision Report.

Forty-four (44) photographs of Mr. Dawkins vehicle taken by Don Crews

Twenty-six (26) photographs of Pierce National Inc.'s truck taken by Don Crews

Twenty-two (22) photographs of the Budget Rental truck taken by Don Crews

Sixty-four (64) photographs of the accident scene taken by Don Crews

Fifty-five (55) photographs taken by South Carolina Highway Patrol

Three (3) photographs of plaintiff's injury

SUPPLEMENTAL ANSWER, 02/11/16:

Plaintiff's attorney is in possession of the following documents:

- **Richland County EMS – Medical Records & Bill**
- **Progressive Physical Therapy – Medical Records & Bills**
- **Beaufort Memorial Hospital – Medical Records & Bill**
- **Lowcountry Medical Group – Medical Records & Bills**
- **Eighth Street Foot & Ankle/Harris Foot & Ankle – Medical Records & Bills**
- **Carolina Foot Institute – Medical Records**
- **Palmetto Health Emergency Physicians – Bill**
- **Pitts Radiology – Bill**
- **Walgreens Pharmacy – Bill**
- **Palmetto Imaging Downtown – Bill**
- **Donen Davis Plastic Surgery – Bill**
- **Lowcountry Anesthesia – Bill**
- **Beaufort CRNA Services – Bill**
- **Charleston Pathology – Bill**
- **InMed Diagnostic Services of SC – Medical Records & Bill**

- Five (5) Photographs of Plaintiff's injuries taken by Plaintiff on 5/21/2015

- Two (2) Photographs of Plaintiff's injuries taken by Plaintiff on 7/10/2015

3. Set forth the names and addresses of all physicians who have treated the party and all hospitals to which the party has been committed in connection with the said injuries and also set forth a statement of all medical costs involved.

ANSWER:

- a) Jared T. Marx, M.D.
Palmetto Health Richland

[REDACTED]
[REDACTED]

\$1,155.00

- b) Subhash J. Patel, M.D.
Carolina Orthopaedic & Sports Medicine, P.A.

[REDACTED]

	[REDACTED]	\$ 464.00
c)	Donen Davis, M.D. Donen Davis Plastic Surgery, LLC [REDACTED] [REDACTED]	\$ 413.00
d)	W. Bret Smith, DO, MS Moore Orthopaedics [REDACTED] [REDACTED]	\$ 444.00
e)	John Harris, DPM UF Bone & Joint Center at Emerson [REDACTED] [REDACTED]	\$2,935.00
f)	Coastal Plains Physician Associates Edward Warren, M.D. [REDACTED] [REDACTED]	\$ 404.40
g)	McCain Orthopaedic Center Richard S. McCain, M.D. [REDACTED] [REDACTED]	\$ 263.00
h)	Richland County EMS [REDACTED] [REDACTED]	\$ 550.00
i)	Jasper County EMS [REDACTED] [REDACTED]	\$ 550.00
j)	Hampton Regional Medical Center [REDACTED] [REDACTED]	\$5,449.15
k)	Providence Hospital [REDACTED] [REDACTED]	\$5,596.08
l)	Progressive Physical Therapy [REDACTED]	

	[REDACTED]	\$1,063.00
m)	Palmetto Imaging Downtown	
	[REDACTED]	
	[REDACTED]	\$4,000.00
n)	Pitts Radiology	
	[REDACTED]	
	[REDACTED]	\$ 60.00
o)	Providence Hospital Northeast	
	[REDACTED]	
	[REDACTED]	\$ 118.19

SUPPLEMENTAL ANSWER, 02/11/16:

a)	Beaufort Memorial Hospital	
	[REDACTED]	
	[REDACTED]	Total Medicals: \$19,093.29
b)	Lowcountry Medical Group, LLC	
	[REDACTED]	
	[REDACTED]	Total Medicals: \$9,245.50
c)	Palmetto Health Emergency Physicians	
	[REDACTED]	
	[REDACTED]	Total Medicals: \$198.01
d)	Providence Hospital	
	[REDACTED]	
	[REDACTED]	Total Medicals: \$9,487.36
e)	Progressive PT	
	[REDACTED]	
	[REDACTED]	Total Medicals: \$6,108.00
f)	University of Florida Jacksonville Physicians, Inc.	
	[REDACTED]	
	[REDACTED]	Total Medicals: \$3,339.00
g)	Charleston Pathology Beaufort, PCCL	
	[REDACTED]	
	[REDACTED]	Total Medicals: \$207.39

h) Lowcountry Anesthesia, PA

[REDACTED]
[REDACTED]

Total Medicals: \$1,350.00

i) Beaufort CRNA Services

[REDACTED]
[REDACTED]

Total Medicals: \$510.00

j) InMed Diagnostic Services of SC

[REDACTED]
[REDACTED]

Total Medicals: \$1,155.00

5. Set forth a statement of all other damages claimed to have been sustained by the party.

ANSWER:

- Medical expenses totaling \$24,139.04 to date
- Lost wages
- Pain and suffering
- Loss of enjoyment of life
- Physical and mental anguish
- Permanent Injury

SUPPLEMENTAL ANSWER, 02/11/16:

- Medical Expenses totaling \$65,372.18 to date:
 - Jasper County EMS
 - Richland County EMS
 - Hampton Regional Medical Center
 - Coastal Plains Physician Associates
 - Progressive Physical Therapy
 - Beaufort Memorial Hospital
 - Lowcountry Medical Group
 - Eighth Street Foot & Ankle/Harris Foot & Ankle
 - Carolina Foot Institute
 - Palmetto Health Richland Hospital
 - Palmetto Health Emergency Physicians
 - Pitts Radiology
 - The Foot Institute
 - Walgreens Pharmacy
 - Carolina Orthopaedic & Sports Medicine
 - Palmetto Imaging Downtown
 - Donen Davis Plastic Surgery
 - McCain Orthopaedic Center, LLC
 - Moore Orthopaedic Clinic

- University of Florida Jacksonville Physicians, Inc.
- Lowcountry Anesthesia
- Beaufort CRNA Services
- Charleston Pathology
- InMed Diagnostic Services of SC

6. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: The plaintiff will identify expert witnesses, if any, as discovery proceeds in accordance with a scheduling order or as agreed by Counsel.

SUPPLEMENTAL ANSWER, 02/11/16:

- a) **David L. Dorrity**
Transportation Resources, Inc.

Mr. Dorrity is a transportation safety expert. He is expected to testify as to his investigation into the Defendant's operation of the vehicle, compliance with the Federal Motor Vehicle Safety Act, and the hiring and retention of the Defendant driver by the Defendant employer. A copy of Mr. Dorrity's curriculum vitae is attached hereto.

- Plaintiff intends to use his treating physicians as expert witnesses.

PETERS, MURDAUGH, PARKER, ELTZROTH
 & DETRICK, P.A.

By:

W. F. Barnes, III

R. Alexander Murdaugh
 William F. Barnes, III
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 Hampton, SC 29924
 Phone: (803) 943-2111
 Fax: (803) 914-2014

ATTORNEYS FOR PLAINTIFF

February 16, 2016
 Hampton, South Carolina

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No.: 2011-CP-25-00252

RECEIVED

DEC 08 2017

SC Court of Appeals

Maurice Dawkins Appellant,

-v-

James A. Sell, ...Respondent

NOTICE OF APPEAL

PLEASE take notice that Maurice Dawkins ("Appellant"), pursuant to Rule 203, SCACR, appeals the following Orders and Judgment in this matter:

- Jury verdict and Judgment rendered October 12, 2017 (Exhibit A);
- Order Denying Plaintiff's motion for new trial and judgment notwithstanding the verdict, signed and filed November 20, 2017 (Exhibit B).

Appellant received written notice of entry of the Order denying Plaintiff's motion for new trial and judgment notwithstanding the verdict on November 20, 2017. This Notice is timely filed. A copy of the Orders appealed are attached to this Notice.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

December 6, 2017
Hampton, South Carolina

BY:



Richard Alexander Murdaugh
William F. Barnes, III
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Hampton, SC 29924
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Email: amurdaugh@pmped.com
Email: wbarnes@pmped.com

Attorneys for Appellant

Other Counsel of Record:

E. Mitchell Griffith, Esquire
Griffith Sharp & Liipfert, LLC
P.O. Drawer 570
Beaufort, SC 29901

Attorney for Respondent

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No.: 2011-CP-25-00252

RECEIVED

DEC 08 2017

SC Court of Appeals

Maurice Dawkins Appellant,

-v-

James A. Sell, ...Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Notice of Appeal has been served upon the following counsel of record by mailing a copy of the same, postage prepaid, in the United States Mail, addressed as shown below this 10th day of December, 2017.

E. Mitchell Griffith, Esquire
Griffith Sharp & Liipfert, LLC
P.O. Drawer 570
Beaufort, SC 29901

[SIGNATURE PAGE TO FOLLOW]

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

December 6, 2017
Hampton, South Carolina

BY: Wil. Barnes
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Attorneys for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Maurice Dawkins,

Plaintiff,

v.

James A. Sell,

Defendant.

IN THE COURT OF COMMON PLEAS
2011-CP-25-00252

VERDICT FORM

FILED
9:28 AM PM

OCT 12 2017
MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

VERDICT

☐ We, the Jury, find for the **Plaintiff** against the Defendant in the amount of \$ _____ **actual damages.**

FOREPERSON

RECEIVED

DEC 08 2017

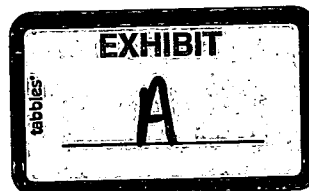
SC Court of Appeals

DATE

☒ We, the Jury, find for the **Defendant.**

FOREPERSON

10/12/2017
DATE



Co-Defendant Dennis Owens.¹ The Budget Truck then struck the Defendant and the drivers who were rendering aid; thereby injuring several individuals, including the Plaintiff.

The case was tried beginning on October 9, 2017 and the jury returned a verdict for the Defendant on October 12, 2017. At the trial of this matter, the Plaintiff called as witnesses the investigating officer, Officer Rush, and two other individuals who stopped to aid the Defendant-Josh Sparkman and Kristin Starnes-Sparkman. They testified that prior to the accident with the semi-truck, other vehicles happened upon the Budget Truck in the roadway and were able to safely move around the Budget Truck. They also testified that at least one other semi-truck had also safely moved around the Budget Truck prior to the accident with Pierce National's semi-truck.

In the Defendant's case, the Defendant called Co-Defendant Dennis Owens, the driver of Pierce National's Semi-Trailer Truck, and John Pinckney, an expert in Federal Motor Carrier Safety Regulations (FMCSA) compliance and safety, to testify regarding the actions of Dennis Owens. Mr. Pinckney opined that Dennis Owens violated several FMCSA regulations and falsified his driver logs showing that he had not had the proper rest. Additionally, the evidence presented showed that Dennis Owens did not slow for the hazard of rain, was driving too fast for conditions, and overdrove his headlights. At the conclusion of trial, the jury returned a verdict for Defendant.

DISCUSSION

The motion for judgment notwithstanding the verdict "is limited to the grounds stated in the motion for a directed verdict." V.E. Amick & Assoc., LLC v. Palmetto Environmental Group, Inc., 394 S.C. 538, 548-49, 716 S.E.2d 295, 300 (Ct. App. 2011). "A directed verdict or judgment

¹ Pierce National and Dennis Owens both settled with Plaintiff prior to trial.

notwithstanding the verdict should not be granted unless only one reasonable inference can be drawn from the evidence. Creighton, 334 S.C. at 112 (citing Brady Dev. Co., 312 S.C. 73, 439 S.E.2d 266 (1993)). “If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury.” Creighton, 334 S.C. at 112 (citing Gamble v. International Paper Realty Corp., 323 S.C. 367, 474 S.E.2d 438 (1996); Brady Dev. Co., 312 S.C. 73, 439 S.E.2d 266 (1993)). In other words, a motion for judgment notwithstanding the verdict “may be granted only if no reasonable jury could have reached the challenged verdict.” Gause v. Smithers, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013).

Moreover, “the grant or denial of a new trial motion rests within the discretion of the trial judge.” Umhoefer v. Bollinger, 298 S.C. 221, 379 S.E.2d 296 (Ct. App. 1989). “The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Howard v. Roberson, 376 S.C. 143, 149; 654 S.E.2d 877, 880 (Ct. App. 2007) (quoting Chapman v. Upstate RV & Marine, 364 S.C. 82, 88–89; 610 S.E.2d 852, 856 (Ct. App. 2005)). The Court may grant a new trial absolute only if “the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.” Burke v. AnMed Health, 393 S.C. 48, 710 S.E.2d 84, 88 (Ct. App. 2011). Similarly, the Court may grant a new trial under the thirteenth juror doctrine if the Court determines that “the jury’s verdict is contrary to the fair preponderance of the evidence.” Id.

I. Motion for Judgment Notwithstanding the Verdict

In its motion for judgment notwithstanding the verdict, Plaintiff alleges that the Court erred in failing to direct a verdict in favor of Plaintiff on the issue of intervening and superseding

negligence, and in failing to direct a verdict in favor of Plaintiff on the issue of Defendant's negligence. Although the Defendant testified that he accepted responsibility for turning over the Budget Truck, the question of whether Defendant's conduct amounted to the breach of any duty owed to Plaintiff was properly before the jury. Likewise, the jury's determination that Defendant did not breach any duty owed to Plaintiff was reasonable in light of the evidence presented. Further, the act of Pierce National's semi-trailer truck crashing into the Budget Truck could reasonably be said to be a superseding cause of Mr. Dawkins' injuries; certainly at least to the extent that it was a proper question for the jury to determine. The evidence supported the conclusion that a "reasonable jury" could have made the same decision as the jury in the present case.

Additionally, Plaintiff alleges that the Court erred in not directing a verdict on the issue of negligence on the theory that Defendant violated S.C. Code §§ 56-5-5060, 56-5-5080, and 56-5-5090 by not putting out roadside flares. The law states that a "[c]ausative violation of an applicable statute constitutes actionable negligence and is evidence of recklessness, willfulness and wantonness." Fairchild v. SCDOT, 398 S.C. 90, 100, 727 S.E.2d 407, 412 (2012) (quoting Field v. Gregory, 230 S.C. 39, 46, 94 S.E.2d 15, 19 (1956)) (emphasis added). As mentioned, the testimony in the case reflected that five to ten minutes had elapsed after the Budget Truck flipped on its side, and that as many as twenty other vehicles, including at least one other semi-truck, passed the location before the accident in question occurred. These facts render the question of whether the violation of these statutes was "causative" of Plaintiff's injuries as one that was properly before the jury. Likewise, the jury's determination that Defendant's alleged violation of these statutes did not cause Plaintiff's injuries could properly be characterized as reasonable given the evidence presented at trial.

II. Motion for New Trial

The Plaintiff also moves for a new trial on three (3) grounds. The first ground claims that the Defendant should not have been allowed to cross examine the Plaintiff on his pleadings and discovery responses; or, in the alternative, the Plaintiff should have been allowed to disclose to the jury that there was a settlement with Co-Defendants Owens and Pierce National or to disclose to the jury the settlement amount. However, the Plaintiff cites no law to this effect. In fact, generally, the prior pleadings in an action may be received in evidence against the pleader. Young v. Martin, 254 S.C. 50, 58, 173 S.E.2d 361 (1970). This issue has been previously addressed by the Supreme Court in the case of Lucht v. Youngblood, 266 S.C. 127, 221 S.E.2d 854 (1976). In Lucht, counsel also attempted to cross examine on prior pleadings regarding settlement with a different defendant in order to impeach. Lucht, 266 S.C. at 134. The trial court in Lucht did not allow counsel to cross-examine on the prior pleadings because it was concerned with disclosure of the prior settlement. Id. On appeal, the Supreme Court set out the procedure to handle such an issue and held:

“[W]hile this is a difficult issue to handle, the trial judge should have permitted the cross examination on the pleadings. If the judge thought the release on a covenant was becoming involved, he should simultaneously charge the jury that a plaintiff may choose which defendant he wishes to sue and that if any actions against a former defendant are relevant, they would be a matter for the court and not for the jury.” Id. at 135.

Additionally, the Plaintiff claims that the defendant should not have been allowed to publish to the jury the Plaintiff's discovery responses. However, Rule 33(d) SCRPC specifically states that “the answers may be used to the extent permitted by the rules of evidence.” If the Plaintiff's complaint is with the publishing the name of an expert to the jury, there is no error in

this regard. In the case of Holmes v. Black River Elec. Co-op., Inc., 274 S.C. 252, 260–61, 262 S.E.2d 875, 879 (1980), counsel for the plaintiff referenced to the jury that there were two experts who were retained, but did not testify. The Supreme Court held that “failure to call a witness is proper argument. In the presence of the jury, attention was called to the fact that these two expert witnesses had been offered to counsel for [the Plaintiff]. Of course, the jury was permitted to draw any inferences warranted. We find no error.” Holmes 274 S.C. at 260–61 (citing State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978)). Therefore, the law is settled that pleadings and discovery materials may be properly used on cross examination of a witness.

The Plaintiff further asserts that the Court erred in allowing Defendant Sell to “exceed the bounds of the empty chair defense.” The Plaintiff claims that Defendant Sell should not be allowed to use the empty chair defense and claim a set-off for the amount paid by the settling defendant/empty chair. The Plaintiff’s argument is without merit because this specific issue is addressed in the South Carolina Contribution Among Joint Tortfeasors Act (“the Act”), S.C. Code Ann. § 15-38-15. Under subsection (D) of the Act, “a defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.” S.C. Code Ann. § 15-38-15(D). Setoff was recently addressed by the Supreme Court in Huck v. Oakland Wings, LLC, No. 2015-002025, 2017 WL 3044750, at *2 (S.C. Ct. App. July 19, 2017). In Huck, the court reaffirmed that “a nonsettling defendant is entitled to credit for the amount paid by another defendant who settles.” Huck, 2017 WL 3044750 at *2; (citing Welch v. Epstein, 342 S.C. 279, 312, 536 S.E.2d 408, 425 (Ct. App. 2000); Powers v. Temple, 250 S.C. 149, 155, 156 S.E.2d 759, 761 (1967) “The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained

which has already been paid to him.” Truesdale v. S.C. Highway Dep't, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975). “In other words, there can be only one satisfaction for an injury or wrong.” Welch, 342 S.C. at 312; Huck, 2017 WL 3044750 at *2. No applicable law supports the conclusion that the Plaintiff exceeded the bounds of the “empty chair” defense.

The Plaintiff also claims that this Court erred in charging the jury on intervening and superseding negligence. As discussed above, a Pierce National semi-truck crashed into the overturned Budget Truck. It was proper for the jury to decide whether the occurrence of this crash was an intervening and superseding cause of Plaintiff's injuries.

CONCLUSION

This Court having considered the arguments, supporting and opposing documents, and based on the same DENIES Plaintiff's Motions for New Trial and for Judgment Notwithstanding the Verdict.

IT IS SO ORDERED!

November 17, 2017
Charleston, South Carolina

Roger M. Young, Sr.
Presiding Judge



Hampton Common Pleas

Case Caption: Maurice Dawkins VS James A Sell , defendant, et al

Case Number: 2011CP2500252

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2017-11-17 11:31:12 page 8 of 8

ELECTRONICALLY FILED - 2017 Nov 20 10:24 AM - HAMPTON - COMMON PLEAS - CASE#2011CP2500252

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No.: 2011-CP-25-00252

Maurice Dawkins Appellant,

-v-

James A. Sell, ...Respondent

NOTICE OF APPEAL

PLEASE take notice that Maurice Dawkins ("Appellant"), pursuant to Rule 203, SCACR, appeals the following Orders and Judgment in this matter:

- Jury verdict and Judgment rendered October 12, 2017 (Exhibit A);
- Order Denying Plaintiff's motion for new trial and judgment notwithstanding the verdict, signed and filed November 20, 2017 (Exhibit B).

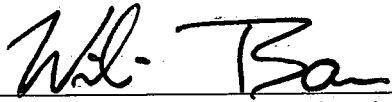
Appellant received written notice of entry of the Order denying Plaintiff's motion for new trial and judgment notwithstanding the verdict on November 20, 2017. This Notice is timely filed. A copy of the Orders appealed are attached to this Notice.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

December 6, 2017
Hampton, South Carolina

BY: 
Richard Alexander Murdaugh
William F. Barnes, III
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Attorney for Respondent

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Maurice Dawkins,

Plaintiff,

v.

James A. Sell,

Defendant.

IN THE COURT OF COMMON PLEAS

2011-CP-25-00252

VERDICT FORM

FILED
9:28 AM PM

OCT 12 2017
MYLINDA D NETTLES
CLERK OF COURT
HAMPTON COUNTY, SC

VERDICT

☐ We, the Jury, find for the **Plaintiff** against the Defendant in the amount of \$ _____ **actual** damages.

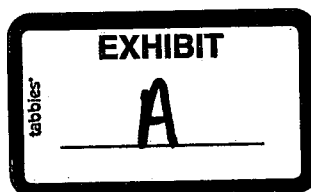
FOREPERSON

DATE

☒ We, the Jury, find for the **Defendant**.

FOREPERSON

DATE



STATE OF SOUTH CAROLINA,

COUNTY OF HAMPTON

MAURICE DAWKINS,

Plaintiff,

vs.

JAMES A. SELL,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2011-CP-25-00252

**ORDER DENYING PLAINTIFF'S
MOTIONS FOR NEW TRIAL AND
JUDGMENT NOTWITHSTANDING
THE VERDICT**

The trial of the above-captioned case began on October 9, 2017, in Hampton County. At the conclusion of trial, the jury returned for a verdict for the Defendant, James A. Sell. Plaintiff then filed a Motion for Judgment Notwithstanding the Verdict, pursuant to Rule 50(b), SCRPC, for amendment pursuant to Rule 52(b), SCRPC, and Motion for New Trial pursuant to Rule 59, SCRPC.

STATEMENT OF FACTS

This matter arises from an accident that occurred August 21, 2010, on I-95 in Hampton County, South Carolina. The Defendant, James Sell, was driving a Budget Rental Truck ("Budget Truck") when he lost control and the Budget Truck rolled onto its left side. The truck blocked both south bound lanes of travel on I-95. The Defendant and his grandson then exited the vehicle with the assistance of some other drivers who stopped to render aid, including the Plaintiff, Maurice Dawkins ("the Plaintiff"). Approximately five to ten minutes later, the Budget Truck was hit by a semi-trailer truck owned by Co-Defendant Pierce National and operated by



Co-Defendant Dennis Owens.¹ The Budget Truck then struck the Defendant and the drivers who were rendering aid; thereby injuring several individuals, including the Plaintiff.

The case was tried beginning on October 9, 2017 and the jury returned a verdict for the Defendant on October 12, 2017. At the trial of this matter, the Plaintiff called as witnesses the investigating officer, Officer Rush, and two other individuals who stopped to aid the Defendant- Josh Sparkman and Kristin Starnes-Sparkman. They testified that prior to the accident with the semi-truck, other vehicles happened upon the Budget Truck in the roadway and were able to safely move around the Budget Truck. They also testified that at least one other semi-truck had also safely moved around the Budget Truck prior to the accident with Pierce National's semi-truck.

In the Defendant's case, the Defendant called Co-Defendant Dennis Owens, the driver of Pierce National's Semi-Trailer Truck, and John Pinckney, an expert in Federal Motor Carrier Safety Regulations (FMCSA) compliance and safety, to testify regarding the actions of Dennis Owens. Mr. Pinckney opined that Dennis Owens violated several FMCSA regulations and falsified his driver logs showing that he had not had the proper rest. Additionally, the evidence presented showed that Dennis Owens did not slow for the hazard of rain, was driving too fast for conditions, and overdrove his headlights. At the conclusion of trial, the jury returned a verdict for Defendant.

DISCUSSION

The motion for judgment notwithstanding the verdict "is limited to the grounds stated in the motion for a directed verdict." V.E. Amick & Assoc., LLC v. Palmetto Environmental Group, Inc., 394 S.C. 538, 548-49, 716 S.E.2d 295, 300 (Ct. App. 2011). "A directed verdict or judgment

¹ Pierce National and Dennis Owens both settled with Plaintiff prior to trial.

notwithstanding the verdict should not be granted unless only one reasonable inference can be drawn from the evidence. Creighton, 334 S.C. at 112 (citing Brady Dev. Co., 312 S.C. 73, 439 S.E.2d 266 (1993)). “If the evidence as a whole is susceptible of more than one reasonable inference, the case should be submitted to the jury.” Creighton, 334 S.C. at 112 (citing Gamble v. International Paper Realty Corp., 323 S.C. 367, 474 S.E.2d 438 (1996); Brady Dev. Co., 312 S.C. 73, 439 S.E.2d 266 (1993)). In other words, a motion for judgment notwithstanding the verdict “may be granted only if no reasonable jury could have reached the challenged verdict.” Gause v. Smithers, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013).

Moreover, “the grant or denial of a new trial motion rests within the discretion of the trial judge.” Umhoefer v. Bollinger, 298 S.C. 221, 379 S.E.2d 296 (Ct. App. 1989). “The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” Howard v. Roberson, 376 S.C. 143, 149; 654 S.E.2d 877, 880 (Ct. App. 2007) (quoting Chapman v. Upstate RV & Marine, 364 S.C. 82, 88–89; 610 S.E.2d 852, 856 (Ct. App. 2005)). The Court may grant a new trial absolute only if “the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.” Burke v. AnMed Health, 393 S.C. 48, 710 S.E.2d 84, 88 (Ct. App. 2011). Similarly, the Court may grant a new trial under the thirteenth juror doctrine if the Court determines that “the jury’s verdict is contrary to the fair preponderance of the evidence.” Id.

I. Motion for Judgment Notwithstanding the Verdict

In its motion for judgment notwithstanding the verdict, Plaintiff alleges that the Court erred in failing to direct a verdict in favor of Plaintiff on the issue of intervening and superseding

negligence, and in failing to direct a verdict in favor of Plaintiff on the issue of Defendant's negligence. Although the Defendant testified that he accepted responsibility for turning over the Budget Truck, the question of whether Defendant's conduct amounted to the breach of any duty owed to Plaintiff was properly before the jury. Likewise, the jury's determination that Defendant did not breach any duty owed to Plaintiff was reasonable in light of the evidence presented. Further, the act of Pierce National's semi-trailer truck crashing into the Budget Truck could reasonably be said to be a superseding cause of Mr. Dawkins' injuries; certainly at least to the extent that it was a proper question for the jury to determine. The evidence supported the conclusion that a "reasonable jury" could have made the same decision as the jury in the present case.

Additionally, Plaintiff alleges that the Court erred in not directing a verdict on the issue of negligence on the theory that Defendant violated S.C. Code §§ 56-5-5060, 56-5-5080, and 56-5-5090 by not putting out roadside flares. The law states that a "[c]ausative violation of an applicable statute constitutes actionable negligence and is evidence of recklessness, willfulness and wantonness." Fairchild v. SCDOT, 398 S.C. 90, 100, 727 S.E.2d 407, 412 (2012) (quoting Field v. Gregory, 230 S.C. 39, 46, 94 S.E.2d 15, 19 (1956)) (emphasis added). As mentioned, the testimony in the case reflected that five to ten minutes had elapsed after the Budget Truck flipped on its side, and that as many as twenty other vehicles, including at least one other semi-truck, passed the location before the accident in question occurred. These facts render the question of whether the violation of these statutes was "causative" of Plaintiff's injuries as one that was properly before the jury. Likewise, the jury's determination that Defendant's alleged violation of these statutes did not cause Plaintiff's injuries could properly be characterized as reasonable given the evidence presented at trial.

II. Motion for New Trial

The Plaintiff also moves for a new trial on three (3) grounds. The first ground claims that the Defendant should not have been allowed to cross examine the Plaintiff on his pleadings and discovery responses; or, in the alternative, the Plaintiff should have been allowed to disclose to the jury that there was a settlement with Co-Defendants Owens and Pierce National or to disclose to the jury the settlement amount. However, the Plaintiff cites no law to this effect. In fact, generally, the prior pleadings in an action may be received in evidence against the pleader. Young v. Martin, 254 S.C. 50, 58, 173 S.E.2d 361 (1970). This issue has been previously addressed by the Supreme Court in the case of Lucht v. Youngblood, 266 S.C. 127, 221 S.E.2d 854 (1976). In Lucht, counsel also attempted to cross examine on prior pleadings regarding settlement with a different defendant in order to impeach. Lucht, 266 S.C. at 134. The trial court in Lucht did not allow counsel to cross-examine on the prior pleadings because it was concerned with disclosure of the prior settlement. Id. On appeal, the Supreme Court set out the procedure to handle such an issue and held:

“[W]hile this is a difficult issue to handle, the trial judge should have permitted the cross examination on the pleadings. If the judge thought the release on a covenant was becoming involved, he should simultaneously charge the jury that a plaintiff may choose which defendant he wishes to sue and that if any actions against a former defendant are relevant, they would be a matter for the court and not for the jury.” Id. at 135.

Additionally, the Plaintiff claims that the defendant should not have been allowed to publish to the jury the Plaintiff's discovery responses. However, Rule 33(d) SCRPC specifically states that “the answers may be used to the extent permitted by the rules of evidence.” If the Plaintiff's complaint is with the publishing the name of an expert to the jury, there is no error in

this regard. In the case of Holmes v. Black River Elec. Co-op., Inc., 274 S.C. 252, 260–61, 262 S.E.2d 875, 879 (1980), counsel for the plaintiff referenced to the jury that there were two experts who were retained, but did not testify. The Supreme Court held that “failure to call a witness is proper argument. In the presence of the jury, attention was called to the fact that these two expert witnesses had been offered to counsel for [the Plaintiff]. Of course, the jury was permitted to draw any inferences warranted. We find no error.” Holmes 274 S.C. at 260–61 (citing State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978)). Therefore, the law is settled that pleadings and discovery materials may be properly used on cross examination of a witness.

The Plaintiff further asserts that the Court erred in allowing Defendant Sell to “exceed the bounds of the empty chair defense.” The Plaintiff claims that Defendant Sell should not be allowed to use the empty chair defense and claim a set-off for the amount paid by the settling defendant/empty chair. The Plaintiff’s argument is without merit because this specific issue is addressed in the South Carolina Contribution Among Joint Tortfeasors Act (“the Act”), S.C. Code Ann. § 15-38-15. Under subsection (D) of the Act, “a defendant shall retain the right to assert that another potential tortfeasor, whether or not a party, contributed to the alleged injury or damages and/or may be liable for any or all of the damages alleged by any other party.” S.C. Code Ann. § 15-38-15(D). Setoff was recently addressed by the Supreme Court in Huck v. Oakland Wings, LLC, No. 2015-002025, 2017 WL 3044750, at *2 (S.C. Ct. App. July 19, 2017). In Huck, the court reaffirmed that “a nonsettling defendant is entitled to credit for the amount paid by another defendant who settles.” Huck, 2017 WL 3044750 at *2; (citing Welch v. Epstein, 342 S.C. 279, 312, 536 S.E.2d 408, 425 (Ct. App. 2000); Powers v. Temple, 250 S.C. 149, 155, 156 S.E.2d 759, 761 (1967) “The reason for allowing such a credit is to prevent an injured person from obtaining a second recovery of that part of the amount of damages sustained

which has already been paid to him.” Truesdale v. S.C. Highway Dep't, 264 S.C. 221, 235, 213 S.E.2d 740, 746 (1975). “In other words, there can be only one satisfaction for an injury or wrong.” Welch, 342 S.C. at 312; Huck, 2017 WL 3044750 at *2. No applicable law supports the conclusion that the Plaintiff exceeded the bounds of the “empty chair” defense.

The Plaintiff also claims that this Court erred in charging the jury on intervening and superseding negligence. As discussed above, a Pierce National semi-truck crashed into the overturned Budget Truck. It was proper for the jury to decide whether the occurrence of this crash was an intervening and superseding cause of Plaintiff’s injuries.

CONCLUSION

This Court having considered the arguments, supporting and opposing documents, and based on the same DENIES Plaintiff’s Motions for New Trial and for Judgment Notwithstanding the Verdict.

IT IS SO ORDERED!

November 17, 2017
Charleston, South Carolina

Roger M. Young, Sr.
Presiding Judge



Hampton Common Pleas

Case Caption: Maurice Dawkins VS James A Sell , defendant, et al

Case Number: 2011CP2500252

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2017-11-17 11:31:12 page 8 of 8

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

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December 6, 2017

William F. Barnes, III
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The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Re: Maurice Dawkins v. James A. Sell
Civil Action No.: 2011-CP-25-00252

Dear Ms. Kitchings:

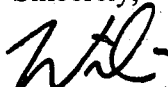
Enclosed for filing please find the original and one copy of the Notice of Appeal in the above-referenced case. Also enclosed is the certificate of service of the Notice of Appeal on Respondent, James A. Sell, copy of the Orders challenged on appeal, and a check in the amount of \$100.00 for the filing fee. Please file the enclosed documents and return a clocked copy of same in the enclosed self-addressed, stamped envelope.

By copy of this letter, I am serving all counsel of record with a copy of the same.

If you have any questions, please do not hesitate to contact our office.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: The Honorable Mylinda Nettles
E. Mitchell Griffith, Esquire

LAW OFFICES
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June 4, 2018

William F. Barnes, III
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The Honorable Jenny Abbott Kitchings
S.C. Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Re: *Maurice Dawkins v. James A. Sell*
Appellate Case No.: 2017-002520

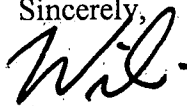
Dear Ms. Kitchings:

Please be advised the transcript of record ordered from Ruth Weese, the court reporter who covered part of the trial in the above-referenced matter, was received on January 4, 2018.

The transcript of record ordered from Brenda Sigwald, the court reporter who covered majority of the trial in the matter, was received on May 29, 2018.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd

cc: E. Mitchell Griffith, Esquire
SC Court Administration

LAW OFFICES
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK

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December 6, 2017

William F. Barnes, III
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Paralegal: mdavis@pmped.com

Brenda W. Sigwald
Post Office Box 206
Jackson, SC 29831

Re: Dawkins v. James A. Sell
Civil Action No.: 2011-CP-25-00252

Dear Ms. Sigwald:

The above-referenced matter was tried before Judge Young on October 9-12th, 2017 in Hampton County. As the court reporter for this trial, please allow this letter to serve as our formal request for a copy of the complete transcript as soon as conveniently possible.

Please forward an invoice with the transcript and we will remit payment upon receipt as provided by Rule 607, SCACR.

If you need any additional information, please let us know. Thank you for your assistance in this matter.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd

cc: Honorable Jenny Abbott Kitchings, SC Court of Appeals
SC Court Administration
E. Mitchell Griffith, Esquire

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December 6, 2017

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Ruth Weese
1554 Chastain Road
Johns Island, SC 29455

Re: Dawkins v. James A. Sell
Civil Action No.: 2011-CP-25-00252

Dear Ms. Weese:

The above-referenced matter was tried before Judge Young on October 9-12th, 2017 in Hampton County. As the court reporter for this trial on October 12th, 2017, please allow this letter to serve as our formal request for a copy of the complete transcript as soon as conveniently possible.

Please forward an invoice with the transcript and we will remit payment upon receipt as provided by Rule 607, SCACR.

If you need any additional information, please let us know. Thank you for your assistance in this matter.

With kind regards, I am

Sincerely,



William F. Barnes, III

WFB/mcd

cc: Honorable Jenny Abbott Kitchings, SC Court of Appeals
SC Court Administration
E. Mitchell Griffith, Esquire

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No.: 2017-002520

RECEIVED

DEC 10 2018

SC Court of Appeals

Maurice Dawkins Appellant,

v.

James A. Sell Respondent,

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

December 7, 2018
Hampton, South Carolina

BY: _____



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