

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.: 2016-CP-39-001346
Appellate Case No. 2018-000102

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SC Court of Appeals

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Appellant,

v.

Gerald L. Moody,

Respondent.

RECORD ON APPEAL

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INDEX

Order Granting Defendant's (Respondent's) Motion for Summary Judgment.....	3
Order Denying (Appellant's) Notice of Motion and Motion to Alter or Amend Judgment Pursuant to Rule 59, SCRCP, and Motion to Reconsider Pursuant to Rule 52, SCRCP	8
Summons	10
Complaint.....	11
Answer of Gerald L. Moody	14
Motion for Summary Judgment of Defendant (Respondent) Gerald L. Moody	17
Defendant (Respondent) Gerald L. Moody's Memorandum in Support of Motion for Summary Judgment with exhibits.....	18
a. Excerpts from Deposition of Chelsea Abdelgheny (Exhibit A).....	25
b. Excerpts from Deposition of Gerald L. Moody (Exhibit B).....	44
c. Summons & Complaint (Exhibit C).....	58
Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment	62
a. Picture (Exhibit A).....	68
b. Excerpts from Deposition of Chelsea Abdelgheny (Exhibit B).....	70
c. Excerpts from Deposition of Gerald L. Moody (Exhibit C).....	81
Plaintiff's (Appellant's) Notice of Motion and Motion to Alter or Amend Judgment Pursuant to Rule 59, SCRCP, and Motion to Reconsider Pursuant to Rule 52, SCRCP	85
a. Picture (Exhibit A).....	98
b. Pictures (Exhibit B).....	100
c. Excerpts from Deposition of Chelsea Abdelgheny (Exhibit C).....	103
d. Excerpts from Deposition of Gerald L. Moody (Exhibit D).....	115

Transcript of Record from October 13, 2017 hearing on Motion for Summary Judgment.....	119
Transcript of Deposition of Chelsea Jackson on July 11, 2017, including all exhibits	143
a. Direct Examination by Chad M. Graham.....	146
b. Direct Examination by Raymond T. Wooten.....	217
c. Defendant's Exhibit 1, Photograph.....	219
d. Defendant's Exhibit 2, Photograph.....	220
e. Defendant's Exhibit 3, Photograph.....	221
f. Defendant's Exhibit 4, Photograph.....	222
g. Defendant's Exhibit 5, Photograph.....	223
h. Defendant's Exhibit 6, Photograph.....	224
i. Defendant's Exhibit 7, Photograph.....	225
Transcript of Deposition of Gerald L. Moody on July 11, 2017, including all exhibits	226
a. Direct Examination by Raymond T. Wooten.....	229
b. Direct Examination by Chad M. Graham.....	271
c. Defendant's Exhibit 1, Photograph.....	273
d. Defendant's Exhibit 2, Photograph.....	274
e. Defendant's Exhibit 3, Photograph.....	275
f. Defendant's Exhibit 4, Photograph.....	276
Pictures of Meeting Street.....	277
Certificate of Counsel	279

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS
Case No. 2016-CP-39-001346

Chelsea Abdelgheny f/k/a Chelsea Jackson,)

Plaintiff,)

vs.)

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Gerald L. Moody,)

Defendant.)

This matter comes before the Court upon Defendant's Motion for Summary Judgment heard October 13, 2017. After careful review of the memoranda presented by counsel, the case law and relevant portions of the parties' depositions and pleadings, the Court finds that Summary Judgment should be awarded in favor of the Defendant. The sole issue before the court is the degree of negligence, if any, of the Defendant.

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCF. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party."

Bloom v. Ravoira, 339 S.C. 417, 422-23, 529 S.E.2d 710, 712 (2000) (citing Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)). "Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Id. at 422.

"Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide." Id. (citing Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 32, 491 S.E.2d 571, 575 (1997); accord Brown v. Smalls, 325 S.C.

547, 481 S.E.2d 444 (Ct.App. 1997)). In comparative negligence cases, "the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent." Id. (citing Creech, 328 S.C. at 33, 491 S.E.2d at 575. "Where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury." Id., 339 S.C. at 424, 529 S.E.2d at 714.

In Bloom, the South Carolina Supreme Court affirmed the trial court's grant of summary judgment where a pedestrian's negligence in crossing the street exceeded that of the plaintiff's. See id. at 425. In that case, the plaintiff was struck by the defendant's car while crossing a street in Charleston. Id. 339 S.C. at 420, 529 S.E.2d at 711. The undisputed facts established that the defendant attempted to cross in the middle of the street despite the existence of crosswalks and traffic signals. Id. 339 S.C. at 423, 529 S.E.2d at 713. The defendant was driving within the speed limit, he was not driving recklessly, and his car lights and windshield wipers were on. Id. 339 S.C. at 424. The accident occurred a split second after the plaintiff entered the street, and the defendant did not see the plaintiff prior to the accident indicating the plaintiff entered the street quickly and without warning to drivers. Id. 339 S.C. at 420, 529 S.E.2d at 711. The Court found that the plaintiff did not cross the street in a safe, reasonable manner, and that, as a matter of law, the plaintiff's negligence exceeded fifty percent. Id. 339 S.C. at 425, 529 S.E.2d at 714.

The present case occurred in rainy conditions similar to those in Bloom. The undisputed facts establish that the Defendant was traveling 25-30 miles per hour, had his headlights and windshield wipers on, and did not see the plaintiff until just before he struck her in his lane of travel. The plaintiff was wearing a hoody, talking on her cell phone, and was not crossing at an intersection or cross walk despite the fact that one existed not far from her location. While the

plaintiff testified she looked both ways, she also testified that she did not see the Defendant's car when she crossed the street. Based on this evidence, the Court finds that the plaintiff did not cross the road in a safe, reasonable manner. Moreover, the plaintiff was negligent *per se* in crossing the road. See S.C. Code §§ 56-5-3150 (a) ("every pedestrian crossing a roadway at any point other than within a marked crosswalk...shall yield the right-of-way to all vehicles on the roadway"); see also 56-5-3150(c) ("Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.").

Additionally, the Court must also look at the allegations and evidence against the Defendant. Under paragraph 7 of the Complaint, the Plaintiff asserts general allegations of negligence and includes: a) failing to keep vehicle under proper control; b) failure keep vehicle properly equipped; c) failure to use degree of care; d) failing to maintain a proper lookout; e) driving too fast for conditions; f) failing to control speed of vehicle; g) failing to exercise proper precautions; and h) failing to use due care. The evidence, based on the depositions of both parties was that the defendant was traveling 25-30 miles per hour, had his lights on, his vehicle was in good working condition, he was not talking on the phone or changing the radio station or otherwise distracted, and he saw the Plaintiff in front of his vehicle when he was 10 feet away and immediately slammed on his brakes. However, he had no time to do anything to avoid colliding with the plaintiff. Thus, even if it could be argued that the evidence establishes that the Defendant was slightly negligent it is not, as a matter of law, greater than the Plaintiff's negligence.

In light of Bloom and the evidence presented, the Court finds that Summary Judgment in favor of the Defendant is warranted. The Court holds that there is no material issue of fact and

the Defendant is entitled to judgment as a matter of law. Defendant's Motion for Summary Judgment is granted.

Perry H. Gravely
Presiding Judge

Pickens, South Carolina

October ____, 2017



Pickens Common Pleas

Case Caption: Chelsea Abdelgheny , plaintiff, et al VS Gerald L Moody

Case Number: 2016CP3901346

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Chelsea Abdelgheny f/k/a Chelsea Jackson,

Case No: 2016-CP-39-01346

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGEMENT, AND MOTION TO
RECONSIDER**

Gerald L. Moody,

Defendant.

This matter comes before the Court upon Plaintiff's Motion to Alter or Amend, and Motion to Reconsider this Court's October 30, 2017, Order granting Defendant's Motion for Summary Judgment. After fully considering said Motions, this Court finds that oral argument is not needed for a final determination. The Court has reviewed the Defendant's arguments and there does not appear to be any grounds to support an amendment or alteration to the Order previously filed in this matter. In this case, the Plaintiff's negligence was overwhelming, which warrants granting summary judgment to the Defendant. Therefore, the Defendant's Motion to Alter or Amend, and Motion to Reconsider are DENIED.

IT IS SO ORDERED!

Perry H. Gravely
Presiding Judge

Pickens, South Carolina

January _____, 2018



Pickens Common Pleas

Case Caption: Chelsea Abdelgheny , plaintiff, et al VS Gerald L Moody

Case Number: 2016CP3901346

Type: Order/Amend

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2018-01-18 08:16:09 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
C.A. No: 2016-CP-39-_____

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Plaintiff,

Vs.

Gerald L. Moody,

Defendant.

SUMMONS

(Jury Trial Demanded)

TO: DEFENDANT HEREIN:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscriber at his office, Post Office Box 1207, 1810 East Main Street, Easley, South Carolina, 29641, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,

s/ Raymond T. Wooten

Raymond T. Wooten (S.C. Bar No. 81483)

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Attorney for Plaintiff

Easley, South Carolina
November 29, 2016

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
C.A. No: 2016-CP-39-_____

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Plaintiff,

Vs.

Gerald L. Moody,

Defendant.

COMPLAINT

(Jury Trial Demanded)

Plaintiff, complaining of Defendant herein, would respectfully show unto this Honorable Court that:

1. Plaintiff is a citizen and resident of Pickens County, South Carolina.
2. Defendant was a citizen of Pickens County, South Carolina, at all times pertinent hereto.
3. Upon information and belief, Defendant was the operator of a 1993 Chevrolet truck.
4. On October 26, 2015, Defendant was traveling South on Gentry Memorial Highway, and struck Plaintiff who was crossing Gentry Memorial Highway on foot.
5. Jurisdiction and venue are proper.

FOR A FIRST CAUSE OF ACTION

(Negligence/Gross Negligence)

6. Plaintiff reiterates and realleges the prior allegations in this Complaint as if repeated herein verbatim.
7. Defendant was careless, negligent, reckless, and grossly negligent at the time and place above-mentioned in the following particulars:

- a) In failing to keep Defendant=s vehicle under proper control;

- b) In failing and omitting to have the aforementioned vehicle equipped with proper and responsible brakes or, if so equipped, in failing to apply said brakes in a timely manner;
- c) In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there existing;
- d) In failing to maintain a proper lookout;
- e) In driving too fast for conditions;
- f) In failing to control the speed of his vehicle so as to avoid striking Plaintiff;
- g) In failing and omitting to exercise proper precautions under the existing circumstances;
- h) In failing to use due care to avoid striking pedestrians;

All of which were the direct and proximate cause of the injuries and damages suffered by Plaintiff herein, said acts being in violation of the statutory laws of the State of South Carolina and the dictates of ordinary prudence.

8. As a direct and proximate result of the willful, wanton, and reckless negligence of Defendant, Plaintiff suffered great physical harm and injury from being run over by Defendant's vehicle, all of which has caused and will continue to cause her to undergo much physical pain and suffering and mental anguish and distress, has caused and will continue to cause her to have to spend money for medical services, and has caused and will continue to cause her to suffer lost wages, diminution in income and economic damages. Plaintiff has suffered permanent injury as well as

loss of enjoyment of life and has been otherwise damaged.

9. Plaintiff is informed and believes that she is entitled to judgment against Defendant for such an amount of actual and punitive damages as the trier of fact may find, for the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

WHEREFORE, Plaintiff prays for judgment against Defendant for such an amount of actual and punitive damages as the trier of fact may find, for the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED,

s/ Raymond T. Wooten
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Easley, South Carolina
November 29, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
Chelsea Abdelgheny f/k/a Chelsea Jackson,)
Plaintiff,)
v.)
Gerald L. Moody,)
Defendants.)

IN THE COURT OF COMMON PLEAS

ANSWER

(JURY TRIAL DEMANDED)

CA NO.: 2016-CP- 39-01346

Defendant Gerald L. Moody (hereinafter "Defendant"), answering the Complaint of Plaintiff, will respectfully show unto this Court as follows:

1. Paragraph 1 is admitted.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.
4. In responding to allegations in Paragraph 4, Defendant admits that an accident occurred involving Defendant and Plaintiff. Defendant denies all allegations in Paragraph 4 not specifically admitted.
5. Paragraph 5 is admitted.
6. Defendant re-alleges and restates the preceding paragraph as is stated here in verbatim.
7. Paragraph 7 is denied.
8. Paragraph 8 is denied.
9. Paragraph 9 is denied.

FOR A SECOND DEFENSE

(Unconstitutionality of Punitive Damages)

10. Defendant alleges that the imposition and the awarding of punitive damages in this case denies the Defendant due process of law and is unconstitutional and the denial of Defendant's constitutional rights and is contrary to the Fifth, Eighth and Fourteenth Amendments of The Constitution of The United State of America and Article 1, Sections 3, 13 and 15, of The Constitution of the State of South Carolina.

FOR A THIRD DEFENSE

(Comparative Negligence)

11. Defendant asserts the doctrine of comparative negligence as an absolute bar or in the alternative a reduction in recovery sought by Plaintiff.

FOR A FOURTH DEFENSE

(Unavoidable Accident)

12. The allegations of the preceding Defenses are re-alleged and incorporated by reference in so far as they are consistent.
13. Defendant expressly denies liability and asserts that the accident at issue in this litigation was an unavoidable accident for Defendant due to the conditions then and there existing which created a situation where the accident was unavoidable. Defendant therefore pleads that the Unavoidable Accident defense is absolute bar to the claims by Plaintiff.

FOR A FIFTH DEFENSE
(Motion to Dismiss Pursuant to Rule 12(b)(6))

14. Defendant moves to dismiss Plaintiff's Complaint for failure to state a claim upon which relief may be granted against Defendant pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendant having answered the Complaint Plaintiff prays that this Court:

1. Dismiss Plaintiff's Complaint with prejudice;
2. Award Defendant the costs of defending this matter; and
3. Award Defendant such other and further relief as this Court deems just and equitable.

THE WARD LAW FIRM, P.A.
Attorneys for Defendant Gerald L. Moody

/s/Chad M. Graham

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January 18, 2017

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS)

Chelsea Abdelgheny f/k/a
Chelsea Jackson,

Plaintiff,

DEFENDANT GERALD MOODY'S
MOTION FOR SUMMARY JUDGEMENT

v.)

Gerald L. Moody,

Defendant.)

C.A. NO.: 2016-CP-39-01346

**TO: CHELSEA ABDELGEHNY f/k/a CHELSEA JACKSON AND HER ATTORNEY
RAYMOND WOOTEN:**

You will please take notice that ten days after the service hereof, or such time and place as the Court may deem appropriate, Defendant Gerald Moody (hereinafter "Defendant") will move the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting Defendant's Motion for Summary Judgment in this case. The motion is made upon the grounds there is no genuine issue as to any material fact and Defendant is entitled to judgment in his favor as a matter of law. Specifically, this meant the grounds for this motion are:

1. There is no evidence of negligence on the part of the Defendant entitling Plaintiff to a verdict; and in the alternative,
2. Plaintiff was comparatively negligent as a matter of law. Specifically, Plaintiff has admitted to violating S. C. Code Ann. § 56-5-3150 and S. C. Code Ann. § 36-05-3160.

In further support of this Motion, Defendant craves reference to the pleadings, discovery, substantive and procedural law of South Carolina, deposition transcripts and a memorandum to be filed in support of this motion.

THE WARD LAW FIRM, P.A.
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July 17, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
	)	
Chelsea Abdelgheny f/k/a	)	
Chelsea Jackson,	)	DEFENDANT GERALD MOODY'S
	)	MEMORANDUM IN SUPPORT OF
Plaintiff,	)	MOTION FOR SUMMARY
	)	JUDGEMENT
	)	
v.	)	
	)	
Gerald L. Moody,	)	
	)	C.A. NO.: 2016-CP-39-01346
Defendant.	)	

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant Gerald L. Moody (hereinafter "Moody") submits this memorandum in support of Motion for Summary Judgment.

UNDISPUTED FACTS

This lawsuit arises out of an automobile accident occurring on October 26, 2015 at around 8PM on Gentry Memorial Highway in Pickens County, South Carolina. Plaintiff Chelsea Abdelgheny (hereinafter "Plaintiff") was walking from Mission Fitness across Gentry Memorial Highway to CMG Signs. *See* Deposition Transcript of Plaintiff p.36:12-p.37:4. Plaintiff admitted that she was walking diagonally across Gentry Memorial Highway and that she stopped in the median prior to proceeding into Moody's lane of travel. Plaintiff admitted that she was not using a crosswalk when the accident occurred. *Id.* at p. 39:2-p.40:6. Plaintiff admitted that it was raining and dark at the time she crossed the street, and that she had a hood covering her face due to the rain. *Id.* at p.41:7-10.

Plaintiff testified that she was in Moody's lane of travel at the point of impact. *Id.* at p. 42:13-18. Plaintiff testified that she did not see Moody's vehicle at any point prior to the impact and that she did not know how fast Moody was traveling at the point of impact or prior to the

impact. *Id.* at p.41:14-41:20. Furthermore, Plaintiff admitted that she was told she was on a cell phone at the time of the impact. *Id.* at p. 47:2-6 and p.48:13-20.

Moody had been at his grandson's house near downtown Pickens and was on his way home when the accident occurred. *See* Deposition Transcript of Gerald Moody, p. 18:1-p.19:10. The weather at the time of the accident was medium to heavy rain. *Id.* at p.17:13-21. Moody testified that he was running at around 25-30 miles per hour at the time of the impact. *Id.* at 20:8-14. He testified that he was keeping a proper lookout and saw Plaintiff when she was approximately 10 feet in front of his vehicle, and he immediately pressed his brakes. She took two fast steps after he saw her and his vehicle struck her with the front passenger side. *Id.* at p. 21:8-p.22:8. Moody testified that Plaintiff went over his fender and she ended up in the road next to his back bumper. *Id.* at p.22:9-17. Moody testified that the area where the accident occurred was not very well lit. *Id.* at p.33:22-25. Moody testified that his lights were in proper working order. *Id.* at p.43:7-p.44:3. Moody was not given a ticket by the investigating officer as a result of this accident.

STANDARD OF REVIEW

"Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Russell v. Wachovia Bank, N.A.*, 370 S.C. 5, 633 S.E.2d 722, 727 (2006). "While the Court views the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing summary judgment, the mere existence of a scintilla of evidence is not enough to frustrate the motion. To defeat it, the party opposing the summary judgment must present evidence of specific facts from which the finder of fact could reasonably find for him." *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 226 S.E.2d 722, 733 (Ct. App. 2005).

ANALYSIS

To establish a cause of action in negligence, a plaintiff must prove the following three elements: 1) a duty of care owed by defendant to plaintiff; 2) breach of that duty owed by a negligence act or omission; and 3) damage proximately resulting from the breach of duty. *Bloom v. Ravoir*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). Furthermore, pursuant to South Carolina's comparative fault system, "the plaintiff in a negligence action may recover damages only when his or her negligence is not greater than that of the defendant." *Estate of Haley v. Brown*, 370 S.C. 240, 634 S.E.2d 62, 63 n.3 (Ct. App. 2006).

In South Carolina, a driver and a pedestrian owe certain statutory duties. Regarding pedestrian duties, "a pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway." S.C. Code Ann. Section 56-5-3150(a). In addition, "...pedestrians shall not cross at any place except in a marked crosswalk." S.C. Code Ann. Section 56-5-3150(c). Regarding drivers, they are "charged with the duty to exercise due care to avoid colliding with any pedestrian." S.C. Code Ann. Section 56-5-3230.

a. Plaintiff was Negligent by Admission

As stated by the statutes listed above, pedestrians may not cross roadways outside of crosswalks without yielding the right of way to all vehicles. The testimony provided by Plaintiff demonstrates that Plaintiff chose to attempt to cross a four-lane roadway (with median) outside of a crosswalk in breach of the statutory duty created by S.C. Code Ann. Section 56-5-3150. The testimony of Plaintiff is that she entered Moody's lane of travel under dark and rainy conditions. She covered her face with a hood and was talking on a cell phone at the time of the accident while failing to yield the right of way to Moody. Plaintiff's failure to yield the right of way under these conditions constitutes *negligence per se* as a clear violation of the pedestrian statute and by any common sense analysis. See *Jowers v. Dupriest*, 249 S.C. 506, 154, S.E. 922 (1967). Negligence per se simply means the jury need not decide if the defendant acted as would a

reasonable man in the circumstances. The statute fixes the standard of conduct required. *Trivelas v. South Carolina Dept. of Transp.*, 558 S.E.2d 271, 275, 348 S.C. 125, 134 (S.C.App.,2001).

b. No Evidence of Moody's Negligence

The uncontroverted testimony lacks any evidence of negligence on behalf of Moody.

The only evidence in the record is that Moody was traveling under the speed limit at 25-30 miles per hour. The only evidence in the record regarding Moody's headlights is that the headlights were in proper working order. Moody testified he was keeping a proper lookout when Plaintiff suddenly and without warning entered his lane of travel 10 feet in front of him. Moody testified that Plaintiff's face was covered by a hood, and Plaintiff by her own admission was talking on a cell phone. Moody immediately reacted as any reasonable driver would react by applying his brakes but was unable to avoid the contact with Plaintiff.

Plaintiff will assert that Moody violated a duty to keep a proper lookout to avoid colliding with a pedestrian under S.C. Code Ann. Section 56-5-3230 due to the fact that the testimony demonstrates that he did not see Plaintiff until she was approximately 10 feet away from him. However, there is no support for this contention. Plaintiff's testimony is that she was in the median when she paused to look for oncoming traffic, she proceeded into the oncoming lanes of traffic walking at a normal speed and was struck soon thereafter. *See* Deposition Transcript of Plaintiff, p.46:5-13. Despite the language of the statute, Moody could not have anticipated Plaintiff would have been crossing this roadway illegally while on her cell phone so as to give him virtually no time to react to avoid the collision. He applied his brakes as soon as he saw Plaintiff in his lane of travel. Even viewing the light most favorable to Plaintiff, the record is devoid of any evidence of negligence on behalf of Moody.

c. Application of Comparative Negligence

Even if the Court were to assume a scintilla of evidence exists, the evidence is

overwhelming that Plaintiff was more than 50% at fault for the accident. The Court may “determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceed fifty percent. *Bloom v. Ravoir*, 339 S.C. 417, 422, 529 S.E.2d at 713. The evidence of Plaintiff’s negligence is compelling and, frankly, overwhelming. She failed to yield the right of way by crossing a roadway at a location other than a crosswalk. She crossed at night in rainy conditions with a hood covering her face. She failed to keep a proper lookout for vehicles lawfully in the roadway. Plaintiff admitted she was talking on her cell phone at the time of the collision. Plaintiff’s main assertion of Moody’s negligence, that he should have seen her prior to when she was 10 feet in front of her, further substantiates her own negligence. She was in the median lane of travel when she ascertained whether she had time to cross the roadway. She was in a better position to determine whether she could have successfully crossed the roadway. The evidence is clear that Moody had control of his lane for a substantial period of time prior to the impact and had not switched lanes since departing from the intersection that was approximately one/quarter of a mile from the scene of the accident.

This case is controlled by the seminal driver/pedestrian case in South Carolina. In *Bloom*, a pedestrian attempted to cross Meeting Street in Charleston. The pedestrian entered the roadway at night in an area that was not designated as a crosswalk. The pedestrian stated he looked left and then right and then entered the street without looking to the left again, and entered the roadway without seeing the motorist. The motorist was driving no more than 25 miles per hour and was not driving recklessly. The driver of the vehicle that struck the pedestrian was driving within the speed limit, using properly working headlights and no evidence that he was driving recklessly. The South Carolina Supreme Court found: “The undisputed facts establish the pedestrian attempted to cross the street but did not do so in a safe, reasonable manner. Any factual issues which might exist as to the driver’s fault in this accident cannot alter

the inescapable conclusion that, as a matter of law, the pedestrian's fault exceeded fifty percent. Where evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury." *Id.* at 423, 529 S.E. at 714.

CONCLUSION

Based upon the foregoing, Moody respectfully requests his Motion for Summary Judgment be granted.

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October 11, 2017

Exhibit 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) C.A. NO. 2016-CP-39-01346

Chelsea Abdelgheny f/k/a)
Chelsea Jackson,)
Plaintiff,)
Versus)
Gerald L. Moody,)
Defendant.)

DEPOSITION OF
CHELSEA ABDELGHENY

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of CHELSEA ABDELGHENY was taken on the 11th day of July, 2017, commencing at the hour of 10:00 a.m., in the offices of Smith, Jordan & Lavery, P.A., Attorneys at Law, Easley, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

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Deposition of Chelsea Abdelgheny

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Deposition of Chelsea Abdelgheny

INDEX

Stipulations, waiver and Oath.....	4
Examination by Mr. Graham.....	4
Examination by Mr. Wooten.....	75
Certificate of Reporter.....	76

EXHIBITS:

Defendant's Exhibit 1, 1 pg.; photograph.....	34
Defendant's Exhibit 2, 1 pg.; photograph.....	38
Defendant's Exhibit 3, 1 pg.; photograph.....	43
Defendant's Exhibit 4, 1 pg.; photograph.....	51
Defendant's Exhibit 5, 1 pg.; photograph.....	53
Defendant's Exhibit 6, 1 pg.; photograph.....	53
Defendant's Exhibit 7, 1 pg.; photograph.....	54

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 Total Fitness and teach classes at Mission Fitness, are
2 you pretty tired?

3 A. I'm okay. I'm usually pretty full of energy, ready to
4 go.

5 Q. That's a lot of working out, isn't it?

6 A. Yeah.

7 Q. Okay. Do you have a record of who would have attended,
8 your classes that day?

9 A. I don't have a record.

10 Q. Would Mission Fitness probably?

11 A. They would.

12 Q. And so on this particular evening, the night of the
13 accident, where were you going after you got off work
14 at Mission Fitness?

15 A. I was going to go home.

16 Q. I mean, what were you doing when the accident occurred?

17 A. CMG Signs, I was going over there. They were producing
18 signage for the gym, and they didn't answer the phone,
19 so I walked over there.

20 Q. At 8 o'clock at night, were they still open?

21 A. Yes.

22 Q. What were you going to do when you got there?

23 A. Get the product we'd ordered.

24 Q. So you weren't going to go right home; you had to go to
25 CMG Signs to pick up this product. Is that right?

Deposition of Chelsea Abdelgheny

1 A. Right.

2 Q. So you were crossing Gentry Memorial Highway when this
3 accident occurred?

4 A. Yes.

5 Q. Had you crossed that highway before to go to CMG Signs?

6 A. Yes.

7 Q. How many times?

8 A. Many.

9 Q. I mean, was that an ongoing relationship between
10 Mission Fitness and CMG Signs?

11 A. Yes. They did all of the sign work. They made T-
12 shirts.

13 Q. And you had to walk across the street to go pick that
14 up?

15 A. Yes.

16 Q. And were you going to walk back across to Mission
17 Fitness with all the signs in your hand?

18 A. Well, I was seeing what the progress was at this time.
19 I wasn't actually picking it up.

20 Q. Where were you parked that evening?

21 A. At Mission Fitness.

22 Q. Which would have been in this parking lot, I mean,
23 somewhere? I don't know if you remember where you
24 parked.

25 A. Right here.

Deposition of Chelsea Abdelgheny

1 Q. Okay. Right out front?

2 A. I usually would park right over here.

3 Q. Was anybody working with you that night?

4 A. No, I don't believe anyone else was at the gym. I'm
5 not sure. I don't remember.

6 Q. Was that common for you to work there by yourself?

7 A. Yes.

8 Q. Were you going to close up that night?

9 A. We don't really close. It's a card gym. You just
10 slide the card and go in.

11 Q. Let's mark this.

12 (Defendant's Exhibit Number 2 marked)

13 EXAMINATION RESUMED BY MR. GRAHAM:

14 Q. Had you taken any medication that day?

15 A. No.

16 Q. I'm going to show you a picture, Defendant's Exhibit
17 Number 2. Just so we're acclimated, there's the KFC.
18 Do you see that? There's the Little Caesars. And I
19 don't know if Mission Fitness would be in this
20 photograph or not.

21 A. It's the red awning.

22 Q. The red awning. Okay if I circle that? Can you write
23 Mission there for me?

24 A. (Witness complies).

25 Q. And is that a decline? It goes down to the road?

Deposition of Chelsea Abdelgheny

- 1 A. Yes.
- 2 Q. Can you put an X for me where you left this side of the
- 3 road and entered the highway? Do you understand what
- 4 I'm asking?
- 5 A. Yeah. Like from the sidewalk where I left?
- 6 Q. Where did you leave, yeah.
- 7 A. And this is approximate, because I can't be sure of the
- 8 exact.
- 9 Q. That's fine. And the KFC is right there?
- 10 A. Right here.
- 11 Q. And then Little Caesars is right there. There's that
- 12 road that goes up to the Little Caesars.
- 13 A. I'm going to say approximately somewhere over here. I
- 14 can't be sure, though.
- 15 Q. And can you circle CMG Signs?
- 16 A. (Witness complies).
- 17 Q. Can you write CMG on that building?
- 18 A. (Witness complies).
- 19 Q. And that was your destination?
- 20 A. Yes.
- 21 Q. And can you draw an X for me where you were when you
- 22 got hit?
- 23 A. This is Hot Spot. Right?
- 24 Q. That's Hot Spot. That's the KFC. I think that's the
- 25 KFC sign right there.

1 A. I think I was somewhere like right around here, I
2 think. I'm not sure.

3 Q. Okay. So you walked diagonally across the road?

4 A. Yes, sir.

5 Q. What was the weather like?

6 A. I believe it was raining.

7 Q. How hard was it raining?

8 A. I don't -- if it had been raining hard, I wouldn't have
9 been walking.

10 Q. But you think it was actively raining?

11 A. I believe so. I'm not 100 percent sure.

12 Q. And was it dark outside?

13 A. It was dark outside, very well lit.

14 Q. Where were the lights that lit up that area? Do you
15 know?

16 A. Well, there are streetlights over here all in front of
17 Hot Spot.

18 Q. There are streetlights?

19 A. Well, it was very well lit. I believe they're
20 streetlights.

21 Q. And then tell me what happened.

22 A. I really don't remember much of it. I walked to the
23 middle. Well, I first, of course, looked. I walked to
24 the middle, and then I looked. I thought it was clear,
25 and I made it at all the way to the sidewalk, and then

Deposition of Chelsea Abdelgheny

1 I got hit.

2 Q. Were you holding an umbrella?

3 A. No.

4 Q. What were you wearing?

5 A. I was wearing a neon color coral hoodie and bright blue
6 pants.

7 Q. Did you have your hood up?

8 A. Yes.

9 Q. Because it was raining?

10 A. Yes.

11 Q. What kind of pants?

12 A. They're bright blue. Like they're Zumba pants, but
13 they're just leggings.

14 Q. Did you see Mr. Moody's vehicle at all before the
15 accident?

16 A. No. I felt it upon impact.

17 Q. So do you have any idea how fast he was going?

18 A. I don't.

19 Q. And you didn't see him at all before impact?

20 A. No.

21 Q. And you have the X there in the right-hand lane of
22 that---

23 A. I kind of put it on the sidewalk.

24 Q. You think you got hit on the sidewalk?

25 A. I do believe one foot was on the sidewalk, yes.

- 1 Q. And where was the rest of your body?
- 2 A. One foot was off the sidewalk.
- 3 Q. In the road?
- 4 A. Yeah.
- 5 Q. Do you think he came off the road and hit you?
- 6 A. I would -- yeah, I do.
- 7 Q. You think he came up on the sidewalk and hit you?
- 8 A. Yes.
- 9 Q. Why do you think that?
- 10 A. Because I thought I was on the sidewalk.
- 11 Q. Well, you had one foot on the sidewalk --
- 12 A. Yes.
- 13 Q. -- and one foot in the road. So you were partially in
- 14 the road, as well. Correct?
- 15 A. Correct. But there's usually a little bit of median.
- 16 Q. So he could have hit you and you'd still be in the
- 17 roadway. Correct?
- 18 A. Correct.
- 19 Q. And you had no idea he was coming?
- 20 A. No.
- 21 Q. You had no idea he was right there?
- 22 A. No.
- 23 Q. Were you keeping a lookout?
- 24 A. Yes.
- 25 Q. Do you know where he came from?

1 A. He came from this direction.

2 Q. Did you notice any lights on on his vehicle?

3 A. No. I didn't see his vehicle.

4 Q. I know, but do you remember seeing the lights from it?

5 A. No.

6 Q. Do you know that area very well?

7 A. I do.

8 Q. And we'll mark this as Defendant's Exhibit 3.

9 (Defendant's Exhibit Number 3 marked)

10 EXAMINATION RESUMED BY MR. GRAHAM:

11 Q. That's just a blown-up shot of this to show more of the
12 area. There's KFC. There's generally the area you
13 crossed. There's Mission Fitness. Does this appear --
14 is that an intersection?

15 A. Yes.

16 Q. Is that controlled by a stop light?

17 A. Yes.

18 Q. And is this an intersection, as well, down here?

19 A. Yes.

20 Q. And is that controlled by a stop light?

21 A. Yes.

22 Q. And that's CMG signs? I'm just going to circle it
23 right here.

24 A. Yes.

25 Q. I'm going to write CMG. And that's where you were

1 going. Correct?

2 A. Yes.

3 Q. Why didn't you use one of those intersections to cross?

4 A. I don't have a reason.

5 Q. Do you agree it would have been safer to cross at those
6 intersections?

7 A. Yes.

8 Q. And there's not a crosswalk where you crossed, is
9 there?

10 A. No.

11 Q. Okay. So did you lose consciousness after this
12 accident?

13 A. I really don't know.

14 Q. Are there times -- I don't know how to follow up. Are
15 there times you don't remember after the accident?

16 A. I remember the impact. I remember laying there with my
17 pants ripped off not knowing if I was going to live or
18 not.

19 Q. What's the first memory you have after the accident
20 happened?

21 A. Laying there, not knowing what was going on.

22 Q. Do you remember anybody coming to check on you?

23 A. There was some lady. I don't know who it was.

24 Q. Where did you feel pain after this accident? What
25 parts of your body?

1 A. I was in shock. Everything really hurt. I mean, the
2 pain I felt was indescribable. I don't really know the
3 words to use for it.

4 Q. So just your whole body? At that point you couldn't
5 tell what was hurting?

6 A. Yes.

7 Q. Is that an accurate statement?

8 A. Yes.

9 Q. Do you know how long it took you to get from the point
10 where you left the sidewalk to enter the highway until
11 the accident happened, how much time passed?

12 A. I do not know.

13 Q. Do you have any idea, approximately? I mean, how long
14 did it take you---

15 A. A couple of minutes.

16 Q. You think it took you a couple of minutes to leave the--
17 --

18 A. The gym?

19 Q. Well, to leave the sidewalk on the gym side of the road
20 until when the accident occurred.

21 A. Just a few minutes, if that. I mean...

22 Q. Do you have any idea how long that took?

23 A. I don't.

24 Q. Do you understand what I'm asking? From the time you
25 started into the highway until the accident occurred,

- 1 how long was that?
- 2 A. I have no idea, but not very long.
- 3 Q. Could it have been less than a minute?
- 4 A. Probably.
- 5 Q. Were you in the median for very long?
- 6 A. Not very long. I mean, I stopped and paused there to
- 7 look.
- 8 Q. And then you proceeded on?
- 9 A. Yes.
- 10 Q. Did you walk at a normal rate of speed?
- 11 A. Yes.
- 12 Q. From the median to the other side of the road?
- 13 A. Yes.
- 14 Q. What else do you remember about when you were laying
- 15 there?
- 16 A. I remember asking the paramedic if I was going to live.
- 17 Q. Do you remember if you called the police?
- 18 A. No, I didn't.
- 19 Q. Did you have your phone on you at the time?
- 20 A. It was thrown somewhere, and the owner of CMG Signs
- 21 came out there and he got my phone for me, and I
- 22 remember hearing him telling my mom how it was a bad
- 23 accident and he didn't know if I was going to make it.
- 24 Q. Did he see it?
- 25 A. No. He was in his -- I don't think he did. He was in

- 1 his shop.
- 2 Q. Were you on your phone at the time of this accident?
- 3 A. I don't recall that, but I was told I was.
- 4 Q. What's the number of that phone?
- 5 A. I do not recall the number of it. It's been changed
- 6 since then. I'm sure I can get it to you.
- 7 Q. How are you going to get it to me if you don't
- 8 remember? I'm just curious what you would---
- 9 A. I can give it to my lawyer, and he can give it to you.
- 10 Q. But you can find it, you think?
- 11 A. Yes.
- 12 Q. Was it a burner phone?
- 13 A. No. I have business cards with it on there. I just
- 14 don't remember the number.
- 15 Q. Who was your service provider?
- 16 A. I used -- it was one of the pay -- it's in the old
- 17 Kmart parking lot. Infinity, where you go and you get
- 18 a month. I don't remember the name of the---
- 19 Q. So it wasn't a -- it was a prepaid phone?
- 20 A. Yeah, but it was the phone I always used.
- 21 Q. You would replenish your minutes every month?
- 22 A. Mm-hmm.
- 23 Q. Is that a---
- 24 A. Yes.
- 25 Q. Where did you pay your bill?

- 1 A. At the Infinity place in the old Kmart parking lot in
2 Easley.
- 3 Q. Is that still around?
- 4 A. Yes.
- 5 Q. It's still around today?
- 6 A. Yes.
- 7 Q. Was anybody else on that account? Your husband?
- 8 A. No.
- 9 Q. Do you know who you were talking to?
- 10 A. The owner of Mission Fitness.
- 11 Q. Who is that?
- 12 A. Daniel Phillips.
- 13 Q. Do you know Daniel's number or what it was at the time?
- 14 A. Not off the top of my head, no.
- 15 Q. And why do you think you were on the phone?
- 16 A. He told me that we were talking.
- 17 Q. Daniel Phillips did?
- 18 A. Yes. He heard me get hit.
- 19 Q. And he's told you that since the accident?
- 20 A. Yes.
- 21 Q. Are you still in contact with him?
- 22 A. No.
- 23 Q. Does he still run Mission Fitness?
- 24 A. Yes, the best of my knowledge.
- 25 Q. Do you have his number anywhere?

Deposition of Chelsea Abdelgheny

- 1 A. No.
- 2 Q. Did you have anything else in your hands?
- 3 A. No.
- 4 Q. Were you going to pay for the signs when you got there?
- 5 A. No.
- 6 Q. Did you have a basket or anything to bring the signs
- 7 back in?
- 8 A. No. I was just checking on the progress.
- 9 Q. Were you eating or drinking anything at the time of the
- 10 accident?
- 11 A. No.
- 12 Q. Do you know who else came to the scene of the accident?
- 13 A. Derrick, the owner of CMG Signs, and his mother.
- 14 Q. And his mother?
- 15 A. Yeah. They both own it.
- 16 Q. Does he still own CMG Signs?
- 17 A. Yes.
- 18 Q. Who else came out there? Do you know?
- 19 A. Well, I know Daniel Phillips did. I can't recall if my
- 20 mom made it the scene on time or not. She may have
- 21 been and followed the ambulance. I don't remember. I
- 22 don't think so.
- 23 Q. What's your mother's name?
- 24 A. Kimberlie Jackson, l-i-e.
- 25 Q. Okay. Does she live in Easley?

- 1 A. She lives in Liberty.
- 2 Q. Liberty, okay.
- 3 A. And my father.
- 4 Q. He came to the scene of the accident?
- 5 A. I don't know if they made it there or had to meet me at
- 6 the hospital.
- 7 Q. Is your mom still at 113 J and W Trail?
- 8 A. Yes, sir.
- 9 Q. Who's Candice Mann?
- 10 A. She is one that teaches with -- or taught with me. She
- 11 might have been there.
- 12 Q. Did she see the accident?
- 13 A. I don't know if she saw it. She could have been in the
- 14 parking lot. I'm not sure.
- 15 Q. But you were you working alone that day?
- 16 A. She -- she started teaching after the accident for me.
- 17 She started out just as a student.
- 18 Q. Did you ever locate that phone after the accident?
- 19 A. Yes.
- 20 Q. The owner of CMG Signs found it?
- 21 A. Mm-hmm.
- 22 Q. And where was it?
- 23 A. In the middle of the road.
- 24 Q. What kind of phone was it?
- 25 A. An iPhone.

Exhibit 2

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) C.A. NO. 2016-CP-39-01346

Chelsea Abdelgheny f/k/a)
Chelsea Jackson,)
Plaintiff,)
Versus)
Gerald L. Moody,)
Defendant.)

DEPOSITION OF
GERALD L. MOODY

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of GERALD L. MOODY was taken on the 11th day of July, 2017, commencing at the hour of 11:38 a.m., in the offices of Smith, Jordan & Lavery, P.A., Attorneys at Law, Easley, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

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Attorneys for Defendant/UIM Carrier.

Also attending: Mr. A. Abdelgheny, Ms. C. Abdelgheny

Deposition of Gerald L. Moody

INDEX

Stipulations, Waiver and Oath.....	4
Examination by Mr. Wooten.....	4
Examination by Mr. Graham.....	46
Certificate of Reporter.....	47

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Plaintiff's Exhibit 1, 1 pg.; photograph.....	31
Plaintiff's Exhibit 2, 1 pg.; photograph.....	34
Plaintiff's Exhibit 3, 1 pg.; photograph.....	36
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Deposition of Gerald L. Moody

1 A. I just call it Mountain Highway. I don't even know the
2 number.

3 Q. Do they live near downtown Pickens? And by downtown, I
4 mean the old part with the courthouse in it.

5 A. Next to the high school.

6 Q. So when did you get on Gentry Memorial Highway? Or let
7 me rephrase that. Where did you get on Gentry Memorial
8 Highway?

9 A. Main Street, Pickens.

10 Q. So you had been on Gentry Memorial Highway all the way
11 from Main Street?

12 A. Yes.

13 Q. What was the weather like that night?

14 A. Raining.

15 Q. How hard was it raining?

16 A. That I couldn't say.

17 Q. Would you describe it as a light rain or a heavy rain?

18 A. Probably from medium to heavy.

19 Q. Were there any other kind of distractions or anything
20 on the road?

21 A. No.

22 Q. Construction?

23 A. No.

24 Q. Ambulances?

25 A. No.

- 1 Q. Okay. How was traffic that night?
- 2 A. Moderate.
- 3 Q. And when you say moderate, are you talking about
- 4 moderate for that road, or are you talking about
- 5 moderate for 123?
- 6 A. For that road.
- 7 Q. Because I assume that road's not that heavily
- 8 trafficked, is it?
- 9 A. At times.
- 10 Q. That night wasn't one of the times when it was heavily
- 11 traveled, was it?
- 12 A. No.
- 13 Q. So would you say a few cars here or there?
- 14 A. Yes.
- 15 Q. So you weren't the only one on the road, but there --
- 16 A. No.
- 17 Q. -- wasn't bumper-to-bumper?
- 18 A. Right.
- 19 Q. Did you have anybody in the car with you?
- 20 A. No.
- 21 Q. What had you been doing at your grandson's?
- 22 A. I just went by to check on him.
- 23 Q. How long were you there?
- 24 A. I didn't even stop.
- 25 Q. So you just drove by?

Deposition of Gerald L. Moody

- 1 A. Just drove by to make sure things were fine.
- 2 Q. Any reason in particular, or you just check sometimes?
- 3 A. It's a long story.
- 4 Q. Okay, fair enough. Where had you been before you went
- 5 to check on your grandson?
- 6 A. Nowhere. I left the house.
- 7 Q. So you left your house, you went to their house to
- 8 check on him. Correct? And then you didn't stop, and
- 9 then you just drove back?
- 10 A. Just come on home, coming back home.
- 11 Q. When you drove to their house, your grandson's house,
- 12 did you drive down Gentry Memorial Highway?
- 13 A. Going into Pickens, yes.
- 14 Q. So you were coming back the same way as you got there?
- 15 A. Same way.
- 16 Q. Did you own the car you were driving?
- 17 A. No. It's my wife's.
- 18 Q. What kind of car was it?
- 19 A. It's a pickup. It's a 1993 Chevy pickup.
- 20 Q. Is that a Silverado?
- 21 A. It's a S10.
- 22 Q. And you said your wife owns that truck?
- 23 A. Yes. It was her father's.
- 24 Q. Do you own any vehicles?
- 25 A. Yes.

- 1 Q. Did you at the time of the wreck?
- 2 A. Yes.
- 3 Q. What vehicles did you own?
- 4 A. I own a 2006 -- excuse me -- 2013 Dodge van, crew van.
- 5 Q. Anything else?
- 6 A. Yes. I own a 1997 Fleetwood motor home.
- 7 Q. Any other vehicles?
- 8 A. At the time of the accident, no.
- 9 Q. Who did you have insurance with on the Dodge van?
- 10 A. Geico.
- 11 Q. How about the Fleetwood motor home?
- 12 A. Geico.
- 13 Q. Did you have any other kind of insurance policies? And
- 14 what I'm looking for here is like umbrella coverage at
- 15 the time of the wreck.
- 16 A. No.
- 17 Q. And if I'm not mistaken, the insurance on the truck was
- 18 Geico?
- 19 A. Yes.
- 20 Q. Is that correct? Okay. Do you have insurance with any
- 21 other company aside from Geico?
- 22 A. No.
- 23 Q. So any policies that you have would be with Geico?
- 24 A. Pardon?
- 25 Q. Any insurance policies you have would be through Geico?

1 A. Right.

2 Q. Just kind of take me through and explain what happened
3 when the incident occurred.

4 A. I was driving down Gentry Memorial Highway, stopped at
5 the light at the foot of the hill.

6 Q. Is that the light by the American Waffle?

7 A. That's it.

8 Q. Okay, I'm sorry. Keep going.

9 A. The light changed. I was running about maybe 25 or 30
10 miles an hour, and then in front of Kentucky Fried
11 Chicken I looked up and I saw this lady in front of my
12 driver's headlight with her hand up. She turned and
13 looked at me and made approximately two fast steps, and
14 I hit her with the right passenger headlight.

15 Q. How far away was she from the front of your vehicle
16 when you first saw her?

17 A. Around 10 foot.

18 Q. Did you hit the brakes?

19 A. Yes, I did.

20 Q. Did you skid?

21 A. Don't know.

22 Q. Did that truck have antilock brakes?

23 A. Don't know.

24 Q. So when you first saw her and she was 10 feet in front
25 of your truck, what part of your truck was she in front

Deposition of Gerald L. Moody

1 of?

2 A. In front of the driver's headlight.

3 Q. So she was already in front of your vehicle?

4 A. In my lane.

5 Q. And then you said she made two quick steps, and so you
6 actually hit her with the passenger side of your
7 vehicle?

8 A. Yes.

9 Q. And what happened to her after you hit her?

10 A. She went over my fender into the highway.

11 Q. Where did she end up?

12 A. I immediately stopped. I was afraid that she might be
13 under the truck. I stopped and got out and looked, and
14 she was laying in the road next to my back bumper.

15 Q. How close was she to the sidewalk when she was resting
16 next to your back bumper?

17 A. Estimate, two to three foot. Probably two foot.

18 Q. And how close to the sidewalk was she when you first
19 saw her?

20 A. Well, she was in my driver's headlight. So I couldn't
21 tell you how much distance from the sidewalk to the
22 driver's headlight. I would say probably at least 10
23 foot.

24 Q. Were you in the far right lane?

25 A. Yes, I was.

- 1 Q. And I guess when you're driving, you're probably a
2 couple feet from the side of the road?
- 3 A. I would think so.
- 4 Q. I mean just in general to stay in the center of the
5 lane.
- 6 A. Yes.
- 7 Q. You don't recall driving close to the centerline that
8 night for any reason, do you?
- 9 A. No. There was other cars.
- 10 Q. And where were there other cars?
- 11 A. There was one sitting beside of me at the light. Where
12 he went I don't know.
- 13 Q. After seeing that car next to you at the light, do you
14 recall seeing that car again?
- 15 A. No.
- 16 Q. You said you were going about 25 or 30 miles an hour?
- 17 A. Yes.
- 18 Q. You didn't accelerate fast from the light for any
19 reason, did you?
- 20 A. No.
- 21 Q. And what was Chelsea wearing when you saw her?
- 22 A. Well, she was wearing something with a hood on it, but
23 it looked dark to me.
- 24 Q. What color did it look like?
- 25 A. It looked like maybe a dark brown or something.

1 Q. And when she was laying on the ground, is that what it
2 looked like she was wearing, as well?

3 A. I couldn't say. I was so upset.

4 Q. Did this whole incident shake you up pretty bad?

5 A. Yes.

6 Q. And did you have the radio on at the time of the wreck?

7 A. No.

8 Q. So you didn't have anything on?

9 A. No.

10 Q. Did you have your cell phone with you at the time of
11 the wreck?

12 A. Yes.

13 Q. And where was that?

14 A. In my pocket.

15 Q. What kind of phone did you have?

16 A. (Witness retrieves phone).

17 Q. Same one you've still got today?

18 A. This one.

19 Q. Is that an iPhone, it looks like?

20 A. Apple, yeah. I think it's an iPhone. I'm not up to
21 par on that.

22 Q. And you said after the wreck you got out and you went
23 and saw her laying there. What did you do next?

24 A. Stood there.

25 Q. How long did you stand there?

1 A. Okay.

2 Q. Just in your lane of travel.

3 A. Yes.

4 Q. Near the point of impact that you drew on there?

5 A. Point of impact?

6 Q. Just near it. She was near it when you first saw her?

7 A. Yes. She was here --

8 MR. GRAHAM:

9 Object to the form.

10 EXAMINATION RESUMED BY MR. WOOTEN:

11 A. -- when I first saw her.

12 MR. GRAHAM:

13 Object to the form. Don't draw anything.

14 EXAMINATION RESUMED BY MR. WOOTEN:

15 Q. No, you don't need to draw anything else.

16 A. Oh. I'm sorry.

17 Q. You're fine. Then you'd agree that there's two lanes
18 of traffic in each direction and then a center median?

19 A. Correct.

20 Q. And that's how you remember the road being that night?

21 A. Yes.

22 Q. Is that area very well lit?

23 A. No.

24 Q. And so it wasn't very well lit that night?

25 A. No.

- 1 appropriately given the conditions?
- 2 A. Yes, I was.
- 3 Q. Did you have your lights on at the time of the wreck?
- 4 A. Yes, I did.
- 5 Q. Did you have your brights or your low beams on?
- 6 A. My low beams.
- 7 Q. Have you ever had your lights serviced before on your
- 8 truck?
- 9 A. Yes, I have.
- 10 Q. When did you have your lights serviced?
- 11 A. It was probably three or four years ago.
- 12 Q. So three or four years from today?
- 13 A. Yes.
- 14 Q. So that would have been 2013 or 2012 maybe? Or, I'm
- 15 sorry.
- 16 A. Estimate.
- 17 Q. Okay. 2013 let's say or 2014.
- 18 A. Mm-hmm.
- 19 Q. And what did you have done to your lights at that
- 20 point?
- 21 A. Adjusted.
- 22 Q. And when you say adjusted, what do you mean?
- 23 A. Set the beam.
- 24 Q. Set the angle that it's at?
- 25 A. Angles, yes.

Exhibit 3

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
C.A. No: 2016-CP-39-_____

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Plaintiff,

Vs.

Gerald L. Moody,

Defendant.

SUMMONS

(Jury Trial Demanded)

TO: DEFENDANT HEREIN:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscriber at his office, Post Office Box 1207, 1810 East Main Street, Easley, South Carolina, 29641, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,

s/ Raymond T. Wooten
Raymond T. Wooten (S.C. Bar No. 81483)
SMITH, JORDAN & LAVERY, P.A.
1810 East Main Street
P.O. Box 1207
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Attorney for Plaintiff

Easley, South Carolina
November 29, 2016

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
C.A. No: 2016-CP-39-_____

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Plaintiff,

Vs.

Gerald L. Moody,

Defendant.

COMPLAINT

(Jury Trial Demanded)

Plaintiff, complaining of Defendant herein, would respectfully show unto this Honorable Court that:

1. Plaintiff is a citizen and resident of Pickens County, South Carolina.
2. Defendant was a citizen of Pickens County, South Carolina, at all times pertinent hereto.
3. Upon information and belief, Defendant was the operator of a 1993 Chevrolet truck.
4. On October 26, 2015, Defendant was traveling South on Gentry Memorial Highway, and struck Plaintiff who was crossing Gentry Memorial Highway on foot.
5. Jurisdiction and venue are proper.

FOR A FIRST CAUSE OF ACTION

(Negligence/Gross Negligence)

6. Plaintiff reiterates and realleges the prior allegations in this Complaint as if repeated herein verbatim.
7. Defendant was careless, negligent, reckless, and grossly negligent at the time and place above-mentioned in the following particulars:
 - a) In failing to keep Defendant=s vehicle under proper control;

- b) In failing and omitting to have the aforementioned vehicle equipped with proper and responsible brakes or, if so equipped, in failing to apply said brakes in a timely manner;
- c) In failing to use the degree of care and caution that a reasonable and prudent person would have used under the circumstances then and there existing;
- d) In failing to maintain a proper lookout;
- e) In driving too fast for conditions;
- f) In failing to control the speed of his vehicle so as to avoid striking Plaintiff;
- g) In failing and omitting to exercise proper precautions under the existing circumstances;
- h) In failing to use due care to avoid striking pedestrians;

All of which were the direct and proximate cause of the injuries and damages suffered by Plaintiff herein, said acts being in violation of the statutory laws of the State of South Carolina and the dictates of ordinary prudence.

8. As a direct and proximate result of the willful, wanton, and reckless negligence of Defendant, Plaintiff suffered great physical harm and injury from being run over by Defendant's vehicle, all of which has caused and will continue to cause her to undergo much physical pain and suffering and mental anguish and distress, has caused and will continue to cause her to have to spend money for medical services, and has caused and will continue to cause her to suffer lost wages, diminution in income and economic damages. Plaintiff has suffered permanent injury as well as

loss of enjoyment of life and has been otherwise damaged.

9. Plaintiff is informed and believes that she is entitled to judgment against Defendant for such an amount of actual and punitive damages as the trier of fact may find, for the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

WHEREFORE, Plaintiff prays for judgment against Defendant for such an amount of actual and punitive damages as the trier of fact may find, for the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED,

s/ Raymond T. Wooten
Raymond T. Wooten (S.C. Bar No. 81483)
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Attorney for Plaintiff

Easley, South Carolina
November 29, 2016

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
C.A. No: 2016-CP-39-01346

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Plaintiff,

Vs.

Gerald L. Moody,

Defendant.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Plaintiff submits this memorandum in opposition to Defendant's Motion for Summary Judgment. Defendant moves for Summary Judgment on the grounds that:

- "1. There is no evidence of negligence on the part of the Defendant entitling Plaintiff to a verdict; and in the alternative,
2. Plaintiff was comparatively negligent as a matter of law. Specifically, Plaintiff has admitted to violating S. C. Code Ann. § 56-5-3150 and S. C. Code Ann. § 36-05-3160."

II. ARGUMENT

"Summary judgment is proper only when it is clear that 'there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Hamilton v. Miller*, 301 S.C. 45, 47, 389 S.E.2d 652, 653 (1990)." Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). "Ordinarily, comparison of the plaintiff's negligence with that of the defendant is a question of fact for the jury to decide." Bloom v. Ravoir, 529 S.E.2d 710, 713 (S.C. 2000). Further, "summary judgment is generally not appropriate in a comparative negligence case." Bloom v.

Ravoira, 529 S.E.2d 710, 713 (S.C. 2000). Here, Defendant moves for summary judgment on the grounds that there is no evidence that Defendant was negligent, and Plaintiff was comparatively negligent.

Defendant's motion should be denied as it is well settled that:

"[q]uestions of negligence, proximate cause and contributory negligence are ordinarily questions of fact for the jury, as to which the trial court's only function is to inquire whether particular conclusions are or not the only reasonable inferences to be drawn from the evidence. If the facts in controversy and the inferences deducible therefrom are doubtful, or if they tend to show both parties guilty of negligence or willfulness, and there may be a fair difference of opinion as to whose act or whose acts produced or contributed to the injury complained of as a direct and proximate cause, questions of negligence, proximate cause and contributory negligence should be submitted to the jury."

Wilson v. Marshall, 195 S.E.2d 610, 611 (S.C. 1973)

NEGLIGENCE OF DEFENDANT

Defendant first moves for summary judgment on the grounds that "[t]here is no evidence of negligence on the part of the Defendant entitling Plaintiff to a verdict[.]" Here, there is certainly evidence that defendant was negligent, so that summary judgment would be improper. The wreck occurred on a long straight stretch of road. (See Exhibit A; and Deposition of Gerald Moody, Pg. 34, ll. 1-3). There was nothing obstructing Defendant's vision. (See Deposition of Gerald Moody, Pg. 34, ll. 4-6). It was not raining hard. (See Deposition of Chelsea Abdlegheny, Pg. 40, ll. 5-11)(as set out in Defendant's brief, there is a factual dispute about how hard it was raining as Defendant claims it was raining heavily). The area where the Plaintiff was hit was

very well lit, with a gas station and restaurant nearby. (See Deposition of Chelsea Abdlegheny, Pg. 40, ll. 12-20)(as set out in Defendant's brief, there is a factual dispute as to how well lit the area was as Defendant claims that it was not well lit). The road where the wreck occurred was four lanes wide, with a turning lane in the middle. Defendant was driving in the far right lane. Prior to being hit, Plaintiff had already walked across three lanes of traffic and a turning lane. Plaintiff walked at a normal rate of speed and paused in the median to look for traffic. (See deposition of Chelsea Abdlegheny, Pg. 46, ll 5-13). Defendant did not see Plaintiff until she was in his lane and she was only ten feet away. (See Exhibit A; and Deposition of Gerald Moody, Pg. 21, ll. 15-17; Pg. 21, l. 24-Pg. 22, l. 4). Plaintiff was wearing bright clothes at the time she was hit as she had just finished teaching a Zumba class. (See Deposition of Chelsea Abdlegheny, Pg. 51, l. 24 – Pg. 54, l. 10 and accompanying exhibits).

S.C. Code § 56-5-3230 provides that “[n]otwithstanding other provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person.” Further, as summarized by Judge Ralph King Anderson, Jr.,

“[a] person using the public roads of this State owes an urgent duty to keep a proper lookout for other persons or objects upon the highway. The duty is not merely one of looking but one of observation. In the exercise of due care or caution for the safety of himself and others, a person must look in such an intelligent and careful manner as to enable him to see a person or object upon the

highway. A person who fails to keep a proper lookout or fails to see what a person of ordinary care and prudence would have seen is guilty of negligence.

When the vision of a motorist is obscured by unfavorable conditions, whether by reason of weather conditions, atmospheric conditions or other obstructions to vision, such motorist must exercise due care consistent with the conditions of travel encountered. Likewise, a motorist should exercise reasonable care in keeping a lookout commensurate with the increased danger occasioned by the conditions that obscure his vision.”

§ 28-2 Motor Vehicles - Duty to Keep Lookout and to Keep Vehicle Under Control, Anderson, S.C. Requests to Charge - Civil, 28-2

Further, “[m]otorists have a duty of exercising ordinary or reasonable care to avoid injuring pedestrians. The fact that a motorist, by statute, has the right-of-way over a pedestrian does not relieve the motorist of the duty to use reasonable care for the safety of such pedestrian.” § 28-36 Motor Vehicles - Pedestrians on Highways, Anderson, S.C. Requests to Charge - Civil, 28-36. Here, Defendant did not see Plaintiff, who was in his lane of travel, until he was only ten feet away from her. Plaintiff was wearing a hot pink sweatshirt, and had already crossed three lanes of traffic and a turning lane in the middle of the road. Defendant had a duty to keep a proper lookout and to drive at a proper speed given the conditions then and there existing. He was certainly not keeping a proper lookout if he did not see Plaintiff until he was ten feet away from her. Therefore, when all the facts are considered in a light most favorable to Plaintiff, there is a question of whether or not Defendant was negligent, so that Defendant’s motion for summary judgment should be denied.

COMPARATIVE NEGLIGENCE OF PLAINTIFF

Next, Defendant moves for summary judgment on the grounds that "Plaintiff was comparatively negligent as a matter of law. Specifically, Plaintiff has admitted to violating S. C. Code Ann. § 56-5-3150 and S. C. Code Ann. § 36-05-3160[.]" Once again, summary judgment would be improper on this grounds as comparative negligence is a jury question.

S.C. Code Ann. § 56-5-3150 provides that:

(a) Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway.

(b) Any pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the roadway.

(c) Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.

(d) No pedestrian shall cross a roadway intersection diagonally unless authorized by official traffic-control devices and when authorized to cross diagonally pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements."

In his motion, Defendant also references SC Code § 36-05-3160. This statute does not exist. I can only assume that this is a typo, and that Defendant intended to refer to SC Code § 56-05-3160, which provides

"(a) Where a sidewalk is provided and its use is practicable, it shall be unlawful for any pedestrian to walk along and upon an adjacent roadway.

(b) Where a sidewalk is not available any pedestrian walking along and upon a highway shall walk only on a shoulder as far as practicable from the edge of the roadway.

(c) Where neither a sidewalk nor a shoulder is available, any pedestrian walking along and upon a highway shall walk as near as practicable to an outside edge of the roadway and, if on a two-way roadway, shall walk only on the left side of the roadway.

(d) Except as otherwise provided in this chapter, any pedestrian upon a roadway shall yield the right-of-way to all vehicles upon the roadway.”

Defendant does not reference which particular sections of these two statutes Plaintiff admitted to violating. However, as set out above, comparative negligence is a jury question so that summary judgment would be improper.

For the reasons set out above, Defendant’s motion should be denied.

RESPECTFULLY SUBMITTED,

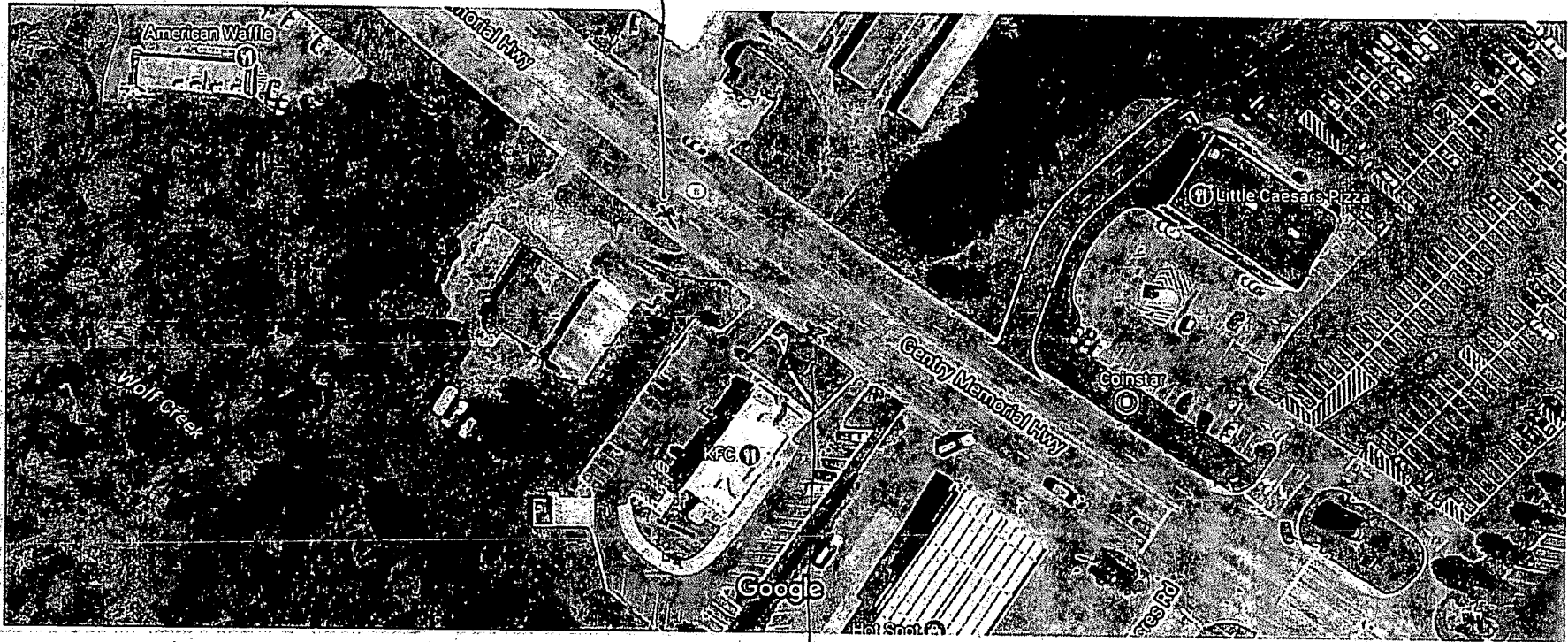
s/Raymond T. Wooten
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Easley, South Carolina
 October 12, 2017

EXHIBIT A

Google Maps Mission Fitness 24-7

347



69

Imagery ©2017 Google, Map data ©2017 Google 50 ft

IMPACT



**DEPOSITION OF CHELSEA
ABDELGHENY**

Deposition of Chelsea Abdelgheny

1 A. I think I was somewhere like right around here, I
2 think. I'm not sure.

3 Q. Okay. So you walked diagonally across the road?

4 A. Yes, sir.

5 Q. What was the weather like?

6 A. I believe it was raining.

7 Q. How hard was it raining?

8 A. I don't -- if it had been raining hard, I wouldn't have
9 been walking.

10 Q. But you think it was actively raining?

11 A. I believe so. I'm not 100 percent sure.

12 Q. And was it dark outside?

13 A. It was dark outside, very well lit.

14 Q. Where were the lights that lit up that area? Do you
15 know?

16 A. Well, there are streetlights over here all in front of
17 Hot Spot.

18 Q. There are streetlights?

19 A. Well, it was very well lit. I believe they're
20 streetlights.

21 Q. And then tell me what happened.

22 A. I really don't remember much of it. I walked to the
23 middle. Well, I first, of course, looked. I walked to
24 the middle, and then I looked. I thought it was clear,
25 and I made it all the way to the sidewalk, and then

Deposition of Chelsea Abdelgheny

1 how long was that?

2 A. I have no idea, but not very long.

3 Q. Could it have been less than a minute?

4 A. Probably.

5 Q. Were you in the median for very long?

6 A. Not very long. I mean, I stopped and paused there to
7 look.

8 Q. And then you proceeded on?

9 A. Yes.

10 Q. Did you walk at a normal rate of speed?

11 A. Yes.

12 Q. From the median to the other side of the road?

13 A. Yes.

14 Q. What else do you remember about when you were laying
15 there?

16 A. I remember asking the paramedic if I was going to live.

17 Q. Do you remember if you called the police?

18 A. No, I didn't.

19 Q. Did you have your phone on you at the time?

20 A. It was thrown somewhere, and the owner of CMG Signs
21 came out there and he got my phone for me, and I
22 remember hearing him telling my mom how it was a bad
23 accident and he didn't know if I was going to make it.

24 Q. Did he see it?

25 A. No. He was in his -- I don't think he did. He was in

Deposition of Chelsea Abdelgheny

1 Q. Do you know who called the police or who called EMS?

2 A. I have no idea. I'm assuming he did.

3 Q. Mr. Moody?

4 A. No. I was thinking Derrick. I have no idea, though.

5 Q. Did you ever speak to Mr. Moody?

6 A. No.

7 Q. Did your husband come out to the scene?

8 A. No.

9 Q. Were you married at the time?

10 A. No.

11 Q. Were y'all together?

12 A. We didn't know each other at the time.

13 Q. Didn't know each other, okay. Where were you living at
14 the time of the accident?

15 A. Liberty, South Carolina.

16 Q. What address?

17 A. 113 J and W Trail.

18 Q. With your parents?

19 A. Yes.

20 Q. Did anybody else live there?

21 A. No.

22 (Defendant's Exhibit Number 4 marked)

23 EXAMINATION RESUMED BY MR. GRAHAM:

24 Q. This is Exhibit Number 4. It's a picture your attorney
25 sent me in discovery. Is that you in that picture?

Deposition of Chelsea Abdelgheny

1 A. Yeah, earlier that day.

2 Q. And that says Total Fitness Family Center --

3 A. Yes.

4 Q. -- at the top? Is there a time stamp on this anywhere?

5 A. Not to the best of my knowledge.

6 Q. And that's your Instagram?

7 A. That's their Instagram.

8 Q. Their Instagram?

9 A. Mm-hmm.

10 Q. Are you on that Instagram a lot?

11 A. I used to be, yeah, when I worked there.

12 Q. And that's what you were wearing when the accident
13 occurred?

14 A. Yes.

15 Q. Did you have it like that, I mean, with the hood up?

16 A. Yeah.

17 Q. And your Instagram handle is Shade of Blue?

18 A. Shade of Blue 88.

19 Q. Is it still that?

20 A. Yeah. I don't use it anymore, but yeah.

21 Q. Do you have Facebook?

22 A. I don't use it anymore.

23 Q. Do you have it, though?

24 A. I deactivated it.

25 Q. What was your name on there?

Deposition of Chelsea Abdelgheny

1 A. Chelsea Jackson.

2 (Defendant's Exhibit Number 5 marked)

3 EXAMINATION RESUMED BY MR. GRAHAM:

4 Q. I'm going to show you this picture. This is
5 Defendant's Exhibit Number 5. What is that a picture
6 of?

7 A. The pants I was wearing.

8 Q. And where are those? Or where is this picture taken?

9 A. I have no idea.

10 Q. Did you take it?

11 A. I didn't.

12 MR. WOOTEN:

13 Can we go off for a second?

14 MR. GRAHAM:

15 Yeah.

16 (Off the Record; 10:53 -- 10:54 a.m.)

17 (Defendant's Exhibit Number 6 marked)

18 EXAMINATION RESUMED BY MR. GRAHAM:

19 Q. And this is Defendant's Exhibit Number 6. What is that
20 a picture of?

21 A. My tops.

22 Q. What is that?

23 A. That's -- I had multiple layers on. That's one of the
24 shirts.

25 Q. Is that the underneath shirt?

Deposition of Chelsea Abdelgheny

1 A. Yes.

2 Q. And that's the---

3 A. The jacket that was on top at the time.

4 (Defendant's Exhibit Number 7 marked)

5 EXAMINATION RESUMED BY MR. GRAHAM:

6 Q. And what is that a picture of?

7 A. That's a bra and that's another tank top I had on.

8 Q. Was that tank top over this tank top?

9 A. I'm not sure which tank top was in which place, but the
10 hoodie was on top.

11 Q. Why do you wear so many shirts?

12 A. I just---

13 Q. Just out of curiosity.

14 A. The look. It was just layered.

15 Q. All right. Do you remember anyone else who came out to
16 the scene of the accident you haven't told me about
17 already?

18 A. No.

19 Q. How long were you there?

20 A. Where?

21 Q. At the scene of the accident. Sorry.

22 A. I have no idea.

23 Q. Do you know where you were laying? In the road,
24 sidewalk, grass?

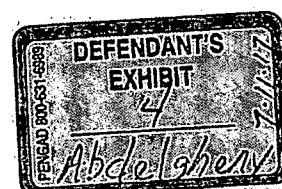
25 A. No, I don't.

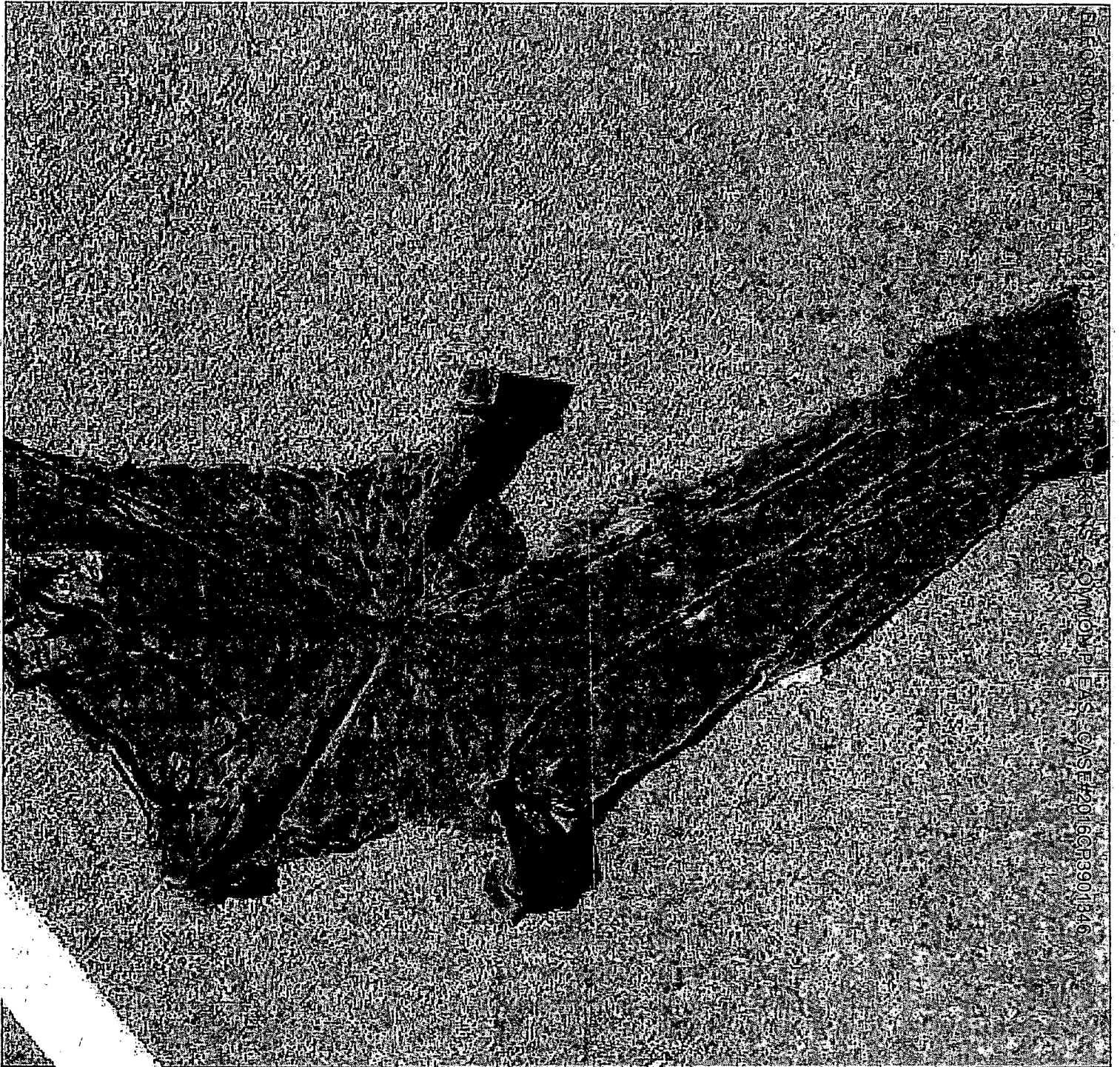
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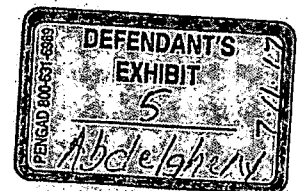
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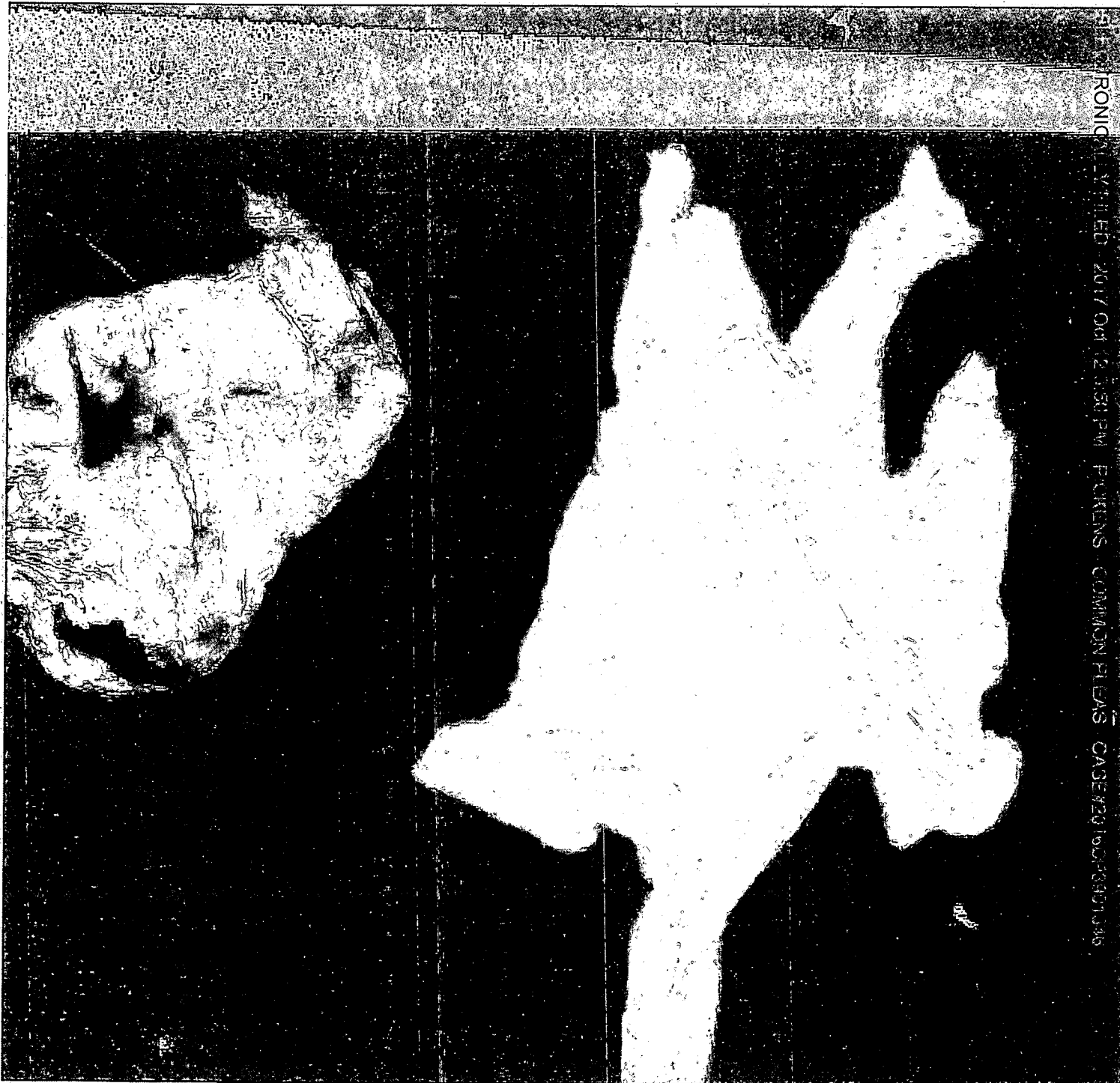
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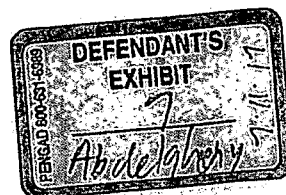




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DEPOSITION OF GERALD L. MOODY

1 Q. And would you agree that this stretch of road that you
2 were driving on was pretty straight?

3 A. Yes.

4 Q. And there's nothing overhanging it, no trees or
5 anything that would obstruct your vision?

6 A. No.

7 MR. WOOTEN:

8 Can we mark that as Plaintiff's Number 2?

9 (Plaintiff's Exhibit Number 2 marked)

10 EXAMINATION RESUMED BY MR. WOOTEN:

11 Q. I'm going to show you what's been marked as Plaintiff's
12 Exhibit Number 2.

13 A. Okay.

14 Q. And that should be a picture generally from the
15 direction that you were coming back up past the KFC
16 where the incident happened.

17 A. Mm-hmm.

18 Q. Does that look about right?

19 A. Yeah. It looks a little -- about right. A little
20 further down, I think.

21 Q. Yeah. Would you say that the wreck happened up this
22 way somewhere?

23 A. Pardon?

24 Q. Does that look about right; the wreck happened
25 somewhere up in here?

Deposition of Gerald L. Moody

1 A. Right.

2 Q. Just kind of take me through and explain what happened
3 when the incident occurred.

4 A. I was driving down Gentry Memorial Highway, stopped at
5 the light at the foot of the hill.

6 Q. Is that the light by the American waffle?

7 A. That's it.

8 Q. Okay, I'm sorry. Keep going.

9 A. The light changed. I was running about maybe 25 or 30
10 miles an hour, and then in front of Kentucky Fried
11 Chicken I looked up and I saw this lady in front of my
12 driver's headlight with her hand up. She turned and
13 looked at me and made approximately two fast steps, and
14 I hit her with the right passenger headlight.

15 Q. How far away was she from the front of your vehicle
16 when you first saw her?

17 A. Around 10 foot.

18 Q. Did you hit the brakes?

19 A. Yes, I did.

20 Q. Did you skid?

21 A. Don't know.

22 Q. Did that truck have antilock brakes?

23 A. Don't know.

24 Q. So when you first saw her and she was 10 feet in front
25 of your truck, what part of your truck was she in front

Deposition of Gerald L. Moody

1 of?

2 A. In front of the driver's headlight.

3 Q. So she was already in front of your vehicle?

4 A. In my lane.

5 Q. And then you said she made two quick steps, and so you
6 actually hit her with the passenger side of your
7 vehicle?

8 A. Yes.

9 Q. And what happened to her after you hit her?

10 A. She went over my fender into the highway.

11 Q. Where did she end up?

12 A. I immediately stopped. I was afraid that she might be
13 under the truck. I stopped and got out and looked, and
14 she was laying in the road next to my back bumper.

15 Q. How close was she to the sidewalk when she was resting
16 next to your back bumper?

17 A. Estimate, two to three foot. Probably two foot.

18 Q. And how close to the sidewalk was she when you first
19 saw her?

20 A. Well, she was in my driver's headlight. So I couldn't
21 tell you how much distance from the sidewalk to the
22 driver's headlight. I would say probably at least 10
23 foot.

24 Q. Were you in the far right lane?

25 A. Yes, I was.

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Plaintiff,

Vs.

Gerald L. Moody,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
C.A. No: 2016-CP-39-01346

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND JUDGMENT
PURSUANT TO RULE 59, *SCRPC*, AND
MOTION TO RECONSIDER PURSUANT TO
RULE 52, *SCRPC***

TO: DEFENDANT AND HIS ATTORNEY, CHAD M. GRAHAM:

YOU WILL PLEASE TAKE NOTICE that Plaintiff will move, ten (10) days after service hereof or as soon thereafter as Plaintiff may be heard, pursuant to Rules 59 and 52, *SCRPC*, for an Order altering or amending, and/or reconsidering the Court's Order granting Defendant's Motion for Summary Judgment filed on October 30, 2017.

The grounds for this motion are as follows:

1. Summary judgment was inappropriate in the present case because in a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff's negligence exceeded fifty percent. In this case, a jury could reasonably conclude that Plaintiff's negligence was less than fifty percent so that summary judgment is not appropriate.
2. The fact that Plaintiff was not crossing the road at a designated cross walk does not excuse Defendant's duty to avoid hitting Plaintiff, or his negligence in failing to see her and is not a proper ground for summary judgment.

For the reasons set forth herein, Plaintiff respectfully request an Order of this Court

vacating its prior Order, and/or altering its prior Order, and/or amending its prior Order, and/or denying Defendant's Motion for Summary Judgment.

Plaintiff's motion is based upon the pleadings and discovery; the sworn testimony of Plaintiff and Defendant; the statutory, procedural and case law of the State of South Carolina; and the supporting Memorandum submitted for consideration by the Court.

RESPECTFULLY SUBMITTED,

s/Raymond T. Wooten
Raymond T. Wooten (S.C. Bar No. 81483)
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Attorney for Plaintiff

Easley, South Carolina
November 9, 2017

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT
C.A. No: 2016-CP-39-01346

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Plaintiff,

Vs.

Gerald L. Moody,

Defendant.

**PLAINTIFF'S MEMORANDUM IN SUPPORT
OF HER MOTION TO ALTER OR AMEND
AND/OR RECONSIDER**

Plaintiff submits this memorandum in Support of Her Motion to Alter or Amend and/or Reconsider.

I. FACTS

1. The wreck occurred on a long straight stretch of road. (See Exhibit A; and Deposition of Gerald Moody, Pg. 34, ll. 1-3).
2. There was nothing obstructing Defendant's vision. (See Deposition of Gerald Moody, Pg. 34, ll. 4-6).
3. It was not raining hard. (See Deposition of Chelsea Abdlegheny, Pg. 40, ll. 5-11)(as set out in Defendant's brief, there is a factual dispute about how hard it was raining as Defendant claims it was raining heavily).
4. The area where the Plaintiff was hit was very well lit, with a gas station and restaurant nearby. (See Deposition of Chelsea Abdlegheny, Pg. 40, ll. 12-20)(as set out in Defendant's brief, there is a factual dispute as to how well lit the area was as Defendant claims that it was not well lit).
5. The road where the wreck occurred was four lanes wide, with a turning lane in the middle. (See Exhibit A)

6. Defendant was driving in the far right lane. (See Exhibit A; and Deposition of Gerald Moody Pg. 22, ll 24-25).
7. Prior to being hit, Plaintiff had already walked across three lanes of traffic and a turning lane, and was partially across the far right lane of travel. (See Exhibit A; Deposition of Chelsea Abdlegheny, Pg. 40, l. 22- Pg. 41, l. 1)
8. Plaintiff was stepping onto the sidewalk as she was hit. (See Deposition of Chelsea Abdlegheny, Pg. 41, ll 24-25)
9. Plaintiff walked at a normal rate of speed and paused in the median to look for traffic. (See deposition of Chelsea Abdlegheny, Pg. 46, ll 5-13).
10. Defendant did not see Plaintiff until she was in his lane and she was only ten feet away. (See Exhibit A; and Deposition of Gerald Moody, Pg. 21, ll. 15-17; Pg. 21, l. 24-Pg. 22, l. 4).
11. Plaintiff was wearing bright clothes, including a bright pink hooded sweatshirt, at the time she was hit as she had just finished teaching a Zumba class. (See Deposition of Chelsea Abdlegheny, Pg. 51, l. 24 – Pg. 54, l. 10 and accompanying exhibits).

II. ARGUMENT

1) SUMMARY JUDGMENT WAS INAPPROPRIATE AS A JURY COULD REASONABLY CONCLUDE THAT DEFENDANT'S NEGLIGENCE EXCEEDED PLAINTIFF'S NEGLIGENCE

“Summary judgment is proper only when it is clear that ‘there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’ Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all

inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Hamilton v. Miller*, 301 S.C. 45, 47, 389 S.E.2d 652, 653 (1990).” *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). “Ordinarily, comparison of the plaintiff’s negligence with that of the defendant is a question of fact for the jury to decide.” *Bloom v. Ravoira*, 529 S.E.2d 710, 713 (S.C. 2000). Further, “summary judgment is generally not appropriate in a comparative negligence case.” *Bloom v. Ravoira*, 529 S.E.2d 710, 713 (S.C. 2000). It is well settled that:

“[q]uestions of negligence, proximate cause and contributory negligence are ordinarily questions of fact for the jury, as to which the trial court’s only function is to inquire whether particular conclusions are or not the only reasonable inferences to be drawn from the evidence. If the facts in controversy and the inferences deducible therefrom are doubtful, or if they tend to show both parties guilty of negligence or willfulness, and there may be a fair difference of opinion as to whose act or whose acts produced or contributed to the injury complained of as a direct and proximate cause, questions of negligence, proximate cause and contributory negligence should be submitted to the jury.”

Wilson v. Marshall, 195 S.E.2d 610, 611 (S.C. 1973)

In *Bloom*, the court found a narrow exception to the general rule that negligence is a question for the jury. The court stated that “[i]n a comparative negligence case, the trial court should only determine judgment as a matter of law if the sole reasonable inference which may be drawn from the evidence is that the plaintiff’s negligence exceeded fifty percent.” 339 SC at 422. The court went on to say that “[t]herefore, summary judgment is generally not appropriate in a comparative negligence case.” *Id.* Summary judgment was not appropriate in the present case because, when

viewed in a light most favorable to the Plaintiff, a jury could reasonably conclude that Plaintiff's negligence was less than fifty percent.

a) The Present Case Is Factually Distinguishable From Bloom

The present case is factually distinguishable from Bloom. In Bloom, a pedestrian stepped out from behind a parked sport utility vehicle directly into the path of a vehicle, which hit the pedestrian **immediately** after he entered the street. Conversely, in the present case, the Plaintiff had crossed three full lanes of traffic and a turning median, and was about to step on the curb on the other side of the road from where she started when she was struck. In the present case, the road where the wreck occurred did not have any obstructions that would have prevented Defendant from seeing Plaintiff like the parked vehicles in Bloom.

In Bloom, the collision occurred on Meeting Street in Charleston in front of the Meeting Street Inn. 339 S.C. at 420. Meeting Street is a narrow two lane road with parking for cars along both sides of the road. I have attached a picture of the street view and overhead view in front of the Meeting Street Inn where the collision in Bloom occurred for the courts convenience. (See Exhibit B) In Bloom, the pedestrian stepped out from in between two parked vehicles and directly into the path of an oncoming vehicle. The vehicle on the pedestrian's left was a sport utility vehicle. Id at 421. In Bloom, the pedestrian was hit from his left immediately after he stepped into the road from in between parked cars. Id at 420. The impact occurred a **split second after the pedestrian entered the street**. Id at 423. The pedestrian was wearing dark clothing. Id. As you can see on the pictures of Meeting Street attached as Exhibit B, the pedestrian in Bloom walked out of the hotel, between two parked vehicles, and stepped directly into the path of a vehicle which hit him immediately after stepping into the street. The key point in Bloom is that the pedestrian stepped from in between a parked car directly into the path of a

car. Under this circumstance, the driver could neither see the pedestrian approaching nor have any time to react to him entering the road before he was hit. Therefore, there was nothing the driver in Bloom could do to avoid hitting the pedestrian, even if he had been keeping a proper lookout and driving at an appropriate speed.

Conversely, in the present case, the collision occurred on a road that was four lanes wide, with a turning median in the middle. (See Exhibit A) There was nothing obstructing Defendant's vision like the parked cars in Bloom. (See Deposition of Gerald Moody, Pg. 34, ll. 4-6). The Defendant was driving in the far right lane, and Plaintiff had walked across walked across three lanes of traffic and a turning median prior to being struck, and was almost across the fourth lane of traffic when she was hit. (See Exhibit A; Deposition of Chelsea Abdlegheny, Pg. 40, l. 22- Pg. 41, l. 1). Prior to being struck, Plaintiff was walking at a normal rate of speed and paused in the median to look for traffic. (See Deposition of Chelsea Abdlegheny, Pg. 46, ll 5-13). Plaintiff was wearing a bright pink hooded sweatshirt when she was hit. (See Deposition of Chelsea Abdlegheny, Pg. 51, l. 24 – Pg. 54, l. 10 and accompanying exhibits). As you can see on Exhibit A attached hereto, the wreck occurred in a wide open stretch of road unlike the narrow city street where the Bloom collision occurred. In the present case, Defendant struck Plaintiff after she had crossed three lanes of traffic and a turning median, and was about to step out of the road on the opposite side from where she had started. Defendant had ample time and opportunity to see Plaintiff as she walked across the wide open road approaching his lane of travel, and would have seen Plaintiff had he been paying proper attention as required by S.C. Code § 56-5-3230. This is diametrically opposite of the Bloom case where the pedestrian stepped out from between two parked cars directly into the path of a vehicle and was hit immediately upon entering the street.

Below is a chart where I have summarized key factual distinctions between Bloom and the present case:

<u>Bloom v. Ravoira</u>	<u>Present Case</u>
Two lane street in city with cars parked on side of road	Four lane rural road with a turning median
Cars parked on side of road	Nothing to obstruct Defendant's vision
Pedestrian hit immediately after he steps into road from between parked vehicles	Plaintiff hit after crossing over three lanes of traffic and a turning median
Pedestrian wearing dark clothes	Plaintiff wearing a bright pink hooded sweatshirt

Based on these distinctions alone, a jury could reasonably find that Plaintiff's negligence was less than fifty percent. Therefore, summary judgment is improper in the present case.

b) Based On Defendant's Own Statements, Defendant Was Operating His Vehicle Negligently, So That A Jury Could Reasonably Conclude That Plaintiff Was Less Than Fifty Percent At Fault

In its Order, the Court states that "[t]he evidence, based on the depositions of both parties, was that the defendant was traveling 25-30 miles per hour, had his lights on, his vehicle was in good working condition, he was not talking on the phone or changing the radio station or otherwise distracted, and he saw the Plaintiff in front of his vehicle when he was 10 feet away and immediately slammed on his brakes. However, he had no time to do anything to avoid colliding with the plaintiff. Thus, even if it could be argued that the evidence establishes that the Defendant was slightly negligent it is not as a matter of law, greater than the Plaintiff's negligence." (Order pg. 3). However, the fact that Defendant did not see Plaintiff until he was ten feet away from her is, in and of itself, evidence of his negligence. As described above, the subject wreck occurred on a long, straight and open road with nothing to obstruct Defendant's vision. Plaintiff, who was wearing a bright pink sweatshirt, had already crossed three full lanes

of traffic and a turning median before she was hit. Despite this, Defendant did not see Plaintiff until he was only ten feet away from her and she was in his lane of travel. Based on this testimony, Defendant was either driving too fast for conditions, not keeping a proper lookout, or some combination of the two.

S.C. Code Ann. § 56-5-3230 provides that “[n]otwithstanding other provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person.” Further, “S.C. Code Ann. § 56-5-1520 (1976) requires the driver of every vehicle to drive at an appropriately reduced speed when hazards exist with respect to weather or highway conditions. A motorist whose vision is obscured by unfavorable weather conditions must exercise care commensurate with the conditions of travel. *Edwards, supra.*” Burgess Brogdon, Inc. v. Lake, 339 S.E.2d 507, 509 (S.C. 1986). Further, “[t]he general rule is that a motorist whose vision is obscured by unfavorable atmospheric or weather conditions must exercise care commensurate or consistent with the conditions of travel. Likewise, a motorist should exercise reasonable care in keeping a lookout commensurate with the increased danger occasioned by conditions obscuring his view.” Edwards v. Bloom, 143 S.E.2d 614, 617 (S.C. 1965).

Here, the undisputed testimony is that the Defendant did not see Plaintiff until he was only ten feet away from her in his lane of travel. (Deposition of Gerald Moody, Pg. 21, ll. 15-17; Pg. 21, l. 24-Pg. 22, l. 4). It is important to note that a vehicle traveling at 25 mph would cover 10 feet in less than one second- far too short of a time to stop (in fact, a vehicle going 25 mph would cover 50 feet in one second). If Defendant had been keeping a proper lookout in the

present case, he could have easily seen Plaintiff in time to avoid hitting her. In other cases where an object was not seen by a driver until the driver was a short distance away, our Supreme Court has found that, as a matter of law, the driver was negligent.

- In Epps v. S.C. State Hwy. Dept., 39 S.E.2d 198, 202 (S.C. 1946), a driver could not see more than fifteen or twenty feet in front of them due to fog, but was driving at a speed of about twenty-five mph. The Court stated that “[t]he visibility being only fifteen to twenty feet, it was negligence as a matter of law, in the light of the other facts and circumstances of this case, for the car to be operated at a speed greater than that in which it could be stopped within such distance.”
- In Jones v. Southern Railway Co., 238 S.C. 27, 118 S.E.2d 880 (1961), a driver was found to be negligent as a matter of law in driving his tractor-trailer in a fog so dense as to limit his vision to fifty feet at a speed of thirty to forty mph.
- In Brown v. A. Coast Line R. Co., 119 S.E.2d 729, 731 (S.C. 1961), a driver was found to be grossly negligent as a matter of law when was driving at 30 mph despite the fact that he said he could not see a dark object until he was within a few feet of it.

Brown is especially pertinent to the present case. This case involved a driver who hit a flatcar while going 30 mph. Id. The driver testified that he could not see the flatcar until he was within a few feet of it. Id. In finding that the driver was negligent as a matter of law, the Court stated that “[i]f, as he apparently claims, conditions were such that he could not see a dark object until within a few feet of it, he was grossly negligent in driving at a speed of 30 miles an hour. On the other hand, if, as defendant's testimony shows, the weather was clear and the street lights made

this flatcar plainly visible at a distance of 150 or 200 feet, plaintiff was guilty of gross contributory negligence in failing to see the standing train in time to avoid the collision.” Id. Like the driver in Brown, in the present case, if the Defendant’s vision was so limited by darkness and rain that he could not see Plaintiff until he was ten feet away, then Defendant was grossly negligent for driving 25-30 mph. Conversely, if Plaintiff was visible from more than ten feet away then Defendant was grossly negligent in failing to see her in time to avoid hitting her. In the present case, the inescapable conclusion is that Defendant was either driving too fast for conditions or was not paying proper attention. Regardless of whether Defendant was driving too fast for conditions or was not paying proper attention, a jury could reasonably concluded that his negligence exceeded fifty percent.

It is also interesting to note that S.C. Code § 56-5-4450 requires a driver to use headlights if they cannot see at least 500 feet ahead of them. Here, Defendant claims that he could not see Plaintiff until he was only ten feet away from her- 1/50th of the statutory mandate for the use of headlights. As described above, if visibility was so bad that Defendant could not see Plaintiff until he was only ten feet away from her, then he was grossly negligent in driving 25-30 mph. Conversely, if Plaintiff was visible from more than ten feet then Defendant was grossly negligent in not seeing Plaintiff until he was only ten feet away from her, when he could have easily seen her in time to avoid hitting her. Summary judgment is improper in the present case because, when viewed in a light most favorable to Plaintiff, a jury could reasonably conclude that Plaintiff’s negligence was less than fifty percent.

2. THE FACT THAT PLAINTIFF WAS NOT CROSSING THE ROAD AT A DESIGNATED CROSS WALK IS NOT A PROPER GROUNDS FOR SUMMARY JUDGMENT

In its Order, the court states that “[b]ased on this evidence, the Court finds that the plaintiff did not cross the road in a safe, reasonable manner. Moreover, the plaintiff was negligent *per se* in crossing the road. See S.C. Code § 56-5-3150(a)(“every pedestrian crossing a roadway at any point other than within a marked crosswalk...shall yield the right-of-way to all vehicles on the roadway”); see also 56-5-31(c) (“Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk.”).” However, “[t]he fact that a motorist, by statute, has the right-of-way over a pedestrian does not relieve the motorist of the duty to use reasonable care for the safety of such pedestrian.” § 28-36 Motor Vehicles - Pedestrians on Highways, Anderson, S.C. Requests to Charge - Civil, 28-36. While it is true that a driver does have the right of way when a pedestrian is crossing the road somewhere other than a designated cross walk, S.C. Code § 56-5-3230 provides that “[n]otwithstanding other provisions of any local ordinance, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian or any person propelling a human-powered vehicle and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or any obviously confused, incapacitated or intoxicated person.” This statute applies in situations where a pedestrian is crossing the road outside of a cross walk such as the present case. These duties are noted in Bloom, and the fact that plaintiff did not cross the road in a cross walk in Bloom did not serve as the basis for summary judgment. Therefore, the fact that Plaintiff did not cross the road at a cross walk is not proper grounds for summary judgment, as to find so would ignore Defendant’s responsibilities pursuant to S.C. Code § 56-5-3230.

III. CONCLUSION

For the reasons set forth herein, Plaintiff respectfully requests an Order of this Court vacating its prior Order, and/or altering its prior Order, and/or amending its prior Order, and/or denying Defendant's Motion for Summary Judgment.

RESPECTFULLY SUBMITTED,

s/Raymond T. Wooten

Raymond T. Wooten (S.C. Bar No. 81483)

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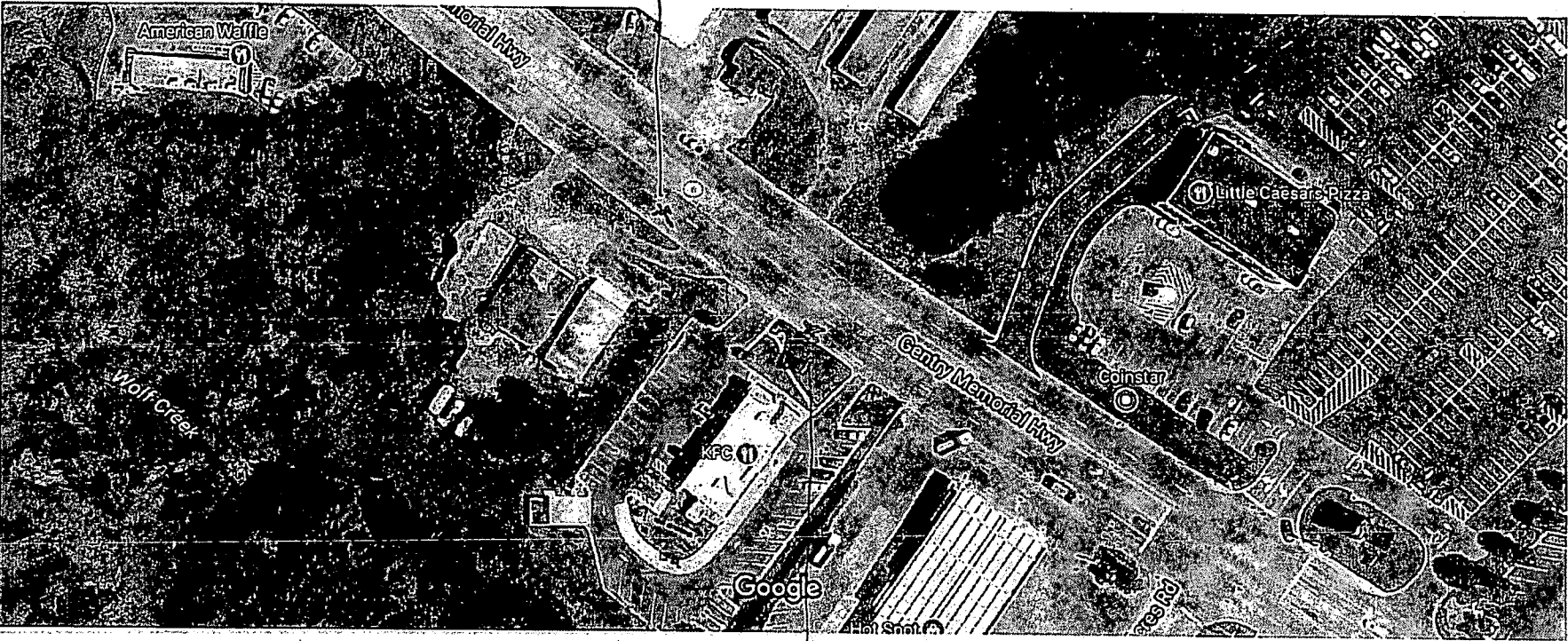
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Attorney for Plaintiff

Easley, South Carolina
November 9, 2017

EXHIBIT A

Google Maps Mission Fitness 24-7



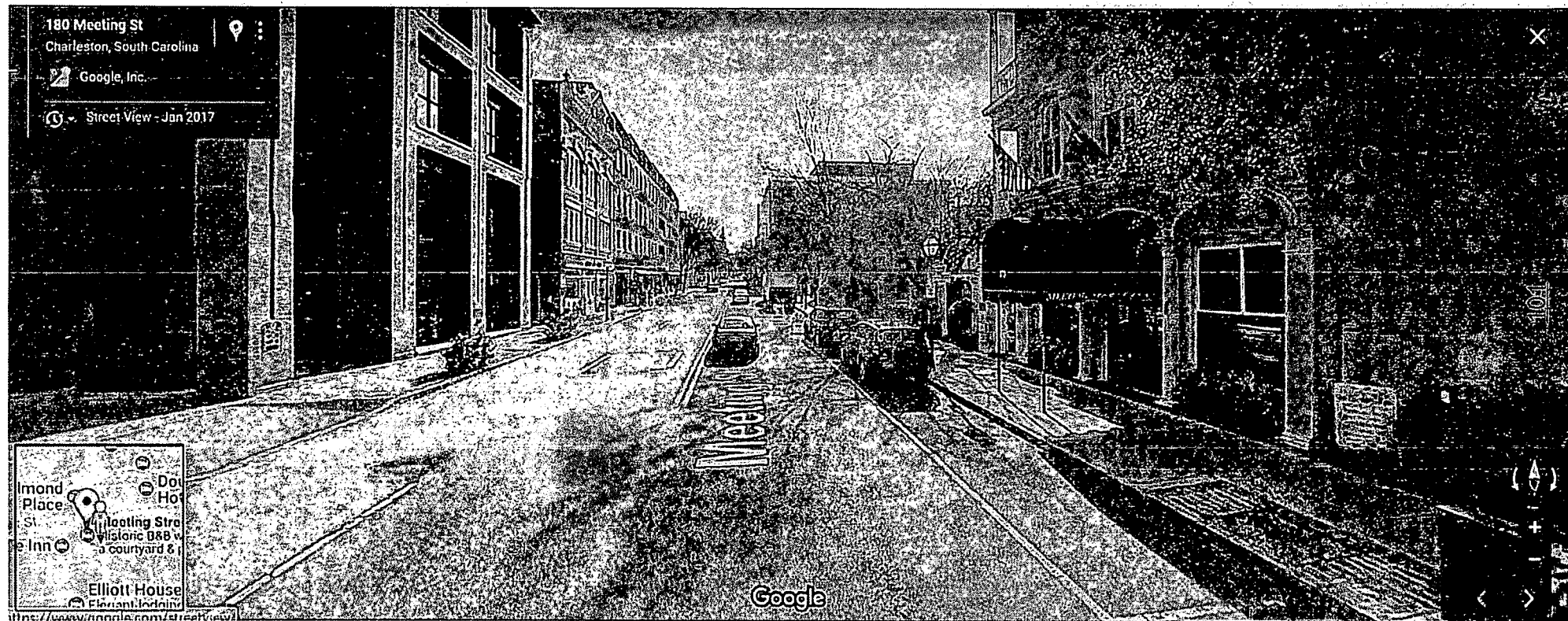
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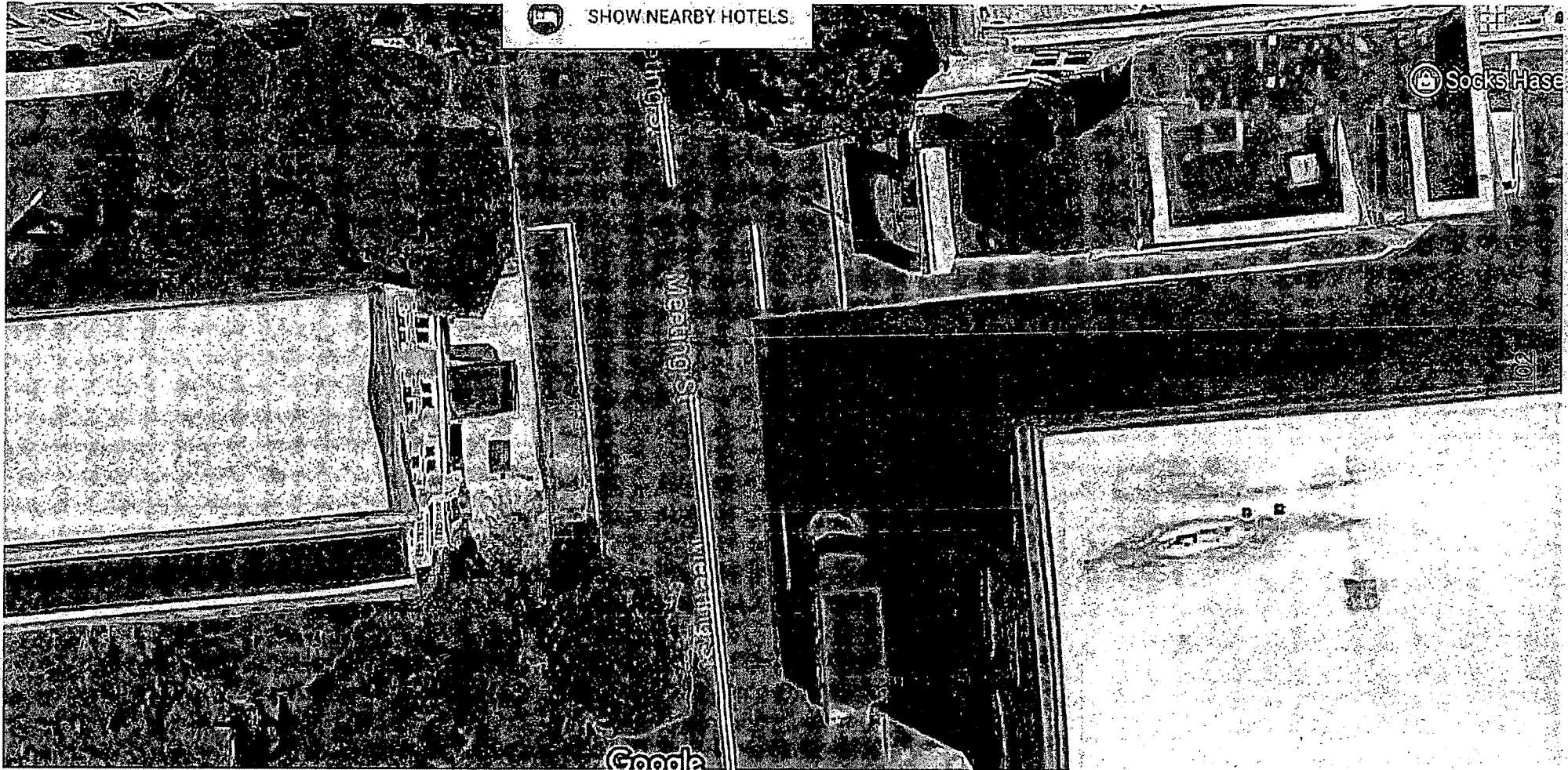
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IMPACT



EXHIBIT B





**DEPOSITION OF CHELSEA
ABDELGHENY**

Deposition of Chelsea Abdelgheny

1 A. I think I was somewhere like right around here, I
2 think. I'm not sure.

3 Q. Okay. So you walked diagonally across the road?

4 A. Yes, sir.

5 Q. What was the weather like?

6 A. I believe it was raining.

7 Q. How hard was it raining?

8 A. I don't -- if it had been raining hard, I wouldn't have
9 been walking.

10 Q. But you think it was actively raining?

11 A. I believe so. I'm not 100 percent sure.

12 Q. And was it dark outside?

13 A. It was dark outside, very well lit.

14 Q. Where were the lights that lit up that area? Do you
15 know?

16 A. Well, there are streetlights over here all in front of
17 Hot Spot.

18 Q. There are streetlights?

19 A. Well, it was very well lit. I believe they're
20 streetlights.

21 Q. And then tell me what happened.

22 A. I really don't remember much of it. I walked to the
23 middle. Well, I first, of course, looked. I walked to
24 the middle, and then I looked. I thought it was clear,
25 and I made it at all the way to the sidewalk, and then

Deposition of Chelsea Abdelgheny

- 1 I got hit.
- 2 Q. Were you holding an umbrella?
- 3 A. No.
- 4 Q. What were you wearing?
- 5 A. I was wearing a neon color coral hoodie and bright blue
- 6 pants.
- 7 Q. Did you have your hood up?
- 8 A. Yes.
- 9 Q. Because it was raining?
- 10 A. Yes.
- 11 Q. What kind of pants?
- 12 A. They're bright blue. Like they're Zumba pants, but
- 13 they're just leggings.
- 14 Q. Did you see Mr. Moody's vehicle at all before the
- 15 accident?
- 16 A. No. I felt it upon impact.
- 17 Q. So do you have any idea how fast he was going?
- 18 A. I don't.
- 19 Q. And you didn't see him at all before impact?
- 20 A. No.
- 21 Q. And you have the X there in the right-hand lane of
- 22 that---
- 23 A. I kind of put it on the sidewalk.
- 24 Q. You think you got hit on the sidewalk?
- 25 A. I do believe one foot was on the sidewalk, yes.

Deposition of Chelsea Abdelgheny

1 how long was that?

2 A. I have no idea, but not very long.

3 Q. Could it have been less than a minute?

4 A. Probably.

5 Q. Were you in the median for very long?

6 A. Not very long. I mean, I stopped and paused there to
7 look.

8 Q. And then you proceeded on?

9 A. Yes.

10 Q. Did you walk at a normal rate of speed?

11 A. Yes.

12 Q. From the median to the other side of the road?

13 A. Yes.

14 Q. What else do you remember about when you were laying
15 there?

16 A. I remember asking the paramedic if I was going to live.

17 Q. Do you remember if you called the police?

18 A. No, I didn't.

19 Q. Did you have your phone on you at the time?

20 A. It was thrown somewhere, and the owner of CMG Signs
21 came out there and he got my phone for me, and I
22 remember hearing him telling my mom how it was a bad
23 accident and he didn't know if I was going to make it.

24 Q. Did he see it?

25 A. No. He was in his -- I don't think he did. He was in

Deposition of Chelsea Abdelgheny

1 Q. Do you know who called the police or who called EMS?

2 A. I have no idea. I'm assuming he did.

3 Q. Mr. Moody?

4 A. No. I was thinking Derrick. I have no idea, though.

5 Q. Did you ever speak to Mr. Moody?

6 A. No.

7 Q. Did your husband come out to the scene?

8 A. No.

9 Q. Were you married at the time?

10 A. No.

11 Q. Were y'all together?

12 A. We didn't know each other at the time.

13 Q. Didn't know each other, okay. Where were you living at
14 the time of the accident?

15 A. Liberty, South Carolina.

16 Q. What address?

17 A. 113 J and W Trail.

18 Q. With your parents?

19 A. Yes.

20 Q. Did anybody else live there?

21 A. No.

22 (Defendant's Exhibit Number 4 marked)

23 EXAMINATION RESUMED BY MR. GRAHAM:

24 Q. This is Exhibit Number 4. It's a picture your attorney
25 sent me in discovery. Is that you in that picture?

Deposition of Chelsea Abdelgheny

1 A. Yeah, earlier that day.

2 Q. And that says Total Fitness Family Center --

3 A. Yes.

4 Q. -- at the top? Is there a time stamp on this anywhere?

5 A. Not to the best of my knowledge.

6 Q. And that's your Instagram?

7 A. That's their Instagram.

8 Q. Their Instagram?

9 A. Mm-hmm.

10 Q. Are you on that Instagram a lot?

11 A. I used to be, yeah, when I worked there.

12 Q. And that's what you were wearing when the accident
13 occurred?

14 A. Yes.

15 Q. Did you have it like that, I mean, with the hood up?

16 A. Yeah.

17 Q. And your Instagram handle is Shade of Blue?

18 A. Shade of Blue 88.

19 Q. Is it still that?

20 A. Yeah. I don't use it anymore, but yeah.

21 Q. Do you have Facebook?

22 A. I don't use it anymore.

23 Q. Do you have it, though?

24 A. I deactivated it.

25 Q. What was your name on there?

Deposition of Chelsea Abdelgheny

1 A. Chelsea Jackson.

2 (Defendant's Exhibit Number 5 marked)

3 EXAMINATION RESUMED BY MR. GRAHAM:

4 Q. I'm going to show you this picture. This is
5 Defendant's Exhibit Number 5. What is that a picture
6 of?

7 A. The pants I was wearing.

8 Q. And where are those? Or where is this picture taken?

9 A. I have no idea.

10 Q. Did you take it?

11 A. I didn't.

12 MR. WOOTEN:

13 Can we go off for a second?

14 MR. GRAHAM:

15 Yeah.

16 (Off the Record; 10:53 -- 10:54 a.m.)

17 (Defendant's Exhibit Number 6 marked)

18 EXAMINATION RESUMED BY MR. GRAHAM:

19 Q. And this is Defendant's Exhibit Number 6. What is that
20 a picture of?

21 A. My tops.

22 Q. What is that?

23 A. That's -- I had multiple layers on. That's one of the
24 shirts.

25 Q. Is that the underneath shirt?

Deposition of Chelsea Abdelgheny

1 A. Yes.

2 Q. And that's the---

3 A. The jacket that was on top at the time.

4 (Defendant's Exhibit Number 7 marked)

5 EXAMINATION RESUMED BY MR. GRAHAM:

6 Q. And what is that a picture of?

7 A. That's a bra and that's another tank top I had on.

8 Q. Was that tank top over this tank top?

9 A. I'm not sure which tank top was in which place, but the
10 hoodie was on top.

11 Q. Why do you wear so many shirts?

12 A. I just---

13 Q. Just out of curiosity.

14 A. The look. It was just layered.

15 Q. All right. Do you remember anyone else who came out to
16 the scene of the accident you haven't told me about
17 already?

18 A. No.

19 Q. How long were you there?

20 A. Where?

21 Q. At the scene of the accident. Sorry.

22 A. I have no idea.

23 Q. Do you know where you were laying? In the road,
24 sidewalk, grass?

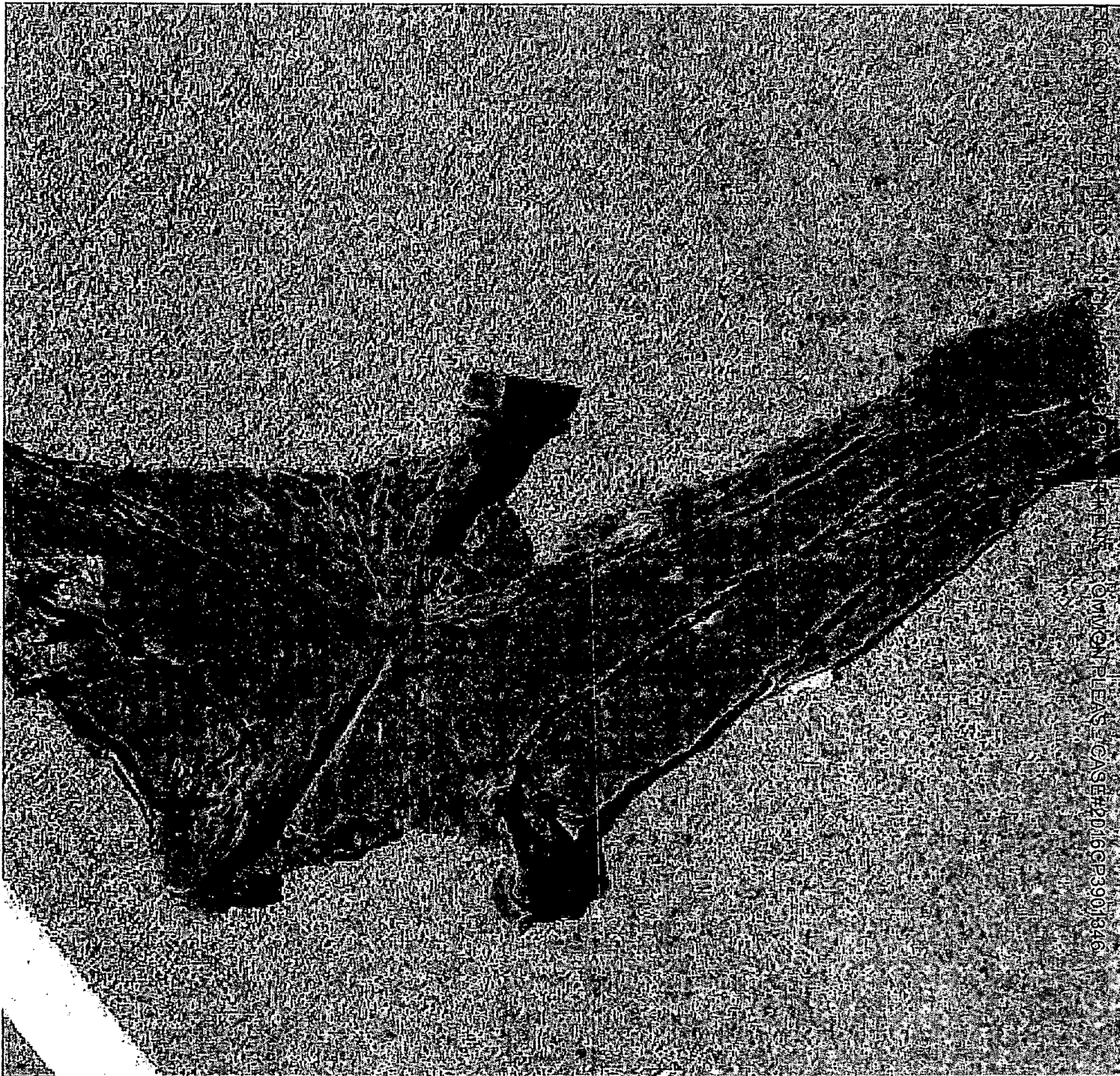
25 A. No, I don't.



1X

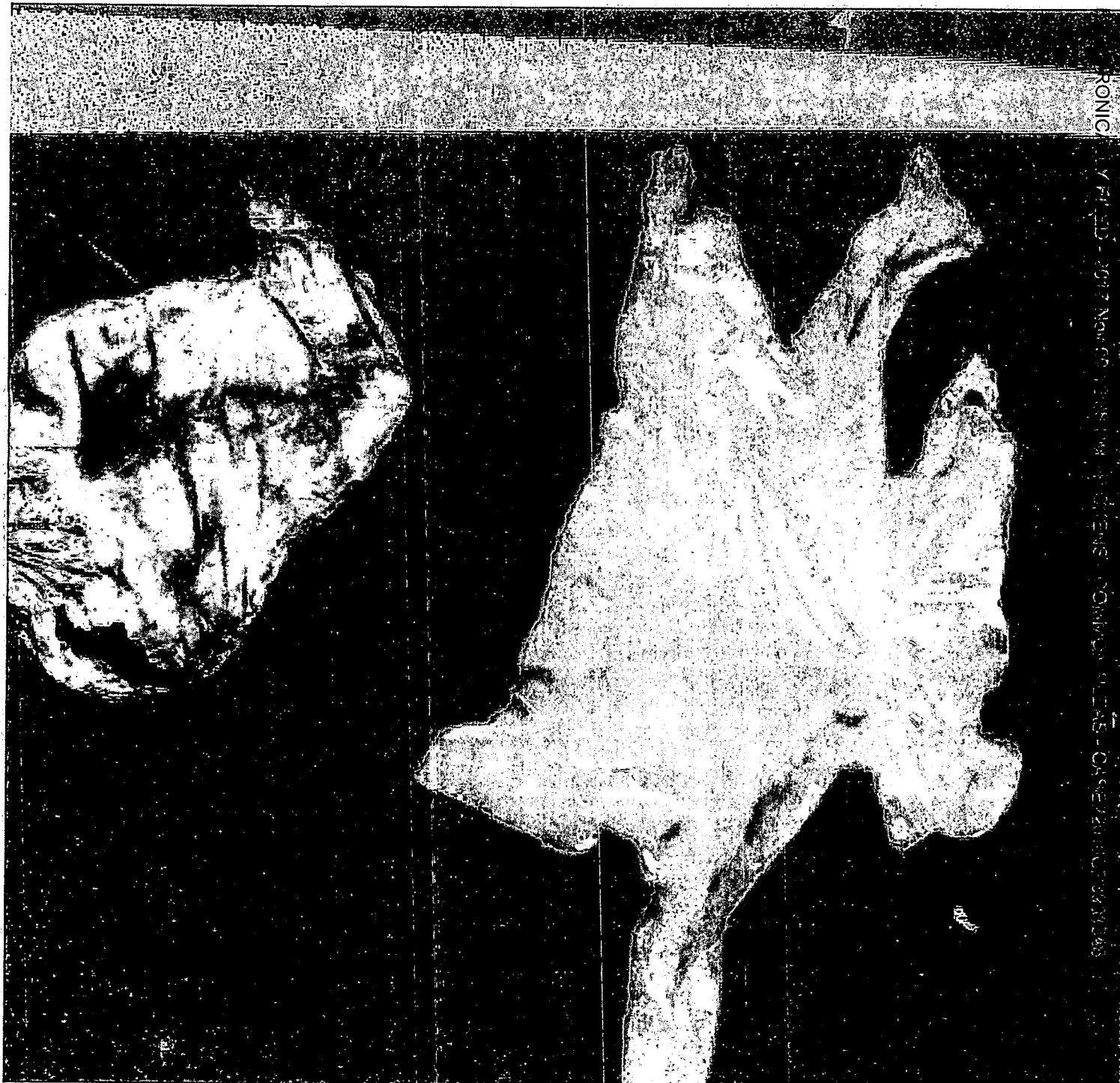
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DEFENDANT'S
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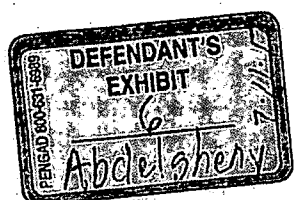


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DEPOSITION OF GERALD L. MOODY

Deposition of Gerald L. Moody

1 A. Right.

2 Q. Just kind of take me through and explain what happened
3 when the incident occurred.

4 A. I was driving down Gentry Memorial Highway, stopped at
5 the light at the foot of the hill.

6 Q. Is that the light by the American waffle?

7 A. That's it.

8 Q. Okay, I'm sorry. Keep going.

9 A. The light changed. I was running about maybe 25 or 30
10 miles an hour, and then in front of Kentucky Fried
11 Chicken I looked up and I saw this lady in front of my
12 driver's headlight with her hand up. She turned and
13 looked at me and made approximately two fast steps, and
14 I hit her with the right passenger headlight.

15 Q. How far away was she from the front of your vehicle
16 when you first saw her?

17 A. Around 10 foot.

18 Q. Did you hit the brakes?

19 A. Yes, I did.

20 Q. Did you skid?

21 A. Don't know.

22 Q. Did that truck have antilock brakes?

23 A. Don't know.

24 Q. So when you first saw her and she was 10 feet in front
25 of your truck, what part of your truck was she in front

1 of?

2 A. In front of the driver's headlight.

3 Q. So she was already in front of your vehicle?

4 A. In my lane.

5 Q. And then you said she made two quick steps, and so you
6 actually hit her with the passenger side of your
7 vehicle?

8 A. Yes.

9 Q. And what happened to her after you hit her?

10 A. She went over my fender into the highway.

11 Q. Where did she end up?

12 A. I immediately stopped. I was afraid that she might be
13 under the truck. I stopped and got out and looked, and
14 she was laying in the road next to my back bumper.

15 Q. How close was she to the sidewalk when she was resting
16 next to your back bumper?

17 A. Estimate, two to three foot. Probably two foot.

18 Q. And how close to the sidewalk was she when you first
19 saw her?

20 A. Well, she was in my driver's headlight. So I couldn't
21 tell you how much distance from the sidewalk to the
22 driver's headlight. I would say probably at least 10
23 foot.

24 Q. Were you in the far right lane?

25 A. Yes, I was.

Deposition of Gerald L. Moody

1 Q. And would you agree that this stretch of road that you
2 were driving on was pretty straight?

3 A. Yes.

4 Q. And there's nothing overhanging it, no trees or
5 anything that would obstruct your vision?

6 A. No.

7 MR. WOOTEN:

8 Can we mark that as Plaintiff's Number 2?
9 (Plaintiff's Exhibit Number 2 marked)

10 EXAMINATION RESUMED BY MR. WOOTEN:

11 Q. I'm going to show you what's been marked as Plaintiff's
12 Exhibit Number 2.

13 A. Okay.

14 Q. And that should be a picture generally from the
15 direction that you were coming back up past the KFC
16 where the incident happened.

17 A. Mm-hmm.

18 Q. Does that look about right?

19 A. Yeah. It looks a little -- about right. A little
20 further down, I think.

21 Q. Yeah. would you say that the wreck happened up this
22 way somewhere?

23 A. Pardon?

24 Q. Does that look about right; the wreck happened
25 somewhere up in here?

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF PICKENS)

Chelsea Abdelgheny f/k/a Chelsea)
Jackson,)

Plaintiff,)

v.)

Case No. 16-CP-39-1346

Gerald L. Moody,)

Defendant.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on October 13, 2017, before The Honorable Perry H. Gravely in Courtroom 4 of the Pickens County Courthouse, 214 East Main Street, Pickens, South Carolina; attended by counsel as follows:

APPEARANCES:

Raymond T. Wooten, Esq.
...Appearing for Plaintiff

Chad M. Graham, Esq.
... Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

1 THE COURT: All right. Abdelgheny
2 versus Moody. All right, we've got a Motion
3 to quash and a Motion for summary judgment.

4 MR. GRAHAM: That's correct, Your Honor.
5 I filed a Motion for summary judgment on
6 behalf of the defendants. Chad Graham with
7 the Ward Law Firm.

8 Mr. Wooten filed a Motion to quash some
9 of the medical subpoenas that I issued after
10 a deposition. I think the Motion to quash is
11 listed first. However you want to hear it.

12 THE COURT: Let's hear the Motion to
13 quash. That will give me some background.

14 MR. GRAHAM: Okay, (affirmative nod).

15 MR. WOOTEN: Thank you, Your Honor.

16 This case revolves around a pedestrian that
17 got hit by a driver out here on 93, in front
18 of the KFC.

19 Obviously I represent the plaintiff.
20 She was hit. She sought a bunch of medical
21 care. As you might imagine, in a case where
22 the plaintiff gets hit by a car, injuries are
23 very traumatic. There's not any kind of
24 preexisting conditions on this case.

25 So we -- defense counsel asked for all

1 prior medical providers. We gave them to
2 her. They went ahead and sent subpoenas to
3 all her prior medical providers, asking for
4 any record that she ever had in her entire
5 life.

6 We asked that they limit that. We
7 thought five years before the wreck would be
8 reasonable. They refused to limit that.

9 Another issue was that two of the medical
10 providers that we listed were the Pickens,
11 County Health Department and the Spartanburg
12 Health Department where my client got birth
13 control. They also subpoenaed records from
14 them. We just don't think that's relevant
15 at all, so we ask that that subpoena be
16 withdrawn.

17 Just as an example, some of the medical
18 records that they subpoenaed, they subpoenaed
19 Shriner's Hospital where she was treated when
20 she was a very small child.

21 They subpoenaed Palmetto Baptist in
22 Columbia where she broke her wrist when she
23 was eighteen or nineteen. She's twenty-nine
24 now. She was probably about twenty-seven
25 when the wreck happened.

1 They subpoenaed Cannon Memorial where --
2 the only treatment that we know of is that
3 she had a blood sugar test done.

4 They subpoenaed AnMed where she had
5 surgery to have a mole removed.

6 We just don't think that most of these
7 subpoenas are relevant. We didn't even ask
8 to quash the AnMed, Cannon or those, just
9 that it be quashed any more than five years
10 before the wreck. If something didn't show
11 up within five years of the wreck, I don't
12 see how it is going to be relevant to the
13 case or how it is going to lead to discover-
14 able/admissible evidence.

15 Based on that, we would just ask that
16 this be quashed.

17 Your Honor, I can if you would like, I
18 can pass up some -- there are some excerpts
19 from her deposition where she just talks
20 about what medical care -- I don't know that
21 defense attorney is going to contest that. I
22 don't know if it is worth your reading.

23 Then I also have an e-mail from the
24 attorney for DHEC who represents the health
25 departments, just explaining, you know, that

1 it's not a typical health care provider that
2 would provide treatment for any kind of
3 traumatic or other injuries. They typically
4 provide things like disease control, STD
5 testing, birth control, things like that. I
6 will be happy to pass that up to Your Honor
7 if you'd like ---

8 THE COURT: No. Let me hear from
9 y'all.

10 MR. GRAHAM: Sure, Your Honor. I do
11 take issue that we have refused to limit --
12 we've talked a few times on the phone and I
13 suggested possibly ten years, and he rejected
14 that suggestion.

15 What we have here, as you'll hear in our
16 Motion for summary judgment, is a highly-
17 contested case. The damages are high.

18 He obviously thinks the case is high
19 value, he's put two UIM carriers on notice,
20 so he's going for a verdict in excess of my
21 client's limits. So I feel like it is my
22 duty to turn over stone that I can in this,
23 Your Honor.

24 She has put her medical condition in
25 issue, she's put her medical history in

1 issue. She's made some pretty outlandish
2 claims in her deposition. One is that she
3 had a miscarriage as the result of this
4 accident. She wasn't pregnant at the time of
5 the accident.

6 She has a history of treating with a
7 psychologist and she's claiming extreme
8 mental anguish. She is also claiming that
9 she has migraine headaches now because of
10 this accident, and she had a history of
11 migraine headaches before.

12 So, believe it or not, Your Honor, I've
13 had a plaintiff not represent accurately
14 their prior history. I think that it is
15 incumbent on me to pursue that and to get
16 records that confirm what her history is, so
17 that I can properly defend my client.

18 I'm sorry that we are here before you on
19 a discovery Motion, but that's kind of where
20 we are. I don't think it is unreasonable for
21 me to request those records.

22 THE COURT: And I guess it is not
23 really for me to determine whether it is
24 overreaching or something that I would have
25 done, but I think that -- he's perfectly

1 within his right to research all that's --
2 you know, that could lead to discoverable
3 evidence or admissible evidence.

4 It's a lot of paper to look at but I
5 think that he is entitled to those records
6 for whatever they are worth.

7 MR. GRAHAM: And, Your Honor, I'd agree
8 to whatever confidentiality Order he wants.

9 THE COURT: Do y'all want a
10 confidentiality Order on that?

11 MR. WOOTEN: No, Your Honor. I don't
12 think that Mr. Graham is going to go publish
13 them around the county. I mean -- and I
14 guess -- and I don't want to keep arguing
15 after you've already decided, but we're not
16 asking -- we're not saying that they can't
17 get the records for the miscarriage, that
18 they can't get the mental health records.
19 We just think that if it doesn't show up
20 within five years before the wreck that --
21 you know, how could it be anything that is
22 possible -- or that is admissible for trial?

23 THE COURT: Again, that's not for us to
24 determine here. I mean, that's -- he agreed
25 that he would limit it to ten years.

1 MR. GRAHAM: I can, Your Honor, unless I
2 find something in there that,--

3 THE COURT: I'm going to let you go
4 ahead with your discovery.

5 MR. GRAHAM: Thank you.

6 THE COURT: Motion to quash is denied.

7 MR. GRAHAM: Thank you, Your Honor.

8 THE COURT: All right, the Motion for
9 summary judgment. I guess that we should
10 have done this one first.

11 MR. GRAHAM: Your Honor, I don't see an
12 easel here but I want to allow the Court to
13 see a printout of the scene of the accident
14 here.

15 THE COURT: Okay.

16 MR. GRAHAM: It was an exhibit to the
17 deposition.

18 THE COURT: Okay.

19 MR. GRAHAM: May I approach?

20 THE COURT: Yes.

21 MR. GRAHAM: (Tendering), and I have a
22 memorandum that was sent, I believe, to your
23 office.

24 THE COURT: We received that.

25 MR. GRAHAM: This is just for your frame

1 of reference.

2 THE COURT: Okay.

3 MR. GRAHAM: This is where the accident
4 happened.

5 THE COURT: Okay.

6 MR. GRAHAM: This accident, like Mr.
7 Wooten said, happened to Gentry Memorial
8 Highway on October 26th, 2015 at around 8:00
9 at night.

10 My Motion is for summary judgment based
11 on Rule 56. The grounds for my Motion are
12 that the plaintiff, by her own admission, was
13 negligent as a matter of law. There is no
14 evidence in the record that the defendant was
15 negligent.

16 I'm relying heavily on the case of *Bloom*
17 *v. Gregoria*, which is really the seminal
18 pedestrian/driver case, which states that the
19 court may determine judgment as a matter of
20 law if the sole reasonable inference which
21 may be drawn from the evidence is that
22 plaintiff's negligence exceeds fifty percent.
23 That is obviously in a comparative negligence
24 context. I'll be making that argument.

25 We have several undisputed facts. We've

1 taken the depositions of the plaintiff and
2 the defendant, and that's all that we have
3 done. That's probably all we are going to do
4 as far as fact witnesses to determine how the
5 accident happened and liability.

6 She worked at a work out facility. She
7 had worked that day. She was going across
8 Gentry Memorial Highway to a sign company, to
9 create some signs for her employer.

10 She admitted that it was night time, that
11 it was raining, that she walked diagonally
12 across the road.

13 As you see on that exhibit there are two
14 X's. One is where she entered the roadway
15 and one is where the accident occurred. That
16 is from her deposition.

17 But she was walking in an area that was
18 not designated as a crosswalk.

19 Those facts are not in dispute. That's
20 where we are with what her testimony is going
21 to be.

22 She stated that she never saw the
23 defendant before the accident. She stated
24 that she stopped in the median to determine
25 if traffic was such that she could cross.

1 That she didn't see anybody, so she proceeded
2 on into my client's lane of travel and was
3 struck there.

4 She testified that her hood was up. She
5 had a hoodie and she hood was up, and she was
6 using her right hand to talk on her cell
7 phone at the time of the accident.

8 The testimony from my client, and this is
9 undisputed, is that he was going twenty-five
10 to thirty miles per hour at the time of the
11 accident. He had been stopped at the
12 intersection prior to where the accident
13 happened, about an eighth of a mile away.
14 The light turned green and he proceeded in
15 the right lane the whole time, without
16 switching lanes, until the accident occurred.
17 He was keeping a proper lookout. He
18 testified that his lights were working
19 properly. He was not given any kind of
20 citation as a result of the accident.

21 He testified that when he first saw her
22 that she was about ten feet away from him in
23 his lane of travel. He immediately hit the
24 brakes, like any reasonable person would, but
25 was not able to avoid impacting her person.

1 My argument is based on the cases that
2 I have already talked about and also the
3 statute 56-5-3150, the statute which governs
4 pedestrian care in crossing a roadway.

5 So 56-5-3150(a) states that "a pedestrian
6 crossing a roadway at any point other than a
7 crosswalk must yield to traffic on the
8 roadway.

9 56-5-3150(c) says that "a pedestrian
10 should not cross at any point other than a
11 crosswalk."

12 There is another statute, 56-5-3160 that
13 states that "a pedestrian on a roadway must
14 yield to motor vehicles lawfully on that
15 roadway."

16 Your Honor, ---

17 THE COURT: What was your first
18 statute?

19 MR. GRAHAM: 56-5-3150.

20 THE COURT: Thank you.

21 MR. GRAHAM: Then (a) and (c) of that
22 statute, and then 56-5-3160 as well.

23 THE COURT: Thank you.

24 MR. GRAHAM: Based upon those statutes
25 and her testimony, it's clear that she has

1 admitted that she was crossing the roadway at
2 night in the rain at an area not designated
3 as a crosswalk, that she did not properly
4 ascertain if she could cross the roadway
5 without an accident occurring, that she
6 didn't see my client's vehicle that was
7 clearly there.

8 So she, by her own testimony, has
9 admitted to violating the statute. That
10 means that she is negligent under a common
11 law approach to it, and she is also negligent
12 per se by violating the statute.

13 Your Honor, the statute clearly sets
14 forth what type of care a pedestrian should
15 exercise when crossing a roadway. She's
16 violated and breached that statute, based on
17 the evidence in the record.

18 There is absolutely no evidence that my
19 client, Mr. Moody, was negligent. He was not
20 speeding, he was not driving recklessly and
21 his lights were working properly. His
22 testimony is that he was keeping a proper
23 lookout. They've not been able to produce
24 any evidence.

25 What he cited in his memo was several

1 cases and a jury charge from Judge Anderson
2 just stating what the duty is. Obviously,
3 that duty, motorists have to take reasonable
4 care to avoid hitting pedestrians. But he
5 wasn't brought any evidence that that duty
6 has actually been breached, and he can't cite
7 case that states based on these facts that
8 that duty has been breached.

9 He's relying heavily on my client
10 testifying that he didn't see the plaintiff
11 until she was ten feet ahead of him. Well,
12 she was crossing -- like I said, in the dark,
13 in the rain, with her hood up, on her cell
14 phone, not in a crosswalk. So a person could
15 be exercising reasonable care, probably was
16 exercising reasonable care, if they don't see
17 that person. So there is no evidence that my
18 client is negligent under the facts of this
19 case.

20 The case that I really emphasize that is
21 analogous to this case, very similar facts,
22 is the *Bloom v Gregoria* (phonetic) case.
23 In that case the Supreme Court granted
24 summary judgment on a comparative negligence
25 analysis. I've already stated it, but it

1 says that it allows courts to determine that
2 if the plaintiff's negligence would exceed
3 fifty percent that no reasonable jury could
4 come back with a verdict for the plaintiff,
5 that then summary judgment is appropriate.
6 The facts in this case are very similar to
7 the facts in the case before you today, Your
8 Honor.

9 In that case it was night time, the
10 pedestrian entered the crosswalk at -- sorry
11 -- entered the roadway in a place that was
12 not a crosswalk. There is no evidence that
13 the driver was negligent. The driver was
14 running about twenty-five miles per hour.
15 Neither party saw either one of them before
16 the accident happened, which is what happened
17 here except that my client saw her ten feet
18 ahead and hit the brakes immediately.

19 In both cases there was a crosswalk or
20 intersection nearby where the pedestrian
21 could have crossed.

22 So what we have here is really a fact-
23 specific ruling that can apply almost
24 directly to this case, Your Honor.

25 What the Supreme Court ruled on those

1 facts was that the undisputed facts of that
2 case established that the pedestrian
3 attempted to cross the roadway but did so in
4 an unreasonable manner. And that any factual
5 issue which might exist to show that the
6 driver was negligent could not alter the
7 inescapable conclusion that the plaintiff's
8 negligence would exceed fifty percent. On
9 that basis the Supreme Court felt that it was
10 appropriate and necessary to grant summary
11 judgment on those facts, Your Honor. The
12 facts couldn't fit any better in the case
13 before you today, Your Honor.

14 So that is the basis for my argument for
15 summary judgment. Plaintiff's negligence
16 fits under a common law analysis. There is
17 no evidence of negligence by my client. Even
18 if there might be some type of negligence on
19 behalf of my client, that the comparative
20 negligence laws dictate that there could
21 never be a verdict for the plaintiff because
22 the plaintiff's negligence exceeds fifty
23 percent. That is the only reasonable
24 inference that can be drawn from the facts,
25 Your Honor.

1 THE COURT: Thank you. Mr. Wooten?

2 MR. WOOTEN: Thank you, Your Honor.

3 Also I would just like to say it is very well
4 settled in South Carolina that questions of
5 negligence and comparative negligence are
6 generally questions for the jury.

7 I will individual of flip my argument a
8 little bit here because he ended on the *Bloom*
9 case. I've got a copy of that if you would
10 like for me to pass that up.

11 THE COURT: That would be good.

12 MR. WOOTEN: (Tendering).

13 THE COURT: Thank you.

14 MR. WOOTEN: Your Honor, once you've had
15 a chance to look at that case, you'll see
16 that the facts are very different in that
17 case. The Bloom case was on King Street in
18 Charleston where the plaintiff in that case
19 stepped out from between two parked cars,
20 directly into the path of a car that was
21 coming down the road. So the car hit him on
22 the side as soon as he stepped out into the
23 road.

24 This case is a case where my client was
25 crossing Gentry Memorial Highway. She had

1 crossed over two lanes of traffic, paused in
2 the turning median and then continued to walk
3 across. She was almost all the way across
4 the road. She was about to step on the
5 sidewalk when she was hit. So she had
6 crossed basically almost five lanes of
7 traffic before she got hit.

8 It was not particularly heavy traffic
9 that night. She was wearing a bright pink
10 hoodie. It is a well-lit area with a gas
11 station and a KFC right there. She was
12 walking across the road. She had just taught
13 a Zumba class, so she was wearing aerobics
14 clothes including the pink hoodie.

15 If I might approach, Your Honor, I'll
16 pass up a copy of the memorandum that I filed
17 last night -- (tendering), I'm not sure if it
18 went through yet or not.

19 THE COURT: Okay.

20 MR. WOOTEN: I've got it flipped over.
21 That's a exhibit from the defendant's
22 deposition and it has starred where the
23 impact occurred. As you can see, almost on
24 the sidewalk after she had crossed almost all
25 the way across that road.

1 Then if you flip a few pages further you
2 can see the clothes that she was wearing when
3 she got hit.

4 THE COURT: Looks like modern art.

5 MR. WOOTEN: It the parking lot of my
6 office. You can imagine clothes covered with
7 ---

8 THE COURT: We won't explore that any
9 more.

10 MR. WOOTEN: Yes, sir. You can keep
11 this if you want, Your Honor.

12 THE COURT: Oh, is that for me?

13 MR. WOOTEN: Yeah. I brought a copy
14 because I didn't know if went through.

15 Your Honor, I think there is certainly --
16 certainly enough here to be a question of
17 negligence, especially in light of South
18 Carolina Code 56-5-3230 which requires a
19 driver to keep a lookout for pedestrians,
20 even if they are not in a crosswalk.

21 That statute further provides that they
22 have a heightened duty if the person is
23 drunk, has a child or they are otherwise
24 distracted. They have a duty to keep a
25 lookout. Just because somebody is not in a

1 crosswalk doesn't mean that you can plough
2 them right over.

3 So, Your Honor, we think that there is
4 certainly enough here for a jury question of
5 negligence. The biggest part, as Mr. Graham
6 alluded to, he did not see my client until
7 she was ten feet away. That's about one car
8 length. If you can't see something in your
9 lane until you're within one car length,
10 there's no way that you are paying adequate
11 attention as required by the law.

12 The fact that it was dark or raining,
13 South Carolina law is very clear that you
14 have to adjust your driving based on the
15 conditions that you presented. It doesn't
16 matter if it was thirty-five or forty-five,
17 if you can't see more than one car length out
18 in front of you, you're going too fast even
19 if you're going below the speed limit.

20 So that doesn't excuse his client for not
21 seeing her. He's kind of arguing against
22 himself when he says that it was dark and it
23 was raining. You know, he should have been
24 going slower in that case. The fact that you
25 can't see somebody until you are ten feet

1 way, you can't possibly be paying adequate
2 attention in that situation.

3 The other thing that he was arguing, Your
4 Honor, is comparative negligence, *per se*.
5 First of all, as I alluded to already,
6 comparative negligence is a jury question.

7 Second of all, if comparative negligent
8 *per se* for violating a statute would mean
9 that he should granted summary judgment, or
10 that his client should be:

11 One, that would completely get rid
12 of the statute where his client is obligated
13 to keep a proper lookout; and,

14 Two, that would mean that every time
15 a person was going one mile an hour over the
16 speed limit that would be negligence, *per se*,
17 so nobody would be liable even if they pulled
18 out in front of them.

19 So that doesn't get his client out of
20 this case. I think it is still a jury
21 question.

22 So, Your Honor, as I said, just alluding
23 back to the Bloom case, the Bloom case notes
24 that summary judgment is an extraordinary
25 remedy, it notes that if -- in a situation

1 like that, it has to be the only conclusion
2 that the facts can render, is that the
3 plaintiff will be more than fifty percent
4 liable. In this case, I just don't think
5 that is the case at all. I mean, I think
6 that there's plenty of evidence that in fact
7 the defendant in this case was more
8 responsible for this wreck. Therefore, we
9 would ask that Your Honor dismiss their
10 Motion for summary judgment. Thank you.

11 THE COURT: Anything in brief reply?

12 MR. GRAHAM: Brief reply, Your Honor.

13 The Bloom case, the last paragraph of it,
14 which he just alluded to, does state summary
15 judgment is a drastic remedy and that it
16 should be cautiously invoked. If you keep
17 reading that paragraph, the language says
18 that "nevertheless, in a rare case where a
19 verdict is not reasonably possible on the
20 fact presented, summary judgment is proper."
21 This is the exact case where that should
22 apply, Your Honor. She's on her phone at
23 night with a hoodie on, with her phone in her
24 right hand up to her ear, not looking, not
25 paying attention. How could my client be

1 accused of not being responsible and not
2 keeping a proper lookout when she's keeping
3 no lookout and is on her cell phone?

4 So I think that negligence, while most
5 times it is a question of fact for the jury,
6 in this case, under these specific
7 circumstances, based on the Bloom case, it is
8 not and it's a matter of law that a plaintiff
9 under these circumstances would be found over
10 fifty percent negligent and, thus, couldn't
11 recover.

12 THE COURT: All right. I'm going to
13 review this. It's a close call. I think
14 that there is no question that the Court can
15 decide that the plaintiff was negligent, but
16 can the court get beyond the fifty percent
17 level which is what you're asking. Let me
18 review it and review the Bloom case and I'll
19 let y'all know. Thank you.

20 (HEARING CONCLUDED)
21
22
23
24
25

CERTIFICATE

COUNTY OF GREENVILLE)

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Abraham Harrison

Deborah Garrison

Greenville, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) C.A. NO. 2016-CP-39-01346

Chelsea Abdelgheny f/k/a)
Chelsea Jackson,)

Plaintiff,)

Versus)

Gerald L. Moody,)

Defendant.)

DEPOSITION OF
CHELSEA ABDELGHENY

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of CHELSEA ABDELGHENY was taken on the 11th day of July, 2017, commencing at the hour of 10:00 a.m., in the offices of Smith, Jordan & Lavery, P.A., Attorneys at Law, Easley, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

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Also attending: Mr. A. Abdelgheny, Mr. G. Moody

INDEX

Stipulations, waiver and Oath.....	4
Examination by Mr. Graham.....	4
Examination by Mr. Wooten.....	75
Certificate of Reporter.....	76

EXHIBITS:

Defendant's Exhibit 1, 1 pg.; photograph.....	34
Defendant's Exhibit 2, 1 pg.; photograph.....	38
Defendant's Exhibit 3, 1 pg.; photograph.....	43
Defendant's Exhibit 4, 1 pg.; photograph.....	51
Defendant's Exhibit 5, 1 pg.; photograph.....	53
Defendant's Exhibit 6, 1 pg.; photograph.....	53
Defendant's Exhibit 7, 1 pg.; photograph.....	54

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to rule 30
5 of the South Carolina Rules of Civil Procedure;
6 2. That the deponent waives the right to read and sign the
7 deposition transcript.

8 *****

9 CHELSEA ABDELGHENY, being duly sworn to tell the truth, the
10 whole truth, and nothing but the truth of her own knowledge
11 concerning the matter herein, testified as follows:

12 *****

13 EXAMINATION BY MR. GRAHAM:

14 Q. Ms. Abdelgheny, is that the correct pronunciation?

15 A. Abdelgheny.

16 Q. Abdelgheny, okay. My name is Chad Graham. I'm
17 defending Gerald Moody in this case you brought against
18 him that arises out of an accident that occurred
19 October 26, 2015 in Pickens County. Have you had your
20 deposition taken before?

21 A. Yes.

22 Q. You've given a deposition before?

23 A. Yes.

24 Q. What was the nature of the case?

25 A. An accident.

1 Q. How many times have you given your deposition?

2 A. Once.

3 Q. Just once? When was of that?

4 A. I don't remember.

5 Q. How long ago was it? Do you know?

6 A. Several years, approximately.

7 Q. More than five?

8 A. No.

9 Q. Less than five?

10 A. Yes.

11 Q. Two or three?

12 A. Approximately, yes. I just don't remember.

13 Q. And you can give me approximate dates. Were you the
14 plaintiff or the defendant in that case?

15 A. A driver hit my father and I, and I went through the
16 windshield.

17 Q. And you sued---

18 A. So whatever that is.

19 Q. You were suing the other person?

20 A. (Witness nods head).

21 Q. Is that a yes?

22 A. Yes.

23 Q. Okay. And I'll ask you some more questions about that,
24 but there are some rules for depositions. Try not to
25 talk over me. I'll try not to talk over you so the

1 court reporter can get down an accurate transcript of
2 what's said here today. Answer me audibly. Avoid head
3 nods and uh-huh's, mm-hmm's, that sort of things. I
4 might know what you're saying, but the transcript will
5 not accurately reflect what you said. okay?

6 A. Okay.

7 Q. Have you taken any medications this morning?

8 A. No, sir.

9 Q. If you don't understand one of my questions, ask me to
10 repeat it or rephrase it. If you do answer my
11 question, I'm going to assume you understood it. So
12 basically let's just make sure we're on the same page.
13 okay?

14 A. Okay.

15 Q. You understand you've been sworn under oath and now you
16 have a legal and moral obligation to tell the truth?

17 A. I do.

18 Q. Is there going to be a problem with that today?

19 A. No.

20 Q. Is there any medical condition you have that's going to
21 prevent you from telling the truth?

22 A. No.

23 Q. Is there any medical condition you have that's going to
24 keep you from understanding my questions?

25 A. No.

Deposition of Chelsea Abdelgheny

- 1 Q. All right. what's your full name?
- 2 A. Chelsea Jackson Abdelgheny.
- 3 Q. Have you ever gone by any other name?
- 4 A. No, other than my Chelsea Jackson.
- 5 Q. Do you have a middle name when you went by Chelsea
- 6 Jackson?
- 7 A. Christine.
- 8 Q. How many times have you been married?
- 9 A. Twice.
- 10 Q. what's the name of your first husband?
- 11 A. Nathan Bolt.
- 12 Q. How long were you married to Nathan?
- 13 A. About six months.
- 14 Q. How long ago was that?
- 15 A. I was 23. I'm 29 now.
- 16 Q. Okay. Did you have any children with Mr. Bolt?
- 17 A. No.
- 18 Q. Does he still live in Pickens County?
- 19 A. He never lived in Pickens County.
- 20 Q. How long have you been married to your current husband?
- 21 A. We're close to a year.
- 22 Q. And that's Amer Abdelgheny?
- 23 A. Mm-hmm.
- 24 Q. How do you spell -- is that a yes?
- 25 A. Yes.

Deposition of Chelsea Abdelgheny

- 1 Q. How do you --
- 2 A. A-b-d---
- 3 Q. -- spell Amer?
- 4 A. Amer or Abdelgheny?
- 5 Q. Amer.
- 6 A. A-m-e-r.
- 7 Q. And you've been married close to a year?
- 8 A. Mm-hmm. September 2nd will be a year.
- 9 Q. Do you have any children?
- 10 A. No.
- 11 Q. What's your address?
- 12 A. 832-A Melton Road, Liberty, 29657.
- 13 Q. Is that in Pickens County?
- 14 A. Yes.
- 15 Q. How long have you lived in Pickens County?
- 16 A. Almost my whole life.
- 17 Q. What period of time did you not live in Pickens County?
- 18 A. When I was married to Nathan Bolt.
- 19 Q. For six months?
- 20 A. Mm-hmm.
- 21 Q. That's a yes?
- 22 A. Yes.
- 23 Q. Where did you live?
- 24 A. Spartanburg.
- 25 Q. Otherwise you grew up in Pickens County, went to high

- 1 school in Pickens County?
- 2 A. Yes.
- 3 Q. Are you a high school graduate?
- 4 A. Yes.
- 5 Q. Where did you graduate from?
- 6 A. I was homeschooled.
- 7 Q. Homeschooled, okay. When did you graduate?
- 8 A. When I was 17 years old.
- 9 Q. Did you attend any college or secondary school?
- 10 A. Yes. I went to Tri-County Tech.
- 11 Q. Did you graduate from Tri-County?
- 12 A. No.
- 13 Q. How long did you attend there?
- 14 A. Two and a half years.
- 15 Q. What did you study?
- 16 A. Majored in English.
- 17 Q. Why didn't you graduate?
- 18 A. I just didn't finish.
- 19 Q. Decided to stop going?
- 20 A. Yes.
- 21 Q. Voluntarily?
- 22 A. Yes.
- 23 Q. What's your date of birth?
- 24 A. April 30, '88.
- 25 Q. That makes you -- how old are you?

1 A. Twenty-nine.

2 Q. What's your social security? And we can go off the
3 record for that.

4 (Off the record; 10:10 -- 10:10 a.m.)

5 EXAMINATION RESUMED BY MR. GRAHAM:

6 Q. Do you have a valid driver's license?

7 A. Mm-hmm. Yes.

8 Q. Do you know the number of that driver's license?

9 A. I do not.

10 Q. Do you have it with you?

11 A. I do.

12 Q. Can you pull it out and just read it to me?

13 A. (Witness tenders license).

14 Q. I'll read it, I guess. It's driver's license number
15 090515403. Has this license ever been suspended or
16 revoked for any reason?

17 A. It was suspended when I forgot to -- I previously took
18 some antidepressants, and they required me to get a
19 letter from a psychiatrist every year stating. And I
20 didn't get the mail when I got a divorce from my ex-
21 husband.

22 Q. How long was your license suspended?

23 A. The shortest amount of time that it could be. I don't
24 recall.

25 Q. And did you get pulled over?

1 A. No.

2 Q. Were you required to get that letter to the DMV --

3 A. Yes.

4 Q. -- in a certain amount of time?

5 A. Yes.

6 Q. And you just didn't do that?

7 A. Right, because I didn't get my mail.

8 Q. How did you learn that your license was suspended?

9 A. The previous accident I was in, they told me. I wasn't
10 driving, though, so it didn't matter.

11 Q. And I see there's a restriction for corrective lenses
12 on the back?

13 A. Mm-hmm.

14 Q. Do you have any kind of -- what are your issues with
15 that?

16 A. I wear contacts.

17 Q. Do you wear them all the time?

18 A. Mm-hmm.

19 Q. Is that a yes?

20 A. Yes.

21 Q. I'm sorry. I'm not picking on you. I've just got to
22 make sure the record's right.

23 A. That's okay.

24 Q. Were you wearing contacts when this accident occurred?

25 A. Yes.

1 Q. who was your eye doctor at that time?

2 A. Dr. McNeely.

3 Q. where is his office or her office?

4 A. His office is in Greenville. I don't know the address.

5 Q. were you wearing your contacts when this accident
6 occurred?

7 A. Yes.

8 Q. where did you go to work after you stopped going to
9 Tri-County Tech?

10 A. I worked with my father for a time.

11 Q. what was the name of that business?

12 A. Big Tim's Drywall.

13 Q. what were you doing for Big Tim's Drywall?

14 A. I was basically his helper. I ran tools. I helped
15 write out bills.

16 Q. Did you do the actual work?

17 A. Yes.

18 Q. You installed drywall?

19 A. I cleaned. I was onsite.

20 Q. And you also did, I guess, clerical work at the office?

21 A. Yes.

22 Q. How long did you work for your dad?

23 A. On and off from the time I was about 16 to about 23 or
24 24.

25 Q. what job did you have immediately after Big Tim's

1 Drywall?

2 A. I worked -- I'm a Zumba instructor, and I've worked at
3 multiple gyms. I opened my own Dance Fitness place. I
4 rented out the building and taught classes there.

5 Q. Where all have you worked as a Zumba instructor?

6 A. Well, I just mentioned there. I worked in Spartanburg,
7 as well, at Excel Fitness.

8 Q. Any other gyms?

9 A. Mission Fitness where I was working at the time of this
10 accident. Total Fitness.

11 Q. Where's Total Fitness?

12 A. Powdersville.

13 Q. Okay.

14 A. And one in Easley, Perfect Physique.

15 Q. All right. I've got Excel Fitness in Spartanburg,
16 Mission Fitness, Total Fitness in Powdersville, and
17 Perfect Physique?

18 A. Mm-hmm.

19 Q. And where is that, again?

20 A. It's on Rock Springs Church Road.

21 Q. What town is it in? Sorry.

22 A. Easley.

23 Q. Have you worked at any other gyms?

24 A. I can't remember the name of it. It was the very first
25 one I worked at. It's an all-ladies gym.

- 1 Q. Where was that?
- 2 A. It was in Easley. It's closed now.
- 3 Q. And you recently opened your own gym?
- 4 A. No. That was first.
- 5 Q. That was first?
- 6 A. Yeah.
- 7 Q. What was the name of that gym?
- 8 A. It wasn't -- I rented out a building and did Zumba in
- 9 it. It was the Rosewood Center.
- 10 Q. What was the name of your business?
- 11 A. It was just Dance Fitness.
- 12 Q. Were you incorporated?
- 13 A. No.
- 14 Q. Where are you currently working?
- 15 A. I'm not.
- 16 Q. How long have you not been working?
- 17 A. A year.
- 18 Q. Why are you not currently working?
- 19 A. I am traveling with my husband.
- 20 Q. Traveling where?
- 21 A. He works on the road.
- 22 Q. What does he do?
- 23 A. He's a nuclear power worker.
- 24 Q. What's the name of his company?
- 25 A. He's a contractor. He works for different companies.

1 Q. Does he have his own business?

2 A. No. He's an employee. He works -- he's a contractor.

3 Q. So he just contracts with various businesses to perform
4 work?

5 A. Yes.

6 Q. And what does a nuclear power worker do?

7 A. He's an MOV tech.

8 Q. Where all have you traveled?

9 A. Florida, North Carolina, Arizona.

10 Q. And when you travel do you stay at these locations for
11 an extended period of time?

12 A. Yes.

13 Q. So in the past year you've lived in Florida, North
14 Carolina, and Arizona?

15 A. Yes.

16 Q. Where in Florida?

17 A. I don't remember the name of the location.

18 Q. You don't remember where you lived?

19 A. I don't remember the name of the location.

20 Q. How long did you live there?

21 A. For about four weeks.

22 Q. Where did you move from Florida?

23 A. We went back to South Carolina, our home, and then we
24 went up to North Carolina.

25 Q. Where in North Carolina?

- 1 A. Raleigh.
- 2 Q. And then where did you move after Raleigh?
- 3 A. Back to South Carolina.
- 4 Q. Then you moved to Arizona?
- 5 A. Yes.
- 6 Q. Where did you live in Arizona?
- 7 A. It was near Phoenix.
- 8 Q. How long were you in Arizona?
- 9 A. Approximately a month.
- 10 Q. Did you work at all --
- 11 A. No.
- 12 Q. -- in any of these places?
- 13 A. No.
- 14 Q. Did you get any medical treatment at all in any of
- 15 these places?
- 16 A. Yes.
- 17 Q. What kind of medical treatment did you get in Florida?
- 18 A. In Florida I had a miscarriage.
- 19 Q. What about North Carolina?
- 20 A. No.
- 21 Q. What about Arizona?
- 22 A. No.
- 23 Q. Have you worked anywhere else besides Big Tim's Drywall
- 24 or as a Zumba instructor?
- 25 A. I was a personal trainer at Total Fitness, but same

1 line of work.)

2 Q. And that's the Total Fitness in Powdersville?

3 A. Yes.

4 Q. All right. Have you ever applied for disability?

5 A. No.

6 Q. Have you ever made a workers' compensation claim?

7 A. No.

8 Q. Have you ever been injured on the job?

9 A. No.

10 Q. And you have had a prior lawsuit. Is that correct?

11 A. Yes.

12 Q. And that was two or three years ago?

13 A. Yes.

14 Q. Did you hire an attorney for that?

15 A. Yes.

16 Q. Who did you hire?

17 A. Here.

18 Q. This office?

19 A. Yes.

20 Q. Mr. Wooten's firm?

21 A. Yes.

22 Q. Where did that accident occur?

23 A. In Easley.

24 Q. What road did it occur on? Do you remember?

25 A. Highway 123.

1 Q. What happened?

2 A. Someone pulled out in front of my father, and we went
3 like that.

4 Q. T-boned?

5 A. Yes.

6 Q. Did y'all get hit?

7 A. Yes.

8 Q. What part of your body was injured?

9 A. My face. I went through the windshield.

10 Q. Are there any other parts of your body that were
11 injured in this accident?

12 A. No.

13 Q. Can you name for me all the places you treated after
14 this accident?

15 A. No. I do not remember, but I'm sure it's on paper
16 somewhere.

17 Q. Well, you don't remember anywhere you treated?

18 A. The hospital emergency room, Greenville Hospital.

19 Q. Greenville Hospital System?

20 A. Yes.

21 Q. Did you follow up with any kind of plastic surgeon or
22 anything like that?

23 A. Yes.

24 Q. What plastic surgeon?

25 A. I do not remember the name.

1 Q. Do you remember where the office was?

2 A. Somewhere in Greenville.

3 Q. Did you get any surgery after this accident?

4 A. No.

5 Q. What did the plastic surgeon do for you?

6 A. He told me what would happen if we had plastic surgery
7 and went over ways that could help my face heal.

8 Q. And what did you elect to do? What kind of treatment
9 did you elect to have?

10 A. I didn't. I thought about it. I contemplated plastic
11 surgery, but there were possibilities my face would
12 look worse afterwards. So...

13 Q. Did you treat with any other medical care provider
14 other than the emergency room at Greenville Hospital
15 and the plastic surgeon in Greenville?

16 A. Yes. At the chiropractor.

17 Q. What's the name of the chiropractor?

18 A. I do not know. It was on White Horse Road.

19 Q. How did you get to that chiropractor?

20 A. Recommendation from some of the doctors.

21 Q. Which doctor?

22 A. I do not remember.

23 Q. Did you treat with any other medical care provider as a
24 result of that accident?

25 A. I do not remember. As I said, it's on paper somewhere.

1 Q. well, you know, I've got to be able to find it if it's
2 on paper somewhere, and the only way I can do that is
3 if I know who treated you. So---

4 A. I know I went to the eye doctor. They had to check
5 because everything on my face was swollen.

6 Q. Was that Dr. McNeely?

7 A. I want to say no, that it was the Easley Jervey Eye
8 Group.

9 Q. Jervey Eye Group?

10 A. Yes.

11 Q. And what did you treat at the chiropractor for? What
12 part of your body was treated?

13 A. My spine and neck were touching, and they had to keep
14 readjusting me. I think it was about three times a
15 week. They had to redo it over and over because it
16 kept going back.

17 Q. How long did you treat with that chiropractor? Do you
18 remember?

19 A. I do not remember.

20 Q. Do you know how long it took for your injuries to heal,
21 if they have healed?

22 A. I do not know.

23 Q. Have the injuries healed from that accident?

24 A. I assume so.

25 Q. Do you still have pain in your neck?

1 A. Not from that.

2 Q. Do you still have pain in your neck at all?

3 A. No.

4 Q. Did you treat with anyone else from that accident?

5 A. Not that I'm aware of.

6 Q. Have you been involved in any other lawsuits other than
7 the lawsuit for that injury where you went through the
8 windshield and for what we're here for today? Have
9 there been any other lawsuits you've been involved in?

10 A. There's -- I don't believe so. I mean...

11 Q. Were you about to tell me about something?

12 A. I got in a car wreck after this accident happened, and
13 I think that lady was trying to sue.

14 Q. Has she sued you yet?

15 A. I don't think so. I mean, I don't -- I haven't heard
16 anything.

17 Q. When did this accident happen?

18 A. Directly after that one.

19 Q. Like the---

20 A. When I could drive. So, I mean, it was like probably a
21 month later.

22 Q. What happened in that accident?

23 A. I rear-ended someone, and then they rear-ended someone,
24 and the first car said that they were injured.

25 Q. Where did this occur?

1 A. On Highway 178 in Liberty.

2 Q. Did you get a ticket?

3 A. Yes.

4 Q. Have you paid the ticket?

5 A. Yes.

6 Q. Were you injured in that accident?

7 A. No.

8 Q. Did you treat anywhere for that accident?

9 A. I don't think I had to pay anything.

10 Q. I mean, did you go to the -- did an ambulance take you
11 anywhere after that accident?

12 A. No.

13 Q. You didn't go to any doctor after that accident?

14 A. No.

15 Q. And, I'm sorry, did you say you were given a ticket?

16 A. No, I don't think I was, but I don't -- don't quote me
17 on that. I don't remember.

18 MR. WOOTEN:

19 well, they're quoting you on that.

20 EXAMINATION RESUMED BY MR. GRAHAM:

21 A. I mean, I know you're quoting me on it.

22 Q. Yeah. You don't remember?

23 A. I don't remember.

24 Q. That's fine. So we've discussed the accident where you
25 went through the windshield. We discussed the accident

1 you had directly after this accident.

2 A. Yes.

3 Q. And we're going to discuss this accident, obviously.
4 Are there any other automobile accidents you've been
5 in, whether you were the driver of the vehicle or a
6 passenger?

7 A. No.

8 Q. That's it? Is that right?

9 A. From that time period to this, yes.

10 Q. Well, I'm asking through your whole life.

11 A. Well, yeah, there have been fender benders.

12 Q. Have you been treated by any doctor---

13 A. No.

14 Q. Well, you've got to let me finish.

15 A. Okay.

16 Q. Did you treat with any doctor as a result of any car
17 accident other than the ones we've talked about?

18 A. No.

19 Q. Okay. Have you ever been arrested?

20 A. Yes.

21 Q. How many times?

22 A. Twice.

23 Q. When was the first time?

24 A. I don't remember the dates. I really don't.

25 Q. That's fine. Was it in the last 10 years?

1 A. Yes.

2 Q. Was it in the last year?

3 A. No. It was -- I mean, it's been a while. It's been
4 probably close to two years.

5 Q. Okay. What were you arrested for the first time?

6 A. Driving under the influence, but I would like to say I
7 was not under the influence.

8 Q. Okay. Where did this arrest occur?

9 A. In Pickens County.

10 Q. What is the disposition, if there is one, in that case?
11 Is it over?

12 A. What do you mean? I have someone taking care of it,
13 yes.

14 Q. Is it still pending?

15 A. Yes.

16 Q. Okay. Are the allegations related to you drinking
17 alcohol, or were you under the influence of some kind
18 of medication?

19 A. It was alcohol. I blew .01.

20 Q. Who's your attorney on that case?

21 A. Aaron someone. I don't remember his last name.

22 Q. Is it a public defender or a private attorney?

23 A. It's a private attorney.

24 Q. Okay. And when were you arrested the second time?

25 A. They were both like about I want to say at least a year

1 and a half, if not two years ago, and it was for the
2 same thing.

3 Q. How long after the first arrest were you arrested the
4 second time?

5 A. Less than six months.

6 Q. Is this Aaron --

7 A. Yes.

8 Q. -- representing you on both of them?

9 A. Yes.

10 Q. Let me finish. This was in Pickens County?

11 A. Yes.

12 Q. And is that case still pending?

13 A. Yes.

14 Q. And these were separate incidents?

15 A. Yes.

16 Q. What were the allegations in this one about? Alcohol?

17 A. Yes.

18 Q. Did a wreck occur, you know, at the same time as these
19 charges?

20 A. No.

21 Q. You were just pulled over?

22 A. Yes.

23 Q. Have you been arrested any other times --

24 A. No.

25 Q. -- in your life? Never?

1 A. No.

2 Q. Have you ever been treated for alcohol or drug abuse?

3 A. No.

4 Q. Have you ever been to a psychologist or a psychiatrist?

5 A. Yes.

6 Q. How many psychiatrists or psychologists have you been
7 to?

8 A. One.

9 Q. Just one? When was that?

10 A. From the time I was 18 to about 26.

11 Q. What were you treating for?

12 A. ADHD.

13 Q. Anything else?

14 A. Depression.

15 Q. Was there an event that caused you to go get treatment?

16 A. No.

17 Q. Did that psychologist or psychiatrist prescribe you
18 medication?

19 A. Yes.

20 Q. Are you taking that medication today?

21 A. No.

22 Q. Were you taking that medication at the time of this
23 accident?

24 A. No.

25 Q. What were you prescribed?

- 1 A. Adderall.
- 2 Q. Anything for the depression?
- 3 A. Yes. I don't remember what it was because they
- 4 frequently change it.
- 5 Q. What's the name of the psychologist or psychiatrist?
- 6 A. Dr. Galvarino.
- 7 Q. Where is that office?
- 8 A. Near the Greenville Hospital.
- 9 Q. And you're 28?
- 10 A. Twenty-nine.
- 11 Q. So you haven't treated with him in about three years?
- 12 A. With him?
- 13 Q. Yeah.
- 14 A. No. From when I was 18 to about 26.
- 15 Q. Are you still taking ADHD medication?
- 16 A. No, I'm not.
- 17 Q. When you filled those prescriptions where would you get
- 18 them?
- 19 A. Usually Costco. Sometimes Walmart.
- 20 Q. Where's the Costco?
- 21 A. Greenville.
- 22 Q. Is there only one Costco in Greenville?
- 23 A. I believe so.
- 24 Q. What about the Walmart?
- 25 A. I went to the Easley one and sometimes the one in

1 Powdersville.

2 Q. Are you still dealing with those issues, ADHD and
3 depression or anxiety?

4 A. Yes.

5 Q. But you're not getting treatment right now?

6 A. I take an antidepressant now from my family doctor.

7 Q. Who's your family doctor?

8 A. Travis Davis.

9 Q. Where is his office?

10 A. Liberty.

11 Q. What are you taking? I mean, are you prescribed
12 anything currently?

13 A. Yeah. I don't remember. I'll look.

14 Q. You just didn't take it this morning?

15 A. No, I didn't. It's Citalopram.

16 Q. Zitalofram [ph]?

17 A. Citalopram. C-I.

18 Q. How long have you been taking that?

19 A. Probably close to a year.

20 Q. Do you know what you were prescribed, if anything, on
21 the day of this accident? This accident was October
22 26, 2015.

23 A. I wasn't taking any medication then.

24 Q. And you're treating with just Dr. Galvarino?

25 A. Yes.

1 Q. All right. These are some Google map printouts of the
2 scene there. I have this accident happened October 26,
3 2015. Does that sound right to you?

4 A. Yes.

5 Q. What had you been doing that day?

6 A. Teaching classes.

7 Q. What time did the accident occur?

8 A. In the evening.

9 Q. Do you know about what time?

10 A. I don't remember.

11 Q. Do you think it was after 9 o'clock?

12 A. No. It was before that.

13 Q. The accident report, I believe, says -- I think that
14 says 19:58, which would be about 8 o'clock.

15 A. Okay.

16 Q. Does that sound about right to you?

17 A. Yes.

18 Q. Tell me what you had done that day from the time you
19 woke up till this accident happened, as best you can
20 remember.

21 A. I was working at Total Fitness and Mission Fitness. In
22 the mornings I would go and train with clients at Total
23 Fitness, and then I'd usually stop and grab lunch, and
24 then I'd go over to Mission Fitness. I did all the
25 paperwork there. I answered the phones and signed

1 people up from about 1 o'clock to about four. And then
2 I taught classes until about 7:30, 8 o'clock.

3 Q. And then with Total Fitness, were those private
4 sessions?

5 A. Private training sessions, yes.

6 Q. And what was your training? Was it Zumba or was it
7 weightlifting?

8 A. No. It was like personal training where you sit down
9 with people and talk about their lifestyle and eating
10 habits and you help them, and then you work out with
11 them and teach them the right ways to work out.

12 Q. And did you have to go to a school for that?

13 A. Yes.

14 Q. Where did you go?

15 A. I did online courses.

16 Q. Did you get a certificate --

17 A. Yes.

18 Q. -- or graduate?

19 A. Yes. Personal training certification.

20 Q. What's the name of the website you used?

21 A. I don't remember. There were several smaller ones, and
22 then I'm enrolled in the ACE program, too.

23 Q. What's the ACE program?

24 A. I didn't finish it, though.

25 Q. What is that?

1 A. It's just a personal training certification.

2 Q. And what certificate did you get?

3 A. It's a personal training certification. I don't
4 remember the name of it.

5 Q. How long did you have to attend this online class?

6 A. It was a lot of reading information you do on your own
7 time, and then you take the test.

8 Q. Okay. What time did you start teaching classes at
9 Total Fitness in the morning?

10 A. I don't remember exactly what time, because each client
11 books time with you. I don't remember what time I
12 arrived there that day.

13 Q. Generally, what time were you getting there?

14 A. Around 8:00 a.m.

15 Q. So do you actually work out --

16 A. Yes.

17 Q. -- with the folks?

18 A. Yes. You make sure they're doing it properly.

19 Q. How many people did you work with, on average, from
20 eight to whenever you went to lunch?

21 A. Three to four.

22 Q. And are these people who schedule with you privately,
23 or do they schedule with Total Fitness?

24 A. They schedule through Total Fitness. They're---

25 Q. But do you have -- I'm sorry. Go ahead. I cut you off

1 that time.

2 A. They scheduled with me. Like they would call me and
3 make appointments with me, yes, but it's through the
4 gym. Like they're signed up through the gym, through a
5 training program with the gym.

6 Q. But are they recurrent customers of yours?

7 A. Yes.

8 Q. Do you get paid in addition to what Total Fitness pays
9 you?

10 A. Yes, through each -- how many clients I had.

11 Q. Do you know the names of these people --

12 A. I do not.

13 Q. -- you treated that day?

14 A. I do not.

15 Q. Could you find that somehow? Would Total Fitness have
16 that?

17 A. Probably.

18 Q. And these are people you saw over and over again?

19 A. Yeah. Well, I also got new people. Like if -- say if
20 you came and signed up, they would put you with me, and
21 I would try to convince you to do personal training.
22 You get the first -- you get a free session with a
23 private trainer each time you sign up. So there were
24 also those types of customers that I'd help with
25 frequently, too.

1 Q. And when they signed up did they have standing
2 appointments with you every week?

3 A. When they signed -- what do you mean? Like---

4 Q. So say you get a client. You convince them after the
5 free session to continue with you.

6 A. Yes.

7 Q. How did the scheduling work after that? Would they
8 come every week?

9 A. Yes. Sometimes they'd come three times a week.
10 Sometimes they'd come once a week, sometimes every
11 other week.

12 Q. And what I'm driving at is did you have people booked
13 up for the weeks after this accident?

14 A. Yes.

15 Q. Do you know who those people would have been?

16 A. I remember one was a young girl who another trainer had
17 to take over for me.

18 Q. And you think Total Fitness would have that?

19 A. Yes.

20 Q. You don't have a list laying around in a file cabinet
21 in your house?

22 A. No.

23 Q. So you eat lunch and then you go to Mission Fitness.
24 Is that right?

25 A. Mm-hmm. Yes.

1 Q. And Mission Fitness is located where?

2 A. Pickens.

3 Q. I'm going to mark this picture here as Defendant's
4 Exhibit Number 1.

5 (Defendant's Exhibit Number 1 marked)

6 EXAMINATION RESUMED BY MR. GRAHAM:

7 Q. And this is a Google map overhead shot of the area
8 where this accident occurred. Okay? That is the KFC,
9 2809 Gentry Memorial Highway right there. Okay?

10 A. Mm-hmm.

11 Q. There's Little Caesars. There's Bi-Lo. Are you
12 acclimated with where things are in that area right
13 now?

14 A. Yes.

15 Q. Okay. And then I saw Mission Fitness.

16 A. That's not the right place.

17 Q. Looks like it's in the middle of the road.

18 A. It's right there next to Little Caesars.

19 Q. Can you draw a circle around where you think it is?

20 A. It's right there.

21 Q. And can you write out to the side Mission, I guess?

22 A. (Witness complies).

23 Q. All right. I didn't think you taught classes in the
24 middle of the highway.

25 A. No.

1 Q. And so you were at Mission Fitness teaching classes
2 from 4:00 to 7:30 or 8:00, typically?

3 A. Yes.

4 Q. And exactly what did that entail? Were you teaching
5 several different classes back to back?

6 A. Yes. I taught children's classes, and I'd usually have
7 a little break in between so I could have a snack. And
8 I don't remember what day of the week was the accident.
9 was it on a wednesday?

10 Q. You know, I don't really know.

11 A. I don't know, okay. Well, there were several nights
12 where I would teach adult classes back to back. Some
13 nights I would just teach one adult class and one child
14 class.

15 Q. And do you remember how many you taught this day?

16 A. No, I don't remember that day particularly.

17 Q. How long would each class last?

18 A. An hour.

19 Q. And are you up front doing the Zumba?

20 A. Yes.

21 Q. So people can see you?

22 A. Yes.

23 Q. And you're actively working out?

24 A. Yes.

25 Q. So at the end of the day after you teach classes at

1 Total Fitness and teach classes at Mission Fitness, are
2 you pretty tired?

3 A. I'm okay. I'm usually pretty full of energy, ready to
4 go.

5 Q. That's a lot of working out, isn't it?

6 A. Yeah.

7 Q. Okay. Do you have a record of who would have attended
8 your classes that day?

9 A. I don't have a record.

10 Q. Would Mission Fitness probably?

11 A. They would.

12 Q. And so on this particular evening, the night of the
13 accident, where were you going after you got off work
14 at Mission Fitness?

15 A. I was going to go home.

16 Q. I mean, what were you doing when the accident occurred?

17 A. CMG Signs, I was going over there. They were producing
18 signage for the gym, and they didn't answer the phone,
19 so I walked over there.

20 Q. At 8 o'clock at night, were they still open?

21 A. Yes.

22 Q. What were you going to do when you got there?

23 A. Get the product we'd ordered.

24 Q. So you weren't going to go right home; you had to go to
25 CMG Signs to pick up this product. Is that right?

1 A. Right.

2 Q. So you were crossing Gentry Memorial Highway when this
3 accident occurred?

4 A. Yes.

5 Q. Had you crossed that highway before to go to CMG Signs?

6 A. Yes.

7 Q. How many times?

8 A. Many.

9 Q. I mean, was that an ongoing relationship between
10 Mission Fitness and CMG Signs?

11 A. Yes. They did all of the sign work. They made T-
12 shirts.

13 Q. And you had to walk across the street to go pick that
14 up?

15 A. Yes.

16 Q. And were you going to walk back across to Mission
17 Fitness with all the signs in your hand?

18 A. Well, I was seeing what the progress was at this time.
19 I wasn't actually picking it up.

20 Q. Where were you parked that evening?

21 A. At Mission Fitness.

22 Q. Which would have been in this parking lot, I mean,
23 somewhere? I don't know if you remember where you
24 parked.

25 A. Right here.

1 Q. Okay. Right out front?

2 A. I usually would park right over here.

3 Q. Was anybody working with you that night?

4 A. No, I don't believe anyone else was at the gym. I'm
5 not sure. I don't remember.

6 Q. Was that common for you to work there by yourself?

7 A. Yes.

8 Q. Were you going to close up that night?

9 A. We don't really close. It's a card gym. You just
10 slide the card and go in.

11 Q. Let's mark this.

12 (Defendant's Exhibit Number 2 marked)

13 EXAMINATION RESUMED BY MR. GRAHAM:

14 Q. Had you taken any medication that day?

15 A. No.

16 Q. I'm going to show you a picture, Defendant's Exhibit
17 Number 2. Just so we're acclimated, there's the KFC.
18 Do you see that? There's the Little Caesars. And I
19 don't know if Mission Fitness would be in this
20 photograph or not.

21 A. It's the red awning.

22 Q. The red awning. Okay if I circle that? Can you write
23 Mission there for me?

24 A. (Witness complies).

25 Q. And is that a decline? It goes down to the road?

1 A. Yes.

2 Q. Can you put an X for me where you left this side of the
3 road and entered the highway? Do you understand what
4 I'm asking?

5 A. Yeah. Like from the sidewalk where I left?

6 Q. Where did you leave, yeah.

7 A. And this is approximate, because I can't be sure of the
8 exact.

9 Q. That's fine. And the KFC is right there?

10 A. Right here.

11 Q. And then Little Caesars is right there. There's that
12 road that goes up to the Little Caesars.

13 A. I'm going to say approximately somewhere over here. I
14 can't be sure, though.

15 Q. And can you circle CMG Signs?

16 A. (Witness complies).

17 Q. Can you write CMG on that building?

18 A. (Witness complies).

19 Q. And that was your destination?

20 A. Yes.

21 Q. And can you draw an X for me where you were when you
22 got hit?

23 A. This is Hot Spot. Right?

24 Q. That's Hot Spot. That's the KFC. I think that's the
25 KFC sign right there.

1 A. I think I was somewhere like right around here, I
2 think. I'm not sure.

3 Q. Okay. So you walked diagonally across the road?

4 A. Yes, sir.

5 Q. What was the weather like?

6 A. I believe it was raining.

7 Q. How hard was it raining?

8 A. I don't -- if it had been raining hard, I wouldn't have
9 been walking.

10 Q. But you think it was actively raining?

11 A. I believe so. I'm not 100 percent sure.

12 Q. And was it dark outside?

13 A. It was dark outside, very well lit.

14 Q. Where were the lights that lit up that area? Do you
15 know?

16 A. Well, there are streetlights over here all in front of
17 Hot Spot.

18 Q. There are streetlights?

19 A. Well, it was very well lit. I believe they're
20 streetlights.

21 Q. And then tell me what happened.

22 A. I really don't remember much of it. I walked to the
23 middle. Well, I first, of course, looked. I walked to
24 the middle, and then I looked. I thought it was clear,
25 and I made it all the way to the sidewalk, and then

1 I got hit.

2 Q. Were you holding an umbrella?

3 A. No.

4 Q. What were you wearing?

5 A. I was wearing a neon color coral hoodie and bright blue
6 pants.

7 Q. Did you have your hood up?

8 A. Yes.

9 Q. Because it was raining?

10 A. Yes.

11 Q. What kind of pants?

12 A. They're bright blue. Like they're Zumba pants, but
13 they're just leggings.

14 Q. Did you see Mr. Moody's vehicle at all before the
15 accident?

16 A. No. I felt it upon impact.

17 Q. So do you have any idea how fast he was going?

18 A. I don't.

19 Q. And you didn't see him at all before impact?

20 A. No.

21 Q. And you have the X there in the right-hand lane of
22 that---

23 A. I kind of put it on the sidewalk.

24 Q. You think you got hit on the sidewalk?

25 A. I do believe one foot was on the sidewalk, yes.

- 1 Q. And where was the rest of your body?
- 2 A. One foot was off the sidewalk.
- 3 Q. In the road?
- 4 A. Yeah.
- 5 Q. Do you think he came off the road and hit you?
- 6 A. I would -- yeah, I do.
- 7 Q. You think he came up on the sidewalk and hit you?
- 8 A. Yes.
- 9 Q. Why do you think that?
- 10 A. Because I thought I was on the sidewalk.
- 11 Q. Well, you had one foot on the sidewalk --
- 12 A. Yes.
- 13 Q. -- and one foot in the road. So you were partially in
- 14 the road, as well. Correct?
- 15 A. Correct. But there's usually a little bit of median.
- 16 Q. So he could have hit you and you'd still be in the
- 17 roadway. Correct?
- 18 A. Correct.
- 19 Q. And you had no idea he was coming?
- 20 A. No.
- 21 Q. You had no idea he was right there?
- 22 A. No.
- 23 Q. Were you keeping a lookout?
- 24 A. Yes.
- 25 Q. Do you know where he came from?

1 A. He came from this direction.

2 Q. Did you notice any lights on on his vehicle?

3 A. No. I didn't see his vehicle.

4 Q. I know, but do you remember seeing the lights from it?

5 A. No.

6 Q. Do you know that area very well?

7 A. I do.

8 Q. And we'll mark this as Defendant's Exhibit 3.

9 (Defendant's Exhibit Number 3 marked)

10 EXAMINATION RESUMED BY MR. GRAHAM:

11 Q. That's just a blown-up shot of this to show more of the
12 area. There's KFC. There's generally the area you
13 crossed. There's Mission Fitness. Does this appear --
14 is that an intersection?

15 A. Yes.

16 Q. Is that controlled by a stop light?

17 A. Yes.

18 Q. And is this an intersection, as well, down here?

19 A. Yes.

20 Q. And is that controlled by a stop light?

21 A. Yes.

22 Q. And that's CMG Signs? I'm just going to circle it.
23 right here.

24 A. Yes.

25 Q. I'm going to write CMG. And that's where you were

1 going. Correct?

2 A. Yes.

3 Q. why didn't you use one of those intersections to cross?

4 A. I don't have a reason.

5 Q. Do you agree it would have been safer to cross at those
6 intersections?

7 A. Yes.

8 Q. And there's not a crosswalk where you crossed, is
9 there?

10 A. No.

11 Q. Okay. So did you lose consciousness after this
12 accident?

13 A. I really don't know.

14 Q. Are there times -- I don't know how to follow up. Are
15 there times you don't remember after the accident?

16 A. I remember the impact. I remember laying there with my
17 pants ripped off not knowing if I was going to live or
18 not.

19 Q. what's the first memory you have after the accident
20 happened?

21 A. Laying there, not knowing what was going on.

22 Q. Do you remember anybody coming to check on you?

23 A. There was some lady. I don't know who it was.

24 Q. where did you feel pain after this accident? what
25 parts of your body?

1 A. I was in shock. Everything really hurt. I mean, the
2 pain I felt was indescribable. I don't really know the
3 words to use for it.

4 Q. So just your whole body? At that point you couldn't
5 tell what was hurting?

6 A. Yes.

7 Q. Is that an accurate statement?

8 A. Yes.

9 Q. Do you know how long it took you to get from the point
10 where you left the sidewalk to enter the highway until
11 the accident happened, how much time passed?

12 A. I do not know.

13 Q. Do you have any idea, approximately? I mean, how long
14 did it take you---

15 A. A couple of minutes.

16 Q. You think it took you a couple of minutes to leave the-
17 --

18 A. The gym?

19 Q. Well, to leave the sidewalk on the gym side of the road
20 until when the accident occurred.

21 A. Just a few minutes, if that. I mean...

22 Q. Do you have any idea how long that took?

23 A. I don't.

24 Q. Do you understand what I'm asking? From the time you
25 started into the highway until the accident occurred,

1 how long was that?

2 A. I have no idea, but not very long.

3 Q. Could it have been less than a minute?

4 A. Probably.

5 Q. Were you in the median for very long?

6 A. Not very long. I mean, I stopped and paused there to
7 look.

8 Q. And then you proceeded on?

9 A. Yes.

10 Q. Did you walk at a normal rate of speed?

11 A. Yes.

12 Q. From the median to the other side of the road?

13 A. Yes.

14 Q. What else do you remember about when you were laying
15 there?

16 A. I remember asking the paramedic if I was going to live.

17 Q. Do you remember if you called the police?

18 A. No, I didn't.

19 Q. Did you have your phone on you at the time?

20 A. It was thrown somewhere, and the owner of CMG Signs
21 came out there and he got my phone for me, and I
22 remember hearing him telling my mom how it was a bad
23 accident and he didn't know if I was going to make it.

24 Q. Did he see it?

25 A. No. He was in his -- I don't think he did. He was in

1 his shop.

2 Q. Were you on your phone at the time of this accident?

3 A. I don't recall that, but I was told I was.

4 Q. What's the number of that phone?

5 A. I do not recall the number of it. It's been changed
6 since then. I'm sure I can get it to you.

7 Q. How are you going to get it to me if you don't
8 remember? I'm just curious what you would---

9 A. I can give it to my lawyer, and he can give it to you.

10 Q. But you can find it, you think?

11 A. Yes.

12 Q. Was it a burner phone?

13 A. No. I have business cards with it on there. I just
14 don't remember the number.

15 Q. Who was your service provider?

16 A. I used -- it was one of the pay -- it's in the old
17 Kmart parking lot. Infinity, where you go and you get
18 a month. I don't remember the name of the---

19 Q. So it wasn't a -- it was a prepaid phone?

20 A. Yeah, but it was the phone I always used.

21 Q. You would replenish your minutes every month?

22 A. Mm-hmm.

23 Q. Is that a---

24 A. Yes.

25 Q. Where did you pay your bill?

- 1 A. At the Infinity place in the old Kmart parking lot in
2 Easley.
- 3 Q. Is that still around?
- 4 A. Yes.
- 5 Q. It's still around today?
- 6 A. Yes.
- 7 Q. Was anybody else on that account? Your husband?
- 8 A. No.
- 9 Q. Do you know who you were talking to?
- 10 A. The owner of Mission Fitness.
- 11 Q. Who is that?
- 12 A. Daniel Phillips.
- 13 Q. Do you know Daniel's number or what it was at the time?
- 14 A. Not off the top of my head, no.
- 15 Q. And why do you think you were on the phone?
- 16 A. He told me that we were talking.
- 17 Q. Daniel Phillips did?
- 18 A. Yes. He heard me get hit.
- 19 Q. And he's told you that since the accident?
- 20 A. Yes.
- 21 Q. Are you still in contact with him?
- 22 A. No.
- 23 Q. Does he still run Mission Fitness?
- 24 A. Yes, the best of my knowledge.
- 25 Q. Do you have his number anywhere?

1 A. No. .

2 Q. Did you have anything else in your hands?

3 A. No.

4 Q. Were you going to pay for the signs when you got there?

5 A. No.

6 Q. Did you have a basket or anything to bring the signs
7 back in?

8 A. No. I was just checking on the progress.

9 Q. Were you eating or drinking anything at the time of the
10 accident?

11 A. No.

12 Q. Do you know who else came to the scene of the accident?

13 A. Derrick, the owner of CMG Signs, and his mother.

14 Q. And his mother?

15 A. Yeah. They both own it.

16 Q. Does he still own CMG Signs?

17 A. Yes.

18 Q. Who else came out there? Do you know?

19 A. Well, I know Daniel Phillips did. I can't recall if my
20 mom made it the scene on time or not. She may have
21 been and followed the ambulance. I don't remember. I
22 don't think so.

23 Q. What's your mother's name?

24 A. Kimberlie Jackson, J-i-e.

25 Q. Okay. Does she live in Easley?

- 1 A. She lives in Liberty.
- 2 Q. Liberty, okay.
- 3 A. And my father.
- 4 Q. He came to the scene of the accident?
- 5 A. I don't know if they made it there or had to meet me at,
- 6 the hospital.
- 7 Q. Is your mom still at 113 J and W Trail?
- 8 A. Yes, sir.
- 9 Q. Who's Candice Mann?
- 10 A. She is one that teaches with -- or taught with me. She
- 11 might have been there.
- 12 Q. Did she see the accident?
- 13 A. I don't know if she saw it. She could have been in the
- 14 parking lot. I'm not sure.
- 15 Q. But you were you working alone that day?
- 16 A. She -- she started teaching after the accident for me.
- 17 She started out just as a student.
- 18 Q. Did you ever locate that phone after the accident?
- 19 A. Yes.
- 20 Q. The owner of CMG Signs found it?
- 21 A. Mm-hmm.
- 22 Q. And where was it?
- 23 A. In the middle of the road.
- 24 Q. What kind of phone was it?
- 25 A. An iPhone.

1 Q. Do you know who called the police or who called EMS?

2 A. I have no idea. I'm assuming he did.

3 Q. Mr. Moody?

4 A. No. I was thinking Derrick. I have no idea, though.

5 Q. Did you ever speak to Mr. Moody?

6 A. No.

7 Q. Did your husband come out to the scene?

8 A. No.

9 Q. Were you married at the time?

10 A. No.

11 Q. Were y'all together?

12 A. We didn't know each other at the time.

13 Q. Didn't know each other, okay. Where were you living at
14 the time of the accident?

15 A. Liberty, South Carolina.

16 Q. What address?

17 A. 113 J and W Trail.

18 Q. With your parents?

19 A. Yes.

20 Q. Did anybody else live there?

21 A. No.

22 (Defendant's Exhibit Number 4 marked)

23 EXAMINATION RESUMED BY MR. GRAHAM:

24 Q. This is Exhibit Number 4. It's a picture your attorney
25 sent me in discovery. Is that you in that picture?

- 1 A. Yeah, earlier that day.
- 2 Q. And that says Total Fitness Family Center --
- 3 A. Yes.
- 4 Q. -- at the top? Is there a time stamp on this anywhere?
- 5 A. Not to the best of my knowledge.
- 6 Q. And that's your Instagram?
- 7 A. That's their Instagram.
- 8 Q. Their Instagram?
- 9 A. Mm-hmm.
- 10 Q. Are you on that Instagram a lot?
- 11 A. I used to be, yeah, when I worked there.
- 12 Q. And that's what you were wearing when the accident
- 13 occurred?
- 14 A. Yes.
- 15 Q. Did you have it like that, I mean, with the hood up?
- 16 A. Yeah.
- 17 Q. And your Instagram handle is Shade of Blue?
- 18 A. Shade of Blue 88.
- 19 Q. Is it still that?
- 20 A. Yeah. I don't use it anymore, but yeah.
- 21 Q. Do you have Facebook?
- 22 A. I don't use it anymore.
- 23 Q. Do you have it, though?
- 24 A. I deactivated it.
- 25 Q. What was your name on there?

1 A. Chelsea Jackson.

2 (Defendant's Exhibit Number 5 marked)

3 EXAMINATION RESUMED BY MR. GRAHAM:

4 Q. I'm going to show you this picture. This is
5 Defendant's Exhibit Number 5. What is that a picture
6 of?

7 A. The pants I was wearing.

8 Q. And where are those? Or where is this picture taken?

9 A. I have no idea.

10 Q. Did you take it?

11 A. I didn't.

12 MR. WOOTEN:

13 Can we go off for a second?

14 MR. GRAHAM:

15 Yeah.

16 (Off the Record; 10:53 -- 10:54 a.m.)

17 (Defendant's Exhibit Number 6 marked)

18 EXAMINATION RESUMED BY MR. GRAHAM:

19 Q. And this is Defendant's Exhibit Number 6. What is that
20 a picture of?

21 A. My tops.

22 Q. What is that?

23 A. That's -- I had multiple layers on. That's one of the
24 shirts.

25 Q. Is that the underneath shirt?

1 A. Yes.

2 Q. And that's the---

3 A. The jacket that was on top at the time.

4 (Defendant's Exhibit Number 7 marked)

5 EXAMINATION RESUMED BY MR. GRAHAM:

6 Q. And what is that a picture of?

7 A. That's a bra and that's another tank top I had on.

8 Q. Was that tank top over this tank top?

9 A. I'm not sure which tank top was in which place, but the
10 hoodie was on top.

11 Q. Why do you wear so many shirts?

12 A. I just---

13 Q. Just out of curiosity.

14 A. The look. It was just layered.

15 Q. All right. Do you remember anyone else who came out to
16 the scene of the accident you haven't told me about
17 already?

18 A. No.

19 Q. How long were you there?

20 A. Where?

21 Q. At the scene of the accident. Sorry.

22 A. I have no idea.

23 Q. Do you know where you were laying? In the road,
24 sidewalk, grass?

25 A. No, I don't.

1 Q. You don't remember that at all?

2 A. (Witness shakes head).

3 Q. No?

4 A. No.

5 Q. Do you remember hearing any braking?

6 A. No.

7 Q. Did you see any skid marks in the road you can
8 remember?

9 A. I don't remember.

10 Q. Did you ever go back to the scene of the accident and
11 inspect it?

12 A. No.

13 Q. Can you identify any other witnesses other than the
14 ones you've already --

15 A. No.

16 Q. -- told me about? All right. And so you went to the
17 emergency room. You were taken to the emergency room
18 by EMS that evening?

19 A. Yes.

20 Q. Do you remember what kind of treatment you had that
21 evening?

22 A. What I remember is the excruciating pain. There was a
23 doctor, an intern I believe, that held my hand and
24 tried to talk me through it. They couldn't give me any
25 pain medicine because I was in shock and my blood

1 pressure was too low. They put over eight blankets on
2 me, and I was shaking so hard that the whole thing was
3 rattling, and all I remember is excruciating pain.

4 Q. where?

5 A. Everywhere. Mostly my hip because it was fractured
6 there, and in my back, and they had to keep taking x-
7 rays, and I was just crying and screaming, and the
8 doctor was trying to calm me down. And I didn't even
9 know if I was going to make it, and they wouldn't let
10 me see my parents, and that's all I wanted.

11 Q. You know, I looked all through your records and you
12 complained only of head and right leg and hip pain --

13 A. And back.

14 Q. -- based on the records I've seen. You think you also
15 had back pain?

16 A. Well, yeah. There was a fractured vertebra.

17 Q. So you were admitted --

18 A. Yes.

19 Q. -- at that time, and you were there for a few days. Is
20 that correct?

21 A. Yeah.

22 Q. Do you remember what kind of treatment you got over
23 those few days?

24 A. No, I don't remember.

25 Q. And they did a lot of diagnostic tests on you. Is that

1 correct?

2 A. Yes.

3 Q. Do you remember any of the results of those tests?

4 A. I know that there was swelling in my head. There was
5 bleeding inside me. There was bruising on stuff inside
6 me. I don't remember all the medical terms, no, but
7 there was torn stuff in my knee. There were holes in
8 my side. There's crazy gnarly scars still on my hip.

9 Q. On your right hip?

10 A. Yeah.

11 Q. Did you have any kind of surgery --

12 A. Yes.

13 Q. -- during that time? What kind of surgery did you
14 have?

15 A. I don't know the technical name for it, but they had to
16 go in and clean all the rocks out of me in two
17 different places on my hip.

18 Q. Were you able to walk at all during this time?

19 A. No.

20 Q. When were you first able to walk after the accident?

21 A. I had to have physical therapists, and I had to use a
22 walker, and, I mean, at my age that's kind of super
23 like low for the self-esteem, and it makes you feel
24 like crap. I mean, I was 28 at the time.

25 Q. How long did you have a walker?

1 A. For a long time.

2 Q. Do you know how long?

3 A. No, I don't.

4 Q. Was it---

5 A. Months.

6 Q. Months? Did you have that walker at Christmastime that
7 year?

8 A. I don't recall. I'm sure, yes. Yes, I did.

9 Q. Were you using that walker all the time to walk?

10 A. Yeah. I had to have physical therapists come out to my
11 house.

12 Q. When were you first able to walk on your own?

13 A. I don't recall. I had to use -- I had to go from that
14 to crutches.

15 Q. When you went to crutches, were the crutches full-time?

16 A. Yes.

17 Q. When did you get off your crutches?

18 A. Probably months after that.

19 Q. How long did it take you to get fully off crutches and
20 walking---

21 A. I would probably say close to my birthday when I turned
22 28.

23 Q. Which is when?

24 A. April 30.

25 Q. When you were released from the hospital what were your

1 instructions?

2 A. To use the walker.

3 Q. Were you given medications?

4 A. Yes.

5 Q. What were you given?

6 A. I don't remember the names of it, but there was a whole
7 bag. I had to take all kinds of supplements to build
8 my blood back up because they said I lost a significant
9 amount of blood.

10 Q. Where did you fill those prescriptions?

11 A. I don't know. I didn't fill them. My mother or father
12 did.

13 Q. Was anybody else living at your house at that time?

14 A. No.

15 Q. Did you go somewhere from physical therapy?

16 A. No. They came to my home.

17 Q. How many times did they come?

18 A. I do not recall the amount.

19 Q. Was it over 10 times?

20 A. No.

21 Q. Was it under---

22 A. It was under.

23 Q. Was it over five times?

24 A. I don't believe so.

25 Q. And who came?

1 A. It was an older lady.

2 Q. what did you do when she came?

3 A. She gave me just different exercises, and I would hold
4 onto something to try to move and lift my leg up and
5 stuff in the bed.

6 Q. So what exactly, what parts of your body as you're
7 sitting here today are you saying were injured in this
8 accident?

9 A. My back, the bottom vertebra. My hip was fractured.
10 My knee, there was a torn muscle. I had holes in the
11 side of me. I had bruises on my lungs, I believe it
12 was. There was swelling in my head. There was
13 stitches in my head. They had to shave part of my hair
14 when they -- and it wasn't like a pretty thing. It was
15 like right in the front.

16 Q. At some point, did one part of your body start healing
17 quicker than the others?

18 A. I mean, this healed eventually. I mean, there's still
19 a scar.

20 Q. And you're pointing at your head?

21 A. Yeah.

22 Q. I'm just trying to get a gauge for which body parts
23 hurt and for how long. Do you remember any part of
24 your body hurting worse than the other?

25 A. My hip.

- 1 Q. That's the right hip?
- 2 A. Yes.
- 3 Q. How long did it take your head pain to resolve?
- 4 A. I have migraines still.
- 5 Q. And you didn't have any before?
- 6 A. No.
- 7 Q. How about your back, how long did that take to resolve?
- 8 A. I would say by April it was okay.
- 9 Q. What about your right hip, how long did that take to
- 10 resolve?
- 11 A. That still bothers me. It isn't resolved.
- 12 Q. Have you treated anywhere for that right hip since the
- 13 physical therapist came out to your house?
- 14 A. Just the orthopedic doctor that I don't still see, but
- 15 who was treating me for it, who did the surgery.
- 16 Q. Who was that?
- 17 A. I don't know the name.
- 18 Q. You went to that doctor's office, though, at some
- 19 point?
- 20 A. Yes.
- 21 Q. Where is his office?
- 22 A. Somewhere in Greenville.
- 23 Q. Does Dr. Jeray sound right?
- 24 A. I think so.
- 25 Q. Where in Greenville? Do you remember?

1 A. No, I don't.

2 Q. Do you know the name of that practice?

3 A. I don't.

4 Q. When's the last time you treated for these injuries
5 with anybody?

6 A. I guess the migraines.

7 Q. When was that?

8 A. The past week, the past two weeks. I had an MRI done
9 on my head.

10 Q. And that's related to this accident?

11 A. I believe it is.

12 Q. Who gave you the MRI?

13 A. Dr. Travis Davis ordered it.

14 Q. Before that when is the most recent time you treated
15 for these injuries?

16 A. My miscarriage.

17 Q. That was related to this accident?

18 A. I believe it is.

19 Q. Were you pregnant at the time of the accident?

20 A. No, but I believe there was internal damage done.

21 Q. Has anybody told you that?

22 A. They are looking into it.

23 Q. Who's looking into it?

24 A. My OB/GYN.

25 Q. Who is that?

1 A. In Powdersville, Women's Premier Care, I believe is the
2 name of it. I'm not sure.

3 Q. When did you get pregnant?

4 A. I miscarried in -- I don't remember the exact dates. I
5 can get them for you.

6 Q. Were you living in Florida at the time of the
7 miscarriage?

8 A. Yes, when it happened.

9 Q. Who treated you down there?

10 A. It was the emergency room.

11 Q. What emergency room?

12 A. I don't know the name of it.

13 Q. What town were you living in at the time?

14 A. It was close to the beach, close to Vero Beach.

15 Q. Did you have an OB/GYN down there?

16 A. No.

17 Q. Did you go anywhere for your pregnancy down there?

18 A. I stayed in very close contact with my doctors.

19 Q. And that's who? Who's your OB/GYN?

20 A. Women's Premier, Powdersville.

21 Q. And when was this? Was it last year?

22 A. It was this---

23 Q. 2017?

24 A. Yeah.

25 Q. All right. Before you had your miscarriage, when's the

1 last time you treated for these injuries?

2 A. I don't recall the exact dates. I don't know.

3 Q. Well, I can just tell you that all I've got that you're
4 claiming for in this accident, the last time you
5 treated with anybody was November 11, 2015 when GHS
6 Home Healthcare or Home Health Services came to your
7 house to give you physical therapy. Do you believe you
8 treated with anybody after that date for these
9 injuries?

10 A. I guess not.

11 Q. Okay. And if you can, just tell me. I mean, I---

12 A. No. I mean, I don't -- I honestly don't recall dates
13 well.

14 Q. Okay. Is anybody else treating you for these
15 migraines?

16 A. Dr. Davis is.

17 Q. Dr. Davis?

18 A. Yes, Travis Davis.

19 Q. Yeah. Other than him.

20 A. No.

21 Q. I also have you treating on November 6, 2015 at GHS
22 Surgery and Ortho Clinic for constipation?

23 A. Yeah. I had to go back in, because I couldn't eat
24 anything, because they said like my -- all of that just
25 shut down, and I was throwing up and vomiting

1 everything I ate.

2 Q. Have you treated with anybody since that date for that
3 issue of constipation?

4 A. No.

5 Q. Did that resolve?

6 A. Yeah.

7 Q. When did that resolve?

8 A. After I left.

9 Q. How long did you take -- or did you take pain
10 medication for a while after this accident?

11 A. Mm-hmm.

12 Q. Who prescribed that to you?

13 A. The -- I guess it was the orthopedic I was seeing.

14 Q. Which is who?

15 A. I don't remember his name. You stated it.

16 Q. Okay. Where would you fill those pain prescriptions?

17 A. I don't know. My mother or father would. I wasn't up
18 for driving at the moment.

19 Q. Sitting here today you said you have migraines still,
20 and you still have right hip pain?

21 A. Yes.

22 Q. Is anything else from this accident still giving you
23 pain?

24 A. The mental anguish. It bothers me to walk on sidewalks
25 too close to the road. It bothers me to see a vehicle

1 backing up close to me.

2 Q. Are you taking any medication for that issue?

3 A. No.

4 Q. That aspect of it?

5 A. No.

6 Q. How often is your right hip hurting you?

7 A. Whenever I'm in the car for more than about 30 minutes
8 it bothers me. It locks up, and my husband has to help
9 me get out of the car.

10 Q. Are there any times when your hip has no pain?

11 A. Yeah.

12 Q. Have you taught any Zumba classes since this accident?

13 A. Yes.

14 Q. Where have you worked since this accident?

15 A. Total Fitness.

16 Q. What about Mission Fitness?

17 A. I worked there for a time after.

18 Q. When did you go back to work?

19 A. Several months after. Candice taught most of the
20 classes. I would occasionally fill in when she
21 couldn't.

22 Q. How much money were you making right before the
23 accident?

24 A. I don't recall an exact amount. It was per class. I
25 would get about \$25 per class, and I would get paid so

1 much per day for being there doing the business. And
2 at Total Fitness it was completely different. It was
3 per client I saw.

4 Q. So do you know, can you give me a number for how much
5 your lost wages would be?

6 A. I would say approximately all together about 300 --

7 Q. \$300?

8 A. -- a week.

9 Q. Three hundred a week?

10 A. Mm-hmm.

11 Q. That's a yes?

12 A. Yes.

13 Q. How many weeks were you out?

14 A. I would say at least three months.

15 Q. Approximately 12 weeks?

16 A. Yes.

17 Q. If I do that math, that's 3600?

18 A. Yes.

19 Q. Does that sound right?

20 A. Yes.

21 Q. What type of employee were you with these two places,
22 with Total Fitness and Mission Fitness?

23 A. What do you mean?

24 Q. Were you like a W-9, or did you pay taxes?

25 A. They did. I mean, they took it out, yeah.

- 1 Q. who did your taxes during that year, 2015, 2016?
- 2 A. My aunt did.
- 3 Q. what's her name?
- 4 A. Carol Robinson.
- 5 Q. Is she an accountant?
- 6 A. She does taxes.
- 7 Q. Does she have a business?
- 8 A. I believe so. I think she retired from it now, but...
- 9 Q. Do you know what it was called?
- 10 A. I don't.
- 11 Q. Do you know where it was?
- 12 A. Out of her home.
- 13 Q. Do you know the address?
- 14 A. (Witness nods head).
- 15 Q. What's that?
- 16 A. 830 -- 832 Melton Road.
- 17 Q. Where is Melton Road?
- 18 A. Liberty, 29657.
- 19 Q. Do you know when you hired your attorney?
- 20 A. It was sometime after my accident.
- 21 Q. Was it after your treatment?
- 22 A. I don't know.
- 23 Q. Do you plan to go back in the future for any more
- 24 treatment from the injuries you had in this accident?
- 25 A. I want to get checked out again, yes.

- 1 Q. Who are you going to go to?
- 2 A. Dr. Davis.
- 3 Q. What is he going to check you out for?
- 4 A. I want to know about my hip and why it's been locking
- 5 up.
- 6 Q. Do you have an appointment?
- 7 A. I don't, but I will make one.
- 8 Q. Has anybody ever told you you're a surgical candidate
- 9 for any of these injuries?
- 10 A. No.
- 11 Q. Has anybody ever told you you're as good as you're
- 12 going to get?
- 13 A. No.
- 14 Q. When you stopped treating with the therapist, why did
- 15 you stop?
- 16 A. Because I didn't feel like she was helping me.
- 17 Q. Did you go anywhere after that?
- 18 A. No.
- 19 Q. Did the pain medication help?
- 20 A. Yes, but I had to quit taking it at a certain point
- 21 when I was even still in pain if I wanted to drive.
- 22 Q. When was that? Do you remember?
- 23 A. I don't remember the dates, no.
- 24 Q. When did you meet your husband?
- 25 A. In April.

1 Q. of?

2 A. 2016.

3 Q. Where did y'all meet?

4 A. At Total Fitness.

5 Q. Before this accident had you treated with an
6 orthopedist?

7 A. No.

8 Q. Not even for the prior automobile accident?

9 A. No.

10 Q. Had you ever been to an emergency room?

11 A. Yes.

12 Q. Which emergency rooms had you been to before this
13 accident?

14 A. Easley, Greenville. I think that's it.

15 Q. Do you know what for?

16 A. Sprained ankle, broken wrist.

17 Q. Do you know how you broke your wrist or how you
18 sprained your ankle?

19 A. I sprained my ankle probably a dozen times and thought
20 I broke it. My wrist, I was -- the first time I was
21 probably four. I was jumping on a trampoline and got
22 bounced off of it, and the second time I was probably
23 ten and got in a fistfight with a girl.

24 Q. Have you had any surgeries before this accident?

25 A. Yes. When I was 16, I was born with a scar -- or not a

1 scar. I was born with a mole right here, and they had
2 to remove it because they thought it was going to be
3 cancerous.

4 Q. Who did that surgery?

5 A. It was -- it was at Anmed in Anderson.

6 Q. Anmed, okay.

7 A. I mean, it was a plastic surgeon. She was a female. I
8 don't remember her name.

9 Q. Had you had any issues with headaches before the
10 accident?

11 A. No.

12 Q. Had you had any back issues before the accident?

13 A. No.

14 Q. Did you ever complain to a medical care provider that
15 your head or your back hurt before the accident?

16 A. No.

17 Q. Did you ever complain to a medical care provider that
18 your right hip hurt before the accident?

19 A. No.

20 Q. Is Dr. Travis's practice named Liberty Family Care?

21 A. Yes.

22 Q. When have you gone to the Shriners Hospital?

23 A. Oh. I was very young, eight or nine years old. I had
24 fibromyalgia. I was diagnosed with it when I was a
25 very young.

1 Q. Do you still have that?

2 A. No.

3 Q. You haven't treated for fibromyalgia since you were
4 very young?

5 A. Right.

6 Q. What about Cannon Memorial Hospital in Pickens?

7 A. I believe that was just a sugar blood test that they
8 had ran on me there.

9 Q. What for?

10 A. Just to check my sugar because my mother is diabetic
11 and they just wanted to make sure.

12 Q. What about Palmetto Health Baptist in Columbia?

13 A. Oh, I fell.

14 Q. When did that happen?

15 A. I was -- I want to say I was about 18, 19.

16 Q. Where did you fall?

17 A. I was at the convention center where they do basketball
18 for USC, and I fell. And I would have never went to
19 the ER, but one of the staff there saw me, and they
20 called the ambulance and insisted because I hit my
21 head.

22 Q. You hit your head?

23 A. Yes.

24 Q. Did you have any injuries to your head?

25 A. No, I didn't.

1 Q. What did they check you out for?

2 A. They just wanted to make sure my head was okay.

3 Q. Did you follow up with any other medical care provider

4 --

5 A. No.

6 Q. -- for your head? No?

7 A. No.

8 Q. What about the Spartanburg County Health Department?

9 A. That was just to get birth control pills.

10 Q. What about Pickens County Health Department?

11 A. That was to get birth control pills.

12 Q. Okay. Let's take a quick break.

13 A. Thank you.

14 (Off the Record; 11:17 -- 11:25 a.m.)

15 EXAMINATION RESUMED BY MR. GRAHAM:

16 Q. The phone you were on at the time of the accident, did
17 you have a protective weather casing on it?

18 A. Yes.

19 Q. A waterproof casing?

20 A. Yes.

21 Q. Do you know what hand you had the phone in as you
22 crossed the road?

23 A. I don't know.

24 Q. Were you on any kind of Bluetooth?

25 A. No.

1 Q. If you were talking on the phone, you had to have it up
2 to your ear.. Is that right?

3 A. Right.

4 Q. But you don't remember what hand you had it in?

5 A. No. A lot of times I use speaker.

6 Q. And your hood was on?

7 A. Right.

8 Q. So you had to have it inside the---

9 A. No. A lot of times I use the speakerphone.

10 Q. You use the speaker. So how far away could you have
11 held the phone from your mouth to---

12 A. I probably could have just held it right here.

13 Q. Do you think you were texting at all or you were --

14 A. No.

15 Q. -- talking on the phone?

16 A. I was talking.

17 Q. All right. Has anybody paid any of your medical bills
18 that you know of?

19 A. No.

20 Q. Did you have insurance at the time?

21 A. No.

22 Q. No health insurance?

23 A. No.

24 Q. Were you on Medicare or Medicaid?

25 A. No.

1 Q. And so if you were on speaker, your speaker was
2 powerful enough you could have heard him talking to
3 you?

4 A. Yes.

5 Q. Crossing that road in the rain?

6 A. Yes.

7 Q. Do you remember what you were talking about?

8 A. I have no idea. I don't recall the conversation.

9 Q. Thank you. That's all I have.

10 A. Okay.

11 EXAMINATION BY MR. WOOTEN:

12 Q. Just one question for you, Chelsea. When you went back
13 to work after the wreck, when you first went back, were
14 you at full strength at that point --

15 A. No.

16 Q. -- and able to do all the things that you could before
17 the wreck?

18 A. Not at all. The first time I taught a class I could
19 only teach one song, and I had to have somebody else
20 teach the rest. It was more of just wanting to
21 rehabilitate that I even could do that, and it killed
22 me, because I couldn't take any pain pills or anything.

23 Q. Okay. That's all the questions I have. Thank you.

24 (There being no further questions, this deposition concluded
25 at 11:27 a.m.)

1
2
3 CERTIFICATE OF REPORTER

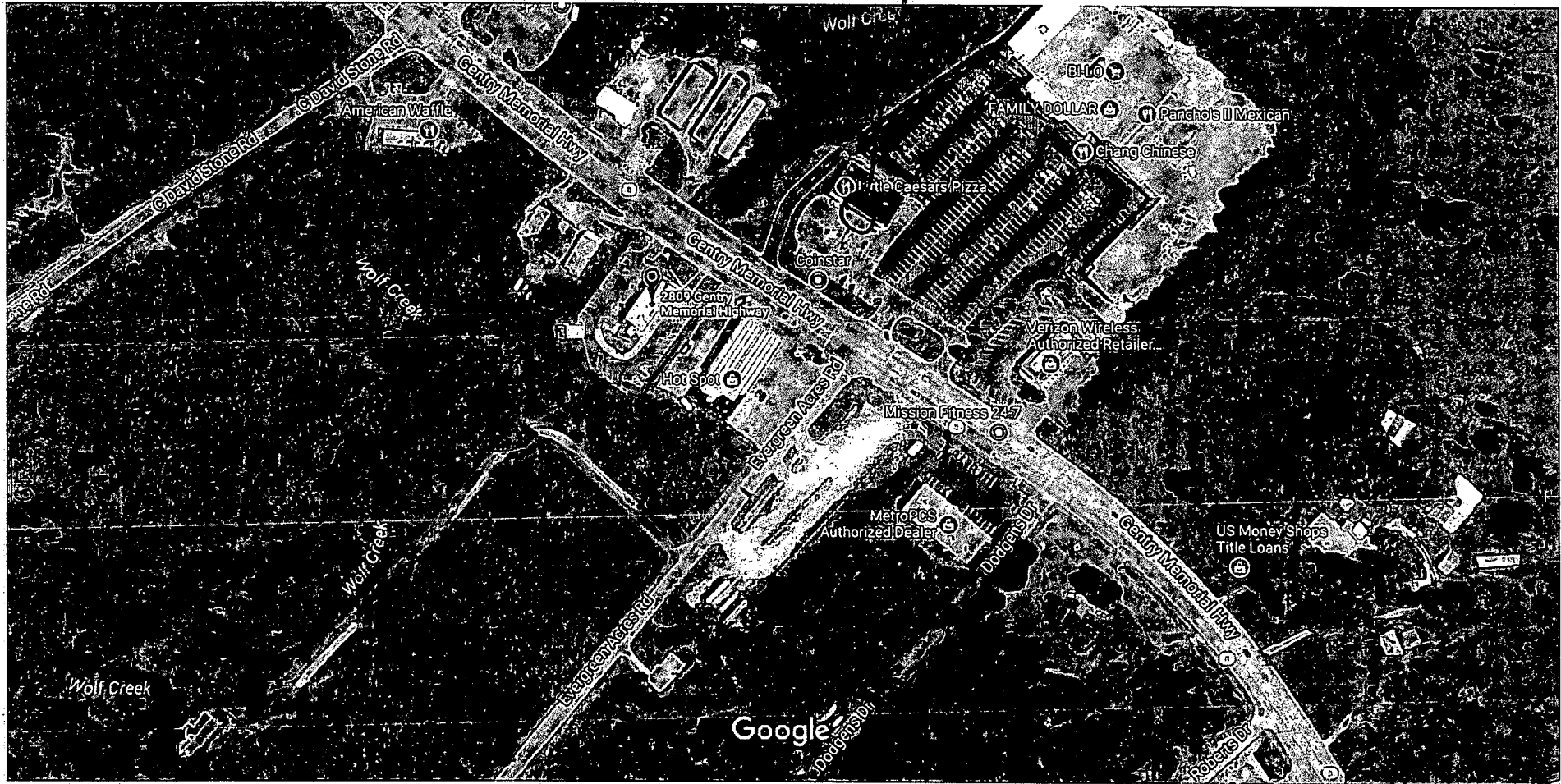
4 I, ROSALIND POOLE WALTERS, a Notary Public in and for
5 the State of South Carolina, do hereby certify that the
6 foregoing 75 pages represents a true and accurate transcript
7 of the deposition of CHELSEA ABDELGHENY, which was taken by
8 me on the 11th day of July, 2017.

9 That the witness was first duly sworn to tell the
10 truth, the whole truth and nothing but the truth of her own
11 knowledge concerning this matter.

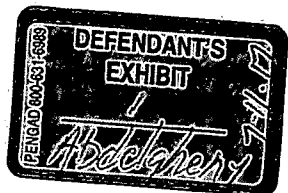
12 That I am not related to nor the employee of any of the
13 parties hereto, nor related to or employed by any attorney
14 or counsel employed by the parties hereto, nor interested in
15 the outcome of this action.

16
17 _____
18 Rosalind Poole Walters, CVR-M
19 Notary Public for South Carolina
20 Commission Expires: 4/29/26
21
22
23
24
25

Google Maps 2809 Gentry Memorial Hwy

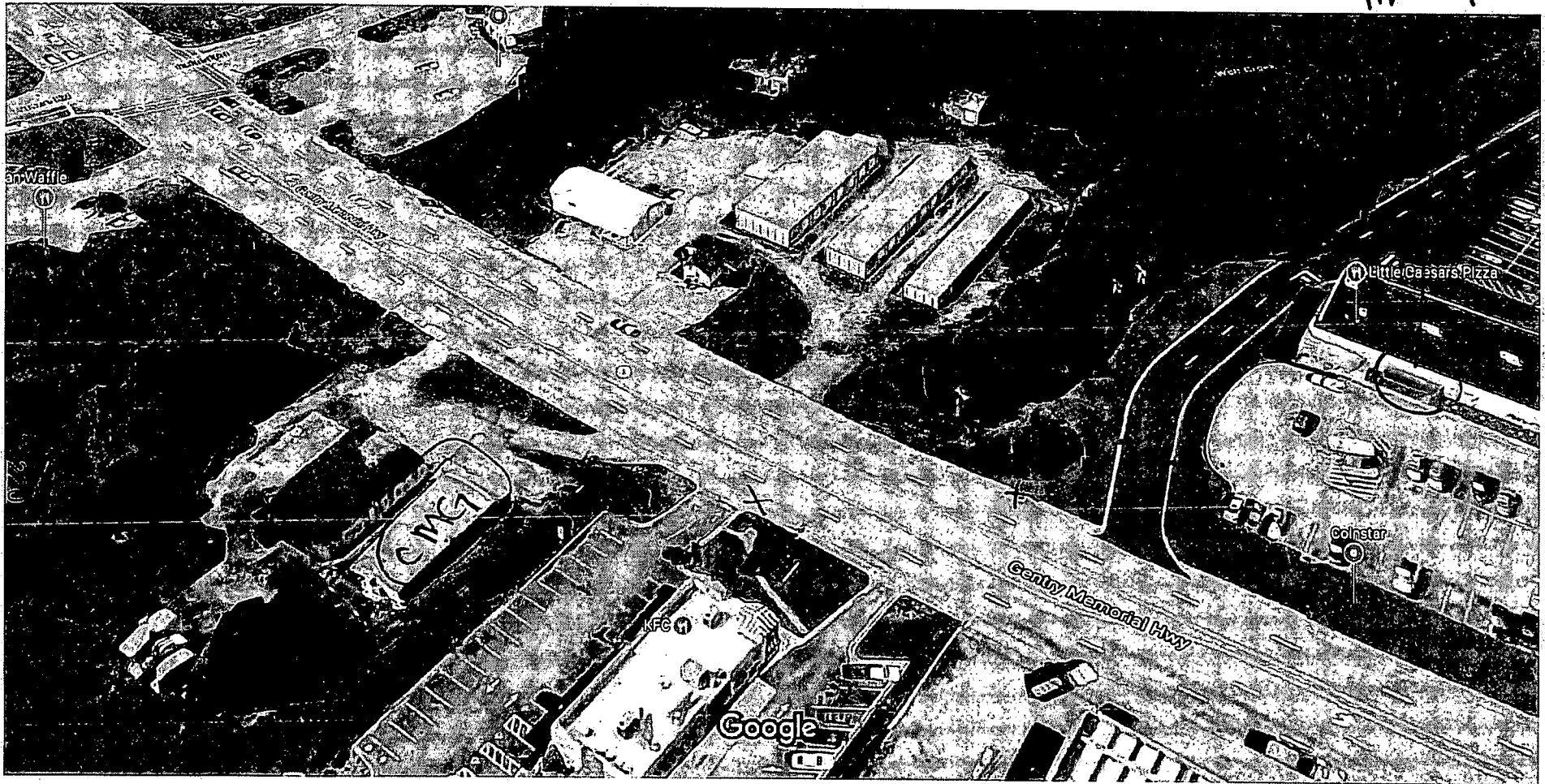
Mission
Fitness

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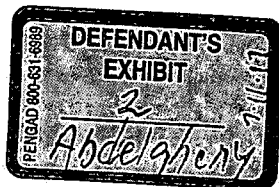


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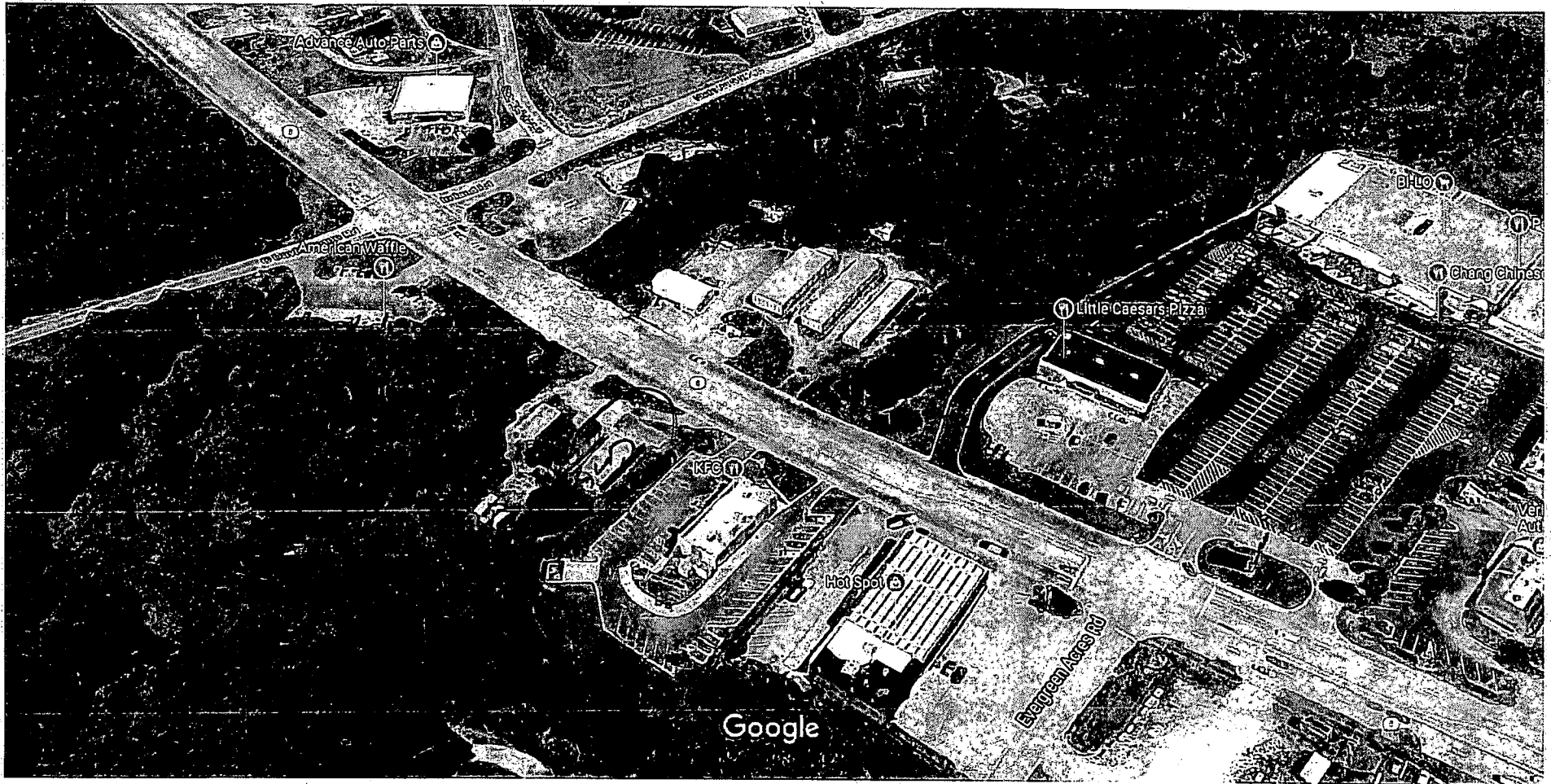
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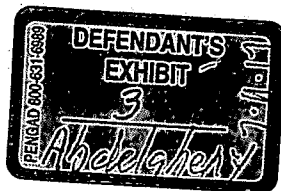
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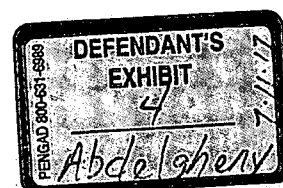


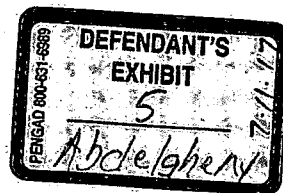
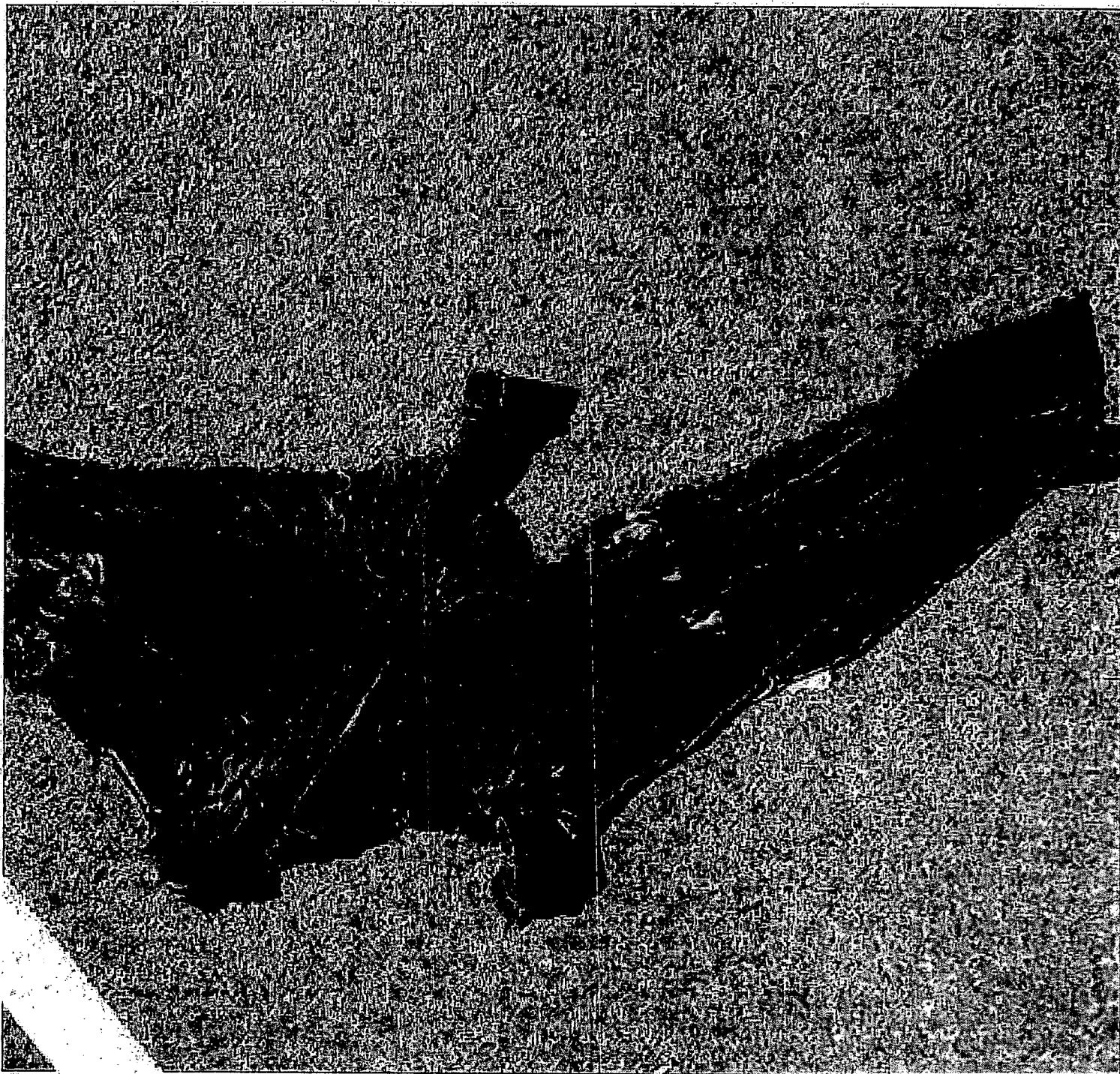
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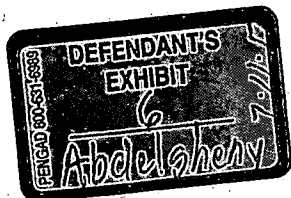


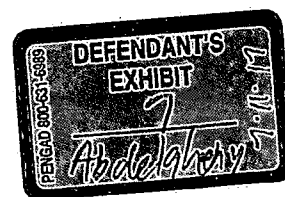
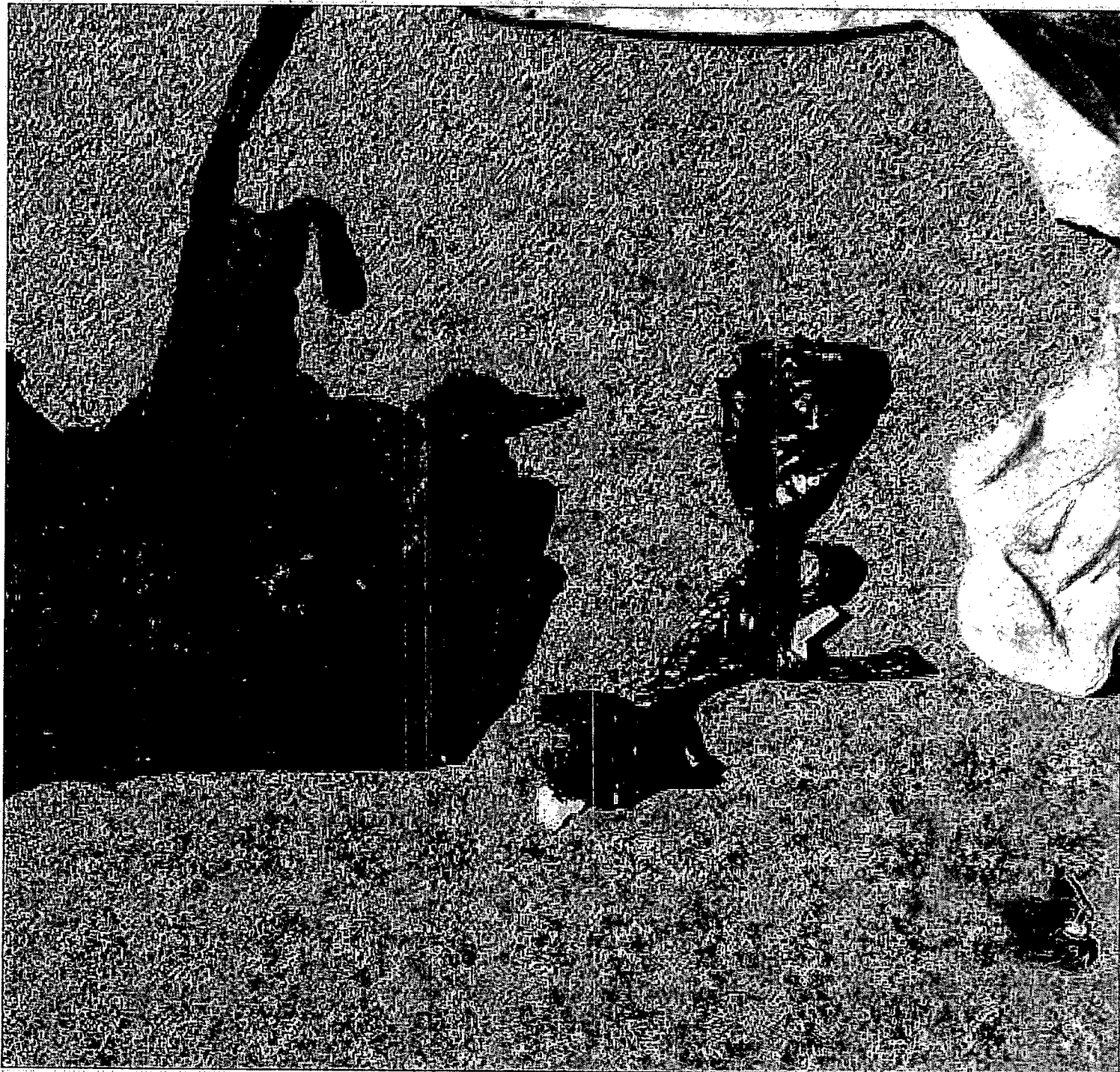


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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS) C.A. NO. 2016-CP-39-01346

Chelsea Abdelgheny f/k/a)
Chelsea Jackson,)

Plaintiff,)

Versus)

Gerald L. Moody,)

Defendant.)

DEPOSITION OF
GERALD L. MOODY

Pursuant to Notice of Deposition and/or agreement in the above-entitled case, the deposition of GERALD L. MOODY was taken on the 11th day of July, 2017, commencing at the hour of 11:38 a.m., in the offices of Smith, Jordan & Lavery, P.A., Attorneys at Law, Easley, South Carolina.

REPORTED BY: Rosalind Poole Walters, CVR-M

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Also attending: Mr. A. Abdelgheny, Ms. C. Abdelgheny

INDEX

Stipulations, Waiver and Oath.....	4
Examination by Mr. Wooten.....	4
Examination by Mr. Graham.....	46
Certificate of Reporter.....	47

EXHIBITS:

Plaintiff's Exhibit 1, 1 pg.; photograph.....	31
Plaintiff's Exhibit 2, 1 pg.; photograph.....	34
Plaintiff's Exhibit 3, 1 pg.; photograph.....	36
Plaintiff's Exhibit 4, 1 pg.; photograph.....	37

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 STIPULATIONS:

2 It is agreed by and between the counsel for the parties as
3 follows:

- 4 1. That this deposition is being taken pursuant to rule 30
5 of the South Carolina Rules of Civil Procedure;
6 2. That the deponent waives the right to read and sign the
7 deposition transcript.

8 *****

9 GERALD L. MOODY, being duly sworn to tell the truth, the
10 whole truth, and nothing but the truth of his own knowledge
11 concerning the matter herein, testified as follows:

12 *****

13 EXAMINATION BY MR. WOOTEN:

14 Q. All right, Mr. Moody, we met a little bit ago, but my
15 name is Raymond Wooten, and I represent the plaintiff
16 in this case. And you saw her deposition, so I guess
17 you kind of know what to expect.

18 A. Yes.

19 Q. Okay. Have you ever had your deposition taken before?

20 A. Yes.

21 Q. When did you have your deposition taken?

22 A. Back in 1984.

23 Q. And why did you have your deposition taken?

24 A. Concerning a corporation, Enel. It was a business
25 deal. It was called Enel back at that time.

1 Q. And were you a party to that lawsuit?

2 A. Pardon?

3 Q. Were you a party to that lawsuit?

4 A. No. Just gave my deposition. Never went to court.

5 Q. But I mean were you sued or suing somebody?

6 A. No.

7 Q. What was your relationship to Enel?

8 A. I was a manager, regional manager.

9 Q. Have you ever had your deposition taken other than
10 that?

11 A. No.

12 Q. And let me go over some rules with you real quick. As
13 you saw in her deposition, always try and give a verbal
14 answer. Even if you think I understand what you're
15 doing, the court reporter can't take it down. So no
16 uh-huh's, uh-uh's, shaking your head, things like that.

17 A. (Witness nods head).

18 Q. And, also---

19 A. Sorry.

20 Q. You're fine. Also, let me finish my question. I'll
21 let you finish your answer. That way we don't talk
22 over each other. If you don't understand one of my
23 questions, ask me to rephrase it. If you answer a
24 question, I'm going to assume you understood what I was
25 asking you. And if you need a break or anything, just

1 let me know.

2 A. Thank you.

3 Q. Are you ready to get started?

4 A. I'm ready.

5 Q. All right. Before we get into the questions, have you
6 taken any prescription medications this morning?

7 A. Yes, I have.

8 Q. What did you take?

9 A. I took Prilosec and Lisinopril.

10 Q. Would any of the drugs that you've taken affect your
11 ability to answer or understand my questions?

12 A. No, sir.

13 Q. Okay. What's your full name?

14 A. Gerald Lynn Moody.

15 Q. And where do you live?

16 A. 206 Mount Forest Circle, Easley.

17 Q. And how long have lived there?

18 A. Nine years.

19 Q. Where did you live before that?

20 A. I lived at 1049 Jamison Road.

21 Q. And where is that?

22 A. That's in Easley, Easley address, yeah.

23 Q. And how long did you live there?

24 A. I lived there about 15 years.

25 Q. Who do you live with now?

1 A. My wife.

2 Q. And what's her name?

3 A. Janet.

4 Q. Janet Moody?

5 A. Uh-huh.

6 Q. How long have you and Janet been married?

7 A. Thirty-nine years.

8 Q. That's pretty impressive. And have you lived with
9 Janet for the past 39 years?

10 A. Yes.

11 Q. Anybody else live in your house aside from Janet?

12 A. No.

13 Q. Do you have any children?

14 A. Yes.

15 Q. And where do they live?

16 A. Three lives -- two lives in Pickens, one in Decatur,
17 Georgia, one in Spartanburg, and Greenville.

18 Q. What are the names of the two that live in Pickens?

19 A. Okay, the first one in Pickens is Michael Timothy Moody
20 and Gregory Dwight.

21 Q. Aside from your wife and your two sons, do you have any
22 other relatives who are over 18 that live in Pickens
23 County?

24 A. Grandchildren.

25 Q. Are they over 18?

1 A. No. Sorry.

2 Q. We're just trying to figure out who might be on a jury.

3 A. Yes.

4 Q. So just those three, your wife and your two sons, are
5 the only ones that are over 18 years of age that live
6 in Pickens County?

7 A. Yes.

8 MR. GRAHAM:

9 And Raymond, we can agree to let you know about
10 any family members. Now that I think about it, I don't
11 think I did that with your client. So can y'all also
12 agree to let me know if there's a family member on the
13 jury?

14 MR. WOOTEN:

15 That's fine.

16 EXAMINATION RESUMED BY MR. WOOTEN:

17 A. Retract that statement, please.

18 Q. That's fine.

19 A. Jerry Lynn Moody.

20 Q. And how is Jerry Lynn Moody related to you?

21 A. He's my son, also.

22 Q. And he lives in Pickens County?

23 A. Yes, he does. I have so many it's hard to keep up.

24 Q. How many children do you have?

25 A. I have six children.

1 Q. That's a lot of children.

2 A. Yes.

3 Q. Okay. Aside from your three sons and your wife,
4 anybody else live in Pickens County?

5 A. No.

6 Q. And if we can go off the record for a second.

7 (Off the Record; 11:44 -- 11:44 a.m.)

8 EXAMINATION RESUMED BY MR. WOOTEN:

9 Q. what sort of education do you have?

10 A. Tenth grade.

11 Q. Where did you go to high school?

12 A. Last was Palmetto.

13 Q. And where is that?

14 A. Williamston.

15 Q. Did you ever get your GED?

16 A. No.

17 Q. Did you go to any other high schools?

18 A. No.

19 Q. Did you grow up in Williamston?

20 A. No.

21 Q. How long did you live in Williamston?

22 A. About four years.

23 Q. And what's your date of birth?

24 A. 8/29/41.

25 Q. Were you employed at the time of the wreck?

1 A. No.

2 Q. Are you retired?

3 A. Retired.

4 Q. When did you retire?

5 A. 2007.

6 Q. And what company did you retire from?

7 A. It was called -- they've changed, recently changed
8 their name. When I retired it was called Enel.

9 Q. How do you spell Enel?

10 A. E-n-e-l.

11 Q. What did Enel do?

12 A. Hydroelectric plants.

13 Q. How long did you work for Enel?

14 A. Twenty-six years.

15 Q. What was your position at the time you retired?

16 A. I was supervisor.

17 Q. What did you do before you started working for Enel?

18 A. I worked at Singer Corporation.

19 Q. Is that the --

20 A. In Pickens.

21 Q. -- sewing machine company?

22 A. No. It was -- they built router parts.

23 Q. How long did you work for Singer?

24 A. Probably about four years.

25 Q. Were you in the military?

1 A. No.

2 Q. Was there any reason you weren't in the military?

3 A. Yes.

4 Q. What was that?

5 A. I was married and the draft missed me. We had the
6 draft back then.

7 Q. That's why I was asking. I figured you were old enough
8 for you to have been around.

9 A. Yes.

10 Q. So you didn't get drafted and your wife didn't want you
11 to go?

12 A. (Witness nods head).

13 Q. Is that a yes?

14 A. Just children.

15 Q. So you already had some children?

16 A. Had children, yes.

17 Q. Have you ever been charged with or convicted of any
18 crimes other than, you know, minor speeding tickets?

19 A. Have I -- no.

20 Q. Have you ever been arrested at all?

21 A. Yes.

22 Q. What did you get arrested for?

23 A. Assault.

24 Q. And when was that?

25 A. About five years ago.

1 Q. And where was that?

2 A. It was in Anderson County.

3 Q. And what happened?

4 A. Had a little problem with my daughter's boyfriend,
5 which is now her husband.

6 Q. That makes Thanksgiving fun.

7 A. Yeah.

8 Q. Other than being arrested five years ago for assault in
9 Anderson County, have you been arrested?

10 A. No.

11 Q. And just to tell you, I ask everybody these questions.
12 So don't take any kind of personal offense against it.
13 In that same vein, do you drink alcohol?

14 A. No.

15 Q. Have you ever drank alcohol on a consistent basis? Not
16 have you ever tried it.

17 A. No.

18 Q. Okay. Do you ever use any recreational drugs?

19 A. No.

20 Q. And we already talked about depositions, but prior to
21 this lawsuit have you ever been a party to another
22 lawsuit?

23 A. No.

24 Q. Have you ever made any kind of insurance claim?

25 A. Other than auto, no.

1 Q. How about auto?

2 A. I'm sorry. The question you asked me was hail damage,
3 yeah.

4 Q. So you made an insurance claim for hail damage?

5 A. Yes.

6 Q. Have you ever made any other insurance claims for
7 anything?

8 A. No.

9 Q. Has anybody ever made a claim against your insurance
10 other than in this case?

11 A. No.

12 Q. Aside from the wreck that we're talking about today,
13 have you ever been involved in any other car wrecks of
14 any type?

15 A. Yes.

16 Q. How many wrecks have you been involved in?

17 A. One.

18 Q. When was that?

19 A. Probably around 1990.

20 Q. Who was at fault? Was it you or the other driver?

21 A. The other driver.

22 Q. And what happened?

23 A. Instead of crossing -- it was a four-lane highway.

24 Instead of crossing over all four, she just went over
25 two and hit me head-on.

1 Q. So she was trying to cross the road that you were
2 driving on?

3 A. She came out of a side road, and instead of going all
4 the way over to her lane, she went over two lanes,
5 which was my inside -- outside lane -- or inside lane,
6 excuse me, and she come around a curve and there I was.

7 Q. Were you injured in that wreck?

8 A. No.

9 Q. How fast were you going?

10 A. No injuries.

11 Q. How fast were you going in that wreck? Do you recall?

12 A. Probably about 40.

13 Q. You got lucky.

14 A. I know.

15 Q. I guess she wasn't hurt either?

16 A. No, she wasn't hurt.

17 Q. Do you belong to any organization such as Rotary Club?

18 A. No.

19 Q. Do you go to church?

20 A. Yes.

21 Q. Which church?

22 A. Life Church.

23 Q. And where is that?

24 A. It's located on Thomas Mill Road.

25 Q. What city?

1 A. Easley.

2 Q. How long have you gone to Life Church?

3 A. About twenty -- about 24 years, in that neighborhood,
4 estimate.

5 Q. Do you hold any kind of positions at that church?

6 A. No, I don't.

7 Q. Are you a member of Life Church?

8 A. Yes.

9 Q. Other than Life Church are you a member of any other
10 organization?

11 A. No.

12 Q. Sons of -- there's Daughters of the American
13 Revolution. I don't know if there's a Sons. I mean
14 anything.

15 A. No.

16 Q. All right. Do you wear glasses or contacts?

17 A. Reading glasses.

18 Q. And did you have a cell phone at the time of the wreck?

19 A. Yes.

20 Q. And what was the cell phone number at the time of the
21 wreck?

22 A. 864-616-6066.

23 Q. 864-616-6066?

24 A. Yes.

25 Q. what provider is that with?

1 A. It's with AT&T.

2 Q. And let's talk about the wreck, obviously why we're
3 here today. Where did this occur?

4 A. Gentry Memorial Highway.

5 Q. Do you recall any businesses that were nearby?

6 A. Yes.

7 Q. What businesses were nearby?

8 A. There was a Kentucky Fried Chicken, Hot Spot.

9 Q. Do you know what the speed limit was there?

10 A. I think 35.

11 Q. And are you familiar with that stretch of road?

12 A. Yes, I am.

13 Q. Drive down it a lot?

14 A. Yes, I do.

15 Q. Is there anything located near there that you regularly
16 go to?

17 A. No.

18 Q. When you go down that road why are you going that way?

19 A. I have grandchildren and two children.

20 Q. And they live that way?

21 A. In Pickens, yes.

22 Q. And the night of the accident, where were you coming
23 from before the wreck?

24 A. I had been by my grandson's house.

25 Q. And what's that address?

1 A. I just call it Mountain Highway. I don't even know the
2 number.

3 Q. Do they live near downtown Pickens? And by downtown, I
4 mean the old part with the courthouse in it.

5 A. Next to the high school.

6 Q. So when did you get on Gentry Memorial Highway? Or let
7 me rephrase that. Where did you get on Gentry Memorial
8 Highway?

9 A. Main Street, Pickens.

10 Q. So you had been on Gentry Memorial Highway all the way
11 from Main Street?

12 A. Yes.

13 Q. What was the weather like that night?

14 A. Raining.

15 Q. How hard was it raining?

16 A. That I couldn't say.

17 Q. Would you describe it as a light rain or a heavy rain?

18 A. Probably from medium to heavy.

19 Q. Were there any other kind of distractions or anything
20 on the road?

21 A. No.

22 Q. Construction?

23 A. No.

24 Q. Ambulances?

25 A. No.

1 Q. Okay. How was traffic that night?

2 A. Moderate.

3 Q. And when you say moderate, are you talking about
4 moderate for that road, or are you talking about
5 moderate for 123?

6 A. For that road.

7 Q. Because I assume that road's not that heavily
8 trafficked, is it?

9 A. At times.

10 Q. That night wasn't one of the times when it was heavily
11 traveled, was it?

12 A. No.

13 Q. So would you say a few cars here or there?

14 A. Yes.

15 Q. So you weren't the only one on the road, but there --

16 A. No.

17 Q. -- wasn't bumper-to-bumper?

18 A. Right.

19 Q. Did you have anybody in the car with you?

20 A. No.

21 Q. What had you been doing at your grandson's?

22 A. I just went by to check on him.

23 Q. How long were you there?

24 A. I didn't even stop.

25 Q. So you just drove by?

- 1 A. Just drove by to make sure things were fine.
- 2 Q. Any reason in particular, or you just check sometimes?
- 3 A. It's a long story.
- 4 Q. Okay, fair enough. Where had you been before you went
- 5 to check on your grandson?
- 6 A. Nowhere. I left the house.
- 7 Q. So you left your house, you went to their house to
- 8 check on him. Correct? And then you didn't stop, and
- 9 then you just drove back?
- 10 A. Just come on home, coming back home.
- 11 Q. When you drove to their house, your grandson's house,
- 12 did you drive down Gentry Memorial Highway?
- 13 A. Going into Pickens, yes.
- 14 Q. So you were coming back the same way as you got there?
- 15 A. Same way.
- 16 Q. Did you own the car you were driving?
- 17 A. No. It's my wife's.
- 18 Q. What kind of car was it?
- 19 A. It's a pickup. It's a 1993 Chevy pickup.
- 20 Q. Is that a Silverado?
- 21 A. It's a S10.
- 22 Q. And you said your wife owns that truck?
- 23 A. Yes. It was her father's.
- 24 Q. Do you own any vehicles?
- 25 A. Yes.

1 Q. Did you at the time of the wreck?

2 A. Yes.

3 Q. What vehicles did you own?

4 A. I own a 2006 -- excuse me -- 2013 Dodge van, crew van.

5 Q. Anything else?

6 A. Yes. I own a 1997 Fleetwood motor home.

7 Q. Any other vehicles?

8 A. At the time of the accident, no.

9 Q. Who did you have insurance with on the Dodge van?

10 A. Geico.

11 Q. How about the Fleetwood motor home?

12 A. Geico.

13 Q. Did you have any other kind of insurance policies? And
14 what I'm looking for here is like umbrella coverage at
15 the time of the wreck.

16 A. No.

17 Q. And if I'm not mistaken, the insurance on the truck was
18 Geico?

19 A. Yes.

20 Q. Is that correct? Okay. Do you have insurance with any
21 other company aside from Geico?

22 A. No.

23 Q. So any policies that you have would be with Geico?

24 A. Pardon?

25 Q. Any insurance policies you have would be through Geico?

1 A. Right.

2 Q. Just kind of take me through and explain what happened
3 when the incident occurred.

4 A. I was driving down Gentry Memorial Highway, stopped at
5 the light at the foot of the hill.

6 Q. Is that the light by the American waffle?

7 A. That's it.

8 Q. Okay, I'm sorry. Keep going.

9 A. The light changed. I was running about maybe 25 or 30
10 miles an hour, and then in front of Kentucky Fried
11 Chicken I looked up and I saw this lady in front of my
12 driver's headlight with her hand up. She turned and
13 looked at me and made approximately two fast steps, and
14 I hit her with the right passenger headlight.

15 Q. How far away was she from the front of your vehicle
16 when you first saw her?

17 A. Around 10 foot.

18 Q. Did you hit the brakes?

19 A. Yes, I did.

20 Q. Did you skid?

21 A. Don't know.

22 Q. Did that truck have antilock brakes?

23 A. Don't know.

24 Q. So when you first saw her and she was 10 feet in front
25 of your truck, what part of your truck was she in front

1 of?

2 A. In front of the driver's headlight.

3 Q. So she was already in front of your vehicle?

4 A. In my lane.

5 Q. And then you said she made two quick steps, and so you
6 actually hit her with the passenger side of your
7 vehicle?

8 A. Yes.

9 Q. And what happened to her after you hit her?

10 A. She went over my fender into the highway.

11 Q. Where did she end up?

12 A. I immediately stopped. I was afraid that she might be
13 under the truck. I stopped and got out and looked, and
14 she was laying in the road next to my back bumper.

15 Q. How close was she to the sidewalk when she was resting
16 next to your back bumper?

17 A. Estimate, two to three foot. Probably two foot.

18 Q. And how close to the sidewalk was she when you first
19 saw her?

20 A. Well, she was in my driver's headlight. So I couldn't
21 tell you how much distance from the sidewalk to the
22 driver's headlight. I would say probably at least 10
23 foot.

24 Q. Were you in the far right lane?

25 A. Yes, I was.

1 Q. And I guess when you're driving, you're probably a
2 couple feet from the side of the road?

3 A. I would think so.

4 Q. I mean just in general to stay in the center of the
5 lane.

6 A. Yes.

7 Q. You don't recall driving close to the centerline that
8 night for any reason, do you?

9 A. No. There was other cars.

10 Q. And where were there other cars?

11 A. There was one sitting beside of me at the light. Where
12 he went I don't know.

13 Q. After seeing that car next to you at the light, do you
14 recall seeing that car again?

15 A. No.

16 Q. You said you were going about 25 or 30 miles an hour?

17 A. Yes.

18 Q. You didn't accelerate fast from the light for any
19 reason, did you?

20 A. No.

21 Q. And what was Chelsea wearing when you saw her?

22 A. Well, she was wearing something with a hood on it, but
23 it looked dark to me.

24 Q. What color did it look like?

25 A. It looked like maybe a dark brown or something.

1 Q. And when she was laying on the ground, is that what it
2 looked like she was wearing, as well?

3 A. I couldn't say. I was so upset.

4 Q. Did this whole incident shake you up pretty bad?

5 A. Yes.

6 Q. And did you have the radio on at the time of the wreck?

7 A. No.

8 Q. So you didn't have anything on?

9 A. No.

10 Q. Did you have your cell phone with you at the time of
11 the wreck?

12 A. Yes.

13 Q. And where was that?

14 A. In my pocket.

15 Q. What kind of phone did you have?

16 A. (Witness retrieves phone).

17 Q. Same one you've still got today?

18 A. This one.

19 Q. Is that an iPhone, it looks like?

20 A. Apple, yeah. I think it's an iPhone. I'm not up to
21 par on that.

22 Q. And you said after the wreck you got out and you went
23 and saw her laying there. What did you do next?

24 A. Stood there.

25 Q. How long did you stand there?

1 A. Probably 15 minutes. She was saying, call mama, call
2 my mom. And I said, just lay still till EMS gets here.

3 Q. And did you call EMS?

4 A. No.

5 Q. Do you know if somebody did?

6 A. No. There was several said they called, but I don't
7 know who they were.

8 Q. Do you remember the names of any of the people that
9 were standing there?

10 A. Pat wellborn was one.

11 Q. Do you know Mr. wellborn?

12 A. Pardon?

13 Q. Do you know Mr. wellborn?

14 A. Yes, I know him. I've met him after that.

15 Q. Did you know him before that?

16 A. No.

17 Q. Do you know of any other witnesses? And by that I mean
18 do you know who they were?

19 A. No.

20 Q. You said that several witnesses told you that they
21 called EMS?

22 A. Yes.

23 Q. Did you have any other conversations with any of the
24 witnesses?

25 A. No.

1 Q. So you just stood there and didn't talk with anybody?

2 A. I talked to one gentleman.

3 Q. What did y'all talk about?

4 A. He stood up. He was with her. He stood up and he
5 said, Are you the one that hit her? And I said, Yes, I
6 am. My advice to you is get out of here. And I said,
7 If you want to get up and hit me, go ahead. I'm not
8 leaving.

9 Q. Do you remember what the guy looked like?

10 A. He was about your size, and he was knelt over her,
11 apparently was one of her friends. I don't know.

12 Q. Did he cross the road with her, or did he come from
13 somewhere else?

14 A. Come from somewhere else.

15 Q. Was there anybody else that you talked to or talked to
16 you?

17 A. No.

18 Q. How long did it take for EMS to arrive?

19 A. Estimate, 15 minutes.

20 Q. How long did it take for police to arrive?

21 A. About the same. Fire department, also.

22 Q. Did you talk to EMS?

23 A. No.

24 Q. Did you talk to the police?

25 A. Yes.

1 Q. And tell me what you said with the police.

2 A. They said to me, Are you okay? And I said yes. And
3 the police officer said, It's not your fault. Don't
4 let this send you to the hospital.

5 Q. Did you have any other -- do you recall anything else
6 that you talked with the police about?

7 A. No.

8 Q. Did they ask you what happened?

9 A. Yes.

10 Q. And what did you tell them?

11 A. I told them exactly what I've told you.

12 Q. Do you recall what the police officer looked like?

13 A. Looked like? Is that what you said?

14 Q. Yes, sir.

15 A. Yes. One was a tall, slim guy, and the other one was a
16 young lady.

17 Q. Do you recall their names?

18 A. No.

19 Q. Did you see anybody else speaking with the police?

20 A. No. And I say that because there was so many people I
21 don't know who was talking to who.

22 Q. So you're not sure if anybody else talked to the police
23 or not?

24 A. Not sure.

25 Q. Did you receive a ticket as a result of this?

- 1 A. No.
- 2 Q. Was your truck damaged?
- 3 A. Yes.
- 4 Q. What kind of damage was done to it?
- 5 A. Passenger headlight, broken grille, bent fender.
- 6 Q. And when you stopped your truck where was it?
- 7 A. Beside her.
- 8 Q. But I mean did you stop in the middle of the road?
- 9 A. Yes, in the lane, right.
- 10 Q. After your truck struck Chelsea, how much farther did
- 11 it travel before it came to a complete stop?
- 12 A. Probably the length of the truck.
- 13 Q. Did you drive the truck away from the scene?
- 14 A. After the officers arrived.
- 15 Q. Did you have the truck repaired?
- 16 A. No.
- 17 Q. Is it still damaged to this day?
- 18 A. Yes.
- 19 Q. Where is the truck today?
- 20 A. In my -- at my residence, 206 Mount Forest Circle.
- 21 Q. Is there any way that you could get some pictures of
- 22 the front of the truck and get them to your attorney?
- 23 A. Yes, but I've replaced the headlight.
- 24 Q. So you fixed the headlight?
- 25 A. Yes.

1 Q. But you haven't fixed the bumper or the grille?

2 A. No.

3 Q. Could you get some pictures of it and get it to your
4 attorney?

5 A. Yes.

6 Q. Okay, I appreciate it. Were you injured?

7 A. No.

8 Q. Have you gotten any kind of medical treatment or
9 psychiatric treatment since the wreck?

10 A. No.

11 Q. Where did you go after the wreck?

12 A. Home.

13 Q. What time did you get home?

14 A. Estimate, 10:00 p.m.

15 Q. Did you take any prescription drugs the day of the
16 wreck?

17 A. No.

18 Q. You weren't taking your Lisinopril or your --

19 A. Oh, yes.

20 Q. -- Prilosec?

21 A. Yes. I take that every day.

22 Q. How long have you been taking those?

23 A. Twenty-five years, estimate.

24 Q. Who prescribes those for you?

25 A. Dr. Rhonda Todd.

1 Q. where is Dr. Rhonda Todd located?

2 A. Easley Medical Center.

3 Q. And she's been your doctor for how long?

4 A. She's been my doctor -- she was my doctor for 10 years.

5 Q. Is she no longer your doctor?

6 A. She's no longer.

7 Q. where did you get prescriptions filled?

8 A. walgreens.

9 Q. where is that walgreens located?

10 A. Easley.

11 Q. Any other pharmacies?

12 A. No.

13 Q. Have you talked to any insurance company since the
14 wreck? And I'm not asking you anything you said with
15 your attorney, but did you talk to Geico after the
16 wreck?

17 A. Just called them.

18 Q. Did you tell them what happened?

19 A. Yes.

20 Q. Do you know if you gave a recorded statement?

21 A. Yes.

22 Q. How long after the wreck was that?

23 A. Probably two days.

24 MR. WOOTEN:

25 Can we mark this as Plaintiff's Number 1?

1 (Plaintiff's Exhibit Number marked)

2 EXAMINATION RESUMED BY MR. WOOTEN:

3 Q. If you can look at what's been marked as Plaintiff's
4 Exhibit Number 1, and I tried to just get an overhead
5 shot of the area.

6 A. Okay.

7 Q. And if you can look, it looks like that is the Little
8 Caesars and Mission Fitness up there.

9 A. Yes, okay.

10 Q. And then that's KFC down here.

11 A. KFC, okay.

12 Q. Does that look about right?

13 A. Yes, it does.

14 Q. And let's try this. I've got this red sharpie. Can
15 you make an X on there where the impact occurred?

16 A. Yes, I can.

17 Q. And then if you can just run a line out here and say
18 "impact" so we know what you're---

19 A. (Witness complies).

20 Q. And you were coming, if I'm not correct, from down here
21 by the American waffle?

22 A. Right.

23 Q. And you were in the far right lane?

24 A. Yes, this lane.

25 Q. And can you just put an X down here in the lane that

1 you were in?

2 A. Yes.

3 Q. And if you can just run a line down this way and say
4 "lane," I think that will let us know that's the lane
5 you were in.

6 A. (Witness complies).

7 MR. GRAHAM:

8 That's just generally the lane he was in. Right?
9 Not at a specific point in time necessarily.

10 MR. WOOTEN:

11 No, no, no. I don't think we'd have a case if
12 that was the specific point.

13 MR. GRAHAM:

14 I just wanted to be clear on the record.

15 MR. WOOTEN:

16 Yeah. That's just the lane he was in. That's why
17 I was trying to get it far enough away so it wouldn't
18 be confused with the point of impact.

19 EXAMINATION RESUMED BY MR. GRAHAM:

20 A. Should I draw my truck?

21 Q. No, sir. I don't know if your drawing is like mine,
22 but mine hasn't progressed much since about
23 kindergarten. All right, and so the first time you saw
24 her she was in your lane of travel -- you don't need to
25 draw this.

1 A. Okay.

2 Q. Just in your lane of travel.

3 A. Yes.

4 Q. Near the point of impact that you drew on there?

5 A. Point of impact?

6 Q. Just near it. She was near it when you first saw her?

7 A. Yes. She was here --

8 MR. GRAHAM:

9 Object to the form.

10 EXAMINATION RESUMED BY MR. WOOTEN:

11 A. -- when I first saw her.

12 MR. GRAHAM:

13 Object to the form. Don't draw anything.

14 EXAMINATION RESUMED BY MR. WOOTEN:

15 Q. No, you don't need to draw anything else.

16 A. Oh. I'm sorry.

17 Q. You're fine. Then you'd agree that there's two lanes
18 of traffic in each direction and then a center median?

19 A. Correct.

20 Q. And that's how you remember the road being that night?

21 A. Yes.

22 Q. Is that area very well lit?

23 A. No.

24 Q. And so it wasn't very well lit that night?

25 A. No.

1 Q. And would you agree that this stretch of road that you
2 were driving on was pretty straight?

3 A. Yes.

4 Q. And there's nothing overhanging it, no trees or
5 anything that would obstruct your vision?

6 A. No.

7 MR. WOOTEN:

8 Can we mark that as Plaintiff's Number 2?

9 (Plaintiff's Exhibit Number 2 marked)

10 EXAMINATION RESUMED BY MR. WOOTEN:

11 Q. I'm going to show you what's been marked as Plaintiff's
12 Exhibit Number 2.

13 A. Okay.

14 Q. And that should be a picture generally from the
15 direction that you were coming back up past the KFC
16 where the incident happened.

17 A. Mm-hmm.

18 Q. Does that look about right?

19 A. Yeah. It looks a little -- about right. A little
20 further down, I think.

21 Q. Yeah. Would you say that the wreck happened up this
22 way somewhere?

23 A. Pardon?

24 Q. Does that look about right; the wreck happened
25 somewhere up in here?

1 A. No. Is this Kentucky Fried Chicken here?

2 Q. I believe it is.

3 A. Okay. Okay, if this is -- if this is Kentucky Fried
4 Chicken, it happened right here.

5 Q. Can you draw an X right there?

6 A. Yes. Okay.

7 Q. And I will tell you that I took that picture exactly
8 one year to the day after the wreck happened just to
9 try and get the light conditions as close as possible
10 as they were at that time. Now, obviously, it's not
11 raining that night, but would you say that's about what
12 the lighting looked like at the time of the wreck?

13 MR. GRAHAM:

14 Object to the form.

15 EXAMINATION RESUMED BY MR. WOOTEN:

16 A. No.

17 Q. What did it look like at the time of the wreck?

18 A. Darker.

19 Q. You said you go down that road a lot?

20 A. Yes.

21 Q. Has anything changed on that road that would have had
22 increased lighting?

23 A. Don't know what this is. It's a glare.

24 Q. Is that -- and I'm not 100 percent sure, honestly. Do
25 you think that could be the sign for the Hot Spot gas

1 station that's down there?

2 A. Don't think so.

3 MR. WOOTEN:

4 If we can mark this as Plaintiff's Exhibit Number
5 3.

6 (Plaintiff's Exhibit Number 3 marked)

7 EXAMINATION RESUMED BY MR. WOOTEN:

8 Q. Just to be clear before I show you this next exhibit.

9 A. Okay.

10 Q. Do you know of anything that's been built or changed on
11 that road since the time of the wreck that would change
12 the lighting?

13 MR. GRAHAM:

14 Object to the form.

15 EXAMINATION RESUMED BY MR. WOOTEN:

16 A. No.

17 Q. As far as you know, have the businesses along that road
18 stayed the same?

19 A. Yes.

20 Q. As far as you know, has the street lighting, if any,
21 stayed the same?

22 A. Yes.

23 Q. Let me show you what's been marked as Plaintiff's
24 Exhibit Number 3.

25 A. Okay.

1 Q. And I believe that's from the same angle, just farther
2 back, closer to the American waffle.

3 A. Mm-hmm.

4 Q. Does that look right?

5 A. Yeah, it looks close, I guess.

6 Q. And so it looks the same to you as Plaintiff's Exhibit
7 Number 2, just a little farther back. Correct?

8 A. Yes. Right in here, yes.

9 Q. And does that look like -- does that lighting in
10 Plaintiff's Exhibit 3 look similar to what it was like
11 the night of the wreck?

12 A. No.

13 Q. And what's different about it?

14 A. Glare.

15 Q. Does it look as bright or less bright or brighter?

16 A. It looks brighter, but it looks like camera glare.

17 MR. WOOTEN:

18 Let's mark this as Plaintiff's 4.

19 (Plaintiff's Exhibit Number 4 marked)

20 EXAMINATION RESUMED BY MR. WOOTEN:

21 Q. Let me show you what's been marked as Plaintiff's
22 Exhibit Number 4, and I'll just represent to you, I
23 think, according to your prior testimony, this doesn't
24 quite show where the impact happened.

25 A. Mm-hmm.

1 Q. But this is from the other side of the road.

2 A. Mm-hmm.

3 Q. And if I'm correct, the impact would have happened off
4 the left side of this picture?

5 MR. GRAHAM:

6 Object to the form.

7 EXAMINATION RESUMED BY MR. WOOTEN:

8 A. No. Bridge ices -- bridge is here, light here. The
9 accident happened up here.

10 Q. Yes, sir. Now, that's the American waffle down there.

11 A. Okay.

12 Q. So you're looking the other way.

13 A. Yes.

14 Q. And that's the CMG Sign company. So I think KFC might
15 be off the left side of the picture.

16 A. Yes.

17 Q. Do you see what I'm talking about?

18 MR. GRAHAM:

19 Object to the form.

20 EXAMINATION RESUMED BY MR. WOOTEN:

21 A. Yes.

22 Q. Does Plaintiff's Exhibit 4 accurately represent the
23 lighting the night of the wreck?

24 A. No.

25 Q. And what's different about it?

1 A. Dark, raining, no camera glare, no flash.

2 Q. So is that picture brighter than what it looked like on
3 the night of the wreck?

4 A. Oh, yes.

5 Q. I'm going to ask you a few questions just kind of about
6 driving generally. Would you agree that a driver
7 should never needlessly endanger a pedestrian?

8 MR. GRAHAM:

9 Object to the form.

10 EXAMINATION RESUMED BY MR. WOOTEN:

11 A. Pardon me?

12 Q. I said, would you agree that a driver should never
13 needlessly endanger a pedestrian or another driver?

14 MR. GRAHAM:

15 Object to the form.

16 EXAMINATION RESUMED BY MR. WOOTEN:

17 A. I agree.

18 Q. And how many years have you been a licensed driver?

19 A. Since 1954.

20 Q. And you're aware of the laws of the road as a licensed
21 driver. Correct?

22 A. Yes, I am.

23 Q. You're aware of the duties that you owe other drivers?

24 A. Yes, I am.

25 Q. And they owe you those same duties?

1 A. Yes.

2 Q. And you expect them to follow the rules of the road
3 just like you do?

4 A. Yes.

5 Q. And that makes the roads safe for both you and for
6 them. Correct?

7 A. Yes.

8 Q. And do you follow the safety rules when you drive?

9 A. Yes.

10 Q. And how did you learn how to drive and the safety
11 rules?

12 A. Driver's handbook.

13 Q. The South Carolina Driver's Handbook?

14 A. Yes.

15 Q. Did you to take driver's ed, as well?

16 A. No.

17 Q. So you knew all that prior to the accident. Correct?

18 A. Yes.

19 Q. And would you agree that if somebody doesn't follow a
20 driver's safety rule, that people can get injured?

21 MR. GRAHAM:

22 Object to the form.

23 EXAMINATION RESUMED BY MR. WOOTEN:

24 A. Yes.

25 Q. And do you agree that if you break a driver's safety

1 rule, you're responsible for any harms or losses that
2 you cause?

3 MR. GRAHAM:

4 Object to the form.

5 EXAMINATION RESUMED BY MR. WOOTEN:

6 A. Yes.

7 Q. And kind of getting into that a little more, do you
8 agree that a driver has a duty to keep a proper lookout
9 for a pedestrian?

10 A. Yes.

11 Q. And do you agree that a driver has a duty to avoid
12 hitting a pedestrian?

13 MR. GRAHAM:

14 Object to the form.

15 EXAMINATION RESUMED BY MR. WOOTEN:

16 A. Yes.

17 Q. And that's even if somebody is not in a crosswalk.
18 Correct?

19 MR. GRAHAM:

20 Object to the form.

21 EXAMINATION RESUMED BY MR. WOOTEN:

22 A. Yes.

23 Q. You would agree that even if a pedestrian is not in a
24 crosswalk, you still have a duty to keep a lookout for
25 them?

1 A. Yes.

2 Q. And you would agree that even if a person is not in a
3 crosswalk, you still have a duty to avoid hitting them?

4 MR. GRAHAM:

5 Object to the form.

6 EXAMINATION RESUMED BY MR. WOOTEN:

7 A. Yes.

8 Q. And do you agree that when it's raining a driver has a
9 duty to adjust their driving for the conditions that
10 they find?

11 A. Yes, I do.

12 Q. And the same thing when it's dark. Do you agree that a
13 driver has a duty to adjust their driving based on the
14 conditions?

15 A. Yes, I do.

16 Q. So if visibility is diminished, you have to adjust your
17 speed and your lookout accordingly?

18 A. Yes.

19 Q. Mr. Moody, so I guess the biggest question I have in
20 this case is you know you're coming down a long
21 straight road and it's fairly wide. Why do you think
22 you didn't see Chelsea crossing the road?

23 A. It was raining, and it was dark and not a very well-lit
24 area.

25 Q. Yes, sir. Do you think that you were driving

1 appropriately given the conditions?

2 A. Yes, I was.

3 Q. Did you have your lights on at the time of the wreck?

4 A. Yes, I did.

5 Q. Did you have your brights or your low beams on?

6 A. My low beams.

7 Q. Have you ever had your lights serviced before on your
8 truck?

9 A. Yes, I have.

10 Q. When did you have your lights serviced?

11 A. It was probably three or four years ago.

12 Q. So three or four years from today?

13 A. Yes.

14 Q. So that would have been 2013 or 2012 maybe? Or, I'm
15 sorry.

16 A. Estimate.

17 Q. Okay. 2013 let's say or 2014.

18 A. Mm-hmm.

19 Q. And what did you have done to your lights at that
20 point?

21 A. Adjusted.

22 Q. And when you say adjusted, what do you mean?

23 A. Set the beam.

24 Q. Set the angle that it's at?

25 A. Angles, yes.

1 Q. Did you have the bulbs changed?

2 A. I have changed them over the period, yes. I have --
3 I've changed those myself.

4 Q. Do you recall the last time that you changed the bulbs?

5 A. No.

6 Q. Was it within the last five years?

7 A. I doubt it.

8 Q. Have you ever cleaned the light cover, for lack of a
9 better word, the plastic part that the beam shines
10 through?

11 A. Don't have it.

12 Q. No, sir. The outside of the light where the light
13 shines through.

14 A. A 1993 doesn't have that.

15 Q. Yes, sir. I'm just talking about not anything fancy,
16 just like the -- you know, I can't think of the word.
17 I guess the lens of the light, for lack of a better
18 word, the part that the -- the clear part that the
19 light shines through.

20 A. 1993 Chevy S10 does not have that.

21 Q. I think we're talking about two different things here,
22 because the bulb -- the bulb's clearly not out exposed.
23 Right? There's some sort of cover, like plastic
24 covering over it.

25 A. No. No. It's just the bulb mounted, no covers.

1 Q. There's no plastic over it?

2 A. No. It's a 1993.

3 Q. Okay. Did it come like that?

4 A. Yes.

5 Q. Can we go off the record for a second?

6 A. Yes.

7 (Off the Record; 12:31 -- 12:32 p.m.)

8 EXAMINATION RESUMED BY MR. WOOTEN:

9 Q. Mr. Moody, why do you think this incident happened?

10 A. Negligence on the pedestrian.

11 Q. And what specifically was she doing negligently?

12 A. Crossing the road and it not being a crosswalk,
13 raining.

14 Q. Do you think that anything different would have
15 happened if she had been crossing at a crosswalk?

16 A. Sure.

17 Q. What different would have happened?

18 A. She'd have been safe.

19 Q. And why is that?

20 A. Because there's a light at the crosswalk.

21 Q. Are you talking about a traffic light, or are you
22 talking about an overhead light?

23 A. Traffic light, stop and go light.

24 Q. So you think her negligence was crossing the road
25 somewhere other than a crosswalk?

1 A. Yes.

2 Q. Do you think that you did anything negligent?

3 A. No.

4 Q. Do you think that you violated any kind of traffic
5 safety rules?

6 A. No.

7 Q. Is there anything that you think you could have done to
8 avoid this incident?

9 A. No.

10 Q. That's all the questions I have. I appreciate it.

11 A. Thank you.

12 EXAMINATION BY MR. GRAHAM:

13 Q. Mr. Moody, I have one question.

14 A. Yes.

15 Q. Mr. Wooten asked you about as Ms. Abdelgheny was
16 crossing the road you said she had one of her hands up
17 when she looked at you. Which hand?

18 A. Right.

19 Q. All right. That's all I have.

20 A. Yeah, facing me like that, and then she turned.

21 Q. Okay. That's all I have. Thank you.

22 MR. WOOTEN:

23 Nothing further.

24 (There being no further questions, this deposition concluded
25 at 12:34 p.m.)

CERTIFICATE OF REPORTER

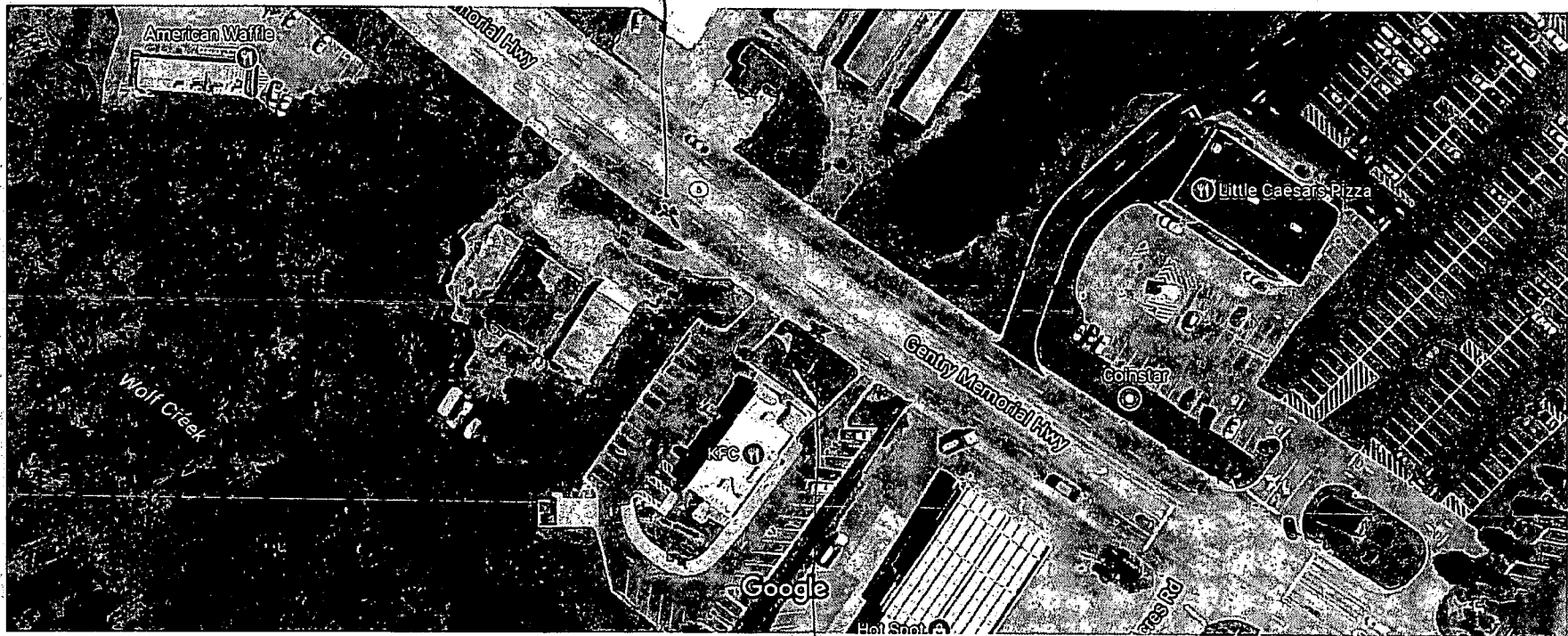
I, ROSALIND POOLE WALTERS, a Notary Public in and for the State of South Carolina, do hereby certify that the foregoing 46 pages represents a true and accurate transcript of the deposition of GERALD L. MOODY, which was taken by me on the 11th day of July, 2017.

That the witness was first duly sworn to tell the truth, the whole truth and nothing but the truth of his own knowledge concerning this matter.

That I am not related to nor the employee of any of the parties hereto, nor related to or employed by any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

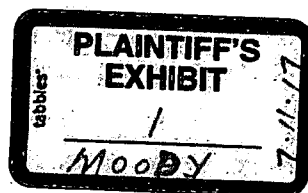
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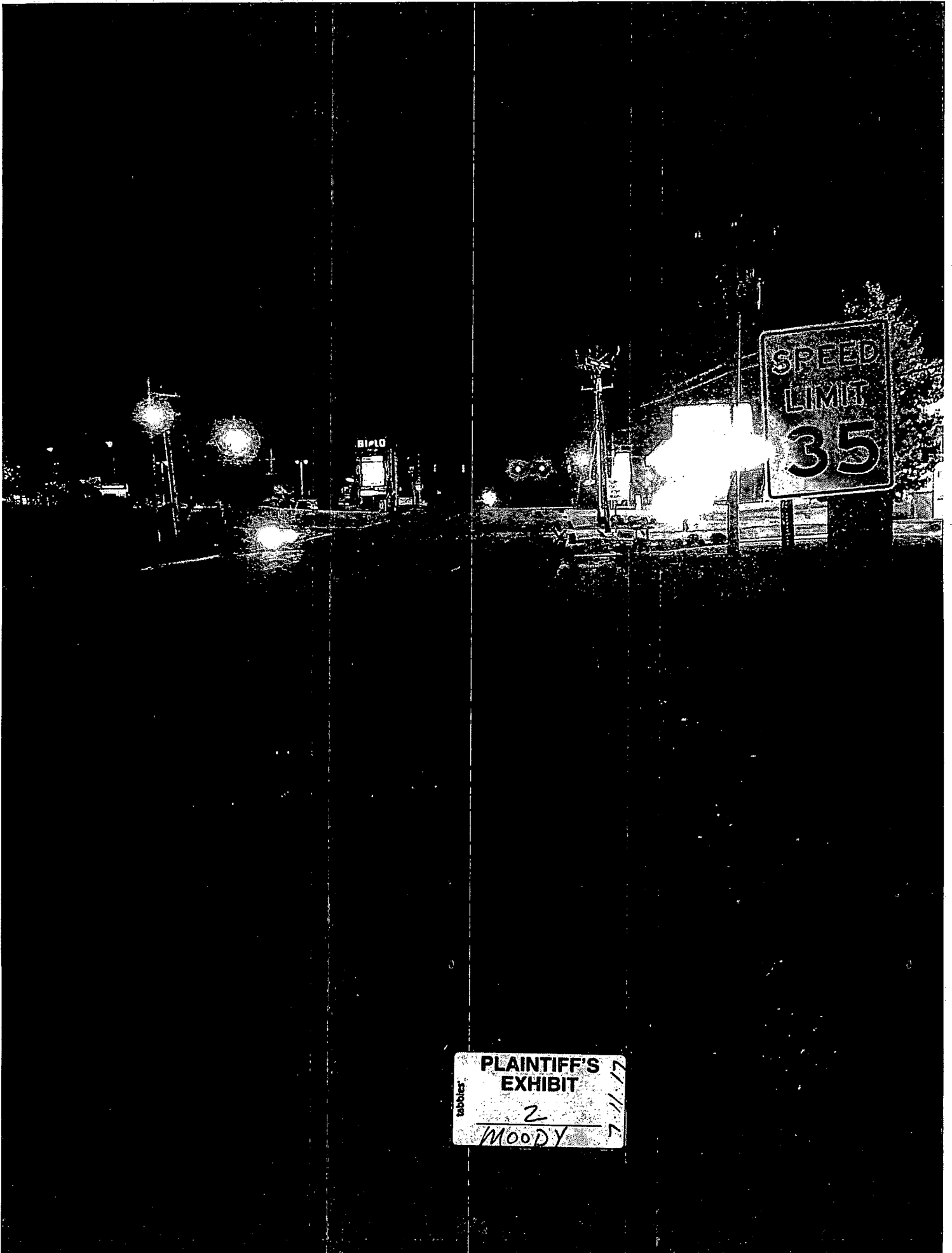
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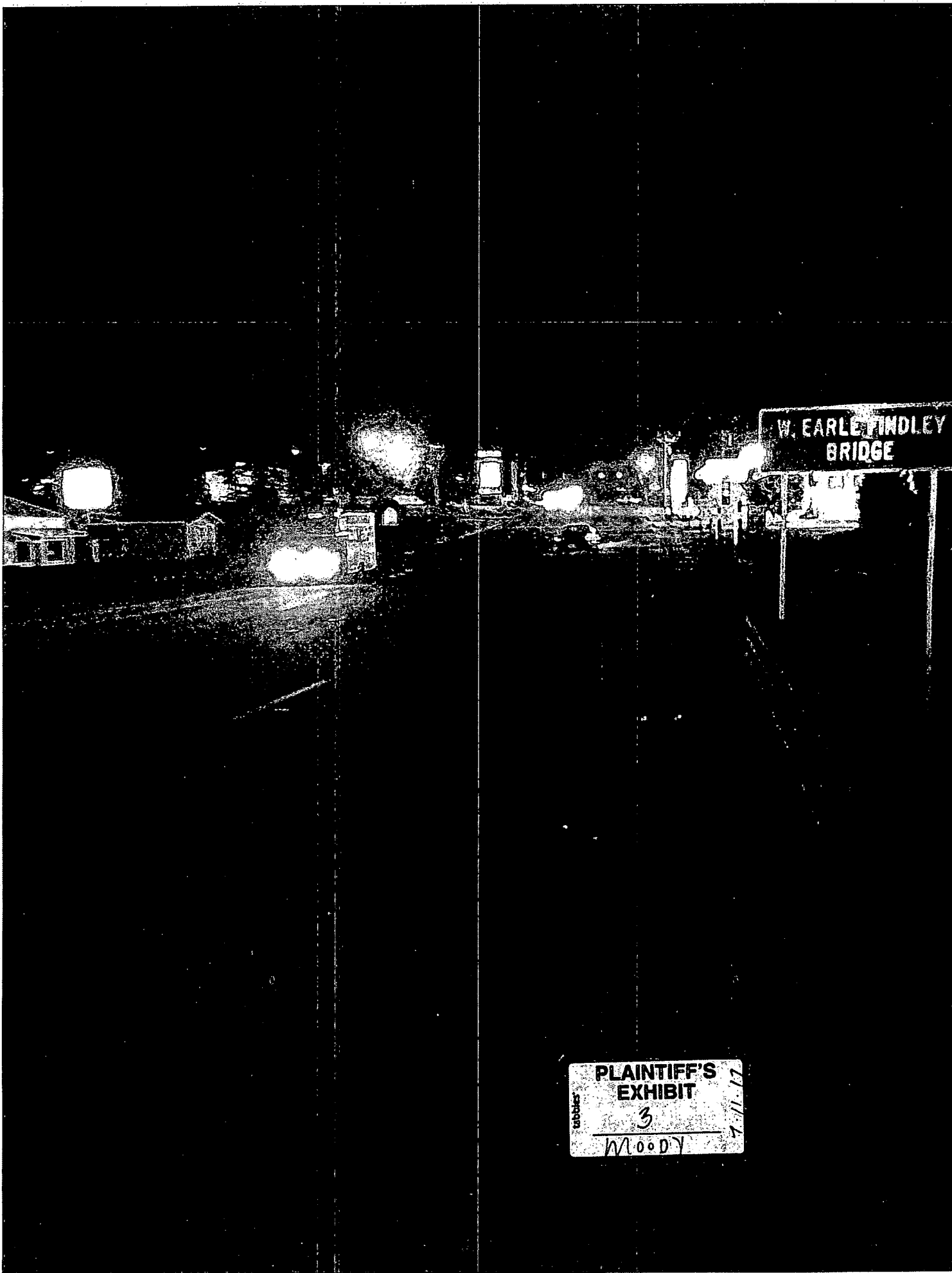
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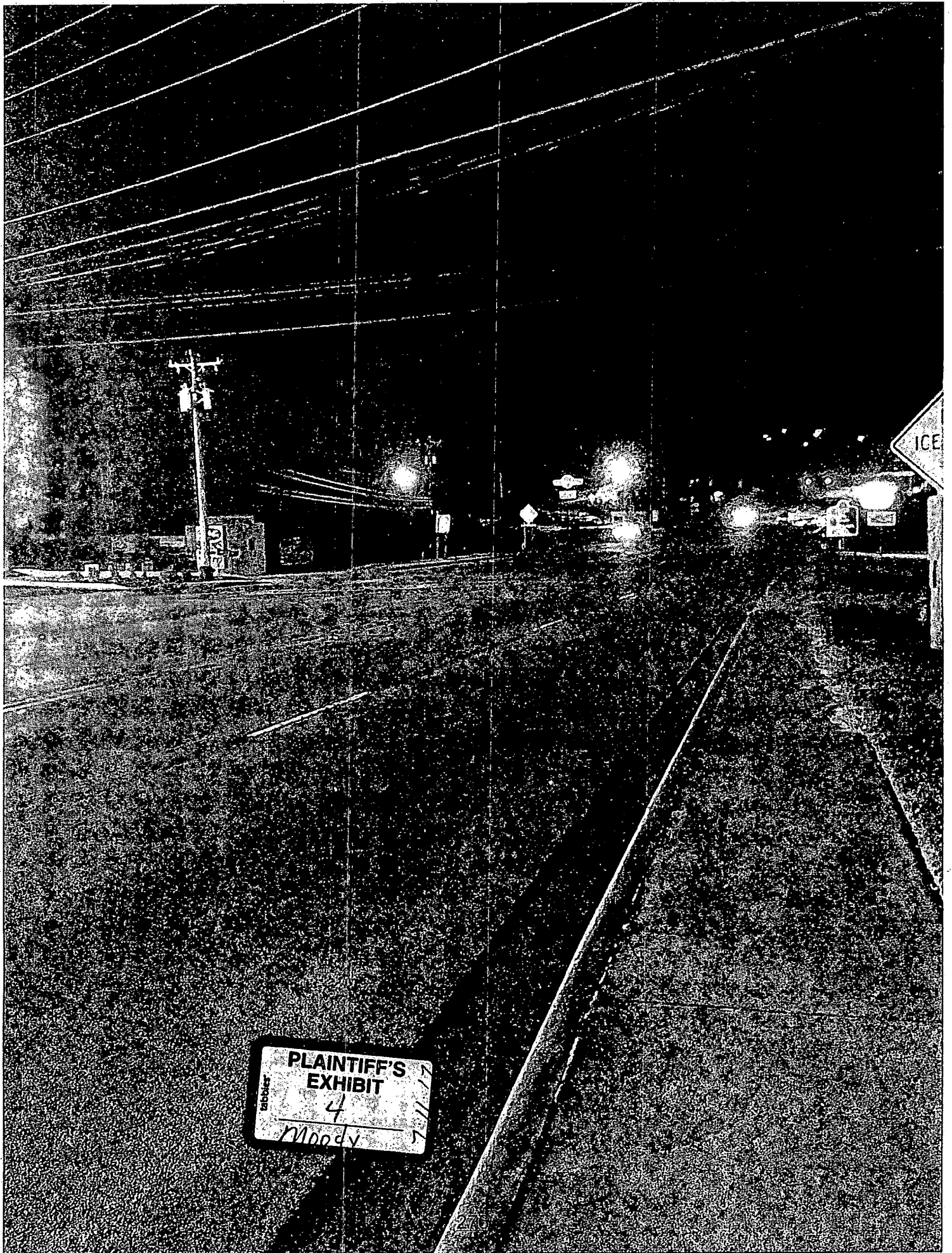


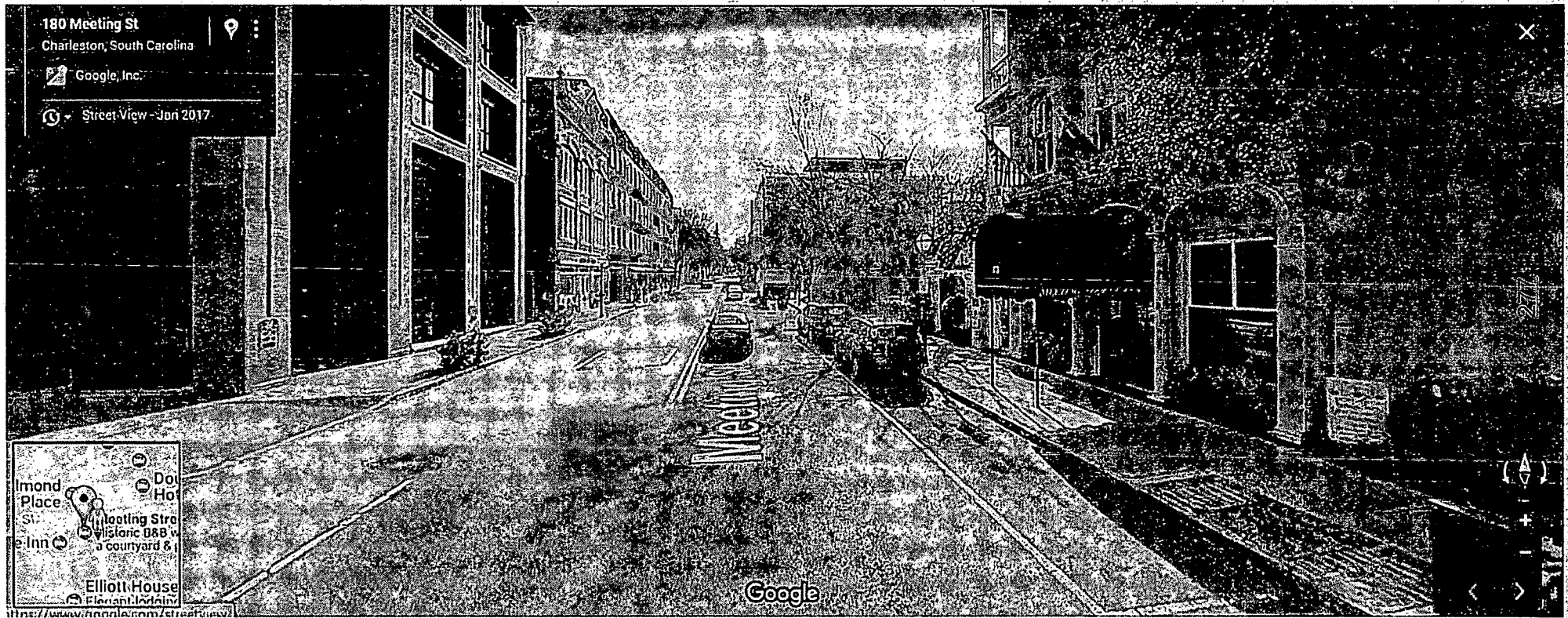


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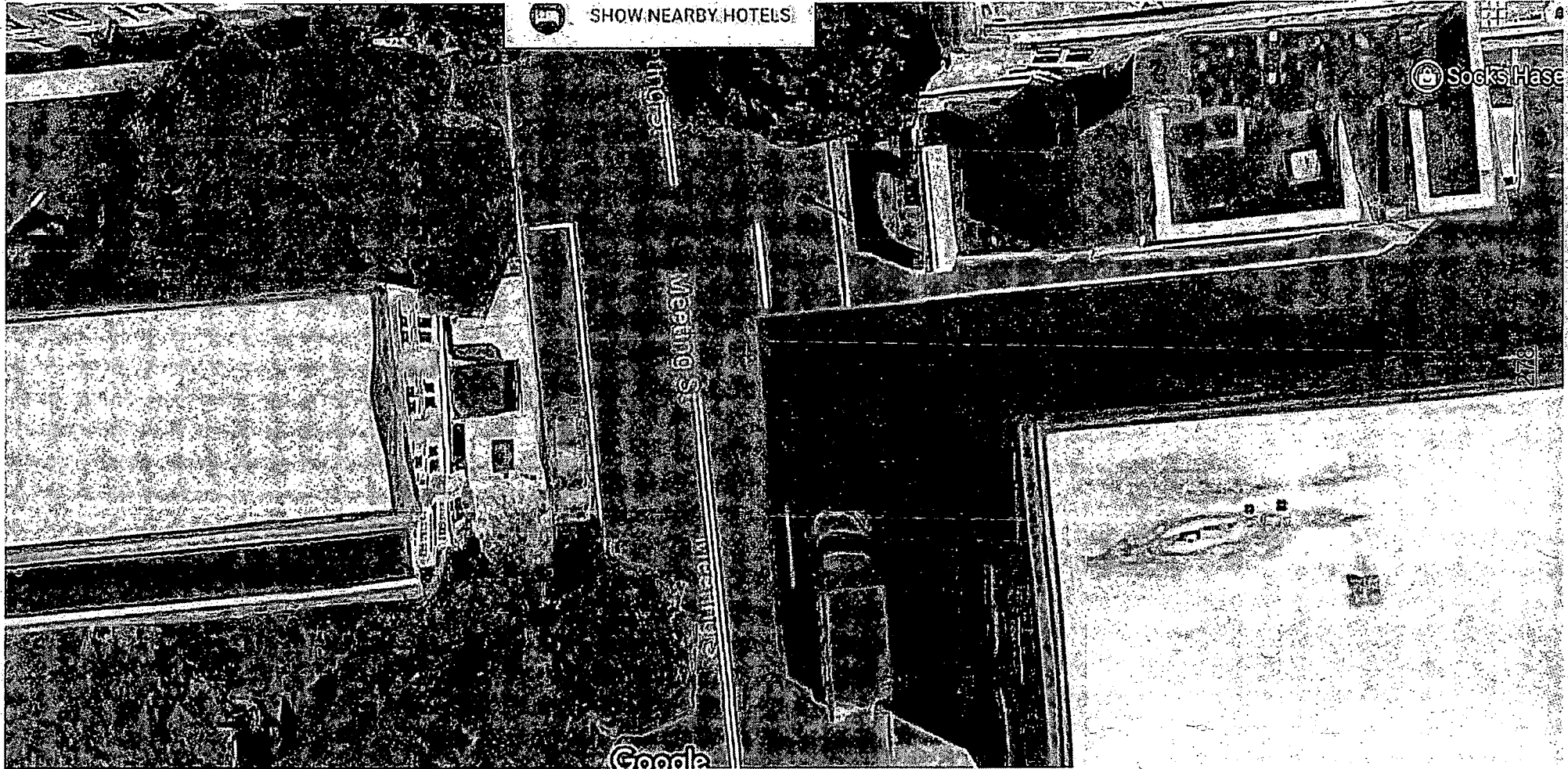
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No.: 2016-CP-39-001346
Appellate Case No: 2018-000102

Chelsea Abdelgheny f/k/a Chelsea
Jackson,

Appellant,

v.

Gerald L. Moody,

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.



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