

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Grace Gilchrist Knie, Circuit Court Judge

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SC Court of Appeals

Appellate Case No. 2018-001665
Case No. 2016-CP-42-2478

Betty Jean Perkins, ... Respondent,

v.

South Carolina Department of Transportation, ... Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2016-CP-42-2478
	)	
BETTY JEAN PERKINS,	)	
	)	
PLAINTIFF,	)	
	)	<u>ORDER</u>
v.	)	
	)	
SOUTH CAROLINA DEPARTMENT OF	)	
TRANSPORTATION,	)	
DEFENDANT.	)	

This matter was heard by the Court as a bench trial on February 12, 2018. After hearing testimony, reviewing the evidence and hearing the arguments of the parties, the Court submitted a verdict on February 15, 2018 that found for the Plaintiff Betty Jean Perkins ("Perkins"). This Order accompanies that verdict pursuant to Rules 52 and 58, SCRPC.

FACTS / BACKGROUND

This case arose from an accident that occurred at approximately 9:00 p.m. on March 1, 2012, in Spartanburg County, South Carolina. Perkins was driving southbound on I-85 when her vehicle experienced a tire and engine failure that resulted in her stalling out in the far-left lane, closest to the center median. Shortly after stopping, Perkins exited her vehicle, stepped next to the concrete barrier located in the center median, and proceeded to walk around her vehicle to get to the safety of the opposite shoulder when she suddenly and unknowingly stepped into a drainage culvert, causing her to lose her balance and fall to the ground.

This fall resulted in injuries to Perkins's knees, back, and shoulder. Testimony was offered by Perkins as to the extent and nature of her injuries and damages. The parties also stipulated to the admission into evidence of an independent medical examination of Perkins that causally related injuries to her right knee, lower back, and overall being to the accident in various percentages. Perkins submitted medical bills into evidence for her care and treatment, including two operations on her right

knee and the resulting rehabilitation. Perkins also provided testimony regarding her pain, suffering, and lost wages.

LAW /ANALYSIS

Perkins brought this action against Defendant South Carolina Department of Transportation ("SCDOT") on the grounds of negligence. The South Carolina Tort Claims Act ("the Act") governs all tort claims against governmental entities and is the exclusive remedy for any tort committed by a governmental entity. The Act provides that the State, its agencies, political subdivisions, and other governmental entities are "liable for their torts in the same manner and to the same extent as a private individual under like circumstances," subject to certain limitations and exemptions provided in the Act. S.C. Code Ann. § 15-78-40 (2005). Of particular importance to this case, S.C. Code Ann. § 15-78-60(15) (2005) expressly provides that:

...Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is ***not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice.***

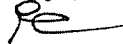
S.C. Code Ann. § 15-78-60(15) (2005) (emphasis added). Accordingly, SCDOT may be held liable under a negligence theory for any loss arising out of a defect or condition in, on, or under any road or street, if it is determined that SCDOT had actual or constructive notice of the condition.

During the trial, testimony was provided by representatives of SCDOT that they are responsible for maintaining highways to provide for the safety of the traveling public. The testimony by both SCDOT employees, a design engineer and a resident maintenance engineer, acknowledged that this responsibility extends beyond the lanes of traffic and includes the entire right-of-way. One who controls the use of property has a duty of care not to harm others by its use. *Miller v. City of Camden*,

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329 S.C. 310, 314 (1997). This duty of care includes the duty to avoid damage or injury to foreseeable plaintiffs. *See Dorrell v. S.C. Dep't. of Transp.*, 361 S.C. 312, 15 (2004). Both employees also acknowledged that roadside safety is an integral component of maintaining a safe highway for the traveling public and that hazards within such roadside should be eliminated. The design engineer testified that although this center median was not intended to be a lane of travel, it is foreseeable that it will be used by the traveling public and others in a variety of occasions including emergency stops. This Court finds that it is reasonably foreseeable that the traveling public and other individuals may avail themselves of this lane, and accordingly, SCDOT has a duty to identify and eliminate hazards for those individuals that are foreseeably within such area. This finding is based on the evidence and the testimony provided by the SCDOT employees.

In regards to the specific hazard presented by the drainage culvert, both employees of SCDOT testified that it does not match the design indicated on the plans. Specifically, that the design plans provide for the concrete drainage basin and the concrete center median to be flush against each other. The employees also testified that the presence of a large gap between the concrete drainage basin and the concrete center median is a deviation from the design plans. Although testimony was proffered by the design engineer that reasonable tolerances and variations must be considered, no actual measure of those tolerances was provided. In reviewing the plans and the photographs submitted into evidence, it is apparent and evident that this particular gap is drastically wider than the analogous openings within the drainage grate itself. After examining the design plans, the photographs, and considering testimony, this Court finds that this gap presents a hazard to the traveling public, and accordingly SCDOT was negligent in failing to take corrective action to remedy this hazard. *Giannini v. S.C. Dep't of Transp.*, 378 S.C. 573, 580 (2008) (recognizing that SCDOT may be liable for a defective condition if there is a failure to take corrective action).

3 of 5


Defendant SCDOT argued that Perkins was comparatively at-fault for this incident; however, the record is replete of any act by Perkins in which she failed to act as a reasonably prudent person in like or similar circumstances. This Court is not persuaded by the argument that Perkins should be at-fault simply because her vehicle stalled out in the far-left hand lane. Perkins testified that the tire and engine failure left her vehicle inoperable; therefore, she was unable to make any additional maneuvers with her vehicle. Recognizing the danger presented by her location in the middle of I-85, Perkins vacated her vehicle and proceeded to safety. The Defendant's own testimony by its employees affirms her decision to seek the safety of the opposing shoulder. Unfortunately, due to the hazard presented by the drainage culvert, Perkins was unable complete this course of action.

Lastly, in order to prevail, Perkins must show that SCDOT had actual or constructive notice of this hazard. Perkins introduced numerous records of actual drainage inspections performed by SCDOT. The resident maintenance engineer also offered testimony that this particular roadway is thoroughly and routinely inspected by his department. Additionally, Perkins introduced an internal engineering directive for the specific purpose of requiring road inspections for "detecting deficiencies that could pose a hazard to motorists or pedestrians, thus creating a risk for the Department." This directive specifically mandates that all roads including interstates and their drainage structures shall be inspected. In light of the evidence and testimony, this Court finds that SCDOT had or should have had notice of the hazard created by this defective drainage basin. This finding is analogous with *Wooten v. S.C. Dep't. of Transp.*, 333 S.C. 464, 511 S.E.2d 355 (1999) in which the court determined that once the DOT had notice of the hazardous condition, it may be liable for such hazard.

Perkins testified at trial that she has a complicated medical history including long-term, chronic low back pain, extensive pain management and a prior knee repair; however, Perkin's testimony and the report of the independent medical examiner are both consistent with the ultimate finding that

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Perkins experienced significant right knee exacerbation and injury from the incident. Because there was no other testimony to contradict these findings, the Court accepts the facts as established from the testimony. Additionally, no testimony was offered to refute Perkin's claim for lost wages. Having found the testimony of Perkins to be credible and in placing great weigh on the report of the independent medical examiner, this Court finds that Perkins was significantly injured as a result of her fall and accordingly she is entitled to an award of damages for her medical expenses, pain, suffering, and lost wages.

CONCLUSION

Based on the foregoing analysis, this Court finds that the Defendant SCDOT owed a duty to Perkins, that SCDOT breached that duty, and that Perkins experienced damages as a proximate cause of said breach.

THEREFORE, this Court hereby finds for the Plaintiff as stated on the verdict that has been filed and orders that a judgment be entered in the amount of \$93,362.97 against the Defendant.

IT IS SO ORDERED.

April
~~March~~ 18, 2018
Spartanburg, South Carolina



Judge Grace Gilchrist Knie
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	ORDER DENYING
	)	DEFENDANT'S POST TRIAL MOTIONS
Betty Jean Perkins,	)	
Plaintiff,	)	
	)	Civil Action Number(s): 2016-CP-42-2478
	)	
vs.	)	
	)	
South Carolina Department of	)	
Transportation,	)	
Defendant.	)	

PRESIDING JUDGE:	Grace Gilchrist Knie
DATE OF HEARING:	July 20, 2018
PLAINTIFFS' ATTORNEY:	Neil E. Alger
DEFENDANT'S ATTORNEY/S:	William M. Smith and Andrew F. Lindemann
COURT REPORTER:	Shirley G. Broom
	(Hearing held at Gaffney, Cherokee County, SC)

This matter was before the Court on July 20th, 2018, upon the Defendant's SCRCF, Rule 41(b), Rule 52 (a), Rule 52(b), and /or Rule 59 Motions altering, amending, and/or for reconsideration regarding the Court's prior decision and order issued in this matter on April 18th, 2018, so as to grant an involuntary nonsuit, and/or judgment as a matter of law to Defendant or otherwise grant a new trial absolute or otherwise reduce the amount of the judgment.

There was a hearing convened to address the Defendant's Motions. Present at the hearing were Plaintiff's counsel, Neil E. Alger, and Defendant's counsel, William M. Smith and Andrew F. Lindemann. Having fully considered the matter, reviewed the record and notes regarding the hearing on the merits held on February 12th, 2018, the Motions of Defendant and attachments,

the transcript of the hearing, memoranda in support of all parties positions, and the arguments of counsel at the reconsideration hearing, and the post hearing filings of Plaintiff's Memorandum in Opposition to Defendant's Post Trial Motions filed with the Court on July 30th, 2018, and Defendant's Reply to Plaintiff's Opposition Memorandum filed with the Court on August 6th, 2018, the Court finds no basis upon which to modify the Court's prior decision. The Defendant's Motions made pursuant to SCRCF, Rule 41(b), Rule 52 (a), Rule 52(b), and /or Rule 59 seeking to alter, amend, and/or for reconsideration regarding the Court's prior decision and order issued in this matter on April 18th, 2018, so as to grant an involuntary nonsuit, and/or judgment as a matter of law to Defendant or otherwise grant a new trial absolute or otherwise reduce the amount of the judgment are DENIED.

IT IS SO ORDERED.

/s/Grace Gilchrist Knie

The Honorable Grace Gilchrist Knie
Resident Judge, Seventh Judicial Circuit

August 9, 2018



Spartanburg Common Pleas

Case Caption: Betty Jean Perkins VS South Carolina Department Of Transportation
Case Number: 2016CP4202478
Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG)
)

Betty Jean Perkins,)

Plaintiff(s),)

-vs-)

ORDER REGARDING DEFENDANT'S
 SECOND MOTION
 FOR RECONSIDERATION

SC Department of Transportation,)

Defendant(s).)

Case No.: 2016-CP-42 -02478

PRESIDING JUDGE: Grace Gilchrist Knie
 PLAINTIFF'S ATTORNEY: Neil E. Alger
 DEFENDANT'S ATTORNEY/S: William M. Smith and Andrew F. Lindemann

A 2nd Rule 59(e) SCRCP motion to reconsider and to alter or amend has been received from the Defendant, SC Department of Transportation filed with the Court on August 21, 2018, and properly served on The Court per Rule 59(g) SCRCP. Pursuant to Rule 59(f), SCRCP, the court, in its discretion, may decide the motion based on briefs without oral argument. The Court issued an Initial Order on August 27th, 2018, regarding the Motion as to the deadlines to file written submissions. The deadlines have passed. The Court decided the issue/s on written submissions.

After careful consideration of the able argument and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. Accordingly, the Defendant's Motion, pursuant to Rule 59, SCRCP,¹ is DENIED.

¹ The Court, in its discretion, has determined this Motion on the filings, without oral argument, pursuant to Rule 59(f), SCRCP.

AND IT IS SO ORDERED.

September 28, 2018

/s/Grace Gilchrist Knie
Grace Gilchrist Knie, Judge
Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Betty Jean Perkins VS South Carolina Department Of Transportation
Case Number: 2016CP4202478
Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
BETTY JEAN PERKINS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	VERDICT FORM
	)	CASE NO. 2016-CP-42-02478
	)	a/k/a 2013-CP-42-04122
SOUTH CAROLINA DEPARTMENT	)	
OF TRANSPORTATION,	)	
	)	
Defendant.	)	

1. Do you find that the defendant, South Carolina Department of Transportation, was negligent in proximately causing the collision?

☒ Yes

☐ No

IF YOU ANSWERED YES TO QUESTION 1, PLEASE GO TO QUESTION 2.

**IF YOU ANSWERED NO TO BOTH QUESTIONS 1 AND 2, PLEASE STOP
HERE AND DELIBERATE NO FURTHER.**

2. Do you find that the plaintiff, Ms. Perkins, was negligent in proximately causing the collision?

☐ Yes

☒ No

PLEASE GO TO QUESTION 3.

3. Taking the combined negligence and fault as 100%:

(a): What percentage of fault, if any, is attributable to SCDOT?
(if you answered no to question 1, your answer here has to be 0%) 100 %

(b): What percentage of fault, if any, is attributable to the plaintiff, Ms. Perkins?

(if you answered no to question 2, your answer here has to be 0%) 0 %

IF THE PERCENTAGE OF FAULT ATTRIBUTABLE TO MS. PERKINS IS GREATER THAN 50%, PLEASE STOP HERE AND DELIBERATE NO FURTHER. IF THE PERCENTAGE OF FAULT ATTRIBUTABLE TO MS. PERKINS IS 50% OR LESS, PLEASE GO TO QUESTION 4.

4. Please state the **total** amount of damages sustained by Ms. Perkins in this case.

NOTE: You have to enter some amount. Do not reduce the damages by any percentage of negligence attributed to the plaintiff in question 4.

\$ 93,362.97

February 14, 2018



Grace Gilchrist Knie,
Circuit Court Judge Seventh Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

BETTY JEAN PERKINS,

Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT
OF TRANSPORTATION,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2013-CP-42-

2013-CP-42-

LT1022

COMPLAINT

(Jury Trial Requested)

The Plaintiff alleges:

1. The Plaintiff, Betty Jean Perkins, is a citizen and resident of Smyrna, Georgia which is located in Cobb County, Georgia

2. The Defendant, South Carolina Department of Transportation ("SCDOT") governmental agency subject to suit pursuant to the South Carolina Tort Claims Act.

om
3. On or about March 1, 2012, the Plaintiff was operating her motor vehicle on Interstate 85 in Spartanburg County when the left rear tire exploded. As she exited the vehicle on the shoulder of the roadway and walked around to inspect the damage to her tire, she stepped into a drainage culvert, causing her to fall.

4. As a result of the fall, Plaintiff suffered injuries to her person.

5. The Defendant knew or should have known of the dangerous defect, had constructive knowledge of this dangerous defect, and had the duty to properly maintain the roadway so that motorists could safely travel the road.

6. The Plaintiff's injuries were proximately caused by the negligence of the SCDOT as follows:

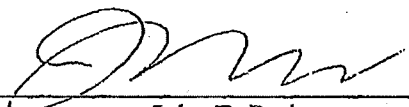
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- a. In maintaining an unreasonably hazardous and unsafe roadway;
 - b. In failing to take the steps to warn motorists of the unsafe condition of the roadway;
 - c. In failing to repair the dangerous condition of the roadway when it knew or should have known such dangerous conditions existed;
 - d. In violating its own rules for the maintenance of the roadway; and
 - e. In such other and further particulars as the evidence may establish.

7. As a result of the negligent acts of the Defendant, the Plaintiff suffered serious, severe and permanent injuries which caused her to incur expenses for medical care.

8. WHEREFORE, plaintiff prays for judgment against the defendant for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

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

BY: 

John E. Parker
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

October 3, 2013

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Betty Jean Perkins,

Plaintiff,

vs

South Carolina Department of Transportation,

Defendant.

ANSWER TO COMPLAINT

C. A. No. 2013-CP-23-4122

Defendant, South Carolina Department of Transportation, answers plaintiff's complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the complaint not specifically admitted is hereafter denied.
2. Paragraph 1 of the complaint is admitted.
3. Defendant admits paragraph 2 of the complaint that alleges SCDOT is an agency of the state of South Carolina.
4. Defendant admits that plaintiff's insured had an automobile accident on or about March 1, 2012. However, it is denied that paragraph 3 of the complaint accurately describes the accident and therefore is denied for lack of information.
5. Defendant has no information regarding paragraph 4 of the complaint and therefore the allegations are denied.
6. Defendant denies paragraphs 5, 6, 6a, 6b, 6c, 6d, 6e and 7 of the complaint.

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FOR A SECOND DEFENSE
(Comparative Negligence)

7. Paragraphs 1 through 6 above are incorporated herein insofar as the same are not inconsistent with this defense.

8. While denying that any properly named governmental entity of the state was guilty of acts of negligence or recklessness and denying that such acts proximately caused the damages, it is nevertheless, alleged that plaintiff was negligent, grossly negligent, careless, reckless, willful and wanton in one or more of the particulars:

- A. in failing to keep a proper lookout;
- B. in failing to keep her vehicle and tires in good condition to avoid the accident;
- C. in failing to stop her vehicle in a safe area along the interstate or next exit ramp;
- D. in failing to wait in her vehicle for the arrival of the South Carolina Highway Patrol.
- E. in exiting her vehicle and walking about near the interstate in an area she knew was dangerous;
- F. in failing to avoid a known danger associated with walking along the interstate and into a drainage culvert;
- G. in failing avoid the accident when she had the notice, time and opportunity to do so;
- H. in failing to observe the hazardous nature of the condition that caused her

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JUDITH D. BAUMLEY

alleged accident and injuries;

- I. in failing to exercise for her own safety that degree of care and caution that an ordinary, reasonable and prudent person would have exercised under the same or similar circumstances;
- J. in walking in an area not meant for pedestrian traffic.

9. Answering the complaint, if there was any negligence, carelessness, recklessness, willfulness and wantonness on the part of a governmental defendant which is expressly denied, plaintiff, was also negligent, careless, reckless, willful and wanton in her acts and omissions as stated above and such should be compared to any wrongful acts by any state governmental defendant and if the negligence of plaintiff exceeds 50% of the proximate cause of plaintiff's damages, then plaintiff is barred from any recovery from state governmental defendant. If plaintiff's negligent acts constitute less than 50% of the proximate cause of the damages, then the state governmental defendant is entitled to a reduction of damages proven in proportion to the degree of fault attributable to plaintiff, pursuant to the doctrine of comparative negligence.

FOR A THIRD DEFENSE
SC Tort Claims Act 15-78-60 (13) (15) & (20)

10. Paragraphs 1 through 9 above are incorporated herein insofar as the same are not inconsistent with this defense.

11. Liability of governmental entities or agencies of the state is governed by the South Carolina Tort Claims Act, South Carolina Code Ann. Section 15-78-10 et seq.

12. Defendant pleads the affirmative defenses under South Carolina Code Ann. Section 15-78-60 which provides that governmental entities may not be held liable for (13) regulatory

inspections, (15) a defect or condition unless not corrected within a reasonable time after actual or constructive notice; and (20) acts or omissions of persons other than an employee including but not limited to criminal actions of third persons.

13. Therefore, under SCRCF 12(b) as a matter of law, the Complaint fails to state a cause of action upon which relief can be granted.

FOR A FOURTH DEFENSE
SC Tort Claims Act 15-78-120(a)(1)

14. All foregoing defenses are adopted and reaffirmed herein, except for so much thereof as may be inconsistent with the allegations of this defense.

15. Pursuant to the South Carolina Tort Claims Act, Section 15-78-120(a)(1), Code of Laws of South Carolina, 1976, as amended, this defendant cannot be liable to this plaintiff for an amount in excess of \$300,000.00.

16. Therefore, pursuant to SCRCF 12(f), any claims in plaintiff's complaint which seek to recover in excess of \$300,000.00 should be stricken.

FOR A FIFTH DEFENSE
BY WAY OF MOTION TO STRIKE

17. All foregoing defenses are adopted and reaffirmed herein, except for so much thereof as may be inconsistent with the allegation of this defense.

18. Pursuant to the South Carolina Tort Claims Act, Section 15-78-120(b), Code of Laws of South Carolina, 1976, as amended, plaintiff cannot recover punitive or exemplary damages or interest prior to judgment.

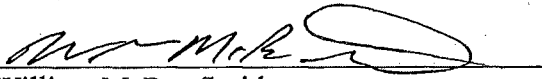
19. Therefore, pursuant to SCRCF 12(f), any claims in plaintiff's complaint which seek

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to recover punitive damages, exemplary damages, or interest prior to judgment should be stricken.

SMITH & HASKELL LAW FIRM, L.L.P.

By:



William McBee Smith

Attorney for Defendant

South Carolina Department of Transportation

218 E. Henry Street

Spartanburg, S.C. 29306

Telephone: (864) 582-6727

FAX: (864) 585-8358

Spartanburg, South Carolina

November 26, 2013

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N. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Betty Jean Perkins,

Plaintiff,

v.

South Carolina Department of
Transportation,

Defendant.

Civil Action No. 2016-CP-42-2478

**NOTICE OF MOTION AND MOTION FOR JUDGMENT
AS A MATTER OF LAW AND/OR INVOLUNTARY NONSUIT,
MOTION TO ALTER OR AMEND JUDGMENT AND/OR
MOTION FOR RECONSIDERATION, AND MOTION FOR NEW TRIAL**

TO: THE HONORABLE GRACE GILCHRIST KNIE

JOHN E. PARKER AND NEIL E. ALGER, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant South Carolina Department of Transportation will move before the Honorable Grace Gilchrist Knie at such time and place as may be set by the Court, for an Order, pursuant to Rule 41(b), Rule 52(b), Rule 52(a), and/or Rule 59(e), SCRCP, altering, amending, and/or reconsidering the Order dated April 18, 2018, so as to grant an involuntary nonsuit and/or judgment as a matter of law to the Defendant or otherwise grant a new trial absolute or otherwise reduce the amount of the judgment. The Defendant further requests the Court to amend the Order to set forth the findings of fact and conclusions of law with sufficient specificity and detail to allow for proper appellate

review. Counsel for the Defendant received a copy of the Order on April 18, 2018.

The Defendant's motion seeks the following relief based on the grounds as stated:

1. For an involuntary nonsuit and judgment as a matter of law based upon the absence of any testimony, evidence or proof establishing that the Defendant owed the Plaintiff a duty of care to provide for an area for pedestrians to walk along the median barrier on Interstate-85. Moreover, the Court is respectfully asked to reconsider its finding of "a hazard to the traveling public" and that "SCDOT was negligent in failing to take corrective action to remedy this hazard." That finding is not supported by the evidence.

2. For an involuntary nonsuit and judgment as a matter of law based upon the absence of any testimony, evidence or proof that the injuries sustained by the Plaintiff were proximately caused by any act or omission committed by the Defendant. The Plaintiff failed to prove the element of legal cause in that the Plaintiff's actions and her subsequent injuries were not reasonably foreseeable within the contemplation of the law. It is not reasonably foreseeable that motorists would stop their vehicle along the median barrier on Interstate-85 and walk in the areas of the median catch basin at issue.

3. For an involuntary nonsuit and judgment as a matter of law based upon the absence of any testimony, evidence or proof of any prior notice of defect to the median catch basin on Interstate-85 where the Plaintiff fell. The Defendant is entitled to absolute immunity pursuant to S.C. Code Ann. § 15-78-60(15), which provides that "governmental entities are not liable for the design of highways and public ways."

4. For an involuntary nonsuit and judgment as a matter of law based upon the absence of any competent testimony, evidence or proof of any defect to the median catch basin on Interstate-85 where the Plaintiff fell, including no evidence of a defective design. In addition, there is no basis for the Court's ruling that the "gap between the concrete drainage basin and the concrete center median" was either "a deviation from the design plans" or "is drastically wider than the analogous openings within the drainage grate itself." That finding is not supported by the evidence. In addition, the Plaintiff produced no evidence from which such a determination could reasonably be made.

5. For an involuntary nonsuit and judgment as a matter of law based upon the evidence of the Plaintiff's negligence in excess of fifty percent in stopping her vehicle on Interstate-85 in violation of S.C. Code Ann. § 56-5-2530 and exiting her vehicle to walk along the median barrier in area not designed or intended for pedestrian traffic. The Plaintiff's negligence claim is barred as a matter of law by her own negligence and degree of fault.

6. For reconsideration of the judgment or alternatively a new trial absolute because the Court abused its discretion in failing to reduce the Plaintiff's damages by the 50% percent determined by the Independent Medical Examination Report of Dr. Gordon Early and to further reduce the Plaintiff's damages by the Plaintiff's comparative fault in violating S.C. Code Ann. § 56-5-2530 and walking along the median barrier in area not designed or intended for pedestrian traffic. The Court erred in finding no fault on the part of the Plaintiff.

7. For reconsideration of the judgment or alternatively a new trial absolute because of the absence of sufficient or credible evidence that justified the Plaintiff's action in stopping her vehicle on Interstate-85 in violation of S.C. Code Ann. § 56-5-2530. The Plaintiff presented no credible evidence, such as the testimony of an automotive expert, to support the finding that the tire and engine of the Plaintiff's vehicle simultaneously failed so as to render the vehicle inoperable and incapable of having been moved to the emergency lane of Interstate-85 rather than stopped adjacent to the median barrier where there is no emergency lane.

8. Rule 52(a), SCRCPP, requires "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." The Order filed April 18, 2018, fails to set forth the findings of fact separately and with specificity to support the Court's decision and the damages awarded. The Court is respectfully asked to set forth all material findings of fact and conclusions of law as required by Rule 52(a).

The Defendant's motion is based upon the pleadings and record filed in Civil Action Number 2016-CP-42-2478; the Order filed April 18, 2018; the supporting memorandum to be filed; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

Respectfully submitted,

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April 30, 2018

ORAL ARGUMENT REQUESTED

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Betty Jean Perkins,

Plaintiff,

vs.

**South Carolina Department of
 Transportation,**

Defendant.

**POST TRIAL BRIEF OF
 DEFENDANT**

C.A. No. 2016-CP-42-2478

COMES NOW Defendant, the South Carolina Department of Transportation ("SCDOT"), by counsel, in support of its Post Trial Motion for Judgment as a Matter of Law and/or Involuntary Nonsuit, Motion to Alter or Amend Judgment and/or Motion for Reconsideration, and Motion for New Trial, stating as follows:

STATEMENT OF CASE

Plaintiff had a flat tire while driving on I-85 at 9:10 p.m. on March 1, 2012. She pulled her vehicle to the far left lane and stopped along the concrete median barrier in the middle of I-85. Plaintiff exited her vehicle to walk around and stepped onto a cast iron catch basin along the concrete median barrier, fell and was injured. Plaintiff filed a complaint against defendant, SCDOT, on October 17, 2013. Defendant SCDOT filed and served its answer to the complaint on November 26, 2013. The case was mediated March 19, 2015 which did not result in settlement. Before trial in June, 2015, plaintiff moved to strike the case from the trial docket pursuant to SCRCP 40(j) which was granted by Order of the Court on June 8, 2015. Plaintiff subsequently moved to restore the case to the trial docket which was granted by Order of the Court dated June 24, 2016.

The parties consented to a non-jury trial which was called to trial before the Honorable Grace Gilchrist Knie on February 12, 2018. On February 15, 2015, the Court electronically filed and served a Verdict Form finding in favor of plaintiff for \$93,362.97. On April 19, 2018, the Court electronically filed and served a formal Order.

On April 30, 2018, Defendant SCDOT electronically filed and served its Motion for Judgment as a Matter of Law and/or Involuntary Nonsuit, Motion to Alter or Amend Judgment and/or Motion for Reconsideration, and Motion for New Trial.

STATEMENT OF FACTS

Plaintiff had a flat tire while driving on I-85 at 9:10 p.m. on March 1, 2012. Rather than pull her vehicle off to the right shoulder of I-85, she pulled her vehicle to the far left lane and stopped her vehicle along the concrete median barrier in the middle of I-85. Plaintiff exited her vehicle to walk around the vehicle and stepped onto a cast iron catch basin along the concrete median barrier. Plaintiff fell and was injured.

Trooper A.D. Earl reported to the scene and completed an incident report in which he noted Plaintiff's injuries. Trooper Earl reported no defects to the catch basin or to the highway. (Tr. 22: 1-9 and Tr. 142: 3-25 to Tr. 142: 1-6),

Plaintiff was transported to the Village Hospital Emergency Department in Greer, where the emergency room physicians examined and treated injuries to Plaintiff's left knee and right arm and noted some low back pain. Thirteen days later, Plaintiff visited Pinnacle Orthopedic Specialist in Smyrna, Georgia, complaining about pain in her right hip, right knee, and left knee, which she attributed to her accident on March 1, 2012. Medical records from Pinnacle Orthopedic Specialist showed a significant prior medical history from August 17, 2010 that included neck and arm pain, lumbar spondylosis, left leg pain, bilateral leg pain, chronic knee pain, a meniscus tear to the right

knee, bilateral thigh pain, prior right knee arthroscopy, persistent right knee pain, and low back pain.

Because of Plaintiff's extensive prior medical conditions, Judge Keith Kelly approved a consent order appointing Dr. Gordon Early to perform an independent medical examination and to prepare a written report setting out his findings, including results of all tests made. The parties stipulated to the admissibility of Dr. Gordon Early's Independent Medical Examination Report submitted on February 9, 2015.

Plaintiff claims that the catch basin where she fell along the I-85 median must have been defective, causing her to fall. However, there is no testimony, report, documentary evidence, or photograph that reveals any defect to the catch basin in question.

SCDOT's Assistant District Maintenance Engineer, Michael Holden, searched SCDOT inspection records for all catch basins within one mile in each direction of Mile Marker 61, where Plaintiff's accident occurred. (Tr. 58:16-19; 59:6-13). His search retrieved records of all 27 inspections that were performed within this section of I-85 between June 10, 2010 and July 24, 2013. (Tr. 59:24 to 60:7). Ten of these 27 inspections occurred between June 10, 2010 and the date of the accident on March 1, 2012. (Tr. 60:8-23). Each of these inspections covered roadway drainage, drain culverts, and catch basins, including the catch basin where Plaintiff fell. (Tr. 59:6-13). An initial inspection was also performed at the time construction was completed and the roadway was turned over by the contractor to the state, to confirm that the roadway was built according to specification tolerances. (Tr. 62:7 to 63:17).

Mr. Holden found one report dated August 24, 2010 (19 months before Plaintiff's accident) that stated that the lid to the catch basin was off and had to be moved back in place. (Tr. 70:20 to

71:19). The catch basins along the I-85 median are a Type 15 Catch Basin with two heavy iron grates weighing a total of 230 pounds. (Tr. 53:4-7).

Replacing the lid to a Type 15 Catch Basis requires SCDOT Maintenance to close a lane of traffic along the concrete median barrier in order to perform this work safely. (Tr. 72:6 to 73:1). A lane closure was required because of the weight of the grates and also because the space between the yellow line and concrete median barrier was not wide enough to stop and safely work along the median. (Tr. 72:14-25 to 72:1). Such an operation would be documented in SCDOT's computerized work request system. (Tr. 75:6-9). Mr. Holden found no other report of any work having to be done for the catch basin in question or for any other catch basin in the area around the scene of Plaintiff's accident. (Tr. 74:16-22).

Mr. Holden testified about a photograph of the catch basin in question that he took shortly after Plaintiff's accident. (Tr. 75:23 to 76:1). He was asked whether he saw "anything about that photograph there that would require SCDOT maintenance to fix," and he answered "no." (Tr. 75:2-5). He further testified that he is not aware of any document or evidence possessed by SCDOT that would indicate there is any error or defect with the drain in question. (Tr. 75:13-15).

Mr. Holden was asked whether a gap between the concrete edge of the catch basin box and the concrete median was wider than the design plans specified. (Tr. 76:2-14; 77:19-22). He replied that he did not know, but he testified that the gap was not a defect. (Tr. 77:13-14; 78:2-4). Mr. Holden specifically denied that plaintiff's photograph of the catch basis indicated any defect that needed to be repaired. Mr. Holden explained that a structural defect would be "if it is broken, if it was – there was debris in front of it, if it's not draining properly, you know, say, it's stopped up and, you know, water's not going down, from a maintenance standpoint, that is a defect." (Tr. 79: 21-25).

SCDOT's Preconstruction Support Engineer, Rob Bedenbaugh, examined the plans to the Type 15 Catch Basin and that section of roadway along I-85. (Tr. 28:7-8; 38:6-11). He noted that these plans are used uniformly across the state. (Tr. 40:1-3). Mr. Bedenbaugh has been a design engineer for about 23 years. (Tr. 52:12-15). He testified that the plans show gaps in the grates (3.5 inches wide), and a distance of six inches from the edge of the metal grate to the concrete barrier. (Tr. 43:8-24). He was questioned about the photograph of the catch basin on which Plaintiff fell, and he testified that he could not speculate as to how wide the gap is in the photograph. (Tr. 44:7-11). He indicated that "[i]t's just hard to say with the angle of the photograph." (Tr. 46:20).

Plaintiff's counsel questioned Mr. Bedenbaugh at length in an effort to elicit testimony that a gap depicted in a photograph was inconsistent with the design specifications for the catch basin. In response to these questions, Mr. Bedenbaugh set out four reasons to explain that there was no inconsistency between the catch basin and the design drawings. First, he testified that the design calls for construction joints that allow for contraction and expansion when temperatures vary. (Tr. 44:13-18). He testified that the plans that counsel showed to him do not show the construction joints, but that the construction joints would be shown on a different drawing. (Tr. 48:12-15). Mr. Bedenbaugh explained that the construction joints allow the concrete to contract and expand to prevent cracking of the roadway or the concrete barrier. (Tr. 48: 17-24).

Second, he explained that the photograph does not depict a gap that can be characterized as a "void" because there is concrete material in the gap. (Tr. 45:9-11). He noted that an open void would not be acceptable but added that the gap shown in the photograph shows concrete or asphalt in the gap. (Tr. 46:25 to 47:2). Plaintiff's counsel specifically asked Mr. Bedenbaugh: "So if they're not flush, it's not built to the specifications, here, correct?" (Tr. 48:5-6). He did not

answer in the affirmative. Instead, he emphasized again that "like I said, there is material there." (Tr. 48:7). Thus, he confirmed that the photograph does not depict an unacceptable open void, or a drain that is not in conformity with any requirement that the grate be flush with the concrete median barrier.

Third, Mr. Bedenbaugh testified that the catch basin is designed to have a gap in order to allow for emergency overflow of water. (Tr. 50:7-14). The gap ensures that large items such as pieces of tires or milk jugs do not clog up the grate. (Tr. 50:11-19).

Fourth, Mr. Bedenbaugh testified that an installed drain does not have to conform precisely to the design drawings. He explained that "there are construction tolerances" that allow for "engineering discretion." (Tr. 45:20-25). He added: "When we're pouring concrete and forming up different material, they just have to work with wood shims and all sorts of material to actually make it – make it meet these parameters. So it's an understood tolerance where there's just room to actually construct it physically." (Tr. 46:1-5).

Mr. Bedenbaugh directly addressed the issue of whether the photographs of the catch basin where Plaintiff fell show any design defect or other defect. He unequivocally testified as follows:

Q. When you looked at the pictures that Plaintiff showed you of the storm grate, from your experience did you see any design defect or defect in the storm catch basin?

A. No. It looks reasonable for what that device is supposed to be.

Q. And would you expect DOT maintenance to make any alterations to what you see in those photographs?

A. Not unless a specific problem was pointed out.

(Tr. 52:16-23).

The Type 15 Catch Basin was designed to allow maximum drainage on the interstate. (Tr. 49:10-12). The catch basin in question is located in an emergency lane that is not wide enough for

a car to park so that it is completely out of the adjacent travel lane. (Tr. 66:2-8; 67:16-20; 68:17-18). The emergency lane is designed primarily for the sole purpose of drainage, not for vehicles or pedestrian travel. (Tr. 34:11-16; 35:14-22; 51:24 to 52:2; 66:7-8). Mr. Bedenbaugh testified that I-85 is a controlled access highway for purposes of S.C. Code Ann. § 56-5-2530, which generally prohibits stopping a vehicle on such a highway. (Tr. 51:16 to 52:2).

Mr. Holden testified that motorists should NOT pull over into the far left shoulder because "there's not really enough room to pull a car to the left." (Tr. 67:18-20). Similarly, Mr. Bedenbaugh testified that the left shoulder is "not wide enough for refuge" because a vehicle there would be partially blocking the far left lane of travel. (Tr. 31:8; 32:7-9). Mr. Bedenbaugh testified that the outside (right) shoulder would be typically used for a motorist to take refuge. (Tr. 31:19-20; 32:13-14).

SCDOT's Answer to the Complaint denied liability and maintained that Plaintiff's recovery is barred by her comparative contributory negligence for stopping her vehicle and walking along the median barrier on I-85. SCDOT also asserted defenses under the South Carolina Tort Claims Act, which provides that SCDOT may not be held liable under Section 15-78-60 of the South Carolina Code, subsection (13) for regulatory inspections, subsection (15) for defects and design, and subsection (20) for acts or omissions of others.

ARGUMENT

I. **SCDOT IS ENTITLED TO AN INVOLUNTARY NONSUIT AND JUDGMENT AS A MATTER OF LAW BASED UPON THE ABSENCE OF ANY COMPETENT PROOF OF ANY DEFECT IN THE MEDIAN CATCH BASINS ON I-85**

In analyzing the issue of whether the catch basin was defective, it is important to clarify the narrow, limited basis upon which SCDOT can be held liable. Logically, there are only two possibilities under which a catch basin could be defective. One possibility would be that the catch basin was defectively designed. The other possibility would be that the catch basin did not conform to its design at the time of Plaintiff's accident so that it constituted an unreasonably dangerous condition. For example, a particular catch basin might be damaged by some external cause between the time it was installed and the time that an accident occurs.

As to the first scenario, SCDOT cannot be held liable for a defective design. The South Carolina Tort Claims Act expressly states that "[g]overnmental entities are not liable for the design of highways and other public ways." S.C. Code Ann. § 15-78-60(15).¹ This is an absolute immunity, as was explained in *Summer v. Carpenter*, 328 S.C. 36, 492 S.E.2d 55 (1997), as follows:

As for negligent design, the Act provides absolute governmental immunity from liability for loss resulting from the design of highways and other public ways. S.C. Code Ann. § 15-78-60(15). Therefore, even if the Highway Department was on notice the design of the intersection was dangerous, the Highway Department was immune from suit for negligent design. Accordingly, the trial judge properly granted summary judgment for respondent on the issue of negligent design.

¹ Note that immunity under subsection (15) differs from discretionary immunity under subsection (5) of section 15-78-60. In order to claim immunity under subsection (5), SCDOT would have to demonstrate that, faced with alternatives, it actually weighed competing considerations and made a conscious choice and that in weighing the competing considerations and alternatives, it utilized accepted professional standards appropriate to resolve the issue before it. *Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429, 445 S.E.2d 439, 440 (1994). In the present case, SCDOT is not relying on discretionary immunity.

Id. at 43, 492 S.E.2d at 58;² *cf. Cooper v. S.C. Highway Dep't*, 183 S.C. 155, 190 S.E. 499, 502 (1937), *overruled on other grounds by McCall ex rel. Andrews v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) ("The Highway Department is not an insurer of the safety of travelers over its highways"). In addition, Plaintiff did not present any expert testimony to show that the design was defective.

Thus, the only possible circumstance under which SCDOT could be held liable for a defective catch basin would be if the catch basin did not conform to its intended design at the time of the accident. Plaintiff produced no competent evidence that the catch basin deviated from its design. In fact, the only evidence on this point was from SCDOT's witnesses, who stated that the catch basin was not designed for pedestrian traffic and that there was, in fact, no defect. Moreover, SCDOT engineer, Rob Bedenbaugh testified that the median barrier was not designed or intended to be wide enough to be a place for motorists to stop. (Tr. 34: 11-23). Finally, Trooper Earl reported no defects to the catch basin or to the highway in his Incident Report. (Tr. 22: 1-9 and Tr. 142: 3-25 to Tr. 142: 1-6).

Although a photograph of the catch basin was introduced into evidence, no witness testified that the photograph showed a deviation from the design of the catch basin. Contrary to this Court's findings, neither SCDOT witness testified that "the presence of a large gap between the concrete drainage basin and the concrete center median is a deviation from the design plan." (Order, p. 3). There was no evidence, photographic or otherwise, that any external force had damaged the catch basin after it was installed. SCDOT respectfully submits that the Court cannot conclude that the

² Even if SCDOT were not absolutely immune for designing a defective catch basin, it would not be liable in the absence of evidence that there was, in fact, a defective design. The only evidence on this issue at trial was from SCDOT's professionals, who testified that there was no defect. Plaintiff presented no expert testimony that the catch basin was defectively designed.

catch basin had been damaged or failed to conform to its intended design simply by looking at a photograph, particularly when no witness testified that there was damage or that it did not conform to its design.

In its Order, the Court determined "this particular gap is drastically wider than the analogous openings within the drainage grate itself" and that the "gap presents a hazard to the traveling public." (Order, p. 3). However, that finding is purely speculative and not based on competent evidence in the record. Importantly, Plaintiff presented no measurements to establish any deviations from the design specifications. Plaintiff presented only a single photograph that was taken at such an angle that it cannot be determined by a preponderance of the evidence that the gap between the catch basin and the concrete barrier was wider than its design. Plaintiff presented no evidence of the width of the gap (which was designed to be present) or what the design specifications required for the gap's width. Plaintiff, instead, focused on the distance between the catch basin and the vertical concrete barrier which by the design specifications was to be six inches. However, the only photograph presented by Plaintiff was not taken from the appropriate angle to even estimate – let alone determine by a preponderance of the evidence – that the distance exceeded six inches. To make that determination, measurements were needed. At the very least, to even estimate the distance, a photograph taken directly above and looking down on the edge of the concrete barrier was needed. The Court has no such competent evidence in the record, and thus, the Court's finding is purely speculative and cannot support the judgment entered.

In addition, Plaintiff has not shown that any deviation in the gap as may exist – although the evidence does not establish such a deviation from the design – rendered the catch basin to be unreasonably dangerous so as to be actionable. There is no evidence to support the Court's finding

that any deviation as may exist created a foreseeable hazard or one that should be identified in a reasonable inspection.

In summary, there is no competent evidence that could prove that SCDOT is liable in this case. Accordingly, SCDOT is entitled to an involuntary nonsuit and a judgment as a matter of law. Plaintiff failed to present sufficient evidence to establish any liability on the part of SCDOT.³

II. SCDOT IS ENTITLED TO AN INVOLUNTARY NONSUIT AND JUDGMENT AS A MATTER OF LAW BASED UPON THE ABSENCE OF ANY TESTIMONY, EVIDENCE, OR PROOF OF ANY PRIOR NOTICE OF A DEFECT IN THE CATCH BASIN

As is discussed in Part I above, notice is irrelevant in this case because SCDOT is immune from liability for any defect in the catch basin and/or there was no competent proof of any defect. Therefore, it is a moot point whether or not SCDOT had any prior notice of a defect. Nevertheless, SCDOT will address the notice issue.

SCDOT cannot be held liable for a defective catch basin in this case unless the defect was "not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice." S.C. Code Ann. § 15-78-60(15); *cf. Hightower v. Greenville County*, 255 S.C. 192, 195-96, 177 S.E.2d 785, 786 (1970) ("We have held that a county will not be held liable for injuries caused by a defect in a roadway unless it be shown that the county had actual or constructive notice of the defect").

Plaintiff presented no evidence that SCDOT either failed to inspect the catch basin prior to the accident or negligently inspected it. Even if there had been such evidence, SCDOT would be

³ Moreover, even if there was evidence that the catch basin was somehow damaged, there was no proof as to what caused such damage. In the absence of any proof, it is just as likely that someone other than a governmental employee caused such damage. SCDOT would be immune from liability for damage that was caused by a third party, because Section 15-78-60 provides immunity for "an act or omission of a person other than an employee including but not limited to the criminal actions of third persons." S.C. Code Ann. § 15-78-60(20).

immune under Section 15-78-60, which precludes liability for "regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety." S.C. Code Ann. § 15-78-60(13).

Plaintiff presented no evidence that SCDOT had actual notice of any defect. In fact, the only evidence as to notice was testimony from SCDOT's witnesses. The Assistant District Maintenance Engineer, Michael Holden, testified that there were no prior reports of any defect other than a report that a cover was repositioned some 19 months before the accident occurred.

Similarly, Plaintiff presented no evidence that any alleged defect existed "for such length of time that in the exercise of reasonable care the defect should have been discovered and remedied." *Hightower*, 255 S.C. at 196, 177 S.E.2d at 786. Thus, there was no proof that SCDOT had constructive notice of any defect. Therefore, even if a defect existed, there was a complete absence of any evidence of prior actual or constructive notice. In fact, the only evidence on point was that there was no record of any prior report of a defective condition at the location in question.

The Court's Order states that both SCDOT employees testified that the grate does not match the design indicated on the plans, and that the presence of a gap is a deviation from the design plans. However, as is set forth above in the statement of facts, neither witness so testified. Mr. Holden testified that he is not aware of any document or evidence possessed by SCDOT that would indicate there is any error or defect with the drain in question. (Tr. 75:13-15). Mr. Bedenbaugh outlined four reasons why the drain was not inconsistent with the design drawings. He testified that an "open void" gap would be inconsistent with the design, but he denied that such a void

appeared in the photograph because there was concrete or asphalt material in the gap. (Tr. 46:25 to 47:2).

The Court's Order further states that the design plans provide for the concrete drainage basin and the concrete center median to be flush against each other. However, Mr. Bedenbaugh explained that the design drawings upon which defense counsel relied do not show construction joints that are part of the design. (Tr. 44:13-18; 48:12-24). He also specifically testified that the photograph shows no defect in the catch basin where Plaintiff fell. (Tr. 52:16-23). Thus, there was simply no evidence that the catch basin deviated from the design plans.

III. EVEN IF SCDOT WAS NEGLIGENT, PLAINTIFF'S CLAIM IS BARRED ON THE BASIS OF HER COMPARATIVE FAULT.

In its Order, the Court erred in concluding that the Plaintiff was not comparatively negligent. More specifically, Defendant SCDOT contends that the sole reasonable inference which may be drawn from the evidence is that Plaintiff's negligence exceeded fifty percent, and as a result, Plaintiff is barred from recovery as a matter of law.⁴ Alternatively, the Court has erred in failing to find the Plaintiff comparatively negligent in any degree. The Plaintiff was not free from fault.

Under S.C. Code Ann. § 56-5-2530(1)(i), it is unlawful to stop, stand, or park a vehicle on any controlled-access highway.⁵ The undisputed evidence reveals that Plaintiff violated this

⁴ In *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000), the Supreme Court explained that a circuit court may find a plaintiff's claim is barred 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." 529 S.E.2d at 713. The *Bloom* Court ruled that the evidence in that case, even when viewed in a light favorable to the plaintiff, demonstrated that the plaintiff was more than fifty percent negligent. See also, *Hopson v. Clary*, 321 S.C. 312, 468 S.E.2d 305 (Ct. App. 1996); *Bass v. Gopal, Inc.*, 384 S.C. 38, 680 S.E.2d 917 (Ct. App. 2009).

statute. *See, Helfrich v. Brasington Sand & Gravel Co.*, 268 S.C. 236, 233 S.E.2d 291 (1977) (affirming defense verdict against motorist who violated statute that prohibited stopping, standing, or parking a vehicle on a bridge).

Plaintiff's violation of Section 56-5-2530(1)(i) constitutes comparative negligence *per se*, which precludes recovery when it exceeds fifty percent and proximately causes injury. *Ott v. Pittman*, 320 S.C. 72, 80, 463 S.E.2d 101, 106 (Ct. App. 1995). A motorist must exercise a higher degree of care when driving upon a shoulder. *Bunton v. S.C. State Highway Dep't*, 186 S.C. 463, 196 S.E. 188, 191 (1938); *cf. Davis v. Payne*, 120 S.C. 473, 113 S.E. 325, 326 (1922) ("It is too well settled to require the citation of authority that, when there is a safe way and a dangerous way, he who takes the dangerous way cannot recover if injured").

In this case, Plaintiff parked her car illegally, got out, and walked in an area that was not designed or intended for pedestrian traffic. If she had she remained in her car and waited for help to arrive, or if she had pulled over on the other side of the highway, she would likely not have been injured. Her comparative fault exceeded fifty percent.

In addition, the Court has erred in accepting Plaintiff's self-serving and unsupported testimony that her vehicle was unable to be moved to the right shoulder of the highway because she *simultaneously* blew a tire and experienced an engine failure rendering her vehicle incapable of being moved from its position adjacent to the concrete median barrier. SCDOT submits that

⁵ Similarly, the South Carolina Driver's Manual on page 28 states as follows:

It is illegal to stop or park your vehicle at any of the following places except to avoid an accident or unless directed by the law enforcement officer or traffic control device to do so.

1. On an interstate. In case of mechanical trouble or other emergency, stop on the right shoulder, entirely clear of moving traffic.

Plaintiff's testimony is contrary to all competent evidence in the record as to the cause for her vehicle breakdown, is unsupported by expert testimony from any mechanic who inspected her vehicle, and absolutely defies common sense and any standard of plausibility. In addition, the claim that her vehicle suffered an engine failure is contrary to Plaintiff's own Complaint which alleges as follows: "On or about March 1, 2012, the Plaintiff was operating her motor vehicle on Interstate 85 in Spartanburg County when the left tire exploded." *See*, Complaint, ¶ 3. The Complaint makes no mention of any engine failure that rendered the vehicle inoperable. *See*, *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992) ("parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise"). In short, the Court should not accept as fact that the Plaintiff's vehicle was inoperable and thus incapable of being safely maneuvered to the right shoulder. The claim of an engine failure simultaneous with a tire blow out was not supported by any evidence from an automotive expert witness who examined the engine. Moreover, the simultaneous occurrence of two failures is simply implausible to be believed in the absence of competent evidence establishing such an occurrence.

In short, Plaintiff's violation of S.C. Code Ann. § 56-5-2530 establishes her comparative negligence of greater than fifty percent and bars her recovery in this case.⁶

⁶ This case is similar in many respects to *Bass v. Gopal, Inc.*, 384 S.C. 38, 680 S.E.2d 917 (Ct. App. 2009), where the Court of Appeals concluded as a matter of law that the plaintiff's negligence claim was barred by comparative negligence because the only reasonable inference to be drawn from the evidence was that the plaintiff's actions placed himself in harm's way. Later, on a writ of certiorari, the Supreme Court affirmed Court of Appeals on different grounds. The Supreme Court did not reach or comment on the comparative negligence defense. Justice Pleicones, however, concurred by concluding "that the Court of Appeals correctly affirmed the grant of summary judgment on the comparative negligence ground." *Bass v. Gopal, Inc.*, 395 S.C. 129, 716 S.E.2d 910, 917 (2011).

IV. PLAINTIFF CANNOT PROVE PROXIMATE CAUSE BECAUSE HER ACCIDENT WAS NOT FORESEEABLE AS A MATTER OF LAW AND SCDOT DOES NOT HAVE A DUTY TO MAINTAIN AN AREA WHERE PEDESTRIANS ARE NOT REASONABLY EXPECTED TO BE TRAVERSING.

Moreover, any alleged negligence on the part of SCDOT was not a proximate cause of Plaintiff's accident because it was not reasonably foreseeable that she would violate a statute and walk in an area that was not designed or intended for pedestrians. Specifically, it is not reasonably foreseeable that motorists would stop their vehicle along the median barrier on Interstate-85 and walk in the area of the median catch basin at issue. Likewise, the law does not impose a duty on SCDOT to design or maintain the center median in such a manner to guard against hazards to pedestrians traversing that median.

In *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 638 S.E.2d 650 (2006), the Supreme Court explained the law on proximate cause:

Negligence is not actionable unless it is a proximate cause of the injury. *Hanselmann v. McCardle*, 275 S.C. 46, 48, 267 S.E.2d 531, 533 (1980). Proximate cause requires proof of both causation in fact and legal cause. *Oliver v. S.C. Dept. of Highways and Pub. Transp.*, 309 S.C. 313, 316, 422 S.E.2d 128, 130 (1992). Causation in fact is proved by establishing the injury would not have occurred "but for" the defendant's negligence. Legal cause is proved by establishing foreseeability.

Id. at 146-47, 638 S.E.2d at 662. "The standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained of act." *Young v. Tide Craft, Inc.*, 270 S.C. 453, 462, 242 S.E.2d 671, 675 (1978).

In analyzing the issue of foreseeability, courts focus on whether the conduct that resulted in the accident would occur "in the ordinary and normal course of events" as opposed to falling "within the category of the unusual or extraordinary." *Nelson v. Piggly Wiggly, Inc.*, 390 S.C. 382, 393-394, 701 S.E.2d 776, 782 (Ct. App. 2010). In *Nelson*, which involved a parking lot accident,

the Court of Appeals found that the improper operation of the vehicle in that instance "was not a foreseeable hazard against which [defendants] were required to protect [plaintiff]." 701 S.E.2d at 782. The Court concluded that "[a]lthough not entirely unprecedented, the vehicle's acceleration and contact with [plaintiff] were unexpected and unusual." *Id.*

On the issue of foreseeability, the Court has ruled that "it is foreseeable that [the center median] will be used by the traveling public and others in variety of occasions including emergency stops." (Order, p. 3). That ruling is not supported by the evidence. While it may be not entirely unprecedented, there is no reasonable expectation for motorists to stop their vehicles in the center median which was not designed for such. Any vehicle stopped in that location cannot be removed from the left lane of traffic and poses great safety hazards to the other motorists. Thus, there is no reasonable expectation or foreseeability *within the contemplation of the law* that pedestrians would be traversing the area where the catch basin is located. As a result, the law does not and should not require SCDOT to design or maintain the median in the area of the catch basin at issue to allow for pedestrian traffic. An emergency situation may arise, but that situation would be unexpected and unusual, consistent with the *Nelson* decision. That situation does not create foreseeable circumstances for which SCDOT has a duty of care to provide for the safety of pedestrians. In short, SCDOT is entitled to judgment as a matter of law based upon Plaintiff's failure to establish a duty of care under these unique circumstances or the element of proximate cause.

V. THE COURT ERRONEOUSLY FAILED TO REDUCE PLAINTIFF'S RECOVERY

SCDOT is entitled to a new trial absolute or a new trial nisi remittitur because the Court abused its discretion in failing to reduce Plaintiff's damages by the fifty percent determined by the

Independent Medical Examination Report and in failing to further reduce Plaintiff's damages by Plaintiff's comparative negligence. The Court's Order listed Plaintiff's total damages as being \$93,362.97. However, the Court is required to reduce the damages awarded based on comparative fault⁷ and on the fact that only fifty percent of her injuries can be attributed to the accident.

The independent medical examiner, Dr. Gordon Early, determined that only a four percent worsening of Plaintiff's back pain was attributable to the accident, and that fifty percent of Plaintiff's other injuries were due to causes other than the accident. Therefore, even if this Court rejects all of SCDOT's arguments on liability, the Court is respectfully requested to reduce the award of \$93,362.97 to account for Dr. Early's findings as to medical causation.⁸

⁷ As is discussed in Part III above, Plaintiff's comparative negligence exceeds fifty percent and bars any recovery. However, assuming arguendo that her comparative fault was less than fifty percent, the Court must reduce her recovery accordingly.

⁸ Rule 52(a), SCRCP, requires "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." The Court's Order fails to set forth the findings of fact separately and with the needed specificity to support the damages awarded. In fact, the Order fails to explain how the Court reached the award of \$93,362.97 in actual damages that was made, including the elements of damages on which the award was based.

CONCLUSION

For the foregoing reasons, SCDOT is entitled to an involuntary nonsuit and judgment as a matter of law or, alternatively, a new trial absolute.

Respectfully submitted,

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Department of Transportation*

July 18, 2018

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Betty Jean Perkins,

Plaintiff,

v.

South Carolina Department of
Transportation,

Defendant.

) IN THE COURT OF COMMON PLEAS
)

) CIVIL ACTION NO.: 2016-CP-42-2478
)

**Plaintiff's Memorandum in Opposition
to Defendant's Post Trial Motions**

TO: WILLIAM MCBEE SMITH, ESQUIRE, AND ANDREW F. LINDEMANN, ESQUIRE,
ATTORNEYS FOR DEFENDANT:

COMES NOW Plaintiff Betty Jean Perkins (hereinafter "Ms. Perkins" or "Plaintiff"), by and through her undersigned counsel, and hereby submits to the Court her Memorandum in Opposition to Defendant South Carolina Department of Transportation's (hereinafter "SCDOT" or "Defendant") Post Trial Motions for Judgment as a Matter of Law and/or Involuntary Nonsuit, Motion to Alter or Amend Judgment and/or Motion for Reconsideration, and Motion for New Trial. For the reasons stated herein, the Defendant's motion should be denied.

BACKGROUND

This case arises out of an accident that occurred at approximately 9:15 p.m. on March 1, 2012 on I-85 in Spartanburg County, South Carolina. Plaintiff was driving her son-in-law's 1991 Lincoln Town Car southbound on I-85 in the far left lane when she suddenly experienced a tire and engine failure, causing her vehicle to stall out partially in the far left lane and center median. (Tr. 82:22 – 83:25). After calling law enforcement, Plaintiff exited her vehicle with the intention of moving to the safety of the shoulder on the other side of the interstate when she suddenly and unknowingly stepped into a void between a drainage culvert and the vertical, concrete, center median. (Tr. 84:8 – 87:3). As a result, Plaintiff lost her balance and fell forward onto her knees and then completely flat on the ground. (Tr. 86:10-13). Fortunately, some unidentified, good Samaritans saw the Plaintiff on the ground and escorted

her to the right shoulder of the highway before using a truck to tow her Lincoln Town Car to the right shoulder as well. (Tr. 89:1-21). Shortly afterwards, South Carolina Highway Patrolman Trooper A.D. Earl arrived on the scene. (Tr. 89:22 – 90:4). Trooper Earl's report states:

The female subject stepped into a drainage culvert after exiting her vehicle. The subject's vehicle had blew a tire prior to incident. Subject has visible injuries to her left knee and leg. Subject also has visible injuries to her left arm and elbow. She was transported to The Village of Pelham by Medic # 9.

(Tr. D. Ex. 2). Plaintiff was transported to the Village Hospital and treated for her injuries from the fall in the emergency department. (Tr. 94: 11-22).

After her course of treatment at the hospital, Plaintiff was picked up by her boyfriend and they proceeded to return to I-85 and tow the disabled vehicle off the interstate to a nearby location. (Tr. 95:10-25). The disabled vehicle remained at that location for approximately a month. (Tr. 96:6-9). Once the vehicle was towed back to Plaintiff's residence in Atlanta, Plaintiff and her boyfriend attempted to repair the vehicle. (Tr. 98:8 – 99:1). During the course of those repairs to the Lincoln Town Car, they discovered that the engine failure was due to the engagement of the emergency fuel shut-off located in the trunk of the vehicle. *Id.* After releasing this shut-off mechanism, Plaintiff and her boyfriend were successfully able to restart the engine. (Tr. 98:24 – 99:1).

Following her initial treatment at the hospital, Plaintiff sought medical care at Pinnacle Orthopedics. Although Plaintiff had routinely sought treatment from this medical provider long before the subject incident for chronic back pain, she presented after the incident with new symptoms in her knees and exacerbation of the injuries to her low back. (Tr. 99:17-19, 100:21-23, 103:16-25). In April of 2012, Plaintiff underwent arthroscopic surgery to repair the meniscus in her right knee. (Tr. 104:16-24). Notwithstanding this surgery, Plaintiff's right knee issues did not resolve. (Tr. 104:25 – 105:1). Plaintiff endured these right knee issues for nearly two and a half years. (Tr. P. Ex. 1, p. 4). In anticipation of further extensive knee operations, Plaintiff relocated to North Carolina to be closer to her family. (Tr.

107:8-10). In July of 2014, Plaintiff underwent a total right knee replacement. (Tr. 111:10-13). As a part of the recommended post-surgical rehabilitation, Plaintiff received in-patient skilled nursing care, out-patient skilled nursing care, extensive physical therapy, and continuous pain management. (Tr. 112:21 – 113:25).

Plaintiff timely filed suit against the South Carolina Department of Transportation (“SCDOT”) on October 17, 2013. After the initiation of this litigation, Defendant SCDOT compelled a medical examination of the Plaintiff with Dr. Gordon Early. This independent examination resulted in a written report containing Dr. Early’s findings as to Plaintiff’s medical history, the injuries arising from this accident, and Plaintiff’s resultant physical impairment. (Tr. Pl. Ex. 1). Dr. Gordon’s report states:

Ms. Perkins is given a 50% impairment to the R leg due to the R total knee replacement . . . with fair results. This is a 20% impairment to the body. The apportionment for this injury is 50% due to the accident and 50% due to other causes. This changes the impairment rating (from the auto accident) to 10% to the body as it relates to the knee. There is a 4% worsening of her chronic low back pain due to the auto related accident. The combined total body rating is 14% from the auto accident.

Id. Plaintiff agreed with these findings and asked the Court to give great weight to the findings of Dr. Early, despite his selection and hiring by Defendant. (Tr. 174:15-23). This report was stipulated into evidence by consent of both parties prior to the commencement of the trial. (Tr. 11:9-10).

In the years following the accident, Plaintiff was unable to work her part-time job as a cashier at a fast food restaurant due to her injuries. (Tr. 126: 1-12). Plaintiff has also endured pain and a diminished quality of life, unable to participate in her previous activities, such as playing with her children and grandchildren. (Tr. 127:10-20).

The matter was tried as a bench trial before the Honorable Grace Gilchrist Knie on February 12, 2018. Plaintiff argued at trial that the Defendant has an ongoing duty to ensure the safety of the traveling public on the State’s highways. The scope of this responsibility extends beyond the paved surfaces and

includes the entire right-of-way. Plaintiff argued and presented evidence at trial that SCDOT breached this duty and was liable for the hazard presented by the excessive gap between the drainage culvert and the concrete center median into which Plaintiff fell. Plaintiff presented evidence establishing the existence of this hazard through the testimony of the SCDOT witnesses, the pictures, and the design plans for that stretch of I-85.

At trial, SCDOT's Preconstruction Support Engineer, George R. Bedenbaugh, Jr., and Assistant District Maintenance Engineer, Michael Holden, were questioned at length about the intended and foreseeable use of this stretch of I-85 by the traveling public. Mr. Bedenbaugh acknowledged that the duty of SCDOT extends to the entire right-of-way, and that it is foreseeable and anticipated that motorists may deviate from the lanes of traffic. (Tr. 29:10-15). When asked specifically about the foreseeability of stranded motorists using the inside shoulder on which this incident occurred, Mr. Bedenbaugh reluctantly acknowledged the obvious that, "[i]t's not – it's not unforeseeable, but that's a very risky scenario." (Tr. 32:13-14). And then more specifically when asked a hypothetical utilizing the identical facts of the present case:

Q. Okay. So you're stalled out, come to rest, you're in that far left lane, wouldn't it seem reasonable to get over on that concrete median?

A. You could. It's just – it's not designed for that. That's not a parameter that we design for on an interstate like this.

Q. Can't it be anticipated or foreseeable that somebody's going to utilize the safety of that concrete barrier, that shoulder rather than sitting in the lane of traffic still?

A. Well, yes, the design parameters of this road, you would be partially in the lane even if you chose to use some of the left shoulder. You would be blocking the travel lane.

(Tr. 34:11 – 35:4).

When Michael Holden was asked about the foreseeability of the use of this center median in a scenario, he similarly provided the following testimony:

Q. Okay, so people are going to use that drain, drive on it, whatever, walk on it? They're going to drive – they're going to be out there in that lane, correct?

A. I'm not going to say that they're going to be. They could be.

Q. They could be? Okay.

A. Yeah.

Q. They could be out there. It's foreseeable that a car will pull off in that shoulder?

A. They shouldn't, but they could. I mean, it's very unsafe. You know, there's not really enough room to pull a car to the left.

(Tr. 67: 9-20). And more specifically:

Q. Okay. What if the right wasn't an option because traffic's whizzing by going 70, 75 miles an hour, horns were honking, people are cursing out the windows at you because you're a stranded motorist and you're in their way and they're trying to get wherever they're going? Where would you go?

A. If your – if your car was absolutely stalled out and you had no other options you would, you know, pull to the – probably, yeah, you would pull to the median or get as much off as you can, but you're not going to be totally off the road. You're still in – you're still in the left lane.

Q. Okay. But you as an individual, you get out of the line of traffic and you'd get up out of the – out of traffic and out of the way of everybody, right?

A. Um-hum (affirmative).

(Tr. 68: 8-22).

While examining the picture of the gap between the drainage basin and the concrete barrier that was present at the scene, Mr. Bedenbaugh testified:

Q. --- above-hand picture right there. If the concrete lip around the grate is six inches, and the gap between the metal grate and the concrete barrier is supposed to be six inches, how wide is the gap in the picture?

A. Oh, I can't speculate. I mean, I can tell that there's room in there, but I don't know the exact dimension.

Q. Is that cement, or asphalt, some kind of paving material between the concrete?

A. I mean, it's hard to say. It looks like concrete that covered up with some sort of debris, ---

Q. Um-hum (affirmative).

(Tr. 44: 7-14, 21-25).

In describing the obvious non-conformity of the gap to the plans, Mr. Bedenbaugh simply evaded the question by postulating that there are construction tolerances and those tolerances are made with engineering discretion. (Tr. 45:17-25). Mr. Bedenbaugh did acknowledge that a three-inch gap between the concrete basin and concrete barrier would not be acceptable, but then proceeded to qualify his answer with the fact that "this has some sort of material in it." (Tr. 46:23 – 47:47). This testimony clearly ignores the fact that the void between the two areas with material is now wider. (See pictures of scene, Tr. P. Ex. 5). Unfortunately, when given the opportunity to state the obvious that the plans specify a flush contact between the concrete basin and the concrete barrier, Mr. Bedenbaugh continued to offer the self-serving testimony that "well, like I said, there is material in there." An obvious and apparent deduction occurs when examining the pictures in conjunction with Mr. Bedenbaugh's testimony. The pictures and Mr. Bedenbaugh's testimony clearly establish that material is present between the concrete basin and the concrete barrier on either side of the overflow void. The obvious conclusion is that because of the separation exemplified by the material, the overflow void itself is thus wider and more open to intrusions. (See pictures of scene, Tr. P. Ex. 5).

On February 15, 2018, the Court returned a verdict for the Plaintiff in the amount of \$93,362.97. On April 19, 2018, the Court filed an Order accompanying the verdict pursuant to SCRPC Rules 52 and 58, and judgment was entered against the Defendant SCDOT.

On April 30, 2018, Defendant SCDOT filed the present motions pursuant to Rule 41(b), Rule 52(b), Rule 52(a), and/or Rule 59(e), SCRPC so as to compel the Court to grant an involuntary nonsuit, a judgment as a matter of law, a new trial, and/or reduce the amount of the judgment. Plaintiff provides this memorandum in opposition to Defendant's motions.

STANDARD OF REVIEW

Defendant SCDOT has presented this Court with numerous post-trial motions. First, Defendant SCDOT has asked the Court to revisit and alter or amend its ruling on the Rule 41(b) motion for involuntary non-suit. Generally, Rule 41(b) allows the judge as the trier of facts, to weigh the evidence, determine the facts, and consider whether the law allows the plaintiff a right to relief. *Estate of Livingston v. Livingston*, 404 S.C. 137 (Ct. App. 2013). The standard is the same as summary judgment and dismissal is not allowed if there is any genuine issue of material fact. *Id.* The court must also view all evidence in a light most favorable to the non-moving party. *Ex Parte: USAA*, 365 S.C. 50 (Ct. App. 2005).

Second, Defendant SCDOT moved pursuant to Rule 52(b) to alter and/or amend the Court's Order pursuant to 52(a) or, in the alternative, to grant a new trial. Under Rule 52(a), the Court in a bench trial is required to "find the facts specially and state separately its conclusions of law thereon." Rule 52(a), SCRPC. In interpreting this rule, the S.C. Supreme Court has said that the rule is directorial in nature so "where a trial court **substantially complies with Rule 52(a) and adequately states the basis for the result it reaches**, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding." *Noisette v. Ismail*, 304 S.C. 56, 58 (1991) (emphasis added). "A lower court is not required to set out findings on all the myriad factual questions arising in a particular case, but the

findings must be sufficient to allow [the appellate court] . . . to ensure the law is faithfully executed below.” *Mathis v. Brown & Brown of South Carolina, Inc.*, 389 S.C. 299, 320 (2010). “The trial judge’s findings of fact are conclusive unless there is no evidence that reasonably support them.” *Mayes v. Paxton*, 313 S.C. 109, 114 (1993).

Lastly, Defendant SCDOT has moved pursuant to Rule 59(e) to alter or amend the Court’s order and judgment. SCRCP Rule 59(e) is a request to the trial judge to “reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 172 (1992).

DISCUSSION

I. THE COURT PROPERLY FOUND THAT THE EXCESSIVE GAP PRESENTED AN UNREASONABLE HAZARD TO THE TRAVELING PUBLIC.

SCDOT has a duty to eliminate unreasonable hazards for the safety of the traveling public. In the context of this matter, SCDOT has a duty to ensure that the traveling public is not confronted with conditions or hazards that may endanger it. *Gianni v. S.C. Dep’t. of Transp.*, 378 S.C. 573, 580 (2008). In applying this precedent in conjunction with the Tort Claims Act, the S.C. Supreme Court has held that SCDOT may be liable for “failure to take corrective action subsequent to notice of a defect.” *Id.*

Defendant SCDOT argued that Plaintiff has failed to present testimony of a defect in the drainage basin involved in the incident. Specifically, that Plaintiff did not extrapolate such evidence from the adversarial SCDOT witnesses that a defect exists. However, the Defendant’s argument neglects to ascertain that such direct testimony is not the only source of relevant and competent evidence in the record. Rather, the unreasonableness of the hazard created by the excessive gap can be inferred through all the evidence in the record. The question of liability is not whether the drainage basin is defective from “its intended design.” (SCDOT Memo., p.9). Certainly, this drainage basin functions perfectly well and likely achieves its intended use more effectively than other comparable basins because it has a larger opening at the gap in question, thus accomplishing better drainage. But does the gap that is present, that is clearly not

within the design plans, also present an unreasonable hazard to the traveling public? This is a defect in the sense that the safety of traveling public is imperiled by this hazard. Whether this drainage basin was defective or non-conforming or whether the fact that a person could lose their foot or become entangled with the void is a question for the factfinder. In this instance, the Court properly considered all the evidence within the record and made the determination that “this gap presents a hazard to the traveling public.” (Order, p. 3). This was a reasonable deduction and inference made through the Court’s careful examination of the pictures, the design plans, and the testimony.

As previously mentioned, Mr. Bedenbaugh and Mr. Holden testified as to the presence of a gap and material in such gap between the drainage basin and the concrete divider. (Tr. 46:23 – 47:2, Tr. 76:2-4). When reviewing the pictures in conjunction with the design plans, reasonable inferences can be made as to the gap, notably that it is not specified for anywhere in the plans themselves. It can also be determined by careful examination of the photographs that the width of the extra material is comparable in size to the gaps in the grate itself, which are a standardized measurement of three and a half inches. Defendant SCDOT has argued that Plaintiff “presented no measurements to establish any deviations from the design specifications.” (SCDOT Memo., p. 10). This statement is inaccurate. While admittedly Plaintiff did not provide any pictures displaying rulers or tape measurements, Plaintiff did draw attention to the definitive measurements that can be deduced through the standardization of the materials incorporated in the drainage basin itself, i.e. the grate, the frame, and the beam. These elements of the drainage basin present scales with which the Court may infer approximate measures, if the Court necessitates it. *See Design Plans, P. Ex. 2*. When considering the direct evidence of the design plans, it is very apparent that the edge of the drainage basin that abuts the concrete divider is specified to be flush, with the exception of the overflow segment. That is not the case of the configuration presented in the pictures of the drainage basin and concrete divider in this case. They are clearly separated, the material

between the two is indicative of this and, accordingly, the Court found that this additional gap was an unreasonable hazard. (Order, p.3)

In summary, the Court properly concluded and provided sufficient findings of fact based on the evidence admitted at trial that the gap between the drainage basin and the concrete barrier is an unreasonable hazard.

II. DEFENDANT SCDOT SHOULD HAVE DISCOVERED AND REMEDIED THIS HAZARD.

Defendant SCDOT argues that it is entitled to immunity based on S.C. Code Ann. § 15-78-60(15) because it cannot be held liable unless the defect was not corrected by SCDOT “within a reasonable time after actual or constructive notice.” However, SCDOT can be held liable if it knew, or in the exercise of reasonable care should have known, that a hazardous condition existed. *Marsh v. South Carolina Dep't of Highways and Pub. Transp.*, 298 S.C. 420 (Ct.App.1989). This liability arises from the SCDOT's duty to use reasonable care to keep streets and highways within its control in a reasonably safe condition for public travel. *Inabinett v. State Highway Dep't*, 196 S.C. 117 (1941).

Plaintiff reviewed and submitted into evidence significant SCDOT records that establish constructive notice in which SCDOT should have identified this hazard. First, a year and a half prior to this incident, SCDOT was at or near this very scene repairing a similar drainage structure. On the day of that project, numerous SCDOT personnel were on scene and had the opportunity to observe and perform inspections of nearby drainage structures. (Tr. 70:20 – 72:24). Furthermore, between June 10, 2010 and the date of this incident, according to SCDOT records there were ten additional inspections specifically for the drainage systems including these culverts or basins. (Tr. 60:10-23). Yet, coincidentally there was no additional documentation showing a lane closure, crash attenuator, or additional vehicles so that a thorough inspection could occur. Plaintiff also submitted into evidence the SCDOT internal Engineering Directive Memorandum # 8. This memorandum specifically provides that road inspections are to occur

monthly on instate routes and that “the purpose of those inspections is to detect deficiencies that could pose a hazard to motorists or pedestrians, thus creating a risk for the Department.” (Tr. P. Ex. 3). This specifically includes inspecting “Drainage (includes structures and ditches).”

To the extent that the Defendant argues immunity by way of S.C. Code Ann. § 15-78-60(13), reliance on such statute would be improper. If there is one immunity provision that is more applicable to the facts of the case, then such provision also controls the case. *Atlas Food Systems & Serv., Inc. v. Crane*, 319 S.C. 556 (1995). In this instance, the controlling provision would be S.C. Code Ann. § 15-78-60(15) because it is directly on point with the elements of the case.

In summary, the Court properly found that SCDOT should have recognized this hazard based on significant competent evidence submitted into the record by the Plaintiff. The evidence reveals that SCDOT specifically directed its inspections to include these drainage culverts and to identify deficiencies that could pose hazards to the traveling public. Based on the evidence in the record, SCDOT had ample opportunity to recognize this hazard and correct it, but failed to do so.

III. THE COURT PROPERLY FOUND THAT THERE WAS NO COMPETENT EVIDENCE OF PLAINTIFF’S NEGLIGENCE.

Defendant alleges that Plaintiff is comparatively at-fault for the accident, yet they have failed to provide any evidence, testimony, report, document or photograph that substantiates these allegations. Defendant has erroneously assumed and postulated throughout the course of these proceedings that Plaintiff “stopped and parked” the vehicle that she was operating in the far-left lane of I-85. This is blatantly false, deceptive, and misleading to the court. Furthermore, Plaintiff provided the only first-hand testimony in the record regarding the incident. Defendant’s theory that she pulled or stopped her vehicle is purely conjecture and speculation. There is not a single piece of evidence that Plaintiff voluntarily brought her vehicle to a stop in such a fashion.

Plaintiff’s testimony specifically refutes these allegations:

A. I was traveling southbound back to Atlanta, and I was over in the fast lane. And I was just driving and all of a sudden I heard – it sounded like a gunshot. It was like, pow.

Q. Um-hum (affirmative).

A. And the car kind of went like this. And I'm holding to the steering wheel. I was looking back, traffic, people were swerving by, and the car just stopped dead in the road.

Q. The car stopped?

A. Yes.

Q. You didn't even have the opportunity to get over?

A. No.

(Tr. 82:24 – 83:10). Plaintiff's testimony is unequivocal. Her vehicle stalled out and she was unable to maneuver her vehicle away from the left side of the highway. This stalling out was of no fault of her own, but rather, as she later discovered, was due to the emergency fuel inertia switch becoming engaged during the tire blow out. Her vehicle was rendered inoperable. Confronted with this dire situation, Plaintiff did what any reasonable person would do. She called 9-1-1 and spoke with the dispatcher:

A. . . . So I said, well, let me get off and call 911. So I called. I told the dispatcher that I was stranded in the middle of the interstate. She said, well, ma'am, get out of that vehicle. She said, get out and get to your far right as far as you can away from traffic.

Q. And that was your intention, was to get – cross all lanes of traffic over to the right-hand shoulder, correct?

A. Yes.

(Tr. 84:8-15). Following the instructions of the dispatcher, Plaintiff proceeded to exit her vehicle and proceed towards the right, opposite shoulder, but unfortunately, she never made it because of the unapparent, hazardous hole in the ground that caused this accident.

Defendant SCDOT claims that this testimony is “self-serving and unsupported,” yet they fail to consider all the facts in the record or present any testimony to the contrary. Plaintiff’s recitation of the facts is also consistent with the report provided in Defendant’s medical examination by Dr. Gordon Early in which he clearly notes that her vehicle experienced a malfunction. His patient history notes state, “it caused a lot shaking in the car and the engine shut off while driving in the fast lanes on I-85.” (Tr. P. Ex. 1, p. 3). Dr. Gordon Early’s medical examination and the corresponding notes were taken on February 3, 2015, approximately three years prior to when her testimony was offered in the trial of this matter.

Defendant has further raised that Plaintiff’s pleadings are inconsistent with this recitation because there is no mention of an engine failure. (SCDOT Memo., p. 15) First, the majority of the facts and evidence that have been discovered are also not included within the four corners of Plaintiff’s two-page complaint, nor is there any requirement that they should be. Second, Plaintiff’s complaint does not contain any allegation that contradicts or invalidates any aspect of the Plaintiff’s recollection of the incident that was provided to either Dr. Gordon Early or in her testimony at trial.

Furthermore, in perpetuating this false narrative that Plaintiff “pulled over or stopped,” Defendant SCDOT has argued that Plaintiff violated S.C. Code Ann. § 56-5-2530(1)(i) by stopping, standing, or parking a vehicle on any controlled-access highway. However, basic criminal law negates this theory because Plaintiff was entirely without any intent to this crime. Her vehicle malfunctioned for reasons beyond her control. Criminal liability normally is based upon the concurrence of two factors: the defendant’s criminal intent and the actual, physical act constituting the offense. *United States v. Bailey*, 444 U.S. 394, 402 (1980). A defendant may not be convicted of a criminal offense unless the State proves beyond a reasonable doubt that he acted with the criminal intent, or mental state, required for a particular offense. *State v. Ferguson*, 302 S.C. 269, 271 (1990). Plaintiff could not be guilty of this crime, nor could she have been found to be negligent per se. Additionally, Trooper A.D. Earle responded to the scene,

filled out the incident report with full awareness of the facts of the situation and access to many witnesses, but did not proceed to issue any citations to any party involved.

The Court properly and accurately found that Plaintiff was not and cannot be held as comparatively at-fault for this accident. The Court's order reflects consideration of these erroneous allegations and appropriately dismisses them based on the accurate evidence that was offered in trial.

IV. LEGAL PROXIMATE CAUSE IS APPARENT AND FORESEEABLE.

Defendant argues legal causation is not foreseeable in this instance because the roadway was not "designed or intended for pedestrians." (SCDOT Memo., p. 16). However, this statement regarding design or intent misses the tantamount question which is whether this incident was foreseeable.

Legal cause, in contrast to the "but for" nature of causation in fact, is proved by establishing foreseeability. *Oliver v. S.C. Dept. of Highways and Pub. Transp.*, 309 S.C. 313, 316. The standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained of act. *Id.* A negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred. *Vinson*, 324 S.C. 389, 401 (Ct. App. 1996). The touchstone of proximate cause in South Carolina is foreseeability. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490 (1994).

This statement by the Defendant seems to defy the logic that accidents do occur on the interstate and it is foreseeable that someone would likely have to walk in this particular area. Furthermore, the AASHTO regulations of which SCDOT is a participating member recognize in the title of their publication that "**Roadside** Design Safety" is an integral and essential component. (emphasis added). This very publication is premised on the fact that the roadside environment comes into play in a very significant percentage of accidents. This was acknowledged by Mr. Bedenbaugh in his testimony:

Q. So it is anticipated that motorist will have at times emergencies on the system and have to avail themselves of the shoulders, correct?

A. That's correct.

(Tr. 37:10 – 38:5). Along the same logic, if someone were participating in a roadway event, i.e. the distressed person, first responders, workers, contractors, good Samaritans, and anyone else, common logic would say that rather than walking in the middle of three lanes of intense interstate, those individuals would seek the refuge of either shoulder, despite one being narrower than the other. For obvious safety reasons, pedestrian traffic is not allowed in this particular area, but to claim that it is not foreseeable or likely to occur is patently disingenuous and contrary to the very standards that SCDOT incorporates from AASHTO.

Concomitantly with this position, the testimony of SCDOT's employees was that every time they perform maintenance in this area, they also do a corresponding lane closure. (Tr. 35:2-4). While this may be true for significant projects, it is highly illogical and implausible that such a simple activity as collecting roadkill or removing debris would require and necessitate a lane closure. The simple fact is that accidents and emergencies occur on the interstate and interstates are very busy thoroughfares. This shoulder, which per the convenient SCDOT testimony constitutes a drainage inlet (Tr. 30:16-17), would appear to anyone that has ever driven on the interstate as at least a place of refuge from the chaos of the adjacent lanes, thus establishing the foreseeability of this particular incident.

Legal causation and foreseeability is further established by SCDOT's responsibility to "ensure the safety of the traveling public," (Tr. 29:1-4), as well as SCDOT's own internal Engineering Directive Memorandum # 8 that specifically provides for inspections on interstates to "detect deficiencies that could pose a hazard to motorists or pedestrians, thus creating a risk for the Department." It is irrefutable to anyone that has ever driven I-85, and according to the very testimony of SCDOT, that I-85 is one of the most heavily traveled roads in the State. (Tr. 33:18-20). It is also one of the most dangerous given this

traffic volume. SCDOT's stated responsibility, its own directives, and its recognition of the perils associated with I-85 recognize the foreseeability of such incidents.

The Court properly reasoned and found in its Order that "roadside safety is an integral component of maintaining a safe highway for the traveling public and that hazards within such roadside should be eliminated." (Order, p. 3). The Court further established this legal causation by stating that "it is reasonably foreseeable that the traveling public and other individuals may avail themselves of this lane."

Id. The Court has properly and sufficiently addressed this legal element.

V. THE COURT PROPERLY DETERMINED DAMAGES IN ITS VERDICT.

The final argument of Defendant SCDOT is that the Court erred by not reducing Plaintiff's damages per Dr. Gordon Early's report or per a finding of comparative negligence. Plaintiff has adequately addressed the issue of comparative negligence above, and thus will not address it again. Should the Court make a finding that Plaintiff was comparatively negligent, then a corresponding reduction would be appropriate. However, Dr. Gordon Early's report was premised on medical causation and differentiating between new and pre-existing injuries, not liability or negligence. The application of a comparative fault reduction by virtue of his medical causation findings would be entirely inappropriate. Comparative negligence is the law in South Carolina. *Nelson v. Concrete Supply Co.*, 303 S.C. 243 (1991). The plaintiff may recover damages when his or her negligence is not greater than that of the defendant. The plaintiff's damages, however, are reduced in proportion to the amount of his or her negligence. *Id.* These precedents do provide for a reduction on the basis of medical causation.

Considering the Court's award of \$93,362.97, Plaintiff's counsel has deduced, but speculates that the Court arrived at this number just as the Plaintiff's counsel argued in his closing. It is believed that the Court awarded \$36,317.77 for medical expenses related to the right knee injury, lost wages in the amount of \$18,125.00, and pain management expenses of \$2,602.43. The last remaining possible element of the

Court's damage award is pain and suffering which would be \$36,317.77 (twice the medical expense for the right knee). The total of these numbers adds up to the Court's actual award of \$93,362.97. Since it appears that the Court has followed the prayer for relief that was offered by Plaintiff's counsel, it would also be assumed that the Court has similarly applied the reductions to each of these special damages for Dr. Gordon Early's findings as Plaintiff's counsel conceded in his closing argument. Furthermore, each of these finding of damages is appropriate and within the sound discretion of the Court. Although the Court's Order is soundly in compliance with Rule 52(a), Plaintiff does not object to the Court amending its Order to reflect the determinations above, if Court were to make any amendments at all.

CONCLUSION

Based on the aforementioned arguments and reasons enumerated herein, Plaintiff respectfully requests that this Honorable Court deny all the Defendant's Post-Trial Motions. The Court's rulings and Order contain sound and reasonable findings of fact and appropriate applications of the laws of the State of South Carolina. Aside from the concession as to the determination of damages, this Court should affirm its original Order and deny the Defendant's motions.

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ATTORNEYS FOR PLAINTIFF

July 30, 2018
Hampton, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Betty Jean Perkins,)

Plaintiff,)

v.)

South Carolina Department of)
Transportation,)

Defendant.)

Civil Action No. 2016-CP-42-2478

**DEFENDANT'S REPLY TO PLAINTIFF'S
RESPONSE TO POST-TRIAL MOTIONS**

The Plaintiff Betty Jean Perkins has now filed a written response to the Post-Trial Motions filed by the Defendant South Carolina Department of Transportation ("SCDOT"). The Defendant is compelled to respond to a few points. The Defendant, however, continues to rely additionally on its opening memorandum of law and the oral arguments during the July 20, 2018 hearing.

I. No Competent Evidence of a Defect or Deviation in the Opening of the Catch Basin

In its Order, the Court determined "this particular gap is drastically wider than the analogous openings within the drainage grate itself" and that the "gap presents a hazard to the traveling public." (Order, p. 3). SCDOT argued in its opening memorandum and at the hearing that this finding is purely speculative and not based on competent evidence in the record. Specifically, the Plaintiff presented no measurements to establish any deviations from the design specifications. The Plaintiff presented as Plaintiff's Trial Exhibit #5 a series of photographs taken by "R. Dixon" on May 28, 2014, which includes photographs of the catch basin taken from

various angles, perspectives, and distances. The Plaintiff did not present, however, any measurements of the portions of the catch basin, including the “gap” which the Court deemed to be a “hazard.” Mr. Dixon was available at trial to testify, but he was inexplicably not called and apparently was dismissed by the Plaintiff’s counsel before the start of the Plaintiff’s case-in-chief. *See*, Tr. 26:23-24 (“I’m going to go ahead and let Mr. Dixon exit the court”).

In addition to not presenting any measurements that Mr. Dixon could have taken while at the scene, the Plaintiff presented no photographs that displayed a ruler or other measuring device to provide the specific measurements of the various openings and other portions of the catch basin. Remarkably, the Plaintiff’s theory of liability is premised on the failure of the catch basin to be constructed to the *precise* dimensions reflected in the design specifications; yet, no competent evidence was submitted as to the as-built dimensions. The Court, as the fact finder, was left to guess and speculate.

The Court then erred by making a finding that the opening or “gap” was not constructed to its design specifications *based solely on photographs*. The Court failed to consider that a photograph is a two-dimensional representation of a three-dimensional object, and as a result, the angle, perspective, and distance from which a photograph is taken impacts the ability to accurately measure what appears on the photograph. In her response brief, the Plaintiff asserts that the grate, frame and beam of the catch basin “present scales with which the Court may infer approximate measures.” *See*, Plaintiff’s Response Mem., p. 9. The obvious fallacy in that argument, as SCDOT’s argued at the hearing, is that the Court was never provided the actual measurements of those components. The Court would be purely speculating that those components, including the “openings within the drainage grate itself,” were constructed precisely as the design specifications state. Moreover, the Court was offered no evidence of any

measurements taken of those components as built. Therefore, the “scales” suggested by the Plaintiff do not exist.

At any rate, as SCDOT argued at the hearing, a photograph cannot be “eye-balled” to determine accurate measurements. The reason for that is obvious – photographs are distorted based upon such concepts as perspective, (or parallax) and angle. For the Plaintiff to have used the photographs in the record to determine measurements, it was necessary to call an expert witness in the field of photogrammetry, which has been described as “an accepted technique generally used for deriving measurements from photographs” which is “heavily published and widely used.” *Aviva Sports, Inc. v. Fingerhut Direct Marketing, Inc.*, 829 F.Supp.2d 802, 829 (D. Minn. 2011). *See also, United States Fidelity & Guaranty Co. v. Soco West, Inc.*, 2010 WL 11537439, *1, n.1 (D. Mont. 2010) (“Photogrammetry is the science of taking measurements from photographs”). Photogrammetry has also been described in case law as involving the use of “the law of perspective and the measurement of objects of known size in a photograph in order to make measurements of other objects.” *United States v. Johnson*, 114 F.3d 808, 811 (8th Cir. 1997). “[P]hotogrammetry is a science based on triangulation which measures an object in a space where a photograph was taken. A photogrammetrist uses the lines of sight to mathematically produce three-dimensional coordinates to determine specific characteristics like the height of an object or individual.” *State v. Thornton*, 2013 WL 2636129, *3 (Ohio App. 2013). “Photogrammetry is the science of evaluating distances, angles, and measurements derived from comparison of photographs with objects of known dimensions.” *Vincente v. City of Rome*, 2005 WL 6032876, *6 (N.D. Ga. 2005). “Photogrammetry [is] the science of making accurate measurements through the use of photographs. The photographs may be taken from overhead (satellites, airplanes) or from the ground and from a variety of perspectives (including

from the aide, from directly overhead, or from overhead at an oblique angle)." *Pictometry Int. Corp. v. Geospan Corp.*, 2012 WL 3679208, *1 (D. Minn. 2012).

In sum, as the foregoing case law demonstrates, the Plaintiff is asking the Court to engage in the science of photogrammetry to derive the measurements from a photograph, and that is precisely what the Court has done in concluding – based on the photographic evidence – that "this particular gap is drastically wider than the analogous openings within the drainage grate itself." (Order, p. 3). Of course, the Plaintiff never presented an expert in photogrammetry, and absent the testimony of an expert in that scientific field, the Court cannot act as a photogrammetrist for which the Court presumably does not have the scientific expertise. Thus, in its role as a fact finder, the Court simply cannot infer measurements just from eye-balling a two-dimensional photograph.

Consequently, it is clear and should be beyond dispute that the Plaintiff failed to present competent evidence by which this Court could rule by the preponderance of the evidence (rather than pure speculation) that the "gap" is wider than the design specifications provide. From a practical standpoint, this should, in fact, be clear by looking at the photographs. The angle from which the photographs were taken and the perspective of the photographs reflect that the mere eye-balling of measurements could not possibly be accurate or even approximations. The section of the opening or "gap," as the Court calls it, is designed to be built with the concrete sloping downward into the box. Specifically, the beam detail shows that the top of the beam at the entry point of the "gap" is angled downward into the box. *See*, Plaintiff's Ex. #2. Likewise, the base of the concrete barrier is built with a 45-degree angle at its base, which forms the top of the "gap" that slopes into the box. *See*, Plaintiff's Ex. #2. In effect, that sloping of the concrete,

particularly when photographed from various angles affects the ability to make an accurate measurement of the size of the actual opening from the two-dimensional photograph.

Finally, the Plaintiff insists that the Court “may infer approximate measures.” *See*, Plaintiff’s Response Mem., p. 9. However, as mentioned above, the Plaintiff’s entire claim against SCDOT is premised on her position that the as-built “gap” or opening is wider than the design specifications so as to create a construction defect for which SCDOT should have had notice and taken corrective action. To present proof of such a deviation from the design specifications, it is necessary to present more than a mere approximation.

Furthermore, that highlights an additional criticism SCDOT has with the Court’s ruling. The Court rules that the “gap presents a hazard to the traveling public.” (Order, p. 3). However, as SCDOT argued at the hearing, the Court never makes a finding as to the extent of the deviation from the design specifications and offers no ruling as to what point a deviation becomes hazardous. For instance, if the deviation is a mere inch is that sufficient to create a hazard. How about two inches or three inches? How about half an inch? The Court never explains why the deviation it found, which was never stated with any specificity, was indeed hazardous. Clearly, there is not a strict liability standard that applies in this instance – the Plaintiff brought a negligence claim. In other words, why would a four-inch gap be hazardous while a three-inch gap is not – particularly given the attendant circumstances where this is a catch basin adjacent to a concrete center median of an interstate highway? In fact, catch basins on municipal streets and neighborhoods throughout the State have openings in catch basins greater than three inches. Why was this opening in the median of an interstate highway a hazard?

In sum, the Court is respectfully requested to recognize that the evidence presented is not competent to prove the measurements of the opening or “gap” or, for that matter, any component of the catch basin. The Court did not have competent evidence on which to base its decision that the “gap” exceeded the design specifications and constituted a “hazard.” In short, the Court's findings at the heart of case are purely speculative and cannot support the judgment entered.

II. Plaintiff's Accident was not Foreseeable

On the issue of foreseeability, the Court has ruled that “it is foreseeable that [the center median] will be used by the traveling public and others in variety of occasions including emergency stops.” (Order, p. 3). The Plaintiff attempts to support this erroneous finding by arguing that the stopping of a vehicle in the center median, which is not designed or constructed to a size suitable to stop or park any vehicle, is “at least a place of refuge from the chaos of adjacent lanes, thus establishing the foreseeability of this particular incident.” *See*, Plaintiff's Response Mem., p. 15. The Plaintiff further argues that legal foreseeability is “established by SCDOT's responsibility to ‘ensure the safety of the traveling public.’” *See*, Plaintiff's Response Mem., p. 15. That is flawed logic. First, the SCDOT is not the “insurer” of the safety of the traveling public – there is no strict liability standard. Second, foreseeability is not demonstrated by some broad pronouncement of a public duty.

Instead, it is important to take a closer look at the actual law on foreseeability. The leading case is *Young v. Tide Craft, Inc.*, 270 S.C. 453, 462, 242 S.E.2d 671 (1978). The Supreme Court explained that “[t]he standard by which foreseeability is determined is that of looking to the natural and probable consequences of the complained of act.” 242 S.E.2d at 675. Importantly, “[t]he actor cannot be charged with that which is unpredictable or that which could not be

expected to happen.” 242 S.E.2d at 676. “In determining whether a consequence is one that is natural and probable, the actor’s conduct must be viewed in the light of the attendant circumstances.” *Id.* Similarly, the Supreme Court explained that “[t]he actor’s conduct may only be held not to be a legal cause of harm to another where after the event and looking back from the harm to the actor’s negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm.” 242 S.E.2d at 677. The Supreme Court in *Young* focused on “unexpected,” “extraordinary,” and “remoteness” in looking at the foreseeability of the injury. *See also, Nelson v. Piggly Wiggly, Inc.*, 390 S.C. 382, 393-394, 701 S.E.2d 776, 782 (Ct. App. 2010) (focusing on the “category of the unusual or extraordinary”).

In the case at bar, the Plaintiff was injured when she stepped into an opening in a drainage catch basin in the center median of an interstate highway where a vehicle could not be safely stopped or parked. The Plaintiff alleges that the opening or “gap” was wider than the design specifications, but there is no competent evidence as to the width of that “gap” or the degree of deviation from any design specifications. But for purposes of assessing foreseeability, the Court must determine whether it was foreseeable to SCDOT that a motorist would break down in the center median of Interstate-85 adjacent to a catch basin and step into the drainage opening and be injured. There is no evidence that such an accident has previously occurred. Indeed, that accident is so remote, so unusual, and so extraordinary that it cannot be foreseeable within the contemplation of the law. It is no different than the remoteness of the repairman in *Young* improperly splicing a boat’s steering cable and the remoteness in *Nelson* of the improper operation of the grandmother’s vehicle. In short, the alleged negligence on the part of SCDOT was not a proximate cause of Plaintiff’s injury.

III. Plaintiff was Negligent for Stopping in the Roadway

In its opening memorandum and during the hearing on July 20, 2018, SCDOT argued that the Court erred in accepting Plaintiff's self-serving and unsupported testimony that her vehicle was unable to be moved to the right shoulder of the highway because she *simultaneously* blew a tire and experienced an engine failure rendering her vehicle incapable of being moved from its position adjacent to the concrete median barrier. Despite presenting no expert testimony from any mechanic who inspected her vehicle, the Plaintiff now argues in her response brief that her vehicle "stalled out ... due to the emergency fuel inertia switch becoming engage during the tire blow out." See, Plaintiff's Response Mem., p. 12. That new argument – which was not offered at the hearing – is an opinion that is not supported by competent evidence. The Plaintiff claims that pressing the fuel pump "reset button" – which her counsel now calls "the emergency fuel inertia switch" in her brief – allowed the car to be re-started *over a month later* after the car was towed first to a Waffle House, then sat in a parking lot in South Carolina for "about a month" and then was towed to Atlanta. There is no competent evidence that a tire blow out resulted in the "emergency fuel inertia switch" being engaged or that the tire blow out caused a simultaneous engine failure. If that is the Plaintiff's theory to excuse her failure to move the vehicle to the right shoulder of the highway, that needed to be proven by expert automotive testimony.

CONCLUSION

For the foregoing reasons, the Defendant SCDOT is entitled to an involuntary nonsuit and judgment as a matter of law or, alternatively, a new trial absolute.

Respectfully submitted,

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August 6, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Betty Jean Perkins,

Plaintiff,

v.

South Carolina Department of
Transportation,

Defendant.

Civil Action No. 2016-CP-42-2478

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND ORDER**

TO: THE HONORABLE GRACE GILCHRIST KNIE

JOHN E. PARKER AND NEIL E. ALGER, COUNSEL FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant South Carolina Department of Transportation will move before the Honorable Grace Gilchrist Knie at such time and place as may be set by the Court, for an Order pursuant to Rule 52(b) and Rule 59(e), SCRCPP, altering and/or amending the Order Denying Defendant's Post-Trial Motions filed August 10, 2018. The Defendant's counsel received written notice of entry of that Order Denying Defendant's Post-Trial Motions on August 10, 2018.

The Defendant's motion is based on the following:

The Order Denying Defendant's Post-Trial Motions has not addressed with any specificity the grounds for relief as set forth in the Defendant's Post-Trial Motions. Instead, the Court's Order has summarily denied each of the multiple grounds addressed by the Defendant in its motion, the motion hearing and its supporting memoranda, including the grounds supporting an involuntary nonsuit or judgment as a matter of law in the Defendant's favor. Specifically, the

Order Denying Defendant's Post-Trial Motions does not include any discussion of the merits of the following issues:

1. The Plaintiff failed to present any competent evidence of a defect or deviation in the opening of the catch basin. The Court's finding that "this particular gap is drastically wider than the analogous openings within the drainage grate itself" is purely speculative because no measurements were offered into evidence by which the Court could determine any deviation from the design specifications. The photographs alone, absent expert testimony, were not competent to determine accurate measurements necessary to support the Court's finding and the Court was not able to infer the measurements by merely eye-balling the photographs. The Court failed to specifically address this absence of competent evidence in either of its Orders.

2. The Court did not address what made the opening as constructed "a hazard to the traveling public." The Court never made a finding as to the extent of deviation, if any, from the design specifications and at what point a construction deviation becomes a "hazard" particularly where the catch basin was located adjacent to a concrete center median of an interstate highway.

3. The Court failed to address the merits of the foreseeability issue in either Order issued. The Court did not discuss (nor even cite) any case law or other authorities on the issue of foreseeability and failed to legally analyze that critical issue to this case. Instead, the Court found foreseeability in a purely conclusory manner.

4. The Court failed to address whether there was competent evidence, absent expert testimony, to support the Court's conclusion that the Plaintiff experienced a simultaneous tire blowout and engine failure so as to support the Court's finding that the Plaintiff was not negligent in any respect for stopping her vehicle in the left lane of an interstate highway in violation of S.C. Code Ann. § 56-5-2530.

The Defendant is also filing this motion under the authority of *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) to ensure that the Order Denying Defendant's Post-Trial Motions is later construed as deciding all issues raised by the Defendant so that those issues are properly preserved for appeal.

The Defendant's motion is based upon the pleadings filed in this case; the trial record; the Order Denying Defendant's Post-Trial Motions filed August 10, 2018; the Motion for Judgment as a Matter of Law and/or Involuntary Nonsuit, Motion to Alter or Amend Judgment and/or Motion for Reconsideration, and Motion for New Trial filed April 30, 2018; supporting memoranda and case law; the rules of court; and such other matters as may be properly presented to the Court at the time of the hearing.

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August 20, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Betty Jean Perkins,)

Plaintiff,)

v.)

South Carolina Department of)
Transportation,)

Defendant.)

Civil Action No. 2016-CP-42-2478

**MEMORANDUM IN SUPPORT OF
MOTION TO ALTER OR AMEND ORDER**

The Defendant South Carolina Department of Transportation (“SCDOT”) filed a Rule 52(a) and Rule 59(e) motion to alter or amend under the authority of *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004), to ensure that the Order Denying Defendant's Post-Trial Motions is later construed as properly and completely deciding all issues raised by SCDOT so that those issues are properly preserved for appeal and may be addressed in a meaningful manner on appeal. SCDOT is concerned that the Order Denying Defendant's Post-Trial Motions has not addressed with any specificity the grounds for relief as set forth in the Defendant’s Post-Trial Motions. Instead, the Court’s Order has summarily denied each of the multiple grounds addressed by SCDOT in its motion, the motion hearing and its supporting memoranda, including the grounds supporting an involuntary nonsuit or judgment as a matter of law in SCDOT’s favor.

The Defendant SCDOT does not seek to nor need to re-argue the merits of those issues. They have been fully briefed in the memoranda previously filed with the Court and during the oral argument held on July 20, 2018. SCDOT will rely on those discussions of the issues and believe

this Court has been fully apprised of its legal positions. Instead, with this motion, SCDOT is requesting that the Court provide a specific ruling – factually and legally -- with respect to the issues raised in the motion to make certain that those issues may be the subject of meaningful review on appeal. That is particularly important because this case was tried non-jury, and as a result, this Court's order is subject to the strict requirements of Rule 52(a), SCRCP.

Importantly, the standard of appellate review for an action at law on appeal of a case tried without a jury provides that the appellate court will not disturb the judge's findings of fact unless found to be without evidence which reasonably supports the judge's findings. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773, 775 (1976). As a result, it is critical that the trial judge set forth her findings of fact and conclusions of law with sufficient specificity and detail to allow for proper appellate review. Rule 52(a), SCRCP, in fact, requires "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon." Rule 52(a), SCRCP. The Court of Appeals has likewise recognized that "meaningful appellate review is more readily obtained when we are presented with a clear presentation of the basis for the circuit court's findings." *In the Matter of the Care and Treatment of Corley*, 365 S.C. 252, 616 S.E.2d 441, 443 (Ct. App. 2005). The Supreme Court has similarly explained the critical necessity for adequate findings and conclusions of law:

Trial courts, sitting without juries in an action at law, write their findings specially and separately to allow a reviewing court to determine from the record whether the judgment -- and the legal conclusions which underlie it -- represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.

In the Matter of the Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338, 343

(2002). While the Supreme Court "do[es] not require a lower court to set out findings on all the myriad factual questions arising in a particular case," it is required that the key factual questions of a case be stated with clarity and specificity. *Id.* The same is certainly also true with respect to the key legal issues of the case. As the Supreme Court instructs, "the findings must be sufficient to allow [a] Court, sitting in its appellate capacity, to ensure the law is faithfully executed below. The absence of factual findings makes our task of reviewing the court order impossible because the reasons underlying the decision are left to speculation." *Luckabaugh*, 568 S.E.2d at 343.

In sum, the Defendant SCDOT requests that the Court issue an order on its post-trial motions that satisfies the requirements of Rule 52(a) and the case law interpreting that rule so that SCDOT may seek meaningful appellate review as due process and notions of fundamental fairness require.

Respectfully submitted,

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*Counsel for Defendant South Carolina
Department of Transportation*

August 31, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS,
	)	
COUNTY OF SPARTANBURG	)	CIVIL ACTION NO.: 2016-CP-42-2478
Betty Jean Perkins,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Plaintiff's Memorandum in Opposition
	)	to Defendant's Motion to Alter or Amend
	)	Order
South Carolina Department of	)	
Transportation,	)	
	)	
Defendant.	)	
TO:	)	WILLIAM MCBEE SMITH, ESQUIRE, AND ANDREW F. LINDEMANN, ESQUIRE,
	)	ATTORNEYS FOR DEFENDANT:

COMES NOW Plaintiff Betty Jean Perkins (hereinafter "Ms. Perkins" or "Plaintiff"), by and through her undersigned counsel, and hereby submits to the Court her Memorandum in Opposition to Defendant South Carolina Department of Transportation's (hereinafter "SCDOT" or "Defendant") Motion to Alter or Amend Order.

This matter has been tried, the issues have been argued extensively, and this Court entered her ruling and judgment. In the Defendant's post-trial motions, the same exact issues were re-explored, re-argued, and ruled on yet again with another unfavorable result for the Defendant SCDOT. Defendant SCDOT's motion contains no new arguments or grounds upon which they are seeking relief. In fact, the arguments contained within this motion are simply argumentative and irrelevant regurgitations of Defendant SCDOT's prior post-trial arguments. Once again, Defendant SCDOT is disregarding the validity and sufficiency of this Court's prior rulings, and instead attempting to coax the Court into ruling on issues that are superfluous and irrelevant.

This Court's Orders dated April 18, 2018 and August 10, 2018 fully complied with the requirements of SCRCP Rule 52(a). The Court adequately stated the basis for the results that it found, and judgment was properly entered for the Plaintiff in the amount of \$93,362.97.

PETERS, MURDAUGH, PARKER, ELTZROTH
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ATTORNEYS FOR PLAINTIFF

August 30, 2018
Hampton, South Carolina

IN THE COURT OF COMMON PLEAS

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BEFORE:

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
D-1	PLAINTIFF'S ANSWERS (WITHDRAWN)	11	X
D-2	SCHP INCIDENT REPORT	11	90
D-3	GOOGLE EARTH PHOTOS (WITHDRAWN)	11	X
D-4	PHOTO OF CATCH BASIN	11	164
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D-10	SC DRIVER'S MANUAL P.28 (WITHDRAWN)	11	X
D-11	SC CODE SECTION 56-5-2530 (A) (1) (I) (WITHDRAWN)	11	X
D-12	CERTIFIED CONVICTION ORDER (WITHDRAWN)	11	X
D-13	CERTIFIED WARRANT (WITHDRAWN)	11	X
D-14	ORDER FOR MEDICAL EXAM (WITHDRAWN)	11	X
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1 **THE COURT:** We are on the record with regard to the
2 matter of Betty Jean Perkins versus South Carolina
3 Department of Transportation. This is civil action number
4 2016-CP-42-2478.

5 For the record, the court reporter for this proceeding
6 is Susan Hudgins and our clerk is Alexandra Miller. My law
7 clerk is Morgan Eason. Okay.

8 And so I have reviewed the file. And I have reviewed
9 specifically the pleadings, pretrial briefs from both.
10 Thank you all for working this weekend and forwarding
11 information to me. I appreciate that. And I also have a
12 motion in limine from the Plaintiff.

13 And so, first, let me confirm on the record with both
14 parties, it's my understanding that although this case, when
15 it was filed, a jury trial was requested and it was on our
16 jury roster. And counsel informed me on Friday afternoon in
17 a telephone conference when we were discussing pretrial
18 matters that they consented to my hearing this as a bench
19 trial.

20 And so, first, we have a jury next door. And the plan
21 was that Judge Kelly was going to qualify them and send them
22 over. And then we were going to draw our jury this morning.
23 And so I need to confirm again with the Plaintiff if it is
24 your wish to go forward with me hearing this as opposed to
25 having a jury hear this. Counsel?

1 **MR. ALGER:** Yes, Your Honor. Neil Alger here. And I
2 have Ms. Betty Perkins next to me. And we do consent to
3 this being a bench trial.

4 **THE COURT:** All right.

5 **MR. SMITH:** And, Your Honor, we agree or consent.

6 **THE COURT:** Okay.

7 **MR. ALGER:** I was going to let Ms. Perkins say that.
8 It's her right even though ---

9 **THE COURT:** All right. Ma'am, do you agree?

10 **MS. PERKINS:** Yes.

11 **THE COURT:** All right. Thank you. Thank you, Mr.
12 Smith, as well. All right.

13 And so now before we move to your opening statements, I
14 wondered if there are pretrial matters that need to be
15 heard.

16 **MR. ALGER:** Your Honor, I think we have actually
17 resolved our motions in limine. The Defense, I don't think
18 they have any issues with the ones I raised. And I don't
19 anticipate them being any problems in this matter.

20 **THE COURT:** Okay. Well, if you will further clarify
21 for me. I've got that pulled up. There will be no evidence
22 of collateral source, ---

23 **MR. SMITH:** That is correct.

24 **THE COURT:** --- collateral sources.

25 **MR. SMITH:** That is correct.

1 **MR. ALGER:** And then the independent medical
2 examination, I'm just going to go ahead and withdraw that,

3 ---

4 **THE COURT:** Yes, sir.

5 **MR. ALGER:** --- that motion in limine.

6 **MR. SMITH:** We have an independent medical examination
7 by Dr. Gordon Early.

8 **MR. ALGER:** Yes.

9 **THE COURT:** And that was done by consent order, right,
10 ---

11 **MR. ALGER:** Correct.

12 **THE COURT:** --- Judge Kelly?

13 **MR. ALGER:** And it's already submitted into evidence.

14 **THE COURT:** Okay. All right.

15 **MR. ALGER:** And then the criminal record, ---

16 **MR. SMITH:** Well, that's interesting, Your Honor. I
17 mean, she has a criminal record for shoplifting, which we
18 went through in her deposition. And, of course, if she
19 denies it, I think it would be fair impeachment to bring in
20 her criminal record on the shoplifting.

21 **MR. ALGER:** But only if she denies it.

22 **MR. SMITH:** Right.

23 **MR. ALGER:** Otherwise, it's not relevant for -- at
24 least I would argue it's not relevant in this matter.

25 **THE COURT:** Yes, sir. And I have reviewed both of your

1 pretrial briefs. And, of course, it was mentioned there.
2 And in that I am now the trier of fact and law -- yes, okay,
3 y'all both understand.

4 **MR. SMITH:** Yes, Your Honor.

5 **THE COURT:** Okay.

6 **MR. ALGER:** We have available witnesses. I don't
7 anticipate that coming up in the course of this.

8 **THE COURT:** Okay. All right. Well, ---

9 **MR. ALGER:** That covers all my matters in limine, Your
10 Honor.

11 **THE COURT:** Okay. Well, then before we proceed any
12 further, Mr. Smith has handed me a notebook that I haven't
13 looked at yet. I haven't perused this yet. But I did
14 notice in both of your pretrial briefs you listed a number
15 of documents that will be coming in or you're going to
16 propose. Is everything stipulated to or, counsel, have you
17 looked through the notebook? Mr. Alger, have you looked
18 through this notebook to make sure?

19 **MR. ALGER:** I actually have not. This was provided to
20 me this morning. But ---

21 **THE COURT:** Yes, sir.

22 **MR. ALGER:** --- if you'll give me just one minute, I
23 can ---

24 **THE COURT:** Yes, sir. Take your time.

25 (Pause)

1 **MR. ALGER:** Obviously, Your Honor, since you're both
2 the judge and the jury, whether evidence is submitted into
3 evidence is somewhat ---

4 **MR. SMITH:** Flexible.

5 **MR. ALGER:** --- flexible is a good way to put it. I
6 have no problem with these exhibits. Some of them I may
7 have issues with them being submitted into evidence, but
8 since they're in front of Your Honor, it's kind of ...

9 **THE COURT:** Well, I haven't looked at them.

10 **MR. ALGER:** Sure.

11 **THE COURT:** Okay? And ---

12 **MR. ALGER:** But either way, honestly, Your Honor, I'm
13 not going to argue over any of these. The issue I would
14 have ---

15 **THE COURT:** Is there an index that you're looking
16 through?

17 **MR. ALGER:** Yes.

18 **THE COURT:** Is that what it is? Okay.

19 **MR. SMITH:** It's really just the driver's manual, South
20 Carolina Driver's Manual and the ---

21 **MR. ALGER:** And the statute.

22 **MR. SMITH:** --- statute about stopping in the median.
23 And we have the certified copies of the shoplifting
24 convictions. The rest of ---

25 **MR. ALGER:** And you're already aware of that. So, you

1 know, the chicken's out of the hatch.

2 **THE COURT:** Okay. So ---

3 **MR. ALGER:** So I don't have any problems, Your Honor.

4 **THE COURT:** Okay. And then, Mr. Smith, have you had an
5 opportunity to review Mr. Alger's proposed exhibits?

6 **MR. SMITH:** I have. And the photographs are fine. The
7 medical bills, I think, we would like to examine her on some
8 of those, but it's a good document to rely on.

9 **THE COURT:** Okay.

10 **MR. ALGER:** And then there are additional records I
11 have in here that I plan on using, but they're DOT records
12 that were produced in discovery. I don't anticipate -- and
13 actually they're exhibits of his own. So ...

14 **THE COURT:** Okay. And so the next thing would be have
15 all -- Mr. Smith, have all of your exhibits been marked?

16 **MR. SMITH:** They have not been marked yet.

17 **THE COURT:** Do you want to go ahead and do that just
18 for the ease of moving through this more efficiently?

19 **MR. SMITH:** We can do that.

20 **THE COURT:** Okay. And it might be a little easier on
21 our very efficient court reporter as well. Okay? And we
22 might want to make a copy of your exhibit list for the court
23 reporter. And that way she doesn't have to re -- she
24 doesn't have to duplicate that in her own writing, okay?

25 **MR. SMITH:** Yes, Your Honor.

1 **THE COURT:** So the exhibit list, is that page 3, Mr.
2 Smith?

3 **MR. SMITH:** Yes, Your Honor.

4 **THE COURT:** Okay.

5 (Whereupon Plaintiff's exhibits 1 - 6 were marked for
6 identification)

7 (Whereupon Defendant's exhibits 1 - 17 were marked for
8 identification)

9 (Whereupon Plaintiff's exhibit 1 was stipulated to and
10 admitted into evidence)

11 **THE COURT:** Okay. So everything has been marked, is
12 that correct, counsel?

13 **MR. SMITH:** Yes, Your Honor.

14 **THE COURT:** Okay.

15 **MR. ALGER:** Now, I'm good.

16 **THE COURT:** All right. Okay. So before we get
17 started, counsel, I neglected to put on the record that this
18 -- the 2016-27 -- 2478 case number also incorporates 2013-
19 CP-42-4122, is that correct, counsel?

20 **MR. ALGER:** Yes, Your Honor.

21 **MR. SMITH:** Yes, it does.

22 **THE COURT:** Okay. And I've got the paper file and the
23 computer file for the cases. The -- let me go ahead and
24 tell the parties as well as witnesses, if at any time you
25 need to stand up, please feel free to do that. Don't wait

OPENING STATEMENTS - MR. ALGER

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1 to ask for permission to do that. I know that those chairs
2 may be uncomfortable and sitting for long periods of time is
3 sometimes very difficult.

4 I will tell you that we will have a midmorning break
5 probably around eleven. And then we'll break for lunch at
6 12:30 until two if that suits everybody and we're not
7 breaking during the middle of a witness, but that's normally
8 the plan, and ending at five. So that gives y'all an
9 overview of your day.

10 Are we now ready for opening?

11 **MR. ALGER:** Yes, ma'am.

12 **THE COURT:** Okay. And I don't limit you on the time.
13 Just take your time and understand that although I may not
14 be looking up, I'm taking notes. All right. Yes, sir.

15 **MR. ALGER:** May it please the Court? I'm Neil Alger.
16 I'm an attorney with Peters, Murdaugh, Parker, Eltzroth &
17 Detrick down in Hampton, South Carolina.

18 Sitting with me today, I have Ms. Betty Perkins. And
19 Ms. Perkins is a happy grandmother and mother of a daughter,
20 three grandkids, correct?

21 **MS. PERKINS:** Yes, sir.

22 **MR. ALGER:** And going into this today, I was sitting
23 with her this morning at the hotel and I asked her if there
24 was one thing you wanted me to know about you, what would it
25 be? And she said that I love my grandkids. So she's here

OPENING STATEMENTS - MR. ALGER

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1 today.

2 Actually, her grandson drove her down from Eden, North
3 Carolina. And he is sitting out in his car like a typical
4 grandkid on his cell phone entertaining himself, but he is
5 here, and he is here for the support of Ms. Perkins as well.

6 I'm going to be brief since this is a bench trial.
7 Obviously, Your Honor is well aware of the law, and I don't
8 have to do much to educate you on it.

9 But the reason we're here today is really for
10 acknowledgment. Acknowledgment of responsibility,
11 acknowledgment of our past and acknowledgment of the impact
12 that one event can have on the life of an individual.

13 The South Carolina Department of Transportation is who
14 we've brought suit against in this matter. And they are the
15 entity that is responsible for maintaining the safe roadways
16 for the traveling public in the State of South Carolina.

17 The DOT's responsibilities are not limited exclusively
18 to the lanes of traffic. Their responsibilities encompass
19 the entire roadway, that is to say the entire right-of-way.

20 Certainly the lanes of traffic, the paved surface is an
21 important element of a road. However, the roadway, and the
22 right-of-way and the DOT's responsibilities extend to things
23 such as the shoulder, the trees, the landscaping, the
24 unpaved surfaces, the signage. The DOT is responsible for
25 all those other elements. And all of those are essential

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1 components that make up an effective roadway system.

2 Now in acknowledging that the responsibilities of the
3 DOT extend beyond the paved surface, the South Carolina
4 Department of Transportation has joined a group called the
5 American Association State Highway and Transportation
6 Officials. That's abbreviated ASHTO.

7 South Carolina has been a member of that organization
8 for a number of years. I think they actually joined it back
9 in the 70's. But they have maintained their status as a
10 participating member of that. And they have adopted a
11 number of the regulations and the directives that have been
12 provided by ASHTO.

13 Now, ASHTO has put a particular emphasis on roadside
14 safety because ASHTO recognizes and they actually produce a
15 publication each year called Roadside Design Guide. They
16 recognize that almost one out of every three accidents
17 incorporates a roadside element and that the roadside itself
18 can in many cases, far too many -- far often too many cases
19 presents hazards to motorists.

20 Now, this is an acknowledgment by the DOT that the
21 roadside is an essential component of the roadway system.
22 They also acknowledge -- and I think anybody sitting in this
23 courtroom can acknowledge that motorists will deviate from
24 their lanes of travel, whether that's for emergency, tire
25 failure, engine problems, maybe they're avoiding a

OPENING STATEMENTS - MR. ALGER

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1 distracted driver. Maybe they are the distracted driver.
2 But for a number of reasons motorists will deviate from
3 their lane of travel, and they will have to seek the shelter
4 of the emergency lane or the shoulder.

5 Now, these shoulders, the center median included, are
6 essential components of the roadway system. They're
7 integral components for the safety of both law enforcement,
8 first responders, stranded motorists, maybe just somebody
9 seeking the shelter from a busy interstate system. But
10 either way the shoulder is an essential component of the
11 roadway system, and it's essential for the safety of the
12 traveling public.

13 Now, on March 1st, 2012 Ms. Perkins was traveling south
14 on I-85. And Ms. Perkins will tell you that as she was
15 proceeding south on I-85 about two miles -- it was near mile
16 marker 61, which is south of Spartanburg, she experienced a
17 sudden tire failure that resulted in a huge bang, correct?

18 And after that bang, suddenly her car came to a stop
19 due to a stall. She was unable to crank her car and she was
20 stranded in the far left lane of I-85 southbound of
21 Spartanburg. You know, I-85 is quite the -- quite the busy
22 roadway, we'll put it that way. It's not exactly a quiet
23 rural road.

24 But anyways, Ms. Perkins was stranded in the far left
25 lane of I-85 south of Spartanburg. Her car wouldn't crank.

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1 And she was left there all her own. She did what anybody --
2 any reasonable person would do, she called 911.

3 Shortly after that discussion she exited her vehicle
4 and was about to seek the shelter of the shoulder on the far
5 side of the highway when she was walking down the side of
6 the car and she stepped into a hole, a void, and fell
7 forward on her left leg. At that time she was more or less
8 stranded, still stuck in the hole.

9 Almost simultaneously some other good Samaritans pulled
10 up behind her, much better than the other drivers who were
11 driving by honking their horns, flashing their lights,
12 yelling profanities at her. But some good Samaritans pulled
13 up behind her, pulled her out of the hole and took her over
14 to the safety of the right hand shoulder.

15 After that a police officer showed up and then the EMS
16 showed up. All this occurring on the right hand shoulder of
17 I-85. Ms. Perkins went on to the hospital where she was
18 treated for injuries to her knees, shoulder and back. And
19 then about two weeks later she was still experiencing a
20 sharp pain in her right knee.

21 At that time she went on to have a meniscus surgery in
22 her knee. And then after that, about another two years
23 later she went on to have surgery -- a total knee
24 replacement of her right knee.

25 Now, Your Honor, these are all the injuries and damages

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1 that we intend to prove in the course of this trial. There
2 are other damages that I haven't covered. But, Your Honor,
3 we're here today to acknowledge those injuries, to
4 acknowledge the responsible -- the responsibility of the DOT
5 and to give Ms. Perkins her day in court so that we can move
6 on and, you know, recognize where she's come from and where
7 she is today.

8 Your Honor, thank you for hearing this matter. We do
9 appreciate it. And I appreciate you allowing us to do a
10 bench trial because I know it's -- it's a little different
11 when the onus is on you instead of twelve jurors and the
12 bench. So thank you for that today. And Ms. Perkins thanks
13 you as well.

14 **THE COURT:** Okay. Thank you.

15 **MR. SMITH:** Yes, Your Honor.

16 **THE COURT:** Yes, sir. Mr. Smith.

17 **MR. SMITH:** Yes, Your Honor. Just a few things about
18 what Your Honor just heard in the opening by Plaintiff's
19 counsel. This accident happened, as he said, on March 1st,
20 2012. There is a conflict about where she stopped. She
21 says that she testified that her vehicle came to stop in the
22 middle of the left lane. I think the police officer found
23 her car on the median barrier, a concrete median barrier on
24 the far left lane.

25 One of the things that you'll hear from DOT witnesses

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1 is this is the concrete median along the inside of the
2 highway. It's not intended, not designed for pedestrian
3 traffic. When she got out of her vehicle she walked a few
4 steps and fell on what has been marked as Defendant's
5 exhibit number 4. And I believe you've marked it as an
6 exhibit, too. And it's a large cast iron drainage grate.

7 And we have the plans here for Your Honor to look at.
8 It is a huge grate. It weighs a combined over three hundred
9 and forty pounds. The grates that you see in the middle,
10 combined, weigh two hundred and thirty pounds. And they are
11 indeed large openings.

12 These grates are designed for one purpose only. And
13 they are designed to allow the maximum amount of drainage
14 off of the interstate. One of the things at the very
15 beginning of this case is a continuing -- there has never
16 been any testimony or evidence that there was a defect with
17 this drain, something that was defective about the drain,
18 and how it was designed, or how it was constructed, no
19 evidence whatsoever.

20 The Plaintiff has to come forward with a witness to --
21 a competent witness to testify what the defect may be, if
22 any. We don't have that. We have none. We have -- in
23 fact, we have the exact opposite.

24 It is a construction design that was constructed in the
25 field within engineering tolerances. Nothing is perfect.

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19

1 These walls in this room are not exactly plumb, but it is
2 within the engineering tolerance. And we have Mr. Rob
3 Bedenbaugh here who is in construction design down in
4 Columbia. And he has looked at those plans and looked at
5 the photograph. And we cannot identify a single defect in
6 this storm drain.

7 The second thing to point out is there's no evidence of
8 any notice of any condition that might be a concern DOT
9 would need to repair. I have here today a resident
10 maintenance engineer, Mr. Michael Holden, who was the
11 assistant maintenance engineer at the time. And he assisted
12 in inspecting this particular storm drain or a catch basin,
13 as they call it.

14 And he also went back and looked at DOT's work record,
15 their work redress system. And he looked one mile either
16 direction of this particular storm drain. And his testimony
17 is he found nothing to indicate that the DOT went out and
18 had to repair or do anything to this particular storm drain
19 either before -- well, -- before, but afterwards they didn't
20 have to do anything.

21 He did find one work request report, which, I think,
22 would be marked or is marked exhibit number 5, I think,
23 August 10th, 2010, almost a year and a half prior to Ms.
24 Perkins' accident he found that it was called in and
25 reported that one of these hundred and fifteen pound cast

1 iron grates, perhaps, two of them, two hundred and thirty
2 pound grates had become dislodged and had to be moved back
3 on into the drain. That was a year and a half prior to this
4 accident.

5 That is a lane closure operation. It requires DOT to
6 actually close the lane in order to move this -- these heavy
7 grates back into place. And that's significant in one
8 respect. If this -- if this accident with Ms. Perkins was
9 involved in -- it involved a defective grate and it was
10 either defective or had been dislodged, there would have
11 been a record of DOT having to send out a crew just as they
12 did on August the 10th, 2010 to put this grate back in
13 place.

14 And so Mr. Holden searched DOT records for that type of
15 or any type of work on this drain, and there were none. So
16 to this day, DOT has no record of any defect in this drain
17 that could be repaired or even needed to be repaired. So we
18 think that that alone shows that the Plaintiff's case is
19 flawed in whether or not there is legal liability on behalf
20 of DOT.

21 One of the things that Your Honor could see in this
22 picture number 4 is the bright yellow line that runs along
23 the far left lane of the interstate. That is a warning sign
24 to me. To me it means don't park there. It is a hazard
25 warning that says not to cross into that area if you're in a

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1 car.

2 And this area is simply not a safe place for anybody to
3 stop their car or anything. I know that they said her car
4 stopped or stalled, but most cars can still be driven after
5 a flat tire occurs, but whatever happens to a car is not
6 DOT's fault.

7 So we think that there's a critical failure to prove
8 liability in this case. And on that basis we wouldn't --
9 shouldn't even have to get to discussing the damages, but
10 since this is a bench trial ...

11 One of the things Your Honor will note, and it's in the
12 IME report, and I think some of the other records that will
13 be coming in, Ms. Perkins had a long history of all kinds of
14 physical problems. If you look at the Pinnacle medical
15 records it shows that as early as 2010 or perhaps before
16 that she was going to see the orthopaedic specialist down
17 there in Atlanta for left knee pain, right knee pain,
18 bilateral knee pain, low back pain and all kinds of
19 Hydrocodone and prescription drugs for pain and muscle
20 relaxers. This was going on for a long time prior to this.

21 She even had an operation, I think, to her right leg
22 before this accident to her right knee. So she was having
23 trouble with both knees, pain -- both knees all the way up
24 to the time of this accident and afterwards.

25 I will say this about the accident itself. Officer

1 A.D. Earl, his report will be introduced, and I think that's
2 one of the exhibits we both have marked, he shows up to the
3 scene and he notes her situation. And he physically sees
4 the -- an injury to her left knee and an injury to her right
5 knee. And that's what he saw and noted it on his report.

6 In that report he makes no -- reveals nothing of any
7 type of defect at the roadway. And had he -- had there been
8 a defect, it would have been reported, and, of course, DOT
9 would have repaired it.

10 But anyway, the ambulance comes and they take her to
11 the Village Hospital in Greer and she's examined by the
12 intake nurses, examined by the emergency room doctors. And
13 I think those reports or that report will come in and those
14 records.

15 And it shows in there that they only examined her left
16 knee, and they examined her right arm and they noted some
17 pain in her low back. At no point did the doctors or the x-
18 ray technicians at Village Green note any injury to her
19 right knee. They took an x-ray of her left knee.

20 And so she went through that entire process at Village
21 Hospital without ever telling them to examine her right
22 knee. But that's really the -- that means at that point in
23 time she probably, you know, she had been having bilateral
24 knee pain prior. So it was really probably no difference
25 going forward. But the point being, she didn't tell them at

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23

1 the time and neither did Officer A.D. Hill [sic] notice an
2 injury to her right knee.

3 And so it was thirteen days later, two weeks later when
4 she does go back to Pinnacle Orthopaedic Center in Atlanta
5 where she then has or reports right knee pain, at that point
6 bilateral knee pain. So we think there's lack of
7 credibility on what she, in fact, injured at the scene. The
8 injuries were initially reported to the left knee and right
9 arm. And so all these other injuries showed up later.

10 We do have Ms. Perkins' deposition with us. And in the
11 deposition, I think, will be the same testimony today. In
12 the six or seven weeks prior to the accident she was -- she
13 at least got prescriptions to, I think, at the deposition I
14 counted four hundred pills of Oxycontin, Hydrocodone, pain
15 medication. Maybe she wasn't taking them, but she had four
16 hundred pills she'd gotten from prescriptions from the
17 pharmacy for whatever condition was ailing her prior to
18 this, which also included fibromyalgia throughout the entire
19 body.

20 So she did have a slight meniscus operation on her
21 meniscus a couple of weeks after this or was it a year and a
22 half afterwards? And then that didn't work. And then she
23 had the knee replacement, which we don't think is
24 attributable to this accident. We think it's attributable
25 to all of her prior health conditions she was having.

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24

1 Because of that we both did -- we did go get an
2 independent medical examination by Dr. Gordon Early. And he
3 reviewed all the medical records. I mean, I've got two
4 boxes over there. And went through a written report, which
5 was ordered by Dr. -- by Judge Kelly. He wanted a written
6 report, and we have that.

7 And he says, if anything, the right knee, perhaps half
8 of it was attributed to the accident, the other half was
9 prior conditions. And he gave her like a fourteen percent
10 whole body impairment attributable to this accident. But I
11 think the bottom line, he found very little in this accident
12 that attributed to her health conditions and her health
13 trouble.

14 So even if you get to the independent medical
15 examination, we think there's no liability. And it has to
16 be some competent witness to come in and say, look, this is
17 a defective road here, it needs to be repaired. And we
18 don't have that here. And so we think at the end of the day
19 this would be a case where the DOT should receive a defense
20 verdict based on the law and the facts.

21 In our defense, we have made several defenses under the
22 Tort Claims Act, 15-78-60, (13), (15) and (20). (13) would
23 be -- (15) would be a defect on design, has to be actual or
24 constructive notice of the defect or design followed by
25 failure to repair it within a reasonable amount of time.

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25

1 Well, we don't have either one of those. We don't have
2 notice of a defect and we haven't seen anything that needs
3 to be repaired. So neither one of those elements were
4 satisfied.

5 And the number (20) under the Tort Claims Act was about
6 acts or omissions of third parties. And we don't even have
7 that here. If somebody had gone out and pulled the storm
8 drain up or something like that and then we got notice of it
9 and didn't do it, but we didn't even have that. These
10 grates were in place. And there's no records indicating
11 that they had to send anybody out there to fix them. So
12 that is it.

13 We'd also move to strike punitive damages and limit it
14 to whatever damages awarded, less than three hundred
15 thousand dollars, I think, ---

16 **MR. ALGER:** We'll stipulate to that, Your Honor.

17 **MR. SMITH:** So that in a nutshell is DOT's position in
18 what we've seen in this case after a lot of discovery and
19 that's our position.

20 **THE COURT:** Okay. Thank you. Thank you both. I think
21 I have a very good picture of what's happened thus far.
22 Thank you for being very succinct.

23 And, again, on the record, so in the summons and
24 complaint that was filed with the Court on October the 7th
25 of 2013 there is a request in paragraph 8 for actual

OPENING STATEMENTS - MR. SMITH

26

1 together with punitive damages. And so there is a
2 stipulation that punitive damages will be struck from the
3 initial complaint and that the relief would be limited to
4 three hundred thousand dollars (\$300,000.00) per the
5 statute, is that correct?

6 **MR. ALGER:** Correct, Your Honor.

7 **THE COURT:** Mr. Smith?

8 **MR. SMITH:** That's correct.

9 **THE COURT:** Okay. Thank you. All right. Are y'all
10 ready to proceed, counsel?

11 **MR. SMITH:** Yes, Your Honor.

12 **MR. ALGER:** Yes, Your Honor.

13 **THE COURT:** Is there any motion to be made with regard
14 to witness sequestration or y'all just going to leave
15 everybody in?

16 **MR. ALGER:** I'm fine.

17 **THE COURT:** Okay.

18 **MR. SMITH:** We're fine.

19 **THE COURT:** All right.

20 **MR. ALGER:** Your Honor, if I could have one moment.

21 (Pause)

22 **MR. ALGER:** Your Honor, we're going to stipulate
23 Plaintiff's exhibit 5 into evidence. I'm going to go ahead
24 and let Mr. Dixon exit the court.

25 **THE COURT:** Okay. So Plaintiff's number 5 into

1 evidence without objection?

2 **MR. ALGER:** Yes, ma'am.

3 (Whereupon Plaintiff's exhibit 5 was admitted into
4 evidence)

5 **MR. ALGER:** And at this time I'd like to call -- I'd
6 like to call Mr. -- is it Rob Bedenbaugh?

7 **MR. BEDENBAUGH:** Yes.

8 **MR. ALGER:** Did I pronounce that correct?

9 **MR. BEDENBAUGH:** Yes, you did.

10 **MR. ALGER:** Okay. If you don't mind taking the stand,
11 please. I'm going to have you ---

12 **THE COURT:** Okay.

13 **MR. ALGER:** --- testify first.

14 **THE COURT:** Please come forward, sir. And you'll be
15 sworn by the clerk.

16 **George R. Bedenbaugh, Jr.,**
17 being duly sworn testified as follows;

18 **THE COURT:** Okay. Thank you, sir. Just make yourself
19 comfortable. And if you need water, we can get that for
20 you.

21 **MR. BEDENBAUGH:** All right. Thank you.

22 **THE COURT:** And if you would, please state your name
23 and spell your last name for the record.

24 **MR. BEDENBAUGH:** Yes, ma'am. My name is George Robert
25 Bedenbaugh, Jr. I go by Rob.. My last name is B-e-d-e-n-b-

1 a-u-g-h.

2 THE COURT: Okay. Thank you, sir.

3 **Direct Examination by Mr. Alger:**

4 Q. Thank you, Mr. Bedenbaugh. Can you please give me your
5 title and responsibilities within the South Carolina
6 Department of Transportation.

7 A. Yes. My title is the preconstruction support engineer.
8 And I oversee the development of design guidelines for
9 multiple disciplines at the Department such as roadway,
10 hydrology, geotechnical seismic and structural. And ...

11 Q. Okay. What's your educational background?

12 A. I'm a -- I have a Bachelor of Science from Clemson
13 University in civil engineering.

14 Q. Do you have your Master's of Engineering?

15 A. No, sir.

16 Q. Okay. Are you a registered engineer within the State?

17 A. Yes, sir.

18 Q. Or licensed, I should say.

19 A. Yes, sir.

20 Q. How long have you had your license for?

21 A. Since -- since 1999.

22 Q. So in sum would you agree that your responsibilities
23 within the DOT is to design and engineer the roadways in a
24 generalization?

25 A. Yes, in a broad sense.

1 Q. Okay. And, obviously, that's in line with the DOT's
2 responsibility, which is to ensure the safety of the
3 traveling public, correct?

4 A. That's correct.

5 Q. Okay. And is your responsibility limited to the lanes
6 of traffic?

7 A. No, sir.

8 Q. Okay. What other components of the roadway system are
9 you responsible for?

10 A. We cover from right-of-way -- everything within the
11 right-of-way is within our purview.

12 Q. Okay. Do you have to anticipate and, therefore, it's
13 foreseeable that motorists may deviate from the lanes of
14 traffic?

15 A. That does occur.

16 Q. Okay. And that can occur on the shoulder, correct?

17 A. That's correct.

18 Q. Or median, correct?

19 A. If it's a traversable median. Not all medians are
20 capable of being driven over by a motor vehicle.

21 Q. Okay. And I'm going to hand you Plaintiff's exhibit 5,
22 which is already in evidence.

23 A. Okay.

24 Q. If you'll flip through that real quick.

25 A. Okay.

1 **MR. ALGER:** And, Your Honor, I think we've also
2 stipulated, for the record, that the grate that's in those
3 photos is the grate where this incident occurred.

4 **MR. SMITH:** That's right.

5 **THE COURT:** Okay. So Plaintiff's exhibit number 5 is a
6 photograph of the grate?

7 **MR. ALGER:** Where the incident occurred involving Ms.
8 Perkins.

9 **THE COURT:** Thank you.

10 Q. No, this is for you to hold onto. Now, would you
11 consider that a traversable median?

12 A. No, sir. That's a raised concrete median barrier.
13 That's designed to keep vehicles from passing through it.

14 Q. What about the gap between the concrete barrier and the
15 yellow line?

16 A. That is a drainage inlet that's designed to remove
17 water from the roadway.

18 Q. The drainage inlet, about how wide is that gap?

19 A. I'm not certain. I don't have that exact dimensions.
20 They're typically about four to four and a half feet in
21 width on a narrow section like this.

22 Q. And your testimony today is that that is a drainage
23 inlet or drainage gap?

24 A. It's a catch basin, type 15, which is a drainage inlet.

25 Q. That's not a shoulder on the side of the highway?

1 A. Oh, it can be a shoulder if you expand outside the
2 picture. I guess it's just zoomed in really tight on the --
3 on the drainage inlet. But the shoulder does run continuous
4 down the roadway.

5 Q. If a motorist experienced a stalling out or an
6 emergency, isn't it reasonable or really foreseeable that a
7 motorist would utilize that shoulder?

8 A. That shoulder is not wide enough for refuge. We
9 utilize ASHTO guidelines when we develop roadways. And that
10 particular width of shoulder is not suitable for motor
11 vehicle refuge.

12 Q. So if a person stalled out in that left lane, you would
13 expect them to stay in the left lane rather than go on that
14 shoulder?

15 A. The right shoulder is what we would typically expect.

16 Q. So if -- my question was if somebody stalled out in the
17 far left lane would you expect them to utilize that
18 shoulder?

19 A. The outside shoulder would be the typical shoulder that
20 we would expect a motor vehicle to take refuge in.

21 Q. Okay.

22 A. Being the right shoulder.

23 Q. And I get that, but you've got two other lanes of
24 traffic, right? This is ---

25 A.. Right.

1 Q. --- a three lane highway?

2 A. Sure.

3 Q. And you stall out in the left lane. Wouldn't you
4 anticipate somebody to go, whether it's for a brief moment,
5 wouldn't you anticipate them to go into that shoulder and
6 seek refuge?

7 A. They physically wouldn't be able to seek refuge because
8 it's too narrow. So they would be partially blocking a
9 travel lane if they took refuge there.

10 Q. Okay. So your testimony today is that it is
11 unreasonable for a motorist, a stranded motorist to utilize
12 that inside shoulder on that highway?

13 A. Now, that's a high risk scenario. It's not -- it's not
14 unforeseeable, but that's a very risky scenario.

15 Q. So it's better for them to stay in the lane of travel
16 than it is to get off on that shoulder?

17 A. I know it would be better to exit to the right side of
18 the roadway and utilize the right shoulder, ---

19 Q. If there were two ---

20 A. --- if at all possible.

21 Q. If there were two options, stay in the lane of travel
22 or to get on that left shoulder, which would you rather do?

23 A. Well, in this scenario you have to be in the travel
24 lane if you stop anywhere to the left.

25 Q. Okay.

1 A. There's not enough room ---

2 Q. So let's talk about ---

3 A. --- to clear it.

4 Q. --- this scenario a little bit. Stranded motorist, I-
5 85, you're on the far left lane, traffic's whizzing by.

6 You've been on I-85, correct?

7 A. Correct.

8 Q. Have you worked on I-85?

9 A. My job doesn't put me physically out on the roadway,
10 but I've worked on projects along the I-85 corridor, a
11 design.

12 Q. You know, the speed limit's, what, 60, 65, maybe 70?

13 A. It varies from 55 to 70 in the State.

14 Q. It's an interstate system, right?

15 A. That's right.

16 Q. A lot of traffic?

17 A. Right.

18 Q. I-85's probably one of the most heavily traveled
19 stretches of interstate in the country, correct?

20 A. It is in our State. I'm not sure about the country.

21 Q. Okay. So there's a lot of traffic going on this
22 interstate, right?

23 A. That's correct.

24 Q. So if you stall out in that far left lane, meanwhile
25 the other two lanes of traffic's whizzing by, what would you

1 do in that scenario?

2 A. Well, if your vehicle is physically incapable of
3 moving, you have to stop where you're at.

4 Q. No, the vehicle's stalled out.

5 A. Oh, so it can't be cranked up? Is that what you're
6 asking?

7 Q. Correct.

8 A. Okay. Then you would stop where you come to rest at.

9 Q. Um-hum (affirmative).

10 A. Which would be in the lane or wherever that may be.

11 Q. Okay. So you're stalled out, come to rest, you're in
12 that far left lane, wouldn't it seem reasonable to get over
13 on that concrete median?

14 A. You could. It's just -- it's not designed for that.
15 That's not a parameter that we design for on an interstate
16 like this.

17 Q. Can't it be anticipated or foreseeable that somebody's
18 going to utilize the safety of that concrete barrier, that
19 shoulder rather than sitting in the lane of traffic still?

20 A. Well, yes, the design parameters of this road, you
21 would be partially in the lane even if you chose to use some
22 of the left shoulder. You would be blocking the travel
23 lane.

24 Q. All right. When first responders are out there on I-
25 85, or the police, or maybe maintenance personnel, wouldn't

1 you expect them to use that inside shoulder?

2 A. Well, I'm not really sure about the responders, but I
3 can speak on behalf of DOT because I'm familiar with that.
4 We would set up a full-blown lane closure.

5 Q. Okay.

6 A. It would be a very safe, controlled environment where
7 we would transition motorists away from the inside lane so
8 we could work on that inside shoulder.

9 Q. If a first responder, police officer was responding to,
10 say, a stalled motor vehicle in that left lane, do you
11 expect them to walk down that lane of traffic or would you
12 expect them to walk down next to the concrete barrier off
13 the shoulder of the interstate?

14 A. Well, we don't expect that kind of foot traffic
15 anywhere. If it's an emergency scenario, they'll have to
16 walk wherever they need to walk.

17 Q. So ---

18 A. And that could be in the lane or down the shoulder.

19 Q. So motorists don't stall out and emergencies don't
20 occur on the interstate system?

21 A. Oh, they do. And we -- in this scenario the outside
22 shoulder was designed to accommodate that.

23 Q. So since emergencies occur and they're anticipated to
24 occur, correct?

25 A. Right. We -- well, we design for -- it's hard to

1 design for an emergency scenario. We don't design for
2 crashes, if that's what you're asking.

3 Q. You don't design for crashes? Okay.

4 A. Yeah, that's ---

5 Q. But you anticipate crashes, correct?

6 A. Well, we have design variables that mitigate the
7 potential for a crash.

8 Q. For instance, you put up crash absorbers in front of
9 obstacles, right?

10 A. That's right. That's a mitigation.

11 Q. Yeah, on gores and such, right?

12 A. That's correct.

13 Q. Yeah. Or you put up the Triton railings along the
14 roadway, correct?

15 A. Yes, sir. Those are crash mitigation ---

16 Q. And that's so that if a motorist loses control of their
17 vehicle, they will not be hurt worse due to the hazard
18 presented on the side of the road, correct?

19 A. That's correct.

20 Q. So you have to anticipate that accidents are going to
21 occur on the interstate system?

22 A. To some degree, yes. But the design guidelines give us
23 parameters that we do to mitigate the potential for that.

24 Q. And are you familiar with the ASHTO guidelines?

25 A. Some of them. There's dozens.

1 Q. Have you ever seen this manual here? The Roadside
2 Design Guide?

3 A. Yes, sir.

4 Q. Do you have a copy of this?

5 A. Not with me, but I'm familiar with it.

6 Q. Okay. The title says itself, Roadside Design Guide.

7 That's got nothing to do with the paved surface or the lanes
8 of traffic, right?

9 A. Oh, that's correct.

10 Q. So ASHTO, which is a national organization that all
11 fifty states are a member of, acknowledges that accidents
12 occur just as much -- pretty much on the roadside as they do
13 in the lane of travel, right?

14 A. Well, I'm not sure if they acknowledge that, but that's
15 a common fact that crashes can occur anywhere.

16 Q. And they can occur not just due to the negligence of
17 the driver, but due to hazards that present themselves on
18 the roadside, correct?

19 A. That's correct.

20 Q. Like a shoulder edge drop-off?

21 A. That would be one example.

22 Q. Or poor drainage?

23 A. That's another example, yes, sir.

24 Q. Or an obstruction of some sort? Or, you know, the list
25 goes on. There's a bunch of them, correct?

1 A. There are numerous risks.

2 Q. So it is anticipated that motorists will have at times
3 emergencies on the system and have to avail themselves of
4 the shoulders, correct?

5 A. That's correct.

6 Q. Okay. I'm handing you what's been marked as
7 Plaintiff's exhibit 2.

8 A. Yes, sir.

9 Q. Can you please identify that for me?

10 A. Yes, sir. This is a SCDOT construction standard for a
11 catch basin, type 15.

12 Q. Okay.

13 THE COURT: What number is this, counsel?

14 MR. ALGER: Plaintiff's exhibit 2, Your Honor.

15 THE COURT: Okay.

16 MR. ALGER: It's not marked on your ---

17 THE COURT: Okay. But this has been marked into
18 evidence?

19 MR. ALGER: I'm about to submit it into evidence.

20 THE COURT: Okay.

21 MR. SMITH: We have a bigger version of it, exhibit
22 number 8.

23 THE COURT: So it's Defendant's number 8 and
24 Plaintiff's number ...

25 MR. ALGER: 2.

1 **THE COURT:** 2.

2 **MR. ALGER:** And I've got ---

3 A. You might need the bigger one, if that ---

4 Q. Well, I've ---

5 A. Just for my eyes.

6 Q. I've got it.

7 A. Oh, you got it? Okay, perfect.

8 **THE COURT:** Okay. All right. Thank you. And that is
9 coming in without objection, is that correct?

10 **MR. SMITH:** Yes, Your Honor.

11 **THE COURT:** Okay.

12 (Whereupon Plaintiff's exhibit 2 and Defendant's
13 exhibit 8 were admitted into evidence)

14 Q. And it doesn't come with a set of reading glasses. So
15 if you flip over the page we can, now that we've identified
16 the plans, we can see some, yep, some drawings there. Now,
17 could you identify for me, please, what type of catch basin
18 that is or what the plans are? How is this used? Tell me a
19 little bit about it.

20 A. Okay. Well, this is a construction detail for a catch
21 basin type 15. And we utilize standard details like this
22 for items that occur numerous times on a project. So in
23 lieu of having to replicate the same drawing over and over,
24 we will host it in one location that can be referenced time
25 and time again.

1 Q. Would this same plan specifications, et cetera, this
2 would be used pretty much uniformly across the State, right?

3 A. That's correct.

4 Q. Okay. Now, would you agree with me that when you build
5 these catch basins they need to be done according to these
6 specifications?

7 A. They are the guide. The engineer has discretion in the
8 field to make decisions. So these are not a absolute shall
9 condition.

10 Q. But these are the specifications for the catch basin,
11 correct?

12 A. That's correct.

13 Q. Okay. And you recognize in the pictures that the catch
14 basin in Plaintiff's exhibit 5 is, in fact, the catch basin
15 that's right here in these design plans, correct?

16 A. That's correct.

17 Q. Okay. Now, if you'll look back at Plaintiff's exhibit
18 5. And I want to put vertical picture -- yep, that's good.

19 A. This one?

20 Q. Okay. Now, what is right here, looking at this picture

21 ---

22 MR. ALGER: Your Honor, and we've got an aerial
23 picture.

24 Q. What is this gap right there? What is that called?

25 A. That is an emergency overflow.

1 Q. Emergency overflow?

2 A. Um-hum (affirmative).

3 Q. And can you identify for me the emergency overflow on
4 the plans? And if you want to, please flip the pages ---

5 A. Sure. It occurs in several places on this drawing.

6 It's actually referenced in, let's see, one, two, three,
7 four -- four different locations. So I can point to either
8 one.

9 Q. Okay. So it's referenced right here on these plans,
10 correct?

11 A. That's correct.

12 Q. And that's the area in between the grate and the
13 concrete median, right?

14 A. That's correct.

15 Q. Okay. Now, I'm looking at the second page.

16 A. Okay.

17 Q. This right here. The grate right here, ---

18 A. Yes, sir.

19 Q. --- that's surrounded by what appears to be like a
20 concrete lip, correct?

21 A. That's correct.

22 Q. Okay. And can you tell from these plans right here how
23 wide that lip is supposed to be?

24 A. It's shown right here. I believe that is six inches.

25 Q. Okay.

1 A. Six inches of concrete.

2 Q. All right. So I want to -- I'm going to set these
3 apart. I'm going to do it like that for you, okay?

4 A. All right.

5 Q. So we've got a concrete lip right there. Okay. So
6 we've got the concrete lip between the grate and the
7 concrete median, right?

8 A. That's correct.

9 Q. And it's supposed to be about six inches, right?

10 A. That's correct.

11 Q. Now, looking at the specifications -- we'll flip over
12 to the second page, please.

13 A. Okay.

14 Q. Does it appear that that concrete lip is flush up
15 against the concrete barrier on the sides?

16 A. No, sir. It's slightly below it. There's a -- this
17 edge piece right here is called the reveal.

18 Q. Um-hum (affirmative).

19 A. It's about three inches in height. And ---

20 Q. Okay.

21 A. Are you talking horizontal or vertical?

22 Q. I'm talking horizontal.

23 A. Okay. I gotcha. It is. It's -- horizontally it's
24 right up against it.

25 Q. So on the ground it's flush up against it?

1 A. That's correct.

2 Q. They're side by side? How about that?

3 A. There's a construction joint there where they touch.

4 Q. And they're supposed to touch, right?

5 A. That's correct.

6 Q. Okay. All right. And I want to go ahead and flip over

7 -- why don't we look at these -- this page. It says grate

8 section. Can you identify for me how wide these gaps are of

9 the grate?

10 A. Yes, sir. They are three and one half inches.

11 Q. Okay.

12 A. The opening.

13 Q. Okay. The opening of the grate is three and one half

14 inches, right?

15 A. That's correct.

16 Q. All right. So we'll keep that number in the back of

17 our mind. Let's go ahead and flip over to the last page

18 right here. And it looks like the -- so looking at this

19 page right here, what's the distance from the edge of the

20 metal grate to the concrete barrier?

21 A. Oh, it is six inches.

22 Q. Okay. And that's the design specifications for this

23 catch basin, correct?

24 A. That's correct.

25 Q. Okay. So now let's turn back to the pictures,

1 Plaintiff's pictures.

2 A. Okay.

3 Q. All right. No, you were on the right page.

4 A. Yes, sir.

5 Q. And we're going to keep looking at that ---

6 A. Okay.

7 Q. --- above-hand picture right there. If the concrete
8 lip around the grate is six inches, and the gap between the
9 metal grate and the concrete barrier is supposed to be six
10 inches, how wide is the gap in that picture?

11 A. Oh, I can't speculate. I mean, I can tell that there's
12 room in there, but I don't know the exact dimensions.

13 Q. So there is a gap between the concrete edge of the
14 grate and the concrete barrier, correct?

15 A. That's correct. We use construction joints that allow
16 for contraction and expansion ---

17 Q. So ---

18 A. --- on hot and cold.

19 Q. Did that expand? Is that how that got like that?

20 A. Oh, I don't know. I'm not sure how that got like that.

21 Q. Is that cement, or asphalt, some kind of paving
22 material between the concrete?

23 A. I mean, it's hard to say. It looks like concrete
24 that's covered up with some sort of debris, ---

25 Q. Um-hum (affirmative).

1 A. --- but it's difficult to say.

2 Q. Well, let's look at some of the other pictures. Some
3 of them may be zoomed in a little bit better. How about
4 that?

5 A. Yep, for sure.

6 Q. So there is a void or a gap is better to say between
7 the concrete edge of the drainage basin and the concrete
8 median, right?

9 A. It's not a gap per se as in a void. It's got some
10 concrete material I can see right here between this concrete
11 and that concrete.

12 Q. So if that edge of the concrete basin is six inches and
13 the median is supposed to be flush up against it, it's wider
14 than six inches, correct?

15 A. It doesn't -- I'm not sure. I can't tell from the
16 drawing or the image here.

17 Q. It's not built to specifications if that void is there,
18 correct? At least not these specifications that we have in
19 our hand.

20 A. Well, there are -- there are construction tolerances
21 that come into play with the guidelines, the design
22 parameters so ---

23 Q. Where are those construction tolerances listed on this
24 exhibit?

25 A. Oh, they're -- it's through engineering discretion.

1 When we're pouring concrete and forming up different
2 material, they just have to work with wood shims and all
3 sorts of material to actually make it -- make it meet these
4 parameters. So it's an understood tolerance where there's
5 just room to actually construct it physically.

6 Q. So looking at this, and I want to look at this, the
7 last picture in the group right here.

8 A. Sure. Yes, sir.

9 Q. The gap, the empty part of the grate is three and a
10 half inches, correct?

11 A. That's the design parameter, yes, sir.

12 Q. Okay. Looking at this, and you know the concrete is
13 six inches, right?

14 A. I don't -- I know the width on here is six inches,
15 that's right.

16 Q. Um-hum (affirmative). You can't tell for me right now
17 that gap, looking at it, is it as wide as the grate? As
18 wide as the concrete edge of the grate? It looks to me like
19 it's pretty darn close to the width of the grate.

20 A. It's just hard to say with the angle of the photograph.
21 I mean, I could certainly tell you what the design parameter
22 is, but I just don't know ---

23 Q. So would a three inch gap between the concrete edge of
24 the grate and the concrete median, would that be acceptable?

25 A. If it was an open void, that would not be acceptable,

1 but this -- this has some sort of material in it. Whether
2 it's the concrete or asphalt, it's hard to say.

3 Q. So you led me to my next question.

4 A. Sure.

5 Q. If you increase the width of the gap, you're increasing
6 the width of that void between the concrete basin and the
7 concrete median, correct?

8 A. Potentially.

9 Q. So that gap now between the concrete basin and the
10 concrete median is wider than specifications?

11 A. It could be, but there are construction tolerances
12 through engineering discretion where the purpose of that
13 opening is to remove large debris from the roadway.

14 Q. And those construction or engineering tolerances are
15 not written down, they're just left up to you when they're
16 convenient, right?

17 A. Or they're left up to construction personnel, not me
18 personally.

19 Q. Okay. But you would agree with me that that --
20 according to these plans right here is not constructed
21 according to specifications?

22 A. Without dimensions on the photograph it's very
23 difficult to say that.

24 Q. Well, looking at these plans right here, and ---

25 A. Right.

1 Q. --- it shows that the concrete edge is flush with the
2 concrete median. That's the specifications in these plans
3 that you testified to earlier.

4 A. Sure.

5 Q. So if they're not flush, it's not built to the
6 specifications here, correct?

7 A. Well, like I said, there is material there. I just
8 don't know if it's a continuous concrete pour or not.

9 Q. And that material ---

10 A. But there is ---

11 Q. --- is not on these plans, right?

12 A. Well, let me go back to the construction detail because
13 we utilize construction joints adjacent to all concrete
14 items. So this particular drawing does not detail that
15 construction joint.

16 Q. Um-hum (affirmative).

17 A. It would be shown elsewhere for the construction of the
18 actual median barrier. So there's a standard detail similar
19 to this for the actual raised concrete median barrier that
20 would specify a -- they call it like an elastomeric bearing.
21 It's just basically a piece of material in there that allows
22 the road to breathe by the concrete so as it contracts and
23 expands we don't crack the roadway or the concrete barrier.
24 And that just occurs on a different drawing.

25 Q. So in short, there may be a variance, but that's not

1 constructed to the plans you have in front of you today,
2 correct?

3 A. Well, I can't -- I can't say that. I don't have
4 dimensions on here because the drawing is specific very much
5 so to the actual catch basin, but there are -- there is a
6 construction joint, an expansion joint ---

7 Q. Um-hum (affirmative).

8 A. --- that shows up on another drawing that is used in
9 tandem with this.

10 Q. This drain was built for, I think -- I think it was
11 said, maximum drainage, correct?

12 A. That's correct.

13 Q. Why do you have a grate on top of it?

14 A. That's designed to keep motor vehicles from dropping
15 into the grate.

16 Q. And debris?

17 A. Into the opening.

18 Q. And other debris, objects from dropping in as well?

19 A. Sure. It's designed to catch some -- some items.

20 Q. And it's designed to prevent stuff from falling into
21 the drain, correct?

22 A. That's correct.

23 Q. So understanding that the grate and the gaps in the
24 grate are three and a half inches, ---

25 A. Um-hum (affirmative).

1 Q. --- and, again, understanding that this gap was, you
2 know, six inches here, wouldn't it make sense for that gap
3 to be less than three and a half inches as well for the void
4 between the concrete basin and the median?

5 A. I'm sorry, I kind of lost you on that one. Tell me --
6 ask me that question again.

7 Q. This void that I'm pointing to right here, ---

8 A. Yes, sir.

9 Q. --- shouldn't that be less than three and a half inches
10 as well?

11 A. It could be. I think the design standard drawing
12 specifies it, but it is an emergency overflow that we want
13 to make sure does not get clogged up with large items like
14 milk jugs or pieces of tire.

15 So if the grate becomes clogged with items such as
16 those shown here in the image, pieces of tire or the raised
17 pavement marker that's busted up there, this is designed to
18 allow those items to not -- not stop the drainage. So it's
19 large ---

20 Q. Because drainage is essential on a roadway as well,
21 correct?

22 A. Yes, sir. That's one of the most critical elements we
23 design for.

24 Q. Um-hum (affirmative). Because you, again, you want to
25 prevent -- you want to prevent motorists from having

1 emergencies, or wrecks, or coming in contact with hazards,
2 right?

3 A. That's right. It's just keeping the road dry as
4 possible.

5 Q. That goes back to the duty of the DOT to provide a safe
6 roadway for the traveling public?

7 A. That is one of our duties.

8 Q. Okay. All right. I don't think I have any further
9 questions for you. Thank you.

10 A. Okay. Thank you.

11 Q. I'm sure your attorney has some questions for you.

12 A. Okay. Thank you.

13 **THE COURT:** Okay. Mr. Smith.

14 **MR. SMITH:** Yes, Your Honor.

15 **Cross Examination by Mr. Smith:**

16 Q. Just referencing code section 56-5-2530, is I-85
17 considered a controlled access highway?

18 A. Yes, sir.

19 Q. Okay. And are you familiar with that section that says
20 except when necessary to avoid conflict with other traffic,
21 or in compliance with law or the directions of a police
22 officer or official traffic-control device, no person shall
23 stop, stand or park a vehicle on any controlled-access
24 highway? Is that what you're referring to when you said
25 it's not supposed to be a place where people stop and

1 pedestrians walk?

2 A. That's correct.

3 Q. Is that also part of the South Carolina Driver's Manual
4 to drivers, warning them about stopping on the interstate?

5 A. I'm familiar with it, I'm just not well versed in that
6 manual. But in general, yes.

7 Q. Okay. So if a person stops in the middle of an
8 interstate as Ms. Perkins did, that would be a violation of
9 that statute?

10 A. That is correct. We typically do not want people to
11 stop like that.

12 Q. With respect to the photographs that you were looking
13 at of the storm drain, how long have you been a design
14 engineer?

15 A. For about twenty-three years.

16 Q. When you looked at the pictures that Plaintiff showed
17 you of the storm grate, from your experience did you see any
18 design defect or defect in the storm catch basin?

19 A. No. It looks reasonable for what that device is
20 supposed to be.

21 Q. And would you expect DOT maintenance to make any
22 alterations to what you see in those photographs?

23 A. Not unless a specific problem was pointed out.

24 Q. Did you have an occasion to look up the weight and
25 dimensions of this particular -- how much these grates

1 weigh? Did you -- in your experience do you know what these
2 things weigh?

3 A. Yes, sir.

4 Q. How much is one of the -- the two grates together, how
5 much do they weigh?

6 A. The two grates combined weigh two hundred and thirty
7 pounds.

8 Q. And are they sometimes screwed together or, in other
9 words, held together so you'd have to pick both of them up?

10 A. Sometimes.

11 Q. Okay. For a person to -- for a DOT maintenance to pull
12 these up and take them off, what kind of operation -- is
13 that something that your resident maintenance engineer would
14 address?

15 A. Probably better addressed by maintenance. But in
16 general, they're designed to be very heavy so they do not
17 free up if a vehicle does hit them. So the weight is not
18 conducive to a person simply picking it up and replacing it.
19 That would be more of a controlled environment where we
20 would do a lane closure and set up a lot of traffic control
21 to make sure the workers were not injured.

22 Q. All right. When you were looking at the photographs
23 here and you were looking at the plans, it says three and a
24 half inches close to the point. If it ends up being four
25 inches is that within deviant, I mean, is that within the

1 tolerance that y'all'd expect out in the field?

2 A. That's a reasonable allowance for that because our
3 primary design purpose here is to make sure a tire does not
4 go down into the grate opening.

5 Q. And in terms of what you see here, this is designed to
6 do exactly what it was supposed to do?

7 A. Yes, sir.

8 **MR. SMITH:** Your Honor, that's all the questions I have
9 of this witness.

10 **THE COURT:** Okay. Anything else, counsel, of this
11 witness?

12 **MR. ALGER:** No, Your Honor.

13 **THE COURT:** Okay. Mr. Bedenbaugh, sir, you may step
14 down. Watch your step, please.

15 A. Okay. Do these stay up here?

16 **THE COURT:** I think you can give that back to the court
17 reporter, sir. Okay. Is there a motion that Mr. Bedenbaugh
18 be excused or is he going to remain with us?

19 **MR. SMITH:** He can have the option to be excused.
20 He'll hang around.

21 **THE COURT:** That's rare, but okay.

22 **MR. ALGER:** He's not here under subpoena. So he can
23 come and go as he pleases.

24 **THE COURT:** Okay. Thank you, sir. Next witness.

25 **MR. ALGER:** The Plaintiff calls Michael Holden, please.

MICHAEL HOLDEN - DIRECT EXAMINATION BY MR. ALGER

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1 **THE COURT:** Yes, sir.

2 **Michael Holden,** being
3 duly sworn testifies as follows;

4 **THE COURT:** Sir, watch your step. Make yourself
5 comfortable. And, if you will, state your full name,
6 spelling your last for the record.

7 **MR. HOLDEN:** Okay. My name is Michael Cleveland
8 Holden. My last name, H-o-l-d-e-n.

9 **THE COURT:** Okay. Thank you, sir.

10 **MR. HOLDEN:** Thank you.

11 **Direct Examination by Mr. Alger:**

12 Q. Mr. Holden, would you please state your title and
13 responsibilities within the Department of Transportation,
14 please.

15 A. My current title is district traffic engineer.

16 Q. Okay.

17 A. We are in charge of all traffic controlled devices.

18 But formerly I was an interim resident maintenance engineer
19 in Spartanburg, ---

20 Q. Um-hum (affirmative).

21 A. --- and then assistant district maintenance engineer
22 during the time of investigating this particular incident.

23 Q. Did you investigate this incident?

24 A. Just -- just to go back and review our records.

25 Q. Is this a photo that you took of this ---

MICHAEL HOLDEN - DIRECT EXAMINATION BY MR. ALGER

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1 A. Yes, sir.

2 Q. Okay. And I'm handing you a photo, ---

3 MR. ALGER: Which if we could mark as Plaintiff's
4 exhibit 7, please. And I have more copies for you, Your
5 Honor.

6 THE COURT: Okay.

7 (Whereupon Plaintiff's exhibit 7 was marked for
8 identification)

9 Q. That photo that we're marking as -- I'm jumping ahead.

10 THE COURT: Okay. And, Mr. Smith, you've seen these?

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: No objection?

13 MR. SMITH: No objection.

14 THE COURT: Okay. Plaintiff's exhibit number 7 without
15 objection.

16 (Whereupon Plaintiff's exhibit 7 was admitted into
17 evidence).

18 Q. I'm handing you that photograph. Is that a photo that
19 you took when you visited this scene?

20 A. Yes.

21 Q. All right. And identify what's in that photo for me,
22 please.

23 A. It's a -- the type 15 catch basin with the openings as
24 we've spoken of already.

25 Q. Okay.

MICHAEL HOLDEN - DIRECT EXAMINATION BY MR. ALGER

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1 A. Yellow line.

2 Q. So at the time of this accident you were a resident
3 maintenance engineer -- assistant resident maintenance
4 engineer, correct?

5 A. Actually, I was not. I was -- I was assistant district
6 maintenance engineer.

7 Q. Um-hum (affirmative).

8 A. And then about three or four months after the accident
9 I became the interim resident maintenance engineer in
10 Spartanburg ---

11 Q. Okay.

12 A. --- for about nine months. And then I went back to my
13 other job.

14 Q. What are some of the responsibilities of a maintenance
15 engineer?

16 A. We address any issues, problems in the roadway, you
17 know, shoulders, anything in the right-of-way that needs
18 maintenance attention.

19 Q. So you're -- I'm going to put some words in your mouth,
20 but you're kind of like the captain or the manager of the
21 office and you tell who to go where and do what?

22 A. Yes. So we would manage about, you know, twelve,
23 fourteen crews ---

24 Q. Um-hum (affirmative). How many men in a crew?

25 A. Anywhere from four to ten, probably. They would --

1 they have various jobs, you know, some interstate, some
2 traffic control, different things.

3 Q. Okay. I'm going to hand you what's been identified as
4 Plaintiff's exhibit 4. And can you tell for me -- let me
5 get reading glasses.

6 **THE COURT:** And, Mr. Smith, that's in without
7 objection? Okay. Hold on one second. Let me make sure
8 that I'm looking at the right -- is it this?

9 **MR. ALGER:** Yes.

10 **THE COURT:** Okay. And this is ...

11 **MR. ALGER:** Plaintiff's exhibit 4.

12 **THE COURT:** Okay. Mr. Smith, any objection?

13 **MR. SMITH:** Let me just look at it.

14 (Pause)

15 **MR. SMITH:** Yes, Your Honor, no objection.

16 **THE COURT:** Okay. So Plaintiff's exhibit number 4,
17 which is a daily work report, is that correct?

18 **MR. ALGER:** Yes, Your Honor. It's actually a log of
19 when they did inspections.

20 **THE COURT:** Okay. All right. Thank you. In without
21 objection.

22 (Whereupon Plaintiff's exhibit 4 was admitted into
23 evidence)

24 Q. And that was my next question. Is that a log of when
25 inspections have occurred in I-85?

1 A. That appears to be, yes.

2 Q. Can you identify for me some of the information on
3 there, such as the roadway, mileage, where the inspections
4 occurred?

5 A. I-85 mile marker or mile points 55, 89, 83.48.

6 Q. Okay. And what type of inspections are covered in that
7 log?

8 A. Okay. Roadway drainage is what it's listed as.

9 Q. So a roadway drainage inspection, ---

10 A. Um-hum (affirmative).

11 Q. --- would that have included a drain culvert, a catch
12 basin located at mile marker 61?

13 A. Yes.

14 Q. So how many inspections occurred on this log? How many
15 different inspections occurred on that log? And please give
16 us a time-frame, too.

17 A. I'm not following your question. You want me to count
18 the number here?

19 Q. Yeah, please. And tell me when the first inspection
20 was and when the last inspection was and how many occurred
21 between the two.

22 (Pause)

23 Q. Just on the first page.

24 A. Okay. There's twenty-seven entries here for
25 inspections.

1 Q. And when is the first inspection on this log?

2 A. 6/10/2010.

3 Q. Okay. And when is the last entry on this log?

4 A. 7/24/2013.

5 Q. So there were how many inspections between those two
6 dates?

7 A. I think I said twenty-seven.

8 Q. Okay. And this incident occurred on March 1st of 2012?

9 A. Um-hum (affirmative).

10 Q. How many drainage inspections occurred prior to this
11 accident?

12 A. I'm not sure I can answer that. Oh, prior to the
13 accident?

14 Q. Yeah.

15 A. Okay. Ten.

16 Q. Okay. So there were ten instances where DOT employees
17 were going out specifically for the purpose of inspecting
18 the drainage culverts or drainage system of the roadway,
19 correct?

20 A. Um-hum (affirmative).

21 Q. And that's for the mile marker that this incident
22 occurred at? Or within that range?

23 A. It is within the range, yes.

24 Q. Okay. Now when DOT employees are out and about are
25 they also under a duty if they recognize a hazard to report

1 it back to you?

2 A. Yes.

3 Q. And you expect that of your employees?

4 A. Yes.

5 Q. If they see a tree down, they're supposed to call the
6 main office and say, hey, we've got a tree down. We need to
7 come out here and do something, right?

8 A. Yes.

9 Q. So if they were to recognize a hazard on the roadway
10 such as a pothole, would you expect them to call that?

11 A. In some instances. If it was something that had to be
12 addressed at that time, yes. You know, we -- we had -- at
13 that particular time we had people working at night to --
14 just to fix potholes because you can't get out there in the
15 daytime.

16 Q. Okay.

17 A. So it wouldn't necessarily be called in directly.

18 Q. Another thing the DOT does is when there's new
19 construction going on, there's always a DOT employee onsite
20 during that new construction, correct?

21 A. Yes.

22 Q. And that DOT employee is there for the exclusive
23 purpose of making sure that roads are constructed according
24 to specifications, right?

25 A. I don't really speak for construction, but that is our

1 typical ---

2 Q. That's the reason that employee is there is to make

3 sure it's ---

4 A. Yes.

5 Q. It's built according to specification?

6 A. Um-hum (affirmative).

7 Q. And then after new construction, again the DOT does an

8 inspection of the roadway to ensure that it's built

9 according to specifications, correct? Before the road is

10 dedicated to the DOT? Are you familiar with that?

11 A. Yes. I believe that's correct.

12 Q. Okay. And then ---

13 A. We accept it from the contractor.

14 Q. You accept it from the contractor. The road is

15 dedicated to the DOT and it becomes part of the State

16 highway system.

17 A. Yes.

18 Q. And before that occurs DOT does an examination of the

19 road to make sure everything is built according to

20 specifications, correct?

21 A. When you say according to specifications, if you're

22 meaning exactly by a standard drawing, that's not

23 necessarily the case. It's just built to our acceptance,

24 which would mean within our tolerances of ---

25 Q. So the ---

1 A. --- construction.

2 Q. --- DOT doesn't have to abide by the drawings or the
3 specifications of its engineers?

4 A. It's not a -- it's not a shall document. It is a -- it
5 is a document that is guidelines and we work within
6 tolerances to -- to build that to.

7 Q. So design guidelines such as the plans that we went
8 over earlier, Plaintiff's exhibit(2, these are just
9 guidelines, they're not actual specifications that
10 somebody's supposed to follow?

11 A. They are specifications, but there are tolerances
12 within the specifications as Mr. Bedenbaugh had pointed out.

13 Q. So those numbers on there, those are just guidelines?
14 You don't actually have to abide by them?

15 A. No, they are -- they're there for a purpose.

16 Q. And what is that purpose?

17 A. To be built that way or as close as possible.

18 Q. Okay.

19 A. Because physically in the field you can't always build
20 it to a certain, you know, you might be off a half inch or a
21 quarter inch or, you know, -- so those things are ---.

22 Q. Okay..

23 A. We're talking about constructability as opposed to, you
24 know, a specification.

25 Q. Okay. What other inspections occur on I-85 other than

1 drainage inspection? Isn't there a sign inspection?

2 A. Sign inspections.

3 Q. Nighttime inspections?

4 A. Yes.

5 Q. What about general paving inspections?

6 A. Just to -- what do you mean paving?

7 Q. Drive down the road and do a general inspection of the
8 roadway. Isn't there an annual inspection ---

9 A. Yeah, ---

10 Q. --- that occurs?

11 A. Daytime inspection, ---

12 Q. Okay..

13 A. --- is basically what we call it.

14 Q. So there are a number of inspections that occur
15 throughout the year each year of I-85, correct?

16 A. Yes.

17 Q. In fact, in this region in Spartanburg is I-85 probably
18 one of your largest projects and largest responsibilities?

19 A. It's one of them, yes.

20 Q. Is one of the main thoroughfares through Spartanburg
21 County?

22 A. Absolutely.

23 Q. And a significant number of DOT's resources are
24 dedicated to the -- to I-85?

25 A. I mean, significant. I don't -- yeah, I mean, ---

MICHAEL HOLDEN - DIRECT EXAMINATION BY MR. ALGER

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1 Q. Y'all are out there doing work almost every day
2 somewhere on I-85?

3 A. Probably.

4 Q. Now, are you familiar with the ASHTO regulations? You
5 ever heard of that?

6 A. I mean, I'm familiar with the document. I don't know
7 any specifics. You know, there's thousands of pages.

8 Q. Sure. Do you have any design experience, engineering
9 experience with plans such as this?

10 A. Other than working in construction twenty years ago.
11 As a maintenance engineer we don't really necessarily deal
12 with the design or ---

13 Q. Um-hum (affirmative). So you'd defer to Mr. ---

14 A. I would defer to Mr. Bedenbaugh.

15 Q. Okay. As the maintenance engineer, though, you do
16 check for roadside obstacles and hazards, correct?

17 A. Yes.

18 Q. And you try to make sure that the traveling public is
19 safe, be it in the lanes of traffic or on the roadside
20 shoulder?

21 A. (Affirmative nod).

22 Q. Correct?

23 A. Yes.

24 Q. And you would agree that motorists are going to, on
25 occasion, avail themselves the use of emergency lanes,

1 correct?

2 A. The emergency lane -- we define the emergency lane as
3 the right side as Mr. Bedenbaugh indicated.

4 Q. So that's -- the lane in between the traveling lane,
5 the yellow line and the concrete median, that's just there
6 for cosmetic purposes?

7 A. It's actually mainly there for the drainage to get off
8 the road.

9 Q. Okay. So you don't want to have a shoulder there --
10 couldn't that be accomplished by a narrow -- narrower
11 shoulder?

12 A. Uh-uh (negative nod).

13 Q. Or narrow -- if you're going to call that a drain, why
14 don't we just refer to it as a drain? Couldn't that be
15 accomplished by a narrower drain?

16 A. No. I mean, I wouldn't think so.

17 Q. So you got, what, a four and a half, maybe five foot
18 wide drain on the edge of the traveling lane?

19 A. (Affirmative nod).

20 Q. You don't foresee a motorist pulling onto that at any
21 point in time?

22 A. Well, the grate's designed to carry, you know, a car
23 weight. So, I mean, you -- there's an anticipation that you
24 -- that a car might drive over it. And you don't want to
25 drive down in there.

1 Q. Um-hum (affirmative).

2 A. So it's there for that reason. And it's built like
3 that for that reason.

4 Q. So people are going to, on occasion, drive in that
5 lane? In that drain, as you said?

6 A. Well, half their car might. The other half's going to
7 be in the -- in the left lane, which we don't want it to be
8 there.

9 Q. Okay. So people are going to use that drain, drive on
10 it, whatever, walk on it? They're going to drive -- they're
11 going to be out there in that lane, correct?

12 A. I'm not going to say that they're going to be. They
13 could be.

14 Q. They could be? Okay.

15 A. Yeah.

16 Q. They could be out there. It's foreseeable that a car
17 will pull off in that shoulder?

18 A. They shouldn't, but they could. I mean, it's very
19 unsafe. You know, there's not really enough room to pull a
20 car to the left.

21 Q. Because I-85's a busy interstate, right?

22 A. Yes.

23 Q. A lot of traffic?

24 A. Yes.

25 Q. A lot of hazards out there? And if a car stalls out,

1 somebody could get hurt, right?

2 A. Yes.

3 Q. So if you are a stranded motorist would you stand in
4 the middle of three lanes of traffic?

5 A. No.

6 Q. You'd get off to the shoulder, right?

7 A. I would try to get to the right if I was driving.

8 Q. Okay. What if the right wasn't an option because
9 traffic's whizzing by going 70, 75 miles an hour, horns were
10 honking, people are cursing out the windows at you because
11 you're a stranded motorist and you're in their way and
12 they're trying to get to wherever they're going? Where
13 would you go then?

14 A. If you're -- if your car was absolutely stalled out and
15 you had no other options you would, you know, pull to the --
16 probably, yeah, you would pull to the median or get as much
17 off as you can, but you're not going to be totally off the
18 road. You're still in -- you're still in the left lane.

19 Q. Okay. But you as an individual, you get out of the
20 line of traffic and you'd get up out of the -- out of
21 traffic and out of the way of everybody, right?

22 A. Um-hum (affirmative).

23 Q. As quick as you can because you don't want to get hit
24 by a car whizzing by at 70 miles an hour, right?

25 A. Right. I'm doing the best I can to make it to the

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1 right side is what I'm going to do.

2 Q. Okay. No further questions. Please answer your
3 attorney's questions.

4 THE COURT: Okay. Mr. Smith.

5 MR. SMITH: Yes, Your Honor.

6 **Cross Examination by Mr. Smith:**

7 Q. Mr. Holden, I have here exhibits 5, 6 and 7. These
8 have been marked and stipulated ---

9 MR. ALGER: No objection to these, Your Honor.

10 THE COURT: Okay.

11 (Whereupon Defendant's exhibits 5, 6 and 7 were
12 admitted into evidence)

13 Q. First of all, when we got the notice about this
14 accident, tell me the process you went through to search the
15 DOT records for any type of problems with this drain, catch
16 basin. What are the systems that you use at the Highway
17 Department? What is that system you use?

18 A. It's called HMMS.

19 Q. What does that stand for?

20 A. Highway Maintenance Management System.

21 Q. Okay. And how does that system work in terms of
22 problems reported? How does it get entered? Who assigns to
23 fix it, that kind of thing? Explain to the Court how that
24 system works.

25 A. Okay. So say we had a complaint called in from a

1 citizen, that complaint is entered into the system and
2 assigned to the appropriate crew depending on what the issue
3 is. And then that crew looks at their, you know, requests
4 each day and they go out and address the request. They come
5 back in, they mark it complete.

6 They also create a daily work report where their
7 materials and any resources that were used to do that
8 particular job is put into the system to -- and are linked
9 to that work request, completed work request. And then it's
10 closed out in the system. So we have a record of the actual
11 complaint, the work that was done and any resources that
12 were used to perform the work.

13 Q. And is this the system that you queried, so to speak,
14 in order to find out what the history of this section of
15 road?

16 A. Yes.

17 Q. Okay. One of the things I wanted to show you, exhibit
18 number 5, first of all, I'd like for you to tell me what --
19 what is that report and how did you produce that report?

20 A. This is a daily work report. It is produced by the
21 foreman of the crew. It says repair drainage structure at
22 mile point 60.72, I-85 southbound. It also -- it lists all
23 the crew members and the equipment they used.

24 Q. And what's the date of that report?

25 A. August 24, 2010.

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1 Q. And did you retrieve this from the HMMS system?

2 A. Yes.

3 Q. And how do you do that? You retrieve it by what? The
4 location, mile marker? What words do you ---

5 A. I search for the date.

6 Q. Okay.

7 A. And then I look through them to see which ones apply to
8 -- to what work.

9 Q. And that particular report is for doing what type of
10 work?

11 A. Drainage structure repair.

12 Q. Okay. And in terms of the drainage structure, would
13 that be this particular manhole that we see here in exhibit
14 number 7?

15 A. Yes. The mile points are very close to that. I think
16 that's it.

17 Q. And in this particular case the drain -- the grates
18 weren't broken, they were just dislodged?

19 A. That's correct.

20 Q. Okay. And so what did this particular crew have to do
21 in order to get that grate put back in place?

22 A. They would install some type of traffic control to be
23 able to access the inside lane safely.

24 Q. How did they do that on this particular day? This
25 being -- this being August the what? August, what date?

1 A. August 24th, 2010.

2 Q. 2010? Okay.

3 A. Yes, sir.

4 Q. So a year and a half prior. Well, how did they -- how
5 did this crew establish traffic control?

6 A. Well, it's hard to say exactly what signs they had up
7 because that's also a different crew that would have come by
8 to put signs up. They had several pickup trucks. They had
9 a crash attenuator, which the crash attenuator being present
10 tells me that they closed the lane so that they could enter
11 the lane because they would have placed the crash attenuator
12 truck behind where they were working to keep them safe. So
13 ---

14 Q. Why was it necessary to have a crew out there? Is it
15 -- does the weight of the grate play a factor?

16 A. Well, they would have to actually get out and --
17 depending on where the grate was, if it was just right
18 there, they'd probably have to grab it with some type of
19 hook or something to pull it back into the slot where it
20 goes.

21 But the narrow shoulder is what is the real problem.
22 It's, you know, whatever width it is, four or five feet,
23 there's just not enough room to get someone in there safely
24 and work. So ---

25 Q. I see.

1 A. --- they would do the lane closure to keep them safe.

2 Q. So that work report being a year and a half prior,
3 there are several other reports. I have exhibit 6, which
4 is, I think, three different types of reports. If you
5 would, tell me what these are, just for the record. I have
6 -- why are they different? If you would, look ---

7 **THE COURT:** Mr. Smith, I'm sorry. You're looking at
8 number 6, is that correct?

9 **MR. SMITH:** These might be part of number 5. I think
10 they're part of number 5, but ...

11 Q. So what are the -- what are these different reports?
12 We have the top one. Are they just different types of
13 inspection reports or search results?

14 A. These are -- these are road drainage inspection
15 reports.

16 Q. Okay.

17 **THE COURT:** I need to look at what he's looking at real
18 ---

19 **MR. SMITH:** I think this is identical ---

20 A. It's the same.

21 **MR. SMITH:** --- to number ---

22 A. It is.

23 **MR. SMITH:** Oh, okay. My exhibit -- this right here is
24 exhibit -- is identical to number 4. I'm sorry, Your Honor.

25 **THE COURT:** Okay. So it's number 4 or number ---

1 **MR. SMITH:** It's Plaintiff's exhibit number 4.

2 **THE COURT:** Okay. Thank you.

3 **MR. SMITH:** It'll be Defendant's exhibit number 6, I
4 guess.

5 **THE COURT:** Okay. Thank you.

6 Q. Let me ask you this. Is that -- are these the results
7 of you trying to search one mile in each direction of this
8 particular manhole, problems in the road? Did you check, I
9 mean, did you do a search -- in order to get number 5 did
10 you check the same report for other catch basins one mile
11 each direction?

12 A. It would not come from this report. I would have
13 searched the actual -- the actual work request. I would
14 have done a query to search one mile either way.

15 Q. Okay.

16 A. And that would have given me all the work that was
17 done, not just inspections, but it would have given me
18 anything that was done in those -- in those areas.

19 Q. Well, within that one mile direction either way did you
20 find any other work that had to be done on this catch basin
21 or any other catch basin?

22 A. No, sir.

23 Q. Did you physically inspect this particular catch basin?

24 A. I did.

25 Q. Okay. And is this photograph right here, number 7, did

1 you, as a resident -- as resident engineer -- maintenance
2 engineer of traffic, did you -- do you see anything about
3 that photograph there that would require SCDOT maintenance
4 to fix?

5 A. No, sir.

6 Q. Okay. And if there was another attempt by DOT to
7 repair this catch basin would we see another report like
8 exhibit number 5?

9 A. Yes, sir.

10 Q. Of a lane closure operation and personnel out there
11 trying to get the grate back on ---

12 A. Yes.

13 Q. To this day is there any document or evidence that DOT
14 has had to correct any error or defect with this drain?

15 A. Not that I'm aware of.

16 **MR. SMITH:** Your Honor, that's all the questions I'd
17 have.

18 **THE COURT:** Okay. Mr. Alger.

19 **MR. ALGER:** Brief rebuttal, Your Honor, if it's all
20 right.

21 **THE COURT:** Yes, sir.

22 **Redirect Examination by Mr. Alger:**

23 Q. I think you've got it marked there as exhibit 7.

24 A. Um-hum (affirmative).

25 Q. That's the photograph that you took?

1 A. Yes.

2 Q. And you can identify the gap between the concrete edge
3 of the box and the concrete median, correct?

4 A. I do see that.

5 Q. And would you agree with me that the presence of that
6 gap means that this void is wider than the specifications on
7 the plans?

8 A. I can't ---

9 Q. And here's the plans right here for your reference.
10 The plans have those two elements flush, ---

11 A. Um-hum (affirmative).

12 Q. --- correct? Right there?

13 A. Yes, they appear to be.

14 Q. And that gap does not exist on these plans, correct?

15 A. Well, what you're not seeing on this picture right here
16 is this is not -- it doesn't go straight down. I mean, it
17 doesn't -- yeah, it doesn't just go straight down into
18 nowhere. It actually ---

19 Q. Right here on the surface ---

20 A. It slopes back into it.

21 Q. Sure. But right here on the surface, ---

22 A. Um-hum (affirmative).

23 Q. --- that -- the width of that void on the surface, on
24 the asphalt surface is wider than the specifications of the
25 plan because you can see there is a gap between the concrete

1 box and the concrete median, correct?

2 A. I'm not really -- I don't know that I'm really
3 qualified to say that that's ---

4 Q. I mean, you've got a picture in front of you. You're
5 -- you work on ---

6 A. I mean, it is -- it is ---

7 Q. --- these roads all the time. Do you do drainage
8 inspections yourself?

9 A. To some extent, yes, sir.

10 Q. So you'd be on occasion responsible for going out there
11 and seeing if there are any defects in the drainage system
12 of the highway, correct?

13 A. I would, but I wouldn't say that this is a defect. We
14 don't identify this as a defect.

15 Q. Okay. But ---

16 A. From a maintenance ---

17 Q. --- will you ---

18 A. --- standpoint.

19 Q. --- agree with me -- I'm sorry. Will you agree with me
20 that on the surface right here this void is wider than the
21 plans have it specified because you can see there is a gap
22 between the concrete basin box and the concrete median?

23 A. I don't -- I can't tell you what that dimension is.

24 And I don't know ---

25 Q. I'm not asking for a ---

1 A. --- what this dimension is.

2 Q. --- dimension. It's a yes or no question. Is that
3 wider than the plans had it specified?

4 A. I don't know.

5 Q. Now, I think -- it ran off from me earlier. We had
6 submitted into evidence Plaintiff's exhibit number 3. Can
7 you please review that real quick?

8 (Pause)

9 **THE COURT:** Okay. Mr. Smith, have you seen this South
10 Carolina DOT Engineering directive memorandum?

11 **MR. SMITH:** Number 8?

12 **THE COURT:** It has number 8 at the top.

13 **MR. SMITH:** I have seen that one, Your Honor.

14 **THE COURT:** Okay. I know y'all have seen a lot, but do
15 you object to this coming into evidence?

16 **MR. SMITH:** I do not, Your Honor.

17 **THE COURT:** Okay. So this will come in as Plaintiff's
18 exhibit number 3?

19 **MR. ALGER:** Sure.

20 **THE COURT:** Okay.

21 (Whereupon Plaintiff's exhibit 3 was admitted into
22 evidence)

23 Q. Do you recognize that document?

24 A. Um-hum (affirmative). Yes.

25 Q. And is this the DOT's internal directive on how to go

1 about doing inspections?

2 A. Yes.

3 Q. And do you see that drainage inspections -- one of the
4 types of inspections listed?

5 A. Yes.

6 Q. And that says, including structures and ditches,
7 correct?

8 A. Yes.

9 Q. So when you're doing a drainage inspection you're
10 supposed to check these structures out, right?

11 A. Yes.

12 Q. That includes catch basins such as this one, correct?

13 A. Yes.

14 Q. And if there was a defect in the catch basin, if, y'all
15 were supposed to pick up on it, correct?

16 A. No.

17 Q. So if there is a defect in the catch basin, ---

18 A. I mean, ---

19 Q. --- your inspection would not pick up on it?

20 A. What do you mean by defect?

21 Q. Structural defect.

22 A. If it was broken, if it was -- there was debris in
23 front of it, if it's not draining properly, you know, say,
24 it's stopped up and, you know, water's not going down, from
25 a maintenance standpoint, that is a defect.

BETTY JEAN PERKINS - DIRECT EXAMINATION BY MR. ALGER

80

1 Q. Okay. So from a design standpoint when would those
2 inspections have occurred? At the time of construction?

3 A. Yes.

4 Q. Or shortly thereafter before the road is dedicated?

5 A. Yes.

6 Q. Okay. I think that's all the questions I have. Thank
7 you very much.

8 MR. SMITH: I have no redirect [sic].

9 THE COURT: Okay. All right. Thank you. Mr. Holden,
10 sir, you may step down. And watch your step. And we will
11 take a ten minute break, until 11:30. And the restrooms are
12 through that door right there. Thank you.

13 (Whereupon court was in recess at 11:20 am)

14 (Whereupon court reconvened at 11:33 am)

15 THE COURT: Thank you. Please be seated. Counsel, are
16 we ready?

17 MR. ALGER: Yes, ma'am.

18 MR. SMITH: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. ALGER: Your Honor, the Plaintiff calls Ms.
21 Perkins.

22 THE COURT: Okay. Ms. Perkins, ma'am, if you'll come
23 forward. Just take your time.

24 Betty Jean Perkins, being
25 duly sworn testified as follows;

1 **THE COURT:** Okay, ma'am, please watch your step. And
2 just make yourself comfortable, all right? And, counsel,
3 even -- we do plan to break for lunch at 12:30. And so even
4 if the Plaintiff is still in her direct, I'll just caution
5 -- ma'am, I'll caution you at that time not to speak with
6 your counsel during the lunch break, okay? If we're not
7 concluded with your testimony. Do you understand?

8 **MS. PERKINS:** Yes, ma'am.

9 **THE COURT:** All right. Thank you, ma'am. All right.
10 Yes, sir.

11 **Direct Examination by Mr. Alger:**

12 Q. Ms. Perkins, please state your full name for the
13 record.

14 A. Betty Jean Perkins.

15 Q. And, Ms. Perkins, tell me a little bit about yourself.

16 A. I'm fifty-nine years old. I'm disabled. Right now,
17 currently, just take care of my three grandchildren.

18 Q. Where do you live?

19 A. In Eden, North Carolina.

20 Q. Okay.

21 **THE COURT:** Ma'am, I'm going to ask you -- you're very
22 soft spoken, okay? I'm going to ask you to speak up, all
23 right?

24 A. Okay.

25 **THE COURT:** Thank you.

1 Q. And you mentioned you have grandkids, but are you a
2 mother?

3 A. Yes. I have one daughter.

4 Q. Okay. And how many grandkids?

5 A. Three.

6 Q. And they live in Eden, North Carolina as well?

7 A. Yes.

8 Q. Before you lived in Eden, North Carolina where did you
9 reside?

10 A. Smyrna, Georgia.

11 Q. And were you living in Smyrna, Georgia at the time of
12 this accident?

13 A. Yes.

14 Q. Now, do you remember March 1st, 2012?

15 A. Yes.

16 Q. Okay. And on the date of that incident were you
17 heading southbound on I-85?

18 A. Yes.

19 Q. And you were returning from Eden, North Carolina to
20 Georgia?

21 A. Yes.

22 Q. Okay. And what happened once you got to the vicinity
23 of this incident? Like what occurred with your vehicle?

24 A. I was traveling southbound back to Atlanta, and I was
25 over in the fast lane. And I was just driving and all of a

1 sudden I heard -- it sounded like a gunshot. It was like,
2 pow.

3 Q. Um-hum (affirmative).

4 A. And the car kind of went like this. And I'm holding to
5 the steering wheel. I was looking back, traffic, people
6 were swerving by, and the car just stopped dead in the road.

7 Q. The car stopped?

8 A. Yes.

9 Q. You didn't even have the opportunity to get over?

10 A. No.

11 Q. You just stopped in the middle of the far left hand
12 lane of travel?

13 A. Yes.

14 Q. Okay. Did you try to turn the car back on?

15 A. Yes. I -- my first reaction was to turn the switch.
16 And it just made the er, er, er, er, er noise.

17 Q. So mechanics, I think, call that turning over. It
18 would turn over and it would go, er, er, er, er, but it
19 wouldn't ---

20 A. It wouldn't ---

21 Q. --- crank up?

22 A. It wouldn't crank.

23 Q. Okay. So here you are in that far left lane and you're
24 disabled?

25 A. Yes.

1 Q. What did you do next?

2 A. The first thing I did, since it was my son-in-law's
3 car, and he had had it for a few months, I called my son-in-
4 law, and I said, something's wrong with the car. I said, it
5 won't crank. And I said, and I'm in the middle of the
6 highway, of the interstate. And he said, well, ma, I don't
7 know.

8 So I said, well, let me get off and call 911. So I
9 called. I told the dispatcher that I was stranded in the
10 middle of the interstate. She said, well, ma'am, get out of
11 that vehicle. She said, get out and get to your far right
12 as far as you can away from traffic.

13 Q. And that was your intention, was to get -- cross all
14 lanes of traffic over to the right-hand shoulder, correct?

15 A. Yes.

16 Q. Now, when you got out of your car, what did you see?

17 A. It was pitch black outside. It was late. So all I
18 could see was cars was flying, tractor trailers slamming on
19 brakes, and people cussing, get off the road and ---

20 Q. Were people honking their horn?

21 A. Honking their horn and ---

22 Q. So were you ---

23 A. --- swerving.

24 Q. Were you paying attention to everything that's going on
25 around you?

- 1 A. Yes. I was afraid.
- 2 Q. People were honking their horns, cars were flying by,
- 3 you were afraid?
- 4 A. (Affirmative nod).
- 5 Q. And all the while you're trying to get from where your
- 6 car's stranded over to the safety of the right shoulder,
- 7 correct?
- 8 A. Yes.
- 9 Q. Now, in order to do that, because your driver's door is
- 10 located midway up the car, correct?
- 11 A. Yes.
- 12 Q. What kind of car was this?
- 13 A. It was a '91 Lincoln Town Car.
- 14 Q. Okay. So you either got to go around the front or you
- 15 got to go around the back. What did you decide to do?
- 16 A. I was going to walk along the wall and go behind the
- 17 car so that people could see me ---
- 18 Q. Okay.
- 19 A. --- trying to cross the ---
- 20 Q. Because it's nighttime.
- 21 A. --- interstate.
- 22 Q. And, obviously, people don't have a good field of view.
- 23 So you got out of your driver's side door and your intention
- 24 was to walk around the rear of the car and then go to
- 25 safety, right?

- 1 A. Yes.
- 2 Q. And you're up against the concrete shoulder, much like
- 3 I am here today.
- 4 A. Yes.
- 5 Q. Just like this, right?
- 6 A. Yes.
- 7 Q. And you start walking towards the rear of the vehicle.
- 8 A. Yes.
- 9 Q. And what happens?
- 10 A. I was walking alongside the brick wall and my right
- 11 foot just went down in the hole. I lost my balance. I'm
- 12 scrambling, lunge forward, fell on my knee and ultimately
- 13 flat on the ground.
- 14 Q. So just to clarify. You're walking up against the
- 15 concrete wall, right?
- 16 A. (Affirmative nod).
- 17 Q. That puts your right side close up to the concrete
- 18 shoulder, right?
- 19 A. Yes.
- 20 Q. And you're walking -- and you're over against this wall
- 21 because of everything that's going on out here?
- 22 A. Yes.
- 23 Q. And you're walking and your right foot goes down in a
- 24 hole?
- 25 A. Yes.

1 Q. And you fall forward with your left knee onto the
2 grate, is that correct?

3 A. Yes.

4 Q. And then what happens?

5 A. I was kind of scraping around on the ground, and this
6 car -- truck comes up and he almost runs into the back of
7 the car. And some gentlemen jumps out. And they grab me by
8 the arm just like, ma'am, you got to get out of the way.
9 They were saying, you're going to get hit.

10 MR. SMITH: Object to hearsay, Your Honor.

11 THE COURT: Okay. That's sustained.

12 Q. You can go on. Just don't say what they said.

13 A. Okay. So they were helping me up, put me in the truck.
14 And one of the gentlemen was trying to stop the traffic.
15 And they kind of went over to the right side of the road.

16 Q. They took you over to the right side of the road?

17 A. Yes.

18 Q. So they picked you up and they took you over to the
19 right side of the shoulder. And before we get too far ahead
20 of ourselves, what size shoe do you wear?

21 A. A ten.

22 Q. A ten? Can you stick one of your shoes out here real
23 quick?

24 A. You want me to take it off?

25 Q. If you don't mind. So tell me, are you -- I don't

1 know. Is that right there, where the pen is, is that wider
2 than three inches?

3 A. I think so. It looks like it.

4 Q. It looks like it? It looks like -- if there was --
5 let's see, if that's -- how wide do you think that is?

6 A. Six, maybe.

7 Q. Okay. Maybe five?

8 A. (Affirmative nod).

9 Q. Okay. So that -- that's shoes -- is that similar to
10 the shoes you had on the day of this incident?

11 A. Yes.

12 Q. You had slip-ons on that day?

13 A. Yes.

14 Q. Not high heels?

15 A. Oh, no.

16 Q. Can you wear high heels?

17 A. No, not at all.

18 Q. So you got a size what shoe? Nine?

19 A. Ten.

20 Q. Ten? Size ten shoe. And your foot was able to go down
21 into a hole, correct?

22 A. Yes.

23 Q. Okay. And these gentlemen got you to safety over on
24 the right-hand shoulder?

25 A. Yes.

- 1 Q. What happened next?
- 2 A. After we got over to the shoulder of the interstate,
3 one gentleman got me out of the truck and we were standing
4 up on the bank. The other gentleman backed the truck up and
5 one was standing on the side trying to stop the traffic.
- 6 Q. Okay.
- 7 A. Okay. When they got the cars stopped he backed up a
8 little bit and lined up with my car. And then he just took
9 the back of the truck and just kept hitting it and bumping
10 it and bumping it until -- until he got it over to the side.
- 11 Q. And that's because your car was not capable of
12 operating, right?
- 13 A. No.
- 14 Q. Did they try to start your car?
- 15 A. Yes.
- 16 Q. But they hit your car and actually rammed it off the
17 side of the road because your car did not work?
- 18 A. Yes.
- 19 Q. Okay. Now, and you -- and you observed all this going
20 on?
- 21 A. Yes.
- 22 Q. When in this whole episode did the police officer show
23 up?
- 24 A. Right after they had gotten the car over to the side.
25 We were talking and then the police officer came up.

1 Q. So you had already fallen on the ground, gone over to
2 the shoulder, observed them ram your car back over to the
3 right side and then the police officer shows up?

4 A. Yes.

5 Q. Okay. And were you given a copy of the police report
6 from the officer who responded to the scene?

7 A. Yes.

8 Q. Okay. I think ---

9 **THE COURT:** And that has come in via stipulation, is
10 that correct, Mr. Smith? Is that your exhibit 2?

11 **MR. SMITH:** Yes, I believe it is, Your Honor.

12 **MR. ALGER:** It's Defense exhibit 2.

13 **THE COURT:** Okay. Thank you.

14 **MR. ALGER:** Here's an extra copy if you or your clerk
15 want one.

16 (Whereupon Defendant's exhibit 2 was admitted into
17 evidence)

18 Q. Okay. Do you have reading glasses? Did you bring them
19 today?

20 A. I can see.

21 Q. Did you tell the officer that you fell into a drain?

22 A. Yes.

23 Q. Go ahead.

24 A. Well, also, he were talking to the gentlemen that were
25 there as well.

- 1 Q. So the officer spoke with the gentlemen who came to
2 your rescue?
- 3 A. Yes.
- 4 Q. And do you know if -- well, take that back. But this
5 report that you received was based off the information that
6 the officer acquired while at the scene, correct?
- 7 A. Yes.
- 8 Q. Okay. And what does the report say at the bottom, if
9 you can read it?
- 10 A. Read the remarks?
- 11 Q. Yeah, the first line of the remarks.
- 12 A. The female subject stepped into a drainage culvert
13 after exiting her vehicle.
- 14 Q. That's all. Okay. So that's what the officer was made
15 aware of at this scene, correct?
- 16 A. Yes.
- 17 Q. All right. So when this whole episode occurred were
18 you scared?
- 19 A. Yes, very.
- 20 Q. Were you, you know, shaking? Were you worried?
- 21 A. Yes.
- 22 Q. And was your adrenaline running?
- 23 A. Yes.
- 24 Q. Was I-85 a busy environment?
- 25 A. Yes.

1 Q. Was there a lot of stuff going on?

2 A. Yes.

3 Q. Did you feel concerned for your life?

4 A. Yes, I was.

5 Q. Okay. Even when you were in the safety of the officer
6 and these good Samaritans did you still feel worried and
7 concerned about your life?

8 A. Yes.

9 Q. And then the EMS showed up, right?

10 A. Yes.

11 Q. And what did the EMS do?

12 A. When the EMS got there I was -- I was shaken. So the
13 police officer had told me to sit in his car. So I was
14 sitting in the front seat of the police officer's car. And
15 they came over, they got me out of the car, put me in the
16 rescue squad. And they were just asking me what happened
17 and pretty much ...

18 Q. So you had a discussion with the EMS about what
19 happened?

20 A. Yes.

21 **MR. ALGER:** Now, I think the EMS records are also
22 stipulated into evidence. I'm not sure, Defense exhibit.

23 Q. Now, I'm going to -- I'm going to hand you the EMS
24 records. And you had a chance to review these prior to
25 today, correct?

1 A. Yes.

2 THE COURT: I'm not seeing these as an exhibit. Maybe
3 I'm not looking.

4 MR. SMITH: I think they're your exhibit.

5 MR. ALGER: Okay. Well, then we'll submit it as
6 Plaintiff's exhibit 8.

7 THE COURT: Any objection, counsel?

8 MR. SMITH: No objection, Your Honor.

9 THE COURT: Okay. Plaintiff's exhibit number 8 without
10 objection. Thank you.

11 (Whereupon Plaintiff's exhibit 8 was marked and
12 admitted into evidence)

13 Q. So you had a discussion with the EMS about what
14 happened, correct?

15 A. Yes.

16 Q. And I think the records reveal what you stated to them.
17 Can you please tell me what it was that you stated to the
18 EMS individuals?

19 A. I had told them that my car had blown a tire, my car
20 wouldn't start. Then I went to get out of the car, and as I
21 exited the vehicle I stepped over a hole, drain, and that I
22 fell, and that I was having pain in both my knees, ---

23 Q. Okay.

24 A. --- and my shoulder and my back.

25 Q. Okay. So -- and I want to have you read from the

1 records here. The third sentence there, what is it that the
2 patient complained of?

3 A. Patient complained with bilateral knee pain and
4 shoulder pain.

5 Q. Okay. Go on.

6 A. Patient stated that her tire on the car -- the tire
7 blew out on her car and she managed to get it stopped on the
8 side of the interstate. When she exited -- when she got out
9 of the car, she fell into a storm drain on the side of the
10 road and a bystander helped her out of it.

11 Q. Okay. And that's -- that is what you told the EMS as
12 they were taking you to the hospital, correct?

13 A. Yes.

14 Q. Now, they took you to the Village Hospital, correct?

15 A. Yes.

16 Q. And while you were at the Village Hospital they did a
17 physical examination of you?

18 A. Yes.

19 Q. And they did x-rays?

20 A. Yes.

21 Q. And they checked you?

22 A. Yes.

23 Q. Were you still, you know, tense?

24 A. Yes.

25 Q. Tell me, was your adrenaline still running?

- 1 A. Yes. They gave me something that supposed to have ---
- 2 Q. Um-hum (affirmative). Calmed you down?
- 3 A. --- calmed you down.
- 4 Q. So you were still visibly distraught?
- 5 A. Yes.
- 6 Q. And they tried to calm you down?
- 7 A. Yes.
- 8 Q. Okay. Now, what happened after you -- after the
- 9 hospital that night? Where did you go?
- 10 A. The State trooper stayed in the room with me until this
- 11 man that I was dating at the time drove up from Georgia
- 12 because it was closer to Atlanta than for my daughter to
- 13 drive from Eden. So he came up, he picked me up. Well, let
- 14 me say before we left he took the car and put a chain on it
- 15 and drove it off the exit to the Waffle House. And that's
- 16 where the car was left.
- 17 Q. Okay. So you weren't ---
- 18 A. And then ---
- 19 Q. --- present for that?
- 20 A. --- he took me home.
- 21 Q. I'm sorry.
- 22 A. I said and then he took me home.
- 23 Q. So you weren't present when he actually pulled it off
- 24 the interstate up to the Waffle House?
- 25 A. I was.

- 1 Q. You were present?
- 2 A. Yes.
- 3 Q. Okay. So -- and then after that the two of y'all went
- 4 back to Georgia?
- 5 A. Yes.
- 6 Q. Okay. What happened to the vehicle? Do you -- when
- 7 was it recovered from the Waffle House?
- 8 A. Okay. The vehicle sat at the Waffle House, I think,
- 9 for about a month.
- 10 Q. Okay.
- 11 A. And then he put it on the tow and towed it back to
- 12 Smyrna to my house.
- 13 Q. Is that like a -- when you said the tow, like a trailer
- 14 attachment ---
- 15 A. Yes.
- 16 Q. --- where the front wheels go on it, but the rear
- 17 wheels aren't on it and he towed it back to Atlanta?
- 18 A. Yes.
- 19 Q. Okay. When he got it back to Atlanta did anybody use
- 20 that vehicle?
- 21 A. No.
- 22 Q. Did it just sit for a number of -- number of days,
- 23 months?
- 24 A. Yeah, it sat there for a while.
- 25 Q. How long did it sit there?

- 1 A. I'm going to guess maybe two months at the most.
- 2 Q. And you weren't using it because you didn't want to
- 3 drive anymore?
- 4 A. I didn't want to get under the wheel of that car
- 5 anymore. I was afraid of it.
- 6 Q. Okay. Now at some point in time did y'all try to start
- 7 that car again?
- 8 A. Yes. He was going to see why did the car not start.
- 9 Q. Um-hum (affirmative). Who's he?
- 10 A. My boyfriend.
- 11 Q. Okay.
- 12 A. At the time. So he tried to start the car. It.
- 13 wouldn't start. So he went -- we went to AutoZone and he
- 14 was telling the man there that he needed a fuel pump because
- 15 there was no gas getting to ---
- 16 Q. Um-hum (affirmative).
- 17 A. --- the car. So when he was telling the gentleman at
- 18 AutoZone ---
- 19 **MR. SMITH:** Your Honor, ---
- 20 A. --- what had happened ---
- 21 **MR. SMITH:** --- I object to all the hearsay that ---
- 22 **THE COURT:** Okay. That is sustained.
- 23 Q. So ---
- 24 A. Okay. As we were ---
- 25 Q. Hold on, hold on, ---

- 1 A. --- as I was telling ---
- 2 Q. --- hold on. Let me ask a question. So you went to
- 3 AutoZone with your boyfriend?
- 4 A. Yes.
- 5 Q. And when you left AutoZone did you go back and try to
- 6 repair the car?
- 7 A. Yes.
- 8 Q. And in trying to repair the car did you get it to
- 9 crank?
- 10 A. Yes.
- 11 Q. How did you get it to crank?
- 12 A. We pressed the reset button.
- 13 Q. And where is the reset button located?
- 14 A. In the trunk of the car.
- 15 Q. Is that button -- what is the function of that button?
- 16 A. It cut the fuel pump back on.
- 17 Q. Okay. And is it your understanding that the fuel pump
- 18 was cut off at the time that this incident occurred on I-85?
- 19 A. Yes.
- 20 Q. So there was no fuel going to the engine, correct?
- 21 A. No.
- 22 Q. And that's why the engine wouldn't crank?
- 23 A. Right.
- 24 Q. Okay. So you saw the car crank up a period of time
- 25 after this incident, correct?

- 1 A. Yes.
- 2 Q. And you continued to not drive or use that vehicle,
3 correct?
- 4 A. I didn't drive it.
- 5 Q. And what happened to that vehicle at some point after
6 that?
- 7 A. I had it crushed.
- 8 Q. You had it crushed? So the vehicle no longer exists?
- 9 A. No.
- 10 Q. Okay. Now, after you went to the hospital and got
11 worked up, eventually you went and saw -- is it Dr. Lee? Is
12 that right?
- 13 A. Yes.
- 14 Q. And Dr. Lee had been providing you pain management for
15 a number of years, correct?
- 16 A. Yes.
- 17 Q. And you would agree with me that you have had long-term
18 chronic back pain prior to this accident?
- 19 A. Yes.
- 20 Q. And you've been suffering a number of injuries, and
21 medical histories -- you've got an extensive medical history
22 that exists long before this incident occurred, correct?
- 23 A. Yes.
- 24 Q. And Dr. Lee had been helping you manage that with pain
25 management?

- 1 A. Yes.
- 2 Q. And that included prescription narcotics, correct?
- 3 A. Yes.
- 4 Q. Injections?
- 5 A. Yes.
- 6 Q. What else had Dr. Lee done to -- just monitor your
- 7 situation?
- 8 A. Yes. I've had epidurals. I have had physical therapy.
- 9 I've used a Tens machine.
- 10 Q. Um-hum (affirmative). And all that was before this
- 11 accident, correct?
- 12 A. Yes.
- 13 Q. Now, when you saw Dr. Lee on the 13th, thirteen days
- 14 later, did you actually see Dr. Lee or did you see another
- 15 doctor?
- 16 A. I had saw Dr. Eric Frank ---
- 17 Q. Eric Francke?
- 18 A. Francke -- something like that, yes.
- 19 Q. What about Dr. Pesson?
- 20 A. And Dr. Pesson.
- 21 Q. Now, why would you go see Dr. Pesson?
- 22 A. Because my right knee just kept hurting and would
- 23 swell.
- 24 Q. Um-hum (affirmative).
- 25 A. And it was keeping me awake at night.

- 1 Q. Okay.
- 2 A. The pain.
- 3 Q. Now, you had had an injury to your right knee before
- 4 this accident as well, correct?
- 5 A. Yes.
- 6 Q. Back in 2010 you had had a meniscus repair, right?
- 7 A. Yes.
- 8 Q. And that's surgery?
- 9 A. Yes.
- 10 Q. And you actually went under the knife for that, right?
- 11 A. Yes.
- 12 Q. How long did it take you to heal after that surgery?
- 13 A. I went back to work six weeks later.
- 14 Q. Okay. So after the surgery you had a period of time to
- 15 recuperate, correct?
- 16 A. Yes.
- 17 Q. And six weeks after that surgery you were back to work?
- 18 A. Yes.
- 19 Q. Had you had any other issues with your right knee
- 20 before the accident?
- 21 A. No.
- 22 Q. Do you have some minor arthritis in your knee?
- 23 A. Yes.
- 24 Q. But did you have anything that kept you from being able
- 25 to work?

- 1 A. No.
- 2 Q. Anything that kept you from sleeping at night?
- 3 A. No.
- 4 Q. Did your knee feel unsteady?
- 5 A. Before?
- 6 Q. Yeah, before the accident?
- 7 A. No.
- 8 Q. Okay. So aside from minor arthritis did you have any
- 9 other concerns with your right knee after that 2010 surgery?
- 10 A. No.
- 11 Q. Okay. Now, you've also had a diagnosis of
- 12 fibromyalgia, correct?
- 13 A. Yes.
- 14 Q. And that results in lateral pain going throughout your
- 15 body, down your arms, and down your extremities, correct?
- 16 A. Yes.
- 17 Q. Is that different than the pain you've experienced in
- 18 your right knee?
- 19 A. Yes.
- 20 Q. And you've had fibromyalgia for a number of years,
- 21 correct?
- 22 A. Yes.
- 23 Q. In fact, you're on disability due to that, correct?
- 24 A. Yes.
- 25 Q. Now, after this accident your knee was hurting so bad

- 1 that you went and saw Dr. Pesson, correct?
- 2 A. Yes.
- 3 Q. And what did Dr. Pesson do to help you?
- 4 A. The first visit he did an injection.
- 5 Q. Um-hum (affirmative). In both knees?
- 6 A. In both knees, yes.
- 7 Q. And did he give you a knee brace?
- 8 A. Yes.
- 9 Q. Did he do x-rays?
- 10 A. Yes.
- 11 Q. Okay. Did any of that help?
- 12 A. No.
- 13 Q. Okay. Did you also go see Dr. -- and I think you said
- 14 his name was Eric Francke?
- 15 A. Yes.
- 16 Q. And Dr. Francke was seeing you for additional injuries
- 17 to your body, correct?
- 18 A. Yes.
- 19 Q. Did he order that you have an MRI done of your back?
- 20 A. Yes.
- 21 Q. Did you have an MRI done of your back?
- 22 A. Yes.
- 23 Q. And was that out of concern for the pain that you were
- 24 experiencing from this accident?
- 25 A. Yes.

1 Q. Now, about a month later you followed up with Dr.

2 Pesson, correct?

3 A. Yes.

4 Q. And what was his recommendation in early April of 2012?

5 MR. SMITH: Object to hearsay, Your Honor.

6 THE COURT: Okay. That's sustained.

7 Q. Did you at the guidance of Dr. Pesson have arthroscopic
8 surgery done to your knee April 24th, 2012?

9 MR. SMITH: Same objection, Your Honor.

10 MR. ALGER: I asked if she had surgery.

11 MR. SMITH: You asked as a result of seeing the doctor.

12 MR. ALGER: Same ---

13 THE COURT: Okay. I tell you what, counsel, why don't
14 you rephrase.

15 MR. ALGER: Sure.

16 Q. After seeing Dr. Pesson did you have surgery done to
17 your knee?

18 A. Yes.

19 Q. Was that on April 24th, 2012?

20 A. Yes.

21 Q. Did Dr. Pesson do that surgery?

22 A. Yes.

23 Q. Was that repairing your meniscus?

24 A. Yes.

25 Q. Did that help?

1 A. No.

2 Q. Okay. Did you continue to feel pain in your knee?

3 A. Yes.

4 Q. And you went back and saw Dr. Pesson and his nurse a
5 number of times post-op, correct?

6 A. Yes.

7 Q. Do you know how many times you went and saw him?

8 A. I don't know. I just -- I just know I went a bunch of
9 times.

10 Q. Okay. What I've got here -- I just want to flip
11 through this real quick.

12 THE COURT: Counsel, are you referring to an exhibit?

13 MR. ALGER: I am not yet. I intend to mark this binder
14 as an exhibit. We've gone over this. Bills.

15 MR. SMITH: Damages?

16 MR. ALGER: Bills.

17 MR. SMITH: Medical bills?

18 MR. ALGER: I'm just going to keep up with it as I go.

19 THE COURT: Okay. Thank you.

20 MR. ALGER: Yes, ma'am.

21 Q. And I just want to keep up with this as we go. Is this
22 the bill that you received from the EMS for responding to
23 the scene?

24 A. Yes.

25 Q. Okay. And as I flip over, is this the bill that you

1 received from the Village Hospital for your ER visit after
2 the accident?

3 A.. Yes.

4 Q. Okay. And is this the bill from the ER physician who
5 took care of you at the hospital after the accident?

6 A. Yes.

7 Q. And these bills from Pinnacle Healthcare here, we've
8 gone through this prior to this here today, correct?

9 A. Yes.

10 Q. And we have highlighted the amounts associated to your
11 right knee, correct?

12 A. Yes.

13 Q. The other amounts that are not highlighted are from Dr.
14 Lee. And those are bills that you incurred for treating
15 your continuous back pain that you had prior to this
16 accident, right?

17 A. Yes.

18 Q. Okay. So after you saw Dr. Pesson and he did his
19 meniscus repair post accident, and it didn't help, correct?

20 A. No.

21 Q. What was the next thing that you did? Did you ---

22 A. I moved back to ---

23 Q. You moved back ---

24 A. I moved back to North Carolina because I was in a lot
25 of pain and I just couldn't -- needed, you know, I needed to

1 be around my grandkids or somebody to help look out for me.

2 Q. Was the reason that you moved from Atlanta back to Eden
3 so that you could have the assistance of your family?

4 A. Yes.

5 Q. Did you know at that time that you were eventually
6 going to be a candidate for a right knee replacement?

7 A. Yes.

8 Q. And that's part of the reason why you moved back to
9 North Carolina?

10 A. Yes.

11 Q. And when you got back to North Carolina which doctors
12 did you see?

13 A. I went to see Dr. Cannon first because that was who my
14 Medicare had set me up with.

15 Q. Okay.

16 MR. ALGER: And I want to ---

17 THE COURT: Yes, sir.

18 MR. SMITH: You talking about mentioning insurance?

19 MR. ALGER: Since we don't have a jury, I just -- if
20 she accidentally refers to it, I don't think there's any
21 harm.

22 THE COURT: Counsel?

23 MR. SMITH: I, you know, I think Your Honor can
24 distinguish.

25 THE COURT: Yes. Okay. All right.

1 Q. So you saw the doctor at Rockingham Orthopaedics,
2 correct? Dr. Keely? Kelly?

3 A. Keeling.

4 Q. Keeling? And he treated you for a little while,
5 correct?

6 A. Yes.

7 Q. How many times did you go see him?

8 A. It wasn't many because he said that didn't need -- oh,
9 it was just a few times.

10 Q. Um-hum (affirmative).

11 A. And then I went to Dr. Wainer.

12 Q. Okay. So you, in the interim, while you were getting
13 settled in Rockingham, you saw Dr. Keeling, but once you
14 were settled, you went and saw Dr. who?

15 A. Dr. Wainer.

16 Q. Wainer? Okay. And where does Dr. Wainer work?

17 A. The orthopaedic -- Southeastern Orthopaedic.

18 Q. And does -- to the extent that you saw Dr. Keeling does
19 this represent the bill that you received for his treatment?

20 A. Yes.

21 Q. And Dr. Keeling, did he see you for anything other than
22 your right knee?

23 A. No.

24 Q. So this treatment, and really every doctor that we've
25 mentioned before this was exclusively for the treatment of

1 your right knee, correct?

2 A. Yes.

3 Q. Now, Dr. Wainer or Warner?

4 A. Wainer.

5 Q. Wainer? Okay. You started visiting him, and that
6 would have been in 2014, correct?

7 A. Yes.

8 Q. And what did he -- what course of treatment did he
9 provide you?

10 A. When I first started seeing him, he did injections.

11 Q. Did those help?

12 A. No.

13 Q. Were you trying to do, you know, the least amount
14 possible before you would take the extreme measure such as
15 surgery?

16 A. Yes.

17 Q. Okay. And that was the plan of the doctors and you and
18 you guys agreed on that?

19 A. Yes. But I also had a ---

20 Q. Um-hum (affirmative).

21 A. During the time of him treating me, my leg -- my knee
22 gave out and I fell.

23 Q. Um-hum (affirmative).

24 A. And it broke my foot.

25 Q. So ---

1 A. So that was one of the reasons why I took so long to do
2 the knee replacement.

3 Q. So the reason or one of the reasons that that accident
4 happened is because your knee gave out?

5 A. Yes.

6 Q. Was your right knee so weak that it gave out and it
7 caused you to break your other -- your right foot or your
8 left foot?

9 A. My left foot.

10 Q. Your left foot? Okay. So at this point in time when
11 you first start seeing Dr. Wainer, how does your knee feel?
12 How did your knee feel?

13 A. Awful.

14 Q. Awful? Was it keeping you up at night?

15 A. Yes.

16 Q. Was it painful, nagging, you know, describe the pain
17 for me.

18 A. It was really painful, swollen, constant ---

19 Q. Um-hum (affirmative).

20 A. --- pain.

21 Q. Okay. And you and Dr. Wainer, y'all took a course of
22 treatment. And that included, you said, injections?

23 A. Yes.

24 Q. Do you remember those injections?

25 A. Yes.

1 Q. Do they feel good?

2 A. On a scale to one to ten, probably maybe a two, but
3 they very -- did very little help.

4 Q. Okay. Would the -- would the relief given by the
5 injections, would that last or provide any relief for that?

6 A. Very little.

7 Q. And the little bit that it gave, how long would that
8 last?

9 A. Not even a month.

10 Q. Okay. And what did you ultimately come to do with Dr.
11 Wainer?

12 A. Replaced the whole knee, total knee replacement.

13 Q. Total knee replacement. And that's something that you
14 had seen coming since the -- since when? When you were
15 living in Georgia?

16 A. Since I was in Georgia with Dr. Pesson.

17 Q. And yet you tried to do alternate, more reasonable
18 treatment before then, but eventually it was determined that
19 you needed a knee replacement?

20 A. Yes.

21 Q. Okay. Now, when you went and had your knee operation
22 done was that an overnight hospital stay?

23 A. No.

24 Q. Did they sedate you?

25 A. Yes.

- 1 Q. Were you completely out of it?
- 2 A. Yes.
- 3 Q. So you don't remember the actual operation itself?
- 4 A. No.
- 5 Q. Do you remember what it felt like when you woke up?
- 6 A. I woke up screaming. I was in a lot of pain. And it
- 7 was just -- knee replacements, they're just awful. They
- 8 just really hurt. It's a terrible, terrible pain.
- 9 Q. Did that pain get better or worse after the surgery,
- 10 let's say that night after the surgery?
- 11 A. No.
- 12 Q. Did it get better or worse?
- 13 A. It was worse.
- 14 Q. And did it continue to get worse for a couple of days?
- 15 A. Yes.
- 16 Q. At what point did it start feeling a little bit better?
- 17 A. I had surgery, and I was in rehab, ---
- 18 Q. Um-hum (affirmative).
- 19 A. --- rehabilitation. It started to feel a little
- 20 better.
- 21 Q. So after surgery it was determined that you needed to
- 22 go to where?
- 23 A. Rehab. In-house rehab.
- 24 Q. Is that the skilled nursing ---
- 25 A. Skilled nursing. I was trying to find the words.

- 1 Skilled nursing.
- 2 Q. And was that Penn Nursing Home that you went to?
- 3 A. Yes.
- 4 Q. Okay. And while you were at Penn Nursing Home what
- 5 kind of treatment did you receive?
- 6 A. Extensive treatment, exercise.
- 7 Q. Physical Therapy?
- 8 A. Physical therapy on the -- on the knee.
- 9 Q. How long did you stay at Penn Center -- Penn Nursing
- 10 Center?
- 11 A. I believe it was twenty-one days.
- 12 Q. One moment. Let me look.
- 13 A. Six -- I know I stayed in the nursing home.
- 14 Q. Um-hum (affirmative).
- 15 A. And then I had to have a nurse at home.
- 16 Q. Okay. So even after you went home from the nursing
- 17 home you still had to have another nurse come to your house?
- 18 A. Yes.
- 19 Q. Okay. Now, after you finished with the nursing home
- 20 and the nurse coming to your house did you continue with
- 21 treatment?
- 22 A. Yes.
- 23 Q. What type of treatment did you continue with?
- 24 A. I had more therapy at the Orthopaedic Rehabilitation
- 25 Center.

1 Q. Um-hum (affirmative).

2 A. I think I took those treatments for about six weeks.

3 Q. This is the IME that I believe you went to. Do you
4 remember going to this with Dr. Early?

5 A. Yes.

6 Q. And do you remember meeting with him and having him
7 give you an examination?

8 A. Yes.

9 Q. Do you remember discussing your medical history with
10 him?

11 A. Yes.

12 Q. Did you tell him that you'd had chronic back pain for a
13 number of years before this accident?

14 A. Yes.

15 Q. Was he aware that you had also had meniscus surgery in
16 2010?

17 A. Yes.

18 Q. Now, you've had a chance to read this, right?

19 A. Yes.

20 Q. Do you agree with the conclusions that Dr. Early has
21 made in this report? Do you think it's consistent with your
22 medical history?

23 **MR. SMITH:** I object, Your Honor. Lack of foundation.

24 **THE COURT:** Possibly rephrase that.

25 Q. Well, have you had a chance to read this?

1 A. Yes.

2 Q. Okay. And do you agree that you suffered from back
3 pain before this?

4 A. Yes.

5 Q. Do you agree that your knee pain to your right knee
6 arose after the accident?

7 A. Yes.

8 Q. Do you agree that the first meniscus surgery that you
9 had was directly related to this accident?

10 MR. SMITH: I object to the form of the question. Lack
11 of foundation.

12 THE COURT: Rephrase.

13 MR. SMITH: Speaking to the doctors.

14 Q. Do you think that your meniscus surgery, meniscus
15 repair that you had after -- had after this accident was
16 related directly to this accident?

17 MR. SMITH: Same ---

18 A. Yes.

19 MR. SMITH: --- objection. Lack of foundation.

20 THE COURT: Sustained.

21 MR. ALGER: A little leeway because this is stipulated
22 into evidence.

23 MR. SMITH: It is.

24 MR. ALGER: Okay.

25 Q. Did you go over these results with the doctor?

1 A. Yes.

2 Q. Okay. And do you remember -- do you remember him
3 telling you that you've got a fifty percent impairment to
4 your right leg?

5 MR. SMITH: Object to the testimony. The report speaks
6 for itself.

7 THE COURT: Okay. Why don't -- why don't you just ask
8 her, counsel, what she remembers about this exhibit.

9 Q. Do you think you would have had a right knee
10 replacement but for this accident?

11 MR. SMITH: Object to -- lack of foundation, Your
12 Honor.

13 MR. ALGER: I'm asking her. I'm not asking about the
14 report at all anymore. I'm just asking her.

15 MR. SMITH: She's not a doctor.

16 MR. ALGER: Yeah, but she can testify as to the
17 condition of her body.

18 THE COURT: Can you rephrase that, counsel, and ask if
19 there had ever been any indication through her medical
20 treatment in the past that she would have to have meniscus
21 surgery prior to this accident.

22 Q. Prior to this accident did you have any medical history
23 that indicated you needed a meniscus surgery?

24 A. No.

25 Q. Did you have any medical history that indicated you

1 needed a total right knee replacement?

2 A. No.

3 Q. Were you getting about just fine on your right leg?

4 A. Yes.

5 Q. So really in 2010 when you had that first meniscus
6 surgery up until the date of the accident you didn't have
7 any concern with your right knee at all?

8 A. No.

9 Q. Now, you did have concerns in your back?

10 A. Yes.

11 Q. And you had arthritis?

12 A. Yes.

13 Q. And you had fibromyalgia?

14 A. Yes.

15 Q. But in terms of your mobility with your right knee you
16 didn't have any concerns?

17 A. Not -- no.

18 Q. Now, after the accident do you remember taking these
19 photos?

20 A. Yes.

21 Q. Are these photos of the injuries that you sustained at
22 the accident?

23 A. Yes.

24 Q. These are identified as Plaintiff's exhibit 6. Is that

25 ---

1 **THE COURT:** And are these already in evidence, counsel?

2 **MR. SMITH:** I don't know that they are, but we've
3 agreed to them.

4 **MR. ALGER:** I'm going to submit them into evidence
5 right now, Your Honor, if they're right.

6 **THE COURT:** Okay. And this is number 6?

7 **MR. ALGER:** Yes, ma'am.

8 (Whereupon Plaintiff's exhibit 6 was admitted into
9 evidence)

10 **THE COURT:** And so just because they're exhibit
11 stickers on here, that doesn't mean that I'm having -- that
12 I have the court reporter's copy?

13 **MR. ALGER:** Correct. I've got the court reporter's
14 copy right here. And I'll give it back ---

15 **THE COURT:** Okay.

16 **MR. ALGER:** --- to her when I'm done.

17 **THE COURT:** Okay. And would that be the same for
18 Plaintiff's exhibit number 8 because I've ---

19 **MR. ALGER:** Um-hum (affirmative). I think ---

20 **THE COURT:** --- highlighted on parts of it.

21 **MR. ALGER:** Is it a real sticker or is it a printed
22 sticker?

23 **THE COURT:** It's a printed sticker.

24 **MR. ALGER:** Then you're good.

25 **THE COURT:** Okay. Thank you.

1 MR. ALGER: Yep.

2 Direct Examination by Mr. Alger Continued:

3 Q. Ms. Perkins, will you just go through the pictures and
4 just describe for me what we are seeing here. Looking at
5 the first page.

6 A. Okay. This is a page of my left knee.

7 Q. Um-hum (affirmative). And those are the ---

8 A. Knee and leg area there.

9 Q. That's your knee and leg area on your left knee?

10 A. Yes.

11 Q. And that's the first page?

12 A. Yes.

13 Q. So flipping over to the second page.

14 A. That's my right knee. And it's swollen.

15 Q. Um-hum (affirmative). And how far -- how long after
16 the accident did you take these pictures?

17 A. The next day.

18 Q. Okay. And your right knee is visibly swollen there?

19 A. Yes.

20 Q. And that's why you took a picture of this, right?

21 A. Yes.

22 Q. Okay. Just flipping over to the third page.

23 A. And that's the -- that's the better picture. You could
24 just see the scrapes. I turned my leg where you can get a
25 better picture of the ---

1 Q. Is that your left knee?

2 A. That's the right.

3 Q. Right knee? Okay. All right. We're up to the ---

4 A. That's the same leg.

5 Q. We're on the fourth page, just a different angle of the
6 same cut.

7 A. Yes.

8 Q. And ---

9 A. And that's just the swelling.

10 Q. The swelling to your right leg. I don't know ---

11 A. I'm not quite sure.

12 Q. I'm not sure what that one is.

13 A. It's kind of blurry. Now, that's ---

14 **THE COURT:** Page 5 is blurry?

15 Q. Um-hum (affirmative).

16 A. Yes.

17 Q. These are all the pictures that you took after the
18 accident?

19 A. Yes. And that was the bruising on the side.

20 Q. Bruising on the side of your right leg?

21 A. Right leg, yeah.

22 **THE COURT:** What page number is she looking at,
23 counsel? 7?

24 **MR. ALGER:** 7.

25 **THE COURT:** Okay. And which leg is that?

- 1 Q. Right.
- 2 A. Right.
- 3 **THE COURT:** Thank you.
- 4 Q. Okay. Turning over to page 8, what are we ---
- 5 A. This is where I fell flat. And that's a picture of my
- 6 stomach area.
- 7 Q. That's a picture of your stomach? Okay.
- 8 A. Um-hum (affirmative).
- 9 Q. And that's page 8. And page 9?
- 10 A. The same thing.)
- 11 Q. Your stomach as well?
- 12 A. Um-hum (affirmative).
- 13 Q. Page 10?
- 14 A. That's the inside of the leg.
- 15 Q. The inside of your right leg?
- 16 A. Yes. Bruising.
- 17 Q. Okay. Page 11?
- 18 A. And that's the same ---
- 19 Q. Okay.
- 20 A. The same as the other one.
- 21 Q. Okay. Same -- these are all taken on the same date,
- 22 the same time?
- 23 A. Yes.
- 24 Q. Okay. And then the last picture is ---
- 25 A. Just the bruising on the knee.

1 Q. Okay.

2 A. It was more like this area.

3 Q. Okay. So the inside thigh.

4 **MR. ALGER:** And Plaintiff's would move these into
5 evidence, Your Honor, as Plaintiff's 6.

6 **THE COURT:** Okay. Plaintiff's 6 without objection,
7 correct?

8 **MR. SMITH:** Correct.

9 (Whereupon Plaintiff's exhibit 6 had previously been
10 admitted into evidence)

11 **THE COURT:** And, counsel, what was the date these were
12 made?

13 **MR. ALGER:** The day after the accident.

14 **THE COURT:** March the 2nd?

15 **MR. ALGER:** Yes, ma'am.

16 Q. And while we're at it, I'm flipping through some bills
17 here that we've provided you. For Southeastern
18 Orthopaedics, when we were reviewing these we went through
19 and highlighted the amounts for your office visits related
20 to your right knee, correct?

21 A. (Affirmative nod).

22 Q. And is this the bill that you remember receiving for
23 the treatment that you received from Dr. Wainer at
24 Southeastern Orthopaedics for his treatment of your right
25 knee?

1 A. Yes.

2 Q. Okay. And is this the bill from Cone Health -- yeah,
3 Cone Health Memorial Hospital for your total right knee
4 replacement?

5 A. Yes.

6 Q. Okay. And after your total right knee replacement you
7 went to Penn Nursing Center?

8 A. Yes.

9 Q. Is this the -- is this the bill for Penn Nursing
10 Center?

11 A. Yes.

12 Q. Okay. And lastly, after -- well, almost lastly. This
13 is the bill for the home nursing ---

14 A. Yes.

15 Q. --- that you received? And is this the bill for the
16 physical therapy and rehab that you received after that?

17 A. Yes.

18 MR. ALGER: Plaintiff wants to submit these into
19 evidence, Your Honor, as Plaintiff's exhibit 9.

20 MR. SMITH: Without objection.

21 THE COURT: Okay. And these are medical invoices from,
22 you said, Penn?

23 MR. ALGER: Yes, ma'am. And I'm going to give you this
24 entire binder. Plaintiff's exhibit 9.

25 (Whereupon Plaintiff's exhibit 9 was marked and

1 admitted into evidence)

2 Q. Ms. Perkins, sitting here today does your knee still
3 bother you?

4 A. Yes.

5 Q. I see you've got a cane with you. Why do you use your
6 cane?

7 A. Because my knee is weak.

8 Q. Um-hum (affirmative). You also got it because of
9 stability issues with your other problems that we've
10 identified, right?

11 A. Yes.

12 Q. Does your right knee still hurt?

13 A. Yes.

14 Q. Does it keep you up at night still?

15 A. Yes.

16 Q. How about your left knee? What's going on with your
17 left knee in all of this?

18 A. My left knee is fine. It's mostly my right leg.

19 Q. Is your left knee keeping up with your right knee?

20 A. Well, he told me that I'm going to start -- I have
21 issues with it. He said eventually I will have to have it
22 replaced because it's taking all the weight ---

23 Q. Um-hum (affirmative).

24 A. --- from where this knee is damaged.

25 Q. So because you're compensating so much on your right

1 knee -- for your right knee, your left knee is starting to
2 wear out, too?

3 A. Yes.

4 Q. Ms. Perkins, did you also -- were you working before
5 this?

6 A. Yes.

7 Q. And where were you working?

8 A. At Wendy's in Atlanta, Georgia.

9 Q. And about how many hours a week were you working?

10 A. Anywhere from twenty to twenty-five.

11 Q. But not anymore than that because you were disabled,
12 correct?

13 A. Yes.

14 Q. So you were working twenty to twenty-five hours a week.
15 And what was your job at Wendy's?

16 A. I was a cashier.

17 Q. Okay. What were your limitations with your disability?
18 You were allowed to stand for how long?

19 A. I could -- I could stand because most of the time I
20 went in at about five am, got off at eleven.

21 Q. But you were only allowed to work twenty-five hours a
22 week?

23 A. The most I could work was twenty-five hours.

24 Q. How much was your hourly pay at Wendy's?

25 A. Seven twenty-five.

1 Q. Okay. Did you continue working at Wendy's after this
2 accident?

3 A. After the accident, no, because I couldn't -- I
4 couldn't bear to stand.

5 Q. Did you work anywhere else?

6 A. No.

7 Q. Have you worked anywhere else since?

8 A. No.

9 Q. Okay. So that income of twenty to twenty-five hours a
10 week at seven dollars and twenty-five cents (\$7.25) an hour
11 you no longer have as a result of this accident, correct?

12 A. Yeah.

13 Q. Tell me, Ms. Perkins, when you were out there on the
14 interstate on I-85 did you even see this hole that was in
15 front of you?

16 A. No.

17 Q. What were you doing on the inside shoulder of the
18 interstate?

19 A. I was trying to keep from being hit by the oncoming
20 traffic.

21 Q. You were seeking shelter?

22 A. Yes.

23 Q. And were you scared?

24 A. Yes, very scared.

25 Q. Did you feel like your life was in God's hands?

- 1 A. Yes.
- 2 Q. And you were as far over as you possibly could be?
- 3 A. Yes.
- 4 Q. And your plan was to get to the safety of the other
- 5 shoulder, right?
- 6 A. Yes.
- 7 Q. But in order to get there you had to get past this part
- 8 first?
- 9 A. Yes.
- 10 Q. Has this incident impacted your life?
- 11 A. Yes.
- 12 Q. Have you experienced pain as a result of this injury to
- 13 your right knee?
- 14 A. Yes.
- 15 Q. Has it kept you up a lot of nights?
- 16 A. Yes.
- 17 Q. Has it impaired your ability to play with your kids?
- 18 A. Yes.
- 19 Q. Your grandkids?
- 20 A. Yes.
- 21 Q. Have you been able to go about things -- scratch that.
- 22 Now, we want to be truthful here today. You know that
- 23 before this you already suffered from a lot of issues,
- 24 right?
- 25 A. Yes.

1 Q. Are you trying to claim anything here today that is not
2 related to this accident?

3 A. No.

4 Q. And you will concede that you already had some
5 disabilities?

6 A. Yes.

7 Q. Did those disabilities keep you from playing with your
8 grandkids?

9 A. No. Not -- if I can ...

10 Q. Um-hum (affirmative).

11 A. Before I fell I was able to get out with my littlest
12 grandchild. He's six. And we were able to do a lot of
13 things together.

14 Q. Um-hum (affirmative).

15 A. Now, I'm constantly told that I'm very ---

16 MR. SMITH: Objection ---

17 A. --- kind of mean ---

18 MR. SMITH: --- to what she's told.

19 THE COURT: Okay.

20 A. I feel ---

21 THE COURT: That is ---

22 A. --- as though ---

23 THE COURT: --- sustained.

24 A. --- I don't have the patience to deal with a lot of
25 things that I used to could. I'm always in pain. It's hard

1 for me to go upstairs. It's hard for me to sleep at night.
2 And I have to deal with a lot of pain that wasn't there
3 before.

4 **MR. ALGER:** No further questions, Your Honor.

5 Q. Ms. Perkins, he's -- Mr. Smith over here's going to
6 have some questions for you. Please answer anything he has.

7 **MR. SMITH:** Your Honor, do you want to keep going?

8 **THE COURT:** Actually, this is a good time for a break.
9 So why don't we break until -- let's break until two. And
10 then -- even though counsel has stated that he has completed
11 his direct testimony, you can't talk with him over the lunch
12 break, okay?

13 A. Okay.

14 **THE COURT:** All right. About the case. He can show
15 you where the restroom is or where a restaurant is and that
16 kind of thing, all right?

17 A. Okay.

18 **THE COURT:** All right. Watch your step, ma'am.

19 A. All right.

20 **THE COURT:** Okay. Thank you.

21 (Whereupon court was in recess at 12:28 pm)

22 (Whereupon court reconvened at 2:02 pm)

23 **THE COURT:** Thank you. Please be seated. Okay.

24 Counsel, can y'all approach for just one moment? I wanted
25 to confirm one thing with you.

1 (Whereupon a bench conference was held off the record)

2 **THE COURT:** All right. Is everybody ready to begin?

3 **MR. SMITH:** Yes, Your Honor.

4 **THE COURT:** Okay. Ms. Perkins, ma'am, if you'll come
5 back up. Just take your time. Okay. Is there anything
6 else on direct, counsel, before we start with the cross?

7 **MR. ALGER:** No, ma'am.

8 **THE COURT:** Okay. Mr. Smith.

9 **MR. SMITH:** Yes, Your Honor. May I approach the
10 witness?

11 **THE COURT:** Yes, sir.

12 **Cross Examination by Mr. Smith:**

13 Q. Ms. Perkins, I did want to go back over some of your
14 medical history as we did in your deposition back a while.
15 You remember the deposition?

16 A. Yes, sir.

17 Q. Okay. So maybe this will go -- go faster. When we
18 talked last in your deposition we went over medical records
19 from WellStar Cobb Hospital in Georgia, 2010. Do you
20 remember the -- you remember that?

21 A. (Affirmative nod).

22 Q. When I asked you about those records showing that you
23 had knee pain and you had an MRI pertaining to your knee
24 pain back in 2010? You ---

25 A. Yes, sir.

1 Q. --- remember that? Good. And the pain you were
2 troubling -- that you were having at that time, it was right
3 knee pain that led to an arthroscopic surgery to your right
4 knee, is that right?

5 A. Yes, sir.

6 Q. Okay. And that's when you had your surgery performed
7 on your knee back in 2010?

8 A. Yes, sir.

9 Q. Is that right? So -- and you also had chronic lower
10 back pain continuously, right?

11 A. Yes, sir.

12 Q. Back before this happened? And you had fibromyalgia in
13 your entire body, right? Affected all your joints, right?

14 A. Yes, sir.

15 Q. Okay. Thank you. And then we talked about in June of
16 2011, that was when you went to the hospital at WellStar,
17 right? You remember that? You were having trouble with
18 your left leg ---

19 A. Yes, sir.

20 Q. --- in 2011. And your right leg before the accident,
21 before March 1, in this accident, you had trouble with your
22 left leg and your right leg before this accident, right?

23 A. Yes, sir.

24 Q. Okay. Thank you. And you've been taking lots of ---

25 **MR. ALGER:** Your Honor, if he's going to go over

1 medical records, I think it's only fair that he actually
2 gives her the opportunity to review them as well.

3 MR. SMITH: We have them in the deposition, Your Honor.

4 THE COURT: Okay.

5 MR. SMITH: If she wants to open them up and ---

6 MR. ALGER: At least so she can reference it.

7 MR. SMITH: Okay. Your Honor, may I open ---

8 THE COURT: Yes.

9 MR. SMITH: I think -- I hope they're in there.

10 THE COURT: All right. I have unsealed the original
11 deposition of Betty Jean Perkins taken on December the 19th
12 of 2014. And it looks like there are several exhibits
13 attached to this -- to the deposition, Defendant's exhibits
14 1 through ---

15 MR. SMITH: Should be ---

16 THE COURT: --- 19?

17 MR. SMITH: Should be 23.

18 THE COURT: I'm sorry, 24.

19 MR. SMITH: 24, right.

20 THE COURT: Okay. Here you go, Mr. Smith. Do you need
21 the transcript as well?

22 MR. SMITH: I do.

23 THE COURT: Okay.

24 Q. This one's yours right here. And I'll direct you to
25 the page to go to. If you go to page 21 of your deposition.

1 You on page 21?

2 A. Yes, sir.

3 Q. Down at the bottom we talked about -- now you see where
4 we talked about exhibit number 7 down at the bottom? And I
5 have that exhibit right there. I asked you these questions
6 about the medical records of WellStar Cobb. I believe
7 that's it right there.

8 And on page 2 of that it says in the record, we saw
9 that you fell and you hurt your -- your right knee. And
10 that was in January of 2011. Is that right? January 4th,
11 2011, your right knee?

12 A. Is that a -- is that a right knee? I mean, I can't
13 understand what it's saying here.

14 Q. Well, I just -- in your deposition I asked you about
15 your right -- whether or not this reflected you fell and
16 hurt your right knee. And you said, yes. Remember that?

17 A. I don't remember, but ---

18 Q. Okay.

19 A. --- I'm looking at the paper. That's the best I can
20 answer it.

21 Q. If you'll look on page 23 at page -- at line 14, 23.
22 Go to the next page. Two more pages forward. I asked you,
23 in your right leg from before the accident, this case before
24 March 1 of 2012, you've had trouble with your left leg and
25 your right head -- leg? And you said, yes, probably. Is

- 1 that right?
- 2 (Pause)
- 3 Q. Right?
- 4 (Pause)
- 5 Q. Right here. And I asked you ---
- 6 A. Okay.
- 7 Q. --- and your right leg from before the accident in this
- 8 case, before March 1, 2012, you've had trouble with your
- 9 left leg and your right leg? And you said, yes, probably,
- 10 is that right?
- 11 A. Yes.
- 12 Q. Okay. And I asked you, you've had lots of different
- 13 medications for many, many years, is that correct?
- 14 A. Yes.
- 15 Q. Lots of pain medications?
- 16 A. Yes.
- 17 Q. Muscle relaxers, is that correct?
- 18 A. Yes.
- 19 Q. Oxycontin for many years? And you said, yes, right?
- 20 A. If my records were, I mean, I have ---
- 21 Q. I asked you that question and you ---
- 22 A. Yes.
- 23 Q. --- said, yes. Okay. Your testimony was that you had
- 24 fibromyalgia over your whole body, is that right?
- 25 A. Yes.

1 Q. Okay.

2 THE COURT: Where are you in the transcript, counsel?

3 MR. SMITH: That would be -- that was -- that was a
4 previous question.

5 THE COURT: Okay.

6 MR. SMITH: But not in the transcript.

7 THE COURT: Thank you.

8 Q. On page 31 of your deposition, that refers to -- this
9 is actually exhibit number 11. And this is the exhibit that
10 refers to your arthroscopic knee surgery after the accident,
11 right? And you'll see the operation date, 7/16/2014. Is
12 that right?

13 A. 7/28.

14 Q. That sound right?

15 A. Yeah, 7/16.

16 Q. Okay. The other thing we talked about in your
17 deposition was the amount of prescriptions that you were
18 using. And the, I guess, in the six week period leading up
19 to your -- to this accident. Do you remember that? Do you
20 remember that?

21 A. No, sir.

22 Q. This would be your Rite Aid pharmaceutical records.
23 And I am talking about on page 33 of your deposition, if you
24 would turn to that. Are you there?

25 A. Yes, sir.

1 Q. And at the top I say, and then I will make this a group
2 exhibit. This is a set of medical records, I mean,
3 pharmaceutical records for Lane Family Pharmacy, Eden, North
4 Carolina. And you said, yes. You saw that?

5 A. Yes, sir.

6 Q. You see that right there? And down at number 10, that
7 includes, it looks like 2007 to 2014. If you could look at
8 that and verify that it covers the time period. And you did
9 look at it. It does cover the time period, doesn't it?

10 A. (Affirmative nod).

11 Q. And then I have Eden Drug -- Eden Drug -- North Eden
12 Drug and Health Mart. And that record -- drug pharmacy
13 record looks like 2013 up through August 28, 2014, is that
14 correct?

15 A. Yes, sir.

16 Q. And you said, yes. And I went through the record real
17 quickly on Lane Family Pharmacy. And just to note some of
18 the drugs in there, Hydrocodone, is that right?

19 A. Yes, sir.

20 Q. And Hydrocodone is repeated throughout all the way
21 through the present, from 2007 forward. And you said, okay?

22 A. Yes, sir.

23 Q. And you know that some of these medications, other than
24 Hydrocodone, what is that -- do you know what that type --
25 what that is for? And I put probably -- you answered

1 probably an antidepressant. Were you taking an
2 antidepressant?

3 A. Yes, sir.

4 Q. Okay. And then below, what is that, Trazadone?

5 A. Trazadone.

6 Q. Trazadone. And what was that for? And you said,
7 insomnia?

8 A. Yes, sir.

9 Q. And the next one I don't know -- you said, I don't know
10 what's a different name other than Prilosec and high blood
11 pressure medicine, acid reflux medicine. Is that what you
12 said?

13 A. Yes, sir.

14 Q. Okay. Then I have exhibit number 13 to your medical
15 records. I marked these exhibit number 3. And mark these
16 exhibit 13, and they are pharmaceutical records from CVS, if
17 you could.

18 Looks like they cover a period of time from -- the
19 earliest date noted in the records I see here, 2004,
20 Hydrocodone. And what is that? And then your answer was,
21 what do you mean? I said, medication you first received in
22 2014, that's Hydrocodone? And you said, that's Hydrocodone,
23 is that correct?

24 **MR. ALGER:** Your Honor, is he asking a question?

25 **MR. SMITH:** I -- I'll let her answer. I'll go back.

1 Q. What was your answer at the top of page 35?

2 A. You asked me the medication I first received in 2004.

3 Q. Right. And the next page, 35, your answer was?

4 A. Hydrocodone.

5 Q. Okay. And I guess the last -- I see here -- I see
6 January 6th, 2014, I see morphine. And your answer was?

7 A. Yes.

8 Q. And what is that? Pain medication? And your answer
9 was?

10 A. Yes.

11 Q. Okay. I really just want -- and then you put -- and
12 you answered time release, is that right?

13 A. Yes, sir.

14 Q. I really just want to cover about the seven week period
15 prior to the accident and the prescriptions that you got
16 from the pharmacy January 17th, 2012, which would have been
17 about six or seven weeks prior to the accident. And it
18 looks like you got prescription, Oxycodone, ninety tablets?
19 And your answer was?

20 A. Yes.

21 Q. Okay. January the 10th, 2012, about six weeks prior to
22 the accident you got some morphine, a prescription from Dr.
23 Lee. And you answered?

24 A. Yes.

25 Q. And you got sixty tablets, is that right?

- 1 A. Yes.
- 2 Q. Yes. And you said, yes, you take them both together,
3 is that right? Line 14.
- 4 A. Yes.
- 5 Q. Okay. And then you got another refill looks like
6 February ---
- 7 MR. ALGER: Your Honor, again, are we going to just sit
8 here and read the transcript or is Mr. Smith going to ask a
9 question ---
- 10 MR. SMITH: I could ask a question.
- 11 MR. ALGER: --- because, you know, I mean, ---
- 12 THE COURT: Well, ---
- 13 MR. ALGER: He hasn't even given her the opportunity to
14 answer a question.
- 15 THE COURT: I think that I understand that we're trying
16 to move through it, but if you would phrase it as a question
17 ---
- 18 MR. SMITH: Okay.
- 19 THE COURT: --- and just maybe refer her back to the
20 deposition.
- 21 MR. SMITH: All right.
- 22 THE COURT: If -- if she is not answering you
23 correctly.
- 24 MR. SMITH: Okay.
- 25 THE COURT: Thank you.

1 Q. Okay. So February the 7th we've got another thirty day
2 refill of morphine, is that correct?

3 A. Yes.

4 Q. Okay. On February 7th, 2012 you got sixty tablets of
5 morphine, is that right?

6 (Pause)

7 Q. Correct?

8 A. I'm trying to see where we are.

9 Q. Page ---

10 A. 36?

11 Q. Yes.

12 A. Yes.

13 Q. Okay. Then below, February the 10th, you got ninety
14 tablets, February the 14th where you get ninety tablets of
15 Oxycontin, right?

16 A. I don't know where you are. February the 10th.

17 Q. Right.

18 A. And I said that's not a pain medicine.

19 Q. Okay. Well, I'm looking at page 36, line 15. I'm
20 asking you if you got a prescription, more Hydrocodone in
21 February, is that correct? Right?

22 A. Yes.

23 Q. Okay. Twenty tablets of Hydrocodone, is that right?

24 A. On February the 1st through the 15th I said that I
25 received ninety tablets. And below that you asked me about

1 Methocarbamol.

2 Q. Um-hum (affirmative).

3 A. And I said that's not a pain medication.

4 Q. When I asked you in your deposition, page 38, I asked
5 you that -- count up all the medications on this exhibit
6 number 13, there were forty pills of Hydrocodone, Trazodone,
7 muscle relaxers, six or seven weeks period prior to your
8 accident. Is that what -- what was your answer?

9 A. I don't understand what you're asking me.

10 Q. You asked me -- I said you got Hydrocodone, you got
11 four hundred pills of morphine, Hydrocodone, Oxycontin,
12 muscle relaxers in the six weeks prior to your accident.
13 You received those pills in your pocket from CVS. Do you
14 agree with that -- with what that -- that or disagree? And
15 your answer was, that's what it says, right?

16 A. May I add something to that or do I have to say yes or
17 no?

18 Q. Well, first of all, is that what you said in your
19 deposition?

20 A. I answered yes.

21 Q. Okay. And you received -- you've been receiving all
22 these types of medications for years, right? Right?

23 A. Yes.

24 Q. Okay. And you have a lot of medications from
25 pharmacies prior to this accident, leading up to this

1 accident, right?

2 A. Yes.

3 Q. I'm looking at Defendant's exhibit number 2, which is
4 the -- Officer Earl's report. And you read from it in your
5 direct examination. And in your -- and you read the remarks
6 in the very last paragraph. Do you remember that?

7 A. Yes, sir.

8 Q. In that remark Officer Earl says he observed your left
9 -- an injury to your left knee and right arm, right?

10 A. He said he -- subject has visible injuries to her left
11 knee and leg.

12 Q. Okay. He didn't see an injury on your right leg,
13 correct? He didn't report a right leg injury, did he?

14 A. He didn't see one.

15 Q. Okay. And he also didn't report in there that your --
16 this, what you've been saying about your car stalling out
17 and breaking down, he just reported a flat tire, is that
18 right?

19 A. That's what ---

20 Q. Is that's what ---

21 A. --- he have because when he got there the car had
22 already been pushed to the side.

23 Q. Well, but he didn't put in his report your version that
24 there was a -- your engine stalled out or shut off on -- he
25 didn't put that in his report, did he?

1 A. No, it's not here.

2 Q. And that would be same true with the -- on exhibit
3 number, I believe it's number 8, Plaintiff's exhibit, the
4 paramedics. They did not report this version about the
5 engine to your car stalling down, is that correct?

6 A. It's nothing in here about that.

7 Q. Okay. So those are two officers and paramedics did not
8 report anything about your car stalling out, but they both
9 reported you having a flat tire, correct?

10 A. Yes, because they could see the flat tire. And the car
11 was already there when they -- on the side of the road. But
12 also they did not report that my trunk was smashed in from
13 them trying to get it off the road either.

14 MR. SMITH: Did you introduce the Village Hospital
15 records?

16 MR. ALGER: I did not.

17 MR. SMITH: You did not? Okay.

18 MR. ALGER: The bills are up there.

19 MR. SMITH: The bills are? Okay.

20 THE COURT: And what will that be, counsel?

21 MR. SMITH: 18.

22 THE COURT: Medical records?

23 MR. SMITH: Yes, ma'am.

24 (Whereupon Defendant's exhibit 18 was marked for
25 identification)

1 **MR. SMITH:** This is marked Defendant's exhibit number

2 18.

3 (Pause)

4 Q. Exhibit number 18, which is the medical records from
5 the Village Hospital, and you've seen these before. When
6 you -- you went from the scene to Village Hospital by the
7 paramedics, right?

8 A. Yes, sir.

9 Q. And when you went to the hospital the nurses examined
10 you, right?

11 A. Yes, sir.

12 Q. And when they went through it -- you saw this before,
13 but in here it has here circled that they observed problems
14 to your left knee and left shoulder, is that right? You see
15 that on the first page where they circled left knee?

16 A. Yes.

17 Q. Okay. And there's no -- no reference on the first page
18 to your right knee, is there, on this? Is that right?

19 A. I don't see anything ---

20 Q. Okay.

21 A. --- here ---

22 Q. All right.

23 A. --- about my right.

24 Q. All right. And the second page it has, I think, a

25 diagram of your -- well, it has another form here where they

1 -- they get to check the location of pain. And, again, we
2 see on the second page that the location of pain would be
3 your left knee. Is that what the nurses and doctors filled
4 out on that paperwork, that form? Is that right?

5 A. Yes, that's what they have ---

6 Q. Okay.

7 A. --- here.

8 Q. They even proceeded to do an x-ray, is that right? You
9 got an x-ray?

10 A. Yes, sir.

11 Q. Of your -- and, again, they x-rayed your left knee, is
12 that right? According to this they x-rayed your left knee.

13 A. They x-rayed the one that had the scratches.

14 Q. Which was your left leg.

15 A. Which was the ---

16 Q. All right.

17 A. --- left leg.

18 Q. And so you didn't say, hey, my right leg, too? You
19 didn't tell them that, did you? It's not in there, is it?

20 A. At that time I'm concentrating on the pain that was
21 most severe for me.

22 Q. Okay. But it wasn't bothering you enough for them to
23 take an x-ray or examine your right knee, is that right?

24 A. It was bothering me, but I'm hysterical, all upset, ---

25 Q. Um-hum (affirmative).

- 1 A. --- all of this is going on.
- 2 Q. And it was thirteen days later before you went to talk
- 3 to your Dr. Lee down at Pinnacle ---
- 4 A. Not true.
- 5 Q. --- about your -- okay. What doctor ---
- 6 A. Not true.
- 7 Q. --- did you see between this accident and Dr. Lee?
- 8 A. I reached out to my doctor two days after the accident.
- 9 Q. We don't have those medical records, do we?
- 10 A. And they could not get me into the office until the
- 11 date that I went in.
- 12 Q. Would that be Dr. Lee down in Georgia?
- 13 A. Yes, sir.
- 14 Q. Okay. When I asked you at your deposition about
- 15 whether or not there was a defect or any problem with this
- 16 catch basin that we've heard about today, you told me you
- 17 had absolutely no idea what was wrong with it, is that
- 18 correct?
- 19 A. Could you ask me again, please?
- 20 Q. I asked you at your deposition and here today whether
- 21 or not you knew what was wrong with this catch basin, and
- 22 your testimony in your deposition was you had absolutely no
- 23 idea. You remember that?
- 24 A. With the catch basin?
- 25 Q. The storm drain, whatever you want to call it.

1 A. It was pitch black.

2 Q. Well, so you have absolutely no idea?

3 A. I just know that I stepped into something.

4 Q. Well, I'm asking about whether or not you knew of a
5 defect in this storm drain, and you're not answering the
6 question. You don't have any idea ---

7 **MR. ALGER:** Objection, Your Honor. She's not an
8 engineer. She can't testify as to a defect if there was
9 one.

10 **THE COURT:** Well, I tell you what, Mr. Smith, just slow
11 it down just a little bit and try to ask her one question.
12 I know you're on cross, but just try to ask her one question
13 at a time. If she doesn't know, I'm sure she's going to
14 tell you.

15 **MR. SMITH:** Okay.

16 **THE COURT:** Okay.

17 Q. Well, you don't know what was wrong with the storm
18 basin?

19 A. I know that I stepped into something.

20 Q. But you don't know what was wrong with it?

21 A. I know that I stepped into something. I mean, I don't
22 know any better way to say it.

23 Q. Okay. Well, -- okay.

24 **MR. SMITH:** That's all the questions I have. Thank
25 you, Your Honor.

1 **MR. ALGER:** Your Honor, I just have brief rebuttal, but

2 I'll give -- give him a minute.

3 (Pause)

4 **Redirect Examination by Mr. Alger:**

5 Q. Ms. Perkins, after the accident, and we just heard from

6 Mr. Smith, was your knee hurting? Both of your knees

7 hurting?

8 A. They both -- I was hurting. I was hurting all over.

9 Q. All over? So even your back was hurting, right?

10 A. Yes.

11 Q. And you can sit here today and admit that before this

12 accident you had chronic back pain, correct?

13 A. Yes.

14 Q. And you were taking a number of pills? I think Mr.

15 Smith totaled them up to four hundred pills over the course

16 of a period of time, is that correct?

17 A. Yes.

18 Q. And you're not denying that, are you?

19 A. No.

20 Q. But after this accident -- and you're someone who's

21 familiar with pain, aren't you?

22 A. Yes.

23 Q. After this accident were your knees hurting? Both of

24 them?

25 A. Yes.

- 1 Q. Was your right knee hurting?
- 2 A. Yes.
- 3 Q. Was it an excruciating pain?
- 4 A. Yes.
- 5 Q. Was it enough that you had to seek out the help of a
- 6 doctor?
- 7 A. Yes.
- 8 Q. Was your back hurting as well?
- 9 A. Yes.
- 10 Q. And I think you even told Dr. Francke that your back
- 11 was hurting more after this accident?
- 12 A. Yes.
- 13 Q. Now, your back was hurting before, right?
- 14 A. Yes.
- 15 Q. But it was exacerbated at least for a period of time
- 16 after this accident, right?
- 17 A. Yes.
- 18 Q. Okay. Now, is it your testimony here today after
- 19 reviewing all that we've reviewed -- and I'm going to hand
- 20 you what's marked as Plaintiff's exhibit 7 and Plaintiff's
- 21 exhibit 5. Can you sit here today and say at least to a
- 22 reasonable certainty that you stepped into that void, that
- 23 hole right there on that picture?
- 24 A. Yes.
- 25 Q. Okay.

1 **MR. ALGER:** No further questions, Your Honor.

2 **MR. SMITH:** No further questions.

3 **THE COURT:** Okay. All right. Ma'am, you may step
4 down. Watch your step, okay?

5 **MR. ALGER:** Plaintiff rests -- rests his case -- her
6 case, Your Honor.

7 **THE COURT:** Okay.

8 **MR. SMITH:** Just make some motions at this time. And
9 we're not -- all of our witnesses have testified. So we
10 would not present a case at this time. So ---

11 **THE COURT:** Okay. All right. Mr. Smith.

12 **MR. SMITH:** Yes, Your Honor. We'd move for a directed
13 verdict on the grounds that there's no evidence of a defect
14 of this catch basin on Interstate 85. Plaintiff hasn't
15 presented any competent evidence of any type of engineer or
16 expert to say otherwise.

17 The facts are they had two witnesses up on the stand
18 who would know. They looked for records and they -- and the
19 design was within specifications for how these drains are
20 built and installed. There's a certain amount of
21 engineering discretion as to what type of deviation can be.

22 But when you look at the photographs and you look at
23 the design, nobody's been able to say that this was a
24 defective catch basin, which, in this case, was not in the
25 design for pedestrian traffic. It wasn't intended for

1 anybody to walk on it.

2 Of course it's going to be harder to walk across than a
3 regular storm drain along the city street where you have
4 sidewalks and so forth. But this was a catch basin intended
5 for only one purpose, that was to ensure the maximum
6 drainage off the highway, which it was designed to do.

7 So there's no evidence, number one, that there's a
8 defect. And on top of that, there's no evidence that there
9 was any prior notice of any particular condition. We've
10 searched all the DOT records. We've produced those records.
11 And we've searched through those records, and there is
12 nothing.

13 Had there been a problem with this drain, this catch
14 basin, there would have been a work record of it of a team
15 of people to go out and do a lane closure to -- to put this
16 grate back on place if that were the case. So we think that
17 a directed verdict is proper and in order for this
18 particular situation.

19 Our defenses under the Tort Claims Act, 15-78-60 (13)
20 talks about regulatory inspections. You can't say that
21 we're negligent in our inspection of the area. For one
22 thing, there is no evidence that we did any negligent
23 inspection.

24 Number two, I think it's number (15) talks about design
25 defects. There is no liability for design defects. There

1 has to be competent evidence that we failed to follow the
2 acceptable professional standard. There is none. And also
3 section (15) talks about notice, prior notice of a defect
4 and not repaired within a reasonable time. Again, they've
5 failed to come up with any evidence to prove liability on
6 those issues.

7 In terms of our defense under section (20), if it had
8 been a case where somebody went out there and moved the
9 storm drain and put it back in, again, we don't even have
10 evidence that this was a misplaced or repositioned storm
11 drain for there to be liability on behalf of DOT.

12 So we think there is a total, absolute failure on the
13 question of liability. I don't think we even have to get to
14 damages. But if we do, the Plaintiff introduced, I think he
15 introduced the IME report of Dr. Gordon Early. And, of
16 course, the purpose of that was there was such a vast amount
17 of medical records in this case that we needed a doctor to
18 take an independent look. And I think his report is well
19 written.

20 It helped the Court go through all the volume of
21 medical records that are in this case. And I think his
22 medical opinion would be the one that the most credence
23 should be given to in this particular case.

24 So we think that there is no evidence of liability,
25 that a motion for directed verdict should be granted. And

1 with that, we'll rest our case.

2 **THE COURT:** Thank you. Yes, sir, Mr. Alger.

3 **MR. ALGER:** Yes, ma'am. Obviously, we don't agree with
4 a directed verdict or request for a directed verdict of the
5 Defendant. We feel that we have met our burden.

6 First, in proving that there is liability on the part
7 of DOT we've got to show, you know, that they have a duty
8 that they have failed to meet that duty and then, obviously,
9 the other elements thereafter. It was testified by Mr.
10 Bedenbaugh -- Mr. Holden that DOT is responsible for
11 maintaining the highways. They're also responsible for
12 providing the -- a safe roadway for the traveling public.

13 Despite the testimony that there is no defect here, Mr.
14 Bedenbaugh did testify that the gap that is present between
15 the concrete grate and the concrete median is there and is
16 not shown or at least accounted for in the specifications.
17 He went on to testify something about reasonable tolerances,
18 acceptance, however, no evidence is presented to quantify
19 that. There is nothing that's in the record to substantiate
20 that.

21 And, quite frankly, Your Honor, in looking at this and
22 the other specifications in the chart, I think a reasonable
23 person can easily infer that that gap is more than what
24 would be an acceptable standard. If you take the simple gap
25 set around the grate themselves, Mr. Bedenbaugh testified

1 those gaps are three and a half inches plus the plans of the
2 grate itself which shows that -- that the void as I'm
3 referring to right here, from the top of the concrete to the
4 edge, is supposed to be three inches wide as well.

5 So if that was flush with the concrete barrier, that
6 gap would only be three inches wide. But what we have here
7 is a substantially wider gap. Substantially wider than --
8 and just looking at it with your plain view eyes, you can
9 see right there that it's substantially wider. And it's,
10 quite frankly, wider than the gaps of the grate itself. I
11 think that presents an undue hazard of motorists. I think
12 the DOT is responsible for that.

13 Additionally, I think it's very foreseeable that there
14 are going to be pedestrians on the highway, whether it's Ms.
15 Perkins, or it's a first responder or law enforcement. You
16 may have an instance where a first responder is out there
17 responding to somebody like Ms. Perkins.

18 What's the law enforcement officer going to do? He's
19 going to pull up behind her, get out of his car, and he's
20 going to walk down the shoulder and he's going to come to
21 her rescue just as those gentlemen did in this instance.
22 It's very foreseeable that the traveling public, be it
23 pedestrians or cars, they're going to utilize this shoulder.
24 And as such the DOT needs to provide a safe environment for
25 them.

1 In this instance we allege that they have failed this.
2 I believe that we have met that burden through this evidence
3 and the testimony that's here today.

4 As to the -- I'm going to go ahead and say as to
5 causation and damages, I think Plaintiff's exhibit 1, which
6 is the IME report that came at the request of the Defense.
7 And, not to mention, the doctor is the chosen doctor by the
8 Defense. But he, quite frankly, right here in the last page
9 of his IME report testifies as to causation and the damages
10 that the Plaintiff sustained.

11 Now, of course, it's still left up to the fact-finder,
12 the jury, Judge in this instance, to determine what the
13 damages are, but as to evidence of causation and damages, I
14 don't think I need to elaborate on it. We've got it. It's
15 right here in exhibit 1.

16 Lastly, in regards to the Tort Claims Act, number (13),
17 which is dealing with inspections, we haven't alleged that
18 the DOT was negligent in inspecting. We have alleged that
19 they were negligent in allowing a defective storm grate to
20 be present in the area for which they are responsible. It's
21 premise liability, it's not negligence due to an inspection.
22 That section of the Tort Claim Act does not apply.

23 As to section (15) it is the absence, condition,
24 malfunction. And it could be applicable in this instance to
25 a defective grate. I guess you could -- you could make that

1 stretch.

2 However, the second portion of that is that; is not
3 corrected by the governmental entity responsible for its
4 maintenance within a reasonable time after actual,
5 constructive notice. Constructive notice, Your Honor, is
6 knowing or should have known.

7 In this instance we have a roadway -- and I'll draw
8 your attention to the specifications on this plan, effective
9 date of 1997, I would argue that this -- you got grass
10 growing on it. I mean, it's been around for a while. The
11 DOT was more than aware, not to mention we have submitted
12 into testimony -- into the record by exhibit 4 the drainage
13 inspections that occurred.

14 And I think I even had Mr. Holden testify that before
15 this accident there were a number of these inspections that
16 occurred along this roadway. So notice is very there and
17 very apparent. I don't think we have anything to argue on
18 that.

19 Your Honor, it's a question that's left for you to
20 determine. But in terms of evidence to get past a directed
21 verdict, the evidence is here, it's the record, it's in the
22 exhibits. And we don't think that the Tort Claims Act is
23 appropriate.

24 There is one last section, which is -- I don't think it
25 is applicable as well. That's the acts of third parties.

1 We're not alleging anybody went out and tampered with any of
2 this. I don't -- we're not even alleging that the storm
3 grate was defective. Obviously, our focus is on the void in
4 the back. I don't think anybody went out there with a
5 chisel and opened it up.

6 What we're dealing with here is a condition that
7 existed, a defective condition that existed. And it was
8 under the control of the DOT, the party that's responsible.
9 So, again, I don't think the Tort Claims Act is applicable.

10 Plaintiff has submitted all the evidence that she needs
11 in order to establish both the duty, the foreseeability, the
12 breach of that duty by the Department of Transportation,
13 causation and damages for her case. And we'd ask that you
14 deny the motion for directed verdict.

15 **MR. SMITH:** Just one quick point on reply.

16 **THE COURT:** Yes, sir.

17 **MR. SMITH:** I didn't hear any witness testify that this
18 -- there was a defect in this grate, not one witness. What
19 we've heard is counsel's argument about what a photograph
20 might -- what he thinks it shows and the plans, but not a
21 single witness corroborate -- he didn't put a witness on the
22 stand to say that this is a defect that needs to be fixed
23 and that we knew about it. That -- doesn't have it. It's
24 all argument and is entitled to no weight, no credibility.
25 That's all we have to say, Your Honor. Thank you.

1 **MR. ALGER:** Your Honor, in response to that, Mr.
2 Bedenbaugh and Mr. Holden both testified that you're
3 supposed to build things according to the plans. The plans
4 do not provide a gap between the box and the concrete
5 median.

6 It is clear -- it can be inferred without the use of an
7 expert that that is, in fact, a failure to construct this
8 box according to the plans. That is by its terms defective.
9 That is by its terms not adhering to the specifications of
10 the plans, which DOT abides by in constructing all of their
11 boxes on all the interstates throughout the State. Just as
12 Mr. Bedenbaugh says, these are the standard specifications
13 they use throughout the entire State and yet this box -- you
14 can sit here and see it, there's a big oh gap right there.

15 Your Honor, I don't need somebody -- my argument is I
16 don't need an expert to sit here and tell you that's
17 defective. You can look at it and tell it's defective.
18 It's not drawn according to the specifications. It's not
19 constructed according to the specifications.

20 **THE COURT:** Anything else, counsel?

21 **MR. SMITH:** No, Your Honor.

22 **THE COURT:** Okay. Why don't we take about -- well,
23 that clock may be a little off. Why don't we just take a
24 recess until three, ---

25 **MR. SMITH:** Okay.

1 **THE COURT:** --- okay? And I'll come back.

2 (Whereupon court was in recess at 2:48 pm)

3 (Whereupon court reconvened at 3:11 pm)

4 **THE COURT:** Thank you. Please be seated. All right.

5 And just so I'm clear, counsel, because I think there has
6 been some language used that referred loosely to a design
7 defect, but this is not being presented as a design defect,
8 is that correct?

9 **MR. ALGER:** Correct, Your Honor.

10 **THE COURT:** Okay.

11 **MR. ALGER:** This is a hazard to the traveling public is

12 ---

13 **THE COURT:** Or an installation defect might ...

14 **MR. ALGER:** Perhaps. We are not alleging that the
15 drain culvert was designed negligently because if it was
16 designed negligently, I would have to prove those plans are
17 not to specifications.

18 **THE COURT:** Right.

19 **MR. ALGER:** We are alleging that it was, like you said,
20 not installed correctly.

21 **THE COURT:** Well, and, Mr. Smith, I just want to make
22 sure I understand your position, sir. You're not stating
23 that expert testimony is required to establish liability on
24 behalf of the Plaintiff, are you?

25 **MR. SMITH:** Well, I think to -- for him to claim that

1 it was not constructed according to the design, that
2 required an expert testimony. He doesn't have it. And ---

3 **THE COURT:** But I don't think he's saying that. And
4 I'm not trying to cut you off, but I think he just -- that's
5 what I just -- I need for you to confirm that again,
6 counsel. So you're not -- this is not a design defect case
7 that would ---

8 **MR. ALGER:** Correct.

9 **THE COURT:** --- that would have to be established
10 through expert testimony?

11 **MR. ALGER:** I would think so, Your Honor.

12 **THE COURT:** Okay. All right.

13 **MR. SMITH:** Well, whether it was constructed takes
14 competent witnesses to say that. And he doesn't have that.

15 **MR. ALGER:** Well, we did hear the testimony of Mr.
16 Bedenbaugh that it was not -- as it sits there today is not
17 to the specifications of the plans. He agreed with me -- it
18 took some coercing, but he finally agreed that if that gap
19 was there, then they are not built or not present as the
20 plans have them.

21 And, Your Honor, even the installation, there is not
22 requirement that the expert be here testifying as to the
23 standard of care in constructing or installing a culvert.
24 And we don't need that.

25 The simple fact is, the DOT has a duty to provide for

1 the safety of the traveling public. This culvert presents
2 an unreasonable hazard to the traveling public on this
3 roadway. And that can be inferred through the testimony
4 that's been provided here today, the pictures that have been
5 provided, Ms. Perkins in her testimony.

6 All of that is very apparent. It's negligence. And
7 we're not alleging a standard of care as to the design or
8 anything that necessitates an expert testimony.

9 **THE COURT:** Okay. And -- all right. So I did hear, I
10 mean, it wasn't black and white, okay? But I did hear the
11 employees of the DOT reluctantly testify that this -- that
12 the specifications of this grate -- they used a word, and
13 it's in my notes, but they were given some leeway or
14 something with regard to -- and so I do think there was
15 testimony. And in viewing the testimony in the light most
16 favorable to the non-moving party, to the Plaintiff, I would
17 then deny your motion, Mr. Smith.

18 But I give you, it's very close. I mean, I think it is
19 very close in this case. And I know that the cases that
20 come to court are not the easy cases. I understand that.
21 So I'm denying your motion, sir, at this time. Thank you,
22 though, for making it. I appreciate that. And I guess now
23 we will move to closings.

24 **MR. SMITH:** Well, our testimony has been presented ---

25 **THE COURT:** Yes, sir.

1 **MR. SMITH:** --- during the Plaintiff's case in chief.

2 So we rest our case without presenting anymore evidence.

3 And if you need closing arguments, that's fine, too.

4 **THE COURT:** Yes, sir, I need all the help I can get to
5 be perfectly honest. But if you all do want to before --
6 and I don't want you to do anything hastily, Mr. Smith. I
7 know that your witnesses were called in the Plaintiff's case
8 and that we're being a little bit more informal because
9 we're without a jury. But if you all do want to make sure
10 that you have covered all of your exhibits, if you've put
11 everything in that you meant to, I'm not at all going to cut
12 you off and not allow you to do that, okay?

13 **MR. SMITH:** Okay.

14 **THE COURT:** And so if ---

15 **MR. ALGER:** I think ---

16 **THE COURT:** If y'all just want to make sure.

17 **MR. ALGER:** I think we ---

18 **THE COURT:** I have the notebook.

19 **MR. SMITH:** Okay. Well, that's just a copy of what
20 all's been presented, the notebook.

21 **THE COURT:** Okay.

22 **MR. ALGER:** We just took the interim period while you
23 were out and I think we have straightened -- Madame Court
24 Reporter?

25 **MADAME COURT REPORTER:** (Negative nod).

1 **MR. ALGER:** No?

2 **MADAME COURT REPORTER:** No, we still need to get ---

3 **MR. ALGER:** We need to sort out his ---

4 **MADAME COURT REPORTER:** Yes.

5 **MR. ALGER:** --- exhibits? Would you prefer that we do
6 that before closing arguments, Your Honor?

7 **THE COURT:** I just don't want you all to rest and make
8 your closings before you -- if you all find out there's
9 something that you meant to put in. I don't know that the
10 deposition -- the deposition was not in and the exhibits
11 with the deposition are not in. And I'm not trying to tell
12 y'all how to -- how to try your case, but ---

13 **MR. SMITH:** I've given this to the court reporter for
14 her to put a -- deposition sticker on -- exhibit on the
15 deposition, sticker.

16 **THE COURT:** Okay. Is that coming in, counsel?

17 **MR. ALGER:** I would like to know the basis for
18 submission ---

19 **MR. SMITH:** We had -- we had to use it to -- for the
20 witness' testimony for impeachment purposes and ...

21 **MR. ALGER:** Your Honor, no objection.

22 **THE COURT:** Okay. Well, I'm glad we got that one in.

23 (Whereupon Defendant's exhibit 19 was marked and
24 admitted into evidence)

25 **THE COURT:** Okay. And then all of the exhibits

1 attached to the deposition would be coming in as well, is
2 that ---

3 **MR. SMITH:** That's right.

4 **THE COURT:** Okay.

5 (Pause)

6 **THE COURT:** And I'm fine with y'all doing this
7 afterward, but, again, I just want to make sure that ---

8 **MR. SMITH:** Right.

9 **MR. ALGER:** Plaintiff's is present and accounted for
10 ---

11 **MR. SMITH:** Right.

12 **MR. ALGER:** --- as to her exhibits.

13 (Pause)

14 **THE COURT:** Counsel, I'm going to step off the bench
15 just one second while y'all do this, okay?

16 (Whereupon court was in recess at 3:19 pm)

17 (Whereupon court reconvened at 3:23 pm)

18 **MR. SMITH:** Your Honor, we'll just go ahead and state
19 what's going into the evidence.

20 **THE COURT:** Yes, that'd be very helpful to me.

21 **MR. SMITH:** Okay. Defendant's exhibit number 2 is the
22 SCPDS [sic] report. Defendant's exhibit number 4 is a
23 photograph of the storm drain, which is also Plaintiff's
24 exhibit number 7. That's going into evidence.

25 (Whereupon Defendant's exhibit 4, which is also

1 Plaintiff's exhibit 7, was admitted into evidence)

2 Defendant's exhibit number 5, which is the daily work
3 report record. That's been introduced. And then we've got
4 standard -- the standard drawing, exhibit number 8, which is
5 the design drawings, which, I think, is also the Plaintiff's
6 exhibit number 2.

7 And we have independent medical examiner's report going
8 in as evidence. And that is exhibit number 15 in your
9 binder, Your Honor, which would be also the Plaintiff's
10 exhibit number 1.

11 Medical records from the Village Hospital. I believe
12 that is Defendant's exhibit number 18, but also your exhibit
13 number?

14 MR. ALGER: No, I don't have it.

15 MR. SMITH: Don't have it? Okay.

16 THE COURT: It's -- I've got it -- oh, wait, which is
17 it?

18 MR. SMITH: Number 18.

19 THE COURT: This is Village Hospital ---

20 MR. SMITH: Village Hospital.

21 THE COURT: --- emergency department in Greer?

22 MR. SMITH: That's right.

23 THE COURT: Okay. I think that was on here as number
24 16, but then did we ---

25 MR. SMITH: Well, ---

1 **THE COURT:** Did y'all put it in again?

2 **MR. SMITH:** It might have been put in again.

3 **THE COURT:** Okay. It's number 18, ---

4 **MR. SMITH:** Yes.

5 **THE COURT:** --- right? Okay. Okay. That's fine.

6 **MR. SMITH:** And then we have the deposition of Ms.

7 Perkins with the exhibits. That's number 19.

8 **MR. ALGER:** 16 is the Village Hospital. So that's the

9 same thing that you have as 18 ---

10 **MR. SMITH:** Is it?

11 **MR. ALGER:** Yeah. 17 was records from Pinnacle

12 Orthopaedic.

13 **MR. SMITH:** All right.

14 **THE COURT:** Is 17 coming in as well?

15 **MR. ALGER:** Your Honor, I don't remember him discussing

16 it, but ...

17 **MR. SMITH:** Oh, well, those are part of the -- part of

18 exhibit number 19. Those are in the Perkins' deposition.

19 **THE COURT:** Okay.

20 **MR. SMITH:** So ---

21 **THE COURT:** Those predate the incident, correct?

22 **MR. SMITH:** Correct.

23 **THE COURT:** Well, some of them -- some of them predate

24 the incident.

25 **MR. SMITH:** Right.

1 **MR. ALGER:** Correct. I'll stipulate to those, Your
2 Honor.

3 (Whereupon Defendant's exhibits 17 and 18 were admitted
4 into evidence)

5 **MR. SMITH:** Okay.

6 **THE COURT:** All right.

7 (Whereupon the attorneys were speaking with the court
8 reporter)

9 (Whereupon Defendant's exhibit 15, which is also
10 Plaintiff's exhibit 1, was admitted into evidence by
11 stipulation)

12 **THE COURT:** Okay. And so, counsel, these other
13 exhibits that I was given in the notebook, we can just shred
14 those or I can give those back to you, whatever you all
15 would prefer me to do.

16 **MR. SMITH:** Give it back to us.

17 **THE COURT:** Okay. Let me -- let me do that real fast.

18 (Pause)

19 **THE COURT:** Okay. Mr. Smith, I'm going to hand back to
20 you 1, 3, 6, 7, 9, 10, 11, 12, 13 and 14 as being in the
21 notebook, but then those were not stipulated to come in or
22 for whatever reason those were not offered.

23 **MR. SMITH:** Yes, Your Honor.

24 **THE COURT:** And then number 17, I think, is in through
25 the deposition. And those -- so I'll just keep it in here,

1 okay?

2 **MR. SMITH:** Yes, Your Honor.

3 **THE COURT:** Rather than having to copy that for me to
4 review later. All right. Anything else, counsel, before we
5 proceed to your closing arguments?

6 **MR. ALGER:** No, Your Honor.

7 **THE COURT:** All right.

8 **MR. SMITH:** No, Your Honor.

9 **THE COURT:** Happy to hear from you.

10 **MR. ALGER:** May it please the Court?

11 **THE COURT:** Yes, sir.

12 **MR. ALGER:** Thank you for listening to us all day today
13 and sitting through this, Your Honor. This should all be
14 fresh on everyone's mind, but just briefly to recount the
15 facts.

16 Ms. Perkins was driving south on I-85. She experienced
17 a loud tire failure. And as she testified, her car stalled
18 out. It was no longer operational and it stalled out in the
19 left lane. She did what any reasonable person would do.
20 She called her son-in-law, asked him for some advice. And
21 then she called the police and asked them for advice.

22 And she was exiting her vehicle to seek the safety of
23 the shoulder just as Mr. Bedenbaugh and Mr. Holden said
24 they'd do as well, they'd all gone to the shoulder. And so
25 was Ms. Perkins, but she got stopped before she ever made it

1 because she got over into the far left shoulder, she got
2 into the center median of the highway.

3 And as she was -- had herself up against the concrete
4 barrier, just like I think any scared person would do, she
5 stepped into a hole that we have identified in our exhibits
6 throughout the course of this trial, this void that exists
7 between the concrete barrier and the grate. There's the
8 void.

9 Now, Your Honor, Ms. Perkins testified that her foot,
10 her right foot went into that void. After her right foot
11 went in she lost her balance and came down on her left leg.
12 I don't think there is any dispute that she actually had
13 some injuries as a result of this accident. I mean, there's
14 pictures here to show that she had scrapes and bruises and
15 injuries to her stomach and her knees. I don't think that
16 is disputed. Obviously, the disputes in this case are the
17 liability and the extent of her injuries.

18 When I started my opening earlier I talked about how
19 today was the day of acknowledgment for everybody. Ms.
20 Perkins is sitting here in front of you today ready to
21 acknowledge the fact that she had multiple medical issues
22 prior to this accident.

23 We do not dispute the fact that she had chronic back
24 pains, that she has fibromyalgia, that she has all these
25 infirmaries that more or less impacted her life prior to

1 this accident. We don't dispute that she was already
2 partially disabled before this accident, but yet Ms. Perkins
3 was still able to go about her daily life, play with her
4 grandkids and work about twenty to twenty-five hours as she
5 testified before you today.

6 Now, this has impacted her life. And what we are
7 asking for now is acknowledgment by the Department of
8 Transportation that this has impacted her life. It's time
9 for the Department of Transportation to acknowledge that
10 they're responsible for these roadways.

11 Mr. Bedenbaugh and Mr. Holden sat before you and they
12 said that the Department of Transportation is responsible
13 for maintaining safe roadways to protect the traveling
14 public. In that regard, Your Honor, I think it is also very
15 foreseeable that the traveling public isn't limited to just
16 the lanes of traffic.

17 The traveling public has -- as represented by the ASHTO
18 regulations, as represented by the testimony you've heard
19 today, the traveling public, it is anticipated that at some
20 point in time accidents will occur, motorists will be
21 stranded, emergencies will happen, and they will have to
22 deviate from their normal traffic patterns down the roadway.
23 It's going to happen, it's just a matter of when. And in
24 that regard, Your Honor, we think that it is very reasonable
25 that the DOT was under a responsibility to maintain and to

1 avoid hazards such as this gap that we've identified in our
2 exhibits and in the pictures.

3 Your Honor, it is clear from the testimony you've heard
4 today that this drainage culvert does not exist today
5 according to the specifications that it -- that are provided
6 in the DOT's specs right here. Mr. Bedenbaugh, himself,
7 testified that that gap between the concrete perimeter of
8 the grate and the concrete median is not accounted for in
9 these specifications. It should not be there.

10 Now, he did go on and say it's within, you know,
11 whatever acceptable margins there that -- but we don't --
12 but we don't have anything to quantify that. And we don't
13 have anything to say, oh, well, that's an acceptable margin
14 of error.

15 Well, Your Honor, what I would say is look at the
16 grates themselves, right next to it. I mean, that's a very
17 competent piece of evidence is the grate themselves. And
18 those gaps are three and a half inches on the grate. That
19 void right there is three and a half inches.

20 Your Honor, if you look over at the void that's between
21 the concrete basin and the concrete wall you can see where
22 there is a depressed diagonal edge. That is three inches
23 according to the specifications. That is supposed to also
24 be up flush against the concrete wall.

25 Well, Your Honor, because of the presence of this gap

1 between the concrete and the concrete wall -- and I'm saying
2 concrete a lot. I hope I'm not losing anybody. But because
3 of the presence of that gap, that gap is more than three
4 inches. In fact, Your Honor, sitting here looking at it
5 today I'd argue to you that that's more like five or six
6 inches. Maybe even more than that.

7 Your Honor, it's very apparent that that gap is more
8 than what is the acceptable standards that are right here in
9 this specification. If three and a half inches is
10 acceptable for the grate, then three and a half inches or no
11 more should also be acceptable for the gap that's right next
12 to it.

13 Now, unfortunately Ms. Perkins, while she was out there
14 on this highway experiencing an emergency, fortunately [sic]
15 she stepped in that gap. And as a direct result of falling
16 into that hole, Ms. Perkins experienced injuries.

17 Now, we've put into evidence a number of records
18 including her medical bills, which I've got for you in this
19 binder right here. And I don't know if Your Honor has any
20 copies of this in front of you, but I would -- I would argue
21 to you, Your Honor, that in looking at these medical bills
22 and making the question that all us attorneys do, the
23 question of causation and just how much of these damages
24 actually occurred and are attributable to this accident, I
25 ask that you rely on the IME report that was provided

1 exclusively -- well, not exclusively, but with the consent
2 of Plaintiff, but were really set up and coordinated by the
3 Defendants. This is their choice for the doctor who
4 provided the IME of Ms. Perkins, okay?

5 Now, in flipping through this IME report there's a lot
6 of language in here where the doctor acknowledges both her
7 preexisting conditions, prior knee injury in 2010, which we
8 also will stipulate to, but he also comes to conclusions.
9 And those conclusions are as to causation and as to the
10 injuries that he attributes for Ms. Perkins directly related
11 to this accident.

12 Your Honor, his ultimate conclusion is that fifteen --
13 I'm sorry, fifty percent impairment to the right leg due to
14 the total knee replacement with fair results. This is a
15 twenty percent impairment to the body. The apportionment
16 for this injury is fifty percent due to the accident and
17 fifty percent due to other causes.

18 And, again, he's referring to the right knee
19 replacement. He's not referring to, but I think he is
20 incorporating in that statement the meniscus surgery that
21 also occurred prior to the knee replacement.

22 But, Your Honor, what we've done in establishing our
23 damages, our bills here for you, is we've gone ahead and
24 we've already categorized them. And I've got a summary that
25 I'm going to provide to you, Your Honor, where we took her

1 bills and we separated them out.

2 And I've got the bills on the top, which are the bills
3 directly related to her knee in the motor vehicle accident.
4 And the bills on the bottom, which are her other pain
5 management, her back. The other prior injuries that she
6 continued to maintain treatment for, but that will go ahead
7 and, you know, we'll acknowledge the fact because that's
8 what we're doing here today. We'll acknowledge that she had
9 those injuries before this accident.

10 Now, it's important to also note that Dr. Early goes on
11 and says there is a four percent worsening of her chronic
12 low back pain due to the accident. And his final summary is
13 the combined total body rating is fourteen percent from the
14 auto accident.

15 So here's the Defense expert, the expert who's been
16 chosen by the Defense with the consent of the Plaintiff
17 who's saying, yes, there are injuries, there are direct
18 injuries, causation, damages that are right here. This is
19 their expert. And he's telling you that it's fifty percent
20 of her right knee injury, and fourteen percent overall, and
21 four percent for her lower back. Your Honor, as you
22 consider these bills I ask that you give a tremendous amount
23 of weight and credibility to this report right here.

24 Now, Ms. Perkins, as I said, because we're here today
25 to acknowledge stuff, Ms. Perkins will tell you that her

1 life has changed and that before this accident she wasn't
2 able to -- or she was able to get about and play with her
3 kids. But, Your Honor, we do understand -- I don't want you
4 to think we're misleading the Court. We understand that she
5 already had mobility concerns. We understand that she
6 already had pain. But this has drastically changed her
7 life. And I don't think that anybody is contesting that.

8 I think her right knee, the pain that she has
9 experienced, the sleep that she has lost, the time that she
10 has spent with her grandkids, all of that is certainly
11 attributed -- attributable to her injuries beforehand, but
12 she was doing that before the accident. Now, fortunately
13 [sic], she's just not able to do it.

14 So, Your Honor, in concluding I would argue that our or
15 present to you that medical expenses for the knee, the total
16 medical expenses for the knee are seventy-two thousand, six
17 hundred and thirty-five dollars and fifty-four cents
18 (\$72,635.54). If you follow the math of Dr. Early, then
19 half of that should be attributed to this accident, which is
20 a total amount of thirty-six thousand, three hundred and
21 seventeen dollars and seventy-seven cents (\$36,317.77).

22 Ms. Perkins has also testified that prior to this
23 accident she was working at Wendy's, and she was working
24 twenty to twenty-five hours a week for seven dollars and
25 twenty-five cents (\$7.25) an hour.

1 Now I did some quick math. And at fifty hours in a
2 year and accounting for the remainder of 2012 her lost wages
3 tally up to present, to the date here today to thirty-six
4 thousand, two hundred and fifty dollars (\$36,250.00). Again
5 I would ask that you follow the advice or the calculations
6 of Dr. Early and attribute half of that to this accident
7 because, again, she's not able to work due to her right knee
8 replacement.

9 Your Honor, we're asking for lost wages in the amount
10 of eighteen thousand, one hundred and twenty-five dollars
11 (\$18,125.00).

12 Now, again, following Dr. Early and his report, the
13 pain management that Ms. Perkins received after this
14 accident totals up to -- for her back totals up to sixty-
15 five thousand, sixty dollars and seventy cents (\$65,060.70).
16 Now, Dr. Perkins -- Dr. Early said that she had a four
17 percent rating for her back. Four percent of that amount is
18 two thousand, six hundred and two dollars and forty-three
19 cents (\$2,602.43).

20 So when you add up those three numbers and consider
21 them, her total damages in this case, quantifiable damages
22 at least, are fifty-seven thousand, forty-five dollars and
23 twenty cents (\$57,045.20). That does not include those
24 damages that cannot be quantified, like her not being able
25 to play with her grandkids, or the pain that she endures at

1 night, or the sleepless nights that she doesn't [sic] have
2 and the tired days after.

3 Your Honor, we're asking that you consider awarding
4 pain and suffering as well. I'm not going to give you a
5 number for that, but I think that's a number that you can
6 determine on your own as the fact-finder in this case.

7 But we do ask that you consider awarding us actual
8 damages in the amount of fifty-seven thousand, forty-five
9 dollars and twenty cents (\$57,045.20) plus some damages for
10 pain and suffering. Thank you, Your Honor.

11 **THE COURT:** Thank you.

12 **MR. SMITH:** Just a brief reply, Your Honor.

13 **THE COURT:** Yes, sir.

14 **MR. SMITH:** And one of the things in this case that we
15 think is very important is that under the statutory laws of
16 this State, it is flat out stated that it is illegal for a
17 person to stop, or park, or let their vehicle stand on the
18 interstate unless directed by an officer to move it
19 elsewhere. So one of the things that I think isn't clear
20 and in our answer to complete is that a contributory
21 negligence? And we think that the Plaintiff's decision to
22 get out of the vehicle and walk in the area of the
23 interstate along the concrete median barrier, we think is
24 gross contributory negligence.

25 Both of the witnesses that took the stand, I think

1 everybody and even common sense tells you that this area is
2 not designed for or intended to be designed for pedestrian
3 traffic. And that's exactly what Ms. Perkins did.

4 It's not at the fault of the Highway Department that
5 she found herself in the middle of the interstate, that she
6 was walking in the area where is by statute prohibited. So
7 we think her gross contributory negligence should also bear
8 on the Court's consideration in this case.

9 But we don't think we even get to that point because
10 the Plaintiff, I think, even by his argument here today has
11 made an argument that's really just based on argument, and
12 conjecture and speculation. There is no evidence from the
13 witness stand that this catch basin had a construction flaw
14 or design flaw. Both of the witnesses said that when they
15 looked at the photographs that they were built by what they
16 could see according to the plans within deviation of what's
17 possible.

18 And I mentioned earlier that even these walls are not
19 perfectly plumb. But if you're talking about fractions of
20 an inch or something like that, their testimony was
21 affirmatively and clear that this catch basin had nothing
22 defective about it and there would be nothing that they
23 would send a maintenance crew to fix.

24 So they haven't gotten any evidence of a design defect
25 or a construction defect for that matter. And they don't

CLOSING ARGUMENTS - MR. SMITH

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1 have a witness, competent witness to say that on the witness
2 stand. We know we've heard counsel's argument about that,
3 but that's only part of it.

4 There's no evidence of notice, either actual or
5 constructive, constructive notice. So we don't even get to
6 the problem of whether or not it was designed or constructed
7 defectively because there's no notice. There's no notice
8 whatsoever. No witness. No -- to come forward and say this
9 was a problem and they didn't fix it. So we don't even get
10 to that on both points.

11 So we think under the statute that we've recited here,
12 15-78-60-15, there's no notice and there's no design either
13 construction or in its design. And they don't have a
14 competent witness to say otherwise.

15 So counsel can get up here and show photographs and
16 say, well, we can see this, we can see that. He's presented
17 no evidence of what the measurement is between -- we see in
18 that hole there, the storm drain hole over there to what is
19 its measurement.

20 It looks to me like within design. It looked to the
21 expert witnesses or our witnesses that took the stand, Mr.
22 Bedenbaugh and Mr. Holden, that it complied with both the
23 construction design as well as the intended design. So for
24 contributory negligence, lack of any evidence of design,
25 lack of any evidence of notice of a problem, we think that

1 they have totally failed to present an actionable case of
2 negligence against DOT.

3 Now, it is true that we both went through a selection
4 of -- to get to the IME report. A panel of mediators were
5 put out there and we agreed with them to Dr. Gordon Early to
6 be the one to do an independent medical analysis, and which
7 he did do.

8 But when he goes through his calculations in there, I
9 think it has to be figured into that her gross contributory
10 negligence and her deciding to get out and walk amongst --
11 along the concrete median area. I can't imagine a more
12 dangerous thing to do than to do what she did.

13 So it was extremely dangerous. The DOT wasn't
14 responsible for her decision to do that. They didn't design
15 the highway for that purpose. And so -- but Dr. Early did a
16 good report. He did a thorough evaluation. I do give it
17 credibility and credence and to be used for that purpose.

18 So we think that there's been a total failure on the
19 part of the Plaintiff to present a case of negligence
20 against DOT. And we think that the Court should render a
21 verdict in favor of the DOT in this case.

22 **THE COURT:** Thank you. Okay.

23 **MR. ALGER:** Brief rebuttal, Your Honor. I think I'm
24 entitled to that.

25 Your Honor, just in addressing one thing that he

CLOSING ARGUMENTS - MR. ALGER

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1 mentioned that it was an illegal stop. I think there is
2 very clear testimony here today that her car stalled out.
3 If Ms. Perkins was able to get over to the right shoulder,
4 she would have done so. In fact, that was her intention,
5 was to get to the right shoulder.

6 Now, when Mr. Smith is arguing in front of you saying
7 that she got out, around and walked along the median, Ms.
8 Perkins wasn't out there taking a stroll. She got out of
9 her vehicle and before she could even get around her car to
10 get over to the right shoulder, she stepped in this hole.
11 It's not like she was out there prancing around, okay?

12 This cannot be imputed on her as negligence when her
13 car stalls out in the highway. Emergencies are going to
14 happen. Accidents are going to happen. That was testified
15 by both Mr. Bedenbaugh and Mr. Holden here today that it is
16 anticipated that the roadways will experience accidents, and
17 they have to be accounted for.

18 So in that regard, Your Honor, while they want to make
19 the argument that they're not going to consider pedestrian
20 traffic, that these aren't the way the roads are designed
21 for, no, Your Honor, those arguments just do not fly because
22 at the end of the day the rules say, ASHTO regulations say
23 the own -- the very own language of the DOT employees is
24 that they have to anticipate that their roadways will
25 experience accidents, hazards and dangerous conditions where

1 these -- these motorists will have to seek the safety and
2 the shelter of the shoulders.

3 I mean, Your Honor, if you were driving down the
4 interstate and you experience a blow-out, where are you
5 going to go? The side of the road.

6 It's very, very foreseeable and I think it's also
7 anticipated that in the instance such as Ms. Perkins had in
8 this -- in this very case where she got out of her vehicle,
9 she goes to walk around her vehicle, she's up against the
10 concrete shoulder, she's doing everything she's supposed to
11 do. She's following the instructions as she testified that
12 she was given. She's following these instructions. So any
13 argument for comparative negligence just simply does not
14 carry any weight, Your Honor..

15 Lastly, there was argue by Defense counsel that this
16 gap here is within the norms and that this room isn't true
17 and plumb. Well, maybe this room's not plumb, Your Honor,
18 but I ask you to use your own common sense and look at this
19 picture, and look at that one. That's not fractions of
20 inches. That's not just a quarter of an inch here, an
21 eighth of an inch there. That's a very apparent gap where
22 there's even asphalt and concrete filled in between the
23 concrete basin and the concrete sidewall. I mean, that's
24 enough for asphalt to be put in there. It's a wide gap.

25 So for them to sit here and say that's just oh, okay

1 and acceptable variance, Your Honor, I would -- I would draw
2 your attention to the acceptable variance, which is the
3 grate itself, three and a half inches. I ask you to look at
4 the grate, hold that in your mind and then look at this gap
5 right here. You could fit two of those gaps within this
6 one. I think the grate itself is demonstrative of what an
7 acceptable variance is, what an acceptable void is for a
8 highway and yet right next to it you've got this other void,
9 which is nearly twice its width, twice in size.

10 Your Honor, thank you for your time today. And I
11 enjoyed trying this case in front of you.

12 **THE COURT:** Well, thank you.

13 **MR. SMITH:** Thank you.

14 **THE COURT:** Okay. Anything else, counsel?

15 **MR. ALGER:** No, ma'am.

16 **THE COURT:** Okay.

17 **MR. SMITH:** Thank you, Your Honor.

18 **THE COURT:** Okay. Thank you both for your efficiency.
19 Y'all put in a lot of evidence, got -- y'all really narrowed
20 everything for me. I appreciate that. And I am taking this
21 under advisement. And so I will issue written instructions
22 to you both. Just so everyone understands that, I'm going
23 to review everything in detail before I do that, okay?

24 **MR. ALGER:** And, Your Honor, you don't -- I'm assuming
25 by that statement, you don't want us to stick around?

1 **THE COURT:** No. No, I do not want you to stick around,
2 okay? You can if you want to, but it will probably be maybe
3 towards the end of the week or next week, okay?

4 **MR. ALGER:** No problem.

5 **THE COURT:** All right.

6 **MR. ALGER:** Thank you, Your Honor.

7 **THE COURT:** Thank you.

8 **MR. SMITH:** Thank you, Your Honor.

9 **THE COURT:** Thank you so much.

10 (Whereupon court was in recess at 3:57 pm)

11 (Whereupon court reconvened at 4:03 pm)

12 **THE COURT:** Okay. So, first, let's go back on the
13 record. Our brilliant court reporter made it known that two
14 -- I had given back to counsel two exhibits that are in
15 evidence. And these will be Defendant's exhibit 6 and 7.
16 And those have been marked. And so these were my duplicates
17 in my notebook. Okay.

18 **MR. ALGER:** Your Honor, for the Plaintiff's medical
19 bills, I experienced a copier failure, but there is a copy
20 of all the bills right here. It's just not as neatly and
21 organized as a binder. They are paper clipped and separated
22 out. I mean, they're still in some coherent order.

23 **THE COURT:** I think it's okay. I think that -- I think
24 that I can check the notebook out. Can I not, Madame Court
25 Reporter? Yeah.

1 **MADAME COURT REPORTER:** I would think so, yeah.

2 **THE COURT:** Yeah. Okay.

3 **MR. ALGER:** Okay. No problem.

4 **THE COURT:** As they'll be part of the Court's file. So
5 I'll be able to review them while I'm in the building.

6 **MR. ALGER:** No problem.

7 **THE COURT:** Okay.

8 (Hearing Ended at 4:04 pm)

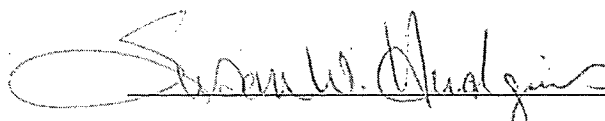
9 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 12th day of February 2018.

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

May 3, 2018

A handwritten signature in cursive script, reading "Susan W. Hudgins", is written over a horizontal line.

Circuit Court Reporter

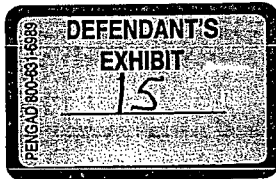
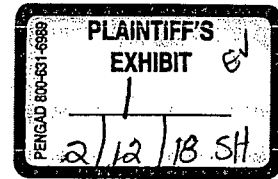


Exhibit A



Wellness Family Medicine
1241 Boiling Springs Hwy
Spartanburg SC 293032258
Phone: 864-591-0992 Fax: 864-591-0776

Visit Note - Office Visit

Provider: GORDON EARLY, MD, MPH
Encounter Date: Feb 03, 2015
Patient: Perkins, Betty (PT00005544)
Sex: Female DOB: [REDACTED] Age: 55 year 2 month
Address: 1, New York NY 10036

Outside medical records:

Pharmacy records.

CVS: 2009 and for through 2013--detailed records. She used to be on Lortab during this time. Looks like she was on this originally in 2004 at 20 milligrams/day. For a 3 month period in 2006, she was on lortab 60 mg/d.

In 2007 up to 60 milligrams a day.

In 2010 she is on oxycodone and MS Contin regularly.

In 2011 she went on oxycodone and morphine regularly.

In 2012 and 13 she was on oxycodone and morphine regularly.

Eden Drug: from October 2013 to August of 2014.

She was on morphine and oxycodone regularly.

Laynes Family Pharmacy from 2007 to 2009. Again from January of 2014 through August of 2014. She was on oxycodone and MS Contin during the later time period.

Publix pharmacy from 2012. This was unremarkable.

Rite Aid pharmacy from 2013 through 2014 and also from January of 2008. She filled her narcotics at this pharmacy in 2013 and 14.

Physician Records

Emory Adventist Hospital 191 pages from 2012 and 13.

This mostly dealt with an October of 2012 admission for abdominal pain. She was admitted to rule out a ilius. She also had admissions to the emergency room for a low

Exhibit A

back pain.

Eden Family Practice: 23 pages. This was from December 2013 to July 2014. She was treated for primary care. She was referred out to an orthopedist for evaluation for right total knee replacement.

Eden Internal Medicine from 2007 to 2009. She was treated for primary care. She was primarily treated for pain and fibromyalgia. Fibromyalgia was the diagnosis in 10 visits during this 2 year period. In a 2009 note her pain is described as "present X 12 years" and "constant" in the lumbar area.

Atlanta Psychiatric Associates. This is an intake form from August of 2011. 4 pages. She was evaluated for depression.

Pinnacle Orthopedics. 113 pages. 2009-2013.

Most of these notes are from Dr Lee who treated her for chronic pain. Of particular interest are the March 13th 2012 and March 14th 2012 notes. The visits occurred after her accident. On the former, her treating physician states that she landed on her right shoulder and left knee during the accident. He noted that she had a right knee effusion. She was noted to be using a cane. He injected both knees. She had a new R knee effusion, new R knee popping on history. The x-rays showed new joint space narrowing in each knee. 3-14-12 she complained of her feet being "on fire" as it related to radicular symptoms from her back.

April 6, 2012 MRI of R knee failed to show any acute changes. It showed post-surgical changes from the 2010 R knee surgery.

3-19-2012 back MRI showed multilevel spondylosis without any spinal stenosis or impingement. There was no indication in the dictation that this was thought to be new in nature.

Surgery on R knee 4-14-12 showed stage 2-3 chondromalacia in the patellofemoral joint

(up from stage 1-2 years in 2010) and a small lateral meniscus tear. It appears that the lateral meniscus tear was new.

NCV/EMG in 7/2013 showed "mild and primarily chronic Left S1 radiculopathy however, it is unclear if these findings correlate with current clinical problems she is identifying..."

Morehead Hospital notes: 967 pages. 2005-2014.

This covers a chest pain admission from July 2009, abdominal pain admission for November 2008, and syncope admission from July of 2014. There are also multiple emergency room visits for chest pain, sore throat, panic attack, low back pain, asthma and visits for other reasons. There is a right knee Xray from November of 2009 that was normal.

Rockingham Orthopedics-24 pages, Fall, 2013. Notes concerning treatment of

Exhibit A

her knee pain.

Southeastern Orthopedic Specialists, 91 pages. 2014. Operative note from her total knee replacement in 2014 showed grade IV patellofemoral chondromalacia.

Village Hospital. 22 pages. 3-1-12. ER records from the date of injury. L knee and Lumbar spine were X-rayed.

Wake Forest University Medical University. 1991-3. 123 pages. Gynecology issues.

Wellstar Cobb Hospital, 150 pages. 2011-13. This covers the 4-2012 R knee arthroscopic surgery done by Pinnacle Orthopedics.

Wellstar Douglass Hospital. 2012. 11 pages. This concerns an epidural

Wellstar Douglass Hospital. 2011-13. 104 pages. Nerve blocks, epidurals.

Wellstar Smyrna Primary Care Center, 35 pages. 2010-12. Primary care notes. This does include a MRI of the R knee dated 5-9-2010.

Complaint:

The patient is seen at the request of Mr Smith for an IME. Outside medical records were reviewed. I spent 200 minutes reviewing medical records.

History of Present Illness

On March 1, 2012, the patient was driving to Atlanta on I-85 South. Her car had a malfunction. It caused a lot shaking in the car and the engine shut off while driving in the fast lane on I-85. She pulled over on the right side of I-85 (into the fast lane shoulder). Her car was not in a safe position and she sat in the car wondering what to do for a few minutes. Then, she got out of the car to evaluate her situation. It was dark and she could not see well. She walked over to the passenger side of the car and squeezed between the car and the median guard rail. She stepped into a grate with her right foot and twisted her right knee. She had trouble getting out of it. A fellow traveler saw the situation that she was in, stopped and helped her. Eventually, the Highway

Exhibit A

Patrol came and helped them. EMS was called and she was transported to Pelham Hospital. She had x-rays done there of her back and her right and left knees. No acute bony abnormalities were defined. She was able to walk. She was discharged home (to Atlanta, her home at that time). Her friend drove up from Atlanta and drove her home.

After the accident, her primary area of pain was in her knees. Her right knee hurt more than her left knee. Her low back area hurt a good bit. She followed up with her orthopedist, (Pennacle Orthopedist) who had been treating her for approximately three years and had been prescribing her narcotics for chronic back pain and fibromyalgia. This orthopedic group injected each of her knees. They ordered an MRI. The MRI is reviewed and described in the review of medical records above. It was thought that there were new changes in the right knee. A month later a surgical procedure was done on the right knee in which the meniscus was shaved as well as a chondroplasty. She states "this did not help my knee at all." She states that her knee has not improved at all from the surgery.

The patient states that she has not been pleased with the results of the right knee surgery. She continued to complain about the knee. Over the next 2.3 years, she complained about the knee regularly to her treating physicians. On 7-28-14, she had a right total knee replacement done by Dr. Wainer in Greensboro, NC. She had moved to the Greensboro, NC area in 2013. The right knee replacement has helped some; however, she has lost range of motion. She is not real happy with the right knee replacement. She has trouble pivoting on that right knee. She feels that the right knee and leg are weaker from the surgery. She is not very happy with the right knee placement.

The patient had antecedent back pain prior to the accident. She does not remember the back pain being "very severe"; however, she does acknowledge that she had been on narcotics for years prior to the accident. The patient does not remember the dose or nature (exact name) of the narcotics in detail. The records do show that prior to the accident she had been on a dose of MS Contin 15 mg b.i.d. and oxycodone 10 mg t.i.d. At times in 2006, she had been on up to 60 mg of Lortab per day but that was only for a few months. The patient's narcotic dose was gradually increased after the accident. It is not clear if the accident was the cause of the increased narcotic dose. The notes really do not differentiate this. The notes do seem to indicate that the worsening knee pain is related to the auto accident. She had had antecedent back pain for a number of years before the accident.

Ms Perkins was approved for Social Security Disability benefits in 2004 due to depression and back pain. In 2004, she had had back pain for a number of years. She had been out of the work force for years prior to 2004. She cannot remember how many years prior to 2004. She does state that she her present back pain is worse than the back pain of 2004 or 3-1-12. She has bilateral sciatica going down each leg. She has a more difficult time with sitting and walking. She has used the cane for the last five years, but has used the cane more since the accident. She had an MRI in April of 2012 and that is reviewed in the outside medical records (see above-Pinnacle Orthopedics).

Exhibit A

The patient thinks that her neck discomfort is worse since the accident. She has numbness and tingling in the left neck. She has, at times, had numbness and tingling in the left arm in the last 2.9 years. She was admitted to a hospital for left arm pain and tingling for what was thought to be possibly be angina. It turned out that it was thought to be a cervical disc. She thinks that she cervical disc is related to the accident. She has had an MRI done at Morehead Hospital (see records above) and that is reviewed in the above medical records. She last had numbness and tingling in the left neck-shoulder area two days ago. She does not recall having numbness or tingling in the left neck-shoulder-arm area prior to the accident.

The patient states that she has trouble with activities of daily living more so now than she did prior to the accident: Prolonged standing or sitting, dressing herself, sleeping, mopping, going up and down steps, cooking, and doing the laundry. She is having more pain than she thinks that she should. She acknowledges that she was having pain prior to the accident. However, she is having pain on a 5-6 on a pain scale and she thinks that "I think that I should be better than having pain on a 5-6 on the pain scale."

Current Medication:

- 1 Albuterol Sulf Hfa 90 Mcg Inh Mcg/actuation SIG: 1-2 puffs qid prn cough/wheeze
- 2 Celexa 20 Mg Tablet SIG: 1 po qd
- 3 Flonase 0.05% Nasal Spray 50 Mcg/actuation SIG: 2 squirts/nares/d for allergic rhinitis
- 4 Hydrochlorothiazide 25 Mg Tab SIG: 1 po qd
- 5 Morphine Sulf Cr 30 Mg Tablet SIG: 1 po bid
- 6 Oxycodone Hcl 10 Mg Tab Sa SIG: 1 po q4-6 hours
- 7 Prilosec Dr 40 Mg Capsule SIG: 1 po qd
- 8 Zanaflex 4 Mg Capsule SIG: 1 po qhs

ROS:

General: (+) poor exercise tolerance , (+) fatigue , (+) malaise , (+) weakness.

Musculoskeletal: (-) atrophy, (-) gout , (+) stiffness.

Neurologic: (-) paralysis, (-) tremors.

Psychiatric: (+) depression , (+) insomnia , (+) poor concentration.

Medical History:

Hypercholesterolemia.

Hypertension. Degenerative disc disease.

Depression.

Appendectomy.

Hysterectomy Left foot (heel spur/cyst removal)

Left Wrist (injury)

Total Knee Replacement (right).

PMH

Exhibit A

1. HYPERTENSION-diagnosed around 2010
2. TIA-2013
3. Uterine cancer treated with hysterectomy in early 2000s
4. L eel spur surgery
5. Appendectomy
6. R elbow surgery for transposition of ulnar nerve
7. L wrist surgery
8. L Jones fracture of 5th Metatarsal in 2014
9. GERD
10. Diverticulosis
11. IBS
12. R knee arthroscopic meniscectomy and chondroplasty in 6-29-10 and again in 4-24-12. R knee total knee replacement in 2014.

Family History:

Patient's father is deceased. Her father died at the age of 74 due to hypertension diabetes.

Patient's mother is 82 years old. and has depression, hypertension, glaucoma.

Brother(s) Patient has 2 brothers. Her first younger brother has depression, hypertension. Her second younger brother has hypertension, Pace Maker.

Sister(s) Patient has 4 sisters. Her first older sister has depression, hypertension. Her second older sister has depression, hypertension, Arrhythmia. Her third older sister has depression, hypertension. Her fourth older sister has depression, hypertension.

Patient has one daughter. Her daughter is 31 years old., has hypertension, Multiple Sclerosis.

see handwritten forms.

Social History:

Current Tobacco User. She has been using tobacco 1 pack every 2-3 days.

She denies alcohol use.

Patient is widowed.

Patient lives with herself. Her daughter, son-in-law and grandchildren live 2 houses away. She resides in Eden, NC.

The patient has been disabled due to Disabled since 2004 due to depression and LBP. She thinks that she last worked in the early 2000s.

The patient does not do any form of exercise.

see handwritten forms.

Allergy:

aspirin, NSAIDS (Non-Steroidal Anti-Inflammatory Drug), Penicillins, Sulfa (Sulfonamide Antibiotics)

Examination:

General Appearance: The patient appears appears to be well nourished and well developed, is well groomed, is in moderate pain, she is carrying a cane with her. Extraocular movement is normal with no squint or diplopia noted.; No abnormalities in

Exhibit A

sclera..

Ears: TM's and EAC's are clear..

Mouth and pharynx exam reveals that posterior pharynx reveals small pharynx.

Respiratory: Lungs are clear to auscultation. Normal AP diameter.

Skin: Skin tags located on the. SK noted.

Head: Patient's head is normocephalic, no gross bulging or retraction noted, no dysmorphic changes noted.

Neck: Movements of neck are restricted with flexion limited to 40 degrees, extension limited to 40 degrees, left lateral rotation limited to 80 degrees and right lateral rotation limited to 80 degrees. Spurling's maneuver causes pain in the muscles of the neck but no radicular symptoms. Tenderness is noted in the trapezius. There is no palpable neck mass. No signs of meningism. Thyroid gland has diffuse enlargement.

Cardiovascular: On auscultation, S1 and S2 are normal, no abnormal heart sounds, rub or clicks heard. No murmurs. It is a non pitting type of edema.

Musculoskeletal: NECK: No limitation in range of motion is noted. Spurling's maneuver produces no pain in the neck musculature or radicular symptoms in the arm. Tenderness is noted in the paracervical muscles and trapezius muscle. SPINE:

Lumbar spine: Range of motion is restricted with flexion limited to 90 degrees and extension limited to 20 degrees. On examination of paravertebral muscles, tenderness is noted on both the sides. Ankle jerk is. Patellar jerk is. 1+ DTRs in LE No spinal process tenderness is noted. Straight leg raising test is positive. Wadell's sign is negative. GAIT: Patient displays difficulty getting up from chair, deficient acceleration during walking.

Lymphatic: No lymph node enlargement or tenderness noted. There is no evidence of acute lymphedema.

Neurologic: Higher functions: Grossly normal. Motor: Normal appearance, tone and strength of muscles. Reflexes: Normal response. Involuntary movements: None noted.

Psychiatric: No abnormal involuntary movements are noticed in the patient. She appears to be guarded. Patient is hesitant to eye contact. Patient seems to be depressed. She is in anhedonia.

Orthopedic Exam	Right	Left
Shoulder ROM: ER	80 degrees	80
IR	touches T 12	touches T12
Abduction	120	120
Hip ROM		
ER	70	70
IR	20	20
Knee ROM		
Flexion	90	130
Ext	full	full
Effusion	small	none
ligament laxity	none	none

Exhibit A

Ankle ROM

full

full

Diagnosis:

719.46 Knee Pain (Both)
724.3 SCIATICA
724.2 lumbago
723.1 Pain, Neck

Vital Signs:

Height: 5' 7"
Weight: 243 lbs
BP: 140/82
Pulse: 76
BMI: 38.06
BSA: 2.28

Plan:

DISCUSSION:

I would like to discuss the knee, back and neck as they relate to the aggravation from the automobile accident. Technically, the automobile accident does not involve a moving automobile accident but rather an accident that occurred outside of the automobile. However, I am simply going to call it an automobile-related accident.

Ms Perkins had a right knee x-ray in 2009 at Morehead Hospital that was unremarkable. This Xray did not do a sunrise view and did not focus on the patellofemoral joint. The patellofemoral joint is the primary source of Ms Perkins knee problems. In 2010, she had arthroscopic findings of meniscal fraying and significant Grade 1-2 patellofemoral arthritis or chondromalacia. She had some mild joint space narrowing. However, she did not complain constantly after the 2010 surgery. She was using a cane, but she reports that she was using a cane mostly for the low back pain and sciatica. She complained a lot about the R knee after the 3-1-12 automobile-related incident involving the right knee. There was an MRI done after the accident that showed no acute changes. There were changes on the surgery of 4-02-12 that were assumed to be due to the accident (worsened chondromalacia and small lateral meniscus tear). Certainly, her pain in the right knee was much worse after the accident. Her use of the cane increased after the accident. I think all of these things are consistent with significant right knee pain exacerbation from the accident and lateral meniscal tear from the accident. I think this is consistent with major aggravation of her knee arthritis and premature exacerbation of her arthritis.

It should be pointed out that she was quite young when she had her first meniscal debridement and chondroplasty (50 years of age). She has also been obese for most of

Exhibit A

her adult life. Records show that she has been obese since 2006. It is not known if she was obese before that time. Her hips are wide and this predisposes one to chondromalacia. This accelerates the rate of patellofemoral arthritis development. All of these factors affected the need for a total knee replacement at 55 years old. It is my opinion that the 3-1-12 accident was a minor player relative to these other factors. The patellofemoral arthritis was well developed as shown by the 2010 surgery. When assessing the issue of attribution of what caused the total knee replacement, all of these issues need to be considered.

The patient does not remember very much about her back pain from the early 2000's. She does remember that she was on narcotics intermittently. Outside records show that it was fairly regular narcotic use from 2004 onward. However, the dose was highly variable. She reports that her 2004 disability award was based not only on depression but also on degenerative lumbar arthritis and fibromyalgia. The outside records do not focus on the major worsening of her back pain and sciatica after her accident. The MRI that was done 3 weeks after the accident does not show any clear acute changes attributable to the accident. It is hard to attribute any percentage of apportionment of her present back pain to the accident. The NCV/EMG done 1.3 years after the accident shows a left S1 neuropathy. She had had radicular pain in the L S1 dermatome for years. She had severe disabling back pain for 8+ years prior to the accident. She has severe disabling back pain now for 2.9 years after the accident. It is hard to apportion how much worse the back pain is after the accident.

The patient has some numbness and tingling in her neck. This is not impairing her. This is of minor significance relative to the knee and back. It is not clear that the fall into the grate was etiologically causative of any neck changes or neck disc changes. However, she is not having significant radicular pain going down her arm. She is having intermittent numbness and tingling in her neck. The numbness and tingling in her neck did not occur in the first few weeks or months after the accident. I do not think that this numbness in the neck area is etiologically due to the accident.

Using the AMA Guides to Impairment, 5th Edition, I give her a rating supported by the worksheet attached.

Gordon Early, MD, MPH
1241 Boiling Springs Rd
Spartanburg, SC 29303
www.upstateoccmed.com
Board Certified in Occupational Medicine and Medical Toxicology
Adjunct Clinical Professor at Via Osteopathic College
Fellow in American College of Occupational and Environmental Medicine

CC:

Smith and Haskell law firm : 02/09/2015

Exhibit A

This visit note has been electronically signed off by GORDON EARLY, MD, MPH.

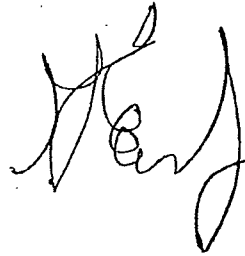
A handwritten signature in black ink, appearing to read 'G. Early', is positioned to the right of the text stating the document was electronically signed off by Gordon Early, MD, MPH.

Exhibit B



Upstate Occ Medicine

1241 Boiling Springs Hwy. · Spartanburg, SC 29303
Sptbg. (864) 591 0992, Fax 591 0776, Gmvl 275 5157
gearly@usa.net

Gordon Early, MD, MPH, FACOEM
Board Certified/Eligible
Occ/Env Med.
Toxicology

Ms Perkins is given a 50% impairment to the R leg due to the R total knee replacement (p 547) with fair results. This is a 20% impairment to the body. The apportionment for this injury is 50% due to the accident and 50% due to other causes. This changes the impairment rating (from the auto accident) to 10% to the body as it relates to the knee.

There is a 4% worsening of her chronic low back pain due to the auto related accident.

The combined total body rating is 14% from the auto accident.

Sincerely,

Gordon Early, MD, MPH

Exhibit B

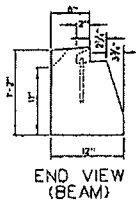
Figure 17-10 Lower Extremity Impairment Evaluation Record and Worksheet

Name <u>Perkins</u> Age <u>55</u> Sex <u>F</u> Side <u>Left</u> Date <u>7/3/15</u>									
Diagnosis <u>R⁺ Chondromalacia, R Lateral meniscus tear, worsened LBP</u>									
Potential Impairments								Final Impairment Utilized	
Region	Abnormal Motion	Regional Impairments	Table #	Percent	Amputation Location	Percent	Methodology	Percent	
Pelvis		DBE DJD Skin Leg Length Amp	17-33 17-31 17-36 17-4 17-32	% % % % %			DBE DJD Skin Leg Length Amputation	% % % % %	
Hip	Tables 17-9 and 17-15 to 17-19 Flexion Extension Ankylosis Impairment % Angle Impairment _____ Abduction Adduction Ankylosis Impairment % Angle Impairment _____ Internal Rot External Rot Ankylosis Impairment % Angle Impairment _____ Add Impairment % ROM or use largest ankylosis = %	DBE DJD Skin Leg Length Weakness Amp	17-33/34 17-31 17-36 17-4 17-8 17-32	% % % % % %			DBE DJD Skin Leg Length Weakness ROM Amputation	% % % % % % %	
Thigh	(Consider related pathology at hip and knee) Table 17-33 R Total Knee - p 547 R Impairment 50% to Leg	Atrophy DJD Skin Leg Length Amp	17-6 17-31 17-36 17-4 17-32	% % % % %			Atrophy DJD Skin Leg Length Amputation	% % % % %	
Knee	Tables 17-10 and 17-20 to 17-23 Flexion Extension Ankylosis Impairment % Angle Impairment _____ Add Impairment % ROM or use largest ankylosis = %	DBE DJD Skin Weakness Amp	17-33/35 17-31 17-36 17-8 17-32	% % % % %			DBE DJD Skin Weakness Amputation	% % % % %	
Calf	(Consider related pathology at knee and ankle)	Atrophy DBE Skin Leg Length Amp	17-6 17-33 17-36 17-4 17-32	% % % % %			Atrophy DBE Skin Leg Length Amputation	% % % % %	
Ankle/Foot	Tables 17-11 to 17-13 and 17-24 to 17-25 Dorsiflex Plantarflex Ankylosis Impairment % Angle Impairment _____ Inversion Eversion Ankylosis Impairment % Angle Impairment _____ Add Impairment % ROM or use largest ankylosis = %	DBE DJD Skin Weakness Amp	17-29/33 17-31 17-36 17-8/9 17-32	% % % % %			DBE DJD Skin Weakness ROM Amputation	% % % % % %	
Toe	Tables 17-14 and 17-30 Great Toe MP Dorsiflex P Plantarflex Ankylosis Impairment % Angle Impairment _____ Lesser Toes MP Dorsiflex Ankylosis Impairment % Angle Impairment _____ Add Impairment % ROM or use largest ankylosis = %	DBE DJD Skin Weakness Amp	17-33 17-31 17-36 17-8/14 17-32	% % % % %			DBE DJD Skin Weakness ROM Amputation	% % % % % %	
Peripheral Nerve System Impairment Motor Grade (Table 16-14) _____ X _____ = _____ Sensory Grade (Table 16-15) _____ X _____ = _____ Dysesthesia Grade _____ X _____ = _____ Combine All Neurologic components %									
Peripheral Vascular System Impairment (Table 17-35) Grade _____ Total vascular system impairment %									
Gait Derangement (This is a structural impairment and may not be combined (Table 17-51) %									
Final Combined Impairment (An explanation should be provided if more than one methodology is used, justifying the rationale for each methodology used) %									

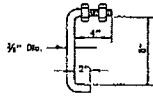
DBE = diagnosis-based estimate; DJD = degenerative joint disease (arthrosis)

Early, MD, Abernathy FNP
1241 Boiling Springs Rd.
Spartanburg, SC 29303
864-591-0992 Fx 0776

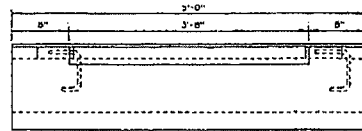
std719i



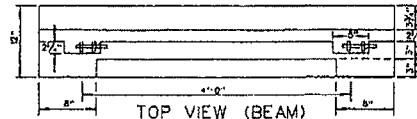
FOR PRECAST BEAM LEAVE
3" X 2 1/4" X 2 1/4" SLOT
FOR FRAME ANCHOR.
AFTER FRAME IS IN PLACE
SLOT IS TO BE GROUTED.
FOR CAST IN PLACE USE
CONCRETE ANCHOR AS SHOWN.



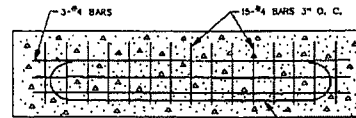
CONCRETE ANCHOR
3/4" DIA. BENT BAR



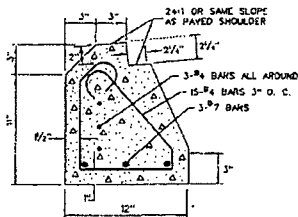
SIDE VIEW (BEAM)



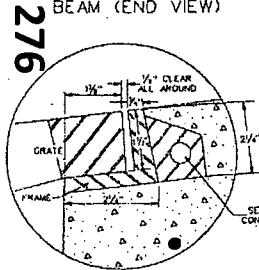
TOP VIEW (BEAM)



STEEL DETAIL OF
BEAM (SIDE VIEW)



STEEL DETAIL OF
BEAM (END VIEW)



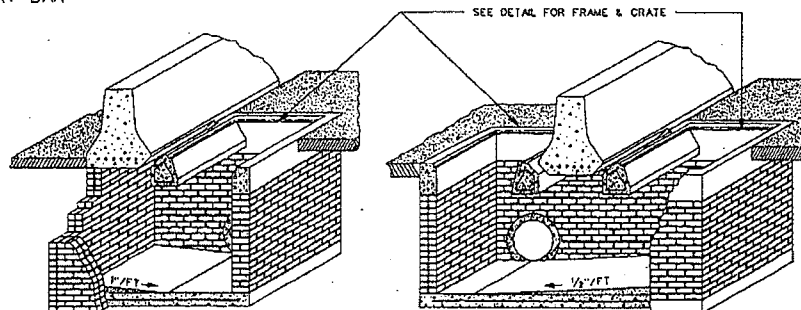
DETAIL A

EXISTING STRUCTURE IS IN PLACE.
REMOVE EXISTING CONCRETE COLLAR (ALL SIDES)
AND REMOVE EXISTING GRATE OR TOP.
REMOVE PORTIONS OF EXISTING STRUCTURE
ONLY IF REQUIRED TO PROVIDE 2" CLEARANCE.
PARTIAL CAP MAY BE REQUIRED OVER THE
EXISTING INLET IF PIPE SIZES OR PIPE SKEWS
MAKE THE EXISTING BOX LARGER THAN THE
PROPOSED INLET. COST OF THIS CAP TO BE
INCLUDED IN THE OVERALL PRICE BID FOR
THIS INLET.

DATE	REV. BY	DESCRIPTION
02-83	L. O. K.	Bottom of Barrier Removed and Location of Slope Res. Wall Added
01-84	C.J.F.S.	Revised Grate & Note
02-85	C.J.F.S.	Revised Drawing & Note

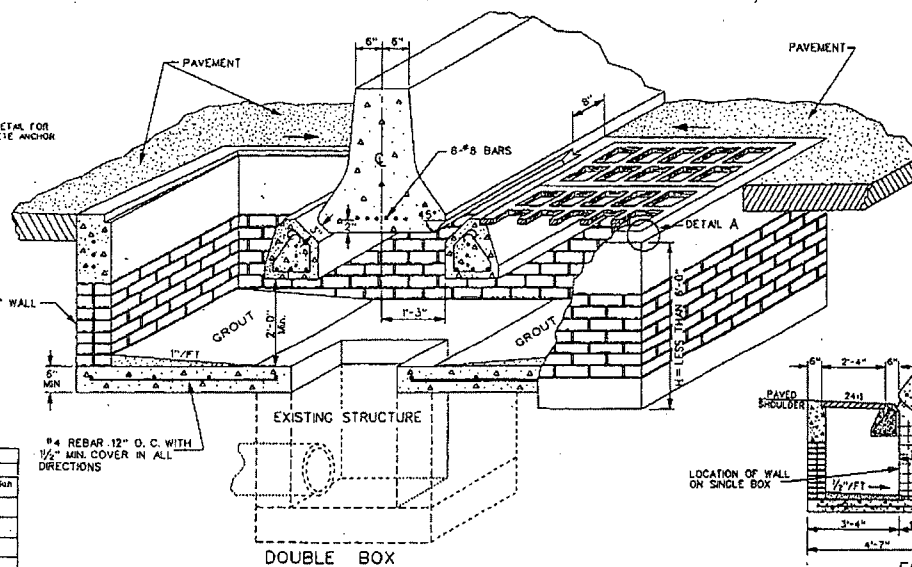
PLAINTIFF'S
EXHIBIT
2

2/12/18 SH



SINGLE BOX
(NEW CONSTRUCTION)

DOUBLE BOX
(NEW CONSTRUCTION)



DOUBLE BOX

701-1-1

1. THE ATTENDED USED OF THE CATCH BASIN TYPE IS DOUBLE OR SINGLE BOX IS FOR OUTSIDE OF THE TRAVELWAY ON
FREWAYS ONLY.

2. FOR CONSTRUCTION OF THE CATCH BASIN WALLS EITHER BRICK MASONRY OR CLASS A CONCRETE MAY BE USED.
FOR CONCRETE THE WALLS ARE TO BE 8 IN. THICK WITH A REINFORCING STEEL AREA OF 0.20 SQ. IN. PER FT.
FOR BRICK THE WALLS ARE TO BE 8 IN. THICK.

3. THE BOTTOM SLAB OF THE BOX SHALL BE A MINIMUM OF 8 IN. THICK CLASS A CONCRETE WITH A REINFORCING STEEL
AREA OF 0.20 SQ. IN. PER FT. WIRE MESH MAY BE USED IN LIEU OF STEEL BARS PROVIDED A MINIMUM OF 0.20 SQ. IN.
PER FT. IS MET.

4. MORTAR SHALL BE TYPE S OR M.

5. IF DESIRED THE DRAINAGE BOX MAY BE PRECAST PRIOR TO INSTALLATION IN LIEU OF BEING CAST IN PLACE.
THE USE OF PRECAST CONCRETE UNITS WILL NOT RELIEVE THE CONTRACTOR OF THE RESPONSIBILITY OF OBTAINING
SATISFACTORY INSTALLATIONS. SEE STANDARD DRAWINGS FOR PRECAST STRUCTURES FOR ADDITIONAL DETAILS AND
SPECIFICATIONS.

6. THE CROSS-SLOPE OF THE CATCH BASIN SHOULD BE THE SAME AS THAT OF THE PAVED SHOULDER. THE CROSS-SLOPE
OF THE PAVED SHOULDER IS TYPICALLY 24:1.

7. REINFORCING STEEL SHALL BE DEFORMED AND SHALL CONFORM TO AASHTO M 318, GRADE 60. WIRE MESH SHALL
CONFORM TO AASHTO M 53 AND M 221.

8. IF STRUCTURE DEPTH EXCEEDS 4'-0", METAL STEPS ARE TO BE PLACED ON WALL. SEE STANDARD DRAWING 719-15.

9. THE BEARING SURFACES OF THE FRAME AND GRATE SHALL BE SMOOTH AND IN FULL CONTACT WITH EACH OTHER AS
SHOWN IN "DETAIL A".

10. CASTING SHALL CONFORM TO AASHTO M 305, CLASS 350 AND THE ALTERNATE LOAD TEST OF AASHTO M 305.
CASTINGS SHALL ALSO MEET THE LOADING REQUIREMENTS OF FEDERAL SPECIFICATION RR-F-821 (LATEST EDITION).

11. (a) STEEL GRATES AND FRAME MAY BE USED IN LIEU OF CAST IRON AS LONG AS THE LOADING AND HYDRAULIC
REQUIREMENTS ARE MET, AND ARE ON THE DEPARTMENT'S LIST OF APPROVED SUPPLIERS.

(b) STEEL GRATES SHALL BE HOT OR GALVANIZED IN ACCORDANCE WITH AASHTO M 111.

(c) STEEL GRATES AND FRAMES SHALL BE DIMENSIONED TO BE INTERCHANGEABLE WITH EACH PIECE OF THE CAST IRON
GRATE AND FRAME SHOWN. MUST HAVE A POSITIVE MEANS TO RETAIN THE GRATE IN THE FRAME.

(d) STRENGTH REQUIREMENTS OF STEEL GRATES AND FRAMES MUST MEET THE LOADING REQUIREMENTS OF FEDERAL
SPECIFICATION RR-F-821 (LATEST EDITION).

(e) MANUFACTURERS DESIRING TO BE PLACED ON THE DEPARTMENT'S APPROVAL SHEETS SHOULD CONTACT THE
RESEARCH AND MATERIALS ENGINEER FOR PROCEDURES.

12. CONCRETE ANCHORS SHALL BE MANUFACTURED FROM QUALITY COMMERCIALLY AVAILABLE METALS AND BOLTS.

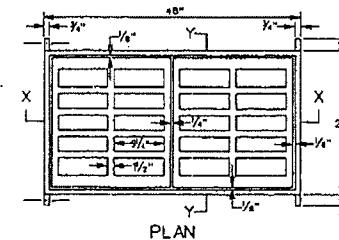
13. REINFORCING STEEL FOR MEDIAN BARRIER SHALL BE EXTENDED 3'-0" MINIMUM INTO NORMAL SECTION.

14. FOR DIMENSIONS OF MEDIAN BARRIER NOT SHOWN, SEE CONCRETE MEDIAN BARRIER DETAILS.

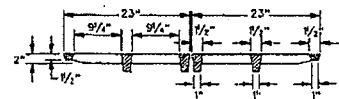
15. THE SOFFIT (INSIDE TOP OF PIPE) OF THE OUTLET PIPE SHOULD BE NO HIGHER THAN THE SOFFIT OF THE INLET PIPE,
UNLESS OTHERWISE SHOWN ON PLANS.

16. THE CONTRACT UNIT PRICE FOR CATCH BASINS SHALL INCLUDE THE COST OF FURNISHING ALL MATERIALS AND WORK
INCIDENTAL TO THE CONSTRUCTION OF THE STRUCTURE COMPLETE IN PLACE AS SHOWN IN ACCORDANCE WITH THE
STANDARD SPECIFICATIONS.

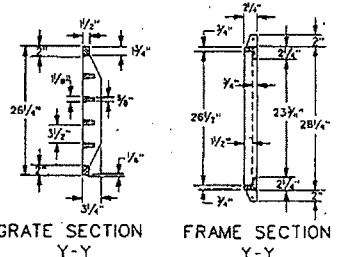
17. THE BID ITEM SHALL BE:
CATCH BASIN TYPE 15 (SINGLE) ----- EA
CATCH BASIN TYPE 15 (DOUBLE) ----- EA



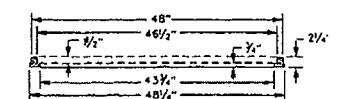
PLAN



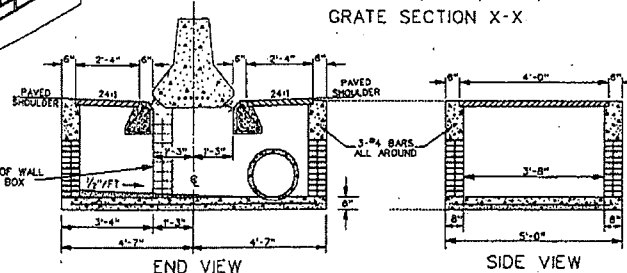
GRATE SECTION X-X



FRAME SECTION Y-Y



FRAME SECTION X-X



END VIEW

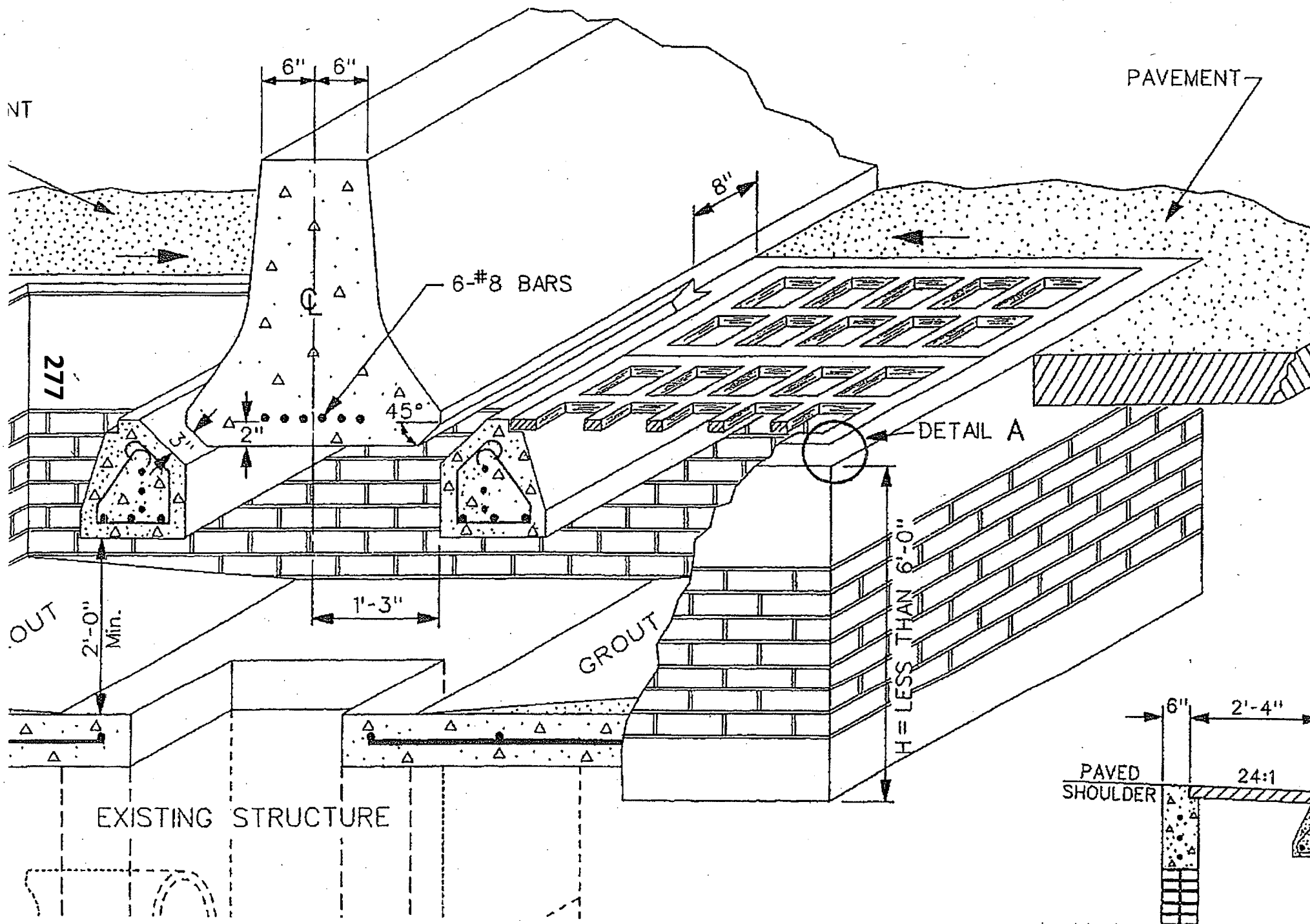
SIDE VIEW

SCDOT

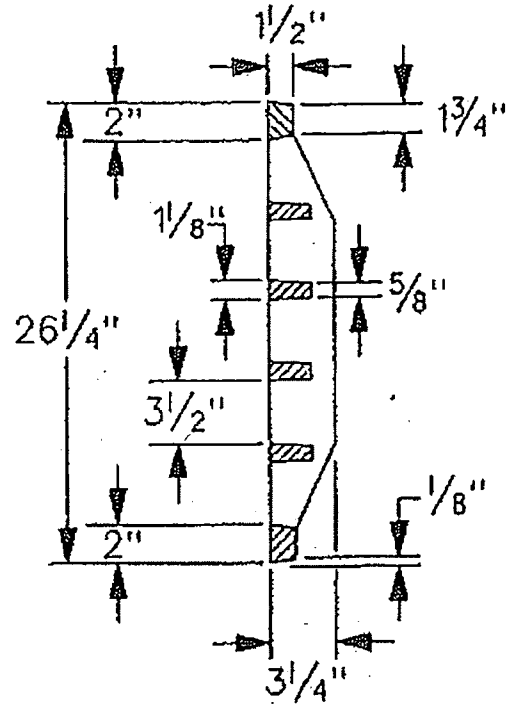
South Carolina Department of Transportation
STANDARD DRAWING
DRAWING NO. 719-9

CATCH BASIN TYPE 15
DOUBLE & SINGLE BOX

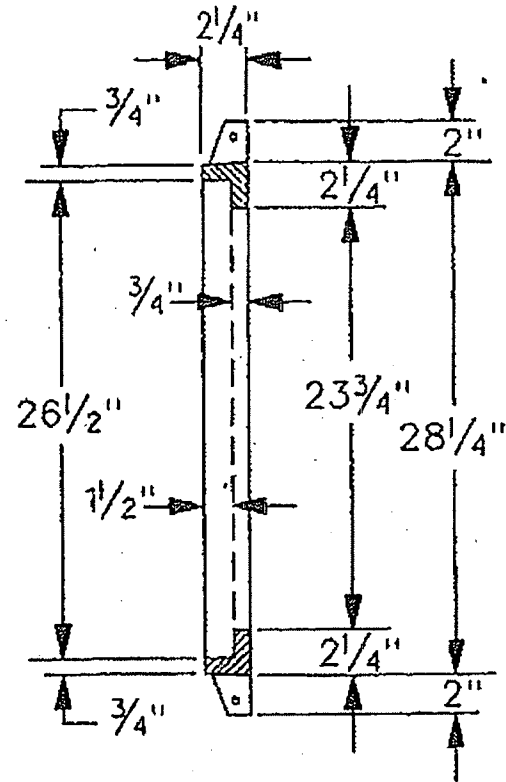
EFFECTIVE LETTING DATE JULY, 1997



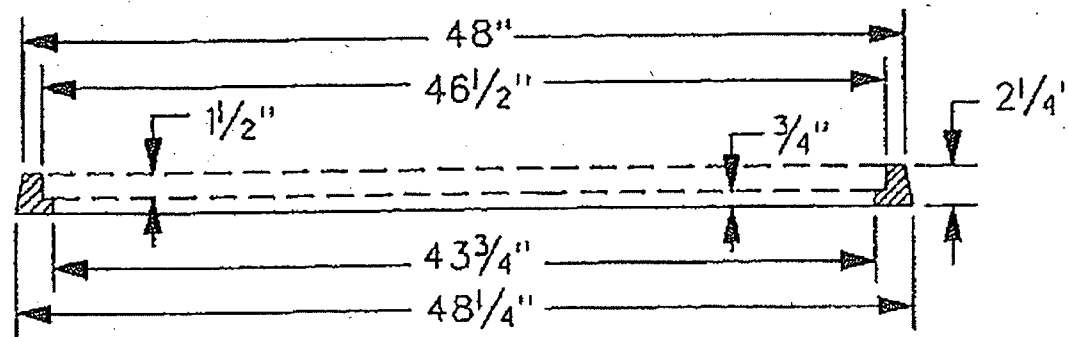
----- EA



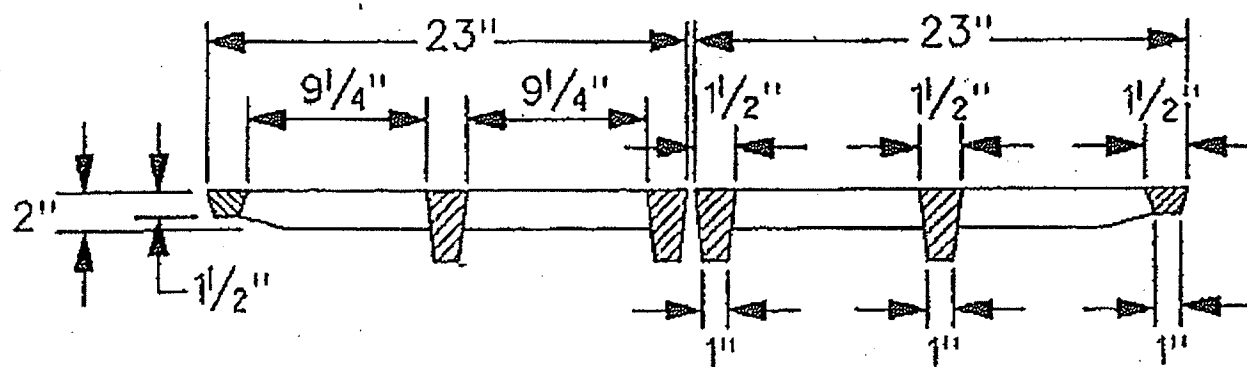
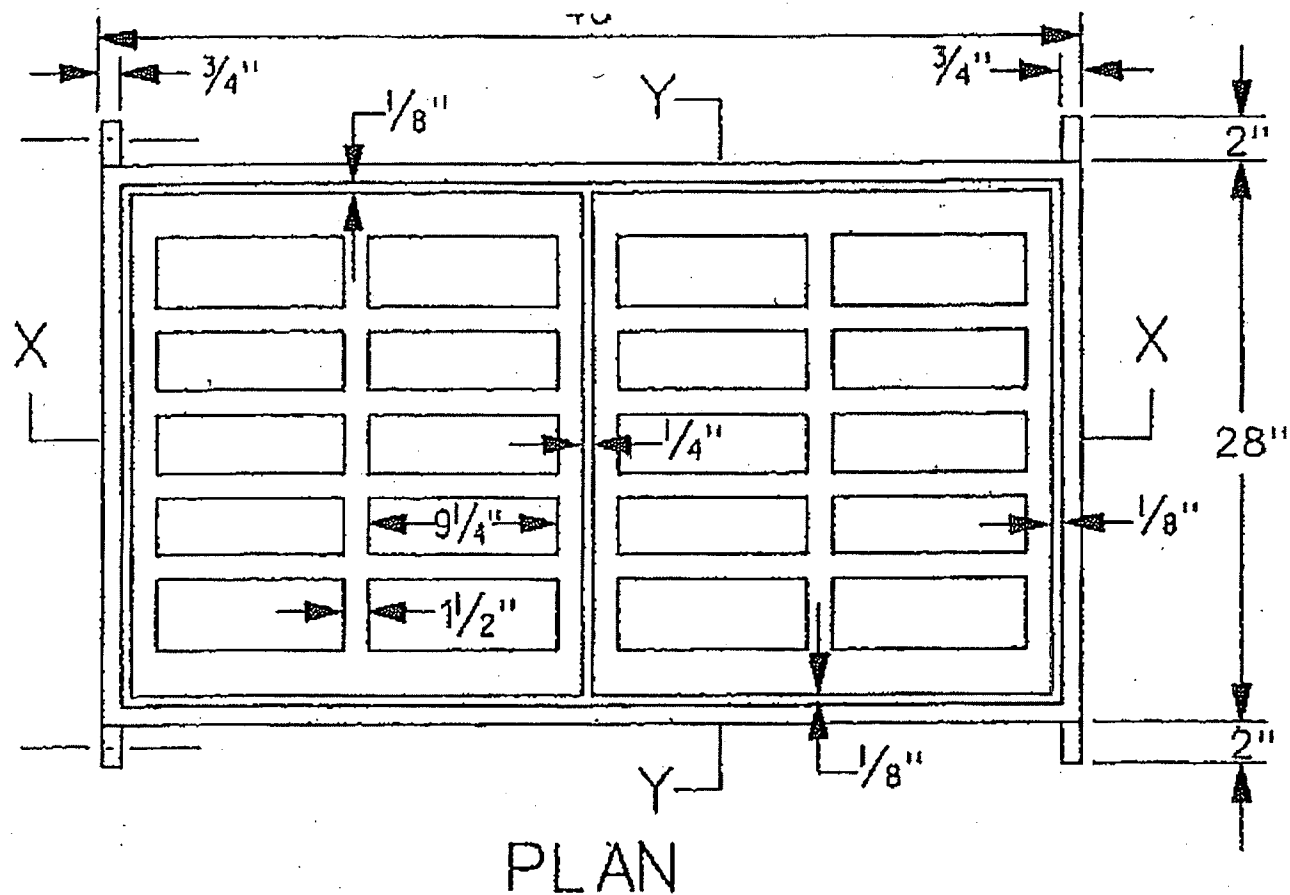
GRATE SECTION
Y-Y



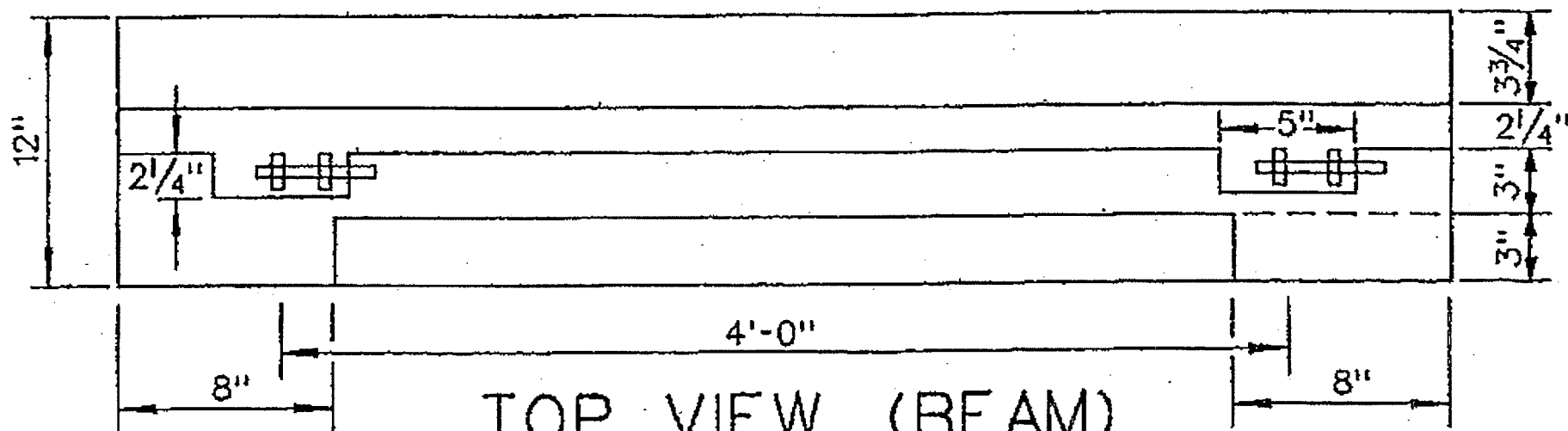
FRAME SECTION
Y-Y

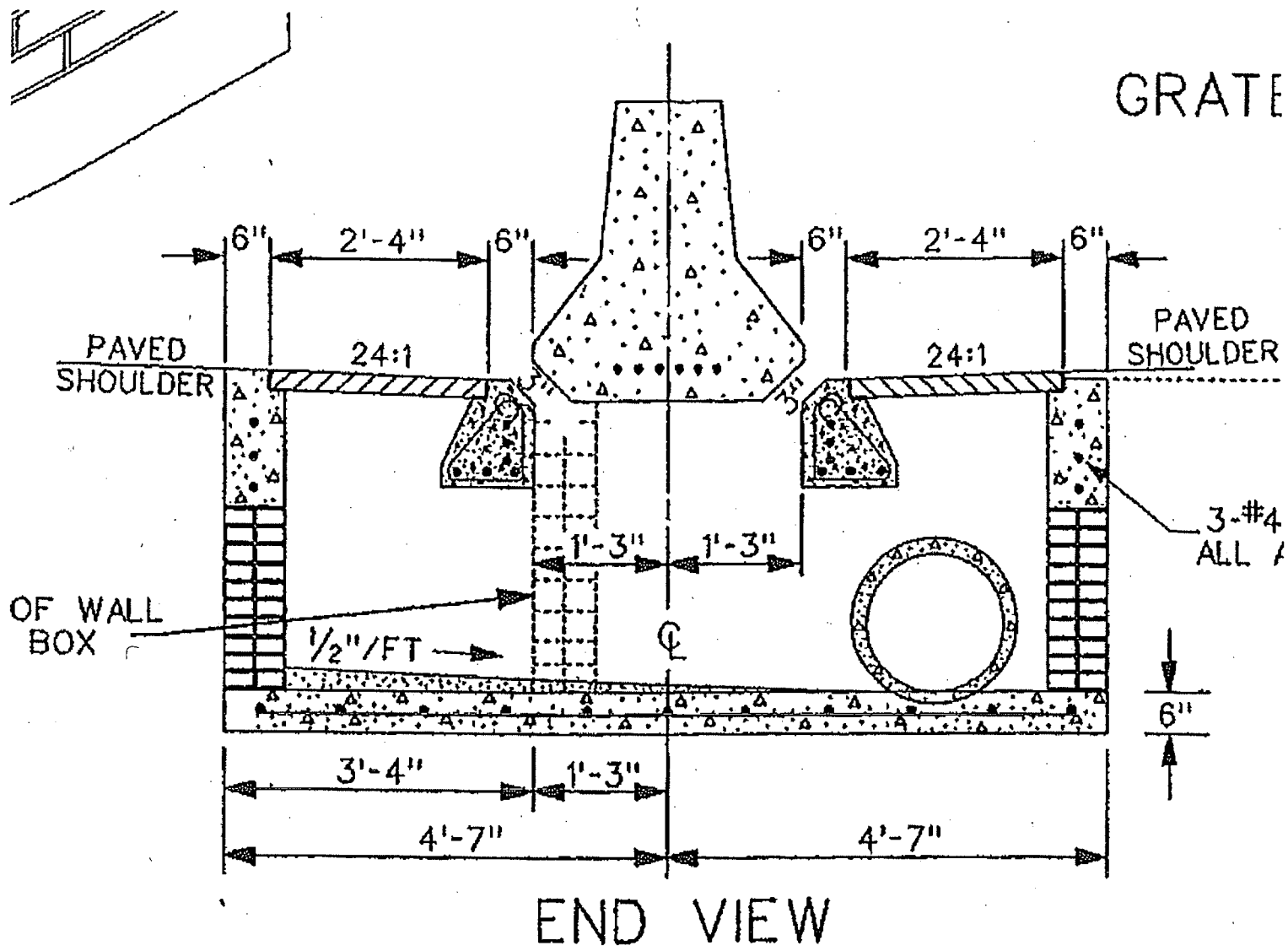


FRAME SECTION X-X

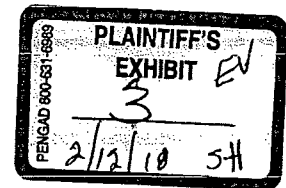


280





Questions # 12, 16, 27, 29



South Carolina Department of Transportation
Engineering Directive Memorandum

Number: 8

Primary Department: Maintenance

Referrals: S.C. Code of Law 57-3-110

Subject: Road Inspections

Daytime Inspections

All roads on the state highway system shall be inspected during daylight hours according to the following schedule:

- Interstates – monthly
- Primary Routes – once every six months
- Secondary Routes – once each year

The purpose of these inspections is to detect deficiencies that could pose a hazard to motorists or pedestrians, thus creating a risk for the Department. These inspections should be entered into the Highway Maintenance Management System (HMMS) by using the “Inspections” work activity and the “Roadway/Drainage” work description. Discrepancies should be entered into the work request module using “SCDOT Inspector” as the type of requestor.

The following are examples of the assets and roadside appurtenances that should be inspected:

- Pavements (includes pavement markings)
- Shoulders (includes sidewalk and other roadside appurtenances)
- Barriers (includes guardrails, attenuators, barrier walls, and cable barrier)
- Signs (look for missing signs)
- Vegetation (includes dead trees or overhanging limbs)
- Drainage (includes structures and ditches)

In accordance with the above, each resident maintenance engineer (RME) will review all noted deficiencies and schedule the necessary work, giving priority to all safety-related items.

Nighttime Inspections

Night inspections are primarily designed to ensure that pavement markings and roadway signs are visible, have proper reflectorization, and meet standards set forth in the Manual on Uniform Traffic Control Devices (MUTCD). All roads on the state highway system shall be inspected at night once each calendar year. These inspections should be entered into HMMS by using the "Inspections" work activity and the "Nighttime" work description. Discrepancies should be entered into the work request module in a similar fashion as day inspections.

Inspections should be conducted in accordance with the following guidelines:

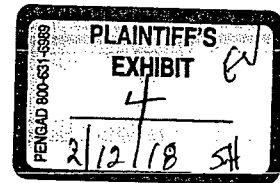
- The inspections should be conducted at normal operating speeds.
- The inspections should be conducted using low beam headlights.
- The inspections should be conducted using a 2005 model year or newer full-size pickup.
- Signs should be viewed at the typical viewing distance for that sign.
- Signs need to be replaced if not legible to the inspector.

In accordance with the above, each RME will make a list of signs and markings that need attention and schedule the needed repairs or replacement on a priority basis.

The resident maintenance engineer will certify in writing to the district engineering administrator by January 1 of each year that all system roads within his/her county have been inspected in accordance with this directive. The district engineering administrator shall then notify the director of maintenance no later than January 10, with the deputy secretary for engineering being notified by January 15, that the inspections have been completed.

Approved By: John V. Walsh
John V. Walsh, Deputy Secretary for Engineering

Effective Date: March 3, 2011



Questions #6

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

District	Org. County	Organization Unit	Work County	From Date	To Date
3	42		SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014
Activity	Work Description	Asset Group	Asset		
908-INSPECTIONS	ROADWAY/DRAINAGE				

Type	Route	Aux	Begin MP	End MP	Off System Descr.	Special Event	Accident
I	85	00	55.89	83.48			

Report No.	Date	Activity	Work County	Type	Route	Aux	Reg MP	End MP	Accomp. Qty	Off System Descr.

Organization Unit: 34201 - SPARTANBURG -ADMINISTRATION

6627642	S	06/10/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
6570518	S	05/19/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
6519212	S	04/27/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
6499350	S	04/20/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
6495718	S	04/19/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
6413380	S	03/17/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
6237718	S	01/11/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
6214732	S	12/31/2009	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
6184278	S	12/15/2009	908	SPARTANBURG	I	85	00	55.89	67.85	11.96
6160947	S	12/08/2009	908	SPARTANBURG	I	85	00	55.89	83.48	27.59

Organization Unit: 34207 - SPARTANBURG-INSPECTIONS

9746840	S	03/06/2014	908	SPARTANBURG	I	85	00	55.89	83.48	1.75
9798674	S	02/19/2014	908	SPARTANBURG	I	85	00	55.89	83.48	1.00
9645313	S	01/21/2014	908	SPARTANBURG	I	85	00	55.89	83.48	0.50
9594414	S	12/20/2013	908	SPARTANBURG	I	85	00	55.89	83.48	8.00
9588455	S	12/18/2013	908	SPARTANBURG	I	85	00	55.89	83.48	4.00
9526580	S	11/21/2013	908	SPARTANBURG	I	85	00	55.89	83.48	3.00
9513930	S	11/18/2013	908	SPARTANBURG	I	85	00	55.89	83.48	3.00
9507477	S	11/14/2013	908	SPARTANBURG	I	85	00	72.35	83.48	3.00
9500190	S	11/12/2013	908	SPARTANBURG	I	85	00	55.89	83.48	1.75
9470850	S	10/30/2013	908	SPARTANBURG	I	85	00	55.89	83.48	5.00
9435219	S	10/15/2013	908	SPARTANBURG	I	85	00	55.89	83.48	0.60
9403696	S	10/02/2013	908	SPARTANBURG	I	85	00	55.89	83.48	2.50
9390373	S	09/26/2013	908	SPARTANBURG	I	85	00	55.89	83.48	1.00
9305903	S	08/21/2013	908	SPARTANBURG	I	85	00	55.89	74.84	0.10
9301747	S	08/20/2013	908	SPARTANBURG	I	85	00	74.80	83.48	1.00
9238798	S	07/24/2013	908	SPARTANBURG	I	85	00	55.89	83.48	3.00

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

<u>District</u>	<u>Org. County</u>	<u>Organization Unit</u>	<u>Work County</u>	<u>From Date</u>	<u>To Date</u>		
3	42		SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014		
<u>Activity</u>		<u>Work Description</u>	<u>Asset Group</u>	<u>Asset</u>			
908-INSPECTIONS		ROADWAY/DRAINAGE					
<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Off System Descr.</u>	<u>Special Event</u>	<u>Accident</u>
I	85	00	55.89	83.48			

Report No.	Date	Activity	Work County	Type	Route	Aux	Begin MP	End MP	Accomp. Qty	Off System Descr.
Organization Unit: 34207 - SPARTANBURG-INSPECTIONS										
9235112	S 07/23/2013	908	SPARTANBURG	I	85	00	55.89	83.48	3.25	
9232506	S 07/22/2013	908	SPARTANBURG	I	85	00	55.89	83.48	3.00	
9215084	S 07/15/2013	908	SPARTANBURG	I	85	00	55.89	83.48	1.00	
9200448	S 07/09/2013	908	SPARTANBURG	I	85	00	55.89	83.48	3.00	
9156956	S 06/19/2013	908	SPARTANBURG	I	85	00	55.89	83.48	1.20	
9064718	S 05/09/2013	908	SPARTANBURG	I	85	00	55.89	70.59	2.00	
9053983	S 05/06/2013	908	SPARTANBURG	I	85	00	63.27	83.48	1.25	
9045407	S 05/01/2013	908	SPARTANBURG	I	85	00	74.84	83.48	2.50	
9041530	S 04/30/2013	908	SPARTANBURG	I	85	00	74.84	83.48	3.00	
9013683	S 04/16/2013	908	SPARTANBURG	I	85	00	65.84	83.48	2.68	
9008992	S 04/15/2013	908	SPARTANBURG	I	85	00	55.89	65.84	4.00	
8994684	S 04/08/2013	908	SPARTANBURG	I	85	00	55.89	83.48	5.50	
8936794	S 03/07/2013	908	SPARTANBURG	I	85	00	55.89	72.35	1.00	
8928183	S 03/06/2013	908	SPARTANBURG	I	85	00	72.35	83.48	1.50	
8858288	S 02/04/2013	908	SPARTANBURG	I	85	00	55.89	83.48	5.50	
8784965	S 01/02/2013	908	SPARTANBURG	I	85	00	55.89	83.48	4.25	
8781892	S 12/31/2012	908	SPARTANBURG	I	85	00	55.89	83.48	3.00	
8720124	S 11/29/2012	908	SPARTANBURG	I	85	00	55.89	83.48	10.00	
8584276	S 10/04/2012	908	SPARTANBURG	I	85	00	55.89	83.48	7.00	
8567300	S 09/27/2012	908	SPARTANBURG	I	85	00	55.89	77.93	4.25	
8562426	S 09/26/2012	908	SPARTANBURG	I	85	00	77.93	83.48	1.00	
8433318	S 08/02/2012	908	SPARTANBURG	I	85	00	55.89	83.48	4.10	
8363052	S 07/03/2012	908	SPARTANBURG	I	85	00	55.89	83.48	3.70	
8292076	S 06/04/2012	908	SPARTANBURG	I	85	00	55.89	83.48	4.02	
8259113	S 05/17/2012	908	SPARTANBURG	I	85	00	55.89	83.48	3.00	
8221747	S 05/02/2012	908	SPARTANBURG	I	85	00	55.89	83.48	3.60	
8157767	S 04/03/2012	908	SPARTANBURG	I	85	00	55.89	83.48	3.27	
8090569	S 03/02/2012	908	SPARTANBURG	I	85	00	55.89	83.48	2.88	

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

<u>District</u>	<u>Org. County</u>	<u>Organization Unit</u>	<u>Work County</u>	<u>From Date</u>	<u>To Date</u>
3	42		SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014

<u>Activity</u>	<u>Work Description</u>	<u>Asset Group</u>	<u>Asset</u>
908-INSPECTIONS	ROADWAY/DRAINAGE		

<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Off System Descr.</u>	<u>Special Event</u>	<u>Accident</u>
I	85	00	55.89	83.48			

<u>Report No.</u>	<u>Date</u>	<u>Activity</u>	<u>Work County</u>	<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Reg MP</u>	<u>End MP</u>	<u>Accomp. Qty</u>	<u>Off System Descr.</u>

Organization Unit: 34207 - SPARTANBURG-INSPECTIONS

8029906	S	02/02/2012	908	SPARTANBURG	I	85	00	55.89	83.48	0.99
7963645	S	01/05/2012	908	SPARTANBURG	I	85	00	55.89	83.48	3.27
7905510	S	12/06/2011	908	SPARTANBURG	I	85	00	55.89	83.48	3.98
7824842	S	11/03/2011	908	SPARTANBURG	I	85	00	55.89	83.48	3.85
7783586	S	10/18/2011	908	SPARTANBURG	I	85	00	55.89	83.48	2.00
7740054	S	09/29/2011	908	SPARTANBURG	I	85	00	55.89	83.48	4.00
7726293	S	09/26/2011	908	SPARTANBURG	I	85	00	55.89	83.48	4.57
7726516	S	09/23/2011	908	SPARTANBURG	I	85	00	55.89	83.48	5.00
7724203	S	09/22/2011	908	SPARTANBURG	I	85	00	55.89	83.45	5.00
7720935	S	09/21/2011	908	SPARTANBURG	I	85	00	59.89	83.48	5.00
7717848	S	09/20/2011	908	SPARTANBURG	I	85	00	55.89	83.48	5.00
7711070	S	09/19/2011	908	SPARTANBURG	I	85	00	55.89	83.48	5.00
7708592	S	09/16/2011	908	SPARTANBURG	I	85	00	55.89	83.48	4.00
7705621	S	09/15/2011	908	SPARTANBURG	I	85	00	55.89	83.48	2.00
7702560	S	09/14/2011	908	SPARTANBURG	I	85	00	55.89	83.48	3.00
7698408	S	09/13/2011	908	SPARTANBURG	I	85	00	55.89	83.48	3.00
7696592	S	09/12/2011	908	SPARTANBURG	I	85	00	55.89	83.48	0.22
7645435	S	08/19/2011	908	SPARTANBURG	I	85	00	55.89	83.48	3.00
7606608	S	08/03/2011	908	SPARTANBURG	I	85	00	55.89	83.48	0.60
7548105	S	07/11/2011	908	SPARTANBURG	I	85	00	55.89	83.48	2.44
7461874	S	06/01/2011	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
7425948	S	05/16/2011	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
7340839	S	04/05/2011	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
7277338	S	03/07/2011	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
7271888	S	03/03/2011	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
7210135	S	02/03/2011	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
7188721	S	01/24/2011	908	SPARTANBURG	I	85	00	55.89	83.48	25.59
7100337	S	12/03/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

<u>District</u>	<u>Org. County</u>	<u>Organization Unit</u>	<u>Work County</u>	<u>From Date</u>	<u>To Date</u>
3	42		SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014

<u>Activity</u>	<u>Work Description</u>	<u>Asset Group</u>	<u>Asset</u>
908-INSPECTIONS	ROADWAY/DRAINAGE		

<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Off System Descr.</u>	<u>Special Event</u>	<u>Accident</u>
I	85	00	55.89	83.48			

<u>Report No.</u>	<u>Date</u>	<u>Activity</u>	<u>Work County</u>	<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Reg MP</u>	<u>End MP</u>	<u>Accomp. Qty</u>	<u>Off System Descr.</u>

Organization Unit: 34207 - SPARTANBURG-INSPECTIONS

7013045 S	11/09/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
6999352 S	11/03/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
6929203 S	10/07/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
6846702 S	09/03/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
6793751 S	08/16/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
6783533 S	08/11/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
6719538 S	07/19/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
6714187	07/16/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	

Organization Unit: 34211 - SPARTANBURG -BRIDGE/CONCRETE

5283152 S	01/06/2009	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
5239644 S	12/11/2008	908	SPARTANBURG	I	85	00	55.89	83.48	27.49	
5230903 S	12/10/2008	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	

Organization Unit: 34212 - SPARTANBURG-SPECIAL PROJECTS

8711995 S	11/27/2012	908	SPARTANBURG	I	85	00	55.89	82.83	8.00	
7717924 S	09/21/2011	908	SPARTANBURG	I	85	00	55.92	82.83	4.42	
6916488 S	09/27/2010	908	SPARTANBURG	I	85	00	55.92	82.83	53.82	
6665923 S	06/28/2010	908	SPARTANBURG	I	85	00	82.83	82.83	0.10	
5157377 S	11/12/2008	908	SPARTANBURG	I	85	00	59.88	82.83	45.90	

Organization Unit: 34214 - SPARTANBURG -SIGN/SIGNAL

6143940 S	12/02/2009	908	SPARTANBURG	I	85	00	75.00	75.01	0.20	
5849100 S	08/14/2009	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
5848970 S	08/12/2009	908	SPARTANBURG	I	85	00	55.92	83.48	55.12	
5688680 S	06/16/2009	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
5418165 S	03/02/2009	908	SPARTANBURG	I	85	00	59.88	79.25	38.74	

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

<u>District</u>	<u>Org. County</u>	<u>Organization Unit</u>	<u>Work County</u>	<u>From Date</u>	<u>To Date</u>
3	42		SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014

<u>Activity</u>	<u>Work Description</u>	<u>Asset Group</u>	<u>Asset</u>
908-INSPECTIONS	ROADWAY/DRAINAGE		

<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Off System Descr.</u>	<u>Special Event</u>	<u>Accident</u>
I	85	00	55.89	83.48			

<u>Report No.</u>	<u>Date</u>	<u>Activity</u>	<u>Work County</u>	<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Accomp. Qty</u>	<u>Off System Descr.</u>

Organization Unit: 34214 - SPARTANBURG -SIGN/SIGNAL

5285596 S	01/06/2009	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
4838532 S	07/03/2008	908	SPARTANBURG	I	85	00	68.84	83.48	29.28	
4331162 S	11/28/2007	908	SPARTANBURG	I	85	00	55.89	83.48	158.58	
4297012 S	11/13/2007	908	SPARTANBURG	I	85	00	56.00	83.48	150.00	

Organization Unit: 34216 - SPARTANBURG -THERMO/DEBRIS

9736245	03/03/2014	908	SPARTANBURG	I	85	00	55.89	83.48	25.00	
7331116 S	03/30/2011	908	SPARTANBURG	I	85	00	55.89	83.48	57.18	

Organization Unit: 34217 - SPARTANBURG -DITCH/DRAINAGE

9680022 S	02/05/2014	908	SPARTANBURG	I	85	00	56.00	83.00	10.00	
9631221 S	01/14/2014	908	SPARTANBURG	I	85	00	56.00	83.00	19.50	
9579175	12/16/2013	908	SPARTANBURG	I	85	00	56.00	83.00	33.50	
9403727 S	10/02/2013	908	SPARTANBURG	I	85	00	56.00	83.00	18.75	
9331117 S	09/03/2013	908	SPARTANBURG	I	85	00	56.00	83.00	5.00	
9191073 S	07/03/2013	908	SPARTANBURG	I	85	00	56.00	83.00	18.50	
9095117 S	05/23/2013	908	SPARTANBURG	I	85	00	56.00	83.00	15.20	
8989472 S	04/04/2013	908	SPARTANBURG	I	85	00	56.00	83.00	30.00	
8924269 S	03/05/2013	908	SPARTANBURG	I	85	00	56.00	83.00	10.00	
8812509 S	01/15/2013	908	SPARTANBURG	I	85	00	56.00	83.00	22.00	
8809699 S	01/14/2013	908	SPARTANBURG	I	85	00	56.00	83.00	30.00	
8783227 S	01/02/2013	908	SPARTANBURG	I	85	00	56.00	83.00	9.00	
8772702 S	12/20/2012	908	SPARTANBURG	I	85	00	56.00	83.48	25.00	
8507673 S	09/04/2012	908	SPARTANBURG	I	85	00	55.89	83.48	20.00	
8097694 S	03/06/2012	908	SPARTANBURG	I	85	00	56.00	83.48	5.00	
8074438 S	02/25/2012	908	SPARTANBURG	I	85	00	56.00	72.00	3.00	
7988891 S	01/17/2012	908	SPARTANBURG	I	85	00	56.00	83.00	30.00	

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

<u>District</u>	<u>Org. County</u>	<u>Organization Unit</u>		<u>Work County</u>	<u>From Date</u>	<u>To Date</u>	
3	42			SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014	
<u>Activity</u>		<u>Work Description</u>		<u>Asset Group</u>	<u>Asset</u>		
908-INSPECTIONS		ROADWAY/DRAINAGE					
<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Off System Descr.</u>	<u>Special Event</u>	<u>Accident</u>
I	85	00	55.89	83.48			

Report No.	Date	Activity	Work County	Type	Route	Aux	Begin MP	End MP	Accomp. Qty	Off System Descr.

Organization Unit: 34217 - SPARTANBURG -DITCH/DRAINAGE

7951453	S	12/28/2011	908	SPARTANBURG	I	85	00	56.00	83.00	19.29
7864568	S	11/17/2011	908	SPARTANBURG	I	85	00	56.00	83.48	12.50
7719067	S	09/21/2011	908	SPARTANBURG	I	85	00	56.00	73.00	19.00
7684720	S	09/06/2011	908	SPARTANBURG	I	85	00	70.00	77.00	4.00
7323360	S	03/28/2011	908	SPARTANBURG	I	85	00	56.00	83.46	27.46
7266075	S	03/01/2011	908	SPARTANBURG	I	85	00	55.89	83.48	55.18
7066300	S	12/01/2010	908	SPARTANBURG	I	85	00	56.00	83.48	54.99
6845513	S	09/02/2010	908	SPARTANBURG	I	85	00	55.89	83.00	54.22
6299778	S	02/03/2010	908	SPARTANBURG	I	85	00	56.00	66.00	60.00
6296319	S	02/02/2010	908	SPARTANBURG	I	85	00	56.00	66.00	60.00
6214319	S	12/31/2009	908	SPARTANBURG	I	85	00	56.00	83.00	54.00
6119898	S	11/23/2009	908	SPARTANBURG	I	85	00	56.00	83.00	54.00
5981995	S	10/07/2009	908	SPARTANBURG	I	85	00	56.00	82.00	52.00
5941654	S	09/23/2009	908	SPARTANBURG	I	85	00	58.00	72.00	28.00
5876399	S	08/28/2009	908	SPARTANBURG	I	85	00	55.92	82.83	53.18
5524063	S	04/14/2009	908	SPARTANBURG	I	85	00	56.00	83.00	54.00
5476675	S	03/26/2009	908	SPARTANBURG	I	85	00	56.00	66.00	20.00
5004775	S	09/11/2008	908	SPARTANBURG	I	85	00	56.00	83.00	27.00
4973321	S	08/27/2008	908	SPARTANBURG	I	85	00	56.00	83.00	54.00
4912708	S	08/05/2008	908	SPARTANBURG	I	85	00	60.00	68.00	16.00
4317044	S	11/24/2007	908	SPARTANBURG	I	85	00	55.89	83.48	55.18
3656672	S	02/03/2007	908	SPARTANBURG	I	85	00	55.89	72.00	32.22
3632680	S	01/25/2007	908	SPARTANBURG	I	85	00	55.89	72.00	32.22
3625530	S	01/23/2007	908	SPARTANBURG	I	85	00	55.89	74.00	36.22

Organization Unit: 34218 - SPARTANBURG-HERBICIDE

6697375	S	07/12/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59
5646446	S	06/04/2009	908	SPARTANBURG	I	85	00	55.89	83.48	27.59

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

<u>District</u>	<u>Org. County</u>	<u>Organization Unit</u>	<u>Work County</u>	<u>From Date</u>	<u>To Date</u>
3	42		SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014

<u>Activity</u>	<u>Work Description</u>	<u>Asset Group</u>	<u>Asset</u>
908-INSPECTIONS	ROADWAY/DRAINAGE		

<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Off System Descr.</u>	<u>Special Event</u>	<u>Accident</u>
I	85	00	55.89	83.48			

<u>Report No.</u>	<u>Date</u>	<u>Activity</u>	<u>Work County</u>	<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Reg MP</u>	<u>End MP</u>	<u>Accomp. Qty</u>	<u>Off System Descr.</u>

Organization Unit: 34218 - SPARTANBURG-HERBICIDE

5536349 S	04/21/2009	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
5478237 S	03/23/2009	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
5085558 S	10/14/2008	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
5070682 S	10/06/2008	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
5005061 S	09/11/2008	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
4971589 S	08/27/2008	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
4823520 S	06/25/2008	908	SPARTANBURG	I	85	00	55.89	83.00	54.22	
4766901 S	06/06/2008	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
4672950 S	04/28/2008	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
4620750 S	04/07/2008	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
4439186 S	01/17/2008	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
4387697 S	12/19/2007	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
4237579 S	10/18/2007	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
4202853 S	10/02/2007	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
3990260 S	07/02/2007	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
3667423 S	02/06/2007	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
3573409 S	12/20/2006	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
3539349 S	12/07/2006	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
2960432 S	03/24/2006	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
2935556 S	03/15/2006	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	

Organization Unit: 34219 - SPARTANBURG -R/W CLEAR/MOWING

7218011	02/05/2011	908	SPARTANBURG	I	85	00	55.89	67.85	71.76	
6297657 S	02/02/2010	908	SPARTANBURG	I	85	00	55.89	83.48	29.59	
6177074 S	12/09/2009	908	SPARTANBURG	I	85	00	63.27	63.28	0.01	
6160783	12/08/2009	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
4323591 S	11/27/2007	908	SPARTANBURG	I	85	00	77.00	78.00	1.00	

31-MAR-14 14:07:12

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

District	Org. County	Organization Unit	Work County	From Date	To Date
3	42		SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014
Activity	Work Description	Asset Group	Asset		
908-INSPECTIONS	ROADWAY/DRAINAGE				

Type	Route	Aux	Begin MP	End MP	Off System Descr.	Special Event	Accident
I	85	00	55.89	83.48			

Report No.	Date	Activity	Work County	Type	Route	Aux	Reg MP	End MP	Accomp. Qty	Off System Descr.

Organization Unit: 34220 - SPARTANBURG-SHOULDERS/DITCHES

9787920 S	03/25/2014	908	SPARTANBURG	I	85	00	55.89	83.48	10.00	
9768169	03/17/2014	908	SPARTANBURG	I	85	00	70.00	75.00	6.00	
9739314 S	03/04/2014	908	SPARTANBURG	I	85	00	55.89	83.48	10.00	
9632883 S	01/14/2014	908	SPARTANBURG	I	85	00	65.84	74.84	10.00	
9584207	12/17/2013	908	SPARTANBURG	I	85	00	55.92	82.83	48.00	
9564937 S	12/10/2013	908	SPARTANBURG	I	85	00	55.89	83.48	30.00	
9536871	11/26/2013	908	SPARTANBURG	I	85	00	55.89	83.48	70.00	
9478176 S	11/01/2013	908	SPARTANBURG	I	85	00	55.92	74.84	10.00	
9187510 S	07/02/2013	908	SPARTANBURG	I	85	00	55.89	83.48	6.00	
9053251 S	05/06/2013	908	SPARTANBURG	I	85	00	55.92	82.83	7.00	
8812938 S	01/15/2013	908	SPARTANBURG	I	85	00	65.84	74.84	7.00	
8761186 S	12/17/2012	908	SPARTANBURG	I	85	00	65.84	74.84	15.00	
8733707 S	12/05/2012	908	SPARTANBURG	I	85	00	59.88	77.98	20.00	
8507210 S	09/04/2012	908	SPARTANBURG	I	85	00	55.92	83.48	5.00	
7862778 S	11/16/2011	908	SPARTANBURG	I	85	00	65.84	74.84	4.00	
7786880 S	10/19/2011	908	SPARTANBURG	I	85	00	55.92	83.48	7.94	
7564535 S	07/15/2011	908	SPARTANBURG	I	85	00	55.89	83.48	6.26	
7434401 S	05/17/2011	908	SPARTANBURG	I	85	00	55.92	82.83	53.82	
7104385 S	12/16/2010	908	SPARTANBURG	I	85	00	65.85	74.85	18.00	
6979685 S	10/25/2010	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
6809161 S	08/19/2010	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
6536441 S	05/03/2010	908	SPARTANBURG	I	85	00	67.90	74.84	13.88	
5974524 S	10/05/2009	908	SPARTANBURG	I	85	00	67.80	74.80	14.00	
5828351 S	08/12/2009	908	SPARTANBURG	I	85	00	67.90	82.83	29.86	
5575266 S	05/06/2009	908	SPARTANBURG	I	85	00	65.84	74.84	18.00	
5343189 S	01/28/2009	908	SPARTANBURG	I	85	00	55.89	83.48	55.18	
5230827 S	12/10/2008	908	SPARTANBURG	I	85	00	65.84	77.93	12.09	

31-MAR-14 14:07:12

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SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MANAGEMENT SYSTEM

Daily Work Report Selection

<u>District</u>	<u>Org. County</u>	<u>Organization Unit</u>	<u>Work County</u>	<u>From Date</u>	<u>To Date</u>
3	42		SPARTANBURG	MONDAY - MAR 01, 2004	MONDAY - MAR 31, 2014

<u>Activity</u>	<u>Work Description</u>	<u>Asset Group</u>	<u>Asset</u>
908-INSPECTIONS	ROADWAY/DRAINAGE		

<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Off System Descr.</u>	<u>Special Event</u>	<u>Accident</u>
I	85	00	55.89	83.48			

<u>Report No.</u>	<u>Date</u>	<u>Activity</u>	<u>Work County</u>	<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>	<u>Accomp. Qty</u>	<u>Off System Descr.</u>

Organization Unit: 34221 - SPARTANBURG -PATCH/FULL DEPTH

6296057 S	02/02/2010	908	SPARTANBURG	I	85	00	55.89	83.48	27.59	
5445603	03/15/2009	908	SPARTANBURG	I	85	00	80.15	80.15	1.00	
5445604	03/14/2009	908	SPARTANBURG	I	85	00	80.15	80.15	1.00	
5433211	03/07/2009	908	SPARTANBURG	I	85	00	80.15	80.15	1.00	

31-MAR-14 14:07:12

9 of 9

DATE: 5/28/14 TIME: 11:40 AM

BY: B. DIXON

LOCATION: I-85 SB

ATTORNEY: JEP

CLIENT NAME: PERKINS

MISC. INFO: SCENE

PLAINTIFF'S
EXHIBIT EV
5
2/12/14 5/14



PLAINTIFF'S
EXHIBIT

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**PLAINTIFF'S
EXHIBIT**





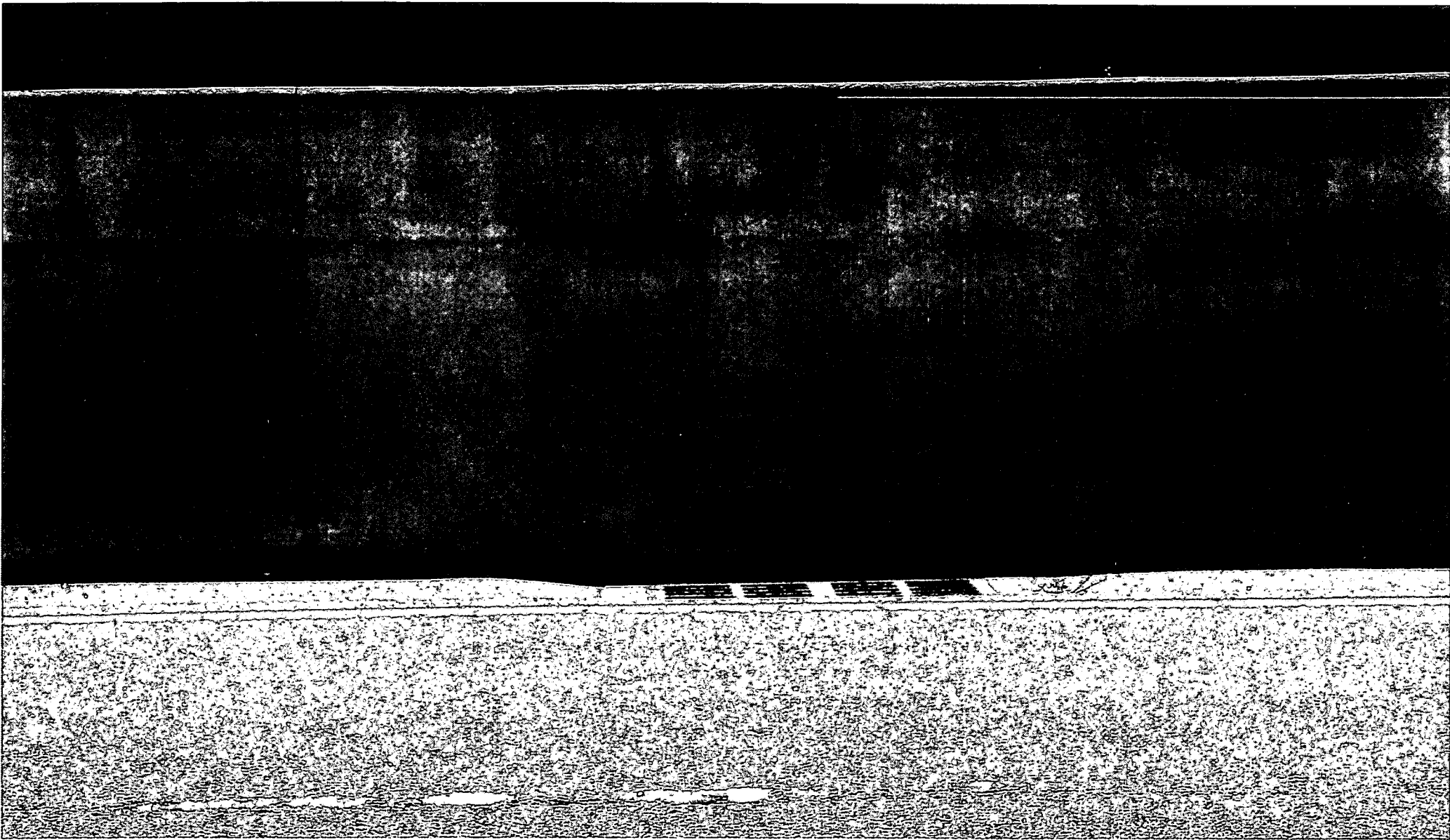
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**PLAINTIFF'S
EXHIBIT**

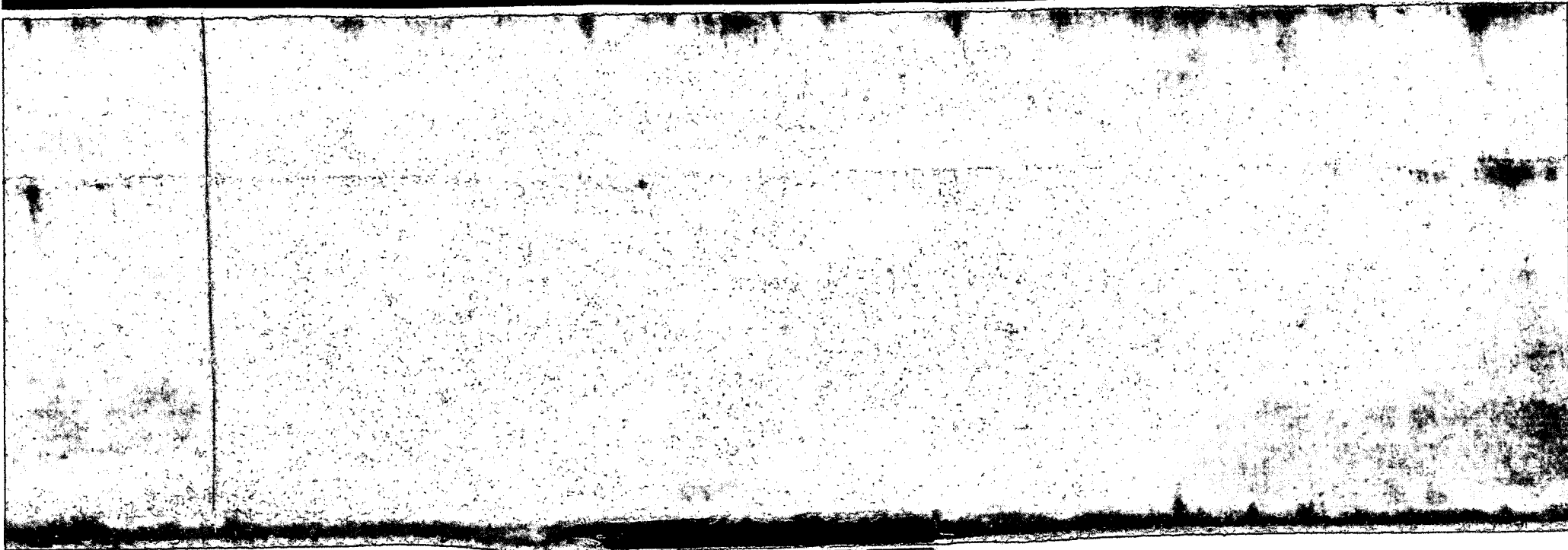




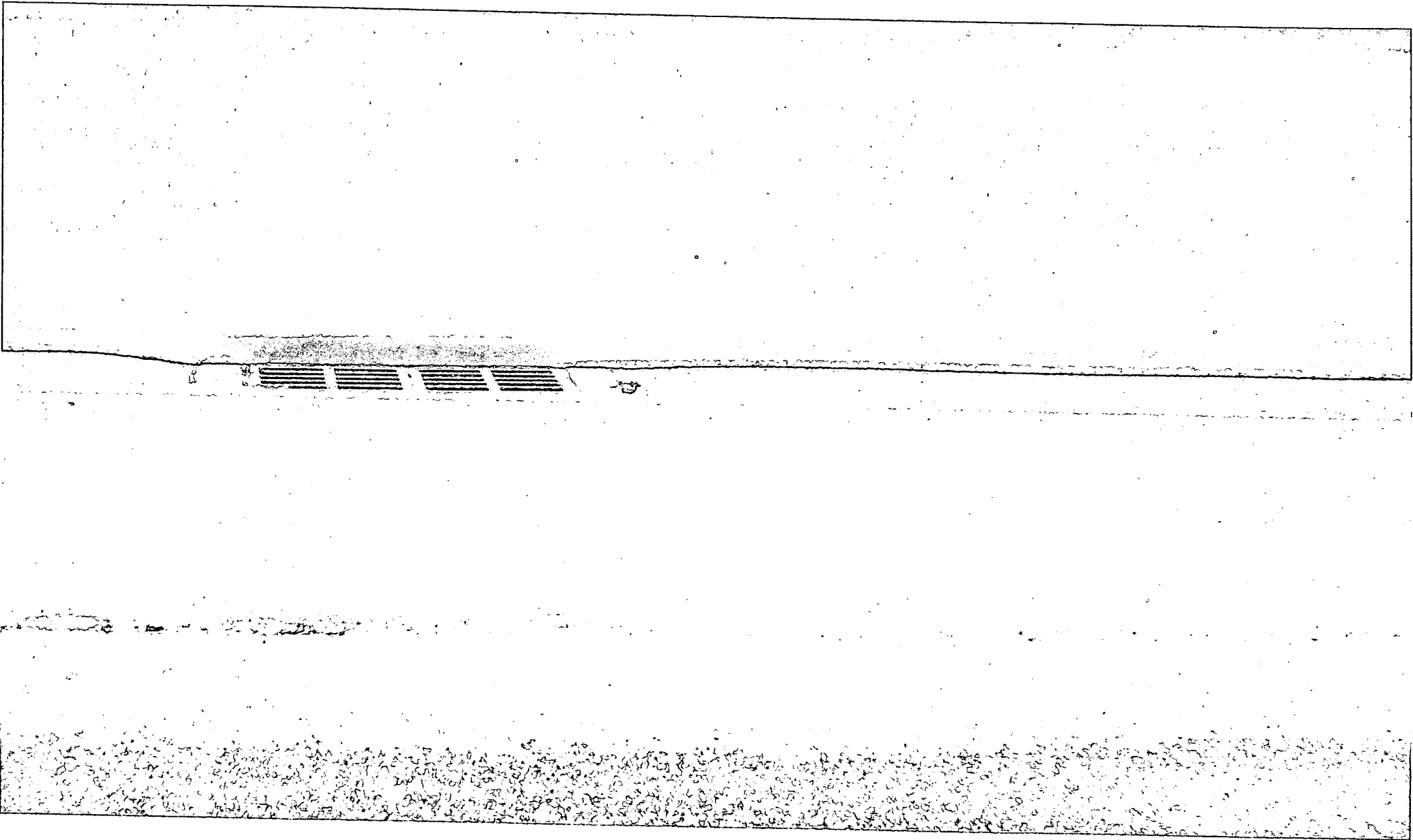
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EXHIBIT

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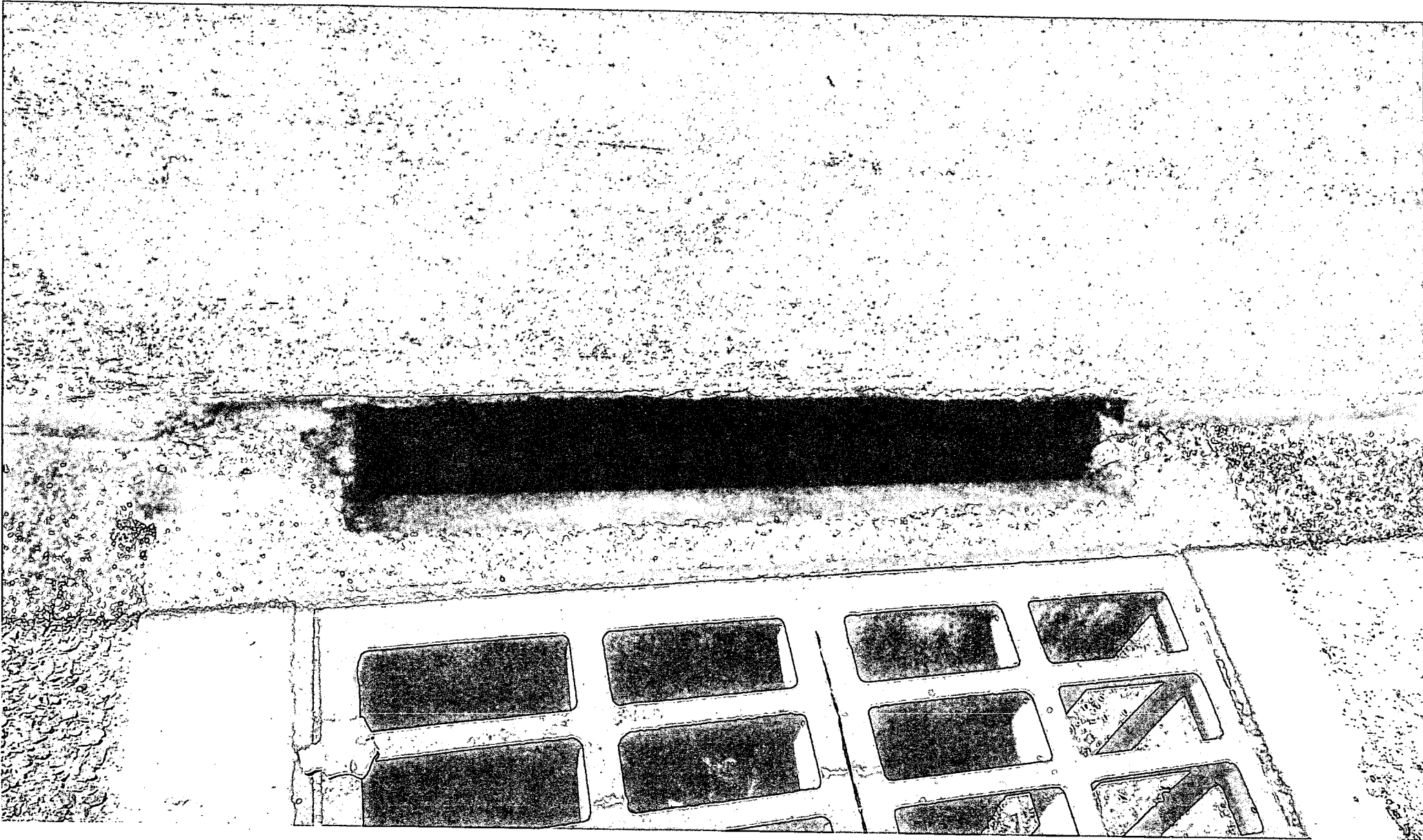
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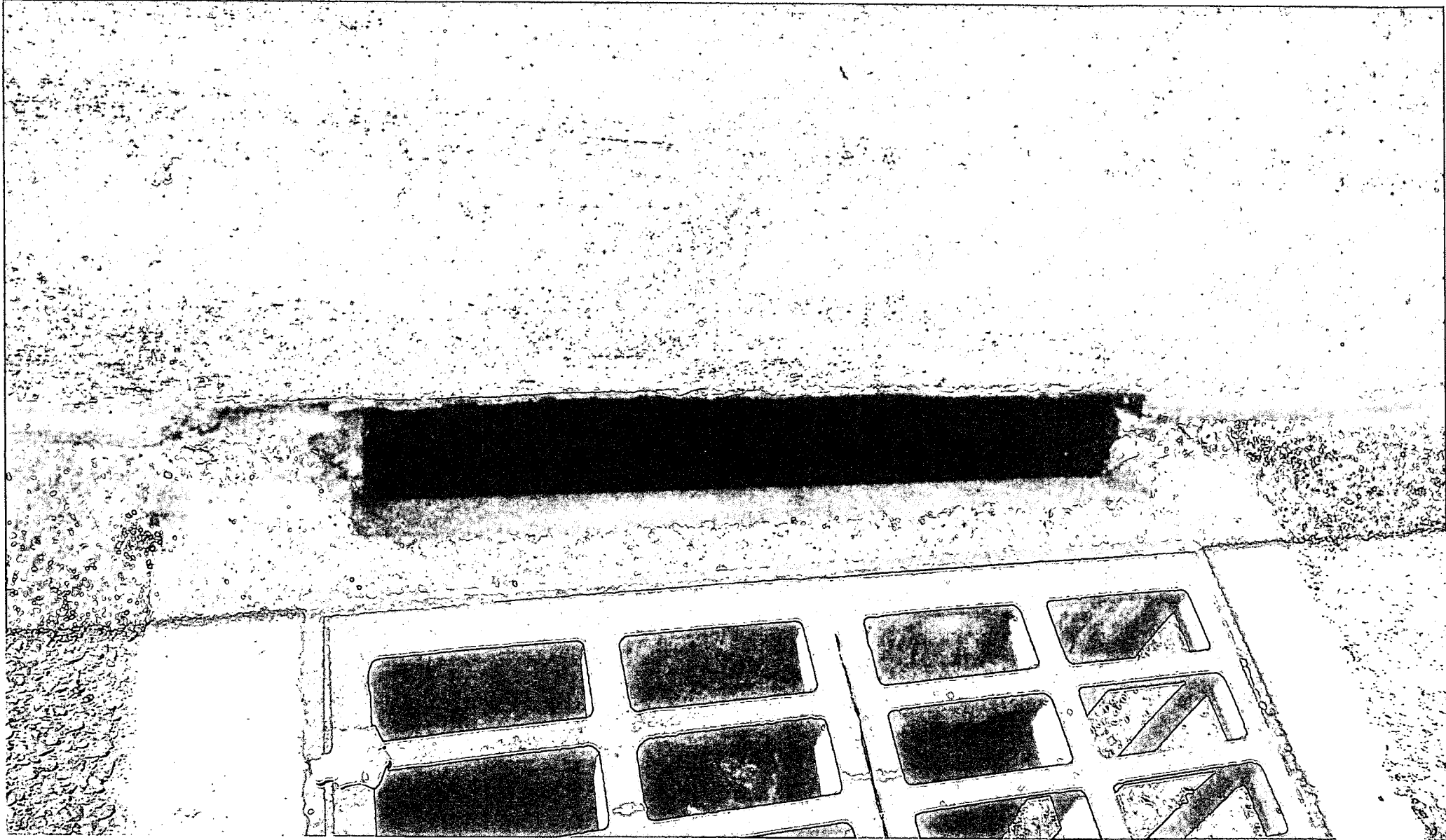




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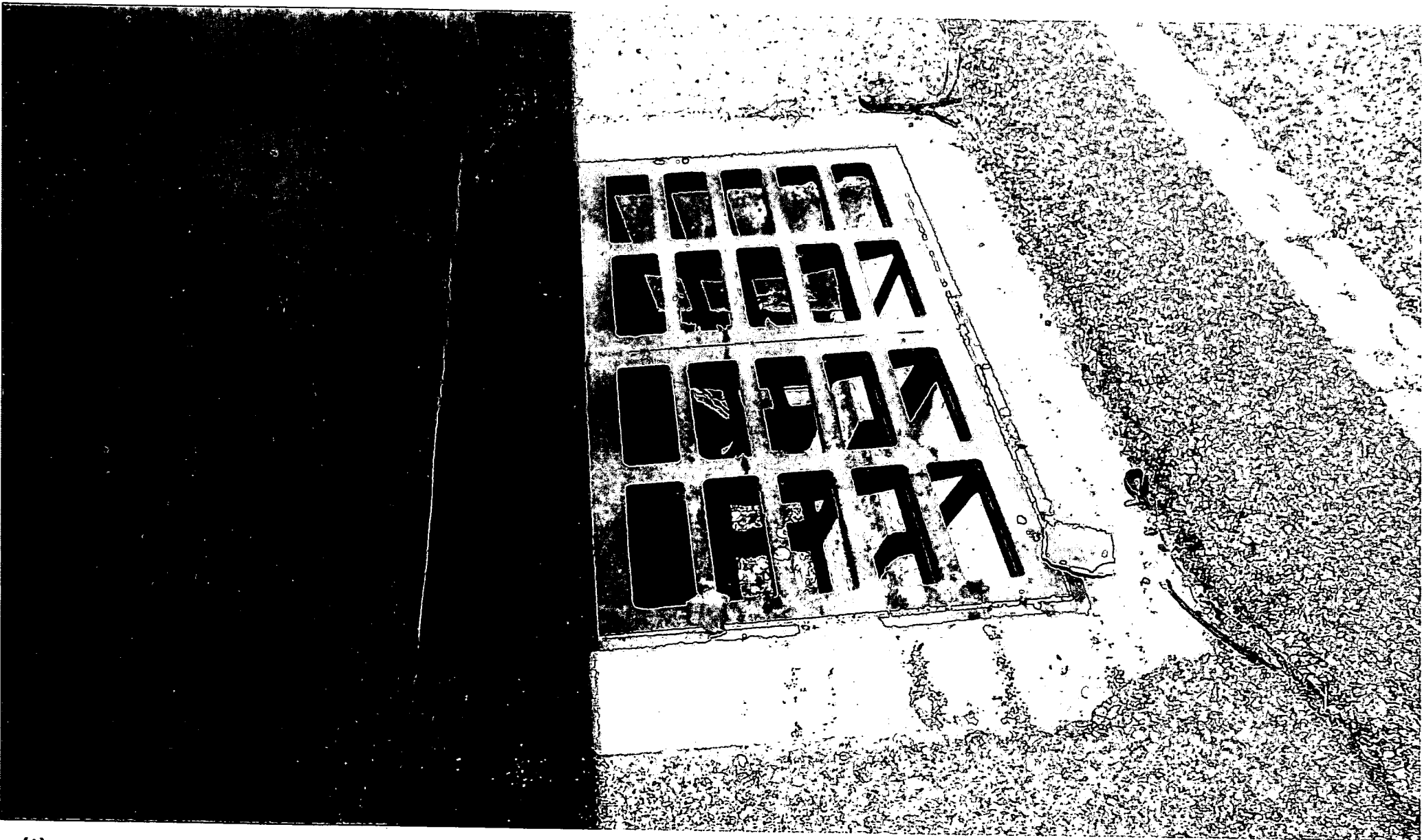
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EXHIBIT

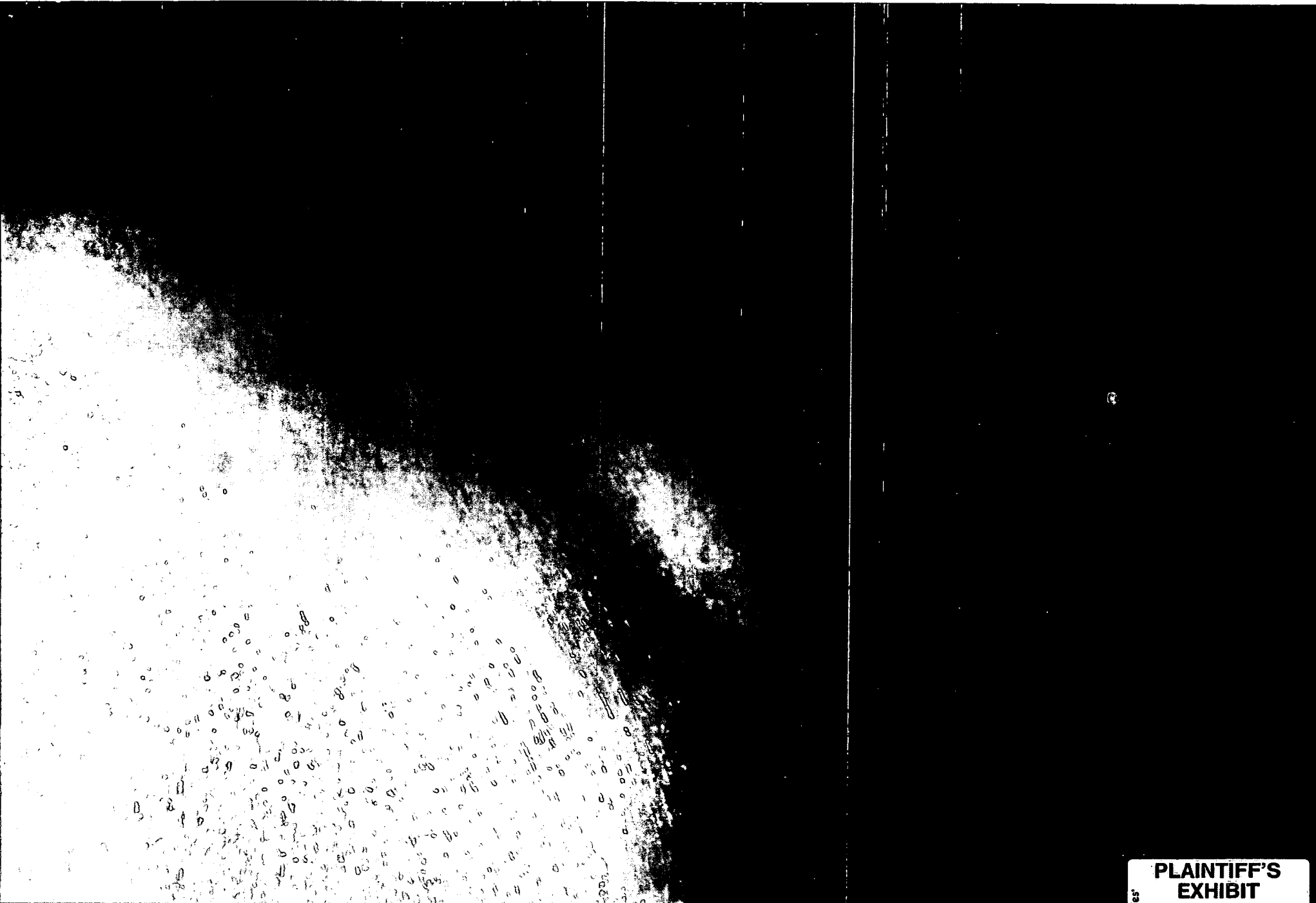
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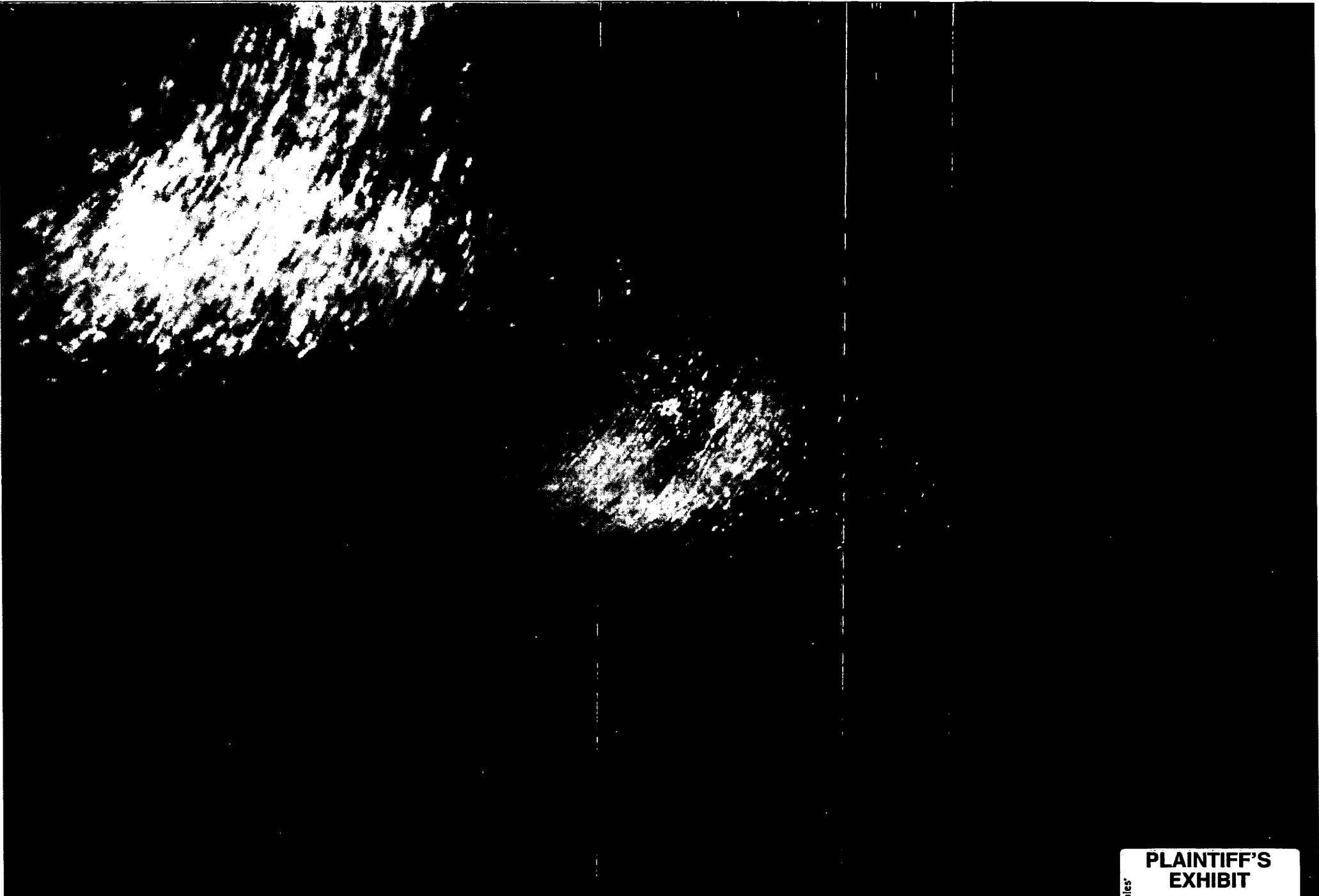


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EXHIBIT EV

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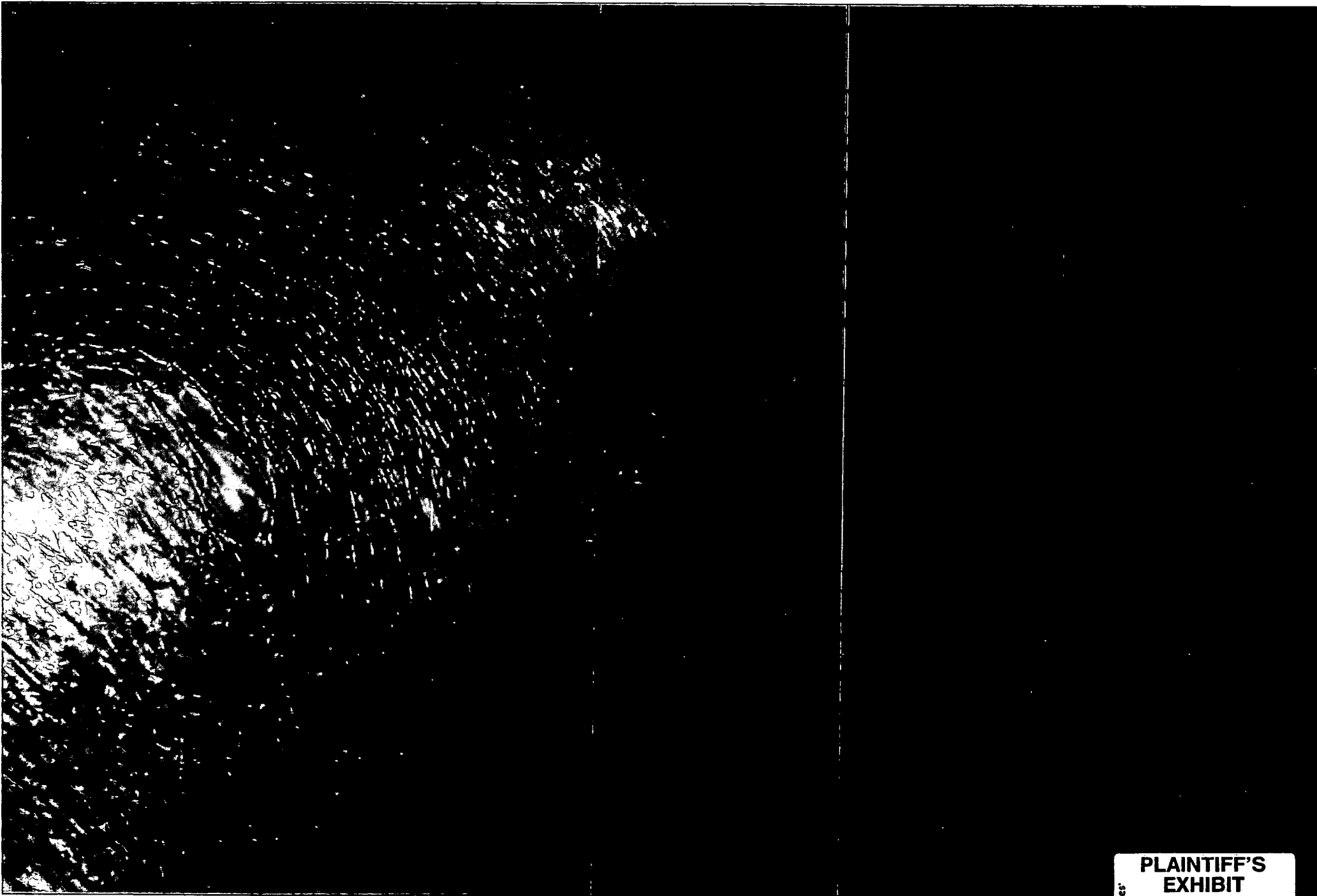
6
2/12/18 SH





**PLAINTIFF'S
EXHIBIT**

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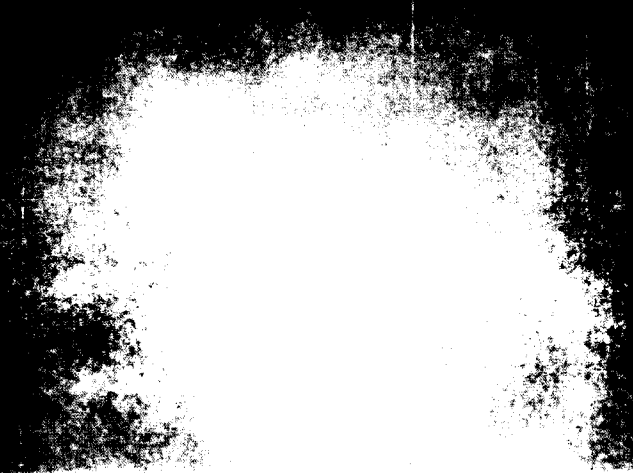


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EXHIBIT**

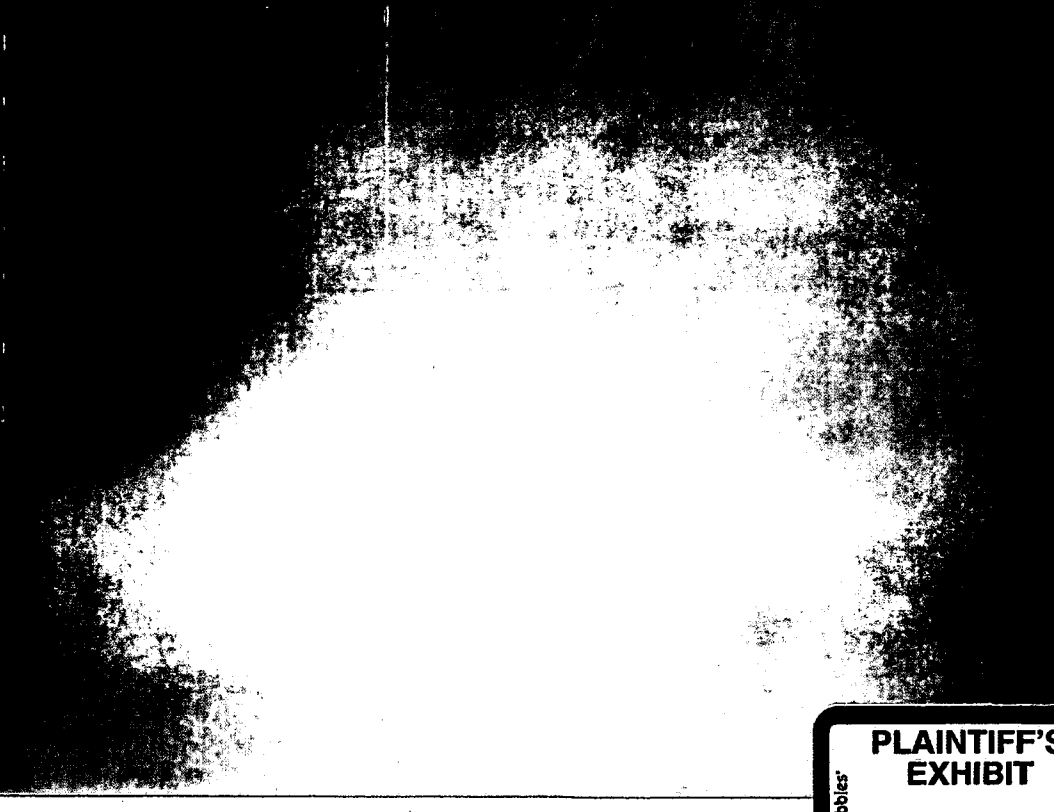
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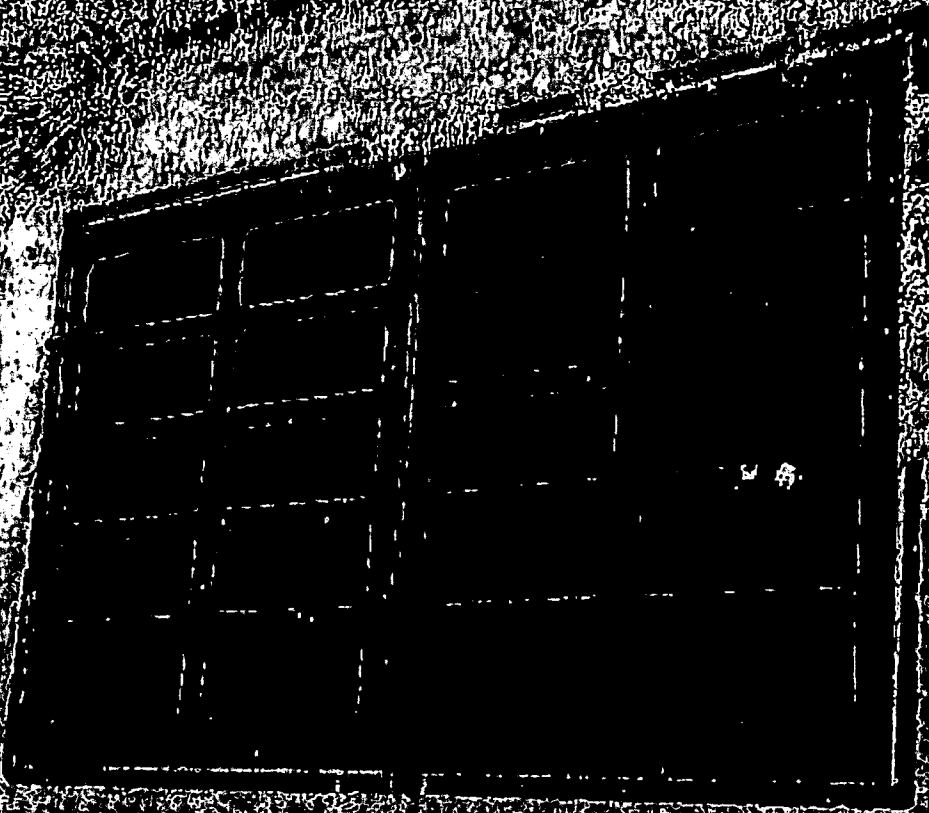
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EXHIBIT EV
7
2/12/18 SH



SPARTANBURG REG MED CTR		SPARTANBURG REG		PAT. CNTL. # 1206601053		TYPE OF BILL 0131	
101 EAST WOOD ST		P O BOX 277723		MED. REC. # 000833576			
SPARTANBURG SC 29303304		ATLANTA GA 30384		MED. TAX NO. 001		STATEMENT COVERS PERIOD FROM 030112 THROUGH 030112	
8645604123		US		576000934		030112	
PATIENT NAME 10313379				PATIENT ADDRESS 722 TAYLOR DR SE			
PERKINS, BETTY J				SAVANNAH GA 30080			
10 BIRTHDATE 11 SEX F		12 DATE 21 1 1 21 01		CONDITION CODES 22 23 24 25 26 27 28 29 ACCT STATE 050			
31 OCCURRENCE CODE DATE 11 030112		32 OCCURRENCE CODE DATE 18 010102		33 OCCURRENCE CODE DATE		34 OCCURRENCE CODE DATE	
35 OCCURRENCE CODE DATE		36 OCCURRENCE CODE DATE		37 OCCURRENCE CODE DATE			
PERKINS, BETTY, J 722 TAYLOR DR SE SAVANNAH GA 30080 (336) 344-5871				38 VALUE CODES AMOUNT A0 29334000X 39 VALUE CODES AMOUNT 750 40 VALUE CODES AMOUNT 41 VALUE CODES AMOUNT			
42 REV. CL.		43 DESCRIPTION		44 HCPCS / RATE / MPPS CODE		45 SERV. DATE	
0540		EMS-MILEAGE		A0425QNSH		030112	
0540		EMS-AMB SRVC, BLS EMERGE		A0429QNSH		030112	
						46 SERV. UNITS 12 6825	
						47 TOTAL CHARGES 42305	
						48 NON-COVERED CHARGES	
						49	
0001		PAGE 1 OF 1		CREATION DATE 030712		TOTALS 49130	
50 PAYER NAME		51 HEALTH PLAN ID		52 PRIOR PAYMENTS		53 EST. AMOUNT DUE	
				Y Y		1609807122	
						57 OTHER 576000934	
58 INSURED'S NAME		59 REL 18		60 INSURED'S UNIQUE ID		61 GROUP NAME	
PERKINS BETTY J						62 INSURANCE GROUP NO.	
63 TREATMENT AUTHORIZATION CODES		64 DOCUMENT CONTROL NUMBER		65 EMPLOYER NAME			
66 71946 U						68	
69							
70 ADMIT DATE 71946		71 PATIENT REASON DX		72 MPPS CODE		73	
74 PRINCIPAL PROCEDURE CODE		75 OTHER PROCEDURE CODE		76 ATTENDING NPI 1225065824		77	
78 LAST DEGENHARDT		79 FIRST DAVID, V		80		81	
82 LAST DEGENHARDT		83 FIRST DAVID, V		84		85	
86 LAST DEGENHARDT		87 FIRST DAVID, V		88		89	
90 REMARKS		B100 2 B3341600000X		91		92	
		B1R2E2		93		94	
		EMS		95		96	

PLAINTIFF'S
EXHIBIT
2/12/13 SH

FINAL**Patient Care Report****Spartanburg EMS**

525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 07300

Patient Number 1 of 1

Date of Service: 3/1/2012

Patient Name: Betty Perkins

Medical Record # 000047393

Account # 1206130257

CREW INFO

Vehicle: 05710

Call Sign: Medic B

Crew #1: POPPE, KRISTOFER

Crew #2: GREENE, JUDSON

Doc'd By: GREENE, JUDSON

Assisted By: 1
0
0

RESPONSE INFO

Med/Trauma: Trauma

Response Priority: Emergency

Nature Of Call: Fracture

Start Mileage: 161,013.3

At Scene Mileage: 161,018.4

At Dest. Mileage: 161,025.9

Response Mileage: 5.1

Resp. Delay: No Delay

Trans. Delay: No Delay

Call Taken by: 911

Resp. with: Fire
Highway Patrol
Spartanburg EMS

Location: 6100 Interstate 85 South
Duncan, SC 29334

PL Found: Passenger Seat

DISPOSITION

Outcome: Hospital

Dest. Reason: Patient Choice

Transport Priority: Non-Emergency

Condition at Dest.: Unchanged

Level of care: BLS

ER Disposition: Not Known

Barriers to Care:

PL Transported: Semi-Fowlers - Main
Stretcher

Scene Delay: No Delay

Destination: Village Hospital
250 WESTMORELAND DR
GREER, SC 29651

Recv Doctor:
DEGENHARDT, DAVID

Transporting Agency: Spartanburg EMS

Transporting Unit: Spartanburg EMS

TIMES

Recvd: 21:29 03-01-12

Dispatch: 21:30 03-01-12

En route: 21:31 03-01-12

At scene: 21:38 03-01-12

At patient: 21:38 03-01-12

Transport: 21:48 03-01-12

At dest: 21:58 03-01-12

In service: 22:14 03-01-12

PATIENT INFORMATION

Name: Betty Perkins

SBN: [REDACTED]

Sex: Female

Race: African American

Marital Status: Single

Phone: (336) 344-5871

DOB: [REDACTED] (52 yrs)

Home Addr.: 722 TAYLOR DRIVE

SMYRNA, GA 30080

DL Info: NC 38040516

Weight: 180 lbs

Mailing Addr.: 722 TAYLOR DRIVE
SMYRNA, GA 30080

Marital Status: Single

Doctor: Coombs, Dr. Toni

Doctor: Coombs, Dr. Toni

NEXT OF KIN

Name: Kelsie Corbett

Phone:

SBN:

DOB:

Sex:

Home Addr.:

Relationship: 0

Charges

Account # 1206601053

Admitted Yes / No

Base Charge

Amb. Svc, Emergency, BLS A0429

Mileage Type

Mileage A0425

Miles 7.50

Origin Modifier S - Scene of Accident / Injury

Destination Modifier H - Hospital

FINAL**Patient Care Report****Spartanburg EMS**

525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 07300

Patient Number 1 of 1

Date of Service: 3/1/2012

Patient Name: Betty Perkins

Medical Record # 000047393

Account # 1206130257

Medicare Questions

Retirement Date 1-1-02

Pt on Dialysis? No

Pt receive VA benefits? No

Pt in Black Lung Program? No

Pt had Kidney Transplant? No

Personal Effects None

INSURANCE

Work Related: No

Payer Info:

Company:

Policy #:

Group #:

Guarantor:

HISTORY**Allergies**

Other - Not Listed

Note: ASA, PCN, Sulfis, Anti
Inflammatory Medications

Cause of Injury

Falls

Chief Complaint

Pain - Other (Explain)

Note: Bilateral knee pain, Shoulder
pain

Medications

Other - Not Listed -

Note: Pirosec, HCTZ, Vistaril, Zolof,
Lyrica

Past Medical History

Depression

Other

Hypertension

Note: Nerve Damage, GERD

FINAL**Patient Care Report****Spartanburg EMS**

525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 07300

Patient Number 1 of 1

Date of Service: 3/1/2012

Patient Name: Betty Perkins

Medical Record # 000947393

Account # 1206130257

ASSESSMENTS

Body Area	Assessment	Body Area	Assessment
Airway	Patent	Breathing	Normal Respirations
	Patent :		Normal Respirations :
Circulation	Pulses - Radial - Normal (2+)	LOC	A & O to person, place, time, event
	Pulses - Radial - Normal (2+):		A & O to person, place, time, event :
Central Nervous System	Neuro Intact	Blood/Fluid Loss	None Noted
	Neuro Intact :		None Noted :
Head	Assessed with No Abnormalities	Face	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Left Ear	Assessed with No Abnormalities	Right Ear	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Left Eye	Assessed with No Abnormalities	Right Eye	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Nose	Assessed with No Abnormalities	Neck	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Trachea	Midline	Chest	Assessed with No Abnormalities
	Midline :		Assessed with No Abnormalities :
Back - Upper	Assessed with No Abnormalities	Back - Lower	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Upper Left Arm	Assessed with No Abnormalities	Upper Right Arm	Pain
	Assessed with No Abnormalities :		Pain : Shoulder
Lower Left Arm	Assessed with No Abnormalities	Lower Right Arm	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Left Hand	Assessed with No Abnormalities	Right Hand	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Upper Left Leg	Assessed with No Abnormalities	Upper Right Leg	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Lower Left Leg	Abrasion, Pain	Lower Right Leg	Abrasion, Pain
	Abrasion :		Abrasion : Knee
Left Foot	Pain : Knee	Right Foot	Pain :
	Assessed with No Abnormalities		Assessed with No Abnormalities
Abdomen - LLQ	Assessed with No Abnormalities	Abdomen - LUQ	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Abdomen - RLQ	Assessed with No Abnormalities	Abdomen - RUQ	Assessed with No Abnormalities
	Assessed with No Abnormalities :		Assessed with No Abnormalities :
Back- Lumbar/Sacral	Assessed with No Abnormalities		Assessed with No Abnormalities :
	Assessed with No Abnormalities :		

IMPRESSIONS

Primary Impressions: Pain - Knee 719.46
Secondary Impressions: Pain - Shoulder 719.01

TRAUMA

Trauma Description
Fall from Standing

FINAL**Patient Care Report****Spartanburg EMS**

525 UNION STREET
SPARTANBURG, SC 29306
(864) 560-9300 Ext.

Run Number: 07300

Patient Number 1 of 1

Date of Service: 3/1/2012

Patient Name: Betty Perkins

Medical Record # 000047393

Account # 1206130257

VITAL SIGNS

Time	BP	Pulse	Respiratory	SPO2	EtCO2	Glucose	GCS
21:44	140/93 Auscultated	85, Strong, Regular	18 Normal, Regular	99%, Source: Room Air			E4 + V5 + M6 = 15
Skin Temp=Normal Skin Color=Normal Skin Moisture=Normal Lung Sounds Left=Normal / Clear Lung Sounds Right=Normal / Clear Cap. Refill=Normal Pupil size: Left=4, Right=4 Pupil Reacts: Left=Reactive, Right=Reactive Pupil Dilation: Left=Normal, Right=Normal Level of Consciousness: Alert; Pain Scale=9; Arm Movement: Left=Spontaneous, Right=Spontaneous; Leg Movement: Left=Spontaneous, Right=Spontaneous Taken by: GREENE, JUDSON							
21:53	146/84 Auscultated	82, Strong, Regular	20 Normal, Regular	99%, Source: Room Air			E4 + V5 + M6 = 15
Skin Temp=Normal Skin Color=Normal Skin Moisture=Normal Lung Sounds Left=Normal / Clear Lung Sounds Right=Normal / Clear Cap. Refill=Normal Pupil size: Left=4, Right=4 Pupil Reacts: Left=Reactive, Right=Reactive Pupil Dilation: Left=Normal, Right=Normal Level of Consciousness: Alert; Pain Scale=9; Arm Movement: Left=Spontaneous, Right=Spontaneous; Leg Movement: Left=Spontaneous, Right=Spontaneous Taken by: GREENE, JUDSON							

TRAUMA SCORES

21:45	<u>Revised Trauma Score</u>	<u>Overall Score: 12</u>
	Glasgow Coma Scale: 13 - 15 [4], Score = 4	
	Respiratory Rate: 10 - 29 min [4], Score = 4	
	Systolic BP: >89 [4], Score = 4	
	Comments:	

TREATMENT SUMMARY

Time	PTA	Treatment	Who performed	Comments
21:49		Hospital Notified	GREENE, JUDSON	
		<u>Complication</u>	<u>Complication Narrative</u>	
		None		
		Method=800mhz Med Channel	Contact Made=Yes	Orders Requested=No
		Orders Received=No	Response=Unchanged	Attempts=1

NARRATIVE

Medic 9 responded to find the Pt 52 year old black female sitting in the passenger seat of the SC Highway Patrol Police Officer's car. Pt was alert times 4, ABC intact. Pt complained of Bi-lateral knee pain, and shoulder pain. Pt stated her tire blew out on her car, and when she managed to get it stopped on the side of the Interstate when she got out of the car she fell into a storm drain on the side of the road, and a bystander helped her out of it. Pt denied any other injury. Abrasions were noted to the Pt knees, No deformities noted. Pt stated the pain was a 9 on the pain scale. Pt wanted to go to the Village ER for further evaluation. Pt was placed on the stretcher and secured for transport. Pt was transported to the Village ER with BLS monitoring. No change in the Pt during transport. Pt vitals were monitored and interventions are as noted in the report. Upon arrival at the ER Pt was placed in ER room #5. Pt was transferred to the ER stretcher. Pt verbal report given to the ER nurse and doctor. Pt care was transferred to the ER staff. Signatures obtained. Medic 9 went clear from the call.

FINAL		Patient Care Report	
 Spartanburg EMS 525 UNION STREET SPARTANBURG, SC 29306 (864) 560-9300 Ext.		Run Number: 07300 Patient Number 1 of 1 Date of Service: 3/1/2012 Patient Name: Betty Perkins Medical Record # 000047393 Account # 1206130257	
SIGNATURES			
<u>Time</u>	<u>Type</u>	<u>Who signed</u>	<u>Why patient did not sign</u>
03/01/2012 22:00		Self - Perkins, Betty Jean	<Not applicable>
x <u>B. Perkins</u>		Betty Jean Perkins or the patient's lawful representative or surrogate for consent to treatment acknowledges that the medical care which (was) (is about to be) furnished to the patient (was) (will be) limited solely to emergency transportation and treatment. The undersigned authorizes such medical treatment and transportation as being considered medically necessary. I request that payment of authorized Medicare, Medicaid, or any other insurance benefits be made on my behalf to Spartanburg Regional Medical Center EMS for any services provided to me by Spartanburg Regional Medical Center now or in the future. I understand that I am financially responsible for the services provided to me by SRMC EMS, regardless of my insurance coverage, and in some cases, may be responsible for an amount in addition to that which was paid by my insurance. I agree to immediately remit to Spartanburg Regional Medical Center any payments that I receive directly from insurance or any source whatsoever for the services provided to me and I assign all rights to such payments to Spartanburg Regional Medical Center. I authorize Spartanburg Regional Medical Center to appeal payment denials or other adverse decisions on my behalf without further authorization. I authorize and direct any holder of medical information or documentation about me to release such information to Spartanburg Regional Medical Center and its billing agents, and/or the Centers for Medicare and Medicaid Services and its carriers and agents, and/or any other payers or insurers as may be necessary to determine these or other benefits payable for any services provided to me by Spartanburg Regional Medical Center - EMS, now or in the future. A copy of this form is as valid as an original.	
<u>Witness</u>		Judson Greene	
x <u>Judson Greene</u>			
03/01/2012 22:01	Standing Protocol	Crew Member #2 - GREENE, JUDSON	<Not applicable>
x <u>Judson Greene</u>		Interventions & treatments for Betty Jean Perkins were performed under Standing Orders authorized by Dr. Chris Lombardozzi, MD.	
<u>Witness</u>			
03/01/2012 22:01	Receiving Signature	RN - Bales, Annette	<Not applicable>

FINAL		Patient Care Report	
	Spartanburg EMS 525 UNION STREET SPARTANBURG, SC 29306 (864) 560-9300 Ext.	Run Number: 07300	
		Patient Number 1 of 1	
		Date of Service: 3/1/2012	
		Patient Name: Betty Perkins	
		Medical Record # 000047393	
		Account # 1206130257	
I acknowledge receiving EMS Patient Betty Jean Perkins on the time indicated in this report.			
x <u>ABates RN</u> Witness Judson Greene <u>Judson Greene</u>			
03/01/2012 22:10		Ordering / Certifying Physician	Physician / MD - Degenhardt, David
			<Not applicable>
Ordering Physician I certify the transportation of this patient, Betty Jean Perkins, was medically necessary. This patient could not be transported by any other means.			
x <u>[Signature]</u> Witness Judson Greene <u>Judson Greene</u>			
CREW INFORMATION			
Start Date/Time: 03/01/2012 08:00			
Name		Name	
POPPE, KRISTOFER		GREENE, JUDSON	
EMT-Paramedic		EMT-Intermediate	
x <u>Krist Poppe</u> x <u>Judson Greene</u>			

Betty Jean Perkins

Vs.

SCDOT



Date of Accident: March 1, 2012

Medical Billing Statements

Civil Action No.: 2016-CP-42-2478

Betty J. Perkins Medical Expense Summary

MVA / KNEE MEDICAL EXPENSES:

<u>Facility</u>	<u>Charges</u>
Spartanburg EMS	\$491.30
Village Hospital	\$1,056.00
Med Group of the Carolinas	\$315.00
Pinnacle Orthopaedics	\$6850.00
Wellstar Cobb/Douglas Hospital	\$9,981.75
Rockingham Orthopaedic Associates	\$699.20
Southeastern Orthopaedic Specialists	\$10,737.58
Cone Health Memorial Hospital	\$30,596.56
Penn Nursing Center	\$7,684.64
Advanced Home Care	\$1,200.00
Deep River Rehab	\$3,723.00
Total Medicals:	\$72,635.54

OTHER PAIN MANAGEMENT:

<u>Facility</u>	<u>Charges</u>
Pinnacle Orthopaedics	\$30,125.00
CVS Pharmacy	\$123.81
Publix Pharmacy	\$90.94
Eden Drug Health Mart	\$49.40
The HEAG Pain management Center	\$34,671.55
Layne's Family Pharmacy	\$5,064.22
Total:	\$65,060.70

SPARTANBURG REG MED CTR² SPARTANBURG REG
101 EAST WOOD ST P O BOX 277723
SPARTANBURG SC 29303304 ATLANTA GA 30384
8645604123 US

1206601053
000833576
0131

PATIENT NAME 10313379 PATIENT ADDRESS 722 TAYLOR DR SE
PERKINS, BETTY J SAVANNAH

BIRTHDATE 11/11/50 SEX F ADMISSION 15 HR 16 TYPE 17 SRC 18 DMR 19 STAT 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

11 030112 18 010102

PERKINS, BETTY, J
722 TAYLOR DR SE

SAVANNAH GA 30080
(336) 344-5871

42 REV CD 43 DESCRIPTION 44 HCPCS / RATE / NPPS CODE 45 SERV DATE 46 SERV UNITS 47 TOTAL CHARGES 48 NON-COVERED CHARGES 49

0540 EMS-MILEAGE A0425QNSH 030112 12 6825
0540 EMS-AMB SRVC, BLS EMERGE A0429QNSH 030112 1 42305

0001 PAGE 1 OF 1 CREATION DATE 030712 TOTALS 49130

50 PAYER NAME 51 HEALTH PLAN ID 52 PRIOR PAYMENTS 53 EST AMOUNT DUE 54 NPI 1609807122

58 INSURED'S NAME 59 REL 60 INSURED'S UNIQUE ID 61 GROUP NAME 62 INSURANCE GROUP NO.

63 TREATMENT AUTHORIZATION CODES 64 DOCUMENT CONTROL NUMBER 65 EMPLOYER NAME

66 71946 U

67 ADMIT DX 70 PATIENT REASON DX 71946 72 ICD9 CODE 73 ICD9 CODE 74 ICD9 CODE 75 ICD9 CODE 76 ICD9 CODE 77 ICD9 CODE 78 ICD9 CODE 79 ICD9 CODE 80 ICD9 CODE

68 71946 U

69 REMARKS

76 ATTENDING API 1225065824 LAST DEGENHARDT FIRST DAVID, V

77 OPERATING API LAST DEGENHARDT FIRST DAVID, V

78 OTHER DN 1225065824 LAST DEGENHARDT FIRST DAVID, V

79 OTHER DN 1225065824 LAST DEGENHARDT FIRST DAVID, V

VILLAGE HOSPITAL 250 WESTMORELAND ROAD GREER SC 29651901		VILLAGE HOSPITAL P O BOX 198886 ATLANTA GA 30384		PAT. # 1206130257 MED. REC. # 000047393 FED. TAX NO. 001		STATEMENT COVERS PERIOD FROM 030112 THROUGH 030112		DATE OF BILL 0131	
PATIENT NAME PERKINS, BETTY J		PATIENT ADDRESS 722 TAYLOR DR SE		CITY GA 30080					
BIRTHDATE 11/03/11		DATE OF ADMISSION 12/22/11		STAT 01		ACCT STATE 050			
31 OCCURRENCE CODE 11		32 OCCURRENCE DATE 030112		33 OCCURRENCE CODE 18		34 OCCURRENCE DATE 010102			
35 OCCURRENCE CODE 11		36 OCCURRENCE DATE 030112		37 OCCURRENCE CODE 18		38 OCCURRENCE DATE 010102			
39 OCCURRENCE CODE 11		40 OCCURRENCE DATE 030112		41 OCCURRENCE CODE 18		42 OCCURRENCE DATE 010102			
39 VALUE CODES AMOUNT		40 VALUE CODES AMOUNT		41 VALUE CODES AMOUNT		42 VALUE CODES AMOUNT			
SAVANNAH (336) 344-5871		GA 30080							
43 REV CC		44 DESCRIPTION		45 HCPCS / RATE / HPPS CODE		46 SERV DATE		47 SERV UNITS	
0320		X-RAY EEXAM OF LOWER SPI		72100		030112		1	
0320		X-RAY EXAM OF KNEE, 3		73562		030112		1	
0450		IMMUNIZATION ADMIN		90471		030112		1	
0450		ED VISIT LEVEL 3		9928325		030112		1	
0636		N449281029183ML1		90714		030112		1	
0637		CYCLOBENZAPRINE 10MG TAB		A9270GY		030112		4	
48 TOTAL CHARGES		49 NONCOVERED CHARGES		50		51		52	
105600									
0001		PAGE 1 OF 1		CREATION DATE 092012		TOTALS		105600	
53 PAYER NAME		54 HEALTH PLAN ID		55 REL NFO		56 PRIOR PAYMENTS		57 EST. AMOUNT DUE	
								1982800397	
58 INSURED'S NAME		59 REL		60 INSURED'S UNIQUE ID		61 GROUP NAME		62 INSURANCE GROUP NO.	
63 TREATMENT AUTHORIZATION CODES		64 DOCUMENT CONTROL NUMBER		65 EMPLOYER NAME		66		67	
				DISABLED					
68 ADMIT DX		69 PATIENT REASON DX		70 ICD-9-CM		71 ICD-9-CM		72	
8460		9130		E8179		OE8495		U	
73 PRINCIPAL PROCEDURE CODE		74 OTHER PROCEDURE CODE		75 ATTENDING NPI		76 LAST		77 FIRST	
				1225065824		DEGENHARDT		DAVID, V	
78 OTHER NPI		79 OTHER NPI		80 LAST		81 FIRST		82	
				LM 1225065824		DEGENHARDT		DAVID, V	
83 REMARKS		84		85		86		87	
88		89		90		91		92	
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Pinnacle Marietta
 Patient Transaction Report
 Patient Name: Perkins, Betty J
 DOB: [REDACTED]; Record #: 2045297; Acct #: 2045297
 Date Range: 05/18/2010-10/23/2013

Provider	Bill#	Encounter	SDate	Code/CPT	Amount
Lee, Yong S	521416	1061050	10/18/2011	99213 Office Visit, Est Pt., Level 3 (99213)	92.00
Finley, Heather Louise	650390	1289197	06/05/2012	99024 Post-Op/Pre-Op 24 hrs/Fracture Cure	0.00
Finley, Heather Louise	650390	1289197	06/05/2012	20610 Injection/Aspiration Large Joint (20610)	214.00
Finley, Heather Louise	650390	1289197	06/05/2012	J1040 Inj Depo Medrol 80mg (J1040)	29.00

Pinnacle Marietta
Patient Transaction Report
Patient Name: Perkins, Betty J
DOB: [REDACTED]; Record #: 2045297; Acct #: 2045297
Date Range: 05/18/2010-10/23/2013

Provider	Bill#	Encounter	SDate	Code/CPT	Amount
Lee, Yong S	716085	1343126	10/02/2012	99213 Office Visit, Est Pt., Level 3 (99213)	92.00
Lee, Yong S	736208	1475586	11/01/2012	62311 Injection Spine Lumbar/Sacral (Caudal)	622.00
Lee, Yong S	736208	1475586	11/01/2012	77003 Fluoroscopic guidance/Paraspinal	245.00
Lee, Yong S	736208	1475586	11/01/2012	99144 Moderate sedation, first 30 mins intra-service time	118.00

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Pinnacle Marietta
 Patient Transaction Report
 Patient Name: Perkins, Betty J
 DOB: [REDACTED]; Record #: 2045297; Acct #: 2045297
 Date Range: 05/18/2010-10/23/2013

Provider	Bill#	Encounter	SDate	Code/CPT	Amount
				Balance	0.00
Lee, Yong S	767179	1452745	01/04/2013	99213 Office Visit, Est Pt., Level 3 (99213)	92.00
Lee, Yong S	767179	1452745	01/04/2013	G0434 DRUG SCR NOT CGC: ANY NUMBER PT ENC	75.00
Lee, Yong S	784166	1569759	01/31/2013	62311 Injection Spine Lumbar/Sacral (Caudal)	622.00
Lee, Yong S	784166	1569759	01/31/2013	77003 Fluoroscopic guidance/Paraspinal	245.00
Lee, Yong S	784166	1569759	01/31/2013	99144 Moderate sedation, first 30 mins intra-service time	118.00
Lee, Yong S	815893	1553699	03/29/2013	99213 Office Visit, Est Pt., Level 3 (99213)	92.00

Printed on 10/23/2013 at 15:17

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Pinnacle Marietta
 Patient Transaction Report
 Patient Name: Perkins, Betty J
 DOB: [REDACTED] Record #: 2045297 ; Acct #: 2045297
 Date Range: 05/18/2010-10/23/2013

Provider	Bill#	Encounter	SDate	Code/CPT	Amount
Lee, Yong S	863021	1649091	06/24/2013	99213 Office Visit, Est Pt., Level 3 (99213)	92.00
Lee, Yong S	863021	1649091	06/24/2013	G0434 DRUG SCR NOT CGC: ANY NUMBER PT ENC	75.00
Lee, Yong S	870424	1746762	07/09/2013	95911 NCV 9-10 studies	668.00
Lee, Yong S	870424	1746762	07/09/2013	95886 MUSC TEST DONE W/N TEST COMP	262.00

Pinnacle Marietta
 Patient Transaction Report
 Patient Name: Perkins, Betty J
 DOB: [REDACTED] Record #: 2045297 ; Acct #: 2045297
 Date Range: 05/18/2010-10/23/2013

Provider	Bill#	Encounter	SDate	Code/CPT	Amount
Lee, Yong S	880611	1746765	07/22/2013	99213 Office Visit, Est Pt., Level 3 (99213)	92.00
Lee, Yong S	880611	1746765	07/22/2013	G0434 DRUG SCR NOT CGC: ANY NUMBER PT ENC	75.00
Lee, Yong S	894681	1775100	08/19/2013	99213 Office Visit, Est Pt., Level 3 (99213)	92.00
Lee, Yong S	894681	1775100	08/19/2013	80104 DRUG SCRNI I+ CLASS NONCHROMO	75.00
Lee, Yong S	894681	1775100	08/19/2013	G0434 DRUG SCR NOT CGC: ANY NUMBER PT ENC	75.00

Printed on 10/23/2013 at 15:17

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Pinnacle Marietta
Patient Transaction Report
Patient Name: Perkins, Betty J
DOB: [REDACTED] Record #: 2045297 ; Acct #: 2045297
Date Range: 05/18/2010-10/23/2013

Provider	Bill#	Encounter	SDate	Code/CPT	Amount
Total Charges					25,006.00

Printed on 10/23/2013 at 15:17

Page 15 of 15

01/31/14

STATEMENT OF ACCOUNT

FOR QUESTIONS REGARDING
THIS STATEMENT PLEASE CALL
770-792-5400

PATIENT:
PERKINS, BETTY JEAN

PATIENT ACCOUNT NUMBER
D12095-01668

DATE ADMITTED
04/04/12

DATE DISCHARGED
04/04/12

PAGE NO
001

REFER TO THIS NUMBER
ON ALL CORRESPONDENCE

AMOUNT PAID: \$

BILL TO	
BETTY JEAN PERKINS 722 TAYLOR DR SE SMYRNA GA 30080-1061	

REMIT TO	
WELLSTAR DOUGLAS HOSPITAL P.O. BOX 406155 ATLANTA GA 30384-6155	

MAKE CHECKS PAYABLE TO THE ABOVE

METHOD OF PAYMENT

☐ CHECK ☐ VISA ☐ MASTERCARD ☐ AMERICAN EXPRESS ☐ DISCOVER ☐ MONEY ORDER

CARD # EXP. DATE

SIGNATURE

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE.

POSTING DATE	ORDER NO.	ITEM NO	DESCRIPTION	QTY	ITEM PRICE	TOTAL CHARGES
04/04/12	2	1752	METHYLPREDNISOLONE ACET 80MG	1	66.75	66.75
04/04/12	4	1855	MIDAZOLAM HCL 1MG/ML 2ML VIA	1	15.00	15.00
04/04/12	3	4390	FENTANYL CIT PF 50MCG/ML 2ML	1	15.00	15.00
04/04/12	5	449	BUPIVACAINE HCL PF 0.25% 10M	1	15.00	15.00
04/04/12	6	5366	SODIUM CHLORIDE 0.9% 10ML SY	1	18.50	18.50
			TOTAL 250 PHARMACY			130.25
04/04/12	10	12632	OMNIPAQUE 180MG 10ML PER ML	10	4.00	40.00
			TOTAL 255 DRUGS/INCIDENT RADIOLOGY			40.00
04/04/12	11	21650	TRAY EPIDURAL INJ DISP SINGL	1	43.00	43.00
04/04/12	9	42859	CATH IV AUTOG WING LF 22GA 1	1	7.00	7.00
			TOTAL 272 STERILE SUPPLIES			50.00
04/04/12	1	72413	FL FLUORO EPIDURAL IN OR	1	585.00	585.00
			TOTAL 320 RADIOLOGY			585.00
04/04/12	7	52059	PAIN MANAGEMENT	1	2,233.00	2,233.00
			TOTAL 361 MINOR SURGERY			2,233.00
04/04/12	8	64498	CONSCIOUS SEDATION	1	424.00	424.00
			TOTAL 372 ANESTHESIA INCIDENT + OTH			424.00
			TOTAL CHARGES			3,462.25

NOTE: AMOUNTS INDICATED TO BE PAID BY THIRD PARTIES ARE ESTIMATED BY THE HOSPITAL, HOWEVER, THE PATIENT AND/OR RESPONSIBLE PARTY HAVE PERSONALLY GUARANTEED PAYMENT AND ARE RESPONSIBLE FOR THE TOTAL CHARGES ON THIS STATEMENT.



WELLSTAR COBB HOSPITAL
P.O. BOX 406149
ATLANTA GA 30384-6149
TAX ID 58-0968382

STATEMENT OF ACCOUNT

11/11/13

FOR QUESTIONS REGARDING
THIS STATEMENT PLEASE CALL
770-792-5400

PATIENT:
PERKINS, BETTY JEAN

PATIENT ACCOUNT NUMBER
C12114-00360

DATE ADMITTED
04/24/12

DATE DISCHARGED
04/24/12

PAGE NO
001

REFER TO THIS NUMBER
ON ALL CORRESPONDENCE

AMOUNT PAID: \$

BILL TO
BETTY JEAN PERKINS 722 TAYLOR DR SE SMYRNA GA 30080-1061

REMIT TO
WELLSTAR COBB HOSPITAL P.O. BOX 406149 ATLANTA GA 30384-6149

MAKE CHECKS PAYABLE TO THE ABOVE

METHOD OF PAYMENT

☐ CHECK ☒ VISA ☐ MASTER CARD ☐ AMERICAN EXPRESS ☐ DISCOVER ☐
☐ MONEY ORDER

CARD # EXP. DATE

SIGNATURE

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE.

POSTING DATE	ORDER NO.	ITEM NO	DESCRIPTION	QTY	ITEM PRICE	TOTAL CHARGES
04/24/12	4	1855	MIDAZOLAM HCL 1MG/ML 2ML VIA	1	15.00	15.00
04/24/12	7	2033	ONDANSETRON HCL 2MG/ML 2ML V	1	15.00	15.00
04/24/12	32	2033	ONDANSETRON HCL 2MG/ML 2ML V	1	15.00	15.00
04/24/12	2	2367	PROPOFOL 10MG/ML 20ML EMUL	1	15.00	15.00
04/24/12	3	4390	FENTANYL CIT PF 50MCG/ML 2ML	1	15.00	15.00
04/24/12	30	4390	FENTANYL CIT PF 50MCG/ML 2ML	1	15.00	15.00
04/24/12	31	4390	FENTANYL CIT PF 50MCG/ML 2ML	1	15.00	15.00
04/24/12	34	463	BUPIVACAINE-EPI PF 0.25% 10M	2	8.25	16.50
04/24/12	48	463	BUPIVACAINE-EPI PF 0.25% 10M	2	15.00	30.00
04/24/12	8	4999	HYDROMORPHONE SYRG 1MG/ML 1M	1	15.00	15.00
04/24/12	33	4999	HYDROMORPHONE SYRG 1MG/ML 1M	1	15.00	15.00
04/24/12	9	5572	GLYCOPYRROLATE 1MG/5ML SYRG	1	62.00	62.00
04/24/12	5	5724	LIDOCAINE 2% 20MG/ML 3ML SYR	1	16.00	16.00
04/24/12	47	620	CLINDAMYCIN PHOS 150MG/ML 4M	1	46.50	46.50
04/24/12	6	768	DEXAMETHASONE 4MG/ML 1ML VIA	1	15.00	15.00
04/24/12	35	795	DIPHENHYDRAMINE 50MG/ML 1ML	1	15.00	15.00
			TOTAL 250 PHARMACY			336.00
04/24/12	51	2621	SODIUM CHLORIDE 0.9% 3000ML	3	35.25	105.75
04/24/12	50	2694	SODIUM CHLORIDE .9% 100ML AD	1	45.00	45.00
04/24/12	49	5063	LACTATED RINGERS SOL 1000ML	1	45.00	45.00
			TOTAL 258 IV SOLUTIONS			195.75
04/24/12	22	2683	SOLUTION DURAPREP SURG LF 24	1	11.00	11.00
04/24/12	19	59790	JUG OMNI	1	47.00	47.00
04/24/12	29	64385	CUFF BP 1TUBE LF ADULT	1	9.00	9.00
04/24/12	26	64417	KIT CIRCUIT ANESTHESIA LF K/	1	16.00	16.00
04/24/12	27	66423	CANNULA NASAL DIVIDED ADULT	1	5.00	5.00
04/24/12	36	67676	SET IV PRIMARY PIGGY 3PORT L	1	14.00	14.00
04/24/12	37	67677	SET IV TWIN-SITE	1	10.00	10.00
04/24/12	20	82521	SLEEVE SEQ COMPRESS LF EXP K	1	54.00	54.00
			TOTAL 271 NON STERILE SUPPLY			166.00
04/24/12	28	21007	MASK AIRWAY LARYNGEAL #4	1	24.00	24.00
04/24/12	18	2431	CANNISTER SUCTION 1200ML DOU	1	4.00	4.00
04/24/12	21	2431	CANNISTER SUCTION 1200ML DOU	1	4.00	4.00
04/24/12	17	35271	TRAY ARTHROSCOPY COBB DISP	1	133.00	133.00
04/24/12	38	42860	CATH IV AUTOG WING LF 20GA 1	1	7.00	7.00

NOTE: AMOUNTS INDICATED TO BE PAID BY THIRD PARTIES ARE ESTIMATED BY THE HOSPITAL.
HOWEVER, THE PATIENT AND/OR RESPONSIBLE PARTY HAVE PERSONALLY GUARANTEED
PAYMENT AND ARE RESPONSIBLE FOR THE TOTAL CHARGES ON THIS STATEMENT.



PATIENT FINANCIAL SERVICES
805 SANDY PLAINS ROAD
MARIETTA, GA 30066
TAX ID - 58-0968382

IF YOU RECEIVED THE SERVICES OF AN EMERGENCY ROOM PHYSICIAN,
RADIOLOGIST, PATHOLOGIST AND/OR AN ANESTHESIOLOGIST
YOU MAY RECEIVE A SEPARATE BILL FOR THEIR CHARGES

← DIRECT ALL CORRESPONDENCE TO:



WELLSTAR COBB HOSPITAL
P.O. BOX 406149
ATLANTA GA 30384-6149
TAX ID 58-0968382

STATEMENT OF ACCOUNT

11/11/13

FOR QUESTIONS REGARDING
THIS STATEMENT PLEASE CALL

770-792-5400

PATIENT:
PERKINS, BETTY JEAN

PATIENT ACCOUNT NUMBER

C12114-00360

DATE ADMITTED

04/24/12

DATE DISCHARGED

04/24/12

PAGE NO

002

REFER TO THIS NUMBER
ON ALL CORRESPONDENCE

AMOUNT PAID: \$

BILL TO	
BETTY JEAN PERKINS 722 TAYLOR DR SE SMYRNA	GA 30080-1061

REMIT TO
WELLSTAR COBB HOSPITAL P.O. BOX 406149 ATLANTA GA 30384-6149

MAKE CHECKS PAYABLE TO THE ABOVE

METHOD OF PAYMENT

☐ CHECK

☐ MONEY ORDER



☐ MASTER
CARD

☐ AMERICAN
EXPRESS



CARD #

EXP. DATE

SIGNATURE

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE.

POSTING DATE	ORDER NO.	ITEM NO	DESCRIPTION	QTY	ITEM PRICE	TOTAL CHARGES
04/24/12	25	4660	BLADE RAZOR CUT LF 3.5	1	120.00	120.00
04/24/12	24	77274	CUFF TOURNIQT SB/DP DISP ST	1	89.00	89.00
04/24/12	16	83199	WAND SUPER MULTIVAC 50DEG	1	548.00	548.00
04/24/12	23	9590	SET INFLOW TUBING LF	1	120.00	120.00
			TOTAL 272 STERILE SUPPLIES			1,049.00
24/12	14	52033	SG OR	81	52.35	4,240.00
			TOTAL 360 OR SERVICES			4,240.00
04/24/12	15	52307	ANESTHESIA TIME	81	27.22	2,205.00
			TOTAL 370 ANESTHESIA			2,205.00
04/24/12	45	62014	PT EVALUATION 30 MIN	1	249.00	249.00
			TOTAL 420 PHYSICAL THERAPY			249.00
04/24/12	12	52509	OP PACU CLASS II	60	18.75	1,125.00
04/24/12	43	52527	OP PACU SECONDARY	107	3.89	416.00
			TOTAL 710 RECOVERY ROOM			1,541.00
			TOTAL CHARGES			9,981.75

NOTE: AMOUNTS INDICATED TO BE PAID BY THIRD PARTIES ARE ESTIMATED BY THE HOSPITAL.
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PAYMENT AND ARE RESPONSIBLE FOR THE TOTAL CHARGES ON THIS STATEMENT.



PATIENT FINANCIAL SERVICES
805 SANDY PLAINS ROAD
MARIETTA, GA 30066
TAX ID - 58-0968382

IF YOU RECEIVED THE SERVICES OF AN EMERGENCY ROOM PHYSICIAN,
RADIOLOGIST, PATHOLOGIST AND/OR AN ANESTHESIOLOGIST
YOU MAY RECEIVE A SEPARATE BILL FOR THEIR CHARGES

← DIRECT ALL CORRESPONDENCE TO:



WELLSTAR DOUGLAS HOSPITAL
P.O. BOX 406155
ATLANTA GA 30384-6155
TAX ID 58-2026750

STATEMENT OF ACCOUNT

01/31/14

FOR QUESTIONS REGARDING
THIS STATEMENT PLEASE CALL
770-792-5400

PATIENT:
PERKINS, BETTY JEAN

PATIENT ACCOUNT NUMBER
D12305-00890

DATE ADMITTED
11/01/12

DATE DISCHARGED
11/01/12

PAGE NO
001

REFER TO THIS NUMBER
ON ALL CORRESPONDENCE

AMOUNT PAID: \$

BILL TO	
BETTY JEAN PERKINS 722 TAYLOR DR SE SMYRNA	GA 30080-1061

REMIT TO
WELLSTAR DOUGLAS HOSPITAL P.O. BOX 406155 ATLANTA GA 30384-6155

MAKE CHECKS PAYABLE TO THE ABOVE

METHOD OF PAYMENT

☐ CHECK

☐ MONEY ORDER



CARD #

EXP. DATE

SIGNATURE

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

POSTING DATE	ORDER NO.	ITEM NO	DESCRIPTION	QTY	ITEM PRICE	TOTAL CHARGES
11/01/12	10	1752	METHYLPREDNISOLONE ACET 80MG	1	66.75	66.75
11/01/12	11	1855	MIDAZOLAM HCL 1MG/ML 2ML VIA	1	15.00	15.00
11/01/12	12	4390	FENTANYL CIT PF 50MCG/ML 2ML	1	15.00	15.00
11/01/12	13	449	BUPIVACAINE HCL PF 0.25% 10M	1	15.00	15.00
			TOTAL 250 PHARMACY			111.75
01/12	5	12632	OMNIPAQUE 180MG 10ML PER ML	10	4.00	40.00
			TOTAL 255 DRUGS/INCIDENT RADIOLOGY			40.00
11/01/12	14	21650	TRAY EPIDURAL INJ DISP SINGL	1	43.00	43.00
			TOTAL 272 STERILE SUPPLIES			43.00
11/01/12	1	72413	FL FLUORO EPIDURAL IN OR	1	702.00	702.00
			TOTAL 320 RADIOLOGY			702.00
11/01/12	2	52059	PAIN MANAGEMENT	1	2,680.00	2,680.00
			TOTAL 361 MINOR SURGERY			2,680.00
11/01/12	3	64498	CONSCIOUS SEDATION	1	509.00	509.00
			TOTAL 372 ANESTHESIA INCIDENT + OTHE			509.00
			TOTAL CHARGES			4,085.75

AMOUNTS INDICATED TO BE PAID BY THIRD PARTIES ARE ESTIMATED BY THE HOSPITAL,
NEVER, THE PATIENT AND/OR RESPONSIBLE PARTY HAVE PERSONALLY GUARANTEED
PAYMENT AND ARE RESPONSIBLE FOR THE TOTAL CHARGES ON THIS STATEMENT.



PATIENT FINANCIAL SERVICES
805 SANDY PLAINS ROAD
MARIETTA, GA 30066
TAX ID - 58-2026750

IF YOU RECEIVED THE SERVICES OF AN EMERGENCY ROOM PHYSICIAN,
RADIOLOGIST, PATHOLOGIST AND/OR AN ANESTHESIOLOGIST
YOU MAY RECEIVE A SEPARATE BILL FOR THEIR CHARGES

← DIRECT ALL CORRESPONDENCE TO:



WELLSTAR DOUGLAS HOSPITAL
P.O. BOX 406155
ATLANTA GA 30384-6155
TAX ID 58-2026750

01/31/14

STATEMENT OF ACCOUNT

FOR QUESTIONS REGARDING
THIS STATEMENT PLEASE CALL
770-792-5400

PATIENT:
PERKINS, BETTY JEAN

PATIENT ACCOUNT NUMBER
D13031-01404

DATE ADMITTED
01/31/13

DATE DISCHARGED
01/31/13

PAGE NO
001

REFER TO THIS NUMBER
ON ALL CORRESPONDENCE

AMOUNT PAID: \$ _____

BILL TO	
BETTY JEAN PERKINS 722 TAYLOR DR SE SMYRNA	GA 30080-1061

REMIT TO
WELLSTAR DOUGLAS HOSPITAL P.O. BOX 406155 ATLANTA GA 30384-6155

MAKE CHECKS PAYABLE TO THE ABOVE

METHOD OF PAYMENT

☐ CHECK ☐ VISA ☐ MASTER CARD ☐ AMERICAN EXPRESS ☐ DISCOVER ☐
☐ MONEY ORDER

CARD # _____ EXP. DATE _____

SIGNATURE _____

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE.

POSTING DATE	ORDER NO.	ITEM NO	DESCRIPTION	QTY	ITEM PRICE	TOTAL CHARGES
01/31/13	10	1752	METHYLPREDNISOLONE ACET 80MG	1	66.75	66.75
01/31/13	11	1855	MIDAZOLAM HCL 1MG/ML 2ML VIA	1	15.00	15.00
01/31/13	12	4390	FENTANYL CIT PF 50MCG/ML 2ML	1	15.00	15.00
01/31/13	13	449	BUPIVACAINE HCL PF 0.25% 10M	1	15.00	15.00
			TOTAL 250 PHARMACY			111.75
01/31/13	5	12632	OMNIPAQUE 180MG 10ML PER ML	10	4.00	40.00
			TOTAL 255 DRUGS/INCIDENT RADIOLOGY			40.00
01/31/13	14	4287	LIDOCAINE 5% PATCH	1	37.50	37.50
			TOTAL NON-COVERED PHARMACY			37.50
01/31/13	6	21650	TRAY EPIDURAL INJ DISP SINGL	1	43.00	43.00
01/31/13	15	92207	NDL EPIDURAL TUOHY 18G 3 1/2	1	21.00	21.00
			TOTAL 272 STERILE SUPPLIES			64.00
01/31/13	1	72413	FL FLUORO EPIDURAL IN OR	1	702.00	702.00
			TOTAL 320 RADIOLOGY			702.00
01/31/13	2	52059	PAIN MANAGEMENT	1	2,680.00	2,680.00
			TOTAL 361 MINOR SURGERY			2,680.00
01/31/13	3	64498	CONSCIOUS SEDATION	1	509.00	509.00
			TOTAL 372 ANESTHESIA INCIDENT + OTH			509.00
			TOTAL CHARGES			4,144.25

NOTE: AMOUNTS INDICATED TO BE PAID BY THIRD PARTIES ARE ESTIMATED BY THE HOSPITAL. HOWEVER, THE PATIENT AND/OR RESPONSIBLE PARTY HAVE PERSONALLY GUARANTEED PAYMENT AND ARE RESPONSIBLE FOR THE TOTAL CHARGES ON THIS STATEMENT.



PATIENT FINANCIAL SERVICES
805 SANDY PLAINS ROAD
MARIETTA, GA 30066
TAX ID - 58-2026750

IF YOU RECEIVED THE SERVICES OF AN EMERGENCY ROOM PHYSICIAN, RADIOLOGIST, PATHOLOGIST AND/OR AN ANESTHESIOLOGIST YOU MAY RECEIVE A SEPARATE BILL FOR THEIR CHARGES

← DIRECT ALL CORRESPONDENCE TO:

SB: 20251 Complete Renderer: Keeling, J. Wayne DOS: 11/6/2013 Service Site: Main Office Financial Ctr: Rockingham Dr: 219.46

Transaction	Service Date	Posted Date	Description	Ref Number	Fee
99214	11/6/2013	11/6/2013	Established Patient Level IV		\$105.33

Total: \$105.33

SB: 20239 Complete Renderer: Keeling, J. Wayne DOS: 10/30/2013 Service Site: Main Office Financial Ctr: Rockingham Dr: 219.46, 724.2

Transaction	Service Date	Posted Date	Description	Ref Number	Fee
99205	10/30/2013	10/30/2013	New Patient Level V		\$284.02

610	10/30/2013	10/30/2013	#103--Injection of KNEE W/OUT aspiration		\$122.00

31030	10/30/2013	10/30/2013	104--injection methylprednisolone acetate, 40 mg		\$17.88

73562N	10/30/2013	10/30/2013	Knee X-ray -- ABNORMAL		\$64.64

Total: \$488.54

Rockingham Orthopaedic Associates

Patient Ledger

Service Dates: All
 Posting Dates: All
 Financial Centers: All
 Service Sites: All
 Rendering Providers: All
 Voids Included In Ledger

Responsible Party:	Perkins, Betty 708 Irving Ave. Eden, NC 27288	Total Amount Billed:	\$703.31
Daytime Phone:	(336)344-5871		
Patient:	Perkins, Betty		
Account:	Main		

SB: C21519 Pending Patient - Rendering: Keeling, J. Wayne - DOS: 2/19/2014 - Service Site: Main Office - Financial Ctr: Rockingham - Dxi									
Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal	
COLLECT	2/19/2014	2/19/2014	COLLECTIONS		\$4.11	\$0.00	\$0.00	\$4.11	
Due: \$4.11	Pd: \$0.00		Adj: \$0.00		Total: \$4.11	\$0.00	\$0.00	\$4.11	

SB: 20528 Pending Patient Payment - Rendering: Keeling, J. Wayne - DOS: 11/27/2013 - Service Site: Main Office - Financial Ctr: Rockingham - Dxi: 719.46									
Transaction	Service Date	Posted Date	Description	Ref Number	Fee				
99214	11/27/2013	11/27/2013	Established Patient Level IV		\$105.33				

Total: \$105.33

06/03/2014
2:33 pm VU

SOUTHEASTERN ORTHOPAEDIC SPECIALISTS 01
A N A L Y S I S (MW01)

Page 1
jenniferf

2847521 - PERKINS, BETTY J 15-04-05-01- 708 IRVING AVE

Date	Description	Phys/Fac	Charge	Credit	Group Tot
02/10/2014	99203. OFFICE OUTPATIENT N	10BB/MWE	219.00		219.00
02/10/2014	28470. CLOSED TX METATARSA	10BB/MWE	397.00		397.00
02/10/2014	73630. RADEX FOOT COMPLETE	10BB/MWE	85.00		85.00
02/10/2014	L4360. SHORT LEG WALKER/AI	10BB/MWE	289.85		289.85
02/24/2014	99213. OFFICE OUTPATIENT V	10BB/MWE	118.00		118.00
02/24/2014	20610. ARTHROCENTESIS ASPI	10BB/MWE	154.00		154.00
02/24/2014	J1040. METHYLPREDNISOLONE,	10BB/MWE	32.00		32.00
02/24/2014	73620. RADIOLOGIC EXAMINAT	10BB/MWE	65.00		65.00
03/17/2014	73630. RADEX FOOT COMPLETE	10BB/MWE	85.00		85.00
04/22/2014	73630. RADEX FOOT COMPLETE	41AV/MWE	85.00		85.00
05/06/2014	99214. OFFICE OUTPATIENT V	41RW/MWE	171.00		171.00

06/03/2014
2:33 pm VU

SOUTHEASTERN ORTHOPAEDIC SPECIALISTS 01
A N A L Y S I S (MW01)

Page 2
jennifert

(384752) PERKINS, BETTY J 15-04-05-01- 708 IRVING AVE

Date	Description	Phys/Fac	Charge	Credit	Group Tot

05/06/2014	73564. RADIOLOGIC EXAM KNE	41RW/MWE	102.00		102.00

05/06/2014	L1820. OPEN PAT SPLINT/SLE	41RW/MWE	226.58		226.58

05/13/2014	99213. OFFICE OUTPATIENT V	41RW/MWE	118.00		118.00

05/13/2014	20610. ARTHROCENTESIS ASPI	41RW/MWE	154.00		154.00

05/13/2014	J7323. EUFLEXXA	41RW/MWE	360.00		360.00

05/20/2014	99214. OFFICE OUTPATIENT V	41RW/MWE	171.00		171.00

09/09/2014
11:17 am VU

SOUTHEASTERN ORTHOPAEDIC SPECIALISTS 01
A N A L Y S I S (MW01)

Page 1
jenniferf

(0384752) PERKINS, BETTY J 15-04-05-01- 708 IRVING AVE

ate	Description	Phys/Fac	Charge
07/28/2014	27447. ARTHRP KNE CONDYLE&	10RW/MCH	7000.00
07/28/2014	27447. ARTHRP KNE CONDYLE&	10JC/MCH	1750.00
08/11/2014	99024. POSTOP FOLLOW UP VI	10KS/MWO	.00
08/11/2014	73562. RADIOLOGIC EXAMINAT	10KS/MWO	74.00
08/26/2014	99024. POSTOP FOLLOW UP VI	41RW/MWE	.00

03/03/2015
2:17 pm VU

SOUTHEASTERN ORTHOPAEDIC SPECIALISTS 01
A N A L Y S I S (MW01)

Page 1
jenniferf.

(0384752) PERKINS, BETTY J 15-05-04-01- 708 IRVING AVE

ate	Description	Phys/Fac	Charge	Group Tot
08/26/2014	99024. POSTOP FOLLOW UP VI	41RW/MWE	.00	.00
09/23/2014	99024. POSTOP FOLLOW UP VI	41RW/MWE	.00	.00
10/28/2014	99024. POSTOP FOLLOW UP VI	41RW/MWE	.00	.00
11/25/2014	99212. OFFICE OUTPATIENT V	41RW/MWE	67.00	67.00
02/24/2015	99214. OFFICE OUTPATIENT V	41RW/MWE	171.00	171.00
	GRAND TOTAL			206.00

03/03/2015
2:17 pm VU

SOUTHEASTERN ORTHOPAEDIC SPECIALISTS 01
A N A L Y S I S (MW01)

Page 1
jenniferf

(0284752) PERKINS, BETTY J 15-05-04-01- 708 IRVING AVE

Date	Description	Phys/Fac	Charge
08/26/2014	99024. POSTOP FOLLOW UP VI	41RW/MWE	.00
09/23/2014	99024. POSTOP FOLLOW UP VI	41RW/MWE	.00
10/28/2014	99024. POSTOP FOLLOW UP VI	41RW/MWE	.00
11/25/2014	99212. OFFICE OUTPATIENT V	41RW/MWE	67.00
02/24/2015	99214. OFFICE OUTPATIENT V	41RW/MWE	171.00


CONE HEALTH
 The Network for Exceptional Care

8/19/2014

Itemized Statement
 P.O. Box 26580
 Greensboro, NC 27415-6580

 Greensboro Area: 336-832-8014 Outside Greensboro Area Toll Free: 1-866-479-8800
 www.conehealth.com/customerservice Tax ID: 58-1588823

Guarantor Name and Address	Insurance Company Name
Betty J Perkins 708 IRVING AVE EDEN, NC 27288	
	Physician Name
	WAINER, ROBERT A

Please refer to account number on all inquiries and correspondence.

Patient Name	Account Number	Admission Date	Discharge Date	Total Due
Perkins, Betty J	401184829	07/28/2014	07/30/2014	\$340.00

Charges

Date of Service	Rev. Code	Procedure Code	Description	Qty	Amount
07/28/14	0781	76100052	HC PRE OP SCHED LEVEL 2	1	136.00
07/28/14	0258	J7120	LACTATED RINGERS SOLN 1,000 ML FLEX CONT	1	55.00
07/28/14	0250	J2250	MIDAZOLAM 5 MG/5ML SOLN	5	16.00
07/28/14	0250	J3010	FENTANYL 0.05 MG/ML SOLN 2 ML AMPULE	1	16.00
07/28/14	0250	J3010	FENTANYL 0.05 MG/ML SOLN 2 ML AMPULE	1	16.00
07/28/14	0250	J3010	FENTANYL 0.05 MG/ML SOLN 2 ML AMPULE	1	16.00
07/28/14	0250	J3010	FENTANYL 0.05 MG/ML SOLN 2 ML AMPULE	1	16.00
07/28/14	0250	J3370	VANCOMYCIN 10 G SOLR	3	20.50
07/28/14	0258	J7040	SODIUM CHLORIDE 0.9 % SOLN	1	55.00
07/28/14	0250	J3490	PROPOFOL 10 MG/ML EMUL 20 ML VIAL	1	55.10
07/28/14	0250	J3490	ROCURONIUM 100 MG/10ML SOLN	5	18.00
07/28/14	0250	J3490	ARTIFICIAL TEARS OINT 3.5 G TUBE	1	13.00
07/28/14	0272	J3490	SODIUM CHLORIDE IRRIGATION 0.9 % SOLN 1,000 ML FLEX CONT	1	55.00
07/28/14	0272	J3490	SODIUM CHLORIDE IRRIGATION 0.9 % SOLN 1,000 ML FLEX CONT	3	108.00
07/28/14	0250	J3490	BUPIVACAINE-EPINEPHRINE 0.25 % SOLN	30	25.40
07/28/14	0250	J3490	DEXMEDETOMIDINE 200 MCG/50ML SOLN 50 ML GLASS CONT	1	123.60
07/28/14	0270	25000015	HC SEVOFLURANE PER HOUR	2	116.00
07/28/14	0379	37000256	HC ANES PQRI PROPHY AB ORDER	1	0.01
07/28/14	0379	37000257	HC ANES PQRI PROPHY AB GIVEN	1	0.01
07/28/14	0270	27000029	HC ANES SET UP PERIPHERAL NERVE	1	107.47
07/28/14	0761	37000254	HC ANES US GUIDE NEEDLE PLACE	1	484.00
07/28/14	0761	37000249	HC ANES FEMORAL NERVE BLOCK	1	1,152.00
07/28/14	0250	J3490	TRANEXAMIC ACID 100 MG/ML SOLN	1	225.80
07/28/14	0258	J3490	SODIUM CHLORIDE 0.9 % SOLN	1	55.00
07/28/14	0250	J3490	GLYCOPYRROLATE 0.2 MG/ML SOLN 1 ML VIAL	1	31.30
07/28/14	0258	J7120	LACTATED RINGERS SOLN 1,000 ML FLEX CONT	1	55.00
07/28/14	0250	J2405	ONDANSETRON 4 MG/2ML SOLN 2 ML VIAL	4	16.00
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN	1	16.00
07/28/14	0250	J2270	MORPHINE 10 MG/ML SOLN 1 ML SYRINGE	1	16.00
07/28/14	0250	J2710	NEOSTIGMINE 1 MG/ML SOLN 10 ML VIAL	6	16.00
07/28/14	0250	J3490	GLYCOPYRROLATE 0.2 MG/ML SOLN 1 ML VIAL	2	47.50
07/28/14	0250	J2270	MORPHINE 10 MG/ML SOLN 1 ML SYRINGE	1	16.00



CONE HEALTH

The Network for Exceptional Care

8/19/2014

Itemized Statement

P.O. Box 26580
Greensboro, NC 27415-6580

Greensboro Area: 336-832-8014 Outside Greensboro Area Toll Free: 1-866-479-8800
www.conehealth.com/customerservice Tax ID: 58-1588823

Guarantor Name and Address	Insurance Company Name
Betty J Perkins 708 IRVING AVE EDEN, NC 27288	
	Physician Name
	WAINER, ROBERT A

Please refer to account number on all inquiries and correspondence.

Patient Name	Account Number	Admission Date	Discharge Date	Total Due
Perkins, Betty J	401184829	07/28/2014	07/30/2014	\$340.00

Date of Service	Rev Code	Procedure Code	Description	Qty	Amount
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN	1	16.00
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN	1	16.00
07/28/14	0250	J3490	OXYCODONE 5 MG TABS	1	1.10
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN	1	16.00
07/28/14	0250	J0131	ACETAMINOPHEN 10 MG/ML SOLN 100 ML VIAL	100	121.20
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN	1	16.00
07/28/14	0250	J3490	OXYCODONE 5 MG TABS	1	1.10
07/28/14	0271	27400033	HC CONTINUOUS PASSIVE MOTION MACHINE	1	125.00
07/28/14	0270	27000107	HC TRAPEZE BAR PATIENT HELPER	1	121.91
07/28/14	0700	70000058	HC STRAPPING KNEE	1	228.00
07/28/14	0710	71000008	HC PACU CLASS 2 NPR 2:1	1	1,156.00
07/28/14	0270	27000347	HC ERX WAFARIN CONSULT	1	50.00
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/28/14	0250	J3490	DIAZEPAM 5 MG TABS	1	1.00
07/28/14	0250	J1100	DEXAMETHASONE SOD PHOSPHATE PF 10 MG/ML SOLN	10	16.00
07/28/14	0410	41000311	HC INCENTIVE SPIROMETRY DISP	1	123.00
07/28/14	0250	J3490	DOCUSATE SODIUM 100 MG CAPS	1	1.00
07/28/14	0250	J3490	HYDROCHLOROTHIAZIDE 25 MG TABS	1	1.00
07/28/14	0250	J3490	MULTIVITAMIN WITH MINERALS TABS	1	1.00
07/28/14	0250	J3490	CITALOPRAM 20 MG TABS	1	5.40
07/28/14	0250	J3490	CLINDAMYCIN 600 MG/50ML SOLN 50 ML FLEX CONT	1	59.80
07/28/14	0250	J3490	PANTOPRAZOLE 40 MG TBEC	1	10.60
07/28/14	0258	J7030	SODIUM CHLORIDE 0.9 % SOLN 1,000 ML FLEX CONT	1	55.00
07/28/14	0424	42400009	HC PHYSICAL THERAPY EVAL TIER I	1	196.00
07/28/14	0420	42000024	HC GAIT TRAINING	1	83.00
07/28/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/28/14	0250	J3490	WARFARIN 7.5 MG TABS	1	5.70
07/28/14	0250	J3490	ATORVASTATIN 40 MG TABS	1	11.60
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/28/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/28/14	0250	J3490	CLINDAMYCIN 600 MG/50ML SOLN 50 ML FLEX CONT	1	59.80
07/28/14	0250	J3490	DOCUSATE SODIUM 100 MG CAPS	1	1.00



CONE HEALTH

The Network for Exceptional Care

8/19/2014

Itemized Statement

P.O. Box 26580
Greensboro, NC 27415-6580

Greensboro Area: 336-832-8014 Outside Greensboro Area Toll Free: 1-866-479-8800
www.conehealth.com/customerservice Tax ID: 58-1588823

Guarantor Name and Address	Insurance Company Name
Betty J Perkins 708 IRVING AVE EDEN, NC 27288	
	Physician Name
	WAINER, ROBERT A

Please refer to account number on all inquiries and correspondence.

Patient Name	Account Number	Admission Date	Discharge Date	Total Due
Perkins, Betty J	401184829	07/28/2014	07/30/2014	\$340.00

Date of Service	Rev Code	Procedure Code	Description	Qty	Amount
07/28/14	0250	J3490	MORPHINE 15 MG TBCR	2	7.50
07/28/14	0250	J3490	TIZANIDINE 4 MG TABS	1	5.10
07/28/14	0250	J8540	DEXAMETHASONE 2 MG TABS	8	1.40
07/28/14	0250	J8540	DEXAMETHASONE 4 MG TABS	32	2.60
07/28/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/28/14	0110	11000001	HC PRIVATE ROOM AND CARE	1	650.00
07/28/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/28/14	0300	104112010	C-CBC/PLATELET	1	53.00
07/28/14	0300	104112022	C-CREATININE	1	55.00
07/28/14	0270	27000023	HC ANES SET UP ROUTINE	1	356.88
07/28/14	0370	37000164	HC ANES TOTAL KNEE ARTHROPLASTY RVU 7 01402	10	1,252.00
07/28/14	0271	27100038	HC OXYGEN O2 SET UP DEVICES	1	16.50
07/28/14	0271	27100039	HC OXYGEN PER DAY	1	79.20
07/28/14	0271	102083056	C-PLEXI-PULSE FOOT WRAP	1	198.45
07/28/14	0272	27200913	HOOD DISPOSABLE 400 800 100	3	175.37
07/28/14	0272	27200913	PULSAVAC HANDPIECE 0210118100	1	85.20
07/28/14	0272	27200916	SUT VIC AB 2-0 CT1 27 VCP259H	2	4.00
07/28/14	0272	27200913	PACK TOTAL JOINT	1	130.81
07/28/14	0272	27200913	CUFF TOURNIQUET SINGLE PORT 34	1	60.68
07/28/14	0272	27200913	BOWL SMART MIX CTS	1	142.00
07/28/14	0272	27200913	BLADE SAGITTAL 13.0X1.19X90.0M	1	90.88
07/28/14	0272	27200913	BLADE SAGITTAL 25.0X1.19X90MM	1	90.88
07/28/14	0272	27200916	SUT MON AB 3-0 PS2 18 MCP497G	1	12.01
07/28/14	0272	27200916	SUT VIC AB 0 CT1 27 VCP260H	2	4.00
07/28/14	0272	27200916	SUT ETHIBOND 1 CT 1 X425H	2	4.00
07/28/14	0278	27802328	CEMENT HV SMART SET 3092-040	2	340.80
07/28/14	0278	C1776	CAPT RP KNEE	1	7,240.00
07/28/14	0360	36001327	HC CATEGORY 5 INITIAL 15 MIN	1	5,582.00
07/28/14	0360	36001326	HC CATEGORY 5 ADDL 15 MIN	9	5,049.00
07/29/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/29/14	0250	J3490	DIAZEPAM 5 MG TABS	1	1.00
07/29/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/29/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/29/14	0258	J7030	SODIUM CHLORIDE 0.9 % SOLN 1,000 ML FLEX CONT	1	55.00
07/29/14	0250	J8540	DEXAMETHASONE 2 MG TABS	8	1.40
07/29/14	0250	J8540	DEXAMETHASONE 4 MG TABS	32	2.60



CONE HEALTH

The Network for Exceptional Care

8/19/2014

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P.O. Box 26580
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www.conehealth.com/customerservice Tax ID: 58-1588823

Guarantor Name and Address	Insurance Company Name
Betty J Perkins 708 IRVING AVE EDEN, NC 27288	
	Physician Name
	WAINER, ROBERT A

Please refer to account number on all inquiries and correspondence.

Patient Name	Account Number	Admission Date	Discharge Date	Total Due
Perkins, Betty J	401184829	07/28/2014	07/30/2014	\$340.00

Date of Service	Rev Code	Procedure Code	Description	Qty	Amount
07/29/14	0250	J1650	ENOXAPARIN 30 MG/0.3ML SOLN	3	38.80
07/29/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/29/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/29/14	0270	27000347	HC ERX WAFARIN CONSULT	1	50.00
07/29/14	0250	J3490	CITALOPRAM 20 MG TABS	1	6.40
07/29/14	0250	J3490	DOCUSATE SODIUM 100 MG CAPS	1	1.00
07/29/14	0250	J3490	HYDROCHLOROTHIAZIDE 25 MG TABS	1	1.00
07/29/14	0250	J3490	MULTIVITAMIN WITH MINERALS TABS	1	1.00
07/29/14	0250	J3490	PANTOPRAZOLE 40 MG TBEC	1	10.60
07/29/14	0250	J3490	MORPHINE 15 MG TBCR	2	7.50
07/29/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/29/14	0420	42000024	HC GAIT TRAINING	1	83.00
07/29/14	0420	42000021	HC THERAPEUTIC EXERCISE PT	1	106.00
07/29/14	0250	J3490	OXYCODONE 5 MG TABS	1	1.10
07/29/14	0250	J3490	OXYCODONE 5 MG TABS	1	1.10
07/29/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/29/14	0420	42000024	HC GAIT TRAINING	1	83.00
07/29/14	0420	42000021	HC THERAPEUTIC EXERCISE PT	1	106.00
07/29/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/29/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/29/14	0250	J3490	WARFARIN 7.5 MG TABS	1	5.70
07/29/14	0250	J3490	ATORVASTATIN 40 MG TABS	1	11.60
07/29/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/29/14	0250	J3490	DIAZEPAM 5 MG TABS	1	1.00
07/29/14	0250	J1650	ENOXAPARIN 30 MG/0.3ML SOLN	3	38.80
07/29/14	0250	J3490	MORPHINE 15 MG TBCR	2	7.50
07/29/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/29/14	0250	J3490	DOCUSATE SODIUM 100 MG CAPS	1	1.00
07/29/14	0250	J3490	TIZANIDINE 4 MG TABS	1	3.00
07/29/14	0110	11000001	HC PRIVATE ROOM AND CARE	1	650.00
07/29/14	0300	104112009	C-BASIC METABOLIC PANEL	1	101.00
07/29/14	0300	104112010	C-CBC/PLATELET	1	53.00
07/29/14	0300	104114000	C-PROTHROMBIN TIME	1	53.00
07/30/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/30/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/30/14	0250	J3490	DIAZEPAM 5 MG TABS	1	1.00


CONE HEALTH
 The Network for Exceptional Care

8/19/2014

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 P.O. Box 26580
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www.conehealth.com/customerservice Tax ID: 58-1588823

Guarantor Name and Address	Insurance Company Name
Betty J Perkins 708 IRVING AVE EDEN, NC 27288	
	Physician Name
	WAINER, ROBERT A

Please refer to account number on all inquiries and correspondence.

Patient Name	Account Number	Admission Date	Discharge Date	Total Due
Perkins, Betty J	401184829	07/28/2014	07/30/2014	\$340.00

Date of Service	Rev Code	Procedure Code	Description	Qty	Amount
07/30/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/30/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/30/14	0250	J1650	ENOXAPARIN 30 MG/0.3ML SOLN	3	38.80
07/30/14	0420	42000024	HC GAIT TRAINING	1	83.00
07/30/14	0420	42000021	HC THERAPEUTIC EXERCISE PT	1	106.00
07/30/14	0250	J3490	MORPHINE 15 MG TBCR	2	7.50
07/30/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/30/14	0250	J3490	MULTIVITAMIN WITH MINERALS TABS	1	1.00
07/30/14	0250	J3490	CITALOPRAM 20 MG TABS	1	5.40
07/30/14	0250	J3490	HYDROCHLOROTHIAZIDE 25 MG TABS	1	1.00
07/30/14	0250	J3490	DOCUSATE SODIUM 100 MG CAPS	1	1.00
07/30/14	0250	J3490	PANTOPRAZOLE 40 MG TBEC	1	10.60
07/30/14	0434	43400001	HC OCCUPATIONAL THERAPY EVAL TIER I	1	209.00
07/30/14	0430	43000017	HC THERAPEUTIC ACTIVITIES OT	1	111.00
07/30/14	0420	42000024	HC GAIT TRAINING	1	83.00
07/30/14	0921	92100015	HC US VENOUS IMG UNILATERAL	1	737.00
07/30/14	0250	J3490	OXYCODONE 5 MG TABS	2	2.20
07/30/14	0270	27000347	HC ERX WAFARIN CONSULT	1	50.00
07/30/14	0250	J1170	HYDROMORPHONE 1 MG/ML SOLN 1 ML CRTRDG-NDL	1	16.00
07/30/14	0300	104112010	C-CBC/PLATELET	1	53.00
07/30/14	0300	104114000	C-PROTHROMBIN TIME	1	53.00
			Total charges		30,596.66



P. O. Box 18049
Greensboro, NC 27419

Tel: 336-878-8825
Fax: 336-878-8524

Patient Name: Betty Perkins
Account Number: 00337264

Claim Type	Date Of Service	Service	Amount	Payer
Initial Charge	08/11/2014	Skilled Nursing / \$	100.00	PARTNERSMDT
Initial Charge	08/11/2014	Physical Therap: \$	100.00	PARTNERSMDT
Initial Charge	08/13/2014	Physical Therap: \$	100.00	PARTNERSMDT
Initial Charge	08/15/2014	Physical Therap: \$	100.00	PARTNERSMDT
Initial Charge	08/22/2014	Physical Therap: \$	100.00	PARTNERSMDT
Initial Charge	08/26/2014	Physical Therap: \$	100.00	PARTNERSMDT
Initial Charge	08/20/2014	Physical Therap: \$	100.00	PARTNERSMDT
Initial Charge	08/14/2014	Skilled Nursing / \$	100.00	PARTNERSMDT
Initial Charge	08/19/2014	Skilled Nursing / \$	100.00	PARTNERSMDT
Initial Charge	08/21/2014	Skilled Nursing / \$	100.00	PARTNERSMDT
Initial Charge	08/26/2014	Skilled Nursing / \$	100.00	PARTNERSMDT
Initial Charge	08/19/2014	Occupational Th \$	100.00	PARTNERSMDT

Randolph Specialty Group

PO Box 5418 Asheville NC 272045418
Tel: (336) 625-2333 Fax: (336) 625-5511

ACCOUNT INQUIRY

10/21/2014 9:13 AM

Account# 90221820

Guarantor Information:

Betty J Perkins
708 Irving Ave
Eden, NC 27288

Home Tel#: (336) 344-5871
Work Tel#:

Patient Information:
Patient# 90221820

Betty J Perkins
708 Irving Ave
Eden, NC 27288

Home Tel#: (336) 344-5871
Work Tel#:

Payor	Current	31-60 Days	61-90 Days	Over 90	Balance

Total Balance: \$1,579.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance Payor	Coverage Type	Billed Date	Age	Patient
09/04/2014	2023760	LAMASONW	\$244.00		\$0.00		09/17/2014	0	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/04/2014	97001	GP	Physical Ther Eval	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$139.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/04/2014	97110	GP	Ther Pk 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$53.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt

09/04/2014 97140 GP Mini Ther Tqs 1+ Regions Ea 15 Min 719.46 Pain In Joint, Lower Leg MEDICAL 1.00 \$52.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/04/2014	G8978	GP,CK	Mobility Current Status	719.46	Pain In Joint, Lower Leg	OTHER	1.00	\$0.00

payment

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/04/2014	G8979	GP,CJ	Mobility Goal Status	719.46	Pain In Joint, Lower Leg	OTHER	1.00	\$0.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patent
09/08/2014	2030430	LAMASONW	\$211.00	\$211.00	\$0.00		Medical	09/17/2014	0	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/08/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/08/2014	97140	GP	Mini Ther Tqs 1+ Regions	719.46	Pain In Joint, Lower	MEDICAL	1.00	\$52.00

Ea 15 Min

Leg

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/10/2014	2030440	LAMASONW	\$211.00	\$211.00	\$0.00	I	Medical	09/17/2014	0	Betty J Perkins

Dates of Service	Procedure	Modis	Description	Diag1	Description	TOS	Units	Fee Amt
09/10/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

Dates of Service	Procedure	Modis	Description	Diag1	Description	TOS	Units	Fee Amt
09/10/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/11/2014	2030460	LAMASONW	\$211.00	\$176.00	\$35.00		Medical	09/30/2014	21	Betty J Perkins

Dates of Service	Procedure	Modis	Description	Diag1	Description	TOS	Units	Fee Amt
09/11/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

Dates of Service	Procedure	Modis	Description	Diag1	Description	TOS	Units	Fee Amt
09/11/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/15/2014	2049360	LAMASONW	\$105.00	\$70.00	\$35.00	I	Medical	09/30/2014	21	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/15/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$53.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/15/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	715.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/17/2014	2046760	LAMASONW	\$211.00	\$176.00	\$35.00	I	Medical	10/08/2014	13	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/17/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/17/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/19/2014	2046770	LAMASONW	\$211.00	\$176.00	\$35.00		Medical	10/08/2014	13	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/19/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/19/2014	97140	GP	Mnt Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/22/2014	2067260	LAMASONW	\$211.00	\$176.00	\$35.00		Medical	10/08/2014	13	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/22/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

10-21-'14 15:46 FROM-
Account Inquiry

T-519 PC007/0085 F-266
1 of 1

10/16/2014 121000240804852m Medical MEDICAID Medicaid Payment (CO-109) \$0.00

kd121000240804852e Updated 10/16/2014

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/22/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/22/2014	G8978	GP,CK	Mobility Current Status	719.46	Pain In Joint, Lower Leg	OTHER	1.00	\$0.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/22/2014	G8979	GP,C	Mobility Goal Status	719.46	Pain In Joint, Lower Leg	OTHER	1.00	\$0.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/24/2014	2067270	LAMASONW	\$211.00	\$176.00	\$35.00		Medical	10/08/2014	13	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/24/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

File:///C:/Users/ADMINI~1/AppData/Local/Temp/psimViewer/psimViewerE7F5.tmp

10/21/2014

T-519 P0007/0085 F-266
1 a g c v v i 2

Dates of Service	Procedure	Mods	Description	Diagl	Description	TOS	Units	Fee Amt
09/22/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

Payment

Payment							Units	Fee Amt
Dates of Service	Procedure	Mods	Description	Diagl	Description	TOS	Units	Fee Amt
09/22/2014	G8978	GP,CK	Mobility Current Status	719.46	Pain In Joint, Lower Leg	OTHER	1.00	\$0.00

Dates of Service	Procedure	Mod	Description	Diag1	Description	TOS	Units	Fee Amt
09/22/2014	G8979	GP, C	Mobility Goal Status	719.46	Pain In Joint, Lower Leg	OTHER	1.00	\$0.00

Service Date	Voucher#	Provider	Chg AMT	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/24/2014	2067270	LAMASONW	\$211.00	\$176.00	\$35.00		Medical	10/08/2014	13	Betty J Perkins

Dates of Service	Procedure	Mod	Description	Diag1	Description	TOS	Units	Fee Amt
09/24/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/24/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/26/2014	2067300	LAMASONW	\$211.00	\$176.00	\$35.00		Medical	10/08/2014	13	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/26/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/26/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00

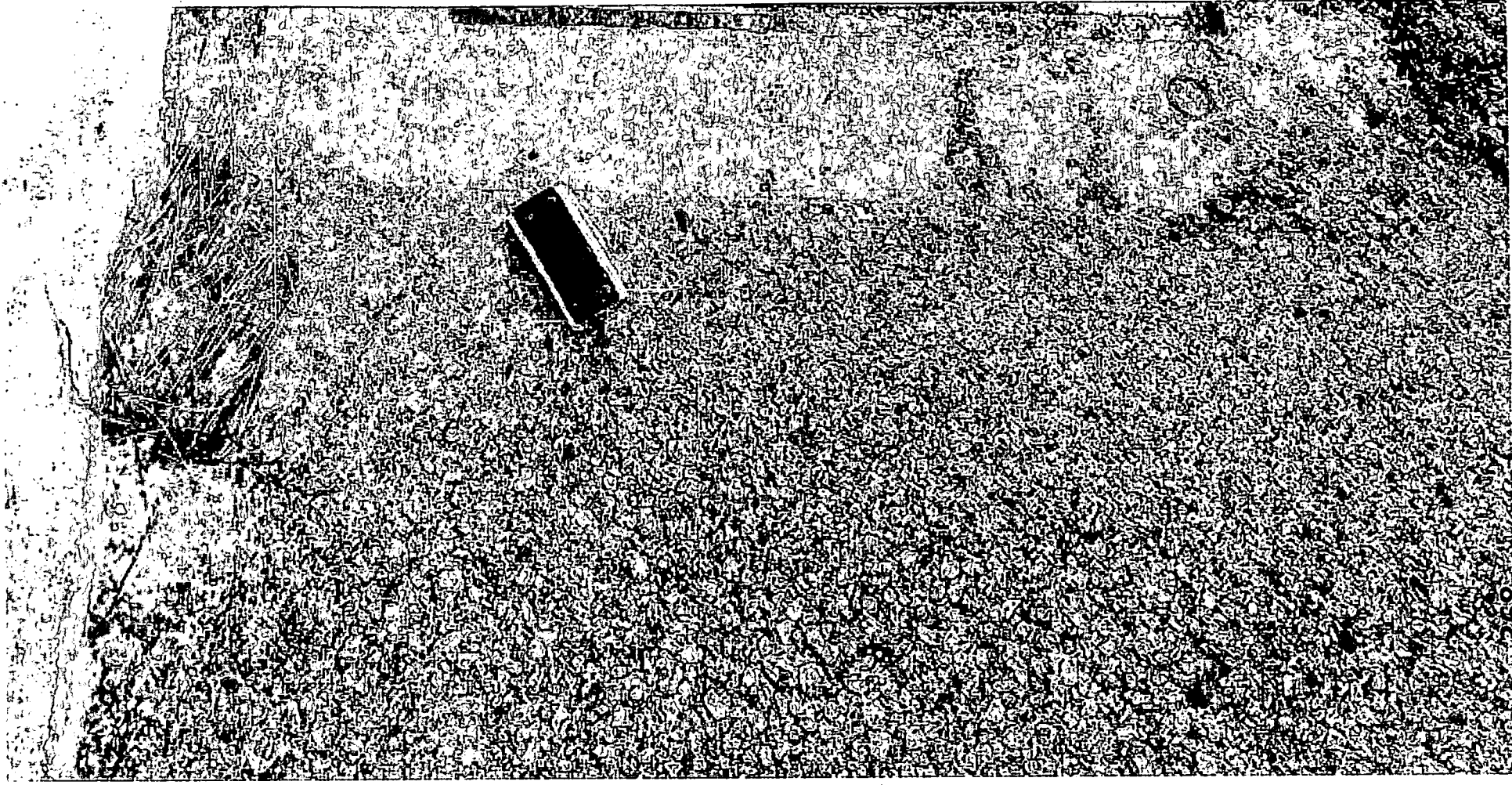
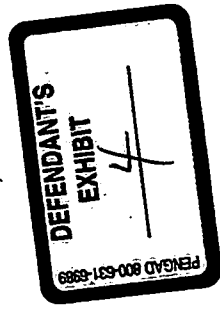
Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
09/29/2014	2078360	LAMASONW	\$211.00	\$176.00	\$35.00		Medical	10/08/2014	13	Betty J Perkins

Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
09/29/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00

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Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt
10/03/2014	97110	GP	Ther Px 1+ Arcas Es 15 Min Ther Xerss	719.46	Pain In Jolnt, Lower Leg	MEDICAL	3.00	\$159.00
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt

10/03/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00		
Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
10/06/2014	2115800	LAMASONW	\$210.00	\$0.00	\$210.00		Medical	10/07/2014	14	Betty J Perkins
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/06/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	2.00	\$106.00		
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/06/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	2.00	\$104.00		
Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
10/09/2014	2128100	LAMASONW	\$211.00	\$0.00	\$211.00		Medical	10/10/2014	11	Betty J Perkins
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/09/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00		
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/09/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00		
Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
10/14/2014	2132690	LAMASONW	\$210.00	\$0.00	\$210.00		Medical	10/16/2014	5	Betty J Perkins
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/14/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	2.00	\$106.00		
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/14/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	2.00	\$104.00		
Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
10/16/2014	2132690	LAMASONW	\$211.00	\$0.00	\$211.00		Medical	10/17/2014	4	Betty J Perkins
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/16/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00		
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/16/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00		
Service Date	Voucher#	Provider	Chg Amt	Pmts/Adjs	Balance	Payor	Coverage Type	Billed Date	Age	Patient
10/20/2014	2144560	LAMASONW	\$211.00	\$0.00	\$211.00		Medical		0	Betty J Perkins
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/20/2014	97110	GP	Ther Px 1+ Areas Ea 15 Min Ther Xerss	719.46	Pain In Joint, Lower Leg	MEDICAL	3.00	\$159.00		
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/20/2014	97140	GP	Mnl Ther Tqs 1+ Regions Ea 15 Min	719.46	Pain In Joint, Lower Leg	MEDICAL	1.00	\$52.00		
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/20/2014	G8978	GP,CJ	Mobility Current Status	719.46	Pain In Joint, Lower Leg	OTHER	1.00	\$0.00		
Dates of Service	Procedure	Mods	Description	Diag1	Description	TOS	Units	Fee Amt		
10/20/2014	G8979	GP,CJ	Mobility Goal Status	719.46	Pain In Joint, Lower Leg	OTHER	1.00	\$0.00		





STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG) CASE NO.: 2016-CP-42-2478

BETTY JEAN PERKINS)
)
vs.)
)
SOUTH CAROLINA DEPARTMENT)
OF TRANSPORTATION)

TRANSCRIPT OF RECORD

JULY 20, 2018
GAFFNEY, SOUTH CAROLINA

BEFORE THE HONORABLE GRACE GILCHRIST KNIE

APPEARANCES:

NEIL E. ALGER, ESQUIRE
Hampton, South Carolina

Attorney for the Plaintiff

ANDREW F. LINDEMANN, ESQUIRE
COLUMBIA, SOUTH CAROLINA

WILLIAM MCBEE SMITH, ESQUIRE
COLUMBIA, SOUTH CAROLIN

ATTORNEYS FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

ALL FEES PURSUANT TO RULE 607 (h) (i), SCACR

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ORIGINAL TRANSCRIPT PROVIDED TO MR. ANDREW F. LINDEMANN

I-N-D-E-X

WITNESSES: DIRECT CROSS RE-DIRECT RE-CROSS

(NO TESTIMONY TAKEN)

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

(NO EXHIBITS)

1 THE COURT - All right, so this is the motion of
2 the DOT on a reconsideration and -- will y'all bear with me
3 -- I will pull this back up.

4 Okay, and madam court reporter, I did jot down
5 the heading and the case number for you.

6 COURT REPORTER - I got it. Thank you.

7 THE COURT - All right. I am now looking at the
8 post-trial brief of defendant in this matter of Perkins v.
9 SDCOT, civil action number 16-CP-42-2478, and, counsel, if
10 you all will note your presence for the record.

11 MR. LINDEMANN - Your Honor, Andrew Lindemann for
12 the Defendant, South Carolina Department of Transportation,
13 and thank you, Your Honor, for accommodating my scheduling
14 issue this morning.

15 THE COURT - Yes, sir. I hope you didn't get a
16 speeding ticket.

17 MR. LINDEMANN - I did not.

18 THE COURT - Okay.

19 MR. SMITH - William McBee Smith, I'm trial
20 counsel.

21 THE COURT - Yes, sir. All right.

22 MR. ALGER - Neil Alger here for the Plaintiff,
23 Ms. Betty Jean Perkins, and just, Your Honor, real quick,
24 before we started, I spoke with opposing counsel, and they

1 submitted their memorandum just a couple days ago. I've
2 had a busy schedule myself with court appearances
3 yesterday. We've agreed to ten days for me to submit a
4 memorandum in opposition as long as Your Honor is willing
5 to entertain that and, if necessary -- unless, of course,
6 you decide to rule today, -- but if you do take it under
7 advisement, I would appreciate the opportunity to submit a
8 memorandum in opposition so long as any new issues that are
9 raised they have the opportunity as well to reply, and
10 those briefs, of course, Your Honor, would be as brief as
11 possible.

12 THE COURT - Okay. And -- all right, and so in
13 saying that there would be a reply to your reply, what new
14 issues can you ---

15 MR. ALGER - And, Your Honor, I do not intend to
16 raise any new issues. I am simply providing case law in
17 opposition to what they have provided in their memorandum.
18 I think out of fairness and due to the fact that they are
19 being considerate enough to allow me this time, I would
20 allow them the opportunity, but again, it's probably at
21 their discretion, and I don't even know if they'd need it.

22 MR. LINDEMANN - And, Your Honor, just so I'm
23 clear -- I mean I was happy to accommodate Mr. Alger, but
24 obviously we -- we have the burden of proof on this motion
25 typically, ---

1 MR. ALGER - Yeah.

2 MR. LINDEMANN - --- the party has the burden of
3 proof, has the ability to reply to any type of rebuttal. I
4 don't know what he's going to argue. It's possible that we
5 might -- we might stand on our brief. I don't know what
6 case law he's going to cite, but I certainly want the
7 ability to be able to distinguish it. Obviously, if he had
8 filed a memorandum ahead of this hearing, we would've had
9 it and been able to distinguish any type of memora -- case
10 law or any arguments that he has anticipated making here
11 verbally, but -- so I'm happy to -- I'm happy to
12 accommodate him if the Court is so willing, but I do think
13 out of fairness we would have the opportunity or should
14 have the opportunity to reply, and I don't think we'd need
15 more than probably seven days to be able to do that.

16 THE COURT - Okay. And so -- so the document that
17 I am reviewing at this point is a post-trial brief and it
18 was filed on -- on July the 18th ---

19 MR. LINDEMANN - That was my understanding, yes,
20 Your Honor.

21 THE COURT - --- at 4:26 p.m. Okay, and so that
22 is the document that he has requested an opportunity to
23 respond to? Is that correct?

24 MR. ALGER - And, yes, that's assuming Your Honor
25 takes this under advisement as well, so ---

1 THE COURT - Yes, sir, I understand. And, so of
2 course it would be reasonable that you would have time to
3 reply to something that you received 48 hours ago at the
4 most. Right? I mean -- and I'm trying to -- so that you
5 got that on Wednesday afternoon around 5:00 o'clock, and
6 so, yes, I will grant that and I will allow -- if there's
7 anything new that defense counsel, the movant in this
8 matter, believes that they need to respond to, I would then
9 give you an additional five days to respond.

10 MR. ALGER - And, Your Honor, today is obviously
11 the 20th, so ten days, so I'll have that brief to you by
12 July 30th.

13 THE COURT - Yes, sir.

14 MR. ALGER - Thank you.

15 THE COURT - Okay. And just one moment; I want to
16 pull up the motion. (brief pause) Okay, I have retrieved
17 the -- the motion that was filed in this matter on April
18 the 30th, 2018 and will point out that I think we have been
19 attempting to motion scheduled for some time. It's just
20 that I have not been holding Court in Spartanburg and they
21 have not been -- there have not been civil terms that I've
22 been handling, but also that I was not served with a copy
23 of the motion. I believe that -- I'm not exactly sure how
24 I came to be served with a copy of the motion, but I was

1 not served when the plaintiff was served. And with that,
2 counsel, I'm -- I will turn it over to you.

3 MR. LINDEMAN - Thank you, Your Honor. May it
4 please the Court, Andrew Lindemann, along with William
5 McBee Smith. We represent the Defendant, South Carolina
6 Department of Transportation. Your Honor, this is a multi-
7 part post-trial motion that's before Your Honor given the
8 fact that this case was tried non-jury in front of Your
9 Honor. We are moving for an involuntary non-suit. As Your
10 Honor is well aware there -- the defendants did not put up
11 a case, that the case ended after the plaintiff's case in
12 chief, and, so therefore, this case is still appropriate
13 for Your Honor to rule based on Rule 41(b). Alternatively,
14 we have moved for judgment as a matter of law. We have
15 moved for Your Honor to alter or amend your judgment
16 pursuant to Rule 52(b) as well. In essence Your Honor has
17 issued obviously a judgment in favor of the plaintiff in
18 this case, and it's still before Your Honor since this is a
19 non-jury case, Your Honor, still in the position to where
20 obviously you can still alter your factual findings and
21 your ultimate conclusions of law in this case. I am filing
22 to move for a new trial absolute. I'm going to touch on
23 the main issues. There are a couple of place, too, where
24 we're going to be asking the Court for relief under Rule
25 52(b) in the event that this decision is appealed to make

1 certain that your findings of fact and conclusions of law
2 are stated with sufficient specificity under Rule 52(a) to
3 allow for appellate review.

4 So to touch on basically the main -- the main
5 issues, Your Honor, go to all of the -- all of the
6 different types of motions that are before Your Honor. In
7 essence what we're going to be addressing with Your Honor
8 today is obviously whether or not there was sufficient
9 evidence for Your Honor to find a defective condition with
10 the catch basin on the inside median lane -- and I use the
11 word lane very loosely because there's only about four feet
12 or so. It is not actually a shoulder or a lane of travel -
13 - whether or not that particular catch basin was defective
14 in any way and whether even if it was not built to
15 specifications, which we are certainly not conceding, don't
16 believe the evidence shows, whether that would even
17 constitute an unreasonable -- unreasonably dangerous
18 condition such that it would be a hazard that would give
19 rise to liability in a negligence case such as this. We
20 are also going to be arguing that even if the Court found
21 that the Department of Transportation was negligent, there
22 was clearly a violation of statute negligence per se, and
23 that the plaintiff should've been found to have some degree
24 of negligence. We submit that the evidence is strong
25 enough on the issue of comparative negligence, that the

1 Court should've found as a matter of fact and the only
2 reasonable inference is greater than 50 percent, that the
3 plaintiff's was greater than 50 percent at fault and,
4 therefore, would be barred, but at the very least, that the
5 Court should have found some degree of negligence on their
6 part because Your Honor found none. We are also going to
7 be raising a proximate cause issue which is whether or not
8 it was even foreseeable that pedestrians would be
9 traversing the area where this catch basin was located and
10 given the fact that it's not foreseeable, as a matter of
11 law I would submit that the defendant was entitled to
12 judgment. And then lastly there are a couple of issues
13 dealing with damages and the -- with all due respect, the
14 lack of specificity in the order as to how Your Honor
15 arrived at the damages that you arrived at.

16 So going through those issues, the first one as I
17 indicated was whether or not there was actually a hazardous
18 condition, whether or not there was actually a defect in
19 this particular catch basin, and even if there was, whether
20 that gives rise to unreasonable, dangerous condition.

21 Your Honor, as I understand the evidence that was
22 before Your Honor, it was the testimony of two DOT
23 employees. There was no expert witness that was ever ---

24 THE COURT - Can I interrupt you for just a
25 second?

1 MR. LINDEMANN - Sure.

2 THE COURT - I do recall that Mr. Smith referenced
3 in his e-mail that you all had requested the transcript and
4 you have the transcript, ---

5 MR. LINDEMANN - Thank you, Your Honor.

6 THE COURT - --- and um ---

7 MR. LINDEMANN - There's a copy for Your Honor.

8 THE COURT - Yes, thank you.

9 MR. LINDEMANN - Thank you for reminding me.

10 THE COURT - All right.

11 MR. LINDEMANN - The transcript does not have the
12 exhibits though. The transcript came from the court
13 reporter who obviously doesn't have the transcripts (sic),
14 the -- I mean the exhibits. I understand the exhibits
15 would still be within the custody and control of the clerk
16 of court in Spartanburg, and we can certainly get those for
17 Your Honor if that would be helpful or get copies of those
18 to you.

19 THE COURT - Well, -- I guess if I need them and I
20 cannot obtain them through the clerk's office, I will
21 contact you all. I just hate for y'all to go to that
22 trouble, to -- okay -- because I -- because basically I
23 think it would getting duplicated there and then -- and I
24 think I can just do that much easier.

25 MR. LINDEMANN - Thank you, Your Honor.

1 THE COURT - Thank you. Sorry for the
2 interruption.

3 MR. LINDEMANN - Oh, that's fine. I appreciate
4 you reminding me that I had a transcript for you.

5 Your Honor, as I indicated, I think the first
6 issue, number one, is whether or not there was a type of
7 defect with this particular catch basin. I think the
8 record is very clear, and I think Your Honor asked some
9 questions during the trial to make certain that it was
10 clear, that this was not a defective design case. There
11 was no allegation whatsoever, or certainly no competent
12 evidence to show that this culvert was defectively
13 designed, and as I was touching on earlier, as I -- as I
14 read the transcript, and I was not present at trial, but as
15 I read it, there was never any type of expert testimony
16 presented by either side. In fact, as I indicated, the
17 defense didn't present a case. The plaintiff who had the
18 burden of proof, we submit, if they were going to take the
19 position that there was a defective design, that would
20 certainly require expert testimony. We believe that if
21 they're going to assert a defect in the culvert itself in
22 the catch basin, it was going to require expert testimony,
23 and they didn't have it. The only evidence that was before
24 Your Honor that goes to this particular issue as I
25 understand it, was a copy of the specifications for the

1 catch basin and at least one photograph that was taken by a
2 DOT representative, and I understand today that there were
3 potentially some additional photographs that were put into
4 evidence by the plaintiff as well, I think plaintiff's
5 exhibit number 5. In looking at those photographs, Your
6 Honor, I would submit to the Court that there is no
7 possibility, and this is with all due respect, for any type
8 of findings by a preponderance of the evidence to be made
9 as to the dimensions of the constructed catch basin.
10 Ultimately in Your Honor's decision you actually state in
11 reviewing the plans and photographs submitted into evidence
12 it is apparent and evident/in this particular gap, and
13 that's the gap that's between the area of the grate itself
14 and the concrete median, and that gap, of course, is
15 something that was within the original design and is
16 intended to be able to remove in emergency situations large
17 amounts of water from the roadway. You wrote, it is
18 apparent and evident that this particular gap is
19 drastically wider than the analogous openings within the
20 drainage grate itself. And then based upon that you found
21 that the gap itself presented a hazard to the traveling
22 public, and we would submit to Your Honor and ask Your
23 Honor to reconsider that finding, because, as I indicated,
24 the only evidence before Your Honor were photographs.
25 Nobody testified as to any specific dimensions. The

1 plaintiffs had an investigator who went out there and took
2 photographs. Well, that investigator, number one, he never
3 testified. He never testified of where the photographs
4 were taken, from what perspective they were taken, but he
5 also never testified as to any dimensions, and obviously
6 the plaintiff had the burden of proof on that. So our
7 position is, Your Honor, that the evidence was not
8 sufficient for you to make the finding that you did, and
9 specifically, drastically wider than the analogous openings
10 within the drainage grate. We would ask the Court, if Your
11 Honor continues with your current ruling, that you
12 supplement under Rule 52 -- 52(b), the findings of fact,
13 and to give the specific dimensions that you have concluded
14 based upon looking at the photographs, and why I think this
15 is important is because if you look at the photographs that
16 were taken and I -- here's a copy of the one that was in
17 evidence that was taken by the DOT representative --
18 everybody understands that a photograph is obviously a two
19 dimensional image, but it's a two dimensional image that is
20 attempting to reflect what is actually three dimensional.
21 And so what comes into play are the angles, the
22 perspective, and unless the photograph is taken in a
23 particular way, for instance, directly on -- onto or over a
24 particular point that you're trying to measure and you do
25 know the measurement of -- of -- you basically have a

1 measurement that you can use as a standard, it's simply
2 guessing and speculating I would submit to the Court to try
3 to determine any other measurements in the photograph, and
4 that's particularly obvious in this particular photograph,
5 because -- well, number one, there's no testimony when this
6 went into evidence as to where the photograph was taken
7 from. And what's interesting is, the perspective and the
8 sizes change based upon as you turn -- turn it around its
9 page. Objects appear wider potentially because of issues
10 with perspective and issues with angle. And you will note
11 that both of the DOT witnesses when questioned by the
12 plaintiff's counsel trying to get them to concede that
13 there was certain dimensions reflected in these
14 photographs, on each occasion they said they could not make
15 that -- or they could not provide that testimony based upon
16 the angles in the photograph, and I would submit to Your
17 Honor that the Court, particularly without expert
18 testimony, cannot make that determination either. And the
19 burden of proof in this case was very simple. Their
20 position was that these dimensions did not meet the
21 specifications. How else can you prove that? You go out
22 and you measure them. And I've seen many, many expert
23 witnesses go out and put a tape measure to a photograph and
24 then you're not dealing with trying to guess at
25 perspectives. You can actually see a ruler that reflects

1 the exact measurements, but this is particularly tricky,
2 because what they ask Your Honor to do, and apparently
3 based upon your ruling what you did do, you took as a given
4 that the grate was built to specifications; we really don't
5 know that, but the grate was supposed to be built to a
6 dimension of three -- I think three and a quarter inches as
7 the width of each of the openings of the grate. And you
8 assumed -- I believe this is your reasoning -- I mean,
9 obviously, you know your reasoning -- but I believe based
10 on my reading of the order, you assumed that to be the
11 case, even though there's no testimony that this grate was
12 actually built to the proper dimension, and then you took
13 that and made a conclusion that the dimension of the gap,
14 what has been called in the testimony as the gap, was wider
15 than what the specifications showed it should be. First of
16 all, there's no finding in your order as to what that gap
17 should've been. Number two, Your Honor -- and this is
18 where the issue with respect to the angles comes into play
19 -- a gap like this can look a lot wider based upon where
20 you're looking at because of the angles, because you can
21 see here, the concrete from the edge of the grate -- if you
22 look at the specifications, it's actually -- if it was
23 built to that -- is actually angled down into or towards
24 the median, and what the specifications show is that the
25 space between the edge of this concrete and a straight

1 looking down at the edge of the concrete median was to be
2 three inches. Well, you can't tell that from this
3 photograph, and I looked at the other photographs that the
4 plaintiff apparently put into evidence, and you can't tell
5 that from that either. There is absolutely no photograph
6 that is taken directly looking down at the edge of the
7 concrete median. So even if you could try to use that
8 three and a quarter dimension of the grate, it is
9 absolutely impossible based upon the photographs that were
10 in evidence before you to make any determination as to the
11 width of that gap, and I would submit to Your Honor that --
12 and I've studied this and studied this and studied this and
13 I'm sure Your Honor did as well, but to conclude that it is
14 drastically wider -- I mean it is not drastically wider,
15 because you're looking at from an absolute angle here and
16 what you need to be looking at is from straight up and
17 down, because if you look at the specifications Your Honor
18 -- and it's hard to explain this -- but if you look at the
19 specifications, the opening toward the gap, everything is
20 built at an angle. It is angled back towards the median,
21 and of course, the reason for that is obvious, because
22 you're trying to channel water and the flow of water, so
23 you would -- number one, you're flow -- you're trying to
24 channel it away from the road and into this culvert that's
25 beneath the median, but everything is angled back that way,

1 and so what you're seeing in this photograph, you see the
2 angle going back here, but you don't see that that gap,
3 what the actual width of it is, because it's a distortion.
4 It's a distortion, because a photograph regrettably is a
5 two dimensional image that's taken of a three dimensional
6 object, and based -- like I said, based on perspective and
7 angles, absolutely cannot make the determination, I would
8 submit, that Your Honor made. And I certainly don't think
9 you can make it without a witness actually being -- being
10 found to be an expert, number one, and, number two,
11 offering that opinion based upon their inspection of the
12 photographs. And what you typically have in a case like
13 this that you didn't before Your Honor, is someone who
14 actually goes to the scene and measured it like I said. I
15 mean it's just crazy in this case that that evidence isn't
16 in the record, but that evidence isn't in the record, and I
17 don't think the Court can correct the absence of that
18 evidence by making the findings of fact that you did based
19 on the evidence that's before you.

20 So our first argument, Your Honor, is that the
21 evidence that's before the Court is insufficient to prove
22 any type of defective condition. There is no evidence
23 whatsoever that this culvert was damaged in any way, and
24 the best argument the plaintiff has is that it wasn't -- it
25 was constructed incorrectly, but they haven't supported

1 that evidence by showing the dimensions of the culvert and
2 compared that to the specifications. Even if they were
3 able to show some changes, some differences from the
4 specifications, Your Honor, -- this goes to the next point
5 -- it would need to be substantial, I would submit to Your
6 Honor for it to constitute any type of dangerous condition.
7 In this particular case, I don't believe the evidence
8 supports a finding that that gap was dramatically wider
9 than the gaps in the grate, and quite frankly, even if they
10 were, that doesn't make this a dangerous condition. Part
11 of the things that factor into a dangerous condition are --
12 some of the points I'm going to make in a minute on
13 foreseeability -- this is not an area where people were --
14 were walking. This was not an area that was designed for
15 people to stop. This was a half lane at best. Probably
16 wouldn't even hold half a car. It was designed as the
17 testimony before Your Honor indicated, that it was designed
18 to remove water from the roads. There was no expectation
19 whatsoever by SCDOT in the design or construction or
20 maintenance of this roadway that people would be stopping
21 along the median barrier. In fact, it's incredibly
22 dangerous, and that was the testimony that Your Honor
23 heard, that it was incredibly dangerous. So to suggest
24 that a -- the construction of a convert where people are
25 not expected to be able to walk is a hazardous condition

1 that could give rise to a duty of care of maintenance, a
2 duty of care that Your Honor found, we submit that that's
3 contrary to the law, that SCDOT cannot design every aspect
4 of every roadway to expect that by some minute chance
5 someone is going to walk along an area that they're not
6 supposed to. In this particularly case statutory law is
7 you don't stop on the left side of this roadway. The
8 statute clearly provides that if you stop on the shoulder
9 which is on the right side of the roadway -- clearly she
10 did that, but clearly she violated the South Carolina
11 statutory of law, which brings me to another interesting
12 point that I think the evidence failed, Your Honor. Didn't
13 really address this in your order, and I'd ask the Court to
14 reconsider. In her complaint, Ms. Perkins alleged -- and
15 it has never been amended, so they're bound by the
16 pleadings -- that she encountered trouble on I-85 because
17 she blew a tire, and of course, anybody who's blown a tire
18 before, and I have actually on the interstate, you're able
19 to still drive in a vehicle. It's tough, but you're able
20 to still drive the vehicle and you drive to a shoulder
21 where it's safe. You don't leave the car in the left lane
22 of Interstate 85 with high moving traffic. I mean it's an
23 incredibly hazardous situation she created for herself.
24 The problem is is during the course of the litigation, and
25 apparently in her testimony, she made the self-serving

1 statement that not only did she blow a tire, but she had an
2 engine failure occur simultaneously, and I would submit to
3 Your Honor that Your Honor adopted that apparently as a
4 finding of fact, but there's no evidence to support that,
5 and I don't believe that the plaintiff is competent to
6 testify that she blew a tire and simultaneously experienced
7 an engine failure. And, quite frankly, Your Honor, that
8 requires expert testimony from an automotive expert. None
9 of that was provided in this case, and I think they
10 couldn't provide that testimony, because it is incredibly
11 implausible for that to simultaneously occur, to have a
12 flat tire and your engine cuts off and can't crank back up.
13 Never heard of it, but I would submit that it was the
14 plaintiff's burden to prove that to you more than a self-
15 serving statement that's contrary to the pleadings, because
16 it's a pretty critical fact in the case, and that critical
17 fact I would submit is not supported by sufficient
18 evidence, certainly not supported by a preponderance of the
19 evidence, but -- and that goes to part of the reason as to
20 whether or not it was a hazardous condition, because she
21 should've never been there in the first place. It also
22 goes to the issue of her negligence and level of negligence
23 that she should've never been there in the first place. A
24 proper motorist who faced the situation she did attempts to
25 move their vehicle across three lanes of traffic to the

1 right side of -- to the right shoulder, a shoulder as both
2 DOT witnesses testified was designed for people making
3 emergency stops.

4 Let me touch real quickly on the issue of
5 foreseeability. Obviously, that's part of the -- our
6 causation argument, Your Honor. In order to show legal
7 cause, you've got to show that the incident itself was
8 foreseeable such that SCDOT would be under a duty, assuming
9 that there is a duty of care, that they would be under a
10 duty to design and maintain the center median in a manner
11 to guard against any type of hazard that it would be for
12 pedestrians to be traversing that area. Your Honor, we
13 have cited to the case a somewhat similar situation. It
14 was a parking lot accident, the Nelson vs. Piggly Wiggly
15 case, and I think the Nelson case is -- is a excellent case
16 to really understand particularly a motorist-type
17 situations, what is the foreseeable hazard and what isn't?
18 And the South Carolina Court of Appeals on that case said
19 that the improper operation of the vehicle in that case was
20 not a foreseeable hazard against which the grocery store
21 was the owner of the parking lot was required to protect
22 the plaintiff, and this is the key language. They said,
23 although not entirely unprecedented, the vehicle's
24 acceleration and contact with the plaintiff were unexpected
25 and unusual. So for something to be foreseeable or -- or

1 not foreseeable I should say -- there can't be -- it
2 doesn't rise to the level that it actually could never have
3 happened. That is absolutely not feasible, but it goes to
4 the standard of whether it's unexpected and unusual,
5 whether or not it's extraordinary. And the situation in
6 this case can't be viewed any other way than extraordinary.
7 There was no evidence presented whatsoever by the plaintiff
8 of any similar breakdowns that anybody has ever had on any
9 part of this stretch of road. There was no evidence
10 presented that any other motorist ever encountered a
11 problem that the plaintiff did. She encountered an
12 emergency situation. She had a blow-out of her tire while
13 she was traveling in the left lane. That is extraordinary;
14 that's not expected; that's not unusual. I mean that is
15 unusual, and as a result, Your Honor, the -- it was not
16 foreseeable for SCDOT to expect a motorist to be walking
17 along that median barrier in the middle of I-85 in the
18 middle of the night such that they had to design and build
19 this culvert where someone couldn't step into it or step
20 onto it or get their foot caught, whatever her scenario
21 exactly was. And we would submit to Your Honor that this
22 is exactly that type of case, that without any history of
23 doing this, without there being any contemplation that
24 people would be walking in that area, this is not a
25 foreseeable accident. Both SCDOT employees explained in

1 their testimony that this roadway was designed to have an
2 emergency lane on the right side of the road, not on the
3 left side of the road, and that the left side of the road
4 in this particular strip along the center median could not
5 be used as an emergency shoulder, because it wouldn't even
6 hold even the smallest of vehicles. As they indicated in
7 their testimony, it was not an appropriate area of refuge.
8 And so as a result, Your Honor, we would submit that this
9 particular accident was not foreseeable to SCDOT, and as a
10 result the plaintiff's proof on causation fails.

11 Lastly, Your Honor, -- and along those same
12 lines, there's also a duty issue, too, that there's no duty
13 of care to provide for a safe walking area in -- where she
14 fell. I mean because bottom line is, there's no
15 expectation of people to be traversing in that area.

16 And then lastly, Your Honor, on the issue of
17 damages that I mentioned earlier, we would ask the Court, --
18 - Your Honor didn't actually make separate findings of fact
19 as I -- as I read the order that dealt with damages issues.
20 And in the -- in the conclusions of law section, you did
21 indicate -- made reference to the independent medical exam
22 that was stipulated to by the parties. You indicated that
23 there as no testimony offered to refute Ms. Perkins' claim
24 for loss wages. I would dispute that, because in the IME,
25 the doctor indicates that she has been disabled by Social

1 Security since 2004, and obviously, if she's disabled by
2 Social Security, she's not working 20-25 hours at Wendy's
3 like -- like she testified that she was. That was -- so
4 there's definitely testimony in the record to refute that,
5 but the bottom line is, you gave a judgment of ninety-three
6 thousand three hundred and sixty-two dollars and ninety-
7 seven cents. You didn't break it down as to what was
8 awarded for medical expenses, what was awarded for pain and
9 suffering, what was awarded for loss wages. The IME that
10 was -- that was agreed to by the parties, the doctor
11 indicated that 50 percent of her -- I believe it was 50
12 percent -- of her injuries in this case were pre-existing,
13 not exacerbated by this accident. I know in the
14 plaintiff's closing he actually accounted for and asked the
15 Court only for 50 percent of medical bills, 50 percent of
16 loss wages. I can't tell from the -- from the opinion
17 whether or not the Court applied that or didn't apply that
18 or what was the -- what are the elements and what was the
19 basis of the ninety-three thousand three hundred and sixty-
20 two dollars and ninety-seven cents. Now, we would -- we
21 would ask the Court to reconsider your decision and
22 actually enter judgment in favor of South Carolina
23 Department of Transportation on the basis that I said. If
24 Your Honor does not do that and sticks with a judgment in
25 favor of the plaintiff, we would ask that specific findings

1 be made so that a review, if necessary, can be made as to
2 that damages award.

3 The Court's indulgence.

4 Thank you, Your Honor.

5 THE COURT - Thank you.

6 Okay, and Mr. Lindemann, sir, do wish to have
7 this marked?

8 MR. LINDEMANN - It doesn't need to be as a
9 transcript.

10 THE COURT - All right.

11 MR. LINDEMANN - Thank you.

12 THE COURT - Just making sure. Thank you, sir.

13 MR. ALGER - Yes, ma'am. As I previously
14 mentioned, Neil Alger here on behalf of the plaintiff.
15 May it please the Court.

16 Where do I begin? First, I would like to talk
17 about the comparative negligence aspects of the defendant's
18 brief. I think that it's a bit of the pot calling the
19 kettle black for them to make the argument that there is no
20 competent evidence in the record to support the findings
21 that the Court has made in the other aspects of the order,
22 and yet completely disregard or not acknowledge the
23 existence of the evidence that supports your finding of no
24 comparative negligence. Your Honor, I draw your attention
25 to the -- the only testimony in the record regarding how

1 the accident occurred, which is the testimony of Ms.
2 Perkins. There was no other evidence. There is no other
3 testimony. Certainly you can infer from the circumstantial
4 evidence that's been provided, but in terms of direct
5 evidence as to the accident itself, Ms. Perkins is the only
6 person who proffered an explanation. I would agree no
7 expert was provided as to the mechanics of the vehicle, but
8 the testimony and the resulting situation is consistent
9 that Ms. Perkins did experience a tire failure that
10 resulted in her vehicle stalling out. If her vehicle
11 continued to operate, a reasonable person would assume that
12 she would continue to take her vehicle over to the side of
13 the highway, but her testimony was that the vehicle stalled
14 out and came to a halt in the left-hand lane. It wasn't
15 even completely out of the left-hand lane onto this center
16 median. It literally came to a halt in the lane. Well, a
17 reasonable mind can infer from that that her vehicle
18 stalled out, plus there was the additional testimony that
19 she discovered her own defect in the car, and it does not
20 take an expert to opine to this if it's something that she
21 observed through her own recollection. Now, she did
22 experience a stall; she did experience and witness her car
23 turn operable again down the road when -- when her cousin
24 showed to her the fuel shut-off that was triggered. The
25 testimony is clearly there and supports the finding that

1 her vehicle stalled out for no fault of her own. Now, the
2 comparative negligence is simply unfounded in this case,
3 because she experienced an emergency, and she did exactly
4 what the DOT personnel said would be a reasonable thing to
5 do. She called the police. The police dispatcher told her
6 to exit her vehicle. Well, she recalls the police
7 dispatcher telling her to exit her vehicle. She then
8 exited the vehicle and was beginning to go to the far
9 right-hand shoulder to seek shelter when she stepped in
10 this culvert. That's exactly what the DOT personnel said
11 would be a reasonable thing to do as well, further
12 substantiating her own conduct. There simply is no
13 evidence in the record that she acted in any comparative --
14 any way comparatively negligent, and I just -- I would
15 reiterate the Court's finding that there is no value or
16 weight to be applied to that. But back to the issue of
17 evidence, because I've heard all these arguments from the
18 defendants here, and I don't see any arguments regarding
19 the law that you applied, rather, all of the arguments that
20 have been presented to this Court are simply in your
21 interpretation, inferences and findings based on the
22 evidence that's in front of you. And, Your Honor, I think
23 what the defendants are asking in this case is for you to
24 put up the blinders and focus all of your attention on the
25 testimony of the two DOT personnel without applying any

1 weight or significance to all the other evidence in the
2 record. Your Honor, prior to this hearing here today, --
3 and I'm not pointing fingers at Mr. Lindemann, but he
4 wasn't even aware that there were additional photos in the
5 evidence in the record that substantiated the defect that
6 we were presented with on this grate, and yet we're sitting
7 here arguing today that the DOT personnel did not testify
8 that there was a defect. Well, Your Honor, in so many
9 words they did. They did after a very extensive
10 examination concede that it was not as it exists in the
11 photo built to the specifications that were provided in the
12 plans. They did provide that; they did say that the
13 existence of the cement and asphalt that separates the
14 concrete basin from the center median is not built to the
15 specifications, and further I took Mr. Betenbaugh
16 (phonetic) -- in his testimony through a more or less a way
17 to decipher the distances of the specifications, you know,
18 the grates itself are one measurement, the gap between the
19 center median and the concrete grate was another
20 measurement. Clearly visualizing the photo right here, you
21 can see that there is a gap, a concrete or asphalt segment
22 between and separating the center median from the concrete
23 grate. I -- I do appreciate Mr. Lindemann's -- or
24 defendant's concern about the lack of measurements, but,
25 Your Honor, the photo speaks a thousand words, and you can

1 clearly tell from here that there is a separation of what
2 should have been and what is present in this photo. If it
3 had built to the specifications have been provided in the
4 design plans, certainly that would've been further impeding
5 the ability of somebody to step in this or maybe a child to
6 fall in it or maybe some first responder who's responding
7 to Ms. Perkins as was suggested as the reasonable thing to
8 do, this could've easily been a sheriff of Spartanburg
9 County who was coming and aiding Ms. Perkins in her rescue,
10 but it wasn't. It was Ms. Perkins who exited her vehicle,
11 who sought the shelter of the center median as a refuge
12 before she went ahead -- a refuge before she went ahead and
13 head over to the right shoulder. This could have just as
14 easily been any other first responder, DOT personnel or
15 anybody else that was utilizing this center median, which
16 goes to the argument of foreseeability. It was clearly
17 established in the testimony of both DOT personnels that
18 they comply with ASTA, that they recognize and utilize in
19 their own maintenance, design and construction that the --
20 the shoulders of the highway have to provide for the safety
21 of the traveling public, that the safe shoulder concept is
22 essential and an integral component within the highway
23 system. It is extremely foreseeable, despite what the
24 defendants have argued, that there are going to be
25 accidents, people getting pulled over for speeding, all

1 kinds of instances in which cars will either come to an
2 emergency condition or have to be pulled over or maybe even
3 seek -- just simply seek the refuge of the shoulder in
4 order to provide the time and opportunity to then get to
5 the other shoulder. I mean it's as simple as that. It is
6 a refuge, and it's there for a purpose. If it wasn't a
7 refuge, then I would contend that the DOT would've built
8 the shoulder flush up against the lane, but it's simply not
9 what we're confronted with here today, and it is extremely
10 very foreseeable that people would use this as a refuge. I
11 mean just think of the instance in which a baby chases a
12 soccer ball out in the highway. Where -- where do you want
13 the baby to go? Do you want it to run across three lanes
14 or traffic or do you want it to momentarily pause in the
15 center lane? I mean, Your Honor, it's just -- it's
16 ludicrous to sit here and not acknowledge the fact that
17 this shoulder well serves a function of drainage in the
18 highway system, it also clearly serves an additional
19 function as well as a place for refuge to various different
20 types of personnel.

21 As for the damage argument, Your Honor, I'd like
22 to draw your attention to the -- and I have Mr. Kon's
23 helpful book here, -- but there's a case, Mathis v. Brown &
24 Brown of South Carolina. It's 389 SC 299, and this is
25 regarding the specificity as Mr. Lindemann said of Rule 52

1 in the Court's findings. I believe the rule is that the
2 trial court actually has to provide your findings with spec
3 -- is it specially? Not specificity but specially -- and
4 the Court goes on to say that this Court has held that this
5 rule is directorial in nature so that the trial court
6 substantially complies with Rule 52(a) and adequately
7 states the basis for the result it reaches. The Appellate
8 Court should not vacate the trial court's finding for lack
9 of an explicit or specific factual finding. Your Honor,
10 that's been reaffirmed in a number of Supreme Court and
11 Court of Appeal opinions that you are not bound by the
12 requirement to make explicit and specific findings in any
13 of your findings but rather your order is merely a
14 directorial order upon which the appellate proceedings may
15 continue, if necessary. And to the actual determination of
16 the damages and the verdict that the Court entered, I would
17 argue that you do not need to, you know, break it down as
18 requested, that you do not need to make specific findings
19 of loss wages, medical bills, expenses, pain and suffering,
20 future medicals. None of that is required, Your Honor, and
21 rarely is it even asked of a regular juror. You are the
22 fact finder in this instance. You are the determinator --
23 the determination of fact. You are to weigh all of the
24 evidence, which you did. You did not neglect or omit any
25 evidence or provide anything anymore weight than you

1 determined it needed, and that's just as a jury would do,
2 and down the road if an Appellate Court has to hear this,
3 the deference is going to be provided to your factual
4 findings, because you are the one sitting in the chair who
5 had the opportunity to observe the witnesses, to weigh the
6 evidence, to view the pictures, all of the pictures, and to
7 come up with the findings of fact that you made in your
8 order, and that I believe your order more than complies
9 with requirement of Rule 52 in finding -- in providing your
10 findings of fact in your rulings thereon.

11 Your Honor, I would ask you to deny all of the
12 various motions and rules that have been asked as relief by
13 the defendants. I would ask that you essentially deny it,
14 and in doing so, affirm your order that you submitted in
15 this case.

16 Thank you, Your Honor.

17 THE COURT - Thank you.

18 MR. LINDEMANN - Reply, Your Honor?

19 THE COURT - Yes, sir.

20 MR. LINDEMANN - Your Honor, touching on the first
21 argument regarding the engine failure, the plaintiff
22 suggested that the only evidence in the record is to how
23 the accident happened was the plaintiff's testimony. Of
24 course the plaintiff was the only person there, but it's
25 well settled that a fact finder does not have to adopt

1 testimony as being truthful simply because it's not
2 uncontroverted, and the fact finder should be looking at
3 bias, should be looking at what was stated previously,
4 should be looking at whether something is self-serving, and
5 in this particular case, Your Honor, should be looking at
6 where something is even factually plausible. And in this
7 particular case, Your Honor, even though nobody testified
8 that Ms. Perkins did not experience an engine failure, the
9 Court has to look at her testimony and determine whether or
10 not it's truthful, and here are the points that I would
11 submit that the Court should look at: Number one, the
12 complaint. The complaint makes no mention whatsoever that
13 she was not able to crank her vehicle. This is what the
14 complain says about the accident: It says on or about
15 March 1, 2012, the plaintiff was operating her motor
16 vehicle on Interstate 85 in Spartanburg County when the
17 left rear tire exploded. As she exited the vehicle on the
18 shoulder of the roadway and walked around to inspect the
19 damage to her car, she stepped into a drainage culvert
20 causing her to fall. So there's several things there that
21 are very pertinent I would suggest to the Court. Number
22 one, there's no mention of an engine failure. There's no
23 mention of any facts that would suggest that she was not
24 able to move her vehicle. To the contrary, she's
25 testifying that there was a left tire explosion or blow-

1 out. Obviously, this is a front-wheel-drive vehicle. The
2 engine's in the front of the vehicle, so clearly there
3 could be no potential damage to the engine itself, and
4 anybody that's had a tire blow-out, it's much easier to
5 drive the vehicle and control a vehicle when you have a
6 rear blow-out rather than the two front wheels. So the
7 bottom line is as a fact finder I would submit to Your
8 Honor not to just adopt Ms. Perkins' testimony, which was
9 adopted clearly after the proceedings were submitted and
10 was to come up with this scenario where they could justify
11 the fact that she violated state statute and simply stopped
12 her vehicle on the, uh -- halfway into the left lane on I-
13 85 in the middle of the night. So look at the complaint.
14 Look at the plausibility as I indicated. Look at whether
15 or not it requires expert testimony. It would've been real
16 easy to present an expert who looked at this vehicle and
17 testified that, hey, this vehicle had some sort of engine
18 failure at the same time and be able to give that
19 explanation. They didn't even attempt to submit any type
20 of repair bills, anything along those lines, to justify her
21 self-serving testimony.

22 And lastly, this is unbelievable, basically a Res
23 Ipsa argument was made to Your Honor. Mr. Alger suggested
24 to you that you should consider what a reasonable person
25 would do, that a reasonable person wouldn't have stopped in

1 the left lane of the vehicle but would've driven to the
2 right shoulder. You can never assume that someone is not
3 going to be negligent to prove that they weren't negligent.
4 That is not the basis of -- a proper basis of evidence and
5 that is, if not exactly Res Ipsa, it's akin to Res Ipsa, so
6 it is not a reasonable inference to think, well, it must've
7 happened like the plaintiff said she -- she did, otherwise
8 she would've driven her vehicle to the right shoulder like
9 the law requires her to do. Doing what the law requires
10 you to do, it's not -- or -- what the law requires that you
11 to do is not evidence that someone wasn't negligent is what
12 I'm getting away.

13 Any way, a couple of other quick points. We are
14 arguing -- he said we aren't making legal arguments. We're
15 arguing the absence of any competent sufficient evidence to
16 be a preponderance of the evidence on a number of these
17 issues. We're arguing that the evidence even taken in the
18 light most favorable to the plaintiff did not support a
19 plaintiff's verdict, but this is not a directed verdict
20 situation. This is an involuntarily non-suit case, and
21 obviously post-trial it's also whether or not we're
22 entitled to a judgment as a matter of law.

23 And lastly, we'd ask the Court to reconsider
24 under Rule 59(e) your findings, and you have absolute
25 ability to rethink this case, rethink your findings,

1 rethink your conclusions of law, and if the Court is so
2 willing, to agree with our position and finding judgment in
3 favor of the South Carolina Department of Transportation.

4 Mr. Alger also argued that DOT clearly intended
5 that strip along the -- along the concrete barrier, the
6 median barrier, to have been built for refuge. That's
7 totally contrary to the evidence that is in the record, and
8 it defies logic. You can't fit a vehicle -- you can barely
9 fit maybe half of a small vehicle into that area. There is
10 no way that that was designed or intended as a place of
11 refuge like a normal shoulder would be. He also indicated
12 that DOT witnesses agreed that the median was not built to
13 specifications. I would submit to Your Honor that's not in
14 the testimony.

15 Lastly, to go back to an original point that I
16 made, it's real easy to prove dimensions. If you're going
17 to base your case on the fact that something wasn't built
18 to specifications, the way you present that case is you go
19 out and you measure it and present an expert or somebody
20 who's doing the measurements, or at the very least a
21 photograph with a ruler on it, that the Court can then look
22 at and not have to guess looking a photo -- a two
23 dimensional photograph of a three dimensional object
24 without any testimony -- there's no testimony from anybody
25 who took these photographs where they were standing, what's

1 the perspective that the photographs were shot at, and
2 again, this whole idea that this gap is wider, you can't
3 tell that from this photograph and you can't tell that from
4 any of the other photographs that the plaintiff has,
5 because none of them were taken from directly above the
6 concrete median barrier. You cannot tell without looking
7 directly above this area whether or not the gap is bigger
8 than it should be. In addition, -- even if you knew what
9 the dimensions were, even if you had a standard such as
10 what Your Honor used that the -- the width of the grate,
11 using that as a standard, which again, was never
12 established in this case that that was an appropriate
13 standard.

14 I think that's my last one. Oh, lastly, under
15 Rule 52(a), Your Honor, I would -- I would submit to the
16 Court that whereas in a non-jury trial, you are not -- you
17 are the fact finder, but you're not the equivalent of a
18 jury in all respect. One of the benefits of asking for a
19 non-jury trial is you get specified findings of fact and
20 conclusions of law. It makes it easier to get a review on
21 appeal than a general verdict with a jury, and, obviously,
22 that was something that was within the consideration of the
23 Department of Transportation in asking for a non-jury
24 trial. It is not -- if you look, I would submit, to other
25 non-jury decisions, particularly federal cases, as happens

1 all the time in tort claims act, federal tort claims cases,
2 because they all have to be tried non-jury. You get very
3 detailed findings of facts as to how they are -- judges
4 arrive at -- at damages figures. And here we have a -- we
5 have a verdict -- we have a judgment on a verdict; we have
6 a judgment, and you -- you've identified the areas where
7 they put up evidence, loss wages, pain and suffering,
8 medical bills, but we have no idea which of those
9 components you found and in what amount, and I think Rule
10 52(a) does require that. I mean the South Carolina Supreme
11 Court said -- and this is a quote -- the findings must be
12 sufficient to allow a Court sitting its appellate capacity
13 to insure the law is faithfully executed below. The
14 absence of factual findings makes our task at reviewing the
15 Court order impossible, because the reasons underlying the
16 decision are left to -- are left to speculation. I
17 recently got the Court of Appeals to reverse a decision in
18 a non-jury case on that exact basis. There were not
19 sufficient findings of fact. We went back and got
20 sufficient findings of facts. All I'm asking for is the
21 Court to make that determination.

22 And then lastly, Your Honor, and I don't know
23 whether this is an issue that even needs to be addressed,
24 but Your Honor made mention at the beginning of your
25 comments at the beginning of the hearing about the --

1 whether or not you've got -- received a copy of the -- of
2 the motion itself, and I would submit to Your Honor that,
3 first of all, when it was filed by Mr. Smith, the NEF
4 indicated that no other person is needed to be served and
5 that the electronic service would take care of serving the
6 appropriate people; we no longer serve counsel. I guess
7 there was an expectation that it would be served on -- on
8 the Court as well, but there are also two cases, Koon vs.
9 Koon from the Court of Appeals and Gallego vs. Everett
10 from the Court of Appeals that indicate that -- that the
11 failure to serve a copy of the -- of the motion has no
12 effect whatsoever on the merits of the motion itself. That
13 simply was added as the comments say to insure that the
14 Judge is notified that a motion has been file, and, of
15 course, that rule was adopted prior to the State adopting
16 electronic filing, so to the extent that maybe electronic
17 filing needs to be modified so that judges get copies of
18 it, I guess that's something that needs to be taken up with
19 Court Administration, but I don't believe that that has any
20 effect whatsoever on this case, and we certainly apologize
21 if the Court did not get immediate notice through
22 electronic filing of the filing of the motion.

23 Thank you, Your Honor.

24 THE COURT - Okay. Okay a couple of things, I
25 believe that Rule 59(g) requires that I be served within

1 ten days, whether it's recorded or not recorded, and -- and
2 -- but -- and I am not trying to argue for either side
3 about not getting service. It's just that I wanted to make
4 a point that I would've tried and worked with you to have
5 this heard as quickly as possible had I known that the
6 motion was pending. I -- you know, I didn't want to hold
7 up a resolution on this, and the other thing is, Mr.
8 Lindemann, the copy of the transcript that I have been
9 provided, it looks like they're some notes and highlighting
10 on it, and so I think that maybe I received a copy that was
11 not intended for me.

12 MR. LINDEMANN - I appreciate your pointing that
13 out. I'll return that one to Mr. Smith.

14 THE COURT - Thank you.

15 MR. ALGER - And just while we're on the record, I
16 would like to reserve the opportunity to raise those
17 arguments related to the filing of the motion if so be, but
18 I'd like to review them before I make any arguments, and
19 maybe that's the instance that we talked about earlier
20 where if I raise it in my brief, they'd have the
21 opportunity to reply briefly, but in terms of further
22 appellate proceedings, I want to reserve that for my
23 arguments and make it clear on the record.

24 THE COURT - Okay. Anything else?

1 MR. LINDEMANN - Nothing from the defendant, Your
2 Honor. Thank you. Thank you again for accommodating me as
3 well.

4 THE COURT - Okay, all right, thank you, ---

5 MR. ALGER - Nothing further, Your Honor.

6 THE COURT - --- nice to see you all.

7 MR. ALGER - And if we do need to get pictures of
8 the evidence or provide the Court with it, will you please
9 let us know so that we can help facilitate that if need be?

10 THE COURT - Sure. And I believe -- well, I will
11 let you know and I am, obviously, taking this under
12 advisement. I'm going to review the transcript and the
13 exhibits before issuing an order, and so I will grant Mr.
14 Alger an opportunity to respond to the brief of the
15 defendant, and then I will allow the defendant five days to
16 respond to anything that the defendant contends is new in
17 response.

18 MR. LINDEMANN - Great. Thank you, Your Honor.

19 THE COURT - All right, thank you all.

20 (END OF TRANSCRIPT)

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CERTIFICATE OF COUNSEL

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

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April 25, 2019

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CERTIFICATE OF COMPLIANCE

The undersigned counsel for the Appellant South Carolina Department of Transportation certifies that the Record on Appeal complies with the Supreme Court's Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings, issued April 15, 2014.

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