



AMERICAN
ASSOCIATION FOR
JUSTICE[®]
The Association for Trial Lawyers

STAC
Student Trial Advocacy
Competition

2026 Student Trial Advocacy Competition (STAC) Official Rules and Fact Pattern

*Riley Leery, Administrator
for the Estate of Jamie Leery,*

v.

Witter Development, LLC

nalae

AAJ is proud to partner with the National Association of Legal Advocacy Educators (NALAE) to host STAC.

The 2026 STAC Fact Pattern is dedicated to the memory of Susan Poehls, a fierce, compassionate, and dedicated pillar of the trial advocacy community.

Important Dates:

Problem Release Date: January 23, 2026

Student Registration Deadline: January 16, 2026

Clarification Request Deadline: February 2, 2026

Regional Competition: March 5–8, 2026

National Finals: March 26-29, 2026

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2026 AAJ STAC OFFICIAL COMPETITION RULES AND GUIDELINES

The American Association for Justice (AAJ) Student Trial Advocacy Competition is a national civil mock trial competition, open to all U.S. law schools, hosted annually in partnership with the National Association of Legal Advocacy Educators (NALAE).

The AAJ Law Schools Committee co-chairs, AAJ-NALAE committee members, and/or AAJ staff will interpret these competition rules, and their decisions are final. At any time, AAJ may create additional rules to address situations not presently covered by these competition rules.

All participants, including team members and coaches, are expected to conduct themselves in a professional manner throughout the competition.

REGISTRATION PROCEDURES

Each team must consist of four eligible students. Only if the team is participating in a virtual region is a trial technician permitted as an additional team member. However, the trial tech is not permitted to become a substitute should the team make the national finals. No additional students can be considered part of the competing team besides the four competing students for any in-person segment of this competition.

School Registration and Refund Policy

School registration closed on October 30, 2025, and no schools may register after that deadline. The full terms and conditions of school registration can be found here.

Team cancellation requests and school registration fee refund requests were due in writing before December 12, 2025. Teams cancelling after that will not receive a refund and will be penalized in the 2027 competition.

Teams placed on the waitlist will be contacted for participation in the order that they were placed on the waitlist. Schools whose second team is removed from the waitlist and compete will pay their second team registration fee at that time.

AAJ Law Student Membership and Student Registration

Students who graduate in December 2025 are eligible to participate only if the competition counts toward their credits for graduation and they will not be admitted to practice prior to March 2025.

Each student participant, including student trial technicians for virtual teams, must be an AAJ student member by January 16, 2026, to participate. All students must verify their membership and register for their respective team online. AAJ Law Student membership dues are \$15. If you have any questions about AAJ's law student membership, or if you have any trouble becoming a member online, please call the AAJ Membership Department at (202) 965-3500, option 1. Failure to join AAJ by this date may result in sanctions against the student or team.

Student Substitution Policy

Substitution of team members after February 13, 2026, is not permitted except in the case of personal emergencies or medical diagnoses that do not allow a student to compete.

Requests for substitutions after the February 13, 2026, deadline must be made in writing with an explanation of why there is a personal emergency or medical need to substitute the student. These requests must be sent to AAJ by emailing Kathryn.Schwacha@justice.org.

The same four students who compete on the advancing teams from regionals should be the same four students who compete at nationals. There are no substitutions allowed, including the consideration of a virtual trial technician competing in person. If any of the four original students cannot compete in the national finals, your team is still eligible to compete but will only compete as a team of three.

Coaches and Coach Registration

A coach must work with each team in the regional and the final competitions. The coach for a team that advances to the final competition does not have to be the person who coached the team at the regional competition—there will be an additional coach form to fill out for finals. A coach may be a law student but may not be a student who is competing in the competition.

Team coaches are expected to attend the coaches' meeting held prior to the competition and are the only ones permitted to file formal complaints with AAJ or regional coordinator. If the team coach is unable to attend the coaches' meeting or unavailable during any portion of the competition, they must notify AAJ and the regional coordinator and at that time a non-competing designee can serve in the coach's absence. Any designee may not be a competing student. A coach or non-competing designee must be in attendance at both regionals and nationals for the duration of the competition.

AAJ must receive the names of the coach(es) for each team before a school is able to compete. The coach will serve as a team contact and be able to observe the competition. A coach must be affiliated with the school they are coaching (alumni, professor, or a non-competing law student). Coaches do not need to be members of AAJ and should not register for the STAC event. Coaches must complete this online form, listing the team the coach is associated with by February 1, 2026. This is the information that will be sent to the regional coordinators to communicate logistics. Not providing an appropriate coach for the regional competition by the deadline provided could result in the team being removed from the competition.

COMPETITION FORMAT

This is a trial skills competition. There is no motion or trial brief writing component. Each team will consist of four law students. Two students will be advocates, and two students will play the witnesses for their side in each round. Advocates and witnesses may change their roles from round to round, but roles must remain consistent throughout each individual trial.

Any questions regarding the competition format are to be directed to AAJ staff. No protests will be granted regarding the competition format, and decisions made by AAJ staff regarding the execution of the competition format are final.

Regional Competition

The regional competition will consist of three qualifying rounds. The first two qualifying rounds will be randomly matched by AAJ, such that each team tries both sides of the case during the first two rounds. **No team from the same school will face another team from the same school during any round in the regional competition.** The third qualifying round will be power-matched, and the sides for round three will be randomly determined. In the event two teams from the same school are paired together as a result of the power ranking, the higher-ranked team will maintain that ranking and the lower-ranked team will trade with the team ranked one spot below. If the lower ranked team is the lowest ranked team remaining in the elimination rounds, then it will trade spots with the team ranked one spot above it.

The seeding for power matching will be determined as follows: (1) win-loss record; (2) number of ballots won; (3) total point differential; and finally (4) total points. AAJ staff will announce the matches and pairings for the first two qualifying rounds no later than noon the Monday before the start of the competition. The regional hosts will determine the round three pairings privately and announce them to the teams before the round begins.

At the conclusion of round three, eight (8) teams shall advance to the elimination rounds of the tournament. The advancement and seeding of teams from qualifying rounds to elimination rounds shall be determined as follows: (1) win-loss record, (2) number of ballots won, (3) total point differentials, and (4) total points. The first elimination round will be paired as follows:

- Semifinal #1: 1st Seed v. 8th Seed
- Semifinal #2: 4th Seed v. 5th Seed
- Semifinal #3: 2nd Seed v. 7th Seed
- Semifinal #4: 3rd Seed v. 6th Seed

In the Final Rounds, the winner of Semifinal #1 (Seed 1v. 8) will play the winner of Semifinal #2 (Seed 4 v. 5), and the winner of Semifinal #3 (Seed 2 v. 7) will play the winner of Semifinal #4 (Seed 3 v. 6) in the Final Rounds. The two winners of these Final Rounds will advance to nationals.

Two teams from the same law school may not compete directly against one another at any time during the elimination rounds. In the event two teams from the same school are paired together as a result of the above method, the higher-ranked team will maintain that ranking and the lower-ranked team will trade with the team ranked one spot below it in that elimination round. If the lower ranked team is the lowest ranked team remaining in the elimination rounds, then it will trade spots with the team ranked one spot above it in that elimination round.

If the teams paired during the elimination rounds have met in the preliminary rounds, they will each represent different sides than in the previous meeting. If they have not yet met, each

team will take the side that they represented the least, or, if matched teams represented the same side equally, the regional hosts will privately flip a coin to determine which side they will represent. The higher seeded team will be heads and the lower will be tails, winner will be plaintiff.

We do not anticipate any odd number of teams at the regional competitions. When an odd number of teams compete at a regional competition, one randomly chosen team will receive a "bye" in each qualifying round. AAJ staff will provide the power pairing bye team name for the power ranking before competition starts in order to remain a random selection that is not impacted by rankings. For ranking purposes, a bye will count as a win, and the team with the bye will be deemed to have had three votes and the points equal to the average of the team's points from the two other qualifying rounds.

The winners of each final round will advance to the National Finals Competition, so each region will have two teams advance.

National Finals Competition

The National Finals will take place in person in New Orleans, LA. The exact location will be shared when it is finalized. AAJ has already set up a room block for students/coaches that advance, and that will be shared with finalists on March 9, 2026.

During the finals, each team will compete in three (3) qualifying rounds. No team from the same school shall face another team from the same school during the three qualifying rounds. The third qualifying round will be power matched. The seeding for power matching will be determined as follows: (1) win-loss record; (2) number of ballots won; (3) total point differential; and finally (4) total points. AAJ staff will announce the matches and pairings for the first two qualifying rounds no later than noon the Monday before the competition starts. AAJ staff will determine the round three power pairings using the same method from the regional competition privately and announce them to the teams before the round begins.

The top eight teams will advance to a single elimination quarterfinal round. The winners of each quarterfinal round will advance to a single elimination semifinal round. The winners of each semifinal round will advance to a single elimination final round.

At the conclusion of the final qualifying round at the National Final competition, the eight teams that shall advance to the elimination rounds of the tournament and the seeding of those teams shall be determined as follows: (1) win-loss record, (2) number of ballots won, (3) total point differentials, and (4) total points.

The first elimination round will be paired as follows:

- Quarterfinal #1: 1st Seed v. 8th Seed
- Quarterfinal #2: 4th Seed v. 5th Seed
- Quarterfinal #3: 2nd Seed v. 7th Seed
- Quarterfinal #4: 3rd Seed v. 6th Seed

In the next elimination round, the winner of Quarterfinal #1 (Seed 1 v. 8) will play the winner of Quarterfinal #2 (Seed 4 v. 5), and the winner of Quarterfinal #3 (Seed 2 v. 7) will play the winner of Quarterfinal #4 (Seed 3 v. 6) in the Semifinal Rounds.

The winners of each Semifinal round will advance to the National Final Round.

Two teams from the same law school may not compete directly against one another at any time during the elimination rounds until the National Final Round. In the event two teams from the same school are paired together as a result of the above method at any time prior to the National Final Round, the higher-ranked team will maintain that ranking and the lower-ranked team will trade with the team ranked one spot below it in that elimination round. If the lower ranked team is the lowest ranked team remaining in the elimination rounds, then it will trade spots with the team ranked one spot above it in that elimination round.

COMPETITION LOGISTICS (Regional Rounds)

All teams must conduct a meet and confer approximately 30 minutes prior to the round. For teams competing in-person, this can be done in your courtrooms. For teams competing virtually, teams should meet in their virtual courtrooms. All teams should ensure they are in their courtrooms, Zoom or in-person, 15 minutes before the rounds are scheduled to begin as we may start early if the judge training is completed ahead of schedule.

A separate document has been provided outlining the finalized start times for the regional competition. Please look for your region and take note of the date and times of each round. The length of each round is estimated at two and a half hours but may be shorter or longer when competing. Times may vary slightly by region - please be sure to read all emails from AAJ in advance of the competition thoroughly.

In-person teams should **NOT** arrive at the courthouses more than one hour before the round start time. Regional hosts on the first day will confirm that all team members are present and that participants match the AAJ competitor roster.

Each team will be assigned a three-digit number that will be used to identify each team without revealing their law school or state throughout the competition.

For virtual teams: advocates will name themselves "NAME - Team #," and witnesses will name themselves "WITNESS NAME - Team #." Trial technicians will name themselves "Trial Technician - Team #." Coaches and observers can watch the round but must name themselves "Coach - Team #" or "Observer - Team #." Teams will receive these numbers the week prior to the competition.

Logistics for the National Finals in New Orleans will be sent to teams that advance after the conclusion of the regional rounds.

THE TRIAL

The competition this year involves the trial of a civil lawsuit. The same fact pattern will be used in the regional and final competitions, but it may be adjusted for the national finals. The trial judge previously ruled that the case would be bifurcated, and the case being tried in the competition is the first phase of the case—the liability phase. Only evidence relevant to the liability issue will be received. There are no pending third-party claims.

The Federal Rules of Evidence (FRE) and Federal Rules of Civil Procedure (FRCP) are the applicable rules of evidence and civil procedure. Only these rules, and the law provided in the fact pattern, shall be used in argument. Specifically, no statutory, regulatory, or case law shall be cited unless such law is provided in the fact pattern.

Students may argue based upon the comments or advisory notes to the FRE but may not cite the cases contained therein. No written briefs, motions, or trial notebooks may be presented to the judge hearing a case. Advocates may show the presiding judge only part of the fact pattern that the judge is asked to rule on, only at the time the judge is asked to rule on it.

The trial will consist of the following phases by each team in this order:

- Pre-trial motions
- Opening Statements for Plaintiff followed by Defendant
- Plaintiff's Case-in-Chief
 - Plaintiff's direct of Plaintiff's witness #1 Defendant's cross of witness Plaintiff's redirect of witness
 - Similar for Plaintiff's witness #2
- Defendant's Case-in-Chief
 - Defendant's direct of Defendant's witness #1
 - Plaintiff's cross of witness
 - Defendant's redirect of witness
 - Similar for Defendant's witness #2
- Closing Argument
 - Plaintiff's Closing
 - Defendant's Closing
 - Plaintiff's Rebuttal Closing

Each side is limited to two live witnesses whom they may call in any order. Plaintiff must call and may only call Avery Potter and Cameron McPhee. Defendant must call and may only call Logan Whitter and Dyland Lindell live at trial. Neither side may call any witness adversely. Both parties are entitled to call Riley Leery by deposition during their case in chief, and if Riley Leery is called by deposition, then the other party is entitled to cross examine Riley Leery by deposition as well. Neither party may object to Riley Leery's testifying by deposition.

The trial has six (6) major advocacy opportunities for each team: opening statement; direct/redirect examinations (2); cross-examinations (2); and closing argument. Each attorney member of a team must handle three of the six opportunities. Opening statement and closing argument may not be done by the same person, and individual statements may not be split

between team members. Each team member that is serving as a lawyer in a given round must do a direct and cross. Each team member does not need to play an attorney role.

Except in the final round, the courtrooms, virtual or in-person, will be off-limits to all team members, coaches, friends, and family members who are not associated with either team competing, unless their team has already been eliminated from the competition.

Competitors may not receive any coaching from anyone in any form during a round, including recesses or breaks. During a round, teams shall not have contact with anyone, other than their team members and their student trial technician (in virtual regions only), until the round ends. The regional or national coordinator, as applicable, has the authority to punish any violation of this rule by disqualifying the team from the remainder of the competition.

Performance at trial will be evaluated by a panel of judges and/or attorneys, one of whom will preside over the trial as Judge, making rulings as necessary, and the remainder of whom will act as the jury.

Motions

Each side will be permitted to make pretrial motions. Each side shall be limited to six (6) minutes to both present their motions and respond to the other side's motions, meaning that pretrial shall not exceed twelve (12) minutes total. Motions for a judgment as a matter of law and evidentiary objections are permitted.

Timing of the Trial

Each team will have seventy (70) minutes to present its case (not including the additional six (6) minutes per side for pretrial motions); time will be stopped during objections. The time limit will be strictly enforced, although it is not necessary to use all allotted time. There will be no time limits for specific aspects of the trial. Time on cross-examination is charged against the team conducting the cross-examination. Time will be stopped for objections and responses to objections. Team members will be responsible for timing the trials, as no bailiffs will be provided. Teams should meet and confer prior to closing arguments if there are any issues regarding timing. If the issue cannot be resolved, it should be brought to the attention of the regional coordinator.

Facts Outside the Record

Direct Examination: During direct examination, advocates must confine the questions and witnesses must confine their answers to the facts provided in the fact pattern, any matters judicially noticeable under the Federal Rule of Evidence 201, and necessary inferences drawn from the case material on non-material facts.

- **Necessary inference:** An inference is necessary if another and a different inference cannot be reasonably drawn from the facts stated. It is inescapable and inevitable. A necessary inference is NOT any fact that you might wish to be true, nor is it a factual inference that is merely possible or consistent with facts in the fact pattern. For example, if your witness is a police officer, it is a necessary inference that the officer went to and graduated from the police academy. However, it is not a necessary

inference that the officer received any specialized training, like training in accident reconstruction.

- **Material facts:** No inferred fact may be material, which means you may not ask a witness for and the witness may not provide a fact that either: (1) changes the merits of either side of the case; or (2) enhances the credibility of that witness or damages the credibility of another witness. This rule means that even if an inferred fact is a necessary inference witnesses are not allowed to testify to such fact if it falls within either of these two categories.
- **Impeachment by omission:** If during a direct examination a witness testifies to a material fact not contained in the case materials, the witness may be impeached during cross-examination through impeachment by omission. A witness must admit that counsel suggested the fact or that the witness him/herself made up the material fact, if true. The opponent should impeach if a witness says something outside the fact pattern. In the event of such an impeachment, the witness is prohibited from saying, "I was not asked that in my deposition," or any variation thereof.
 - Under no circumstances are witnesses permitted to testify that they were not asked a question in their depositions. Any testimony to this effect, alleged by an opponent's objection and verified by at least one scoring judge, may result in sanctions.
- **Cross-examination:** During cross-examination, an advocate may question the witness about facts and/or non-events that are not contained in the problem materials. However, in the event of such questions during cross-examination, the witness is permitted to provide details not contained within the problem only if: (1) the fact or non-event is not addressed by the prior testimony of that witness or exhibits authenticated by that witness; and (2) the added fact is in direct response to the question asked.
 - For example, if the witness testifying is a police officer and the problem does not discuss whether or not the police officer fingerprinted the crime scene, the advocate cross-examining that police officer may ask, "you did not fingerprint the scene, correct?" But the witness would be permitted to answer this question, "no," or "yes, I did," because the problem does not speak to that fact or non-event and such answer is in direct response to the question asked.
 - However, if the witness were asked, "you did not fingerprint the scene, correct," and the witness responded with, "no, because the Defendant cleaned the room with bleach so there was no point," that would be impermissible because it was not directly responsive to the question being asked and asserts a new fact that was not asked for.
 - These rules do not permit a witness to add a fact or detail not contained within the problem during direct or re-direct examination. It only permits a witness to testify to such fact and/or detail in response to a direct question or cross-examination. Additionally, a witness may not provide additional testimony regarding a fact or detail that was added in response to a direct question on cross-examination during re-direct examination.
 - Additionally, an advocate may not invent facts or use outside resources in their questions to enhance the cross-examination of a witness. Taking the example of a police officer witness testifying and a silent record about DNA samples, an advocate shall not reference topics outside of the case file, such as the reliability

of DNA, the scientific theory of DNA, the process of DNA collection, etc. In this example, it is not permissible to ask the police officer witness, "You're aware that the margin of error for DNA tests can be as high as five percent, correct?"

- **Re-cross examination:** While these rules generally prohibit re-cross examination of a witness, re-cross examination is allowed for the limited purpose of impeaching the witness, either by prior inconsistent statement or by omission, if a witness testifies during re-direct examination to a fact not contained in the case materials.
 - The presiding judge will determine, based on arguments and evidence presented by counsel, whether a witness testified during re-direct examination to a fact not contained in the case materials.
 - In any event, even if a re-cross examination is allowed, under no circumstances will another re-direct examination be permitted after the re-cross examination concludes.

Witnesses

The same attorney conducting direct examination of a witness shall also conduct the re-direct examination of the same witness if any. The only lawyer who may object during witness testimony is the lawyer examining that witness.

- A person of any gender may play any witness. During the pre-trial meet and confer, each team will notify the other team of the gender of each witness.
- All depositions are signed and sworn.
- Witnesses may not be recalled. Witnesses will not be physically sequestered but may be constructively sequestered by the presiding judge.
- While a witness is testifying, no one may communicate with them privately (e.g., no coaching your witness by text message). Otherwise, advocates and witnesses on the same team may communicate with each other during the trial.
- A witness may not intentionally and unreasonably refuse to answer questions during cross- examination (or re-cross examination) and may not take any action designed to exhaust the time of the cross-examining advocate's team, such as repeatedly asking to be refreshed/have questions repeated, offering explanations to simple questions requires a "yes/no" answer, or shown their deposition or statement.
 - Any team that encourages a witness to violate this rule is subject to sanctions consistent with the rules herein.

For Virtual Regional Rounds

- Witnesses must sit while testifying (unless given permission to stand by the presiding judge). Witnesses should only have their audio and video on while testifying or if asked to turn on their camera to be introduced to the jury during opening statements.
- Advocates may choose whether and when to sit or stand. Advocates must mute their audio except when presenting, including the attorneys conducting direct and cross, who may both be unmuted.
- During motions and while addressing housekeeping matters, only the attorneys addressing the issues at that time should have their video on.
- During opening and closing, only the two attorneys giving that particular speech should have their video on (e.g., during the Plaintiff opening, both the Plaintiff opener

and Defense opener should have their video on). During witness examinations, only the two attorneys examining that witness and the witness should have their video on.

PROTEST COMMITTEE FORMATION AND PROCEDURES

Protests may only be filed regarding conduct during the course of the trial. Protests cannot be filed regarding any competition format or logistics. Decisions made by the regional or national protest committees are final and cannot be appealed.

Protest Committee Formation

Protest committees shall be formed at the beginning of each regional competition and the beginning of the final competition.

- For regional rounds, regional coordinators/hosts must designate three coaches or representatives of the participating schools to serve as the protest committee.
 - Protest committees will swap with another region to prevent conflicts of interest.
 - All designated protest committee members are expected to be available for the entire duration of the regional or final competition, even if the school they represent has been eliminated from the competition.
- For the national finals, AAJ staff will designate three coaches/representatives of the participating schools, as well as two alternates should those representatives have a conflict.
- If by disqualification, unavailability, or otherwise, less than three (3) members of the protest committee remain, an additional qualified member or members will be selected by the regional coordinator/host or the final round coordinator - this could include the regional host serving or an outside AAJ/NALAE representative being asked to serve.

A competitor or coach violating any rules governing the competition may be subject to sanctions under these rules.

General Protest Procedure

- All formal protests must be lodged with the AAJ regional coordinator or law school host at the regional competition or with AAJ staff at nationals **within five (5) minutes of the conclusion of the trial in question.**
 - Conclusion of the trial means the moment the judges dismiss the competitors after closing arguments have concluded (or otherwise signals that the trial is done), before any feedback from the judges is given. Coaches should immediately notify the coordinator and opposing coach by text or email.
 - In virtual regions, they then go into the coaches' room on Zoom.
 - In in-person regions, coaches should wait where the regional host has directed them to wait; this will likely be outside the judges' meeting room.
 - If the issue of whether the deadline has expired is raised, the burden is on the protesting team to demonstrate that the protest was made to the appropriate party within the five-minute deadline.
- Protests concerning witness testimony will be handled in the manner described above.

- All other protests must be lodged with the regional host, who will promptly convene the protest committee. After lodging an official protest, the protesting coach must inform the opposing team's coach, and coaches from both teams are required to meet in the coaches' Zoom room or courthouse hallway to confer and attempt to agree on if a protest should proceed.
 - Protest committee members who are coaches or representatives of the protesting law school or of the law school against which the protest is lodged may not participate in deciding the protest.
 - However, every protest must be decided by at least three (3) protest committee members.

Protests may be considered and decided according to such procedures and standards as the protest committee may determine, subject to the following guidelines:

- Protests are not intended to be and should not become part of the competitive process. They are a last resort and should be lodged only for an alleged substantial violation of the competition rules and relevant ethical standards. If the protest committee determines whether a protest is without merit or frivolous, the protest committee may impose sanctions on the protesting team.
- Since uncertainty and surprise play a role in many trials, the protest committee should give weight to whether the protesting team was able, or through the use of resourceful trial techniques should have been able, to neutralize the protested conduct.
- The protest committee may, but is not required to, consult with the judges of the protested round, the coaches of the involved teams, the team members, and the witnesses in the round in deciding the protest. Since recording of the competition is not permitted at any time during the competition, no recordings of the trial will be permitted or heard when reviewing a protest.
- **Explanation of protests to the protest committee should not take longer than five minutes per side.** Coaches should be mindful of everyone's time, including the overtime courthouse costs, involved in resolving a protest. If a coach brings multiple issues to the committee, they should explain them all as quickly and efficiently as possible.
- Protests should be resolved as soon as possible.
- The regional coordinator shall be present during meetings of the protest committee and will compile a complete report of all protest committee proceedings. This report must be emailed to Kathryn Schwacha at Kathryn.Schwacha@justice.org within an hour of the protest's resolution.

RULE VIOLATIONS AND SANCTIONS

These sanctions are for any violation of the rules contained herein under the "Facts Outside Record" section and only for those specific rules. AAJ considers violations of this rule serious and wants protest committees to take violations seriously to discourage teams from violating the rule in this and future competitions.

Is There a Violation?

In determining whether a violation occurred and, if so, the severity of the violation, protest committees shall be guided by the following:

- Whether the fact testified to was material;
- Whether the fact testified to was a necessary inference;
- Whether the conduct was intentional or unintentional
 - In determining whether any facts elicited which violate the Necessary Inference Rule were intentional or unintentional, the protest committee shall consider:
 - whether the fact was elicited more than once;
 - whether the fact was argued by the team who elicited the fact in closing argument; and
 - whether the advocate who elicited the fact attempted to address the fact by
 - withdrawing the fact;
 - asking the witness to clarify (“are you sure you have previously said...”);
 - moving to strike the fact; or
 - otherwise informed the presiding judge, scorers, and/or opposing advocates that the fact was unintentionally elicited.
- If the fact was first testified to in response to a question on cross-examination: (1) whether the fact or non-event is not addressed by the prior testimony of that witness or exhibits authenticated by that witness; and (2) whether the added fact was in direct response to the question asked.

Penalties

The following penalties are not mandatory but should be used as guidance for protests concerning this rule.

- Once a violation is found, points may be deducted from the score of the violating team in the following situations:
 - **Material Violations:** If the protest committee finds the violation to be material, they may deduct 3 – 5 points from the violating team’s score on each ballot using the guidelines.
 - **Non-Material Violations:** If the protest committee finds the violation non-material, they may deduct at least one (1) but no more than two (2) points on each ballot using the guidelines.
 - **Unintentional Conduct:** If the protest committee finds that the conduct was unintentional, they may choose not to deduct any points.
- All protest point deductions should end in half-points (0.5, 1.5, 2.5, etc.). Protest resolutions cannot result in a tie.
- Additional Sanctions – If the protest committee finds the severity of the violation to warrant sanctions more severe than point deductions, the protest committee may:
 - Require the offending team to forfeit a ballot;
 - Require the offending team to forfeit the round;
 - Disqualify the offending team from the competition.

Protests under this procedure are not encouraged. Any complaints should be limited to substantial violations that are well-grounded in fact. All participants are encouraged to act within the spirit and letter of the competition rules.

JURY INSTRUCTIONS

The instructions provided in the fact pattern are the only instructions that will be given. The instructions are the only statements of applicable substantive law. Instructions will not be eliminated or modified, and no additional instructions may be tendered or will be given.

EXHIBITS AND TRIAL TECHNOLOGY

A case file of all materials will be provided to presiding judges. Advocates should authenticate exhibits, impeach, and refresh recollection by referencing the case file.

Teams may have one additional student on their roster to serve as a trial technician, who shall be responsible for technological needs, such as displaying exhibits. Trial technicians are only available to virtual participants. Trial technicians must become an AAJ member, register as a team member, and may confer with team members throughout the trial for any reason. Teams may also assign those responsibilities to one or more of the other rostered team members. Trial techs may attend the national finals should their team advance; however, they cannot substitute as a competitor in the finals.

During any trial, counsel may use only those exhibits provided in the problem itself and demonstrative evidence as defined herein. No other evidence or audiovisual aids will be allowed.

- Nothing in this rule permits teams to create new exhibits or evidence.
- No charts or drawings may reflect facts outside the record.
- All exhibits are stipulated as authentic and genuine for purposes of trial.

For In-Person Regional Rounds

- Teams may not use technology during in-person Regional Rounds.
- During trial, team members may communicate only with each other, judges, the opposing team, and tournament officials. They may not communicate with coaches, family, or anyone else. **TEAMS SHOULD NOT USE ANY PHONES OR SMART WATCHES DURING THE TRIAL.** Teams that violate this rule are subject to sanctions outlined below.
- For purposes of this competition, “demonstrative evidence” includes diagrams, maps, drawings, graphs, charts, timelines and/or lists of facts, elements, or arguments (such as closing argument outlines) that are written or created during the trial using a whiteboard or flip chart. The entirety of these demonstratives must be created during trial including any heading or graph lines. Demonstratives of this nature are not required to be disclosed prior to trial because they must be created during trial. Teams must bring their own whiteboard or flip chart as well as markers and erasers.
- Teams may enlarge any exhibit in the file to any size they choose. Teams may bring as many enlargements as they choose; however, teams must share their enlargements

with their opponents in each round. Teams may also bring flip charts and/or whiteboards.

- Teams may also hand copies of portions of the case file (e.g. exhibits, depositions, jury instructions, the verdict form, etc.) to the presiding judge as necessary throughout trial and in accordance with the FRCP and FRE. Teams may publish admitted exhibits to the jury either through enlargements or through handing copies of said exhibits to the jury.

For Virtual Regional Rounds

- **Demonstrative evidence:** includes diagrams, maps, drawings, graphs, charts, timelines and/or lists of facts, elements, or arguments (such as closing argument outlines) that are written or created during the trial using Zoom white boards or an actual white board or flip chart in the room with the advocate that is shown on camera.
 - The entirety of these demonstratives must be created during trial including any heading or graph lines.
 - Demonstratives of this nature are not required to be disclosed prior to trial because they must be created during trial.
 - Demonstratives of this kind are also not subject to limitation on PowerPoint slides.
- **Other Technology:** Teams may use any technology except teleprompters or other script-scrolling apps or devices.
 - Teams that are proven to be using these devices will be penalized.
- **Courtroom Set Up:** Teams may set up their physical spaces however they like, but they may not have (a) virtual backgrounds or (b) anything on screen that identifies their school, state, or region.
 - Any app or program screen share as a virtual background is not permitted.
- **PowerPoint Presentations**
 - Presentations may be created prior to trial, but counsel may only use the exhibits provided in the problem itself, the jury instructions, and the verdict forms. Teams may use callouts or highlighting in their PowerPoint presentations and may insert answers into the questions on the verdict forms.
 - Animations are strictly prohibited. This refers to re-creations akin to a video, not slide transitions in PowerPoint. Highlights and callouts may appear via pop ups in PowerPoint.
 - PowerPoint presentations are limited to a total of thirty (30) slides, not including blank slides that merely separate one section of the presentation from another.
 - Depositions used for impeachment only do not count as part of the thirty (30) slides.
 - Each side (plaintiff and defense) may have their own PowerPoint presentation of thirty (30) slides. PowerPoint presentations must be disclosed to opposing counsel before trial begins.
 - This requirement does not apply to the use of a deposition for impeachment purposes only.

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IN THE SUPERIOR COURT FOR HANOVER COUNTY

RILEY LEERY, Administrator for the)
Estate of JAMIE LEERY,)
Plaintiff)
)
v.)
)
WITTER DEVELOPMENT, LLC,)
Defendant)

CIVIL ACTION NO. AAJ-CV-001-26

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF THIS COURT:

NOW COMES RILEY LEERY, Administrator for the Estate of JAMIE LEERY, Plaintiff herein, complaining of WITTER DEVELOPMENT, LLC (hereinafter “WITTER DEVELOPMENT”), Defendant herein, and for cause of action would respectfully show the Court and jury the following:

I.

PARTIES

- 1. Plaintiff RILEY LEERY is an individual residing in Capeside County and is suing as the Administrator of the Estate of JAMIE LEERY.
- 2. Defendant WITTER DEVELOPMENT is a domestic corporation with its principal place of business in Hanover County.

II.

FACTUAL BACKGROUND

3. On or about September 7, 2024, JAMIE LEERY was exiting The Icehouse, a restaurant located at 1234 E. Main St., Wilmington, Hanover. The Icehouse sits in a strip mall or shopping center that is owned by WITTER DEVELOPMENT, a land development company here

in Wilmington and the surrounding area. WITTER DEVELOPMENT is the landlord/lessor of the building that The Icehouse operates out of and maintains control of the common spaces in that shopping center, including the parking lot.

4. JAMIE LEERY exited The Icehouse and began walking through the parking lot towards his vehicle, which was parked in the parking lot. While walking through that parking lot, JAMIE LEERY came upon a landscape median. Unbeknownst to JAMIE LEERY, there was an exposed sprinkler head in this landscape median that was sticking up from the ground a couple of inches. Due to the nature of the landscape median, this exposed sprinkler head was camouflaged. Additionally, the parking lot itself was poorly lit, which made it even more difficult to see the subject sprinkler head. Finally, there were no warning signs or warnings of any kind that would have alerted JAMIE LEERY to the presence of this exposed sprinkler head or the inadequate lighting in that parking lot.

5. As JAMIE LEERY approached this landscape median, he stepped up onto the median and walked over it, eventually tripping over the exposed sprinkler head and falling to the ground, hitting his head, which lead to a brain hemorrhage.

6. JAMIE LEERY died later that same day as a result of the injuries sustained in that fall.

7. JAMIE LEERY was survived by his child, RILEY LEERY, who is also the administrator of his estate, along with other children and grandchildren.

III.

SURVIVAL ACTION

8. Plaintiff adopts and incorporates by reference all previous paragraphs of the complaint as if set forth in their entirety.

9. WITTER DEVELOPMENT owned, operated, and controlled the subject premises where JAMIE LEERY sustained his injuries and the damages described herein. WITTER DEVELOPMENT owed JAMIE LEERY a duty to exercise ordinary care in maintaining safe premises for those people that were invited onto those premises.

10. WITTER DEVELOPMENT breached this duty by, among other things:

- a. Failing to remove the exposed sprinkler head or failing to warn of its presence;
- b. Failing to ensure that the parking lot and the area where the exposed sprinkler head was located had adequate lighting or failing to warn of the lack of adequate lighting in the parking lot that would have allowed persons travelling through that parking lot to see obstructions like the exposed sprinkler head; and
- c. Failing to provide customers of the shopping center with a walkway through the subject parking lot in order to allow them to avoid the area where the exposed sprinkler head was located.

11. Each of WITTER DEVELOPMENT's negligent acts and omissions, singularly and in combination with others, was a proximate cause of JAMIE LEERY's injuries and damages.

IV.

WRONGFUL DEATH

12. Plaintiff adopts and incorporates by reference all previous paragraphs of the complaint as if set forth in their entirety.

13. WITTER DEVELOPMENT owned, operated, and controlled the subject premises where JAMIE LEERY sustained his injuries and the damages described herein. WITTER

DEVELOPMENT owed JAMIE LEERY a duty to exercise ordinary care in maintaining safe premises for those people that were invited onto those premises.

14. WITTER DEVELOPMENT breached this duty by, among other things:
 - a. Failing to remove the exposed sprinkler head or failing to warn of its presence;
 - b. Failing to ensure that the parking lot and the area where the exposed sprinkler head was located had adequate lighting or failing to warn of the lack of adequate lighting in the parking lot that would have allowed persons travelling through that parking lot to see obstructions like the exposed sprinkler head; and
 - c. Failing to provide customers of the shopping center with a walkway through the subject parking lot in order to allow them to avoid the area where the exposed sprinkler head was located.

15. Each of WITTER DEVELOPMENT's negligent acts and omissions, singularly and in combination with others, was a proximate cause of JAMIE LEERY's injuries and damages.

V.

JURY DEMAND

16. Plaintiff requests a jury trial and tenders the appropriate fee with this Complaint.

VI.

REQUEST FOR RELIEF

17. For the reasons stated above, Plaintiff asks that this Court issue citation for WITTER DEVELOPMENT to appear and answer, and that upon trial on the merits Plaintiff, as the Administrator of the Estate of JAMIE LEERY, recover judgment for the following:

- a. Past and future pain and suffering;
- b. Loss of wages and earning capacity in the past and future;
- c. Loss of companionship;
- d. Past and future mental anguish;
- e. Funeral expenses;
- f. Loss of society;
- g. Medical expenses;
- h. Loss of household services;
- i. Pre-judgement and post-judgment interest;
- j. Cost of suit;
- k. All other relief, general and special, which Plaintiff is entitled to receive at law or in equity, or for which this Court deems proper.

Respectfully submitted,

/s/ L. W. Yer
Attorney for Plaintiff

14. Denied.

15. Denied.

16. No need to admit or deny.

17. Denied.

IV.

AFFIRMATIVE AND OTHER DEFENSES

1. Defendant is not liable to the Plaintiff because JAMIE LEERY's own acts and/or omissions proximately caused or contributed to JAMIE LEERY's own injury. On the occasion in question, JAMIE LEERY failed to exercise that degree of care which a person of ordinary care and prudence would have exercised under the same or similar circumstances, and such failure to use ordinary care for their own safety was a proximate cause of the alleged injuries.

Respectfully submitted,

/s/ Max Fried
Attorney for Defendant

7. All exhibits are deemed authentic and are true copies, meaning they are what they purport to be. All parties reserve the right to raise other evidentiary objections to the admission of any exhibit at the trial of this matter.

8. All witnesses have personally seen and reviewed all Exhibits contained in the case file.

9. Jamie Leery was pronounced dead at the Hanover County Hospital. An autopsy determined that Jamie Leery died due to injuries sustained in the subject fall, including blunt force trauma to the head, which resulted in a brain hemorrhage.

10. Plaintiff must call and may only call Avery Potter and Cameron McPhee live at trial. Defendant must call and may only call Logan Witter and Dylan Lindell live at trial. Both parties are entitled to call Riley Leery by deposition during their case in chief, and if Riley Leery is called by deposition, then the other party is entitled to cross examine Riley Leery by deposition as well. Neither party may object to Riley Leery's testifying by deposition.

11. Jamie Leery's wife, Gail Leery, died in 2019 of a heart attack. Jamie Leery is survived by three children – Riley, Charlie, and Abby – along with six grandchildren.

12. At the time of his death, Jamie Leery was 75 years old, 5'10" tall, and weighed 210 pounds.

13. Hanover is a comparative fault jurisdiction, which means that Plaintiff's ultimate recovery would be reduced by any percentage assigned to Jamie Leery.

14. The parties agree that Exhibits 3, 5, and 10 are business records under FRE 803(6), and any objections to such exhibits on the basis of hearsay, or hearsay-within-hearsay, have been waived.

15. The parties agree that Exhibits 15 and 72 are public records under FRE 803(8), and any objections to such exhibits on the basis of hearsay, or hearsay-within-hearsay, have been waived.

16. At all relevant times, Logan Witter was acting within the course and scope of employment for Witter Development, LLC.

17. The legal blood-alcohol concentration (BAC) in this jurisdiction is 0.08.

18. Statements made by Jamie Leery qualify as opposing party statements under Rule 801 if offered by the Defendant.

answer, then answer “no.” A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

The Plaintiff has the burden of proof on their claim of negligence. That is, the Plaintiff must prove that one or more of the Defendants were negligent by a preponderance of the evidence.

An employer is “vicariously liable” for its employee’s actions while the employee is acting within the course and scope of their employment. Defendant admits that Logan Witter was acting in the course and scope of employment at all times relevant to this case.

The Defendant has plead the affirmative defense of comparative negligence. The defense asserts that the negligence of Jamie Leery was a proximate cause of Jamie Leery’s injury.

With respect to Jamie Leery, “negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

With respect to Jamie Leery, “ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

The definition applying to “proximate cause” that I have previously given to you applies to the defense of comparative negligence. The defense has the burden of proof on their affirmative defense. That is, the defense must prove that Jamie Leery was negligent by a preponderance of the evidence before the defense would prevail on that issue.

IN THE SUPERIOR COURT FOR HANOVER COUNTY

RILEY LEERY, Administrator for the)
Estate of JAMIE LEERY,)
Plaintiff)

v.)

CIVIL ACTION NO. AAJ-CV-001-26

WITTER DEVELOPMENT, LLC,)
Defendant)

VERDICT FORM – QUESTION ONE

QUESTION NO. 1:

For purposes of this question, did the negligence, if any, of the persons named below proximately cause the injury in question?

Answer “Yes” or “No” for each of the following:

WITTER DEVELOPMENT, LLC: _____

JAMIE LEERY: _____

If you answered “Yes” to Question No. 1 for WITTER DEVELOPMENT, LLC and also answered “Yes” to Question No. 1 for JAMIE LEERY, then answer the following question. Otherwise do not answer the following question.

FOREPERSON

IN THE SUPERIOR COURT FOR HANOVER COUNTY

RILEY LEERY, Administrator for the)
Estate of JAMIE LEERY,)
Plaintiff)

v.)

WITTER DEVELOPMENT, LLC,)
Defendant)

CIVIL ACTION NO. AAJ-CV-001-26

VERDICT FORM – QUESTION TWO

QUESTION NO. 2:

For purposes of this question, you should only assign percentages to those you find caused the damages identified in response to Question No. 1. The percentages you find must total 100%. The percentages must be expressed in whole numbers. The percentage of responsibility is not necessarily measured by the number of acts or omissions found.

For those found by you to have caused the damages, if any, to JAMIE LEERY, find the percentage caused by:

WITTER DEVELOPMENT, LLC: _____ %

JAMIE LEERY: _____ %

Total 100%

 FOREPERSON

IN THE SUPERIOR COURT FOR HANOVER COUNTY

RILEY LEERY, Administrator)	
for the Estate of JAMIE LEERY,)	
)	
Plaintiff,)	
v.)	Civil Action No. AAJ-CV-001-26
)	
WITTER DEVELOPMENT, LLC,)	
)	
Defendant.)	
)	
)	
)	

1
2 *****
3 ORAL DEPOSITION
4 OF RILEY LEERY
5 July 10, 2025
6 *****

7 PROCEEDINGS
8 RILEY LEERY

9 having been first duly sworn, testified as follows:

10 CROSS EXAMINATION

11 BY DEFENSE COUNSEL:
12 Q: Good afternoon, can you please state your name for the record.
13 A: Good afternoon, my name is Riley Leery.
14 Q: How old are you?
15 A: I'm 35 years old.
16 Q: Are you married?
17 A: I am. My husband, Joey, and I have been married for five years,
18 and we have a daughter named Lily, who is three.
19 Q: What do you do for a living?

1 A: I'm a lawyer.

2 Q: What kind of law do you practice?

3 A: I'm a personal injury attorney. I always joke around that I do
4 car wrecks and dog bites, but that's just me being modest. I work
5 for a plaintiff's firm doing products liability and mass torts.

6 Q: How long have you been doing that?

7 A: Since I graduated from law school, so ten years now.

8 Q: What does your spouse do?

9 A: He is a high school basketball coach and also teaches health
10 and biology classes.

11 Q: Where do you live now?

12 A: We live in Atlanta.

13 Q: How long have you lived there?

14 A: That's where my firm is, so we've lived here for ten years.

15 Q: Where did you grow up?

16 A: In Wilmington.

17 Q: Alright, well tell us why you're here today?

18 A: I'm here because of my dad's fall and the injuries that
19 ultimately took his life, and to seek justice against the people
20 that allowed this to happen.

21 Q: I'm showing you Exhibits 1 and 2, do you recognize these?

22 A: Yes, those are photographs of my father. Exhibit 1 is a
23 photograph that was taken for his work and Exhibit 2 is a
24 photograph of him on vacation.

1 Q: And when were these taken?

2 A: Exhibit 1 was taken in the fall of 2023 and Exhibit 2 was taken
3 last summer while he was on vacation.

4 Q: How old was he in these photographs?

5 A: Well, he was 75 years old when the fall happened, so he would've
6 been either 75 or 74 when these photographs were taken.

7 Q: And are Exhibits 1 and 2 fair and accurate depictions of your
8 father as he appeared around the time of his death?

9 A: Yes.

10 Q: You told us Exhibit 1 was a photograph your father took for
11 work. What was his job?

12 A: He was a professor at the university in Wilmington. He taught
13 classic literature. You know, Beowulf and Shakespeare and stuff
14 like that. He loved it. He also wrote a little on the side. I think
15 he always had aspirations of writing the great American novel, but
16 I assume that is every literature professor's dream.

17 Q: How long did he do that work?

18 A: Gosh, he was at the same university his entire career. I mean,
19 they had all of us in Wilmington and we were all raised there, so
20 they would've been in Wilmington for forty years or so, and he was
21 a professor that entire time.

22 Q: You said "us," how many siblings do you have?

1 A: I have two, an older brother and a younger sister. They both
2 stayed in Wilmington after they graduated from the university, and
3 they both have their own families there.

4 Q: So, how many grandchildren did your father have?

5 A: Well, Lily was just a baby when he passed away, which is so sad
6 because he never really got to know her because she was so little.
7 But my brother has three kids and my sister has two, and my dad
8 spent a lot of time with them since they were all in Wilmington.
9 They were over at the grandparents' house pretty much every day
10 while their parents were at work and whatnot.

11 Q: What was your mother's name?

12 A: Gail.

13 Q: Is she still alive?

14 A: No, she passed away about five years before my father.

15 Q: And what was her cause of death?

16 A: She had a heart attack. Very sudden, kind of out of nowhere. It
17 was a shock to all of us, but especially my father. Those were a
18 rough few years for him.

19 Q: I can imagine. What did you and your siblings do to try to help
20 him through that period?

21 A: Well, obviously, my siblings were there in town, so they spent
22 a lot of time with him, going over to the house for dinner, taking
23 him out to lunch after church on Sundays, taking the kids over
24 there to see him, things like that. For my part, I started to make

1 an effort to make sure I got back to Wilmington for big events
2 like holidays and his birthday, just to make sure I was around.
3 And I would call him at least once a week just to check-in and
4 talk about stuff, see how he was doing. Funny enough, I miss my
5 mother every day, and I know Dad did too, but her death really
6 brought us much closer together, which was nice. Too bad it was
7 cut so short.

8 Q: Let's talk about what happened on September 7, 2024. Where were
9 you that day?

10 A: I was back in Wilmington visiting my father.

11 Q: Why were you there?

12 A: My father's birthday was the following week, on the 10th, so I
13 was there celebrating his birthday, just a few days early.

14 Q: Were you there with your family or just you?

15 A: The whole family went, but that night it was just my dad and I,
16 hanging out. Joey was back at my dad's house watching Lily, and my
17 siblings were already planning a birthday celebration on his actual
18 birthday, so it was just the two of us.

19 Q: Alright, let's walk through that day. Where did the two of you
20 start?

21 A: We started at the Bluewater Grill, which is a local mom and pop
22 type of fish place that I love to eat at when I'm home. Can't get
23 fish like that in Atlanta. So, we went there to get lunch.

24 Q: What time was that?

1 A: Around 11:30 in the morning, maybe closer to noon. I don't
2 really remember.

3 Q: Who drove?

4 A: I did.

5 Q: I'm showing you Exhibit 3, do you recognize it?

6 A: Yes, that's the receipt from the Bluewater from that day.

7 Q: And is Exhibit 3 a true and correct copy of that receipt?

8 A: Yes.

9 Q: According to this, you checked out and paid around 1:30 p.m.
10 that day, does that sound right?

11 A: Yeah, sounds right.

12 Q: And there are several drinks on here.

13 A: I don't know if I would call four drinks "several," but ok.

14 Q: Well, who drank what?

15 A: My dad drank the old fashioned. That was his drink of choice.

16 And I had the beers.

17 Q: Three beers at lunch?

18 A: Am I on trial here? Yeah, I had three beers. I don't see why
19 that matters.

20 Q: Who was driving that day?

21 A: I was, but it was just around Wilmington. And, again, it was
22 just a couple of beers. It wasn't like I was drunk or anything.

23 Q: What is in an old fashioned?

1 A: It's a bourbon-based cocktail. So, it's got a little sugar, a
2 dash or two of bitters, ice, and a couple of ounces of bourbon. My
3 dad was drinking Blanton's.

4 Q: I'm showing you Exhibit 4, what is this?

5 A: It's a screenshot of an Instagram post from that lunch that I
6 posted, so I took the photograph as well. And you can see dad's
7 old fashioned right there.

8 Q: Alright, so you're at lunch from around noon till 1:30 p.m.
9 Where did the two of you go next?

10 A: We went to a sports bar in town called Hell's Kitchen. We were
11 going to watch college football and just hang out.

12 Q: How long were you there?

13 A: A few hours. We met some of my dad's friends up there and some
14 of my old buddies from high school, so it was a lot of fun.

15 Q: I'm showing you Exhibit 5, what is this?

16 A: That's our receipt from Hell's Kitchen.

17 Q: Who paid?

18 A: I did, just like I paid at the Bluewater. I wasn't going to let
19 my dad pay when we were out celebrating his birthday.

20 Q: There is only one beer and two old fashioned on here, so is
21 that all y'all had to drink over a few hours?

22 A: Yeah. I slowed down because I was driving, so I mostly drank
23 iced tea, and dad had a couple of drinks, but he was a sipper
24 mostly, and he had a few iced teas as well.

1 Q: Okay, what time did the two of you leave Hell's Kitchen?

2 A: Around 5 or 5:30 in the afternoon, and that's when we drove
3 over to The Icehouse.

4 Q: Had you been to The Icehouse before?

5 A: I hadn't, but dad was a big fan. Said he knew the owner or the
6 general manager or something like he was a regular or something.
7 I thought it was really cute. So, we went there.

8 Q: Where did you park when you arrived?

9 A: It was in a kind of little shopping center or strip mall, so we
10 just parked in the parking lot.

11 Q: I'm showing you Exhibit 6, which is an overhead shot of that
12 parking lot outside the shopping center where The Icehouse is
13 located. And Exhibit 7 is a little bit more zoomed in picture of
14 the same thing. On both, can you circle for me in red where your
15 car was parked that night and circle for me in blue where The
16 Icehouse is located in that shopping center?

17 A: Here you go.

18 Q: Okay, I'm going to mark those pictures, with those circles on
19 them, as Exhibits 8 and 9. How did the two of you walk into the
20 building?

21 A: We walked through the parking lot, the same way we walked out,
22 basically.

23 Q: How long were the two of you at The Icehouse?

24 A: A few hours. I think we left right before 9 p.m.

1 Q: I'm showing you Exhibit 10, what is this?

2 A: That's our receipt from The Icehouse.

3 Q: So, the two of you were there for a little over three hours,
4 and this says you ordered three beers, three old fashioned, water,
5 and two iced teas. Who drank what?

6 A: Well, I was drinking water kind of steadily throughout the night
7 and dad was drinking iced teas steadily throughout the night as
8 well, and then I drank the beers and dad drank the old fashioned.

9 Q: Was that a lot for your father to drink? Three bourbon drinks
10 in just three hours?

11 A: I mean, he wasn't a heavy drinker, but he wasn't driving that
12 night, so I didn't worry about it. Plus, as you can see from the
13 receipt, we had food as well. So, it wasn't like we were just
14 sitting there drinking, we were eating too.

15 Q: Didn't he fall out of his chair at some point?

16 A: No, he had a little difficulty getting up into his chair at one
17 point, but he didn't fall or anything. We were just having a good
18 time, but he wasn't slurring his speech, he wasn't stumbling
19 around, he was just his normal self. It was a lot of fun, just
20 watching the game and talking about class and whatnot. It was
21 great.

22 Q: What time did you leave?

23 A: Around 9 p.m.

24 Q: Was it dark outside?

1 A: Yes, really dark.

2 Q: I'm showing you Exhibit 11, did you see this sign as you walked
3 towards the parking lot that night?

4 A: I honestly don't remember if I did or didn't. I might have. I
5 have no idea. But even if I did, I wouldn't have walked on that
6 sidewalk. Who would? It just seems to make sense to take the
7 shortest path possible to your car when you're walking through a
8 parking lot. I would think that's what most people do.

9 Q: Alright, using Exhibit 7 again, can you use this yellow marker
10 to show us the path you and your father took when you were leaving
11 The Icehouse that night?

12 A: Sure, here you go.

13 Q: Okay, I'm going to mark that as Exhibit 12. Were you walking in
14 front of, next to, or behind your father as you walked towards the
15 car?

16 A: I was walking behind him, just a couple of feet behind him.

17 Q: I'm going to show you Exhibit 13, do you recognize this?

18 A: Yes, that's the little median or whatever that dad walked up on
19 to while we were walking through the parking lot, where he fell.

20 Q: Is this what it looked like that night?

21 A: Yeah, exactly like that, so dark. It was hard to see anything.

22 Oh, and there was a puddle of water to the right of the median, in
23 the parking lot, so if he had kept walking on the pavement he would
24 have walked directly into that puddle of water or he would've had

1 to go around it to the right. So, I guess he walked up on to that
2 median to avoid walking through that puddle of water.

3 Q: Can you mark on Exhibit 13 where that puddle of water was and
4 about how big it was? Just kind of draw it using this blue marker?

5 A: Yeah, it looked kind of like this.

6 Q: Okay, I'm going to mark that marked up picture as Exhibit 14.
7 What happened next?

8 A: As he walked over that median, over the ground, suddenly, out
9 of nowhere, he tripped, stumbled to the side and forward a bit,
10 and fell to the ground, and landed right on the top of his head.
11 When his head hit the pavement, it sounded like a coconut hitting
12 the ground, like it was splitting in two, it was horrifying.

13 Q: What did you do?

14 A: I ran up to him and said, "Dad, are you ok?" Then I got him
15 onto his back, and he was just out of it. That's when I noticed
16 the blood coming from the top or the back of his head. He just
17 kept saying, "I tripped over something," just kind of dazed, and
18 I asked him if he tripped over the curb and he said something like,
19 "No, it was something in the ground." I looked over towards the
20 ground and didn't see anything, even though I was just a couple of
21 feet away at that point. So, I took a couple steps closer and
22 squatted down and that's when I finally saw that sprinkler head
23 sticking up out of the ground. It was like it was camouflaged. It

1 was so dark in that parking lot, and it blended in so well with
2 the ground and everything, there was no way to see it.

3 Q: Are you sure your dad didn't trip on a curb or a tree root?

4 A: I'm sure. I was right there, and that spot where the sprinkler
5 head was is the exact spot where he was walking right when he
6 tripped. That's why I was caught off-guard, because I couldn't
7 understand why he fell until I got closer and finally saw that
8 exposed sprinkler head.

9 Q: What did you do next?

10 A: That's when the EMTs arrived and put dad on a stretcher and
11 took him to the hospital. I thought everything would be fine at
12 that point. But, obviously I was wrong, because just a few hours
13 later he died as a result of a brain bleed that they couldn't get
14 stopped.

15 Q: Riley, have you understood all my questions?

16 A: Yes.

17 Q: Do you have anything to add regarding this matter that you
18 haven't already said?

19 A: Nope, I've told you everything I know.

20 Q: And have you given complete answers to every question without
21 leaving anything out?

22 A: Yes.

23 Q: Thank you, no further questions.

24 A: Thank you.

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(Proceedings Adjourned.)

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5 I, Riley Leery, have read the foregoing deposition and hereby
6 affix my signature that same is true, correct, and accurate, and
7 that all information I have regarding this case has been
8 provided in this deposition and that nothing has been left out.

9

10

A handwritten signature in black ink, appearing to read 'Riley Leery', is written above a horizontal line.

11

12

Riley Leery

IN THE SUPERIOR COURT FOR HANOVER COUNTY

RILEY LEERY, Administrator)	
for the Estate of JAMIE LEERY,)	
)	
Plaintiff,)	
v.)	Civil Action No. AAJ-CV-001-26
)	
WITTER DEVELOPMENT, LLC,)	
)	
Defendant.)	
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ORAL DEPOSITION
OF AVERY POTTER
July 11, 2025

PROCEEDINGS
AVERY POTTER

having been first duly sworn, testified as follows:

CROSS EXAMINATION

BY DEFENSE COUNSEL:
Q: Good afternoon, can you please state your name for the record.
A: Good afternoon, my name is Avery Potter.
Q: How old are you?
A: I'm 35 years old.
Q: What do you do for a living?
A: I'm the general manager and a bartender at The Icehouse, which
is a bar and restaurant here in Wilmington.
Q: How long have you worked at The Icehouse?

1 A: About thirteen years at this point. I started working here when
2 I got out of college at Wilmington State with a business degree.
3 My family has been in the restaurant business my entire life, they
4 own a burger place in my hometown where I grew up, so it just made
5 sense to me to go into the family business. But I didn't want to
6 go straight back home and working in the family business. So, I
7 got a job at The Icehouse. I started out as a bartender, but after
8 about a year I was promoted to being a shift manager, and then
9 about five years ago I was promoted to being the general manager
10 for the entire restaurant. But I still bartend because the tips
11 are good, and it keeps me close to the action.

12 Q: Are you married? Any kids?

13 A: No, not yet. I'm too busy grinding and trying to make a name
14 for myself in the area. I'm trying to save up the money and find
15 investors to maybe open my own spot someday soon, so I don't have
16 a lot of time for a personal life.

17 Q: I'm showing you Exhibits 1 and 2. Do you recognize these?

18 A: Yeah, those are pictures of Jamie Leery. I think Exhibit 1 is
19 a picture of him from the university's website and Exhibit 2 is a
20 picture of him on his vacation to the Bahamas from earlier last
21 year. I remember because he was excited to show me pictures when
22 he got back from the trip.

23 Q: How did you know Mr. Leery?

1 A: Well, we first met when I was a student at Wilmington State. He
2 was a history professor, and I took one of his intro classes when
3 I was a freshman. European history or something like that. Anyways,
4 I liked him a lot. He was very friendly and chatty, so we had a
5 good relationship, and I made him my advisor for the rest of
6 college. So, we spent a lot of time together when he was advising
7 me through school. He was actually the one that suggested I go see
8 about getting a job at The Icehouse after graduation. Told me that
9 I could get some real-world experience, see how I liked the
10 restaurant and bar game, and take some time to figure out what I
11 wanted to do with my life.

12 Q: Was he a customer?

13 A: Yes. He came in for lunch a lot. He would sit at the bar, and
14 we would visit and talk about what was going on in town and at the
15 university. He seemed kind of lonely after his wife, Gail, passed
16 away a few years ago, so it seemed like he wanted someone to talk
17 to. But I didn't mind, I loved visiting with him. He was a great
18 guy. Loved talking about his kids and grandkids. He always had a
19 smile on his face when he was talking about his family.

20 Q: Was he a big drinker?

21 A: No, not really. When he would come in for lunch it was always
22 an iced tea. Occasionally, he would come in the late afternoon or
23 at night and have an old fashioned or two, but nothing too crazy.
24 I don't think I've ever seen him drunk.

1 Q: What is an old fashioned?

2 A: It's a bourbon-based cocktail. So, it's got a little sugar, a
3 dash or two of bitters, ice, and a couple of ounces of bourbon.

4 Q: So, it's a strong drink?

5 A: It can be. Depends on how much bourbon you put in it. But, if
6 I'm pouring them, then they're not particularly strong.

7 Q: Let's talk about the night of September 7, 2024. Did you see
8 Jamie Leery that night?

9 A: I did. He came in around 5:30 or 6 in the afternoon with his
10 kid, Riley. If I remember correctly, Jamie's birthday was the
11 following week, on the 10th or 11th, and Riley had come into town
12 to celebrate with his old man. I remember Riley walked up to the
13 bar and ordered their first round saying something like, "I'll
14 have a beer and an old fashioned for the birthday boy!" Jamie had
15 such a big smile on his face the whole time he was there. You could
16 tell how proud he was of Riley and how happy he was that Riley was
17 there.

18 Q: How long did they stay that day?

19 A: They stayed for a few hours. I remember they were watching the
20 college football games that were on the TVs behind the bar, so
21 they were sitting at the bar, and I was working behind the bar.

22 Q: I'm showing you Exhibit 10, do you recognize this?

23 A: Yes, that's Riley Leery's receipt from that night.

24 Q: And is this a true and accurate copy of that receipt?

1 A: Yes, it is.

2 Q: Did Jamie Leery have a receipt that night?

3 A: Not that I know of. It was a whole thing when they checked out.
4 Jamie pulled out his wallet to pay but Riley told him, "No, no, I
5 got it, Dad. It's your birthday!" And Jamie pushed back a bit, but
6 ultimately Riley paid for everything.

7 Q: Is it possible Jamie could have bought another drink or two
8 from another bartender in cash when you weren't looking?

9 A: Possible? Sure. But it's incredibly unlikely. When I'm
10 bartending, I'm behind the bar the entire time unless I go to the
11 back to change a keg or get another bottle of liquor or something,
12 or occasionally I'll have to go to the floor or the kitchen to
13 deal with an issue as the manager. So, there are times I'm away
14 from the bar, but not for long.

15 Q: Did Jamie Leery seem drunk to you that night?

16 A: Not really. I mean, towards the end of the night, when he was
17 coming back from the bathroom, I noticed he stumbled a bit walking
18 towards the bar, and then he had a little bit of difficulty getting
19 back up into his stool at the bar. Almost fell, frankly. So, when
20 Jamie ordered his last drink, I asked him, "You sure you need
21 another one?" But he just waived me off and said, "I'm fine," and
22 then he put his arm around Riley and said, "I've got a good Uber
23 driver tonight, so I got nothing to worry about!" We all had a

1 good laugh, and that all made sense to me, so I served him one
2 last drink.

3 Q: Isn't that risky, to serve a customer a drink when they're
4 stumbling and almost fell out of their chair? Aren't there rules
5 about that?

6 A: Sure, the Hanover Alcohol Bureau Commission, or HABC, has rules
7 about overserving customers that say that when you serve a customer
8 you know or should know is drunk then you can lose your license or
9 receive a fine, and obviously we don't want our customers getting
10 hurt or getting behind the wheel of a car drunk, so there is risk
11 in serving a drunk customer. Which is why I checked in with Jamie
12 before I served him that drink. But I didn't think Jamie was drunk
13 that night. I mean, he was laughing a lot and seemed to be feeling
14 pretty good, but I just figured he was happy because he was with
15 his kid.

16 Q: Had you ever seen Jamie stumble like that before?

17 A: Well, I mean, he was in his mid-70s, right? Like 75 or 76? So,
18 yeah, I'd seen him stumble before. In fact, I remember that he was
19 having lunch one day at the restaurant, got up from his table to
20 leave, took a couple of steps and just lost his footing and fell
21 to the ground. It was scary, so I rushed over and helped him up
22 and checked on him, "You alright, Professor Leery," but he just
23 laughed it off and said, "Oh my goodness, I'm such a klutz!" So,
24 he seemed fine. But that's kind of my point, why would I have

1 thought he was drunk that night? He was just an older man, and
2 sometimes they lose their balance.

3 Q: How long was it before the incident on September 7, 2024, that
4 Mr. Leery fell at the bar?

5 A: Probably about six months before.

6 Q: Does the HABC provide training on identifying intoxicated
7 persons that should not be served?

8 A: They do.

9 Q: Did you go through that training?

10 A: I did. All of our bartenders and servers do. We are required
11 to.

12 Q: I'm showing you Exhibit 15, do you recognize this?

13 A: Yes, it's part of the training materials from the HABC on the
14 signs of intoxication and when you should or should not keep
15 serving a customer.

16 Q: And is Exhibit 15 a true and accurate copy of those training
17 materials?

18 A: Yes.

19 Q: Other than the stumbling and almost falling out of his chair
20 that you observed on September 7th, did you notice Jamie Leery
21 exhibiting any other signs of intoxication that night?

22 A: No, I did not. I mean, the bar was busy that night, it was a
23 Saturday, and we get busy on Saturdays, and I have a lot of jobs
24 as a manager, so I'm not always locked in on just one customer,

1 but I've been doing this a long time, and I didn't see anything
2 that gave me pause.

3 Q: What time did they leave that night?

4 A: Well, if you look at the time they closed out on the receipt it
5 was 8:55 p.m., so it must have been around 9 p.m. that night when
6 I walked them out.

7 Q: You walked them out?

8 A: Yeah, I walked them out. When they closed out, Jamie stood up
9 and said, "Well Avery, I guess Riley says we've had enough, so
10 time to go," and I wanted to give him a proper goodbye and wish
11 him a happy birthday in case I didn't see him on his actual
12 birthday, so I came out from behind the bar and walked out front
13 with them.

14 Q: Did you do that because you were worried Jamie was drunk or
15 might stumble or fall again?

16 A: No, no, I just wanted to say a proper goodbye to a friend. I'm
17 glad I did, because that was obviously the last chance I got to
18 say goodbye to him.

19 Q: Okay, when you got outside, was it dark already?

20 A: Yes.

21 Q: And what happened when the three of you got outside?

22 A: I told Riley it was nice to meet them and shook their hand, and
23 then I told Jamie happy birthday and gave him a hug, and then as

1 they walked away towards their car, I told him, "I'll see you soon
2 buddy." You know, just being friendly.

3 Q: Did you go right back inside?

4 A: No, I stood there for a moment and just watched them walking
5 through the parking lot. They had obviously been in there for a
6 while at that point, so I just wanted to make sure they got to the
7 car okay.

8 Q: I'm showing you Exhibit 16, do you recognize this?

9 A: Yes, it's a photograph of the outside of The Icehouse at night.

10 Q: And what about Exhibit 7?

11 A: That's an overhead view of the parking lot and The Icehouse and
12 the shopping center and everything.

13 Q: Is that photograph a fair and accurate depiction of what that
14 area looked like on the night in question?

15 A: Yes. I mean, obviously it was nighttime, but otherwise this is
16 what it looks like.

17 Q: Let's go back to Exhibit 7, that overhead photo of the parking
18 lot and the whole shopping center. If you can, will you circle The
19 Icehouse in blue.

20 A: There you go.

21 Q: And using this red marker, can you show us the path that Jamie
22 and Riley Leery took when they walked away from The Icehouse that
23 night?

1 A: They would've gone right through here, right through the parking
2 lot. Just like this, kind of weaving through cars and whatnot as
3 they went.

4 Q: Is there a sidewalk around that parking lot?

5 A: There is, right here.

6 Q: Can you mark that in green?

7 A: There you go.

8 Q: Okay, and we'll mark this copy of Exhibit 7 with all your
9 markings on it as Exhibit 17. Okay, so as they walked through the
10 parking lot, did you see Jamie Leery stumbling or staggering in
11 any way?

12 A: No, not at all. I mean, at least no more than you would expect
13 for a man of his age.

14 Q: What happened next?

15 A: So, they got to one of the landscape medians in the parking
16 lot, and I guess Jamie stepped up onto the median to walk through
17 it, and that's when, all of a sudden, I saw him disappear out of
18 view, like he had fallen, and I heard Riley yell, "Dad!" So, I
19 took off and started running towards them. When I got there, Jamie
20 was lying on the ground, on his back, on the pavement, and was
21 holding his head, and he said, "I tripped over something." Riley
22 asked his father, "Did you trip over the curb?" And Jamie
23 responded, "No, I don't know what it was, but it was something in

1 the ground." At that point, I looked back and saw that sprinkler
2 head sticking up from the ground a few inches.

3 Q: I'm showing you Exhibits 18 through 29, can you tell us what
4 these are?

5 A: These are pictures of that sprinkler head sticking up from the
6 ground, just like it was that night.

7 Q: Had you ever seen this sprinkler head before that night?

8 A: No, I hadn't, and I'm not surprised. It was so damn dark in
9 that parking lot and there were no lights in the median or in the
10 trees above it or anything, so I had to really look to see it in
11 the dark, and I was looking for it.

12 Q: What did you see when you turned back and looked at Jamie Leery?

13 A: I heard Riley say, "Dad, you're bleeding," and then Jamie put
14 his hand to his head and you could see blood on his hand, coming
15 from the back of his head, so Riley told him to keep pressure on
16 it, and I called 9-1-1 and told them to send some help because it
17 looked pretty serious.

18 Q: How long did it take the emergency medical services folks to
19 arrive?

20 A: About ten minutes or so.

21 Q: What happened when they got there?

22 A: They checked on Jamie and then got him on a stretcher and took
23 him to the hospital, and that was the last time I ever saw him. He
24 died that night at the hospital. Apparently, once he arrived at

1 the hospital, they discovered that he had a brain bleed, and they
2 couldn't get it stopped in time. Just awful. He was such a great
3 man. Such a big heart for everyone around him.

4 Q: Had you ever made any complaints about the parking lot before
5 that night?

6 A: Yes, I had. A couple of times.

7 Q: I'm showing you Exhibits 30 and 31, do you recognize these?

8 A: Yes, those are two different emails I sent to Logan Witter, the
9 property manager and owner of Witter Development, who is our
10 landlord and owns the shopping center.

11 Q: And are these true and correct copies of those emails?

12 A: Yes, they are.

13 Q: Let's talk about the first email in Exhibit 30, why did you
14 send this?

15 A: It seems pretty self-explanatory, the parking lot was way too
16 dark, just like it was on the night that Jamie Leery fell in that
17 parking lot. We had been noticing that our customers would walk
18 through the parking lot to come to and from the bar, and I was
19 worried that they might fall or something in that parking lot, so
20 I wanted to let the owner know there was a problem and that they
21 should do something about it.

22 Q: Did Witter Development do anything in response to this email?

23 A: Not that I noticed. If they did, it didn't work, or it didn't
24 work for very long.

1 Q: Alright, what about Exhibit 31?

2 A: Well, this wasn't that long before Jamie Leery's fall in that
3 parking lot, and I wanted to complain again, because the issue
4 hadn't been fixed. So, I sent this second email complaining about
5 the issue. And I realized that I didn't mention the number of
6 customers we had seen walking through the parking lot in that first
7 email, so I made sure to make a point of emphasizing that in this
8 second email.

9 Q: Did Witter Development do anything in response to this second
10 email?

11 A: They put up a sign on the sidewalk outside of the bar.

12 Q: I'm showing you Exhibit 11, do you recognize this?

13 A: That's the sign they put up. Well, it's a photograph of it.

14 Q: And is this a fair and accurate depiction of how that sign
15 looked on the day of Jamie Leery's fall?

16 A: Yes.

17 Q: Let's go back to Exhibit 7, that overhead shot of the shopping
18 center. Using this yellow marker, can you circle the location where
19 that sign was put up by the Defendant?

20 A: It was right about here, kind of at the edge of the parking lot
21 if you were entering or leaving our joint.

22 Q: Okay, I'll mark this as Exhibit 32. Did this sign resolve your
23 concerns?

1 A: Ummmm, no. I asked them to fix the lighting in the parking lot,
2 and they put up a sign, and you can only imagine how many people
3 were going to pay attention to that sign when all they wanted to
4 do was get to their cars and get home. It was, at best, like
5 putting a band-aid on a bullet wound or lipstick on a pig. The
6 lighting still sucked, the parking lot was still too dark, and our
7 customers just ignored the sign and kept walking through that
8 parking lot, right past that sign, like it wasn't even there.

9 Q: Did you send any other notices to the Defendant?

10 A: Not by email. But I talked to Logan Witter about it in person
11 several times.

12 Q: When did those conversations take place?

13 A: Logan would come into the bar from time-to-time to complain
14 about things. Logan loved to tell us that our customers were drunk
15 and disorderly outside the bar, that they would leave trash in the
16 parking lot, and that it pissed off the other tenants in the
17 shopping center. It drove me crazy because Logan didn't take care
18 of the shopping center and ignored my complaints but loved to
19 complain about us. And it was nonsense, we didn't overserve
20 customers, so all of that stuff was just deflection on the part of
21 Logan because Logan knew that they weren't doing what they could
22 to keep the place safe. I remember that once I even brought up all
23 those landscape medians in the parking lot, and how unsafe those
24 were because people could trip on the curbs or try to walk on them,

1 but Logan just brushed it off and said something like, "If people
2 can't walk around without falling down or tripping then how is it
3 my fault? How about you tell the drunkards that hang out in your
4 place to avoid walking into trees, dumbass." That's the way Logan
5 talked, so condescending.

6 Q: Do you know if any of the lights in that parking lot were
7 actually out and weren't working on the night of Jamie Leery's
8 fall?

9 A: I don't know. It's not like I stood there and examined every
10 light in the parking lot that night, I had more important things
11 going on. What I can tell you is that it was too dark in that
12 parking lot, and I do know that when I complained in the past there
13 had been lights missing, but usually Logan would get that fixed
14 pretty quickly, at least compared to how long it took Logan to do
15 anything else.

16 Q: I'm showing you Exhibits 33 and 34. What are these?

17 A: Those are two emails I received from other tenants in the
18 shopping center complaining about some of our customers being drunk
19 or disorderly in the parking lot outside of The Icehouse. You know,
20 we aren't perfect and these things can happen, so when I got these
21 emails, I addressed them with our staff and our bartenders, just
22 like I told them I would.

23 Q: I'm showing you Exhibits 35 and 36, what are these?

1 A: These are screenshots of text messages between Logan and myself.
2 The messages in grey are from Logan and the messages in blue are
3 from me. Exhibit 35 was a text message exchange between us in the
4 early summer in 2024, and the second one was after Jamie Leery's
5 fall, in December.

6 Q: You don't seem to like each other very much?

7 A: I think that's a fair assessment. I mean, I don't know how much
8 you're supposed to like your landlord, but Logan is one of those
9 landlords that takes your money and then doesn't show up again
10 until it's time to collect again. We have a commercial lease on
11 that building that requires us to pay \$8,500 a month, which is
12 over \$100,000 per year. You would think that would buy us the right
13 to have a landlord that actually pays attention to what is going
14 on at the property.

15 Q: Were you worried that you might be the target of a lawsuit in
16 this case, like Logan says in that one text message?

17 A: Any time that a customer leaves your bar and gets hurt shortly
18 thereafter you should be concerned, because bars or anywhere that
19 serves alcohol is an easy target for plaintiffs' lawyers, and Jamie
20 had been drinking that night. But, like I said earlier, there was
21 nothing that made me believe that Jamie was too drunk to walk to
22 a car that night, and there was nothing that made me think Jamie
23 shouldn't be served that night in the bar, so I wouldn't say I was

1 especially concerned about this case. But, any bar owner or manager
2 would be a fool not to be a little concerned in this situation.

3 Q: So, are you trying to point the finger at Witter Development to
4 keep the heat off The Icehouse or yourself?

5 A: Not at all. I'm not pointing the finger at anyone. I'm telling
6 you what happened. It's not my fault Witter didn't keep that
7 parking lot safe.

8 Q: What can happen to a bartender or a bar that overserves someone
9 that ends up serious injured or dead?

10 A: The bar could face fines or even lose their liquor license,
11 which is basically a death sentence. And a bartender could go to
12 jail and lose their HABC license as well, which makes it pretty
13 difficult to find a job at any reputable bar like The Icehouse.
14 So, it's not good.

15 Q: Did The Icehouse have liquor liability insurance at the time of
16 Jamie Leery's fall?

17 A: No, we did not. So, if the bar got sued then we would have to
18 pay to defend it out of pocket and would have to pay any damages
19 out of pocket as well, so that would have been the end of the bar.
20 We couldn't afford it.

21 Q: I'm showing you Exhibit 37, what is this?

22 A: It's a screenshot of some text messages between me and Riley
23 Leery, Jamie's kid, maybe a month after the fall. Riley's message
24 is in grey, and my message is in blue.

1 Q: What was Riley asking you to do here?

2 A: Riley wanted me to go talk to his lawyers, the ones that are
3 representing him and his father in this lawsuit. And I agreed to
4 go.

5 Q: Did Riley threaten you that if you didn't cooperate with his
6 attorneys then it might be bad for you in some way?

7 A: I wouldn't call it a threat. Riley just made it clear that they
8 were going to be taking legal action, and it might be best for me
9 to talk to the lawyers so they could figure out what really
10 happened. So, that's what I did.

11 Q: Avery, have you understood all my questions?

12 A: Yes.

13 Q: Do you have anything to add regarding this matter that you
14 haven't already said?

15 A: Nope, I've told you everything I know.

16 Q: And have you given complete answers to every question without
17 leaving anything out?

18 A: Yes.

19 Q: Thank you, no further questions.

20 A: Thank you.

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(Proceedings Adjourned.)

I, AVERY POTTER, have read the foregoing deposition and hereby
affix my signature that same is true, correct, and accurate, and
that all information I have regarding this case has been
provided in this deposition and that nothing has been left out.

A handwritten signature in black ink, appearing to read 'Avery Potter', written in a cursive style. The signature is positioned above a horizontal line.

AVERY POTTER

Cameron McPhee

McPhee Landscaping
1212 Green Oak, Dr.
Wilmington, Hanover

.....
.....
September 20, 2025

RE: Civil No. AAJ-CV-001-26; *Riley Leery, Administrator for the Estate of Jamie Leery v. Witter Development, LLC*

Dear Counsel:

This letter is intended to serve as my expert report in the above referenced matter. You have retained me at a cost of \$500 per hour in order to review this matter, all the relevant documents related to this matter, and to draft this report. If I am required to testify at trial, then I will require an additional \$750 per hour for those services. Pursuant to my role as an expert in this case, I hereby certify with my signature below that this report represents a complete and accurate account of all of the work I've done on this matter and of all of my opinions in this case and that I have not left anything relevant to this case out of this report. Additionally, you will find a copy of my *curriculum vitae* attached herein at Exhibit "A."

Reviewed:

I reviewed the following documents in coming to my opinions in this case:

- Exhibits 1 through 74
- Inspection of the subject parking lot outside of The Icehouse, including an inspection of the subject landscape median
- July 10, 2025 Deposition of Riley Leery
- July 11, 2025 Deposition of Avery Potter
- July 12, 2025 Deposition of Logan Witter

These are the types of materials reasonably and customarily relied upon by experts in the landscaping industry in conducting the type of investigation I conducted in this case and in reaching the types of opinions that I reached in this case.

Accident Description:

The following is a brief description of the accident based on what I have reviewed in this case.

On September 7, 2024, at approximately 9:00 p.m., Jamie Leery, a 75-year-old retired college professor that lived in Wilmington, was leaving The Icehouse, a local restaurant, with his child, Riley Leery. Jamie and Riley had been out that day celebrating Jamie Leery's impending 73rd birthday. As the two of them walked through the parking lot towards Riley's vehicle, Jamie Leery walked up onto a landscape median, which you can see in Exhibits 18 through 29. While walking on this landscape median in the parking lot, Jamie Leery tripped over an exposed sprinkler head that was sticking out of the ground. Jamie Leery lost his balance and fell, hitting his head on the pavement of the parking lot, and later died as a result of that fall and the injuries sustained.

Overview of Witter Development, LLC:

Witter Development, LLC is a property development company that operates in the Wilmington area. In some cases, Witter Development buys existing commercial buildings and continues to operate and improve those buildings as the property owner while collecting rents from the tenants as the landlord for the property. In other cases, Witter Development buys undeveloped land, erects commercial buildings on that land, and then continues to operate and improve those buildings as the property owner while collecting rents from the tenants as the landlord for the property. Witter Development owns twenty-five different commercial properties in the Wilmington area and had net profits in fiscal year 2024 of approximately \$2.5 million.

Logan Witter founded Witter Development, is the President of the company, and is the primary decision maker for that company.

Opinions:

1.) The lighting in the parking lot, and specifically in the area of Jamie Leery's fall, was insufficient.

On September 14, 2024, I travelled to the subject shopping center where Jamie Leery's fall took place to inspect the parking lot where that fall occurred and perform testing to determine whether the lighting was sufficient in that parking lot. In order to make that determination, I used an ExTech LT300 Light Meter, which you can see in the exhibits.

It is a handheld digital light meter designed to measure illuminance, which means the amount of light that is falling on a particular surface. Generally, these measurements are done in “foot-candles.” It comes with a remote sensor that is connected to the light meter by a coiled cable so you can place the sensor in the light field while holding the main unit elsewhere.

Under the building ordinances for the City of Wilmington, which can be seen in Exhibit 38, the minimum required foot-candles measured from the ground in a parking lot is 0.5 fc, and the maximum foot-candles measured from the ground in a parking lot is 5 fc.

I measured the lighting in the parking lot from several different spots in the parking lot. As you can see in Exhibits 39 and 40, the light poles in that parking lot have two different lighting fixtures so that each one is capable of having two light directed down at the surface of the parking lot. However, as you can see in the pictures, when I went to inspect those lights, some were missing at least one of those lights and some were missing entirely. This is consistent with the testimony of Avery Potter regarding the poor lighting situation in the parking lot generally. Exhibit 41 is a map of the parking lot showing location of the landscape median where the subject sprinkler head was located and where Mr. Leery’s fall took place.

The lighting in the area where the poles had both lights measured above 1 fc, which means it met the bare minimum required under city ordinance. However, when I am installing lighting in a parking lot like this I aim for an fc measurement between 4-5 fc, which ensures maximum visibility for anyone walking in that parking lot, which I know because it is consistent with local municipal ordinances and also based on my own experience with installing and inspecting lighting on my own landscaping projects in order to determine whether there is sufficient lighting to ensure safe conditions for walking. So, even though the lighting in some areas of the parking lot meets city standards, in my opinion that lighting is still insufficient to ensure the safety of the patrons of the shopping center. The measurements in these areas can be seen in Exhibits 42 through 45.

With that being said, the lighting in the areas where one or more lights were missing was wholly insufficient under the city standards, including the area where the fall took place. Starting with Exhibit 46 and moving through Exhibit 59, we can see the walkup towards the landscape median that Jamie Leery walked through and where the exposed sprinkler head was located that caused Jamie Leery’s fall, and you can see not only the location where I placed the light meter to get a reading but also the readings themselves from these various locations. As you will see, the readings from the surface of the parking lot leading up to that landscape median read 0.27 fc and 0.14 fc, so well below

the required 0.5 fc. Then, the readings on the landscape median itself show 0.12 fc, 0.13 fc, 0.15 fc, and 0.19 on the landscape median leading up to the sprinkler head and a reading of 0.21 fc in the exact area where the sprinkler head was located. This means that the entire leadup to the landscape median, the median itself, and the area where the exposed sprinkler head was sticking up out of the ground were all lit insufficiently in accordance with the city ordinance and general safety standards.

The lack of sufficient lighting in the area leading up to, around, and at the location of the exposed sprinkler head was a contributing factor to Jamie Leery's fall as a result of tripping over that exposed sprinkler head because the poor lighting in that area obscured the presence of that sprinkler head and made it difficult if not impossible to see on the night of the fall, as evidenced by Exhibits 18 through 29, which show that the sprinkler head was impossible to see to the naked eye unless a person knew exactly where they were looking, exactly what they were looking for, and got down to ground level to look at it.

In addition to the above, the failure to repair the lighting condition in the subject parking lot on the part of Witter Development was unreasonable and dangerous given that, according to the deposition of Avery Potter, Witter Development had been notified of the issue on multiple occasions and still failed to remedy the issue. Witter Development should have fixed the issues with any existing lights to ensure they were fully operational and installed additional lighting around the parking lot in order to provide proper illumination, especially if Witter Development was not going to remove things like the exposed sprinkler head that are made even more dangerous when they are difficult to see. And all of these decisions on the part of Witter Development were contributing factors in Mr. Leery's fall.

2.) The exposed sprinkler head was a dangerous condition that was a contributing factor in causing Jamie Leery's fall.

Retractable, or "pop-up," sprinkler heads are common in the landscaping industry and have been around for over seventy years, which means we have lots of experience with these products and extensive knowledge about their function and issues. In general, retractable sprinkler heads, the design of which can be seen in Exhibit 60, include two parts – the sprinkler head itself, which is about three to four inches tall, and then the base, which is the wider part of the sprinkler head that goes into the ground. The top part of the sprinkler head emerges from the ground when the sprinkler system is turned on and then retracts back into the ground once the system is turned off, which means that when the sprinkler system is not operating and water is not spraying the sprinkler

head sits flush with the ground and there is nothing sticking up out of the ground to create a trip hazard for those walking in the area where the sprinkler head is located.

Logan Witter has admitted that the sprinkler system for the landscape medians in that parking lot had been non-operational for a period of at least five years prior to Jamie Leery's fall in the parking lot in 2024, and had not been used for much longer before that because Witter Development chose to put mulch in those landscape medians and get rid of the grass, thus eliminating the need for watering those landscape medians. Thus, the sprinkler head in question was serving no purpose at the time Mr. Leery tripped over that sprinkler head.

Finally, it's clear that both Avery Potter and Logan Witter reveal that Witter Development had been made aware that patrons of the shopping center were walking through that parking lot leaving The Icehouse, which would bring them near to those landscape medians with exposed sprinkler heads and increase the risk of a fall like this.

The Wilmington city ordinances provide the following:

Sec. 13-31(b)(2)

Ground surface hazards. Holes, excavations, breaks, projections, obstructions and excretion of pets on paths, driveways, parking lots and other parts of the property that are accessible to the public shall not be permitted. Holes and excavations shall be filled and repaired, walks replaced and conditions removed where necessary to eliminate hazards or unsanitary conditions with reasonable dispatch upon their discovery.

Clearly, once Witter Development determined that it had no use for the sprinkler head in question, that sprinkler head was a projection or obstruction in an area that was accessible to the public, which means the city ordinance required it to be removed, but Witter Development did not remove that exposed sprinkler head.

Additionally, reviewing photographs of the sprinkler head, it becomes clear how difficult it was to see it sticking up from the ground even in the daylight. Exhibits 18 through 29 are all pictures of the subject landscape median, and they show that when looking down at the landscape median from eye-level the exposed sprinkler head is almost invisible to the naked eye. A person would only be able to see that sprinkler head if they got down on the ground and looked at it from the ground level. Exhibit 61 shows the view from an eye-level position with the exposed sprinkler head circled in

red, which demonstrates how difficult it is for a person to spot even standing right on top of it.

The bottom line is that an exposed sprinkler head is a trip hazard, which is precisely why retractable sprinkler heads exist, and Witter Development should have and could have removed that sprinkler head from that landscape median or taken some steps to warn of its existence, and the failure to do so led to Jamie Leery's fall when he tripped over that exposed sprinkler head.

3.) The design of the parking lot and the ingress/egress from the parking lot to The Icehouse was unreasonably dangerous and nonsensical.

Exhibit 7 shows a top-down view of the shopping center. Exhibit 17 is the same picture with the location of The Icehouse circled in blue, the path Jamie and Riley Leery walked through that parking lot marked in red, and the path of the sidewalk around the shopping center marked with a green line. What is evident from looking at the design here is that anyone who parks in that parking lot in order to enter The Icehouse would never walk from their car to the sidewalk and then around in order to get to The Icehouse. Instead, they would exit their car and walk through the parking lot to get to The Icehouse because that is the most direct path to the restaurant. And we know that this was the case because, as evidenced by the depositions and exhibits in this case, Witter Development had been made aware that patrons of The Icehouse were, in fact, leaving the restaurant and walking directly through the parking lot in order to get to their vehicles when leaving the restaurant, and we can presume the same thing was happening when they entered the restaurant as well.

Given this, Witter Development could have designed the parking lot with designated walkway through the parking lot that would have allowed customers more direct access to their vehicles while avoiding potential tripping hazards like the various landscape medians located throughout the parking lot, the exposed sprinkler head on one of those landscape medians, and the parking bumpers located at each of the parking spaces throughout the parking lot. My own company has installed these types of walkways in several parking lots that we have done the landscape design for, which can be seen in Exhibits 62 and 63. If a walkway like this had been installed, and if it had been well lit (unlike the parking lot in the condition it was in at the time of Mr. Leery's fall), then it would have allowed customers to travel through the parking lot in a more direct path to their cars and reduced the risk of a trip and fall on the various tripping hazards located throughout that parking lot.

Conclusion

For all the reasons outlined above, I conclude that Witter Development was negligent in to ensure the proper design and maintenance of the subject parking lot, the landscape medians located in that parking lot, and the lighting in that parking lot, and that such negligence was a proximate cause of the subject trip and fall and resulting injuries.

Please let me know if you have any questions, concerns, or comments about anything contained within this report or if there is anything else you would like for me to look into in preparation for trial on this matter.

Respectfully,

Cameron McPhee

Cameron McPhee

EXHIBIT

A

CURRICULUM VITAE

Cameron McPhee

McPhee Landscaping
1212 Green Oak, Dr.
Wilmington, Hanover

.....
.....

Professional Experience

2001-Present McPhee Landscaping

Owner and primary operator of landscaping company that has been operating in the greater Wilmington area and throughout Hanover County for over twenty years. McPhee Landscaping is involved in every area of landscape work, which would include the design of landscaping around both residential and commercial buildings, the design of landscaping for parking lots outside both residential and commercial buildings, the installation of such landscaping, including turf, trees, shrubbery, pavement, concrete, accessories, and sprinkler systems. We are also involved in the design of ingress and egress routes to and from residential and commercial buildings to ensure safe access to the buildings our projects support and to ensure that such ingress and egress routes blend in with our landscape designs. As the owner/operator, I am involved in each and every project and oversee each step in the process.

Over the past twenty-plus years, I have performed the following tasks as the owner/operator of McPhee Landscaping:

- Lead designer for commercial and municipal project involving parking lot medians, pedestrian corridors, sports-field renovation, and urban green-space integration;

- Oversaw installation and maintenance planning for large-scale irrigation systems, including rotor and spray-head specifications, pressure regulation, and head-height safety standards;
- Developed lighting layout recommendations for public parks and retail plazas to ensure safe pedestrian navigation and visibility;
- Supervised compliance inspections with local municipal landscape and lighting ordinances; and
- Oversaw and collaborated with others in designing parking lots on over one-hundred landscaping projects.

Education

1995-2001 Hanover A&M University - Wilmington
 Bachelor of Science, Horticulture (Cum Laude), 1999
 Master of Landscape Architecture, 2004

Professional Licenses & Certifications

- Licensed Landscape Architect by the Hanover Board of Architectural Examiners
- Certified Irrigation Designer by the Irrigation Association of America

IN THE SUPERIOR COURT FOR HANOVER COUNTY

RILEY LEERY, Administrator)	
for the Estate of JAMIE LEERY,)	
)	
Plaintiff,)	
v.)	Civil Action No. AAJ-CV-001-26
)	
WITTER DEVELOPMENT, LLC,)	
)	
Defendant.)	
)	
)	
)	

1
2 *****
3 ORAL DEPOSITION
4 OF CAMERON MCPHEE
5 OCTOBER 1, 2025
6 *****

7 PROCEEDINGS
8 CAMERON MCPHEE

9 having been first duly sworn, testified as follows:

10 CROSS EXAMINATION

11 BY DEFENDANT'S COUNSEL:
12 Q: Good afternoon. Can you please state your name for the record.
13 A: Good afternoon, my name is Cameron McPhee.
14 Q: A couple of things I wanted to clarify from your report. You
15 say that you're getting paid \$500 per hour to review this case and
16 draft your report. So, how much have you billed up to this point?
17 A: Well, this took a lot of work on my part, especially since I've
18 never really done this type of thing before, so I had to get up to
19 speed and figure all this out. So, I've billed about 40 hours so

1 far, basically a week's worth of my time, and that is a total of
2 \$20,000. But I assure you I could have made a whole lot more money
3 if I spent that time working on the landscaping projects I had to
4 put on the backburner to do this work.

5 Q: Wait, so is this the first time you've ever testified as an
6 expert in a case like this before?

7 A: First time testifying, first time writing a report, first time
8 for all of it. I'm a landscaper. So, this is all new to me. Hope
9 I've done a good job. I sure think I have.

10 Q: How did you get involved?

11 A: I knew the Leery family from church, and when I heard about
12 this case, I offered to talk to their lawyers just to give them my
13 thoughts on what happened, since I know a thing or two about
14 landscaping and sprinklers and everything. Once we had that
15 meeting, I guess they thought I knew what I was talking about, so
16 they asked me if I would work with them on the case.

17 Q: So, you knew the Leery family, did you know anything about Logan
18 Witter or Witter Development prior to getting involved in this
19 case?

20 A: Sure. I mean, Witter is a development company doing real estate
21 development in the same town where I do a lot of my landscaping
22 work, so it would be weird if we didn't know each other. I actually
23 worked with Witter Development on a project in town, but we got

1 sideways when they wanted a discount after the work was done and
2 refused to pay my full bill, so I had to sue them.

3 Q: I'm showing you Exhibit 64, what is this?

4 A: That's the settlement agreement from the lawsuit between myself
5 and Witter Development, but, as you can see, it doesn't show most
6 of the terms of the settlement because it also contains a
7 confidentiality agreement. So, I can't really talk too much about
8 it.

9 Q: Have you worked with Witter Development since the job that was
10 the subject of this lawsuit?

11 A: No, I would never work with them again. I don't do business
12 with people that don't pay their bills. Can't be trusted. And after
13 working on this case, seems like they are in the practice of
14 pinching pennies anywhere and any way they can.

15 Q: So, did you agree to be a witness in this case and provide your
16 opinions in an effort to exact revenge against Witter Development?

17 A: Not at all. I reviewed the case and gave my opinions as a
18 landscaper, that's it.

19 Q: Okay, well let's talk about what you mean. First, I've read
20 your report in this case, and in it you talk about measuring the
21 lighting in that parking lot and provide various light
22 measurements. You took those measurements using an ExTech LT300
23 Light Meter, correct?

24 A: Yes.

1 Q: Had you ever used that tool before the inspection of that
2 parking lot?

3 A: I've used it a bunch of times to ensure that the lighting on
4 our jobs complies with code.

5 Q: How many years have you been using that light meter?

6 A: About 5 years.

7 Q: I'm showing you Exhibit 65, which is a page from the website
8 for ExTech containing information on that light meter. Do you see
9 right there where it says every ExTech product comes factory
10 calibrated, but that this factory calibration is valid for just
11 one year and an annual calibration is recommended by the company?

12 A: Yeah, I see that. This is the first time I've ever heard of
13 anything like that.

14 Q: So, have you calibrated your ExTech light meter in the past 5
15 years that you've been using it to measure lighting?

16 A: I can't say that I have. But, what I can say is that the readings
17 I've gotten using that machine have been consistent with my own
18 perception of the amount of light being produced given my twenty-
19 plus years of experience and having done this dozens and dozens of
20 times. So, I'm not just trusting the machine, I'm also trusting my
21 eyes, my experience, and my expertise.

22 Q: I'm showing you Exhibit 66, this is an ordinance from another
23 city called Fort Fisher that is about 30 miles away from
24 Wilmington. Have you seen this before?

1 A: I'm familiar with it. We've done work in Fort Fisher before. As
2 you can, these people tend to use a lot of the same language.

3 Q: How does this factor into your opinion?

4 A: Each city has its own rules, and as landscapers and property
5 owners we have to follow the standards in the community where we
6 are building. So, the fact that a different city has different
7 standards doesn't change the fact that Witter Development failed
8 to comply with the standards in Wilmington when it comes to the
9 lighting in that parking lot. Plus, what I know after conducting
10 that inspection is that the lighting in that parking lot is
11 insufficient. You can see it for yourself when you look at those
12 pictures.

13 Q: On your opinion regarding the sprinkler head, you're aware that
14 Jamie Leery was drinking immediately before the fall?

15 A: I am. I read Riley Leery's deposition, and I've seen the
16 toxicology report, so I think it is obvious that Jamie Leery was
17 doing a little drinking prior to falling in that parking lot.

18 Q: As a landscaper, what is your understanding of the impact that
19 alcohol can have on decision-making and motor skills?

20 A: I don't have any expertise in that area, obviously. I'm not a
21 toxicologist. So, I just know the same stuff as everyone else.

22 Q: Like?

23 A: The legal limit for alcohol consumption for things like driving
24 under the influence or public intoxication is 0.08, and that when

1 you are drunk or if you drink too much, it can impact your decision
2 making and make you stumble or stagger or even fall down more
3 easily. You know, the kind of stuff you learn in high school and
4 most of us have experienced once or twice.

5 Q: Does that have any impact on your opinions in this case?

6 A: No. I wasn't asked to factor those things into my opinions in
7 this case, and if I was asked then I would've said it doesn't
8 matter. All of my opinions are based on what is appropriate and
9 reasonable from a landscaping and landscape design perspective,
10 which is independent of whether someone was drinking before they
11 walked through that parking lot. If anything, if the parking lot
12 had been designed better and maintained appropriately, then it
13 would have been safer for everyone, both completely sober people
14 and those that had a few drinks before walking out to a car. Plus,
15 based on my review of the toxicology report in this case, Jamie
16 Leery's BAC was only 0.06, which is below the legal limit. So, if
17 he could legally drive a car, I think it's reasonable to expect
18 that he would have been able to walk through a parking lot safely
19 if not for the dangerous condition of that parking lot.

20 Q: But it could help explain why Jamie Leery was up on that
21 landscape median in the first place?

22 A: Sure, I suppose. That's obviously not a great idea, and you
23 would hope that people wouldn't choose to walk on those landscape
24 medians, but it does happen, which is why the city ordinance

1 requires removal of objects sticking out of the ground, like that
2 retractable sprinkler head.

3 Q: Is there any ordinance dealing with sprinkler heads specifically
4 or how high they can be sticking out of the ground?

5 A: No, there is not. But the ordinance does refer to "ground
6 surface hazards" generally and includes references to
7 "projections" and "obstructions," so it would cover things like
8 these sprinkler heads.

9 Q: Are all sprinkler heads retractable?

10 A: No, there are sprinkler systems that use non-retractable
11 sprinkler heads, older systems.

12 Q: So, how would the ordinance apply to those?

13 A: Well, it's difficult to say. I've never really run into that
14 issue before. I guess those would have to be removed based on the
15 language of the ordinance.

16 Q: Were you asked to evaluate The Lighthouse's role in all this?

17 A: Again, that wasn't part of my assignment. I don't know what the
18 rules are with regards to how much a bar can serve its customers,
19 and Riley's attorneys never brought it up when we talked.

20 Q: One last thing, let's talk about your opinion regarding putting
21 a walking path through the parking lot. You're aware that there
22 was a sign specifically instructing customers to stay on the
23 sidewalk around that shopping center?

1 A: I am, and I saw that sign when I went out to inspect the parking
2 lot. You can see that sign in Exhibit 11. But there is no way to
3 know if Jamie Leery even saw that sign before walking through that
4 parking lot that night.

5 Q: Do you take issue with the wording of that sign or whether it
6 would be an effective warning?

7 A: Again, not my area. Looks good enough to me, but I think the
8 dangers of walking through a parking lot are obvious with or
9 without a sign.

10 Q: What kind of dangers?

11 A: Well, you could get hit by a car, obviously. But it's also
12 nighttime, it's dark, there are parking bumpers, curbs, cars, and
13 landscaping, so all of those things can create dangers. So,
14 assuming people can see all those things clearly, they should be
15 relatively obvious. That's what is so nefarious about the sprinkler
16 head, it was basically camouflaged, especially because of the poor
17 lighting.

18 Q: Have you understood all my questions?

19 A: Yes.

20 Q: Do you have anything to add regarding this matter that you
21 haven't already said?

22 A: Nope, I've told you everything I know.

23 Q: And have you given complete answers to every question without
24 leaving anything out?

1 A: Yes.

2

3

4

(Proceedings Adjourned.)

5

6

I, Cameron McPhee, have read the foregoing deposition and hereby

7

affix my signature that same is true, correct, and accurate, and

8

that all information I have regarding this case has been

9

provided in this deposition and that nothing has been left out.

10

11



12

13

Cameron McPhee

IN THE SUPERIOR COURT FOR HANOVER COUNTY

RILEY LEERY, Administrator)	
for the Estate of JAMIE LEERY,)	
)	
Plaintiff,)	
v.)	Civil Action No. AAJ-CV-001-26
)	
WITTER DEVELOPMENT, LLC,)	
)	
Defendant.)	
)	
)	
)	

1
2 *****
3 ORAL DEPOSITION
4 OF LOGAN WITTER
5 July 12, 2025
6 *****

7 PROCEEDINGS
8 LOGAN WITTER

9 having been first duly sworn, testified as follows:

10 CROSS EXAMINATION

11 BY DEFENSE COUNSEL:

12 Q: Good afternoon, can you please state your name for the record.

13 A: Good afternoon, my name is Logan Witter.

14 Q: How old are you?

15 A: I'm 45 years old.

16 Q: Are you married?

17 A: I am. My spouse, C.J., and I have been married for twenty years,
18 and we have three children, all boys, Charlie, Henry, and Mitch.

19 Q: Where do you live?

1 A: Right here in Wilmington, I've lived here all my life. Went to
2 Wilmington State and got a business degree, then continued on and
3 got an M.B.A., and then I started my company with a little seed
4 money from my father and started doing property development right
5 out of school.

6 Q: What is the name of your company?

7 A: Witter Development, LLC.

8 Q: And what kind of business is Witter Development? What do you
9 do?

10 A: We are a real estate development company, which means that our
11 primary business is buying up under-used pieces of property and
12 turning them into something more valuable. That could be something
13 residential, like an apartment complex or a housing subdivision,
14 or it could be something commercial, like an office building or
15 shopping center. Then, once we've developed the property, we either
16 sell it off for a profit or we maintain ownership of the property
17 and collect rent from various tenants as the landlord. Typically,
18 we sell off the residential properties we develop because we don't
19 really want to be in the business of collecting rent from
20 individuals, but we tend to maintain ownership of the commercial
21 properties we develop because it's easier to collect rent from
22 commercial tenants and businesses. So, at that point we become a
23 landlord.

24 Q: What's wrong with residential tenants?

1 A: Too many complaints and you end up running around all day fixing
2 the air conditioner or the plumbing or whatever. There is always
3 something. It's much easier dealing with commercial tenants and
4 commercial properties where we can put some or most of the
5 responsibility on the tenants to maintain their leased premises
6 and we can sit back and collect the rent and focus on our ongoing
7 development projects, which is really where the money is. Trust
8 me, if we are spending our time fixing leaky faucets then we are
9 wasting our time.

10 Q: What is the role of Witter Development when it comes to being
11 a landlord?

12 A: Well, there is a lot to it I suppose. There are the obvious
13 parts, which is setting the rent price, negotiating lease
14 agreements with our various tenants, and then collecting rent on
15 a month-to-month basis. But we are also obligated under those
16 rental agreements to maintain certain parts of the property,
17 especially the common areas of the property. So, if we are talking
18 about a shopping center for example, the tenant is generally
19 responsible for maintaining the portion of the building they occupy
20 but we are responsible for maintaining the areas outside the
21 building that are used by all of the tenants in that shopping
22 center. So, that would include things like the sidewalk and the
23 parking lot for that shopping center.

1 Q: Since you maintain control over the common areas, like parking
2 lots, at your properties, do you get a lot of complaints from
3 tenants about those common areas? You know, things like landscaping
4 issues or issues with the lighting in those parking lots?

5 A: Sure, from time to time, that's just part of the business. And
6 when we receive those complaints, we just have to go out and
7 identify the problem, if there is one, fix it, and make sure that
8 we are in compliance with applicable building codes and ordinances
9 and that everything is safe. And that's exactly what we do. We
10 know that our reputation is important to attracting tenants to our
11 properties, and that is our whole business, so we do everything we
12 can to make sure we take care of our properties and keep them as
13 safe as possible.

14 Q: According to your lease agreement with The Icehouse, who is
15 obligated to maintain the sidewalk and parking lot in that shopping
16 center?

17 A: We are, Witter Development. So, just like I told you, those
18 would be common areas on the property, so those are our obligation.

19 Q: Did Witter Development build the shopping center and the parking
20 lot where The Icehouse is located?

21 A: We did.

22 Q: And when was that project done?

23 A: We've had that property for twenty years now, so that project
24 was completed in 2005.

1 Q: And how long has The Icehouse been a tenant?

2 A: Well, that part of the shopping center was purpose built for a
3 restaurant and we wanted a restaurant or a bar in that spot, so
4 The Icehouse has been a tenant since the very beginning, which
5 means they've been a tenant for twenty years now.

6 Q: What is your primary role with Witter Development?

7 A: Well, it's my company, so I oversee everything and have my hand
8 in every part of the company. I'm very hands on, right down to
9 visiting tenants and collecting rent if I need to. I like to know
10 our tenants and develop personal relationships with them if I can,
11 which lets them know who they should contact if there is an issue
12 and hopefully fosters a good business relationship that keeps them
13 with us for a long time.

14 Q: How familiar were you with The Icehouse and the shopping center
15 where it was located prior to Jamie Leery's fall in the parking
16 lot on September 7, 2024?

17 A: I would say I was very familiar. I mean, they were one of our
18 tenants and they have been tenants for a very, very long time. And
19 I have visited the property and The Icehouse specifically a number
20 of times over the years to address various issues and to talk about
21 collecting the rent and things like that, so I knew it well and
22 still know it well to this day.

23 Q: Did you ever receive any complaints about the lighting in the
24 parking lot outside The Icehouse?

1 A: Yes, I know of at least two written complaints we received about
2 the lighting in the parking lot.

3 Q: Okay, I'm showing you Exhibit 30, do you recognize this?

4 A: Yes, that's the first email I received from Avery Potter about
5 the lighting in the parking lot.

6 Q: What did you do when you received this email?

7 A: Well, obviously I was concerned because we don't want to be out
8 of compliance with the regulations and the codes, and we want the
9 parking lot to be safe. So, I went out to that parking lot just a
10 couple of days after I received this email from Avery and took
11 along one of the landscaping subcontractors that we use on most of
12 our jobs, and we checked the lighting throughout the parking lot,
13 or I should say that he checked the lighting throughout the parking
14 lot.

15 Q: What were you doing?

16 A: I was there observing, but he was the one actually doing the
17 testing with the light meter.

18 Q: Do you know what kind of light meter he was using?

19 A: I do not. I don't know anything about it. That's why I brought
20 him along, because he was the landscaping guy and should know what
21 he was doing, so I trusted him to do it correctly and use the
22 correct tools. I just saw that he had some kind of handheld device
23 and that he was walking around throughout the parking lot taking
24 readings on that device.

1 Q: What time was this done?

2 A: Around 10 p.m., so it was very dark.

3 Q: Okay, I'm showing you Exhibit 67, what is this?

4 A: This is an email I received from my landscaping contractor after
5 we did that inspection, which, as you can see, confirms that the
6 lighting in that parking lot complied with the city ordinances and
7 that we had sufficient lighting in the parking lot. So, I
8 considered the matter settled.

9 Q: When you did that inspection, did you see any lights missing?

10 A: No, if I had, we would've replaced them.

11 Q: In all your visits to that shopping center and that parking
12 lot, did you ever see any lights missing?

13 A: I'm sure I had, but I can't remember a specific time. But we've
14 had that shopping center for twenty years, so I'm sure it has
15 happened. But, what I do know is that if we had a light missing
16 then we replaced it, immediately. Plus, we have a policy that
17 requires our maintenance folks to inspect all of our properties
18 once per quarter, so that's four times per year, and replace things
19 like missing lights. So, I doubt it would ever be an issue.

20 Q: Is that a written policy?

21 A: No, that's just something we communicate verbally to our
22 maintenance folks, and they know that is the deal. That's just
23 part of their job.

24 Q: Okay, I'm showing you Exhibit 31, what is this?

1 A: That's another email I received from Avery at The Icehouse in
2 August 2024.

3 Q: What did you do to check the lighting when you received this
4 email?

5 A: Nothing. After the previous email when we went out and checked
6 and everything was fine, I just assumed that this was more whining,
7 so I didn't think there was a problem that needed to be addressed.
8 We had already checked the lighting in that parking lot, and I
9 felt confident there wasn't a problem, so no need to do it a second
10 time based on what some bartender said.

11 Q: So, you didn't go out and check it again?

12 A: No, I didn't think there was a reason to. But we did go out and
13 put up a sign outside of The Icehouse telling the customers to
14 stay on the sidewalk around the shopping center instead of walking
15 through the parking lot.

16 Q: I'm showing you Exhibit 11, what is this?

17 Why did you put this sign up?

18 A: Honestly, it was clear to me that the people leaving The
19 Icehouse had been drinking too much and were just wandering through
20 the parking lot, which seemed dangerous to me for obvious reasons
21 because there were cars driving through that parking lot. So, I
22 figured the safest thing to do was warn them that they needed to
23 stay on the sidewalk and walk around the parking lot until they
24 got to the row where their car was located, and that's exactly

1 what I did. Obviously, some people don't read very well or don't
2 follow instructions very well.

3 Q: Did you honestly expect people to follow these instructions?

4 A: I wouldn't have put it up if I didn't.

5 Q: Other than the two written complaints we've looked at in
6 Exhibits 30 and 31, did you receive any other complaints from any
7 of the tenants in that shopping center about the lighting in the
8 parking lot?

9 A: No, none. Not from Avery, not from anyone else at The Icehouse,
10 and not from any other tenant in that shopping center.

11 Q: Okay, let's move on now and talk about that sprinkler head.
12 When you built this shopping center and this parking lot for the
13 shopping center, who designed the landscaping?

14 A: We did, Witter Development did, in conjunction with our
15 landscaping subcontractor, which is how we always do it on all our
16 jobs.

17 Q: Why were there sprinklers in these landscaping medians?

18 A: Well, the original design plan was to have grass covering each
19 of those landscape medians, just because we thought it would be a
20 good look. But that plan changed over the years.

21 Q: How did it change?

22 A: We decided it was too costly and not worth the money to have to
23 water those areas and maintain that sprinkler system, so we just
24 stopped watering those areas and filled them in with loose mulch.

1 You know, wood chips and stuff. Eventually, all the grass died
2 off, which meant there was no need for the sprinklers on those
3 landscape medians anymore.

4 Q: When did this change take place?

5 A: About ten years ago.

6 Q: So, why didn't you remove the sprinkler system and the sprinkler
7 heads when you stopped watering those landscape medians?

8 A: Two reasons. First, they were retractable sprinkler heads and
9 they weren't in use, so that means they should have just been
10 buried in the ground, which means they weren't posing any kind of
11 danger to anyone.

12 Q: So, you agree that a sprinkler head sticking up out of the
13 ground is dangerous?

14 A: I didn't say that. And, obviously, if you aren't walking on
15 those landscape medians, which you shouldn't be because they aren't
16 a walking path, then there shouldn't be any danger to anyone
17 because they shouldn't be anywhere near those sprinkler heads.
18 And, if they're paying attention to where they're going then they
19 shouldn't be a problem either.

20 Q: But you knew people were walking through the parking lot and
21 near or around those landscape medians where the sprinkler heads
22 were located, right?

1 A: We had some indication of that, sure. But again, they were
2 supposed to be retracted into the ground, so we didn't think there
3 was an issue.

4 Q: Okay, what was the second reason you didn't remove those
5 sprinkler heads?

6 A: Cost, we got a quote to remove them, and it was just absurdly
7 high.

8 Q: I'm showing you Exhibit 68, do you recognize this?

9 A: Yes, that's an email from Arthur Brooks, our Chief Financial
10 Officer, telling me what it would have cost to remove the sprinkler
11 system, including those sprinkler heads, from the landscape
12 medians, and then you can see my email in response as well.

13 Q: And is this a true and correct copy of those emails?

14 A: It is.

15 Q: Did you get a quote to just remove the sprinkler heads and not
16 the entire sprinkler system?

17 A: No. Again, I didn't think people would walk on those landscape
18 medians, so I don't know what the point would've been to go through
19 that expense.

20 Q: I'm going to show you Exhibits 18 through 29, which show the
21 sprinkler head that was sticking up out of the ground that Jamie
22 Leery tripped over. Were you aware that this sprinkler head was
23 sticking up out of the ground on this landscape median prior to
24 Jamie Leery's fall?

1 A: No, we were not.

2 Q: You told us earlier that you had been to this property many,
3 many times and were very familiar with it, and you told us that
4 your maintenance people went out to the property on a quarterly
5 basis to perform routine maintenance on the property. Given that,
6 how is it possible that you or someone from Witter Development
7 hadn't seen this sprinkler head sticking up out of the ground?

8 A: I don't know. All I can tell you is that I never saw it, and
9 that if any of our maintenance people saw it then they didn't tell
10 us about it. I mean, as you can see from some of these pictures,
11 like Exhibit 20, it isn't that easy to see unless you get pretty
12 close to the ground.

13 Q: But you were aware that there were sprinkler heads on these
14 landscape medians?

15 A: In general? Yes. We knew they were there. They had been there
16 since we built the shopping center. But we didn't know that this
17 one was sticking up out of the ground.

18 Q: What would you have done if you were aware of it?

19 A: We would've fixed it, which is exactly what we did after Jamie
20 Leery tripped over it.

21 Q: When was that done?

22 A: The very next day after the fall, so September 8, 2024.

23 Q: And how was that done?

1 A: I was out there looking over the property with that same
2 landscaping subcontractor we talked about earlier, and we went to
3 take a look at it, and he just got out a screwdriver and messed
4 around with it for about two minutes and pushed it back down into
5 the ground. He said, "huh, I guess this one just never retracted
6 after the last time y'all turned on the sprinkler system, that's
7 weird," but it didn't take him any time to fix it. So, not a worry
8 anymore. Like I told you earlier, if we know there is a problem we
9 fix it as soon as we can.

10 Q: Prior to Jamie Leery's fall in that parking lot, over the twenty
11 years that you had owned that property, had anyone else had a fall
12 in that parking lot?

13 A: Maybe a handful of times over the twenty years that we've owned
14 the property.

15 Q: I'm showing you Exhibits 69, 70, and 71, what are these?

16 A: These are reports that we've collected regarding those previous
17 falls in the parking lot?

18 Q: And are these true and correct copies of those reports?

19 A: Yes, they are.

20 Q: What did you do in response to these reports?

21 A: I mean, there isn't much we could do, right? We put some paint
22 on some of the curbs in the parking lot and painted the parking
23 bumpers in the parking spots, but that's about all we could do.
24 And I think it's important to note that none of these people

1 reported tripping over a sprinkler head, so there was nothing in
2 here that would have alerted us to that issue.

3 Q: Would that reflective paint on the curbs and the parking bumpers
4 do much if there wasn't sufficient light in the parking lot?

5 A: I suppose not, but I don't see why that matters since we did
6 have sufficient light in that parking lot.

7 Q: Did you ever consider putting some kind of walkway through the
8 parking lot so that customers could walk through the parking lot
9 without having to weave through cars or dodge traffic?

10 A: No, I don't remember discussing that at all when we built that
11 shopping center. I don't think we've ever done that on any of our
12 properties. We had a sidewalk for people to walk on, they should've
13 used it.

14 Q: Avery Potter talked about conversations that the two of you had
15 when you would come into The Icehouse where, according to Avery,
16 you would complain about the "drunk and disorderly" customers
17 outside of The Icehouse. Is that true?

18 A: Absolutely. The bottom line is that they overserved people
19 there, that's just a fact. I got complaints from the other tenants
20 about it, but I also observed it myself. I was up there multiple
21 times at night and would see people stumbling out of the bar. There
22 was even one night where I watched a customer leave that joint and
23 walk over to one of the landscape medians in the parking lot and
24 piss on a tree. It was absurd. That place is supposed to be a

1 restaurant, and it is during the day, but those bartenders started
2 pouring the drinks a bit too stiff at night and things would get
3 out of hand.

4 Q: Did Potter ever say anything about the landscape medians being
5 dangerous during these conversations?

6 A: Huh? Are you kidding? That's revisionist history if Avery said
7 that. I mean, I'm not surprised, because we all know that they are
8 scared to death of getting in trouble for overserving Jamie Leery
9 that night, which is why he fell down in that parking lot, so I'm
10 sure Avery would say anything to point the finger at anybody but
11 Avery and The Icehouse, but that conversation simply never
12 happened.

13 Q: So, did you ever say anything like, "If people can't walk around
14 without falling down or tripping then how is it my fault? How about
15 you tell the drunkards that hang out in your place to avoid walking
16 into trees, dumbass?"

17 A: Absolutely not. I mean, I did talk to Avery about the drunk
18 people leaving The Icehouse, but it had nothing to do with the
19 landscape medians or tripping over curbs or anything like that.
20 That's just nonsense.

21 Q: Do you know Cameron McPhee?

22 A: I do.

23 Q: How do you know McPhee?

1 A: Cameron did some landscaping work for us on a project back in
2 the day, but it all went a bit sideways, so Cameron doesn't work
3 for us anymore. I mean, we would hire Cameron, but Cameron refuses
4 to work for us.

5 Q: What caused it to go "sideways" as you say?

6 A: We just had a dispute because I thought Cameron's work wasn't
7 quite up to par with what we expected, and I didn't want to pay
8 Rolls Royce prices for Toyota work, you know what I mean? So, I
9 asked Cameron to cut the bill a bit, but Cameron refused. Anyways,
10 we got it all worked out, Cameron got paid, and that's that. It's
11 right there in the settlement agreement, which I can't really talk
12 about. But what I can say is that Cameron was a real jerk about
13 the whole thing. I was willing to let it all go, let bygones be
14 bygones and whatnot, but Cameron yelled and cursed at me after the
15 settlement was signed and said something like, "You better hope I
16 don't catch you in the alley behind one of your slumlord shopping
17 centers asshole." It was just so unnecessary. It was just business.
18 So dumb.

19 Q: Logan, have you understood all my questions?

20 A: Yes.

21 Q: Do you have anything to add regarding this matter that you
22 haven't already said?

23 A: Nope, I've told you everything I know.

24 Q: And have you given complete answers to every question without

1 leaving anything out?

2 A: Yes.

3 Q: Thank you, no further questions.

4 A: Thank you.

5

6

7

(Proceedings Adjourned.)

8

9 I, Logan Witter, have read the foregoing deposition and hereby
10 affix my signature that same is true, correct, and accurate, and
11 that all information I have regarding this case has been
12 provided in this deposition and that nothing has been left out.

13

14

A handwritten signature in black ink, appearing to read "Logan Witter", written in a cursive style. The signature is positioned above a horizontal line.

15

16

Logan Witter

Dylan Lindell, Ph.D., CPE

Lindell Consulting
 867 5th Ave.
 Wilmington, Hanover

.....

October 15, 2025

RE: Civil No. AAJ-CV-001-26; *Riley Leery, Administrator for the Estate of Jamie Leery v. Witter Development, LLC*

Dear Counsel:

This letter is intended to serve as my expert report in the above referenced matter. You have retained me at a cost of \$750 per hour in order to review this matter, all the relevant documents related to this matter, and to draft this report. If I am required to testify at trial, then I will require an additional \$1500 per hour for those services. Pursuant to my role as an expert in this case, I hereby certify with my signature below that this report represents a complete and accurate account of all of the work I've done on this matter and of all of my opinions in this case and that I have not left anything relevant to this case out of this report. Additionally, you will find a copy of my *curriculum vitae* attached herein at Exhibit "A."

Reviewed:

I reviewed the following documents in coming to my opinions in this case:

- Exhibits 1 through 74
- July 10, 2025 Deposition of Riley Leery
- July 11, 2025 Deposition of Avery Potter
- July 12, 2025 Deposition of Logan Witter
- September 20, 2025 Expert Report from Cameron McPhee
- October 1, 2025 Deposition of Cameron McPhee
- Site visit on October 20, 2024
- Retrograde analysis conducted by Kristy Livingstone
- Fillmore MT, Vogel-Sprott M. Behavioral impairment under alcohol: cognitive and pharmacokinetic factors. *Alcohol Clin Exp Res.* 1998 Oct;22(7):1476-82. PMID: 9802531.

- Moskowitz, H., & Florentino, D. (2000). *A review of the literature on the effects of low doses of alcohol on driving-related skills* (Report No. DOT-HS-809-028). U.S. Department of Transportation, National Highway Traffic Safety Administration, Office of Research and Traffic Records, Research and Evaluation Division.

These are the types of materials reasonably and customarily relied upon by experts in the human factors field in conducting the type of investigation I conducted in this case and in reaching the types of opinions that I reached in this case.

Accident Description:

The following is a brief description of the accident based on what I have reviewed in this case.

On September 7, 2024, at approximately 9:00 p.m., Jamie Leery, a 72-year-old retired college professor that lived in Wilmington, was leaving The Icehouse, a local restaurant, with his son, Riley Leery. Jamie and Riley had been out that day celebrating Jamie Leery's impending 73rd birthday and had consumed a number of alcoholic beverages both at The Icehouse and other restaurants/bars in town. Jamie Leery was drinking a cocktail known as an "old fashioned," which is a bourbon-based drink. While at The Icehouse, Jamie Leery appeared to stumble or stagger and had difficulty getting into his chair, all of which are signs of intoxication.

When leaving The Icehouse that evening around 9 p.m., Jamie and Riley Leery walked through the parking lot towards Riley's vehicle. Jamie Leery walked up onto a landscape median, which you can see in Exhibits 18 through 29. While walking on this landscape median in the parking lot, Jamie Leery lost his balance and fell to the ground. While no witness actually saw Jamie Leery trip over an exposed sprinkler head that was located on that median, the witnesses reported that the fall began in the same area where the sprinkler head was located and said that they saw that sprinkler head in that area after the fall took place.

Opinions:

1.) *Jamie Leery failed to follow the adequate warnings that were given to him.*

Following a written complaint from Avery Potter that was received by Witter Construction in August 2024, Logan Witter installed a warning sign that was located directly between The Icehouse and the parking lot for the subject shopping center. A photograph of that warning sign can be seen in Exhibit 11.

First, given the location of that warning sign, directly between the exit from The Icehouse and the parking lot, any customer that was leaving The Icehouse would have to walk directly past that sign. Additionally, based on the location of the sign and the path that Riley Leery testified they walked through the parking lot that evening, there is no question that both Riley Leery and Jamie Leery would have walked right past that sign on their way to their car in that parking lot. Thus, both Riley and Jamie Leery would have had an opportunity to read the sign before choosing to enter that parking lot on the night of September 7th, and the only reason they would not have read that sign would have been a conscious decision on their part not to read the sign. Alternatively, as I'll discuss more fully below, it is possible Jamie Leery read the sign but did not understand the warning or failed to heed that warning because he was sufficiently intoxicated that his motor function skills and/or decision making was impaired.

Second, if Jamie Leery read that sign then he was sufficiently warned about the dangers of entering that parking lot and the need to walk on the sidewalk around the shopping center instead of attempting to walk directly through the parking lot. The sign clearly states, "DANGER: Walking through the parking lot should be avoided. Customers should use the sidewalk at all times to reach the area where their vehicle is located." At the very least, this sign provides a clear warning of "DANGER," which is unmistakable, and any reasonable person would have understood that warning and heeded it, which would mean they would have used the sidewalk around that shopping center instead of walking directly into the parking lot, which is what Jamie and Riley Leery did in this case. That kind of warning, in all capital letters, at the top of the sign, in red lettering, is the kind of warning that grabs the attention of the average person and should cause them to consider the safest option available to them, regardless of the language that is used for the rest of the warning sign.

Additionally, it is reasonable and appropriate to expect customers to use the sidewalk to travel to their cars instead of walking directly through the parking lot. On October 20, 2024, I visited the subject shopping center to observe customers travelling to and from their cars to enter the various shops in the shopping center, including The Icehouse. During the four hours that I observed the subject shopping center, I observed that less than 5% of the customers that entered that parking lot and then entered one of the stores in that shopping center, including The Icehouse, walked from their car directly to the store they were entering without use of the sidewalk or walked directly from the store they were leaving to their car through the parking lot without using the sidewalk to travel to the area where their car was located. This shows that expecting customers to use the sidewalk rather than walking through the parking lot, and therefore closer to the landscape medians, is a reasonable expectation, especially when there is a sign warning about the dangers of walking directly through the parking lot.

Therefore, Jamie Leery's failure to either read this warning sign or follow the warning given on that sign is unreasonable and ultimately contributed to his fall in that parking lot because it put him on a path towards the subject landscape median.

2.) *Jamie Leery's drinking was a substantial factor in his decision making and his ultimate fall.*

According to Exhibit 72, which is the toxicology report based on a blood draw that took place at Wilmington Memorial Hospital at 11:20 p.m., so approximately two-and-a-half hours after Jamie Leery's fall, Jamie Leery had a blood alcohol content of 0.06, which is only 0.02 less than the legal limit in this jurisdiction.

Even if we assume that Jamie Leery's blood alcohol content at the time he left The Icehouse and ultimately fell in that parking lot was a 0.06 and no higher, that level of intoxication would have had a substantial impact on his decision-making, reaction time, and posture control, and increases the likelihood of a fall, stumble, stagger, or loss of balance compared with someone in a sober condition. Although 0.06 is near or just below some legal "per se" driving limits, the experimental literature shows that balance, coordination, and divided-attention tasks are already significantly impaired at BAC levels as low as 0.03 to 0.05, with impairment becoming more consistent and pronounced by 0.05-0.06. At 0.06, a person would be squarely within a range where most individuals will demonstrate measurable decrements in gait, stability, obstacle avoidance, and rapid corrective movements necessary to prevent a fall. In practical terms, a person with a BAC of 0.06 will be slower to perceive a trip hazard, meaning that they will not see something that would be obvious to a sober person, and would be less precise in how they place their feet, especially while walking on uneven surfaces, negotiating curbs, or medians, or steps, or changes in lighting, and would be slower to initiate a recovery step once they begin to trip. These human-factors limitations increase the probability that an otherwise manageable perturbation (a small elevation change, irregular paving, curb, landscaping feature, or other obstacle) will result in stumbling, staggering, or an actual fall.

Safe walking – especially in environments like parking lots, medians, steps, or poorly lit areas – is not a simple motor task because it involves what we call "dual-tasking." This is because when you're walking in one of these types of areas, like a parking lot, you have to monitor the environment (traffic, other people, lighting, obstacles, etc.), plan a route (where to step, which path to take, etc.), and execute precise placement of your feet, make dynamic balance adjustments, and make rapid corrections if something unexpected happens. Alcohol – even at low to moderate doses is well documented to impair divided attention and dual-task performance. The National Highway Transportation Safety Administration's low-dose alcohol review notes that divided attention and tracking tasks

are among the most sensitive to alcohol, with impairment often observed as low as the 0.02-0.05 range.

Based on the foregoing, a person with a 0.06 BAC is significantly more likely than a sober person to:

- Misjudge step height or surface irregularities;
- Misplace their foot when negotiating curbs, medians, and obstacles;
- Fail to execute an adequate recovery step when they trip; and
- Exhibit stumbling, staggering, or outright falls in response to perturbations that a sober individual would ordinarily manage without incident.

What all of this tells is that even if we assume Jamie Leery was only at a 0.06 BAC when he entered that parking lot and walked through it he was already experiencing impaired decision making, which could explain the decision to walk up onto the landscape median and ignore the warning sign in the first place, and would have also been experiencing deficits and impairment of his motor skills that would have made identifying the exposed sprinkler head and stabilizing himself after he began to fall more difficult, all things that would have contributed to his fall.

Additionally, in my expert opinion based on a reasonable degree of professional and scientific certainty, I do not believe that Jamie Leery's BAC was a 0.06 at the time of his fall. Kristy Livingstone, a forensic toxicologist that works for Lindell Consulting, conducted a retrograde analysis, which can be found in Exhibit 73. This retrograde analysis found that a conservative estimate of Jamie Leery's BAC at the time of the fall, 9 p.m., would've been over 0.08, which means he would have been legally intoxicated at the time of the fall. While this does not change any of my above conclusions it does amplify those conclusions because everything I mentioned regarding Jamie Leery's impaired motor skills and decision making would only be worse and a bigger issue.

Based on the foregoing, it is my conclusions that Jamie Leery's alcohol intake on the day in question was a substantial contributing factor and proximate cause of his fall both in terms of why he chose to walk through the parking lot in the first place, why he chose to walk on a landscape median while travelling through that parking lot, and why he fell after presumably tripping on the exposed sprinkler head.

Conclusion

For all the reasons outlined above, I conclude that Jamie Leery was negligent in walking through the parking lot despite the warning and doing so in an intoxicated or at the very

least non-sober state, and that such negligence was a proximate cause of the subject trip and fall and resulting injuries.

Please let me know if you have any questions, concerns, or comments about anything contained within this report or if there is anything else you would like for me to look into in preparation for trial on this matter.

Respectfully,

Dylan Lindell

Dylan Lindell

EXHIBIT

A

CURRICULUM VITAE

Dylan Lindell, Ph.D., CPE

Lindell Consulting
867 5th Ave.
Wilmington, Hanover

Professional Experience

Summary

Dr. Dylan Lindell is a human factors scientist and certified ergonomist. Dr. Lindell has more than twenty-five years of academic, research, and consulting experience. Dr. Lindell's expertise includes:

- Biomechanics of falls, obstacle negotiation failures, and postural instability;
- Environmental and systems analyses, including lighting, walkway design, signage, warnings, and visibility);
- Cognitive load, decision making, situational awareness, and response time;
- Alcohol impairment analysis, including effects on balance, gait stability, judgment, divided attention, motor control, and hazard recognition.

2012-Present

Lindell Consulting

Principal Consultant

Provided human-factors analysis in over 400 cases, including:

- Trip and fall incidents involving medians, curbs, uneven pavement, and sidewalk discontinuities;
- Pedestrian incidents with alcohol impairment;
- Premises liability;

- Occupational safety incidents involving impaired workers;
- Bar/restaurant over-service evaluations;
- Human performance assessment in response to unexpected hazards;
- Development and evaluation of safety warnings, instructions, and signage;
- Human factors failure analysis in product and premises cases.

2012-Present

Associate Professor (Adjunct), Department of Industrial & Systems Engineering, Wilmington State University

Courses taught: Human Factors Engineering, Cognitive Systems, Human Error, Biomechanics of Movement, Forensic Human Factors.

2005-2012

Senior Research Scientist – Center for Applied Cognition & Human Performance

Conducted applied research on:

- Attention and hazard recognition;
- Human error under time pressure;
- Cognitive load and decision making behavior;
- Pedestrian behavior in complex environments.

Published multiple articles and presented nationally on environmental human factors topics.

1998-2005

Human Factors Engineer – U.S. Department of Transportation-Human Performance Lab

Evaluated pedestrian wayfinding, crosswalk visibility, glare effects, and human interaction with roadway environments.

Education

1998	University of Virginia Ph.D., Human Factors & Applied Cognition
1993	Purdue University M.S. Experimental Psychology (Human Performance & Decision Making)
1991	University of Wisconsin-Madison B.S. Psychology (Honors); Minor in Biology

Professional Licenses & Certifications

- Certified Professional Ergonomist (CPE) – Board of Certification in Professional Ergonomics
- Forensic Gait & Balance Assessment Certification
- OSHA 30-Hour General Industry Certification

IN THE SUPERIOR COURT FOR HANOVER COUNTY

RILEY LEERY, Administrator)	
for the Estate of JAMIE LEERY,)	
)	
Plaintiff,)	
v.)	Civil Action No. AAJ-CV-001-26
)	
WITTER DEVELOPMENT, LLC,)	
)	
Defendant.)	
)	
)	
)	

1
2 *****
3 ORAL DEPOSITION
4 OF DYLAN LINDELL
5 NOVEMBER 15, 2025
6 *****

7 PROCEEDINGS
8 DYLAN LINDELL

9 having been first duly sworn, testified as follows:

10 CROSS EXAMINATION

11 BY PLAINTIFF'S COUNSEL:

12 Q: Good afternoon. Can you please state your name for the record.

13 A: Good afternoon, my name is Dylan Lindell.

14 Q: A couple of things I wanted to clarify from your report. You
15 say that you're getting paid \$750 per hour to review this case and
16 draft your report. So, how much have you billed up to this point?

17 A: I've reviewed four depositions, an expert report, all the
18 exhibits, conducted a site visit, and I've reviewed a number of
19 articles regarding alcohol impairment, plus I had to draft my own

1 report. So, I've spent about 35 hours on this case, which I think
2 is pretty reasonable given all the work I had to do, and I've
3 billed about \$27,000 in total, which again seems pretty reasonable
4 given all the work I was required to do in order to prepare my
5 opinion and get ready to come testify today.

6 Q: I see from your resume that you've worked on over four hundred
7 cases providing human-factors analysis. Out of those four hundred
8 cases, have you testified for one side more than the other?

9 A: No. I don't know if it's fifty-fifty or anything, but I testify
10 for both plaintiffs and defendants, and I've turned down cases
11 before when I've looked at the facts and just didn't agree with
12 the side of the case that was reaching out to me and asking for my
13 opinion. So, my work isn't about helping one side or the other,
14 it's about evaluating the case and coming to an honest, unbiased
15 opinion based on my expertise, and I'm going to give that opinion
16 no matter who hired me.

17 Q: And you've testified in other cases involving alcohol
18 consumption and impairment?

19 A: I have. Many times.

20 Q: What kinds of alcohol related cases have you testified in?

21 A: Several vehicle accident cases where one of the drivers had
22 consumed alcohol prior to the accident, especially trucking
23 accidents. You know, just this spring I worked on two different
24 trucking cases at the same time where one of the drivers involved

1 had some alcohol in their system, pretty crazy to have two of those
2 cases at the exact same time! Anyways, I've also worked on dram
3 shop cases where a bar or restaurant has been sued for allegedly
4 overserving a customer, and I've worked on other trip and fall
5 cases, like this one, where alcohol was an issue. I don't know how
6 many of the cases I've worked on involved alcohol consumption, but
7 I would estimate it's over fifty but less than one hundred. Pretty
8 common stuff.

9 Q: Looking at your report, you appear to have reviewed several
10 scholarly articles regarding the effects of alcohol. Are all of
11 those articles dealing with the effects of alcohol in the context
12 of driving-related skills?

13 A: Well, yes. I mean, the Fillmore article is a bit broader than
14 that but mostly focused on driving-related skills as well. But I
15 think that those articles, even though they're focused on driving-
16 related skills, have general applicability to motor skills more
17 broadly. If alcohol impairs your decision making and motor skills
18 when you're driving, then the same thing would be true when it
19 comes to walking and navigating pathways and parking lots.

20 Q: Okay, well, let's back up a bit and let me ask you this, you
21 describe yourself as a "human factors scientist and certified
22 ergonomist." What does that mean?

23 A: As a human factors scientist I examine how people actually see,
24 think, and move in real-world environments, and whether the design

1 of a space, like a parking lot or the interior of a building, or
2 product supports safe human performance or creates avoidable
3 risks. As a certified ergonomist, I focus on the physical side of
4 that interaction – how the body moves, how much force or reach a
5 task requires, and whether the physical layout of the space in
6 question is consistent with normal human capabilities. In both
7 roles, I evaluate whether conditions matched what a reasonable
8 person could perceive and respond to, or whether the environment
9 made a mistake or accident more likely.

10 Q: How does that qualify you to talk about the impact of alcohol
11 on human performance?

12 A: Well, as part of my coursework for my various degrees I've taken
13 multiple classes in psychopharmacology, which would include the
14 mechanisms of drug and alcohol action in the central nervous
15 system, dose response, behavioral pharmacology, and neurobiology
16 of intoxication, as well as classes in forensic toxicology, which
17 includes the interpretation of BAC results and alcohol impairment
18 standards. And, while I didn't do the retrograde analysis in this
19 case, I have taken course in retrograde extrapolation and alcohol
20 calculation, which means I'm very capable of interpreting those
21 results. These types of courses are common for someone working in
22 the human factors field because intoxication is a factor we have
23 to evaluate in any case where it is present in determining why a
24 person interacted with an environment or product in a certain way,

1 so an understanding of toxicology is a necessary component of being
2 a human factors expert. Additionally, as you can see from just
3 this case, I'm very familiar with the literature and research on
4 the topic, plus, as I discussed earlier, this is an issue I've
5 dealt with in dozens of cases I've worked on over the years.

6 Q: I'm showing you Exhibit 73, what is this?

7 A: This is the retrograde analysis that was done in this case by
8 Kristy Livingstone.

9 Q: Who is Kristy Livingstone?

10 A: She is a forensic toxicologist that works for Lindell
11 Consulting, and she is typically the one that performs our
12 retrograde analyses when we need one, and then I review it to help
13 form my opinions in the case.

14 Q: Why don't you just do the analysis yourself?

15 A: It's just our process. I could, but I have plenty of things
16 going on, and I trust Kristy because it's something she does on a
17 daily basis for us when these kinds of issues come up.

18 Q: Is that standard within the human factors field to rely on a
19 retrograde analysis like this performed by another person?

20 A: When it's done by a forensic toxicologist, I think it's
21 completely standard and reasonable for someone like myself to rely
22 on this type of work.

1 Q: Would you agree with me that even if Jamie Leery was impaired
2 due to alcohol consumption that sprinkler head still presented a
3 trip hazard?

4 A: I mean, I think that's fairly obvious. Anything like that when
5 it is protruding out of the ground can present a tripping hazard.

6 Q: So, why does it matter if Jamie Leery wasn't sober when he
7 tripped over that exposed sprinkler head?

8 A: I think I spelled this out in my report fairly clearly, but
9 it's the entire sequence of events. First, the alcohol could have
10 inhibited his decision making, which would explain why he chose to
11 walk through the parking lot instead of using the sidewalk and why
12 he chose to walk up onto that landscape median in the first place.
13 Second, it could have inhibited his perception skills, which may
14 have prevented his ability to see that exposed sprinkler head as
15 he approached it. And finally, it would have inhibited his ability
16 to stabilize himself once he came into contact with and tripped
17 over that sprinkler head, which means he wasn't able to stop
18 himself from falling. So, the alcohol could have impacted every
19 single part of what happened that night.

20 Q: Couldn't his age have had an impact on all of those things as
21 well?

22 A: Of course, his age would have some impact on all of those things
23 - decision making, perception, and stabilization - but if that's
24 the case then the alcohol would have only made the situation worse.

1 Q: I'm showing you Exhibit 20, do you recognize this?

2 A: Yes, it's a photograph of the landscape median at night.

3 Q: Can you see the exposed sprinkler head in this photo?

4 A: No, I cannot.

5 Q: Were you able to see it when you visited the parking lot?

6 A: It had already been removed when I went there. So, no.

7 Q: Do you have any opinions regarding the lighting in the parking
8 lot?

9 A: I do not. I've reviewed McPhee's opinion on the lighting, but
10 I did not do my own analysis of the lighting in the parking lot,
11 so I don't have my own opinion.

12 Q: Is lighting something you would normally factor in when you're
13 trying to determine why a person might have trouble perceiving an
14 obstacle or ultimately tripping over that obstacle?

15 A: It certainly can be, but I wasn't asked to evaluate that in
16 this case, so I didn't.

17 Q: You've said several times that alcohol would have impacted Jamie
18 Leery's decision making, which could have been the reason he
19 stepped up onto that landscape median. Do you consider that
20 decision to be unreasonable?

21 A: I do. I don't think a reasonable person who was walking through
22 that parking lot would walk up onto that landscape median, because
23 a person of average perception skills would perceive that landscape
24 median as having uneven ground and obstacles, which means they

1 would have avoided it altogether or exercised caution when
2 travelling over it.

3 Q: Would it have been a good idea for Witter Development to install
4 a walkway through that parking lot?

5 A: I don't think that would've helped for two reasons. First, the
6 walkway wouldn't be effective because, as we see in this case,
7 people would still take the shortest route possible to get to their
8 cars, which means they would just ignore the walking path and walk
9 the most direct line possible to their car. And second, even if a
10 walking path was present, it wouldn't have been used by someone in
11 an intoxicated state, like Jamie Leery, because of the inhibited
12 decision making we've already discussed.

13 Q: Dr. Lindell, you know that we asked in discovery for a copy of
14 every deposition you've given in a case involving alcohol
15 consumption?

16 A: Yes.

17 Q: Did you provide all of those depositions to the best of your
18 ability?

19 A: I did.

20 Q: I want to show you one of those depositions. This is from a
21 case called *Holly Hunter, Administrator for the Estate of Nicolas*
22 *Hunter v. Huffheins Trucking, LLC and Casey Snoats*, and I'll mark
23 this as Exhibit 74. Is this your deposition?

24 A: It is a portion of it, yes.

1 Q: And you stand behind your opinions in that case?

2 A: I do.

3 Q: Can you tell us about this case?

4 A: It was a trucking accident case where the Defendants were a
5 trucking company and its driver, and the Plaintiff was the mother
6 of the deceased driver who had collided with the back of the
7 Defendants' truck while it was parked on the side of the highway.
8 I was hired by Plaintiff's counsel to evaluate whether some cocaine
9 and alcohol that was found in the Plaintiff's system would have
10 impaired him in any way leading up to the crash.

11 Q: So, how do you explain your testimony in *Hunter* given your
12 testimony in this case?

13 A: Well, I think you're talking about two different situations.
14 The subject in *Hunter* was a young man driving a vehicle and was
15 below the legal limit for driving, so I think you have to evaluate
16 him differently as opposed to Jamie Leery who is an older man and
17 was walking through that parking lot. So, you have to take each
18 case and evaluate each case based on the unique facts in that case.

19 Q: Let me ask you about your opinion that about the warning sign.
20 First, you agree that a warning is only effective if the person it
21 is directed at actually reads it?

22 A: Sure.

23 Q: And you don't know one way or the other if Jamie Leery read
24 that sign, do you?

1 A: No, I do not, but it was right there for him to read. I mean,
2 we know through various studies that generally something like 50%
3 of people completely ignore warning signs, no matter what they say
4 or where they're place, but that doesn't change the fact that
5 Witter tried to warn everyone leaving that bar that walking through
6 that parking lot was dangerous.

7 Q: Well, taking a look at that sign in Exhibit 11, you agree that
8 it doesn't say anything about why the parking lot is dangerous,
9 correct? Like, it doesn't mention the landscape medians, or the
10 parking bumpers, or cars, or exposed sprinkler heads?

11 A: Well, no, but those all seem like fairly obvious dangers.

12 Q: If that's true then what is the need for a sign?

13 A: You know, just reinforcing the point.

14 Q: Have you understood all my questions?

15 A: Yes.

16 Q: Do you have anything to add regarding this matter that you
17 haven't already said?

18 A: Nope, I've told you everything I know.

19 Q: And have you given complete answers to every question without
20 leaving anything out?

21 A: Yes.

22

23

24

(Proceedings Adjourned.)

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7

I, Dylan Lindell, have read the foregoing deposition and hereby
affix my signature that same is true, correct, and accurate, and
that all information I have regarding this case has been
provided in this deposition and that nothing has been left out.



8
9

Dylan Lindell



EXHIBIT
1

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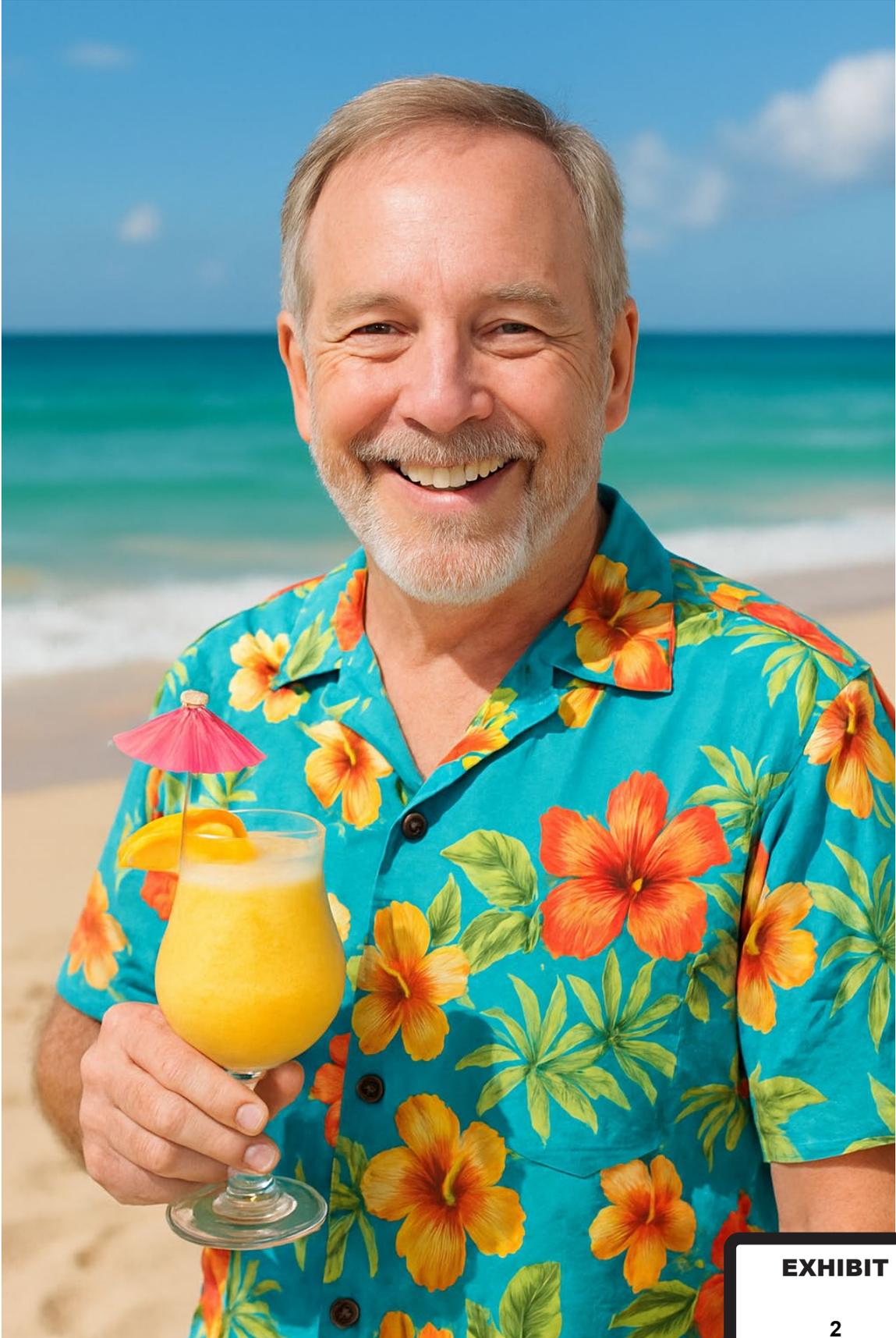


EXHIBIT
2

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Bluewater Grill
321 S. Drag St.
Wilmington, Hanover
(555) 867-5309

1 Old Fashioned	\$11.00
3 Michelob Ultra	\$21.00
2 Fish & Chips	\$24.00

Subtotal	\$56.00
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Tax (8.25%)	\$4.62
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Total	\$60.62
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Tab Closed: 1:30 p.m. 09/07/2024

EXHIBIT

3

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R_Leery · Follow
Wilmington



23

R_Leery Having a few drinks with old man! Hope I don't have to carry him out of here!! KIDDING!!

#TeaTotaler ... more

View all 3 comments

Add a comment...

Sep 7, 2024



Hell's Kitchen
123 Strip Ave.
Wilmington, Hanover
(555) 867-1234

2 Old Fashioned	\$18.00
1 Michelob Ultra	\$6.50
1 Iced Tea	\$3.50

Subtotal	\$28.00
Tax (8.25%)	\$2.31

Total \$30.31

Tab Closed: 4:45 p.m. 09/07/2024

EXHIBIT

5

exhibitsticker.com

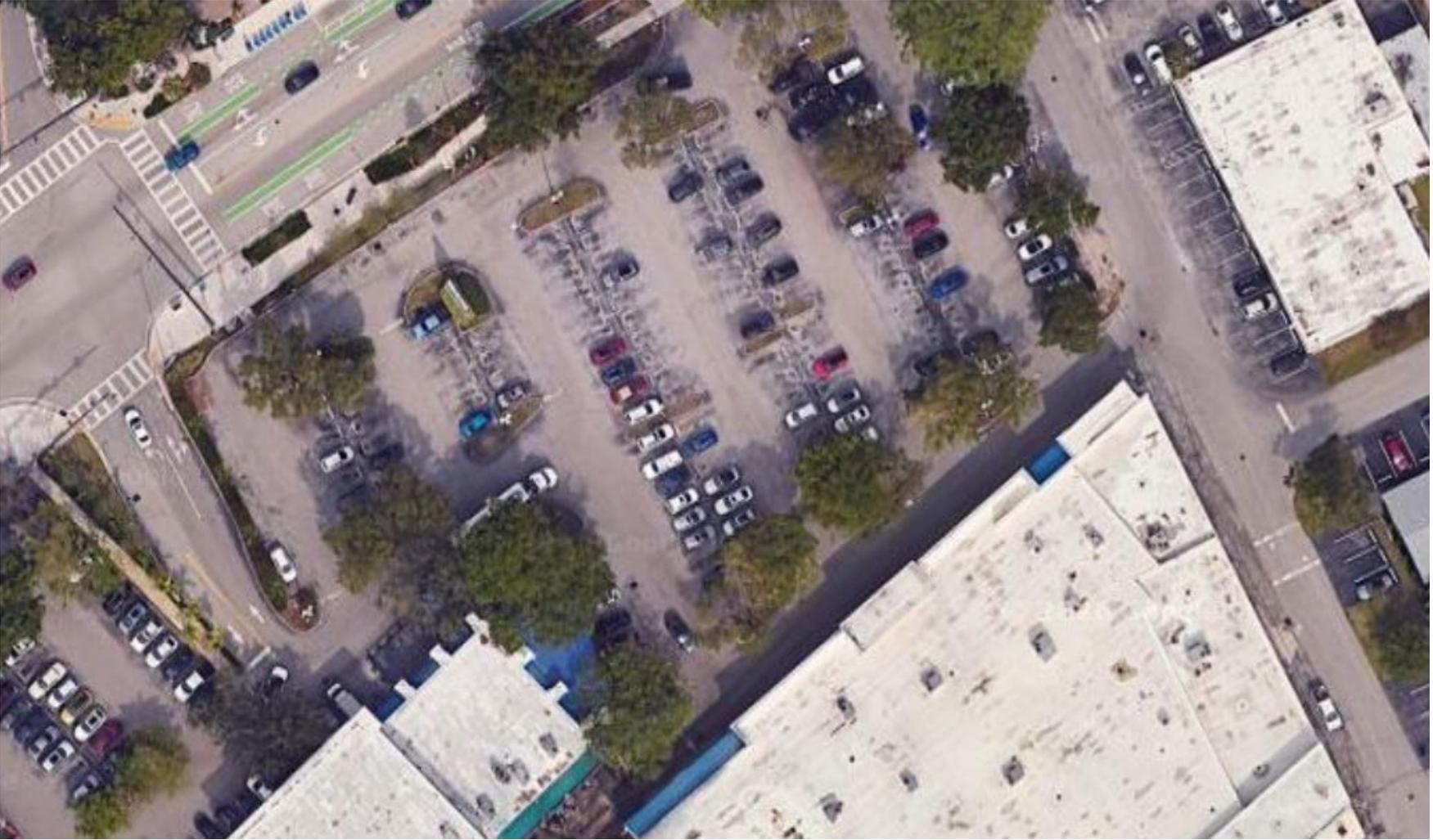


EXHIBIT
6

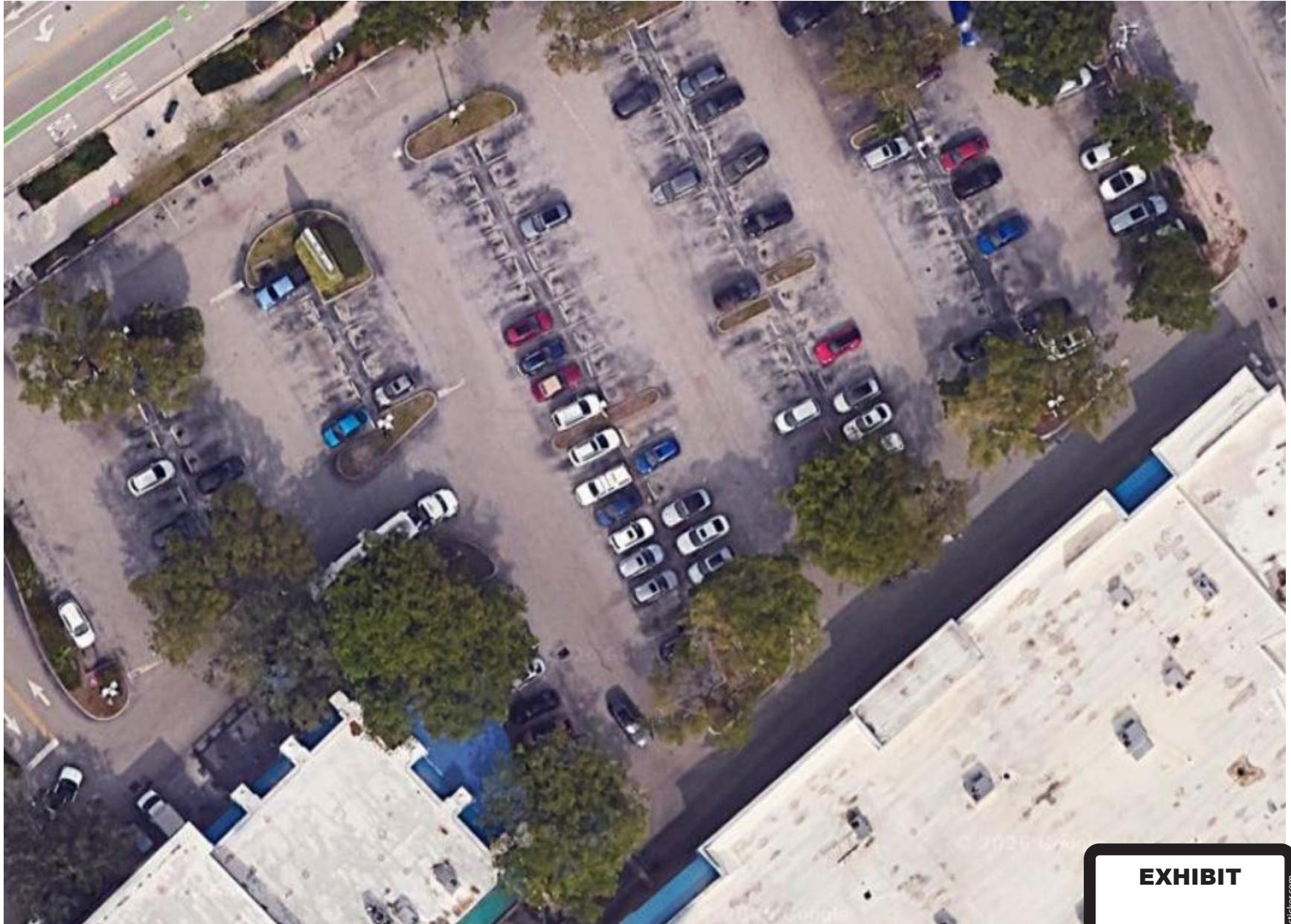


EXHIBIT
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EXHIBIT
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EXHIBIT
9

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The Icehouse
Shops at Wilmington Park
Wilmington, Hanover
(555) 867-1111

3 Old Fashioned	\$36.00
3 Michelob Ultra	\$19.50
2 Water	\$2.00
2 Iced Tea	\$7.50
1 Cheeseburger	\$9.50
1 Buffalo Chk Sandwich	\$10.25
2 Fries	\$8.00
1 Ranch	\$2.50

Subtotal	\$95.25
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Tax (8.25%)	\$7.86
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Total	\$103.11
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Tab Closed: 9:15 p.m. 09/07/2024

EXHIBIT

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EXHIBIT

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EXHIBIT
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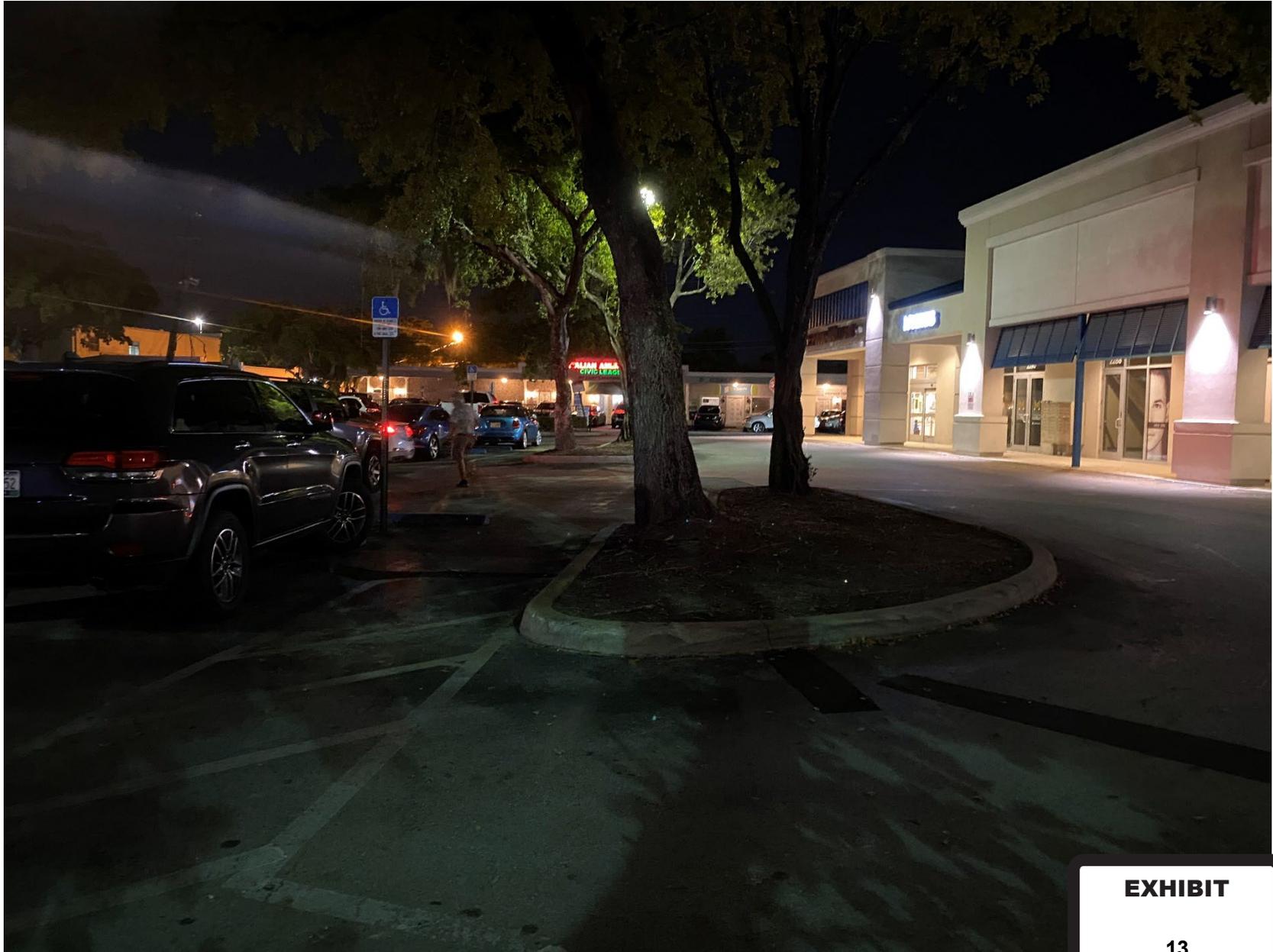


EXHIBIT
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EXHIBIT
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Bartending
01/29/2023



When to stop serving alcohol as a bartender: Signs of intoxication

As a bartender, it is important to understand the signs of intoxication and when to stop serving alcohol. Through this guide, you will be able to identify the signs of intoxication, how to act when someone is intoxicated, and when it is time to stop serving alcohol. Knowing these signs and when to stop serving alcohol can help keep your customers safe, while also protecting you and your establishment from potential legal issues. This guide will provide you with the information you need to properly serve alcohol and keep your customers safe.

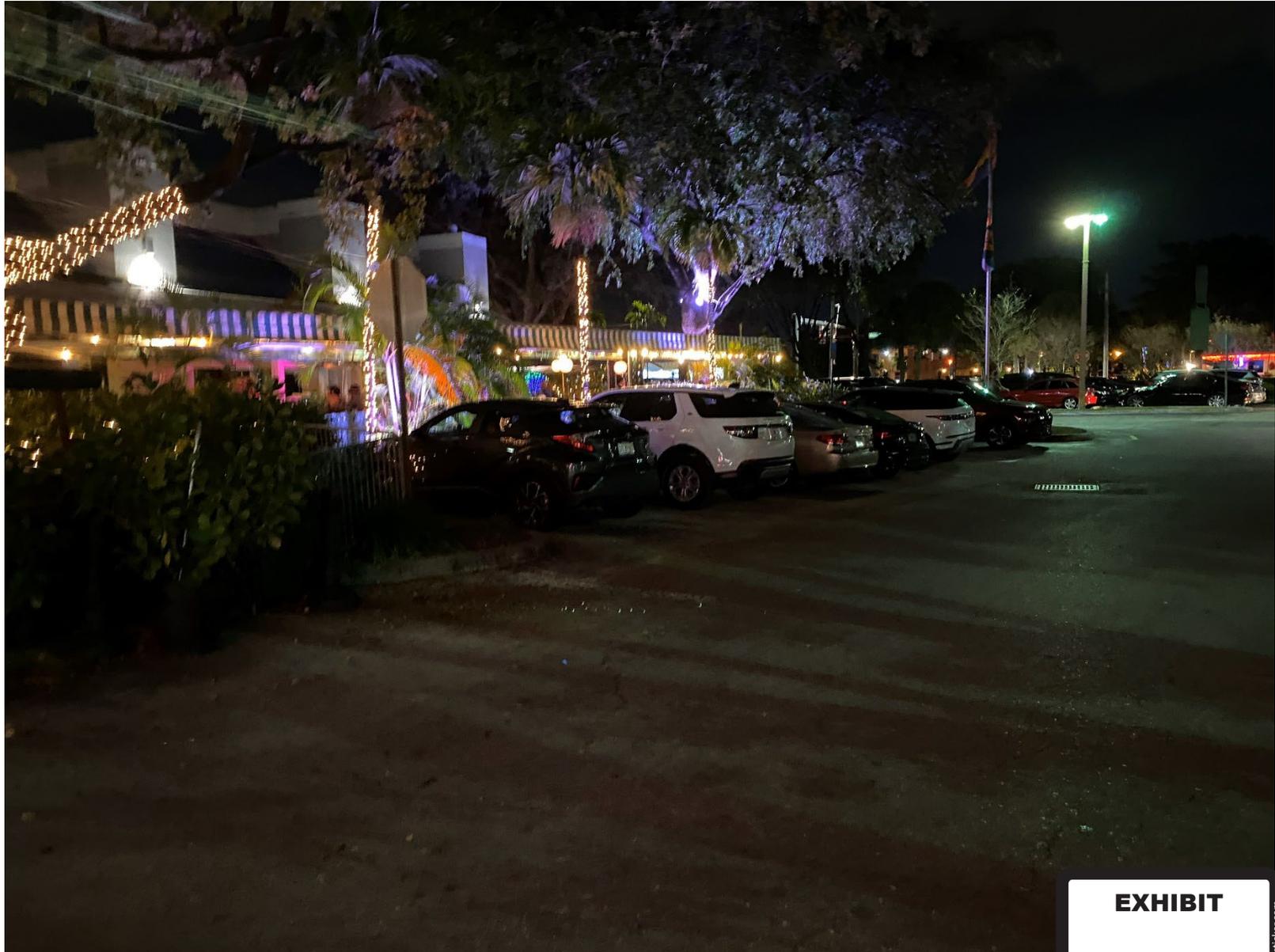
When to stop serving alcohol as a bartender: Signs of intoxication

As a bartender, it is your responsibility to ensure that your patrons are safe and responsible when consuming alcohol. You must be aware of the signs of intoxication and know when it is time to stop serving alcohol. The most obvious sign of intoxication is slurred speech. If a patron's speech is becoming increasingly difficult to understand, it is a clear sign that they have had too much to drink.

Other signs of intoxication include poor balance and coordination, difficulty concentrating, and impaired judgment. If a patron is exhibiting any of these signs, it is time to stop serving them alcohol. It is also important to be aware of the legal drinking age in your area.

If a patron is under the legal drinking age, you must refuse to serve them alcohol. Additionally, you should be aware of any local laws that prohibit serving alcohol to intoxicated patrons.

Finally, it is important to be aware of the signs of alcohol poisoning. These include confusion, vomiting, seizures, and difficulty breathing. If you notice any of these signs, it is essential that you stop serving alcohol and call for medical help immediately. By being aware of the signs of intoxication and alcohol poisoning, you can ensure that your patrons are safe and responsible when consuming alcohol. It is your responsibility as a bartender to know when to stop serving alcohol and take the necessary steps to ensure the safety of your patrons.



EXHIBIT

16

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EXHIBIT
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EXHIBIT
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EXHIBIT
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EXHIBIT
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EXHIBIT

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EXHIBIT

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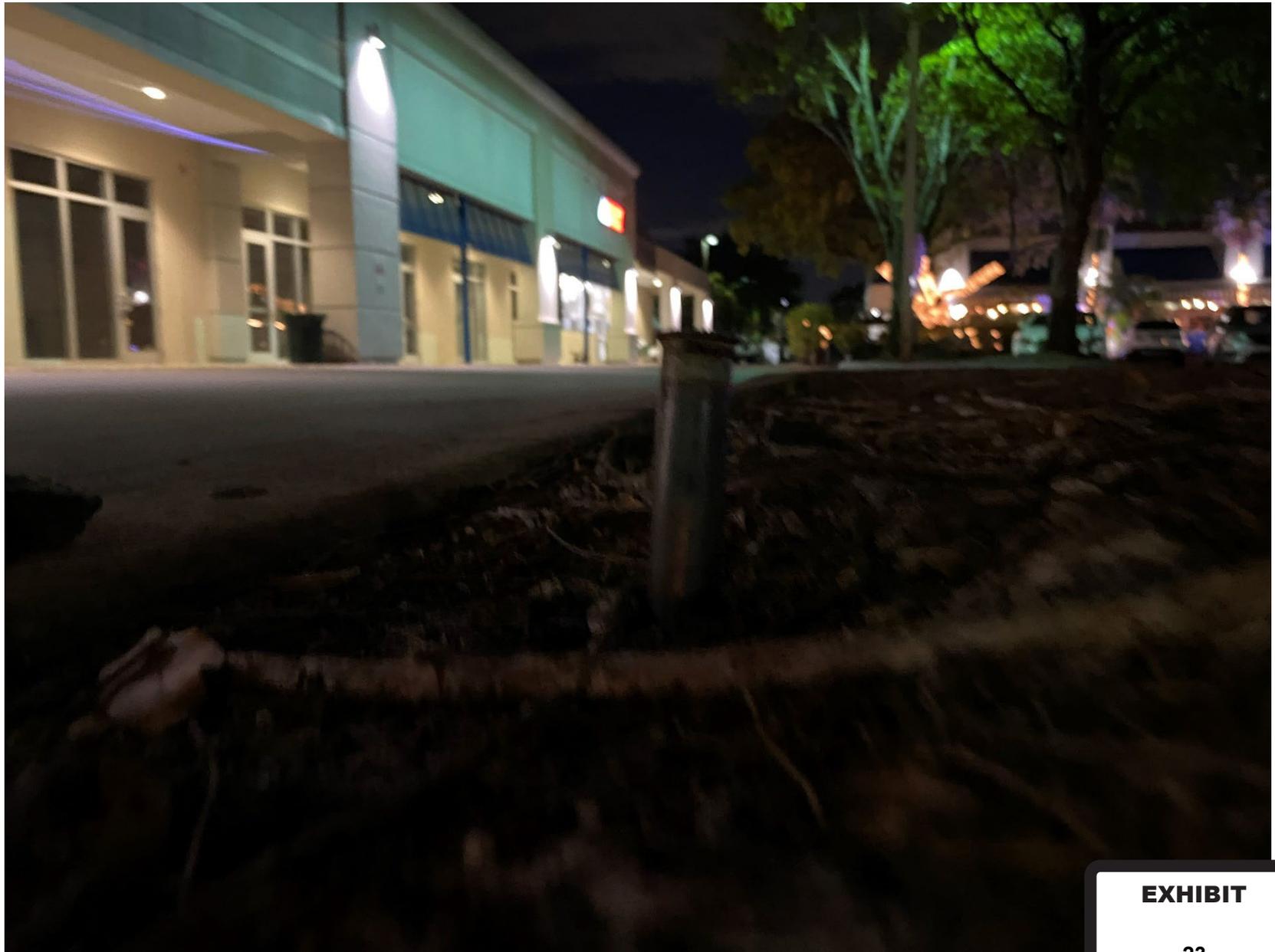


EXHIBIT
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EXHIBIT

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EXHIBIT

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EXHIBIT
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EXHIBIT

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EXHIBIT
28



EXHIBIT
29

To: Witter, Logan (LWitter@witdev.com)
From: Potter, Avery (avery67@gmail.com)
Date: July 23, 2022
Subject: Lighting Issues

Logan,

Haven't had a chance to talk about this with you in person, but I really think you need to do something about the parking lot. It's WAY too dark at night, we've had lots of complaints from customers about lights being out and about how hard is to see the curbs and the parking bumpers in front of their cars, and I just think we're going to end up getting someone hurt. I've even started offering to walk some of our older customers out to their cars when they leave just because I'm so scared they'll fall, and I've noticed lights out in the parking lot on a regular basis. So, please, please, please do something about this ASAP!!

Avery Potter
The Icehouse



To: Witter, Logan (LWitter@witdev.com)

From: Potter, Avery (avery67@gmail.com)

Date: August 1, 2024

Subject: HELP!

I know I've complained about this in writing and in person, but I'm going to try one more time to actually get you to do something about the damn lighting in the parking lot. I've probably had twenty different customers in the past couple of months complain about how dark the parking lot is, and I know of at least five or ten that have fallen down or almost fallen down out there when the trip over something they just can't see. C'mon dude, I know you know that it's a bad idea for people to be leaving a bar after they've been hanging out here all day and walk into a dark parking lot, and yet you've done NOTHING about it! It's been YEARS and it's still a problem. FIX IT!!

Avery Potter
The Icehouse



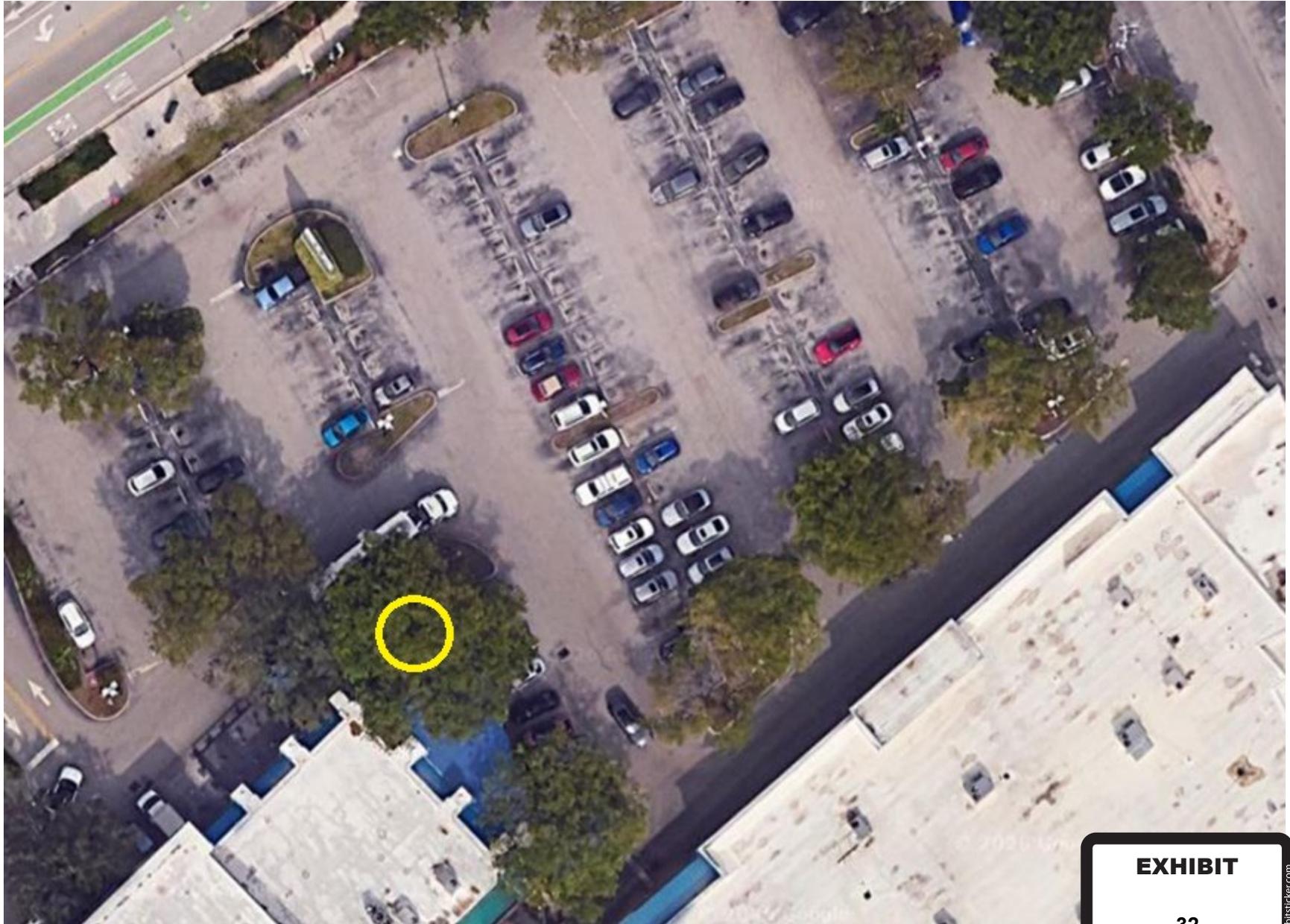


EXHIBIT
32

To: Potter, Avery (avery67@gmail.com)
From: Rocha, Jay (jrocha@homeimprovementdepot.com)
Date: January 24, 2024
Subject: Get Control

Hey, you have to help us out and get control of your people or do something about your customers. Every morning my employees have to spend at least 30 minutes picking up beer bottles and trash from the parking lot in front of our store, and we know it's coming from your customers leaving your place DRUNK and just throwing stuff on the ground because nobody else is opened that late in the shopping center. PLEASE do SOMETHING to let your staff know that they need to keep these people under control.

Sincerely,

Jay Rocha
Manager, The Home Improvement Depot



To: Potter, Avery (avery67@gmail.com)
From: Carbajal, Rick (carbajalrealty@gmail.com)
Date: June 1, 2024
Subject: Patrons

Avery,

We have not had the chance to meet in person, but I got your email address from Jay Rocha, the manager over at the Home Improvement Depot in the shopping center. I am the owner of Carbajal Realty, just a couple doors down from you, and I just wanted to alert you about an incident last week where two of your patrons left your bar, walked out into the parking lot in the middle of the afternoon, and one of them vomited in the parking lot. This is obviously alarming for us, since we are trying to run a business and do not need people puking in front of our customers when they are trying to come visit us and do business. I don't really want to escalate this any further and take it to Witter, so please just try to remind your staff to cut people off when they're drunk so we can limit these types of issues.

Thanks!





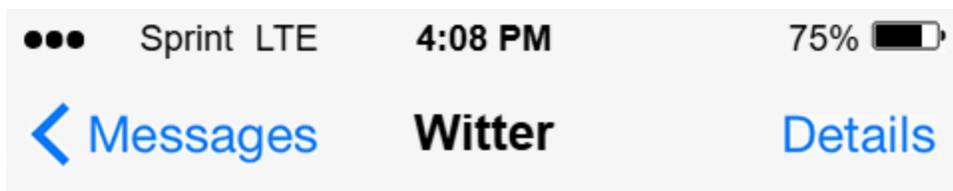
Really getting sick and tired of getting complaints about all the bullshit taking place at your joint. If you can't clean up your act and stop overserving then we are going to have some very tough conversations when it comes time to renew your lease.

I agree that we're going to have some tough conversations because you don't do your job and treat everyone in this shopping center like shit! It's awfully rich for an absentee landlord to talk about someone else getting their act together.

EXHIBIT

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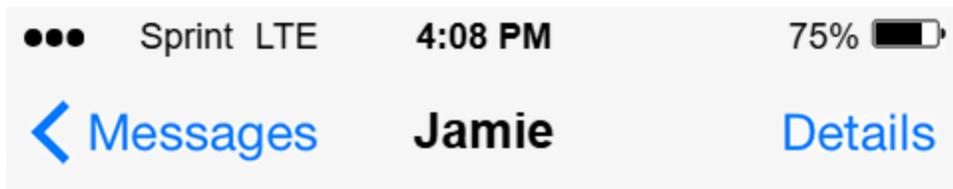
You better lawyer up in this Jamie Leery mess. We just got sued and I bet your next. That guy left your joint drunk and fell down, and somehow that's our fault?

Well, Jamie was a friend and we didn't do anything wrong, which is why I bet they won't sue us. Maybe if you would have cleaned up that parking lot and fixed those lights like I told you then this wouldn't have happened.

EXHIBIT

36

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Hey, this is Riley Leery, Jamie's son. I'm texting from his phone. I was wondering if you would be willing to come meet with our lawyers to talk about what happened that night. I think this might be a good way to avoid getting tangled up in this because we all have the same target here. Just let me know!

Absolutely, I'll give them a call and set up a meeting. Happy to help in any way I can.

EXHIBIT

37



City of Wilmington, City Ordinances

Section 5.3. Parking Lot Illumination Requirements.

(a) Minimum Illumination.

- a. All off-street parking lots, whether publicly or privately owned, shall be illuminated to provide a minimum average illumination level of 0.5 foot-candles (fc), measured at ground level, across the parking surface during hours of operation or when the parking lot is open to the public.

(b) Maximum Illumination.

- a. Illumination within any off-street parking lot shall not exceed a maximum of 5.0 foot-candles (fc), measured at ground level, at any point within the parking area.

(c) Measurement Standard.

- a. Illumination levels shall be measured at the ground surface using a properly calibrated light-measuring device, and shall be taken under normal operating conditions with all parking lot lighting fixtures fully operational.

(d) Uniformity.

- a. Lighting shall be arranged and installed to provide reasonably uniform illumination throughout the parking lot, consistent with the minimum and maximum illumination levels set forth herein.

(e) Time of Measurement

- a. Illumination measurements shall be taken no earlier than 30 minutes after sunset and no later than 30 minutes before sunrise.

(f) Maintenance

- a. Required illumination levels shall be maintained at all times. Burned-out or malfunctioning lighting fixtures shall be repaired or replaced within a reasonable time after notice.





EXHIBIT
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EXHIBIT
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**Landscape
Median**

EXHIBIT
41

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EXHIBIT
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EXHIBIT
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EXHIBIT
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EXHIBIT

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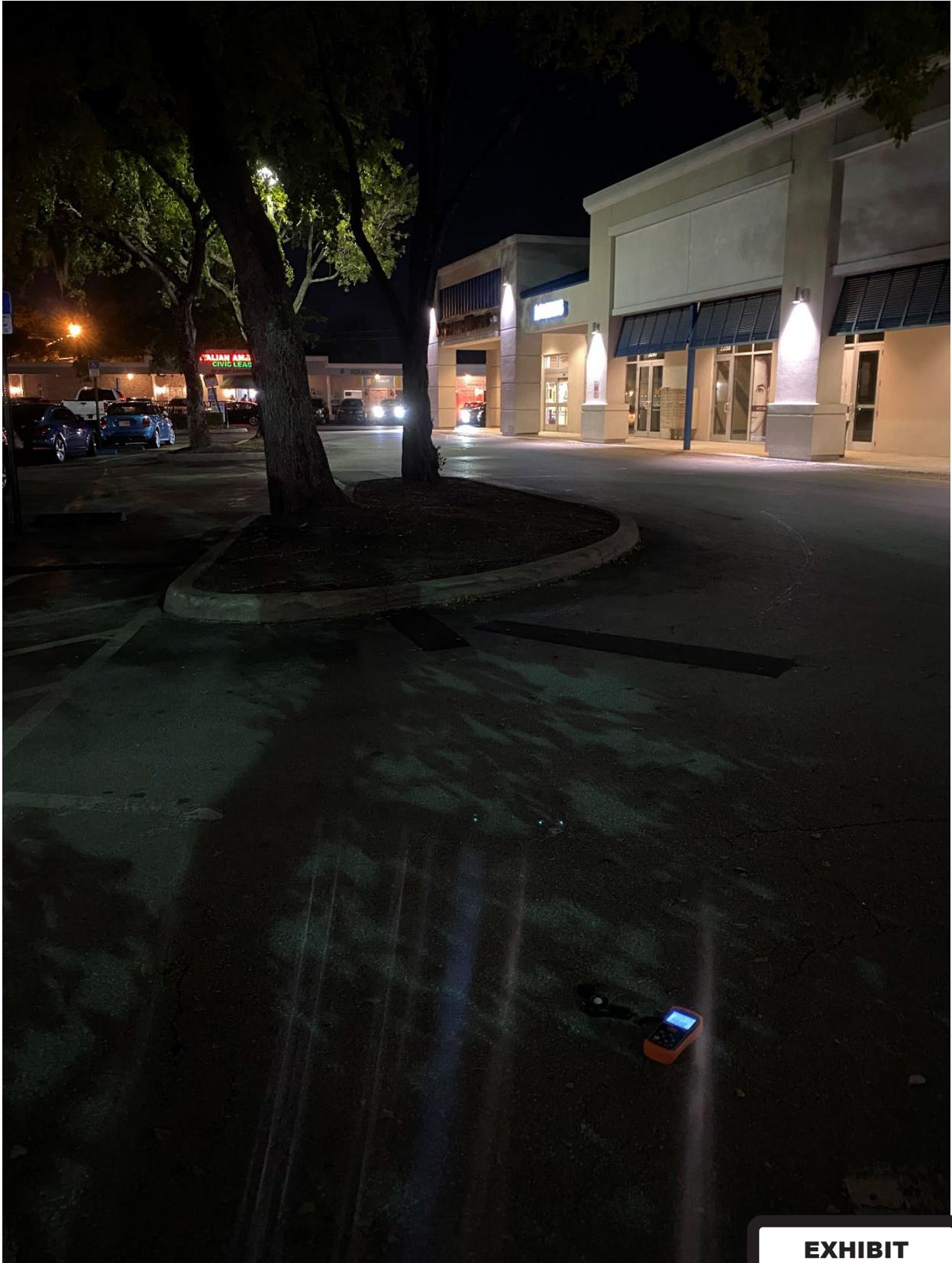


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EXHIBIT
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EXHIBIT
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EXHIBIT

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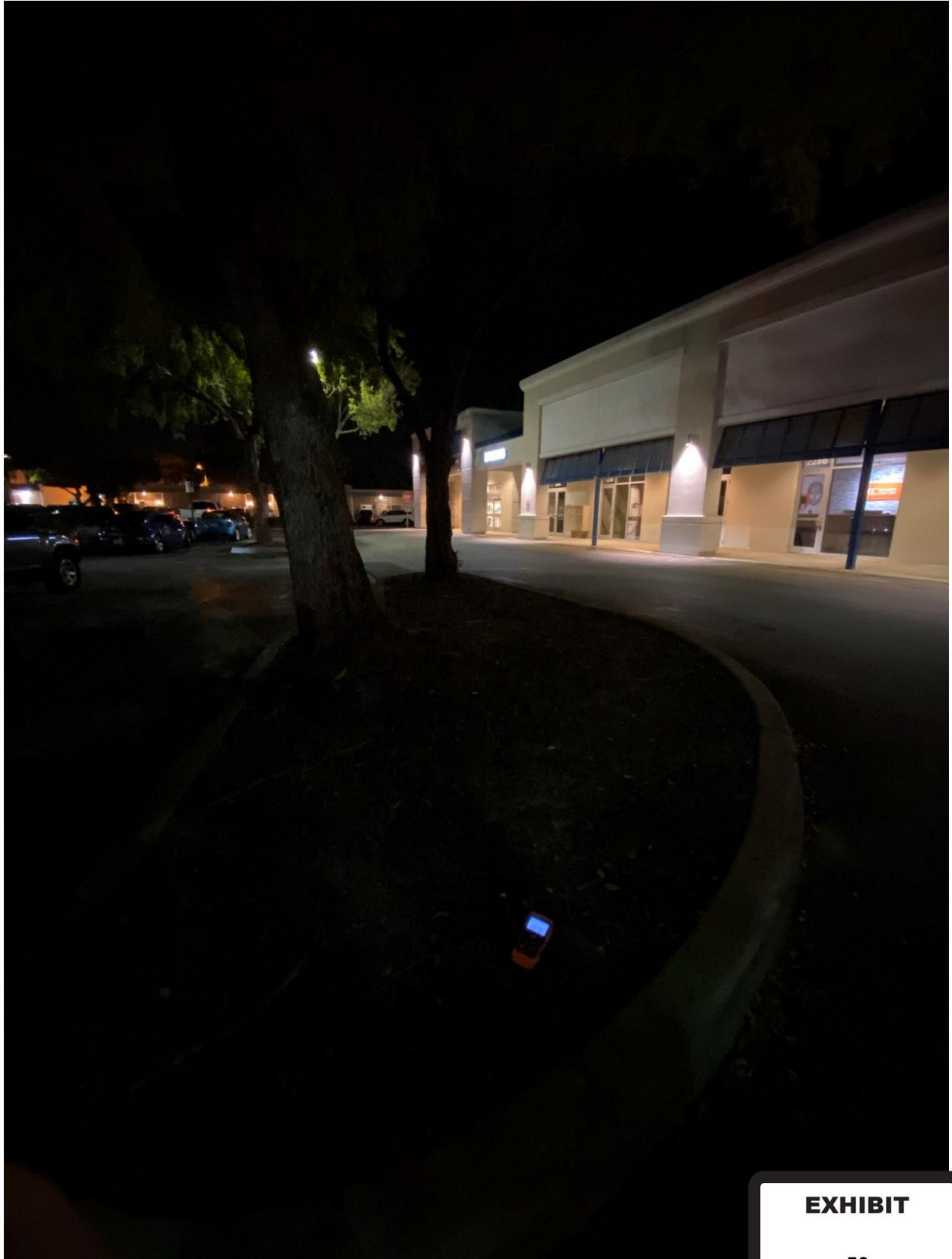


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EXHIBIT

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EXHIBIT
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EXHIBIT

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EXHIBIT

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EXHIBIT

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**COMPROMISE AND SETTLEMENT AGREEMENT, INDEMNIFICATION
AGREEMENT, AND FULL AND FINAL RELEASE**



COUNTY OF HANOVER §
CITY OF WILMINGTON §

WITTER DEVELOPMENT, LLC (hereinafter referred to as "CLAIMANT"), for and in consideration of the total sum of [REDACTED]

[REDACTED] to be paid to CLAIMANT via check, and other good and valuable consideration from whom receipt and sufficiency of said sum is hereby conclusively acknowledged, **have released and forever discharged, and by these presents does hereby release and forever discharge** the said MCPHEE LANDSCAPING and CAMERON MCPHEE (hereinafter referred to as "RELEASED PARTIES"), and all other persons, firms, associations, and corporations whatsoever for damages of every kind and character whatsoever, whether now known or unknown, whether past, present, or future, and all debts, demands, obligations, liabilities, suits, and causes of action whatsoever, whether known or unknown, in any manner claimed, owned, held, or possessed by either party, now or in the future, arising out of or which in any manner whatsoever might or could grow out of the occurrence, transaction, agreement or relationship(s) stemming from [REDACTED]

[REDACTED]

The parties hereby acknowledge such payment to be **full, final, and complete satisfaction, settlement, and discharge of any and all liability** whatsoever by or on behalf of any party hereto, connected with or arising out of the aforesaid incident, transaction or occurrence.

The parties further agree that this settlement shall not be interpreted as an admission of liability on the part of any party, or any other person, firm, association, or corporation, but that liability is expressly denied by them and that said sum is being paid by way of compromise to avoid expense and to terminate all controversy as to the parties, regardless of the extent of injuries and damages, if any.

It is expressly agreed and understood that this release and discharge is to be liberally interpreted and construed, and shall embrace and include any and all liability, claims, demands, actions, causes of action, or suits founded or based upon negligence, gross negligence, the statutes of the County of Hanover, or the violation of any federal law or regulation, or any other statutory or common law claim or cause of action.

We have read this Release carefully and fully understand it. In witness whereof, we have hereunto signed my name.

By: *Cameron McPhee*
Cameron McPhee

Extech FAQ | Flir

https://www.flir.com/support-center/extech-faq/?srsltid=AfmBOoo1Cp3UWU8imXxYLSXKQXb5w3sZ-u8O25-Ro1NmaTmbkFmFtyo

FLIR Log In Cart Region Search

APPLICATIONS INDUSTRIES PRODUCTS DISCOVER SUPPORT & TRAINING ABOUT CONTACT STORE

Extech FAQ

General Questions

My meter has problems communicating with the software installed on my computer (applicable models w/ RS-232 interface)?

Is my meter calibrated out of the box? How often should it be calibrated? Does it come with a calibration certificate? How and where can I get my meter calibrated?

All Extech products are factory calibrated prior to shipment. This calibration is valid for one year. An annual factory calibration is recommended. Extech does not include calibration certificates with our products. NIST calibrations with data can be purchased for an additional charge for most products. To send your meter to be NIST calibrated please contact our return department for a return authorization number and other return information.

Where can I obtain a User's Guide for my meter?

How often does my meter need to be calibrated?

Feedback

exhibitmaker.com





City of For Fisher, City Ordinances

Section 5.3. Parking Lot Illumination Requirements.



(a) Minimum Illumination.

- a. All off-street parking lots, whether publicly or privately owned, shall be illuminated to provide a minimum average illumination level of 0.1 foot-candles (fc), measured at ground level, across the parking surface during hours of operation or when the parking lot is open to the public.

(b) Maximum Illumination.

- a. Illumination within any off-street parking lot shall not exceed a maximum of 5.0 foot-candles (fc), measured at ground level, at any point within the parking area.

(c) Measurement Standard.

- a. Illumination levels shall be measured at the ground surface using a properly calibrated light-measuring device, and shall be taken under normal operating conditions with all parking lot lighting fixtures fully operational.

(d) Uniformity.

- a. Lighting shall be arranged and installed to provide reasonably uniform illumination throughout the parking lot, consistent with the minimum and maximum illumination levels set forth herein.

(e) Time of Measurement

- a. Illumination measurements shall be taken no earlier than 30 minutes after sunset and no later than 30 minutes before sunrise.

(f) Maintenance

- a. Required illumination levels shall be maintained at all times. Burned-out or malfunctioning lighting fixtures shall be repaired or replaced within a reasonable time after notice.

To: Witter, Logan (LWitter@witdev.com)
From: McCain, Casey (mcconeslandscaping@gmail.com)
Date: August 14, 2022
Subject: Lighting

Hey Logan,

Just wanted to follow up in writing about our recent inspection of the parking lot at the shopping center. As you know, since you were there with me, we walked around the parking lot, observed all of the lighting fixtures in the parking lot, and checked the lighting in various areas using a light meter. Based on our inspection, the lighting in that parking lot complies with City of Wilmington ordinances that require a minimum of 0.5 fc measured at ground level. Of course, if you wanted to, we could always add more lighting in the parking lot, but it's not needed at this point to come into compliance with city codes.

Thanks for thinking of us and let me know if you need anything else!

Casey McCain
McCones Landscaping, LLC



To: Brooks, Arthur (ABrooks@witdev.com)
From: Witter, Logan (LWitter@witdev.com)
Date: February 14, 2014
Subject: RE: Lighting

Yeah, we're not going to spend that much just to take out the sprinklers. That's dumb. I'll just make sure the landscaping guys know to check on them and make sure they're okay every once in a while. Thanks for looking into it.

Logan

To: Witter, Logan (LWitter@witdev.com)
From: Brooks, Arthur (ABrooks@witdev.com)
Date: February 14, 2014
Subject: Lighting

Logan,

You asked me to look into how much it would cost to remove the sprinkler heads from the parking lot outside the shopping center. I got a few estimates and to do all the demo work to dig out all the piping and remove those heads, every estimate I got is somewhere between \$40,000-\$50,000. Not sure why it is so high, but they all kept talking about how they would have to tie off the pipes and make sure there was no leakage, so I guess that's what makes it so expensive.

So, let me know if you want me to go ahead.

Art



Witter Development**Incident Report**

Date of Incident: October 18, 2019

Time: Approximately 8:45 p.m.

Location: 1234 E. Main St., Wilmington, Hanover; Parking Lot

Weather Conditions: Clear, dry

Lighting Conditions: Limited; several areas described as dim

Type of Incident: Trip and fall - landscaped median / curb edge

Description of Incident:

The reporting individual states that while walking through the parking lot toward their vehicle, they crossed over a raised landscaped median separating two parking rows. While stepping down from the landscape median, they tripped at the curb edge and fell forward onto the asphalt.

Statement of Injured Person:

I was walking across the parking lot to get to my car and cut across one of those areas in the parking lot with trees and grass on it, like a little landscaped area, which I've done before. It was dark in that part of the lot, and I couldn't clearly see where the curb dropped off. When I stepped down, my foot caught on the edge of the curb, and I lost my balance and fell forward. I believe the poor lighting made it hard to see the change in elevation.



Witter Development**Incident Report**

Date of Incident: March 7, 2022

Time: Approximately 6:20 p.m.

Location: 1234 E. Main St., Wilmington, Hanover; Parking Lot

Weather Conditions: Overcast, dry

Lighting Conditions: Daylight fading

Type of Incident: Trip and fall - parking bumper

Description of Incident:

The individual reports tripping over a concrete parking bumper while walking between parked vehicles toward the building entrance. The fall occurred in an active parking area.

Statement of Injured Person:

I was walking through the parking lot toward the entrance and wasn't paying attention to the parking bumper in front of the space. My foot hit the bumper, and I tripped and fell forward. I wasn't looking down at the ground at the time and didn't notice it until I stumbled.



Witter Development

Incident Report

Date of Incident: June 29, 2024

Time: Approximately 9:10 p.m.

Location: 1234 E. Main St., Wilmington, Hanover; Parking Lot

Weather Conditions: Clear, dry

Lighting Conditions: Dark; limited illumination reported

Type of Incident: Trip and fall - curb / landscaped median

Description of Incident:

The reporting individual states they were walking diagonally across the parking lot toward their vehicle and stepped onto a landscaped median. While stepping off the median they tripped and fell due to difficulty seeing the curb edge.

Statement of Injured Person:

I was walking through the parking lot to my car and crossed over one of the landscape medians to shorten the distance. The area was very dark, and I couldn't clearly see the curb or where the drop-off was. When I stepped down, my foot caught on the curb, and I fell. I feel like the lighting in that part of the lot is too dim and made it hard to see where I was walking.





Medical Examiner's Office

200 N. 5th Street
 Wilmington, Hanover 76767
 (817) 555-0321

William Little, MD, Ph.D.
D-ABP, F-ABMDI
CHIEF MEDICAL EXAMINER

Toxicology Report

Date: 9/7/2024
 Subject: Leery, Jamie

On September 7, 2024, at approximately 2320 hours, blood was drawn from LEERY, JAMIE, in the Wilmington Memorial Hospital's Pathology Department. That blood was immediately sent for a toxicology screening. The results of that screening are described below.

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TOXICOLOGY:

Specimen Amount	Drug	Positive/Negative
Blood	Ethanol	Positive 0.06 BAC
Blood	Cannabinoid	Negative
Blood	Cocaine	Negative
Blood	Fentanyl	Negative
Blood	Benzoyllecgonine	
	Diazepam	Negative
Blood	8-Aminoclonazepam	Negative

Performed & Prepared by: **William Little**
 CHIEF MEDICAL EXAMINER

Date of Test: September 7, 2024

EXHIBIT

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Dylan Lindell, Ph.D., CPE

Lindell Consulting
867 5th Ave.
Wilmington, Hanover



.....
.....
September 22, 2025

RE: Civil No. AAJ-CV-001-26; *Riley Leery, Administrator for the Estate of Jamie Leery v. Witter Development, LLC*

Known Facts:

- Male, 75 years old
- Height: 5'10"
- Weight: 210 lbs
- Blood draw: **11:20 p.m.**
- Measured BAC at 11:20 p.m.: **0.06 g/dL**
- Time of interest: **9:00 p.m.** (2.5 hours earlier)
- We are assuming he was **in the elimination phase** by 9:00 p.m. (i.e., absorption largely complete and BAC declining, which is the usual assumption for retrograde analysis).

2. Elimination rate (β)

Forensic toxicology typically uses an alcohol elimination rate (β) between:

- **0.010 g/dL/hr** (very conservative, often favorable to the defense), and
- **0.020 g/dL/hr** (upper end of commonly accepted average range),

with a commonly cited “average” of about **0.015 g/dL/hr** for adults.

These are population averages; individual rates can vary, but for a standard retrograde calculation, experts usually present a **range** using these values.

3. Retrograde calculation

Formula (backwards in time):

BAC at earlier time = Measured BAC + (elimination rate × hours elapsed)

Time difference from 9:00 p.m. to 11:30 p.m. = **2.5 hours**

a. Very conservative ($\beta = 0.010$ g/dL/hr)

- Earlier BAC = $0.06 + (0.010 \times 2.5)$
- = $0.06 + 0.025$
- = **0.085 g/dL**

b. “Average” rate ($\beta = 0.015$ g/dL/hr)

- Earlier BAC = $0.06 + (0.015 \times 2.5)$
- = $0.06 + 0.0375$
- \approx **0.098 g/dL**

c. Higher-end typical rate ($\beta = 0.020$ g/dL/hr)

- Earlier BAC = $0.06 + (0.020 \times 2.5)$
 - = $0.06 + 0.05$
 - = **0.11 g/dL**
-

4. Opinion

Based on the measured BAC of 0.06 g/dL at 11:20 p.m. and applying standard forensic alcohol-elimination rates in the range of 0.010 to 0.020 g/dL per hour, it is my opinion, to a reasonable degree of scientific and toxicological certainty, that this 75-year-old man’s BAC at 9:00 p.m. would have been **no lower than approximately 0.085 g/dL** and could reasonably have been as high as **approximately 0.11 g/dL**.

Using the commonly accepted average elimination rate of **0.015 g/dL per hour**, his estimated BAC at 9:00 p.m. would have been approximately **0.098 g/dL**, which is above

the typical 0.08 legal per se limit for driving and within a range associated with **clear impairment of balance, coordination, and judgment** in the experimental literature.

Please let me know if you have any questions, concerns, or comments about anything contained within this report or if there is anything else you would like for me to look into in preparation for trial on this matter.

Respectfully,

Kristy Livingstone

Kristy Livingstone

IN THE SUPERIOR COURT FOR STEELTON COUNTY

HOLLY HUNTER, Administrator for)	
the Estate of NICOLAS HUNTER,)	
)	
)	
Plaintiff,)	
v.)	Cause No. AAJ-STAC-2025-001
)	
HUFFHEINS TRUCKING, LLC, and CASEY)	
SNOATS,)	
Defendants.)	
)	
)	

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 ORAL DEPOSITION
 OF DYLAN LINDELL
 October 1, 2024

PROCEEDINGS

DYLAN LINDELL

having been first duly sworn, testified as follows:



1 Q: So, in your report you state that you do not believe that
2 alcohol played any role in this accident, is that correct?

3 A: That is correct.

4 Q: You agree that Nicolas Hunter had a BAC of .05 at the time his
5 blood was drawn?

6 A: I do.

7 Q: So, how can you come to that conclusion given the literature on
8 the subject?

9 A: Well, first, the legal limit in this state is .08. So, if the
10 state has determined that someone is legally able to drive with a
11 BAC of .05 then that seems relevant when deciding whether their
12 drinking played a role in the accident. Second, the literature
13 certainly indicates that any level of drinking, even a .01, would
14 have some impact on a person. But, to what extent? We're talking
15 about a younger person with a BAC well below the legal limit and
16 it was early in the morning, so drowsiness wouldn't have been an
17 issue at all. I think when you look at the totality of the
18 circumstances, while Hunter may have been experiencing some
19 effects from the alcohol, none of them would have been severe
20 enough to impact his driving or cause the accident.

21 Q: Did you do a retrograde analysis in this case?

22 A: No, I didn't. Yes, the blood was drawn two hours after the
23 accident, but I wasn't asked to do that analysis, so I didn't.

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