



AMERICAN  
ASSOCIATION FOR  
**JUSTICE**®

The Association for Trial Lawyers

**STAC**

Student Trial Advocacy  
Competition

**American Association for Justice  
2026 Student Trial Advocacy Competition (STAC)  
Official Rules and Fact Pattern  
National Finals  
March 26-29, 2026**

*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.**

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## **2026 AAJ STAC OFFICIAL COMPETITION RULES AND GUIDELINES - NATIONAL FINALS**

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. Behavior deemed otherwise could subject a school to sanctions and/or disqualification from the competition.

No audio or video recording of any kind is allowed during the trials, during the teams' meet and confers, or during protest proceedings. **Anyone found in violation of this rule will immediately forfeit all ballots for the round that they recorded.** Coaches and students are only permitted to take photos of their own team. Only AAJ staff or designated AAJ members are authorized to take photos during the trials.

### **REGISTRATION PROCEDURES**

#### **Student Substitution Policy**

The same four students who competed on the advancing teams from regionals must 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, with one student acting as both witnesses.

#### **Coaches and Coach Registration**

A coach must work with each team. 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—[all coaches that will be attending the finals must fill out this form](#). AAJ will not communicate with any coach that is not officially registered. 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 protests with AAJ. If the team coach is unable to attend the coaches' meeting or unavailable during any portion of the competition, they must notify AAJ, 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 available 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 only communicate directly with AAJ staff regarding the competition or issues. AAJ Staff will discuss issues or concerns with appropriate partners (AAJ Law School Co-Chairs or NALAE Partners) as needed.

### **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 are final.**

#### **National Finals Competition**

The National Finals will take place in person at the Eastern District of Louisiana - US District Court (500 Poydras St., New Orleans, LA 70130).

During the finals, each team will compete in three (3) qualifying rounds. No team from the same school or region shall face another team from the same school or region 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. Schools that have seen each other for the first two qualifying rounds will not see each other for the third qualifying round. AAJ staff will announce the matches and pairings for the first two qualifying rounds no later than Monday, March 23. AAJ staff will determine the round three power pairings and sides using the same method from the regional competition privately and announce them to the teams before the round begins.

The top eight teams, determined via the same seeding used for power matching, 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.

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 or region 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 or region 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. If the lower ranked team is the lowest ranked team remaining, then it will trade spots with the team ranked one spot above it in that 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 represent the side that they represented the least through all preceding rounds (such that the final round shall also consider the sides represented during the semifinal rounds), or, if matched teams represented the same side equally, AAJ staff 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.

### **COMPETITION LOGISTICS (National Finals)**

All teams must conduct a meet and confer in their courtrooms approximately 30 minutes prior to the round. All teams should ensure they are in their courtrooms 30 minutes before the rounds are scheduled to begin as we may start early if the judges' training is completed ahead of schedule.

The round start times for the finals are as follows:

Thursday, March 26 - First Qualifying Round

6:00 PM start

Friday, March 27 - Second Qualifying Round

6:00 PM start

Saturday AM Session, March 28 - Third Qualifying Round

10:00 AM start

Saturday PM Session, March 28 - Quarterfinal Round

3:30 PM start

Sunday AM Session, March 29 - Semifinal Round

10:00 AM start

Sunday PM Session, March 29 - Final Round

3:00 PM start

Teams should **NOT** arrive at the courthouses more than one hour before the round start time. All students, coaches, and spectators need to bring a photo ID to the courthouse every day. To

enter, you may need to show your ID to security. There will be a student check-in with AAJ staff to show ID and identify students with their team.

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.

## **THE TRIAL**

The same fact pattern will be used in the final competition - only the rules have been adjusted for 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 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, until the round ends. The national coordinator 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 AAJ staff.

### **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. **PLEASE SEE THE END OF THE CLARIFICATIONS FOR MORE EXAMPLES REGARDING THIS RULE.**

- **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.

### **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 protest committee are final and cannot be appealed.

Only coaches are permitted to file protests and be present during protest proceedings.

### Protest Committee Formation

The protest committee will be formed at the coaches' meeting, prior to the national finals.

- All designated protest committee members are expected to be available for the entire duration of the final competition, even if the school they represent has been eliminated from the competition.
- 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 AAJ staff - this could include AAJ Law School Committee members or an outside AAJ/NALAE representative.

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 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.
    - Coaches should wait where AAJ staff 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 AAJ staff, 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 courthouse hallway to confer and attempt to agree on if a protest should proceed.
  - Coaches on both sides of the protest must attempt to confer and resolve the protest before the proceedings begin with the protest committee.
  - 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. If information of a recording becomes available, the protest proceedings will immediately end, and the team that was recording will immediately forfeit all ballots for that round.**
- **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. Coaches are expected to conduct themselves in a professional manner during protests and throughout the competition. Behavior deemed otherwise could subject a school to sanctions by protest committee and/or disqualification from the competition.
- Protests should be resolved as soon as possible.
- An AAJ staff member must be present during meetings of the protest committee.

### **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.

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.

Teams may not use technology during the in-person national finals.

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 ARE NOT PERMITTED TO USE ANY PHONES OR SMART WATCHES DURING THE TRIAL.** Teams that violate this rule are subject to sanctions.

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. “During trial” means that it was created in front of the jury, not during a break. This does not apply to brief notes or quotes. 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.

# AAJ LAW STUDENT MEMBERSHIP

## ★ ACCESS LAW STUDENT BENEFITS ★

The American Association for Justice (AAJ®) is here for you with resources as you work your way through law school and prepare for a career as a plaintiff lawyer.

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## AAJ LAW STUDENT SCHOLARSHIPS

### ★ AAJ-NPLA CONVENTION SCHOLARSHIP

- Discount AAJ convention registration
- Travel stipend
- Multiple recipients
- Interest in pursuing a career in plaintiff law considered

### ★ AAJ LEESFIELD SCHOLARSHIP

- \$1,500 to help subsidize recipient's attendance at AAJ Annual Convention
- Available to law students entering their first or second year of law school
- Financial need considered

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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**

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**PLAINTIFF’S ORIGINAL COMPLAINT**

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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 led 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

**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**

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**DEFENDANT’S ORIGINAL ANSWER**

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TO THE HONORABLE JUDGE OF THIS COURT:

Defendant WITTER DEVELOPMENT, LLC (hereinafter “WITTER DEVELOPMENT”)

files this Original Answer to Plaintiff’s Original Complaint:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied.
5. Admitted.
6. Admitted.
7. Admitted.
8. No need to admit or deny, but to the extent required, denied.
9. Denied.
10. Denied.
11. Denied.
12. No need to admit or deny, but to the extent required, denied.
13. Denied.

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. Riley Leery is unavailable under FRE 804(a) and his deposition satisfies the requirements of Rule 804(b)(1).

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.

19. Defendant concedes it had a duty to exercise ordinary care to protect invitees from dangerous conditions on its property. This includes: (1) discovering dangerous conditions, (2) warning invitees of those conditions, and/or (3) making the conditions reasonably safe.

20. The parties agree that Jamie Leery tripped over the subject sprinkler head.



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* )

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**VERDICT FORM – QUESTION ONE**

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**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**

<b>RILEY LEERY, Administrator for the</b> ) <b>Estate of JAMIE LEERY,</b> ) <i>Plaintiff</i> ) )		
v.	)	<b>CIVIL ACTION NO. AAJ-CV-001-26</b>
<b>WITTER DEVELOPMENT, LLC,</b> ) <i>Defendant</i> ) )	)	

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**VERDICT FORM – QUESTION TWO**

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**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.	)	
	)	
	)	
	)	

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ORAL DEPOSITION  
OF RILEY LEERY  
July 10, 2025

\*\*\*\*\*

PROCEEDINGS

RILEY LEERY

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 Riley Leery.

Q: How old are you?

A: I'm 35 years old.

Q: Are you married?

A: I am. My husband, Joey, and I have been married for five years, and we have a daughter named Lily, who is three.

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.

## LEGAL SERVICES

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 10<sup>th</sup>, 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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I, Riley Leery, 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.



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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.

## LEGAL SERVICES

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 son, Riley. If I remember correctly, Jamie's birthday was the  
11 following week, on the 10<sup>th</sup> or 11<sup>th</sup>, 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 son.

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 7<sup>th</sup>, 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 him and shook his 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: I'm showing you Exhibits 46, 48, 50, and 54. Do you know what  
13 these are?

14 A: Yeah, those are pictures of the landscape median where Jamie  
15 Leery fell that night.

16 Q: And do these pictures fairly and accurately depict how that  
17 landscape median looked on the night of Jamie Leery's fall?

18 A: Yes, they do.

19 Q: These pictures seem pretty dark. Is that what it actually looked  
20 like that night or is that just poor lighting on the photographs?

21 A: Yes, that's what it looked like. I told you it was dark, and  
22 these pictures show how dark it really was.

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

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

6 Q: How long did it take the emergency medical services folks to  
7 arrive?

8 A: About ten minutes or so.

9 Q: What happened when they got there?

10 A: They checked on Jamie and then got him on a stretcher and took  
11 him to the hospital, and that was the last time I ever saw him. He  
12 died that night at the hospital. Apparently, once he arrived at  
13 the hospital, they discovered that he had a brain bleed, and they  
14 couldn't get it stopped in time. Just awful. He was such a great  
15 man. Such a big heart for everyone around him.

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

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

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

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

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

24 A: Yes, they are.

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

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

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

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

13 Q: Alright, what about Exhibit 31?

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

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

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

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

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

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

4 A: Yes.

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

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

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

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

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

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

23 Q: When did those conversations take place?

1 A: Logan would come into the bar from time-to-time to complain  
2 about things. Logan loved to tell us that our customers were drunk  
3 and disorderly outside the bar, that they would leave trash in the  
4 parking lot, and that it pissed off the other tenants in the  
5 shopping center. It drove me crazy because Logan didn't take care  
6 of the shopping center and ignored my complaints but loved to  
7 complain about us. And it was nonsense, we didn't overserve  
8 customers, so all of that stuff was just deflection on the part of  
9 Logan because Logan knew that they weren't doing what they could  
10 to keep the place safe. I remember that once I even brought up all  
11 those landscape medians in the parking lot, and how unsafe those  
12 were because people could trip on the curbs or try to walk on them,  
13 but Logan just brushed it off and said something like, "If people  
14 can't walk around without falling down or tripping then how is it  
15 my fault? How about you tell the drunkards that hang out in your  
16 place to avoid walking into trees, dumbass." That's the way Logan  
17 talked, so condescending.

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

21 A: I don't know. It's not like I stood there and examined every  
22 light in the parking lot that night, I had more important things  
23 going on. What I can tell you is that it was too dark in that  
24 parking lot, and I do know that when I complained in the past there

1 had been lights missing, but usually Logan would get that fixed  
2 pretty quickly, at least compared to how long it took Logan to do  
3 anything else.

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

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

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

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

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

18 A: I think that's a fair assessment. I mean, I don't know how much  
19 you're supposed to like your landlord, but Logan is one of those  
20 landlords that takes your money and then doesn't show up again  
21 until it's time to collect again. We have a commercial lease on  
22 that building that requires us to pay \$8,500 a month, which is  
23 over \$100,000 per year. You would think that would buy us the right

1 to have a landlord that actually pays attention to what is going  
2 on at the property.

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

5 A: Any time that a customer leaves your bar and gets hurt shortly  
6 thereafter you should be concerned, because bars or anywhere that  
7 serves alcohol is an easy target for plaintiffs' lawyers, and Jamie  
8 had been drinking that night. But, like I said earlier, there was  
9 nothing that made me believe that Jamie was too drunk to walk to  
10 a car that night, and there was nothing that made me think Jamie  
11 shouldn't be served that night in the bar, so I wouldn't say I was  
12 especially concerned about this case. But, any bar owner or manager  
13 would be a fool not to be a little concerned in this situation.

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

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

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

21 A: The bar could face fines or even lose their liquor license,  
22 which is basically a death sentence. And a bartender could go to  
23 jail and lose their HABC license as well, which makes it pretty

1 difficult to find a job at any reputable bar like The Icehouse.

2 So, it's not good.

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

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

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

10 A: It's a screenshot of some text messages between me and Riley  
11 Leery, Jamie's son, maybe a month after the fall. Riley's message  
12 is in grey, and my message is in blue.

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

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

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

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

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

24 A: Yes.

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

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

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

6 A: Yes.

7 Q: Thank you, no further questions.

8 A: Thank you.

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(Proceedings Adjourned.)

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

21

22



23

24

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AVERY POTTER



**Cameron McPhee**  
McPhee Landscaping  
1212 Green Oak, Dr.  
Wilmington, Hanover

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.....

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 son, Riley Leery. Jamie and Riley had been out that day celebrating Jamie Leery's impending 76<sup>th</sup> 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. 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.	)	
	)	
	)	
	)	

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ORAL DEPOSITION  
OF CAMERON MCPHEE  
OCTOBER 1, 2025

\*\*\*\*\*

PROCEEDINGS

CAMERON MCPHEE

having been first duly sworn, testified as follows:

CROSS EXAMINATION

BY DEFENDANT'S COUNSEL:

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

A: Good afternoon, my name is Cameron McPhee.

Q: A couple of things I wanted to clarify from your report. You say that you're getting paid \$500 per hour to review this case and draft your report. So, how much have you billed up to this point?

A: Well, this took a lot of work on my part, especially since I've never really done this type of thing before, so I had to get up to 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 Icehouse'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

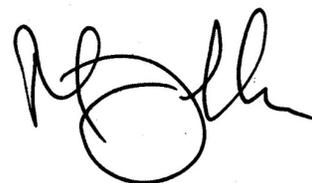
4 (Proceedings Adjourned.)

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



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13

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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.	)	
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ORAL DEPOSITION  
OF LOGAN WITTER  
July 12, 2025  
\*\*\*\*\*

PROCEEDINGS  
LOGAN WITTER

having been first duly sworn, testified as follows:

CROSS EXAMINATION

BY PLAINTIFF'S COUNSEL:  
Q: Good afternoon, can you please state your name for the record.  
A: Good afternoon, my name is Logan Witter.  
Q: How old are you?  
A: I'm 45 years old.  
Q: Are you married?  
A: I am. My spouse, C.J., and I have been married for twenty years,  
and we have three children, all boys, Charlie, Henry, and Mitch.  
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: Two weeks after the fall, so September 21st.

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 surprise, 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



15

16

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Logan Witter



## **Dylan Lindell, Ph.D., CPE**

Lindell Consulting  
867 5<sup>th</sup> 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 75-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 76<sup>th</sup> 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 7<sup>th</sup>, 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, 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 5<sup>th</sup> 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.	)	
	)	
	)	
	)	

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ORAL DEPOSITION  
OF DYLAN LINDELL  
NOVEMBER 15, 2025

\*\*\*\*\*

PROCEEDINGS

DYLAN LINDELL

having been first duly sworn, testified as follows:

CROSS EXAMINATION

BY PLAINTIFF'S COUNSEL:

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

A: Good afternoon, my name is Dylan Lindell.

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

A: I've reviewed four depositions, an expert report, all the exhibits, conducted a site visit, and I've reviewed a number of 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: Have you ever used a light meter before?

18 A: Yes, sure. I would've done it in this case if I was asked to  
19 look at that issue.

20 Q: Do you calibrate that light meter on a regular basis?

21 A: I don't know if I ever have. I'm not familiar with the  
22 recommendations on that, but I've always been comfortable with the  
23 readings my light meter has given me. What I mean is the readings  
24 seem to be consistent over time based on the lighting conditions

1 that I observe, so I don't really see a need to calibrate it  
2 because I trust it. When it's too dark my light meter reflects  
3 that, and when the light is appropriate my light meter reflects  
4 that as well. So, I'm not just trusting the machine, I'm trusting  
5 my eyes. But, like I said, I didn't examine that issue in this  
6 case.

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

11 A: I do. I don't think a reasonable person who was walking through  
12 that parking lot would walk up onto that landscape median, because  
13 a person of average perception skills would perceive that landscape  
14 median as having uneven ground and obstacles, which means they  
15 would have avoided it altogether or exercised caution when  
16 travelling over it.

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

19 A: I don't think that would've helped for two reasons. First, the  
20 walkway wouldn't be effective because, as we see in this case,  
21 people would still take the shortest route possible to get to their  
22 cars, which means they would just ignore the walking path and walk  
23 the most direct line possible to their car. And second, even if a  
24 walking path was present, it wouldn't have been used by someone in

1 an intoxicated state, like Jamie Leery, because of the inhibited  
2 decision making we've already discussed.

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

6 A: Yes.

7 Q: Did you provide all of those depositions to the best of your  
8 ability?

9 A: I did.

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

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

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

16 A: I do.

17 Q: Can you tell us about this case?

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

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

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

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

12 A: Sure.

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

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

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

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

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

3 A: You know, just reinforcing the point.

4 Q: Have you understood all my questions?

5 A: Yes.

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

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

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

11 A: Yes.

12

13

14 (Proceedings Adjourned.)

15 \*\*\*\*\*

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

20

21

22

23

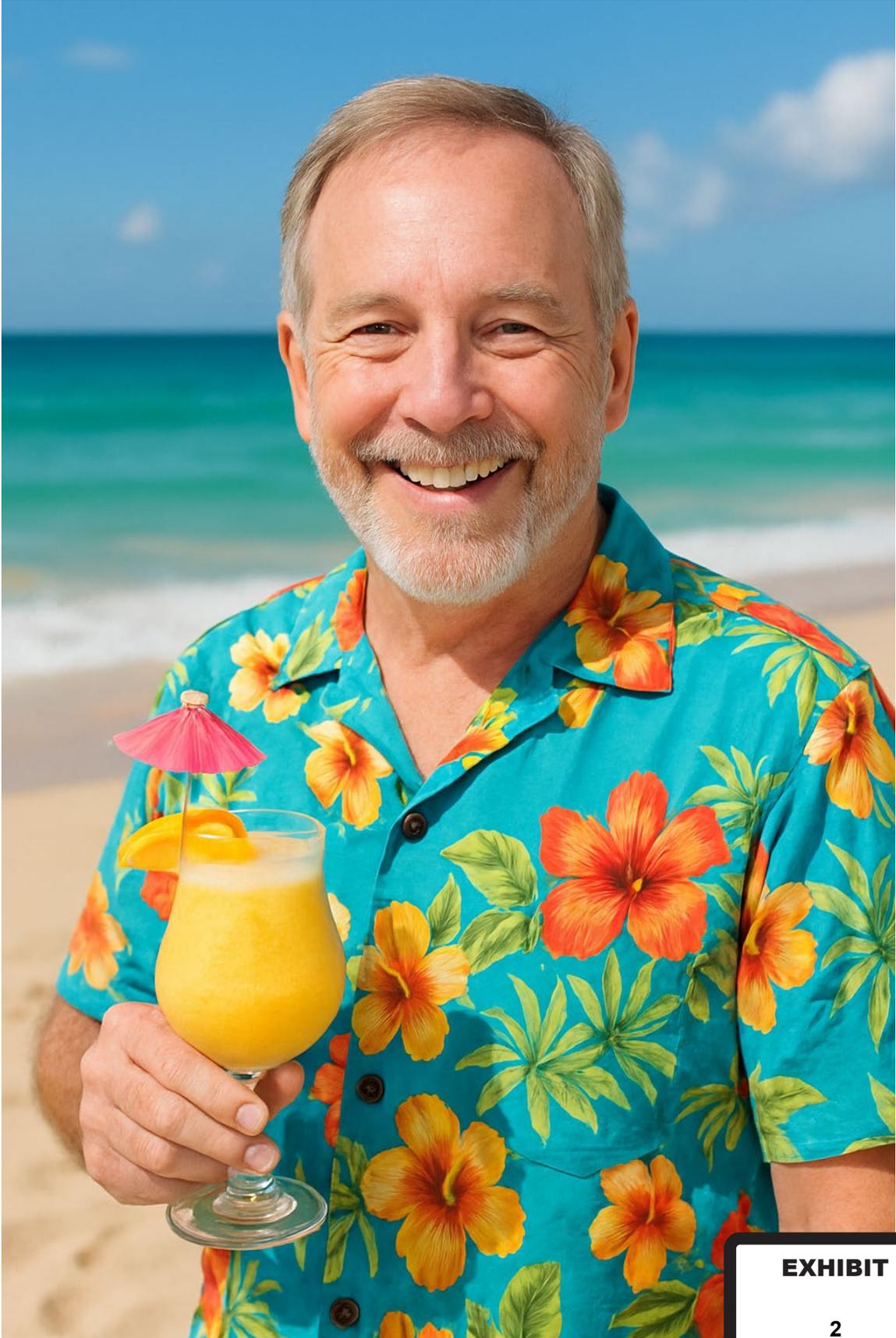


Dylan Lindell



**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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<b>Total</b>	<b>\$60.62</b>
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Tab Closed: 1:30 p.m. 09/07/2024

**EXHIBIT**

**3**

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**EXHIBIT**

4

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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

---

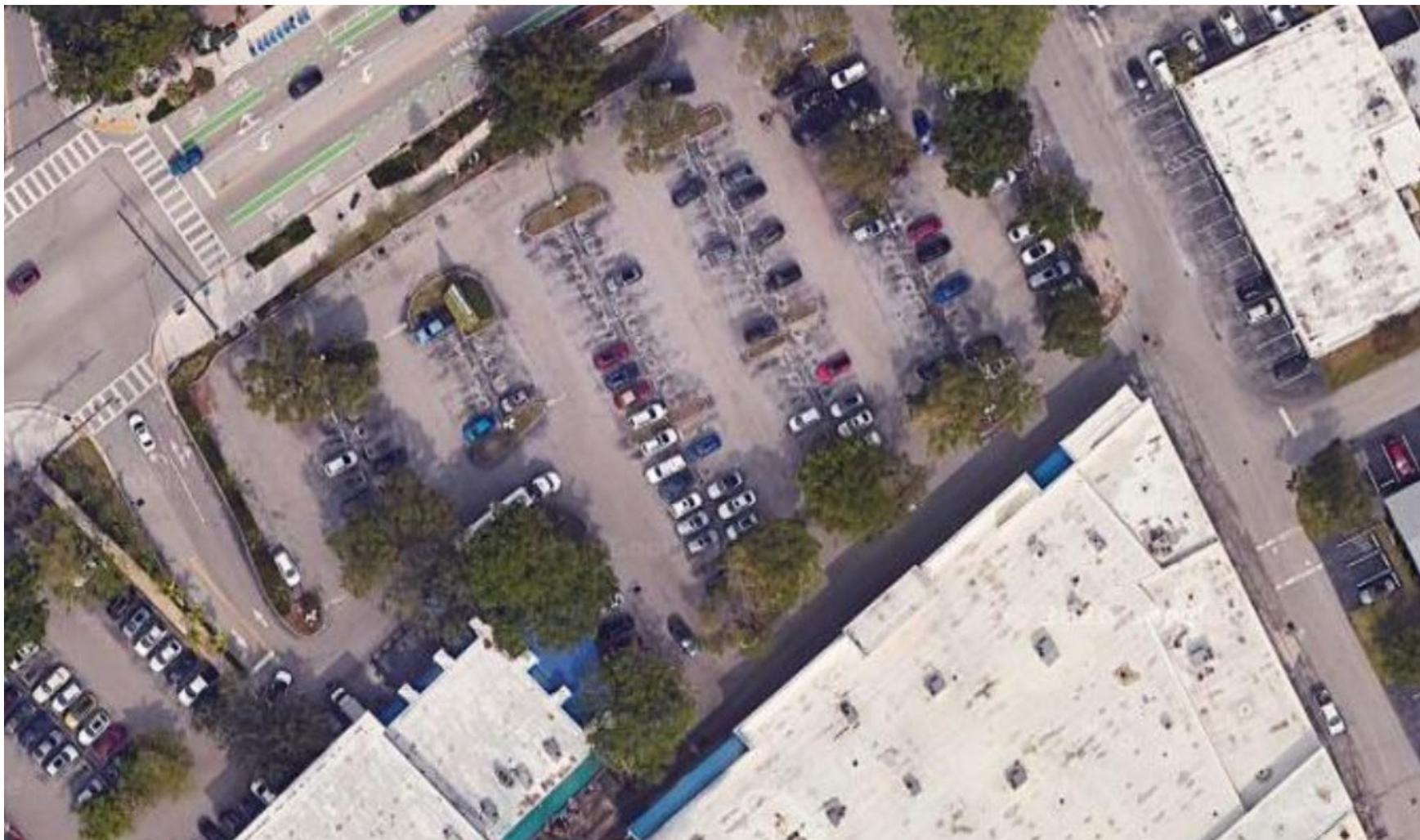
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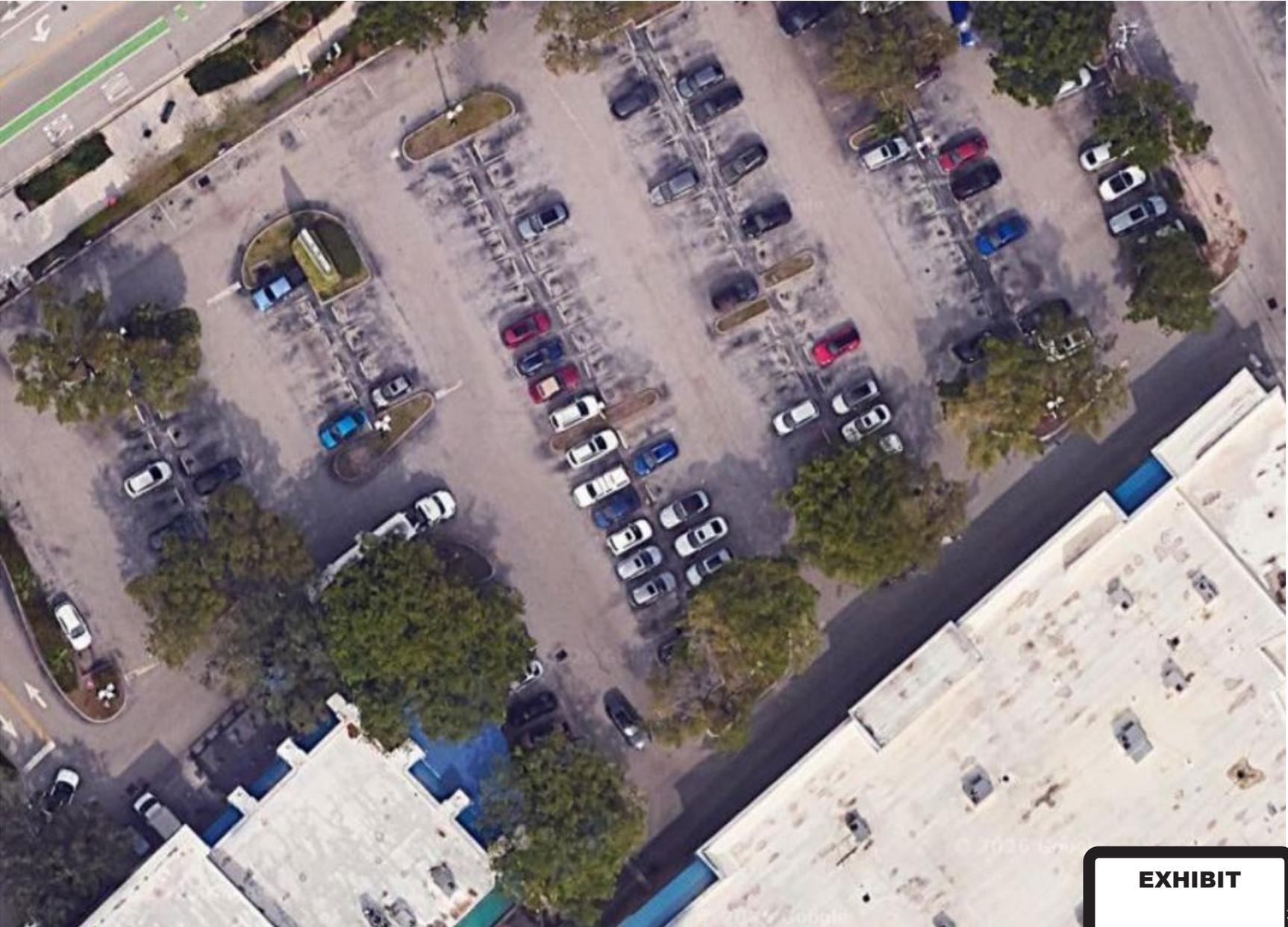
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**EXHIBIT**  
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**EXHIBIT**  
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**EXHIBIT**  
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The Icehouse  
 Shoppes at Wilmington Park  
 Wilmington, 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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<b>Total</b>	<b>\$103.11</b>
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Tab Closed: 8:55 p.m. 9/7/2024

**EXHIBIT**

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**EXHIBIT**

**11**



**EXHIBIT**  
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**EXHIBIT**  
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**EXHIBIT**  
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**EXHIBIT**
**15**

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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.

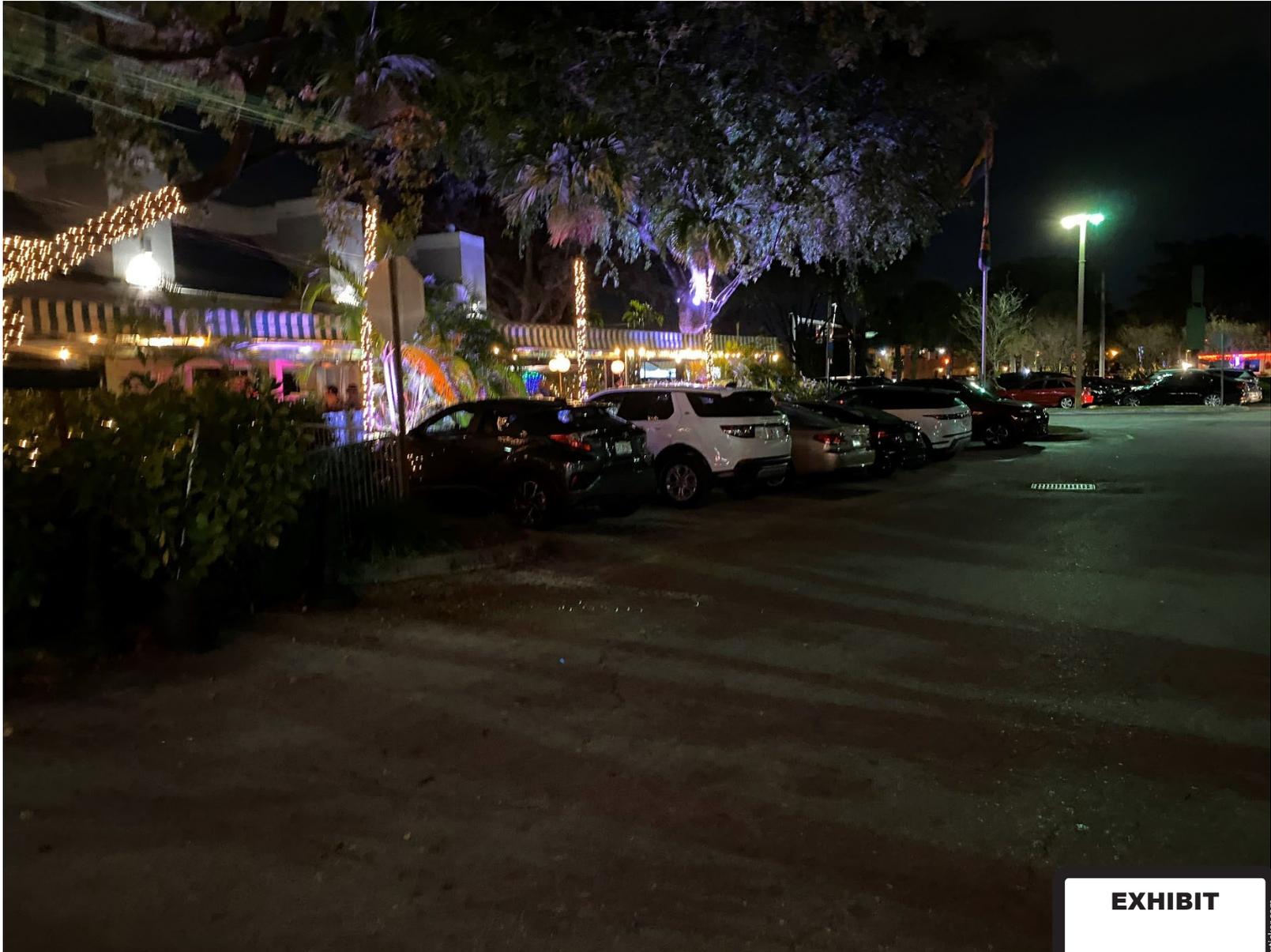
**When to stop serving alcohol as a bartender: Signs of intoxication**

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.

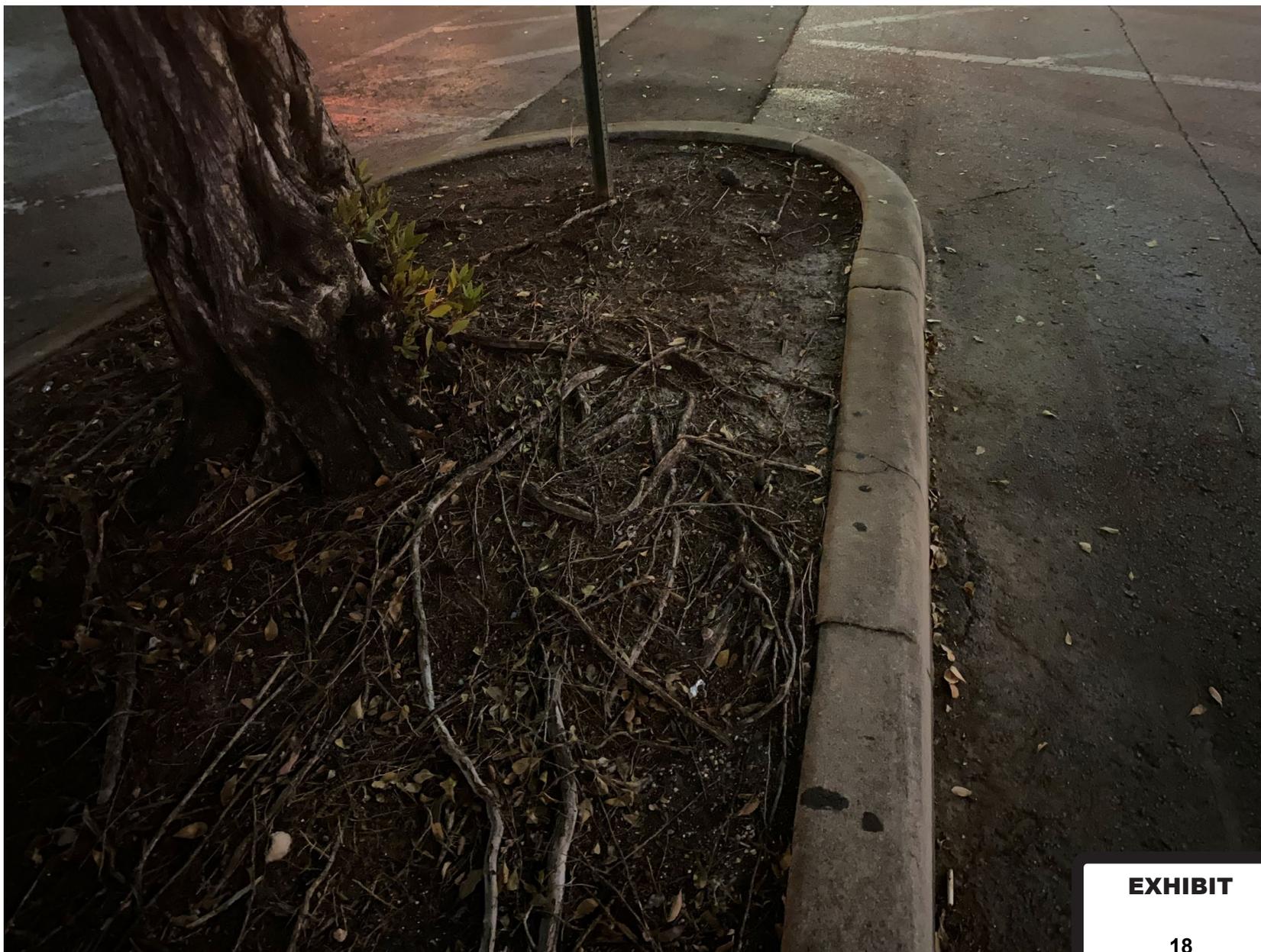


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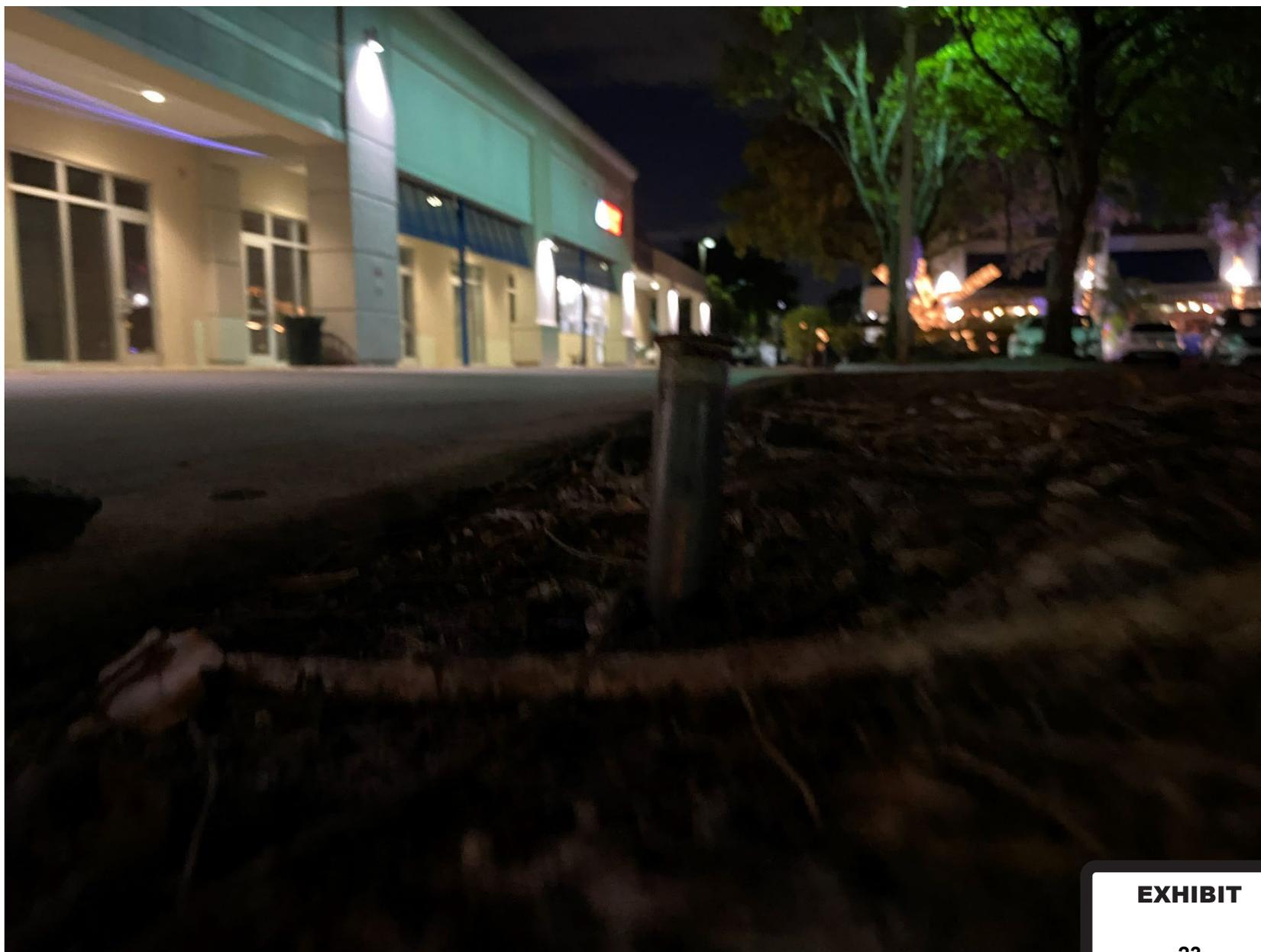
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**EXHIBIT**  
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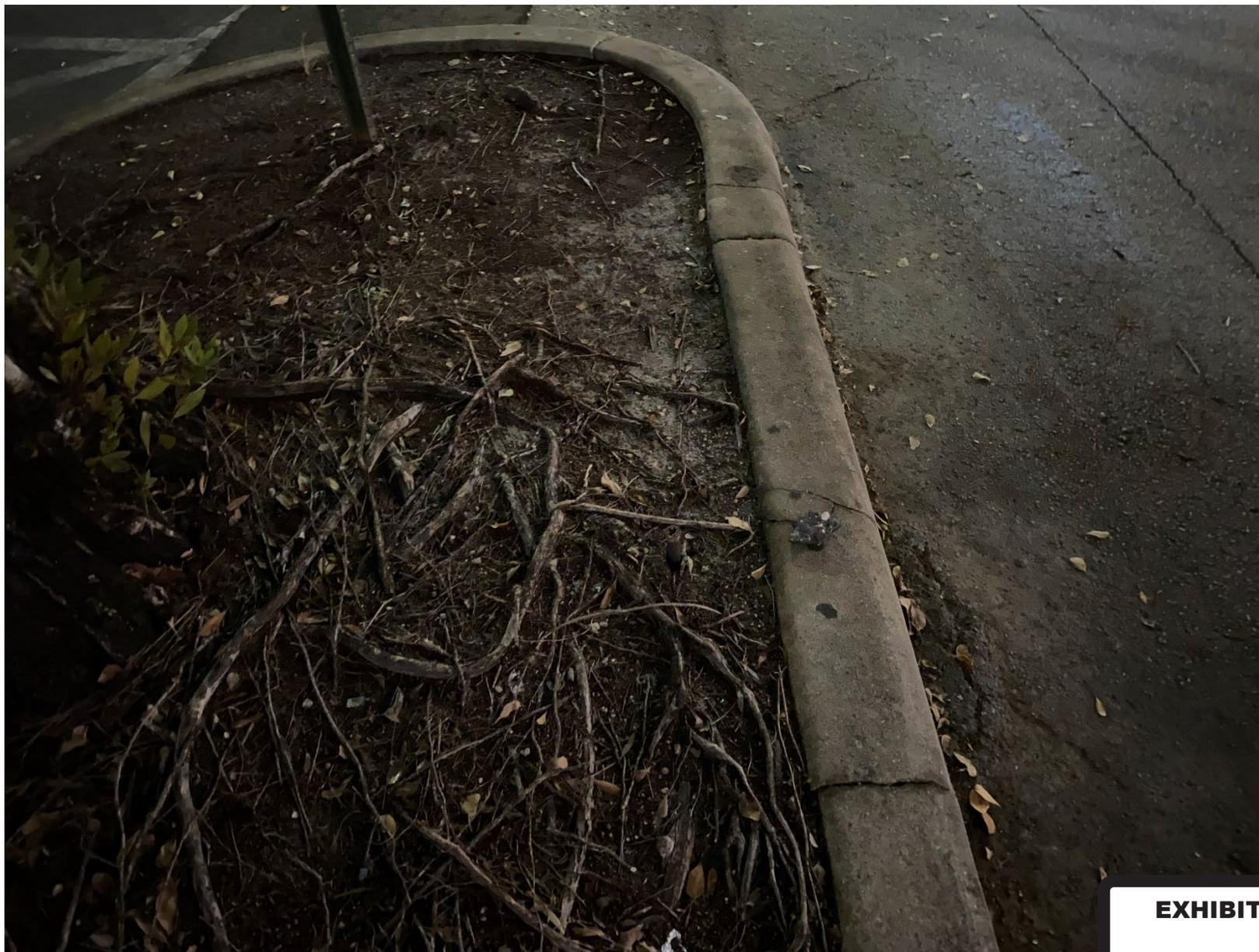
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**EXHIBIT**

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**EXHIBIT**  
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**EXHIBIT**  
29

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**To:** Witter, Logan ([LWitter@witdev.com](mailto:LWitter@witdev.com))  
**From:** Potter, Avery ([avery67@gmail.com](mailto: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



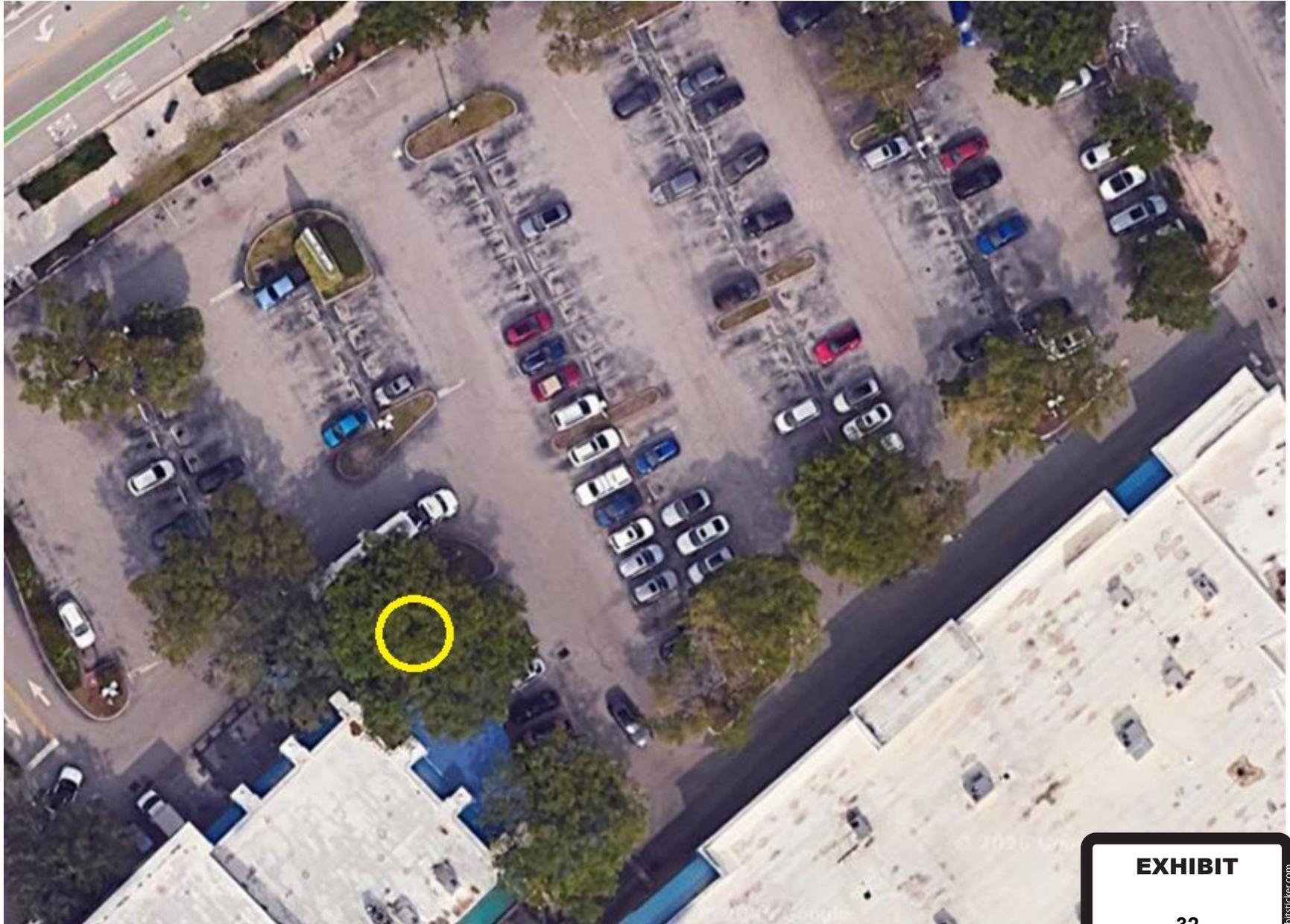
**To:** Witter, Logan ([LWitter@witdev.com](mailto:LWitter@witdev.com))  
**From:** Potter, Avery ([avery67@gmail.com](mailto:avery67@gmail.com))  
**Date:** August 1, 2024  
**Subject:** HELP!

---

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](mailto:avery67@gmail.com))  
**From:** Rocha, Jay ([jrocha@homeimprovementdepot.com](mailto: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](mailto:avery67@gmail.com))**  
**From: Carbajal, Rick ([carbajalrealty@gmail.com](mailto: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.

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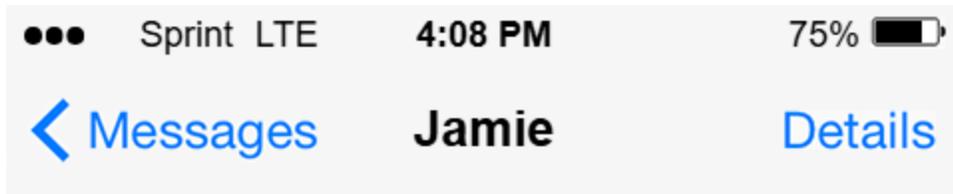


You better lawyer up in this Jamie Leery mess. We just got sued and I bet your next. That guy left your joint drunk and fell down, and somehow that's our fault?

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**



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.





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**39**

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**EXHIBIT**  
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**Landscape  
Median**

**EXHIBIT**  
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**EXHIBIT**  
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**EXHIBIT**

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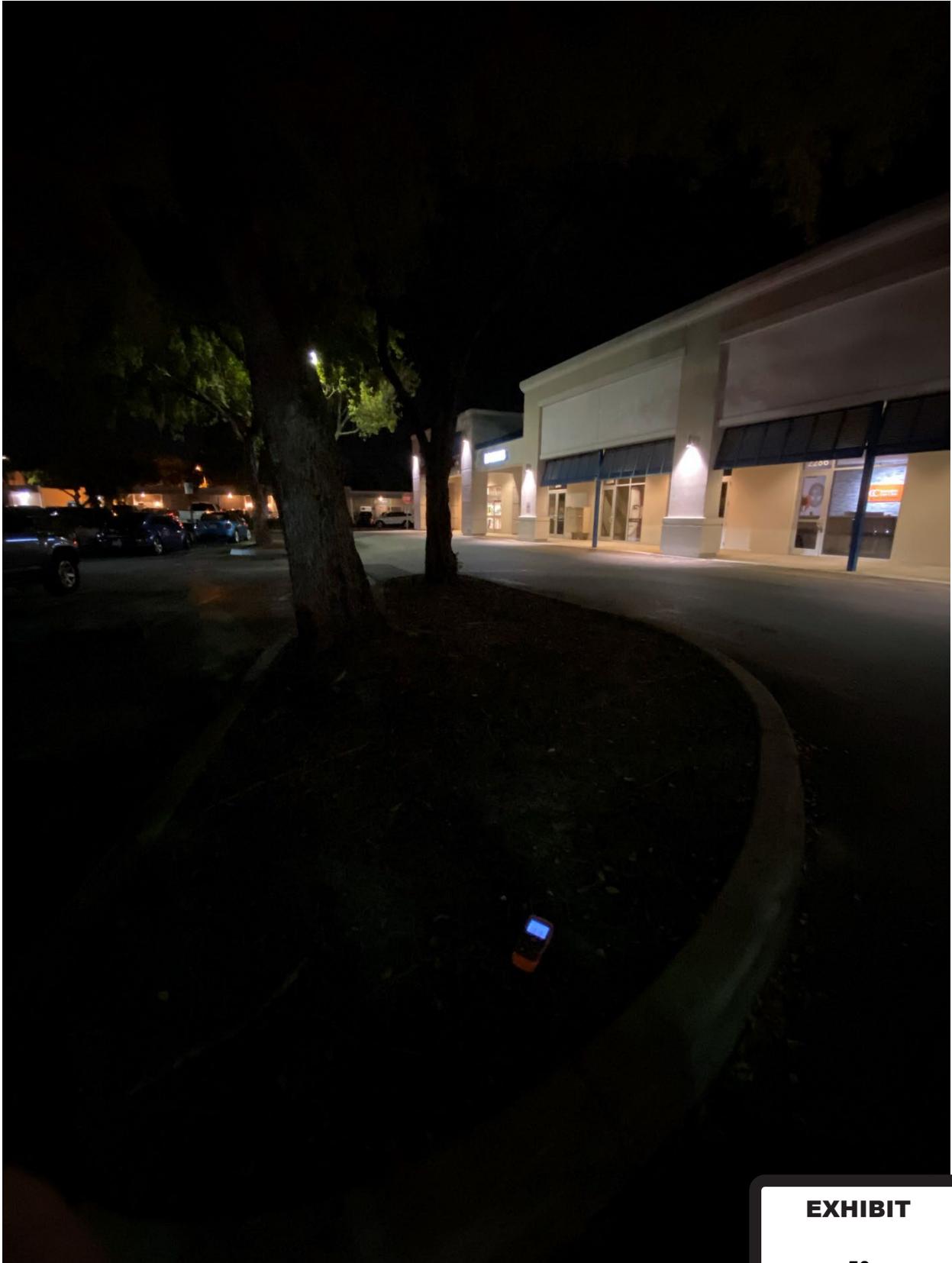
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**EXHIBIT**

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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: *Logan Witter*  
Logan Witter

Extech FAQ | 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](mailto:LWitter@witdev.com))  
**From:** McCain, Casey ([mcconeslandscaping@gmail.com](mailto:mcconeslandscaping@gmail.com))  
**Date:** August 14, 2022  
**Subject:** Lighting

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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](mailto:ABrooks@witdev.com))  
**From:** Witter, Logan ([LWitter@witdev.com](mailto:LWitter@witdev.com))  
**Date:** February 14, 2014  
**Subject:** RE: Sprinkler System

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Yeah, we're probably not going to spend that much just to take out the sprinklers. Let me think about it, but, for now, I'll just make sure the landscaping guys know to check on them and make sure they're okay every once in a while. It's just a couple sprinkler heads sticking out of the ground, right? Thanks for looking into it.

Logan

**To:** Witter, Logan ([LWitter@witdev.com](mailto:LWitter@witdev.com))  
**From:** Brooks, Arthur ([ABrooks@witdev.com](mailto:ABrooks@witdev.com))  
**Date:** February 14, 2014  
**Subject:** Sprinkler System

---

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 \$4,000-\$5,000. 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. But, might be worth it to get rid of some of the ones we know are malfunctioning.

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

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**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

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**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

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**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. 5<sup>th</sup> Street  
Wilmington, Hanover 76767  
(817) 555-0321

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

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**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:

<b>Specimen Amount</b>	<b>Drug</b>	<b>Positive/Negative</b>
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



## Dylan Lindell, Ph.D., CPE

Lindell Consulting  
867 5<sup>th</sup> 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).

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## 2. Elimination rate ( $\beta$ )

Forensic toxicology typically uses an alcohol elimination rate ( $\beta$ ) 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.

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### 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.

24

## 2026 STAC Clarifications

1. We do not understand what Stipulation # 10 re. calling Riley by deposition means as well as that if he is called, the opposing party is entitled to cross-examine him by deposition. Riley's deposition was a cross-examination by the defense only. So, 1) How does one call him by deposition? Does this mean that you just read selected parts of his deposition? 2.) And how do you cross him by deposition if only one side questioned him at the depo? Does this mean you can read any other part of his depo?"
  - a. **Yes, if you call Riley by deposition then you can read in portions of the deposition, and if the opposing party wishes to cross-examine by deposition, then they can read in portions of the deposition as well.**
2. What is the procedural process regarding the Riley deposition? Does it need to be handled mid-witness or outside the calling of witnesses, and are we required to read it into the record?
  - a. **You can call the witness by deposition. There are at least two different ways to do this: 1) you can simply read in portions of the deposition; or 2) you can put your co-counsel on the stand and read in portions of the deposition through questions and answers. You can handle it however you like provided that the Judge allows it. We assume that if the Judge allows you to simply put the deposition in the record, then you can do that, but your opponent is, of course, entitled to object to that.**
3. Are there any evidentiary rules/requirements for how evidence should be entered via the Riley deposition since there will be no live witness on the stand?
  - a. **See previous answers.**
4. What does it mean to call/cross examine Riley Leery by deposition—do we need a student to portray that witness?
  - a. **See previous answers.**
5. The fact pattern says that teams may not object to Riley Leery's testimony by deposition, but it is not clear whether you can object to the statements contained in Riley Leery's deposition, e.g., speculation, hearsay. Can you object to the statements contained in Riley Leery's deposition during the time it is being used as testimony?
  - a. **Yes, you can object to the substance of the testimony, but you may not object to the party calling Riley by deposition.**
6. Can you clarify how students can use Riley Leery's deposition?
  - a. **See previous answers.**
7. Is it possible to get clarity on how to conduct a cross on Riley's deposition?
  - a. **See previous answers.**
8. How will the cross and direct of the witness by deposition happen? Would any attorney read the question and answer into the record and then the opposing side be asked if they have cross and are able to read portions of questions and answers from the deposition in the record?

- a. See previous answers.**
9. What are the logistics of reading the deposition of Riley Leery during trial? What does this process look like?
- a. See previous answers.**
10. What does it mean to testify by deposition?
- a. See previous answers.**
11. What is the procedure for presenting Riley Leery's deposition at trial (e.g., one student reads questions, another reads answers, or does the student just read the entire testimony at issue onto the record)?
- a. See previous answers.**
12. We are seeking clarification on the following instructions: "Plaintiff must call and may only call Avery Potter and Cameron McPhee. Defendant must call and may only call Logan Whitter and Dylan 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." Since we are limited to only two witnesses, how does Riley Leery get called by deposition/how would this work in practice?
- a. See previous answers.**
13. Stipulation 10 states that "both parties are entitled to call Riley Leery by deposition, 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." First, please confirm that this means that the Plaintiff may read in certain portions of the dep during their case in chief and that Defendant may then read in counter designations thereafter. The use of the word "cross examine" makes it slightly confusing. Second, please confirm that evidentiary objections are still permitted to be made to certain portions of the deposition
- a. See previous answers.**
14. How exactly will calling a witness (Riley Leery) through a deposition work? Will that require the two attorneys to act out the direct or cross?
- a. See previous answers.**
15. We read stipulation 10 on p. 26 to mean that either party may read into the record portions (or all) of Riley Leery's deposition. Could you clarify what it means that "the other party is entitled to cross examine Riley Leery by deposition as well"?
- a. See previous answers.**
16. Does the rule prohibiting objections to Riley Leery testifying by deposition (Rules, p. 5) also preclude evidentiary objections to specific testimony within the transcript?
- a. See previous answers.**
17. For the Riley deposition, are advocates permitted to have co-counsel take the stand to read the witness's answers (verbatim from the depo) in response to the questions co-counsel poses (also verbatim from the depo)?

- a. See previous answers.**
18. Are we permitted to enter exhibits through a deposition-only witness?
- a. You can try, and the Judge can decide what you are allowed or not allowed to do in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.**
19. Why is Riley Leery unavailable to testify?
- a. Because this is a mock trial competition, we can only have two live witnesses per side, and we thought his testimony was necessary on certain issues, so this was our solution to that problem.**
20. Under FRCP rule 32, is it the competition's preference that cross-examinations of Riley Leery via deposition should take the form of objections to material read on the record, the adverse party additionally reading testimony onto the record (FRCP 32(a)(6), or both?
- a. See previous answers.**
21. If the Plaintiff chooses to call Riley Leery through deposition, must the Defense cross examine him/her by deposition during Plaintiff's case in chief OR must the Defense cross examine Riley Leery during their case in chief.
- a. You may handle that however you like as long as the Judge allows you to do it.**
22. If Plaintiff reads portions of the deposition during their case in chief, does Defendant have to read their preferred portions at the same time or can they read their preferred "cross" during the Defendant's case in chief?
- a. See previous answers.**
23. The Icehouse receipt on Exhibit 10 represents the tab closed at 9:15, but Avery Potter represents that they left between 8:30pm-9:00pm. Is this a typo, or was this intentional?
- a. Exhibit 10 has been updated.**
24. What time did the Leery's close out of the Icehouse? (Exhibit #10 says 9:15 p.m.; Potter Dep. 52:4-5 says 8:55 p.m.). Is this an intentional discrepancy or just a packet error?
- a. Exhibit 10 has been updated.**
25. Exhibit 10 says tab closed at 9:15pm. Avery Potter says that the receipt shows they closed out at 8:55pm (page 52, line 5). Which is the correct time?
- a. Exhibit 10 has been updated.**
26. Avery's deposition indicates the time on the receipt was 8:55 PM, however Exhibit 10 indicates the time is 9:15PM. Is this intentional?
- a. Exhibit 10 has been updated.**
27. What time was the tab closed at the Icehouse? Potter says 8:55, and the receipt says 9:15.
- a. Exhibit 10 has been updated.**
28. Avery Potter at page 52, lines 4-5 states that he closed out the receipt at 8:55 PM. However, the receipt (Exhibit 10) says tab closed at 9:15 PM. Which time is correct?
- a. Exhibit 10 has been updated.**
29. Icehouse Receipt says 9:15pm. AP depo says it says 8:55pm. Which time is correct?
- a. Exhibit 10 has been updated.**

30. What time did they order their last drink?  
**a. No further information will be provided.**
31. Can you provide the actual ordinance language and stipulation that this is the actual ordinance that was an effect on September 7, 2024? In a real case, an attorney would have this, and a judge would take judicial notice of it, etc. Not having the actual language or stipulation is unrealistic.  
**a. No further information will be provided.**
32. Page 65 of casefile, expert's review, says the Leerys were celebrating Jamie's "pending 73 birthday," but Leery was already 75. Similarly, on page 101. Is this a mistake on the expert's part or the case writer's?  
**a. McPhee and Lindell's reports have been updated.**
33. What is the age of Jamie Leery? There are conflicting accounts of him being 73 or 75.  
**a. McPhee and Lindell's reports have been updated.**
34. How old is Jamie?  
**a. McPhee and Lindell's reports have been updated.**
35. Do all witnesses understand Jamie Leery was 75 years old at the time of his death? There are several references to him being 73.  
**a. McPhee and Lindell's reports have been updated.**
36. Can we please get an age clarification for Jamie Leery? Most witnesses are saying 72, but Riley, his son says 74/75.  
**a. McPhee and Lindell's reports have been updated.**
37. The fact pattern contains different ages for Jamie. Please confirm Jamie's age.  
**a. McPhee and Lindell's reports have been updated.**
38. What is Jamie Leery's age? Riley Leery's deposition testimony and Stipulation #12 say he was 75 years old, but reports by both Cameron McPhee Dylan Lindell say he was 72 or 73 years old.  
**a. McPhee and Lindell's reports have been updated.**
39. What is the age of Jamie Leery as it states his age in the accident as 72, 73, and 75 throughout?  
**a. McPhee and Lindell's reports have been updated.**
40. Stipulation 12 states that Jamie Leery was 75 years old at the time of his death. Some reports and deposition testimony appear to reference different ages. Are these differences typographical errors, or are they intended inconsistencies within the fact pattern?  
**a. McPhee and Lindell's reports have been updated.**
41. The witnesses give conflicting testimony about what Jamie Leery's age was - is this intentional?  
**a. McPhee and Lindell's reports have been updated.**
42. Please clarify how old Jamie Leery was on the date of his death. It is represented differently in the casefile.  
**a. McPhee and Lindell's reports have been updated.**

43. In the Dylan Lindell report, they purport that Jamie Leery was 72, going on 73 years old. But elsewhere in the file he is 74, going on 75. Is this intentional?  
**a. McPhee and Lindell's reports have been updated.**
44. Stipulation 12 says that Jamie Leery was 75 at time of his death, and Lindell's report (STAC 101) says 72. Is that a typo on STAC 101 or an intentional error?  
**a. McPhee and Lindell's reports have been updated.**
45. Are the McPhee and Lindell reports a typo for 73rd birthday when it was his 75th? He was 75 when the fall happened on Sept 7, 2024, according to Riley and stipulation #12. He was 75 years old in Exhibit 73 per Lindell. Shouldn't it be "impending 76th" birthday?  
**a. McPhee and Lindell's reports have been updated.**
46. Jamie's age is inconsistent at several points in the packet; these appear to be typos. For example, on page 65 the Accident Description says Jamie was a 75 year-old celebrating his 73rd birthday. Page 101 also states Jamie was 72 and would be celebrating his 73rd birthday. How old is he?  
**a. McPhee and Lindell's reports have been updated.**
47. How old was the decedent?  
**a. McPhee and Lindell's reports have been updated.**
48. Is the discrepancy in Jamie's age intentional? (P. 65 and p. 101)  
**a. McPhee and Lindell's reports have been updated.**
49. Page 65 lists Jamie Leery's age at 75, but shortly after references his impending 73rd birthday. Is this discrepancy intentional?  
**a. McPhee and Lindell's reports have been updated.**
50. Both experts state that Jamie Leery was 73 years old but there is a stipulation that he died at 75. Is this purposeful or a typo?  
**a. McPhee and Lindell's reports have been updated.**
51. Cameron McPhee's expert report says it was his 73rd birthday. Did they mean 75th?  
**a. McPhee and Lindell's reports have been updated.**
52. The witnesses give conflicting testimony about what Jamie Leery's profession was - is this intentional?  
**a. No further information will be provided.**
53. Could we get more information about the decedent? There seems to be some conflicting information about his age, employment status, and what subject he taught.  
**a. No further information will be provided.**
54. Is the discrepancy between Riley and Avery describing what Jamie teaching intentional (p. 35 and 47)?  
**a. No further information will be provided.**
55. Was the victim a history or a literature teacher?  
**a. No further information will be provided.**
56. Is Jamie Leery a professor in classic literature (Riley Leery's assertion) or history (Avery Potter's assertion)?  
**a. No further information will be provided.**

57. Was Jamie Leery retired at the time of his death, or was he still working as a professor?

**a. No further information will be provided.**

58. Is there an argument/case law in the jurisdiction for negligence per se?

**a. The charge contains all relevant instructions.**

59. The verdict form seems to foreclose the possibility of assigning fault to the non-party (it requires fault to add to 100% between only the parties). Can jury instructions and/or a modification to the verdict form or Answer be added to make clear whether shifting blame to a non-party is a viable claim?

**a. The charge contains all relevant instructions.**

60. Plaintiff alleges in the Complaint, Para 5, that Jamie Leery tripped and fell on the exposed sprinkler head. Defendant "admits" this allegation in the Answer. However, the file appears to be drafted in such a way that the defense can dispute whether he even tripped on the sprinkler head, as no witness actually saw him trip on it, as opposed to the curb (which also creates a significant causation issue for the Plaintiff). The admission appears to preclude this defense theory. Please clarify.

**a. The stipulations have been updated.**

61. In the Original Answer, Defendant admitted paragraph 5 and 6 (that Jamie did in fact trip on the sprinkler and nothing else, and this definitively caused his death). Are we to take that as an admission or was that in error?

**a. The stipulations have been updated.**

62. Did the defense actually mean to admit #5 in the answer to the complaint?

**a. The stipulations have been updated.**

63. Defendant's Answer to the Complaint has Defendant admitting paragraph 5, which is the allegation on how the fall occurred, but the deposition questions of Plaintiff's witnesses are contradictory to that admission, as is the denial of paragraph 4. Can you advise whether the admission to how the injury occurred was intentional based on the denial of para. 4 and the depo. questions?

**a. The stipulations have been updated.**

64. Does the Answer's "Admitted" for paragraph 5 of the Complaint mean that Defendant cannot claim that Jamie Leery's fall was caused by anything other than tripping over the sprinkler head?

**a. The stipulations have been updated.**

65. Can you confirm that Defendant does Admit paragraph 5 of the Complaint that Jamie tripped over the sprinkler head?

**a. The stipulations have been updated.**

66. Paragraph Number 9 from Defense's Original Answer denies the paragraph in its entirety, but Witter (in his depo) admits that he was in charge of maintaining safe premises for the sidewalks and medians, which is the same area where Jamie fell. The same can be said for 13. Is this intentional?

**a. No further information will be provided.**

67. Who took the photos of the sprinkler head after Jamie Leery's fall, and when were the photos taken? Was it the Plaintiff's expert? We want to know because Witter testifies that he went to the parking lot the day after the fall and fixed the sprinkler head, and the Plaintiff's expert went to the parking lot on September 14th. If the owner had actually fixed the sprinkler head, then the plaintiff expert would not have seen it above ground.
- a. Plaintiff's expert took the photographs. Witter's deposition has been updated.**
68. When were the photos of the parking lot (Exhibits 13, 16, 18-29, 39-40) taken and by whom?
- a. They were taken by Plaintiff's expert during the site visit discussed in their report.**
69. Were photos in Exhibits 39, 40 and 42-59 taken by Cameron McPhee on Sept 14, 2024?
- a. See previous answers.**
70. The file does not identify who took the photographs in Exhibits 18-29. If Cameron McPhee took these photographs, this directly contradicts Logan Witter's testimony that he removed the sprinkler head the very next day, as McPhee did not go to the property until a week later. Please clarify.
- a. See previous answers.**
71. Who took the pictures in Exhibits 18-29?
- a. See previous answers.**
72. Who took the photos shown in Exhibits 18-29, and what date/time were they taken?
- a. See previous answers.**
73. What time of day were Exhibits 18-29 taken? (The photos appear to be taken at night, but the last paragraph of page 68 Cameron McPhee's testimony makes it seem like the photos were taken during the day.)
- a. See previous answers.**
74. Who took photos of the sprinkler?
- a. See previous answers.**
75. When were the photos of Exhibit 18 - 29 taken?
- a. See previous answers.**
76. What time was the plaintiff's expert's inspection done?
- a. No further information will be provided.**
77. Are there records for the inspections?
- a. No further information will be provided.**
78. What time did each expert (McPhee and Lindell) visit the scene of the fall to conduct their investigations?
- a. No further information will be provided.**
79. When did Lindell visit the parking lot? Daytime or nighttime?
- a. No further information will be provided.**
80. Who measured the sprinkler in Exhibit 29?
- a. No further information will be provided.**
81. What time did McPhee take the photos we see in Exhibits 42-59?

- a. No further information will be provided.**
82. Who created Exhibit 60? Where did it come from?  
**a. Exhibit 60 was something found on the internet.**
83. What time were the pictured exhibits taken/can we get time stamps?  
**a. No further information will be provided.**
84. Can we have a little more information about when Lindell went to the parking lot? What time of day was it, and how many people did he see traveling through the strip mall that day?  
**a. No further information will be provided.**
85. Where was each of McPhee's light readings taken relative to the median  
**a. No further information will be provided.**
86. Can we get a clear time of death?  
**a. No further information will be provided.**
87. What date did they put the sign up?  
**a. No further information will be provided.**
88. Is it possible to get a time stamp on the Instagram post?  
**a. No further information will be provided.**
89. What was the date the suit was filed?  
**a. No further information will be provided.**
90. Will there be dates added to text message exhibits?  
**a. No further information will be provided.**
91. What dates were the text messages (Exhibits 35-37) sent?  
**a. No further information will be provided.**
92. Is this a pure comparative or modified comparative state?  
**a. Since damages are not in issue and you're not allowed to argue to the jury about the effect of their answers, no further information will be provided.**
93. Can the defense pursue a theory and argument that Icehouse is negligent for overserving Jamie, even though Icehouse is not on the liability verdict form?  
**a. The charge contains all relevant instructions.**
94. Does the verdict form, which lists only the parties to the suit, limit us to those parties when using comparative negligence at trial?  
**a. The charge contains all relevant instructions.**
95. Will any additional affirmative defenses be added?  
**a. No.**
96. Is this jurisdiction pure comparative fault (defendant can be liable regardless of how small their level of fault is) or modified comparative fault (defendant will not be liable if they are less than 50% responsible)?  
**a. Since damages are not in issue and you're not allowed to argue to the jury about the effect of their answers, no further information will be provided.**

97. As the elements of negligence in the jury instructions do not explicitly mention proximate cause, does proximate causation only weigh on the affirmative defense of comparative negligence?
- a. Question No. 1 makes proximate causation an issue for both parties. So, it applies to both claims.**
98. Can defense argue that Icehouse is liable as an affirmative defense?
- a. The charge contains all relevant instructions.**
99. There appears to be an ambiguity within the Jury Charge in that it does not indicate the Plaintiff has the burden to prove Witter Development, LLC owed Jamie Leery a legal duty or that the Plaintiff must prove Witter Development, LLC's actions or omissions were the proximate cause of Jamie Leery's injury. Must the Plaintiff prove both of these aspects to be successful in their negligence claim?
- a. Regarding duty, since it is a question of law, no, you can't argue to the jury regarding duty. But, see the stipulations, which have been updated. Regarding proximate causation, see previous answers.**
100. Did Witter Development, LLC take advantage of the opportunity to bring in the Icehouse, or manufacturer and installer of the sprinkler head, as potential third-party defendants, or are they now prohibited from arguing liability may rest with these entities because they failed to raise them as additional responsible parties in their affirmative defense?
- a. The charge contains all relevant instructions.**
101. In this jurisdiction, does a finding that plaintiff was more than 50% negligent bar any recovery?
- a. See previous answers.**
102. Is the defense team allowed to assert a negligence of a third-party defense against The Icehouse?
- a. The charge contains all relevant instructions.**
103. Since Icehouse wasn't added as a party to the case, is defense prohibited from arguing Icehouse has any liability?
- a. The charge contains all relevant instructions.**
104. Page 91: Witter says they never received any complaints other than the two written complaints from Avery (Exhibit 31). Avery says they complained multiple times in person. Is Witter saying that did not happen and that that is a lie?
- a. No further information will be provided.**
105. What dates are the quarterly inspections conducted or months?
- a. No further information will be provided.**
106. Is the red circle in Exhibit 8 and 9 created by Riley Leery in the wrong spot? It does not line up with the paths drawn in Exhibits 12 and 17.
- a. No further information will be provided.**
107. Should references to the "Lighthouse" be "Icehouse" instead?
- a. See updates to Cameron McPhee's deposition.**

108. Is the word "Lighthouse's" on pg. 80, line 60, meant to be "Icehouse's"?
- a. See updates to Cameron McPhee's deposition.**
109. In Cameron McPhee's deposition (p. 113), counsel refers to "The Lighthouse," but the establishment is called "The Icehouse" everywhere else in the case file. Should this be corrected?
- a. See updates to Cameron McPhee's deposition.**
110. Is the mention of the "Lighthouse" (page 80) supposed to be "Icehouse"?
- a. See updates to Cameron McPhee's deposition.**
111. On page 80 of Cameron McPhee's depo, they were asked to evaluate the "Lighthouse". Did they mean Icehouse?
- a. See updates to Cameron McPhee's deposition.**
112. P80, L16 of Cameron McPhee's deposition refers to the Lighthouse, not the Icehouse. Was this intended?
- a. See updates to Cameron McPhee's deposition.**
113. Page 80 of the fact pattern provides that there was a "Lighthouse." Is this a typo?
- a. See updates to Cameron McPhee's deposition.**
114. Will another defendant be added?
- a. No.**
115. What time frame did Lindell take his 4 hours observation on 10/20/24? (If not specific times - morning/afternoon/night?)
- a. No further information will be provided.**
116. The scholarly articles mentioned in Dylan Lindell's expert report are real articles. Can the students inquire about the substance of those articles on cross-examination?
- a. You may not use any materials outside the case file.**
117. Who sued in the case between McPhee and defendant Witter?
- a. No further information will be provided.**
118. Who sued first, McPhee or defendant?
- a. No further information will be provided.**
119. Exhibit 64 (redacted settlement agreement) seems to be purporting that Cameron McPhee had to pay Witter Development, and that Cameron McPhee was the "released party". If the settlement arose out of Witter Development's failure to pay a bill, wouldn't it be the other way around?
- a. Exhibit 64 has been updated.**
120. Exhibit 64 has Witter Development as the "Claimant" receiving money in the settlement from McPhee but has McPhee signing. It also has McPhee releasing himself and his company. Perhaps the Claimant should be McPhee and his company and the Released Parties Witter Development, etc.?
- a. Exhibit 64 has been updated.**
121. Exhibit 64 lists Witter Development as the "CLAIMANT" and McPhee as the "RELEASED PARTY." However, both McPhee (p. 109) and Witter (p. 125) testify that McPhee sued Witter

for non-payment and McPhee received the settlement funds. Should the party designations be reversed to match the testimony?

**a. Exhibit 64 has been updated.**

122. Paragraph 5 of the Complaint was admitted in the Answer. Was it intentional that the defense was not only admitting that the fall caused the death, but also that it was in fact the sprinkler that the decedent tripped on?

**a. The stipulations have been updated.**

123. The settlement agreement (Exhibit 64) states that Witter Development is the claimant and a sum of money is to be paid to the claimant. Is this supposed to read that McPhee landscaping is the claimant since Mr. McPhee sued to recover being paid the full price contract

**a. Exhibit 64 has been updated.**

124. Cameron McPhee testifies that Witter previously refused to pay the full bill on a prior landscaping project, so he sued Witter. Logan Witter testifies that Cameron McPhee did eventually "get paid" and that it's "right there is the settlement agreement." However, Exhibit 64, the Settlement Agreement, shows that Witter Development was the claimant and actually sued Cameron McPhee, which contradicts both of their deposition testimony. Please clarify.

**a. Exhibit 64 has been updated.**

125. Both Cameron McPhee and Logan Witter say that the dispute they had resulted in Witter Development paying McPhee in a settlement, but the settlement agreement (Exhibit 64) says that Witter Development was the Claimant who received consideration to release McPhee from charges. Is McPhee meant to be the Claimant who releases Witter Development from all charges?

**a. Exhibit 64 has been updated.**

126. Why is the Defendant being paid for the lawsuit between Cameron and the Defendant?

**a. Exhibit 64 has been updated.**

127. Did Cameron McPhee review Dylan Lindell's report/deposition?

**a. No further information will be provided.**

128. Exhibit 68 is an email with a subject line labeled "Lighting." Was that subject line mistakenly copied from Exhibit 67 or intentional?

**a. Exhibit 68 has been updated.**

129. Clarification on Exhibit 5: Riley's testimony says he and his father had a few ice teas, but the receipt only shows one iced tea. There is a discrepancy. Is this fair game for impeachment or is this a typo?

**a. No further information will be provided.**

130. On pg. 54 line 21 and 22, it mentions that Riley is a "he." Is this a determination of that witness's gender, or is it still left up to plaintiff to determine that?

**a. Riley is a man. The case file has been updated to reflect that.**

131. Is Riley a girl or a boy?

**a. Riley is a man. The case file has been updated to reflect that.**

132. Avery Potter occasionally refers to Riley Leery with male pronouns (Page 48, Lines 11-12), but Riley is otherwise referred to by gender-neutral pronouns. Are we to assume Riley uses he/him pronouns?
- a. Riley is a man. The case file has been updated to reflect that.**
133. Was the sign properly lit on the night of the incident?
- a. No further information will be provided.**
134. What were the lighting conditions regarding the sign (Exhibit 11) on the night of 9/7?
- a. No further information will be provided.**
135. If we notice a team has a darker/lighter print of a parking lot photo, will we need to deal with it as a modification of an exhibit and object to it being used (even if unintentional)? Or is it not expected to have a major impact on trial.
- a. In terms of how you handle it in the round, that is up to you as part of your trial strategy. It is certainly possible that if teams are manipulating exhibits intentionally to make them lighter or darker, then that could be considered a rules violation.**
136. Where exactly is the sidewalk that the defendants wanted patrons to use in relation to the parking lot? There is not a sidewalk pictured in the exhibits other than the store fronts.
- a. No further information will be provided.**
137. Please clarify the inference rule (page 10). On cross examination, if there is an absence in the evidence (a fact is not mentioned in the witness's prior statement or explained elsewhere in the file), can the witness answer in the affirmative (say that the fact does exist) even if that would alter a material fact? a. Example: Mr. Potter, you can't say that the parking lot ever had potholes? - Can Mr. Potter respond, "Yes, it did"? b. The file is silent as to potholes, he was asked the question on cross, and he answered in the affirmative, but his answer would change a material fact about the maintenance of the parking lot. Our reading of the rules suggests that the witness would not be allowed to answer in the affirmative in this situation. Is this correct?
- a. Please see explanation at the end of the clarifications.**
138. On page 91, Witter says "they" stopped watering and just filled the medians with mulch. Who is "they"?
- a. No further information will be provided.**
139. Following Jamie Leery's fall, when was the sprinkler actually fixed? Logan Witter testified that it was the day after the incident on page 94 line 22, while Cameron McPhee testified that it was in the same condition when he examined it (his examination was on September 20th, 2025). McPhee used the sprinkler to form his opinion on page 67. What are the correct dates?
- a. Witter's deposition has been updated.**
140. Can you go outside the scope of direct on cross examination?
- a. Yes. Cross-examination is not limited to the scope of direct examination.**

141. The rules say that presiding judges will be given a “case file of all materials.” Will this case file have the same page numbers as the 198-page case problem, so that we can refer to the page numbers if needed (e.g., referring the judge to the answer on page 23)?
- a. Yes.**
142. Are there future claims that can be brought, such as a claim by Jamie Leery’s estate against the Icehouse?
- a. No further information will be provided.**
143. On Logan Witter's depo it says they were deposed by defense counsel. Did you mean plaintiff's counsel?
- a. Yes. It has been updated.**
144. The expert, Lindell, says that he handled 400 cases and about 20% involved alcohol, but there’s no testimony as to how many cases he testified in related to alcohol. So that we don’t have students making things up in protest, can you add that information?
- a. No further information will be provided. People should not make things up that aren’t in the facts, which would also avoid protests.**
145. Can you clarify whether the new rule that allows witnesses to invent facts applies to an expert's methodology and basis of opinions? It seems like experts might invent new facts if asked about the limits of what they knew or reviewed.
- a. Please see explanation at the end of the clarifications.**
146. In Exhibit 69 the incident report contains reference to a “grassy median” and is dated October of 2019. However, Logan Witter’s deposition indicates the medians were no longer landscaped with grass and replaced with mulch about “ten years prior.” Is this intentional?
- a. No further information will be provided.**
147. What is a foot candle, or can we use the definition that is not in the packet to explain it?
- a. No further information will be provided.**
148. The expert states the lighting in the parking lot is below standard, but no standard is given. What is the standard?
- a. No further information will be provided.**
149. Which median is the June 29, 2024, email referring to?
- a. No further information will be provided.**
150. Will the full deposition of Dylan Lyndall from previous lawsuit be provided?
- a. No further information will be provided.**
151. Can we get line numbers in the expert reports for ease of reference and impeachment purposes?
- a. No further information will be provided.**
152. For Retrograde - are we to assume that the calculation is the proper way to calculate retrograde in Hanover, or is it allowable for questions regarding missing factors? (First drink, last drink, food eaten, etc.)
- a. No further information will be provided.**
153. Does each side get one pre-trial motion?
- a. Please see the rules of the competition.**

154. Will there be line numbers added for the expert reports? (Asking for ease of reference during trial).  
**a. No further information will be provided.**
155. By what numbers or letters should we refer to pp. 32-120?  
**a. However you see fit.**
156. May we ask the judge to take judicial notice of the fact that Blanton's is 46.5% ABV?  
**a. You can certainly try, but the other side may take issue with that.**
157. How many stores does the defendant own in the shopping center?  
**a. No further information will be provided.**
158. Are you able to give the names and hours of other businesses located in the same development that share the parking lot with the Icehouse?  
**a. No further information will be provided.**
159. Is Plaintiff required to prove both elements of part 3 of the jury instruction, both failure to warn and failure to make the area reasonably safe?  
**a. The charge contains all relevant instructions.**
160. On page 95, are lines 16-17 intended to be a statement or an inquisitive response?  
**a. Logan Witter's deposition has been updated.**
161. Can Logan Witter sit at the counsel table as a representative of the company?  
**a. No further information will be provided.**
162. Page 102 provides that the sign posted by Witter states DANGER "in red lettering," but Exhibit 11 does not reflect this. Is this discrepancy intentional?  
**a. No, the reference to red lettering has been removed.**
163. Will there be a jury instruction as to proximate cause? We have one on the verdict form, but it is not mentioned in the jury instructions.  
**a. The charge contains all relevant instructions.**
164. Whether questions about other alternative measures of correction to the sprinkler system could have been done prior to the incident (spray painting, flagging, snipping the sprinkler heads, placing landscaping stone next to, etc.)?  
**a. No further information will be provided.**
165. Were any other sprinkler heads in the medians surrounding the parking lot found exposed? If so, when?  
**a. No further information will be provided.**
166. Exhibit 30 is from July 2022, while Exhibit 31 is from August 2024. Logan Witter's testimony indicates that those emails from Avery Potter were sent closer in time. Are the dates on the emails correct?  
**a. No further information will be provided.**
167. Is the two-year gap in the dates intentional for Exhibits 30, 31, and 67?  
**a. No further information will be provided.**
168. Can jury instructions be blown up and used as a demonstrative?  
**a. Yes.**

169. Is the metal pole that you can see in Exhibit 18 the pole for the sign shown in Exhibit 11/circled in Exhibit 32?
- a. No.**
170. Must demonstratives be created by counsel during their examination/speech, or can they be created by any team member at any time during the trial (e.g., would we be allowed to create a chart at counsel table during our partner's cross/write out a list of quotes during a 5-minute break before closing arguments)?
- a. See the rules.**
171. When are finals? The packet and the website conflict.
- a. The National Finals are March 26-29. The updated version of the packet with this corrected date was sent out on January 26.**
172. Can we meet and confer with opposing counsel after the plaintiff case in chief to discuss timing?
- a. Yes. We encourage cooperation and conversation to create a collegial atmosphere.**
173. Did the conversation between Avery Potter and Logan Witter detailed on page 58-59 of the Potter deposition, lines 58:12-59:5 take place before Mr. Leery's trip and fall?
- a. No further information will be provided.**
174. There is deposition testimony that states the landscape median was mulched, but the exhibits of the landscape median do not contain mulch. Was this intentional?
- a. No further information will be provided.**
175. Are we able to cite to the ABA Rules of Professional Conduct?
- a. See the rules.**
176. Is the striped buffer zone on the left side of the median considered an available walkway for pedestrians?
- a. No further information will be provided.**
177. Page 15 of the packet says that "Advocates should authenticate exhibits..." but also that "All exhibits are stipulated as authentic and genuine for purposes of trial." Does this mean that all exhibits are authentic without further foundation being laid out by witnesses?
- a. No further information will be provided.**
178. In previous years, you stated how the experts should be tendered. Will you provide this information this year as well?
- a. No further information will be provided.**
179. Page 68, paragraph 3, McPhee says that walking through the parking lot would have brought Jamie "near to those landscape medians with exposed sprinkler heads." Did McPhee inspect other medians and how many did he see, or was it just the one injuring sprinkler head?
- a. No further information will be provided.**
180. Can we make enlargements of just portions of exhibits?

- a. You can make whatever enlargements you like. Whether they can be used during trial will be determined by the rules of the competition and potentially subject to objections in the round.**

181. How can McPhee know that the materials/methods he uses are customarily relied upon by experts in the field in regard to the investigation he did if this is his first one?

- a. No further information will be provided.**

182. Will the judge be provided with a copy of the case file and exhibits, or may the teams provide a copy to the judge at the beginning of the round?

- a. No further information will be provided.**

### **CLARIFICATION ON FACTS OUTSIDE THE RECORD**

The following is an explanation of the rule on Facts Outside the Record. Specifically, we are providing guidance on what is permitted during direct and redirect examination versus cross examination.

The rules for direct and redirect examination are unchanged from previous years, which means that during direct and redirect examination you are limited to those facts contained in the fact pattern, any matters judicially noticeable under the Federal Rules of Evidence 201, and necessary inferences drawn from the case material on non-material facts.

By way of example, the fact pattern is completely silent as to whether Jamie Leery's eyes were bloodshot while he was in The Icehouse that night, and it is not a necessary inference on a non-material fact to say that his eyes were or were not bloodshot. So, during direct or redirect examination of Avery Potter, it would be a violation of the rule if the following question and answer took place:

Q: Were Jamie Leery's eyes bloodshot that night?

A: No.

In this situation, the rules still prohibit the witness from saying, "I wasn't asked that in my deposition," or the equivalent, if they are impeached during cross examination on this invented fact.

However, a lawyer during the cross examination of Avery Potter might ask a question like this:

Q: You don't recall whether Jamie Leery's eyes were bloodshot that night.

In the past, because of the way the rules were drafted, the witness would be required to say that they do not recall one way or another because the fact pattern is silent on that issue, and if the witness said, "No, they were not," then they could be impeached by omission.

Under the new rules, because the fact pattern is completely silent on that issue, the witness is free to answer the question however they see fit, so long as they are being directly responsive to the question being asked. So, the witness could say, "Yes, his eyes were bloodshot," or, "No, his eyes were not bloodshot," or, "I don't know," or, "I don't remember," and all of those answers would be acceptable and none of those answers would subject the witness to a proper impeachment by omission.

Nothing about this rule allows a student on cross examination to add facts when the question does not call for them. For example:

Q: While Jamie Leery was inside the bar that night, he almost fell, right?

A: Well, yes, **but his eyes weren't bloodshot at all.**

That is not permitted because the added information is not responsive to the question being asked, and the question being asked is directly referenced in the fact pattern.

Another example using Logan Witter. Logan Witter's deposition testimony and the exhibits are completely silent on issues like the type of light bulbs that are used to light the parking lot, or if the city regulations/ordinances require the use of certain lightbulbs or for the light poles to be a certain height. So, during cross examination, a witness playing Logan Witter would be allowed to answer the following questions like this:

Q: You don't know what kind of lightbulbs were being used to light that parking lot.

A: Yes, I do.

Q: What kind?

A: LED parking lot light bulbs.

Q: Well, you don't know if those are in compliance with city ordinances?

A: Yes, they are.

Q: You can't even tell us how high those light poles have to be according to city regulations?

A: Yes, they are required to be 10-feet high, which our poles comply with.

That is permitted because the added information is responsive to the question being asked, and the questions being asked are not addressed anywhere in the fact pattern.

However, the following would not be permitted:

Q: You don't know what kind of lightbulbs were being used to light that parking lot.

A: Yes, I do. **We actually used the brightest light bulbs that were commercially available at the time, and those light bulbs were the most expensive bulbs on the market.**

This is not permitted because the added information is not responsive to the question being asked.

Additionally, these rules do apply to expert witnesses in the fact pattern as well, however those witnesses are subject to the disclosure rules under the Federal Rules of Civil Procedure. So, they may not be subject to an impeachment by omission, but that does not mean they would not be subject to a proper objection under Rule 26 of the Federal Rules of Civil Procedure if they disclose information on the witness stand that they have not previously disclosed in their report or deposition.