IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

VICTOR SMITH and MARY ANNE SMITH,	)	
Plaintiffs,	)	
v.	)	Case No. 1:09-cv-3355
FEDERAL EXPRESS CO.,	)	
Defendant.	)	

VICTOR SMITH and MARY ANNE SMITH'S MEMORANDUM
IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

NOW COME the Plaintiffs, VICTOR SMITH and MARY ANNE SMITH, by and through their attorneys, FICHERA & MILLER, pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, submit the following Memorandum of Law in Support of their Motion for Partial Summary Judgment.

INTRODUCTION

This suit asserts claims by the Plaintiffs, VICTOR SMITH and MARY ANNE SMITH against FEDERAL EXPRESS CO ("FEDEX") for negligence and injuries arising out of a motor vehicle accident. This case is ripe for summary judgment. Depositions of the occurrence witnesses have been completed.

Plaintiffs ask this Court to find that: (1) Illinois law controls the issues of damages and allocation of fault to non-parties; (2) No triable issue of material fact exists with respect to the question of liability; (3) Defendant driver's conduct was willful and wanton as a matter of law.

STATEMENT OF FACTS

1. Victor and Mary Anne Smith in Cook County, Illinois. Defendant's Answers to Plaintiffs First Amended Complaint.

2. FEDEX is a Delaware Corporation and has its corporate headquarter in Georgia. Defendant's Answers to Plaintiffs First Amended Complaint.

3. FEDEX has facilities and employees in Illinois. Defendant's Answers to Plaintiffs First Amended Complaint.

4. Victor and Mary Anne Smith were treated for their injuries in Indiana and Illinois. Defendant's Answers to Plaintiffs First Amended Complaint.

5. Victor Smith spent 11 months in rehabilitation in Illinois and his primary treating doctors are located in Illinois.

6. Plaintiffs filed this action in the Circuit Court of Cook County, Illinois. Defendant's Answers to Plaintiffs First Amended Complaint.

7. On February 3, 2009, at approximately 8:30 a.m., the Plaintiff, Victor Smith was southbound on I-65, in Boone County, Indiana; Mary Anne Smith was his passenger. Defendant's Answers to Plaintiffs First Amended Complaint.

8. It was snowing at the time of the occurrence and it was accumulating on the roadway. Melville at 5, 50 attached as exhibit E; Howard at 28, 30 attached as exhibit B; Tibbs at 14 attached as exhibit C; Cole at 24, 25 attached as exhibit D.

9. Two separate accidents occurred in short succession at approximately 8:30 a.m. along I-65 in the southbound travel lanes. *See* Police Report 901059045 attached as exhibit F and Police Report 901059043 attached as exhibit G.

First Accident

10. The first accident occurred at approximately 8:30 a.m., involving David Cole, driving a truck going southbound on I-65. The driver of this truck attempted to stop, slid, and his trailer jack-knifed onto the median leaving his tractor in the left southbound lane in I-65. *See* Police Report 901059045.

11. Plaintiff, Victor Smith was southbound behind David Cole, and tried to move to his right, lost control of his vehicle because of the road conditions. The vehicle spun around and struck Cole's trailer, veered right to the right guardrail, and the came to a rest on the right shoulder within inches the right guardrail. *See* Police Report 901059045; V. Smith at 30-34 attached as exhibit A.

12. No part of the Smith vehicle was in the roadway. V. Smith at 30-34.

13. After seeing to his wife and himself the Plaintiff, Victor Smith exited his vehicle and stood in the shoulder to the left of his vehicle. *See* Police Report 901059045; V. Smith at 40.

Second Accident

14. The second accident occurred when the Defendant FEDEX, driver, Juan Howard, driving a double tandem trailer, was proceeding south on I-65 attempting to steer through stopped vehicles on either side of the roadway. *See* Police Report 901059043.

15. The investigating officer stated that Howard was traveling "too fast for existing weather conditions." *See* Police Report 901059045.

16. Howard hit the left guardrail and rear-ended Judith Tibbs who had slowed to avoid the stopped vehicles. *See* Police Report 901059043; Howard at 37-38; Tibbs at 22-24.

17. After hitting Tibbs, Howard closed his eyes for "a couple of seconds" and hit Smith's white van parked on the shoulder. *See* Police Report 901059043; Melville at 41, 57; Howard at 42.

18. Howard did not see Smith's van until after the accident when he was getting out of his truck and he has no recollection of hitting the van. Howard at 43.

19. Howard striking the Smith vehicle caused the plaintiff's vehicle to spin 180 degrees in a clockwise direction, which caused the plaintiff's own vehicle to strike him, launching his body into the center of the highway, causing him severe injuries. *See* Police Report 901059043; Melville at 62-63.

STANDARD OF REVIEW

Summary judgment must be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Summary judgment does not require the moving party to negate its opponent's claim. *NLFC, Inc. v. Devcom Mid-America, Inc.*, 45 F.3d 231, 235 (7th Cir. 1995) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). Rather, the summary judgment standard mirrors the directed verdict standard under

Fed. R. Civ. P. 50(a), which requires the court to grant a directed verdict where "there can be but one reasonable conclusion". *Esdale v. American Mut. Ins. Co.*, 914 F. Supp. 270, 271 (N.D. Ill. 1996).

Once the moving party informs the court of the basis of its motion and identifies the materials it believes demonstrate the absence of a genuine issue of material fact, the nonmoving party must oppose the motion with the evidentiary material listed in Rule 56(c). *Dobiecki v. Palacios*, 829 F. Supp. 229, 232 (N.D. Ill. 1993). The non-moving party cannot rest on the pleadings alone but must designate specific facts that establish that there is a genuine triable issue. *Id*. at 233. That is, the non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Id.* at 233, citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp*., 475 U.S. 574, 586 (1986). Reliance on a "scintilla of evidence" in support of the non-moving party's position is not sufficient to successfully oppose summary judgment rather, "there must be evidence on which the jury could reasonably find for the [nonmoving party]." *Id.* (quoting *Anderson v. Liberty Lobby, Inc*., 477 U.S. 242, 250 (1986).

ARGUMENT

Illinois law governs this case because none of the parties are residents of Indiana, Illinois is the forum state, and Illinois is the domicile of all potential beneficiaries. This Court should find that no triable issue of material fact exists with respect to whether Defendant was negligent. Defendant owed Victor and Mary Anne Smith a duty of ordinary care and breached that duty by driving his vehicle at an excessive speed and failing to keep a proper lookout. Further, this Court should find that the Defendant

driving a double tandem trailer in excess of 50 miles per hour during a snowstorm with his "eyes closed" was willful and wanton conduct as a matter of law.

I. ILLINOIS HAS THE MOST SIGNIFICANT RELATIONSHIP WITH THIS ACTION AND ITS LAW SHOULD GOVERN.

When federal jurisdiction is based upon diversity of citizenship, a district court must look to the law of the forum in which it sits for substantive law, *Erie R.R. Co. v. Tompkins,* 304 U.S. 64, 78, 58 S.Ct. 817, 822, 82 L.Ed. 1188 (1938), including the forum state's rules governing choice of law. *See Klaxon Co. v. Stentor Electric Mfg. Co.,* 313 U.S. 487, 496, 61 S.Ct. 1020, 1021, 85 L.Ed. 1477 (1941); thus, this court must apply Illinois' choice of law rules applying the most significant contacts approach. *See Ingersoll v. Klein,* 46 Ill.2d 42, 45, 262 N.E.2d 593, 595 (1970). This approach presumes that the local law of the state in which the injury occurred applies unless another state has a "more significant relationship" with the occurrence and with the parties, in which case that state's substantive law would control. *See id.* Here, Illinois has a more significant relationship with the parties and the occurrence so its law should apply.

"Rather than simply counting each state's contacts with the parties and the event involved and then selecting the law of the state with the highest tally, courts must evaluate each state's contacts in light of that state's interest in having its law applied to the occurrence." *Vantassell-Matin v. Nelson,* 741 F.Supp. 698, 703 (N.D.Ill.1990). What results is a three-step conflicts-of-laws analysis: "(1) isolate the issue and define the conflict, (2) identify the policies embraced in the conflicting laws, and (3) examine the contacts of the respective jurisdictions in order to determine which has a superior connection with the occurrence and thus would have a superior interest in having its

policy or law applied." *Morris B. Chapman and Assocs. Ltd. v. Kitzman,* 307 Ill.App.3d 92, 100-01, 240 Ill.Dec. 235, 244, 716 N.E.2d 829, 838 (1999); *see also International Adm'rs, Inc. v. Life Ins. Co. of No. Am.,* 753 F.2d 1373, 1376 (7th Cir.1985) (recognizing that Illinois choice of law rules employ the issue-by-issue examination of conflicts of law called "depecage").

A. A conflict exists between Illinois and Indiana law concerning the issue of calculation of damages, the method by which damages are presented to the jury, and the allocation of fault to non-parties.

"Because a conflicts analysis is only required when a difference in law will make a difference in outcome, [courts] initially must detect a conflict and then define it." *Morris B. Chapman and Assocs. Ltd.,* 307 Ill.App.3d at 101, 240 Ill.Dec. at 244, 716 N.E.2d at 838. In this case there are substantial differences between Indiana and Illinois law as applied to damages and allocation of fault to non-parties.

Calculation Medical Special Damages

Illinois and Indiana law are very different with respect to how damages for medical treatment are calculated and what may be presented to the jury. Under Illinois law, any difference in the amount charged and the amount paid by the insurance company to settle the bill does not decrease the damages paid to the plaintiff. *Arthur v. Catour*, 345 Ill.App.3d 804, 803 N.E.2d 647, 281 Ill.Dec. 243 (Ill.App. 3 Dist. 2004). Therefore, under Illinois law, Mr. Smith is entitled to the full amount charged for medical services and any evidence of a reduction negotiated by his insurance company is inadmissible as a violation of the collateral source rule.

Under Indiana law, the collateral source statute does not bar evidence of discounted amounts in order to determine the reasonable value of medical services. *Stanley v.*

Walker, 906 N.E.2d 852 (Ind. 2009). To the extent the adjustments or accepted charges for medical services may be introduced into evidence without referencing insurance, they are allowed. *Id.* Therefore, under Indiana law, Smith is only entitled to the full amount actually paid by his insurance company for medical services rather than the full amount charged by the provider.

If Indiana law were to apply Mr. Smith's potential recovery would be reduced significantly. The total discount negotiated by Mr. Smith's insurance providers is in excess of $100,000. Illinois has a significant interest in ensuring that its citizens are properly compensated.

Lost Wages

The rule in Illinois is that with respect to lost earnings or profits is that the injured plaintiff may recover for the time lost, even though he was paid a regular wage during the time off. *Cooney v. Hughes*, 310 Ill. App. 371 (1941); *Muranyi v. Turn Verein Frisch-Auf*, 308 Ill. App. 3d 213 (1999). In *Cooney,* the court held where salary of injured police office was gratuitously paid by city during police officer's absence, it would not warrant any deduction from actual damages which policeman was entitled to recover. *Cooney*, 310 Ill. App. at 373. *Cooney* is analogous and controlling, thus Mr. Smith is entitled to all lost wages claimed despite being compensated by the Chicago Police Department.

Furthermore, Mr. Smith's paid time off is part of his overall compensation with the Chicago Police Department. His Union negotiated extended paid time off in exchange for a lower wage. The Defendant should not reap any benefit from the Union's negotiation.

Under Indiana law, the collateral source rule applies to this type of situation according to statute. Ind.Code §§ 34-44-1-3. The statute abrogated the common law collateral source rule. Evidence of collateral source payments is only barred if the source is enumerated in the statute. Ind.Code §§ 34-44-1-3.[1] Evidence of collateral sources not covered by the statute is admissible. *Id.* In the present case Defendant argues that Mr. Smith's paid time off from the Chicago Police Department is not covered by the statute and therefore may be presented to the jury to negate his lost wage claim. The total collateral source payments from the Chicago Police Department are in excess of $100,000.

Non-Parties on Jury Verdict Forms

Under Illinois law the jury may apportion fault among the parties including all Plaintiffs and Defendants. *See Generally Ready v. United/Goedecke Services, Inc.,* 232 Ill.2d 369, 905 N.E.2d 725, 328 Ill.Dec. 836 (Ill. 2008). The jury is not allowed to apportion a percentage of fault to a non-party. Illinois has a significant interest in not confusing jurors with non-parties included on the verdict form who do not have an opportunity to defend themselves.

Under Indiana law "The jury shall determine the percentage of fault of the claimant, of the defendant, and of any person who is a nonparty." Ind.Code §§ 34-51-2-7. If

[1] "(A) payments of life insurance or other death benefits;
(B) insurance benefits for which the plaintiff or members of the plaintiff's family have paid for directly; or
(C) payments made by:
(i) the state or the United States; or
(ii) any agency, instrumentality, or subdivision of the state or the United States;
that have been made before trial to a plaintiff as compensation for the loss or injury for which the action is brought. I.C. § 34-44-1-3."

Indiana law were to apply to this issue several non-parties would be added to the jury verdict forms.

B. Policy

Having found that an actual conflict of law exists, this Court next must identify the policies embraced in the law of each of the competing states. To this end, Illinois law turns to the Restatement of Conflicts for guidance. The Court should consider these factors: (a) the needs of the interstate and international systems, (b) the relevant policies of the forum, (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, (d) the protection of justified expectations, (e) the basic policies underlying the particular field of law, (f) certainty, predictability and uniformity of result, and (g) ease in the determination and application of the law to be applied. *Morris B. Chapman & Associates,* 307 Ill.App.3d at 100, 240 Ill.Dec. at 243, 716 N.E.2d at 837 (1999) (citing Restatement (Second) of Conflict of Laws § 6(2)); *Pittway Corp. v. Lockheed Aircraft Corp.,* 641 F.2d 524, 526-27 (7th Cir.1981).

Illinois has a strong policy in favor of a broad application of the collateral source rule. In Illinois it is crucial that the tortfeasor not become the real beneficiary of a stranger's expenditure on behalf of the injured party. See Restatement (Second) of Torts § 920A, Comment b, at 514 (1979). The Defendant should not be rewarded for Plaintiff's forethought in buying insurance. Nor should the Defendant be rewarded for Mr. Smith getting paid time off in exchange for a lower wage.

Although "discounting" of medical bills is a common practice in modern healthcare it is a consequence of the power wielded by those entities, such as insurance companies, employers and governmental bodies, who pay the bills. *Arthur v. Catour*, 345 Ill.App.3d 804, 803 N.E.2d 647, 281 Ill.Dec. 243 (Ill.App. 3 Dist. 2004). While large "consumers" of healthcare such as insurance companies can negotiate favorable rates, those who are uninsured are often charged the full, undiscounted price. *Id.* In other words, simply because medical bills are often discounted does not mean that the plaintiff is not obligated to pay the billed amount. Defendant may, if they choose, dispute the amount billed as unreasonable, but it does not become so merely because plaintiff's insurance company was able to negotiate a lesser charge. For the same reasons, plaintiff receives no "windfall" when he is compensated for his reasonable medical expenses. To the extent that he receives an amount greater than that paid by his insurer in satisfaction of the bill, that difference is a benefit of his contract with the insurer, not one bestowed on his by the defendant.

FEDEX should not benefit from the fact that Smith's union negotiated extended sick leave in exchange for a lower salary. Any possible "double recovery" Smith receives as a result of barring evidence of collateral source payments from the Chicago Police Department is a benefit from his employer rather than one conferred on him by FEDEX.

Finally, both Illinois and the Federal Courts have a policy against allocating risk to non-parties. Including non-parties on a jury verdict form would confuse jurors. The Federal Rules of Civil Procedure provides a better vehicle for allocating fault to other parties than simply putting them on the verdict form without representation. Federal

Rule 22 provides "A defendant exposed to similar liability may seek interpleader through a crossclaim or counterclaim." Fed. R. Civ. Pro. 22 (a)(2).

C. **Superior connection**

Finally, the court must "examine the contacts of the respective jurisdictions to ascertain which has a superior connection with the occurrence and thus would have a superior interest in having its policy or law applied." *Mitchell,* 100 Ill.App.3d at 494, 55 Ill.Dec. at 382, 426 N.E.2d at 357. Illinois law recognizes the following as significant contacts: (a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered. *See Morris B. Chapman & Assocs., Ltd.,* 307 Ill.App.3d at 100, 716 N.E.2d at 837, 240 Ill.Dec. at 243; *Pittway Corp. v. Lockheed Aircraft Corp.,* 641 F.2d at 526.

The place of the injury is only a factor in determining the choice of law—it is not dispositive. *See Kaczmarek v. Allied Chemical Corp.,* 836 F.2d 1055, 1058 (7th Cir.1987). In this case, the parties were both coming from Illinois when the accident occurred. The Smiths were only passing through Indiana en route to Georgia. V. Smith at 16. Defendant driver was transporting cargo from Chicago to Indianapolis. Howard at 14. The fact that the accident happened to occur in Indiana should not be determinative. In this case, Illinois has a far more significant interest in this case than Indiana. The Smiths are domiciled in Illinois and the bulk of Mr. Smith's treatment occurred in Illinois. FEDEX is domiciled in Georgia and Delaware and does significant business

and employs thousands of Illinois citizens. Therefore, Illinois has a significant interest in the occurrence complained of.

Illinois law governs this case because none of the parties are residents of Indiana, Illinois is the forum state, and Illinois is the domicile of all potential beneficiaries. Accordingly, Illinois has a more significant interest in recovery of damages than Indiana whose only interest arises from the accident having occurred in Indiana.

II. DEFENDANT IS NEGLIGENT AS A MATTER OF LAW BECAUSE ITS AGENT WAS DRIVING AT AN EXCESSIVE RATE OF SPEED IN VIOLATION OF STATUTE.

The standard of care on Indiana highways is set by Indiana Statute, the relevant statute provides: "[a] person may not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions, having regard to the actual and potential hazards then existing." Ind.Code § 9-21-5-1 (1992). Further, pursuant to section 9-21-5-4, when weather or highway conditions create a hazard, the driver of a vehicle is required to "drive at an appropriate reduced speed." Ind.Code § 9-21-5-4 (1992).[2]

There should be no question that weather conditions that day constituted a hazard. The accident occurred during snowstorm. Melville at 5. Officer Melville observed that the snow "was coming down pretty heavy, visibility of about 500" *Id.* at 5. The snow was so heavy that the snowplows were unable to keep up to remove the snow. Melville at 50. Juan Howard observed that heavy snow began to fall about five minutes before the accident. Howard at 28. Howard testified he was unable to see some of the lane

[2] There is no apparent conflict between Indiana and Illinois law regarding the standard of care.

markers clearly because they were covered by snow. *Id*. at 30. Judith Tibbs testified that, "There was snow accumulating on the road." She had her wipers and lights on at the time of the accident. Tibbs at 14. David Cole testified it was snowing heavily at the time of the accident and the road surface was slippery. Cole at 24, 25.

The posted speed limit in the area where the accident occurred is 70 miles per hour. Melville at 6. Due to the severe weather all drivers who testified traveled at less than 40 miles per hour with the exception of Defendant Driver. Before the accident Howard was traveling at 50 miles per hour. Howard at 32. Tibbs was traveling at approximately 35 miles per hour. Tibbs 18. Cole was traveling at about 40 miles per hour and gradually slowed to a stop when he saw the accident ahead. Cole at 25-28. At the time Howard witnessed the accident ahead of him he was traveling between 45 and 50 miles per hour. Howard at 34. Major Melville stated Howard was traveling too fast for existing weather conditions. Melville at 36. Howard was operating a double tandem trailer that was larger than any other vehicle involved. There is no issue of material fact that Howard was traveling faster than other drivers on the roadway and too fast for weather conditions at the time of the accident.

The first accident was over when Howard came down that stretch of highway. The first accident was a hazard that required drivers to reduce speed. Ind.Code § 9-21-5-4 (1992) Howard noticed the accident ahead of him when he was about a half a mile away. Howard at 35, 36. Tibbs also slowed to about 5 miles per hour when she saw the first accident ahead. Tibbs at 22-24.

Howard lost control of his vehicle shortly before reaching the scene of the first accident. Howard at 37-38. Howard hit the right guardrail and rear of Tibbs's vehicle that was traveling in right lane at approximately 5 miles per hour. Tibbs at 22-24; Howard at 37-38. After hitting Tibbs, Howard closed his eyes for "a couple of seconds maybe" and hit Smith's vehicle parked on the right shoulder. Howard at 42. Mr. Smith was standing directly next to his vehicle that was completely off the roadway at the time Howard hit the Smith vehicle. Melville at 41, 57, 62.

The depositions cited above make clear that Howard was negligent as a matter of law. He violated Indiana statute by traveling too fast for weather conditions and as a direct and proximate result he lost control of his tandem trailer truck and hit the Smith vehicle.

III. DEFENDANT'S CONDUCT WAS WILLFUL AND WANTON AS A MATTER OF LAW.

An act or omission to act is willful and wanton when a motorist proceeds under circumstances exhibiting a reckless disregard for the safety of others. *Valiulis v. Scheffels*, 191 Ill.App.3d 775, 789, 547 N.E.2d 1289, 1298, 138 Ill.Dec. 668, 677 (Ill.App. 2 Dist. 1989). Howard's excessive speed and driving with his eyes closed is exhibited reckless disregard for the safety of others.

A failure, after knowledge of immediate danger, to exercise ordinary care to prevent it may constitute willful and wanton conduct. *Valiulis*, 547 N.E.2d at 1298, 138 Ill.Dec. at 677. Howard was aware that accidents had occurred ahead of him and did not reduce his speed. Howard at 35-38. When he knew of the immediate danger after the first collision he closed his eyes and prayed rather than exercising ordinary care to

prevent the accident. Howard at 42. This failure to take any action to avoid the collision constitutes willful and wanton conduct.

Failure to keep a proper lookout may amount to willful and wanton misconduct under certain circumstances. *Koch v. Lemmerman,* 12 Ill.App.2d 237, 241, 139 N.E.2d 806 (1956). In this case Howard's failure to keep a proper lookout was especially egregious because he closed his eyes for a couple seconds immediately before striking the Smiths vehicle parked on the right shoulder. Howard at 42.

Speed itself might establish willful and wanton conduct taking into consideration the degree of speed with reference to other surrounding facts and circumstances. *Smith v. Polukey*, 22 Ill.App.2d 238, 160 N.E.2d 508 (1959). Likewise, evidence of excessive speed also bears on the presence of negligent conduct. *Crosby v. Distler*, 38 Ill.App.3d 1058, 349 N.E.2d 448 (1976). Thus when speed is at issue, that which distinguishes willful and wanton conduct from negligent conduct is the degree of speed. Where the speed is grossly fast for conditions, the conduct is willful and wanton. *Smith*, 22 Ill.App.2d at 242, 160 N.E.2d at 512. Short of that, excessive speed constitutes negligent conduct. *Id.*

In this case, Howard's speed was grossly excessive for conditions. Despite driving a double tandem trailer it is undisputed that he was traveling at least 10 miles per hour faster than any other drivers involved in the accidents at that location (Howard was traveling at 50 miles per hour; Howard at 32. Tibbs was traveling at approximately 35 miles per hour; Tibbs 18. Cole was traveling at about 40 miles per hour; Cole at 25-28). This Court should hold that traveling at such a rate of speed in a

fifty-foot long double tandem trailer is willful and wanton conduct as a matter of law. *See* Photo of FEDEX Tandem Truck attached as exhibit C.

CONCLUSION

WHEREFORE, for each of the foregoing reasons, Plaintiffs pray that partial summary judgment be entered in favor of Plaintiffs, VICTOR SMITH and MARY ANNE SMITH, and against the Defendant FEDEX for liability.

(s/ Alexander N. Hattimer)

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Exhibit List

Exhibit A: Deposition of Victor Smith

Exhibit B: Deposition of Juan Howard

Exhibit C: Deposition of Judith Tibbs

Exhibit D: Deposition of David Cole

Exhibit E: Deposition of Thomas Melville

Exhibit F: Police Report 901059045

Exhibit G: Police Report 901059043