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CIRCUIT COURT
FOR MULTNOMAH COUNTY

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

18CV22336

GABRIEL BRYCE OWENS, an individual,

Plaintiff,

v.

MT. HOOD SKI BOWL, LLC, an Oregon limited liability company; **H. SKI CORP.**, a domestic business corporation; **MT. HOOD SKI COMPANY, LLC**, an Oregon limited liability company,

Defendants.

No.

COMPLAINT

CLAIM OVER \$10,000 NOT SUBJECT TO MANDATORY ARBITRATION

Prayer = \$17,275,000
Filing fee: \$1100.00
(ORS 21.160(1)(d))

JURY TRIAL REQUESTED

I. Introduction

1. This claim arises from a severe and permanent bodily injury caused by an unsafe facility created and maintained by Defendants at Mt. Hood Ski Bowl mountain bike park.

2. Gabriel Bryce Owens ("Plaintiff" or "Owens") through counsel alleges that at all material times:

II. The Parties

1
2 3. Owens was an adult male who lived in Oregon City, Oregon.

3 4. Mt. Hood Ski Bowl, LLC was an Oregon limited liability corporation with its
4 registered agent located in Multnomah County, Oregon.

5 5. H. Ski Corp. was a domestic business corporation with its registered agent
6 located in Multnomah County, Oregon.

7
8 6. Mt. Hood Ski Company, LLC was an Oregon limited liability company with
9 its registered agent located in Multnomah County, Oregon.

10 7. Mt. Hood Ski Bowl, LLC, H. Ski Corp., and Mt. Hood Ski Company, LLC
11 will be referred to collectively in this Complaint as "Defendants."

12
13 **III. Relevant Facts**

14 **A. Ski Bowl Amusement Park**

15 8. Defendants owned and/or operated a resort and outdoor amusement park
16 located at 87000 US Highway 26, Government Camp, Oregon 97028. ("Ski Bowl").

17 The Ski Bowl facility was on property the United States Forest Service leased to
18 Defendants for winter and summer commercial use pursuant to a U.S. Forest Service
19 special use permit.

20
21 9. Summertime operations at Ski Bowl encompassed a range of outdoor
22 family-oriented activities. These included miniature golf, batting cages, pony and
23 horseback riding, trampolines, bungee jumping, zip lines, kiddy carts, disc golf,
24 horseshoes, volleyball, badminton, and mountain biking.
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10. The Ski Bowl mountain biking facilities consisted of a lift-served mountain bike park typically operating from late June through September.

11. Defendants designed, installed, and maintained the Ski Bowl mountain bike trails. This included the signage; wooden pathways, ramps, and bridges; berms; drainage and other appurtenances and facilities related to operation and use of the trails.

12. Several of Ski Bowl's mountain bike trails were intended to be used, and were used by advanced riders who operate their mountain bikes on trails at high speeds.

13. Defendants have hosted mountain bike racing events at the Ski Bowl mountain bike park and knew or reasonably should have known before Owens' injuries that recreational and competitive riders traveled the Ski Bowl trails at high speeds.

14. Defendants also knew or reasonably should have known that riders occasionally crashed or fell from their mountain bikes at speed, causing them to slide, tumble, or roll down the trails before stopping.

15. One of the signed, marked, and maintained mountain bike trails at Ski Bowl was designated as "Cannonball." Cannonball was a double-track mountain bike trail that ran generally down the north face of the northeastern side of Tom Dick and Harry Mountain, and was accessed by Ski Bowl's upper bowl chairlift.

16. Cannonball began between the intersections of the Skyline Road/ Fireball trails and the Skyline Road/Sunrise trails. It ended at its intersection with the High

1 Road trail near Ski Bowl's "historic warming hut". Exhibit 1.

2 17. Cannonball had an average downhill grade of 17 percent and a maximum
3 downhill grade of 27 percent. A curve requiring an approximately 120-degree right turn
4 existed approximately 0.39 miles after the beginning point of the Cannonball trail. After
5 that curve, the trail sloped 15 percent or more and generally maintained that slope or
6 greater for the next approximately 650 feet. Approximately 0.51 miles from its
7 beginning, Cannonball crossed a hiking trail ("Cannonball Trail Crossing"). Exhibit 2.
8

9 18. A typical mountain bike with a rider of average weight freewheeling (i.e.
10 riding without any pedaling effort or braking) for 650 feet on a 15 percent downhill
11 grade will reach a speed of over 50 miles per hour. Given the terrain, slope, and other
12 characteristics of Cannonball in the mildly curved portion between the 0.39 and 0.51
13 mile points, it was foreseeable to Defendants that riders would reach speeds in excess
14 of 30 miles per hour immediately above the Cannonball Trail Crossing.
15

16 19. It was also foreseeable to Defendants that mountain bike riders would
17 occasionally lose control of, fall from, or crash their mountain bikes while riding downhill
18 at speed on Cannonball trail.
19

20 20. The area into which a mountain bike rider would reasonably be expected
21 to slide, tumble, or roll into or through when losing control, crashing, or falling from their
22 mountain bike is called the "crash zone."
23

24 21. A YouTube video posted by Defendants on September 3, 2016 titled
25 "Skibowl Bike Park – Cannonball" described Cannonball trail as "Our most difficult on
26

1 the upper mountain with high speeds, big jumps, and huge berms, it is a double black
2 diamond and downhill bikes are recommended.”¹ The mountain bike rider in that
3 promotional video was riding at approximately 30 to 35 miles per hour as he
4 approached the Cannonball Trail Crossing.

5 22. Concurrent with re-opening its mountain bike park for the 2016 season,
6 Defendants placed or maintained signage along and adjacent to its trail system,
7 including Cannonball. This included instructional and directional signs for mountain
8 biker riders and for hikers.

10 **B. Accepted Safe Design Criteria for Mountain Bike Parks**

11 23. Criteria existed for the design, construction, and layout of mountain bike
12 parks, including Ski Bowl. These criteria establish a standard of care for the industry in
13 terms of design to protect against otherwise foreseeable injuries to users of a mountain
14 bike park. These included guidance concerning the materials used to construct signs
15 and signposts adjacent to mountain bike trails, their location and placement adjacent to
16 trails, and within crash zones.

18 24. Specifically, signs placed within a crash zone or otherwise along or
19 adjacent to areas where high speeds and falls by riders are foreseeable should be
20 designed, constructed, and installed in a manner and from materials that cause the
21 sign and its post to break away in a collision without causing substantial injury to a rider
22 who may strike the sign or its post.

25 ¹ <https://www.youtube.com/watch?v=fUGFhHymU8w>

26

1 25. Further, to the extent possible and while still maintaining the intended
2 function and purpose, signs and posts placed along areas where high speeds and falls
3 were foreseeable should be placed as far from the trail as possible; placed outside of
4 the likely crash zone; placed on an existing natural structure such as a tree or rock; or
5 suspended overhead.

6 **C. Defendants Violated Safe Design Criteria for Mountain Bike Parks**

7
8 26. During the 2016 mountain biking season at Ski Bowl, Defendants placed
9 or maintained a number of signs along trails within its mountain bike park, including
10 Cannonball. Signs located near the trails, and particularly signs near high speed
11 portions of mountain bike trails or within foreseeable crash zones were typically placed
12 on small wooden posts or other supports that would easily break away or could be
13 overturned without causing substantial injury to a mountain bike rider who struck them
14 at speed. Exhibit 3. Other signs along the trails were placed on pre-existing natural
15 structures such as trees or rocks. Exhibit 4. Overhead signs were also an option at
16 appropriate locations. Exhibit 5.
17

18 27. An exception to the above described break-away signage existed near the
19 area of the Cannonball Trail Crossing. There, Defendants placed or maintained signs
20 mounted on 4"x 4" solid wooden posts that were secured firmly into the ground, and
21 placed immediately adjacent to the Cannonball trail. These signs and posts were
22 within the area that riders approaching the Cannonball Trail Crossing would reasonably
23 be expected to ride, slide, or tumble if they lost control, fell from, or crashed their
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1 mountain bikes on the high-speed approach to the intersection. Exhibit 6.

2 28. The function and purpose of the signs placed on the 4"x 4" wooden posts
3 adjacent to the Cannonball Trail Crossing and within the crash zone could have been
4 achieved through other safer and more reasonable methods that would have been in
5 accord with generally-accepted design criteria for mountain bike park and trail design.

6 29. The 4"x4" wooden sign posts placed adjacent to the Cannonball Trail
7 Crossing and within the crash zone posed an unreasonable and foreseeable risk of
8 harm to mountain bike riders on the Cannonball mountain bike trail.

9
10 **D. Owens' Experience at Ski Bowl Mountain Bike Park**

11 30. On July 31, 2016 Owens purchased a Ski Bowl lift ticket, used the Ski
12 Bowl lifts, and rode his mountain bike down various designated mountain bike trails at
13 the Ski Bowl mountain bike park.

14
15 31. While there, Owens rode down Cannonball. As he approached a point
16 approximately one-half mile from the beginning of Cannonball, and immediately uphill
17 from the Cannonball Trail Crossing, Owens was traveling at a foreseeable rate of
18 speed and in a manner customary for mountain biker riders on that section of the
19 Cannonball trail.

20
21 32. Immediately uphill from the Cannonball Trail Crossing, Owens lost control
22 of his mountain bike, crashed, and slid downhill within the boundaries of the
23 Cannonball trail and within the foreseeable crash zone.

24
25 33. As he slid down Cannonball and neared the Cannonball Trail Crossing,
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1 Owens' torso forcibly struck one of the 4"x 4" solid wooden posts placed immediately
2 adjacent to and within the crash zone of Cannonball trail.

3 34. Because of the strength and rigidity of the 4"x 4" sign post, and because it
4 was solidly affixed to the ground it failed to easily break away when Owens struck it.
5 Instead, the sign post caused severe and permanent bodily injury to Owens.

6 **E. Owens' Injuries and Damages Caused by Unsafe Conditions at the Ski**
7 **Bowl Mountain Bike Park**
8

9 35. As a direct and proximate result of Defendants' negligent acts and
10 omissions, Owens suffered the following injuries:

- 11 a. Spinal cord injury and lesion resulting in an ASIA A T12 rating
12 (complete paraplegia below the T12 level).
13
14 b. Left T8 facet displacement and pedicle spondylitis fracture;
15
16 c. Anterior wedging of T8 and T11 vertebral bodies;
17
18 d. Spondylolysis to T9 pedicles with anterior displacement of the
19 vertebral column at T9 and above;
20
21 e. Unstable fracture with dislocation at the T9-T10 vertebra with
22 16mm anterolisthesis and complete effacement of the thecal sac;
23
24 f. Comminuted fracture of T10 involving posterior elements of the
25 vertebral body / anteropulsion of a large fragment of T10;
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g. Osseous fragments present within the spinal canal at level T9-T10;
h. Chance fracture of the T11 vertebral body with marked post-

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traumatic anterolisthesis at T10-T11 with central canal narrowing and surrounding hemorrhage, including around the descending thoracic aorta;

- i. Extensive soft tissue swelling around the spinal column at levels T8-T12;
- j. Nondisplaced left posterior 10th rib fracture near the costovertebral junction;
- k. Bilateral posterior displaced 11th rib fractures, comminuted right posterior rib fracture;
- l. Bilateral hemothoraces with adjacent atelectasis and/or pulmonary contusions and trace plural gas bilaterally;
- m. Right apical pneumothorax;
- n. Left anterior pneumothorax;
- o. Displaced fracture of triquetrum (cuneiform) bone, right wrist with dorsal soft tissue swelling;
- p. Left inferior eyelid and periorcular area laceration.

36. As a further direct and proximate and ongoing result of his injuries, Owens has experienced:

- a. Neurogenic / neuromuscular dysfunction of his bladder;
- b. A neurogenic bowel;
- c. Stage 4 pressure ulcer of his lower left back;

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- d. Stage 4 pressure ulcer of his lower right back;
- e. Stage 4 pressure ulcer of the trochanteric region of his left hip;
- f. Chronic ulcer of his right thigh with necrosis of bone;
- g. Necrotizing fasciitis;
- h. Sepsis from pseudomonas species;
- i. Acute pulmonary embolism;
- j. Acute pulmonary edema;
- k. Wound infections;
- l. Staphylococcal and pyogenic arthritis of the right hip;
- m. Cellulitis;
- n. Tinea cruris;
- o. Osteomyelitis of his pelvic region and hip;
- p. Polymicrobial / trochanteric osteomyelitis on his left hip and pelvis;
- q. Chronic osteomyelitis of his left femur with draining sinus;
- r. Bacterial pneumonia;
- s. Acute respiratory failure with hypoxia;
- t. Protein calorie malnutrition;
- u. Acute post hemorrhagic anemia;
- v. Dysphagia;
- w. Chronic and severe pain;
- x. Severe depression;

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y. Contusions, bruising, and multiple infections.

37. Owens has undergone an extensive course of medical treatment and care for his injuries, including:

- a. A T10 decompression surgery with T6-L2 posterior instrumented vertebral fusion using screws, rods, plating, and hardware;
- b. Multiple and extended hospitalizations and additional surgeries to treat infections and other ongoing medical issues;
- c. Prescription drug therapy;
- d. Physical rehabilitation;
- e. Mental health counseling and care;
- f. Acquisition and use of various wheelchairs, medical support devices, catheters, and other medical products.

38. Owens has incurred medical and rehabilitation bills in the amount currently believed to exceed \$450,000. Owens will amend this Complaint to more accurately state his medical costs upon receipt of a current billing statement from his providers.

39. Owens' condition is permanent and progressive and will require future and ongoing medical care, skilled nursing care, rehabilitative services, mental health counseling, medical devices, and drug therapy. The cost of his future care and services will likely exceed \$5,500,000. Owens intends to amend this complaint to more accurately state his anticipated future medical costs after becoming medically stationary and consultation with the appropriate professionals.

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40. Owens has incurred lost wages in the amount of \$75,000 to date.

41. Owens has sustained a loss of future earning capacity in an amount currently estimated to be at least \$1,250,000 in present value.

42. Owens has suffered, and will continue to suffer ongoing and chronic pain, loss of bodily control and functions, paralysis, mental and emotional distress, humiliation, limitation in his ability to participate in and enjoy recreational and social activities, loss of the ability to father children, decreased life expectancy, sleeplessness, inconvenience, and other foreseeable losses and limitations resulting from his injuries, all to his non-economic damages in an amount to be determined by a jury at trial, but currently not to exceed \$10,000,000.

F. First Claim for Relief

(Premises Liability)

43. Owens re-alleges paragraphs 1 through 42 and further alleges:

44. At all material times, Owens was a business invitee at the Ski Bowl mountain bike park ("Park").

45. As owners and managers of the Park, Defendants owed a duty to business invitees such as Owens to maintain the Park in a condition reasonably safe for their foreseeable use.

46. Defendants failed to maintain the Park in a reasonably safe condition for Owens' foreseeable use because it:

- a. placed rigid 4"x 4" wooden sign posts within or immediately

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adjacent to a high-speed portion of the Cannonball mountain bike trail near the Cannonball Trail Crossing;

b. placed rigid 4"x 4" wooden sign posts within the crash zone of the high-speed portion of the Cannonball mountain bike trail near the Cannonball Trail Crossing;

c. failed to comply with reasonable and accepted criteria for the safe design, construction, and/or maintenance of a mountain bike park.

47. As a direct and proximate result of Defendants' failure to maintain the Park in a reasonably safe condition, after experiencing a foreseeable crash and fall, Owens suffered the injuries and damages detailed in this Complaint.

**G. Second Claim for Relief
(Negligence)**

48. Owens re-alleges paragraphs 1 through 47 and further alleges:

49. Defendants were negligent in one or more of the following ways that caused foreseeable injury to Owens:

a. failed and neglected to design, construct, or maintain the mountain bike trails within the Park in a manner consistent with generally accepted design principles concerning sign placement in a mountain bike park;

b. failed and neglected to design and maintain the mountain bike trails within the Park in a manner consistent with generally accepted

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design principles concerning placement of rigid obstacles within the foreseeable crash zone in a mountain bike park;

c. placed rigid 4"x 4" wooden sign posts within or immediately adjacent to a high-speed portion of the Cannonball mountain bike trail near the Cannonball Trail Crossing; and

d. placed rigid 4"x 4" wooden sign posts within the crash zone of the high-speed portion of the Cannonball mountain bike trail near the Cannonball Trail Crossing.

H. Request for Relief

1. Owens seeks judgment against Defendants as follows:

a. Economic damages in an amount to be determined by the jury at trial but not to exceed \$7,275,000;

b. Non-economic damages in an amount to be determined by the jury at trial but not to exceed \$10,000,000;

c. All legally recoverable costs and disbursements incurred in this matter.

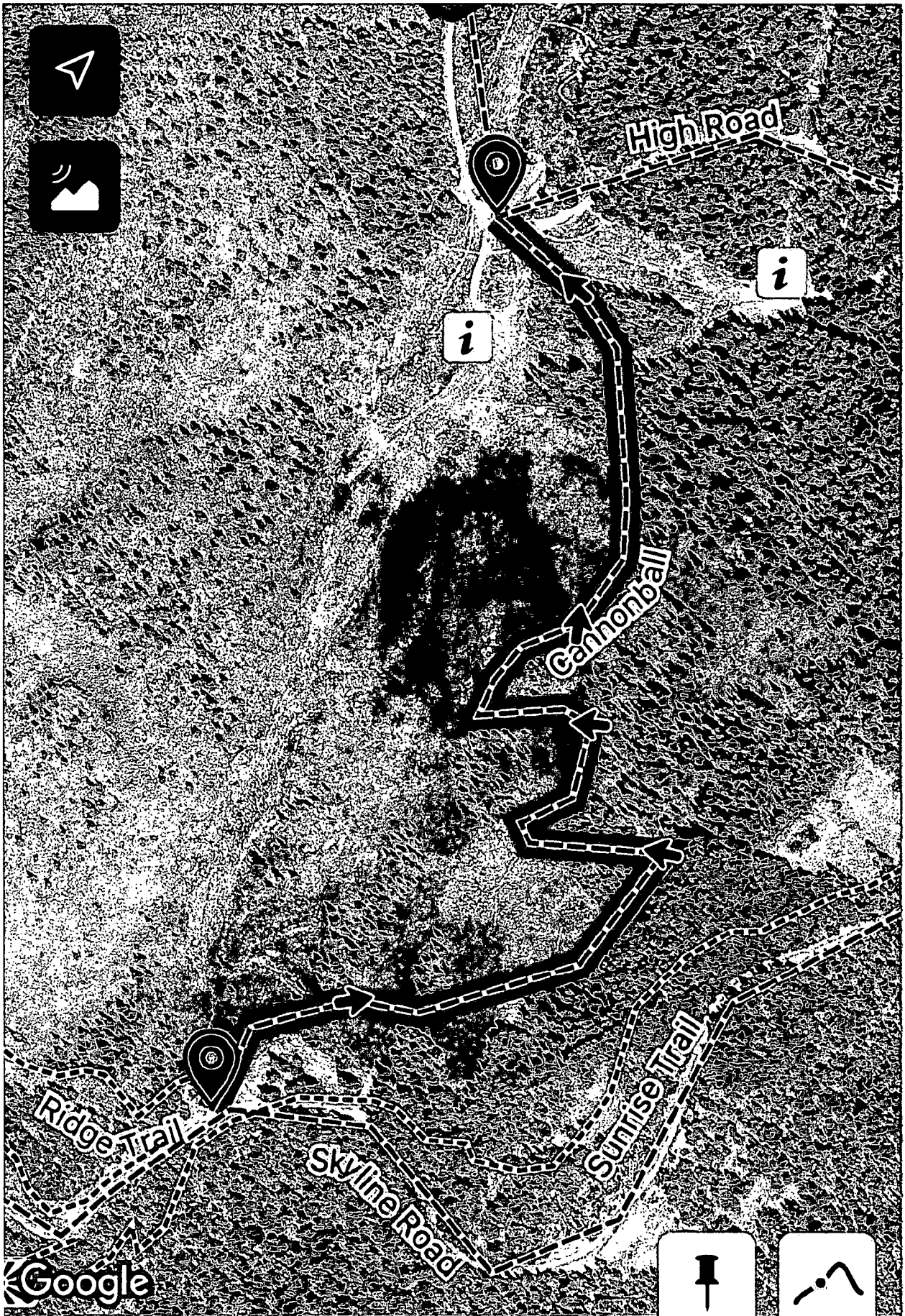
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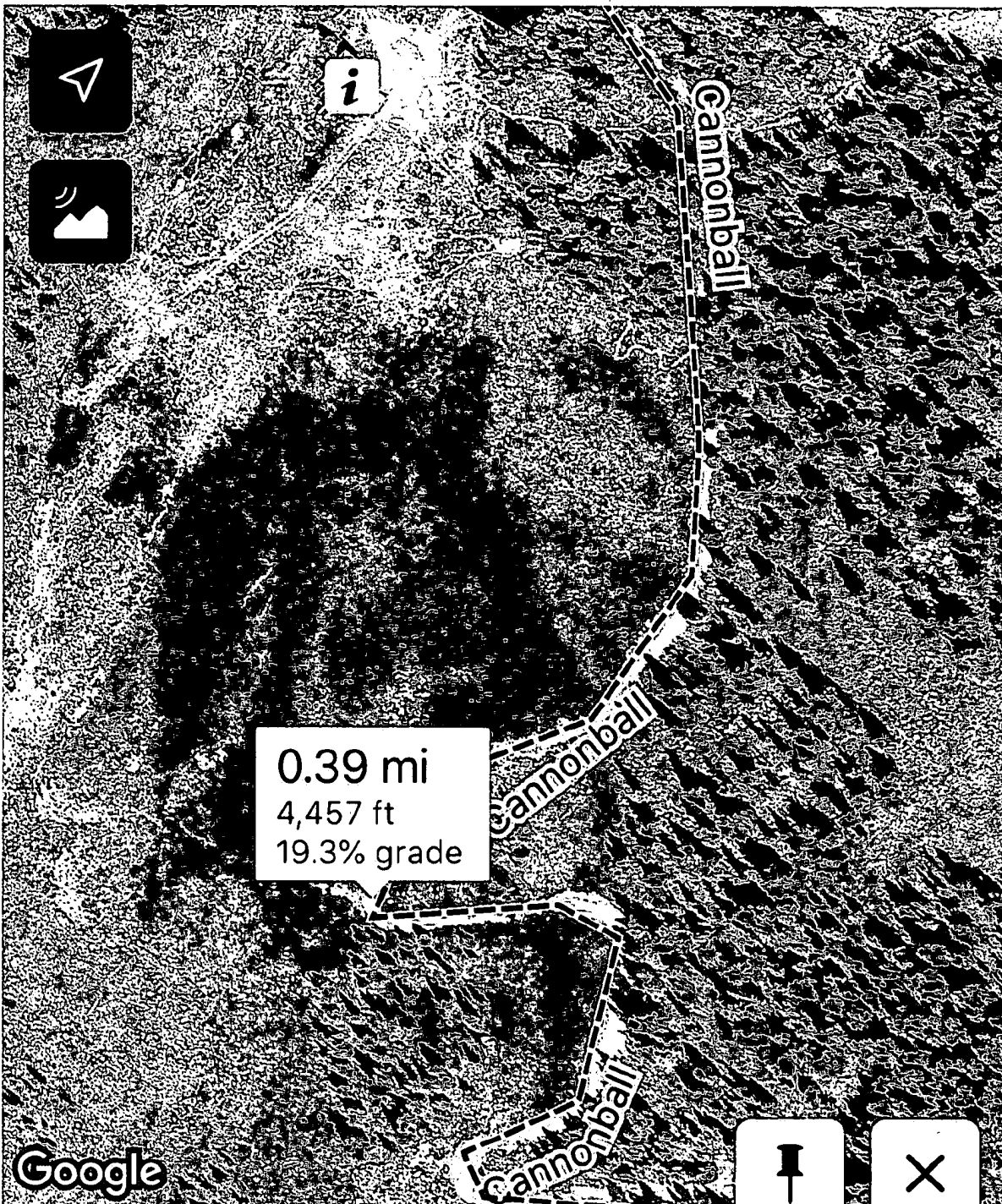
RICK KLINGBEIL, PC

/s/ Rick Klingbeil

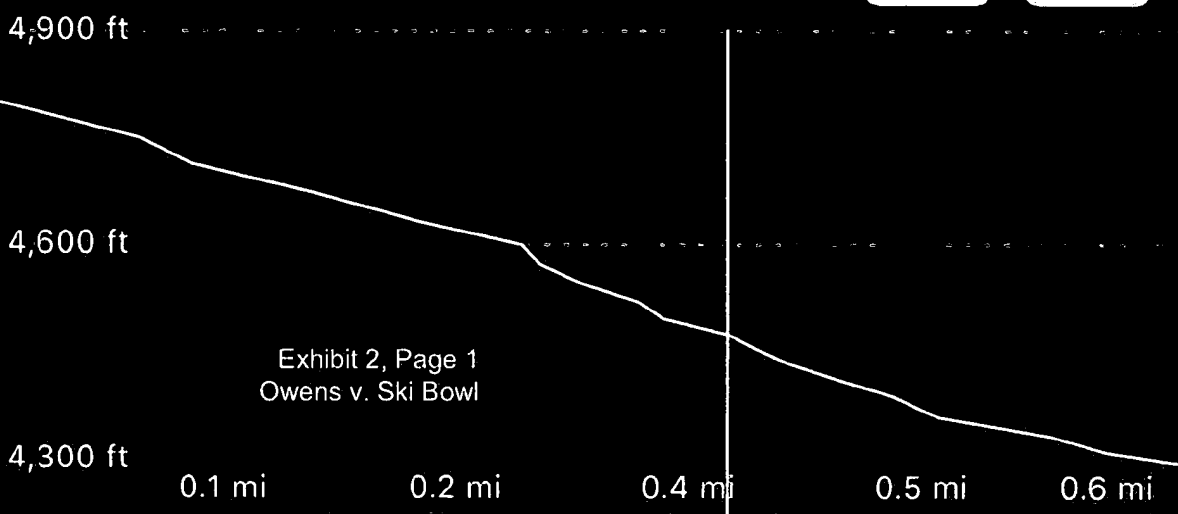
Rick Klingbeil, OSB #93332
Attorney for Plaintiff

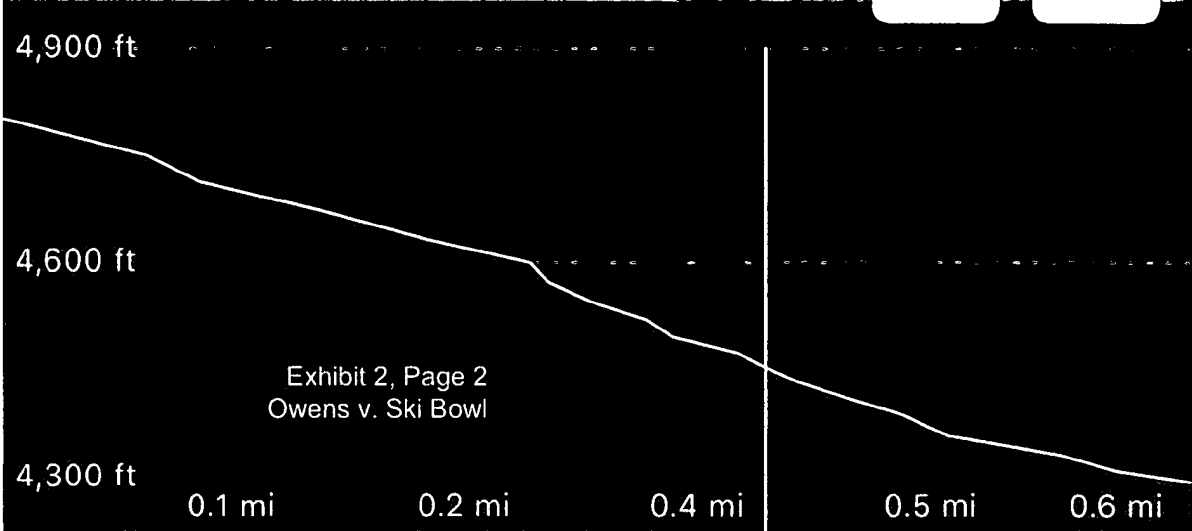
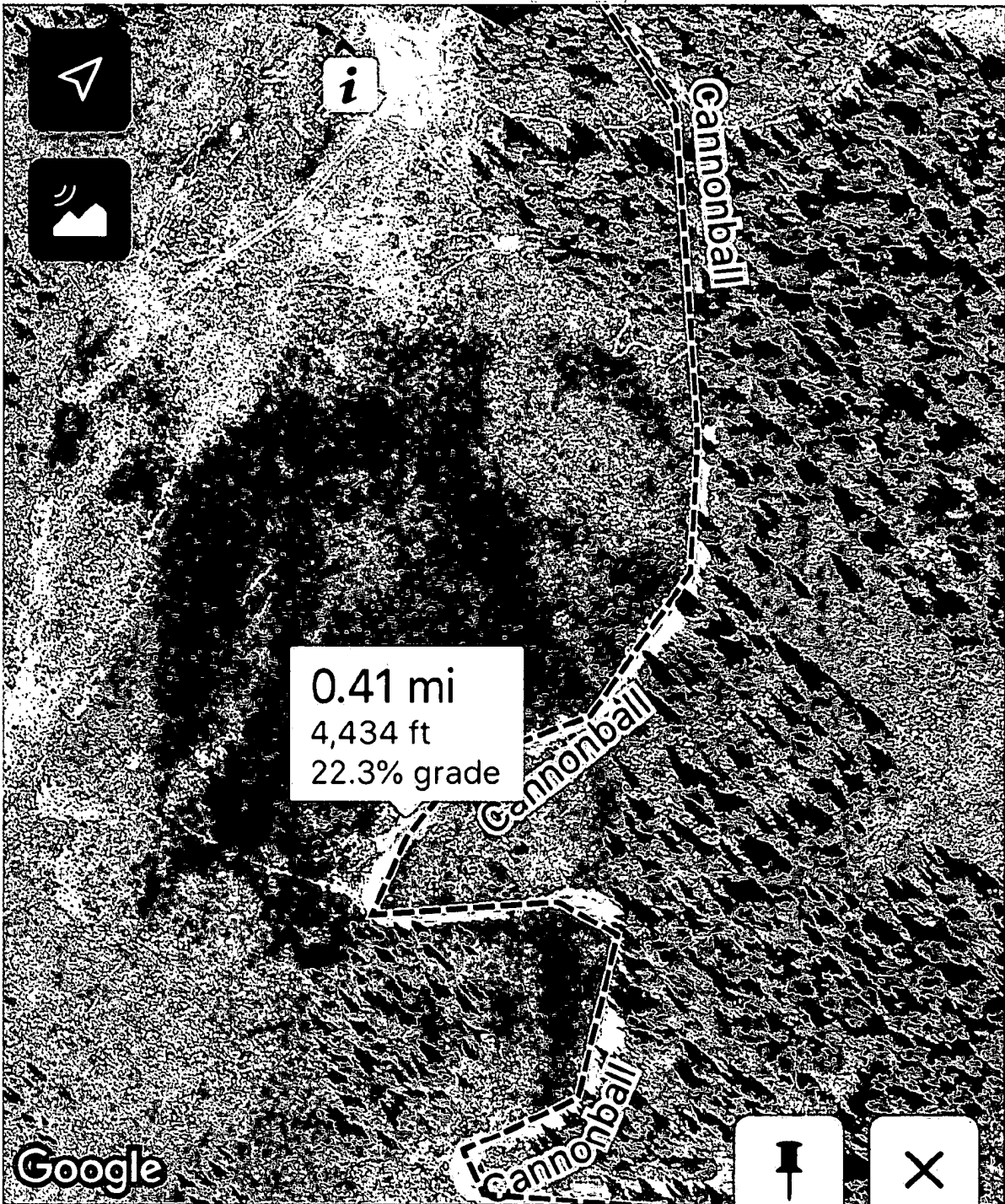
Trial Attorney: Rick Klingbeil

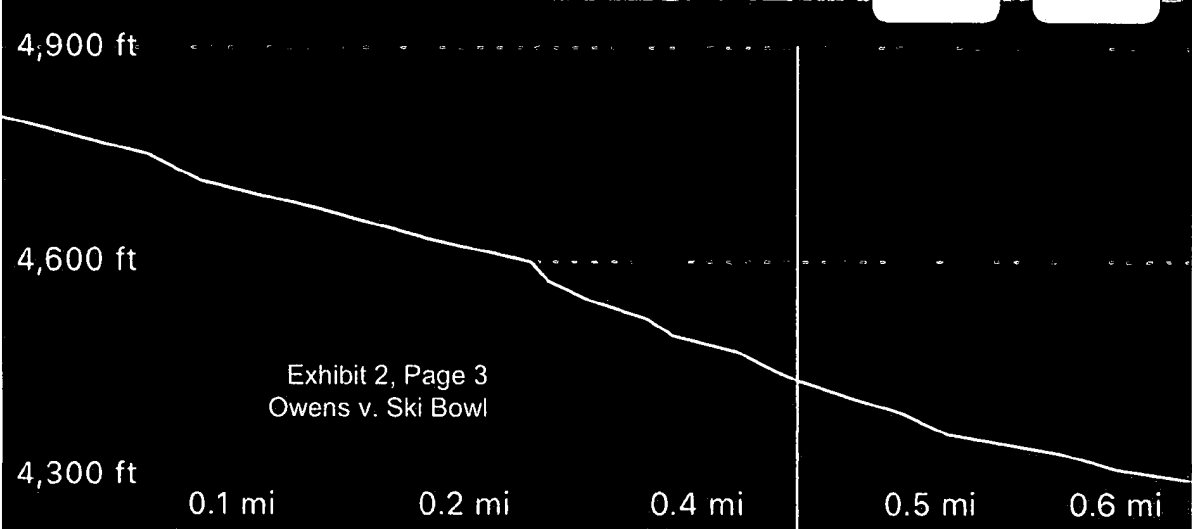
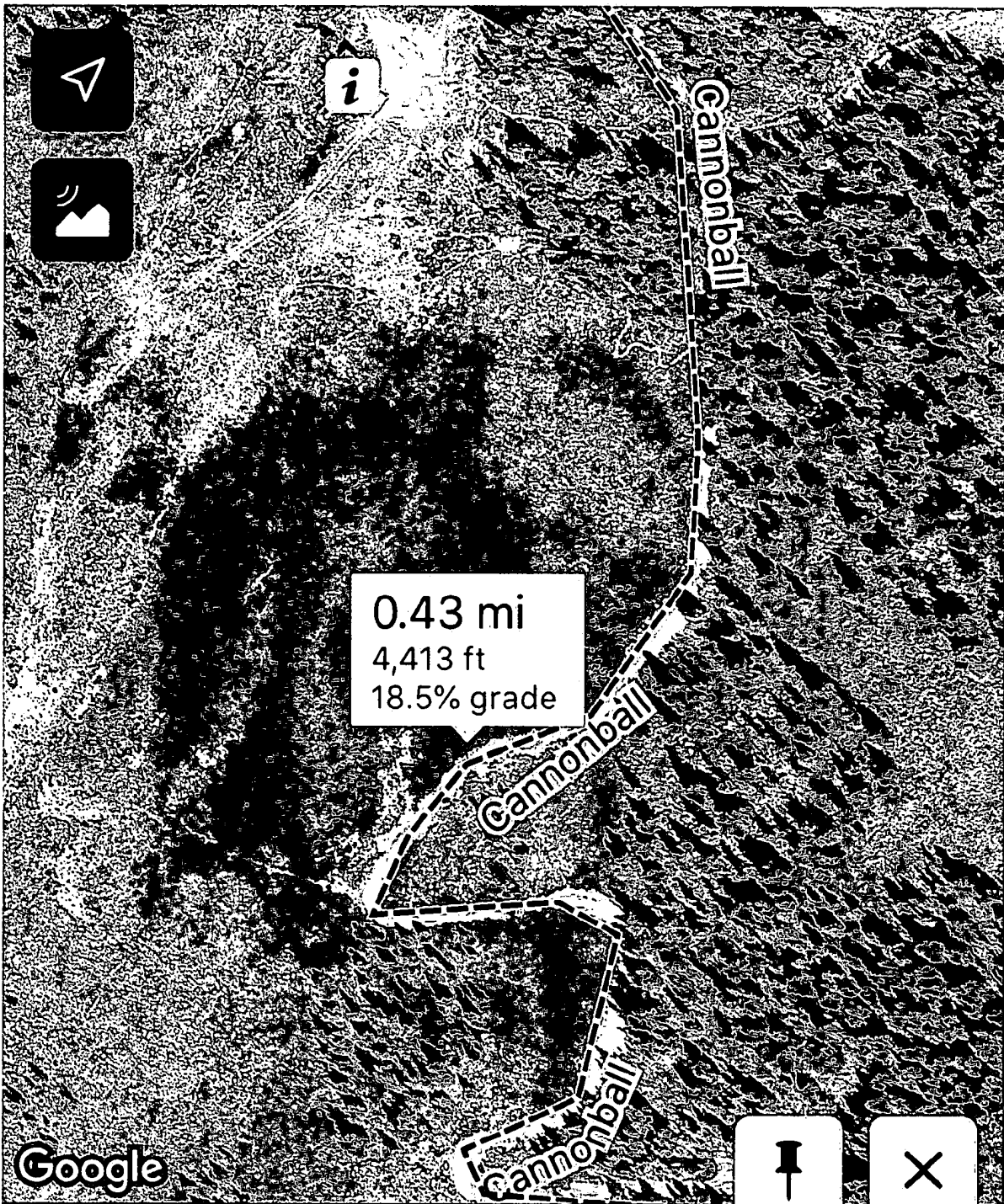




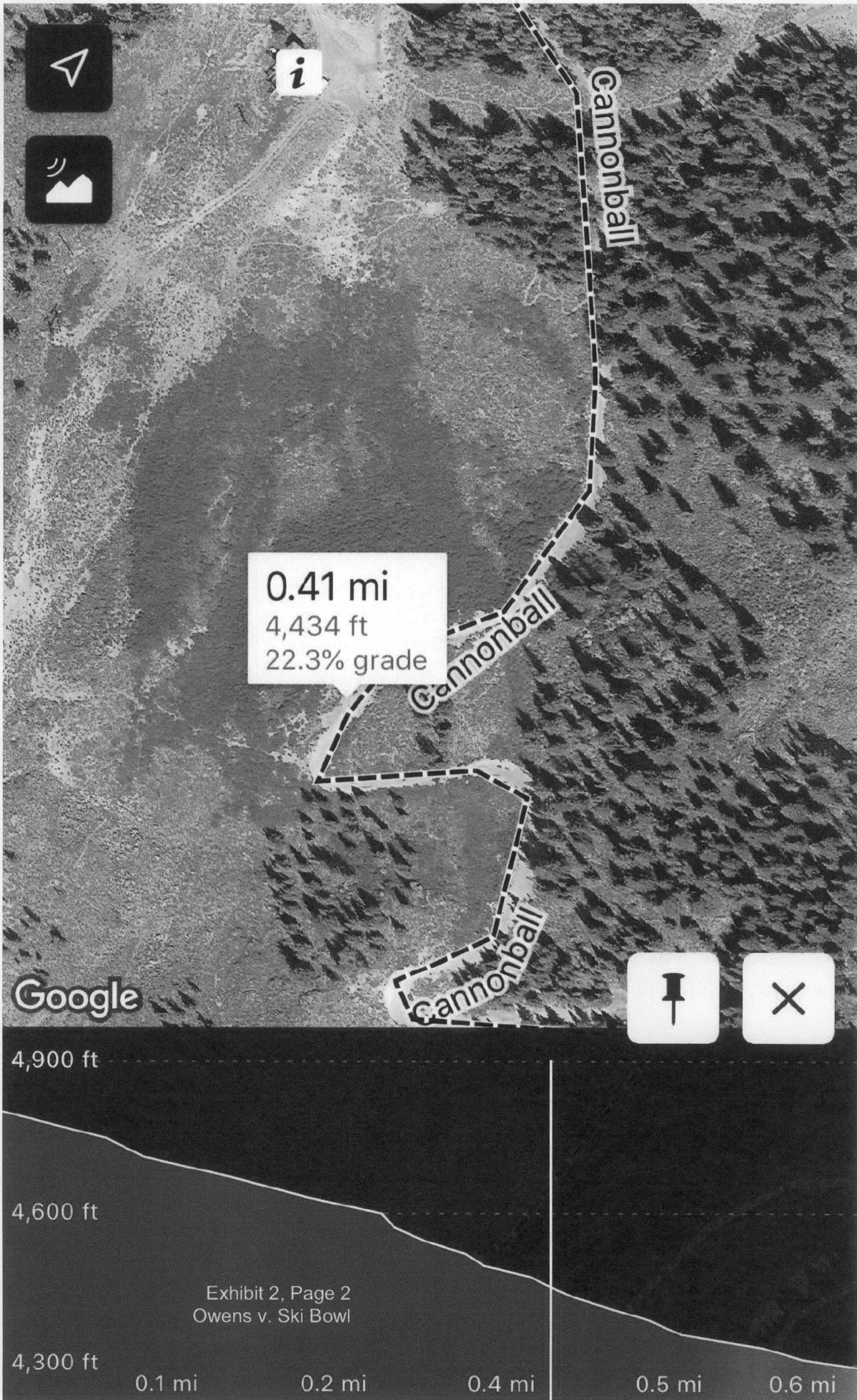
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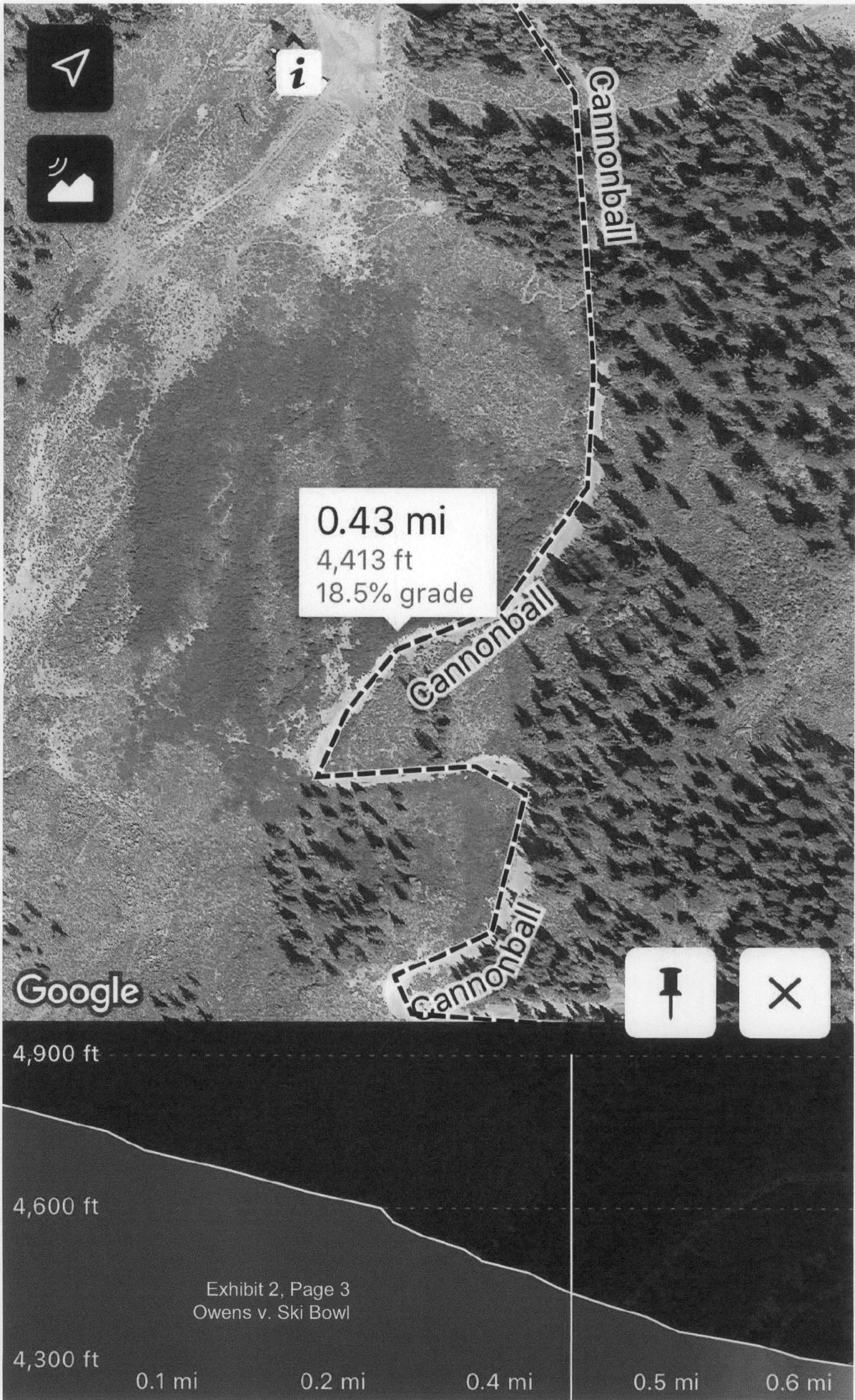














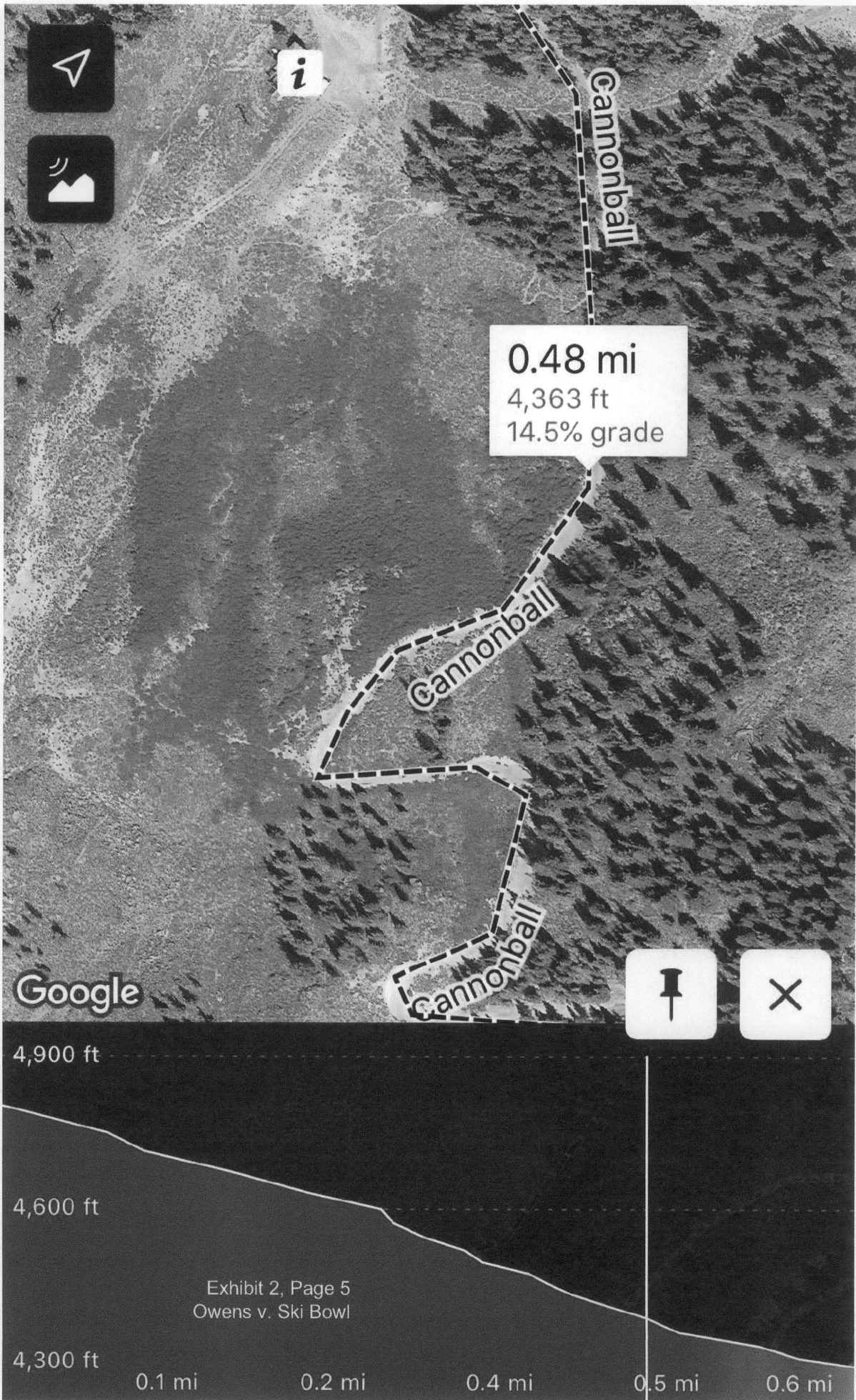








Exhibit 8, Page 1
Owens Valley Ski Bowl



Exhibit 3, Page 2
Owens v. Ski Patrol





Exhibit 3, Page 4
Owens v. Ski Bowl



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Exhibit 3, Page 5
Lawrence Ski Bowl







Exhibit 3, Page 8
Owens v. Ski Bowl



Exhibit 3, Page 9
Owens v. Ski Bowl





Exhibit 1 Page 1
Owens v. S. Bay



Exhibit 3 Page 12
Owens v. Ski Bowl



Exhibit 3, Page 13
Owens v. Ski Bowl

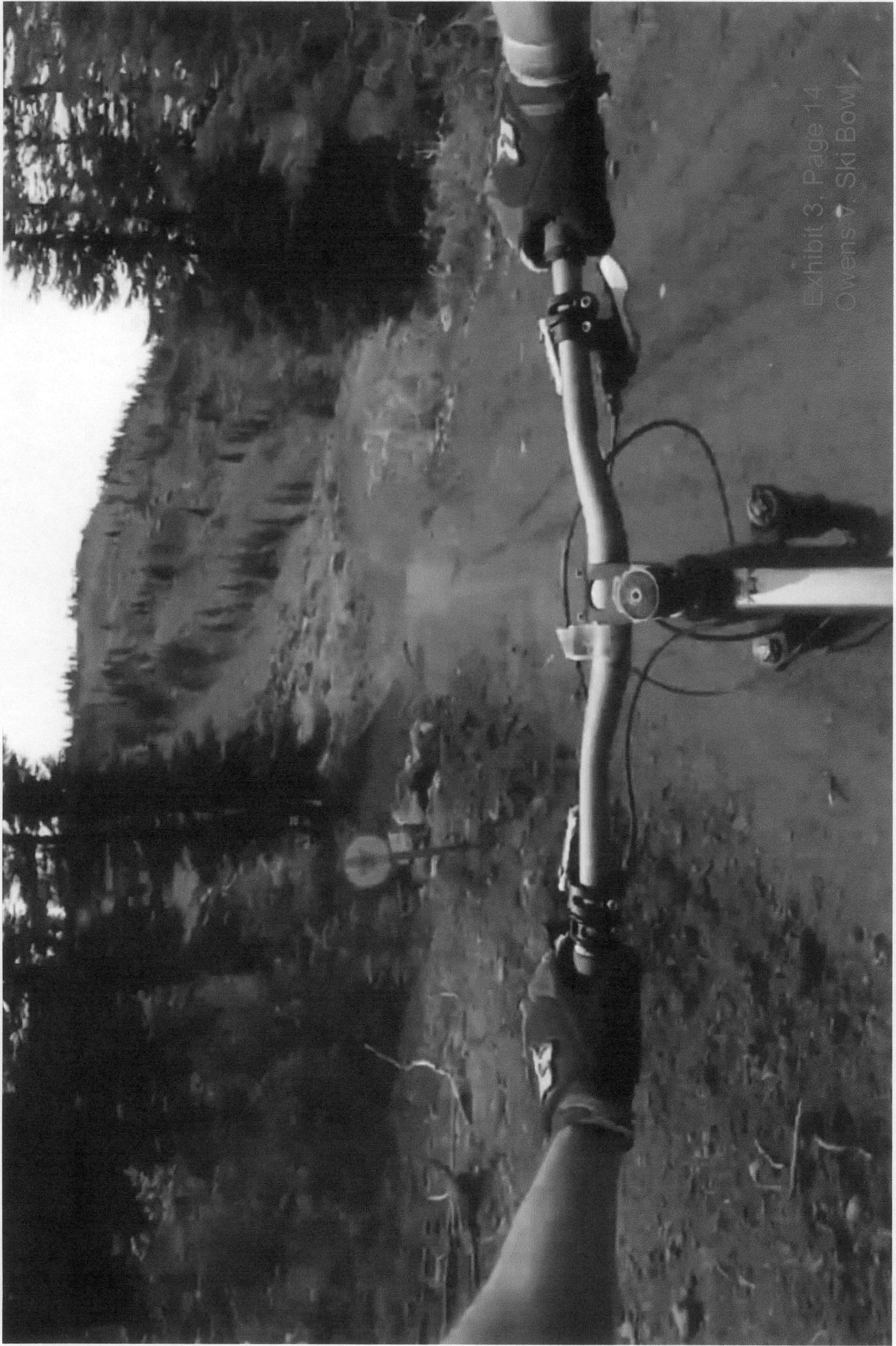




Exhibit 3, Page 15
Owens v. Ski Bowl

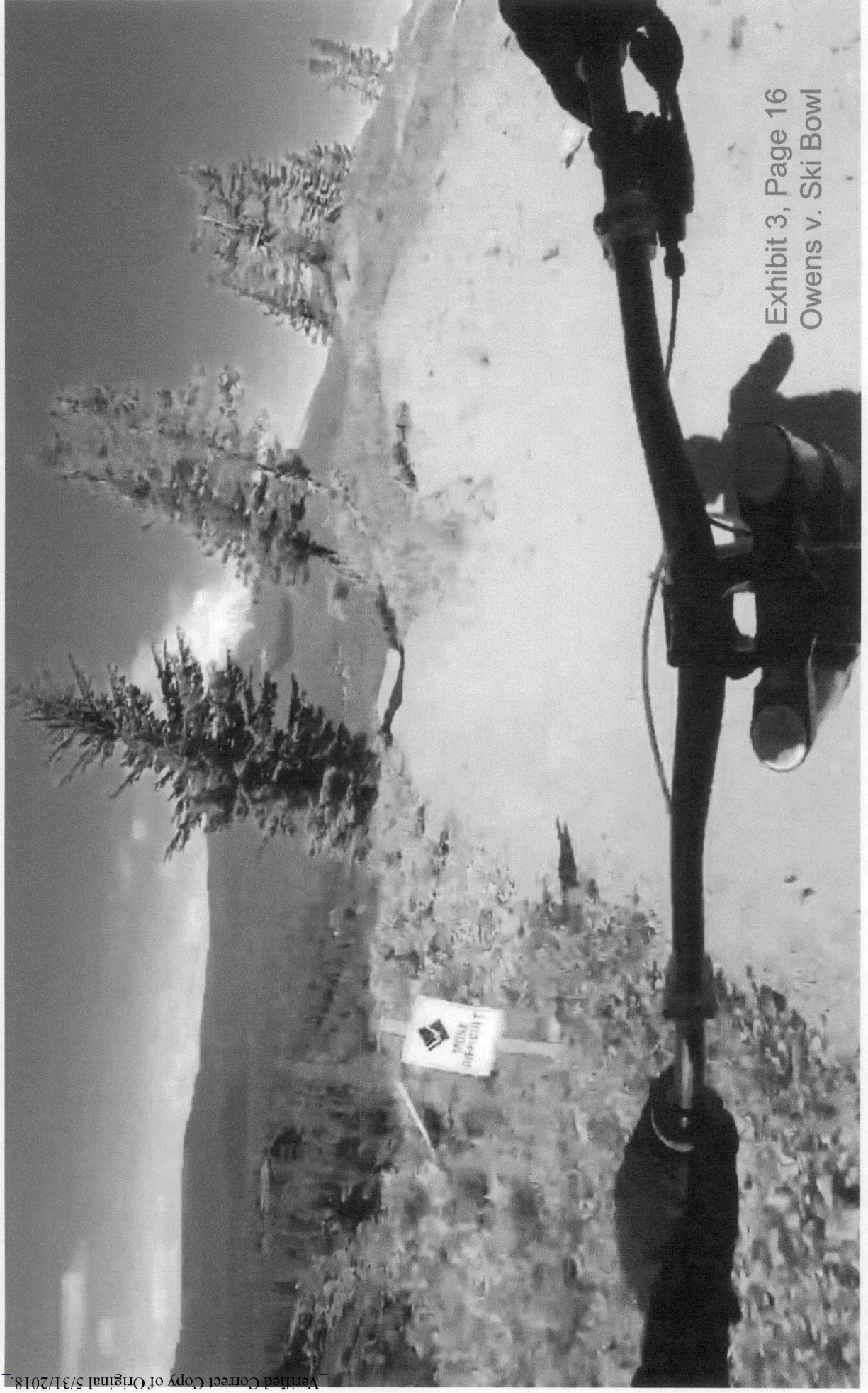


Exhibit 3, Page 16
Owens v. Ski Bowl



Exhibit 3, Page 17
Owens v. Ski Bowl



Exhibit 3, Page 18
Owens v. Ski Bowl





Exhibit 3, Page 20
Owens v. Ski Bowl

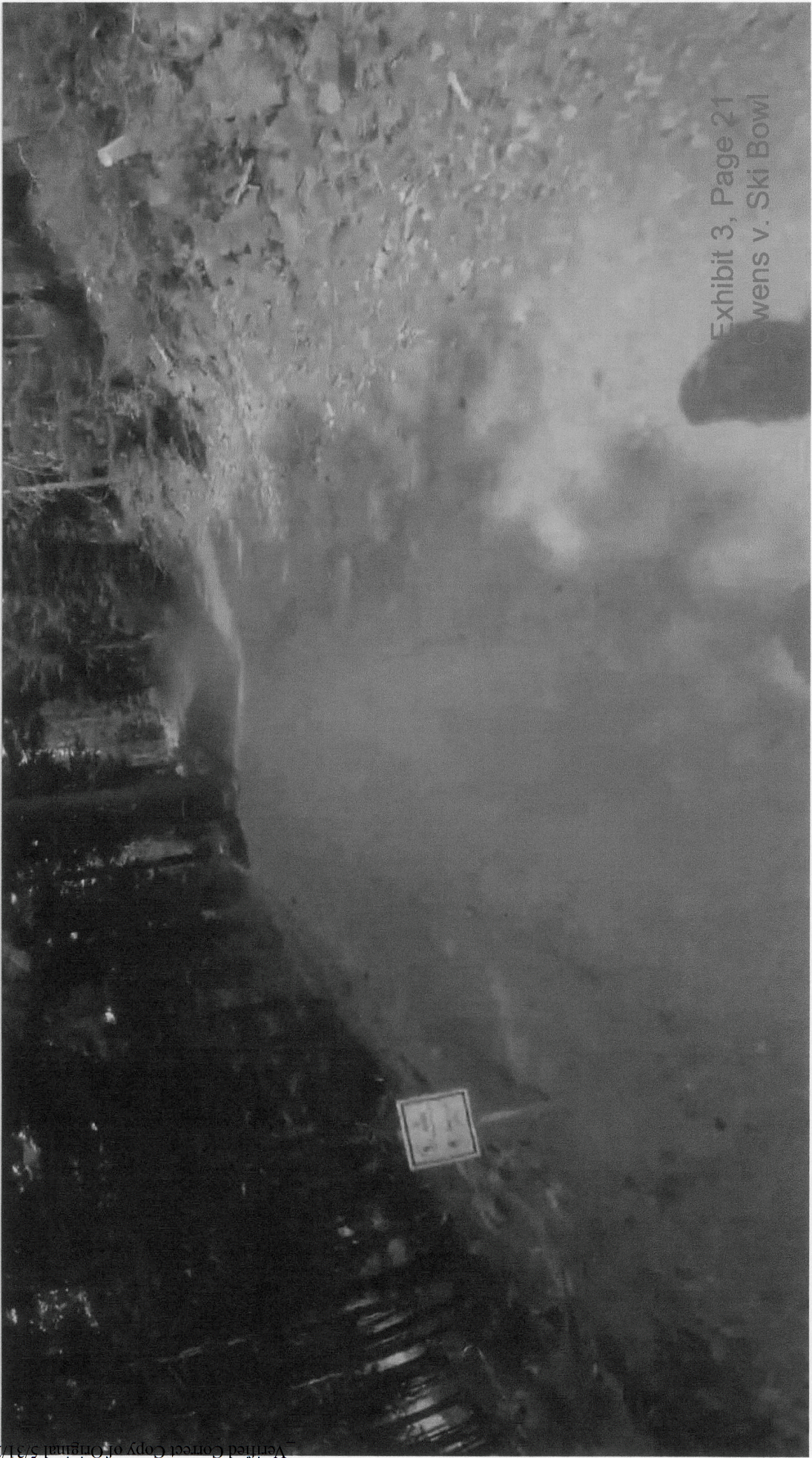


Exhibit 3, Page 21
Owens v. Ski Bowl



Exhibit 4, page 1
Owens v. Ski Bowl



Exhibit 4, page 2
Owens v. Ski Bowl



Exhibit 4, page 3
Owens v. Ski Bowl



Exhibit 4, page 4
Owens v. Ski Bowl



Exhibit 4, page 5
Owens v. Ski Bowl