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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis

Appellate Case No. 2021-000685

The Station, Inc. d/b/a Company Two, Inc., ...Appellant,

v.

Hampton County, ...Respondent.

**RECORD ON APPEAL
VOLUME II**

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1 MR. WILSON: Your Honor, we'd call Mr. Blake
2 Hodge. I believe we've got him out here, Mr. Blake
3 Hodge?

4 (Larry Blake Hodge, Jr. was duly sworn
5 and testified as follows)

6 **DIRECT EXAMINATION BY MR. WILSON**

7 BY MR. WILSON:

8 Q. Mr. Hodge, how are you doing today?

9 A. Doing good.

10 Q. Good. Can you give the jury -- the jury your
11 full name, please?

12 A. It's Larry Blake Hodge, Jr.

13 Q. And, Mr. Hodge, where do you live?

14 A. I live in Varnville, South Carolina.

15 Q. Did you grow up here in Hampton County?

16 A. No, sir.

17 Q. How long have you been in Hampton County?

18 A. Seventeen years.

19 Q. All right. And what do you do for a living?

20 A. I'm the Director of Public Works for Hampton
21 County.

22 Q. Okay. How long have you been in that position?

23 A. Seventeen years.

24 Q. All right. So they were lighting the fire when
25 you got here, hey?

1 A. Yes, sir.

2 Q. Got you. Director of Public Works?

3 A. Yes, sir.

4 Q. All right, what -- just tell the jury,
5 generally, what that entails.

6 A. Well, we have a couple of departments, known as
7 roads and bridges, building and grounds, vehicle
8 maintenance, so we're a catchall pretty much for the
9 County. We do a little bit of everything.

10 Q. Does some of what your department covers
11 encompass the Hampton-Varnville Airport, now called
12 the Hampton County Airport?

13 A. Yes, sir.

14 Q. And that wouldn't fall under roads and bridges,
15 would it?

16 A. No, sir.

17 Q. It falls under building and grounds, I think?

18 A. Yes.

19 Q. And your assistant who's in charge of that, I
20 believe, is Dobie Hiers?

21 A. Yes, sir.

22 Q. As I recall, your department did some work --
23 well, let's back up and talk about this.

24 Are there any buildings out there at the airport
25 property that belong to Hampton County?

1 A. Yes, sir.

2 Q. What was there?

3 A. The Pilot's Lounge.

4 Q. Okay, y'all call it the Pilot's Lounge?

5 A. Yes, sir.

6 Q. And we looked a little bit earlier at an aerial
7 above the airport, and I'm not going to put it
8 up there. Where's the Pilot's Lounge located?

9 A. It is right off the apron of the airport.

10 MR. WILSON: I do want to get that, just one
11 moment, please, Your Honor.

12 BY MR. WILSON:

13 Q. So this aerial right here of the Hampton-
14 Varnville Airport -- I'll put it up.

15 Is what I'm pointing at right here kind of the
16 apron area?

17 A. It would be the left of that red dot, yes, sir.

18 Q. Right in there?

19 A. Yes, sir.

20 Q. Do a little better with a pen, but kind of right
21 in this area?

22 (Indicating.)

23 A. Yes, sir. Right in this area.

24 Q. Okay, this is the run -- this is the runway?

25 A. Yes.

1 Q. Running like this, and that is kind of the
2 apron. That bead thing right there is an apron,
3 correct?

4 A. Well, yeah. Two taxiways that come into the
5 square part of the apron.

6 Q. Okay.

7 A. Yes, sir.

8 Q. And the building you're talking about would be
9 right there somewhere along there?

10 A. It's just to the -- it's inside the con -- I
11 mean just off the asphalt of the apron, yes, sir,
12 below your pen.

13 Q. But in that general area?

14 A. Yes, sir.

15 Q. Okay. And at some point in time, I -- I recall
16 your department was called to go out to do some work
17 on that building?

18 A. Yes, sir.

19 Q. What was the condition of that building when
20 your department was called out there to go do some
21 work on it?

22 A. We had to -- well, we had to repair the roof on
23 it, replace the roof on it.

24 Q. Did it look like it had been abandoned?

25 A. I don't know about abandoned, but it was -- the

1 inside was coming down because of water damage, yes,
2 sir.

3 Q. So the inside was falling in?

4 A. Yes, sir.

5 Q. So it didn't look like it had been maintained?

6 A. Yes, correct.

7 Q. Okay. Now, tell me again when you started? You
8 said 17 years, so that puts you back about two --

9 A. 2004.

10 Q. 2004?

11 A. Yes.

12 Q. From -- from 2004 until your department went out
13 there to do some work on this building in 2011 at
14 the airport, had -- had your department gone out to
15 do any other kind of maintenance or repair work at
16 the airport?

17 A. Well, we maintained the grounds, yes, sir.

18 Q. Doing what?

19 A. Bushhogging. We bushhogged and patched --
20 patched spots on the runway.

21 Q. Okay, cutting grass?

22 A. Yes, sir.

23 Q. Okay. But during that time period your -- your
24 department hadn't done any cleanup of the runway,
25 what they call Foreign Object Debris?

1 A. No, sir.

2 Q. Your department wasn't tasked with going out
3 there on a weekly or twice a week or every other
4 week to inspect the runway, for purposes of making
5 sure it was clear of debris so planes could land
6 safely?

7 A. No, sir.

8 Q. And -- and I'm talking about from 2004 to 2011.

9 A. Yes, sir, that's correct.

10 Q. Okay. From 2011, after your department did some
11 work on this building to 2015, was your department
12 ever in charge of or instructed to go out and do
13 Foreign Object Debris work on the runway?

14 A. I think that we had went out there and done some
15 of that, yes, sir.

16 Q. What did y'all do to the building in 2011?

17 A. Replaced the roof and the ceiling on the inside,
18 worked in the bathroom.

19 Q. Did you go out there while some of the work was
20 being done?

21 A. Yes, sir.

22 Q. Did you ever see any -- you're familiar with Mr.
23 Jones and Company Two, aren't you?

24 A. Yes, sir.

25 Q. Okay. Are you familiar with his business and

1 what it does?

2 A. Yes, sir.

3 Q. Are you familiar with the fact that he -- his
4 Company does work on these oversized fire trucks
5 called ARFF trucks?

6 A. Yes, sir.

7 Q. So you're familiar with what one looks like?

8 A. Yes, sir.

9 Q. When you were out there in 2011, would you say
10 -- ever see any ARFF trucks operating on the runway
11 in --

12 A. Yes, sir.

13 Q. -- the Hampton Airport?

14 A. Yes, sir.

15 Q. Okay. And what were they doing?

16 A. Driving down the runway.

17 Q. We talked about that building, up until 2011 it
18 looked like it had been dilapidated and
19 deteriorated. Was there much activity going on at
20 the Hampton Airport in 2004, when you first came to
21 Hampton County?

22 A. I -- I didn't go out there the -- when my guys
23 were doing maintenance, when they were bushhogging,
24 if they needed something.

25 Q. Did you ever --

1 A. But we --

2 Q. -- see any activity going on out there, when you
3 were out there doing that?

4 A. I can't recall seeing any, no, sir.

5 Q. 2005 --

6 A. Yes.

7 Q. -- 2006? Even into '07, '08, '09, '10 and '11,
8 you didn't see anything really, did you?

9 A. I didn't go out there very much, other than when
10 we were getting -- we -- well, no, sir.

11 Q. But when you did, you didn't see anything, did
12 you?

13 A. No, sir.

14 Q. Bear with me a minute, Mr. Hodge.

15 I think -- did you say a moment ago Mr. Hiers
16 may have blown off the runway some, or something
17 like that?

18 A. He could have, yes, sir.

19 Q. Did you ever -- during the time period from 2004
20 to 2011, did you ever see any firefighters with the
21 Hampton County Fire Departments -- or Hampton County
22 fire trucks on the runway doing any kind of
23 cleanup --

24 A. No, sir.

25 Q. -- or maintenance of the roadway?

1 A. No, sir.

2 Q. You said a moment ago, I think, Mr. Hodge, that
3 there were times where -- well, let me ask you this:

4 Were there ever times that your department had
5 to do any patchwork or repair work to the airport
6 runway?

7 A. Yes, sir.

8 Q. And what would that -- why would that be?

9 A. Well, there -- there was cracks in the asphalt
10 due to the age of asphalt.

11 Q. You didn't ever see any damage to the airport
12 runway that you thought was caused by Company Two or
13 its trucks, did you?

14 MR. AARON NESS: Objection, leading.

15 THE COURT: That's sustained.

16 MR. AARON NESS: Ask him --

17 THE COURT: You can rephrase it.

18 BY MR. WILSON:

19 Q. Did -- did you ever see any damage to the
20 airport runway that you thought was caused by
21 Company Two?

22 MR. AARON NESS: Same objection.

23 THE COURT: I'm going to allow it.

24 BY MR. WILSON:

25 Q. Or it's trucks?

1 A. Not that I'm aware of, no.

2 Q. Just one moment, Mr. Hodge.

3 Mr. Hodge, that's all the questions I have.

4 Thank you for your time. Mr. Ness may have a few
5 questions.

6 **CROSS-EXAMINATION BY MR. AARON NESS**

7 BY MR. AARON NESS:

8 Q. All right, Mr. Hodge, have you kind of oriented
9 as to where we are at the airport?

10 A. Yes, sir.

11 Q. You've been out there a lot, right?

12 A. Yes.

13 Q. All right, that taxiway easement, you're
14 familiar with that, correct?

15 A. Yes, sir.

16 Q. And how is it that you're familiar with this
17 taxiway?

18 A. I built it.

19 Q. You actually built the taxiway?

20 A. Yes, sir. My -- well, my -- I built it with my
21 crew.

22 Q. Tell a little -- tell the jury a little bit
23 about how y'all built it and what was involved, and
24 what you did to it.

25 A. Well, we brought in some -- we put in a pipe and

1 brought in some field dirt to build the taxiway.

2 Q. Okay.

3 A. Put the pipe in, rolled it and packed it.

4 Q. So you put -- what do you mean, why -- why did
5 you put a pipe in?

6 A. There's a natural draw that comes and leaks out
7 on the runway, it rolled -- it -- it goes west, so
8 that way it wouldn't ever eroded out, so the water
9 keeps on going through.

10 Q. Okay, so you put a pipe in and you put dirt in
11 there, you packed it, and did you grade it?

12 A. Yes, sir.

13 Q. When did y'all do all this?

14 A. I think it was '11, 2011, somewhere in there.

15 Q. Did you ever contemplate that ARFF trucks would
16 be running along this easement?

17 A. No, sir.

18 Q. Okay. Why not?

19 A. 'Cause I was told to build a taxiway.

20 Q. You're told what? Say it again.

21 A. Build a taxiway.

22 Q. Okay. And what was your understanding of what
23 would be running along this taxiway?

24 MR. WILSON: Your Honor, I -- I -- I'm going to
25 object to this, because his -- his knowledge is

1 based off of some hearsay that he heard from
2 somebody, he doesn't have direct knowledge to
3 testify, it's hearsay. I think that's what it is.

4 BY MR. AARON NESS:

5 Q. Do you have personal knowledge, Mr. Hodge?

6 A. Yes, sir.

7 Q. Of -- of what? Were you told what may or may
8 not be riding on that taxiway?

9 THE COURT: That --

10 MR. WILSON: And that's my objection, Your
11 Honor.

12 THE COURT: That hearsay objection is sustained.

13 BY MR. AARON NESS:

14 Q. Mr. Hodge, it was your understanding that planes
15 could be on this taxiway and not ARFF trucks,
16 correct?

17 A. Correct.

18 MR. WILSON: Your Honor, may we approach?

19 (Off-the-record bench trial was held.)

20 BY MR. AARON NESS:

21 Q. Mr. Hodge, it was your understanding that planes
22 would be going on this taxiway and not ARFF trucks,
23 right?

24 A. Right.

25 MR. AARON NESS: Your Honor, same objection. He

1 doesn't have personal knowledge of it. He asked
2 another question, and he said what he was told. In
3 this courtroom you don't testify unless you've got
4 personal knowledge.

5 MR. WILSON: That's fine.

6 THE COURT: I think it was that he testified
7 about such things as the new taxiway, so I'm going
8 to allow it.

9 Any redirect?

10 MR. AARON NESS: No further questions.

11 THE COURT: Thank you.

12 Any redirect?

13 MR. WILSON: No, Your Honor.

14 THE COURT: Thank you, sir, you can step down.

15 (Witness exits witness stand.)

16 WITNESS: Thank you, ma'am. Can I leave?

17 MR. WILSON: Yes.

18 THE COURT: Any objection to Mr. Hodge being
19 excused?

20 MR. AARON NESS: None from me, Your Honor.

21 MR. WILSON: Your Honor, the next witness we
22 intend to call is Mr. Bobby Anderson. And as I have
23 indicated to the Court last night and to counsel
24 this morning, Mr. Anderson had a kidney stone attack
25 yesterday, and he might -- he might be the only

1 person in Hampton County who would rather be in the
2 courthouse, but he had a kidney stone attack
3 yesterday and he has to have some surgery and home
4 rest. We -- without objection from the other side,
5 we're going to put in portions of his deposition so
6 the jury can hear his testimony, and we'd like to do
7 that now.

8 THE COURT: Okay.

9 MR. WILSON: I'm going to have my paralegal,
10 Ms. Vicki Lyman, give the answers, if that's okay
11 with the Court.

12 THE COURT: Sure.

13 MR. WILSON: This is the first.

14 THE COURT: And if I can get your name for the
15 record.

16 MS. LYMAN: Vicki Lyman.

17 (Vicki Lyman being duly sworn testified as follows.)

18 MR. WILSON: Vicki, pull up a little bit to that
19 microphone and speak up as loud as you do in the
20 office.

21 MR. WILSON: I'm going to read the question, and
22 then you'll read the answer, so if you'll flip to
23 page three, and we'll start on line 13, okay?

24 MS. LYMAN: All right.

25 (The deposition of Bobby Brown was read into the

1 record.)

2 MR. WILSON: That's all of the deposition, Your
3 Honor.

4 MR. AARON NESS: Judge, we have no trial
5 designation on depositions?

6 THE COURT: I'm sorry?

7 MR. AARON NESS: I said we -- we had it
8 designated.

9 MR. WILSON: That's it.

10 MR. AARON NESS: That's it.

11 MR. WILSON: Thank you.

12 THE COURT: All right, thank you.

13 MR. WILSON: Your Honor, we would call Mr. Dobie
14 Hiers.

15 (George L. Hiers, Jr., being duly sworn,
16 testified as follows)

17 **DIRECT EXAMINATION BY MR. WILSON**

18 BY MR. WILSON:

19 Q. Good afternoon, Mr. Hiers, how are you doing
20 today?

21 A. Good, sir.

22 Q. Good. I appreciate you sticking around. Give
23 your full name to the jury please.

24 A. George L. Hiers, Jr.

25 Q. Okay. I -- I've seen where you go by a

1 nickname, Dobie?

2 A. Dobie, correct.

3 Q. Is that what you prefer to be called?

4 A. Yes, sir.

5 Q. Yeah. Mr. Hiers, where'd you grow up?

6 A. I was born and raised in Varnville, which is
7 Hampton County, and now I live in Hampton County.

8 Q. Okay, and I think you work for the County of
9 Hampton, correct?

10 A. Yes, sir.

11 Q. How long have you been working for Hampton
12 County?

13 A. Twenty-nine years on May 11th.

14 Q. Congratulations. What's your position now or
15 positions?

16 A. Buildings and ground supervisor.

17 Q. Okay.

18 A. Airport Director at -- in rec -- recreations
19 director.

20 Q. Okay. All right, now building and grounds, that
21 falls under Public Works; is that correct?

22 A. That's correct.

23 Q. So we just heard from Mr. Blake Hodge, that
24 would be your supervisor?

25 A. That's correct.

1 Q. Does Recreation Director fall under Mr. Hodge?

2 A. No, it falls under the Administrator.

3 Q. Directly under the Administrator?

4 A. Yes, sir.

5 Q. And who's the Administrator in Hampton County
6 now?

7 A. Miss Rose Elliott.

8 Q. Okay. How long have you been Recreation
9 Director?

10 A. Well, it was a stint of about five years, and
11 then we hired a Director, and it's been probably
12 almost another year, so about six years.

13 Q. Were you ever Recreation Director before
14 Ms. Elliott became the Administrator?

15 A. No, sir.

16 Q. How long have you been the Building and Grounds
17 supervisor?

18 A. Well, it's been about 18 years now.

19 Q. So that's been primarily what you've done?

20 A. Yes, sir.

21 Q. Okay. And then I think you mentioned something
22 about being an Airport Manager?

23 A. Acting Airport Manager, correct.

24 Q. Acting Airport Manager.

25 A. Yes, sir.

1 Q. Is there a difference between Acting Airport
2 Manager and Airport Manager?

3 A. I guess not. We just do what we need to be
4 doing.

5 Q. When did you start doing that?

6 A. That was about 2015, 2016.

7 Q. Okay. Were you ever Acting Airport Manager
8 before Ms. Rose Elliott became the Administrator in
9 Hampton?

10 A. No, sir.

11 Q. Did Hampton County have an Airport Manager, to
12 your knowledge, prior to your becoming the Airport
13 Manager?

14 A. Not to my knowledge.

15 Q. Buildings and grounds, what does that entail?

16 A. Just general maintenance of the buildings,
17 electrical, plumbing, upkeep of buildings, custodial
18 work falls under that. I'm over that.

19 Q. Okay.

20 A. Just make sure -- general cleaning and like
21 that.

22 Q. There was some testimony from Mr. Hodge a little
23 bit earlier that there's a building, what was called
24 the Pilots Lounge out at the airport runway --

25 A. Yes, sir.

1 Q. -- correct? His testimony was that the inside
2 was falling down, prior to 2011, it really hadn't
3 been kept up.

4 A. That's correct.

5 Q. Does that sound fair?

6 A. Yes, sir.

7 Q. So during the 18 years that you were with
8 Hampton County as building and grounds supervisor,
9 have -- had Hampton County had any involvement in
10 maintaining and the upkeep of that building out
11 there at the airport?

12 A. No, sir.

13 Q. Had Ham -- had Hampton County had any real
14 involvement in maintaining or upkeeping the airport
15 property during your time as buildings and grounds
16 supervisor?

17 A. They -- I know the grass has been cut, but
18 nothing under me. I know they cut the grass some,
19 but I knew the State used to cut grass around the
20 airport.

21 Q. Okay.

22 A. But now that's several years back.

23 Q. Grass got cut?

24 A. Yes, sir.

25 Q. And I understand that sometimes your guys may go

1 out and spray the weeds or something like that?

2 A. Yes, sir.

3 Q. But prior to 2015 there just really wasn't

4 anything going on at the Hampton Airport, was there?

5 A. Not through my knowledge, no, sir.

6 Q. And that's an area that you would go by some, at

7 least during --

8 A. Mm-hm.

9 Q. -- your job as building and grounds supervisor,
10 correct?

11 A. Yes, sir.

12 Q. If you feel like there was somethin' goin' on,
13 you would have seen it?

14 A. Yes, sir.

15 Q. Do you know what FOD is? We talked about that
16 in here.

17 A. Yes, it's cleanup.

18 Q. Foreign Object Debris?

19 A. Yes, sir.

20 Q. It's, basically, cleaning up stuff off of a
21 runway, so that it doesn't pose a danger to pilots
22 and planes, correct?

23 A. Correct.

24 Q. Prior to 2015, your department didn't do any
25 cleanup or FOD --

1 A. No, sir.

2 Q. -- work at the runway, did you?

3 A. No, sir.

4 Q. Did you ever see any firefighters or Fire
5 Departments from Hampton County do any FOD work --

6 A. I --

7 Q. -- out at the airport?

8 A. I -- no, sir.

9 Q. Do you know who was doing FOD cleanup or
10 maintenance of the runway, so the planes -- the
11 planes that may land in Hampton and take off would
12 be able to do so safely?

13 A. No, sir.

14 Q. And you weren't an Airport Manager at that time
15 either though?

16 A. That's right.

17 Q. All right. We're gonna talk about a new term a
18 little bit today in front of this jury, NOTAM. Do
19 you know --

20 A. Yes, sir.

21 Q. -- what that is?

22 A. Yes, sir.

23 Q. So how do you spell that?

24 A. N-O-T-A-M, it's a notification to all airmen.

25 Q. Notification --

1 A. Notification To All Airmen is the way I took it.

2 Q. Okay, Notification to All Airmen?

3 A. Correct.

4 Q. And the initials of it are N-O-T-A-M, it's
5 NOTAM?

6 A. Yes.

7 Q. What is a NOTAM?

8 A. It's just we're -- well, my definition of it is
9 where we call the FAA, and we put it in, if we're
10 doing work the main runway, we close the runway, or
11 -- or any maintenance or anything on the runway, we
12 put in for a NOTAM. And then they give us a
13 reference number to go with that, and you put in a
14 time that you're going to close it and why you are
15 closing it, or -- or an advisor. I mean you could
16 put it out as a -- not even to just show them, but
17 you can put it in as an advisory.

18 Q. So, if for any reason the Hampton Airport
19 runway, or any airport runway for that matter, is
20 being closed down, a NOTAM can be issued?

21 A. Yes, sir.

22 Q. And that, as I understood what you just said,
23 puts a notice out to pilots, airplanes --

24 A. Yes, sir.

25 Q. -- to the public that -- that the runway is

1 shutdown for a tempor -- temporary period of time?

2 A. Yes, sir.

3 Q. And that's for any reason that the runway needs
4 to be shut down whatsoever?

5 A. Yes, sir.

6 Q. I asked Mr. Hodge this, I think I asked you this
7 in your deposition, you've never seen any damage --
8 have you ever seen any damage to the Hampton Airport
9 runway that you would attribute to the activities of
10 Company Two's trucks being on the runway?

11 A. No, sir.

12 Q. Mr. Hiers, has Company Two ever provided
13 assistance to you, your department or Hampton County
14 with any kind of fire outbreak, or anything like
15 that in the past?

16 A. Yes, sir.

17 Q. And what is that?

18 A. We had a fire -- a brush fire around the
19 airport, and it was out of hand, and they came for
20 assistance.

21 Q. Okay. I don't have any other questions. I
22 appreciate your time.

23 A. Yes, sir.

24 Q. Thank you. Mr. Ness may have some for you.

25 **CROSS-EXAMINATION BY MR. AARON NESS**

1 BY MR. AARON NESS:

2 Q. Just a couple of questions, Mr. Hiers.

3 A. Okay.

4 Q. Mr. Hiers, in your part-time you used to be a
5 D.J., didn't you?

6 A. That's correct.

7 Q. What -- what was your D.J. name?

8 A. D.J. Doby and the Fatman Disco.

9 Q. I remember that from the deposition. Has
10 Company Two ever issued a NOTAM in all the years
11 that you've been working out there?

12 A. Not to my knowledge. It hasn't come from me.

13 Q. Okay. So they've never asked you to issue a
14 NOTAM?

15 A. No, sir.

16 Q. And have you ever seen Company Two out on the
17 Hampton Airport performing FOD cleanup?

18 A. No.

19 Q. You're the Airport Manager?

20 A. Yes, sir.

21 Q. Okay, thank you, no further questions.

22 **REDIRECT EXAMINATION BY MR WILSON**

23 BY MR. WILSON:

24 Q. Mr. Hiers, you've only been the Airport Manager
25 since 2015, right?

1 A. '15, '16, yes, sir.

2 Q. Okay. And there's testimony in here today that
3 in 2015 Mr. Jones was instructed to stay off of the
4 runway; does that sound accurate to you?

5 A. Yes, sir.

6 Q. You had never been the Airport Manager prior to
7 that were you?

8 A. No, sir.

9 MR. WILSON: Thank you, Your Honor.

10 THE COURT: Anything further, Mr. Ness?

11 MR. AARON NESS: Nothing involving re-cross.

12 THE COURT: Mr. Hiers, you can step down.

13 (Witness exits the witness stand.)

14 MR. WILSON: Thank you, Mr. Hiers.

15 Your Honor, our -- our next witness, 'cause we
16 had an issue a little bit earlier, and I didn't tell
17 him to be here until 4 o'clock. Could we take a 5-
18 minute break --

19 THE COURT: Yes.

20 MR. WILSON: -- and let me make sure he's here
21 and ready to go?

22 THE COURT: Sure.

23 Ladies and gentlemen, let's take a break. Just
24 don't begin discussing the case yet.

25 (Jury exits courtroom.)

1 witness by a deposition that is already in and one
2 other witness that is an expert, that I would
3 suspect wouldn't take very long for me, Your Honor.
4 I don't know that we will finish up tomorrow.

5 THE COURT: Well I guess we'll -- we'll play it
6 by ear. I -- I am going to contact the Court
7 Administration tonight and send them an email, and
8 just tell them that there's a pretty good chance of
9 it going into Friday.

10 Anything else before we bring the jury in?

11 MR. RICHARD NESS: No, Your Honor, that's all
12 we've got.

13 (Jury enters courtroom.)

14 THE COURT: Mr. Wilson?

15 MR. WILSON: Thank you, Your Honor. We would
16 call Mr. Willard Wilson to testify, please.

17 (Willard Wilson was duly sworn
18 and testified as follows)

19 **DIRECT EXAMINATION BY MR. WILSON**

20 BY MR. WILSON:

21 Q. Mr. Wilson, how are you doing this afternoon?

22 A. Doing good.

23 Q. Good. Speak up just a little bit, so we can
24 hear you well, and I'll try to do the same, okay?

25 A. Okay.

1 Q. All right. Give your full name for the jury,
2 please.

3 A. Willard E. Wilson.

4 Q. Okay. Mr. Wilson, where do you live?

5 A. In Varnville, South Carolina, [REDACTED].

6 Q. Okay. I'm going to ask you about your age, with
7 that gray hair, how old are you?

8 A. I'm 75, I will be a great 76 in August.

9 Q. Gotcha. How long have you been in Hampton
10 County?

11 A. 50 -- I think it's 56 years.

12 Q. Okay. What brought you to Hampton?

13 A. A wife and two kids.

14 Q. Gotcha.

15 Now, Mr. Wilson, tell the jury, do you -- do you
16 still work now or are you retired?

17 A. I'm retired.

18 Q. And what are you retired from?

19 A. I retired from Hampton County Council. I have
20 retired from the United Brotherhood of Carpenters,
21 and also retired from Long Construction Company,
22 LLC.

23 Q. Okay, what'd you do for United Brotherhood?

24 A. I was an International Representative in the
25 United Brotherhood of Carpenters, as I did the

1 contract negotiations for the Westinghouse Plant in
2 Hampton, a company in Hampton, Georgia-Pacific in
3 Hampton, several Georgia Pacifics, a gold
4 manufacturer in Charleston.

5 Q. Okay. And did you -- did you at one time serve
6 as an elected representative on Hampton County
7 Council?

8 A. Yes, sir, for 16 years.

9 Q. Sixteen years? Do you remember your years when
10 you started and when you ended?

11 A. Well, it's been so long, it's been a while,
12 but --

13 Q. Did that time period encompass the year in 2005?

14 A. Yeah, yeah, yeah. I started back in the latter
15 part of the '80s.

16 Q. Okay. All right. Now, Mr. Wilson, do you
17 recall the business of Company Two coming before the
18 Hampton County Council during your time on Council?

19 A. Yeah.

20 Q. Tell the -- tell the company what you know about
21 Company Two, or what you remember about what Company
22 Two did or does.

23 A. There was a fire --

24 THE COURT: I'm sorry, hang on just a minute,
25 I'm sorry.

1 MR. AARON NESS: We object to this, Your Honor.

2 THE COURT: I'm sorry?

3 MR. AARON NESS: We object to this, Your Honor.

4 THE COURT: On the basis?

5 MR. AARON NESS: The prior ruling made pre-
6 trial.

7 THE COURT: Thank you. I note your objection
8 for the record, based on your argument that you made
9 pre-trial, and, of course, I've already ruled on it,
10 so I will allow it in, but your objection is noted
11 for the record.

12 BY MR. WILSON:

13 Q. Do you recall there being a time while you were
14 on County Council that Company Two came before
15 County Council, it was something about Company Two
16 came before County Council?

17 A. Yeah, they came before County Council for a new
18 company coming in, and we didn't have any industry
19 at that time with Mr. Simmons and Jim came to us and
20 he had an executive session with us. And at that
21 point in time --

22 Q. And, I'm sorry, I don't mean to cut you off.
23 You said you had an executive session with?

24 A. With Simmons and Jim.

25 Q. Okay, all right.

1 A. And at that point in time our question was, the
2 only thing he left was, could -- Jim was wanting to
3 know if we could let him have the runway at the
4 airport to be able to test equipment. And quite
5 naturally no industry, we're looking at probably 20,
6 25 jobs down the road at -- at that point in time.
7 Our consensus was the airport was doing nothing,
8 it's just there.

9 As a matter of fact, we were negotiating moving
10 it from where it was at. I did some negotiations
11 with some of the homeowners to get some -- them to
12 let us have some land, simply because of the danger
13 of the houses out there --

14 Q. Okay.

15 A. So we had a problem there. We had no activity.
16 And it was the consensus of the Council to allow him
17 to use that airport for his instruments, if that was
18 the only thing keeping him from coming in at that
19 point in time. And we gave Jim the okay to go ahead
20 and proceed. He came out of the Council meeting.
21 We didn't have to vote because give Peggy, which was
22 the Chairman at that time, we give her the
23 consensus. She came out and gave the consensus that
24 everything went into the Council meeting and the
25 executive session was approved as an economic

1 development decision, and Jim was given the okay.

2 Q. All right. You pointed here and said, "Mr.
3 Simmons or Mr. Simpson." I'm just --

4 A. Yeah, right.

5 Q. That's Quincy Jones.

6 A. Jones, yeah, yeah, I see him.

7 Q. Do you know Mr. Jones personally?

8 A. Yeah, I -- I only knew him from that point in
9 time, and then a few times I've bumped into him.

10 Q. Okay, so y'all bumped into each in some sense?

11 A. Yes.

12 Q. But you don't know him outside of your dealings
13 with him through County Council?

14 A. No, none -- none other than that.

15 Q. Okay.

16 A. As a matter of fact, I haven't seen him since I
17 left the Council --

18 Q. Oh.

19 A. -- 'til I came in here.

20 Q. I understand, I understand. Why -- why did this
21 -- why does this stand out in your mind as --

22 A. Because --

23 Q. -- something you remember?

24 A. Because of the fact that at that time, and still
25 now, we had no industry. We had lost the

1 Westinghouse plant at that time. We lost the
2 Nevamar Company. We lost the Georgia-Pacific. All
3 those plants our representative here. And what
4 happened is, it -- they were gone, there were no
5 major industries that -- no major industries came
6 back into this County since then -- since we lost
7 Nevamar. Westinghouse sold out to International
8 Paper. International Paper sold out to Nevamar.

9 Q. Okay.

10 A. They took it on down the train.

11 Q. All right. So was there anything unique about
12 what Mr. Jones' company did or was going to do, what
13 Company Two did or was gonna do that made it stand
14 out to you?

15 A. Yeah, because he was refurbishing fire trucks
16 for a big industry, not like Hampton County and
17 whatnot, but commercial places like airports.

18 Q. Is that something you had ever seen or heard of
19 before?

20 A. Well, not the refurbishing until he came here
21 with the company and everything. It was exciting,
22 because we had something coming in that was going to
23 give some employment.

24 Q. I gotcha. I think I heard you say a moment ago
25 that there had been some discussion amongst Council

1 back, at that time, to either move the airport or to
2 abandon the airport?

3 A. Right, we -- we were talking about abandoning it
4 and moving it, actually, moving it from where it
5 was.

6 Q. Okay.

7 A. But then negotiations, as I said earlier, with
8 some of the families that were owners of the houses
9 out there --

10 Q. Okay.

11 A. -- we were able to get a couple of those houses,
12 and get the trees moved.

13 Q. I gotcha.

14 Okay. So at the time Mr. Jones' company was
15 having interaction with Council, there was some
16 thought that the airport might be abandoned --

17 A. Right.

18 Q. Because there were too many houses too close to
19 the airport to make it functional?

20 A. And the discussions whether to join it with
21 Allendale, or to try to put one out next to where --

22 Q. I gotcha.

23 A. The radio station side of it.

24 Q. But sometime after that it sounds like those
25 issues were worked out with those homeowners?

1 A. Right.

2 Q. Correct?

3 A. Yeah, yeah. I was able to get the homeowners
4 somewhat to agree.

5 Q. Okay. Mr. -- Mr. Wilson, you said that you
6 recall a meeting. Would that have been, I guess, a
7 regular County Council meeting?

8 A. Right.

9 Q. And -- and was Mr. Jones present at that
10 meeting?

11 A. He was present.

12 Q. Was Mr. Jim Daniel present at that meeting?

13 A. He was present.

14 Q. And County Council members would have been
15 present at that meeting?

16 A. All -- all of us there.

17 Q. Okay.

18 A. Richard, Lee, Peggy, Lisa.

19 Q. Okay. Now, I think Mr. Burgess Johnson's
20 passed?

21 A. Yeah.

22 Q. And Mr. Lee Bowers has passed?

23 A. Passed, yes.

24 Q. Now, Mr. Wilson, you said something about you
25 went into executive session. Let's talk a moment

1 about that so the jury understands that.

2 Governmental meetings are generally done in the open
3 in front of the public, correct?

4 A. Right.

5 Q. What is an executive session?

6 A. Executive session is where we discuss issues
7 that would be legal issues as far as contracts, his
8 company coming in, some things that would be
9 contractual that needed to be able to finalize the
10 situation or either thwart the situation, one or the
11 other. You know, in this situation it was actually
12 allowing that because that was the only thing.

13 Q. Understand. So -- so sometimes those type of
14 sensitive matters, when you're dealing with a
15 company and negotiations, that goes on in -- in
16 executive session, which is kind of a behind closed
17 doors meeting?

18 A. Right.

19 Q. Is that what took place in this --

20 A. That --

21 Q. -- case?

22 A. That's what took place in this case. And as I
23 said, we gave Peggy -- the full Council gave Peggy
24 the okay. She came out and just announced that
25 there was a contractual matter that was taken care

1 of, and will give Jim Daniel --

2 Q. An okay to proceed was to form an agreement to
3 do what?

4 A. To form an agreement for the company, and allow
5 -- I keep on calling him Simmons --

6 Q. Jones.

7 A. Don't -- don't -- don't think hard of me, 'cause
8 I'm -- but allow him the opportunity to -- to be
9 able to use the runway to test his equipment. And
10 it wasn't something that he did daily, it was a
11 thing that they did periodically, whenever he got to
12 that point with that equipment.

13 Q. Gotcha. Mr. Wilson, do you recall Mr. Jones
14 having a discussion with Council that night about
15 what his Company did?

16 A. Yeah, he -- he explained to us what -- what his
17 Company did, and --

18 Q. And the Council had -- I'm sorry, I didn't mean
19 to cut you off.

20 A. Right. He explained to us what the company did,
21 the functions of it, actually what he would be doing
22 with the airport.

23 Q. Okay. Did Mr. Jones explain and express to the
24 Council that access to the airport was vital to his
25 business?

1 A. Yeah, that was an important thing, in -- in
2 order for him to come, that was one of the things
3 that he needed.

4 Q. And did he express to the Council that access to
5 the airport and, in particular to the runway, was
6 something that was important for the continued
7 operations and viability of his business?

8 A. Yes.

9 MR. RICHARD NESS: Your Honor, objection,
10 leading.

11 THE COURT: That's sustained.

12 MR. WILSON: Okay.

13 BY MR. WILSON:

14 Q. Tell -- tell the jury, Mr. Wilson, what -- what
15 did Mr. Jones express to the Council, and -- and the
16 people that were present? I think you said Mr. Jim
17 Daniel was also present.

18 Do you recall whether Ms. Sabrina Graham,
19 Administrator, would have been present also?

20 A. Yeah.

21 Q. Okay. And what would Mr. Daniel have expressed,
22 excuse me, what Mr. Jones have expressed about the
23 airport access and the runway access to the
24 viability of his Company?

25 A. He said that was an important part, because,

1 number one, he could not test his equipment, if he
2 didn't have the runway, in order to be able to
3 access his vehicles to test them, and probably get
4 them up to about 50 miles an hour I think he was
5 saying something like that, 50, 55, and to be able
6 to make sure that they were functioning right.

7 Q. Okay. All right, so at the end of that meeting
8 I think you said Council gave the authorization to
9 Ms. Parker or gave the --

10 A. Yeah.

11 Q. -- or gave the ascension to Ms. Parker, I think,
12 is what --

13 A. Right.

14 Q. -- you said.

15 A. They --

16 Q. And why -- why was Ms. Parker -- what was she?

17 A. She was the Chair.

18 Q. At that time?

19 A. Uh-huh.

20 Q. Okay. And -- and would Council have given
21 instruction to Ms. Parker or to Mr. Daniel to
22 proceed?

23 A. Yeah.

24 Q. Mr. -- Mr. Wilson, I'm gonna ask you something a
25 little personal.

1 A. Okay.

2 Q. When I listed you as a witness in this case, I
3 got a notice from -- from the attorneys from Hampton
4 County that they intended to bring up some trouble
5 that you had been in.

6 A. Yes, sir.

7 Q. Do you want to talk about that for just a
8 second?

9 A. Yes, sir.

10 Q. Tell the jury, do you have a conviction from
11 back in 2011-2012 time period, somewhere around
12 there?

13 A. Right, yeah.

14 Q. And -- and what is that?

15 A. It was a conviction for -- they said it was --
16 make sure I quote it right, it was conspiracy to
17 defraud the United States, that's what the charge
18 was.

19 Q. Okay.

20 A. Now, there was some overlying stuff, mortgage
21 fraud and other stuff, and my involvement was
22 because I had discussed buying up a house, and one
23 of the houses was in that, that my brother had
24 bought. I discussed the fact, you know, to give his
25 power of attorney to a broker to do the paperwork,

1 because he was in Washington, D.C. So from that
2 point they know that that was embarrassing, but
3 that's what I got charged with.

4 Q. And where -- and you were charged with that.
5 Were you facing a lot of time?

6 A. Yes, sir. At the -- at -- I did a plea. The
7 plea was basically, I had an option of 30 years, or
8 plea -- do a guilty plea and take 30 months.

9 Q. Okay.

10 A. Quite naturally, mom didn't raise no fool, I
11 took -- I took the 30 months. If I'm guilty or not,
12 it didn't matter.

13 Q. Did you -- did you do your 30 months?

14 A. No, sir, I did 23 of 'em and they released me.

15 Q. Okay. And then you did your probation or parole
16 and finally got out what?

17 A. I did seven months of -- the balance of that --
18 that 30 months, I did that on supervision.

19 Q. Gotcha, okay. Any doubt in your mind at all
20 whatsoever, Mr. Wilson, because this is back in
21 2005, any doubt in your mind that County Council and
22 Company Two reached an agreement where Company Two
23 would have access to the airport property, including
24 the runway to test fire trucks?

25 A. No.

1 MR. RICHARD NESS: Your Honor, he's still
2 leading, objection.

3 THE WITNESS: We did -- we agreed --

4 THE COURT: I'm going to allow that, thank you.

5 BY MR. WILSON:

6 Q. Any -- any doubt in your mind?

7 A. There's no -- no doubt in my mind, we -- we
8 agreed. We all were in consensus.

9 MR. WILSON: Thank you, Mr. Wilson, I appreciate
10 your time. Answer any questions Mr. Ness might
11 have.

12 **CROSS-EXAMINATION BY MR. RICHARD NESS**

13 BY MR. RICHARD NESS:

14 Q. Mr. Wilson, the charge you were convicted of
15 wasn't such a small crime, was it?

16 A. Huh?

17 Q. How much was the charge you were convicted of?
18 How much money was involved?

19 A. I really don't know the amount, because I -- I
20 wasn't part of it, the money side of this thing.

21 Like I said, the only thing I -- I got convicted for
22 conspiracy to defraud the United States, because the
23 reason that they give me was the fact that I had
24 discussed the part of my brother were given the
25 power of attorney to the broker. Now, up until then

1 I didn't know that was considered conspiracy really,
2 but I do now.

3 Q. And anyway do you know it was a \$850,000 bond?

4 A. Huh?

5 Q. \$850,000 that you were supposed to pay back?

6 A. No, sir. I don't -- I don't have that much.

7 Q. I know you might not have had it, but you were
8 supposed to pay it back, weren't you?

9 A. Huh?

10 Q. You were supposed to pay it back; were you not?

11 A. No, there was a group that is -- what they have
12 is, the total group of folks that was involved in
13 that, there is a 800 -- what, eight, what? Tell me
14 -- tell me, I don't know the exact figure, but it
15 was 800 something thousand that was involved that
16 the total group have to pay back.

17 My part is that I have to pay \$253 -- \$253 a
18 month back 'til it all gets paid off. Whatever's
19 left, they pay off the full -- they paid it off
20 before I get to the rest of it, but I've got to pay
21 it, if they all die, but that's -- that's what I
22 understand.

23 Q. So can you read this, if I hand it to you, could
24 you read it?

25 A. Huh?

1 Q. Can you read this paperwork?
2 A. Can I read --
3 Q. Can you read?
4 A. -- what?
5 Q. Can you read okay?
6 A. Can I read okay? I read good.
7 Q. I want to make sure you could see it.
8 A. Uh-huh.
9 Q. Could you read that?
10 A. It says, "\$100 fine restitution \$850,374.71.
11 Q. Read the sentence about it.
12 A. That's what I said. It says, "The Defendant
13 shall pay the following total criminal monetary
14 penalty in accordance with the schedule of
15 payments." And that's what I said just now, it's a
16 whole group that's involved. If they pay it off
17 before -- before it's dated. If it's -- if it's
18 paid off -- when it was paid off, if they come up
19 and say, "Well, okay, we will pay off the 800 some
20 thousand. But if I've got 800 some thousand I'll
21 pay the office like I am, but we've all got to pay
22 that. I had --
23 Q. You had to pay --
24 A. Well, I had a \$100 fine --
25 Q. Well, this says you had to pay it, it's federal

1 court order.

2 A. I can't pay it, I don't have it.

3 Q. But you were ordered to pay it, right?

4 A. Pay what?

5 Q. \$850,000.

6 A. I ain't paying no 850,000, I don't have it. I
7 never had it. How can I pay something I don't have?
8 If I had \$850,000, but, man, I don't know, I'd
9 probably buy all us lunch at least.

10 Q. Mr. Wilson, let me ask you a couple other
11 questions. You said Hampton County Council talked
12 to Mr. Jones in executive session, right?

13 A. Yes, sir.

14 Q. Executive session you go in there as opposed to
15 -- did you all vote in executive session, Mr.
16 Wilson?

17 A. I didn't hear you, say that again.

18 Q. Did you vote in executive session?

19 A. Huh?

20 Q. You voted in executive session?

21 A. Voted in executive session?

22 Q. Yes, sir.

23 A. We -- we made the decision in executive session,
24 a consensus of us there that -- that that was --
25 that we all were in agreement that he would go ahead

1 and notify in executive session that we had a -- a
2 contracted matter, and it was -- we would give Jim
3 the opportunity to go in and --

4 Q. Do you remember another time you did that at
5 all, do you?

6 A. Huh?

7 Q. The only time it ever -- it ever happened,
8 right?

9 A. Say what?

10 Q. It never happened again before or since, did it?

11 A. Oh, we do it -- we did that all the time. It
12 was constant. We'd do -- we had executive session
13 constantly, and if there was something that came up,
14 then of this nature of contractually or -- or either
15 legally, we made those decision in -- in cou -- in
16 executive session.

17 Q. You need to come out and put it on --

18 A. They still do that now.

19 Q. You come out of executive session to vote
20 publicly, didn't you?

21 A. Can you --

22 Q. Don't you vote publicly after you come out of
23 executive session?

24 A. If it's something that we need to vote on, yes,
25 but that wasn't something we needed to vote on, that

1 was -- that was an executive decision in executive
2 session that we made. It was given to the public
3 when we came out that the decision was made to allow
4 Jam -- Jim Daniel to go ahead and proceed with the
5 contract.

6 Q. They're not supposed to do that though, don't
7 you?

8 A. Huh?

9 Q. Don't -- not supposed to do that in executive
10 session, are you?

11 A. They do it -- they do it regularly. I hate to
12 say it, but happens.

13 Q. Not supposed to, are you? Answer my question.

14 A. It happens.

15 Q. It's not supposed to happen.

16 A. All I can say is it happens.

17 Q. It's against the law, isn't it?

18 A. No. As far as the discussions that we have in
19 -- in executive session, we have a su -- discussion,
20 we're all in consent to come out, and then --

21 Q. Then you vote officially on it, don't you?

22 A. Huh?

23 Q. You vote officially then, don't you?

24 A. Not all the time. I just told you that, we
25 don't do that all the time. It never happened all

1 the time. It don't happen now.

2 Q. Sir?

3 A. It don't happen now all the time.

4 Q. Yeah. Sir, let me ask you -- sir, let me ask
5 you one more question.

6 A. I mean reality, if you want to know reality, it
7 don't happen.

8 Q. Yes, sir. When's the last time you talked to
9 Quincy Jones on the telephone?

10 A. Huh?

11 Q. When's the last time you talked to Quincy Jones
12 on the telephone?

13 A. I talk -- I never talked to Mr. Jones on the
14 telephone. I talked to him just now, a few minutes
15 ago. The first time I've talked to Mr. Jones since
16 probably 2010.

17 Q. And did Mr. Wilson find out you were involved in
18 this?

19 A. Huh?

20 Q. Mr. Wilson, the attorney for Mr. Jones, how did
21 he find out you were involved in this case?

22 A. I don't know. I guess he figured me being on
23 County Council.

24 Q. Who contacted you first?

25 A. Whoever the County Council member was, that he

1 basically came to me and asked me was I on there in
2 2005. I said, "Yes."

3 Q. Who contacted you first?

4 A. He said he had some questions that he wanted to
5 ask me, and --

6 Q. Mr. Wilson, who contacted you first?

7 A. Who?

8 Q. Who contacted you first about coming here today
9 and talking to this Court?

10 A. Who's that?

11 Q. Who talked to you?

12 A. Nobod -- nobody never contact me but Mr. Wilson.

13 Q. The only --

14 A. Attorney Wilson, look, that's the only person
15 who ever contacted me. I never talked to anybody
16 else about that. There's no Council members
17 presently now, and Administration, nobody.

18 Q. Two of them are deceased, aren't they?

19 A. Huh?

20 Q. Two are deceased, aren't they?

21 A. Yeah, two are deceased.

22 Q. Yeah.

23 A. We -- we just said that earlier. Councilman
24 Bowers and Councilman Johnson, two very good Council
25 members, good friends of mine. I miss them.

1 MR. RICHARD NESS: Thank you, Mr. Wilson, that's
2 all the questions I have.

3 THE WITNESS: Okay.

4 **REDIRECT EXAMINATION BY MR. WILSON**

5 RE MR. WILSON:

6 Q. Mr. Wilson, did I understand that there was
7 discussion in executive session with Mr. Jones about
8 the details; is that what I understood you to say a
9 moment ago?

10 A. Yeah.

11 Q. All right. And then did I also understand you
12 to say that the Council would come out of executive
13 session into open session, and giving Ms. Parker
14 instruction on how to proceed?

15 A. Right.

16 Q. And that was for her to proceed with Mr. Daniel
17 to proceed with Mr. --

18 A. Right.

19 Q. -- Jones or with Company Two?

20 A. Yeah.

21 Q. And would all -- and did I understand you to say
22 all of that was done in open session?

23 A. Yeah.

24 Q. Okay. Was it -- was it oftentimes what County
25 Council would do, was to have discussions with

1 companies about details in closed session or
2 executive session?

3 A. Yeah.

4 Q. When a company's looking to locate in Hampton
5 County, in your experience, do they want all of
6 their business broadcast in an open public meeting?

7 A. Well, we couldn't do that because it would spoil
8 the whole -- whole contract and everything there,
9 because, you know, whatever their -- they have stuff
10 that -- it's -- it's not stuff that's put out to the
11 full --

12 Q. To the public.

13 A. You know, and that's -- that's the reason for
14 the executive session, to discuss what -- what is --
15 is permissible and what's not.

16 Q. If a company -- I mean, in your experience, do
17 companies want their private information about how
18 they run their business and what they're looking to
19 do, or say they're looking to get into a new area,
20 or expand in a new area, do they want that out there
21 in the public, in a meeting, so their competitors
22 can find out about it? Beat them to the punch?

23 A. No.

24 Q. Okay.

25 MR. WILSON: That's all the questions I have,

1 Mr. Wilson. Thank you for your time.

2 MR. RICHARD NESS: Nothing further, Your Honor.

3 THE COURT: Thank you, sir, you can step down.

4 MR. WILSON: We would just ask Mr. Wilson be
5 excused also, Your Honor.

6 THE COURT: Any objection --

7 MR. RICHARD NESS: No objection.

8 THE COURT: -- to him being excused?

9 MR. RICHARD NESS: He can be excused.

10 THE COURT: You're free to go. Yeah, I think
11 that's probably a good stopping point us for today,
12 since it's five o'clock on the dot. Ladies and
13 gentlemen, we're going to go ahead and end court for
14 the day. We'll have you back tomorrow morning at
15 9:30.

16 Once again, please don't discuss the case with
17 anyone overnight, and have a good evening.

18 (Jury exits courtroom.)

19 THE COURT: Anything else before we dismiss?

20 MR. AARON NESS: Nothing from us, Your Honor.

21 MR. WILSON: Your Honor, we do have a
22 deposition. We both intended to call this witness,
23 but we're just gonna go ahead and do it now,
24 tomorrow, and -- and read in both parts of his
25 deposition. They're -- they have a few objections

1 to what I designated, and I have just a few of what
2 they designated, and that will probably be the first
3 thing we would do in the morning.

4 Would you like us here a few minutes early to go
5 over that before 9:30, or --

6 THE COURT: If you can, that would be great,
7 yeah.

8 MR. WILSON: And I wasn't trying to jump. I
9 don't think it'll take but 15 minutes. They have
10 two objections to mine, and I have three objections
11 to theirs.

12 THE COURT: Okay, if you can be here at 9:00, I
13 have gone ahead and emailed Court Administration
14 about our issue on Friday. I haven't heard anything
15 back, but we do need to keep the ball rolling, so
16 let's start tomorrow at 9:00.

17 MR. WILSON: Thank you, Your Honor.

18 THE COURT: All right, have a good evening.

19 MR. AARON NESS: Thank you.

20 (At 5:00 p.m. the trial was continued to be
21 resumed the following day without interruption.)

22 END OF VOLUME II

23

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2016-CP-25-00170

The Station, Inc.,)
)
Plaintiff,)
)
vs.)
)
Hampton County,)
)
Defendants.)
-----)

TRANSCRIPT OF TRIAL
VOLUME III
PAGES 298 - 512

May 26, 2021
Hampton, South Carolina

B E F O R E:

The Honorable Kristi Curtis, Judge Presiding

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1 THE COURT: Okay, so let's go ahead and get on
2 the record. I know we have a couple things to take
3 up before the Jury comes in.

4 MR. WILSON: Your Honor, may it please the
5 Court? Judge, just as a matter of housekeeping,
6 your ruling on the Motion for Summary Judgment and
7 then those matters that you sent us by email, is it
8 okay if we print down your email and put it in the
9 record, as a Court exhibit, just so that's in there?
10 I think you announced it in open Court, but I'm not
11 sure if we were on the record, at that time, so --

12 THE COURT: Well, I'm glad to put it on the
13 record now.

14 MR. WILSON: Okay.

15 THE COURT: I took under advisement two things,
16 the Defendant's motion for Summary Judgment on the
17 issue of parol evidence. I denied that motion. I
18 also took under advisement the motion in limine made
19 by Plaintiff to exclude -- or to prevent the Defense
20 from eliciting testimony that the 2005 letter
21 required a County Council ordinance, I guess is the
22 best way to put it.

23 MR. WILSON: Yes, Your Honor.

24 THE COURT: And that motion was granted. I did
25 notify the parties by email. Mr. Wilson's I sent to

1 the wrong email, but, eventually, got it to the
2 correct email. Anything else that y'all want me to
3 put on the record, with respect to that.

4 MR. WILSON: Nothing else from the Plaintiff,
5 Your Honor.

6 MR. NESS: Judge, do you want to put the first
7 part of that email on record, too, as to our summary
8 judgment motion and your denying it?

9 THE COURT: Well, I think I just did, but --

10 MS. JETT: Your Honor, I think what Mr. Ness
11 wants to know is in denying our summary judgment
12 motion based on the parol evidence rule, are you
13 also denying our one -- and were you officially
14 denying our one and two motions, and limiting on
15 parole evidence, which was sort of dovetailed in?

16 THE COURT: I gotcha. So what I said in the
17 email was that the Defendant's motion for summary
18 judgment is denied upon your genuine issues and
19 material fact. As to the schedule for 2011 and 2015
20 agreements, which, by the terms refer only to the
21 property swap, so, yes, those were denied.

22 MS. JETT: The summary judgment what -- what
23 we're asking is, we also had parol evidence as to
24 the ground for one and two of the motion in limine.
25 And I take it that that has been denied since we --

1 we've made contemporary objection -- contemporaneous
2 objections to parol evidence, but those have been
3 overruled, and so I am -- we are of the assumption,
4 but just wanted it on the record that you denied the
5 motion in limine on parol evidence, as well.

6 THE COURT: That is correct.

7 MS. JETT: Thank you.

8 THE COURT: Thank you. Okay, what else do we
9 need to take up?

10 MR. WILSON: Thank you, Your Honor. Your Honor,
11 the second matter is, there was a motion in limine
12 made by the Defendant concerning one of our
13 witnesses, the same name as me, James Chris Wilson
14 -- Williams, excuse me, close to the same name,
15 James Chris Williams. Your Honor, you heard in
16 limine and granted the motion to exclude his
17 testimony, he is a contractor with great detail and
18 experience. I don't think there's any question he
19 would qualify as an expert, and, ultimately, at the
20 end of the day his opinion would be just concerning
21 the cost of constructing and building similar to
22 where Company Two operates now. We intend to call
23 him, and I understand your in limine ruling. I -- I
24 have him on standby about an hour and a half away,
25 and I don't want to put him on the road and drive

1 him up here and have to pay him to do all that stuff
2 if the motion -- if -- if it's gonna be denied. So,
3 Your Honor, what I was hoping to be able to do was
4 just to give my intention to the Court to call him
5 this morning. I can say I will call him as my first
6 witness if that helps, for the record. His
7 testimony would simply be the cost of that building,
8 Your Honor, and we believe that would be relevant.
9 Your Honor, we've got a breach of an agreement here
10 that has resulted in damage to Company Two. It
11 results in continuing ongoing damage to Company Two,
12 as -- as you heard, and as you heard from testimony
13 yesterday, it affects business, it affects the
14 ability to attract business. There's testimony that
15 bids in this business are very competitive. There's
16 a bid before the Court already that is a no-
17 exception bid and requires on-site testing. There's
18 testimony that that bid leads to other bids of a
19 similar nature. There will be testimony from one of
20 our experts, Robert Shaub, who's an ARFF expert, S-
21 H-A-U-B, that a lot of bids are -- are on-site
22 testing requirements and those type things. And so
23 I understand the Court's ruling the other day, but,
24 Your Honor, to put Company Two back into the
25 position that it was in prior to this breach, if the

1 Jury finds that there's a breach of -- of this
2 agreement or this promise, putting it back into the
3 position, they -- they've got to be put back on the
4 runway, the -- the contract has to be enforced,
5 specifically, or a special -- a specific performance
6 enforced, Your Honor, or, which is one of our causes
7 of action, or he has to be moved somewhere similar,
8 and that's the cost of constructing something
9 similar. And we just think, based on the testimony
10 that you have now heard, that testimony from
11 Mr. Williams would be proper, and -- and that's the
12 proffer. I'm glad to put his deposition in if -- if
13 the defense doesn't object to his deposition, but at
14 the end of the day, his testimony boils down to the
15 cost of a building. Your Honor, I'm glad to put his
16 deposition in, and I'm glad to bring him up to
17 proffer it, if I need to bring him to proffer it,
18 but I'd -- I'd like to avoid all of that, if
19 possible. If we're allowed to call him, we'll have
20 him here to testify, if we're not, then we'd like to
21 get a ruling on that, a final ruling, and move to
22 something else.

23 THE COURT: Well, I mean my ruling is and was
24 that Q&J's the owner of the building, that Company
25 Two is leasing that property from Q&J, they're

1 separate entities, Q&J is not a party to this
2 action, so the -- the cost of construction would not
3 be a proper measure of damages. We've already
4 elicited some testimony about leasing additional
5 property, and I think that's a perfectly appropriate
6 measure of damages; but I don't think that the cost
7 of construction is a -- an appropriate measure of
8 damages where Q&J is not a party to the action. If
9 you want to proffer it live, I'll give you that
10 opportunity. If you want to proffer -- proffer it
11 through his deposition testimony, I'm fine with
12 that, as well.

13 MR. WILSON: I'll -- I'll just proffer it by
14 submitting his deposition, Your Honor, as just a
15 Court exhibit. And if -- if they dispute or
16 disagree that at the end of the day his entire
17 deposition boils down to one opinion, what is the
18 cost of the building, then I guess they could tell
19 you that's all -- that's all it is, and that's all I
20 would be putting him on the stand for is to talk
21 about what it'd cost to construct a steel building
22 similar to what Q&J -- excuse me, what Company Two
23 operates. Your Honor, I do understand your ruling,
24 and I understand, of course, the distinction between
25 the ownership, and we've argued that that ownership

1 distinction matters, so I'm not trying to argue
 2 against myself. Your Honor, I -- I think when you
 3 talk about -- I think that distinction matters for
 4 purposes of these contracts and agreements and
 5 documents that they want to talk about, but, Your
 6 Honor, when it comes to damages, I don't think that
 7 distinction matters because at the end of the day
 8 Company Two has to go somewhere to do this work,
 9 either the Hampton Airport, or it has to lease
 10 somewhere, or it has to build somewhere, and that's
 11 the only way it can be put in the same position as
 12 it would have been prior to. It -- it either has to
 13 be back on the Hampton property, or it has to lease
 14 a place, or it has to build a place. We -- we --
 15 we'll -- we'll ask for them to be put back on the
 16 property, Your Honor. We've talked about what it
 17 cost to lease. I don't have anybody, other than
 18 Mr. Williams who's qualified to talk about what it
 19 cost to build. Mr. Jones couldn't do that, and
 20 that's why I intend to call him. So I -- I think
 21 the distinction is important. I'm not --
 22 respectfully, I don't think distinction is the
 23 deciding factor when it comes to the damage issue.

24 THE COURT: Yes, sir. Mr. Ness?

25 MR. AARON NESS: Your Honor, my only objection

1 would be to the -- and not to cause anyone an
2 inconvenience, but my objection would be to putting
3 his deposition in. If he's only an hour and a half
4 away, I'd rather him be here live during -- when I
5 took his deposition, I was directing, and then if we
6 bring him live, I would be crossing, so I would like
7 the chance to cross him. So if Mr. Wilson's going
8 to proffer him, I'd rather it be here so I can cross
9 him. That would -- that's the only thing I'd have
10 to add then.

11 THE COURT: I -- and I -- I appreciate your
12 position. I -- I am going to allow the deposition
13 if you want to proffer it.

14 MR. WILSON: Thank you, Your Honor.

15 THE COURT: What else do we need? Do we need to
16 take up the portions of the deposition that are
17 going to be read into the record, or do you have an
18 agreement on that?

19 MR. WILSON: We have a few objections. And I
20 assume, Your Honor, and by that statement that
21 you're denying a final ruling denying and excluding
22 Mr. Williams' from testifying?

23 THE COURT: That's my final answer.

24 MR. WILSON: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. WILSON: Your Honor, the other thing -- I'm
2 sorry, what??

3 MR. AARON NESS: We haven't done trial
4 designations as to Williams.

5 THE COURT: No, no, I don't think that's
6 necessary. She's excluding him, so we don't need
7 them.

8 MR. AARON NESS: That's fine.

9 MR. WILSON: Your Honor, we have a -- a
10 deposition, Your Honor, and I'll hand up a copy,
11 Your Honor, and it's marked up with some
12 designations.

13 Your Honor, this is the deposition of Kevin
14 Weinberg, and we intend to go with it as second,
15 right after Jim Daniel testifies. Your Honor, that
16 -- that -- that deposition is marked up. It's pink
17 and yellow, and sometimes it's the same in two
18 places, just so I could keep straight where I did
19 and where they did. This is a witness that we
20 intend to call, that the Defendants intend to call
21 also. I think he's under subpoena, but we both
22 agree to -- I think he had some obligation or
23 something, so we both agreed yesterday to do his
24 testimony by reading in his deposition, and just
25 letting the jury know that he's a witness that we

1 THE COURT: Okay.

2 (Whereupon, the Jury enters the courtroom.)

3 THE COURT: Good morning, Ladies and gentlemen.
4 I do appreciate you all being here on time this
5 morning. I want you to know that we have been
6 working diligently while you were waiting back
7 there. We addressed a number of legal issues that I
8 think will make it much quicker this morning once we
9 get started, we don't have to keep sending you in
10 and out. So we're trying to make the best use of
11 your time that we can. I'm going to turn it over to
12 you, Mr. Wilson.

13 MR. WILSON: Thank you, Your Honor. Your Honor,
14 we will call Jim Daniel.

15 THE COURT: And we don't have anyone else in the
16 courtroom who's going to be testifying later on in
17 the case? We need to --

18 MR. WILSON: We went through that.

19 MR. AARON NESS: Judge, our expert,
20 Mr. Anderson is sitting over here, Mr. Wilson has
21 agreed for him to be in here.

22 MR. WILSON: I have no problem with that, Your
23 Honor.

24 THE COURT: Thank you.

25 (James Edward Daniel was duly sworn

1 and testified as follows)

2 **DIRECT EXAMINATION BY MR. WILSON**

3 MR. WILSON: Pleases the Court?

4 THE COURT: Yes, sir.

5 BY MR. WILSON:

6 Q. Good morning, Mr. Daniel, how are you?

7 A. Good morning, fine.

8 Q. I think we had you up here yesterday and you had
9 been to the doctor, and you weren't feeling real
10 well yesterday, were you?

11 A. No, I wasn't. I'm 100 percent better today,
12 thank you.

13 Q. Well, good. Mr. Daniel, if you'll give your
14 full name to the Jury, please.

15 A. Legal name is James Edward Daniel, I go by Jim.

16 Q. Okay. I may call you Jim a few times today; is
17 that okay?

18 A. Yeah, that's what I go by.

19 Q. All right. Tell the Jury where you live.

20 A. Do you need the whole address?

21 Q. Just -- do you live here in Hampton --

22 A. I live in Hampton County.

23 Q. Okay. And how long have you been a resident of
24 Hampton County?

25 A. In Hampton County since 1980.

1 Q. Do you work now?

2 A. No, I'm retired. I've been retired for about --
3 about three and a half years.

4 Q. Okay, and where did you retire from?

5 A. My last job was with DSS.

6 Q. Okay. Have you ever worked for Hampton County?

7 A. I have.

8 Q. And what did you do for Hampton County?

9 A. I was Hampton County's Executive Director of
10 Economic Development Commissions from July 2002 to
11 January 2006.

12 Q. Okay. I've oftentimes heard that called the
13 Economic Development Director; is that the same
14 thing?

15 A. That's fine, yeah, but I mean if you want to be
16 fancy about it, it's Executive Director. I guess,
17 you know, it makes the job sound a little more fancy
18 than really --

19 Q. I got it.

20 A. -- what it is.

21 Q. To keep me from getting tongue-tied I -- I may
22 say Economic Development Director today.

23 A. That's good.

24 Q. Okay. And how long did you say you did that,
25 again?

1 A. From July 2002 to January 2006.

2 Q. And -- and tell the jury kind of what your job
3 was, and what your job duties were.

4 A. Typical of an Economic Development Director my
5 charge was to work with existing industry within the
6 expansion, like I said, I helped them any way as I
7 could, but expansion projects or adding jobs. It
8 also to work with new industries, trying to bring
9 new industry to the County, and helping them with
10 any type of assistance they may need, in order to
11 bring jobs and -- and -- and investment to the
12 County.

13 Q. Okay. When you were the Economic Development
14 Director, who was the Administrator for Hampton
15 County?

16 A. Sabrina Graham.

17 Q. Were you ever Economic Development Director
18 while Rose Elliott was the Administrator?

19 A. I was. As a matter of fact, she hired me.

20 Q. Okay, she did?

21 A. Yes, she did.

22 Q. All right. And how long did you work for
23 Ms. Elliott -- or I -- I -- let me back up. I think
24 this has been explained, but who would have been
25 your direct supervisor as the Economic Development

1 Director?

2 A. The whole time was the County Administrator,
3 whoever that might be.

4 Q. Okay. And when you started, that was Rose
5 Elliott?

6 A. That's correct.

7 Q. And -- did you say how long were -- was she
8 Administrator while you were the Economic Director?

9 A. Several months. She left to go, I think to
10 Jasper County, if I recall correct.

11 Q. Okay. And then the rest of the time it would
12 have been who?

13 A. It changed, we had interim Administrators, we
14 had a permanent Administrator that was fired after
15 about six months, and then, if I remember this
16 correctly, I worked for Sabrina.

17 Q. Okay. At the time you -- you know we're here to
18 talk about Company Two, correct?

19 A. Yes, sir.

20 Q. And we're talking about stuff that happened
21 around October or the fall of 2005.

22 A. Correct.

23 Q. Who was the Administrator at that time?

24 A. Sabrina was.

25 Q. Okay. Mr. Daniel, did Hampton County ever enter

1 into an agreement which included a promise or a
2 commitment from Hampton County for --

3 A. I'm sorry, I need to let you finish.

4 Q. That's okay, no problem, for Company Two?

5 A. Correct, yes.

6 Q. And what was that?

7 A. What, the commitment?

8 Q. Yes.

9 A. Can I back up and explain how it all happened?

10 Q. Yes.

11 A. And as I said, my job was to improve business
12 and industry in the County, and one day I -- either
13 I got a phone call, or a gentleman came in, Quincy
14 Jones, who owns Company Two, and told me that he was
15 interested in locating in the County. He said that
16 he was going to be locating into the Gemco building.
17 And if you're not familiar with the Gemco building,
18 the Gemco building is located right next to the
19 Airport. He explained to me that he was in -- the
20 type of work he did was to buy used fire trucks and
21 rebuild them, and then sell them. And he also
22 explained to me that his interest in, not only
23 working in the Gemco building, which was located
24 here, that he specifically wanted to locate here
25 because of the Airport. And he explained to me that

1 he needed access to the Airport because he needed to
2 test the fire trucks that he would buy and rebuild
3 them there. And then it --

4 Q. But what --

5 A. -- just took went on from there.

6 Q. Would you have conveyed that information,
7 ultimately through to your supervisor, the
8 Administrator?

9 A. More than likely, I would have told her right
10 away, 'cause that -- I mean she's my direct
11 supervisor, and I've got --

12 Q. Okay.

13 A. -- a prospect that's of great interest, and
14 especially with him wanting to -- we had to make
15 some kind of agreements. I'm not allowed to make
16 agreements, I can only make, you know, an offer. I
17 can make, you know, suggestions, you have to go
18 before County Council, so I would have let her know
19 right away.

20 Q. And, ultimately, so -- so you said there was a
21 discussion, and -- and Mr. Jones indicated an
22 interest to relocate Company Two, and there was a
23 discussion that he had a need for use of the Airport
24 property to test trucks?

25 A. That's correct.

1 Q. Did you have the authority to enter into an
2 agreement to that effect on your own, or to make a
3 promise or a commitment to do that, just you, Jim
4 Daniel?

5 A. No, I did not. I didn't --

6 Q. Did Sabrina --

7 A. -- have that authority on any type of deal.

8 Q. Okay. Did Sabrina Graham have authority to do
9 that, just herself?

10 A. No, not to my knowledge.

11 Q. Did County --

12 A. I didn't -- I'm sorry.

13 Q. That's okay, go ahead.

14 A. To my knowledge, County Council has ultimate
15 authority. Everything had to go through them and be
16 passed by them.

17 Q. All right, and so did this agreement with
18 Company Two, that involved testing of trucks on the
19 Airport property, did that, ultimately, go in front
20 of Coun -- or before County Council?

21 A. It did.

22 Q. Okay. And did County Council reach an agreement
23 and make a commitment with Company Two in that
24 regard?

25 A. The County Council met in executive session.

1 Can I expand?

2 Q. Yes, please.

3 A. Well, as I say, when I get a prospect like that,
4 what I do is, if it's something that needs to be
5 dealt with immediately is that we set up a meeting
6 with County Council, because they have the ultimate
7 authority. So at that meeting we had Mr. Jones
8 there, since it's his project. The County Attorney
9 would have been there because we were talking about
10 legal stuff that would have to be taking place. We
11 were talking specifically about the Airport, so the
12 best I can recall, members of the Airport Commission
13 would have had a meeting, 'cause I would assume that
14 County Council would have questions of them to make
15 sure that whatever was being done was legal as far
16 as the Airport Commission is concerned. The
17 Administrator, of course, would have been there,
18 perhaps members of Economic Development Commission
19 might have been there as well, and I would let them
20 know ahead of time in case they wanted to attend the
21 meeting and offer any input. So those were the
22 interested parties that would have been in executive
23 session -- I mean it was an executive session to
24 assist a contract on it.

25 Q. We heard some talk yesterday from Mr. Willard

1 Wilson, who was a County Council member at that
2 time, about executive session. Now, most meetings
3 occur -- you -- you've attended County Council
4 meetings plenty of times with your job, correct?

5 A. Correct.

6 Q. Most things occur out in the open in front of
7 the public, there's discussion and votes made openly
8 in front of the public?

9 A. Except those things that would legally be
10 discussed in executive session.

11 Q. Okay. And things that can be legally discussed
12 in executive session, in your experience, are things
13 that involve contractual matters?

14 A. Correct, legal.

15 Q. Legal matters?

16 A. Economic development matters.

17 Q. And economic -- and economic development
18 matters?

19 A. That's correct.

20 Q. And -- and just in your experience, why -- why
21 are economic development matters discussed in
22 executive session usually?

23 A. Oh, it's a variety of reasons. A lot of times
24 it's -- I mean people can argue about whether it's
25 proper or not, but, you know, maybe the business

1 does not want to take a chance with its competitors
2 about what's going on. That's probably one of the
3 biggest reasons, and, honestly, I can't think of any
4 other particular reason why it needs to be. If
5 we're going to discuss legal matters, contractual
6 matters, I guess, it's --

7 Q. Strategy.

8 A. I'm sorry?

9 Q. There's strategy sometimes?

10 A. Yes.

11 Q. You don't want the other side to know what your
12 strategy is. Would -- would it -- would it also be,
13 you know, maybe -- is there any reason why an
14 executive session might involve discussions of
15 industry or economic opportunities such as Company
16 Two, because the County itself, who's -- who's
17 looking to attract that industry, doesn't want the
18 neighboring counties or other counties to find out
19 what's going on, and try to -- try to jump ahead of
20 them?

21 A. That could be possible, 'cause it has happened.

22 Q. Did you ever negotiate any deals or enter into
23 -- enter into any contracts or agreements or make
24 any commitments to Company Two and Mr. Quincy Jones
25 that weren't authorized and approved by County

1 Council?

2 A. You're asking did I make any --

3 Q. Yeah, did you?

4 A. The only commitments I made were at the
5 instruction of County Council. And I can't -- I
6 cannot make deals or commitments on my own, it has
7 to go through the approval of County Council. I can
8 make recommendations, but, ultimately, County
9 Council has that authority, I do not.

10 Q. And did County -- I think I asked this a moment
11 ago, and you went through the process, did County
12 Council enter into an agreement, and -- and make a
13 commitment and a promise to Company Two, with
14 regards to use of the Airport property, the Airport
15 runway to test trucks if Company Two relocated?

16 A. That's correct, it did -- County Council did
17 that in executive session in a meeting. I don't
18 recall the exact date of the meeting.

19 Q. Did County Council make that commitment?

20 A. They did.

21 Q. And were you instructed to follow-up on that?

22 A. I was.

23 Q. And did you do so?

24 A. I did so.

25 Q. And did you convey that to Mr. Jones?

1 A. Best I can recall, I probably let him know that
2 night when we left the meeting, that, you know,
3 'cause he was there, in principle, "We got our deal
4 done, and I'll be in touch with you in the coming
5 days with a letter containing what's going on, and
6 we'll go from there."

7 Q. Okay. Now, you said you made -- you could make
8 recommendations?

9 A. That's correct.

10 Q. Did you recommend as the Economic Development
11 Director that County Council enter into this
12 agreement with Company Two to get Company Two to
13 relocate?

14 A. Based on the research that I had done in the
15 past, yes, I did.

16 Q. Did you think it was a good deal?

17 MR. AARON NESS: Objection.

18 WITNESS CONTINUES:

19 A. Without question, yes.

20 MR. WILSON: I'm sorry.

21 MR. AARON NESS: Leading.

22 MR. WILSON: I'll -- I'll rephrase it.

23 BY MR. WILSON:

24 Q. What did you think about that deal with respect
25 to how it was for Hampton County?

1 A. I didn't -- I thought it was a win-win
2 situation.

3 Q. Now, at that time, Mr. Daniel, wa -- was there
4 much going on at the Hampton Airport?

5 A. Nothing. Tell me what you want to talk about.
6 I can tell you anything you want to know about the
7 Airport back then.

8 Q. All right. I -- I mean I don't want -- I -- we
9 -- we've had some testimony, and I don't want to go
10 through things we've already done. Were you
11 familiar with what was going on or not going on
12 around the Airport around 2005, 2004 time period?

13 A. I was aware that nothing was going on at the
14 Airport --

15 Q. Okay.

16 A. -- at that time period and -- and prior to that.

17 Q. Did it seem to be any burden to the County at
18 that time, from your perspective, for an agreement
19 to be reached with Company Two to be able to access
20 the property and, in particular, the runway?

21 A. No -- no, I didn't see it as any burden. The
22 County administer -- well I can't say, County
23 Council members of the County Council saw the
24 Airport as a burden, and I can expand, if you would
25 like.

1 Q. Well, just briefly, yeah. Well --

2 A. Well --

3 Q. -- or however much you need to. I want the Jury
4 to hear everything, but --

5 A. But shortly after -- shortly after Sabrina
6 arrived, and she's the kind of person -- I liked
7 that about her, 'cause I'm the same way, she wants
8 to learn the job and know as much as she can about
9 it. And, apparently, members of County Council had
10 approached her shortly after she arrived, I don't
11 remember the exact date, it may be a year or so in
12 advance to this thing happening with Company Two,
13 but she had wanted to meet with me to discuss the
14 Airport. She said that she had been told by members
15 of County Council that they were interested in
16 closing the Airport, and they wanted to do a
17 Regional Airport with Allendale County, 'cause
18 Allendale County had a lot more going on airport-
19 wise than Hampton County did, and she wanted to know
20 my opinion. And I don't know how far back you want
21 to go, I know a lot of stuff about the Airport. I
22 told her I that I thought that would be a bad idea,
23 that there was only one other county in the State,
24 if I remember correctly it was in the Pee Dee area,
25 and they were probably in the same situation we were

1 in, being a rural county and didn't have much to
2 offer. And I said, "To me, you'd be going backwards
3 if you ever close the airport." So that's what I
4 mean by a burden on the County. Apparently, some
5 members of County Council saw the airport as a
6 burden, and wanted to close it.

7 Q. I gotcha. And, Mr. Daniel, you've got to slow
8 down just a hair, I talk fast too.

9 A. I'm sorry.

10 Q. Everybody probably can hear you. This lady's
11 got to take down everything you're saying.

12 A. Okay.

13 Q. And so -- yeah, we want to move along, but she's
14 got to -- she's got to get it down, so --

15 A. Okay.

16 Q. -- just a little slower, okay? I have to make
17 myself do that too. So not much going on at all at
18 the airport?

19 A. Absolutely nothing was going on.

20 Q. Okay. Mr. Daniel, did -- did Mr. Jones ever get
21 into -- or do you recall the specifics of what the
22 testing entailed -- every specific of what type of
23 test had to be done, and what all the testing
24 entailed?

25 A. Not with me. We -- we didn't get into that

1 discussion, I just knew he wanted to use the
2 Airport. And I can't say what he's --

3 Q. Back up just a little bit from the microphone,
4 too. There's feedback.

5 A. I can't say if he specifically said, "I want to
6 use the Airport runway," or, "just use the Airport."
7 I just knew he said he needed access to the Airport
8 for the testing of his fire trucks, and that's the
9 extent of what I knew about it.

10 Q. And you understood that to encompass the whole
11 Airport property?

12 A. Yes. I mean -- like I say, is that he said he
13 needed use of the Airport, so --

14 Q. Yeah.

15 A. -- the use of the Airport, I guess, meant use of
16 the Airport, around the property of the Airport,
17 whatever was needed.

18 Q. And that -- and that what was conveyed to
19 Council in that meeting?

20 A. That is correct.

21 Q. Did -- did you understand, or did Mr. Jones
22 explain that that was a very important and vital
23 piece of his business, and his decision to relocate
24 to Hampton County?

25 A. That is correct. And my understanding was that

1 was the specific reason he wanted to locate to the
2 Gemco building is because it was next to the
3 Airport, and I was hoping that he could have -- get
4 some type of agreement to allow him access to the
5 Airport.

6 Q. Okay. Mr. Daniel, did you expect -- in your
7 experience, do industries rely on commitments that
8 are made to them by counties where they locate?

9 MR. AARON NESS: Objection. Leading.

10 WITNESS CONTINUES:

11 A. Yes.

12 THE COURT: Well, that's sustained.

13 MR. WILSON: Okay, I'll -- I'll reask the
14 question.

15 BY MR. WILSON:

16 Q. Mr. Daniel, what is your experience in
17 connection with industries about whether or not they
18 rely on commitments that are made with counties or
19 cities, where it is that they may be locating?

20 A. Well, my experience and my opinion, if that's
21 what you're asking is, that business and industry
22 they firmly commit for the county or town. I mean,
23 you know, your word is as good as your bond, and all
24 of a sudden you made a commitment to go back on it,
25 then that's not good for your county or town to do

1 things like that. So I mean a commitment to me
2 means a lot.

3 Q. Okay.

4 A. And I would think if there's any business or
5 industry the county or town makes a commitment to,
6 then they expect them to honor that commitment.

7 Q. Now, Mr. Daniel, we've -- we've looked at,
8 several times, a letter, dated October 12th of 2005,
9 I'm gonna show you that letter.

10 A. Okay.

11 Q. And you're familiar with that, aren't you?

12 A. (Reviews document.) I am.

13 Q. I don't think you have looked at that in a long,
14 long time. I think you said you left Hampton
15 Economic Development Director in 2006, right?

16 A. That's correct. I had to be shown the letter to
17 refresh my memory.

18 Q. I was gonna say you haven't look at it in a long
19 time from --

20 A. Uh-huh.

21 Q. -- this case that's going on, had you?

22 A. No.

23 Q. Okay. And you've had a chance to look at it
24 even more so as this case has gone on?

25 A. Of course.

1 Q. Okay. Read -- read the first line of the
2 letter, please.

3 A. "Dear Quincy, Hampton County is excited about
4 the prospect of having Company Two Fire locate here.
5 You requested that certain commitments be made by
6 the County to assist you in making the decision
7 about locating in the Gemco building at 283 Foster
8 Road in Varnville."

9 Q. Okay. Now, read the first line -- the -- just
10 the first line of the next paragraph, please.

11 A. "Hampton County Council has authorized me to
12 make the following commitments to you concerning the
13 Hampton-Varnville Airport."

14 Q. And what does that tell you? What does that
15 tell you in respect to whether County Council was
16 involved?

17 A. That they were involved.

18 Q. Okay.

19 A. They had made the ultimate decision about
20 whether or not any commitments would be made, and I
21 was just conveying the commitments to --

22 Q. Okay.

23 A. -- him.

24 Q. Read -- read the next line, Mr. Daniel, please.

25 A. "Hampton County agrees to provide you with a

1 private taxi right -- taxi -- a taxiway right to use
2 from the northeast tip of the Airport to the Gemco
3 property line." More?

4 Q. No, just stop right there. Now, we've taken a
5 look -- you've had a chance to look at this letter
6 more and more as this case has gone on, haven't you?

7 A. I have.

8 Q. And I -- I think you've had a chance to look at
9 it several times, even since you were deposed a
10 couple times in this case, correct?

11 A. That's correct.

12 Q. I think you were deposed one time just as a
13 matter of course. Then you were deposed one time,
14 because you were gonna be out-of-state --

15 A. Uh-huh.

16 Q. -- and wasn't gonna be available to testify?

17 A. Correct.

18 Q. Okay. And you've had a chance to look at this
19 letter a number of times since then, correct?

20 A. I have.

21 Q. And I will put up on the -- on the board here
22 for just a moment -- we looked at this several
23 times, but you're familiar -- you're familiar with
24 the Airport property layout, correct?

25 A. I am now. I wasn't, to be honest with you.

1 That's the first aerial I've ever seen of the
2 Airport.

3 Q. Okay.

4 A. 'Cause there was no reason for me to previously.

5 Q. Okay. So here, and I've got it here on the
6 screen, and some of you can follow it now. I'm
7 going to pull -- pull out a little bit, Mr. Daniel.
8 Can you -- I don't know, can you see that where
9 you're seated?

10 A. Yes, I can see it.

11 Q. This is the Gemco property line right here.
12 This --

13 A. That's the Gemco building, correct.

14 Q. Is that -- and you see the Gemco property and
15 the building right there?

16 A. Yeah, and they had a large parcel of property.
17 I don't know how many acres.

18 Q. Okay, and then you see this is the -- the tip of
19 the runway? Is -- is this the northeast tip of the
20 airport over in here somewhere?

21 A. I'll have to take your word for it. I know it's
22 the same direction.

23 Q. Okay. If -- if you look on that aerial and you
24 see Varnville's to the right and Hampton's to the
25 left?

1 A. That's correct.

2 Q. Okay. And so is Varnville east of the airport?

3 A. Yes.

4 Q. And Hampton's west of the airport?

5 A. To be honest with you, yes.

6 Q. Okay. So just based off of that, the top right
7 part of this picture would be the northeast part of
8 this picture?

9 A. Based on what you're saying, correct.

10 Q. Okay. And you agree with that, right?

11 A. I agree with that, yes, sir.

12 Q. And -- and what is the property that -- in the
13 -- in the area and location that County Council had
14 made a commitment to Company Two, in an agreement
15 with Company Two, that you followed up with this
16 letter?

17 A. I'd have to read the letter, because that's not
18 my reading -- that's not my writing, that's --
19 'cause I didn't know anything about any of this
20 until the Airport Commission made me aware that this
21 is -- they wanted --

22 Q. No, no, I'm talking about this --

23 A. Okay.

24 Q. Back up just a little bit off the mic.

25 A. Okay.

1 Q. Can you back up just a little bit off that mic.
2 I'm talking about the part of the letter that you
3 just read a moment ago, the second sentence, where
4 it says, "Hampton County agrees to provide you
5 with" --

6 A. Yeah. 'Cause -- all I can say is I did not know
7 the details of how it was going to be worded, I just
8 knew he wanted access to the Airport runway -- the
9 Airport, and that it was up to the County to
10 negotiate the terms of how that would look. You
11 know, that's why they were getting with the County
12 Attorney to make sure they're doing everything
13 legal, so, as far as designing an agreement, to make
14 sure they're okay, and Company Two would be okay.
15 That's -- to me, that's more legalese as anything
16 else.

17 Q. I understand.

18 A. That's a plot, a piece of property.

19 Q. You're talking about a property swap that
20 occurred sometime later?

21 A. Well, eventually, but I mean it's just talking
22 about specifically about the airport. I mean I did
23 not get into the details of it, we want to be here
24 to this northeastern tip, all I had -- all I talked
25 to him about -- and all I was aware of was that he

1 wanted acce -- he wanted access to the runway. It
2 would have been the Airport Commission or County
3 Council or the County Attorney that would
4 specifically state, "The northeast tip of the
5 airport property to," whatever it says here.

6 Q. And that's what was put in the letter that you
7 signed?

8 A. Correct.

9 Q. Let me finish my --

10 A. Would have been negotiating.

11 Q. Let me finish my question first.

12 A. I'm sorry.

13 Q. That's what was put in the letter that you
14 signed based off the instructions that were given to
15 you by County Council?

16 A. That is correct.

17 MR. NESS: It's still leading, Your Honor,
18 objection.

19 THE COURT: That's sustained.

20 MR. WILSON: Okay.

21 BY MR. WILSON:

22 Q. What is in that letter that you put in based off
23 of the instructions that were given to you through
24 the County Council?

25 A. Pretty much this whole letter was dictated to me

1 by the County Attorney. I mean he had to review the
2 deal to make sure everything met legally.

3 Q. Okay.

4 A. And then after that information was given to me,
5 I fashioned the letter. How much of this was
6 Algie's writing, County Council's writing, I just
7 can't say for now.

8 Q. I understand, you're trying to think back and
9 remember who put some words in there.

10 A. Yeah, but I -- but I -- I wrote the letter, then
11 I presented it to Algie and Sabrina to make sure
12 they were okay with the way I wrote the letter, and
13 then once I had their approval, I sent it to Quincy.

14 Q. Okay. Now, Mr. Daniel, was all of that done at
15 the instruction of --

16 MR. WILSON: Well, we'll strike that, Your
17 Honor.

18 BY MR. WILSON:

19 Q. Mr. Daniel, is there any question in your mind
20 that Company Two and Hampton County reached an
21 agreement that provided Company Two with access to
22 the Airport property to test trucks?

23 MR. NESS: Objection, leading.

24 THE COURT: I'm going to allow it, thank you.

25 BY MR. WILSON:

1 Q. Is there any doubt in your mind about it?

2 A. No doubt in my mind.

3 Q. Now, there's been some discussion in this
4 courtroom about a property swap where Company Two --
5 or where there was a swap --

6 THE COURT: Can I -- can I stop you just a
7 minute? Can I get y'all to approach the Bench?

8 MR. WILSON: Sure.

9 (Whereupon, a sidebar was held with the Court and
10 the attorneys.)

11 THE COURT: Sorry to interrupt.

12 MR. NESS: That's no problem.

13 MR. WILSON: Thank you, Your Honor.

14 BY MR. WILSON:

15 Q. Mr. Daniel, there -- there's been some
16 discussion about a property swap that occurred
17 between -- between Hampton County and -- and
18 Mr. Jones. You've heard about that from just being
19 involved in this case, correct?

20 A. Correct. And -- and also being a part of the
21 whole negotiation.

22 Q. Okay. But you -- you weren't involved -- the
23 property swap is something that occurred -- did it
24 occur while you were Administrator, or is it
25 something that occurred after -- excuse me, while

1 you were the director, or did it occur afterwards?

2 A. No, it -- that happened afterwards. I mean, you
3 know, I don't recall any discussion with Quincy
4 about this project. After that letter I don't
5 recall if there was anything. They had dealt with
6 him, this was the only thing that's happened before
7 I left. And remember that was October, and I left
8 in December -- I mean --

9 Q. Were there de --

10 A. -- I left in January.

11 Q. Were there details of the property swap that
12 were worked out and agreed to about which properties
13 were going to be swapped and all of that, were those
14 details worked out and agreed to at any point in
15 time while you were the Economic Development
16 Director, or was all that worked out after you left?

17 A. Oh, yeah, the only thing I can say is, that
18 whatever this letter says, that's all the knowledge
19 I have of what was worked out and was agreed upon.
20 I mean I -- I don't even know what piece of land
21 you're talking about which was gonna be swapped,
22 because you've got to remember, I didn't know
23 anything about the property swap, this is something
24 that the County and the Airport Commissioner was
25 willing to do, and then when this all came about,

1 not only with this project, but another one, that's
2 when the property swap was talked about. Said,
3 "Well, look, we've got an opportunity here to -- why
4 don't we do something we want to do and have been
5 wanting to do with the Airport, let's swap a piece
6 of land," whatever the reason is they wanted to do
7 that.

8 Q. Okay.

9 A. And so that's how that got incorporated into the
10 deal.

11 Q. I understand.

12 MR. WILSON: Mr. -- Mr. Daniel, I believe that's
13 all the questions I have for you. Answer anything
14 the Defense has. Thank you for your time.

15 **CROSS-EXAMINATION BY MR. AARON NESS**

16 BY MR. AARON NESS:

17 Q. Mr. Daniel, what's on the Elmo right here? This
18 is Defendant's Exhibit 16.

19 A. Okay.

20 Q. Have you ever seen this document before? This
21 is a plat.

22 A. (Reviews document.) It doesn't look familiar,
23 no.

24 Q. Okay. Well, look at it a little bit closer.
25 Now, see at the top right up there, it looks like

1 the tip of the Airport runway?

2 A. I don't even know what you're asking me to look
3 at. I don't know what that is.

4 Q. Well, that's why we're looking at it.

5 A. Okay, when you say the tip of the runway, I'm
6 taking your word for it. I don't -- I don't
7 remember ever looking at it, and I can't read any of
8 that, so I don't know exactly what I'm looking at.
9 If you give me a piece of paper to look at it, that
10 might help.

11 Q. All right, this is Defendant's Exhibit 16. Look
12 at it for a second and then I'll put it back on.

13 A. (Reviews document.) I'm sorry, this doesn't
14 help me. I don't know exactly what I'm looking at.
15 I mean you can tell me that's --

16 Q. You don't --

17 A. -- some Airport property, and I can take your
18 word for it, but I don't know. I've never seen this
19 piece of tract.

20 Q. You don't recognize this 35-foot easement right
21 here?

22 A. No. I -- I have no idea what this is.

23 Q. I'm just --

24 A. I've never seen this piece of paper before, so I
25 can't tell you what all this stuff is. You'll have

1 to explain it to me.

2 Q. You don't recognize this property being
3 Mr. Jones' property?

4 A. I see Q&J Properties, I don't know what that
5 means on it.

6 Q. Okay.

7 A. And I have no idea what this is.

8 Q. Okay.

9 A. I'm sorry.

10 Q. Do you recognize this? It says, "Runway,
11 Hampton County Airport."

12 A. (Reviews document.) Oh, I can do that, yeah,
13 when you show me that, I can, but I was --

14 Q. Okay.

15 A. -- trying to look over everything, and now you
16 show me that, okay, Airport runway, okay, yeah.

17 Q. Okay. So that's the tip of the Airport runway
18 closest to Mr. Jones' property, right?

19 A. Yeah, near towards Hampton, yeah.

20 Q. Okay, can you orient yourself with that?

21 A. Yeah, I can.

22 Q. Okay. Mr. Daniel, this is a demonstrative
23 exhibit that Mr. Wilson just showed you.

24 A. Okay.

25 Q. Can you see that?

1 A. I can.

2 Q. All right, we just looked at it a minute ago --

3 A. Yeah.

4 Q. -- or he just looked at it a minute ago with
5 you, right?

6 A. Right.

7 Q. Did you say yes?

8 A. Yes.

9 Q. Okay. I'm gonna give you back Exhibit 16 real
10 quick.

11 A. Uh-huh.

12 Q. Do you see a compass on the side over here on
13 the left?

14 A. I do.

15 Q. All right, so you can see which way is the
16 north, right?

17 A. That's right, I can.

18 Q. So based on Defendant's Exhibit 16 that you've
19 got in front of you, and we've got the aerial right
20 here on the screen, you'd agree with me that that's
21 going north to south?

22 A. I would.

23 Q. All right. And that's east to west?

24 A. Correct.

25 Q. All right. East being over on the right-hand

1 side, --

2 A. Correct.

3 Q. -- correct?

4 A. West --

5 Q. West --

6 A. -- to the left.

7 Q. -- being over on the left-hand side, correct?

8 A. Correct.

9 Q. All right. This is the northeast tip of the

10 Airport, correct?

11 A. Okay, yes.

12 Q. I'm just making sure you and I are on the same

13 page in terms of --

14 A. Yeah.

15 Q. Okay.

16 A. I agree with you on that.

17 Q. Okay. This will be the northwest tip of the

18 Airport, right?

19 A. Okay. Yes.

20 Q. This will be southwest, somewhere we're down

21 here.

22 A. Okay, yes.

23 Q. And this will be southeast somewhere down here.

24 A. Right.

25 Q. All right, so we're on the same page then?

1 A. On the -- yes, sir.

2 Q. All right. You fully understand me?

3 A. So far, with the question you were asking, yes.

4 Q. Okay. Let me ask you one question.

5 A. Okay.

6 Q. All right, now we've got our bearings straight.

7 This will be the northeast tip of the runway,

8 correct?

9 A. Correct, correct.

10 Q. And this would be the northwest tip of the

11 runway, correct?

12 A. Correct.

13 Q. Do you agree with me on that?

14 A. Yes, sir.

15 Q. You fully agree?

16 A. Yes.

17 Q. Okay. What was so special -- let me get

18 Defendant's Exhibit -- it's the letter.

19 A. All right.

20 Q. Plaintiff's Exhibit 1 you said, "Hampton County

21 has authorized me to make the following commitments

22 to you concerning the Hampton-Varnville Airport.

23 Hampton County agrees to provide you with a private

24 taxiway right to use from the northeast tip of the

25 Airport to the Gemco property line."

1 A. (Reviews document.) That's what the letter
2 says, correct.

3 Q. So that would be somewhere up here, right?

4 A. Correct.

5 Q. So you were providing him -- you -- you state in
6 your letter that his private taxiway would do
7 something like that?

8 A. You're talking about -- you're -- we're talking
9 about two different things.

10 Q. Are we?

11 A. Yeah. A taxiway's not the same thing, and it's
12 for him gaining the access to the Airport.

13 Q. Okay, well, you --

14 A. His access to the Airport with the taxiway to be
15 able to go from his property to the Airport.

16 Q. All right. Well your letter says private
17 taxiway right-to-use from the northeast tip of the
18 Airport to the Gemco property line, which is
19 actually right here. That's what your letter says.

20 A. Okay.

21 Q. And you wrote it, right?

22 A. I -- I wrote it based on what I was told to
23 write by the County Attorney and the Administrator.

24 Q. Okay.

25 A. 'Cause I remember they -- no, that's -- to be

1 honest with you, that's not language. I would not
2 have written it that way had it been me writing it.
3 The -- the letter is written using the County
4 Attorney's language, so then --

5 Q. That's not your lang -- you wrote the letter.

6 A. No, sir, that's not my language.

7 Q. You signed it.

8 A. I signed it based on what the County Attorney
9 told me to say. He's the one that determines
10 whether or not the legalese and stuff. If I had
11 written the letter myself, it would have said, "Use
12 of the airport," but --

13 Q. You signed it?

14 A. Yeah, of course, I signed it, based on what I
15 was told to do by the County Council and the County
16 Attorney to protect their interest.

17 Q. You signed it and you wrote it?

18 A. I wrote it based on what they gave me -- the
19 information I was told to use, correct.

20 Q. Let me ask you this, what's so special about the
21 northeast tip of the Airport that y'all wanted to
22 give him the right up here?

23 A. I have no idea. That's a question you have to
24 pose to County Council and the County Attorney.

25 They're the ones that wanted the letter fashioned

1 that way.

2 Q. How about the northeast corner of the Airport?
3 Why didn't you want to give him a right down there?

4 A. Again, I -- I have no idea. I'm doing -- I'm
5 writing the letter, based on what I was instructed
6 to put in the letter.

7 Q. Is the north -- excuse me, southeast --

8 A. Yeah.

9 Q. -- the southeast corner, what -- what's --
10 that's not special?

11 A. I can't -- I can't, you know, I -- I can't
12 answer that. I'm writing the letter based on what I
13 was instructed to write by the County Attorney and
14 County Council.

15 Q. How about the northwest tip of the Airport?

16 A. Again --

17 Q. And why not grant him a right up there?

18 A. I can't answer the question, I wrote a letter
19 based on what I was instructed to do by the County
20 Attorney and County Council.

21 Q. You wrote this letter?

22 A. Based on their instructions.

23 Q. And your -- this lawsuit is about you -- the
24 letter I just gave back to you, --

25 A. Right.

1 Q. -- correct?

2 A. That's correct, based on the instructions I was
3 given.

4 Q. All right, a minute ago you said that you can't
5 say if Quincy Jones wanted use of the Airport
6 property or the Airport runway. That's a big
7 difference, isn't it?

8 A. Not necessarily.

9 Q. Not necessarily?

10 A. No, I don't think it is.

11 Q. Okay.

12 A. And I -- and I can explain; if you'd like.

13 Q. That's basically the runway, right? Is that
14 correct?

15 A. That's correct.

16 Q. All right. That's it, that's the runway?

17 A. That's correct. That's the runway, you're
18 right.

19 Q. The Airport's a lot bigger than that, isn't it?

20 A. It is.

21 Q. So you can't say whether or not he wanted use of
22 the Airport or the runway?

23 A. I can only deduce -- I mean he -- what other
24 reason would he have for need of the Airport unless
25 he needed the use of the runway. He had plenty of

1 property to need, so the only deducing that I can
2 come from is, that -- did he exactly, "I will need
3 to use the runway?" 100 percent certain I can't
4 say. He said, "Use of the Airport." He may have
5 said runway, but I -- I can't come to another
6 conclusion. Why would he need use of the Airport
7 unless you've got use of the runway? 'Cause you've
8 got plenty of land.

9 Q. Let me ask you --

10 A. What was the other reason?

11 Q. So you can't recall that then?

12 A. I'm sorry?

13 Q. So you can't recall whether or not he wanted use
14 of the Airport property or the Airport runway?

15 A. I can't recall if his wording was, "I need use
16 of the Airport," or, "the Airport runway."

17 Q. Okay, but you remember that it --

18 A. 'Cause we're talking 15 years ago.

19 Q. But you remember that there were discussions now
20 at an executive session in 2005 regarding all of
21 this?

22 A. That's -- that's --

23 Q. And you remember that?

24 A. Yeah, I do remember that.

25 Q. But you can't remember whether or not he wanted

1 to use the Airport property or the Airport runway?

2 A. To me, the Airport property includes the Airport
3 runway.

4 Q. All right.

5 A. So that's the only way I can answer that.

6 Q. Sir, would you be able to step down and come
7 down here?

8 A. Sure.

9 Q. And stand right here.

10 A. Yeah.

11 Q. And you can just kind of see where you're
12 finger's going.

13 A. Yeah.

14 Q. Okay. I've got a question for you.

15 A. Okay.

16 Q. The private taxiway right that you were
17 referring to in your letter, here's a copy of the
18 letter, okay?

19 A. Okay.

20 Q. Show me where it starts and where it ends.

21 A. Where what ends?

22 Q. The private taxiway. Show me where -- you
23 referred to it in your letter. Show me where it
24 starts and where it ends?

25 A. That I don't know because that was -- I don't

1 -- I don't know where the taxiway would be in
2 proximity to this property. I didn't do that deal
3 after that. I just negotiated the deal. He wanted
4 to have a private taxiway. That was all done after
5 I left. They determined exactly where they wanted
6 to put the taxiway.

7 Q. May I see that again?

8 A. Sure.

9 Q. All right, you say, "Hampton County agrees to
10 provide you with a private taxiway right-to-use from
11 the northeast tip of the Airport," we've established
12 you know where that is, right?

13 A. Yes, sir.

14 Q. "To the Gemco property line."

15 A. Okay.

16 Q. Which we decided is that, right?

17 A. Yes, sir.

18 Q. Well, you know where that is?

19 A. Yes.

20 Q. So will you put your fingers and show the Jury
21 exactly what you're talking about.

22 A. Well, I don't know exactly where the Gemco
23 property line ends, I just know where the Gemco
24 building is, because I mean I -- I don't see any
25 stakes here to tell me this is where the Gemco the

1 property line is and where the airport property line
2 is. So it says close proximity to the airport
3 runway.

4 Q. So you can't say today where the taxiway goes
5 from -- from in --

6 A. In the event -- I can say -- I can show you
7 where I would have put it, but I mean I didn't get
8 involved in that part of actually grading the
9 taxiway, I was already gone when that happened. I
10 wanted his permission to put in a taxiway, so he
11 could have access to the Airport.

12 Q. I want you to show the Jury what you meant in
13 your letter.

14 A. We're going to just -- you want me to fake it?

15 Q. Here --

16 A. I can tell you where I -- where I would -- if
17 would have been me where I would have put the
18 taxiway, I'm assuming there was gonna be
19 negotiations between the County and Mr. Jones about
20 exactly where's the best place to put that taxiway
21 to allow him access with his property to the Airport
22 and the Airport runway.

23 Q. So the taxi- --

24 A. Yeah, but would it be better for it to be up
25 here, or down -- down here? I mean that would have

1 been something the County would have done with the
2 Public Works. They'd say, "Where -- where can we
3 put that taxiway? What's the best place for it to
4 be okay for both of us?"

5 Q. Okay. Yes, sir. If you will, put your finger
6 on Mr. Jones' building.

7 A. The Gemco building is right here.

8 Q. Okay. And the taxiway that you were referring
9 to in your letter, where is that?

10 A. I don't know where it, 'cause it hadn't been --
11 that was something they were going to discuss at
12 some point, where's the best place to put the
13 taxiway for you?

14 Q. Did you not know where it was when you were --

15 A. No.

16 Q. -- writing the letter?

17 A. No, I just stated they needed a taxiway.

18 Wherever it would be advantageous for the Airport --
19 for the County and for Mr. Jones. We're talking --
20 I'm talking about a driveway.

21 Q. Do you see --

22 A. I'm talking about a driveway, I said, "Jack,
23 where's the driveway. It don't have any access to
24 the Airport." That was the -- they talked about
25 that later. I was gone then.

1 Q. Can you see this right here?

2 A. I do.

3 Q. Is that the taxiway you were referring to?

4 A. I have no idea. I don't know how old this map
5 is. Does it show today, or did it show back in
6 2005? I -- I don't know. You have to tell me what
7 year this is. Is this the taxiway that was in
8 question?

9 Q. Let me ask you this, Mr. Daniel, -- Sir, you can
10 have a seat.

11 A. Thank you.

12 Q. Appreciate it. All right, let's look at this
13 letter one more time. And I know we've --

14 A. All right.

15 Q. "Hampton County agrees to provide you with a
16 private taxiway right-to-use from the northeast tip
17 of the Airport to the Gemco property line." I read
18 that correctly; did I not?

19 A. You did read it correctly.

20 Q. Okay. Mr. Daniel, didn't you mean northwest?

21 A. I wrote what I was told to write by the County
22 Attorney and County Council.

23 Q. And didn't you mean to put the word "runway"
24 right after Airport right here?

25 A. I can't say, but I would -- I -- I can tell you

1 what I would have put, but that's -- we're -- that's
2 not what we're discussing, we're talking about what
3 County Council and the County Attorney wanted to
4 have put in the letter, how they wanted to have it
5 worded.

6 Q. Well, let's read it as if we're reading into at
7 those -- we're gonna read northwest here, okay?
8 Instead of reading -- instead of reading northeast,
9 we're gonna read northwest, right?

10 A. So you want me to speculate now?

11 Q. No.

12 A. Okay.

13 Q. And right here I want you to include the word
14 "runway", okay? And we'll see if this doesn't make
15 a lot more sense.

16 A. "Hampton County agrees to provide you with a
17 private taxiway right-to-use from the northwest tip
18 of the Airport runway for a taxiway to the Gemco
19 property line." Okay, I'll read it one more time.

20 "Hampton County agrees to provide you with a private
21 taxiway right-to-use from the northwest tip of the
22 Airport taxiway to the Gemco property line," okay?

23 Q. Okay. The northwest tip of the taxiway would be
24 right here, wouldn't it, to the Gemco property line?

25 A. Right.

1 Q. That would make a lot more sense, wouldn't it?

2 A. I can't answer that. I'm -- I'm not gonna

3 speculate on what could or what should have been.

4 I'm not speculating. And I can only comment on what

5 the letter says.

6 Q. That's his building, right?

7 A. That's his building, correct.

8 Q. And that's the northwest tip one, that's the

9 closest part of the runway, his building, isn't it?

10 A. It is.

11 Q. All right. You don't think -- excuse me, that

12 doesn't make a lot more sense to you?

13 A. I'm not gonna speculate on that, I'm sorry. I

14 mean I -- I wrote exactly what County Council and

15 the County Attorney wanted said in the letter, and

16 everybody was happy with the way the letter was

17 worded, including Mr. Jones.

18 Q. Did you have your --

19 A. As far as I know.

20 Q. Did you have your bearings off when you wrote

21 the letter?

22 A. It wasn't the case of me having my bearings off.

23 I did not write the letter based -- I wrote the

24 letter, but it was based on the instructions of

25 County Attorney and the -- and the County Council.

1 Q. And did you --

2 A. If -- if anybody's bearings were off, it was
3 theirs, I just wrote what they instructed me to
4 write.

5 Q. And did you leave off the road "runway"? 'Cause
6 that makes a huge difference. Do you agree with me
7 on that?

8 A. No, I don't. You've got to remember, this
9 letter was approved not only by the County Attorney,
10 but the Administrator before it was even sent.

11 Q. If I may, sir?

12 A. Sure.

13 Q. 'Cause the way you've written it takes us all
14 the way up here. "Hampton County agrees to provide
15 you with private taxiway right-to-use from the
16 northeast tip of the Airport," which is up here,
17 right?

18 A. Okay.

19 Q. Zoom in a little bit. It's up here, right?

20 A. Okay.

21 Q. All right. You'd agree -- do you agree with me?

22 A. Yeah, northeast tip, yeah, we've --

23 Q. All right.

24 A. -- already discussed that, correct.

25 Q. To the Gemco -- to the Gemco property line,

1 okay?

2 A. Okay.

3 Q. All right. So that's from here to here, right?

4 A. Yeah.

5 Q. Okay.

6 A. It gives him access to the whole Airport.

7 Q. It by -- it bisects the runway at this weird
8 angle, doesn't it?

9 A. Well, you can speculate on what -- exactly what
10 it means. I mean it might just mean that the way
11 it's been worded, the way the County wanted it
12 worded, that it's allowing access to the entire
13 Airport. I -- I don't know, I can't speculate on
14 exactly why the County wanted the wording the way it
15 was worded. I just wrote it the way I was told to
16 write it.

17 Q. Versus, if you had written it, "Hampton County
18 agrees to provide you with a private taxiway right-
19 to-use from the northwest tip of the Airport
20 taxiway," or, excuse me, "tip of the Airport to the
21 Gemco property --"

22 MR. WILSON: Your Honor, I don't mean to object,
23 because I want him to do his cross, but I -- this
24 has been asked and answered by the third time.

25 THE COURT: That's sustained.

1 MR. WILSON: Thank you, Your Honor.

2 MR. AARON NESS: I'll move on, Your Honor.

3 EXAMINATION CONTINUES BY MR. NESS:

4 Q. Is it possible you got your letter confused?

5 A. There's only one letter, how can I confuse it?

6 Q. Is it possible you got your bearings confused in
7 that letter?

8 A. Not my bearings we're talking about. We're
9 talking about County Council and the County
10 Attorney.

11 Q. You wrote the letter.

12 A. Based on their instructions.

13 Q. Let ask you this, Mr. Daniel, you testified that
14 Mr. Jones was coming to Hampton County to test ARFF
15 trucks either on the Airport or the Airport runway;
16 is that fair to say?

17 A. He's given access to the Airport to test his
18 fire trucks.

19 Q. Yeah.

20 A. Whether it be -- I presumed it was the runway.
21 I mean I can't think of no other reason that he
22 would need access to the Airport, 'cause he's got
23 plenty of property.

24 Q. Okay.

25 A. What does he need more property for? I mean --

1 I mean he may specifically have said, "Airport
2 runway," I just -- honestly, I can't -- 15 years
3 later, did he say Airport runway or just Airport? I
4 can't say.

5 Q. Well, let me ask you this, why didn't you just
6 state that in your letter?

7 A. 'Cause I wrote what I was told to write. If I
8 had written the letter, it would have been entirely
9 different, but, you know, I'm not the County
10 Attorney that's to make sure it meets all legal
11 ramifications, so I just wrote what I was told to
12 write.

13 Q. Mr. Daniel, I'm going to show you what is
14 Defendant's Exhibit 18, okay?

15 A. Okay.

16 MR. WILSON: Your Honor, that's without
17 objection. Without objection.

18 BY MR. AARON NESS:

19 Q. Do you recognize that letter, sir?

20 A. After I was refreshed about it, I do, from
21 earlier depositions. I'd forgotten about it, but
22 after it was introduced to me, I remembered it.

23 Q. All right. Who was that letter written to?

24 A. That was a letter that was written to Gary
25 Grossman of Lancaster Redevelopment Corporation, and

1 we called that Project Forest. He came to me back
2 in January of 2005.

3 Q. Would you mind reading the first paragraph on
4 there?

5 A. Sure. If it helps, I can tell you it's the
6 exact same letter. "Hampton County's excited about
7 the prospect of having Forest Homes locate here.
8 You requested that certain commitments be made by
9 the County to assist you in making the decision
10 about locating in the Gemco building at 283 Foster
11 Road in Varnville." Do you want me to go any
12 further?

13 Q. Yes, sir, keep on reading. Thank you.

14 A. Okay. "Hampton County Council has authorized me
15 to make the following commitments to you concerning
16 the Hampton-Varnville Airport. Hampton County
17 agrees to provide you with a private taxiway right-
18 to-use from the northeast tip of the airport to the
19 Gemco property line. The County also agrees to
20 clear and upgrade the taxiway to the Gemco property
21 line. The County also plans to move forward
22 improvements to the Airport, including the
23 installation of runway lights as soon as possible.
24 During discussion with the Administrator Sabrina
25 Posey, Airport Commission Chairman Lee Ellis, and

1 myself in February, it was indicated that the County
2 desires to obtain a portion of the Gemco property
3 adjacent to the Airport and consider making
4 necessary upgrades." Do you want me to continue?

5 Q. Yes, sir.

6 A. "You agree to grant this portion of property to
7 the County provided we give you a similar amount of
8 interest that's west or southwest of the Gemco
9 property line. By the way, everybody at Hampton
10 County Council concurs with that request." Is that
11 it?

12

13 Q. Thank you. So you wrote an identical letter --
14 identical to the one that you wrote to Mr. Jones in
15 October of 2005, you wrote an identical letter to an
16 entirely different company, didn't you?

17 A. That is correct, based on instructions from the
18 County Council and County Attorney.

19 Q. In March of 2005, correct?

20 A. That's what it says. He actually met with them
21 in January.

22 Q. And then Mr. Gary Grossman, right?

23 A. That is correct.

24 Q. And here we go down into the meat of the letter,
25 and it's the exact same thing, isn't it?

1 A. It is, that is correct.

2 Q. Were you giving Gary Grossman a taxiway -- the
3 same taxiway as you were giving Company Two?

4 MR. WILSON: Your Honor, I -- I object to the
5 form of the question. I think Mr. Daniel has
6 testified he can't give anything.

7 THE COURT: Sustained.

8 MR. AARON NESS: Judge, I'm move to admit
9 Defendant's Exhibits -- or I've got it, excuse me,
10 Defendant's Exhibit 18 into evidence.

11 THE COURT: I think that's without objection.

12 MR. WILSON: Without objection, Your Honor.
13 (Whereupon, Defendant's Exhibit Number 18 is moved
14 into evidence without objection.)

15 BY MR. AARON NESS:

16 Q. Do you remember the project code name?

17 A. Project Forest, if you're asking about Gary
18 Grossman?

19 Q. Yes, sir.

20 A. Project Forest.

21 Q. So you remember the project code name for Gary
22 Grossman from March of 2005, right?

23 A. I do after my -- my memory was refreshed.

24 Q. What was the project code name for Company Two?

25 A. There was no code name because the Department of

1 Commerce got involved in the project.

2 Q. So there wasn't a code name?

3 A. No, because Company Two was not considered an
4 industry. Gary Grossman, what he was doing with --
5 with the industry, he was doing manufactured
6 housing.

7 Q. Did you send this letter to anybody else?

8 A. Did I send it?

9 Q. Yes, sir, did you send this letter, the one you
10 sent to Gary Grossman and the one you sent to
11 Company Two, who else did you send it to?

12 Q. Those are the only two letters that were sent
13 while I was the Economic Development Director, in
14 relation to the Gemco building and the prospects
15 that were interested in it and the use of the
16 Airport.

17 Q. But this commitment that you were making to
18 Grossman, when did his commitment end such that you
19 could then make a commitment to Company Two?

20 A. I guess a couple of months afterwards because
21 he, at some point -- I forgot exactly when just
22 indicated that he was not interested in Hampton
23 County, and whatever reason decided to go to Jasper
24 County.

25 Q. And you remember that?

1 A. Of course I do, 'cause I'd seen the facility
2 when it was built in Jasper County on I-95.

3 Q. I'm going to show you Plaintiff's Exhibit 1 one
4 more time, this is -- this is the letter. And I
5 know it's hard to see on that little screen on
6 there.

7 A. I pretty much remember that part now.

8 Q. All right, right here you said -- you state,
9 "During discussions with Administrator, Sabrina
10 Posey Graham, Airport Commission Chairman Lee Ellis,
11 and myself earlier this year it was indicated that
12 the County desires to obtain a portion of the Gemco
13 property adjacent to the airport to facilitate
14 necessary upgrades. We appreciate your commitment
15 to grant this portion of property to the County
16 provided we give you a similar amount of acreage to
17 the west or southwest of the Gemco property." Did I
18 read that correctly?

19 A. You did.

20 Q. So they were swapping properties, weren't they?

21 A. That was the idea.

22 Q. So they were swapping properties?

23 A. There was gonna be a piece of property that was
24 swapped, that was -- that was in the proposal.

25 Q. Then right here you state right at the end, "By

1 way of letter, Hampton County Council concurs with
2 that request."

3 A. Correct.

4 Q. Did Hampton County Council actually concur with
5 this request?

6 A. I wouldn't have sent it if it hadn't been the
7 case. I'm not in the habit of lying.

8 Q. Do you have an email, or a letter, or anything
9 from County Council stating that you can bind the
10 County?

11 A. I can't say that. I've been gone from the
12 County for 15 years or more.

13 Q. You left in January of 2006, so you left just a
14 couple months after this October 12, 2005, letter
15 was witten -- written, right?

16 A. That's correct.

17 Q. Why'd you leave?

18 A. I was asked to leave. I was asked to resign by
19 the Administrator.

20 Q. Sabrina Graham?

21 A. That is correct.

22 Q. Why'd she ask you to leave?

23 A. I don't know. She -- we met -- if I can explain
24 it to you. We met in November, just before
25 Thanksgiving in 2005, and she asked me to meet with

1 her, and she said, "I want you to resign." I was
 2 shocked because everything was going quite well.
 3 We'd just negotiated this deal with Company Two, we
 4 had other good things going on in the County, we
 5 were getting ready to announce another project, and
 6 I got a bunch of grant money for the County, so I
 7 was taken aback by it. But as she continued
 8 talking, I -- in my own mind, had my own reasons and
 9 ideas why she was asking me to resign.

10 Q. What were those ideas and --

11 A. Do you want me to speculate?

12 Q. No, what -- you say you had your own reasons,
 13 what were those reasons?

14 A. Okay, well, if -- if I may expand upon that.

15 When she asked me to resign, as I say, I was taken
 16 aback at first. And she said, "Jim, I just want you
 17 to know that I am willing to let you stay on with
 18 the County 'til the end of January if you accept my
 19 request to resign." It was then that I was pretty
 20 much convinced why the resignation was being asked.
 21 Why would you want somebody to resign when
 22 everything's going well unless there were ulterior
 23 motives, and that's the way that I saw it. Doing
 24 good, you're just given an employee that you don't
 25 want me any longer the ability to stay on until the

1 end of January, two and a half months, there must be
2 more to the story.

3 Q. If you didn't resign by when she told you to,
4 would you have been fired?

5 A. I can't answer that, I suppose so, but I didn't
6 go that far to find out. The way I looked at it is,
7 if somebody doesn't want me there any longer, I
8 don't want to stay. If you got fired and you even
9 challenged it, it wouldn't be challenged. I'm gonna
10 have the back of my head, they want to get rid of me
11 on this, so I'll just negotiated the best deal I
12 can, and that's exactly what I did.

13 Q. Did it have anything to do with this letter and
14 the March 2005 letter you sent Grossman?

15 A. My opinion it did not, because it didn't come up
16 in any discussions whatsoever.

17 Q. Thank you, sir.

18 A. Yeah.

19 MR. AARON NESS: Court's indulgence one moment?

20 BY MR. AARON NESS:

21 Q. Mr. Daniel, if Hampton County authorized a deal
22 with Company Two in a separate executive session,
23 why is the letter, the March 2005 letter, identical
24 to the October 12, 2005, letter?

25 A. You've got to remember the whole thing is

1 negotiated by County Council, especially the County
2 Attorney. I guess -- I can only speculate that once
3 they heard what Mr. Jones was wanting to do, it
4 sounded so similar as far as use of property, you
5 know, and even have the taxiway, why not use the
6 same letter? So that's -- that's the only
7 speculation I could have. So the County Attorney
8 and the County Council orders it, felt that that
9 letter would suffice. If it had not, then it would
10 have been changed, and, of course, Mr. Jones was
11 agreeable to the way it was written, as far as I
12 know. I mean I don't remember having a discussion
13 with him after that letter letting him know what
14 County Council decided.

15 Q. What did Mr. Grossman's company do?

16 A. Manufactured homes. They -- he built
17 manufactured homes similar to what -- we had -- we
18 were looking at Haven Homes, they also relocated to
19 Jasper County. He -- no -- modular homes, he would
20 sell them, but he also -- that's why he wanted the
21 use of the airport, not only did he sell them, but
22 he taught classes to people so they could also do
23 what he does, and he was a pilot, and he needed
24 access to the Airport so he could land his planes
25 there and bring in clients, and he wanted that, of

1 course. I guess it was something that could look
2 good. They got -- can just drive -- drive you right
3 from the Airport.

4 Q. Okay.

5 A. And come across this taxiway right to my
6 property right next door.

7 Q. So he needed --

8 A. Instead of having to drive around.

9 Q. He needed access that looked like this for his
10 modular home business?

11 A. Again, I can't speculate on why County Council
12 and the County Attorney wanted that letter written
13 the way it was. I know all he wanted was a taxiway
14 from the property to the Airport to his building, to
15 his -- his property, so he could drive back and
16 forth his clients.

17 Q. What was the modular home business going to be
18 doing way up here at the northeast tip of the
19 Airport in the dirt -- in the grass and maybe even
20 worse?

21 A. Again, I can't answer. I'm only writing what
22 County Council and the County Attorney instructed me
23 to write. Why they wanted to word it that way, you'd
24 have to ask them. Again, if I had to write it, it'd
25 be entirely different, but I didn't get to write the

1 letter. I just wrote based on what I was
2 instructed.

3 Q. Sir, thank you.

4 MR. AARON NESS: Answer any questions on
5 redirect by Mr. Wilson.

6 **REDIRECT EXAMINATION BY MR. WILSON**

7 BY MR. WILSON:

8 Q. Mr. Daniel, we -- we've had a lot of discussion
9 about semantics and about language and about words
10 and about those things. Is there any doubt in your
11 mind that County Council reached an agreement with
12 Company Two that allowed Company Two access to use
13 the Hampton County Airport to test trucks?

14 A. No question in my mind.

15 Q. Is there any doubt in your mind that that
16 commitment and that promise was made to Company Two?

17 A. Yes, it was.

18 Q. Okay. I'm not going back over the aerial that
19 we've seen a hundred times. The northeast tip of
20 the Airport to the Gemco property line encompasses
21 the entire Airport property, doesn't it?

22 A. I'll take your word for it. Again, I really
23 hadn't see that plat until just recently.

24 Q. Okay.

25 A. But I'm --

1 Q. But it looks that way when you look at it,
2 doesn't it?

3 A. Yeah, it does. Like I said, if I'd have written
4 it, it'd have been entirely different.

5 Q. Yeah. In -- in hindsight words -- words might
6 have been a little different, right?

7 A. If I had -- I wrote it specifically with just my
8 wording, correct.

9 Q. Was the intent and the purpose of this letter,
10 this Plaintiff's Exhibit Number 1, to -- to follow-
11 up on the agreement that we talked about between
12 Company Two and Hampton County Council?

13 A. There would have been some follow-up, so
14 correct, but it never happened while I was there, so
15 I guess he was putting his ducks in a row.

16 Q. No, I guess what -- what I'm asking is, this
17 letter was sent after the meeting that you talked
18 about, correct?

19 A. That -- that's correct.

20 Q. Okay. Mr. Daniel, Gary Grossman, Project
21 Forest, did that ever come to fruition in Hampton
22 County?

23 A. No. I can't exactly recall the exact reasons
24 why he decided not to locate here, but I guess he
25 got a better deal in Jasper County and decided to

1 locate there.

2 Q. And he had needs at the Airport, correct?

3 A. That's what he told us, but where he located his
4 business in Jasper County at the Airport, not
5 anywhere close to him, so --

6 Q. Okay. Mr. Jones' Company Two had needs at the
7 Airport, correct?

8 A. No question, based on our -- our negotiations
9 and discus -- discussions.

10 Q. And those were conveyed very clearly by Company
11 Two through you to County Council?

12 A. To County Council, and everybody involved in the
13 County, correct.

14 Q. Mr. Daniel, I understand it's personal, you
15 talked about resigning. Ms. Graham came to you and
16 asked you either to resign or she was going to
17 terminate you, correct?

18 A. No, no, no. She asked me to resign. I can only
19 speculate that I'd be fired had I not resigned.

20 Q. I understand, okay. And -- and did she ever, in
21 any of the discussions that you had with her,
22 express any concern or disappointment or problems
23 with either one of these letters to Mr. Grossman or
24 to Mr. Jones? Did she ever give you any indication
25 that that was the basis of her asking you to resign?

1 A. No.

2 Q. I -- I think you have -- your Board actually --
3 the Economic Development Board actually recognized
4 you at the last meeting and issued an accommodation
5 in your honor or in your recognition for the service
6 you had given, correct?

7 A. They did. They were quite surprised at what
8 happened.

9 Q. Mr. Jones, excuse me, Mr. Daniel, I want you to
10 look just again at Plaintiff's Exhibit Number --
11 Exhibit Number 1, the letter that we've looked at so
12 many times, and you said you almost have it
13 memorized by now.

14 A. Yeah.

15 Q. Who is cc'd on the bottom of that letter?

16 A. Sab -- a carbon copy on Sabrina Posey Graham and
17 Lee Ellis.

18 Q. And Sabrina Graham is?

19 A. The Administrator. Well, she was the
20 Administrator at the time, and Lee Ellis, at the
21 time, was the Commission -- the Airport Commission
22 Chairman.

23 Q. Do you know of any correspondence or
24 communication or contact ever made with Quincy Jones
25 or anybody on behalf of Company Two to say, "Hey,

1 that letter -- that letter's wrong, it's got
2 mistakes in it?"

3 A. No. Not a word or any other correspondence.

4 Q. Or communication or anything?

5 A. No, nothing.

6 Q. Before today has anybody ever suggested to you
7 that somehow, before today, and before Mr. Ness'
8 suggestions to you, and before the lawyer suggested
9 to you, has anybody ever suggested to you somehow
10 that this letter is wrong, and that it's missing
11 words, or that it's got the wrong directions on it,
12 or the wrong map orientation, that somehow the word
13 northeast was supposed to be northwest? Has anybody
14 ever talked to you about that all the time that you
15 were ever Economic Development Director or all the
16 time you've ever been involved in this case?

17 A. No. And I would expect, if there was a problem
18 with it, the County Attorney would have called me.
19 I mean this -- that letter was written based on what
20 the County wanted in the letter.

21 Q. I -- I understand, but I'm asking before today
22 has --

23 A. Yeah.

24 Q. -- anybody ever asked you, suggested to you, or
25 tried to imply that -- that -- that northeast should

1 have said northwest?

2 A. No.

3 Q. Has anybody ever asked you, or questioned you,
4 or tried to imply that somehow the word "runway" is
5 left off after the word "airport"?

6 A. No.

7 Q. And did Sabrina Graham, Lee Ellis, or anybody
8 else on behalf of County ever come to you and say,
9 "Mr. Daniel, this was a screw up, we need to correct
10 this?"

11 A. I know, as a matter of fact, Sabrina would have
12 approved the letter before I sent it.

13 MR. WILSON: Your Honor, I don't have any
14 questions for Mr. Daniel. I appreciate your time
15 and patience being here.

16 MR. AARON NESS: Nothing on recross, Your Honor.

17 THE COURT: Thank you, sir, you may step down.

18 MR. DANIEL: Appreciate it.

19 THE COURT: Okay, Ladies and gentlemen, I'm
20 gonna give us about a 10-minute break, let you
21 stretch your legs before we start our next witness.
22 Please don't begin discussing the case.

23 (Whereupon, the Jury leaves the courtroom.)

24 (Whereupon, a brief recess is held.)

25 (Whereupon, the Jury enters the courtroom.)

1 THE COURT: Mr. Wilson?

2 MR. WILSON: Thank you, Your Honor. Your Honor,
3 the next witness that we intended to call is a
4 gentleman named Kevin Weinberg. He's also a witness
5 the Defense was going to call in their case, he was
6 here yesterday, but I think he had some commitment
7 or something, so we agreed last night to read in his
8 deposition, parts -- all -- all parts relevant to
9 the case, Your Honor, so Ms. Katie Ehrhardt is going
10 to read today, since I'm short-handed for me.

11 THE COURT: Okay.

12 MR. WILSON: This will be questions from us. I
13 believe I -- I forgot to give you a copy yesterday,
14 the one we read, but I believe you have this one,
15 Your Honor? Mr. Weinberg?

16 THE COURT: Yes.

17 MR. WILSON: Okay.

18 THE COURT: If you would just tell us your full
19 name.

20 MS. AIRHART: Kathleen Davis Ehrhardt.

21 THE COURT: And spell your last name?

22 MS. EHRHARDT: E-H-R-H-A-R-D-T.

23 THE COURT: And, Ms. Ehrhardt, could you raise
24 your right hand? Do you swear and affirm that you
25 will read from the deposition without additions and

1 -- or subtractions?

2 MS. EHRHARDT: I do.

3 THE COURT: Thank you.

4 MS. WILSON: Ms. -- Ms. Ehrhardt. I've known
5 her whole life, Your Honor, so she's Katie Davis to
6 me -- Ms. Ehrhardt. Can you look at page five,
7 please? Starting at line three. I'm going to read
8 the question, you read the answer.
9 (Whereupon, excerpts of deposition of Kevin Weinberg
10 is published for the Jury.)

11 MR. WILSON: Your Honor, that would be -- unless
12 I missed something or misread something, that would
13 be all the portions of Mr. Weinberg's deposition
14 that the Defendant and Plaintiff wanted to be
15 published.

16 THE COURT: Did they cover it all, Mr. Ness?
17 Ms. Jett?

18 MR. AARON NESS: Your Honor, can you give me one
19 second to make sure.

20 THE COURT: Sure.

21 MR. WILSON: And while you're looking, I'm going
22 to rearrange my order a little bit because this
23 video's a little bit longer. I'm going to call a
24 witness that I believe we can do before lunch. Can
25 I slip outside just to check with him one second?

1 THE COURT: Sure.

2 MR. WILSON: Thank you.

3 MR. NESS: Your Honor, that's it.

4 THE COURT: Okay.

5 MR. WILSON: Your Honor, we'll make

6 Mr. Weinberg's deposition a Court exhibit so it's in
7 the record.

8 THE COURT: Okay.

9 MR. WILSON: Your Honor, if we're ready to
10 proceed further. We would call Mr. Jim Nilo.

11 (James Robert Nilo was duly sworn
12 and testified as follows)

13 **DIRECT EXAMINATION BY MR. WILSON**

14 BY MR. WILSON:

15 Q. You can remove that if you'd like to.

16 MR. WILSON: If it pleases the Court.

17 EXAMINATION BY MR. WILSON:

18 Q. Mr. Nilo, give your full name for the record,
19 please.

20 A. James Robert Nilo.

21 Q. And where are you from?

22 A. I live just north of Richmond, Virginia.

23 Q. All right. Did you come in yesterday from
24 Virginia to testify in this case?

25 A. I did.

1 Q. Did -- did we hire you to answer some questions
2 for us about this case and about airports in
3 general, and the Hampton-Varnville Airport?

4 A. Yes.

5 Q. Okay. Are you being paid for your time?

6 A. Yes.

7 Q. Do you have experience with airport safety
8 operations and compliance?

9 A. I do.

10 Q. We're going to talk in detail about that in a
11 little bit. Do you have experience with airport
12 rescue firefighting truck operations within
13 airports?

14 A. Yes.

15 Q. Let's talk about your experience a little bit.
16 Did you start out as a firefighter?

17 A. I did.

18 Q. Just kind of walk me through your professional
19 experience.

20 A. I started as a firefighter in the U.S. Marine
21 Corps. in 1984, served four years of active duty.
22 Following separation of services, I went to the
23 Metropolitan Washington Airport's Authority, which
24 is the Authority which is the Authority that
25 operates Washington Dulles and Reagan National

1 Airports in Washington, D.C. I spent a few years
2 there, and I left to go to the City of Manassas, a
3 little city outside of Washington, as a structural
4 firefighter. We did protection for the City and for
5 a pretty large general aviation airport that's
6 there. I was kind of recruited to go to work for
7 the State of Virginia, the Commonwealth of Virginia,
8 as a training program manager for many public safety
9 programs, including aircraft rescue and
10 firefighting; and following that I was recruited by
11 the Capital Region Airport's Commission, which is
12 the owner and operator of Richmond International
13 Airport, and I did the latter half of my career, up
14 until retirement in 2015, as the Aircraft Rescue
15 Firefighting Chief and the Manager of Airport
16 Operations.

17 Q. So you managed Airport Operations at the
18 Richmond International Airport?

19 A. I did.

20 Q. Okay. I want to go back through a little bit of
21 that, just some highlights in some of your history.
22 How long did you say you had served with the Marine
23 Corps.?

24 A. Four years active, two years inactive Reserve.

25 Q. Did you have involvement with the ARRF vehicles

1 during the time with the Marine Corps.?

2 A. I did.

3 Q. I saw from your resume that you were involved
4 with the presidential helicopter operation?

5 A. Yes. I was stationed at the Quantico Marine
6 Corps. base where the presidential helicopters were
7 based at.

8 Q. Okay. And I also saw from your resume, it
9 looked pretty interesting, that you have a U.S.
10 Department of Justice secret clearance?

11 A. I do.

12 Q. I won't ask about it, since it's secret. Tell
13 me what's the ARFF Coordinator with the State of
14 Virginia?

15 A. So in that job we delivered the certification
16 programs that the firefighters that go to work at
17 airports or protect airports. So we had students
18 from municipal fire departments or airport fire
19 departments. We taught them how to do aircraft
20 rescue and firefighting. There's -- it's -- it's a
21 little bit different type of firefighting, and it
22 involves the use of some special equipment and
23 apparatus.

24 Q. So you're -- you have -- do you have extensive
25 knowledge and history on ARFF vehicles, how they're

1 set up, what they're intended for, and how to use
2 and -- and employ ARFF vehicles?

3 A. Yes.

4 Q. And you also have -- do you also have extensive
5 experience in airport operations?

6 A. I do.

7 Q. Is -- do you have experience in safety
8 operations and compliance issues with air -- with
9 respect to airports?

10 A. Yes.

11 Q. Let's talk a little bit about -- do -- do those
12 compliance issues pertain to compliance with FAA
13 regulations and rules?

14 A. They do.

15 Q. And would that be specifically with respect to
16 any kind of FAA safety regulations, as related to
17 airports?

18 A. Yes.

19 Q. Where -- where does that experience come from in
20 your career?

21 A. When I went to work for the Capital Region
22 Airport Commission in Richmond, I was hired as the
23 Fire Chief, specifically. Unfortunately, after 9/11
24 the world changed quite a bit, and I found myself
25 with new duties and responsibilities. Part of that

1 was airport operations, and it's a very unusual and
2 specialized field, but really has to do with the
3 safe operation of the airfield; so my main focus was
4 taking care of the runways and the taxiways, and all
5 the operations and things necessary to allow the
6 aircraft to come and go as they needed in a safe
7 manner.

8 Q. Okay. Are you a member of any Airport --
9 Operation Airport Society, Committees, things like
10 that? Professional Associations?

11 A. Yes.

12 Q. What is that?

13 A. I'm a member of the American Association of
14 Airport Executives, which is an individual
15 membership for anyone that works at airports
16 anywhere can be a part of. I'm also a member of the
17 Aircraft Rescue Firefighting Working Group, which is
18 specific for airport firefighters.

19 MR. WILSON: Your Honor, at this time, we would
20 submit Mr. Nilo as an expert in airport safety
21 operations and compliance and -- and ARFF airport
22 rescue and firefighting truck operations within
23 airports.

24 THE COURT: Any objection?

25 MR. AARON NESS: No objections, Your Honor.

1 THE COURT: Okay.

2 Ladies and gentlemen, normally, a witness can
3 testify to things that they have personal knowledge
4 of, things that they either saw, or heard, or sensed
5 in some other manner, but an -- an exception to that
6 is that someone's who's qualified as an expert,
7 either by education, or experience, or a
8 combination. We do allow them to offer opinion
9 testimony in that area. Mr. Nilo is qualified as an
10 expert in airport rescue firefighting and airport
11 safety operations and compliance and can give
12 opinion testimony in those areas.

13 MR. WILSON: Thank you, Your Honor.

14 BY MR. WILSON:

15 Q. Mr. Nilo, in your experience have you ever been
16 involved in testing ARFF trucks for certification?

17 A. Yes, but there's different testing. There's
18 manufacturer's testing for compliance to meet the
19 FAA standards, and then there's the testing that we
20 do at the airports, to make sure that they perform
21 their -- their lifesaving functions in a timely
22 manner.

23 Q. And which one of those would you have been
24 involved in?

25 A. A little bit of both. My position is ARFF

1 Chief. I've purchased, I believe, it's about six
2 ARFF vehicles, while I was employed with Capital
3 Regional Airport Commission. So we would visit the
4 manufacturer's facilities, while the aircraft --
5 while the trucks were being tested, or portions of
6 the trucks were being tested by the manufacturer,
7 prior to delivery. And then the testing that we did
8 was what's called a time response exercise. The --
9 the importance of aircraft rescue and firefighting
10 is the fact that -- that the main difference is that
11 the trucks that we have can deliver high volumes of
12 specialized firefighting agents, while the trucks
13 are on the move, because post-crash you have a post-
14 crash fire, and, obviously, that's probably one of
15 the most detrimental things that there could be, so
16 rapid response and the ability to -- to put the
17 engine on the -- on the fire as quickly as possible
18 is the key to lifesaving, and so time is of the
19 essence, even -- even more so than in a structural
20 environment. So I mean we test to make sure we can
21 get there as fast as we can and safely as we can.

22 Q. Do me a favor, pull up just a little bit,
23 because this Court -- I can't hear you quite as
24 well, just speak up just a hair, okay?

25 A. Sure.

1 Q. So am I understanding you to say that while you
2 were involved with the airports, ARFF trucks that
3 the airport would purchase would have been tested,
4 almost like a test drive vehicle after you purchase
5 it to make sure it's operating properly, correct?

6 A. Yes.

7 Q. And then throughout the -- the life of the time
8 that the airport owns and, hopefully, never has to
9 use but has the ARFF truck available for use, it's
10 tested to make sure it was still operable and in
11 compliance?

12 A. That is correct. We are -- we were required to
13 do performance testing at least once a year for the
14 FAA, but we, typically, far exceeded that,
15 obviously. We wanted to make sure the vehicles were
16 ready any time.

17 Q. And where would that have occurred within the
18 airports? Would it have occurred at times on the
19 airport runway?

20 A. Yes.

21 Q. And on the grounds around the airport runway?

22 A. Yes.

23 Q. Have you, yourself, ever driven an ARFF truck on
24 an airport runway?

25 A. Yes.

1 Q. Is that something primarily you did? I mean, do
2 you try to put these trucks on the runway,
3 primarily?

4 A. Typically, we don't operate on the runway,
5 unless we have an absolute need to do that, but we
6 did, obviously, for experience purposes. We
7 practice in real-world environments, so we'd go on
8 the runways from time-to-time testing, training,
9 exercises, and things of that nature, and, of
10 course, actual emergency responses as needed.

11 Q. And if an ARFF truck was going to be on an
12 airport runway, are there procedures in place or are
13 there proced -- procedures that exist so that you
14 don't have a vehicle on a runway while a plane's
15 trying to land?

16 A. Yes.

17 Q. What is that?

18 A. It -- it depends on the type of airport.
19 There's two types of airports. Controlled, meaning
20 that they had an operational control tower, and if
21 it's an uncontrolled airport, they don't have a
22 tower. The tower doesn't operate 24/7. So on -- on
23 a controlled airport we would ask permission from
24 the -- the Control Tower to proceed to whatever
25 station that there was, and they'd give a response

1 route. On an uncontrolled airport, that we use the
2 same procedures that -- that the pilots would use.
3 There's something called CTAF, or Common Traffic
4 Advisory Frequency, so we would come up on that
5 frequency. We would announce who we are, and the
6 location that we were at, and where we were going,
7 and, obviously, be cognizant of the other traffic in
8 the area, whether that be ground vehicles or
9 aircraft, and proceed safely to wherever our
10 destination was.

11 Q. Have you ever heard of something called NOTAM?

12 A. Yes.

13 Q. Are you familiar with that?

14 A. Yes.

15 Q. What is it?

16 A. A NOTAM is a notice to airmen. There's -- it
17 could be issued for many, many reasons. In the
18 airport perspective, they can be issued to notify
19 the users of the airport of any potential hazards or
20 unusual situations, such as closed runways or closed
21 taxiways, or closed airports, or unavailable fuel.
22 There's -- there's numerous reasons why you might
23 issue one.

24 Q. Okay. Now, the -- the testing of vehicles that
25 you would have been involved in on airport runways

1 or airport properties would have been vehicles that
2 were already purchased by airports you were working
3 for, correct?

4 A. Yes.

5 Q. That -- that -- that would be different, at
6 least in the reasoning for the vehicle being on the
7 runway from something like Company Two using the
8 runway to test trucks for certification that it's
9 then going to put out and sell, correct?

10 A. Yes. I think the end-game is the same. The
11 procedures are a little bit different, as far as
12 what -- what the regulations for -- for those that
13 require the ARFF trucks -- the manufacturer's
14 requirements versus the end-users' requirements
15 which are mine. Essentially, they're the same, it's
16 just this is the procedures to make sure that the
17 truck can do what the end-user needs it to do --

18 Q. Does that --

19 A. -- or to --

20 Q. Does that difference between whether the truck
21 is being used or tested on -- on the runway by the
22 manufacturer or by supplier, or whether it's being
23 tested by a purchaser, does that make any difference
24 as to whether that type of activity is allowable or
25 violates any kind of federal regulations or

1 statutes, or anything in that regard?

2 MR. AARON NESS: Objection, leading.

3 THE COURT: If you will rephrase.

4 MR. WILSON: Sure.

5 BY MR. WILSON:

6 Q. Does that disti -- in -- in -- in your opinion,
7 does that distinction make any difference as to
8 whether it's allowable --

9 A. No.

10 Q. -- for a vehicle to be on the runway?

11 A. No.

12 Q. Have you researched the Hampton-Varnville
13 Airport?

14 A. I have.

15 Q. Have you been there before?

16 A. Yes.

17 Q. When?

18 A. This morning, actually, on my way here.

19 Q. Okay. Mr. Nilo, do you have any opinions in
20 this case as to whether there's anything that
21 prohibits Company Two's use of the Hampton-Varnville
22 Airport runway to test fire trucks?

23 A. My opinion is, is that it's perfectly acceptable
24 to do so under certain conditions.

25 Q. And what type of conditions would those be?

1 A. So there's a -- there's a document that the FAA
 2 has, it's -- it's called an advisory circular. It's
 3 advisory in nature, in some cases, and regulatory in
 4 others, advisory to a general aviation airport, but
 5 it is the procedures to be able to operate ground
 6 vehicles on -- in airport movement areas, which are
 7 the runways, the taxiways, and so there's several
 8 provisions that you can put into place to be able to
 9 safely operate whatever vehicle, for whatever
 10 mission that you may have out on the field,
 11 basically, keeping the -- the ground vehicles and
 12 the aircraft movement separate from one another.

13 Q. Okay, so movement areas are generally taxiways
 14 and runways?

15 A. Yes.

16 Q. Okay. Do you know of any FAA rule or regulation
 17 that prevents vehicular movement or vehicular
 18 activity on movement areas at airports under
 19 controlled circumstances?

20 A. No.

21 Q. Do you know of any federal rule, FAA regulation
 22 or anything of the such that prohibits vehicular
 23 activities on areas of an airport, like a taxiway?

24 A. No. The -- the provisions to be able to operate
 25 in the movement areas are -- are, basically, the

1 same, whether it's runway or taxiway, and then
 2 whatever pro -- like I'd mentioned earlier, whatever
 3 provisions are -- are put in place, basically, to
 4 allow you to perform whatever function in your
 5 ground vehicle that you need to on the airport in a
 6 -- in a safe fashion. And it's up to the operator
 7 to figure out which is the best way to do that.

8 Q. In connection with your research and your
 9 opinions in this case, have you reviewed any
 10 correspondence from or with the FAA concerning this
 11 issue?

12 A. I have.

13 Q. And what would that be?

14 A. There was an email from a gentleman named Bobby
 15 Shaub to another gentleman with the FAA, his name is
 16 Jim Price. Jim is a Airport Safety Certification
 17 Inspector for the FAA Southern Region Office in
 18 Atlanta. He's one of about 80 folks in the United
 19 States that are specialized, and -- and,
 20 specifically for airport safety functions, and there
 21 was some email traffic.

22 Q. And what was the gist of that?

23 A. Basically, asking if there were any regulations
 24 that would prohibit that particular action, and the
 25 response was, "No, it's up to the airport operator

1 to -- to make those decisions."

2 Q. Your understanding of who the airport operator
3 is at Hampton County?

4 A. Yes.

5 Q. Who is -- what is your understanding of who
6 operates the airport in Hampton County?

7 A. I think the County is the owner and the operator
8 of the airport. They have an employee there that
9 was listed on the Airport's master record for the
10 point of contact, so I assume that's like an Airport
11 Manager's position.

12 Q. And this correspondence with Mr. Jim Price that
13 you're talking about from the FAA, was that
14 specifically related and concerning Company Two's
15 use of the Hampton County Airport runway to test
16 fire trucks?

17 A. Yes.

18 Q. And Mr. Price with the FAA, what was his
19 response as to whether there was any prohibition in
20 that regard?

21 A. His response was something like that the Airport
22 is not the NPGAS, which is the National Plan of
23 Graded Airport Systems, meaning it's not an airport
24 that -- that receives federal funding, and that it
25 is not -- there's no grant assurances, we -- they

1 never received any federal funding that might
2 require them to -- to do more than an airport that's
3 completely unregulated.

4 Q. What does all that boil down to and mean as to
5 whether the FAA or federal regulations prohibits
6 Company Two's use of the Hampton County Airport
7 runway to test fire trucks?

8 A. My takeaway from that email was that there were
9 no prohibitions from the FAA with regards to the
10 testing of fire trucks at the Airport.

11 Q. Did you also in connection with your work have
12 an opportunity to review correspondence between the
13 Administrator in Hampton County and the same Mr. Jim
14 Price that you talked about with the FAA?

15 A. I did.

16 Q. And would that have been the Administrator, Rose
17 Elliott?

18 A. Yes.

19 Q. And what was the nature of that correspondence?

20 A. Very similar to the correspondence that Mr.
21 Shaub sent, just worded a little bit differently,
22 but the answer was, basically, the same in both.

23 Q. So Ms. Elliott was asking the same questions as
24 Mr. Shaub as to whether anything in the FAA
25 regulations prevented Company Two's operation or

1 testing of trucks on the Hampton runway?

2 A. Yes.

3 Q. And his response was?

4 A. Was much the same, that there -- there's no
5 complication or grant assurances, and, basically,
6 it's up to the Airport to decide what they would
7 like to do.

8 Q. Mr. Nilo, I -- I expect -- we expect -- and part
9 of the reason we got you involved in this case and
10 called you to testify is we expect that Hampton
11 County's going to call a gentleman named David
12 Anderson to testify as an expert much as the same as
13 you. Have -- and I sent you his -- his resume and
14 his deposition. Have you had a chance to -- to
15 review those?

16 A. I did.

17 Q. And just tell me, generally, about his resume,
18 kind of where you see his experience and his
19 expertise has been in the past.

20 A. Mr. Anderson appears to have an ex- --

21 MR. AARON NESS: Your Honor, I object to the
22 pitting expert witnesses.

23 THE COURT: I'm just going to really listen
24 carefully to your questions. Of course, you can't
25 pit one witness against another. You haven't

1 ventured into that area as of yet, but that
2 objection is overruled --

3 MR. WILSON: Be careful.

4 THE COURT: -- but, of course, you know the
5 parameters.

6 THE WILSON: Sure.

7 BY MR. WILSON:

8 Q. Just where -- where do you see the majority of
9 his experience has come from?

10 A. It -- it appears that Mr. Anderson has extensive
11 flight experience and in the realm of -- from a
12 pilot's perspective more so than from an airport's
13 perspective. There's -- there's lots of different
14 realms of aviation, and he and I are -- and even
15 though we all work in the same big world, we have
16 different countries, I guess, if you will, that we
17 -- we operate in.

18 Q. Okay. Your experience is more in airport safety
19 and airport compliance?

20 A. Yes.

21 Q. And how about Jim Price, what did -- tell me
22 what he was again?

23 A. Jim was an Airport Safety Certification
24 Inspector, so they are folks that have special
25 training to -- to ensure that airports that are

1 certificated, meaning they have to follow a certain
2 regulation on the airports, are -- are in compliant
3 with -- with that. So he -- he inspects us to make
4 sure that we're doing what we're supposed to do,
5 comply with the Federal Aviation Regulations that
6 apply specifically to our airports.

7 Q. And I guess if an airport or an airport operator
8 has concerns or a question about whether or what
9 they are doing or plan to do may be violative of any
10 -- of any FAA regulations, they check with somebody
11 like Jim Price?

12 A. Absolutely.

13 Q. Have -- have you also, as a part of your -- I
14 think there's another entity or agency in South
15 Carolina that's kind of involved with airports,
16 something called a South Carolina Aeronautics
17 Commission?

18 A. Yes.

19 Q. Is there something similar to that in Virginia
20 and the other places that you've worked in the past?

21 A. There is.

22 Q. Okay. Have you also had an opportunity to
23 review correspondence from them?

24 A. I did.

25 Q. Any issues there that you see with respect to

1 Company Two's operation to test fire trucks on the
2 Hampton-Varnville runway?

3 A. The -- the letter I reviewed, and -- and it's
4 been several weeks back, but, basically, closed kind
5 of with a paragraph that -- that didn't have any
6 objections. It seemed to be that that was up to the
7 Airport whether to allow that or not.

8 Q. Now, you referenced something a moment ago
9 called a FAA circular?

10 A. Yes.

11 Q. Is that something -- I -- I'm going to show you
12 this. What -- well tell the Jury what is a
13 circular?

14 A. So the -- the document is an advisory circular.
15 The -- the name's a bit of a misnomer, but it is the
16 best practice in how to do something, basically,
17 recommendations from the FAA to -- if you want to --
18 this -- this particular one is, if you want to
19 operate a ground vehicle on the -- the movement
20 areas runways and safety areas, here are the best
21 practices and procedures for you to do so. The
22 misnomer of advisory is, sometimes if you become
23 federally obligated to the federal recipients of
24 federal grant monies and things, sometimes these are
25 requirements that you have to do, but I believe in

1 the entry paragraph it said these are the best
2 practices for -- for any airport to adopt,
3 regardless of whether they meet -- have to meet the
4 regulatory requirements.

5 Q. So do some airports get FAA money, and some
6 don't?

7 A. Correct.

8 Q. And even those that get FAA money, these
9 advisory circulars are -- are not requirements, but
10 just -- what did you call it a moment ago? Best
11 practices?

12 A. Sometimes they're requirements, sometimes
13 they're simply best practices.

14 Q. Okay. Now, why would there need -- if -- if
15 there were an FAA rule or regulation that said a
16 vehicle being on an airport runway was illegal, or
17 violated FAA regulations, so if there was an FAA
18 regulation or an FAA rule or something contained in
19 the -- in the Federal Aviation regulations that said
20 a vehicle of any kind, for any reason, being on the
21 airport runway was violating -- was violating those
22 regulations, why would there be any reason to have
23 this circular?

24 A. Well, there wouldn't, and, obviously, the
25 airports couldn't operate safely if you didn't have

1 vehicles that supported the -- the function of
2 aviation, whether that be firefighting, or
3 maintenance, or painting, fixing potholes, scaring
4 wildlife away. There's lots of reasons why you
5 might have ground vehicles in the -- in the area of
6 construction.

7 Q. Are there other reasons or other instances that
8 you've seen in your career where there are vehicles
9 on an airport property or an airport runway that
10 aren't -- what I'll call routine, that are either
11 there for testing, because they belong to the
12 airport and they're there for testing, or they
13 belong to the airport and they're there for
14 emergency responses?

15 A. Sure, I've seen some different things like that.

16 Q. Tell -- tell the Jury some of your experiences.

17 A. One general issue at an aviation airport I was
18 at, they conduct -- they closed the runway, and they
19 set up a concourse for first responders and police
20 and sheriffs and fire to go out and do what's called
21 EVOC, Emergency Vehicle Operations Course, so they
22 did training with all kinds of cars and trucks, and
23 things like that. I've seen airports -- we bought
24 -- in addition to -- to ARFF, one of my jobs was
25 snow removal, so we bought numerous pieces of snow

1 removal equipment, it's very specific to airports,
2 and --

3 Q. How did that company -- did that company have to
4 do any testing or promotion of its equipment by
5 allowing to be seen how it operated?

6 A. Yes, there was a company in Wisconsin called
7 Wausau Everest, whose facility was located right
8 next to the airport, and they had the ability to
9 leave the facility and -- and have road or a
10 taxiway, or whatever it was, that led directly onto
11 the airport property, and they could -- where they
12 could go out and test their equipment.

13 Q. If you could speak up just a little bit more for
14 me, Mr. Nilo, I'm sorry, because the -- they're
15 having to sit in the back, just where it's -- pull
16 up -- pull that microphone to you or something.

17 A. Is that better?

18 Q. But you're good. So that -- that snow equipment
19 was being tested or displayed on the runway of how
20 -- how it worked and how it was being used?

21 A. Yes.

22 Q. And was that on the airport runway itself?

23 A. My understanding from time to time they -- they
24 tested them all over the airport in the winter.

25 Q. And that -- was that a private company that was

1 doing that on that airport property for equipment
2 that it had, that was then going to be put out for
3 sale?

4 A. Yes.

5 Q. Now, let's go back to the circular and just talk
6 about a moment, and I think that'll be all the
7 questions I have. What's -- what's it titled?

8 A. This is Advisory Circular 150/5210-20A. They
9 all have numbers. 150 signifies an airport specific
10 advisory, and the subject is ground vehicle
11 operations to include taxing or towing an aircraft
12 on airports.

13 Q. Okay. And it's 100 and something pages, I think
14 it's pretty thick there, isn't it?

15 A. Yes.

16 Q. Okay. I -- I want -- I want to ask you this.
17 Is it -- as to an airport, who has priority under
18 your understanding of federal regulations and -- and
19 practices in the industry, and practices within
20 airport and -- and aviation operations, who has
21 priority between aircraft and emergency vehicle as
22 it comes to the runway?

23 A. Typically, most airports have something called
24 rules and regulations, and those rule -- they're --
25 they're kind of like local codes that you would

1 have, like traffic laws and things like that. And,
2 typically, they state aircraft have the right-of-way
3 at all times, and then they may state, the emergency
4 vehicles have the right-of-way over all other
5 vehicles with the exception of an aircraft.

6 Q. Okay, so if we were looking at a priority chain,
7 we'd go aircraft, top priority, emergency vehicles,
8 next priority, and then non-emergency vehicles, a
9 lesser priority?

10 A. Typically, yes.

11 Q. Does that prevent non-emergency vehicles from
12 being allowed on movement areas of airports, like
13 taxiways and runways?

14 A. No, this -- this document identifies how non-
15 emergency vehicles can do that. It's -- it's the
16 same procedure, whether it's an emergency vehicle or
17 not.

18 Q. Have you ever seen anything like where they have
19 something called the 5K on the runway?

20 A. Oh, all the time.

21 Q. What is that?

22 A. They'll close an airport runway and open it up
23 to the public to come in and do these charity runs
24 and things like that.

25 Q. Have you ever seen anything like commercial

1 photo shoots, or photo opportunities, anything like
2 that occur on airport runways?

3 A. Yes.

4 Q. And how do they do that?

5 A. I've been involved in a couple. Basically, we
6 close whatever surface it is by issuing a NOTAM,
7 like put up some barricades and things like that to
8 prevent aircraft from entering into that area, and
9 the other vehicles are usually escorted by someone
10 who has the authorization to be in that area to
11 perform that function.

12 Q. So can these type things be done if proper
13 safety precautions are put in place and proper
14 safety measures are taken and coordinated?

15 A. Yes.

16 Q. All right. Let's take a look there at -- let's
17 take a look right there at that circular, I just
18 want to look at one part of it, and I'm gonna get
19 you to slip the -- the -- excuse me, go to Section
20 4.1. What -- what is -- 4.1 just means Chapter 4,
21 Part 1. What is Chapter 4 entitled?

22 A. This is entitled, "Emergency operations and
23 other non-routine operations."

24 Q. Emergency operations would be what?

25 A. An emergency operation might be if you had an

1 aircraft accident occur, maybe it wasn't life-
2 threatening, but you had a disabled aircraft that
3 was not able to be moved, it had to be recovered,
4 things like that.

5 Q. And what is non-routine operations?

6 A. In -- in here the definition talks about a whole
7 bunch of different things. Construction on
8 airports, air shows, static displays of -- of
9 airport aircraft that people are allowed to come
10 look at. VIP arrivals and departures, like the
11 President and the Queen of England, and things like
12 that. Commercial photo shoots and lots of other
13 activities. That -- that's like your 5Ks on the
14 runway, or, you know, maybe the testing of your --
15 of your vehicles would probably fall into categories
16 like that.

17 Q. Let's go back through that just a little bit
18 slower, okay? So the Section 4.1 of the circular,
19 the FAA rules, does this say airport operators allow
20 a number of non-routine operations to occur on the
21 movement and safety areas of the airport?

22 A. Yes.

23 Q. And what does that mean?

24 A. Basically, it -- it -- it allows you to do any
25 of those things with proper coordination, and that

1 is to be able to drive these vehicles or have these
2 events on the movement of those runways or taxiway
3 of -- of the airport.

4 Q. And read the listing that's there.

5 A. It's -- some of the references here, air --
6 airfield construction, air shows, aircraft static
7 displays.

8 Q. What is an air- -- aircraft static displays
9 mean?

10 A. You may have a -- a -- a -- we used to get the
11 World II aircraft would come in for the
12 commemorative Air Force, and they would open them up
13 to the public. They could go on -- go out and view
14 the aircraft and things like that.

15 Q. Parked on the runway?

16 A. Yeah.

17 Q. Okay. Go -- go ahead after that.

18 A. VIP arrivals and departures as well, so things
19 that happen when you have Presidential or Vice-
20 Presidential and other high-level visits at
21 airports.

22 Q. Okay, and what -- what's the next thing?

23 A. Commercial photo shoots.

24 Q. And what else?

25 A. It says a host of other activities.

1 Q. So does that -- in circular in that guideline on
2 the FAA, does that somehow contemplate that there
3 will be activities going on on an airport runway,
4 and there may be vehicular involvement, there may be
5 vehicles on an airport runway that have nothing to
6 do with the taking off or landing of a plane,
7 nothing to do with responding to an emergency?

8 A. Yes.

9 MR. WILSON: Mr. Nilo, that is all the questions
10 I have for you, I believe. Answer any questions
11 that Mr. Ness has. Thank you.

12 **CROSS-EXAMINATION BY MR. AARON NESS**

13 EXAMINATION BY MR. AARON NESS:

14 Q. Hey, Chief Nilo, how you doing?

15 A. I'm fine.

16 Q. Good. I called you Chief during our deposition,
17 so you're okay if I continue to call you Chief,
18 right?

19 A. That is perfectly fine.

20 Q. And we -- we met over a Zoom a couple weeks ago.

21 A. We did.

22 Q. A few questions for you today. In your
23 experience throughout your career, have any of the
24 airports that you've worked at or been stationed on
25 ever allowed a private company, like Company Two, to

1 test ARFF trucks on an airport runway?

2 A. No.

3 Q. And you've been in this business how long?

4 A. Probably 35 plus years now.

5 Q. How many different airports?

6 A. I worked at three different airports.

7 Q. Okay. Two of them were major, weren't they?

8 A. Yes.

9 Q. One of them was Richmond International Airport?

10 A. Yes.

11 Q. And that's a major airport, correct?

12 A. It is the 68th busiest in passenger traffic in
13 the United States.

14 Q. And you were the fire chief there?

15 A. Yes.

16 Q. And you operated ARFF trucks there?

17 A. Yes.

18 Q. When I say the movement area of the airport, you
19 know exactly what I'm talking about, right?

20 A. I do.

21 Q. The moving areas of the airport are the runways
22 and the taxiways, --

23 A. Yes.

24 Q. -- correct? So the moving areas of the airport
25 are for airplanes, correct?

1 A. Yeah.

2 Q. So aircraft have the number one right-of-way,
3 correct?

4 A. Yes.

5 Q. And then when you were at Richmond you didn't
6 typically operate the ARFF trucks on the moving
7 areas, correct?

8 A. Only when they had a mission to -- to be there.

9 Q. So on -- only unless you had a -- a mission to
10 be there, an operational need, right?

11 A. Yes.

12 Q. And what would that be?

13 A. It could be anything. It could be an actual
14 response to an emergency. It could be simply
15 transitioning from one portion of the airport to
16 another that required us to cross a runway and drive
17 on taxiways and things. That was relatively
18 frequent. Sometimes we've even gone out in support
19 of construction activity, it was a post -- post-
20 construction of a runway where they had to do the --
21 the grooves in the pavement, and it was so dirty
22 that the only way they could get the remains off
23 before they could open the runway to aircraft was to
24 use the high-velocity turrets that we had on the
25 trucks to help clean up the FOD, so things like

1 that.

2 Q. So Richmond didn't want y'all on the airport for
3 safety reasons -- or, excuse me, they don't want you
4 on the moving areas of the airport for safety
5 reasons, right?

6 A. That -- that's typically the reason that we --

7 Q. Does aircraft have the right-of-way?

8 A. Yes.

9 Q. Okay. Let me -- the FAA circular, do you have
10 it in front of you?

11 A. I do.

12 Q. If you will, there's a page B3, would you flip
13 to it?

14 A. I am there.

15 Q. Okay. Do you see down at the bottom, the very
16 bottom, 1.3.26 on page B3, it said -- it said,
17 "Runway," and it's got the definition of a runway;
18 do you see that?

19 A. (Reviews document.) I do.

20 Q. Can you read that definition for the Jury?

21 A. Excuse me. It says, "Runway, a defined
22 rectangular area on a land airport prepared for the
23 landing and takeoff run of aircraft and allowing it
24 to land."

25 Q. So aircraft, right?

1 A. Yes.

2 Q. That's why they call it an airport?

3 A. Yes.

4 Q. Right?

5 A. Yes.

6 Q. Not an ARFFport, an airport, correct?

7 A. Yes.

8 Q. Okay. On the FAA circular that you've got
9 still, if you'll flip back towards the beginning to
10 page 333-3, and I'm going to get you to read one
11 sentence.

12 A. Sure. All right.

13 Q. All right, DC 3.2.3?

14 A. (Reviews document.) Yes.

15 BY MR. AARON NESS:

16 Q. This is the same set of documents that
17 Mr. Wilson was showing you, correct?

18 A. Yes.

19 Q. Can you read what's highlighted right there?

20 A. I'm going to read it from here, I can see this a
21 little bit better.

22 Q. Sure, yes, sir.

23 A. This says, "Restricting movement and safety area
24 access. Inadvertent entry by vehicles onto movement
25 and non-movement areas of an airport poses a danger

1 to both the vehicle operator and the aircraft on the
2 airport."

3 Q. Okay, and you agree with that, right?

4 A. I do.

5 Q. Okay. It's the airport's responsibility to
6 control its own airport, isn't it?

7 A. Yes.

8 Q. They are the operator, right?

9 A. Yes.

10 Q. Are you aware of any parameters that Company Two
11 has in relation to the airport runway and when they
12 can use it, how they can use it, and in what manner
13 they can use it?

14 A. No.

15 Q. Are you aware -- have you ever spoke with
16 Mr. Jones about it?

17 A. I haven't.

18 Q. Okay, and he didn't mention it?

19 A. He basically said that the -- the gist was that
20 that was the area that they were allowed to do the
21 test, I guess was one of the reasons why he located
22 his business to the specific area. I recall some --
23 there was some conditions in there like FOD control,
24 making sure nothing fell off the truck, or didn't
25 disturb any of the pavement surfaces. Other than

1 that, no details on the coordination.

2 Q. Okay. So 20 -- excuse me, if Company Two had
3 the right to use the airport runway 24/7, 365 for as
4 long as they want, then in your opinion, would that
5 be safe from the airport operator's perspective?

6 A. Only if certain provisions such as those in the
7 advisory circular were done -- were done usually.

8 Q. And are you aware of when -- or are you aware if
9 Company Two ever issued any NOTAMs?

10 A. I am -- not that I'm aware of, no.

11 Q. Has Mr. Jones ever told you they issued NOTAMs?

12 A. No.

13 Q. I think you said a minute ago, you said it's
14 basically up to the airport to decide what to do; do
15 you remember saying something like that?

16 A. Yes.

17 Q. Okay, so it's -- because it's their airport,
18 right?

19 A. Yes.

20 Q. They operate it. If Hampton County decides it
21 wants to tell someone not to use their runway for
22 safety reasons, that's within their discretion,
23 isn't it?

24 A. Yes.

25 Q. Okay.

1 MR. AARON NESS: Court's indulgency, Your Honor.

2 BY MR. AARON NESS:

3 Q. Chief Nilo, one other thing, flip back to B4 on
4 -- on the FAA circular you have in front of you. Do
5 you see that? Oh, excuse me, are you on page --

6 A. I'm on page B4, yes.

7 Q. Okay, and kind of towards the middle do you see
8 where a taxiway is defined?

9 A. Yes.

10 Q. Can you please read that for the Jury?

11 A. Certainly, it says, "Taxiways, those parts of
12 the movement and safety areas designated for the
13 surface maneuvering of aircraft to and from the
14 runways into aircraft parking areas."

15 Q. So taxiway goes only to and from runways,
16 correct?

17 A. Sometimes. See they're -- they're two and from
18 one destination to another on the airport for --

19 Q. And taxiways and runways are different?

20 A. Yes.

21 Q. Okay.

22 MR. AARON NESS: Your Honor, I think that's all
23 the questions I have.

24 MR. WILSON: Just a little bit --

25 THE COURT: Redirect?

1 MR. WILSON: -- Your Honor.

2 REDIRECT EXAMINATION BY MR. WILSON

3 Q. Mr. Nilo, Mr. Ness just asked you if it was up
4 to an airport to decide what activities they wanted
5 to allow or not allow, correct?

6 A. Yes.

7 Q. And -- and that would be up to whoever the
8 operating authority of the airport is to make those
9 decisions?

10 A. Yes.

11 Q. Do you -- do you agree with that?

12 A. Yes.

13 Q. And so if an airport wanted to tell somebody
14 that they could not be able to use an airport for a
15 certain purpose, that would be within the airport
16 operator, in this case, Hampton County's discretion,
17 correct?

18 A. Yes.

19 Q. But if Hampton County decided, at some point in
20 time, that they wanted to contract, enter into an
21 agreement, or allow use of their airport property,
22 to enter into an agreement with a company, like
23 Company Two, to be able to test their fire trucks on
24 a runway, that would be in their discretion to be
25 able to make the decision to allow that, too,

1 wouldn't it?

2 A. Yes.

3 Q. So back in 2005, if Hampton County Council had
4 decided it was in the best interest as a County to
5 reach an agreement to attract the industry to locate
6 in Hampton County, would they have had the
7 discretion and the ability to make a decision to
8 allow that company access and use of the Hampton-
9 Varnville runway to test trucks?

10 MR. AARON NESS: Objection, leading and it calls
11 for speculation.

12 MR. WILSON: They asked -- Your Honor, I'm --
13 I'm sorry. They -- they asked the question about
14 discretion and opened the door.

15 MR. AARON NESS: Well, it's certainly leading.

16 THE COURT: I'm sorry?

17 MR. AARON NESS: It's certainly -- it's
18 certainly leading.

19 THE COURT: You can rephrase it.

20 MR. WILSON: Sure.

21 BY MR. WILSON:

22 Q. Back in 2005, or sometime prior to this lawsuit,
23 if Hampton County Council had decided that it wanted
24 to enter into a contract and an agreement with a
25 company to allow use of the Airport property, for

1 whatever reason, would they have had the dis- -- in
2 your opinion, would they have had the discretion to
3 be able to do that?

4 A. Yes.

5 Q. Just like they would have the discretion to say,
6 "No, we don't want to have something happen?"

7 A. Yes.

8 Q. Mr. Nilo, who issues NOTAMs?

9 A. Whoever's authorized by the owner of the airport
10 in coordination with the flight service station to
11 do that.

12 Q. So it would be whoever manages or is in charge
13 of operating the airport?

14 A. Certainly, yes.

15 Q. Mr. Nilo, I'm going to put this back up on the
16 screen just a moment so we can be clear about this.
17 This is that section 3.23 that Mr. Ness had you
18 read. You can just -- you can look at it on the
19 screen if you want to, simple enough.

20 A. I -- I can see it.

21 Q. What's the very first word in that sentence?

22 A. Inadvertent.

23 Q. What does inadvertent mean in that context?

24 A. In that context it means accidentally accessing
25 the movement and safety area.

1 Q. So if somebody gets on the runway somehow that's
2 not supposed to be there, or -- or accidentally gets
3 there?

4 A. Correct.

5 Q. Would that apply -- does that -- does that word
6 have -- would that provision, that section,
7 considering that word apply to operations for a
8 company who's been authorized by the operator of the
9 airport to be on that runway for a -- for a valid,
10 agreeable purpose?

11 A. Sure, whatever the agreement was and whatever
12 procedures were approved.

13 Q. If you have -- if you had a situation where the
14 airport operator or the airport manager had
15 authorized use, had agreed the use of the runway for
16 whatever purpose, would you consider that to be
17 inadvertent entry?

18 A. No.

19 Q. Mr. Nilo, he asked you, and I want to make sure
20 we're clear about this, he asked you about with any
21 airport that you had ever been involved with had
22 allowed ARFF trucks to be tested by a -- a private
23 company for certification. Have you ever been
24 involved with or worked for an airport near Hampton,
25 South Carolina?

1 A. No.

2 Q. Las Vegas, Nevada?

3 A. No.

4 Q. Alabama?

5 A. No.

6 Q. Have you ever been involved with, worked for, or
7 been involved with an airport who was located in
8 very close proximity to a company that manufactured
9 ARFF vehicles, or -- or refurbished and certified
10 ARFF vehicles?

11 A. A couple of the manufacturers are located to --
12 adjacent to or near airports.

13 Q. But I'm talking about that you've been in.

14 A. No.

15 Q. Okay. Because they asked you if you had ever
16 been in an airport that had allowed this, and I
17 think you said, "No;" is that correct?

18 A. Yes.

19 Q. Have you ever been at an airport that's close
20 enough to any of these manufacturers or refurbishers
21 of ARFFs that they would have wanted to use your
22 airport property to test?

23 A. Could you -- that was a little confusing for me.

24 Q. Yeah, I -- I understand. I'm just asking, have
25 any of the airports that you've ever been involved

1 in located near these refurbishers that we've heard
2 testimony are located in Las Vegas, Nevada; Alabama;
3 or Hampton, South Carolina?

4 A. To my knowledge, none of those manufacturers are
5 near any of those airports.

6 Q. All right. I -- I just want to clari -- I -- I
7 think you misunderstood my question. I'm not -- I'm
8 -- I'm asking about airports in those areas. I'm
9 trying to clear up, they asked you if you had ever
10 been in an airport that allowed ARFF trucks to be
11 tested on your airport; do you remember that
12 question?

13 A. Yes.

14 Q. And have you?

15 A. Can I ask a question just for clarification?

16 Q. Sure.

17 A. So are you referring to, have I ever been to an
18 airport that allowed ARFF trucks to be tested?

19 Q. No, no, no, that's where we're confused. I'm
20 asking at an airport that you were in charge of --

21 A. Okay.

22 Q. -- because I think that's the way the question
23 was asked, at an airport that you are in charge of
24 or were in charge of, have you ever been at one that
25 has allowed ARFF trucks to be tested on those

1 runways?

2 A. No.

3 Q. Okay, and then what I'm asking in follow-up to
4 that is, have you ever been in charge of or involved
5 at an airport near Hampton, South Carolina?

6 A. No.

7 Q. Las Vegas, Nevada?

8 A. No.

9 Q. Union Grove, Pennsylvania?

10 A. No.

11 Q. Alabama, I'm sorry. Union Grove, Alabama.

12 MR. AARON NESS: This -- this has been asked
13 and --

14 THE COURT: Just a minute.

15 MR. AARON NESS: Objection, this has been asked
16 and answered.

17 THE COURT: I'm going to give him a little
18 leeway to clarify.

19 MR. WILSON: I'm done in two questions.

20 BY MR. WILSON:

21 Q. Oshkosh, Wisconsin?

22 A. Yes, I've been to Oshkosh.

23 Q. Have you ever been in charge of an airport in
24 Oshkosh?

25 A. No.

1 Q. So have you ever been at -- in charge of an
2 airport that has been located in these areas where
3 these ARFF manufacturers are located?

4 A. No.

5 Q. Okay.

6 MR. WILSON: That's all the questions I have.

7 MR. AARON NESS: Nothing on re-cross, Your
8 Honor.

9 THE COURT: Thank you, sir, you can step down.

10 Okay, Ladies and gentlemen, my stomach is
11 growling, so that must mean it's lunchtime. This is
12 a good time for us to break. We're gonna break
13 until 2:30. Again, please don't begin any
14 deliberations. We'll see you back at 2:30.
15 (Whereupon, the Jury leaves the courtroom.)

16 THE COURT: Okay, anything before we break for
17 lunch? All right, I -- I did say 2:30, right?
18 Their -- their reactions --

19 MR. WILSON: I thought you said 2:30.

20 THE COURT: Okay.

21 MS. JETT: Yes, ma'am, you did say 2:30.

22 THE COURT: And that's what I meant to say.
23 (Whereupon, a lunch recess is taken.)

24 BAILIFF: All rise. Court come to order.

25 THE COURT: Please be seated.

1 I understand we are still missing one juror.

2 MS. JETT: Your Honor, if the Court pleases, we
3 have one matter to take up with the Court while we
4 wait for that juror.

5 THE COURT: Sure, just a moment.

6 Okay, I'm all ears.

7 MS. JETT: Thank you, Your Honor.

8 Your Honor, as I understand it, the Plaintiff
9 has one last witness to present, which is going to
10 be the video that is paused on the screen now.
11 After that, it's my understanding the Plaintiff is
12 resting; is that correct?

13 MR. WILSON: Correct, Your Honor.

14 MS. JETT: And, Your Honor, of course I'm going
15 to have a directed verdict motion to make. We have
16 two witnesses who need to be accommodated today.
17 They won't be available Thursday or Friday. And my
18 preference, and I think Mr. Wilson is agreeable to
19 this, would be for the Court, after the video, to
20 just note that I do have a directed verdict motion
21 that I move and then put the particulars on the
22 record after those two witnesses today or first
23 thing in the morning, depending on what the Court
24 wants to do timewise. But if the Court would
25 accommodate us, I would appreciate that.

1 THE COURT: Any objection?

2 MR. WILSON: Your Honor, I have no objection to
3 taking up motions, you know, and taking witnesses
4 out of order, no objection to that. We may can go
5 ahead and talk about this if we're waiting on a
6 juror. I understand they're going to call Ms. Sandy
7 Steele and Mr. Buddy Phillips. Your Honor, Ms.
8 Steele was a former economic director, but she was
9 from 2009 to 2015, I think, Your Honor, in no way,
10 shape, or form connected to any of the events of
11 2005 that this case is about. Your Honor, I don't
12 know where any of her testimony is going to be
13 relevant at all. I will submit she was involved,
14 Your Honor, in the property swap and she might have
15 been involved at the -- I think she was involved or
16 at least the taxiway, whatever you want to call it,
17 between Gemco property line and the -- I guess we've
18 learned this now, the southwestern edge of the
19 runway was at least graded during her time, maybe
20 completed. But she doesn't have any involvement
21 with the 2005 agreement concerning access to the
22 airport runway to test fire trucks. No knowledge of
23 it, Your Honor, no involvement in it, no nothing in
24 that regard. So I don't know where she's relevant.

25 THE COURT: Well, I'm sure you'll make the

1 appropriate objection, and that sounds like that's
2 cross-examination. I don't know that that precludes
3 her from testifying. If you have an objection on
4 relevance at the time that the question is asked,
5 then, of course, you'll make your objection.

6 MR. WILSON: All right. Your Honor, I guess I'm
7 making my motion before I even rest just to try to,
8 you know, not have to go in and out. I'm moving to
9 exclude her at this time and, if not, I'll object
10 where I think it's appropriate, but I'm moving to
11 exclude her unless they've got some reason they can
12 show where she's relevant to testify. Because
13 that's all -- I mean that's all she's going to be
14 able to talk about.

15 THE COURT: Well, I'm going to respectfully deny
16 your motion. Again, if there is a particular
17 relevance objection, --

18 MR. WILSON: Sure.

19 THE COURT: -- since their argument is that the
20 2011 and 2015 agreements basically superseded the
21 2005, I'm going to allow the testimony.

22 MR. WILSON: Okay. Thank you, Your Honor.

23 Your Honor, I have the same objection for
24 Mr. Buddy Phillips who, I understand, they plan to
25 call also. He is a current County Council member,

1 but was not a member in 2005. He would have -- he
2 was a member during this 2011, 2014, 2015 time
3 period. Same objection. Same grounds to exclude
4 him.

5 THE COURT: And I understand your objection.
6 Again, I'm going to respectfully deny your motion to
7 exclude him as a witness.

8 MR. WILSON: Sure. Thank you, Your Honor.

9 THE COURT: And yes, I'll be glad to -- Ms.
10 Jett, if you just want to stand and note for the
11 record that you have a directed verdict motion that
12 you will take up at the end of the day, that is
13 perfectly fine. We'll take this out of order.
14 We'll go ahead and get your witnesses in and then
15 we'll see where we stand on time and hopefully we'll
16 hear those motions this afternoon.

17 MS. JETT: Thank you, Your Honor.

18 THE COURT: Do we have all of our jurors now?
19 (Whereupon, the Jury enters the courtroom.)

20 THE COURT: Ladies and gentlemen, for the best
21 laid plans, we've had technical issues with our
22 screen over here, so you're going to be able to see
23 and hear the next witness's testimony from this
24 screen. If at any time you cannot see or hear,
25 please get my attention and we'll move you around so

1 that you can see an hear everything on screen.

2 Okay. Mr. Wilson?

3 MR. WILSON: Thank you, Your Honor.

4 Your Honor, at this point, we call Mr. Robert
5 Shaub to testify, and he will be by a videotaped
6 deposition that was taken several weeks ago. He had
7 out of country work commitments, and we agreed to
8 take his deposition and submit it by video.

9 THE COURT: Okay. Very good.

10 (Whereupon, the video deposition of Robert Shaub is
11 published to the Jury.)

12 MR. WILSON: Your Honor, that would be the video
13 deposition of Mr. Shaub.

14 THE COURT: Okay, Ladies and gentlemen, since
15 we've had you in here a little while since we got
16 back from lunch, let's take about a ten-minute
17 break. Please don't begin discussing the case.

18 THE COURT: Y'all, I understand we're pressed
19 for time. I felt they needed to get up and stretch
20 their legs a minute --

21 MR. WILSON: Sure.

22 THE COURT: -- before we can effectively put on
23 another witness.

24 MR. WILSON: Sure.

25 MS. JETT: Do I need to -- to at least state for

1 the record that I have a motion?

2 THE COURT: Well, he hasn't rested in front of
3 them, but if you want to do that out of order since
4 we're going out of order anyway, that's perfectly
5 fine.

6 MR. WILSON: Your Honor, other than just
7 entering Mr. Shaub's deposition in as a Court
8 exhibit, which we'll do now, that'll be the
9 Plaintiff's case, we'll rest, and we'll rest in
10 front of the Jury when they come back.

11 MS. JETT: And, Your Honor, if I can put it on
12 the record, I -- and I don't -- I don't know if
13 you're going to require that I go ahead and address
14 the grounds, or can I just say that for the record I
15 have --

16 THE COURT: Ladies and gentlemen, we're back on
17 the record, if you'll --

18 BAILIFF: Order in the Court, please, order in
19 the Court.

20 THE COURT: Thank you, we're back on the record
21 for just a few minutes. Yes, ma'am?

22 MS. JETT: Do I need to put the grounds on the
23 record, Your Honor, or may I just simply say that
24 the Defendant moves for a directed verdict to be
25 addressed after the next two witnesses?

1 THE COURT: Yes, ma'am, that's sufficient. That
2 will -- that preserves your right to go back, and
3 we'll go fully into whatever grounds you want to
4 raise, but just in our interest of time, once the
5 jury's had a little break, we'll bring them in, let
6 Mr. Wilson rest, and you can go right into your
7 witnesses who have time constraints, and then we
8 will take up your full grounds on your directed
9 verdict motion.

10 MS. JETT: Thank you most sincerely, Your
11 Honor --

12 THE COURT: Sure.

13 MS. JETT: -- for accommodating them.

14 THE COURT: All right, I'll let y'all take a
15 little short break, as well.

16 MR. WILSON: Judge, I apologize I was so long.
17 I -- I couldn't cut it up with the trouble that we
18 had. I had it cut, but I couldn't get it cut, and
19 as you can tell we had tons of problems getting that
20 in with --

21 THE COURT: We just need to let them go. Yeah,
22 stretch your legs a minute.

23 MR. WILSON: Yeah, sure, sure, I understand.

24 THE COURT: No problem.

25 (Whereupon, a brief recess is taken.)

1 THE COURT: Okay, Mr. Wilson?

2 MR. WILSON: Your Honor, that would be the
3 Plaintiff's case, we would rest.

4 THE COURT: Okay. Ladies and gentlemen, this
5 would be, normally, the time where I would excuse
6 you to hear some legal issues. We have all agreed
7 that we're going to do that a little bit out of
8 turn, and we're going to move forward with the
9 testimony now, so that we can go ahead and get that
10 testimony in front of you, and then we'll take up
11 the legal issues once you all have been dismissed.
12 So let me turn it over to Ms. Jett. Mr. Ness?

13 MR. AARON NESS: Your Honor, we call Ms. Sandra
14 Steele to the stand.

15 (Sandra Gay Steele was duly sworn
16 and testified as follows)

17 **DIRECT EXAMINATION BY MR. AARON NESS**

18 BY MR. AARON NESS:

19 Q. Good afternoon, Ms. Steele, how are you?

20 A. I'm doing well, I hope you are.

21 Q. Thank you for being here. I know you've got a
22 busy schedule. Can you state your full name for the
23 record?

24 A. Sure, it's Sandra Gay Steele.

25 Q. And have you always been known by the last name

1 Steele, or have you gone by another last name?

2 A. I -- I've gone by another last name. When I was
3 in Hampton County, I was married, and that -- and my
4 married name was Sandra Steele Fowler; but I have
5 since divorced and returned to my maiden name.

6 Q. And, Ms. Steele, where are you from?

7 A. Originally, from Sumter, South Carolina.

8 Q. And where do you live now?

9 A. In Walterboro, South Carolina.

10 Q. And do you have any ties to Hampton County?

11 A. Professional ties I do.

12 Q. And you --

13 A. I work --

14 Q. Go ahead.

15 A. I'm sorry, I -- I work in Hampton County, among
16 other counties.

17 Q. And what do you do for work?

18 A. I'm the Director of Operations for Southern
19 Carolina Alliance. We're the Economic Development
20 provider for several counties.

21 Q. Okay, where exactly do you work in Hampton
22 County?

23 A. Our office is on Lee Avenue, 201 Lee Avenue.

24 Q. Can you give the Jury a little bit about your
25 educational background?

1 A. Sure. I attended the University of South
2 Carolina, I'm sorry, Clemson graduates, and I have
3 been in the private business world, of course,
4 development and economic development for probably 30
5 years now.

6 Q. And did you used to work for the County of
7 Hampton?

8 A. I did.

9 Q. And what did you do for Hampton County?

10 A. I was the Economic Development Director.

11 Q. And when did you start as the Economic
12 Development Director?

13 A. In 2009.

14 Q. And who would have been your predecessors?

15 A. Dr. Small would have been the Economic
16 Development Director, prior to me joining Hampton
17 County in that role.

18 Q. Do you know before him?

19 A. I -- I don't -- I know that Jim Daniel was, at
20 some point, but there may have been a person between
21 Jim Daniel and Dr. Small, I don't recall.

22 Q. Do you recall how long you worked for the County
23 of Hampton?

24 A. Yes, I was from 2009 to 2015, so six years.

25 Q. And can you give the Jury a description of what

1 your job duties would have been as the Economic
2 Development Director?

3 A. Sure. As Economic Development Director, I
4 served as a County -- that was a County Department
5 at the time, so I was a department head. Our
6 mission and our focus is to work with new companies,
7 particularly, manufacturers and distribution
8 companies, to work with them to try to get them to
9 locate in Hampton County and create jobs, but toward
10 that end we also did a lot of work in building
11 industrial parks and spec buildings so that we'd
12 have an appropriate place for them to locate and
13 have interest in the County; and then we also
14 support -- supported the existing industries that
15 were there -- or here.

16 Q. Ms. Steele, do you know Mr. Jones?

17 A. I do.

18 Q. And are you familiar with his company called
19 Company Two?

20 A. I am.

21 Q. And how are you familiar with his Company?

22 A. I worked with Company Two, Mr. Jones and his
23 staff during the time that I was in Hampton County
24 as Economic Development Director.

25 Q. When you came into your Economic Development

1 position in 2009, Company Two was already in the
2 Gemco building; is that correct?

3 A. That's correct.

4 Q. And you're familiar with what I'm referring to,
5 the Gemco building?

6 A. Yes.

7 Q. At that time had Hampton County already made
8 some commitments to Mr. Jones and his company?

9 A. That's correct.

10 Q. Had any -- what written contracts existed, if
11 any, regarding those commitments?

12 A. There was a -- there was a letter, and I don't
13 know if you'd consider that a contract, but there
14 was a letter.

15 Q. I'm going to show you Plaintiff's Exhibit 1, and
16 see if you can identify this letter as being the one
17 you're referring to.

18 A. (Reviews document.) Yes, it is.

19 Q. So the commitments were in that letter?

20 A. Yes.

21 Q. Was your job as Economic -- part of your job as
22 Economic Development Director to push that deal
23 through?

24 A. That's correct. The -- what I was tasked with
25 was the taxiway -- the creation of a taxiway, and

1 the intricacies involved in -- in accomplishing
2 that.

3 Q. And swapping properties?

4 A. Yes, that's what I was referring to as
5 intricacies. Some land had to be swapped in order
6 to create the taxiway referred to in this letter.

7 Q. And who had tasked you that?

8 A. Sabrina Graham was the County Administrator and
9 my -- and my boss, my superior.

10 Q. Okay.

11 BY MR. AARON NESS:

12 Q. Ms. Steele, I'm going to hand you what has been
13 marked as Defendant's Exhibit 8 and Defendant's
14 Exhibit 9, okay?

15 MR. WILSON: Your Honor, that's without
16 objection.

17 THE COURT: Okay, Defendant's 8 and 9 are
18 admitted.

19 (Whereupon, Defendant's Exhibits 8 and 9 are marked
20 for the record and admitted into evidence.)

21 BY MR. AARON NESS:

22 Q. Ms. Steele, can you identify those two
23 documents?

24 A. (Reviews documents.) Yes. Does that mean you
25 want me to describe what they are?

1 Q. Yes, ma'am, please.

2 A. Okay. Yes, so the Defendant's Exhibit 8 is a
3 cover letter and an exhibit that was presented to
4 Hampton County Council. Our process for putting in
5 any agenda item in front of County Council at the
6 time was to prepare the standard cover letter, and
7 when I say we, I mean any County department head.
8 And it, basically, outlined all of the -- the --
9 what the issue was that you were asking them to vote
10 upon and the supporting documentation, and it was a
11 form given to us by Ms. Graham, and so that's on
12 Exhibit 8, that's page one. And the second page of
13 it is a sketch that I made to try to further
14 explain.

15 Q. Okay, we're looking at the same document.

16 A. Okay.

17 Q. Can you read the issue under consideration right
18 here?

19 A. (Reviews document.) "In 2005 Hampton County
20 committed to providing a taxiway to Company Two if
21 they would locate here. In addition, Hampton County
22 asked of Company Two to swap land parcels with them,
23 so that Hampton could obtain land near the runway
24 that is needed for FAA clearance. For various
25 reasons this transaction has never been done.

1 Company Two is asking that the promise be fulfilled,
2 and the land parcels swapped, and the taxiway be
3 created."

4 Q. Now, this letter, this is what you would have
5 sent to County Council?

6 A. That's correct.

7 Q. And can you -- is there any more description
8 that you can give to to that?

9 A. To -- to the issue?

10 Q. Yeah, did you put this on the agenda, or did you
11 hand it to a County Council members?

12 A. No, sir, I'm sorry, I didn't understand your
13 question. So as the department head, the -- the
14 bolded items that are there, those were the standard
15 things that had to be filled in, that was the form;
16 so to speak. So if you wanted an item before County
17 Council, you would complete the form, filling in the
18 information, and submit that to the County
19 Administrator. And then she would work with -- I --
20 I think the County Chair -- Chairperson and the
21 Clerk to Council to get it on the agenda.

22 Q. Okay. And can you read the bullet points?

23 A. "Hampton County made this commitment in writing,
24 and it needs to be honored. Since the commitment is
25 to build a taxiway to Company Two's property line,

1 the land parcels need to be swapped before the
 2 taxiway is created. Council is being asked to
 3 approve an ordinance to transfer a parcel to Company
 4 Two, and to receive a parcel from Company Two, see
 5 sketch. The Hampton County Attorney, Company Two
 6 and their attorney have developed a detailed
 7 agreement to finalize this arrangement. Council is
 8 being presented with an ask to approve the agreement
 9 under a separate agenda item. To ensure continuity
 10 of eligibility for State funding for the Airport,
 11 the agreement was developed in consultation with the
 12 South Carolina Aeronautics Commission. The
 13 agreement will incorporate an allowance for future
 14 negotiations with Company Two if the Airport ever
 15 becomes eligible for federal funding."

16 Q. And then there's an attachment. Can you read
 17 that part there?

18 A. I'm sorry, you want me to read the attachment?

19 Q. Yes, ma'am.

20 A. (Reviews document.) Okay, so it's under
 21 attachments, it lists 2005 letter of commitment and
 22 sketch depicting parcels to be swapped at an
 23 approximate location of the taxiway."

24 Q. And then that's your signature?

25 A. It is.

1 Q. And this is the sketch behind it?

2 A. Yes.

3 Q. What are we --

4 A. Yes.

5 Q. -- looking at?

6 A. I'm sorry?

7 Q. Yes, ma'am. What are we looking at right here?

8 A. So this -- the -- it's a parcel map of parcels
9 that were there, and then I drew -- again, it's a
10 sketch that the bolded portion was the existing
11 runway. They yellow line, I don't know if you can
12 see it, but it says, "Taxiway would be an example --
13 a depiction of where the taxiway to be created would
14 be." And then where it's yellow it says, "Swap A
15 for B." Parcel A, it was the parcel that Cou- --
16 that the County owned, and Par- -- Parcel B was the
17 -- no, excuse me, I've got it in reverse. Parcel A
18 was the parcel that Company Two owned, and Parcel B
19 was the one Hampton County owned, so those needed to
20 be swapped before the runway could be put -- excuse
21 me, the taxiway could be installed, created.

22 Q. Just for the record, where did the taxiway run,
23 in your own words?

24 A. Where did it run?

25 Q. Yes, ma'am. How -- can you describe where it

1 starts and where it ends?

2 A. It begins at the runway and it would run to the
3 parcel that would be owned by Company Two. The --
4 not Parcel A, but the -- the existing parcel.

5 Q. And then Defendant's Exhibit 2, do you have that
6 in front of you?

7 A. Exhibit 9?

8 Q. Oh, excuse me, I'm sorry, Exhibit 9, correct.

9 A. Okay. I have it.

10 Q. Now, this one looks very similar, doesn't it?

11 A. (Reviews document.) Yes, it -- it is similar.

12 Again, it was the same form that would always be

13 used. So the first one that I just read to you,

14 Exhibit 8, would have covered the ordinance that

15 County Council was being asked to approve. This

16 form, basically, contains the same information, but

17 is asking County Council under a separate agenda

18 item to also approve the agreement that gave more

19 specificity and details to the actual land swap, and

20 who was going to grade the taxiway and maintain it.

21 Q. What agreement are you referring to?

22 A. It's an agreement -- yes.

23 Q. I will show you Defendant's Exhibit 12.

24 A. (Reviews document.) So this is agr -- an

25 agreement between Hampton County and Company Two,

1 basically, outlining that they would swap these two
2 parcels, and that then the County would construct
3 the taxiway, and it lists the size of it and that
4 type thing; and then it also specifies that from
5 that point Company Two would maintain it, and then
6 there's some other details, I think, that are in
7 there.

8 Q. So that's the agreement you were referring to in
9 the letters?

10 A. Correct, for Exhibit 9.

11 Q. That was entered into June 23, 2011?

12 A. I think that's the date, yes, sir, I can't see
13 it well.

14 Q. And here's the sketch on the back of this
15 agreement that is the exact same sketch -- excuse
16 me, that we were just looking at on the back of your
17 letter, right?

18 A. It appears to be, yes.

19 MR. AARON NESS: Your Honor, I think that's it
20 for direct examination.

21 THE COURT: Mr. Wilson?

22 MR. WILSON: Your Honor.

23 **CROSS-EXAMINATION BY MR. WILSON**

24 Q. Ms. Steele, good to see you again. How are you
25 today?

1 A. I'm doing well, I hope you are.

2 Q. I am doing fine, thank you. You started with
3 Hampton County as the Economic Developer Direct --
4 Development Director in 2009?

5 A. Yes, sir.

6 Q. And you were the Economic Development Director
7 until 2015?

8 A. Yes, sir.

9 Q. When in 2015 were you no longer or did you leave
10 -- leave, or whatever, the job of the Economic
11 Development Director?

12 A. I think it was February.

13 Q. Okay. Did -- did Ms. Elliott hire you as the
14 Economic Development Director?

15 A. No, sir.

16 Q. You, obviously, weren't the Economic Development
17 Director in 2005 when Mr. Jones was looking to
18 relocate his Company, were you?

19 A. No, sir.

20 Q. And you weren't involved in any County Council
21 meetings or discussions between Mr. Jones when
22 negotiations or contracts or agreement between Mr.
23 Jones and County Council, or between Mr. Jones and
24 Jim Daniel back in 2005, were you?

25 A. No, sir.

1 Q. You don't know anything about what was
2 discussed, or about what was agreed to, or about
3 what agreements were reached, or commitments were
4 made, other than what you saw in this letter,
5 Octo -- this letter, October 12th of 2005, which is
6 Plaintiff's Exhibit Number 1, correct?

7 A. That's correct.

8 Q. And so that's all of your knowledge about what
9 kind of agreement was reached between Company Two
10 and Hampton County Council is contained within the
11 words of this letter, correct?

12 A. Correct.

13 Q. And then you took this letter and read it, and
14 then carried out the completion of the taxiway from
15 the edge of the runway to the Gemco property line as
16 had been committed to in that letter, correct?

17 A. Correct.

18 Q. Now, you don't have any independent knowledge of
19 your own, yourself, you don't have any independent
20 knowledge as to whether there was an agreement
21 between Hampton County Council or Hampton County and
22 Company Two about whether Company Two would have
23 access to the Airport property, and, in particular,
24 the runway to test fire trucks, do you?

25 A. No, sir, I've never seen a written agreement --

1 Q. What I'm asking --

2 A. -- that says --

3 Q. -- you is, you don't have any knowledge, because
4 you weren't here, you weren't involved, were you?

5 A. Not when he was recruited, no, sir.

6 Q. Okay. But you do know that while you were
7 Economic Development Director from the time that you
8 served, you do know that Mr. Jones and Company Two
9 were using the Hampton County runway, and accessing
10 the runway to test fire trucks, didn't you?

11 A. Yes, sir.

12 Q. And you knew that before 2011, didn't you?

13 A. Yes, sir.

14 Q. And you knew that before you left in 2015,
15 didn't you?

16 A. Yes, sir.

17 Q. And I want you to look at that letter, it's
18 dated -- Plaintiff's -- it's entered Plaintiff's
19 Exhibit Number 1. Do you see there -- just look at
20 the first sentence of the second paragraph, what
21 does that say?

22 A. "Hampton County Council has authorized me to
23 make the following commitments to you concerning the
24 Hampton-Varnville Airport," but that's not me. I
25 mean I -- I didn't --

1 Q. Sure.

2 A. -- write the letter.

3 Q. I -- I understand.

4 A. Right.

5 Q. You're reading Mr. Jim Daniel's --

6 A. Yes, sir.

7 Q. -- letter, correct?

8 A. Correct.

9 Q. All right. And what's that next sentence say?

10 A. "Hampton County agrees to provide you with a

11 private taxiway right-to-use from the northeast tip

12 of the Airport to the Gemco property line."

13 Q. We've looked at an aerial in here before, and I

14 apologize, I just can't put my hands on it right

15 this second, but this Jury's seen it a lot. Will

16 you agree with me that the Gemco property line is

17 west and south of the Airport property?

18 A. Mr. Wilson, you couldn't ask a worst person

19 about directions.

20 Q. Directions?

21 A. I -- I'm just like do I take a left at the Zippy

22 Mart, don't tell me north/south, so, I'm sorry, I'm

23 not trying to be flippant.

24 Q. I understand.

25 A. I --

1 Q. I was just trying to not to have to spend time
2 finding --

3 A. Yes, sir.

4 Q. -- something I misplaced, but I can do that.
5 Here we go. Just take a quick look at this for me.

6 A. (Reviews document.)

7 Q. The airport runway runs east and west; does that
8 make sense to you?

9 A. Right, so that's east and west.

10 Q. Yeah. The north would be the top of that
11 picture?

12 A. Right.

13 Q. South would be the bottom of that picture?

14 A. Correct.

15 Q. That would make east the right of that picture?

16 A. Right.

17 Q. And west the left of that picture?

18 A. Yes.

19 Q. And do you see -- do you agree that this right
20 here is the Gemco property, right where my finger
21 is?

22 A. Yes.

23 Q. And that would be kind of on the southwestern
24 border of the Airport property, correct?

25 A. That seems correct, yes.

1 Q. And the northeastern tip of the Airport property
2 would be somewhere over here (indicating), correct?

3 A. That seems correct, yes.

4 Q. That's a -- that's a description of an area that
5 encompasses really the entire Airport property,
6 correct, from the southwest to the northeast tip?

7 A. That appears correct, yes.

8 Q. At any point in time -- and you worked with
9 Sabrina Graham, right?

10 A. I did.

11 Q. She's cc'd on the bottom of that letter, isn't
12 she, Exhibit 1?

13 A. (Reviews document.) Yes, she is.

14 Q. Okay. And you were aware that Mr. Jones -- you
15 had a lot of dealings with Mr. Jones' Company during
16 your time, or some dealings with Mr. Jones' Company,
17 as your time at -- in your time as the Economic
18 Development Director, correct?

19 A. Correct.

20 Q. I mean you would have been trying to make sure
21 that things were going well, that they were able to
22 be stable and stay in business, and employ people in
23 Hampton to pay taxes and do all those things,
24 correct?

25 A. Right.

1 Q. That's your job, right?

2 A. Right.

3 Q. And -- and during that time and -- and in
4 connection with those duties of your job, you
5 learned that Mr. Jones was using the airport runway
6 to test fire trucks, correct?

7 A. Correct.

8 Q. You would have notified your supervisors and
9 your Development Board and all the people you
10 reported to about what you knew, correct?

11 A. Correct.

12 Q. At any point in time during your employment --
13 at any point in time during your employment with
14 Hampton County, did anyone ever instruct you that
15 Mr. Jones' Company that wasn't supposed to have any
16 access to the Airport runway?

17 A. No, sir.

18 Q. Did anybody ever instruct you that he wasn't --
19 that his Company wasn't supposed to be allowed to be
20 on that airport runway to test fire trucks?

21 A. No, sir.

22 Q. Did anybody ever instruct you or tell you that
23 there was no agreement to allow, or that there was
24 no promises made, or commitments made that would
25 allow Company Two to test trucks on the Hampton

1 County Airport runway?

2 A. No, sir.

3 Q. Did anyone -- and -- and this letter that we've
4 looked at a bunch, Plaintiff's Exhibit Number 1,
5 that was something that you would have taken and
6 reviewed and studied, and then gone back to County
7 Council to carry out the remaining terms of that
8 agreement to complete the taxiway all the way to the
9 Gemco property line, correct?

10 A. Right.

11 Q. I guess prior to that time the taxiway didn't
12 run all the way to the Gemco property line, did it?

13 A. I don't think there was one any.

14 Q. Okay. So -- so there's no way any taxiway or
15 anything ran all the way to the Gemco property line,
16 correct?

17 A. Correct, not that I know of.

18 Q. Ms. Fowler, when --

19 A. It's okay.

20 Q. I know you back as Ms. Fowler.

21 A. It's okay.

22 Q. Ms. Steele, when you were the Economic
23 Development Director, the County would make certain
24 commitments to industries that it was trying to
25 attract and relocate, correct?

1 A. Right.

2 Q. Those would be important to those industries,
3 wouldn't they?

4 A. Yes, sir.

5 Q. They would be things that the industries would
6 be expected to rely upon in making business
7 decisions, correct?

8 A. Yes, sir.

9 Q. And that would be very reasonable on those
10 industries to rely on representations and
11 commitments that were made to them when making big
12 time decisions about where to locate and where to do
13 business, correct?

14 A. Yes, sir.

15 Q. Where to invest money?

16 A. Yes, sir.

17 Q. And you wanted your prospects -- prospects that
18 you were trying to recruit, you wanted them to be
19 able to rely on the commitments and promises that
20 were made to them by Hampton County through Hampton
21 County Council, --

22 A. Yeah.

23 Q. -- didn't you?

24 A. Yes, sir.

25 Q. You still do that today in your job with

1 Southern Carolina Alliance some, don't you?

2 A. Yes, sir.

3 Q. And some of that is going out and negotiating
4 industrial things in and between the counties,
5 correct?

6 A. Correct.

7 Q. And in your job with Southern Carolina Alliance
8 and as a part of that organization, it's important
9 that counties -- the counties that y'all deal with
10 honor the commitments and the contracts and
11 agreements that they make, isn't it?

12 A. Yes, sir.

13 Q. Not just for the industries that y'all are
14 dealing with, but -- but the counties themselves,
15 correct?

16 A. Yes, sir.

17 MR. WILSON: I don't have any other questions,
18 Ms. Steele, I appreciate your time today, thank you.

19 THE COURT: Any redirect, Mr. Ness?

20 MR. AARON NESS: No redirect, Your Honor. No
21 redirect.

22 THE COURT: Thank you, ma'am, you can step down.

23 MS. STEELE: Thank you.

24 MR. AARON NESS: Your Honor, may she be excused?

25 MR. WILSON: No objection, Your Honor.

1 THE COURT: Yes, she certainly may.

2 MR. AARON NESS: I have a short witness.

3 THE COURT: Ladies and Gentlemen, we, normally,
4 would try to get you out of here as close as
5 possible to 5:00. We've got one more witness we're
6 trying to get in today because of some scheduling
7 issues that we've got, so we're gonna press forward
8 with this -- I think this is our last witness today;
9 is that correct? And so I made a decision earlier
10 that we're going to press forward with these last
11 witnesses. It will save us some time tomorrow, but
12 that was my decision that we press forward with it,
13 because of the scheduling issues we've got with
14 these witnesses.

15 MR. AARON NESS: Your Honor, we call Mr. Buddy
16 Phillips to the stand.

17 (Charles Harold Buddy Phillips was duly sworn, and
18 testified as follows)

19 **DIRECT EXAMINATION BY MR. AARON NESS**

20 BY MR. AARON NESS:

21 Q. Mr. Phillips, can you state your full name for
22 the record?

23 A. Buddy Phillips -- Charles Harold Buddy Phillips.

24 Q. And, Mr. Phillips, where are you from?

25 A. Hampton.

1 Q. Where do you live now?

2 A. In Furman area, Hampton County.

3 Q. Okay. Can you give the Jury a little bit about
4 your background, start with your education and then
5 go into your work history?

6 A. I was born in Hampton County, and I'll -- I'll
7 be 83 years old next month. I grew up in Hampton
8 County, went to Hampton County schools, graduated
9 from Wade Hampton High School in 1956. Graduated
10 from Spartanburg Junior College in '58, Newberry in
11 '60, and the University of South Carolina, I'm not
12 sure, you know, what year it was.

13 Q. Yes, sir.

14 A. And the Citadel also. I don't remember what
15 year it was. I've lived here all my life, except
16 for the years I was at college, and I worked three
17 years out of the Hampton County -- out of the State
18 really. In Florida, I -- I taught a couple years,
19 and I worked with Pan American Airlines on the
20 missile range for about a year and a half. Other
21 than that I came back home, and I've been here ever
22 since.

23 Q. I'll say, Mr. Phillips, you don't look 83.

24 A. I'm -- I'm kind of hearing though, so if you'd
25 speak up, I'd appreciate it.

1 Q. Okay, yes, sir, I will. I'm sorry about that.

2 You're on Hampton County Council currently, correct?

3 A. Yes.

4 Q. In what capacity are you with the Hampton County
5 Council?

6 A. I'm Chairman --

7 Q. How --

8 A. -- presently.

9 Q. How long have you been Chairman?

10 A. About six months as Chair. I've been on the
11 Council since 2006.

12 Q. And y'all rotate, or is it elected?

13 A. It's elected.

14 Q. Okay. Who is it elected by?

15 A. By the Council.

16 Q. Okay. How often do you have on the terms?

17 A. Every two years.

18 Q. How many other times have you been Chairman, if
19 any?

20 A. I've been Vice-Chair almost -- ever since I've
21 been on it, with the exception of maybe about a
22 year, and I was Chairman this past time.

23 Q. Okay. Give the Jury a better understanding of a
24 typical County Council meeting and what happens
25 there.

1 A. In general? Well we --

2 Q. Yes, sir, very general.

3 A. At -- at the meeting itself we call it to order,
4 approve the agenda, the minutes, public comments,
5 and any other items on the agenda that -- that need
6 to be dealt with, and the Council -- Council deal
7 with it -- deals with them. On occasion we'll have
8 an executive session, which means we go -- as I
9 think you've heard some testimony, but we go into
10 executive session. We explain to the people what
11 we're going to exec -- executive session for. And
12 when we get into executive session we can speak
13 about nothing else except what we said we were going
14 in for. And then when we exit the executive
15 session, we explain to people that we took no
16 action, because we can't take any action in
17 executive session, and then we go back and open
18 session. And if we were to deal with what we talked
19 about in executive session, we do, if not, we don't.
20 And then, of course, adjournment.

21 Q. And has Hampton County Council ever passed
22 what's called an ordinance, can you tell the Jury
23 about how that kind of happens?

24 A. Oh please explain a little louder, I can't hear
25 you.

1 Q. Yes, sir. What's the process for passing an
2 ordinance?

3 MR. WILSON: Your Honor, I -- I object. We --
4 we've talked about ordinances and you've ruled on an
5 ordinance, and an ordinance is not required.

6 THE COURT: I understand your objection, and
7 Mr. Ness knows my ruling, so you can go with
8 parameters.

9 MR. AARON NESS: I'll move on, Your Honor.

10 BY MR. AARON NESS:

11 Q. Mr. Phillips, you know Mr. Jones, don't you?

12 A. Yes, I -- I don't know him really well, but I do
13 know him.

14 Q. Okay. Do you know how long you've known him?

15 A. Ten years or so.

16 Q. Okay.

17 A. A little longer maybe.

18 Q. And what's your position as a current County
19 Councilman regarding Company Two and its use of the
20 Hampton Airport runway to test fire trucks?

21 A. I don't agree with it, and I don't think
22 anything should be on our runway except airplanes.
23 I happen to like Mr. Jones and -- and happy that
24 Company Two is in Hampton County, but as far as
25 using the runway to test vehicles, I don't agree

1 with that.

2 Q. And why?

3 A. Well, for one thing, I think it's a safety
4 issue. I've had other people in the County ask me
5 if they could use the runway. I think that's --
6 that's how all this began.

7 MR. WILSON: Your Honor, I -- I'm going to
8 object to other people in the County wanting to use
9 it, it's irrelevant and it's hearsay, I believe,
10 Your Honor.

11 THE COURT: I'll sustain it on the basis of
12 hearsay.

13 MR. WILSON: Thank you, Your Honor.

14 BY THE WITNESS:

15 A. The -- where do you want me to begin at?

16 Q. Sure, just stick with why -- why on your
17 position is your position?

18 A. Well, again, the safety and other businesses in
19 -- in Hampton County who may want to use the
20 Airport, and we wouldn't be allowed to let them do
21 that. And I don't know why we should be able --
22 able to allow another business to do that when we
23 can't do it to other people.

24 Q. As a collective body, is Hampton County trying
25 to upgrade the airport?

1 A. Yes, we'd like to see it -- I -- I've always
2 wanted to revitalize the airport. I used to go out
3 there when I was a Boy Scout, they had events out
4 there. I always liked the airport. I always hoped
5 it would be revitalized, and some five or six years
6 ago we thought we had a chance to get that done, and
7 so we decided to do that.

8 Q. And what has Hampton County done, and then what
9 are they doing to --

10 A. Well --

11 Q. -- upgrade the airport?

12 A. We applied for the loans. We decided to build
13 hangers out there, 20 hangers, and as I understand
14 it, 19 of the 20 hangers have already been spoken
15 for, and -- and I'm not sure if it's really
16 completed yet. I just think that the airport would
17 be an excellent tool in the economic development for
18 Hampton County, as well as the citizens of Hampton
19 County. With the number of them that have planes, I
20 think it -- it'd be nice to continue to have an
21 airport that's viable, recreational and an advantage
22 for economic development.

23 MR. AARON NESS: Your Honor, may we have a
24 sidebar real quick?

25 THE COURT: Sure. Mr. Wilson, will you join us?

1 MR. WILSON: Sure. Sorry.

2 (Whereupon, a sidebar conference is held off the
3 record.)

4 BY MR. AARON NESS:

5 Q. Mr. Phillips, a couple more questions.

6 A. Sure.

7 Q. Can you tell the Jury the general procedures for
8 passing an ordinance, you know, three readings and
9 an ordinance?

10 A. It -- it comes to Council through whatever
11 organization, whatever, and the Council has to have
12 three readings. And if we do that, it -- it's like
13 any other decision the Council does. We have a
14 motion, of course, and a second, and then a
15 discussion. And after that we ask for approval of
16 the motion, and we do that by a show of hands, all
17 in favor, and then all opposed, and if it passes,
18 we'll do that with three readings. And then the
19 third reading, of course it's passed.

20 Q. And how -- timeframe, how long does all this
21 take?

22 A. Well, we have a meeting every two weeks, so
23 you're looking at two, four, six weeks --

24 Q. Okay.

25 A. -- if -- if we meet every -- every two weeks

1 like we normally do.

2 Q. To then pass an ordinance?

3 A. Yes.

4 Q. Okay. And is all of this done in open session?

5 A. Yes, it has to be.

6 Q. Yes, sir.

7 A. You know, again, as I said a while ago, in
8 executive session we can discuss things, and -- and
9 we tell the people before we go in what we're gonna
10 talk about. And once we get into executive session,
11 we talk about only that, and when we come out of
12 executive session, we tell them we've made no
13 decision on -- on anything that we talked about in
14 executive session. And if we pass anything, it has
15 to be in open session.

16 MR. AARON NESS: Your Honor, I think that's all
17 I have on direct. Thank you.

18 **CROSS-EXAMINATION BY MR. WILSON**

19 Q. Mr. Phillips, I leaned over to Mr. -- I -- I'm
20 sorry, Mr. Phillips, I leaned over to Mr. Jones and
21 said, "Did he say 83?" So I agree, you don't look
22 83.

23 A. It feels like it sometimes. It feels like a
24 little more than that.

25 Q. You were not on County Council back in 2005,

1 were you?

2 A. No, I was not.

3 Q. Tell me your years again?

4 A. 2006 to present.

5 Q. And so in the fall of 2005 you were not on
6 County Council?

7 A. No.

8 Q. Okay. So you don't know -- you don't know what
9 procedures were used or followed? You don't know
10 how Hampton County Council acted back in 2005? You
11 know how y'all do it now, --

12 A. Yes.

13 Q. -- correct?

14 A. Yeah.

15 Q. But you don't know how things were done back
16 then?

17 A. I -- I do not.

18 Q. And you don't -- you weren't involved in and
19 don't have any direct, independent knowledge of your
20 own about any kind of negotiations or discussions
21 between Company Two and Hampton County Council, or
22 the Hampton County Economic Development Director
23 that took place back in 2005, because you weren't
24 involved then, were you?

25 A. That's correct, I did not.

1 Q. Okay. Now, you do know that until Ms. Rose
2 Dobson Elliott -- Ms. Rose Elliott became the
3 Administrator in 2015, the airport just really
4 wasn't a priority in Hampton, was it?

5 A. I -- I don't recall of it being so.

6 Q. Okay. And do you know when Ms. Elliott became
7 Administrator?

8 A. I don't remember the year, but I was on the
9 Council when she was hired.

10 Q. If I told you it was late 2014, like December of
11 2014, or January of 2015, would that sound about
12 right?

13 A. That sounds about right.

14 Q. And they asked you what was your position on
15 Company Two using the runway or the Airport property
16 to test fire trucks, and I think you said you
17 disagreed with it, you don't --

18 A. Yeah.

19 Q. -- you don't like it, correct?

20 A. No, that's right, I disagree with it.

21 Q. Okay. Now, if Company Two -- and I know you may
22 not agree with me as to whether Company Two had an
23 agreement or a contract with Hampton County to be
24 able to use the property to test fire trucks,
25 because that's what this whole lawsuit is about is

1 whether there was a contract or not, okay? So you
2 may not agree with me as to whether there was one,
3 but if Company Two had an agreement, had a contract,
4 had a commitment or a promise from Hampton County to
5 be able to use the airport property to test fire
6 trucks or run -- on its runway, you would feel like
7 that was something Hampton County should honor,
8 wouldn't you?

9 A. Yeah, if they had a -- a legitimate contract, I
10 -- I do.

11 Q. Okay. And you don't believe they did, correct?

12 A. Don't believe they did what?

13 Q. But you -- you don't know whether Hampton County
14 had a contract or an agreement with Company Two from
15 2005, because you weren't involved back in 2005,
16 correct?

17 A. Right, no -- no -- no, I don't know anything
18 about that, I just heard what the testimony was up
19 here this morning.

20 Q. Okay. You've been sitting in the courtroom the
21 whole time, I think, haven't you?

22 A. Yes.

23 Q. Pretty much?

24 A. Yes, I have.

25 Q. Okay. But just to go back and be clear, if --

1 if it's determined that there was a commitment made
2 to Company Two, that it should be allowed to test
3 trucks or use the Airport property, including the
4 runway, to test trucks, if that was a commitment
5 made by Hampton County Council back in 2005, your
6 position would be that Hampton County should honor
7 that commitment?

8 A. We would have to do that.

9 Q. Okay. Mr. Phillips, and I guess in that regard,
10 if the County didn't honor that commitment, the
11 County should be responsible, correct?

12 A. I don't know what you mean by responsible.

13 Q. If you don't honor your commitments, you get
14 held responsible for it, don't you?

15 A. Yeah, if the commitment was proven to be true,
16 yes.

17 Q. Now, some of these other businesses that you
18 mentioned -- you said that there were other
19 businesses that asked recently about the Airport
20 runway, or like -- things like that. None of those
21 businesses had contracts or agreements or
22 commitments from the County to be able to use the
23 runway or the Airport property, correct? They were
24 asking for that.

25 A. They don't have contracts, no.

1 Q. Yeah. What I'm saying is, they had to come ask
2 County Council for it, and that means they didn't
3 already have the commitment, correct?

4 A. Yes. And I believe the County Council would
5 have sent a representative of the committee to tell
6 them so.

7 Q. Okay. And -- and I think you're saying the same
8 thing, but I guess what my question is, is if a --
9 is if a business had to come ask for permission to
10 use the Airport property, it doesn't matter if it
11 was the courthouse grounds, if they had to come ask
12 for permission to use County property, then that
13 means they aren't -- didn't already have it,
14 correct?

15 A. That's correct.

16 Q. If a company, excuse me, or a person or a
17 business was -- already had permission, already had
18 a commitment and an agreement to be able to use
19 County property, they'd have that right. They
20 wouldn't have to come back and ask for it again,
21 would they?

22 A. That's correct.

23 Q. I -- I -- and so that was one of the reasons I
24 thought you said you don't agree with it is because
25 other business maybe have asked recently and Council

1 has decided not to allow it, correct?

2 A. I -- I've just talked to individuals on my own.

3 Q. I got you, okay. All right, and then I think
4 the other thing you said was you were concerned that
5 there might be a safety issue, correct?

6 A. Yes.

7 Q. Okay. You were present all morning long today I
8 think, weren't you?

9 A. I was.

10 Q. And you were present while Mr. James Nilo
11 testified?

12 A. Yes.

13 Q. And you heard him talk about the FAA regulations
14 and the FAA circulars, and all the guidelines that
15 are put out there for things other than airplanes to
16 be able to be on an airport runway?

17 A. Yes.

18 Q. You heard him talk about things like commercial
19 photo shoots and auto shows and 5K runs?

20 A. Yes.

21 Q. You heard all that? Do -- do you believe the
22 FAA would have some type of guidance for those
23 things to take place if they weren't allowable
24 activities on an airport runway?

25 A. They probably would not.

1 Q. I mean if there was anything ever supposed to be
2 on an airport runway, other -- other than an
3 airplane, do you think the FAA would put out
4 guidelines like that?

5 MR. NESS: Your Honor, I'm going to object, that
6 calls for speculation. He's asking what the FAA
7 might do.

8 THE COURT: That's sustained.

9 BY MR. WILSON:

10 Q. Mr. Phillips, just one other thing, you talked
11 about upgrades that had been going on at the
12 airport, correct?

13 A. Yes.

14 Q. I -- I think one of those upgrades -- and I
15 think there have been some upgrades made at the
16 Hampton Airport recently I think is what you said,
17 correct?

18 A. Yes.

19 Q. I'm gonna show you this, I'm not even gonna try
20 to put it on the screen. I'm gonna show you this
21 and I think everybody can see enough to at least see
22 what we're talking about. Thi -- this is the
23 runway, correct?

24 A. Yes.

25 Q. And that's always been there -- or at least

1 since before 2005?

2 A. Right.

3 Q. And -- and this is a taxiway that's just been
4 constructed, hadn't it?

5 A. Yes.

6 Q. Okay. And it runs the same length as the runway
7 and it runs parallel to the runway, correct?

8 A. That's correct.

9 Q. Do you know of any law, regulation or anything
10 that prevents Company Two -- or a company like
11 Company Two from being on an airport runway to test
12 fire trucks, do you know of any law, regulation, or
13 anything like that?

14 A. I wouldn't know that.

15 Q. Do you know of any law, or anything, that would
16 prevent the County from allowing Company Two to use
17 the taxiway to test -- to test fire trucks?

18 A. I don't know that.

19 Q. Well, I'm -- I'm not asking if you know, I'm
20 asking do you know of anything that -- that would
21 prevent Company Two and the Cou -- the County from
22 allowing to use the taxiway to test fire trucks?

23 A. I mean I don't know of -- of -- of all that. I
24 am not familiar with those laws.

25 Q. Okay. Has anything been provided to you as a

1 County Council member by anybody that says it would
2 be illegal, or against the law, or against some
3 regulation for the Com -- for the Company Two to be
4 allowed to use the runway to test fire trucks?

5 A. I don't know of a law, Mr. Wilson, but as we
6 were saying a while ago, when you mentioned that
7 there were all kind of regulations by the FAA and
8 all the peop -- people, the requirements, but, you
9 know, they have accidents that happen every day on
10 our regular highways, even though we've got laws
11 there, they -- they -- they happen. And -- yeah,
12 you know, I think something like a fire truck, or
13 anything else on the runway would constitute an
14 extra danger, and not a regular thing.

15 Q. I understand, and -- and I understand the
16 analogy to a roadway, but if that roadway was shut
17 off from one end to the other temporarily, no
18 accident's going to happen, correct?

19 A. Not unless somebody got on the runway.

20 Q. But if the roadway's shut down from one end to
21 the other, and notice is given out there to
22 everybody that needs to be on that roadway, that
23 it's -- that the roadway is shut down, then no
24 accident's going to happen, is it?

25 A. Well, it's hard to say that, because what --

1 what I'm saying is, it -- you're supposed to abide
2 by all the laws on the highway, and we still have
3 accidents.

4 Q. I -- I understand that, but what I'm asking is,
5 if that roadway -- because you -- you analogized
6 this to a roadway, if the roadway's shut down from
7 one end to the other, and whoever needs to use the
8 roadway is using the roadway, and everybody else is
9 told to stay off the roadway, that significantly and
10 drastically decreases the chance that any kind of
11 accident's going to happen, doesn't it?

12 A. Yes, I had answered that question.

13 Q. And I understand accidents can never be made 100
14 percent prevented, but that -- that takes the
15 accident and -- and drives it down to almost not
16 possible, doesn't it?

17 A. That's correct, but also, if you keep them off
18 completely, that also works with that.

19 Q. Oh I understand, I understand, in a perfect
20 world.

21 A. Yeah, I understand.

22 Q. Agree?

23 A. Yeah.

24 Q. Okay. Back to my question, is there anything
25 that you know of that has been given to you that

1 would prevent Comp -- Hampton County from allowing
2 Company Two to use this newly constructed taxiway to
3 test trucks?

4 A. Not that I know of.

5 Q. Okay.

6 MR. WILSON: Let me check my notes,

7 Mr. Phillips, I believe that's all I have.

8 Mr. Phillips, those are all the questions I have. I
9 appreciate your time.

10 MR. AARON NESS: Real quick, Your Honor.

11 **REDIRECT EXAMINATION BY MR. AARON NESS**

12 Q. Mr. Phillips, this blowup is Defendant's Exhibit
13 11B. Do you want to come stand over here just for a
14 second and look at the aerial?

15 MR. WILSON: Are you going to move it into
16 evidence? Your Honor, I -- I don't have any
17 objection.

18 BY MR. NESS:

19 Q. Mr. -- Mr. Phillips, is this a current
20 representation of the Airport?

21 A. Appears to be, yes.

22 Q. Okay, and just, generally, can you tell the Jury
23 what -- what y'all have added out there?

24 A. Yeah. We resurfaced the --

25 Q. Okay.

1 A. Oh, I'm sorry.

2 Q. This is all for right now.

3 A. We resurfaced the runway. We've redone all
4 that. We built the 20 new hangers. We have -- we
5 have -- this area where the -- the -- there, we --
6 we refurbished that. Almost everything you see here
7 has been redone.

8 Q. All right. Thank you, Mr. Phillips.

9 MR. AARON NESS: No further questions.

10 MR. WILSON: Your Honor, I'd like a two -- two
11 minutes, briefly, if I could.

12 **RECROSS-EXAMINATION BY MR. WILSON**

13 Q. Mr. Phillips, just a couple more questions.

14 A. Sure.

15 Q. Mr. Phillips, you want to see Hampton County
16 thrive, don't you?

17 A. I sure do.

18 Q. You want to see the Airport thrive, don't you?

19 A. Yes.

20 Q. You want to see Company Two -- company --
21 companies like Company Two thrive, and want to be
22 in --

23 A. Absolutely.

24 Q. -- and want to be in Hampton County, don't you?

25 A. Sure.

1 Q. And if all those things can co-exist together,
2 then you want to see that, too, don't you?

3 A. I'd like to see everybody do well.

4 Q. Thank you. Appreciate your time and have a good
5 afternoon.

6 MR. WILSON: Let me see.

7 THE COURT: You don't have any other witnesses
8 for today?

9 MR. NESS: No, ma'am.

10 THE COURT: Okay, is 9:30 okay to bring the Jury
11 in in the morning?

12 MS. JETT: Your Honor, I was going to take up a
13 matter with us, but I didn't know if that's gonna
14 happen now or after the Jury leaves. Let me go
15 ahead and release them. Ladies and gentlemen, we're
16 going to go ahead and let you go for the evening.
17 I'm going to ask if you'll be back at 9:30 tomorrow
18 morning. Please don't begin discussing the case at
19 all. I am doubtful that we're going to finish the
20 case tomorrow. I think that we will go into Friday,
21 so I think y'all need to mentally prepare yourselves
22 for the fact that we are going to go through Friday.
23 And, you know, make whatever arrangements you need
24 to make. I think that we'll finish up at a decent
25 hour on Friday, but it looks to me like the case is

1 going to go into Friday. It won't go past Friday,
2 so that's the good news, but thank you. Have a good
3 evening. Please do not been -- begin discussing the
4 case.

5 (Whereupon, the Jury is dismissed for the day.)

6 THE COURT: Okay, I'm going to leave it up to y'all.
7 I'm happy to have us move forward with the directed verdict
8 motion now.

9 MS. JETT: Your Honor, I'm glad to do it.

10 THE COURT: Are y'all okay with that? Because I feel
11 like something else -- we'll have something else tomorrow
12 morning or some technical issues. So let's go ahead and do
13 that.

14 MR. WILSON: That's fine. Can I ask a question? What
15 time -- her daughter graduates Friday, I remembered that,
16 what time is it?

17 THE COURT: What I originally heard was 11:00, and
18 then today I heard 10:00, but I think what she indicated to
19 the Bailiff was -- maybe they had to be there at 10:00 for
20 an 11 o'clock graduation. It's for preschool, not to make
21 light of that, because, you know, I went to many a
22 preschool graduation, but if it was high school graduation,
23 that would be a whole different matter, so I've told her
24 that I think we're going to go through lunchtime at least
25 on Friday, but that I did not think we'd be done by ten

1 o'clock.

2 MS. JETT: Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. JETT: Your Honor, if it pleases the Court.

5 First of all, the Defendant would move -- I'm not sure
6 we need to do it, but I'm going to do it just in case, move
7 to amend to conform to the proof presented to assert the
8 illegality of any contract. Your Honor heard Mr. Willard
9 Wilson testify that any contract or commitment was actually
10 formed by a vote in executive session, that they've acted
11 in executive session to authorize Mr. Daniel. Mr. Daniel
12 then also testified that they acted in executive session.
13 Your Honor, Mr. -- Mr. Phillips said he wasn't on Council
14 back when it happened in response to Mr. Wilson's
15 questions, but I don't know that it's ever been legal to
16 adopt anything in executive session. And, Your Honor, for
17 that reason any contract formed in executive session or by
18 an agent of Hampton County who didn't have authority from
19 Council given in open session would have been an illegal
20 null contract. Your Honor, we also move --

21 THE COURT: And let --

22 MS. JETT: -- to --

23 THE COURT: And let's just address that first. I see
24 that you had a sixth defense of an ultra -- ultra vires
25 act?

1 MS. JETT: Yes, Your Honor.

2 THE COURT: Which, in my opinion, would cover exactly
3 what you're -- you're talking about.

4 MS. JETT: And I thought it did, too, Your Honor, but
5 in case we needed to, after hearing somebody say in here
6 that it happened in executive session, which was sort of a
7 jaw-drop moment for me, I thought we'd better make the
8 motion in case the Court did not believe that our ultra
9 vires defense covered that.

10 THE COURT: Mr. Wilson, do you want to be heard on
11 that issue?

12 MR. WILSON: Your Honor, I'm recalling the testimony
13 that Mr. Willard Wilson said is, that they had an executive
14 session where it was discussed, and then they came out of
15 executive session and gave instruction to the Chairperson,
16 who gave instruction to Mr. Daniel as to how to proceed.

17 THE COURT: Well, I mean I guess that the issue
18 really is just whether they have preserved their --
19 whether they have pled that, or they need to amend to
20 conform to the evidence. The Jury can recall the testimony
21 however they want to recall the testimony.

22 MR. WILSON: I -- I understand. I mean we would oppose
23 the amendment, Your Honor, but I -- I -- we would oppose an
24 amendment at this stage of the proceedings on that issue,
25 if that's what you're asking.

1 THE COURT: Well, my -- my ruling is that you don't
2 need to conform because you've already pled that in your
3 sixth defense.

4 MS. JETT: Thank you, Your Honor.

5 And, Your Honor, additionally, we would move to amend
6 in the event that it's needed to assert that at the most
7 what the Plaintiff has pled and what he has established
8 here today is a license which is revokable, and not any
9 enduring contract for any definite term, or not anything
10 that's in perpetuity, but he has -- he has -- he has proven
11 that -- he's argued successfully to Your Honor that it's
12 not a sale or a lease, it was not an easement by deed. He
13 didn't plead nor prove any easement that's implied by law,
14 and that leaves us only with a permissive use or a license.
15 And so we would amend -- we'd move to amend to assert that
16 any right he has proven, which we -- we assert he's not
17 proven any right, but that any right that has been proven
18 is a permissive use or license at most.

19 THE COURT: Mr. Wilson?

20 MR. WILSON: Your Honor, what we've proven is that
21 there's a contract with consideration given on both sides
22 of the contract or the agreement, Your Honor, and that's --
23 is pled as a breach of contract case, Your Honor. I mean
24 we've -- we've met the elements of that cause of action to
25 be submitted to the Jury. He's been given a right-to-use

1 the runway to test property, that's a contractual right
2 that he was given by agreement, Your Honor.

3 THE COURT: I understand your position.

4 MR. WILSON: And -- and I guess -- I'm not sure what
5 cause of action they're saying that goes to, Your Honor.
6 That would have no impact on a promissory estoppel cause of
7 action, I guess, Your Honor, I don't know how it would, but
8 I don't believe it impacts any of the causes of action that
9 we've pled, Your Honor.

10 MS. JETT: Your Honor, we would assert it impacts all
11 three.

12 THE COURT: Well, I guess what I'm kind of struggling
13 with is whether that is some kind of affirmative defense
14 that you have to raise in order to request a jury charge on
15 that. I'm assuming that's where you're going with this is
16 that you would then ask for a jury charge on permissive use
17 or --

18 MS. JETT: Assuming that we don't get directed
19 verdict, yes, Your Honor.

20 THE COURT: And I don't know that you necessarily have
21 to amend to request a charge on that. And I don't think
22 it's covered by anything else that you've pled. And I
23 certainly don't think it's being consistent with your
24 pleadings, which is, basically, a denial that a contract
25 exists.

1 MS. JETT: Yes, Your Honor.

2 THE COURT: Let me give that some thought before I
3 rule.

4 MS. JETT: And then, Your Honor, the Defendant moves
5 for a directed verdict. Your Honor, again, we assert that
6 at the most, if the Defense is totally disregarded, and the
7 proof that the Plaintiff has put up is taken at face value
8 and not questioned at all, then he has proven it at most a
9 license. Your Honor has already said this is not a sale,
10 it's not a lease. He doesn't have a fee simple and hasn't
11 asserted that. He doesn't have a leasehold and has not
12 asserted that. He does not have a written easement beyond
13 the easement that we've been talking about with the
14 taxiway. He has no easement to the runway itself. He has
15 not pled nor proven any easement implied by law. That
16 leaves us with some permissive use which would be a license
17 at most. Your Honor, even if the Plaintiff could go so far
18 as to convince the Court that there was a contract
19 established, the contract can't be in perpetuity, and
20 especially not with a governmental entity. Additionally,
21 we heard the testimony of Jim Daniel, who was the man who
22 wrote the letter from which the Plaintiff claims his
23 contract flowed. That letter, oddly enough, in recruiting
24 a modular home builder, who had no need to test anything on
25 the runway, and recruiting Company Two, who now says that

1 that was a vital part of their discussion, was to test on
2 the runway, and Company Two being a later solicitation,
3 those two letters are identical. They both talk about --
4 and it's -- it's awkwardly worded about a taxiway, not a
5 mention of a runway. The one company had no need of a
6 runway other than to fly people in, and Company Two had no
7 need of a runway except according to Mr. Jones now, but it
8 doesn't say that in the letter. Your Honor, there was --
9 if you -- if you go with the testimony of Jim Daniels -- to
10 -- Jim Daniel, he said there were terms that would be
11 worked out later, after he was gone, that he would leave
12 those terms to others to work out later with the documents.
13 The letter itself is not at all an unambiguous promise, and
14 clear enough to be enforceable by a court. There's no
15 contract to which a County should be held to encumber its
16 land in perpetuity. Your Honor has held it's not a sale,
17 it's not a lease, but if it's in perpetuity, it must be
18 somewhere in between there. And if a sale requires an
19 ordinance, and a lease requires an ordinance, then surely
20 something in between requires an ordinance. A perpetual
21 burden on the land of Hampton County would require an
22 ordinance. Your Honor, it's pretty simple, the public --
23 every man, woman and child in Hampton County owns that
24 airport. And the public elect officials to conduct their
25 business in daylight. They can discuss things in executive

1 session and talk about recruiting companies with pre-code
2 names and all that, but when it comes to actually signing
3 documents, somebody's got to vote on the record, because
4 the public's got a right to be heard, to oppose it, to
5 raise Cain, if they want to. They might not get their way,
6 but they will have been heard, and they will have seen what
7 was voted on for their public land that they pay taxes to
8 support, and that they own. The -- the County Council are
9 just trustees for the benefit of the public. And, Your
10 Honor, that public right is what is in perpetuity. There
11 can't be a contract in perpetuity burdening that right.
12 So, Your Honor, if there is any right to use, it had to be
13 a mere license. And, Your Honor, under the law, a mere
14 license is revokable. Your Honor, I've got McClellan
15 versus Taylor, and Briarcliff Acres versus Briarcliff
16 Realty, and I do have copies for Mr. Wilson, I've just to
17 find them. Both of which cite to Amjur easements and
18 licenses, which, of course, since these cases, which are
19 somewhat old, the Amjur publication has been updated, but,
20 Your Honor, there's a dearth of law on the subject of
21 license in South Carolina, because everybody to whom it
22 matters actually hashes out a written agreement. And, Your
23 Honor, if this was such a vital interest that Mr. Jones
24 wasn't going to relocate here without having that interest
25 protected, it would seem that that would have been

1 negotiated and written, voted on in open, and then adopted
2 in a legal document. And we assert that that's exactly
3 what happened, is that these talks in 2005 culminated in
4 the documents, the agreement in 2011, and the easement and
5 deeds from 2014 that are ultimately recorded in 2015, and
6 that this really was one flowing transaction, which is
7 consistent with what Mr. Daniel said. That he -- he sent
8 this letter worded the way somebody told him to word the
9 letter, and then someone else would work out those terms
10 along. But those terms in that letter are not sufficiently
11 concrete to be enforced, and certainly not in perpetuity.
12 So, Your Honor, if it was a license, it could be revoked,
13 and it clearly was revoked. We had a counsel come in who
14 wanted to revise the airport, they made some tremendous
15 improvements. They directed their County Administrator to
16 stop the use, and it was stopped. And the -- and the
17 Plaintiff has not pled any manner in which the revocation
18 was improper. So, Your Honor, even if a statute does not
19 say that this is a -- or even if -- if the statute says
20 sale or lease, what the Plaintiff is urging falls somewhere
21 in between. Your -- Your Honor, there is no minutes -- no
22 written minutes from Hampton County that the Plaintiff has
23 put before the Court in which the Council voted in open
24 session to authorize a contract or a commitment be given to
25 Mr. Jones. There is a letter to Mr. Jones, it has no basis

1 whatsoever in any of the minutes of Hampton County Council.
2 Don't really know where that comes from, but, Your Honor,
3 the -- the law does not assume that a -- a County employee
4 can act in a sideline deal and bind the County and its
5 citizens in perpetuity. It's -- it's -- he didn't have
6 authority to do it. Lack of authority on the part of a
7 government employee can't bind the County. Your Honor,
8 then we get to promissory estoppel, and, certainly, the
9 promise that the government employee didn't have authority
10 to make cannot bind the Council, cannot bind the County.
11 Government can't delegate that decision-making authority,
12 Your Honor. I'll be handing up several cases in a moment.
13 Douglas versus City Council of Greenville says that the
14 government acts as a trustee of its own power and can't
15 surrender it. Your Honor, two cases, which seem a little
16 offbeat for this case, but they are illegal contract cases.
17 One is Evans versus Terry, it's really old, it's from 1802,
18 but a breach of lawsuit -- a breach of promise lawsuit
19 couldn't prevail against an underaged man, he didn't have
20 legal capacity to enter the contract, so the contract
21 couldn't be enforced. The other one was Strickland versus
22 Anderson from 1930 in which a breach of promise lawsuit
23 could not prevail over a man who promised to marry was
24 already married and couldn't legally keep that contract, so
25 it couldn't be enforced. Your Honor, even with -- if the

1 Plaintiff can establish that the County Council authorized
2 this, it wasn't entered into for a public purpose, and
3 under the proper channels of a public body. And I'll be
4 handing up several Attorney General opinions that talk
5 about the necessity of an ordinance for any contract
6 regarding public land having to be for a public purpose and
7 properly entered after public process. Your Honor,
8 additionally, all contracts in South Carolina are deemed to
9 embody all applicable laws. So whatever Mr. Jones thought
10 he was negotiating with Hampton County, he has to remember
11 he is bound by law to remember in the backdrop of that
12 negotiation. That whatever the County promises, it can
13 only deliver what it can lawfully deliver. It can't
14 deliver even what it promised if it's not lawful. And,
15 again, we'll be handing up several Attorney General
16 opinions on that, as well as Inabinet versus Royal Exchange
17 Assurance of London. Your Honor, there's Heyward versus
18 South Carolina Tax Commission, estoppel can't grow out of a
19 dealing with an officer who lacks authority to make the
20 deal. Carolina National Bank of State versus State of
21 Carolina, a penitentiary suit for intent that lacked
22 authority to commit the State to liability on hiring of con
23 -- of convicts. Town of Brooklyn versus Broad River Power
24 Company, the Power Company was operating within the town
25 under an invalid and unauthorized document, because the

1 town couldn't allow it otherwise. State versus Peay
2 (phonetic), DHEC lacked authority to agree not to prosecute
3 a developer who abandoned a wastewater treatment plant.
4 South Carolina Coastal Council versus Vogel, the council
5 was not estopped by an employee's incorrect representation
6 that a deck over a sand dune required no permit. The
7 employee had no such authority. Your Honor, over and over
8 the law is clear. A couple of these are interesting
9 Attorney General opinions about the airport commission. An
10 airport commission entered an illegal, unauthorized lease
11 of airport land to a private company, which is a very close
12 parallel to this one. That's a 2000 Attorney General
13 opinion. City of Charleston versus North Charleston
14 District is an invalid government contract without
15 authorization to make it. Austin vers -- excuse me, Town
16 of Sullivan's Island versus Byrum, a bed and breakfast
17 owner challenged the Town's enforcement of its law, and the
18 law was the town's never estopped from enforcing its law.
19 So, Your Honor, over and over South Carolina's law has held
20 that government has square corners within which it must
21 operate. And those dealing with it must operate within
22 those square corners and be mindful of those square
23 corners, and -- and to expect more is simply unreasonable.
24 So then we get to promissory estoppel, Your Honor, and --
25 and all of this sort of -- it blends into all of the causes

1 of action, but there's an ambiguity in the promise, and a
2 lack of a promise for runway testing. Mr. Daniel said in
3 the witness stand that he is not sure Mr. Jones ever used
4 the word "runway" when he said he needed access, and indeed
5 the letter he wrote back to Mr. Jones doesn't mention
6 runway. The promissory estoppel would only lie if it's an
7 unambiguous, clear promise that should be enforced. But
8 where there are terms that have to be filled in and yet to
9 be finalized, there's no promise. Your Honor, in Stevens
10 and Wilkinson versus South Carolina, and I don't have a
11 copy of this to hand to the Court, but I can email it
12 later, Stevens and Wilkinson versus South Carolina -- of --
13 of South Carolina versus the City of Columbia, 409 S.C.
14 568, it's a 2014 case. It said, "A memorandum of
15 understanding was not an enforceable contract where there
16 was no meeting of the minds on all the material terms, and,
17 therefore, no promissory estoppel would lie." This letter,
18 like a memorandum of understanding has no meeting of the
19 minds on all material terms. And the mind that was meet is
20 the collective mind of Council, and so that's missing as
21 well. But Mr. Daniel, who authored the letter, said he
22 wasn't sure, because those terms would get finalized later,
23 and he didn't -- he wasn't sure Mr. Jones ever used the
24 word "runway." Your Honor, Woods versus State, the reli --
25 the reliance has to be reasonable. It's unreasonable to

1 rely on one official if the law clearly states that it took
2 a body to pass the -- the deal. Your Honor, Commissioner
3 of Public Works of the City of Laurens versus the City of
4 Fountain Inn is a 2019 case at 428 S.C. 209, even if a
5 contract is within the scope of its corporate powers, a
6 government is not bound by a contract made in its name by
7 one of its officers or employees if the officer or employee
8 did not have valid authority. Your Honor, then we get to
9 specific performance, and, obviously, Your Honor's got to
10 find in an actual contract where there was a meeting of the
11 minds on all material terms was in place before Your Honor
12 can grant specific performance of that contract. And --
13 and my question to the Court is, if you grant specific
14 performance of the contract, then what -- for what period
15 will you grant it? Will it inure to Mr. Jones' heirs and
16 assigns or purchasers of his Company? Will it inure to the
17 benefit of Q&J, or to Company Two, or to Mr. Jones,
18 individually, if he chooses to change corporate names?
19 What about as the Airport evolves and this is no longer
20 feasible? There's -- there's a reason there can't be a
21 perpetual contract here. Your Honor, I think I have
22 covered it all, but if I may have a moment.

23 Your Honor, again, I know Your Honor has ruled against
24 us on summary judgment, but I need to renew on directed
25 verdict our motion that in the event this Court determines

1 that the 2005 letter is a contract, the 2011 agreement is a
2 contract, that the 2014 exchanges of deeds and easement was
3 a contract, no parol evidence can be admitted to vary the
4 terms of those documents. And so if that 2005 letter is a
5 contract, Mr. Daniel himself didn't know exactly what the
6 terms of it would be, and parol evidence shouldn't flush
7 those out and fill those in. And we would cite the cases
8 we've already cited in the motion in limine and motion for
9 summary judgment on those.

10 And, Your Honor, that would be our directed verdict
11 motion. In the event that is not to be granted, I also
12 need to ask Your Honor for some further guidance on the
13 ruling on the motion in limine earlier on some photographs
14 of the trucks on the road, but I assume you want to hear
15 from Mr. Wilson on the directed verdict first.

16 THE COURT: Yes, Mr. Wilson?

17 MR. WILSON: Your Honor, where -- where would you like
18 for me to start in that regard? I mean I'll -- I'll say as
19 an overall overriding position, Your Honor, there's facts
20 and evidence and conclusions to be drawn, reasonable
21 conclusions to be drawn from those facts in evidence that
22 warrant submission of -- of all of these causes of action
23 to the Jury, Your Honor. I'll go back -- I mean most of
24 what I heard argued was interpretation or positions that
25 have been taken on what certain things mean, what certain

1 documents mean, what certain words mean, Your Honor, and at
2 the end of the day all of those things are issues that --
3 and decisions that would be submitted to the Jury for
4 factual decisions and factual determination. So I'm -- I'm
5 a little bit at a loss as to where -- where I should start
6 arguing, but tell me where you'd like me to go first, and
7 I'll go there, or I'll just kinda start trying to address
8 -- I mean I'll start trying to address it, you know, going
9 backwards.

10 THE COURT: Well, I mean I guess the first issue to
11 discuss is the -- really the license issue, was this
12 permissive use, or something more than that? And if it is
13 something more than that, I -- I guess the biggest issue
14 for me is the issue of it being in perpetuity. I mean are
15 they obligated to give him access to the runway for the
16 rest of the time his -- his business is in operation? What
17 are the parameters?

18 MR. WILSON: Yeah. No, Your Honor, I -- I don't -- I
19 -- I don't believe -- well, I believe there's different
20 positions that have been taken on that issue, Your Honor.
21 And -- and ask me that question one more time, you said are
22 -- are they --

23 THE COURT: What interest does he have in the
24 property? Is it -- is it your position that this is a
25 permanent permissive use, that -- that they're required to

1 let him use the railro -- the Airport property how long?
2 There's no end date on this, so is it just a permanent
3 right-to-use the --

4 MR. WILSON: Your Honor, it -- it would not be -- I
5 mean our -- our position is not that it would not be
6 permanent in -- in perpetuity forever, because Mr. Jones'
7 Company is not going to stay in business forever. His
8 Company wouldn't -- I mean, obviously, would not stay in
9 business forever. I -- I don't know if I draw the
10 distinction there.

11 THE COURT: Well, I mean if he -- if he -- let's say
12 he sold Company Two to another individual who continued to
13 do business as Company Two, do they still get to stay on
14 the Airport?

15 MR. WILSON: Your Honor, I think the Jury would have
16 to determine what the terms of the contractual use are.

17 THE COURT: Yeah, but doesn't that bolster their
18 position that there are vague and ambiguous issues here
19 with respect to the 2005 letter?

20 MR. WILSON: Your Honor, there may be am -- there may
21 be ambiguous issues there, but a Jury would determine the
22 ambiguities if there were any ambiguities.

23 THE COURT: So you think it's a jury question as to
24 whether there's a -- the existence of a contract?

25 MR. WILSON: Yes.

1 THE COURT: Okay. Talk to me about the promissory
2 estoppel.

3 MR. WILSON: As to whether there's an existence of a
4 contract? I'm just --

5 THE COURT: No, I'm -- I'm moving onto the promissory
6 estoppel issue.

7 MR. WILSON: Okay, but you asked me if I was -- if I
8 believed it was a jury issue. As -- I think they have to
9 make a determination that a contract existed to be able to
10 find a breach of contract.

11 THE COURT: Okay. Tell me about the promissory
12 estoppel.

13 MR. WILSON: Your Honor -- Your Honor, I mean I just
14 looked up the terms of promis -- you know, the elements of
15 promissory estoppel is, it's a promise that's unambiguous
16 in its terms. The party reasonably relies upon the
17 reliances expected and the parties sustains injury based on
18 that. Your Honor, we have testimony that there was a very
19 clear promise made and a very clear commitment made. Our
20 position is that was a contract, because there was
21 consideration on the other side of it, Your Honor. But we
22 have testimony that it -- we have dispute of that
23 testimony, but we have testimony that it was a very clear
24 commitment and a very clear promise made, that Mr. Jones
25 says that the commitment and the -- if you want to call it

1 promise for purposes of this argument, was very clear. Mr.
2 Wilson says that that promise and that commitment was very
3 clear, the Council member that testified, and Mr. Daniel
4 says that that promise and that commitment from Council was
5 very clear. They -- and that commitment was made at -- at
6 -- at a County Council meeting. That commitment was made
7 directly to Mr. Jones and Company Two, and then it was
8 followed up with this letter. The argument, I guess, Your
9 Honor, is somehow that the letter -- the terminology in the
10 letter is ambiguous, Your Honor, but if you look at the
11 terminology in the letter, it's -- it couldn't be any
12 clearer, and that's the position we took very early on is
13 that there is no dispute that the -- that the Gemco
14 property line to the northeast tip of the Airport is from
15 one end of the property to the other, Your Honor. So that
16 letter has no ambiguities in it. The commitments that were
17 made verbally, the commitments that were made in writing to
18 Mr. Jones have no ambiguity. I don't think just because
19 they take the position that they have ambiguity, or just
20 because they're certain they have ambiguity makes them have
21 ambiguity. There's testimony and evidence before this Jury
22 that they were actually -- a -- absolutely unambiguous, and
23 I guess at the end of the day that's a determination that a
24 Jury will have to make is whether it was ambiguous or
25 unambiguous.

1 THE COURT: Okay.

2 MR. WILSON: Unless you make that determination as a
3 -- as a ruling as a matter of law, but I think that if you
4 made that determination as a matter of law, that -- that
5 there's evidence that -- that a reasonable jury can
6 conclude otherwise.

7 THE COURT: Okay. What else do you want to tell me?
8 Anything else you wanted to add?

9 MR. WILSON: Your Honor, just one moment, let me go
10 back to my notes. Can I have just one second, please, Your
11 Honor?

12 THE COURT: Sure.

13 MS. JETT: Your Honor, while Mr. Wilson is doing that,
14 lest I forget, may I hand up a copy of those case
15 decisions?

16 THE COURT: Please.

17 MS. JETT: And that is not all of the ones that I
18 mentioned that I can email to you later, and I can email
19 them to Mr. Wilson as well.

20 MR. WILSON: Your Honor, if I -- if I could, could I
21 ask to be heard in the morning, just to be able to address
22 those issues, if I need to be heard any further, Your
23 Honor?

24 THE COURT: Sure. I'm going to -- and Counsel has
25 gone to considerable effort to provide me with the research

1 and case law, I'm going to read it -- over it this evening.

2 MR. WILSON: Sure. I need to take a look at hose.

3 THE COURT: So I'm going to be taking it under
4 advisement. You've gone to the trouble to give it to me,
5 I'm going to read it over it carefully.

6 MS. JETT: Your Honor, may I then -- so that
7 Mr. Wilson will know everything I've got to say before he
8 responds, I wanted to add a couple things. Your Honor, I
9 failed to reference it by statute. But, of course, if I'm
10 saying that if it's not a sale and it's not a lease, but
11 it's somewhere in between, it must require an ordinance, I
12 would cite 4-9-130(6) and -- and assert that that governs
13 this transaction. Mr. Wilson mentioned Plaintiff's 1, the
14 letter from Jim Daniel, the promise has to be clear and
15 unambiguous. The only thing clear in that letter is
16 taxiway, and Hampton County absolutely delivered the
17 taxiway. Your Honor, there is also no promissory estoppel
18 if an actual contract exists, and so Mr. Wilson has got to
19 elect at some point between breach of contract and
20 promissory estoppel, and there's clearly no meeting of the
21 minds. Mr. Wilson said the Jury's got to decide if a
22 contract exists, and then they've got to determine the con
23 -- the terms of the contract. Well, if the Jury's got to
24 determine the terms of the contract, there wasn't a meeting
25 of the minds. And if the Jury's got to determine the

1 terms, then there weren't any terms promised, and both of
2 those causes of action fail.

3 MR. WILSON: Your Honor, I -- I will say this before
4 we break, Ms. Jett keeps talking about a meeting of the
5 minds and she referenced there has to be a meeting of the
6 minds of the Council, like somehow the individual Council
7 members had to have a meeting of the minds. A meeting of
8 the mind that's required to perform a contract would just
9 be between the parties. And there's evidence before the
10 Court that there was a meeting of the minds to very
11 specific terms to form a contract, Your Honor. And so
12 there -- there's -- there's evidence. I understand they
13 dispute that, but there is -- but at a directed verdict
14 motion stage, there is evidence that is susceptible of --
15 of conclusion to be drawn therefrom, not just susceptible
16 of conclusion, but there is directly stated evidence that
17 there was a meeting of the mind between Hampton County
18 Council and -- and Mr. Jones or Company Two, two very
19 specific terms concerning a contract or an agreement, and
20 -- and the terms -- the terms of it.

21 THE COURT: Tell me, what is your position on whether
22 you have to elect between breach of contract and promissory
23 estoppel?

24 MR. WILSON: I -- I don't know that there's anything
25 that makes me elect at this stage, Your Honor. I may have

1 to elect after a verdict is returned, but -- and I --
2 frankly, I don't want to stand here and suggest that I know
3 the answer to that question, Your Honor, I don't have the
4 case law, and I don't know if they cited any case law or
5 have it. I'll be glad to look at it. I don't know of any
6 case law that says I have to elect prior to it being
7 submitted to the Jury.

8 THE COURT: You think that you submit both of those to
9 the Jury, and let them determine what the issues are?

10 MR. WILSON: Your Honor, all these causes of action
11 have been tried before this Jury, but --

12 THE COURT: I guess I didn't state that very artfully,
13 that you can go to the Jury on alternate theories, I guess,
14 is your --

15 MR. WILSON: I don't know of anything that says I
16 can't, Your Honor, and I'll -- I'll be glad to look at that
17 this evening. And if I have to make an election, then I'll
18 make an election.

19 MS. JETT: And, Your Honor, for Mr. Wilson's benefit,
20 and I'll email it to The Court and Mr. Wilson, the case
21 that's Glover versus Lockheed is 772 F. Supp 898, District
22 of South Carolina, 1991, a promissory estoppel is not
23 applicable where an actual contract exists.

24 MR. WILSON: I -- I don't doubt that that's the law,
25 Your Honor, because they have different elements, but I

1 don't know -- and I'll look at the case, but I don't know
2 that that's an election case, Your Honor, as opposed to
3 ladies and gentlemen, if you find that a contract exists,
4 and here's what a contract is, if you find that a contract
5 does not exist, but you find that the elements of
6 promissory estoppel are met, then you -- you find under
7 that regard, but I -- I'd have to look at the case, Your
8 Honor.

9 THE COURT: Okay.

10 MS. JETT: And, Your Honor, we would just assert that
11 the meeting of the minds, no, it doesn't have to be every
12 mind of Council, but it has to be the County and Company
13 Two. We certainly assert that the County in this case is
14 Council, but the meeting of the minds between the two
15 parties is clearly not there if Plaintiff is suggesting
16 that a jury must fill in the terms, including the duration
17 of any such contract. There's not a meeting of the minds,
18 and that's rule one of contract law.

19 THE COURT: I understand your position.

20 MS. JETT: Thank you.

21 MR. WILSON: Thank you, Your Honor. I mean I'll be
22 glad to look at it tonight, Your Honor, and address it
23 further in the morning; if I could?

24 THE COURT: Let's be here at 9:00. It sounds like
25 we've got a good bit still to -- to address in the morning.

1 MS. JETT: Your Honor, bring up one issue about the
2 photographs --

3 THE COURT: Sure.

4 MS. JETT: -- that I mentioned?

5 Your Honor had earlier ruled in the motion in limine
6 that the pictures of the ARFF trucks on the roads around
7 Hampton would not be admissible, would not be admitted into
8 evidence. Mr. Shaub's video testimony at page 31, line
9 seven through 18, and at at page 36, lines 11 through 16,
10 open the door to this when he said that, "These vehicles
11 are not safe for the roads. That when he took them out on
12 certain roads he had to add temporary bumpers and flags
13 because they are unsafe. You can drive right up under one
14 of these things. We think that the Jury should, number
15 one, see one of these trucks, but, number two, he's saying
16 they're not safe on the roads, and, yet -- and that -- that
17 Mr. Jones clearly can't do this testing on roads, and, yet,
18 clearly, he's driving around them around the roads of
19 Hampton County, and we think that opened the door for it,
20 and we'd like to show it.

21 THE COURT: How is that relevant to any issue in the
22 case?

23 MS. JETT: That he says he can't test them on the
24 roads. That this was a vital necessity that he must have
25 runway access or it's gonna kill his business. Your Honor,

1 he's -- he is driving them on the roads.

2 THE COURT: Well, I mean driving it on the roads
3 doesn't mean it's the same thing as testing it on the
4 roads.

5 MS. JETT: It's not testing it, it's not -- it's not
6 accelerating to 50 or 70 miles an hour and all of that, but
7 he has said they're not safe to take out on the roads. He
8 has proposed through his witnesses that not only could you
9 not test them on the roads, they just wouldn't be safe
10 going there, and -- and they're going there.

11 THE COURT: Do you want to respond, Mr. Wilson?

12 MR. WILSON: Yes, please, just one moment, Your Honor.

13 THE COURT: Okay. And I've got the reference on page
14 31. I think you said also page 38?

15 MS. JETT: 30 -- I just had it, 30 --

16 MR. WILSON: I was trying to --

17 MS. JETT: -- 36, lines 11 through 16, and 31, 14 lines
18 seven through 18.

19 MR. WILSON: 31 --

20 THE COURT: And that's --

21 MR. WILSON: -- seven through 18? Your Honor --

22 THE COURT: I found on -- on page 31. I guess I'm not
23 finding the reference on page 36.

24 MS. JETT: I may have been mistaken about the lines.
25 I thought that it was 36, 11 through 21. Your Honor, 31,

1 and the answer said, "The only other option they have to do
2 it on the road, which is in everybody's opinion unsafe,
3 because there's people, there's cars, you can't shut down a
4 stretch of highway and" -- and he goes on.

5 THE COURT: Yeah, I see it most definitely on page 31,
6 I didn't see it on page 36. I'm sorry, Mr. Wilson, did you
7 want to respond to that?

8 MR. WILSON: Just briefly, Your Honor. Your Honor,
9 page 31, starting at line seven, I guess, or eight, where
10 the question's asked -- is asked about testing, talking
11 about for this acceleration test. There's a huge
12 difference between one of these vehicles being on the road
13 to drive from point A to point B, and being on the road to
14 do an acceleration test from zero to 50, or up to 70 miles
15 an hour, as you just noted. I -- I don't know how that
16 opens the door to photographs of a vehicle just being on
17 the road somewhere. I -- and I -- I don't know of any
18 witness that they have named or that has intended to
19 testify that they've seen an ARFF truck going 70 miles an
20 hour. All of these photographs, I think, Your Honor, are
21 pretty much in town, the truck making a turn or something,
22 and I just think that that's what I recall they say is
23 making a turn, or doing something to that effect.

24 THE COURT: Yeah, my earlier ruling stands. I -- I
25 don't think those pictures of vehicles on the road are

1 relevant.

2 MS. JETT: Thank you, Your Honor.

3 MR. WILSON: Thank you, Your Honor.

4 Your Honor, would you like for -- would you like for
5 -- I know you said you'll take it under advisement, and I
6 ask, just because there's so much information and so many
7 cases that were cited, I asked to be able to review that
8 and to be able to respond a little bit better. Do you want
9 that in an email tonight, or do you just want us to come
10 back here in the morning to -- to -- for me to expound?

11 THE COURT: I'm happy, if you want to email something
12 this evening, that's fine.

13 MR. WILSON: Okay.

14 THE COURT: But I know it's already just about six
15 o'clock, and you all have some traveling to do, so if -- if
16 you want to make your argument in the morning, that's fine,
17 as well.

18 MR. WILSON: I -- I would appreciate that, Your Honor.
19 Thank you.

20 THE COURT: Yeah, that's fine.

21 MS. JETT: Thank you, Your Honor, I'll be sure and
22 email you and Mr. Wilson those additional cases.

23 THE COURT: Tell me what you're anticipating tomorrow
24 with -- just for timing purposes.

25 MR. AARON NESS: Probably seven -- or -- we've --

1 we've got seven witnesses, or at least I do on my notes,
2 one of them being an expert. Your Honor, I do not believe
3 anybody has time constraints, so --

4 THE COURT: And you have about seven witnesses
5 remaining that you think --

6 MS. JETT: Yes, Your Honor.

7 THE COURT: -- like total?

8 MR. AARON NESS: Eight. I have eight.

9 THE COURT: Okay. Live witnesses?

10 MR. AARON NESS: Yes, ma'am.

11 THE COURT: Do we have any technological --

12 MS. JETT: Some of them very brief.

13 THE COURT: Okay. Any technological issues we need to
14 address?

15 MR. AARON NESS: I don't think so. I don't know if
16 I'm going to go there.

17 MS. JETT: Maybe a picture, you know, but we're not
18 going to waste a lot of time with that. If we can't do it,
19 we'll do it on paper.

20 THE COURT: All right. Anything else y'all need from
21 me before we adjourn? If not, we'll see you then at 9 a.m.
22 (At 6:12 p.m. the trial was continued to be resumed
23 the following day without interruption.)

24 END OF VOLUME III

25

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2016-CP-25-00170

The Station, Inc.,)
)
Plaintiff,)
)
vs.)
)
Hampton County,)
)
Defendants.)
-----)

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May 27, 2021
Hampton, South Carolina

B E F O R E:

The Honorable Kristi Curtis, Judge Presiding

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