

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Dec 13 2022

SC Court of Appeals

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2018-CP-07-1622

APPELLATE CASE NO. 2020-000862

J & W Corporation Of Greenwood,

Appellant,

vs.

Broad Creek Marina Of Hilton Head, LLC;
Broad Creek Marina Operations, LLC;
Broad Creek Marina Properties, LLC; and
Broad Creek Development, LLC,

Respondents.

RECORD ON APPEAL

(Print Volume 5 of 5)

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**ATTORNEYS FOR RESPONDENTS
BROAD CREEK MARINA OF HILTON HEAD,
LLC; BROAD CREEK MARINA
OPERATIONS, LLC; BROAD CREEK
MARINA PROPERTIES, LLC; and BROAD
CREEK DEVELOPMENT, LLC.**

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	833
Start Date e 1969)?:	02/01/2017
End Date e 2100)?:	05/15/2019
Days in Year?:	365
Interest Earned:	\$26.58
Future Value (FV):	\$159.70
Annual Percentage Yield ...	8.3036%
Daily Interest Rate:	0.0240%

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Invoice 17455

2001

Starting Amount (P.V.)?: \$55.00

Annual Interest Rate?: 8.7500%

Days (-9,999 <# <47,482)? : 805

Start Date e 1999? : 03/01/2017

End Date e 2100? , 05/15/2019

Days In Year?: 365 ▼

Interest Earned: \$10.61

Future Value (FV): \$65.61

Annual Percentage Yield ... 8.3266%

Daily Interest Rate: 0.0240%

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Invoice I7571

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	805
Start Date e 1999)?:	03/01/2017
End Date e 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$25.69
Future Value (FV):	\$158.81
Annual Percentage Yield ...	8.3296%
Daily Interest Rate:	0.0240%

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Invoice I7572

Starting Amount (PV)?:	\$55.00
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	774
Start Date e 1969)?:	04/01/2017
End Date e 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$10.21
Future Value (FV):	\$65.21
Annual Percentage Yield ...	8.3612%
Daily Interest Rate:	0.0240%

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Invoice 17690

2004

Starting Amount (P.V.)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	774
Start Date e 1999)?:	04/01/2017
End Date e 2100)?:	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$24.70
Future Value (FV):	\$157.82
Annual Percentage Yield ...	8.3573%
Daily Interest Rate:	0.0240%

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Invoice 17691

2005

Starting Amount (PV)?:	\$55.00
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	744
Start Date e 1999)?:	05/01/2017
End Date e 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$9.81
Future Value (FV):	\$64.81
Annual Percentage Yield ...	8.3850%
Daily Interest Rate:	0.0240%

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Invoice 17882

2006

Starting Amount,(PV)?:	\$133.12	
Annual Interest Rate?:	8.7500%	
Days (-9,999 < # < 47,482)?:	744	
Start Date (year > 1969)?:	05/01/2017	
End Date (year < 2100)?:	05/15/2019	
Days In Year?:	365	▼
Interest Earned:	\$23.74	
Future Value (FV):	\$156.86	
Annual Percentage Yield ...	8.3837%	
Daily Interest Rate:	0.0240%	

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Invoice 17883

2007

Starting Amount (P.Y.)?:	\$55.00
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	713
Start Date e 1999)?:	06/01/2017
End Date e 2100)?:	: 05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$9.40
Future Value (FV):	\$64.40
Annual Percentage Yield ...	8.4123%
Daily Interest Rate:	0.0240%

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Invoice 18065

2006

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	713
Start Date (year > 1969)?:	06/01/2017
End Date (year < 2100)?:	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$22.75
Future Value (FV):	\$155.87
Annual Percentage Yield ...	8.4118%
Daily Interest Rate:	0.0240%

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Invoice 18066

2009

Starting Amount (P.V.)? \$55. 00

Annual Interest Rate? 8. 7500%

Days (-9,999 <# <47,482)? 683

Start Date e 1969)? 07/01/2017 =

End Date e 2100)? , 05/15/2019 =

Days In Year? 365 ▼

Interest Earned: \$9. 01

Future Value (FV): \$64. 01

Annual Percentage Yield ... 8. 4450%

Daily Interest Rate: 0. 0240%

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Invoice 18442

2010

Starting Amount (PV): \$133.12

Annual Interest Rate?: 8.7500%

Days (-9,999 <# <47,482): 683

Start Date e 1969): 07/01/2017

End Date e 2100): 05/15/2019

Days In Year?: 365 ▼

Interest Earned: \$21.80

Future Value (FV): \$154.92

Annual Percentage Yield ... 8.4422%

Daily Interest Rate: 0.0240%

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Invoice 18443

Starting Amount (PV)? \$55.00

Annual Interest Rate? 8.7500%

Days (-9,999 < 47,482)? 652

Start Date (year > 1999)? 08/01/2017

End Date (year < 2100)? 05/15/2019

Days In Year? 365

Interest Earned: \$8.60

Future Value (FV): \$63.60

Annual Percentage Yield ... 8.4729%

Daily Interest Rate: 0.0240%

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Invoice 18808

2012

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	652
Start Date (year> 1999)?:	08/01/2017
End Date (year< 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$20.81
Future Value (FV):	\$153.93
Annual Percentage Yield ...	8.4709%
Daily Interest Rate:	0.0240%

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Invoice 18809

2013

Starting Amount (PV): \$55.00

Annual Interest Rate: 8.7500%

Days (-9,999 <# <47,482): 621

Start Date e 1999): 09/01/2017

End Date e 2100): 05/15/2019

Days in Year: 365

Interest Earned: \$8.19

Future Value (FV): \$63.19

Annual Percentage Yield ... 8.5010%

Daily Interest Rate: 0.0240%

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Invoice 19141

2014

Starting Amount (PV):	\$133.12
Annual Interest Rate:	8.7500%
Days (-9,999 <# <47,482):	621
Start Date e 1999): , 09/01/2017	=
End Date e 2100): , 05/15/2019	=
Days in Year:	365 ▼
Interest Earned:	\$19.82
Future Value (FV):	\$152.94
Annual Percentage Yield ...	8.4998%
Daily Interest Rate:	0.0240%

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Invoice 19142

2015

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	591
Start Date (year > 1969)?:	10/01/2017
End Date (year < 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$18.86
Future Value (FV):	\$151.98
Annual Percentage Yield ...	8.5272%
Daily Interest Rate:	0.0240%

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Invoice 19489

2016

Starting Amount (PV)?:	\$55.00
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	591
Start Date (year > 1969)?:	10/01/2017
End Date (year < 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$7.79
Future Value (FV):	\$62.79
Annual Percentage Yield ...	8.5248%
Daily Interest Rate:	0.0240%

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Invoice 19488

2017

Starting Amount (PV): \$4,387.70

Annual Interest Rate: 8.7500%

Days < 47,482: 577

Start Date 16 10/15/2017

End Date 2100: 05/15/2019

Days in Year: 365

Interest Earned: \$606.92

Future Value (FV): \$4,994.62

Annual Percentage Yield ... 8.5407%

Daily Interest Rate: 0.0240%

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Invoice 19732

2018

Starting Amount (PV)? \$1,588.21

Annual Interest Rate? 8.7500%

Days (-9,999 <# <47,482)? 577

Start Date (year> 1969)? 10/15/2017

End Date (year< 2100)? , 05/15/2019

Days In Year? 365 ▼

Interest Earned: \$219.68

Future Value (FV): \$1,807.89

Annual Percentage Yield ... 8.5405%

Daily Interest Rate: 0.0240%

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Invoice 19736

2019

Starting Amount (PV)?:	\$5,229.59	
Annual Interest Rate?:	8.7500%	
Days (-9,999 < # < 47,482)?:	577	
Start Date (year > 1969)?:	10/15/2017	
End Date (year < 2100)?:	05/15/2019	
Days In Year?:	365	▼
Interest Earned:	\$723.37	
Future Value (FV):	\$5,952.96	
Annual Percentage Yield ...	8.5407%	
Daily Interest Rate:	0.0240%	

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Invoice 19737

2020

Starting Amount (P.V)? \$1,788.75

Annual Interest Rate? 8.7500%

Days (-9,999 <# <47,482)? 577

Start Date • 1969)? 10/15/2017

End Date • 2100)? 05/15/2019

Days In Year? 365 ▼

Interest Earned: \$247.42

Future Value (FV): \$2,036.17

Annual Percentage Yield ... 8.5405%

Daily Interest Rate: 0.0240%

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Invoice 19738

Starting Amount (PV): \$55.00

Annual Interest Rate: 8.7500%

Days (-9,999 <# <47,482): 560

Start Date e 1969): 11/01/2017 =

End Date e 2100): 05/15/2019 =

Days In Year: 365 "

Interest Earned: \$7.38

Future Value (FV): \$62.38

Annual Percentage Yield ... 8.5529%

Daily Interest Rate: 0.0240%

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Invoice 19796

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	560
Start Date e 1969)?:	11/01/2017
End Date e 2100)?:	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$17.87
Future Value (FV):	\$150.99
Annual Percentage Yield ...	8.5565%
Daily Interest Rate:	0.0240%

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Invoice 19797

2023

Starting Amount (P.V.):	\$55.00
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	530
Start Date e 1999):	12/01/2017
End Date e 2100)?:	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$6.99
Future Value (FV):	\$61.99
Annual Percentage Yield ...	8.5883%
Daily Interest Rate:	0.0240%

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Invoice 20231

2024

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	530
Start Date (year > 1969)?:	12/01/2017
End Date (year < 2100)?:	: 05/15/2019
Days In Year?:	365
Interest Earned:	\$16.91
Future Value (FV):	\$150.03
Annual Percentage Yield ...	8.5841%
Daily Interest Rate:	0.0240%

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Invoice 20232

2025

Starting Amount (PV):	\$55.00
Annual Interest Rate:	8.7500%
Days (-9,999 <# <47,482):	499
Start Date e 1999):	01/01/2018
End Date e 2100):	05/15/2019
Days In Year:	365
Interest Earned:	\$6.58
Future Value (FV):	\$61.58
Annual Percentage Yield ...	8.6170%
Daily Interest Rate:	0.0240%

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Invoice 20319

2026

Starting Amount (PV)?:	\$133.12	
Annual Interest Rate?:	8.7500%	
Days (-9,999 < # < 47,482)?:	499	
Start Date (year > 1969)?:	01/01/2018	
End Date (year < 2100)?:	05/15/2019	
Days In Year?:	365	▼
Interest Earned:	\$15.92	
Future Value (FV):	\$149.04	
Annual Percentage Yield ...	8.6139%	
Daily Interest Rate:	0.0240%	

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Invoice 20320

2027

Starting Amount (PV): \$55.00

Annual Interest Rate: 8.7500%

Days (-9,999 < < 47,482): 468

Start Date e 1999): 02/01/2018

End Date e 2100): 05/15/2019

Days in Year: 365

Interest Earned: \$6.17

Future Value (FV): \$61.17

Annual Percentage Yield ... 8.6459%

Daily Interest Rate: 0.0240%

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Invoice 20553

2028

Starting Amount (P.Y)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	468
Start Date e 1969)?:	02/01/2018
End Date e 2100)?:	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$14.93
Future Value (FV):	\$148.05
Annual Percentage Yield ...	8.6438%
Daily Interest Rate:	0.0240%;

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Invoice 20554

2029

Starting Amount (P.Y.): \$55.00

Annual Interest Rate?: 8.7500%

Days (-9,999 <# <47,482): **440**

Start Date • 1969): 03/01/2018

End Date • 2100): 05/15/2019

Days In Year?: 365 ▼

Interest Earned: \$5.80

Future Value (FV): \$60.80

Annual Percentage Yield ... 8.6724%

Daily Interest Rate: 0.0240%

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Invoice 20809

2030

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	440
Start Date e 1969)?:	03/01/2018
End Date e 2100)?:	; 05/15/2019
Days In Year?:	365
Interest Earned:	\$14.04
Future Value (FV):	\$147.16
Annual Percentage Yield ...	8.6735%
Daily Interest Rate:	0.0240%

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Invoice 20810

2031

Starting Amount (PV.): \$5,515.46

Annual Interest Rate?: 8.7500%

Days (-9,999 <# < 47,482)?: 434

Start Date • 1969)?: 03/07/2018

End Date • 2100)?: 05/15/2019

Days In Year?: 365 ▼

Interest Earned: \$573.83

Future Value (FV): \$6,089.29

Annual Percentage Yield ... 8.6803%

Daily Interest Rate: 0.0240%

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Invoice 21005

Starting Amount (PV): \$55.00

Annual Interest Rate: 8.7500%

Days (-9,999 <# <47,482): 409

Start Date e 1999): 04/01/2018

End Date e 2100): 05/11/2019

Days In Year: 365 ▼

Interest Earned: \$5.39

Future Value (FV): \$60.39

Annual Percentage Yield ... 8.7012%

Daily Interest Rate: 0.0240%

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Invoice 21132

Starting Amount (P.V.):	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482):	409
Start Date e 1999):	04/01/2018
End Date e 2100):	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$13.05
Future Value (FV):	\$146.17
Annual Percentage Yield ...	8.7040%
Daily Interest Rate:	0.0240%

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Invoice 21133

2034

Starting Amount (P.Y.)? \$55.00

Annual Interest Rate? 8.7500%

Days (9,999 < # < 47,482)? 379

Start Date • 1969)? 05/01/2018

End Date • 2100)? 05/15/2019

Days in Year? 365

Interest Earned: \$5.00

Future Value (FV): \$60.00

Annual Percentage Yield ... 8.7408%

Daily Interest Rate: 0.0240%

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Invoice 21449

2035

Starting Amount (PY)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	379
Start Date e 1969)?:	05/01/2018
End Date e 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$12.09
Future Value (FV):	\$145.21
Annual Percentage Yield ...	8.7323%
Daily Interest Rate:	0.0240%

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Invoice 21450

Starting Amount (PV)?:	\$55.00
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	348
Start Date (year > 1969)?:	06/01/2018
End Date (year < 2100)?:	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$4.59
Future Value (FV):	\$59.59
Annual Percentage Yield ...	8.7705%
Daily Interest Rate:	0.0240%

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Invoice 21846

Starting Amount .{PV})?: \$133.12

Annual Interest Rate?: 8.7500%

Days (-9,999 < <47,482)?: 348

Start Date e 1969): 06/01/2018

End Date e 2100): 05/15/2019

Days In Year?: 365 ▼

Interest Earned: \$11.11

Future Value {FV): \$144.23

Annual Percentage Yield ... 8.7709%

Daily Interest Rate: 0.0240%

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Invoice 21847

Starting Amount (P.Y.): \$133.12

Annual Interest Rate?: 8.7500%

Days (-9999 <# <47,482): 318

Start Date e 1999): 07/01/2018 =

End Date e 2100): 05/15/2019 =

Days In Year?: 365 ▼

Interest Earned: \$10.15

Future Value (FV): \$143.27

Annual Percentage Yield ... 8.7999%

Daily Interest Rate: 0.0240%

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Invoice 22418

Starting Amount (PV)?: \$55.00

Annual Interest Rate?: 8.7500%

Days (-9,999 <# <47,482)?: 318

Start Date • 1969)?: 07/01/2018

End Date • 2100)?: 05/15/2019

Days In Year?: 365 ▼

Interest Earned: \$4.19

Future Value (FV): \$59.19

Annual Percentage Yield ... 8.7923%

Daily Interest Rate: 0.0240%

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Invoice 22419

Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	287
Start Date e 1969)?:	08/01/2018
End Date e 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$9.16
Future Value (FV):	\$142.28
Annual Percentage Yield ...	8.8316%
Daily Interest Rate:	0.0240%

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Invoice 22737

Starting Amount (P.V.)?:		\$55.00
Annual Interest Rate?:		8.7500%
Days (-9,999 < <47,482)?:		287
Start Date e 1969)?:	08/01/2018	
End Date e 2100)?:	05/15/2019	
Days In Year?:	365	
Interest Earned:		\$3.78
Future Value (FV):		\$58.78
Annual Percentage Yield ...		8.8209%
Daily Interest Rate:		0.0240%

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Invoice 22738

2042

Starting Amount (PV)?:	\$55.00	
Annual Interest Rate?:	8.7500%	
Days (-9,999 < # < 47,482)?:	134	
Start Date (year > 1969)?:	01/01/2019	
End Date (year < 2100)?:	05/15/2019	
Days In Year?:	365	▼
Interest Earned:	\$1.77	
Future Value (FV):	\$56.77	
Annual Percentage Yield ...	9.0110%	
Daily Interest Rate:	0.0240%	

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Invoice 24512

2043

Starting Amount (PV)?:	\$133.12	
Annual Interest Rate?:	8.7500%	
Days (-9,999 < # < 47,482)?:	134	
Start Date (year > 1969)?:	01/01/2019	
End Date (year < 2100)?:	05/15/2019	
Days In Year?:	365	▼
Interest Earned:	\$4.28	
Future Value (FV):	\$137.40	
Annual Percentage Yield ...	9.0022%	
Daily Interest Rate:	0.0240%	

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Invoice 24513

Starting Amount (PV)?: \$55.00

Annual Interest Rate?: 8.7500%

Days (-9,999 < # < 47,482)?: 44

Start Date (year > 1969)?: 04/01/2019

End Date (year < 2100)?: 05/15/2019

Days In Year?: 365 ▼

Interest Earned: \$0.58

Future Value (FV): \$55.58

Annual Percentage Yield ... 9.0920%

Daily Interest Rate: 0.0240%

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Invoice 25195

2045

Starting Amount (PV)?: \$133.12

Annual Interest Rate?: 8.7500%

Days (-9,999 < # < 47,482)?: 44

Start Date (year > 1969)?: 04/01/2019

End Date (year < 2100)?: 05/15/2019

Days In Year?: 365 ▼

Interest Earned: \$1.40

Future Value (FV): \$134.52

Annual Percentage Yield ... 9.0664%

Daily Interest Rate: 0.0240%

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Invoice 25196

Starting Amount (PV)?:	\$55.00	
Annual Interest Rate?:	8.7500%	
Days (-9,999 < # < 47,482)?:	12	
Start Date (year > 1969)?:	05/01/2019	
End Date (year < 2100)?:	05/13/2019	
Days In Year?:	365	▼
Interest Earned:	\$0.16	
Future Value (FV):	\$55.16	
Annual Percentage Yield ...	9.2377%	
Daily Interest Rate:	0.0240%	

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Invoice 25554

2047

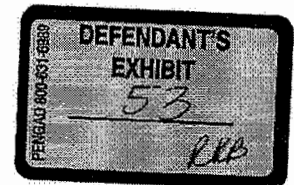
Starting Amount (PV)?:	\$133.12
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	14
Start Date (year > 1969)?:	05/01/2019
End Date (year < 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$0.45
Future Value (FV):	\$133.57
Annual Percentage Yield ...	9.1970%
Daily Interest Rate:	0.0240%

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Invoice 25555

2048

**SUMMARY OF DAMAGES AND PREJUDGMENT INTEREST
DUE RELATING TO OCTOBER 2016 DOCK DAMAGE**



VENDOR	DATE EXPENSE INCURRED	AMOUNT OF EXPENSE INCURRED	INTEREST ACCRUED TO DATE	TOTAL EXPENSE INCURRED
Atlantic Marine Construction Co., Inc.	1/17/2017	\$ 10,000.00	\$ 2,032.88	\$ 12,032.88
Atlantic Marine Construction Co., Inc.	2/8/2017	\$ 8,298.00	\$ 1,643.12	\$ 9,941.12
Barrier Island Marine Contractors, LLC	2/15/2017	\$ 22,200.00	\$ 4,358.65	\$ 26,558.65
Majers Diving & Salvage, Inc.	2/23/2017	\$ 3,900.00	\$ 758.23	\$ 4,658.23

\$ 44,398.00	\$ 8,792.88	\$ 53,190.88
Subtotal of Expense Incurred	Subtotal of Accrued Interest	TOTAL EXPENSE INCURRED WITH ACCRUED INTEREST

NOTE: Accrued interest is calculated at the statutory rate (8.15%) in accordance with S.C. Code § 34-31-20. The date each expense was incurred for purposes of calculating interest is the date when the check cleared the operating account. See Exhibit 16.

Starting Amount (PV):	\$10,000.00	
Annual Interest Rate:	8.7500%	
Days (-9,999 <# <47,482):		848
Start Date (year> 1969):	01/17/2017	---
End Date (year< 2100):	05/15/2019	---
Days In Year:	365	▼
Interest Earned:	\$2,032.88	
Future Value (FV):	\$12,032.88	
Annual Percentage Yield ...	8.2912%	
Daily Interest Rate:	0.0240%	

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Atlantic Marine

Starting Amount (PV)?:	\$8,298.00
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	826
Start Date (year> 1969)?:	02/08/2017
End Date (year< 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$1,643.12
Future Value (FV):	\$9,941.12
Annual Percentage Yield ...	8.3107%
Daily Interest Rate:	0.0240%

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Atlantic Marine

Starting Amount (PV)?:	\$22,200.00	
Annual Interest Rate?:	8.7500%	
Days (-9,999 <# <47,482)?:	819	
Start Date (year> 1969)?:	02/15/2017	=
End Date (year< 2100)?:	05/15/2019	=
Days In Year?:	365	▼
Interest Earned:	\$4,358.65	
Future Value (FV):	\$26,558.65	
Annual Percentage Yield ...	8.3169%,	
Daily Interest Rate:	0.0240%	

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Barrier Island

Starting Amount (P.V)?:	\$3,900.00
Annual Interest Rate?:	8.7500%
Days (-9,999 < # < 47,482)?:	811
Start Date (year> 1969)?:	02/23/2017
End Date (year< 2100)?:	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$758.23
Future Value (FV):	\$4,658.23
Annual Percentage Yield ...	8.3241%
Daily Interest Rate:	0.0240%

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Majers Diving

**SUMMARY OF UNPAID MISCELLANEOUS CHARGES AND PRE-JUDGMENT INTEREST
2010**

Invoice Date	Invoice Number	Charge	Principal Amount	Accrued Interest	Total
6/1/2010	8599614	Monthly Storage Fee (Calibogue)	\$ 331.25	\$ 259.67	\$ 590.92
6/1/2010	8600355	Monthly Storage Fee (Key West)	\$ 265.00	\$ 207.73	\$ 472.73
7/1/2010	8600085	Monthly Storage Fee (Calibogue)	\$ 331.25	\$ 257.29	\$ 588.54
7/1/2010	8600356	Monthly Storage Fee (Key West)	\$ 265.00	\$ 205.83	\$ 470.83
8/1/2010	8600086	Monthly Storage Fee (Calibogue)	\$ 331.25	\$ 254.82	\$ 586.07
8/1/2010	8600357	Monthly Storage Fee (Key West)	\$ 265.00	\$ 203.86	\$ 468.86
9/1/2010	8600358	Monthly Storage Fee (Key West)	\$ 265.00	\$ 201.89	\$ 466.89
9/1/2010	8600364	Monthly Storage Fee (Calibogue)	\$ 331.25	\$ 252.36	\$ 583.61
10/1/2010	8600398	Monthly Storage Fee (Calibogue)	\$ 331.25	\$ 249.98	\$ 581.23
10/1/2010	8601017	Haul & Launch	\$ 150.00	\$ 113.20	\$ 263.20

\$ 2,866.25	\$ 2,206.63	\$ 5,072.88
Subtotal of Unpaid Misc. Charges	Subtotal of Accrued Interest	TOTAL UNPAID MISC. CHARGES AND INTEREST

NOTE: Accrued interest is calculated at the statutory rate (& 75%) in accordance with S.C. Code § 34-31-20.



2054

Starting Amount (PY)?:	\$331.25
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	3,270
Start Date (year> 1959)?:	06/01/2010
End Date (year< 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$259.67
Future Value (FV):	\$590.92
Annual Percentage Yield ...	6.6740%
Daily Interest Rate:	0.0240%

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Invoice 8599614

2055

Starting Amount (PV)?:	\$265.00
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	3,270
Start Date (year > 1999)?:	06/01/2010
End Date (year < 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$207.73
Future Value (FV):	\$472.73
Annual Percentage Yield ...	6.6738%
Daily Interest Rate:	0.0240%

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Invoice 8600355

Starting Amount (FV)?:		\$331.25
Annual Interest Rate?:		8.7500%
Days (-9,999 <# <47,482)?:		3,240
Start Date (year> 1999)?:	07/01/2010	
End Date (year< 2100)?:	05/15/2019	
Days In Year?:	365	
Interest Earned:		\$257.29
Future Value (FV):		\$588.54
Annual Percentage Yield ...		6.6893%
Daily Interest Rate:		0.0240%

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Invoice 8600085

Starting Amount (P.V)?:	\$265.00
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	3,240
Start Date (year> 1999)?:	07/01/2010
End Date (year< 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$205.83
Future Value (FV):	\$470.83
Annual Percentage Yield ...	6.6892%
Daily Interest Rate:	0.0240%

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Invoice 8600356

Starting Amount (PV)?:	\$331.25
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	3,209
Start Date (year> 1969)?:	08/01/2010 P
End Date (year< 2100)?:	05/15/2019
Days In Year?:	365 ▼
Interest Earned:	\$254.82
Future Value (FV):	\$586.07
Annual Percentage Yield ...	6.7050%
Daily Interest Rate:	0.0240%

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Invoice 8600086

Starting Amount (P.V.):	\$265.00
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482):	3,209
Start Date (year> 1999):	08/01/2010
End Date (year< 2100):	05/15/2019
Days In Year?:	365
Interest Earned:	\$203.86
Future Value (FV):	\$468.86
Annual Percentage Yield ...	6.7051%:
Daily Interest Rate:	0.0240%

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Invoice 8600357

Starting Amount (P.V.)?:		\$265.00
Annual Interest Rate?:		8.7500%
Days (-9,999 <# <47,482)?:		3,178
Start Date (year> 1969)?:	09/01/2010	---
End Date (year< 2100)?:	05/15/2019	---
Days In Year?:	365	-
Interest Earned:		\$201.89
Future Value (FV):		\$466.89
Annual Percentage Yield ...		6.7210%
Daily Interest Rate:		0.0240%

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Invoice 8600358

Starting Amount (P.V.)?:	\$331.25
Annual Interest Rate?:	8.7500%
Days (-9,999 <# <47,482)?:	3,178
Start Date (year> 1969)?:	09/01/2010
End Date (year< 2100)?:	05/15/2019
Days In Year?:	365
Interest Earned:	\$252.36
Future Value (FV):	\$583.61
Annual Percentage Yield ...	6.7210%
Daily Interest Rate:	0.0240%

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Invoice 8600364

2062

Starting Amount (P.V)?: \$331.25

Annual Interest Rate?: 8.7500%

Days (-9,999 < # < 47,482)?: 3,148

Start Date (year> 1969)?: 10/01/2010

End Date (year< 2100)?: 05/15/2019

Days In Year?: 365

Interest Earned: \$249.98

Future Value (FV): \$581.23

Annual Percentage Yield ... 6.7366%

Daily Interest Rate: 0.0240%

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Invoice 8600398

Starting Amount (PV.): \$150.00

Annual Interest Rate?: 8.7500%

Days (-9,999 <# <47,482): 3,148

Start Date (year> 1969): 10/01/2010 P

End Date (year< 2100): 05/15/2019 E

Days In Year?: 365 ▼

Interest Earned: \$113.20

Future Value (FV): \$263.20

Annual Percentage Yield ... 6.7366%

Daily Interest Rate: 0.0240%

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Invoice 8601017

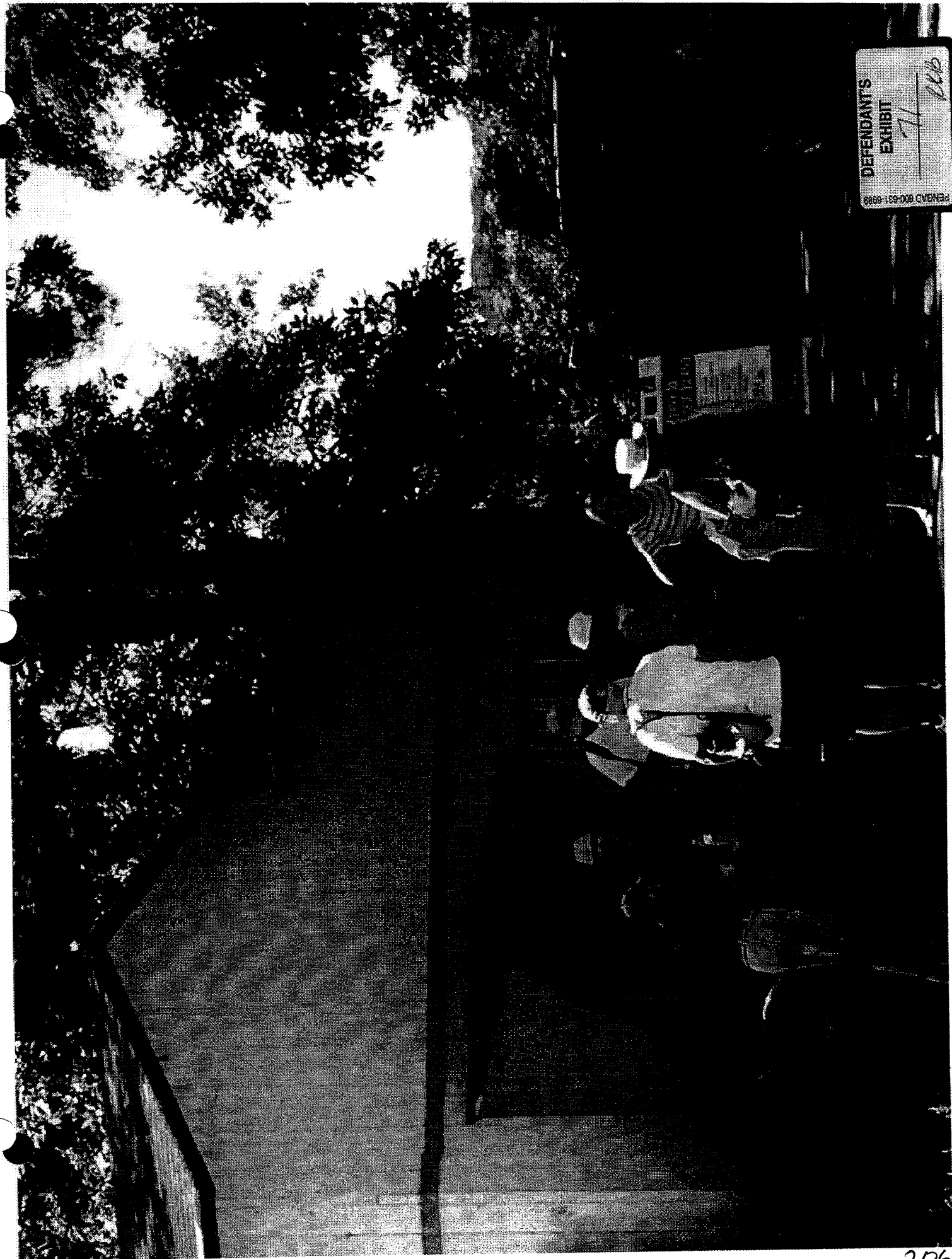
2064



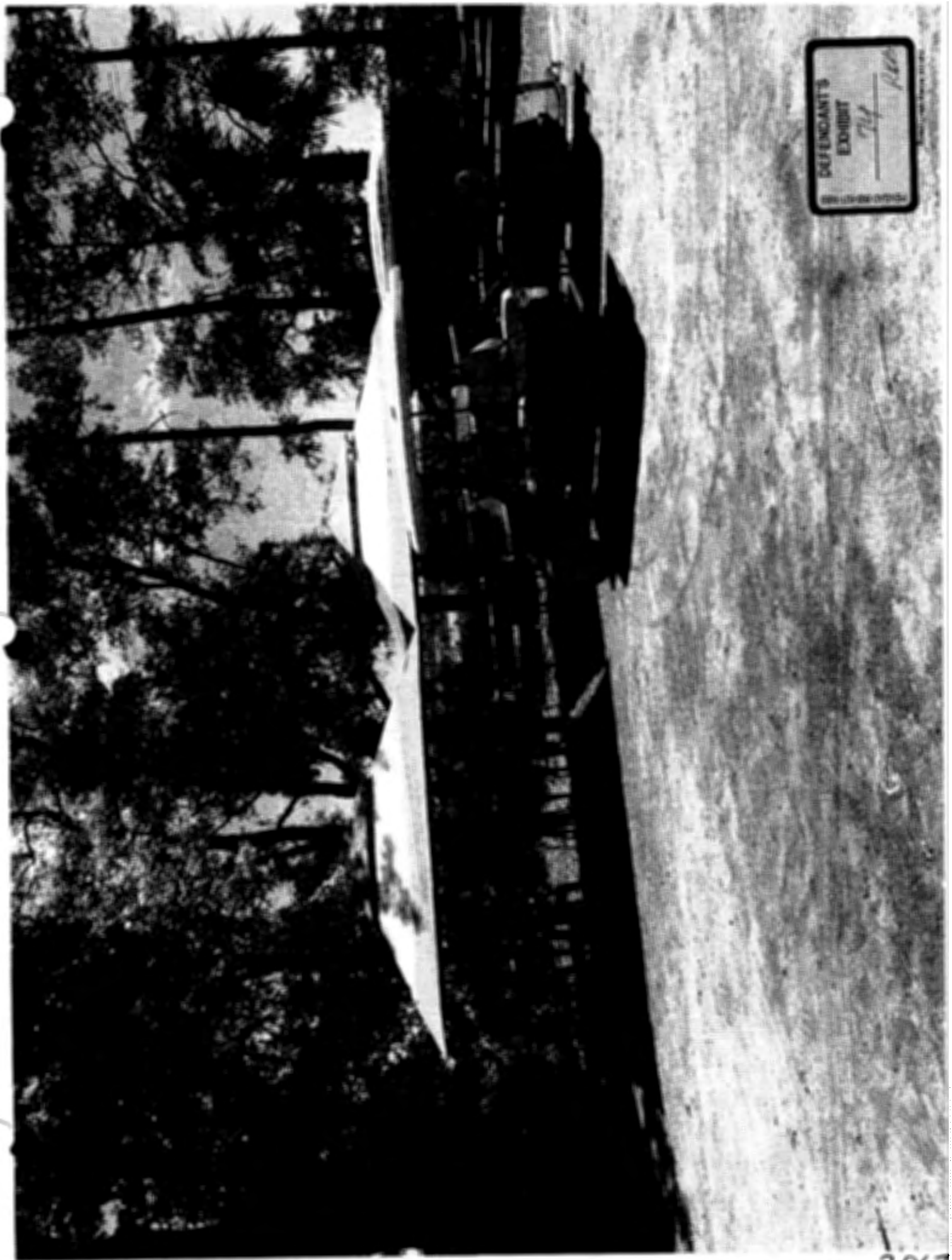
SUMMARY OF ACTUAL DAMAGES

CATEGORY	AMOUNT
Unreimbursed Lease Charges Billed from 2008 through 2018 with Interest	\$76,719.97
Dock Damage Repair Costs with Interest	\$53,190.88
Unreimbursed Miscellaneous Charges from 2010 with Interest	\$5,072.88
TOTAL	\$134,983.73

(Petition for Attorney's Fees Reserved for Post-Trial Motions)



DEFENDANT'S
EXHIBIT
71
PENGAD 900-531-9939



DEFENDANT'S
EXHIBIT
74
160

Ellis Lesemann

From: Lewis Teri
Sent: Tuesday, May 14, 2019 3:16 PM
To: Ellis Lesemann
Cc: Hulbert Brian; Nate Jones; Roger Freedman
Subject: Floating Office at Broad Creek Marina

Mr. Lesemann-

As we discussed on Friday, May 10th, the area in question is part of the Conservation (CON) zoning district. The only uses allowed in this zoning district are boat ramps, docking facilities and marinas. Per the Town's Land Management Ordinance (LMO), specifically Section 16-10-103.J, a marina is defined as a commercial harbor, boat basin, or other facility that provides storage or docking facilities, supplies, or other services for water craft, including facilities for storing water craft in or out of the water, but excluding storage of water craft at a private dock associated with a residential unit or on private property where no fee is charged. I believe that a floating office that sells tickets for a use that must occur on the water, such as a ferry, qualifies under the *other services for water craft* portion of the definition of marina.

Kind regards-
Teri Lewis

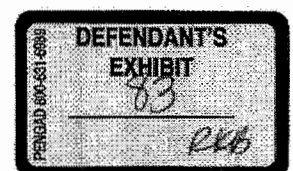
Teri B. Lewis, AICP
Deputy Director of Community Development
Town of Hilton Head Island

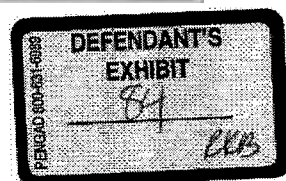
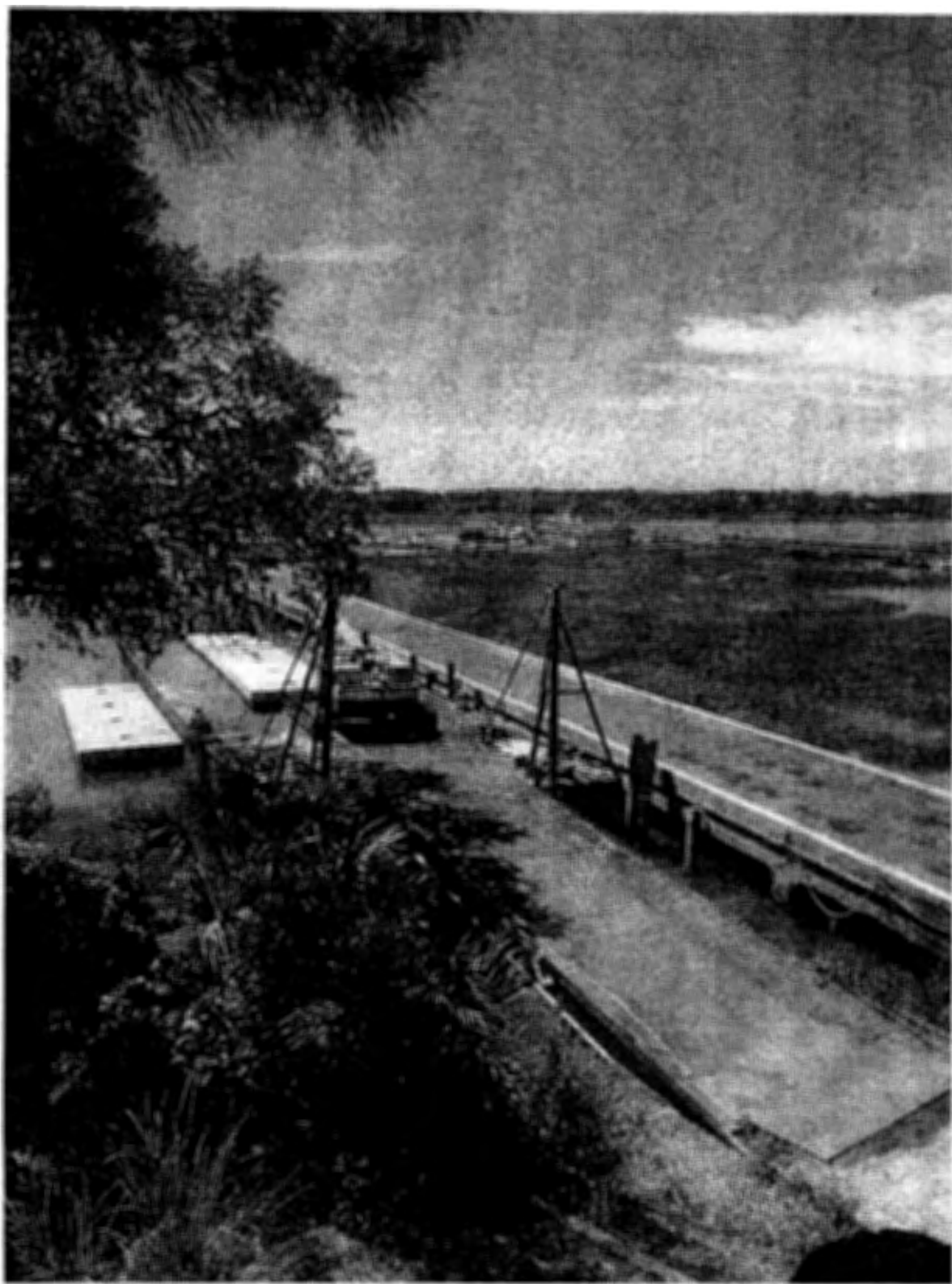
(843) 341-4698 phone
(843) 816-1807 mobile
(843) 842-8908 fax
teri@hiltonheadislandsc.gov

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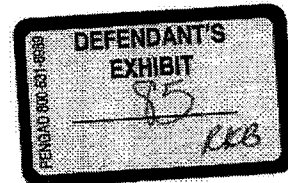
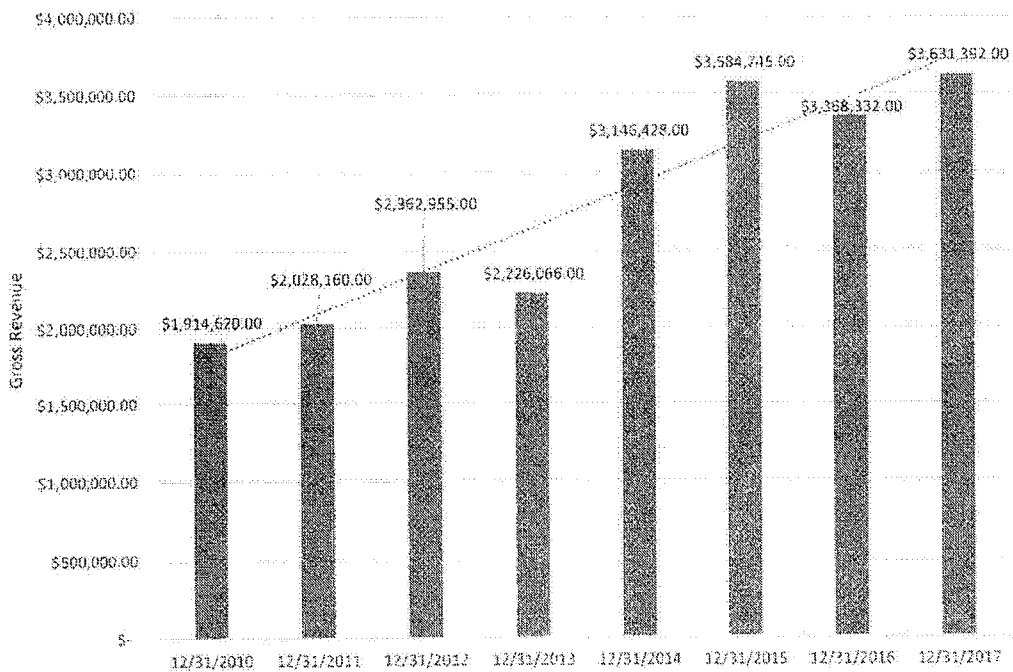
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2069

J & W Corporation of Greenwood
Revenue Growth 2010 - 2017



U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Sector Charleston

196 Tradd Street
Charleston, SC 29401
Phone: (843) 740-7050
24hr Duty: (843) 296-5532
D07-dg-sectorchasn-suw@uscg.mil

16600

November 9, 2018

Mr. Wick Scurry
J & W Corporation of Greenville
50 Bush's Branch Road
Bluffton, SC 29909

**CAPTAIN OF THE PORT ORDER # 023-18:
J&W CORP TUG/BARGE SERVICE TO DAUFUSKIE ISLAND, SC**

Dear Mr. Scurry:

On November 8, 2018, U. S. Coast Guard marine inspectors from my office observed the uninspected towing vessel JAKE WASHINGTON (O.N. 1220835) pushing an uninspected and undocumented barge (approximately 120 ft x 30 ft x 8 ft) with vehicles and their associated drivers on board from Daufuskie Island, South Carolina to Broad Creek Marina, South Carolina. Further investigation revealed that the observed operation of the barge, being over 100 gross tons (calculated via simplified tonnage), carrying at least one passenger, and being operated as a ferry, requires the barge to be inspected under Title 46, Code of Federal Regulations (CFR), Subchapter H.

As the owner or operator, you shall cease any carriage of passengers on the subject barge until the barge meets the requirements of 46 CFR Subchapter H and holds a valid Certificate of Inspection (COI) per 46 CFR 71.01-2.

This order is issued under the authority of the Ports and Waterways Safety Act (Title 33, United States Code (USC) Sections 1221 – 1236) and Title 33 CFR Part 160. In accordance with 33 USC § 1232, failure to comply with this Captain of the Port Order is punishable by a civil penalty of not more than \$90,063 for each day the vessel is in violation. Willful and knowing violation of this order is a class D felony, punishable by up to six years in prison or fines of no more than \$250,000 for an individual or \$500,000 for an organization. This order shall remain in effect until it is amended or the vessel is released.

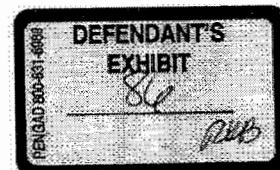
If you feel aggrieved by this order, you may request reconsideration from me directly. If I do not rescind this order based on your request, you may appeal this order to the Commander, Seventh Coast Guard District, through this office. While any request or appeal is pending, all provisions of this order remain in effect. All requests for reconsideration or appeal must follow the procedures prescribed in 33 CFR 160.7.

Sincerely,

J. W. REED
Captain, U. S. Coast Guard
Captain of the Port

Receipt Acknowledged: Date _____

Signature: _____ Typed or Printed Name: _____



2071

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Sector Charleston

196 Tradd Street
Charleston, SC 29401
Phone: (843) 740-7050
24hr Duty: (843) 296-5532
D07-dg-sectorchasn-suw@uscg.mil

16600
November 9, 2018

Mr. Wick Scurry
J & W Corporation of Greenville
50 Bush's Branch Road
Bluffton, SC 29909

**CAPTAIN OF THE PORT ORDER 024-18:
J&W CORP TUG/BARGE SERVICE TO DAUFUSKIE ISLAND, SC**

On November 9, 2018, U. S. Coast Guard marine inspectors from my office conducted a dockside exam of the uninspected towing vessel JAKE WASHINGTON (O.N. 1220835) and the undocumented barge (approximately 120 ft x 30 ft x 8 ft) that were moored at Broad Creek Marina, South Carolina. It was discovered that the barge was in an unsafe material condition, to include: excessive bilge water, severe structural wastage, watertight integrity, firefighting, and electrical hazards. The condition of the barge poses a serious threat to the marine environment and safety of the waterway.

As the owner or operator, you shall cease any and all operations associated with the barge until such time the conditions on board are proven satisfactory as verified by the U.S. Coast Guard.

This order is issued under the authority of the Ports and Waterways Safety Act (Title 33, United States Code (USC) Sections 1221 – 1236) and Title 33 CFR Part 160. In accordance with 33 USC § 1232, failure to comply with this Captain of the Port Order is punishable by a civil penalty of not more than \$90,063 for each day the vessel is in violation. Willful and knowing violation of this order is a class D felony, punishable by up to six years in prison or fines of no more than \$250,000 for an individual or \$500,000 for an organization. This order shall remain in effect until it is amended or the vessel is released.

If you feel aggrieved by this order, you may request reconsideration from me directly. If I do not rescind this order based on your request, you may appeal this order to the Commander, Seventh Coast Guard District, through this office. While any request or appeal is pending, all provisions of this order remain in effect. All requests for reconsideration or appeal must follow the procedures prescribed in 33 CFR 160.7.

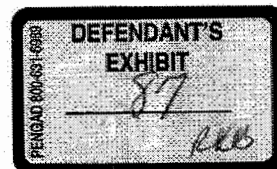
Sincerely,

J. W. REED
Captain, U. S. Coast Guard
Captain of the Port

Receipt Acknowledged: Date _____

Signature: _____

Typed/Printed Name: _____



2072

Untitled Map

Write a description for your map.

Legend



EXHIBIT
Court 1
5/15/19 RB

Google Earth

100 ft

2073

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 BEAUFORT COUNTY
4 30(b)(6) DEPOSITION OF J & W
5 CORPORATION OF GREENWOOD
6 WILLIAM P. SCURRY
7 J & W CORPORATION OF GREENWOOD,
8 Plaintiff,
9 vs. Case No. 2015-CP-07-1704
10
11 BROAD CREEK MARINA OF HILTON HEAD, LLC, f/k/a
12 HILTON HEAD MARINA, LLC, ROGER M. FREEDMAN, and
13 BROAD CREEK MARINA, INC.,
14 Defendants.
15 DEPONENT: WILLIAM P. SCURRY
16 DATE: January 14, 2019
17 TIME: 9:58 AM
18 LOCATION: LAW OFFICE OF THOMAS C. TAYLOR
19 HILTON HEAD ISLAND, SC
20
21 REPORTED BY: TERI L. KENNELLY, RPR, CRR
22 CLARK & ASSOCIATES, INC.
23 P.O. Box 73129
24 Charleston, SC 29415
25 843-762-6294
WWW.CLARK-ASSOCIATES.COM
Teri@Clark-Associates.com

1 APPEARANCES
2
3 ON BEHALF OF PLAINTIFF:
4 LAW OFFICE OF THOMAS C. TAYLOR
5 BY: THOMAS C. TAYLOR
6 22 Bow Circle, Suite A
7 Hilton Head Island, SC 29938
8
9 ON BEHALF OF DEFENDANTS:
10 LESEMANN & ASSOCIATES
11 BY: ELLIS R. LESEMANN
12 418 King Street, Suite 301
13 Charleston, SC 29401

12 Also Present: Nathan Jones
13
14
15
16
17
18
19
20
21
22
23
24
25

1 INDEX
2 EXAMINATION
3 BY MR. LESEMANN 4
4
5 EXHIBITS
6 Exhibit No. 1 Notice of Deposition 5
7 Exhibit No. 2 Lease agreement 47
8 Exhibit No. 3 Settlement agreement and release 47
9 Exhibit No. 4 Letter from J & W Corporation of 55
10 Greenwood to North American Specialty Insurance Company
11 Exhibit No. 5 Invoices from landlord from January 2008 to 82
12 December 2015
13 Exhibit No. 6 Invoices from landlord from January 2016 to 82
14 December 2018
15 Exhibit No. 7 Coast Guard release 93
16
17
18
19
20
21
22
23
24
25

1 WILLIAM P. SCURRY,
2 having been first duly sworn, was examined and
3 testified as follows:
4 EXAMINATION
5 BY MR. LESEMANN:
6 Q. Mr. Scurry, my name is Ellis Lesemann.
7 We've met before. As you know, I am the attorney
8 for the defendants in this case. We're here
9 today to take the Rule 30(b)(6) deposition of J & W
10 Corporation of Greenwood. Do you understand the
11 concept of a 30(b)(6) deposition?
12 A. I know what a deposition is. I don't
13 know what about a 30(b)(6).
14 Q. Yes, sir. So a 30(b)(6) deposition is a
15 particular kind of deposition where your answers
16 will be on behalf of your company, as opposed to
17 being made on behalf of you personally.
18 A. Okay.
19 Q. And so, ultimately, through your
20 presence, you've been appointed as the corporate
21 representative of J & W Corporation of Greenwood
22 for purposes of today's deposition.
23 A. Okay.
24 Q. Is that your understanding?
25 A. Yes, sir.

1 MR. LESEMANN: Teri, could we mark
2 this as Exhibit 1, please.

3 (Exhibit No. 1 was marked for
4 identification.)

5 Q. Mr. Scurry, I've marked as Exhibit 1 to
6 today's deposition a 30(b)(6) Notice that was
7 issued to J & W Corporation and its counsel in
8 this case. Have you had the opportunity to
9 review this document?

10 A. Yes.

11 Q. Are you prepared to provide binding
12 testimony on behalf of J & W Corporation of
13 Greenwood as to these topics?

14 A. As best I can.

15 Q. Did you prepare for the deposition
16 today?

17 A. Ycs.

18 Q. As we get started, you'll see that Teri
19 is going to keep a record of today's deposition.
20 Now that we have begun the deposition, you and I
21 are going to have a question-and-answer session.
22 We can take breaks whenever one is needed by
23 anyone sitting at the table, including yourself.

24 If I ask a question and the wording
25 of it is unclear in some way, I would, would you

1 just let me know that and I will reword the
2 question.

3 While we are active in the
4 deposition and during any break times, you should
5 not discuss anything with Mr. Taylor, and
6 Mr. Taylor is already well aware of this, but I
7 want you to know it because it isn't intuitive
8 necessarily to a litigant.

9 MR. TAYLOR: We can talk football.
10 We just can't talk substance.

11 Q. Right. And again, any questions or
12 comments can just be posed back to me for
13 purposes of the deposition. So we won't be here
14 terribly long, and we'll go ahead and we'll move
15 forward.

16 And, Wick, in honor of your time
17 and everybody's time, I'm going to try to be as
18 brief and as efficient as I can be, so I may end
19 up jumping around, and I'm going to probably do
20 that right now.

21 Topic 11 is the alleged damages,
22 lost revenues, lost profits, damages for injury
23 to business reputation, attorney's fees or other
24 amounts that plaintiff seeks to recover in this
25 case.

1 So I'll ask this: Has J & W
2 Corporation made a calculation of alleged lost
3 profits that it's going to ask Judge Dukes to
4 award in this case?

5 A. There is no -- we do not have an exact
6 number.

7 Q. By saying that you don't have an exact
8 number, would that mean that you believe that
9 J & W Corporation is -- of Greenwood is going to
10 allege some range of damages?

11 A. Yes.

12 Q. What is the range of damages that you --
13 that J & W Corporation would allege with regard
14 to lost profits?

15 A. I would say between 100 and \$300,000.

16 Q. Is there any documentation relating to
17 the range of 100,000 to \$300,000?

18 A. When you say documentation, exactly what
19 are you referring to?

20 Q. Is there any spreadsheet or calculation
21 or form of document that includes a range of 100
22 to \$300,000 on it and the method that was used to
23 determine that range?

24 A. There is no sheet of paper or anything
25 like that, no.

1 Q. Who came up with the range 100 to 300?

2 A. I did.

3 Q. Who did you consult with to come up with
4 that number?

5 A. My lawyer, Mr. Taylor.

6 Q. Would you agree with me that 300,000 is
7 300 percent of 100,000?

8 A. Yeah.

9 Q. And would you agree with me that
10 \$100,000 is one-third of 300,000?

11 A. I would.

12 Q. So is it fair -- has J & W Corporation
13 made a calculation of lost profits in any
14 specific amount to a reasonable degree of
15 certainty?

16 A. The degree of certainty is the problem.

17 Q. Do you agree that there is uncertainty
18 that's inherent in this damages range of 100 to
19 300,000?

20 A. Yes.

21 Q. Have you made efforts to account for
22 other causes of either increases or decreases in
23 revenue in connection with this range?

24 A. What do you mean by other causes?

25 Q. So, for example, is there a seasonality

1 to J & W Corporation of Greenwood's business?

2 A. Yes.

3 Q. Has J & W Corporation of Greenwood, in
4 connection with making an estimated range of
5 damages, factored in the seasonality of the
6 business?

7 A. Yes.

8 Q. And how was that done?

9 A. Well, my business basically starts about
10 the middle of March and goes through October.

11 Q. So how did seasonality impact the
12 calculation in terms of the range of alleged
13 damages?

14 A. I don't really understand your question.
15 I'm very sorry.

16 Q. Sure. How did seasonality -- so how
17 would the number be different if you hadn't
18 considered seasonality? Would it be a different
19 range?

20 A. No, I don't think so.

21 Q. What other factors did you consider in
22 coming up with this estimated range of damages
23 between 100,000 and 300,000?

24 A. The factors were based on a decline in
25 business from the time this agreement that

1 Mr. Freedman and I made in 2004, over the years,
2 as far as just pure business on our boats.

3 Q. So what does the 100,000 to \$300,000
4 represent?

5 A. Lack of income.

6 Q. So are you alleging that that is a net
7 income figure, that's a lost profits? Or is that
8 a lost revenue figure?

9 A. Lost revenue.

10 Q. So what does J & W Corporation allege
11 that the lost revenues of 100 to \$300,000 would
12 constitute in terms of lost profits?

13 A. I would guess the lost profits would be
14 a direct result really of the amount that I gave
15 you because the boats ran anyway, and these are
16 individuals that did not get on the boat. So my
17 costs were already there, so the ridership of the
18 boats would have been a direct hit on my profit.

19 So I guess what I'm saying is that
20 the profit, although it is a net profit, it's
21 also a gross profit.

22 Q. So you think that the profit and revenue
23 figures in this instance under these
24 circumstances would be identical?

25 A. I do.

1 Q. Are these alleged lost profits resulting
2 solely from the ferry operation, or are they some
3 combination of your ferry and your barge
4 operations?

5 A. Just the ferry.

6 Q. And how many tickets are you alleging
7 that you were unable to sell due to alleged
8 actions of the defendant landlord?

9 A. I don't have an exact amount of tickets
10 because my ticket price varies. Well, that's one
11 of the reasons.

12 Q. So how have you accounted for your
13 differences in ticket prices in coming up with
14 your alleged range of damages?

15 A. I don't look at the ticket prices as
16 much as I look at the gross revenue from the P&L
17 statement.

18 Q. And so what years are you alleging that
19 your gross revenue was adversely impacted as a
20 result of alleged actions of the landlord?

21 A. 2004 until this year.

22 Q. So those alleged lost revenues would --
23 are coming over a -- essentially, a 14-year
24 period?

25 A. Yes, sir.

1 Q. So how much of those lost damages are
2 attributable to the year 2004?

3 A. I don't know.

4 Q. How much of those alleged damages are
5 attributable to 2005?

6 A. I don't know exactly, so you could go
7 through all those years, and the answer would be
8 the same.

9 Q. And I'm just going to do that for
10 purposes of this record.

11 A. Sure, that's fine.

12 Q. How much of those alleged damages are
13 attributable to 2006?

14 A. I don't know.

15 Q. How much of those alleged damages are
16 attributable to 2007?

17 A. I don't know.

18 Q. How much of those alleged damages are
19 attributable to 2008?

20 A. I don't know.

21 Q. How much of those alleged damages are
22 attributable to 2009?

23 A. I don't know.

24 Q. How much of those alleged damages are
25 attributable to 2010?

1 A. I don't know.

2 Q. How much of those alleged damages are
3 attributable to 2011?

4 A. I don't know.

5 Q. How much of those alleged damages are
6 attributable to 2012?

7 A. I don't know.

8 Q. How much of those alleged damages are
9 attributable to 2013?

10 A. I don't know.

11 Q. How much of those alleged damages are
12 attributable to 2014?

13 A. I don't know.

14 Q. How much of those alleged damages are
15 attributable to 2015?

16 A. I don't know.

17 Q. How much of those alleged damages are
18 attributable to 2016?

19 A. I don't know.

20 Q. How much of those alleged damages are
21 attributable to 2017?

22 A. I don't know.

23 Q. Can you tell me in which years that
24 you -- are you stating that you -- that J & W
25 Corporation did incur damages in each year, or

1 are you uncertain whether each year resulted in
2 damages?

3 A. I'm certain that there was a pattern of
4 a decrease in business.

5 Q. And what have you used to help you
6 determine what you think that your business would
7 have been? What is -- what's the basis for
8 thinking that anyone didn't utilize your service
9 that otherwise would have?

10 A. The number of people on the boats.

11 Q. Did you account for the level of
12 activity on Daufuskie Island?

13 A. That's gone up.

14 Q. Has it gone up in every year?

15 A. Yes.

16 Q. Has it gone up -- did it go up during
17 the recession?

18 A. I believe so.

19 Q. Did it go up when Melrose declared
20 bankruptcy?

21 A. Yes.

22 Q. You believe it did?

23 A. I know it did.

24 Q. And so you're saying your business
25 increased?

1 A. Yes, on Daufuskie.

2 Q. So if your business on Daufuskie
3 increased, why are you alleging that you lost
4 revenues?

5 A. Let me make it clear. I believe I lost
6 revenue on the ferry operating out of Broad Creek
7 Marina.

8 Q. And why do you believe that if you had
9 been operating out of some other marina, you
10 wouldn't have suffered these losses?

11 A. I'm not sure that that's true. I didn't
12 say that.

13 Q. Have you attempted to make any
14 accounting for other things or other causes that
15 could have resulted in a decrease in revenue over
16 any of those 14 years?

17 A. I believe that -- honestly, I don't
18 believe that because I think the revenues should
19 have increased rather than basically stalemated.

20 Q. In which years -- and, again, I only
21 have your tax returns, I believe, for 2011 to
22 2015.

23 MR. LESEMANN: And part of that,
24 Tom, was because there was an objection to
25 producing tax returns, and we agreed upon a

1 certain range of time. Part of that included a
2 range of 2009. So what I'll need to ask, based
3 on the corporate testimony, is for tax returns
4 for every year from 2014 to 2017 that I don't
5 have to be presented unless you'd like to modify
6 or withdraw the claim in some way.

7 MR. TAYLOR: No, I'm not going to
8 modify or withdraw anything. We can take that up
9 after the deposition as is appropriate.

10 MR. LESEMANN: All right. So are
11 you not willing to agree to present those tax
12 returns?

13 MR. TAYLOR: Ellis, this is not the
14 format for that. You can put on the record
15 whatever you would like to do.

16 MR. LESEMANN: Okay. I just would
17 like to have on the record whether you object or
18 whether you will produce the additional tax
19 returns, based on your client's allegation that
20 there is a 14-year time span for which he's
21 alleging damages. Are you prepared to provide
22 the tax returns for each one of those years?

23 MR. TAYLOR: Not as I sit here, no.

24 MR. LESEMANN: Are you willing to
25 do it?

1 MR. TAYLOR: Ellis, I'm not being
2 deposited right now.

3 MR. LESEMANN: Tom, we've got a
4 trial. Okay? So I'm getting a calculation that
5 I have no idea, you know, statute of limitations
6 and otherwise, all the problems that are inherent
7 with it.

8 But if there is an allegation
9 relating to damages for those times and if we're
10 available to take it up with Judge Dukes after
11 the deposition, then maybe we can just call him
12 then because I need to get that stuff quickly so
13 that I'm able to deal with this allegation at
14 trial.

15 So if you're not prepared to commit
16 to producing them, then we can move on, and I'll
17 have to take it up otherwise.

18 Q. (MR. LESEMANN) Did J & W Corporation
19 consult any of its tax returns in coming up with
20 this alleged range of 100,000 to \$300,000 of lost
21 revenues that it considers to be 100 percent lost
22 profits?

23 A. I did not consult with my tax returns.
24 I did consult with my P&L.

25 Q. For each year, 2004 through 2018?

1 A. I did look at that, yes.

2 Q. And so you have a file with all of the
3 P&Ls from 2004 to 2018 that you have assembled
4 and you have reviewed?

5 A. No. I have a computer that has those in
6 there.

7 Q. From time to time, have you had boats go
8 out of service?

9 A. Oh, yes.

10 Q. Did you make any accounting for your
11 boats going out of service in connection with
12 your allegation about lost revenue or lost
13 profits?

14 A. No.

15 Q. Would your business fluctuate with the
16 number of visits to Daufuskie Island?

17 A. Yes.

18 Q. Have you made any effort to account for
19 the relative number of visitors to Daufuskie
20 Island in connection with your alleged
21 calculation of lost revenues?

22 A. You'd have to repeat that again.

23 Q. Have you made any effort to account for
24 the relative number of visitors to Daufuskie
25 Island in making your allegations relating to

1 lost revenue?

2 A. We are talking -- and I know I should
3 not get into other things, but quite frankly,
4 we're talking about two things that do not equate
5 to each other. You're talking about how many
6 people go to Daufuskie and if I've figured that.
7 I do have a hunch on how many people go to
8 Daufuskie.

9 But the way the people go to
10 Daufuskie is what has changed, and that's why the
11 number of people going to Daufuskie has really
12 increased.

13 Q. And so how has the way that people go to
14 Daufuskie changed?

15 A. Back, say, in 2004 up to probably 2010,
16 80 percent of the people that went to Daufuskie,
17 we took over there.

18 Q. And so are you saying --

19 A. Now 80 percent of the people that go to
20 Daufuskie come in their own boats.

21 Q. And how did the actions of the landlord
22 cause that change, if they did? Are you alleging
23 that that change of people utilizing your service
24 versus utilizing their own boats is directly the
25 result of some act or series of acts or omissions

1 by the landlord?

2 A. I am not.

3 Q. Has that change in the mode of
4 transportation, in terms of how people get to
5 Daufuskie, had a direct impact on your business?

6 A. No.

7 Q. So you're saying that 80 percent of the
8 people used to utilize J & W Corporation to get
9 to Daufuskie. Now 80 percent of people use their
10 own means to get to Daufuskie.

11 A. That is correct.

12 Q. But you're saying that that has had no
13 impact on J & W Corporation's business.

14 A. Well, it's had no effect on J & W
15 Corporation's business out of Broad Creek Marina
16 because the people that are going to Daufuskie by
17 boat are local people who take their own boats
18 and go out and enjoy our facility.

19 Q. Did you account for the loss of the
20 Beaufort County contract in connection with
21 your --

22 A. I did.

23 Q. -- lost revenue calculation?

24 And tell me specifically how you
25 did that.

1 A. Well, it's -- I pulled it out of the
2 calculation.
3 Q. What numbers did you pull out?
4 A. The money I was being paid by Beaufort
5 County.
6 Q. Do fuel prices vary?
7 A. Yes.
8 Q. Did you account for the varying costs of
9 fuel in any way in making your calculations?
10 A. No.
11 Q. Would you agree that your profit would
12 change from year to year based upon the relative
13 cost of fuel?
14 A. Yes.
15 Q. Are your operating costs for maintenance
16 and service of your vessels the same every year?
17 A. No.
18 Q. Would that be another factor that would
19 affect your lost profits?
20 A. Yes.
21 Q. In what years did your business decrease
22 from the prior year, in terms of revenue?
23 A. Our business either did not -- it
24 started decreasing after 2004 and had a gradual
25 decrease in ridership all the way through.

1 Q. So do you have records on the number of
2 ferry tickets that you've sold on an annual basis
3 from 2004 to 2017?
4 A. I don't know that I can find all that,
5 no.
6 Q. So you don't know how many -- you don't
7 know how many passengers that your ferry services
8 have taken to Daufuskie during that time frame?
9 A. I can estimate it, but I cannot -- I
10 don't have a ticket number.
11 Q. So what would be your estimate for the
12 number of people that you took in 2006, for
13 example?
14 A. I'd have to look at the numbers and do a
15 calculation.
16 Q. And so your ticket prices have changed
17 from time to time; is that correct?
18 A. They certainly have.
19 Q. And so does that have an effect on
20 revenue?
21 A. It does.
22 Q. And what steps have you taken to account
23 for changes in your ticket prices in connection
24 with the alleged lost revenues that you're
25 claiming?

1 A. The ticket prices basically have been
2 about, if anything, less lately than it was
3 earlier to try to increase business on the boat.
4 Q. So you've decreased ticket prices; is
5 that correct? Is that what you've saying?
6 A. We have increased and decreased ticket
7 prices over the years.
8 Q. Have you made any accounting for how
9 those increases and decreases in ticket prices
10 have affected the revenue figures that you're
11 purporting to claim were affected by actions of
12 the landlord? So I'll just --
13 A. We took a look at the total gross sales,
14 okay, is what we're looking at. The total gross
15 sales on an annual basis is what I'm referring
16 to.
17 Q. So what steps have you taken -- in any
18 year where your total gross sales for a given
19 year decreased, what steps have you taken to
20 prove that it was some action by the landlord and
21 not some other cause that was the reason for the
22 change?
23 A. I've researched the market, and I have
24 found out that other businesses are going up
25 about 8 percent or 10 percent a year, and ours

1 has not. I have looked at, again, past years to
2 see what I have done, and it's a -- it's a
3 hard -- it's a hard market.
4 And I'm not saying and cannot say
5 that 100 percent of decreases are the landlord's
6 fault. But I do -- I can say that, because of
7 the lack of suitable office facilities and so on,
8 we -- I don't think we are competitive with other
9 operators that do ferries on Hilton Head Island.
10 Q. Who are the other operators that do
11 ferries?
12 A. Vagabond Cruises, the Holiday out of
13 Shelter Cove. A lot of small little boaters that
14 have popped up, Outside Hilton Head, three or
15 four other little companies that are doing the
16 same thing we are.
17 Q. Do some of those smaller operators
18 affect your business and take away some of your
19 market share?
20 A. I don't -- I would say they are another
21 choice, so certainly they would take away
22 something.
23 Q. Are there more competitors in 2018 than
24 J & W Corporation had, let's say, in 2008?
25 A. I don't know.

1 Q. Do you know how much revenue that the
2 competitive businesses are currently doing?

3 A. No.

4 Q. When you said you did research about
5 growth of 8 to 10 percent, can you tell me the
6 basis of this research? What are you talking
7 about?

8 A. I know that Vagabond Cruises and some of
9 the people that I know well have increased their
10 business on a yearly basis.

11 Q. Now, if your tax return shows that J & W
12 Corporation increased business in a given year,
13 do you dispute the accuracy of the revenue
14 figures that you reported to the IRS?

15 A. I don't believe my tax returns say that,
16 but I would leave that answer to my accountant.

17 Q. Do you know of any reason why any tax
18 return that J & W Corporation has filed from the
19 time frame of 2004 to 2018 is inaccurate in any
20 way?

21 A. I have no way of knowing that for sure,
22 but I don't think so.

23 Q. Have you ever amended a tax return in
24 the time frame from 2004 to 2008 [sic]?

25 A. I don't know.

1 A. I don't know.

2 Q. Can you identify when any of the
3 conversations were?

4 A. Not an exact date, no.

5 Q. Can you identify them by year?

6 A. Yeah, I've talked to him this year.

7 Q. And what did he --

8 A. Or 2018.

9 Q. What did he tell you in 2018 that led
10 you to find that there was an 8 to 10 percent
11 annual growth rate with regard to his business?

12 A. He said his business was up in the
13 spring and the summer.

14 Q. And so when he told you it was up, you
15 chose to assign a figure of 8 to 10 percent to
16 that?

17 A. I suppose so, yes.

18 Q. And so you mentioned The Holiday. Are
19 you alleging that you've done any research with
20 regard to that business and its annual rate of
21 growth?

22 A. No, I haven't.

23 Q. And with the -- you said there's very
24 small boats that are operating. Could you
25 provide me the names of those boats?

1 Q. When you mentioned Vagabond Cruises,
2 that you had information about the alleged growth
3 that they have experienced, what specifically
4 were you told? Or were you presented with any
5 documentation to support --

6 A. No documentations, just conversations
7 with the owner.

8 Q. And the owner of Vagabond Cruises told
9 you that his business was increasing at a rate of
10 8 to 10 percent?

11 A. He implied that, yes.

12 Q. How did he imply 8 to 10 percent without
13 saying 8 to 10 percent?

14 A. Over conversations, that's what I came
15 up with.

16 Q. All right. So what specifically did he
17 tell you that allowed for you --

18 A. It's been a long time. I don't know.

19 Q. Okay. So when was this conversation?

20 A. I've had several conversations with him
21 over the years.

22 Q. When was each of the conversations that
23 you have used as part of your basis for alleging
24 that he has an annual growth rate of 8 to 10
25 percent with regard to gross revenue?

1 A. I already have.

2 Q. If you wouldn't mind repeating them,
3 please.

4 A. Outside Hilton Head is one, and then
5 there's several other companies, and I really
6 don't know the name of them.

7 Q. Have you made any accounting for the
8 loss of market share to these competitors in
9 connection with your revenue calculation?

10 A. No.

11 Q. Do you know what office space that each
12 of your competitors either has or doesn't have?

13 A. Yes, I do.

14 Q. So please describe for each competitor
15 in the Hilton Head area the office space that
16 they have.

17 A. Well, first of all, we're talking -- I
18 told you that we're talking about two businesses,
19 correct? Is that correct, sir?

20 Q. You tell me which two that you believe
21 you're talking about.

22 A. Vagabond and Holiday.

23 Q. And all the small boats.

24 A. But I told you I don't know the name of
25 those small boats.

1 Q. Other than Outside Hilton Head, correct,
2 that's the only one that you mentioned.

3 A. Yeah. And they have kiosks down at
4 Shelter Cove right beside the marina store as
5 well as many other locations. But that is the
6 primary location that I can think of.

7 (Off-the-record discussion.)

8 Q. So you mentioned kiosks, and I think you
9 may have mentioned that perhaps some of these
10 operators have multiple kiosks in Hilton Head.

11 A. I don't know for sure.

12 Q. Do you know whether any of them have
13 multiple kiosks?

14 A. I don't know for sure.

15 Q. Do you know what the marketing budget is
16 for each of these competitors?

17 A. I do not.

18 Q. Do you know if it's larger or smaller
19 than the marketing budget of J & W Corporation of
20 Greenwood?

21 A. I do not.

22 Q. Would you agree that at least effective
23 marketing is going to have an impact on a
24 company's revenue?

25 A. Not mine.

1 Q. So I -- so you believe that marketing
2 has no impact on your business?

3 A. Yes, sir.

4 Q. Do visitors to Hilton Head have
5 different options on ferry tours, ferry
6 operators, and ways to get to Daufuskie Island?

7 A. They do.

8 Q. And what is the opinion of J & W
9 Corporation of Greenwood as to why a customer
10 picks one service versus another?

11 A. I'm not sure, although we tripled our
12 advertising this past year to increase business,
13 and it went down.

14 Q. Can you identify a customer by name who
15 has ever utilized another competitor rather than
16 J & W Corporation because of your having
17 allegedly inadequate office space?

18 A. Not one individual, no.

19 Q. Do you know whether the safety record of
20 all of these companies is essentially identical?

21 A. I have no idea.

22 Q. Can the safety record of a ferry
23 operator affect its business?

24 A. I would think so, yes.

25 Q. Have you taken any efforts to account

1 for the safety records and the reputations of
2 these various businesses in the eyes of the
3 public with regard to why J & W Corporation might
4 be losing business to these competitors?

5 A. No.

6 Q. Are there any of these businesses that
7 you are saying have superior office space to
8 J & W Corporation?

9 A. Yes.

10 Q. And who is it that you allege has
11 superior office space?

12 A. Vagabond, for sure.

13 Q. And what about Vagabond's office space
14 is superior?

15 A. A lot of things. Location, extra
16 kiosks, stuff like that.

17 Q. So when you mentioned the kiosks again,
18 tell me where their kiosks are.

19 A. Well, it's right beside -- they have a
20 kiosk right at Harbour Town, right beside where
21 you get on the boats. They also have an office,
22 a separate office building.

23 Q. Do you know what rent that they pay --

24 A. I do not.

25 Q. -- for that office building?

1 A. I do not.

2 Q. Do you know what the terms of their
3 lease are?

4 A. I do not.

5 Q. Do you know if they have a 99-year lease
6 for \$1 per year?

7 A. I do not.

8 Q. So with regard to Vagabond, am I
9 understanding that there might be multiple
10 locations where someone could buy a ticket from
11 Vagabond, or is there just one location?

12 A. I don't really know. I believe there's
13 one location.

14 Q. So why is this estimate in a range?
15 This 100 to \$300,000, why isn't it a specific
16 number?

17 A. Because I don't think that you can
18 fairly judge 100 percent on how much your
19 business should increase on a yearly basis.

20 Q. So what were your gross revenues in
21 2004?

22 A. For what?

23 Q. For J & W Corporation, for the ferry
24 operation. We're just talking about the ferry
25 operation.

1 A. I don't know.
 2 Q. You don't know?
 3 A. No.
 4 Q. So what were they for 2018?
 5 A. \$278,000.
 6 Q. And what was the annual amount that
 7 Beaufort County was paying you?
 8 A. About 250,000 a year.
 9 Q. Do you have any other contracts to
 10 provide ferry service?
 11 A. No.
 12 Q. So the \$278,000, that's all just
 13 individualized ticket sales?
 14 A. Yes.
 15 Q. When did you -- when did J & W
 16 Corporation lose the Beaufort County contract?
 17 A. We didn't lose it. We let it go. And
 18 that was two years ago.
 19 Q. And why did you choose to let it go?
 20 A. Multiple reasons that I don't think have
 21 anything to do with this deposition.
 22 THE WITNESS: You tell me if I have
 23 to answer that, Tom.
 24 Q. I believe that you do.
 25 A. Okay. Ask the question again then.

1 A. Well, we have never had what we were
 2 promised in the settlement agreement with
 3 Mr. Freedman in 2004. We have been moved from
 4 the restaurant down to a boat and then up to a
 5 storage building that is illegal.
 6 Q. Are you operating out of the storage
 7 building as we speak?
 8 A. Yes.
 9 Q. Has anyone come and shut down the
 10 operation?
 11 A. No.
 12 Q. And so when you're saying it's illegal,
 13 why does J & W Corporation think that it's able
 14 to operate in a facility that it declares is
 15 illegal?
 16 A. Because that's the only place I have to
 17 operate from, and that's where I was told by my
 18 landlord to operate.
 19 Q. Have you asked the Town of Hilton Head
 20 to come to the site and determine whether your
 21 tenancy of that building is legal or not?
 22 A. I don't think I would have the nerve.
 23 Q. Is there an office location other than
 24 where you currently are that would be -- that's
 25 on high land that would be any more convenient

1 Q. What are the reasons why J & W
 2 Corporation is stating that it let the Beaufort
 3 County contract go?
 4 A. Because it required that we do 7:15 a.m.
 5 runs to Daufuskie, rain or shine, and then
 6 afternoon runs to Daufuskie. And we had no
 7 control over the people that were riding the
 8 boat.
 9 Q. So in what years, when compared to the
 10 prior year, did J & W Corporation of Greenwood's
 11 annual revenue decrease, relating to its ferry
 12 operations?
 13 A. Would you repeat that again?
 14 Q. In which years did the annual gross
 15 revenue from ferry operations decrease for J & W
 16 Corporation of Greenwood when compared to the
 17 prior year?
 18 A. I can't answer that exactly.
 19 Q. What can you tell me?
 20 A. That it has a -- that it has been
 21 declining in business for the last several years.
 22 Q. So what is your basis for claiming that
 23 your office space has anything to do with the
 24 decline, as opposed to all of the other factors
 25 that we've been discussing for about 30 minutes?

1 than the current location, in terms of access to
 2 the docks?
 3 A. I have no problem with the location and
 4 its access to the docks. There may be, but
 5 that's not the complaint. The complaint is the
 6 building itself.
 7 MR. TAYLOR: Ellis, can we take a
 8 two-minute break?
 9 (A recess was taken.)
 10 Q. (MR. LESEMANN) So, Mr. Scurry, are you
 11 alleging any lost revenues relating to your barge
 12 operation?
 13 A. No.
 14 Q. On a tax return -- and I think I may
 15 know the answer to this -- is there anywhere in
 16 any tax return for J & W Corporation that you've
 17 seen where revenues are itemized between ferry
 18 operations and barge operations, or is it -- it's
 19 probably a consolidated figure, if you know?
 20 A. I believe they are completely separated.
 21 Now, wait a minute. Not on the tax return. I
 22 don't know on the tax return. I did on the P&L.
 23 Q. And so on the P&L, they're separate?
 24 A. Yes.
 25 Q. And are they separate for each vessel

1 of -- each ferry vessel --

2 A. No.

3 Q. -- or they're combined?

4 A. Combined.

5 Q. And you have the P&Ls for the time frame
6 from 2004 to 2018 on a computer?

7 A. I believe so. I mean, I looked at them
8 as the years go by, right. I compare the first
9 year with the next, and it goes back to '04. So,
10 I believe, yes, I believe I would have those.

11 Q. So why is it that there's a range of 100
12 to \$300,000 as opposed to a specific number that
13 J & W Corporation is claiming?

14 MR. TAYLOR: Object to the form.
15 Asked and answered.

16 You can answer, Wick.

17 A. Because I don't think -- I don't think
18 that -- I think there are too many other
19 variables that could affect revenue, and so
20 that's why I would put a spread like that on it.

21 Q. And does J & W Corporation agree that it
22 has not taken those other variables into account?

23 A. No, I have. That's why it's between
24 100,000 and 300,000.

25 Q. So which variables specifically are

1 reflected in that spread? For example, why would
2 it be 100? What factors would cause it to be 100
3 versus 300,000?

4 A. The variables of how many people may or
5 may not want to go to Daufuskie, the variable of
6 how many competitors are possibly taking other
7 people to Daufuskie. I told you I didn't know
8 the exact amount of that. That kind of thing.

9 Q. Do you have estimates for the number of
10 tickets that other ferry operators are selling on
11 a --

12 A. I don't.

13 Q. -- monthly or annual basis?

14 A. No.

15 Q. Is it possible that loss in market share
16 to competitors is accounting for essentially all
17 of this lost revenue that we're speaking of?

18 A. I don't believe so.

19 Q. And why not?

20 A. I just don't believe that, being
21 established as long as we have, that our revenue
22 would not have increased more than it has.

23 Q. Do you have a sense for whether visitors
24 to Hilton Head consider your service more or less
25 convenient than some of the other services that

1 they can use?

2 A. I don't really know.

3 Q. What year did Vagabond Cruises begin
4 operations?

5 A. Late '70s.

6 Q. How many vessels do they have?

7 A. Three, I think.

8 Q. Have they always had three vessels?

9 A. Yes, as far as I know.

10 Q. Now, when you say people take their own
11 boats to Daufuskie, you said 80 percent of people
12 take their own boats. Can I understand you to
13 mean like their Sea Hunt or their Whaler --

14 A. Yeah.

15 Q. -- kind of thing?

16 A. Locals.

17 Q. Okay. Whereas, those individuals used
18 to be patrons of the commercial ferry operators
19 but now are utilizing their own means?

20 A. No. Most of the ferry operators -- most
21 of the people that carry people on a ferry are
22 carrying tourists.

23 I'm referring to people who used to
24 go around in circles or around the marina or
25 whatever, but these are people that are local.

1 And what I mean by local is Savannah, Beaufort,
2 and so on. But they use their own boats, and
3 they're looking for somewhere to go. And we gave
4 them dockage at a bar, and they come out there.

5 Q. And you believe that if the office space
6 that you are in, if the Town of Hilton Head
7 essentially blessed that office space, would you
8 have to then attribute these damages to other
9 causes?

10 MR. TAYLOR: Object to the form.
11 You may answer, Wick.

12 A. I don't believe that the office space is
13 an adequate building, and I don't think that it
14 would be blessed by the Town of Hilton Head, so I
15 guess I do believe that the building itself could
16 affect the revenue.

17 Q. Is the estimate that you've provided a
18 guess?

19 A. Yes.

20 Q. And am I correct that you can't tell me
21 in which years those alleged lost revenues
22 occurred?

23 A. I believe if I pull out my P&L
24 statement, I could.

25 Q. And have you conducted any

1 cross-references to how your competitors

2 performed in those same years?

3 A. I have not.

4 Q. When you mentioned that you felt like

5 that businesses grew at a rate of 8 to 10

6 percent, is that specific to commercial ferry

7 operators in the Hilton Head market?

8 A. I believe so.

9 Q. And other than your discussions with

10 Vagabond or the owner of Vagabond, is there any

11 other basis that you allege -- that you have for

12 that 8 to 10 percent figure?

13 A. No.

14 Q. Have the number of visitors to Daufuskie

15 Island grown by 8 to 10 percent every year?

16 A. If not more.

17 Q. And what's your basis for saying that?

18 A. The amount of people that we see coming
19 across the docks and other docks on Daufuskie.

20 Q. And so what numbers can you tell me in a

21 year-over-year basis, other than your own ticket

22 sales, that would give you any basis for talking

23 about the number of visitors to Daufuskie?

24 A. The revenue of my restaurant on

25 Daufuskie has increased 25 percent in the last

1 three years, at least. Actually, in the last two

2 years, I think. And the revenue of the store has

3 done the same thing, and the golf cart rentals

4 and so on have followed suit. And these are

5 people that are coming over a different way than

6 on my boat.

7 Q. And so the other ways that they're

8 coming include their own vessels?

9 A. Uh-huh.

10 Q. Or other commercial vessels?

11 A. Yeah, but primarily their own vessels.

12 Q. And do you know whether -- separate from

13 your revenues, has your number of diners actually

14 gone up by 25 percent?

15 A. Yes.

16 Q. And you have data on that?

17 A. Yes.

18 Q. And do the number of competitors that

19 you have on Daufuskie Island, in terms of other

20 bars or restaurants, does that change from time

21 to time?

22 A. Yes.

23 Q. And does that have an impact on the

24 number of patrons that you have?

25 A. I don't think so.

1 Q. So you think that the number of patrons

2 that your restaurant on Daufuskie has is

3 unrelated to how many competitors there are on

4 Daufuskie?

5 A. I believe that to be true, yeah.

6 Q. So if there were ten restaurants versus

7 two, you think you'd have the same number of

8 patrons?

9 A. Pretty much.

10 Q. Where is it that J & W Corporation of

11 Greenwood is asking -- is planning to ask the

12 Court to put its office space?

13 A. I believe that, under our agreement of

14 2004, it spells out where the office space would

15 go.

16 Q. So you know the marina as well as

17 anybody. Where specifically are you going to ask

18 that your office be placed?

19 A. Either near where I am now with a -- you

20 know, we would expect a building that is

21 insulated and, you know, normal heat and air and

22 so on. But, you know, we would expect a nice

23 building, and it could be near where we are now.

24 I have no problem with the location of that. I

25 have no problem with the end of the dock, which

1 was one of the choices that we had or one of the

2 things that Mr. Freedman could have put in, an

3 office at the end of the pier, I'm talking about.

4 You can't put a floating office

5 where it used to be because, when they expanded

6 the marina, they moved the inside docks 10 feet

7 closer to high ground. So anything that you put

8 back there, unless it's only 10 feet wide or 8

9 feet wide, would go aground at low tide.

10 Q. So is J & W Corporation willing to move

11 into a floating office that's permitted, provided

12 that it doesn't sit on mud at low tide?

13 A. As long as it is in the key location

14 that we agreed on.

15 Q. Well, I want to understand what you mean

16 by that. The key location that you agreed on, is

17 that the one where, if it was put there now, it

18 would be sitting in the mud?

19 A. Yes.

20 Q. So what about at another location

21 where -- within the area of J & W's, you know,

22 dock lease that -- where it wouldn't sit on mud?

23 A. Well, I don't think it's fair for it to

24 go within my dock lease because that is space

25 that we use for our boats, our commercial boats.

1 Q. Is J & W Corporation willing to accept a
2 floating office that is not occupying its leased
3 dock space?

4 A. If it were in the right location and if
5 it were built to withstand the years and the time
6 that it would need to do because we have a long
7 lease.

8 Q. Is there any provision in the lease that
9 requires any specifications for how long the
10 office space has to last, in terms of whether it
11 would survive a hurricane or something of that
12 nature?

13 A. Well, I would expect that in the lease
14 it says 85 years, so that's how long the office
15 would need to last. It's not to say they
16 couldn't replace it.

17 Q. Is J & W Corporation -- do you believe
18 that the office space above the Up the Creek
19 restaurant is similar or is adequate space, based
20 on your understanding of the lease provisions?

21 A. Above the restaurant? No.

22 Q. And why would J & W Corporation reject
23 that office space?

24 A. Because you don't want people to have to
25 walk up stairs in order to communicate and buy

1 tickets.

2 Q. Is there anything in any -- either the
3 release and confidential settlement agreement or
4 in the lease that requires your office space to
5 be insulated?

6 MR. TAYLOR: Object to the form.

7 You may answer, Wick.

8 A. I don't know, but I do believe it
9 implies that I would get an office that is
10 suitable for a company to rent, and I do believe
11 that that is a -- certainly would be expected by
12 me and anyone else.

13 Q. When you stated that you would accept a
14 floating office that is in the, quote, unquote,
15 right locations, what locations -- you can just
16 give me a description of what locations does that
17 include?

18 A. Well, if you put it anywhere other than
19 where the ramp goes down, it would not be in the
20 key location, you know, either to the left or to
21 the right.

22 Q. Do you know whether there is anything
23 that requires that the floating office be located
24 in a quote, unquote, key location?

25 A. Yes, I do. It's in the lease.

1 MR. LESEMAN: We can mark this as
2 Exhibit 2, please.

3 (Exhibit No. 2 was marked for
4 identification.)

5 Q. So, Mr. Scurry, if you could identify
6 the portion of the lease agreement where you
7 allege that it states that you have a right to an
8 office in a key location.

9 A. Is this the amended lease?

10 Q. So there's a settlement agreement.

11 A. Is this the -- this is just the lease
12 agreement, not the settlement agreement?

13 Q. Yes, sir.

14 MR. LESEMAN: Could you mark that
15 as 3.

16 (Exhibit No. 3 was marked for
17 identification.)

18 Q. All right. Mr. Scurry, I've now marked
19 the settlement agreement and release, which was
20 entered into in 2004 after the lease and has some
21 subsequent terms and provisions. So that might
22 have been what you were meaning there. So that's
23 marked as 3 if that's what you wanted.

24 A. Well, I think I'll start with that.

25 Q. Okay.

1 A. I don't see in here where it refers to
2 location except to name the places it would go,
3 and all of those places are in key locations. It
4 also says it would be in the hub of activity, and
5 I don't know what the hub of activity could mean
6 other than the best location.

7 Q. So -- and you're referring to, again,
8 hub of activity, meaning paragraph 1-A-3 --

9 A. Yeah, 1-A-3, yeah.

10 Q. -- titled hub of activity?

11 A. Yeah.

12 Q. All right. So, Mr. Scurry, could you go
13 in the settlement agreement? Essentially, this
14 is an attachment. It's Attachment B to the lease
15 agreement itself, which is attached to the --

16 MR. TAYLOR: Can I help him, Ellis?

17 MR. LESEMAN: Yeah.

18 THE WITNESS: Oh, okay.

19 MR. TAYLOR: He's got it.

20 Q. So the area that I've circled here in
21 blue, am I correct that that is not part of your
22 leasehold?

23 A. You cannot.

24 Q. Is that area -- does your lease include
25 that dock space that I've circled right there?

1 A. I will explain why it does because if
2 you use -- can I borrow your pen?

3 Q. Sure.

4 A. If you use all of this space, right,
5 from here to here, which I'm leasing, and all of
6 that space from there to there, if you put boats
7 there, it takes up all of that space.

8 Q. Yes, sir. So I appreciate your answer,
9 and I wasn't meaning to talk about boats for the
10 moment. What I wanted to talk about is, what if
11 a floating store, floating office, were located
12 in that specific location that I've circled and
13 I've marked with this arrow here?

14 A. Well, I was just saying, if it were
15 there, it would not be in the key location. The
16 key location -- if this is the walkway going
17 down; is that correct --

18 Q. Yes.

19 A. -- that I'm looking at?

20 Okay. Then it would need to be in
21 here, where all the activity -- you walk down,
22 and it's -- in there would be okay. But again,
23 you couldn't put it here, sir, because if both of
24 my boats are using all of this dock space, it
25 would not fit because the boats have 20-foot

1 beams, and this is 50 feet. Do you understand?

2 Q. Yeah. So you're saying that there's
3 only 10 feet of space between --

4 A. Maybe. Depends on the size of the boat
5 I've got. I mean, if I put the DELTA LADY all
6 the way in this corner and the SAPELO, there is
7 no room in there.

8 Q. So can you mark with an X the various
9 locations where you think that a floating store
10 could be acceptably located?

11 A. I really don't think -- because, again,
12 this dock space was moved from the original lease
13 in. I don't think -- you could put one down
14 there, but it would need to be in the inside,
15 about right here, where it used to be, you know.
16 I would have no problem with that.

17 But I don't see how you do it
18 because, at low tide, it's going to run aground,
19 and it's going to cause problems to the boat, and
20 the boat is going to leak, and it won't work I
21 don't think.

22 Q. So if we look at -- is J & W Corporation
23 willing to cooperate with the landlord relating
24 to the permitting of a floating office or a
25 replacement of the floating store?

1 A. Okay. I'm going to say it -- I'm going
2 to try to repeat it again. I wouldn't because
3 you couldn't put it there without it running
4 aground. It would have to be on oyster shell at
5 low tide.

6 Q. And so does J & W Corporation
7 essentially feel that it's impossible for the
8 floating store to be placed in the location that
9 was agreed to in 2004?

10 A. I'm not sure what location was agreed
11 to, but where the floating store used to be,
12 certainly.

13 Q. So on this map where it says floating
14 office, which essentially appears to be on the
15 other side from the fuel dock, is that a location
16 that you feel is currently impossible due to the
17 sedimentation that's developed on that side of
18 the dock?

19 A. Again, the docks were moved inland
20 toward higher ground. When they were moved
21 inland toward higher ground, you don't have the
22 room to put in a floating store that floats all
23 the time, especially on a tide or a spring tide.

24 I believe there's a building
25 already down there that runs aground at low tide,

1 but I'm not sure of that.

2 Q. So I'd like to go back to Exhibit 2,
3 which was the lease.

4 A. Okay.

5 Q. So on page 2, there's a section 3,
6 rental, and there's a subsection B titled,
7 additional rent.

8 A. Uh-huh.

9 Q. And you see section 3-B-1 entitled
10 utilities.

11 A. Right.

12 Q. Has J & W Corporation paid all of its
13 utilities that have been billed to it by the
14 landlord?

15 A. No.

16 Q. And why not?

17 A. Because the landlord never lived up to
18 this settlement agreement of 2004.

19 Q. So although you've used utilities, you
20 feel that J & W Corporation is justified in
21 refusing to pay them?

22 A. Yes. Until we get what we agreed to.

23 Q. Can you point me to any provision in the
24 lease that would allow for the tenant to withhold
25 amounts out of -- for utilities or for

1 reimbursement of property taxes or insurance as
2 some form of offset for the tenant's belief that
3 it has not gotten what it was supposed to get?

4 A. Well, unfortunately, the lease does not
5 address what happens when the landlord does not
6 do what he says he's going to do in the lease.

7 Q. So is it your allegation that J & W
8 Corporation was forced to accept the current
9 office location?

10 A. We had nowhere else to go, yes.

11 Q. But you would agree you weren't put
12 there through some sort of judicial ruling or
13 court order?

14 A. No.

15 Q. So with regard to the taxes and the
16 share of insurance, is the response the same,
17 that J & W Corporation has intentionally withheld
18 those amounts because it believes that the
19 landlord has not delivered the office space as
20 tenant believes the landlord would be required to
21 do?

22 A. Yes.

23 Q. And is there any other reason for the
24 tenant's refusal to pay utilities, its share of
25 taxes, or its share of insurance?

1 A. No.

2 Q. Is the issue relating to the office
3 space the reason why the landlord -- the tenant
4 has refused to pay for the dock damage that arose
5 during Hurricane Matthew?

6 A. No.

7 Q. What is the reason for the tenant's
8 refusal to pay the dock damage that was incurred
9 relating to Hurricane Matthew?

10 A. Because the docks were insured by the
11 marina, and the marina chose not to get the money
12 from the insurance company to do it. Also, we
13 were unable to even put insurance on that dock
14 because the marina already had it insured.

15 Q. Let's look at paragraph 6 of the lease.

16 A. Okay.

17 Q. Do you see the section entitled dock
18 repair?

19 A. Uh-huh.

20 Q. I'd like you to read the first sentence,
21 please.

22 A. As it becomes necessary to repair or
23 replace the dock, which is a portion of the lease
24 property, landlord shall complete said repairs or
25 replacement, and tenant shall pay to landlord all

1 costs attributed to its use. Said costs to be
2 paid as they are incurred by landlord.

3 Q. Is there anything in that sentence that
4 J & W Corporation would claim makes this
5 obligation on the part of the tenant contingent
6 upon insurance coverage?

7 A. There's nothing in that sentence that
8 would say that, no. But I would not be charged
9 for insurance -- if I were told that I had no
10 insurance and the marina had told me that there
11 was no coverage, I could have covered it myself
12 because I asked the insurance company to cover
13 it, and they couldn't cover it because Broad
14 Creek Marina already had it insured.

15 MR. LESEMANN: Could you mark that
16 as Exhibit 4.

17 (Exhibit No. 4 was marked for
18 identification.)

19 Q. So you just mentioned, Mr. Scurry, that
20 J & W Corporation asked its insurance carrier to
21 cover the damage that arose from Hurricane
22 Matthew; is that correct?

23 A. I asked, prior to Hurricane Matthew, to
24 have my docks covered by insurance, and they
25 could not cover them because they were already

1 insured.

2 Q. So I draw your attention to a letter
3 dated October 28th, 2016, that's been marked as
4 Exhibit 4. It's from J & W Corporation of
5 Greenwood to Mr. Joe Gossage of the North
6 American Specialty Insurance Company and signed
7 by you.

8 Is this a letter that you sent to
9 the North American Specialty Insurance Company,
10 Mr. Scurry?

11 A. It's been too long. I have no idea.

12 Q. Is that your signature that appears on
13 page 2 of the letter? Take as much time as you
14 need because we only received this letter from
15 you, so I want to take as much time as you need
16 to go ahead and --

17 A. Well, I need to read it if you don't
18 mind.

19 Q. Sure. Go ahead.

20 A. Yeah, I did write this letter.

21 Q. And when you wrote this letter, were you
22 intending to be truthful to your insurance
23 carrier?

24 A. Yes.

25 Q. Were you in any way attempting to

1 mislead your insurance carrier?

2 A. Nope.

3 Q. And in the first paragraph, do you refer
4 to the lease agreement, and do you also refer to
5 the 2004 release and confidential settlement
6 agreement?

7 A. Yep.

8 Q. In the last sentence, do you say -- of
9 the first paragraph -- Under the terms of both
10 agreements, J & W is responsible for repairs to
11 its leasehold property in the event of damage?

12 A. Yes.

13 Q. Was that a true statement?

14 A. Yes.

15 Q. As a result of damage from Hurricane
16 Matthew, did it become necessary to repair or
17 replace the dock that was -- that is a portion of
18 the lease property?

19 A. Yes.

20 Q. And did the landlord complete the
21 necessary repairs to that portion of the dock,
22 which is part of J & W's lease property?

23 A. Yes.

24 Q. And did tenant pay to landlord all of
25 the costs from that repair attributed to the

1 tenant's use?

2 A. No.

3 Q. I'd like you to go above in section 5.
4 Well, before we go to section 5 -- and so, again,
5 if I understand it, what is the -- what is the
6 reason why tenant refused to pay the landlord for
7 costs incurred to repair the dock that's a
8 portion of the lease property of J & W
9 Corporation that you concede needed repair?

10 MR. TAYLOR: Object to the form.

11 You may answer, Wick.

12 A. Because the dock was already insured by
13 the landlord. And if I were to be expected to
14 pay a portion of that insurance, then the
15 insurance should have been used to repair the
16 docks.

17 Q. Do you know that there was any money
18 from any insurance policy relating to the docks
19 that was not used for the repair?

20 A. I don't know for sure.

21 Q. And do you know what the deductible on
22 the policy that the landlord has is?

23 A. I do not.

24 Q. If I told you that the deductible is
25 \$50,000, would you have any reason to disagree

1 with me?

2 A. I would not.

3 Q. Let's go to paragraph 26 of the lease,
4 and then we'll go back to 5 in a little bit.
5 It's on page 8.

6 A. Now, which -- is this the settlement or
7 the lease?

8 Q. This is the lease.

9 A. And what paragraph again?

10 Q. Paragraph 26, section 26.

11 A. Okay.

12 Q. I'd ask you to take a minute to review
13 section 26, please.

14 A. Okay.

15 Q. So let's assume for a minute that
16 hurricane damage would fall under the scope of
17 the term casualty that's used in the first
18 sentence of that section.

19 A. Okay.

20 Q. So is it the tenant's understanding that
21 if there's damage due to casualty that the
22 landlord should apply any proceeds from insurance
23 policies that are carried by the landlord, hold
24 those in trust, and disperse them for repairs,
25 restoration, rebuilding, or replacement

1 undertaken by tenant, pursuant to this paragraph?

2 A. Yes.

3 Q. Now, actually, the landlord ended up
4 undertaking the repairs to the dock that were
5 necessitated by Hurricane Matthew, correct?

6 A. I believe so, yes.

7 Q. And did they do that at tenant's
8 request?

9 A. No.

10 Q. Did tenant want to do the repairs
11 itself?

12 A. I was never asked or given the
13 opportunity. I probably would have.

14 Q. Do you know whether your general manager
15 was in contact with the landlord regarding this?

16 A. I heard that he was, and I don't know
17 for sure.

18 Q. Do you know whether there were any
19 insurance proceeds available to pay for the
20 damages that resulted from Hurricane Matthew to
21 your lease property?

22 A. Not through my insurance. I don't know
23 about the other. I just would have assumed yes.

24 Q. You would assume so, okay. And what
25 does the last sentence of that section 26 say?

1 A. If the insurance proceeds are
2 insufficient to repair the damage, then tenant
3 shall pay for the difference.

4 Q. Is J & W Corporation capable of
5 understanding that provision in the lease?

6 A. Yes.

7 Q. Does J & W Corporation consider that
8 provision in the lease to be ambiguous?

9 MR. TAYLOR: Object to the form.

10 A. I don't think I can answer that
11 question.

12 Q. Is there any provision in the lease or
13 in the settlement agreement that requires the
14 landlord to have a certain deductible for
15 whatever insurance policies that it obtains?

16 A. Repeat that question again.

17 Q. Can J & W Corporation identify any
18 provision, either in the lease or in the
19 settlement agreement, that requires the landlord
20 to have a certain deductible on the insurance
21 policy?

22 MR. TAYLOR: Object to the form.

23 A. No, not that I know of.

24 Q. So let's go back to page 3 and section
25 5.

1 A. Okay. What agreement are we looking at
2 right now?

3 Q. We're always -- we're in the lease until
4 I tell you otherwise.

5 A. All right. And you want to look at what
6 again?

7 Q. Let's talk about section 6 real quick.

8 Again, does the tenant -- does J & W Corporation
9 consider itself bound by section 6 of the lease?

10 A. I believe this section does not -- is
11 ambiguous in that it has no -- it doesn't really
12 address the insurance that the landlord has to
13 have. So do I agree with it? I don't think so.

14 Q. Are you the individual -- is Wick Scurry
15 the individual that signed this lease on behalf
16 of the tenant, J & W Corporation of Greenwood?

17 A. Yes.

18 Q. Did you review it with legal counsel
19 before signing it?

20 A. I did.

21 Q. Did you understand it before you signed
22 it?

23 A. I thought so.

24 Q. Does J & W Corporation believe that its
25 obligation to pay for dock repairs for the lease

1 property is contingent upon the availability of
2 insurance proceeds?

3 MR. TAYLOR: Object to the form.

4 A. Yes.

5 Q. And is there -- take all the time that
6 you need -- either in the settlement agreement or
7 in the lease, could you point to the provision in
8 either of those documents that would form the
9 basis of J & W Corporation of Greenwood's
10 argument that its obligation to pay for damages
11 to the dock that are a portion of the lease
12 property is contingent upon the availability of
13 insurance coverage?

14 A. I believe that wherever in the lease it
15 says -- it requires that I reimburse insurance to
16 the marina and that, basically, it doesn't say I
17 insure it; it says they insure it and that I
18 replenish that for them. I believe that that, in
19 itself, requires them to carry the insurance and
20 for them to use the insurance to repair the
21 docks.

22 Q. I asked you a different question, and I
23 want you to take the time because it's important.
24 There's \$45,000 of unpaid dock damages that
25 relate to this plus interest. It'll be more than

1 that.

2 So I want you to point to any
3 provision that you can find in the lease or in
4 the settlement agreement that states that the
5 obligation of tenant is contingent in some way
6 upon the availability of insurance coverage.

7 MR. TAYLOR: Object to the form.

8 A. Under insurance, Tenant shall pay
9 annually, commencing with the execution of this
10 lease, any and all amounts pursuant to paragraph
11 17, entitled liability insurance, or to be
12 allocated pursuant to paragraph 5, entitled
13 licensing fees and other costs.

14 I believe that, if I am required to
15 pay a portion of the insurance and the landlord
16 is required to pay the insurance, then that
17 speaks for itself.

18 Q. So although paragraph 6 makes no
19 reference to insurance and appears in the same
20 document as what you just read, you're believing
21 that some sort of implied contingency should be
22 read into paragraph 6 --

23 A. Yes.

24 Q. -- indicating that this obligation only
25 arises -- or is contingent upon the availability

1 of insurance coverage?

2 A. Or there would be no reason for me to
3 have -- to repay the man for insurance if that
4 were not true.

5 Q. And so you think that the sentence
6 that's in paragraph 6 that says, Tenant shall pay
7 to landlord all costs attributed to its use is
8 ambiguous?

9 A. I do.

10 Q. J & W Corporation does agree, though,
11 that the cause of the damage to the dock was
12 because its vessel was moored to the dock during
13 the storm, correct?

14 A. No.

15 Q. You don't?

16 A. Nope.

17 Q. All right. What does J & W Corporation
18 allege was the cause of the damage to the dock
19 that J & W's vessel was moored to during the
20 storm?

21 A. I don't think anybody knows for sure.
22 It was a storm. It was a hurricane. Things
23 happen. All kinds of things happen. But I
24 certainly cannot say that my boats were the exact
25 reason for the damage.

1 Q. This letter that was marked as Exhibit
2 4, Mr. Scurry, is that a letter that you prepared
3 in your capacity as the president of J & W
4 Corporation of Greenwood?

5 A. Yes.

6 Q. Did you have the assistance of legal
7 counsel in preparing that letter?

8 A. Yes.

9 Q. And did you consult with legal counsel
10 before sending that letter?

11 A. Yes.

12 Q. And is this letter correspondence with
13 J & W Corporation's insurance carrier relating to
14 damage to the docks that arose from Hurricane
15 Matthew?

16 A. Yes.

17 Q. When you wrote the first paragraph and
18 you included the language about, Under the terms
19 of both agreements, J & W is responsible for
20 repairs to its leasehold property in the event of
21 damage, were you suffering from any memory loss
22 or any sort of mental incapacity?

23 A. No, I just made a mistake.

24 Q. So you're stating that that statement
25 was a mistake?

1 A. Yes.

2 Q. And is this letter something that you
3 prepared and maintained in the regular course of
4 J & W Corporation of Greenwood's business
5 relating to its ferry operations?

6 A. You have to ask that again, please.

7 Q. Is this sort of letter a business record
8 that was created by J & W Corporation relating to
9 its business?

10 A. No.

11 Q. Is this a letter that you wrote in
12 connection with damages that arose from J & W's
13 business operations?

14 A. Yes.

15 Q. So paragraph 5 above where we were,
16 licensing fees and other costs --

17 A. Okay. Tell me --

18 Q. In the lease agreement, sir.

19 MR. TAYLOR: Page 3.

20 A. Okay.

21 Q. Now, you pointed to that section in
22 paragraph 5 about, Tenant shall pay -- sorry --
23 this is in paragraph 3. I'm going to jump back
24 for a second. The provision that you pointed to
25 on page 2 in paragraph 3-B-3 relating to

1 insurance, which is what J & W Corporation
2 identified, to say that it believes it created an
3 ambiguity.

4 Can we agree that tenant has
5 refused to pay the amounts due for insurance
6 going back to approximately 2008?

7 A. Yes.

8 Q. So now back to section 5 where we were
9 before, the first sentence says, Tenant shall pay
10 taxes, license fees, insurance, utilities, and
11 all other costs of ownership and possession for
12 the lease property. Did I read that correctly?

13 A. Yes.

14 Q. Do you believe that that's ambiguous?

15 A. No.

16 Q. So at the time the lease was signed, was
17 the office space provided a floating -- a portion
18 of a floating store?

19 A. Yes.

20 Q. Did it have heating and air?

21 A. Yes.

22 Q. And how large was it?

23 A. How large was what?

24 Q. The original floating office.

25 A. 300 square feet with porches, not

1 including porches.

2 Q. And where was it located?

3 A. In a floating store to the left of the
4 dock as you go down to the floats at Broad Creek
5 Marina.

6 Q. So is that a location where it would
7 presently be feasible to place a floating store
8 based on the sedimentation?

9 A. No.

10 Q. Look at paragraph 20 on page 7. Do you
11 see the section that's marked alterations?

12 A. Yeah, I see it.

13 Q. Could you read that sentence in
14 paragraph 20?

15 A. Tenant shall have the right to make
16 alterations, additions, improvements, or rewiring
17 in or to the lease property, subject to the prior
18 written consent of the landlord which consent
19 shall not be unreasonably withheld.

20 Q. Is there anything ambiguous about that
21 sentence that you just read?

22 A. No.

23 Q. So section -- going back to section 7,
24 sorry, I'm going to jump backwards, entitled
25 cooperation and good faith, Based on the

1 provisions in section 7, does J & W Corporation
2 admit that it is bound to cooperate with the
3 landlord in obtaining any licenses, permits, or
4 other governmental or regulatory authorizations
5 appropriate for the property and the operations
6 of each of them, including obtaining any such
7 authorization in the name of one party if that is
8 more convenient and allowing the other to utilize
9 any such authorization, subject to the
10 requirements thereof?

11 MR. TAYLOR: Object to the form.

12 Q. Do you agree that the tenant is bound to
13 act in that manner?

14 A. Just one second.

15 Q. Do you have any disagreement with what's
16 said in the lease in that section 7?

17 MR. TAYLOR: Object to the form.

18 A. Just give me one second, please, sir.

19 Q. Yeah.

20 A. Thank you.

21 No, I do not disagree.

22 Q. Do you find any portion of that
23 provision to be ambiguous?

24 A. No.

25 Q. So section 11, entitled permits, could

1 you read section 11, please?

2 A. Out loud or just read it?

3 Q. You can read it out loud.

4 A. Subject to the provisions of paragraph
5 7, entitled cooperation and good faith, tenant
6 shall procure any and all permits required from
7 local, state, and federal governmental agencies
8 and otherwise which may be required to run its
9 business. Any and all costs associated with such
10 permits shall be sole responsibility of tenant.

11 Q. Do you believe there's anything
12 ambiguous about the provisions in paragraph 11?

13 MR. TAYLOR: Object to the form.

14 A. I believe it is ambiguous.

15 Q. And how is that?

16 A. Because there are certain areas that you
17 could not require -- I could not apply for those
18 permits.

19 Q. And section 7 -- does section 7
20 contemplate that situation, where it might --
21 there might be situations where an authorization
22 is obtained in the name of the other party?

23 MR. TAYLOR: Object to the form.

24 A. It seems to say that we are to cooperate
25 with each other.

1 Q. So above section 11 where we were in
2 section 10, does J & W Corporation recognize that
3 section 10 of the lease gives the landlord the
4 right to reconfigure the uses of the property
5 including all docks in the lease property?

6 MR. TAYLOR: Object to the form.

7 A. Well, I believe it says -- and let me
8 read it -- I believe it says with -- that we
9 would -- that I would have to agree with it.

10 Q. Right. Subject to the approval of
11 tenant, which shall not be unreasonably withheld.

12 A. Yeah, I would agree with that, yes.

13 Q. And at the end of that paragraph, does
14 it also say that tenant will have the right to
15 rebuild the place and reconfigure the lease
16 property at its own expense subject to the
17 approval of landlord, which shall not be
18 unreasonably withheld?

19 A. Yes.

20 Q. Section 12 relating to use of the
21 property, in this case, is J & W Corporation
22 seeking an injunction that would prevent any use
23 of the neighboring property as a commercial ferry
24 service?

25 A. The question again, sir?

1 Q. Is J & W Corporation seeking an
2 injunction in this case to prevent the operation
3 or the potential future operation of a ferry
4 service on the Lucas tract?

5 A. You mean the side of the marina; is that
6 correct?

7 Q. Yes.

8 A. Yes, I am.

9 Q. Does J & W Corporation know who
10 owns -- who is the titleholder of the Lucas
11 tract?

12 A. I would assume Roger Freedman, but I
13 don't know for sure.

14 Q. And so if it's another entity, you
15 wouldn't know?

16 A. No.

17 Q. And what does J & W Corporation believe
18 that the term "marina" -- in the sentence that
19 says, The marina is excluded from competing with
20 the tenant's commercial ferry and barge service,
21 what is J & W's understanding or allegation as to
22 what the term "marina" means?

23 MR. TAYLOR: Object to the form.

24 A. Well, the term "marina" is anything that
25 is built that is over, I believe, 900 feet of

1 dock space.

2 Q. So is that a State definition
3 essentially, like an OCRM-type of definition?

4 A. I believe so, yeah.

5 Q. Do you understand that the reference to
6 the term "marina" refers to the Broad Creek
7 Marina?

8 A. I do.

9 Q. Was the Lucas tract or is the Lucas
10 tract a portion of the lease property?

11 A. It is contiguous with the lease
12 property, so I consider it being a portion of it.

13 Q. You say it's contiguous. Is it part of
14 the lease property?

15 A. The land is part of, I believe, what is
16 considered the marina area, yes.

17 Q. Looking at Exhibit B of this lease, it
18 looks like this, if you could please find that.

19 A. Okay.

20 Q. Is it the testimony of J & W Corporation
21 that the property description on Exhibit B
22 includes the Lucas tract?

23 A. I don't think so, no. But honestly, I'm
24 not sure.

25 Q. Could you turn to paragraph 15?

1 A. Okay.

2 Q. In the lease, did the tenant agree to
3 purchase all fuel and oil for boats docked at the
4 lease property of any type whatsoever exclusively
5 from the landlord, provided, however, the fuel
6 and oil is supplied at commercially reasonable
7 rates, as defined by the average charge by other
8 Hilton Head Island marinas with commercial fuel
9 rates?

10 A. Yes.

11 Q. Has J & W Corporation bought fuel and
12 oil from other sources other than through the
13 landlord?

14 A. No, not unless the landlord is out of
15 fuel.

16 Q. Can you identify any situations where
17 the landlord has ever been out of fuel?

18 A. Yeah. Several times this year.

19 Q. Have there been any instances in prior
20 years when the landlord was out of fuel?

21 A. Yes, sir.

22 Q. Looking at paragraph 17, I'm going to go
23 down one, two, three, four, five, six, seven,
24 eight, nine lines, and there's a sentence that
25 says, Tenant shall keep in full force and effect.

1 So if you could look through
2 section 17 until you find the sentence that
3 starts with that phrase.

4 A. Okay.

5 Q. Could you read that sentence, please?

6 A. Tenant shall keep in full force and
7 effect at tenant's expense insurance for personal
8 property, trade fixtures, and property damage as
9 well as environmental coverage and a public
10 liability policy, all in form and substance
11 reasonably satisfactory to landlord, in which
12 case tenant and landlord shall be named as the
13 insured with the following minimum coverage, \$1
14 million, and to be upwardly adjusted yearly to
15 reflect the inflation rates.

16 Said policy and -- oh, that was
17 the sentence.

18 Q. Okay. Yeah, continue on with the next
19 one. I appreciate that.

20 A. Said policy or policies shall bear
21 endorsements to the effect that the insurer
22 agrees to notify the landlord not less than 30
23 days in advance of any modification, cancellation
24 thereof. Should tenant fail to carry, but shall
25 not be required to do so, cause public liability

1 insurance in the aforementioned, to be assured,
2 and in such event, the tenant agrees to pay the
3 premium for said insurance promptly upon
4 landlord's demand.

5 Q. So has tenant named the landlord as an
6 additional named insured on the named policies in
7 this paragraph 17?

8 A. I don't know.

9 Q. So J & W Corporation is unaware whether
10 it has -- it has named the landlord as an
11 additional named insured on the stipulated
12 policies?

13 A. I'm not sure. I know it's been
14 discussed, but I'm not sure if they're on the
15 policies or not.

16 Q. Do you maintain a file with insurance
17 policies and certificates in it?

18 A. I do.

19 Q. So if there were any certificates naming
20 the landlord as an additional named insured,
21 would you have them?

22 A. They would be somewhere, yes.

23 Q. Does J & W Corporation agree that it's
24 bound to follow the provisions of paragraph 17?

25 A. Yes.

1 sanitation. Does J & W Corporation agree that
2 it's bound by the provisions of paragraph 18 in
3 the lease?

4 A. 19 or 18?

5 Q. 18 that I just read.

6 A. Did you read it all?

7 Q. I didn't read it all.

8 A. Okay. Well --

9 Q. If you'd like to read it all, that's
10 fine. It is part of the lease, but go ahead and
11 read it and then I'll ask my question again.

12 A. Okay. I am under the opinion that,
13 because of the requirement of the reimbursement
14 of insurance to Mr. Freedman, all of this is
15 somewhat ambiguous.

16 Q. So J & W Corporation believes that the
17 fact that you are required to pay a pro rata
18 share of the insurance incurred by the landlord
19 invalidates the provisions that speak to the
20 tenant's obligation to pay for repairs?

21 A. Yes.

22 Q. Paragraph 19, am I correct that it
23 states that, Tenant shall keep the lease property
24 in compliance with all laws, ordinances,
25 regulations, and requirements of any legally

1 Q. Is there any intentional reason why
2 J & W Corporation might be refusing to comply
3 with the provisions of paragraph 17?

4 A. No.

5 Q. Who is the individual at J & W
6 Corporation that interacts with Strickland Marine
7 Insurance relating to insurance policies?

8 A. Well, it used to be a girl named Meg
9 Bartlett, but all that has been shaken up right
10 now, and I really don't have an individual in
11 charge of that.

12 Q. Paragraph 18 starts and says, Subject
13 to the provisions of paragraph 6, entitled dock
14 repair, tenant shall at tenant's expense make all
15 repairs necessary to maintain the lease property
16 in good working condition and repair, neat and
17 clean, and generally in a manner consistent with
18 the operation of a first class marina. Did I
19 read that correctly?

20 A. Uh-huh.

21 Q. Is the tenant bound by that provision?

22 A. Yes.

23 Q. Is that provision ambiguous?

24 A. No.

25 Q. Paragraph 19, regulations and

1 constituted public authority, including all
2 environmental rules and regulations?

3 A. Yes.

4 Q. Would DHEC and OCRM, would that
5 constitute a legally constituted public
6 authority?

7 A. Yes.

8 Q. Would the Town of Hilton Head constitute
9 a legally constituted public authority?

10 A. Yes.

11 Q. Do you believe that paragraph 19 is
12 binding upon J & W Corporation?

13 A. Yes.

14 Q. Do you believe that it's ambiguous?

15 MR. TAYLOR: Object to the form.

16 A. I don't think that 19 is ambiguous.

17 Q. When J & W Corporation of Greenwood
18 initially occupied a floating office in the
19 marina in 1993, was there any -- to J & W
20 Corporation's knowledge, any permit or approval
21 obtained from the Town of Hilton Head relating to
22 that floating office?

23 A. Not to my knowledge.

24 Q. Does J & W Corporation believe that the
25 Town of Hilton Head would have authority over a

1 floating office that would be within -- a
 2 physical area that would fall within the
 3 jurisdiction of OCRM?
 4 MR. TAYLOR: Object to the form.
 5 Q. I mean, to the extent it's a legal
 6 question, I'm not meaning to ask you anything
 7 really legal. I'm asking if you feel like you
 8 have an opinion or if you know. Do you believe
 9 that a location on the docks is essentially
 10 subject to the jurisdiction of the Town of Hilton
 11 Head and of OCRM?
 12 MR. TAYLOR: Same objection.
 13 Q. Or do you know?
 14 A. Well, it always has been, so I assume
 15 yes, especially OCRM. I really don't know on the
 16 Town.
 17 Q. That's what -- yeah, OCRM, I think, is a
 18 given. What I'm really getting at is the Town of
 19 Hilton Head.
 20 A. You know, the Town was so new in those
 21 days when I was dealing with that stuff, I really
 22 don't know.
 23 Q. All right. So the original floating
 24 office in 1993, was it -- it wasn't a houseboat;
 25 it was a -- was it a floating dock structure that

1 had essentially a building on it?
 2 A. It was a boat.
 3 Q. It was a boat?
 4 A. Uh-huh, I had it documented.
 5 Q. Okay. So going back to 1993, that was a
 6 boat?
 7 A. It was a boat.
 8 Q. Whose boat was it?
 9 A. I believe it was mine or J & W
 10 Corporation's.
 11 Q. So it was included as part of the lease
 12 property, but you think that it was -- was it
 13 sold to the landlord, or did it become the
 14 property of the landlord?
 15 A. Became the property of the landlord,
 16 yeah.
 17 Q. When the landlord purchased the
 18 property?
 19 A. The marina, yeah.
 20 (A recess was taken.)
 21 (Exhibit No. 5 was marked for
 22 identification.)
 23 (Exhibit No. 6 was marked for
 24 identification.)
 25 Q. Mr. Scurry, I'll show you what's been

1 marked as Exhibit 5. Does J & W Corporation
 2 receive monthly invoices from the landlord?
 3 A. Yes.
 4 Q. And typically, is there a utility charge
 5 included on invoices, a monthly utility charge?
 6 A. Yes.
 7 Q. So other than the belief on the part of
 8 the tenant that the landlord has failed to uphold
 9 its obligations relating to the office space
 10 requirements in the lease and in the settlement
 11 agreement, is there any other reason why tenant
 12 has not paid the monthly utility charges that are
 13 shown as pending on Exhibit 5?
 14 A. No.
 15 Q. And from time to time, including in
 16 2018, has the tenant actually paid some utility
 17 and lot maintenance charges?
 18 A. Maybe so. I told them they could go
 19 ahead and start paying some of that if they
 20 wanted to.
 21 Q. And what was the reason for the change?
 22 A. Honestly, I wasn't even exactly aware of
 23 when they stopped paying the bill, period, in '08
 24 or '09 or whatever it was. It was something that
 25 somebody construed out of my office.

1 And, you know, we certainly did
 2 think that -- I think it was around the time that
 3 we were moved down to a floating boat down at the
 4 marina -- anyway, bottom line is, I'm sure that
 5 it came from me and that I was told on many, many
 6 occasions that we had asked for and never gotten
 7 back-up for the insurance bills that we were
 8 asked to pay a pro rata portion of.
 9 So it's stuff like that. And we
 10 didn't pay it based on the fact that we just
 11 didn't think Mr. Freedman was living up to his
 12 side of the deal.
 13 Q. Are you aware of -- so, obviously, this
 14 is a listing of a reconciliation of charges that
 15 date from December -- from January of 2008
 16 through December of 2015. Clearly, I can't ask
 17 you to go through each charge and whether or not
 18 you challenge it, but are you aware of challenges
 19 that J & W has or objections to the accuracy of
 20 the amounts that are being billed?
 21 A. I think the agreement that we have, if I
 22 remember correctly, spells out how much the
 23 utility bills should be and what portion of
 24 things they should be. And those things, I don't
 25 really have an argument about, but I do have an

1 argument about what I have been told by not only
2 my lawyer, Tom Taylor, but my bookkeeper that we
3 have not gotten --

4 MR. TAYLOR: Wick, don't talk about
5 anything I've told you. Okay?

6 THE WITNESS: Oh, I'm not.

7 MR. TAYLOR: Okay. I just wanted
8 to make sure you remembered.

9 THE WITNESS: I was just saying
10 that's one of the places -- okay. Then I won't
11 say that.

12 I was told that we have never
13 gotten a complete reckoning of the insurance
14 bills.

15 Q. Do you have any challenge to the amounts
16 paid for property tax, again, other than the
17 tenant's belief that the landlord has not upheld
18 its own obligation relating to office space?

19 A. No, I don't.

20 Q. With regard to the insurance charges,
21 there is that objection that you've stated
22 relating to your belief of the landlord's
23 obligation, but there's an additional issue where
24 you would be seeking for some documentation or
25 proof of payment on the part of the landlord

1 related to the insurance charges?

2 A. Yeah, yeah, yeah.

3 Q. So the lot maintenance charge of
4 \$133.12, does J & W Corporation -- again, aside
5 from its belief that the landlord has failed to
6 uphold its obligations relating to office space,
7 does J & W Corporation have a challenge as to the
8 amount of the lot maintenance charge of \$133.12
9 per month?

10 MR. TAYLOR: Object to the form.

11 A. I don't.

12 Q. And I just want to ask this question
13 to -- you know, so looking at Exhibit 5 and
14 Exhibit 6 -- again, Exhibit 6 is a reconciliation
15 of charges from January 1st of 2016 up through
16 December 31st of 2018. With regard to the
17 amounts in Exhibit 5 and Exhibit 6 -- oh, sorry.
18 There you go

19 A. Okay. Now tell me what you're asking.

20 Q. Yeah. I'm asking -- you can look at
21 that, but, again, that's a similar document --
22 Exhibit 6 is a similar document to Exhibit 5. It
23 just covers a different time frame.

24 A. Okay.

25 Q. And what I wanted to ask you, again, is

1 there any specific provision in the lease
2 agreement or in the settlement agreement that
3 tenant could point to that would allow tenant to
4 withhold payment of amounts for utilities, lot
5 maintenance, insurance proceeds, or insurance pro
6 rata share or the property tax pro rata share?

7 MR. TAYLOR: Object to the form.

8 A. Not at all unless we're lacking back-up.
9 Okay?

10 Q. Now, J & W Corporation and Broad Creek
11 Marina actually use the same insurance broker; is
12 that correct?

13 A. Correct.

14 Q. In any conversations with anyone at
15 Strickland Marine Insurance, has the tenant ever
16 been led to believe that the landlord was not
17 maintaining insurance policies?

18 A. I haven't discussed that with Strickland
19 other than for them to tell me that they were
20 both -- they're working for both of us. But this
21 agreement goes back several years. And there was
22 a time when I had doubts on whether or not
23 insurance was being paid at the marina.

24 Q. What time frame was that?

25 A. Around the recession, you know, '08,

1 '09, or something like that, and everybody was
2 telling us the marina was going under and it was
3 going to be sold and stuff like that. And we,
4 according to my bookkeeper, kept asking for, you
5 know, records of the insurance. And whatever
6 they gave them, nobody thought was adequate.

7 Q. And what was that bookkeeper's name at
8 the time?

9 A. Meg Bartlett.

10 Q. And she's no longer employed with J & W
11 Corporation?

12 A. That's correct.

13 Q. Can J & W Corporation describe each
14 instance where its vessels have collided with the
15 pier or the docks at the Broad Creek Marina
16 during the lease period? So I'm asking, from
17 1993 basically forward, tell me what instances of
18 collisions with the docks or damage to the docks
19 that the tenant is aware of.

20 A. Only one major incident that I can think
21 of. And that was, probably two or three years
22 ago, my captain was in the engine room of the --
23 one of our larger ferries, the SAPELO, and the
24 boat was in gear, and he fired it up, and it
25 crashed into the docks and did quite a bit of

1 damage. I don't know the exact amount of damage,
2 but it was insured by our boats, and I believe
3 the marina was paid in full.

4 Q. Who were the name -- what are the names
5 of the various captains that J & W Corporation
6 has utilized for the ferry and the barge
7 operations?

8 A. Well, there have been quite a few over
9 the years. Are you talking about now or --

10 Q. Yeah, we can start with now and just go
11 back.

12 A. Okay. I have a guy named Captain Jim
13 Horton who is a -- who has worked for me for 16
14 years, and he is still partially around.

15 I have a guy named Buddy, and I
16 hate to tell you, but I swear I don't know his
17 last name. I don't sign his check. But he is
18 our newest guy in the group.

19 We have a guy named Tyler who has
20 got a hundred-ton license.

21 We have a guy named Bob Meister. I
22 happen to know that last name, and he's got a
23 hundred-ton license, that works for me.

24 So those are the ones that I can
25 think of right now. And a guy named Joe

1 Pelletier.

2 Q. And is Joe working for J & W Corporation
3 at this time?

4 A. At what time?

5 Q. At this time.

6 A. Right now?

7 Q. Yes.

8 A. No, he does not, but the rest of the
9 people do.

10 Q. Are each of the -- Jim Horton, buddy,
11 Tyler, Bob, and Joe, were each of them licensed
12 to operate the vessels that they were asked to
13 operate during their employment with J & W
14 Corporation?

15 A. Yep.

16 Q. Has an unlicensed individual ever
17 operated one of J & W Corporation's vessels?

18 A. Nope.

19 Q. Is there a protocol for drug testing in
20 place involving the captains employed by J & W
21 Corporation?

22 A. Yes, there is, and the mates.

23 Q. And could you describe that protocol?

24 A. We're a member of a drug consortium. We
25 supply them with names, and they arbitrarily call

1 and tell someone they have to get a blood test or
2 urine test, one of the two.

3 Q. When was the last time that you recall
4 that there was a drug test performed relating to
5 one of J & W Corporation's mates or captains?

6 A. I'd say about a month ago.

7 Q. How many collisions or accidents have J
8 & W Corporation's vessels had during this
9 leasehold period outside of Broad Creek Marina?

10 A. Say that again.

11 Q. How many collisions or accidents have J
12 & W Corporation's vessels experienced in places
13 other than within Broad Creek Marina?

14 A. I don't know of any.

15 Q. Did one of J & W Corporation's vessels
16 recently strike a channel marker?

17 A. Yes.

18 Q. And was that incident reported?

19 A. Yes.

20 Q. And was it reported to the Coast Guard?

21 A. Yes, it was.

22 Q. Were J & W Corporation's barge
23 operations subject to a cease and desist order
24 from the Coast Guard?

25 A. Yes.

1 Q. Is that cease and desist order currently
2 in place?

3 A. Well, it's cease and desist for that
4 barge.

5 Q. Did the Coast Guard deem -- and what's
6 the name of that barge?

7 A. It doesn't really have a name.

8 Q. So the associated tug is maybe called
9 the JAKE WASHINGTON or something like that. Is
10 that --

11 A. That's right, the JAKE WASHINGTON.

12 Q. Yeah. And then let's see. Yeah, it
13 just says a barge.

14 Okay. So was the -- does J & W
15 Corporation have another barge other than the one
16 that was declared unsafe by the Coast Guard?

17 A. We have another -- we had another barge.
18 We don't anymore.

19 Q. What was -- what became of the other
20 barge?

21 A. The other barge was donated to DNR, and
22 we sunk it on a reef 3 miles out.

23 Q. A release I've got from the Coast Guard
24 indicates that the barge and the associated tug,
25 the JAKE WASHINGTON, had been observed operating

1 as a car ferry between Hilton Head and Daufuskie
2 Island without the required U.S. Coast Guard
3 certificate of inspection.

4 MR. LESEMAN: We can mark that as
5 7.

6 (Exhibit No. 7 was marked for
7 identification.)

8 Q. Was the barge transporting any form of a
9 motor vehicle?

10 A. Absolutely.

11 Q. And was J & W Corporation aware that a
12 specific certificate of inspection would be
13 required in order for the barge to serve that
14 purpose?

15 A. We had not. We did not.

16 Q. Does J & W Corporation disagree with the
17 Coast Guard's findings that the barge had a lack
18 of watertight integrity?

19 A. Absolutely.

20 Q. And you disagree that the vessel was in
21 poor condition?

22 A. Yeah. The type -- yes.

23 Q. Do you disagree that there was excessive
24 water in the voids?

25 A. Only water that we put in there. In

1 other words, there were no leaks on the barge
2 whatsoever.

3 Q. Do you disagree with the Coast Guard's
4 finding that there were firefighting
5 deficiencies?

6 A. Yes.

7 Q. And do you disagree with the Coast
8 Guard's finding that there were electrical
9 hazards?

10 A. Yes.

11 Q. So what is the current plan of action on
12 the part of J & W Corporation to address these
13 issues?

14 A. We're in the process of purchasing a new
15 barge, and we're going to leave that barge there
16 as the loading barge.

17 It's kind of like the police. You
18 can't fight the Coast Guard.

19 MR. TAYLOR: But we're trying.

20 THE WITNESS: We tried.

21 Q. Do you have the landlord's permission to
22 leave the existing barge in its current location?

23 A. We don't need it.

24 Q. And why do you believe that it's not
25 needed?

1 A. Because it's a movable barge.

2 Q. Do you believe that you have the Coast
3 Guard's permission to use that barge as a loading
4 structure?

5 A. They've already told me I could.

6 Q. What measures have been taken to ensure
7 that that loading barge does not collide with the
8 fixed pier?

9 A. Well, it's no different than it is right
10 now. It's sitting beside the fixed pier. If we
11 need to put a couple more piling in there, we
12 will, but it won't move.

13 Q. Is it possible for the barge operations
14 to result in damage to the pier?

15 A. Anything is possible.

16 Q. Would J & W Corporation agree that the
17 possibility of that type of damage makes
18 compliance with the insurance provisions under
19 the lease important?

20 A. Repeat that, please. I'm sorry.

21 Q. Does the possibility of damage to the
22 pier through the barging operation make it
23 important for the tenant to comply with all of
24 its insurance obligations under the lease?

25 A. Yes, so long as the landlord is

1 complying with the lease.

2 Q. Have any of your captains been arrested?

3 A. Not to my knowledge.

4 Q. What is the accident history of the
5 captains that J & W Corporation has employed
6 other than the one that you've mentioned where
7 the ferry was in gear when it was cranked up?

8 A. Don't know of any.

9 Q. What were the circumstances under which
10 J & W Corporation came to have an office space in
11 the -- what's now the Up the Creek pub?

12 A. When the floating store sunk or
13 disappeared or whatever happened to it, I believe
14 we were moved there then as kind of a, I guess,
15 temporary measure.

16 Q. Is the location of the current office
17 superior to a location in the Up the Creek
18 building in terms of its proximity to the docks
19 and convenience for your customers?

20 A. Repeat that.

21 Q. Is the current office location superior
22 to having an office location in the Up the Creek
23 building for the tenant, in terms of its
24 convenience for your customers and its proximity
25 to the dock access?

1 A. Yes, it is.

2 You know what? I'm sorry. The
3 existing shed that we're in --

4 Q. Yes.

5 A. -- is in a better location, I believe,
6 than that office. Okay.

7 Q. That's the question you answered.

8 That's what I asked. Yes, sir, so we were on the
9 same page.

10 Does J & W Corporation know whether
11 there are any requirements relating to the Town
12 of Hilton Head and the current office location
13 that haven't been met?

14 A. I don't know. I'm not aware of
15 anything.

16 Q. Does the Town of Hilton Head know where
17 your business has its office?

18 A. I would be afraid to ask. I really
19 would.

20 Q. Has anyone with J & W Corporation
21 interacted with any official from the Town of
22 Hilton Head at the current office location?

23 A. I don't believe so.

24 Q. Does J & W Corporation receive a renewed
25 business license every year?

1 A. Yes.

2 Q. Has J & W Corporation ever experienced
3 any difficulties in obtaining a renewed business
4 license as a result of its current office space?

5 A. Not to my knowledge.

6 Q. Is the space lockable, the office space?

7 A. Yes.

8 Q. Do you maintain a safe on the property,
9 or do you remove cash from the property?

10 A. We remove cash from the property.

11 Q. Essentially, does an employee of J & W
12 Corporation make a nightly deposit of the day's
13 income?

14 A. Yes.

15 Q. Has that been a consistent business
16 practice for J & W Corporation while you've been
17 president?

18 A. Yes.

19 Q. What do you keep in the existing office
20 space? What's inside that space?

21 A. Computers, copy machines, fax machines,
22 desks, that type of thing.

23 Q. So the -- the existing office has
24 electricity?

25 A. Yes.

1 Q. And has phone service and Internet
2 service?

3 A. Yes.

4 Q. Is the floor unfinished? Is it
5 concrete, or is there any sort of -- anything on
6 it?

7 A. Well, it's concrete with indoor/outdoor
8 carpet on top of it.

9 Q. Is it one large room, or is it divided
10 into -- is it divided in any way?

11 A. It's like -- it's divided into three
12 little sections.

13 Q. I thought that must be the case because
14 I've seen three window units, and so I --

15 A. That's right.

16 Q. So each space essentially has a window
17 unit --

18 A. Uh-huh.

19 Q. -- that services it?

20 A. Yep.

21 Q. And all the electricity and the -- to
22 run those units and to power the office
23 equipment, that's all paid by the landlord?

24 A. I think so, yes.

25 Q. Does J & W Corporation know whether

1 there were any provisions in the lease or in the
2 settlement agreement that would call for J & W
3 Corporation to have separate utility meters?

4 A. I don't recall whether there is or not.

5 I know that it's been discussed that it would be
6 nice to have separate utility meters, especially
7 out on the dock.

8 Q. Does J & W agree that that would be --

9 A. Absolutely.

10 Q. -- a good thing?

11 A. Yes.

12 Q. Would that essentially give the landlord
13 and the tenant one less thing that they would
14 have to potentially disagree about?

15 A. That's exactly right.

16 Q. Do you believe that \$55 per month is a
17 fair and appropriate amount for J & W Corporation
18 to pay?

19 A. For utilities?

20 Q. For utilities, yes.

21 A. I'd say so, yeah.

22 Q. And is \$133.12 a fair and appropriate
23 amount for J & W Corporation to pay relating to
24 lot maintenance?

25 MR. TAYLOR: Object to the form.

1 A. I think that's fair.
2 Q. So what is it about the current office
3 space that you -- that J & W Corporation, if it
4 had its druthers, would want to be different?
5 Did you say that you would want the space to be
6 insulated?

7 MR. TAYLOR: Object to the form.
8 Go ahead.

9 A. I would say several things. You know,
10 it was put together by a rather talented Mexican
11 in about three days, and he put it together with
12 pressed board held together with rebar.

13 And it has no insulation. It's so
14 cold in the winter that I finally had to put gas
15 heat in there myself. Whether or not the gas
16 heat is legal or not, I don't know, but, you
17 know, we had to heat it with -- because you
18 couldn't do it with electric heat. And it's just
19 not an adequate space for what I believe I was
20 promised.

21 Q. Why is it less adequate than a floating
22 office would be?

23 A. Well, the floating office was a real
24 building with -- you know, with insulation and
25 Sheetrock and, you know, good lighting and glass

1 doors and -- it was very nice.

2 Q. Would Sheetrock be the type of thing
3 that the tenant could install -- and again,
4 separate and apart from --

5 A. Could install in that building?

6 Q. You have a belief that maybe that's the
7 landlord's responsibility to do that, and the
8 landlord would believe that it could be your
9 responsibility to do that.

10 But is the tenant aware whether
11 Sheetrock and insulation is something that can be
12 installed in that building?

13 A. I think if you asked for a building
14 permit to do anything in that building, they
15 would shut you down.

16 Q. Would J & W Corporation like to see that
17 existing office location be shut down?

18 A. No, because I would have nowhere else to
19 go.

20 Q. Do you believe there's anything in the
21 lease or the settlement agreement that would
22 require the landlord to possibly build you a
23 standalone location in some other space?

24 A. Yes.

25 Q. So can you identify the provision of the

1 lease or the settlement agreement that would
2 indicate that the landlord at its expense would
3 need to buy you or build you a separate building?

4 A. Well, it'll take me a minute to find it.
5 Where is it?

6 Q. That's fine.

7 A. It says in here not only what he would
8 build, but what he would build first, second, and
9 third, I think.

10 Q. Right.

11 A. And that would be what I'll be referring
12 to.

13 Let's see. Well, it says that HHM,
14 which would be Broad Creek Marina, would agree to
15 replace it, the new office space in substitution
16 for the office space previously located in the
17 floating store as identified in the lease. J & W
18 agrees that they waive any entitlement, if any,
19 to the insurance proceeds that HHM received from
20 the casualty loss of the floating store.

21 The parties agree that HHM may
22 provide one of the following.

23 Do you want me to read those?

24 Q. Sure.

25 A. HHM will seek approval from the

1 necessary regulatory agencies for the replacement
2 of the floating store. A copy of the plan is
3 attached in Exhibit --

4 Q. Wick, I can stop you there. With the
5 conversation that we had over the break, I don't
6 mean for you to have to read the whole thing.

7 But again, the intended location
8 here in section I-A-i, the location that was
9 perhaps feasible as of 2004 for the floating
10 store that was indicated in the exhibit, is
11 that -- in J & W Corporation's mind, is that
12 location currently feasible for the location of a
13 floating store?

14 A. Unfortunately, no.

15 Q. So using the exhibit that looks like
16 this that we looked at before, all right, could
17 you mark, perhaps using a 1 and 2 and 3 and 4,
18 could you mark locations that J & W Corporation
19 believe would be an adequate and suitable
20 location for a floating store if you believe that
21 there are any.

22 A. Well, I don't believe there are any
23 because these docks were moved in when they
24 expanded the docks. Other than that, you know,
25 if it fit, I would not -- I would be fine with X.

1 And I'm not so sure I would dislike here.
 2 It's very important to me to be in
 3 the area where the traffic flows. If it flows
 4 down this dock onto the docks, I would like to
 5 catch it. So if it's over here, I'm not going to
 6 catch it. If it's this way, I will. If it's
 7 down here, I won't because they're going to take
 8 a right and go out. So, you know, I think where
 9 the X is, if the store would fit, would be okay
 10 with me.
 11 Q. Okay. All right.
 12 A. But I just don't believe it will. I
 13 mean, I've looked at it.
 14 Now, we're just talking about
 15 floating stores right now, right?
 16 Q. Yes.
 17 A. Okay. That's it.
 18 Q. Is there anywhere else in the marina
 19 that would be acceptable to J & W Corporation --
 20 or I should say that J & W Corporation believes
 21 would be consistent with the provisions of the
 22 lease and the settlement agreement, in terms of a
 23 location for a floating office?
 24 A. A floating office?
 25 Q. Yes.

1 A. That would be it.
 2 Q. All right. And so the dockmaster's
 3 house, as contemplated in section 1-A-2, that was
 4 not built; is that right?
 5 A. That's right.
 6 Q. The next section down talking about the
 7 hub of activity, where does J & W Corporation
 8 believe the center of the commercial and retail
 9 activity at the marina is?
 10 A. Well, I don't know if there's a drawing
 11 on here of the whole place, is there? But --
 12 MR. TAYLOR: Wick, there is a
 13 drawing that looks like that. Would that help?
 14 THE WITNESS: No, because, sec, it
 15 shows the dock.
 16 But it would be to the -- near the
 17 beginning of the wooden pier that goes out to my
 18 dock space. And, you know, where I am now, if
 19 that were an adequate building would be okay, so
 20 I would say there or closer to the front of the
 21 dock.
 22 Q. Do you know whether the current location
 23 of your office space is at such a location to
 24 where obtaining a building permit could be an
 25 issue based on its location with relationship to

1 the critical line?
 2 A. It's 50 feet, so I don't think so.
 3 Q. And that building has withstood recent
 4 storm and rain activity?
 5 A. No. It leaks some. We've had to work
 6 on that, you know. The right half of the
 7 building is rotted and falling down.
 8 Q. What steps has the tenant taken, if any,
 9 to address that and to potentially repair those
 10 boards or that wood?
 11 A. None that I know of.
 12 Q. Do you believe that the tenant has any
 13 responsibility under the lease for the upkeep and
 14 maintenance of the office space?
 15 A. I believe that the -- no. The answer to
 16 that question would be, I believe, that -- did
 17 you say the tenant or the landlord?
 18 Q. The tenant. Does the tenant have any --
 19 A. Yeah, I think the tenant has a
 20 responsibility when he gets the -- a proper
 21 office to keep it up.
 22 Q. Who was the person that interacted with
 23 the landlord in connection with the move from --
 24 or the move into the current office location?
 25 A. I would assume it would have been me,

1 but I really cannot remember.
 2 Q. Can you recall any conversations or
 3 discussions, communications with the landlord
 4 relating to that move?
 5 A. That it would be temporary.
 6 Q. And who would have told J & W
 7 Corporation it would be temporary?
 8 A. Mr. Freedman.
 9 Q. That's Roger or Richard?
 10 A. Roger.
 11 Q. And would be temporary until what
 12 occurred?
 13 A. Until they could figure out where they
 14 were going to put me on a permanent basis.
 15 Q. And are you aware that there was a
 16 permit that was obtained for the floating store
 17 to be located in the area indicated on the
 18 lease -- or in the settlement agreement, excuse
 19 me?
 20 A. That he had gotten a permit for that
 21 store?
 22 Q. Yeah. Do you know whether or not that
 23 ever occurred?
 24 A. Not to my knowledge.
 25 Q. So, speaking about the bungee jump that

1 was placed on the property, was -- were any
2 customers of J & W Corporation unable to get to
3 the ferry during the time when the bungee jump
4 was installed?

5 A. Yeah.

6 Q. And what I mean when I asked you that
7 question --

8 A. The parking spaces were taken up, if
9 that's what you mean.

10 Q. Did anyone have to go home or wherever
11 they came from without riding the ferry because
12 of the location of the bungee jump?

13 A. I wouldn't know. But I do know that
14 there was a parking issue because of it.

15 Q. And how long was the bungee jump there?

16 A. I don't know.

17 Q. And so you're stating that the bungee
18 jump was located in the parking spaces -- it was
19 placed in a location that was -- where customers
20 of J & W would park?

21 A. Yes, and also where the bungee jump
22 people would park in our parking lot.

23 Q. When you say bungee jump people, you
24 mean people that wanted to utilize that
25 recreational --

1 A. Right.

2 Q. -- option?

3 A. Yep.

4 Q. And so -- I should know this, but do you

5 have placards up on spaces that indicate that

6 they are parking for customers of, you know, your
7 company only?

8 A. We do have those that were put up by the
9 marina.

10 Q. And so anything relating to the bungee
11 jump and the rock climbing wall, those are not an
12 issue at this time?

13 A. Not -- no, because we don't have the
14 traffic we used to have.

15 Q. Are there any access issues that the
16 tenant would report are occurring at this
17 particular time?

18 A. Nope.

19 Q. Are there issues relating to restroom
20 access that J & W Corporation considers that
21 it's -- the availability of restrooms is
22 inadequate at this time?

23 A. Not right now.

24 Q. Does J & W Corporation agree that it
25 should make some contribution to the water and

1 sewer charges to compensate the landlord for the
2 use of those restroom facilities by its patrons?

3 A. Only if it's in the agreement.

4 Q. Is there anything in the agreement that
5 speaks to restroom access?

6 A. I don't know, honestly. Do you want me
7 to look?

8 Q. Yeah. Because, you know, I think what
9 we're getting at here is that there I don't
10 believe is anything in the agreement that would
11 state that you have the restroom access, but it's
12 been provided. And then you stated, well, you
13 should only have to pay for it if it's in the
14 agreement.

15 So I don't think that there's
16 anything in the agreement about restrooms one way
17 or the other, but please take a minute and see if
18 there's anything that you're able to find.

19 MR. TAYLOR: We can stipulate that
20 there is no provision in the lease or in the
21 settlement agreement addressing restroom
22 facilities, Ellis.

23 MR. LESEMAN: Okay.

24 Q. In terms of the visitors to the marina,
25 the people that come to the marina either as

1 customers of the pub, of the dry stack, of the
2 other businesses and things like that, what
3 percentage would J & W Corporation believe that
4 its customers would represent on a percentage
5 basis?

6 A. I would be surprised now if we were more
7 than 5 percent.

8 Q. Now, your business does keep records in
9 terms of the ticket numbers.

10 A. Well, you just take the gross sales and
11 divide it by the price of the ticket. That's how
12 we come up with that.

13 Q. So do you actually keep track of the
14 specific number of tickets that you sell, or is
15 it just you've got revenue?

16 A. Well, we do issue tickets, but
17 obviously, the easier way to do it is just to
18 look at the gross sales and divide it by the
19 price of the ticket.

20 Q. So in terms of Thursday two weeks ago,
21 let's just say, you would -- J & W Corporation
22 would know what its gross revenue was for that
23 day?

24 A. Absolutely.

25 Q. But you wouldn't know specifically the

1 number of tickets that you sold?

2 A. You would because you would know how
3 many people got on the ferry, right. X amount.
4 Let's say \$1,000 worth of people, right. You
5 would divide that by 25, which is the ticket
6 sale, and you would come up with how many people
7 went.

8 Q. Does every ticket cost \$25 for seniors,
9 adults, kids?

10 A. We do allow children that are below five
11 years old on for free sometimes, but, you know,
12 it's pretty close.

13 Q. So what are the different ticket prices
14 that are in place now?

15 A. Just \$25 round trip.

16 Q. How about for the other type of -- not
17 the ferry to Daufuskie, per se, but more of a
18 cruise to the creek or those type, dolphin tour,
19 those sorts of things?

20 A. You know, we tried that this year, but
21 it didn't work.

22 Q. What is the amount that you charge for
23 what I'll call a booze cruise?

24 A. Well, we didn't do it because we found
25 out that it was illegal.

1 Q. How did you find out that it was
2 illegal?

3 A. My attorney told me.

4 MR. TAYLOR: Don't tell him
5 anything I told you, Wick.

6 Q. Does J & W Corporation have a liquor
7 license?

8 A. Beer and wine.

9 MR. TAYLOR: You're talking about
10 for the boat, I assume?

11 MR. LESEMANN: Yes.

12 THE WITNESS: Yes.

13 MR. TAYLOR: I just wanted to make
14 sure we were clear on that, thank you.

15 Q. When you made your estimate of 100,000
16 to \$300,000 in damages, did you -- how did you
17 account for the changes in ticket prices over the
18 last 14 years, to determine whether you were
19 really seeing more or less in terms of
20 passengers?

21 A. Well, we knew that we were losing
22 ridership, so we decided to lower the price to
23 see if that had anything to do with it, to be
24 lower than the other -- one of the other
25 companies.

1 Q. So I understand that you lowered ticket
2 prices, but what I think I had asked you was
3 whether, in coming up with your estimate of your
4 lost revenues, you took changes in ticket prices
5 over time into account.

6 A. Yeah, we did. But at the same time, it
7 was only about two months ago that we lowered our
8 price from 34 to 25, and we did that to try to
9 offset people that were getting on another boat.

10 Q. And, specifically -- I know we talked
11 about a couple companies before, but specifically
12 who does J & W Corporation believe it's losing
13 ridership to?

14 A. The Daufuskie Ferry, and I think we're
15 losing ridership to some of the smaller boats
16 that we spoke of.

17 Q. And what about Vagabond?

18 A. Well, I don't -- doesn't bother me much
19 because they go to me, so I don't really kind of
20 keep up with that. I mean, their boat goes to
21 our facility so --

22 MR. LESEMANN: So what I'd like to
23 do is take a minute with Nate, go through
24 everything, see if there's anything else that we
25 need to cover.

1 Wick, I appreciate your time. We
2 may be done, and Tom may or may not have anything
3 he wants to ask you, so we'll just take a break
4 for a couple minutes and then we'll see if
5 there's anything to accomplish.

6 (A recess was taken.)

7 MR. LESEMANN: We wouldn't have
8 anything further.

9 MR. TAYLOR: We'll read and sign.
10 (The deposition was concluded at
11 1:25 p.m.)

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

3 I, Teri L. Kennelly, Registered
4 Professional Reporter, do hereby certify that the
5 witness in the foregoing deposition was by me
6 duly sworn to testify to the truth, the whole
7 truth and nothing but the truth in the
8 within-entitled cause; that said deposition was
9 taken at the time and location therein stated;
10 that the testimony of the witness and all
11 objections made at the time of the examination
12 were recorded stenographically by me and were
13 thereafter transcribed by computer-aided
14 transcription; that the foregoing is a full,
15 complete and true record of the testimony of the
16 witness and of all objections made at the time of
17 the examination; and that the witness was given
18 an opportunity to read and correct said
19 deposition and to subscribe the same.

20 Should the signature of the witness
21 not be affixed to the deposition, the witness
22 shall not have availed himself/herself of the
23 opportunity to sign or the signature has been
24 waived.

25 I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, this 16th day of
January, 2019, at Charleston, Charleston County,
South Carolina.

Teri L. Kennelly
NCRA REGISTERED PROFESSIONAL REPORTER

1 DEPONENT CORRECTION SHEET

2 I, the undersigned, WILLIAM SCURRY, do
3 hereby certify that I have read the foregoing
4 deposition and wish to make the following
5 clarifications and/or corrections, if any.

6 PAGE LINE CHANGE REASON

7

8

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24

25

WILLIAM SCURRY Date

TLK

DEPOSIT TICKET

BROAD CREEK MARINA OF HIL
P.O. BOX 21584
HILTON HEAD ISLAND, SC 29

(843) 681-3625

Date

5/25/14

DEPOSIT MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL
ALL DEPOSITS RECEIVED FOR DEPOSIT ARE SUBJECT TO THE
POLICIES AND REGULATIONS OF THE FINANCIAL INSTITUTION
LISTED CHECKS SEPARATELY
DOLLARS
CENTS

CURRENCY

☐ CASH
☐ CHECKS

LIST CHECKS

542 20537.67

BRANCH BANKING AND TRUST COMPANY
HILTON HEAD ISLAND, SC 29928

TOTAL
NUMBER OF
DEPOSITED
ITEMS

\$ 20537.67

LESS
CASH
RECEIVED

\$ 20537.67

PLEASE ALSO ENTER TOTAL HERE

Signature

SIGN HERE FOR LESS CASH

USE ROUTING NUMBER FROM YOUR CHECKS FOR AUTOMATIC PAYMENTS. E CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE AND ANY APPLICABLE COLLECTION AGREEMENT.



J & W Corporation Of Greenwood

50 Bush's Branch Road
Bluffton, SC 29909

TD BANK
AMERICA'S MOST CONVENIENT BANK

15318

67-219/539
912

PAY TO THE
ORDER OF

Broad Creek Marina

\$ 20537.67

Twenty thousand four hundred and thirty seven and 67/100 DOLLARS

Interest Not included rust

MEMO

Property taxes 08-#3



AUTHORIZED SIGNATURE

W P Sany

Details on Back

Security Features Included

Broad Creek Marina 000131

2104

SECURITY FEATURES INCLUDE TRUE WATERMARK PAPER, HEAT SENSITIVE ICON AND FOIL HOLOGRAM

 **J & W Corporation Of Greenwood**
50 Bush's Branch Road
Bluffton, SC 29909

TD BANK
AMERICA'S MOST CONVENIENT BANK

15318
67-219/638
912

PAY TO THE ORDER OF Broad Creek Marina \$ 20,537.17

Twenty thousand five hundred thirty seven and 17/100 DOLLARS

MEMO Property taxes 08-13

 W.F. Sams
AUTHORIZED SIGNATURE

Details on Each Side of Security Features Included

J & W Corporation of Greenwood
50 Bush's Branch Road
Bluffton, South Carolina 29909

October 28, 2016

Mr. Joe Gossage
Adjuster
North American Specialty Insurance Company
650 Elm Street
Manchester, NH 03101-2524

Re: North American Specialty Insurance Company Policy purchased by J & W
Corporation of Greenwood, Policy number 50C4000770-02

Dear Mr. Gossage:

On September 23, 1993, the J & W Corporation of Greenwood entered into a 99-year Lease Agreement with the entity then known as Hilton Head Island Marina, L.P. (now known as Broad Creek Marina). Under the Lease Agreement, J & W rented 238 linear feet of floating dock space on one finger dock described in the Lease, and an additional 62 linear feet on a second finger dock. By a mutually negotiated Release and Confidential Settlement Agreement dated December 13, 2004, the parties agreed to reconfigure J & W's rented dock area, and J & W now rents 211 linear feet on one finger dock and 89 linear feet on a second finger dock, both as are shown on the attached diagram that is attached as Exhibit B to the December 13, 2004 Agreement. Under the terms of both agreements, J & W is responsible for repairs to its leasehold property in the event of damage.

By J & W's North American Specialty Insurance Company Policy number 50C4000770-02, effective from April 8, 2016 through April 8, 2017, J & W has coverage to "Damage to Premises Rented To You" of up to \$100,000. Listed on the schedule of premises J & W "rents" is the property at 18 Simmons Road, Hilton Head Island, SC 29928, and is specifically called out as "Wharf and Waterfront Property—not occupied by the insured (lessor's risk only)". This is the Broad Creek Marina property referenced in the Lease and Settlement Agreement.

Please accept this letter as official notice of a claim to be made on the policy for damages to the leasehold property rented by J & W from Hurricane Matthew. J & W has been advised by the General Manager of Broad Creek Marina that the docks (including those portions of the two finger docks noted above) were damaged by the storm, and Broad Creek Marina is making demand upon J & W to stand ready to respond in damages. Thus, we are hereby calling upon North American Specialty Insurance Company to immediately undertake whatever investigation

Broad Creek Marina 000152

2106

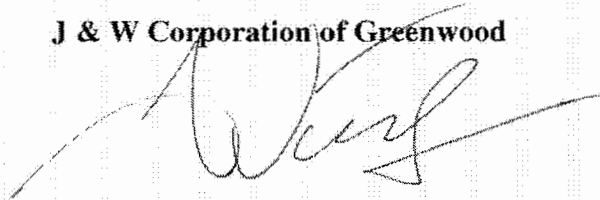
Mr. Joe Gossage
Adjuster
North American Specialty Insurance Company
October 28, 2016
Page 2

you deem necessary to evaluate the damage, so that you may be in a position to provide the coverage J & W purchased under its policy. I assume the first thing you will want to do is come to Broad Creek Marina at your earliest convenience, meet with Nate Jones, Broad Creek Marina's General Manager, and inspect the property and discuss with him, the extent of their investigation and intended repairs.

By this letter, we are hereby demanding that North American Specialty Insurance Company protect J & W in good faith, and work with Broad Creek Marina to address the damages. Please let me know what we can do to assist you. Thank you for your anticipated response and for making sure that J & W is properly covered by the insurance it purchased.

Yours truly,

J & W Corporation of Greenwood

A handwritten signature in black ink, appearing to read 'W. Scurry', is written over the company name.

William P. Scurry, President



April 07, 2017

Broad Creek Marina Development, LLC
PO Box 21584
Hilton Head Island, SC 29925

Re: SAC-2016-00668
Broad Creek Marina Development, LLC

Dear Broad Creek Marina Development, LLC:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to construct a Ferry Terminal at 33 Broad Creek Marina Way, Hilton Head Island, Beaufort County, South Carolina and has issued a permit for this work. You should carefully read the description of the authorized project and special conditions that have been placed on the permit, as these conditions may modify the permitted activity. In addition, there are a series of general conditions that should be reviewed. The original and one photocopy of the permit, as issued, are enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date in the signature block entitled "PERMITTEE" on the original version of the permit and return it to this Department. Keep the photocopy for your records.

PLEASE READ CAREFULLY: You are required to sign and return the original version of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance, OR appealed within 15 days as described on the enclosed "Guide to Board Review", the Department reserves the right to cancel this permit. Please carefully review the enclosed "Guide to Board Review" for information and deadlines for appealing this permit.

We have also enclosed a "request for a construction placard" card. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.

PLEASE NOTE: You are not authorized to commence work under the permit until we have received the original version of the entire permit signed and accepted by you, and a construction placard has been issued and posted at the construction site. The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required. Please return the signed permit to the following address:

DHEC-OCRM
104 Parker Drive
Beaufort, SC 29906

Sincerely,

George J. Madlinger, III
Senior Critical Area Project Manager

Enclosure

cc: Mr. Blair Williams, Wetland Section Manager
Mr. Thomas C. Taylor, LLC
Coastal Conservation League
Steadfast Marine Services, Inc.

SEE SPECIAL
CONDITION(S)

**SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT**

CRITICAL AREA PERMIT & COASTAL ZONE CONSISTENCY CERTIFICATION

Permittee(s): Broad Creek Marina Development, LLC
Permit Number(s): SAC-2016-00668
Date of Issuance: April 07, 2017
Expiration Date: April 07, 2022
Location: On and adjacent to Broad Creek at 33 Broad Creek Marina Way, Hilton Head Island, Beaufort County, South Carolina.

This permit is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et seq.*, and 23A S.C. Code Ann. Regs. 30-1 through 30-18 (Supp. 2005). Please carefully read the project description and special conditions that appear on this permit/certification as they will affect the work that is allowed and may modify the work from that shown on the submitted plans. All special conditions attached to the permit will take precedent over submitted plans. The general conditions are also a part of this permit/certification and should be read in their entirety. The S. C. Contractor's Licensing Act of 1999, enacted as S.C. Code Ann. Section 40-11-5 through 430, requires that all construction with a total cost of \$5,000 or more be performed by a licensed contractor with a valid contractor's license for marine class construction, except for construction performed by a private landowner for strictly private purposes. Your signature on and acceptance of this permit denotes your understanding of the stated law regarding use of licensed contractors. All listed special and general conditions will remain in effect for the life of the permit. This applies to permittee, future property owners, or permit assignees.

DESCRIPTION OF THE PROJECT, AS AUTHORIZED

The plans, as approved, consist of constructing a ferry boat terminal. Specifically, the applicant will construct a 14'x865' walkway, with five (5) 18'x22' passes, leading to a 14'x64' terminal platform with a 45 degree access on each side. The terminal platforms will lead to ramps to access the 30'x70' floating dock and two (2) 16'x32' floating docks. A 20'x40' covered pierhead will be placed channelward of the 14'x64' pierhead. The work, as approved, is to load/unload passengers and freight off ferry boats accessing Daufuskie Terminal on Daufuskie Island.

SPECIAL CONDITIONS

1. The pierhead must not be enclosed, even partially, not screened.
2. The roof shall be constructed as a Hip style roof. No part of the roof, including any ornamental structures, shall exceed 12' above the floor decking of the dock to the highest point of the roof.
3. No part of the dock structure shall extend further into Broad Creek than the existing, adjacent dock to the east.
4. The overall length of this structure must not exceed 1000'.

1 of 1

Broad Creek Marina 000165

2109

**SEE SPECIAL
CONDITION(S)**

5. There shall be no vending, retail or wholesale activity allowed on this structure.
6. No painting, major engine repair or other maintenance which may result in a discharge to the water is performed at this dock. Minor maintenance and repairs must be performed in a designated upland area, away from the water.
7. An as-built survey of the structure(s) must be submitted to the Department within 90 days from completion of construction. The survey must be performed by a registered land surveyor, must show all components of the structure(s), and must list the starting and ending coordinates of the structure(s) in the SC State Plane Coordinate System, which can be obtained by survey-grade Global Positioning System equipment.
8. In the event that any historic or cultural resources and/or archaeological materials are found during the course of work, the applicant must notify the State Historic Preservation Office and the South Carolina Institute of Archaeology and Anthropology. Historic or cultural resources consist of those sites listed in the National Register of Historic Places and those sites that are eligible for the National Register. Archaeological materials consist of any items, fifty years old or older, which were made or used by man. These items include, but are not limited to, stone projectile points (arrowheads), ceramic shards, bricks, worked wood, bone and stone, metal and glass objects, and human skeletal materials.

PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND FIVE (5). BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.

THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE.

Permit Number: **SAC-2016-00668**

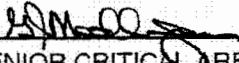
Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE(S))

(DATE)

Broad Creek Marina Development, LLC

This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.


(SENIOR CRITICAL AREA PROJECT MANAGER)

April 7, 2017
(DATE)

George J. Madlinger, III
Or Other Authorized State Official

SEE SPECIAL
CONDITION(S)

GENERAL CONDITIONS:

This construction and use permit is expressly contingent upon the following conditions which are binding on the permittee:

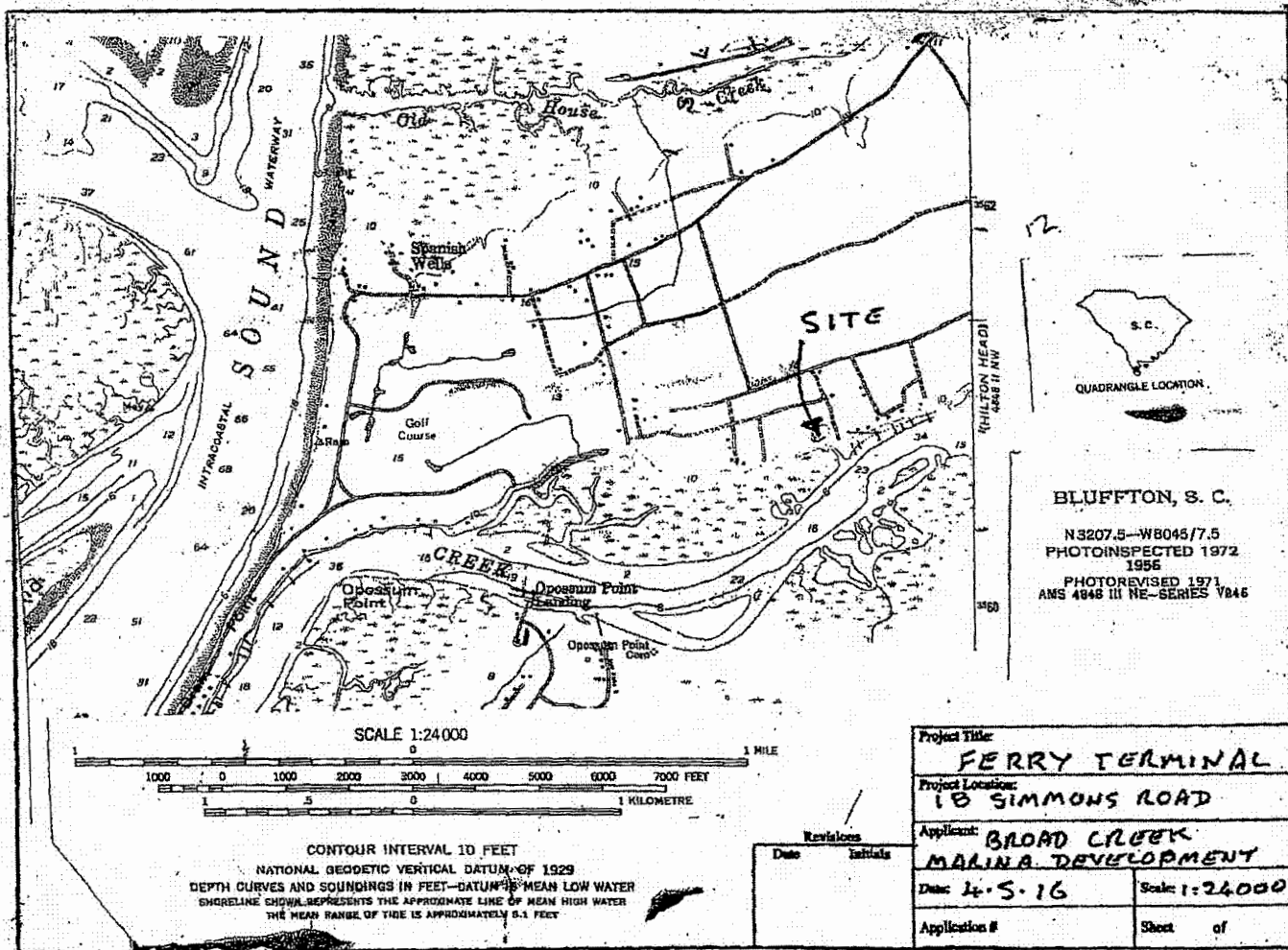
1. The permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save OCRM and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. If the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than thirty days prior to the expiration date.
3. All authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. This permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further, to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. This permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. The permittee shall permit OCRM or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. Any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by OCRM.
8. This permit may not be transferred to a third party without prior written notice to OCRM, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit and thereby agreeing to comply.
9. If the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. The permit construction placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. The structure or work authorized herein shall be in accordance with the permit, as issued, and shall be maintained in good condition. Failure to build in accordance with the permit, as issued, or failure to maintain the structure in good condition, shall result in the revocation of this permit.
12. The authorization for activities or structures herein constitutes a revocable license. OCRM may require the permittee to modify activities or remove structures authorized herein if it is determined by OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the Permittee is notified that OCRM intends to revoke the permit, Permittee agrees to immediately stop work pending resolution of the revocation.
13. OCRM shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is in violation of the terms and/or conditions, including any special conditions of the permit. That the permittee, upon receipt of OCRM's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, OCRM shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to OCRM. (South Carolina

SEE SPECIAL
CONDITIONS

Code Section 1-23-370 shall govern the procedure for revocation, suspension or modification herein described).

14. Any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against OCRM or the State of South Carolina or any employee, agent, or representative of OCRM or the State of South Carolina.
15. All activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. Extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

SEE SPECIAL
CONDITIONS



REFERENCE PLAT

A PLAT OF PARCEL RECONFIGURATION, BOUNDARY SURVEY, LOCATED ON HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

PB 142, PG 149

DATE: 08-18-15, LAST REVISED 12-09-15

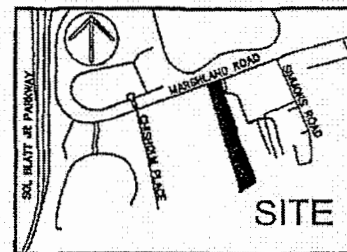
BY: JAMES HAYES, S.C.R.L.S. No. 13527

NOTE: ON ALL AREAS ON THIS PLAT ARE THOSE LOCATED AHEAD AND HAVE BEEN RECORDED AS HAVING AN 125' A JUNE TENDON SURFACE OF 100' TO 100' IN ANY GIVEN YEAR BY 100' TOTAL. THESE ARE ASSOCIATED WITH FLOODING. LOCAL ELEVATION BOUNDARY DATA CENTER FROM HALLS PROJECTIVE MEASURES IF INCORPORATED IN THE JUNE AND CONSTRUCTION OF STRUCTURES IN THESE BEACHLAND AREAS. FUTURE SURVEY SHALL BE MADE TO THE DATA OFFICIAL CONSIDERATION AND RECONSTRUCTION OF THE DEVELOPMENT AND RECONSTRUCTION OF THE TOWN HARBOR OFFICIAL. IF A FUTURE FUTURE LAND RECONSTRUCTION SURVEY OF FLOOD INSURANCE AS A FUTURE SURVEY TO FUTUREALLY SURVEYED SURVEYED IN THESE BEACHLAND 1000 IN 1998 AREAS.

NOTES

1. THIS PARCEL APPEARS TO LIE IN FLOOD ZONE A7, MINIMUM ELEVATION 14' AND ZONE C FIRM PANEL 0007D COMMUNITY 450250.

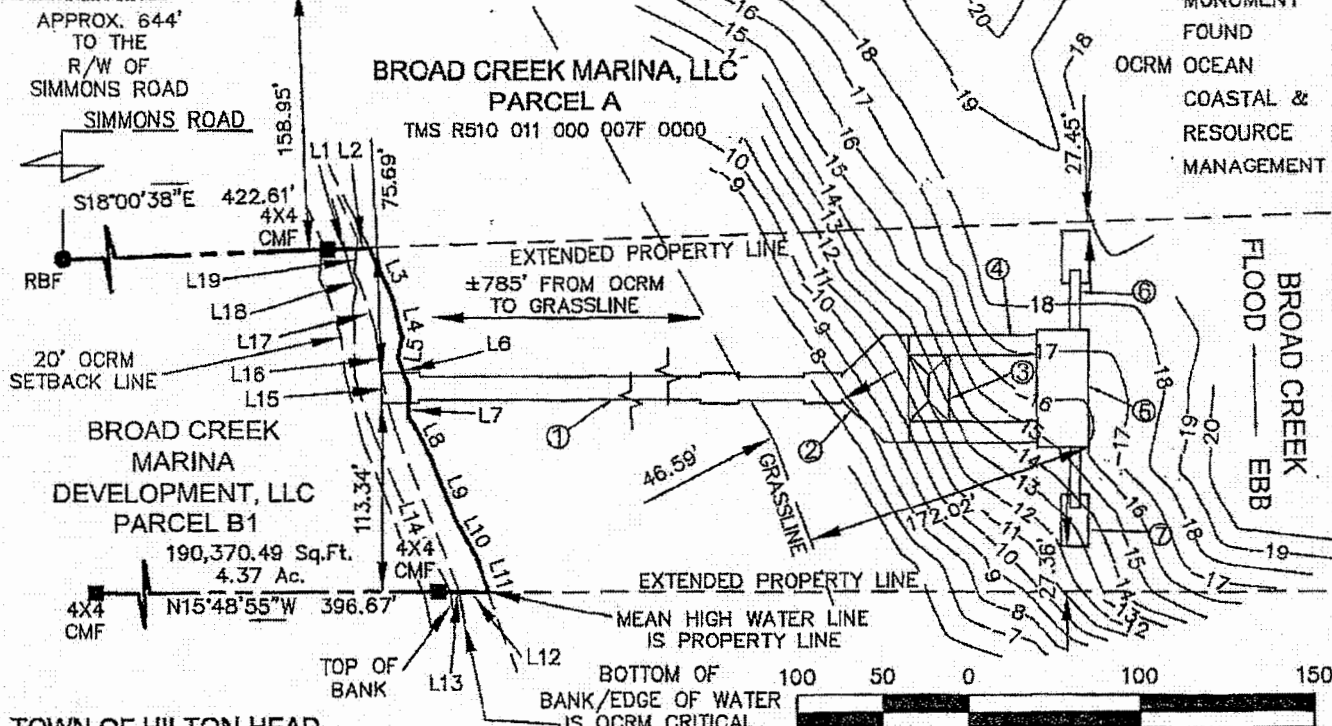
2. BUILDING/SETBACK LINES WILL BE ADDRESSED DURING DESIGN PHASE, AND AS PER LMO 16-6-102D, WETLAND BUFFERS AND STANDARDS. (16-6-102D-2 CHART). PER CALL 3/24/2016 TOWN OF HILTON HEAD. MUST BE VERIFIED PRIOR TO CONSTRUCTION.



VICINITY MAP NOT TO SCALE

LEGEND

- CMF ■ CONCRETE
- MONUMENT FOUND
- OCRM OCEAN COASTAL & RESOURCE MANAGEMENT



TOWN OF HILTON HEAD
TMS R510 011 000 082A 0000

LINE TABLE		
LABEL	BEARING	DISTANCE
L1	S18°00'38"E	17.24'
L2	S18°00'38"E	6.95'
L3	N49°52'33"E	34.95'
L4	N60°14'57"E	22.60'
L5	N84°37'04"E	13.08'
L6	N54°33'21"E	18.64'
L7	N74°30'42"E	17.83'
L8	N47°21'09"E	28.10'
L9	N52°50'31"E	39.28'
L10	S45°51'51"W	27.30'
L11	S55°57'43"W	20.09'
L12	N15°48'55"W	17.24'
L13	N15°48'55"W	12.17'
L14	N53°10'53"E	104.62'
L15	N60°37'57"E	36.98'
L16	N67°51'24"E	24.51'
L17	N56°29'19"E	29.52'
L18	S46°45'48"W	7.03'
L19	N80°24'15"E	14.28'

- ① 14' x 856' WALKWAY WITH (5) 18' x 22' PASSES
- ② 14' x 64' PIERHEAD WITH 45 DEGREE ACCESS
- ③ 24' x 40' COVERED PIERHEAD
- ④ (2) 12' x 64' INGRESS AND EGRESS RAMPS
- ⑤ 30' x 70' FLOAT
- ⑥ (2) 6' x 38' RAMPS
- ⑦ (2) 16' x 32' FLOATS

PREPARED FOR:
BROAD CREEK MARINA
DEVELOPMENT, L.L.C.
A PROPOSED DOCK SURVEY OF
#33 BROAD CREEK MARINA WAY

TAX PARCEL No.
R510 011 000 0006 0000

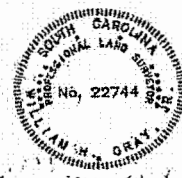
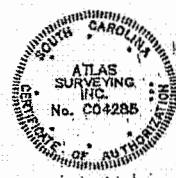
SHEET 2 OF 4
HILTON HEAD ISLAND
BEAUFORT COUNTY, SOUTH CAROLINA

SCALE: 1"=100'
FIELD CHECK: WHO
DATE: 03-31-16
PROJECT No.: BFT-16100
FILE: BFT-16100-D2(b)PRD.DWG

GRAPHIC SCALE

ATLAS
SURVEYING INC.

49 BROWN'S COVE ROAD, SUITE #5.
RIDGELAND, SC 29938
PHONE: (843) 845-9277
FAX: (843) 646-9267
E-MAIL: BGRAY@ATLASSURVEYING.COM



WILLIAM H. GRAY, JR.
S.C.R.L.S. No. 22744
NOT VALID UNLESS CRIMPED WITH SEAL

SAC-2016-00668

6 of 11

Broad Creek Marina 000170

2114

REFERENCE PLAT

A PLAT OF PARCEL RECONFIGURATION
BOUNDARY SURVEY, LOCATED ON HILTON
HEAD ISLAND, BEAUFORT COUNTY, SOUTH
CAROLINA

PB 142, PG 149

DATE: 08-18-15, LAST REVISED:
12-09-15

BY: JAMES HAYES,

S.C.R.L.S. No. 13527

- ① 14' x 856' WALKWAY WITH (5) 18' x 22' PASSES
- ② 14' x 64' PIERHEAD WITH 45 DEGREE ACCESS
- ③ 24' x 40' COVERED PIERHEAD
- ④ (2) 12' x 64' INGRESS AND EGRESS RAMPS
- ⑤ 30' x 70' FLOAT
- ⑥ (2) 6' x 36' RAMPS
- ⑦ (2) 16' x 32' FLOATS

LEGEND

OCRM OCEAN COASTAL & RESOURCE
MANAGEMENT

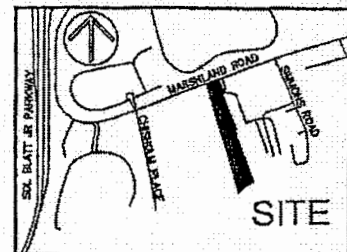
-20 WATER DEPTH ELEVATION SHOT

MHW MEAN HIGH WATER

MLW MEAN LOW WATER

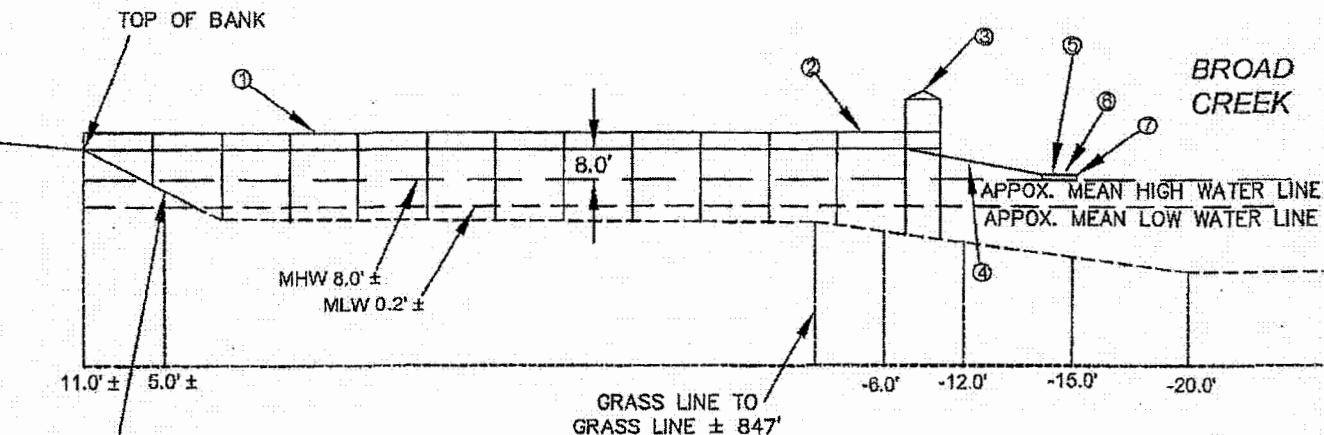
NOTES

1. THIS PARCEL APPEARS TO LIE IN
FLOOD ZONE A7, MINIMUM ELEVATION
14' AND ZONE C FIRM PANEL 0007D
COMMUNITY 450250.
2. BUILDING SETBACK LINES WILL BE
ADDRESSED DURING DESIGN PHASE,
AND AS PER LMO 16-6-102D,
WETLAND BUFFERS AND STANDARDS.
(16-6-102D-2 CHART). PER CALL
3/24/2016 TOWN OF HILTON HEAD.
MUST BE VERIFIED PRIOR TO
CONSTRUCTION.



VICINITY MAP NOT TO SCALE

**SEE SPECIAL
CONDITION(S)**



BOTTOM OF BANK/EDGE
OF WATER IS OCRM
CRITICAL LINE VERIFIED
BY PAUL WOJOSKI ON
03-31-16

SIDE PROFILE VIEW
(NOT TO SCALE)

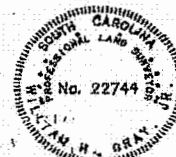
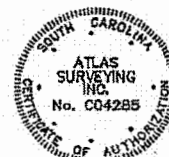
PREPARED FOR:
BROAD CREEK MARINA
DEVELOPMENT, L.L.C.
A PROPOSED DOCK SURVEY OF
#33 BROAD CREEK MARINA WAY

TAX PARCEL No.
R510 011 000 0006 0000

SHEET 3 OF 3

HILTON HEAD ISLAND
BEAUFORT COUNTY, SOUTH CAROLINA

FIELD CHECK: WHG
DATE: 03-31-16
PROJECT No.: BFT-18100
FILE: BFT-18100-02(b)PRO.DWG



William H. Gray, Jr.
WILLIAM H. GRAY, JR.
S.C.R.L.S. No. 22744
NOT VALID UNLESS CRIMPED WITH SEAL

**ATLAS
SURVEYING INC.**

49 BROWN'S COVE ROAD, SUITE #5
RIDGELAND, SC 29936
PHONE: (843) 845-9277
FAX: (843) 845-9267
E-MAIL: BGRAY@ATLASSURVEYING.COM

SAC-2016-00668

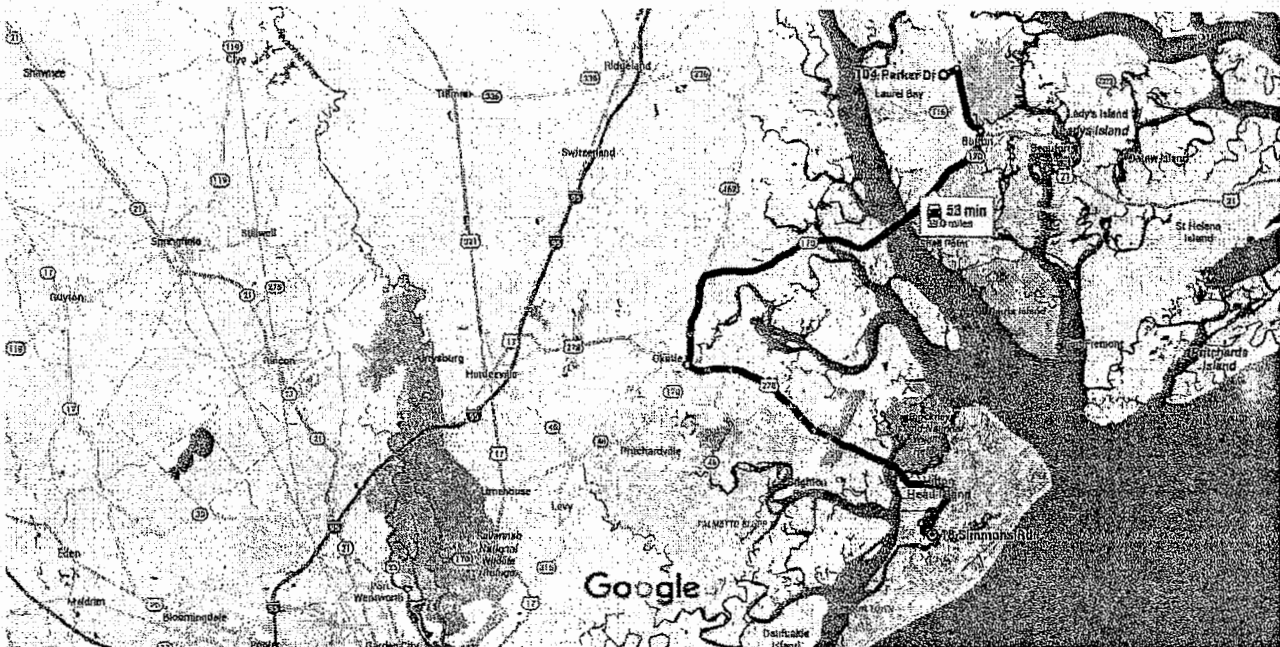
Broad Creek Marina 000171

7-811

2115

Google Maps

104 Parker Dr, Beaufort, SC to 18 Simmons Rd Drive 39.0 miles, 53 min



Map data ©2016 Google 2 mi

104 Parker Dr
Beaufort, SC 29906

**SEE SPECIAL
CONDITION(S)**

- ↑ 1. Head east on Parker Dr toward Hilanda Dr

1 min (0.7 mi)

Take SC-170 W and US-278 E to Spanish Wells Rd in Hilton Head Island

45 min (35.0 mi)

- 2. Turn right onto US-21 S/Trask Pkwy

3.0 mi

- 3. Turn right onto Parris Island Gateway

1.1 mi

- 4. Slight right onto SC-170 W/Robert Smalls Pkwy

➤ Continue to follow SC-170 W

17.6 mi

- ⤴ 5. Slight right onto the ramp to Fording Island

0.2 mi

- ⤴ 6. Merge onto US-278 E/Fording Island Rd

➤ Continue to follow US-278 E

13.0 mi

RECEIVED

APR 21 2016

DHEC-OCRM
CHARLESTON OFFICE

- 7. Turn right onto Spanish Wells Rd

3 min (2.1 mi)

- ↶ 8. Turn left onto Marshland Rd

2 min (1.1 mi)

- 9. Turn right onto Simmons Rd

📍 Destination will be on the right

49 s (0.2 mi)

18 Simmons Rd

Hilton Head Island, SC 29926

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.

Google Maps

SEE SPECIAL
CONDITIONS

RECEIVED

APR 21 2016

DHEC-OCRM
CHARLESTON OFFICE

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of \$100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

1. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars (\$100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
 - The grounds for amending, modifying, or rescinding the staff decision;
 - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
 - the relief requested;
 - a copy of the decision for which review is requested; and
 - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
South Carolina Board of Health and Environmental Control
Attention: Clerk of the Board
2600 Bull Street
Columbia, South Carolina 29201
Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.

NOTE: If the time periods described above and on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be publicly noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publicly noticed and should:
 - include the place, date and time of the Conference;
 - state the presentation times allowed in the Conference;
 - state evidence may be presented at the Conference;
 - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
 - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
 - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
 - Type of decision (permit, enforcement, etc.) and description of the program.
 - Parties.
 - Description of facility/site
 - Applicable statutes and regulations.
 - Decision and materials relied upon in the administrative record to support the staff decision.
 - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] **NOTE: The burden of proof is on the Requestor(s)**
 - Rebuttal by Department staff [15 minutes]
 - Rebuttal by Requestor(s) [10 minutes]

Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.



Beaufort County, South Carolina

generated on 1/3/2019 2:12:42 PM EST

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of
R510 011 000 007F 0000	00347823	18 SIMMONS RD, Hilton Head Island	12/20/2018

Current Parcel Information

Owner	BROAD CREEK MARINA PROPERTIES LLC	Property Class Code	Recr&CultImp Marina
Owner Address	PO BOX 21584 HILTON HEAD ISLAND SC 29925	Acreage	8.3900
Legal Description	PARCEL A PB142 PG149 fka PAR I BROAD CREEK MARINA TRACT B POR SIMMONS PROP PB35 P228 REV PLAT PB44 P47 MGFM:KEY#347770 #1710054#347814 9-17-922/05 MERGE KEY#9100180 PER PB103 P150 *10/07 RESTORE 6.50 AC 11/183 PB118 P109~03/16 LT LN REVISION & AC CHANGED PB142 PG149		

Historic Information

Tax Year	Land	Building	Market	Taxes	Payment
2018	\$3,862,100	\$1,515,000	\$5,377,100	\$60,326.53	\$0.00
2017	\$3,862,100	\$1,641,100	\$5,503,200	\$55,154.61	\$75,712.61
2016	\$3,862,100	\$1,641,100	\$5,503,200	\$52,295.90	\$52,295.90
2015	\$3,392,300	\$1,607,600	\$4,999,900	\$43,876.96	\$43,876.96
2014	\$3,392,300	\$1,607,600	\$4,999,900	\$43,672.05	\$43,672.05
2013	\$3,392,300	\$1,607,600	\$4,999,900	\$42,259.59	\$42,259.59
2012	\$3,392,335	\$1,652,100	\$5,044,435	\$34,185.37	\$39,388.18
2011	\$3,392,335	\$1,652,100	\$5,044,435	\$33,889.29	\$33,889.29
2010	\$3,392,335	\$1,652,100	\$5,044,435	\$33,503.90	\$38,604.49
2009	\$3,392,335	\$1,602,536	\$4,994,871	\$31,383.07	\$36,165.53
2008	\$620,400	\$1,656,700	\$2,277,100	\$30,156.54	\$34,755.02

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
BROAD CREEK MARINA OF HILTON HEAD L	3451 958	12/22/2015	Fu		\$10
HILTON HEAD ISLAND MARINA LP N/K/A	2772 1546	9/30/2008	Fu		\$10
FIRST UNION NAT'L BANK OF SC %	654 193	9/23/1993	Fu		\$1,300,000
BROAD CREEK HOLDINGS	605 1010	7/28/1992	Fu		\$1,500,000
BROAD CREEK HOLDINGS	605 1006	7/28/1992	Fu		\$10
BROAD CREEK HOLDINGS	507 422	7/1/1988	QC		\$0

Broad Creek Marina 000486

1/3/2019

Beaufort County, South Carolina

J & W CORP OF GREENWOOD	507 418	7/1/1988	Fu	\$600,000
J & W INC	507 414	7/1/1988	Fu	\$0
SCURRY WILLIAM P JACK C	440 326	1/1/1986	Fu	\$0
BROAD CREEK MARINE STORAG	352 1357	8/1/1982	Fu	\$376,276
MATTHEWS ROB A JR	352 1067	7/1/1982	Fu	\$27,500
MATTHEWS ROB A JR	236 1393	8/1/1976	Fu	\$1
		12/31/1776	Or	\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Rooms	Square Footage	Improvement Size
C02	COMPIER	Waterfront Pier - Commercial	1995	0	0		7,400
C02	DETGAR	Residential Detached Garage	1960	0	0		600
C01	GENOFF	Office	1988	0	0	1,356	
C02	BOATBLDG	Boat Storage Bldg	2006	0	0		
C04	EQUIPSTG	Equipment Storage Bldg	2009	0	0	2,450	
C03	MACHINE	General Purpose Bldg x Other	2006	0	0		2,400
C02	BOATD	Waterfront Boat Dock	1995	0	0		1,920
C02	BOATD	Waterfront Boat Dock	1995	0	0		2,320
C02	BOATD	Waterfront Boat Dock	1995	0	0		2,320
C02	BOATD	Waterfront Boat Dock	1995	0	0		3,248
C02	BOATD	Waterfront Boat Dock	1995	0	0		7,360
C02	GAZEBO	Residential Gazebo	1990	0	0		64
C02	COMPIER	Waterfront Pier - Commercial	1986	0	0		2,500
C02	COMPIER	Waterfront Pier - Commercial	1986	0	0		600

Broad Creek Marina 000487



DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403-5107

JAN 29 2019

Regulatory Division

Mr. Roger Freedman
Broad Creek Marina Holdings, LLC
P.O. Box 21584
Hilton Head, South Carolina 29925

Dear Mr. Freedman:

PLEASE READ THIS LETTER CAREFULLY AND COMPLY WITH ITS PROVISIONS

This is in response to your application dated April 11, 2016, requesting a Department of the Army permit.

This is to inform you that the public interest review has been completed and it has been determined that the proposed activity is not contrary to the public interest. As such, a permit can be issued under the provisions of the Federal laws for the protection and preservation of the navigable waters of the United States.

Enclosed are two copies of Permit #SAC-2016-00668 which have been prepared for the District Engineer's signature. Please review all of the conditions to which this permit is subject and, if acceptable to you, sign each copy and return all copies with your check or money order (NO CASH PLEASE) made payable to the Charleston District Finance and Accounting Officer for \$100.00 to this office in the enclosed self-addressed envelope. Upon receipt of these properly signed permits and requisite processing fee, the District Engineer or his designee will sign each copy and return one copy to you. As you review the permit documents, be especially mindful that

**IT SHALL NOT BE LAWFUL TO DEVIATE FROM THE PLANS EITHER
BEFORE OR AFTER COMPLETION OF THE WORK,**

unless a plan reflecting the modification has previously been submitted to and approved by the Department of Army.

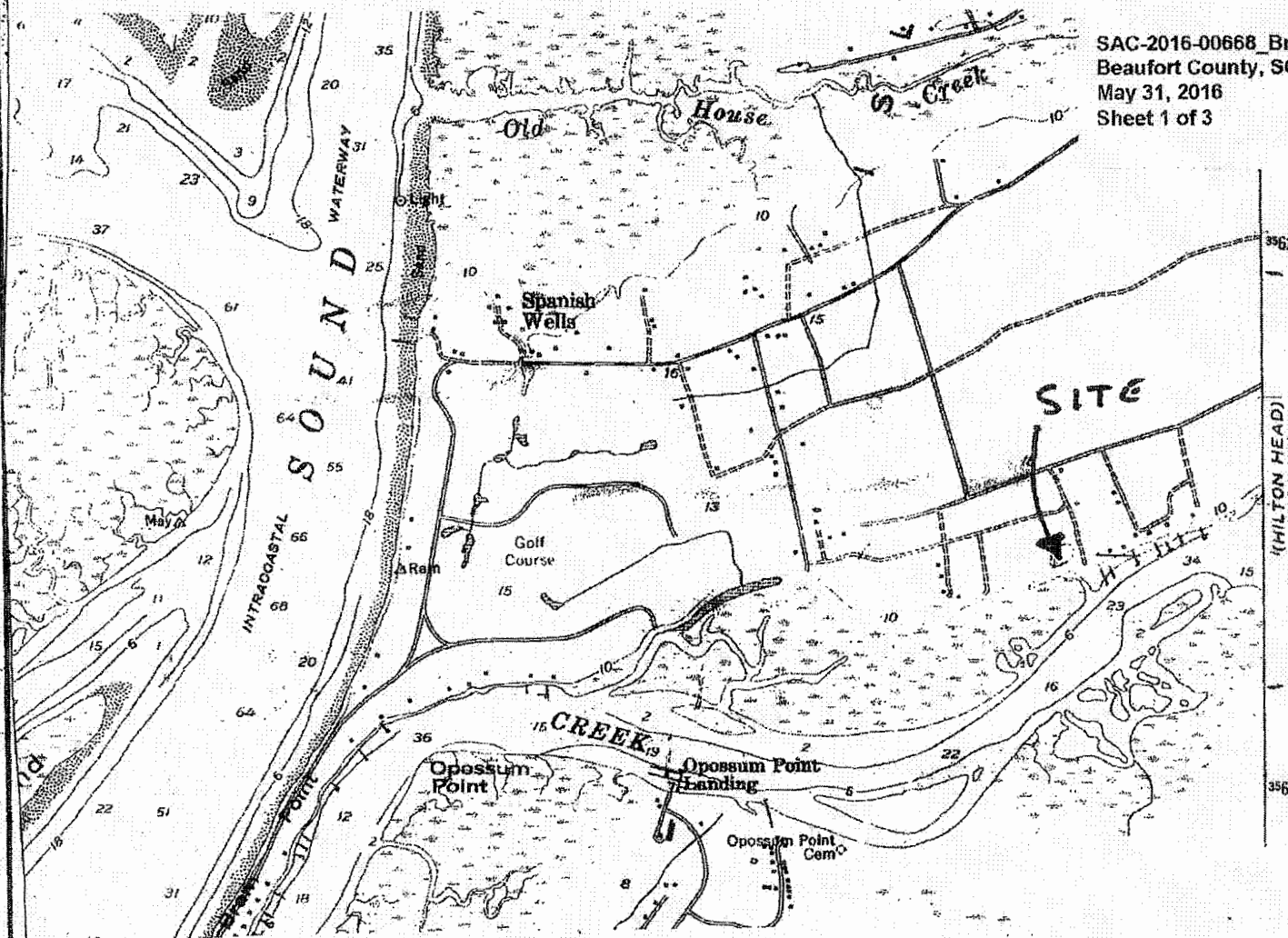
In addition, please note that the permit not only authorizes the work but also its intended use. No use other than that specified in this document can be made of permitted work or structures.

SAC-2016-00668_Broad Creek Marina_Ferry Terminal
Beaufort County, SC
May 31, 2016
Sheet 1 of 3

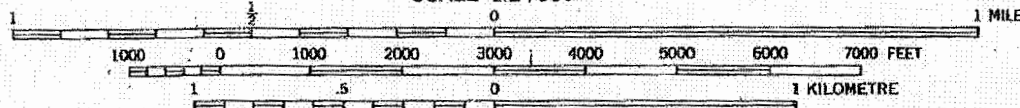
PERMITTED PLANS



BLUFFTON, S. C.
N3207.5—W8045/7.5
PHOTOINSPECTED 1972
1956
PHOTOREVISED 1971
AMS 4848 III NE—SERIES V846



SCALE 1:24000



CONTOUR INTERVAL 10 FEET

NATIONAL GEODETIC VERTICAL DATUM OF 1929
DEPTH CURVES AND SOUNDINGS IN FEET—DATUM IS MEAN LOW WATER
SHORELINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER
THE MEAN RANGE OF TIDE IS APPROXIMATELY 8.1 FEET

Revisions

Date Initials

Project Title:

FERRY TERMINAL

Project Location:

18 SIMMONS ROAD

Applicant:

**BROAD CREEK
MARINA DEVELOPMENT**

Date: **4-5-16**

Scale: **1:24000**

Application #

Sheet **1** of **3**

SAC-2016-00668

2123

REFERENCE PLAT

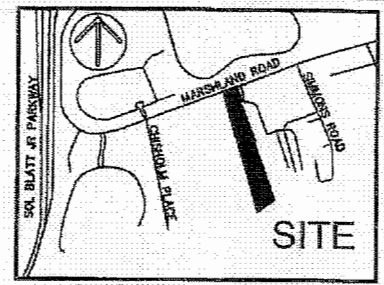
A PLAT OF PARCEL RECONFIGURATION
BOUNDARY SURVEY, LOCATED ON HILTON
HEAD ISLAND, BEAUFORT COUNTY, SOUTH
CAROLINA
PB 142, PG 149
DATE: 08-18-15, LAST REVISED:
12-09-15
BY: JAMES HAYES,
S.C.R.L.S. No. 13527

NOTE: ALL AREAS ON THIS PLAT AND FLOOD HAZARD AREAS
HAVE BEEN DETERMINED AS BEING AT LEAST A ONE PERCENT CHANCE
OF BEING FLOODED IN ANY GIVEN YEAR BY FLOODING THAT WOULD BE
ASSOCIATED WITH POSSIBLE FUTURE LOCAL REGULATION. LOCAL REGULATIONS
INCLUDE THAT CERTAIN FLOOD HAZARD OPERATING SCENARIOS BE
INCORPORATED IN THE DESIGN AND CONSTRUCTION OF STRUCTURES IN
THOSE DESIGNATED AREAS. INTERESTED PARTIES ARE ADVISED TO
DEPENDENTLY EXPEND AND RECOVERIES OF THE DEVELOPMENT
AND RECOVERIES OF THE TOWN OF HILTON HEAD. IN ADDITION,
FEDERAL LAW REQUIRES MANDATORY PURCHASE OF FLOOD INSURANCE
AS A PREREQUISITE TO FUTURELY RECEIVING A FLOOD INSURANCE
IN THOSE DESIGNATED FLOOD HAZARD AREAS.

**PERMITTED
PLANS**

NOTES

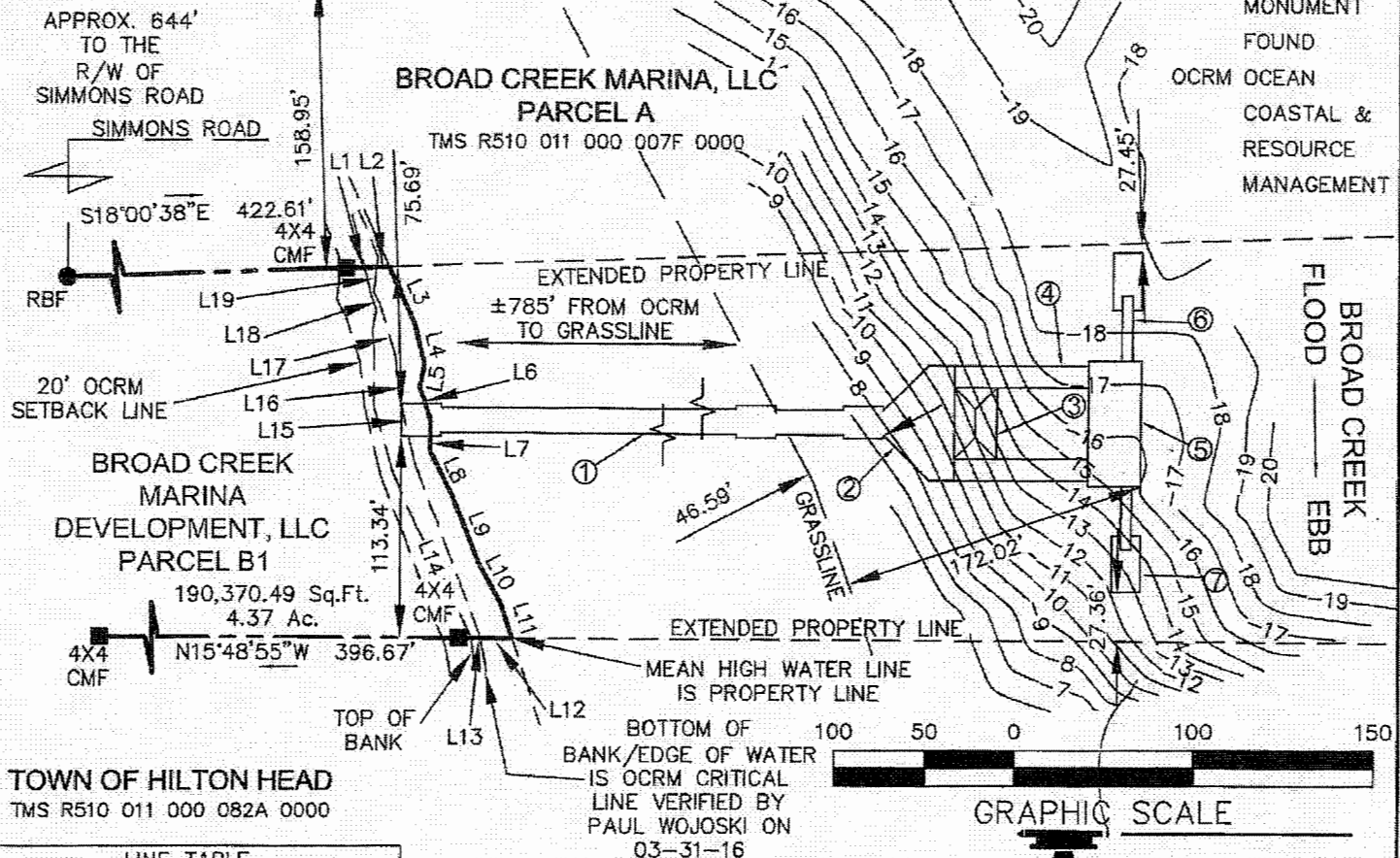
1. THIS PARCEL APPEARS TO LIE IN
FLOOD ZONE A7, MINIMUM ELEVATION
14' AND ZONE C FIRM PANEL 0007D
COMMUNITY 450250.
2. BUILDING SETBACK LINES WILL BE
ADDRESSED DURING DESIGN PHASE,
AND AS PER LMO 16-6-102D,
WETLAND BUFFERS AND STANDARDS.
(16-6-102D-2 CHART). PER CALL
3/24/2016 TOWN OF HILTON HEAD.
MUST BE VERIFIED PRIOR TO
CONSTRUCTION.



VICINITY MAP NOT TO SCALE

LEGEND

- CMF ■ CONCRETE
MONUMENT
FOUND
OCRM OCEAN
COASTAL &
RESOURCE
MANAGEMENT



TOWN OF HILTON HEAD
TMS R510 011 000 082A 0000

LINE TABLE		
LABEL	BEARING	DISTANCE
L1	S18°00'38"E	17.24'
L2	S18°00'38"E	6.95'
L3	N49°52'33"E	34.95'
L4	N60°14'57"E	22.60'
L5	N84°37'04"E	13.06'
L6	N54°33'21"E	18.64'
L7	N74°30'42"E	17.83'
L8	N47°21'09"E	28.10'
L9	N52°50'31"E	39.28'
L10	S45°51'51"W	27.30'
L11	S55°57'43"W	20.09'
L12	N15°48'55"W	17.24'
L13	N15°48'55"W	12.17'
L14	N53°10'53"E	104.62'
L15	N60°37'57"E	36.96'
L16	N67°51'24"E	24.51'
L17	N56°29'19"E	29.52'
L18	S46°45'48"W	7.03'
L19	N80°24'15"E	14.28'

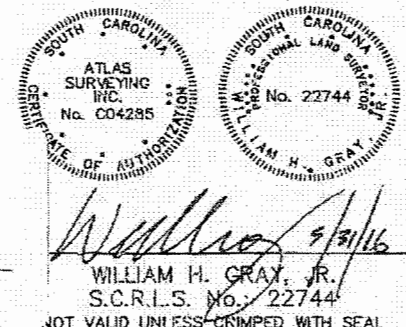
- ① 14' x 856' WALKWAY WITH (5) 18' x 22' PASSES
- ② 14' x 64' PIERHEAD WITH 45 DEGREE ACCESS
- ③ 24' x 40' COVERED PIERHEAD
- ④ (2) 12' x 64' INGRESS AND EGRESS RAMPS
- ⑤ 30' x 70' FLOAT
- ⑥ (2) 6' x 36' RAMPS
- ⑦ (2) 16' x 32' FLOATS

PREPARED FOR:
BROAD CREEK MARINA
DEVELOPMENT, L.L.C.
A PROPOSED DOCK SURVEY OF
#33 BROAD CREEK MARINA WAY
TAX PARCEL No.
R510 011 000 0006 0000

SAC-2016-00668_Broad Creek Marina_Ferry Terminal
Beaufort County, SC
May 31, 2016
Sheet 2 of 3

**ATLAS
SURVEYING INC.**

49 BROWN'S COVE ROAD, SUITE #5
RIDGELAND, SC 29936
PHONE: (843) 645-9277
FAX: (843) 645-9267
E-MAIL: BGRAY@ATLASSURVEYING.COM



NOT VALID UNLESS CRIMPED WITH SEAL

REFERENCE PLAT

A PLAT OF PARCEL RECONFIGURATION
BOUNDARY SURVEY, LOCATED ON HILTON
HEAD ISLAND, BEAUFORT COUNTY, SOUTH
CAROLINA

PB 142, PG 149

DATE: 08-18-15, LAST REVISED:
12-09-15

BY: JAMES HAYES,
S.C.R.L.S. No. 13527

- ① 14' x 856' WALKWAY WITH (5) 18' x 22' PASSES
- ② 14' x 64' PIERHEAD WITH 45 DEGREE ACCESS
- ③ 24' x 40' COVERED PIERHEAD
- ④ (2) 12' x 64' INGRESS AND EGRESS RAMPS
- ⑤ 30' x 70' FLOAT
- ⑥ (2) 8' x 36' RAMPS
- ⑦ (2) 16' x 32' FLOATS

LEGEND

OCRM OCEAN COASTAL & RESOURCE
MANAGEMENT

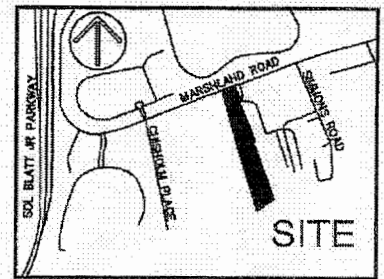
-20 WATER DEPTH ELEVATION SHOT

MHW MEAN HIGH WATER

MLW MEAN LOW WATER

NOTES

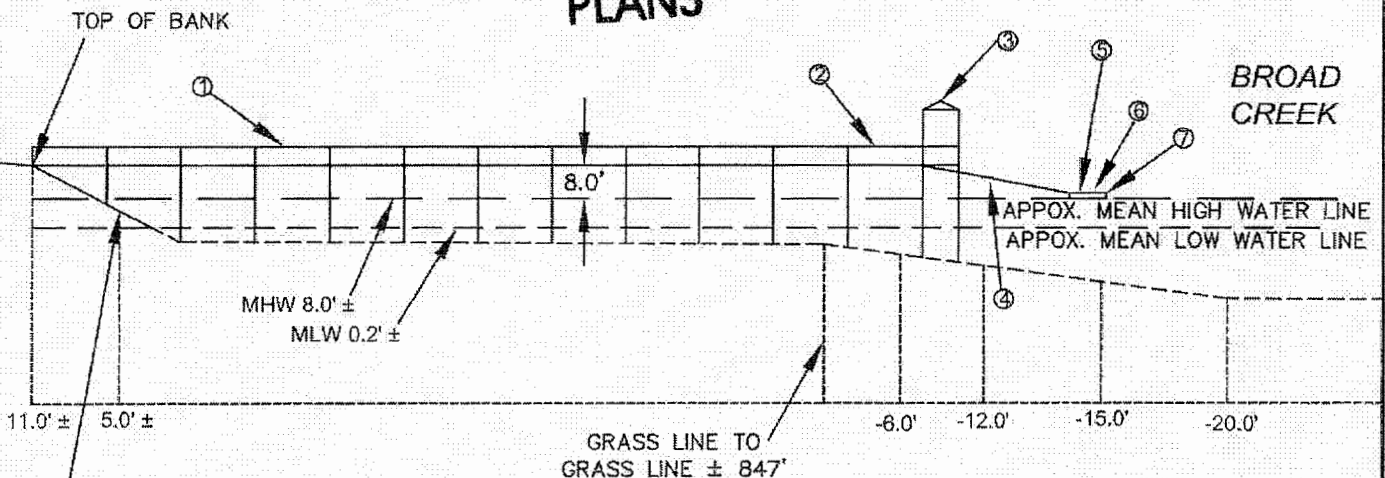
1. THIS PARCEL APPEARS TO LIE IN
FLOOD ZONE A7, MINIMUM ELEVATION
14' AND ZONE C FIRM PANEL 0007D
COMMUNITY 450250.
2. BUILDING SETBACK LINES WILL BE
ADDRESSED DURING DESIGN PHASE,
AND AS PER LMO 16-6-102D,
WETLAND BUFFERS AND STANDARDS.
(16-6-102D-2 CHART). PER CALL
3/24/2016 TOWN OF HILTON HEAD.
MUST BE VERIFIED PRIOR TO
CONSTRUCTION.



VICINITY MAP NOT TO SCALE

SAC-2016-00668_Broad Creek Marina_Ferry Terminal
Beaufort County, SC
May 31, 2016
Sheet 3 of 3

PERMITTED PLANS



SIDE PROFILE VIEW (NOT TO SCALE)

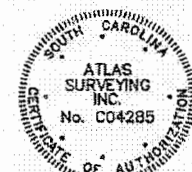
PREPARED FOR:
BROAD CREEK MARINA
DEVELOPMENT, L.L.C.
A PROPOSED DOCK SURVEY OF
#33 BROAD CREEK MARINA WAY

TAX PARCEL No.
R510 011 000 0006 0000

SHEET 3 OF 3

HILTON HEAD ISLAND
BEAUFORT COUNTY, SOUTH CAROLINA

FIELD CHECK: WHG
DATE: 03-31-16
PROJECT No.: BFT-16100
FILE: BFT-16100-02(b)PRO.DWG



William H. Gray, Jr.
WILLIAM H. GRAY, JR.
S.C.R.L.S. No.: 22744
NOT VALID UNLESS CRIMPED WITH SEAL

ATLAS
SURVEYING INC.

49 BROWN'S COVE ROAD, SUITE #5
RIDGELAND, SC 29936
PHONE: (843) 645-9277
FAX: (843) 645-9267
E-MAIL: BGRAY@ATLASSURVEYING.COM

LESEMANN & BARKS LLC

ELLIS R. LESEMANN

Direct: (843) 724-5156
erl@lb-lawfirm.com
(Licensed in SC)

ATTORNEYS AND COUNSELORS AT LAW
80 ALEXANDER STREET, SECOND FLOOR
CHARLESTON, SOUTH CAROLINA 29403

TELEPHONE (843) 724-5155

OFFICES

CHARLESTON, SOUTH CAROLINA
ALEXANDRIA, VIRGINIA

May 30, 2014

Thomas C. Taylor
Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head, SC 29928

Re: J & W Corporation of Greenwood

Dear Mr. Taylor:

I have been retained to represent Broad Creek Marina of Hilton Head, LLC ("Landlord") on various issues, including matters relating to J & W Corporation of Greenwood.

Although there is already a pending case and a number of outstanding issues, one item requires our immediate attention. The barge operations conducted by J & W Corporation of Greenwood ("Tenant") have created a dangerous condition as a result of contact between the barge and the existing single pilings that were installed by your client to protect the concrete pier.

From speaking with Mr. Freedman, reviewing incident reports, and conducting a site visit, I have confirmed that barge operations have resulted in property damage. Currently, there are single pilings forcibly wedged at an angle into the concrete pier as a result of the barge colliding into the single pilings. There is visible damage to both the concrete pier and the single pilings (photographs enclosed). Furthermore, when the barge is moored, the physical weight of the barge pushes against the concrete pier as a result of the displaced single pilings. This creates an unsafe condition that could become potentially disastrous if the concrete pier were undermined.

Tenant has not provided notice to Landlord of this damage, which violates Paragraph 26 of the Lease Agreement. More importantly, however, is the fact that continuation of barge operations under these conditions is unacceptable. The Lease Agreement is clear that: (1) barge operations must not interfere with the operations of the marina; (2) Tenant is responsible for the maintenance and repairs that become necessary as a result of barge operations. The following excerpts from the Lease Agreement address these issues:

14. Non-Interference. As stated in paragraph 8 herein, none of the Lease Property shall be used as a parking or staging area for the barge service. All barge traffic shall proceed via the "access" to the barge as provided for in paragraph 9 herein. **The barge operations shall be conducted in a manner so as not to interfere with any and all operations of the marina and other operations on the Property. All barge operations shall be maintained solely by Tenant, including but not limited to, maintenance of the barge ramp.** Workers, passengers, invitees, employees, guests, and all other persons shall not loiter in and around the barge area or on the Property.

* * *

18. Maintenance and Repair. [. . .] **Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair, neat and clean and generally in a manner consistent with the operation of a first class marina.**

See Lease Agreement at Paragraphs 14 and 18 (emphases added).

This letter is a formal notice and demand that Tenant remediate this condition. The existing single pilings are physically inadequate to withstand contact with the barge and provide insufficient protection for the concrete pier. Because this issue arises solely as a result of barge operation, Tenant, at Tenant's expense, must install and maintain adequate structures to prevent further property damage and interference with the concrete pier. Specifically, Tenant needs to several "dolphin pilings" designed to withstand direct contact with the barge. The dolphin pilings must be installed so that they are not in direct physical contact with the concrete pier and will not become wedged against the concrete pier.

Within 10 days of this letter, I ask that you provide the following: (1) a copy of a contract between Tenant and a licensed marine contractor to remedy this condition at Tenant's expense; (2) a diagram indicating the proposed scope of work to be performed; and (3) copies of each insurance policy currently held by Tenant providing coverage for property damage caused by Tenant's barge operations, pursuant to Paragraph 17 of the Lease Agreement. Until this dangerous condition is rectified, Landlord requests that you discontinue barge operations to avoid further damage, interference or interruption to the marina.

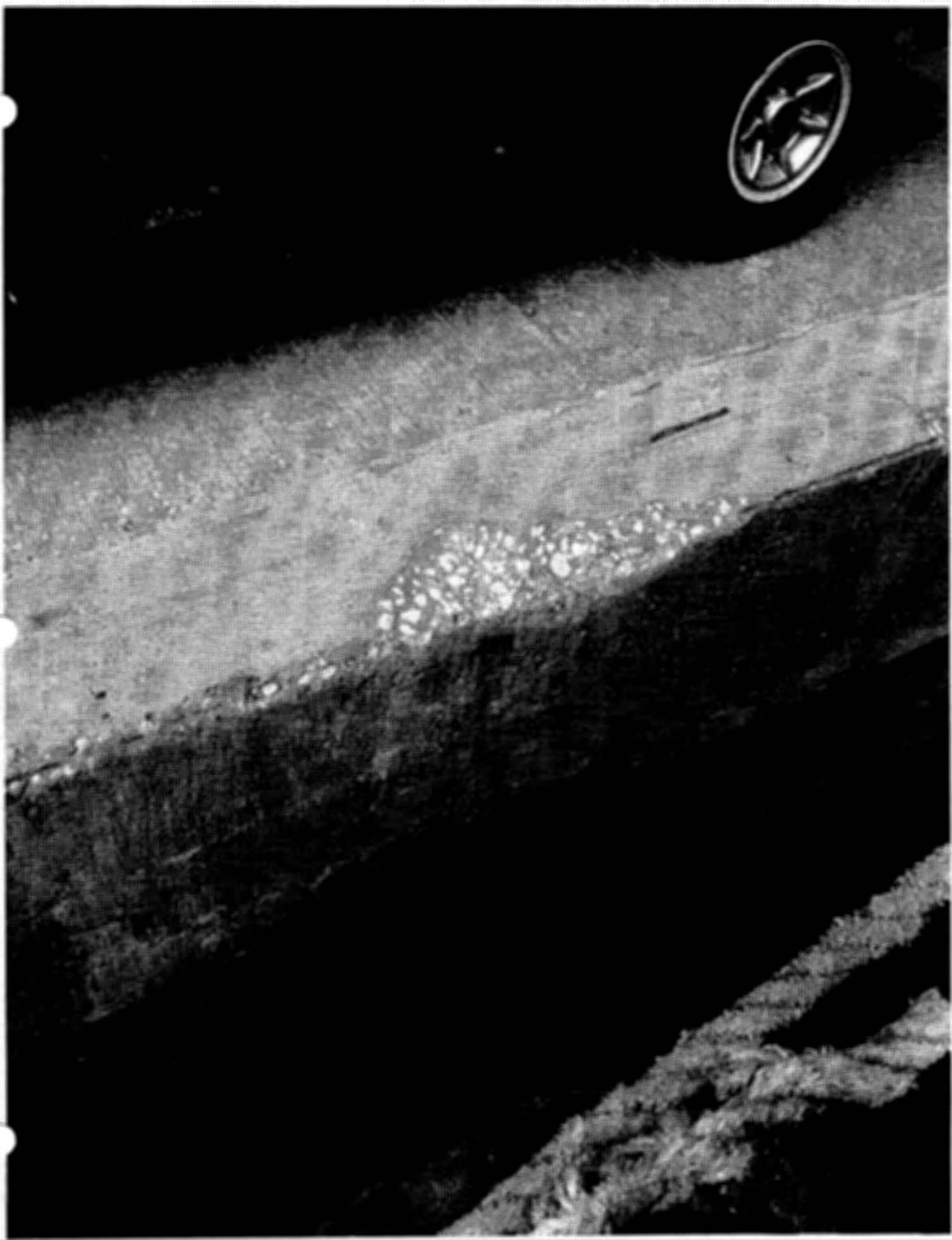
If we do not hear from you within 10 days of this letter and are unable to confirm that adequate measures have been undertaken, we will seek appropriate relief with the court.

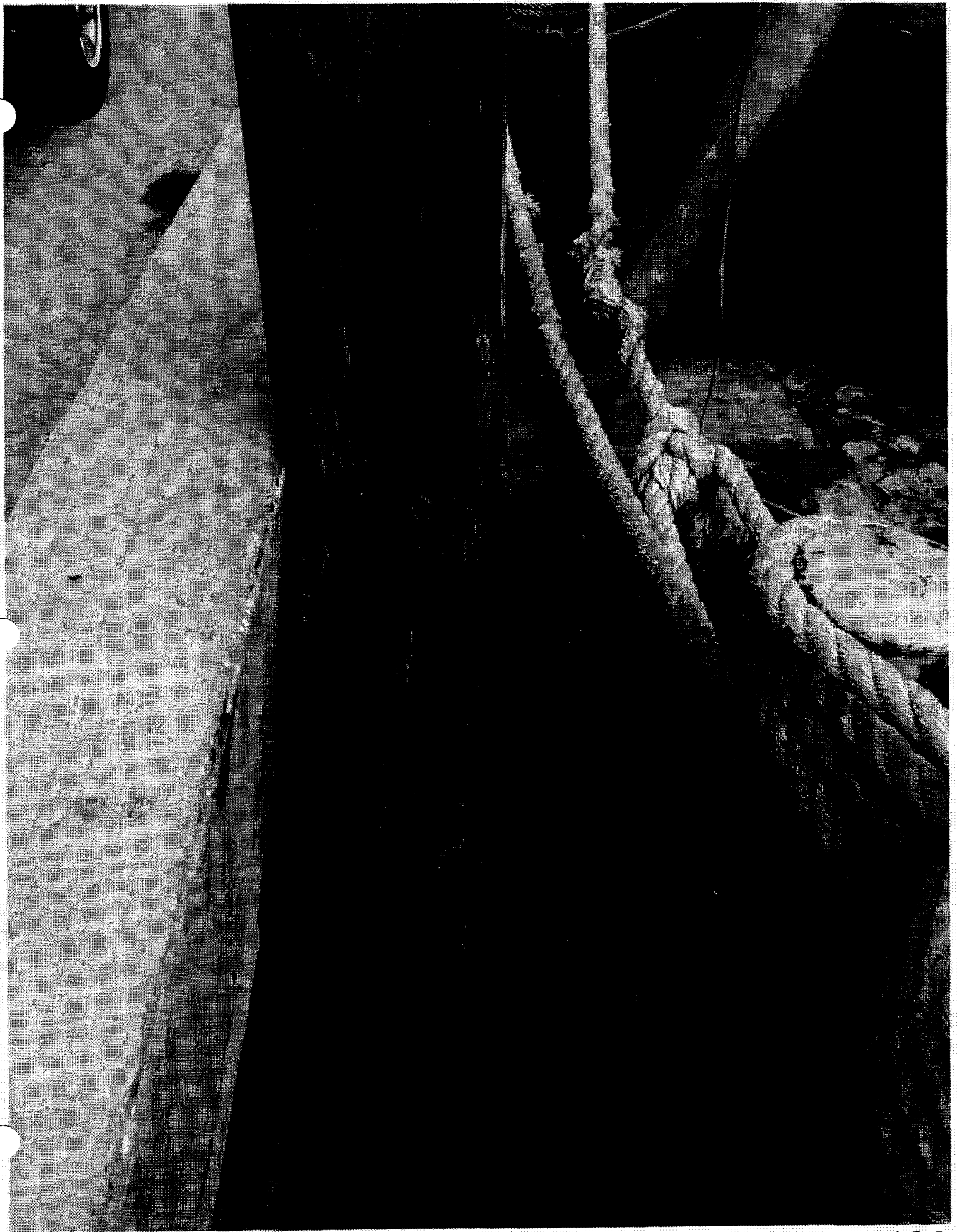
Sincerely,



Ellis Lesemann

ERL:mam
Enclosures







2130

LESEMANN & BARKS LLC

ELLIS R. LESEMANN

Direct: (843) 724-5156
erl@lb-lawfirm.com
(Licensed in SC)

ATTORNEYS AND COUNSELORS AT LAW
80 ALEXANDER STREET, SECOND FLOOR
CHARLESTON, SOUTH CAROLINA 29403

TELEPHONE (843) 724-5155

OFFICES

CHARLESTON, SOUTH CAROLINA
ALEXANDRIA, VIRGINIA

July 30, 2014

VIA ELECTRONIC MAIL AND U.S. MAIL

Thomas C. Taylor
Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head, SC 29928

Re: *J & W Corporation of Greenwood v. Broad Creek Marina of Hilton Head, LLC, Roger M. Freedman, Action Watersports, and Broad Creek Marina, Inc., Civil Action No. 2010-CP-07-5068*

Dear Tom:

As you know, the Lease Agreement dated September 23, 1993 includes a paragraph entitled "Liability Insurance," which provides as follows in relevant part:

17. Liability Insurance. [. . .] Tenant shall keep in full force and effect at Tenant's expense, insurance for personal property, trade fixtures, and property damage as well as environmental coverage and a public liability policy all in form and substance reasonably satisfactory to Landlord, in which Tenant and Landlord shall be named as the Insured with the following minimum coverage: one million dollars (and to be upwardly adjusted yearly to reflect inflation rates). Said policy or policies shall bear endorsements to the effect that the insurer agrees to notify the Landlord not less than thirty (30) days in advance of any modification or cancellation thereof. Should tenant fail to carry such public liability insurance as aforementioned, to be issued, and, in such event, the Tenant agrees to pay the premium for said insurance promptly upon Landlord's demand.

Within seven days of this Letter, and no later than 5:00 pm on Wednesday, August 6, 2014, please provide me with copies of the insurance policies and certificates for all policies currently in effect and obtained by Tenant in compliance with these provisions of the Lease. If you prefer, please inform me of the contact information for Tenant's insurance broker and inform them that they are authorized and directed to provide this information to me, and I will obtain copies of the policies and certificates directly from them.

In addition, please provide the following: (1) if any claim has been submitted to the carrier of the aforementioned policies regarding the recent incident whereby your client ran its vessel aground on an oyster bank, please provide us with all documentation relating to this claim; and (2) all reports, documents and correspondence provided to or received from the United States Coast Guard relating to this incident, as applicable, as well as all reports, documents and correspondence relating to any and all instances when a vessel operated by your client has collided with the concrete pier. These items are also requested no later than 5:00 pm on Wednesday, August 6, 2014.

Based on the terms of the Lease and the underlying circumstances, I trust that there will be no issue in obtaining this information voluntarily. However, if Tenant does not intend to provide any part of this information, please let me know so that we can address the issue accordingly. This information is necessary to confirm that:

- The policies exist and that Tenant is in compliance with Paragraph 17 of the Lease;
- The policies are "in form and substance reasonably satisfactory to Landlord," as required under Paragraph 17 of the Lease;
- The policies are in place and available to address the property damage that has resulted to the concrete pier, which is a claim that Landlord will have to pursue against Tenant; and
- The policies are in place and available to address the property damage that resulted when your client ran its vessel aground on an oyster bank, to the extent that your client seriously intends to pursue a claim for damages against Landlord relating to the recent incident, as Landlord is an additional named insured under the policies, assuming Tenant's compliance with the requirements of the Lease.

I appreciate Tenant's immediate compliance with this request, as the coverage should be in place to provide funds for both your client's damage to the concrete pier and the damage caused when your client operator recently ran its vessel aground on the oyster bank. Please contact me if you have any questions on this issue.

Sincerely,



Ellis R. Lesemann

ERL:mam

cc: Roger Freedman

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

ELLIS R. LESEMAN
EMAIL: nmr@lalawsc.com

418 KING STREET, SUITE 301
CHARLESTON, SOUTH CAROLINA 29403

TELEPHONE (843) 724-5155

DIRECT: (843) 724-5156
WEBSITE: www.lalawsc.com

May 2, 2019

VIA EMAIL AND U.S. MAIL

Thomas C. Taylor, Esq.
Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head, SC 29928

Re: *Renewed Notice of Default Relating to Insurance Requirements of the Lease*

J & W Corporation of Greenwood v. Broad Creek Marina of Hilton Head, LLC, et al., Case No.: 2018-CP-07-1622

Dear Tom:

Prior to the pending trial in this matter, I am writing you on one last occasion relating to lease defaults and delinquencies on the issue of insurance coverage.

As you know, the Tenant has previously failed to correct the lease defaults relating to the addition of the Landlord as a named insured to the applicable policies of insurance.

To check on the status of this ongoing default, we recently obtained copies of your client's insurance policies currently in force by a subpoena issued to Strickland Marine Insurance. Upon review of the materials provided, we confirmed that Tenant has still failed to cause the Landlord to be added as an additional named insured on Tenant's insurance policies for "personal property, trade fixtures, and property damage as well as environmental coverage and a public liability policy."

This failure is a continuing violation of the relevant requirements of the Lease Agreement dated September 23, 1993, which provides as follows in relevant part:

17. Liability Insurance. [. . .] Tenant shall keep in full force and effect at Tenant's expense, insurance for personal property, trade fixtures, and property damage as well as environmental coverage and a public liability policy all in form and substance reasonably satisfactory to Landlord, **in which Tenant and Landlord**

shall be named as the Insured with the following minimum coverage: one million dollars (and to be upwardly adjusted yearly to reflect inflation rates). Said policy or policies shall bear endorsements to the effect that the insurer agrees to notify the Landlord not less than thirty (30) days in advance of any modification or cancellation thereof. Should tenant fail to carry such public liability insurance as aforementioned, to be issued, and, in such event, the Tenant agrees to pay the premium for said insurance promptly upon Landlord's demand.

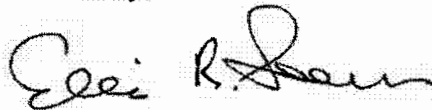
See Lease at ¶ 17. Addressing this failure is one of the reasons why it has been necessary for the Landlord to present claims against the Tenant and incur attorney's fees in this matter. We will seek recovery of all fees and expenses incurred through a post-trial motion.

As a separate matter, the coverage limits on the existing policies are also below what is required under the Lease. As noted in the provision cited above, the Lease includes an escalation clause calling for the minimum coverage amounts "to be upwardly adjusted yearly to reflect inflation rates." *Id.* The policies that we have received from Strickland Marine Insurance Agency all show either a combined single limit or a per occurrence limit of \$1,000,000.00.

This is an additional default under the Lease, as Tenant has failed to adjust the coverage limits yearly for inflation. The most widely accepted measure of inflation is the Consumer Price Index ("CPI") published by the U.S. Bureau of Labor Statistics. Using the inflation calculator available at https://www.bls.gov/data/inflation_calculator.htm, the cumulative rate of inflation from September 1993 to September 2018 would require the minimum coverage limits to be increased to at least \$1,739,758.79, reflecting a cumulative inflation rate of 73.9%.

Prior to trial, please confirm that your client has added the Landlord as an additional named insured on Tenant's insurance policies for "personal property, trade fixtures, and property damage as well as environmental coverage and a public liability policy" and that Tenant has updated the minimum coverages of the policies so that they comply with the 1993 Lease.

Sincerely,



Ellis R. Lesemann

ERL:st

cc: Roger Freedman
Nate Jones

RECEIVED

Dec 13 2022

SC Court of Appeals

CERTIFICATION

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 1, 2021

/s/Thomas C. Taylor, Esq.

Thomas C. Taylor

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