

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Circuit Court for the Eleventh Judicial Circuit

Debra R. McCaslin, Circuit Court Judge

App. Case No. 2022-000597

RECEIVED

JUN 02 2023

SC Court of Appeals

Suzan Garland.....Respondent,

vs.

Robert Cade and Christy Cade..... Appellants.

RECORD ON APPEAL – VOLUME 2

S. Jahue Moore, SC Bar #4063
Moore Bradley Myers Law Firm, P.A.
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Jake@mbmlawsc.com
Attorney for Appellants

H. Freeman Belser
1325 Park Street, Suite 300
Columbia, SC 29201
(803) 929-0096
Attorney for Respondent Suzan Garland

Michal Kalwajtys
3710 Landmark Drive, Suite 400
Columbia, SC 29204
(803) 343-3872
Attorneys for Respondent Roger Singleton

INDEX

VOLUME 1

ORDERS

1. Order of the Honorable Debra R. McCaslin dated April 22, 2022 1
2. Form 4 Order of the Honorable Debra R. McCaslin dated April 4, 2022 6
3. Order of the Honorable H. Steven DeBerry, IV dated November 4, 2021 9

PLEADINGS

4. Summons and Complaint dated April 11, 2019 12
5. Answer dated May 3, 2019 17
6. Amended Summons and Complaint dated January 10, 2020 19
7. Defendant Roger Singleton's Answer to Plaintiff's Complaint dated
January 22, 2020 24
8. Answer to Amended Complaint dated January 23, 2020 27
9. Third Party Summons and Amended Answer and Third Party Complaint
Against Roger Singleton dated December 6, 2021 28
10. Defendant Roger Singleton's Answer to Third Party Plaintiff's
Complaint dated January 6, 2022.....33
11. Proof of ADR or Exemption dated July 26, 2021 37
12. Notice of Motion to Add Claim for Indemnification dated July 22, 2021 39
13. Defendant Roger Singleton's and Plaintiff Suzan Garland's Motion for
Court Approval of Settlement dated October 22, 2021 40
14. Motion to Supplement dated October 25, 2021 43
15. Defendant Roger Singleton's Memorandum in Opposition to Defendant Robert and
Christy Cades' Motion to Add Claims dated October 29, 2021 45
16. Verdict dated April 1, 2022 52

17. Notice of Motion and Motion for New Trial, New Trial NISI and Judgment Notwithstanding the Verdict dated April 6, 2022	54
18. Notice of Appeal dated May 4, 2022	60
19. Plaintiff's Second Supplemental Discovery Response dated December 30, 2020	62

TRANSCRIPTS

20. Transcript of Record March 28-31, 2022 & April 1, 2022; Page 1, Line 1 – Page 405, Line 25	70

VOLUME 2

TRANSCRIPTS

20. Transcript of Record March 28-31, 2022 & April 1, 2022; Page 406, Line 1 – 698, Line 25	475
21. Shearer Video Deposition Transcript (Played to Jury)	768

OTHER

21. Court's Exhibits 1-5	794

VOLUME 3

OTHER

22. Court's Exhibits 6-7.....	943
23. Plaintiff's Exhibits 1 – 12	1003
24. Defendant's Exhibits 1 – 33	1198

I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material designated for this appeal.

s/S. Jahue Moore
S. Jahue Moore, SC Bar #4063
Moore Bradley Myers Law Firm, P.A.
1700 Sunset Boulevard (29169)
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Jake@mbmlawsc.com
Attorney for Appellant

1 THE COURT: All right. Are we ready?

2 MR. MOORE: Yes, ma'am. We're ready.

3 THE COURT: Let's bring the jury in.

4 (Whereupon, the jury return to the courtroom at
5 10:32 AM.)

6 THE COURT: Madam Forelady, are we ready?

7 FOREPERSON: We're ready.

8 THE COURT: Okay.

9 All right. Mr. Moore, you can call your first
10 witness.

11 MR. MOORE: Your Honor, we'd like to introduce
12 the deposition of Paul Shearer. We have it cued up
13 and I believe ready to go.

14 THE COURT: Okay.

15 All right. Before we do that, let me read my
16 deposition thing.

17 All right. Let me tell the jury you're fixing to
18 hear testimony by a witness, but it's by deposition.
19 And it's done by a manner that's prescribed by law and
20 you will consider the testimony from that deposition
21 just as if the witness were here and upon the stand
22 testifying and you will assess it -- the testimony,
23 the same credibility that I explained to you earlier.
24 It's for you to consider and give it the weight that
25 you feel is necessary.

1 You can go ahead.

2 (Defendant's Exhibit Number 27 and 28 was marked
3 and admitted into evidence.)

4 (Whereupon, the deposition of Paul Shearer, Part 1,
5 was played.)

6 THE COURT: Mr. Moore, can you pause this just
7 for one moment?

8 (Whereupon, the video deposition was paused.)

9 THE COURT: I apologize, but I need to excuse the
10 jury for just one second.

11 Y'all can take a five-minute break and come right
12 back. We'll wait on you.

13 (Whereupon, the jury retires to the jury room at
14 11:24 AM.)

15 THE COURT: I apologize, but one of them motioned
16 to me that they needed to take a quick break, so when
17 that happens I have no choice.

18 MR. MOORE: I'll join them.

19 (Recess taken at 11:25 AM.)

20 (Back on the record at 11:33 AM.)

21 BAILIFF: Court is back in session. Please keep
22 your seats.

23 THE COURT: Thank you.

24 Okay. Well, let's bring the jury back in. I've
25 ordered them pizza, so hopefully they can have a short

1 lunch because I really would -- we've got two more
2 witnesses?

3 MR. MOORE: We've got maybe three more witnesses.
4 Maybe two. Probably three. Three more witnesses.

5 THE COURT: All right. I'd like to get through
6 this today.

7 (Whereupon, the jury return to the courtroom at
8 11:38 AM.)

9 THE COURT: Madam Forelady, are you ready?

10 FOREPERSON: We're ready.

11 THE COURT: Okay.

12 (Whereupon, the deposition of Paul Sheer, Part 1,
13 continued playing.)

14 (Whereupon, the deposition of Paul Sheer, Part 1,
15 concluded.)

16 THE COURT: All right. I do have to run to this
17 thing for like five minutes. Y'all are having pizza
18 for lunch. They ordered pizza. It will be here at
19 1:00.

20 Let's go ahead and finish the thirty minutes,
21 then we'll take a break, I'll run over there right
22 quick and we'll come back in and see what we can get
23 -- I'm determined we're gonna finish this case today.

24 Let's go ahead.

25 MR. MOORE: Thank you, Your Honor.

1 (Whereupon, the deposition of Paul Shearer, Part 2,
2 was played.)

3 (Whereupon, the deposition of Paul Shearer, Part 2,
4 concluded.)

5 THE COURT: All right. Mr. Moore, let me ask, is
6 our next witness short, long?

7 MR. MOORE: The next witness will be probably
8 fifteen to twenty minutes.

9 THE COURT: I don't want them to eat cold pizza.

10 MR. MOORE: I don't either.

11 THE COURT: So it's 12:40. Your lunch will be here
12 at 12:45 they tell me. I kind of wanted to do short so
13 we could keep going.

14 Let me ask, is there anybody on the jury -- everybody
15 okay with working after five today?

16 Okay. Thank you.

17 THE CLERK: One on the front says no.

18 THE COURT: What do you -- is it childcare?

19 JUROR: (Nods head.)

20 THE COURT: Is there any way you could make
21 arrangements?

22 JUROR: I could ask my mom.

23 THE COURT: Okay. If you could do that for us,
24 please.

25 MR. MOORE: Judge, we have -- Callee and I represent

1 Lexington School District 2 and have a critical board
2 meeting this evening, I believe, at seven. Our board
3 meeting is at seven tonight and we've been asked to be
4 there a moment earlier to speak to the superintendent
5 about a pressing matter dealing with the schools.

6 THE COURT: Okay.

7 All right. Well, then we'll try to go as late as
8 we can. I'd like to at least get through the witnesses
9 and charge. I've got to be somewhere in the morning
10 myself and I need to get this case heard.

11 MR. MOORE: I --

12 THE COURT: So let's be back here at 1:30, no later
13 than 1:40, and let's start back again, okay?

14 All right. Thank you.

15 If you could check for me and let me know.

16 (Whereupon, the jury was excused for lunch at
17 12:42 PM.)

18 THE COURT: All right. We'll be back at 1:40.

19 (Whereupon, a luncheon recess was taken at
20 12:43 PM.)

21 (Back on the record at 1:50 PM.)

22 THE COURT: All right. Are y'all ready to bring
23 the jury in?

24 MR. MOORE: Yes, ma'am.

25 MR. BELSER: Yes, ma'am.

1 MR. DOUGALL: Yes, ma'am.

2 BAILIFF: Are you ready for the jury, ma'am?

3 THE COURT: Yes, please.

4 (Whereupon, the jury returns to the courtroom at
5 1:52 PM.)

6 THE COURT: All right. Madam Forelady, are we
7 ready to continue?

8 FOREPERSON: We are, Your Honor.

9 THE COURT: Okay. I hope y'all enjoyed lunch.

10 Mr. Moore, do you want to call your next witness?

11 MR. MOORE: May it please, Your Honor, I'd like to
12 call Roger Singleton.

13 THE COURT: Sure.

14 (Whereupon, Roger Singleton was duly sworn by the
15 Clerk of Court.)

16 THE CLERK: Have a seat and state your full name
17 for the record, please.

18 THE WITNESS: Roger Singleton.

19 ROGER SINGLETON,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MOORE:

23 Q. Roger, how old are you?

24 A. 52.

25 Q. Do you do stump removal, clearing, grading, pond and

1 dam work?

2 A. Yes, sir.

3 Q. How long have you been doing that?

4 A. I've been in heavy construction most of my life off
5 and on.

6 Q. Let me ask you this. If you were going to pay
7 somebody to move a track hoe, a couple of bulldozers and
8 some pads twenty miles, do you have any idea what that
9 would cost in your business?

10 MR. BELSER: Your Honor, objection.

11 Can we approach?

12 THE COURT: Sure.

13 (Proceedings held at the bench; not reported.

14 BY MR. MOORE:

15 Q. Roger, you're familiar with the standard charges in
16 the business to move heavy equipment?

17 A. I'm -- I have a hard time hearing. I'm sorry.

18 Q. All right. I'm going to get closer.

19 A. Thank you so much.

20 Q. I think I have -- it's been stipulated that I can
21 speak fairly loud.

22 A. Yes, sir, you can.

23 Q. So I'll try to speak up even louder. How about that?

24 A. Thank you.

25 Q. Are you familiar with the market rates of what it

1 costs to transport heavy equipment?

2 A. Yes, sir.

3 Q. Would it ever cost \$10,000 to haul that much stuff
4 twenty miles?

5 A. No, sir.

6 Q. What would -- what would you expect to pay in the
7 market for that sort of transportation?

8 A. I can tell you what I pay.

9 Q. What do you pay? That's what I want to know.

10 A. I've got my track hoe that's almost 60,000 pounds.
11 It cost me \$250 to move it from Robert's house fifty or
12 sixty miles to St. Matthews.

13 Q. All right. Now when you heard the number \$10,000 to
14 move this stuff twenty miles, I believe you told me you
15 wanted that business?

16 A. Yes, sir. Yes.

17 Q. How reasonable is that sort of number?

18 A. It's not reasonable at all.

19 Q. All right.

20 A. Unless they were moving thirty pieces of equipment, I
21 -- I couldn't see it.

22 Q. All right. And how long have you been working with
23 heavy equipment?

24 A. Off and on most of my adult life.

25 Q. How much heavy equipment do you actually own?

1 A. Right now I have two track hoes. One that I think is
2 56,000, the other one is 63,000 pounds. I've got a track
3 loader. I think it's 25,000 pounds. I have a bulldozer
4 that's right at 30. I've got a skid steer and I might be
5 gonna buy a mini excavator here shortly.

6 Q. Did you do any work on the Cade's property?

7 A. Yes, sir.

8 Q. Did you build either of the two buildings?

9 A. No, sir.

10 Q. They had separate permits as far as you know?

11 A. As far as I know.

12 Q. Did you cut the timber?

13 A. I did not.

14 Q. What work did you -- were you actually hired to do on
15 the Cades' property?

16 A. Originally I was -- Mr. Cade asked me if I would come
17 work in his pond a little bit to try to make it a little
18 bit deeper and shore up the sides.

19 Q. Did it need it?

20 A. Yes, sir.

21 Q. What was wrong with that pond that caused it to need
22 work?

23 A. The pond or the dam?

24 Q. The dam and the pond.

25 A. Okay. The pond was eight feet-ish -- six or eight

1 feet low. There was very little water there. What was
2 there was covered in vegetation. The -- Mr. Cade didn't
3 want it to be as big as it was gonna be if we had just
4 tried to bring the water up, so we -- we shored it up and
5 made the pond smaller. Later on we found -- after the
6 trees were gone looking, at the backside of the dam we saw
7 how bad it was leaking and a very unsafe condition.

8 Q. Why do you say that the dam was in an unsafe
9 condition?

10 A. It had trees larger than -- about the size of the jury
11 box growing in it. When you have something like that, the
12 roots grow through and they'll create small capillaries for
13 the water to seep past and go out the other side. What
14 happens over time is those capillaries will get larger and
15 larger and eventually the dam with completely blow out.

16 Q. So the dam when you -- when you got into it and saw
17 it, the dam was unsafe?

18 A. Correct.

19 Q. Did you do the work on the dam to make it safe?

20 A. Yes, sir.

21 Q. What did you have -- how much were you paid to correct
22 the dam?

23 A. I do not remember.

24 Q. Would it have been thousands or hundreds of dollars?

25 A. It would have been thousands.

1 Q. Can you tell me did you do the work to repair the dam
2 and the pond before or after the hurricane?

3 A. Before the hurricane.

4 Q. Tell me what it is you actually did to the dam to make
5 it safe.

6 A. We had to replace the spillway and the pipe. We had
7 to re-core the entire dam where it was leaking. You
8 actually have to dig down. In some places to get to solid
9 ground, I had to dig over 20 feet deep, so you have to dig
10 all the -- the --

11 Q. Muck?

12 A. For -- the muck or -- or jell-o or pudding is
13 basically what it was. You have to get all of that out
14 and you have to cut through all the capillaries and then
15 you have to come back with clean dry dirt over the top of
16 that and compact it.

17 Q. Did you do all of that?

18 A. Yes, sir.

19 Q. This -- this pond that is on the Cades' property, is
20 it rain-fed, stream-fed or spring-fed?

21 A. It's a watershed, which means it's basically rain-fed.
22 There may be a spring or two, but I'd say 90 percent of the
23 water is from rain.

24 Q. So what happens is it rains, the water from other
25 people's property runs into the pond and the pond is full.

1 When the pond's full, it goes to the spillway and runs out?

2 A. Correct.

3 Q. Did you build any type of a filtration system into the
4 dam when you re-cored it?

5 A. The top of the inlet?

6 Q. Right.

7 A. The top of the inlet for the pipes that go down and go
8 through the pond does have a trash rack on top.

9 Q. And that's to do what?

10 A. To keep the -- any trash, limbs or any kind of debris
11 from going downstream and possibly clogging the pipe and
12 creating more problems later on.

13 Q. All right. Now the dam work that you did after you
14 put in the filter on the inlet valve and after you re-cored
15 it and after you filled it back up with dirt and got it in
16 an appropriate condition, what did you do to the face of
17 the dam, if anything, in order to stabilize it?

18 A. Mr. Cade had somebody come in and do hydroseeding.

19 Q. Would you explain to the jury what hydroseeding is?

20 A. Hydroseeding is basically a mix of seed, fertilizer
21 and glue. When you put it down -- you've probably seen it
22 on the side of interstates. It's a green -- it makes the
23 dirt look green, but it actually glues the seed, the
24 fertilizer and the ground together to keep it from washing.

25 Q. And did you seed the dam after the hurricane?

1 A. Yes, sir.

2 Q. What, if any, evidence was there that the hydroseeding

3 hadn't worked?

4 A. There wasn't.

5 Q. Was the dam stable during the hurricane?

6 A. Absolutely.

7 Q. Did any of the dirt on the dam wash off during the

8 hurricane?

9 A. If it was, it was very minimal.

10 Q. All right. If you hadn't done this work before the

11 hurricane, what would you have expected that dam to do?

12 A. Break.

13 Q. Why?

14 A. Because it was unsafe. When I got into the dam is

15 when I really discovered how unsafe it really was. It was

16 basically jell-o.

17 Q. If that hurricane had come through before you did the

18 work, it would have burst?

19 A. I have no doubt.

20 Q. And the dirt and water from the dam and -- the dirt

21 and water in the dam would have gone where?

22 A. It would have gone downstream.

23 Q. All right. Now we've talked about something called a

24 spillway.

25 A. Yes, sir.

1 Q. Which is where the water collects and then runs
2 across, right?

3 A. Yes, sir. It's where -- the spillway is where the
4 water exits the pond.

5 Q. And the spillway, would you explain to the jury how
6 the spillway works?

7 A. In this case, we installed -- I believe it was either
8 a -- I think it was a 10-inch pipe with a T on the pond
9 side. The T would continue forward to a gate valve where
10 the water could be -- it could be opened and the water
11 could be lowered. Before that at the T there's also a
12 stand pipe that comes up. The stand pipe is brought up
13 and trimmed to wherever the maximum level of the water is
14 going to be and then the trash rack installed on top of it.

15 Q. When the water comes out of the dam, does it follow
16 the natural flow downstream?

17 A. Yes, sir.

18 Q. And would that be the ordinary and natural flow where
19 it's been going for years?

20 A. To my knowledge, yes, sir.

21 Q. When the water comes out of the spillway into the
22 natural streambed, is it clean water or is it trashy water?

23 A. Clean water.

24 Q. Why?

25 A. Because it's coming off the top of the dam and it has

1 a trash rack on top.

2 Q. The sand -- any silt in it goes down and the water
3 stays up?

4 A. Correct.

5 Q. So the water getting into the spillway is all clean
6 water?

7 A. Correct. Yes, sir.

8 Q. Is there any way that there's any major siltation
9 coming out of the spillway of the dam?

10 A. Not -- not that I've been able to determine, no, sir.

11 Q. Well, if the laws of physics --

12 A. I mean, it's all --

13 Q. Go ahead.

14 A. I'm sorry. I mean, if you've got -- you have clean
15 water going in, you're gonna have clean water coming out.

16 Q. And do you have clean water going in?

17 A. Yes, sir.

18 Q. And how do you know that?

19 A. Because I did the work and I've seen it.

20 Q. All right.

21 A. And we instilled -- like I said, we installed the
22 trash rack as well.

23 Q. So whatever is coming out of the pond is not dumping
24 silt on Ms. Garland's property?

25 A. No, sir.

1 Q. Because it can't?

2 A. It cannot, no, sir.

3 Q. When water comes out of that pond below the pond where
4 the water comes out, did you do any excavation there?

5 A. I had to do some excavation there because I had to put
6 the pipe in.

7 Q. Right.

8 A. Other than that, no, sir.

9 Q. All right. So then the -- the actual land except for
10 where you put the pipe in, that's a small area, right?

11 A. Correct.

12 Q. Except for that, did it stay normal and vegetated?

13 A. Yes, sir.

14 Q. Is that actually a wetlands area that the water dumps
15 into?

16 A. I don't know if it's actually classified as a
17 wetlands, but it does -- it does stay wet. Yes, sir.

18 Q. Describe for me what the land looks like between the
19 spillway exit and when it gets to the pipe on Mr. Shearer's
20 property. If it does. What -- what does the land -- hold
21 on. That's a bad question. From the time that clean water
22 leaves the dam until it gets to Mr. Shearer's property,
23 what does it pass through?

24 A. It passes -- it passes through a swampy area, a swampy
25 -- basically wetland. It's several poplar trees, there

1 might be some oaks in there, there's not any pines in there
2 I don't think. The ground is covered in leaves and debris.

3 Q. Did you do anything to the pond that would have
4 increased the flow or volume of water?

5 A. Just the opposite. No, sir, I did not. What I did
6 was the opposite.

7 Q. Tell me what you mean that it was the opposite.

8 A. Before there was so much water coming out of the dam
9 that there was actually a steady -- steady stream. From
10 the beginning at the toe of the dam the water was coming
11 from the sides on the back of the dam and coming down into
12 a central area in the -- in the buffer that we left and
13 then from there it went on down. It was -- that was one of
14 the reasons why it was so necessary to do something with
15 the dam because of all of the water that was coming out of
16 it.

17 Q. So how is -- the work that you did to the dam, how did
18 it reduce the volume and the flow that was going into the
19 wetlands?

20 A. It stopped it. It stopped it until the pond got full.

21 Q. So the only water now that can come out of the dam is
22 coming out of the spillway?

23 A. Correct.

24 Q. And it's clean?

25 A. Yes.

- 1 Q. And goes into wetlands?
- 2 A. Yes, sir.
- 3 Q. From the time that water goes in the wetlands until it
- 4 gets to Mr. Shearer's property, how great a distance is it?
- 5 A. To Mr. Shearer's property?
- 6 Q. To Mr. Shearer's property line, how far is it?
- 7 A. I'm thinking it's several hundred yard -- several
- 8 hundred feet.
- 9 Q. And then Mr. Shearer's property would be how far away
- 10 from Davis Road?
- 11 A. I'm not a hundred percent on that. I think it's a
- 12 couple of hundred feet.
- 13 Q. If something was wrong with the dam, you would be the
- 14 one responsible for having done the work?
- 15 A. Sure.
- 16 Q. Did you do the work correctly?
- 17 A. I believe I did, yes, sir.
- 18 Q. Now we get back to the -- the trees. Can you give me
- 19 an estimate of how many trees were harvested?
- 20 A. I cannot.
- 21 Q. On farmlands is that something that is done from time
- 22 to time?
- 23 A. Harvesting trees?
- 24 Q. Yes.
- 25 A. Yes, sir.

1 Q. And when the trees were sold, were they actually
2 harvested and sold to somebody else to your knowledge?

3 A. Yes, sir.

4 Q. How many acres were you asked to clear?

5 A. I don't know how many acres we actually cleared. I
6 just kept going until they told me we were done.

7 Q. And were you the person paid to do the work?

8 A. Yes, sir.

9 Q. Now in your business and what you know, would a -- any
10 type of permit have been necessary to do that work?

11 A. No, sir, because at the time it was listed as
12 agricultural property. Agricultural property does not
13 require any sort of permit to cut and dig stumps.

14 Q. When you are working on agricultural property, do you
15 know of any rule, regulation or anything else that requires
16 any type of a silt fence?

17 A. Not on agricultural property, no, sir.

18 Q. The -- would you please just describe for me the
19 actual work that you did in -- on the land. We know what
20 you did with the pond. You fixed it. What did you do with
21 the land?

22 A. When the loggers left, the mess that was left was
23 epic. Limbs, logs laying everywhere. You couldn't -- it
24 was -- it looked like a tornado had come through and just
25 chewed up a bunch of trees and spit them out, so what I did

1 is we got in and started raking all the limbs and logs,
2 digging the stumps. I would work in sections, then I'd get
3 down and I'd go back and I'd cover the holes and continue
4 to work down, and then when we got enough down is when we
5 went back and -- actually Mr. Cade went and bought the seed
6 and I helped him put it out.

7 Q. Was the property seeded before the hurricane?

8 A. Yes, sir.

9 Q. Was there actually grass growing up there before the
10 hurricane?

11 A. Yes, sir, there was grass.

12 Q. Was there full heavy standing grass before the
13 hurricane?

14 A. It wasn't -- I wouldn't say heavy, no, sir.

15 Q. But there was grass there?

16 A. It was -- it was actually a crop, but, yes, sir.

17 Q. What was Mr. Cade's intent to do with the land that
18 you had graded and stumped?

19 A. Mr. Cade loves cows and that was his intention. He
20 wanted to -- he wanted to have cows out there.

21 Q. Would that have been a good place for them?

22 A. Absolutely. Absolutely.

23 Q. The land in question, was it flat? Was it hilly? How
24 was that land?

25 A. A soft slope.

1 Q. Tell me what you mean a soft slope.

2 A. I wouldn't call it a hill. The -- from Fish Hatchery
3 Road the ground had a soft steady slope going -- going down
4 to the buffer area that was left.

5 Q. Tell me about the buffer area. Why was there a buffer
6 area left?

7 A. The buffer was left by -- actually by the loggers
8 other than a -- for the lack of a better word, a road they
9 had to put on -- they had to put through it on the back
10 side of the dam through all the -- the marsh and the swamp.
11 They had -- they used -- instead of crane mats, they used
12 other trees, smaller trees and debris that was there, and
13 that's what they drove on. Other than that, it wasn't
14 touched.

15 Q. The buffer that you're talking about, does it adjoin
16 Mr. Shearer's property?

17 A. Yes, sir.

18 Q. The whole length? Except for the wetlands.

19 A. On that side where we left the buffer, I believe it
20 is. I think he had since sold a piece of something to the
21 Mark guy that used to live there, but it does -- it did
22 join his property all the way down.

23 Q. How was the -- how was the -- we know he had trees on
24 it. How about the land underneath, was it vegetated or was
25 it stripped?

1 A. There wasn't anything there. The trees that were
2 there was so thick the sunlight couldn't get through to
3 grow anything else. The only thing that was there was pine
4 straw and leaves. The pine straw was very acidic so that
5 when we took all the limbs and everything else off, the
6 pine straw came off with it to reduce the amount of lime
7 that we were gonna have to use to neutralize the acid.

8 Q. How thick was that buffer?

9 A. How thick?

10 Q. Yeah. I mean, how -- from the -- from the area --
11 from Mr. Shearer's back into Robert and Christy's property,
12 how deep was the buffer?

13 A. The buffer changed. After Mr. Shearer's house, the
14 buffer got much deeper. It was 30 to 50 feet right behind
15 his house, but after his house when -- on the left side of
16 his house toward the dam, the buffer got much, much deeper,
17 which is where the water was gonna go. It's still hundreds
18 of feet.

19 Q. Okay. Now you have heard the amount of dirt that is
20 claimed to be in Ms. Garland's pond. I believe it was some
21 1700 cubic yards. You've heard that number?

22 A. I've heard that number, yes, sir.

23 Q. How many dump truck loads would 1700 cubic yards of
24 dirt be?

25 A. I would say between two and three hundred tri axel

1 trucks.

2 Q. That's big trucks?

3 A. Large single -- single piece dump trucks, yes, sir.

4 Q. If that much dirt had left the Cade's property, do you
5 believe you would have noticed it?

6 A. Yes, sir.

7 Q. Why do you say that?

8 A. 1700 yards of dirt is -- would have left a Grand
9 Canyon in the -- in the field that we were working in or
10 had done work in. It would have -- you wouldn't have been
11 able to put a cow out there if that much dirt had been
12 removed. You would have -- you would have ditches and
13 holes and it's just -- it's not possible.

14 Q. Is it physically possible that that much dirt could
15 have been moved by that hurricane?

16 MR. BELSER: Objection, Your Honor. It's getting
17 into opinion here.

18 MR. MOORE: That's all right.

19 THE COURT: Withdraw it?

20 MR. MOORE: I'll withdraw it.

21 BY MR. MOORE:

22 Q. When dirt erodes to the extent of 1700 cubic yards,
23 what sort of traces does that leave behind?

24 A. Ditches and ravines.

25 Q. After the hurricane, were there any ditches or ravines

1 that you saw?

2 A. There were no ditches or ravines. There might have
3 been a little bit of the surface sand that had gone and
4 moved a little way and recollected itself, but there were
5 no ditches, no, sir.

6 Q. Did you have occasion to look at the property after
7 the hurricane?

8 A. Yes, sir.

9 Q. Did the hurricane occur while you were still in the
10 process of taking out the stumps?

11 A. I don't remember if I was completely finished with the
12 stumps or not. There were some other things that we were
13 doing as well. But I'm -- I'm 90 percent certain that that
14 side was done and it had been planted. I know it had been
15 planted.

16 Q. And you were the person responsible for doing all of
17 the work on the dam?

18 A. Yes, sir.

19 Q. And you were the person responsible for doing all of
20 the work on the site?

21 A. On the -- I'm sorry?

22 Q. On the site.

23 MR. DOUGALL: Object, Your Honor. Contrary to the
24 evidence, he did not clear the trees, so he couldn't have
25 done all the work on the site.

1 THE COURT: Are you gonna withdraw that question?

2 MR. MOORE: I will.

3 THE COURT: Please do not answer.

4 BY MR. MOORE:

5 Q. Except for building the buildings and clearing the
6 trees, you did all the work on the site?

7 A. Yes, sir.

8 Q. Would the Cades have paid you tens of thousands or
9 over a hundred thousand dollars for the work you did?

10 A. They paid me over a hundred thousand dollars for the
11 work I did.

12 Q. Of the work that was done out there day in and day
13 out, how much of it did you actually do yourself?

14 A. I was there almost every day myself.

15 Q. Were you actually driving machines?

16 A. Yes, sir.

17 Q. How well do you know this piece of land?

18 A. I know it very well.

19 Q. How long did it take you to re-core the dam, re -- to
20 stabilize the dam, to remove the trash that had been left
21 by the loggers and to take the stumps and so forth out?

22 A. That part took a month or -- a couple of months. I
23 don't remember exactly. We were doing other things as
24 well, so.

25 Q. Well, why did it take so long?

- 1 A. I don't know.
- 2 Q. It was a lot of work?
- 3 A. It was a lot of work. It was a lot of stumps. There
- 4 were thousands upon thousands of stumps that had to be dug,
- 5 piled, loaded, trucked.
- 6 Q. Were there really thousands?
- 7 A. Yes, sir.
- 8 Q. Okay. When you got the -- by the time the hurricane
- 9 hit, can you tell me the actual condition -- as best you
- 10 can the actual condition of the Cades' land?
- 11 A. I don't -- the condition?
- 12 Q. Well, start -- start with the dam. By the time the
- 13 hurricane hit, what was the dam like?
- 14 A. The dam was completed and safe.
- 15 Q. And how about the actual land between the dam and
- 16 Mr. Shearer's property?
- 17 A. It had been stumped, cleaned up and planted.
- 18 Q. The holes had been filled by that time?
- 19 A. Yes, sir.
- 20 Q. So you'd been about finished when the hurricane hit?
- 21 A. I was getting real close, yes, sir.
- 22 Q. Now after the hurricane hit, did you come out and look
- 23 at what was left?
- 24 A. Yes, sir.
- 25 Q. How much water had been out there?

1 A. There had been a lot of water out there.

2 Q. Were you able to look at the berm on the other side
3 of Davis Drive?

4 A. No, sir.

5 Q. Are you familiar with Davis Drive?

6 A. I am.

7 Q. Is it a dirt road or is it a paved road?

8 A. It's a dirt road made of sand clay with some pockets
9 of loose sand.

10 Q. Does it slant towards or away from Mr. Shearer's
11 property?

12 A. If memory serves me right, it does slant toward
13 Mr. Shearer's property.

14 Q. From what you know, is there any way the work you did
15 would have silted Ms. Garland's pond?

16 A. No, sir.

17 Q. Why?

18 A. Because of the buffer that we left there in good faith
19 to -- to keep anything like that from happening.

20 Q. But you also saw it, right?

21 A. I saw it. I was there during the hurricanes. I was
22 there during the rain. Mr. Cade and I both was out there.

23 Q. When you were looking at the rain, was there any
24 evidence that giant amounts of silt were washing away?

25 A. No, sir.

1 Q. If it had been doing it, would you have seen it?

2 A. Yes, sir.

3 Q. Now you said that there was some loose sand that did
4 move into the wetlands; is that right?

5 A. It moved in -- in different areas. I mean, the field
6 that we're talking about is on the right side of the Cades'
7 driveway. Water -- water runs all different kind of ways
8 up there and you can see little trails of -- of sand.

9 Q. Well, that was on the upper side of the Cades'
10 property, right?

11 A. The -- well, on the right side of the driveway, yes,
12 sir. The whole -- the whole thing. And there was -- I
13 don't know if any actually made it down to the -- to the
14 buffer, I don't remember that or not, but you could see
15 where a little bit had moved, but there were no ditches.

16 Q. Did you see anything to indicate a significant amount
17 of sand had moved into the buffer?

18 A. No, sir.

19 Q. Did you see any significant amount of sand that moved
20 into the -- into the wetlands?

21 A. No, sir.

22 Q. Did you see any evidence that any significant amount
23 of sand had moved into the ditches?

24 A. Which ditches?

25 Q. The ditches that front on Davis Drive.

1 A. I've only been down Davis Drive one time and that's
2 when I rode down there with the attorneys to look at the
3 property.

4 Q. Did you see any evidence that any of the sand had
5 moved into Mr. Shearer's property in major amounts?

6 A. I did not, no, sir. I didn't see that or anything
7 else for that matter.

8 Q. Have you ever even seen the pipe that runs under Davis
9 Road?

10 A. You can't actually see the pipe. It is under the
11 ground.

12 Q. What -- why did you not put silt fences up when you
13 were doing the work?

14 A. Well, two reasons. It wasn't required and I left the
15 buffer instead. The buffer -- the buffer took everything
16 out that would have gotten in there. The buffer would have
17 taken it out.

18 Q. When you say it's not required, why would a silt fence
19 not have been required?

20 A. Because it's agricultural property.

21 Q. Were you there the day the gentleman from the County
22 came and put the stop work order up?

23 A. No, sir, I was not.

24 Q. How did you learn of that?

25 A. I was actually in Texas and I got a phone call.

1 Q. How long after the fact was it that the stop work
2 order was lifted?

3 A. I got another phone call, it was either later that day
4 or the next day, saying that it had been lifted and I had a
5 couple of guys and they went back to work.

6 Q. Were y'all asked or required to stabilize the soil?

7 A. I do not -- I was told that the work order had been
8 lifted and I can get back to work, but it had already been
9 seeded at that point.

10 Q. By the time the -- the stop work order was issued,
11 the seeding had already happened to the land and the
12 hydroseeding to the dam?

13 A. Correct.

14 Q. Can you think of anything wrong that Robert or Christy
15 Cade did?

16 A. No, sir.

17 Q. Can you think of anything wrong that you did?

18 A. No, sir.

19 Q. You were working for the Cades?

20 A. Correct.

21 Q. And there were two buildings constructed, there was
22 a dam repaired and made safe, there was a certain acreage
23 that was cleared, stumped and seeded, and to your knowledge
24 was there any other work done?

25 A. We tried to unclog a couple of springs that was out on

1 the other side that fed Mr. Cade's pond.

2 Q. All right. Let me ask you this. When you were
3 working out there, were Robert and Christy living there?

4 A. No, sir.

5 Q. How long after you left did they actually build their
6 new home?

7 A. I -- I can't remember the -- the amount of time. It
8 was a good while. I knew -- I went back -- I went back and
9 assisted with doing some of the footers and that sort of
10 thing and didn't charge them anything.

11 Q. Nice people?

12 A. We were good friends.

13 Q. Still are?

14 A. Still are.

15 Q. The house they built, is it a pretty house?

16 A. Very.

17 Q. Christy's pretty proud of it?

18 A. Yes. That with all the cow pastures and everything
19 around, it's beautiful.

20 Q. And the ducks?

21 A. The ducks.

22 Q. They've got ducks?

23 A. The ducks are a little aggravating, but, yeah.

24 MR. MOORE: I don't have any further questions.

25 Thank you, Your Honor.

1 THE COURT: Mr. Belser.

2 MR. BELSER: Yes, ma'am. I've got some questions.

3 CROSS-EXAMINATION

4 BY MR. BELSER:

5 Q. All right, Mr. Singleton. How are you doing?

6 A. Good.

7 Q. You look incredibly relaxed right now. Are you
8 relaxed?

9 A. I'm trying to be.

10 Q. All right. And you've seen all the other witnesses
11 come up here and be cross-examined by Mr. Moore, kind of
12 white knuckling up there because he's a pretty tough guy?

13 A. Yeah. I hope I'm not getting ready to do that.

14 Q. All right. You look about as calm as I've seen a
15 witness ever be.

16 A. Plenty of practice.

17 Q. Now you know -- you know Mr. Cade from back in your
18 days with the South Congaree police force, right?

19 A. Yes, sir.

20 Q. Okay. And you resigned from there years ago?

21 A. Yes, sir.

22 Q. And you're friends with Mr. and Ms. Cade right there?

23 A. Yes, sir.

24 Q. Okay. I'm confused. And you've been talking to them
25 the entire time of this trial, sitting next to them?

1 A. Sure.

2 Q. Okay. And you've been talking to Mr. Moore about what
3 -- about the questions he was gonna ask you and that kind
4 of stuff?

5 A. Sure.

6 Q. Do you know that they're suing you?

7 A. I do.

8 Q. And you have no fear at all?

9 A. No, sir.

10 Q. Because you're sitting by your friends, right?

11 A. I did nothing wrong.

12 Q. All right. Now let's just walk through this stuff.
13 So the Cades cut the timber; is that right?

14 A. Yes, sir.

15 Q. And the Cades were out there just about every day,
16 right?

17 A. Yes, sir.

18 Q. Okay.

19 A. Unless he was out of town or something like that.

20 Q. But do you remember when I took your deposition on
21 January the 8th of 2020?

22 A. It's been a couple of years ago. I remember some of
23 it, yes, sir.

24 Q. All right. So they were out there -- one of them was
25 out there every day supervising, watching everything that

1 you were doing; is that right?

2 A. Pretty much. I believe that's correct.

3 Q. Okay. And you had -- and Mr. Cade even got on some
4 equipment, didn't he?

5 A. When he -- he purchased something to help maintain the
6 property, he purchased a smallest excavator, and I taught
7 him how to run it.

8 Q. So they just didn't just give you the key to their
9 gate and let you into their property and let you just ride
10 your big equipment around, did they?

11 A. They did.

12 Q. But they were there with you all whole time, weren't
13 they, every day?

14 A. Not -- not all the time, no, sir.

15 Q. But every day?

16 A. Most -- most days somebody out was out there for some
17 period of time.

18 Q. All right. And when you first got there, before you
19 did anything, you described the -- the land as being thick
20 and dense. Do you remember that?

21 A. Yes, sir.

22 Q. And that's throughout the site?

23 A. Yes, sir.

24 Q. The trees and the vegetation in this area of that
25 green, those were big trees; is that right?

1 A. Yes, sir.

2 Q. And there were thousands of trees, weren't there?

3 A. I believe there were.

4 Q. That's what you said in your deposition. Do you
5 recall that?

6 A. In my deposition, I don't remember what I said, but
7 there were -- it had to be at least a thousand trees.

8 Q. And some of the roots on those trees were eight feet
9 deep; is that right?

10 A. Some of them were, yes, sir.

11 Q. Okay. And do you remember -- you saw the video
12 deposition of Mr. -- Mr. Shearer, right?

13 A. Yes, sir.

14 Q. Did you hear him describe it as like a water sink?

15 A. I think what he was talking about when he said water
16 sink was the -- the trees that were -- the roots were
17 absorbing water.

18 Q. Okay. And so those eight-foot roots, that's what he's
19 talking about, right?

20 A. The taproot on a -- on a pine tree sometimes can be
21 six, eight, ten feet long.

22 Q. Okay. And those -- and when you pulled out these
23 roots, some of the roots were you said twelve feet across.
24 Some of the root beds of these trees were twelve feet
25 across and five feet deep. Do you remember that?

1 A. Some of them were, yes, sir.

2 Q. Okay.

3 A. The root -- the root balls, yes, sir.

4 Q. Yeah.

5 All right. So let's just make a couple of things
6 clear here. You have no -- no license, correct?

7 A. I do not.

8 Q. No contractor's license, no grading license or
9 anything like that; is that right?

10 A. I do not, correct.

11 Q. You have no advanced training in -- in riding heavy
12 equipment, do you?

13 A. Other than on-the-job training, no, sir.

14 Q. Okay. You haven't been to any classes, you have no
15 certifications?

16 A. I do not.

17 Q. Okay. You have no employees, right?

18 A. I had a couple of guys that would help out a little
19 bit, yes, sir.

20 Q. Okay. And one of the guys who helped you out on the
21 site, it turns out he had a pretty bad substance abuse
22 problem?

23 A. Yes, sir.

24 Q. And just -- just to be clear, you're not an engineer,
25 you're not a civil engineer, you're not a geotechnical

1 engineer or anything like that; is that right?

2 A. I'm not.

3 Q. Okay. And all your experience sitting on the stand
4 is as a policeman, right?

5 A. Yes, sir.

6 Q. Now Mr. Moore was asking you some questions about how
7 long you were out there, and this is very, very important.
8 Do you remember when I asked you in your deposition how
9 long the land disturbance process took? Do you remember
10 what you said?

11 A. I do not.

12 Q. Okay. Would it surprise you if you said it was six
13 months?

14 A. The whole time I was out there was probably six or
15 eight months, but the actual land disturbance on that side
16 of the driveway -- the water on this side of the driveway
17 goes toward the buffer, the water on this side of the
18 driveway goes to the Cades' pond. This side was the
19 smaller side and I was not there that long.

20 Q. You were out there with all of your heavy equipment
21 though for six months about, right?

22 A. In total, yes.

23 Q. Every day for six months?

24 A. For the most part.

25 Q. Okay. All right. Now I just want to make something

1 very clear about the scope of what you did. The Cades
2 hired you to pull up the stumps and to grade the land; is
3 that right?

4 A. Pull the stumps, fill the holes.

5 Q. Okay. They -- you said a minute ago that they got
6 somebody else to do the hydroseeding. They weren't looking
7 to you to do that, were they?

8 A. I didn't know anybody that did it. I think he asked
9 me if I did and I told him no.

10 Q. Okay. So that was beyond what you were asked to do,
11 is to stabilize the soil?

12 A. I was asked to help put the seed in, put other seed
13 in.

14 Q. Now -- but that was with -- that was to help. So
15 Mr. Cade was doing that himself; is that right?

16 A. Uh-huh.

17 Q. Now you were out there -- I think you testified you
18 started in June and -- May or June of 2018 and you were out
19 there continuously for about six months through the end of
20 2018; is that correct?

21 A. Yeah. When deer season started in -- in August, I was
22 out there less and less.

23 Q. Okay. Now when your deposition was taken on January
24 the 8th of 2020, so about a year or so after you had left
25 the site, obviously by that time the lawsuit had been

1 filed, right?

2 A. Yes, sir.

3 Q. And you'd been off the site for about a year, correct?

4 A. Okay.

5 Q. And you -- even at that point in time, you had no
6 idea that the Cades had hired Gerald Lee, a professional
7 engineer, to give them an objective opinion as to whether
8 or not what they were doing was causing problems; is that
9 right?

10 A. I did not know about it until after the fact.

11 Q. Okay. Now I'm -- this is Exhibit Number 10 and you
12 testified about the grass that y'all -- that was planted
13 and it was such a good stand. Do you remember that?

14 A. It was a crop, yes, sir.

15 Q. Okay.

16 A. We actually planted it a couple of times.

17 Q. I'd like to -- is there a single blade of grass in
18 that photograph? And you can take all --

19 A. That photograph is not on the side that's in question.
20 That photograph is showing the Cades' pond. Any water on
21 that side of the driveway goes into the pond, it does not
22 go anywhere near --

23 Q. Is there a single blade of grass in that photograph?

24 A. This side was not completed at the time. The other
25 side that we've been talking about is what was -- what was

1 done and planted.

2 Q. Is there a single blade of grass in that photograph?

3 A. There's not. Not that I can see.

4 Q. All right. Here's another picture. This is also
5 taken by Mr. Lee on December -- I think it's December 11th
6 of 2020 -- or 2018. Is there a single blade of grass in
7 that photograph?

8 A. Again, that's the same side of the driveway.

9 Q. Is there a single blade of grass in that photograph?

10 A. Yes.

11 Q. Where?

12 A. In the photograph.

13 Q. Where?

14 A. Can you look?

15 Q. Yeah, point it out to me.

16 A. There's grass up here and there's grass down here and
17 there's grass right here.

18 Q. All right. Why -- why don't you point that out to the
19 jury so they can see what you're talking about.

20 A. Let me get my bearings right here. There's grass
21 behind the shed, there's grass along the peninsula and
22 there's grass along the edge of the pond.

23 Q. Okay. And Ms. Garland's pond is back down that way?

24 A. Yes, on the other side of the driveway.

25 Q. Okay. And this was like an asphalt-type --

1 A. That's recycled asphalt.

2 Q. Recycled asphalt. How much recycled asphalt was
3 poured to give a nice driveway to get down there?

4 A. I do not know.

5 Q. Okay. Did you do that?

6 A. I helped spread some of it, yes, sir.

7 Q. Okay. Would you have liked to have known when you
8 were working out there that a professional engineer had
9 come out and made certain recommendations?

10 A. Sure.

11 Q. That would have been helpful to know, wouldn't it?

12 A. Uh-huh. I found out about it after the fact, yes,
13 sir.

14 Q. Okay. And you heard -- never mind.

15 Now you've seen -- you've been here at trial this week
16 and you've seen pictures of Ms. Garland's muddy pond,
17 haven't you?

18 A. I have.

19 Q. Do you -- looking at those photographs that we've all
20 seen, do you deny that her pond has been muddy?

21 A. I'm sure it has. I don't know anybody that's got a
22 pond that hasn't been muddy at one time or another.

23 Q. Do you deny that it's muddy as a result of the land
24 disturbing activities that took place on the Cade property?

25 A. I don't see how it's possible.

1 Q. You don't see how it's possible at all?

2 A. I do not.

3 Q. Okay. So you disagree with the engineers who've
4 testified?

5 MR. MOORE: Objection, Your Honor. He's pitting
6 one witness against another.

7 THE COURT: I agree. You can't do that. Let's
8 move on.

9 MR. BELSER: Yes, ma'am.

10 BY MR. BELSER:

11 Q. Now you're aware when you were working -- were you
12 working on the site in late November of 2018?

13 A. If I was, I was in and out. I wasn't there much. My
14 equipment was there for some time after I got done and I
15 would go back and help with different things, fencing and
16 just different things, and if my equipment was still there,
17 I used it to help.

18 Q. All right. I'm handing you what is marked as
19 Plaintiff's Exhibit Number 9. When you were working out
20 there, were you provided a copy of that letter?

21 A. I heard about it, but I never saw it.

22 Q. Would you have liked to have seen it?

23 A. No, sir.

24 Q. Did you care?

25 A. If it had been signed by a judge, I would have cared.

1 MR. BELSER: No further questions.

2 THE COURT: Mr. Dougall.

3 MR. DOUGALL: Just briefly, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. DOUGALL:

6 Q. Roger, you were just shown Defendant's Exhibit 9?

7 A. Yes, sir.

8 Q. Who's that from?

9 A. Belser and Belser. From H. Freeman Belser.

10 Q. Okay. Who you know -- have learned during the course
11 of this trial is the gentleman sitting to my left?

12 A. Yes, sir.

13 Q. And who's it addressed to?

14 A. Mr. Cade.

15 Q. Okay. So is there any reason why you should have seen
16 that document?

17 A. No.

18 Q. And that's just a letter from Mr. Belser telling
19 Mr. Cade he shouldn't be doing anything on his property,
20 right?

21 A. Exactly.

22 Q. So there would be no reason for you to see that, would
23 there?

24 A. I don't believe so.

25 Q. Mr. Belser was asking you about your certifications to

1 operate heavy equipment. Are you required to have any in
2 the state of South Carolina?

3 A. No, sir.

4 Q. You can operate all the -- as long as you're not doing
5 highway paving, you can pretty much do whatever you want
6 without a license, right?

7 A. I don't believe you need to have a permit or
8 certification for heavy equipment to pave a highway either.

9 Q. Well, you've got a work for a contractor who has the
10 certification?

11 A. Well, yes. Yes. My apologies.

12 Q. Other than that, there's no such requirement in this
13 state, is there?

14 A. No, sir.

15 Q. And a few times, and it's easy to fall into that trap,
16 you said we left the buffer.

17 A. Yes, sir.

18 Q. You didn't leave any buffer, did you? The loggers
19 left the buffer.

20 A. The loggers left it and we -- we left it behind them.

21 Q. Yeah. You didn't do any work past the buffer that was
22 left?

23 A. Correct.

24 Q. And you didn't have any input into how wide that
25 buffer was gonna be, did you?

1 A. No, I took what -- what the loggers left appeared to
2 be more than adequate, so we just left it alone.

3 MR. DOUGALL: That's all I've got for you. Thank
4 you.

5 THE COURT: Thank you, Mr. Dougall.

6 MR. MOORE: I have no questions.

7 THE COURT: Okay. No redirect.

8 Can I let this witness step down and be excused
9 then?

10 MR. DOUGALL: No, ma'am. He's a party.

11 THE COURT: Oh, that's right. I'm sorry.

12 May I let -- you can return to the table.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (Witness excused.)

16 THE COURT: Thank you, Mr. Dougall.

17 Mr. Moore, your next witness.

18 MR. MOORE: Christy Cade.

19 (Whereupon, Christy Cade was duly sworn by the
20 Clerk of Court.)

21 THE CLERK: If you'll have a seat and state your
22 full name for the record.

23 THE WITNESS: Christy Cade.

24 THE COURT: You might want to scoot up just a little
25 bit.

1 Now if anybody can't hear, y'all raise your hand
2 so I'll know.

3 THE WITNESS: Christy Cade.

4 CHRISTY CADE,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MOORE:

8 Q. You're not nervous, are you?

9 A. A little bit. I'm not used to this.

10 Q. First time in a courtroom, Christy?

11 A. Yes. Or for like this I should say.

12 Q. All right. You're how old? I shouldn't ask that to
13 a lady, but how old are you?

14 A. I am 49.

15 Q. And where do you live?

16 A. I live in Gaston, South Carolina.

17 Q. Is your house and property one of the things we've
18 been talking about?

19 A. Yes, sir.

20 Q. It's been pretty rough, hasn't it?

21 A. Very.

22 Q. Christy, I know after being pulled on during the lunch
23 break pretty hard, you want to tell this jury about that
24 conversation that took place with Ms. Garland.

25 A. Yes, I do.

1 Q. Have you only had one conversation with her?

2 A. Just one, yes.

3 Q. Did it happen the way she said it happened?

4 A. Absolutely not.

5 Q. Okay. You want to tell this so bad you're -- wait a
6 minute -- you're about to jump out of that chair.

7 A. I do.

8 Q. So what I want to do is this. I'm gonna be quiet,
9 and I'm sure they're glad that I am, and I want you to
10 just tell this jury -- describe why you went down there,
11 what you were trying to do and how you were received by
12 Ms. Garland.

13 A. The reason I actually went to her property, I was told
14 that -- that I was being sued for a half a million dollars,
15 which I didn't know anything about. I didn't even know she
16 existed. I had never met her before, had never seen her
17 before. Again, I'd been told several times that day enjoy
18 your half a million dollar lawsuit, so -- and I was told
19 that she was the one suing me for a half a million dollars.

20 So I decided to go around. I had to -- of course, I
21 had to leave my property to go down Fish Hatchery down to
22 Davis because we do not adjoin, so I decided to ride
23 around. I pulled into her property and I actually met her
24 boyfriend, the gentleman sitting there in the audience. He
25 was very polite, as I was. I shook his hand, I introduced

1 myself, asked if he was the property owner because, again,
2 I didn't know. He explained to me that Ms. Garland was
3 and he said she was in back. And I don't know if it was
4 gardening or doing something out back, so he proceeded to
5 walk with me that way.

6 She actually started coming out as we were headed that
7 way. She approached and I stuck my hand out to shake her
8 hand and as I did so, I introduced myself, and when I told
9 her who I was, she instantly got very nasty. She told me
10 to get the hell off of her GD -- I don't like to say that
11 word -- property, that she was suing me, you will hear
12 from my attorney, you're gonna pay me money, and I said
13 ma'am, I don't know you, if I've done something to you,
14 please tell me what it is, I don't know you, you know,
15 please tell me what I've done you. She said you get the
16 hell off of my GD property, you don't come back, you're
17 gonna pay me money. I said I'm sorry, if I've done
18 something to you, I don't know what it is, I apologize. I
19 got in my car and I left, and I've never been back over
20 there other than a few months back one of the attorneys
21 came to -- and, as a matter of fact, she came on my
22 property as well and that same day I went to her property
23 with the attorneys to look, and that's the only time I've
24 ever, other than in court, had interaction with her.

25 Q. When you extended your hand to shake her hand and

1 introduce yourself --

2 A. Yes.

3 Q. -- did she shake your hand?

4 A. No, sir. She instantly told me to get the hell off of
5 her property.

6 Q. How well do you --

7 A. Her GD property. Excuse me.

8 Q. How well do you remember this conversation?

9 A. Very well because I didn't -- I was very shocked to
10 have, you know, had her act that way, I mean, because I was
11 not rude to her at all. Again, like I say, her boyfriend,
12 I think his name's Mr. Shelley or Shelby, I'm not quite
13 sure, he shook my hand, was very nice, cordial, and walked
14 with me to go speak to her, and I was very shocked.

15 Q. Well, let's go back to your -- to your property. When
16 did y'all buy it?

17 A. March of 2018.

18 Q. And what did y'all hope to do down there?

19 A. We wanted to make pastureland and have cows and we
20 wanted to build our home and just retire there eventually.

21 Q. Your husband, does he do specialty truck driving?

22 A. He does.

23 Q. And as a result he has some 18-wheelers and heavy
24 trucks?

25 A. Yes, sir.

1 Q. And does he drive them?

2 A. Yes, sir.

3 Q. Have y'all made your living working for a living?

4 A. Yes, sir.

5 Q. The property in question, you now have a house there,

6 right?

7 A. Yes, we do.

8 Q. The house is a pretty brick house?

9 A. I think so. Yes, sir.

10 Q. You're proud of it?

11 A. Very much so.

12 Q. Did you do any of the work decorating it?

13 A. Of course.

14 Q. Was it fun?

15 A. No.

16 Q. Okay.

17 A. That's stressful to me.

18 Q. And behind your house what is there?

19 A. We have pastureland, we have cows, ducks. We've had

20 -- we don't have it now after everything -- I'm sorry.

21 Q. Take your time. Take your time.

22 A. This was supposed to be my dream --

23 Q. I know.

24 A. -- and it's not anymore. It turned into a nightmare.

25 Q. These folks are listening, Christy. It's okay,

1 sweetie. Do you want some water? Christy, there's some
2 water right there. Here.

3 THE COURT: He's gonna get you some -- here you go.

4 THE WITNESS: Thank you.

5 THE COURT: Uh-huh.

6 BY MR. MOORE:

7 Q. All right. You're doing what I call snuffling and
8 there's only one way to fix it, so you have to listen to
9 me, okay? You've got to do what I tell you. I want you
10 to take a really deep breathe and blow it out. Now count
11 slowly out loud to ten. Out loud.

12 A. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10.

13 Q. Tell me about the ducks on your property.

14 A. There -- they're really pretty to look at, but --

15 Q. How many of them have you got?

16 A. At least thirty.

17 Q. Do you like those ducks?

18 A. I do.

19 Q. Do any of them have names?

20 A. Yes, they do. We have ducks and we have geese. The
21 first two that we brought out were geese and their names
22 are Lucy and Leroy.

23 Q. Are Lucy and Leroy still there?

24 A. They are.

25 Q. You can talk to me now, can't you?

1 A. They come. They know their name.

2 Q. You can talk to me now, can't you?

3 A. Yes, sir.

4 Q. I did good. You're gonna be okay.

5 A. (Nods head.)

6 Q. Don't do that again. Come on, Christy. You can make

7 this. I thought I had you fixed. No?

8 A. I'm good.

9 Q. I think so, too. Work with me.

10 A. Yes, sir.

11 Q. Y'all bought the land, wanted to build your house and

12 you got some permits to build your outbuildings?

13 A. Yes, sir.

14 Q. Well, after you bought the property, did you learn you

15 had a problem with the dam?

16 A. We did. Apparently where the trees had grown in, it

17 made it unsafe.

18 Q. And you had to spend a bunch of money on the dam after

19 you'd spent the money on the land?

20 A. Yes, sir.

21 Q. What did it cost you to get the dam fixed?

22 A. I don't recall exactly. I don't remember. It's been

23 a while. As far as I know, it's thousands. I don't know,

24 you know, exactly as far as just the dam. I'm not sure.

25 Q. And y'all hired Roger to come do it?

- 1 A. Yes, we did.
- 2 Q. Roger's been a friend for a long time?
- 3 A. Yes, we've known him a long time.
- 4 Q. How hard did Roger work on that dam trying to make it
- 5 safe?
- 6 A. He worked very hard.
- 7 Q. And when you had the hurricane, had the dam already
- 8 been done at that time?
- 9 A. Yes, it was.
- 10 Q. Did it hold during the hurricane?
- 11 A. Oh, yes, sir.
- 12 Q. That was good, wasn't it?
- 13 A. Yes, it was.
- 14 Q. Now on this dam, this is where you live, isn't it?
- 15 A. We do.
- 16 Q. And you walk the property, see the property all the
- 17 time?
- 18 A. I -- I do. I usually -- I try to walk at least two
- 19 and a half miles a day.
- 20 Q. And you walk on your land if you can?
- 21 A. I do.
- 22 Q. The spillway from that dam, when the water comes over
- 23 the spillway, is it clean or is it dirty?
- 24 A. From the spillway it's clean water.
- 25 Q. And you know why that is, don't you?

1 A. I'm not good with a lot -- with the whole science of
2 that, but I know we have the spillway pipe thing that comes
3 in, and I don't even know the whole names of everything,
4 and so the water that goes in there, it goes over top, so
5 it's the top water, so.

6 Q. The water that comes through your dam comes from the
7 top, not the bottom?

8 A. Yes, sir.

9 Q. So it's clean?

10 A. Yes, sir.

11 Q. And the water that comes into your pond comes from
12 other people's land that flows naturally in that direction?

13 A. Yes, sir. And the rain.

14 Q. And the rain?

15 A. Yes, sir.

16 Q. Rainwater causes -- rainwater hits your pond, but it
17 also hits upstream and causes water to flow towards you?

18 A. Yes.

19 Q. And then you discharge water and the water's clean and
20 heads toward Mr. Shearer's property?

21 A. Yes.

22 Q. When it heads towards Mr. Shearer's property, does it
23 go into a stripped off area or a vegetated area?

24 A. It's vegetated. Very heavily vegetated.

25 Q. Did y'all do anything to the vegetated area where the

1 water runs out of the pond?

2 A. No, sir.

3 Q. So that's there like it's always been?

4 A. Yes, sir.

5 Q. So the water coming from the pond is like it's always
6 been except it's better and it's clean and it goes where
7 it's always gone?

8 A. Yes, sir.

9 Q. Did y'all do anything to disrupt the flow of that pond
10 or make it dirty or change the direction or amount that
11 comes out of it?

12 A. No, sir.

13 Q. At the time of the hurricane, which is where this
14 supposedly all took place, had the pond dam been
15 hydroseeded?

16 A. Yes. Once the work was completed on the pond dam, it
17 was hydroseeded. They come in and sprayed the -- the green
18 stuff.

19 Q. After the hurricane, did you look at the dam to see if
20 it had been damaged at all?

21 A. Yes, we walked out there and I didn't see anything
22 wrong with it at all.

23 Q. Was there any evidence that the dam had eroded at all
24 or dirt had fallen off?

25 A. No, sir.

1 Q. Was the hydroseeding still there and intact?

2 A. From what I saw, yes.

3 Q. And you saw it?

4 A. Yes.

5 Q. Okay. Now we know somebody came in and cut the timber
6 on that bottom section?

7 A. Yes.

8 Q. And that had been at one time a pretty good stand of
9 trees there?

10 A. That's correct.

11 Q. And you were able to sell them because this is
12 agricultural property?

13 A. Yes, sir.

14 Q. And the plan for that bottom area was to do what with
15 it?

16 A. Make pastureland.

17 Q. And in order to make pastureland on this agricultural
18 property, did you have to clear out what you cleared out?

19 A. Yes, sir.

20 Q. So in order to do the work or in order to get the work
21 done, you had to get somebody to do the work?

22 A. Yes, we did.

23 Q. And who was that?

24 A. Roger.

25 Q. And as far as you know, did Roger do everything okay?

1 A. As far as I know, yes, sir.

2 Q. If you did something wrong, you paid him to do it
3 right?

4 A. Correct.

5 Q. As far as you know, he was working for you, correct?

6 A. Yes, sir.

7 Q. And you relied upon him to do it right?

8 A. I did.

9 Q. Now before you guys started the work on these
10 outbuildings, did you go to the County and get a building
11 permit?

12 A. My husband did, yes.

13 Q. Did -- did you have anything to do with talking to the
14 County about what permits were needed?

15 MR. BELSER: Your Honor, objection.

16 Can we approach real quick?

17 THE COURT: You can.

18 (Proceedings held at the bench; not reported.)

19 BY MR. MOORE:

20 Q. Did you go to the County to pick up any of the
21 permits?

22 A. I went for our home. Now I did for our home, so I
23 have been to the County for permits.

24 Q. Hold on. Did you go to the County to get the permit
25 for the outbuildings?

1 A. I did not.

2 Q. Who handled the outbuildings and the clearing of the
3 land?

4 A. My husband.

5 Q. Before anything was done to timber or to fix the dam
6 or to take out the stumps, did one of you go to the County
7 and check on what was needed?

8 A. Yes.

9 Q. That would be your husband?

10 A. My husband.

11 Q. He handled all of that?

12 A. Yes, he did.

13 Q. How long did it take to actually get the work done on
14 the dam to where the dam was stable and safe?

15 A. The actual dam?

16 Q. The dam.

17 A. I think just a couple of weeks. I'm not sure. I --

18 Q. That's okay. And how long did it take for them to cut
19 the timber?

20 A. I don't remember exactly how long it took them to do
21 that.

22 Q. How long did it take Roger to get the stumps cleared
23 and the land level?

24 A. Do you mean like everything or just --

25 Q. To get the land to where it was -- it didn't have any

1 more stumps on it and the holes had been dug.

2 A. I would say a month or two. A couple of months or so.

3 Q. You're gonna have to forgive me if I'm not clear, I've
4 got this mint in my mouth so I won't cough myself to death,
5 okay?

6 A. That's okay.

7 Q. Do you recall the hurricane coming?

8 A. I do. I do. There were two.

9 Q. There were two of them, weren't there?

10 A. Yes, sir.

11 Q. By the time the hurricanes arrived, the first one
12 let's say, had the work on the dam already been finished?

13 A. Yes.

14 Q. The dam was stable and hydroseeded?

15 A. Yes.

16 Q. When the hurricane showed up, what was the condition
17 of the work that Roger was doing?

18 A. The dam was completely finished and hydroseeded and he
19 had already pulled the stumps and filled the holes and he
20 was doing other things at that point.

21 Q. Now, Christy, at your home after the hurricane did you
22 go outside and look at the land which was being worked on?

23 A. I did.

24 Q. Did you see any type of signs of erosion like gullies
25 or big washes of large amounts of sand or anything like

1 that?

2 A. I did not.

3 Q. What did it look like on the place where Roger was
4 working after the hurricane?

5 A. I mean, of course, it was wet. There was like no big
6 holes or no ditches or anything like that. The most that I
7 saw was you could see where -- just like a little bit of
8 sand movement, but not like any holes or anything. You
9 could just -- and it was no like ditches or nothing like
10 that.

11 Q. Could you see where any sand had moved -- had actually
12 moved on your property?

13 A. On my property, like I say, you could see just where a
14 little bit of sand, the light top sand had, you know, moved
15 a little bit, but nothing -- I didn't see where no major --
16 there was not no hills brought up or no holes or nothing
17 like that.

18 Q. Now 1700 cubic yards of sand would be about 250 dump
19 truck loads from what I understand. If 250 dump truck
20 loads was missing from your property, do you think you
21 would have seen it?

22 A. I'm pretty sure I would have. I think if 200 -- 200
23 dump truck loads of sand would have washed off of my
24 property, I don't think there would have been a wetlands
25 left.

1 Q. That's because the wetlands is down below your
2 property?

3 A. Because it's down below.

4 Q. Was the wetlands still there?

5 A. The wetlands was still there and is still there today.
6 I think that wetlands has been there for many, many years.

7 Q. Why do you think 250 dump truck loads would have
8 destroyed the wetlands?

9 A. Well, because when I think of 250 dump truck loads of
10 sand getting dumped in an area, I mean, it's -- the way I
11 see it, it's gonna fill it up.

12 Q. And it didn't do that, did it?

13 A. No, sir.

14 Q. And if it didn't get in the wetlands, it couldn't have
15 got in Ms. Garland's pond either, could it?

16 A. I don't think so. I couldn't imagine -- I don't think
17 there would have been a pipe left.

18 Q. Well, have you ever seen that pipe we're talking
19 about?

20 A. I have.

21 Q. Is it partially stopped up?

22 A. It is. I actually, like I say, within the last --
23 it's been within the last six months all the attorneys
24 came out, Mr. Belser was present, Ms. Garland came onto
25 my property and inspected and saw the -- the -- the board

1 and everything that was left, and we got to go to her
2 place, and I actually crossed over the fence with another
3 gentleman and got down and looked and there is no pipe on
4 her side. You can't -- there's not anything. There's just
5 ground there and a little bit of water bubbling up.

6 Q. Christy, there's -- we're not gonna take the jury out
7 to your home to look at it, but I think last week we did a
8 drone flyover so we could see what it looks like.

9 A. Yes, sir.

10 Q. And you've seen that drone flyover and it's an
11 accurate representation of what your place looks like?

12 A. Yes, sir.

13 Q. And what I'm gonna do is this. I'm gonna play that
14 video from the drone flyover.

15 A. Yes, sir.

16 Q. I'm gonna take the volume completely off of it.

17 A. Okay.

18 Q. So while the jury is looking at it, all I want you to
19 do is to narrate to them and tell them what they're seeing.
20 So instead of having to go out and look at the property,
21 they can actually see what it looks like on video, okay?

22 A. Yes, sir.

23 THE COURT: Any objection? Is this already into
24 evidence?

25 MR. BELSER: It's not into evidence and I've never

1 seen it and this is the first time I've heard of a drone
2 video, so.

3 MR. MOORE: I haven't seen it myself, but I
4 understand it was there. It was taken last week. I
5 told counsel about it this morning. I have two videos
6 and it just simply shows --

7 MR. BELSER: I mean, I don't know what it is. I
8 mean --

9 MR. MOORE: It simply shows the property. Both of
10 them.

11 THE COURT: All right.

12 Madam Forelady, I'm gonna ask y'all to go to the
13 jury room. Let's take a break, stretch our legs.

14 (Whereupon, the jury retires to the jury room at
15 3:08 PM.)

16 MR. DOUGALL: I don't have any problem with them
17 looking at both of them.

18 THE COURT: Well, you know, y'all should have done
19 this beforehand. You just can't spring a video on the
20 other side who has not seen it.

21 So, Mr. Belser, you have every right to look at it
22 and then tell me if you've got an objection, and I will
23 be back. And I hope they're short videos.

24 (Recess taken at 3:09 PM.)

25 (Back on the record at 3:20 PM.)

1 (Whereupon, the jury return to the courtroom at
2 3:20 PM.)

3 THE COURT: Madam Forelady, are we ready?

4 FOREPERSON: Yes, Your Honor.

5 THE COURT: Thank you.

6 All right. Go ahead.

7 BY MR. MOORE:

8 Q. Christy, I've asked that the volume be cut off on
9 this. I would just like for you to tell the jury what
10 they're seeing as they see it from this drone.

11 (Video played.)

12 A. Yes, sir. Of course, that's an aerial view of the
13 area. Okay. This is our property. It's an aerial view of
14 the entire property with the pond. That's the driveway
15 going down into my property and pastureland on the right
16 and on the left and that's our house.

17 This is going down the driveway.

18 Q. Speak up now, Christy.

19 A. This is going down the driveway and as you see our
20 house is on the left and that's, of course, our house.

21 This is our house. Again, that's our house and out
22 back behind it is more pastureland and our pond and there
23 is the barn building and the overhead shed.

24 This is the -- well, it's kind of going quickly, but
25 that was the back pasture area.

1 Q. That's the outbuilding?

2 A. That is the outbuilding right there.

3 Q. Behind it's the shed?

4 A. Uh-huh. And that -- that's the ag building where we
5 keep feed and everything in it and that's the -- that's the
6 shed that was in question. That's the barn.

7 Q. That's the barn? What's that behind the barn?

8 A. Pardon?

9 Q. What's that stick building behind the barn?

10 A. Just a feeding area so that their feed doesn't get
11 wet. And then that's going over -- that was the front
12 pasture, now you're over the back pasture, and there's our
13 pond.

14 Q. There's your house.

15 A. There's our house again and the barn. That's just --

16 Q. Can you see the barn -- the vegetated area behind it?

17 A. That's the wetlands back behind the pond.

18 Q. Okay.

19 MR. MOORE: Christy, would you answer any questions
20 that Mr. Belser might have for you?

21 THE WITNESS: Yes, sir. Most definitely.

22 MR. MOORE: Oh, I have one more question.

23 BY MR. MOORE:

24 Q. How recently were you able to look at Ms. Garland's
25 pond?

1 A. A few months ago -- oh, yesterday. Actually
2 yesterday.

3 Q. And how did you manage --

4 A. From the road.

5 Q. From the road?

6 A. I stood on top of a pickup truck.

7 Q. And how did it look?

8 A. It looks fine. It looks normal.

9 MR. MOORE: Thank you, ma'am.

10 CROSS-EXAMINATION

11 BY MR. BELSER:

12 Q. Good afternoon, Ms. Cade.

13 A. Good afternoon.

14 Q. We've met a couple of times.

15 A. Yes, sir.

16 Q. I'm sorry for the circumstances --

17 A. Yes, sir.

18 Q. -- but it is what it is.

19 A. That's right.

20 Q. All right. Just a few quick questions and then you'll
21 be off the stand. I won't do the thing -- make you count
22 to ten like Mr. Moore did --

23 A. Thank you.

24 Q. -- but do you remember when Mr. Moore asked you the
25 question about the hydroseeding on the back of the dam?

1 A. Yes, sir.

2 Q. Exhibit Number 10 is the report from Mr. Chao {sic}.

3 Is that a -- that a photograph of the back of the dam?

4 A. That is actually down. That's not the back part of

5 my dam, no. That's like down. That's like down at the --

6 Q. At the toe?

7 A. I -- I don't know if that's what you call that or not.

8 Q. But is that the pipe -- the filtration pipe that you

9 put in there or do you know?

10 A. I don't know. I honestly wouldn't know that because I

11 didn't do any of that, so I have no idea.

12 Q. Do you see any grass in that picture? Any recent

13 grass?

14 A. Any -- I see some grass right there, but --

15 Q. This older grass right here?

16 A. No, down at the bottom, but --

17 Q. Yeah. All right. I want to talk just about two more

18 subjects.

19 A. Okay.

20 Q. I want to talk about the day that you met Ms. Garland

21 for the first time.

22 A. Yes, sir.

23 Q. And you skipped over some pretty important details

24 about -- about what happened.

25 A. Okay.

1 Q. Right before -- well, Mr. Melichar is -- he used to
2 live in this property right here; is that right?

3 A. He did.

4 Q. And y'all had some nasty disputes?

5 A. He was shooting at my cows.

6 Q. And y'all actually filed a lawsuit against him because
7 he was -- y'all claimed stressing out your llamas?

8 A. We did.

9 Q. Okay.

10 A. He actually filed one against us first about this
11 restraining order thing, however, nothing came of it other
12 than it was a mutual between he and my husband because he
13 was video'ing my daughter, taking pictures of her and
14 whatnot, and admitted that, and was cursing me over the
15 fence and would carry a gun on his side intimidating me
16 with a gun and things like that. So a mutual restraining
17 order was given at that point, but then we did file a
18 lawsuit against him because he stressed -- he was shooting
19 at our animals and stressed out -- and we had llamas,
20 they're heard protectors, and he caused our llama to have
21 a premature birth.

22 Q. The reason I mention all that is because we're not
23 hear to talk about Mr. Melichar and the disputes that
24 y'all had with that, but right before you went to see
25 Ms. Garland, confront her that day, you had had a very

1 heated and hostile encounter with Mr. Melichar?

2 A. He was nasty. Again, he had a gun and he was
3 basically intimidating me with a gun and was yelling at me.
4 I went to check the fence work because we had some fence
5 guys doing some work and my husband was not there, so I
6 was out there alone and was checking the fence work and he
7 came out and was along the fence line and was yelling ugly
8 things to me.

9 Q. You don't need to -- there's some extreme vulgarities
10 that he said.

11 A. Yes, he did. He told me to go -- done ugly things to
12 people, sexual things.

13 Q. Okay. I don't -- I don't want you -- I'm not trying
14 to get into that at all. I'm just trying to get into your
15 mindset before you confronted Ms. Garland that day.

16 A. Oh, I did not confront her. I did not. He kept
17 yelling over to me enjoy your half a million dollar
18 lawsuit, enjoy your half a million dollar lawsuit, my
19 neighbor's suing you for half a million dollars, you're
20 gonna pay her she said, and this and that. And I didn't
21 know her. I was not upset when I went to see her. As a
22 matter of fact, I didn't go right away because, again, I
23 was walking my property. It's, you know, thirty-six acres
24 give or take. I was walking the property, so I didn't like
25 leave right then and go over there. I did not. I went

1 over just to introduce myself and to ask -- you know, I
2 didn't know her. I didn't know she existed. I had never
3 met her before.

4 Q. But when Mr. -- and I don't want to get into what was
5 said, but Mr. -- Mr. Melichar was a man who was harassing
6 you, who was intimidating you, had a gun and was yelling
7 adult vulgarities.

8 A. Yes, he was.

9 Q. And you responded in kind; is that right?

10 A. I did, yes. I -- not with a gun.

11 Q. Well, not with a gun, but right before you went to --
12 to go see Ms. Garland --

13 A. Again, it was not right before. I -- I was walking
14 the property. I was out there still and it was -- a little
15 time -- some time passed. I had just gotten out there --

16 Q. Okay.

17 A. -- when that happened with him.

18 Q. I thought you testified that -- on direct examination
19 that you --

20 A. I testified that he said the things that he said to me
21 and I went to introduce myself to, you know, find out what
22 was going on, but I did not testify as to how much time
23 passed in between. I had just gotten out there. I was
24 walking the -- I was walking the property checking the
25 fence work because we had some gentlemen come out and put

1 up a fence, a chain link fence, and I was checking the
2 fence work and, you know, seeing the progress of that and,
3 like I say, I had literally just gotten out there and --
4 you know, considering he was kind of doing the way he'd
5 been doing, no sooner than I get out there here he came
6 out, so.

7 Q. Okay. How much time passed between when you and
8 Mr. Melichar exchanged kind of fire and fire and when you
9 went over to see Ms. Garland?

10 A. I don't know exactly how much time. It was a little
11 bit. Like I say, I had -- I walked the property, walked
12 the -- the fence line checking and, you know, just checking
13 on the property in general and whatnot, so it was a little
14 while.

15 Q. And then -- but you were mad?

16 A. Not when I was seeing her. No, I wasn't mad. I was
17 good.

18 Q. All right. Do you remember when I -- I took your
19 deposition on August the 27th of 2019?

20 A. I remember taking the deposition. That's been quite
21 a while.

22 Q. Yeah. A lot's --

23 A. It's been a long time.

24 Q. A lot's happened in the world since then. During the
25 -- do you recall saying that you just don't know why Suzy's

1 upset?

2 A. I don't because I wouldn't know what the question was.

3 I don't --

4 Q. Okay. Well, right now do you under -- after seeing
5 the photographs and hearing her testify, do you understand
6 why she's upset?

7 A. I don't understand why she's upset with me.

8 Q. Okay.

9 A. I don't. I don't. No, I don't.

10 Q. And do you remember when we took your deposition in
11 August of 2019? That's after I had already sent you a
12 number of questions about witnesses and people who knew
13 about the case. Do you remember that?

14 A. You sent -- several things have been sent since then.
15 Without looking at it or seeing it, to be honest, I
16 wouldn't know what you're talking about because over the
17 course of that many -- you know, the years, several things
18 have been sent, so I don't know what you mean.

19 Q. And in the deposition right when I asked you if you
20 understood why Suzy was upset, you revealed that y'all had
21 talked to an engineer, but you couldn't remember who it
22 was. Do you remember that?

23 A. I don't without looking at it. It's been how many
24 years? If you want to let me look at it, I'd be more than
25 happy to, but I don't --

1 MR. BELSER: Your Honor, may I break the seal?

2 THE COURT: Yes. And then I'm gonna make that
3 Court's Exhibit Number 5.

4 (Court's Exhibit Number 5 was marked for
5 identification.)

6 BY MR. BELSER:

7 Q. I want to hand you -- and I've got a copy which I'm
8 gonna go get.

9 Okay. If you look at -- and maybe I should just be
10 your tour guide through this thing --

11 A. I was gonna say --

12 Q. But Exhibit Number 19. Let me -- let me show it to
13 you.

14 A. Would that be in this?

15 Q. Yes, ma'am.

16 A. Okay. So this is not marked. This is 15.

17 MR. BELSER: Your Honor, I'm glad to help her.

18 A. If you don't mind. I've got a 14 and then after that
19 I don't. I don't see --

20 Q. Well, here -- here's Exhibit 19.

21 A. Okay.

22 Q. Normally Mr. Moore might say don't take my word for
23 it, but in light of the hour, Exhibit 19, these are the --
24 these are your responses to the questions that I asked that
25 we talked about in your deposition.

1 A. Okay.

2 Q. And on -- let's look at page 58 of the deposition.

3 And I'll represent to you that there's no mention of Gerald
4 Lee in your --

5 A. Did you say page 58 or --

6 Q. Well, sorry. Now it's a different document. Now
7 we're looking at the actual transcript itself, which is --

8 A. I was looking in the wrong place. Okay. I see it.

9 Q. Have you got it?

10 A. Yes. I was just thinking it was in the same stack
11 there.

12 Q. Okay. And it's actually, yeah, page 58. Do you see
13 where my question was beginning on line 10, "Have you been
14 in contact with any engineers on your own or any expert
15 witnesses?". What was your answer?

16 A. Yes.

17 Q. It was actually "Have I?"

18 A. Oh, have I, yes.

19 Q. And then the question --

20 A. You said yes. I'm sorry.

21 Q. And then what was your answer?

22 A. "My husband and I went down went and -- went and sat
23 down and spoke with someone."

24 Q. Okay. And now you didn't remember who it was?

25 A. I did not recall the name.

1 Q. You didn't remember by name, but then we took your
2 husband's deposition after that, we actually looked on my
3 phone and saw Mr. Lee's picture and identified who it was.
4 Do you recall that?

5 A. I do.

6 Q. Okay. And you -- when I asked you about this in the
7 deposition and discovered that he existed and had some
8 knowledge about it, I asked you if -- if he gave you
9 anything in writing. Do you recall that?

10 A. I don't. If you want to point it out, I'll be more
11 than happy to look.

12 Q. All right. Let's look at page 59. The answer -- the
13 question on line 24 is "What did he give you?". Your
14 answer, "He went out and looked at our property and he told
15 us what he thought.". Question, "Do you still have that
16 sheet of paper?", "I do not. I don't -- I don't know where
17 it's at.".

18 What -- when you got the report from Mr. Lee, did it
19 just not matter to y'all?

20 A. No, I wouldn't say it didn't matter, you know, but I
21 was not out there with Mr. Lee so he didn't explain
22 anything to me other than when I sat down with -- when we
23 went by his office that one day, I sat there, but when he
24 actually came out, no, I was not present at all for any of
25 that.

1 Q. So it would be better for me to ask your husband about
2 questions about this?

3 A. Probably because I was not present for any of that.

4 Q. Okay. But y'all -- it's your house and it's a
5 beautiful house.

6 A. Yes, it is. And my husband's.

7 Q. Yeah. Well, what's mine is -- well, I'm married, too.
8 I know how that works.

9 A. Yes. Yeah, what's --

10 Q. What's yours is yours and what's mine is yours?

11 A. -- what's mine is mine and what's yours is mine, too.

12 Q. Yeah, that's how it works. But you -- in your -- in
13 your house -- in y'all's house, you don't have a copy of
14 that report? You didn't keep it?

15 A. Probably. We moved, so, therefore, to be honest with
16 you, a lot of paperwork and things got packed up. I -- I
17 have a lot of paperwork, so I probably do, but we did move,
18 so.

19 MR. BELSER: Ms. Cade, thank you very much. I don't
20 have any more questions.

21 THE WITNESS: Okay.

22 THE COURT: And do I just leave this here?

23 MR. BELSER: Yes.

24 THE WITNESS: Okay.

25 THE COURT: Don't go anywhere. Mr. Dougall does

1 get a turn.

2 THE WITNESS: Sorry, Mr. Dougall.

3 MR. DOUGALL: That's okay.

4 CROSS-EXAMINATION

5 BY MR. DOUGALL:

6 Q. You've testified here under oath today, right?

7 A. Yes, sir.

8 Q. And you testified that Mr. Singleton did some work on
9 your property?

10 A. Yes, sir.

11 Q. And you have absolutely no problems with any of the
12 work he did?

13 A. I don't. I don't know that they don't or the County
14 or whoever doesn't, but --

15 Q. Well, but you're one of the people who've sued him and
16 you don't know of anything wrong that he did, correct?

17 A. I don't know the rules and regulations, so.

18 Q. So you have no evidence that Mr. Singleton --

19 A. I have no idea.

20 Q. -- that Mr. Singleton did anything wrong on your
21 property, correct?

22 A. Honestly, I wouldn't know if he did.

23 Q. Okay.

24 MR. DOUGALL: Thank you.

25 THE COURT: Any redirect?

1 REDIRECT EXAMINATION

2 BY MR. MOORE:

3 Q. Christy, if you did something -- you don't know -- you
4 don't know anything you did wrong, right?

5 A. No, sir, I don't.

6 Q. If you did something wrong, he's the one you paid to
7 do it right?

8 A. Yes, sir. So my assumption was that he knows what
9 he's doing and he's supposed to take care of all that. To
10 me, that's like having my car fixed. I pay them to fix it
11 and I expect to get back in my car and drive.

12 Q. All right. But as far as you know, Roger did a pretty
13 good job?

14 A. As far as I know, yes, sir.

15 Q. And, therefore, as far as you know y'all did a pretty
16 good job?

17 A. Yes, sir, as far as I know.

18 Q. Okay.

19 MR. MOORE: Thank you, ma'am.

20 THE COURT: May I let her step down?

21 MR. BELSER: Yes, ma'am.

22 THE COURT: You can step down. Thank you.

23 (Witness excused.)

24 MR. MOORE: Your Honor, I would call Roger Cade.

25 I'm sorry. Roger Singleton. Robert Cade. I'm

1 trying to do three things at one time.

2 THE COURT: That's okay.

3 (Whereupon, Robert Cade was duly sworn by the
4 Clerk of Court.)

5 THE CLERK: Have a seat and state your full name
6 for the record.

7 THE WITNESS: Robert Cade.

8 ROBERT CADE,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MOORE:

12 Q. Robert, it is Robert Cade and not Roger Cade, right?

13 A. Yes, sir.

14 Q. Your lawyer's getting old. Robert, you live at the
15 house we looked at?

16 A. Yes, sir.

17 Q. How old are you?

18 A. 45.

19 Q. What do you do for a living?

20 A. I'm a specialty contractor with the Department of
21 Defense.

22 Q. Basically -- for the Department of Defense, that's the
23 United States Department of Defense?

24 A. Yes.

25 Q. Do you do specialty truck driving, specialty hauling

1 for them?

2 A. I handle the logistics for the historical items for
3 the Army Museum Enterprise.

4 Q. And while that sounds pretty sophisticated, what
5 you do is drive 18-wheelers and haul sophisticated stuff
6 around?

7 A. Not necessarily. I'm more of a project manager.

8 Q. Okay. But you've got trucks that you operate?

9 A. Yes, sir.

10 Q. And this place out there, you like it pretty much?

11 A. Absolutely.

12 Q. Have you worked your whole life?

13 A. Absolutely.

14 Q. Before we start, you did a video last night; is that
15 right?

16 A. Yes, sir.

17 Q. That was at my request?

18 A. Yes, sir.

19 Q. I'm gonna ask you -- I'm gonna do the same thing with
20 you we did with your wife. If you would just let me be
21 quiet and you just narrate what we see.

22 (Video played.)

23 Q. By the way, the big rock in the ocean, that's not your
24 house, is it?

25 A. No, sir.

1 Q. All right. What are we looking at here?

2 A. This is on Davis Drive directly across from
3 Ms. Garland's property. There's Ms. Garland's property.
4 There's a -- there's a cutout in the berm there for
5 drainage into her pond.

6 Q. Did you do that cutout?

7 A. No, sir. The wetlands that are besides Mr. Shearer's
8 property, as you can see we haven't had rain other than
9 today, in approximately a week. There's standing water in
10 the wetlands. This is the channel that -- that flows
11 underneath Davis Drive.

12 Q. And that channel flows from your pond?

13 A. Yes, sir.

14 Q. The water's clean?

15 A. Yes, sir. Now I'll tell you --

16 Q. That's Mr. Shearer's property there, right?

17 A. That is Mr. Shearer's property. At the edge of the
18 foot of our pond, the water is stagnant. It is not moving.
19 So there is a spring in that channel that is picking up
20 water, moving it.

21 Q. What are we looking at here?

22 A. This is on Ms. Garland's side of the property.

23 Q. What is it?

24 A. That is the -- the pipe going underneath. The water
25 is stagnant.

1 Q. And the pipe's in the ground?

2 A. Yes, sir. And you can see the loose soil on the dirt
3 road.

4 Q. This is Davis Drive?

5 A. This is continuing on Davis Drive at the corner of
6 Ms. Garland's property and Mr. Claude Davis's property.

7 Q. Up on the right you see a scarfed-off field. Is that
8 Mr. Claude Davis's?

9 A. It is.

10 Q. And are those woods there that are between Claude's
11 property and Ms. Garland's property?

12 A. Yes, sir.

13 Q. Where are we here?

14 A. We're back on the wetland side of Mr. Shearer's
15 property. That's the channel.

16 Q. Is there -- there's more, isn't here?

17 A. No, sir. There's some photographs.

18 Q. All right. Let's see the photographs you took last
19 night. What's that a picture of?

20 A. That's a picture of Ms. Garland's pond from Davis
21 Drive.

22 Q. Black water?

23 A. Black water.

24 Q. Do you see anything wrong with it?

25 A. No, sir.

1 Q. How did you get the picture?

2 A. On Davis Drive.

3 Q. Next picture. Same thing, her pond?

4 A. Same thing. Yes, sir.

5 Q. Next picture. Same thing?

6 A. Same thing.

7 Q. Next picture.

8 MS. JUMPER: That's all of them.

9 Q. That's all of them?

10 A. Yes, sir.

11 Q. All right. I've got to ask this question. Who flew

12 the drone?

13 A. We have a friend that has one. He does a pretty good

14 job of it.

15 Q. It looked like it to me.

16 How far did you go to in school, Robert?

17 A. High school.

18 Q. Where did you go?

19 A. Vacaville High School in California.

20 Q. This area that we're talking about where your home is,

21 how many acres do you have?

22 A. I believe it's right at thirty-six.

23 Q. And is it -- it's rural property?

24 A. Yes, sir.

25 Q. Do you know what it is zoned?

1 A. It is zoned as agricultural.

2 Q. What do you understand that to mean?

3 A. Anything to do with the production of
4 agricultural-related products, forestry, livestock,
5 poultry.

6 Q. Before you started work out there, you wanted to build
7 a home, you wanted to build a shed, you wanted to build an
8 outbuilding, you wanted to fix the dam and you wanted to
9 timber the property and turn it into a field for pasture?

10 A. We were not a hundred percent on building a home
11 there.

12 Q. All right.

13 A. The main thing we wanted to focus on was basically
14 turning it into pasture and hayfields to produce livestock.

15 Q. Before you did that, did you go to the County?

16 A. Yes, sir.

17 Q. Do not tell me what anyone at the County told you.

18 A. Okay.

19 Q. I just want to know what you had when you left. Did
20 you -- because that would be hearsay for you to say what
21 somebody said. Did you explain to the County personnel
22 what you wanted to do?

23 A. Yes, sir.

24 Q. Did you make any requests for permits?

25 A. Yes, sir.

1 Q. After you explained what you wanted to do, did they
2 give you the permits that you needed?

3 A. The first department I had to -- I was informed that
4 I needed to go to --

5 Q. Now don't say what you were informed.

6 A. That I needed to go to the zoning department because
7 we had no -- the property had never been addressed before.

8 Q. All right. You had to get an address?

9 A. We had to get an address.

10 Q. So you got an address. Then where did you go?

11 A. To the zoning department.

12 Q. And did you get the necessary zoning permits?

13 A. We didn't need one.

14 Q. Didn't need one.

15 A. We just had to make sure it qualified as -- still as
16 agricultural property.

17 Q. And it did?

18 A. And it did.

19 Q. All right. From the zoning department where did you
20 go?

21 A. To building permits.

22 Q. And did you explain to them what you were gonna do?

23 A. Yes, sir.

24 Q. And what permits did you get from them?

25 A. The first permit I got from them, I believe, was the

1 permit to build our barn.

2 Q. What other permits did you get from them?

3 A. Shortly afterwards I got a permit to build a shelter.

4 Q. Did you get any other permits?

5 A. Not at that time, no, sir.

6 Q. Did you ever get any other permits?

7 A. We got one to build a house two years later.

8 Q. Now in regard to the -- the clearing, grading and

9 conversion into pasture, did you make inquiry as to what

10 permits you would need for that?

11 A. I made inquiry as to as far as what the requirements

12 were.

13 Q. And did you learn what those requirement were?

14 A. As long as it was related to agricultural purposes,

15 there were no -- there were no permits required.

16 Q. And when you learned that there were no permits

17 required, did you start work?

18 A. Yes, sir.

19 Q. And how do you know Roger?

20 A. I've been friends with him for years.

21 Q. A good guy?

22 A. A very good guy.

23 Q. Works hard?

24 A. Yes, sir.

25 Q. How much did you pay him for all the work that he did?

1 A. I believe the total was approximately 130,000.

2 Q. Now the -- the allegations are that you did -- you and
3 your wife did something wrong. You're wrongdoers.

4 A. Yes, sir.

5 Q. To your knowledge, did you do anything wrong?

6 A. No, sir.

7 Q. To your knowledge, did Roger do anything wrong?

8 A. To my knowledge, no, sir.

9 Q. If you did something wrong, Roger's the person you
10 paid to do it right, correct?

11 A. That's correct.

12 Q. And the lawsuit that you filled against him is because
13 I told you to do it?

14 A. Yes, sir.

15 Q. You didn't like that very much?

16 A. No, sir.

17 Q. Because you don't believe you either of you did
18 anything wrong?

19 A. That's correct.

20 Q. Did you do this just like the County instructed you
21 to?

22 A. Yes, sir.

23 Q. The dam -- did you know the dam was in as bad a shape
24 as it was in when you bought the property?

25 A. No, sir.

1 Q. When you learned the dam was in this bad of shape, did
2 it scare you?

3 A. Yes.

4 MR. BELSER: Your Honor, objection. Leading. I
5 know that we're late in the day, but this is Mr. Cade's
6 chance to testify, not Mr. Moore's.

7 MR. MOORE: I'll withdraw the question.

8 THE COURT: Okay. Thank you, Mr. Moore.

9 BY MR. MOORE:

10 Q. What, if any, concerns did you have when you realized
11 the dam was in the dangerous condition that it was in?

12 A. The pond was very poorly maintained over the years and
13 from my understanding the gentleman that previously owned
14 it died previous years before that and left it to a trust a
15 family in Charleston owns, so there was no direct contact
16 with anybody that owned this property until we purchased it
17 and then once we got into where we could see what was going
18 on with it, the pond was in very, very poor condition.

19 Q. Did you have any choice but to make the dam safe?

20 A. No, sir.

21 Q. What all did you have to do to make it safe?

22 A. We had to go in and repair the spillway and basically
23 re-core the dam.

24 Q. Was there any way to do the work without doing the
25 work?

- 1 A. No, sir.
- 2 Q. And the work had to be done?
- 3 A. Yes, sir.
- 4 Q. Do you agree that if that hurricane had come before
- 5 you did the work that everybody would have had a problem?
- 6 A. Yes, sir.
- 7 Q. How big is your pond?
- 8 A. Approximately three to four acres.
- 9 Q. How deep is it?
- 10 A. At certain spots about eighteen feet.
- 11 Q. Is it -- do you basically take water from upstream?
- 12 A. Yes.
- 13 Q. Is that how it's primarily fed?
- 14 A. Basically just off of rainwater or just the rain
- 15 basin.
- 16 Q. Rainwater falls in your pond?
- 17 A. Yes, sir.
- 18 Q. And what rainwater falls off your land, it flows into
- 19 your pond?
- 20 A. Yes, sir.
- 21 Q. This is the natural flow of the land?
- 22 A. That's correct.
- 23 Q. Now when water flows out of the pond, is there any way
- 24 that water can be silted?
- 25 A. No, sir.

1 Q. Why not?

2 A. Because of the depth of the pond and the -- and the
3 measures that we put into place. The materials that I
4 ended up purchasing that Roger installed, it's basically
5 all the water is coming off the top.

6 Q. So any of the sand falls down before it gets to the
7 spillway?

8 A. That's correct. And any water -- any water going into
9 the pond is at the farthest end.

10 Q. So what you can tell me is the water that comes out of
11 the pond into the channel is all clean?

12 A. That's correct.

13 Q. And it flows into vegetated wetlands where it's
14 supposed to?

15 A. Yes, sir.

16 Q. Have you ever seen the pipe that we're talking about?

17 A. The pipe?

18 Q. The 24-inch pipe under Davis Drive.

19 A. I saw the inlet side of it, yes, sir.

20 Q. Is it clogged or is it free-flowing?

21 A. I didn't see it free-flowing last night.

22 Q. You looked at it as late as last night?

23 A. Yes, sir.

24 Q. Is there siltation in the pipe?

25 A. I didn't look down in the pipe.

1 Q. What did you see?

2 A. I saw water -- a flow of water going into the pipe
3 and there was water on the other side, but it was not
4 free-flowing.

5 Q. Does water back up from that pipe from time to time?

6 A. I have seen it so, yes, sir.

7 Q. Now besides the -- besides the water coming from your
8 pond into that channel, is there other water that goes into
9 that channel from other places?

10 A. I could not a hundred percent confirm that, but there
11 has to be because of the -- the shed that I've seen that
12 has backed up on Mr. Shearer's property before.

13 Q. There's also a spring in that -- down below you?

14 A. Yes, sir.

15 Q. So yours is not the only water going into the pipe?

16 A. That's correct.

17 Q. But the water that's headed from your land is clean?

18 A. Yes, sir.

19 Q. It can't be otherwise?

20 A. That's correct.

21 Q. Now is there water that flows toward the pipe from a
22 ditch?

23 A. There is a -- there's several indentions in
24 Mr. Shearer's property that -- that hold water and when
25 the water backs up, it -- it combines and it also combines

1 off of Davis Drive into a -- into a holding area right
2 there at Mr. Shearer's property and eventually separates
3 into a ditch and then into that channel.

4 Q. That basically is rainwater?

5 A. Yes, sir.

6 Q. That's not your water?

7 A. That's correct.

8 Q. Now we saw somewhat of a cut there in the berm. Did
9 you see that?

10 A. Yes, sir, I did.

11 Q. How long has that been there?

12 A. I could not tell you.

13 Q. Did you do that?

14 A. No, sir.

15 Q. What does that cut in the berm do?

16 A. It drains Davis Drive into Ms. Garland's pond.

17 Q. Do you know who did that cut?

18 A. No, sir.

19 Q. Davis Drive, the cut there in the berm, the berm acts
20 like a dam, right?

21 A. Yes, sir.

22 Q. Water that falls on Davis Drive dams up along that
23 berm?

24 A. Yes, sir.

25 Q. But where that cut is the water can go through and it

1 would go in the direction of Ms. Garland's pond, wouldn't
2 it?

3 A. That's correct.

4 Q. Do you have any idea of who put that cut-through in
5 that berm?

6 A. No, sir.

7 Q. Would you have had any reason to do that?

8 A. No, sir.

9 Q. Would that cut-through allow silt to go down towards
10 her pond?

11 A. Absolutely it would.

12 Q. Now last night when you were out there, you say you
13 looked at her pond from the road. You didn't go on her
14 property?

15 A. No, sir.

16 Q. You wouldn't do that?

17 A. I've never been on her property.

18 Q. At one -- Ms. Garland, was there any time that she
19 started doing anything unusual towards you and your wife?

20 A. Several occasions. Yes, sir.

21 Q. Would you tell me what it is that she would do?

22 A. She would drive up and down Newcastle Drive bordering
23 our property videotaping us, recording us, trespassing on
24 my neighbor's property at my chain link fence to take
25 pictures of our property.

1 Q. Did you like that?

2 A. No, sir.

3 Q. Now was there one day you reciprocated?

4 A. Absolutely.

5 Q. What did you do?

6 A. I -- I returned the favor.

7 Q. What did you do?

8 A. I followed her with my videocamera back to her

9 facility -- her -- her residence.

10 Q. Did you ever block her into her driveway?

11 A. She pulled into her driveway, I pulled up on Davis

12 Drive. Her significant other got out of the vehicle,

13 closed the gates, and they -- they drove on into her

14 property.

15 Q. And you drove off?

16 A. Yes, sir.

17 Q. That's the only time you've ever followed or video'd

18 her?

19 A. Yes, sir.

20 Q. And you did it because she was following and video'ing

21 you?

22 A. Yes, sir. Numerous times a day.

23 Q. You just wanted to basically try to put an end to it?

24 A. Yes.

25 Q. But did you assault her or accuse -- talk to her or

1 anything?

2 A. I didn't speak a word to her.

3 Q. You just did to her what she was doing to you?

4 A. Yes, sir.

5 Q. That was kind of childish, wasn't it?

6 A. Very.

7 Q. You're not particularly proud of that fact?

8 A. No, sir.

9 Q. Were you angry at the time or frustrated?

10 A. I was frustrated and aggravated.

11 Q. How many times do you reckon that she drove all the

12 way around her property video'ing you and your wife before

13 you did this one incident where you followed her?

14 A. I would say hundreds.

15 Q. And you actually have a videotape of that -- that day

16 when you were following her, but it doesn't show anything

17 except you in your truck, does it?

18 A. That's correct.

19 Q. Did you ever leave your truck?

20 A. No, sir.

21 Q. Did you ever cuss her?

22 A. No, sir.

23 Q. Did you ever do anything out of the way towards her?

24 A. No, sir.

25 Q. Have you ever even spoken to her?

1 A. No, sir.

2 Q. Did you ever do anything to damage her property?

3 A. No, sir.

4 Q. Who actually cut the timber off your land?

5 A. I don't remember the name of the company. It was a
6 timber buyer and they actually hired a logging company out
7 of North, South Carolina, who actually cut the timber.

8 Q. Now Roger is in this business and you're not?

9 A. That's correct.

10 Q. Have you ever been in the land clearing or grading
11 business?

12 A. No, sir.

13 Q. Now we talked about this stop work order. When the
14 stop work order was issued, where were you?

15 A. I was either -- I believe I was either in Alabama or
16 I was in Maryland.

17 Q. And your wife had to handle the problem, right?

18 A. Yes, sir.

19 Q. How long did it take for the stop work order to go
20 away?

21 A. Within hours.

22 Q. How did you get it removed?

23 A. I talked to the gentleman with the County. I forget
24 his name now.

25 Q. Now I don't want you to tell me what he told you, I

1 want you to tell the jury what you told him. What did you
2 say to him when you learned that there had been a stop work
3 order?

4 A. We had a previous verbal stop work order, I believe,
5 in the month of June and there was a gentleman that -- I've
6 got a voicemail that I forwarded to you.

7 Q. Go ahead.

8 A. That we were disturbing -- had some land disturbing
9 activities and that he was trying to -- there was another
10 property that he couldn't ever catch anybody there. He saw
11 us there --

12 MR. BELSER: Your Honor, objection.

13 MR. MOORE: Don't say what he said.

14 THE WITNESS: Okay.

15 MR. BELSER: Number one, there's allegedly a
16 voicemail that I never heard or seen and, number two,
17 this is clearly hearsay which is trying to back door,
18 front door, side door, through the roof, everything
19 trying to get in. It's improper.

20 MR. MOORE: Your Honor, I didn't ask anybody what
21 he said.

22 THE COURT: All right. Let me see the lawyers for
23 a second.

24 (Proceedings held at the bench; not reported.)

25 THE COURT: Don't answer that.

1 Mr. Moore's gonna rephrase it.

2 THE WITNESS: Yes, ma'am.

3 BY MR. MOORE:

4 Q. You had previously back in June had a conversation
5 with the County. Don't tell me what they said.

6 A. Yes, sir.

7 Q. Did -- were you allowed to continue to work?

8 A. Yes, sir.

9 Q. Were you required to get a permit?

10 A. No, sir.

11 Q. Did anybody ever tell you you had to have a stormwater
12 permit?

13 MR. BELSER: Objection.

14 BY MR. MOORE:

15 Q. Were you ever required to get a stormwater permit?

16 A. No, sir.

17 Q. All right. Now I want to go back to the stop work
18 order that's in evidence. When you learned that had taken
19 place, you called somebody?

20 A. Yes, sir.

21 Q. And that was with the County?

22 A. Yes, sir.

23 Q. What did -- don't tell me what they told you, but tell
24 me what you told them.

25 A. I asked them what it was in reference to, they --

1 they followed up with a complaint. The -- I told them
2 previously I went down there over a verbal stop work order
3 and the person that I discussed that with --

4 Q. Don't say what he said.

5 A. -- that we were not required to have a permit.

6 MR. BELSER: Your Honor, objection.

7 THE COURT: I'm telling you I just said not to say
8 what he said.

9 MR. MOORE: Don't say what he said.

10 THE WITNESS: I'm sorry.

11 MR. BELSER: Your Honor, can we strike that from the
12 record?

13 THE COURT: I'm gonna strike it from the record.

14 MR. BELSER: And I'd like a curative instruction,
15 too.

16 THE COURT: I am.

17 When I strike something from the record, that
18 means you are not to consider it at all in any way in
19 your deliberations.

20 Now with that said, let me see the lawyers.

21 (Proceedings held at the bench; not reported.)

22 BY MR. MOORE:

23 Q. Robert, if you tell me again what somebody from the
24 County told you, I'm gonna come up and strangle you, okay?

25 A. Yes, sir.

1 Q. You can't do that.

2 A. Okay.

3 Q. You can say what you did and you can say what you
4 said, but you can't say what somebody else said.

5 A. Yes, sir.

6 Q. Got it?

7 A. Yes, sir.

8 Q. All right. You called them and you told them the
9 history?

10 A. Yes, sir.

11 Q. Was the stop work order lifted?

12 A. It was lifted.

13 Q. Now in the stop work order that was lifted, it says
14 please stabilize. Did you -- other than that request, was
15 there ever any order issued by anyone that you know of
16 ordering you to do anything?

17 A. No, sir.

18 MR. BELSER: Objection. Leading.

19 THE COURT: It is leading.

20 Just rephrase it, Mr. Moore.

21 BY MR. MOORE:

22 Q. What, if any, orders -- other than that stop work
23 order that was lifted, what, if any, other orders were
24 directed toward you?

25 A. None.

1 Q. And did you go back to work?

2 A. Yes.

3 Q. And did you finish?

4 A. Yes.

5 Q. Before the hurricane, was your property already
6 seeded?

7 A. Yes.

8 Q. Before the hurricane, was the dam hydroseeded?

9 A. Yes.

10 Q. Before the hurricane, was the dam stable?

11 A. Yes.

12 Q. Now there's been testimony that approximately 1700
13 cubic yards of sand is missing from your property. If
14 1700 cubic yards were missing, do you think you would have
15 noticed it?

16 A. Absolutely.

17 Q. Why?

18 A. That's a -- that's a large portion of dirt.

19 Q. Did you look at your land after the hurricanes?

20 A. Every day.

21 Q. What, if any, erosion have you ever seen on your
22 property since the time you bought it?

23 A. Very minimal.

24 MR. MOORE: Thank you, sir. If you would answer
25 any questions counsel may have.

1 MR. BELSER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BELSER:

4 Q. Mr. Cade, if I give you a check right now for \$13,890,
5 would you transfer your property to me?

6 A. No, sir.

7 Q. Okay. Do you know what your property is taxed at?

8 A. I -- I don't recall what the last tax record was at.

9 MR. BELSER: Your Honor, this has only come up just
10 because of the questions on cross -- earlier. Your --

11 MR. MOORE: Your Honor, I've never seen this
12 document, nor has it been disclosed to me in discovery.

13 THE COURT: It's a question. I don't know that
14 he's introducing anything.

15 BY MR. BELSER:

16 Q. What is your -- what is your property assessed at?

17 MR. MOORE: Your Honor, that would be hearsay.

18 MR. BELSER: He can answer what the property is
19 assessed at.

20 THE WITNESS: I don't recall what the last tax --

21 BY MR. BELSER:

22 Q. Okay. What do you pay in taxes?

23 A. My wife writes the check. I couldn't tell you. I
24 don't think I was home when the bill came.

25 Q. Okay. Would you be surprised to know that your

1 property was assessed for less than \$14,000?

2 MR. MOORE: That's hearsay, Your Honor. What
3 somebody assessed it at would be what somebody else
4 says and it's hearsay.

5 THE COURT: I --

6 THE WITNESS: I don't believe that's accurate.
7 Not -- not for the past year after our house was built.

8 THE COURT: Don't answer until I rule, please.

9 THE WITNESS: Yes. I'm sorry.

10 THE COURT: All right. Let me have you back.

11 (Proceedings held at the bench; not reported.)

12 BY MR. BELSER:

13 Q. All right. Mr. Cade, I'm showing you your -- I just
14 got this this morning. What is -- what is your property
15 assessed at?

16 A. That says 13,890.

17 Q. Okay. So for that piece of property that we did the
18 tour of, that's what its assessed at?

19 A. I didn't see the address on there. We did own some
20 other properties. I wasn't sure what the year is on that.

21 Q. Is your address 106 Newcastle Drive?

22 A. That was the old -- that's the old address. I just
23 want to make sure it's the same piece of property.

24 Q. But it is the same piece of property that we had the
25 drone tour of and that's 2,021 -- I mean, 2021?

1 A. Yes.

2 Q. Now let's talk about this cut. Do you remember the
3 cut we saw the picture of you took last -- that was last
4 night?

5 A. Yeah, that was last night. Yesterday afternoon.

6 Q. Whose house is that right across the street from?

7 A. Mr. Shearer's.

8 Q. Okay. Now there was a -- I'm not even going to get
9 into what happened in June with the verbal stop work order.
10 There was a written stop work order that you received in
11 October after you got a complaint -- after there was a
12 complaint by Ms. Garland?

13 A. Yes.

14 Q. Okay. And you actually had a sit-down conversation
15 with -- with Mr. Spires; is that right? Did you hear him
16 testify?

17 A. Yes, sir. Yes, sir. I couldn't remember what his
18 name was.

19 Q. Okay. But you and Mr. Spires had a sit-down
20 conversation?

21 A. No, sir, we had a phone conversation.

22 Q. You had a phone conversation?

23 A. Yes, sir.

24 Q. And you told him you were gonna stabilize the
25 property?

1 A. I do -- I do not recall that, no, sir. The property
2 had already been stabilized. It'd already been seeded or
3 grassed and I told him we had already been through this
4 once before.

5 Q. Okay. So it's your testimony under oath -- because I
6 took your deposition. Do you remember when I took your
7 deposition?

8 A. Yes, sir.

9 Q. So it's your testimony under oath today, March the
10 31st of 2022, that it was -- that your property was
11 stabilized well before the stop work order?

12 A. That it had been seeded, yes, sir.

13 Q. Okay. It was not stabilized until after Christmas;
14 is that right?

15 A. No, sir. We had it sprigged. We had the hayfield
16 sprigged in Christmas of that year.

17 Q. Let me hand you your --

18 MR. BELSER: Your Honor, may I approach the witness
19 with his deposition transcript?

20 THE COURT: You may.

21 MR. BELSER: And I'm gonna unseal it as well.

22 THE COURT: You may.

23 (Court's Exhibit Number 6 was marked for
24 identification.)

25 BY MR. BELSER:

1 Q. All right. Let's do -- let's do a little turn back
2 the clock here. Do you remember when -- do you remember
3 when I took your deposition on August the 27th of 2019?

4 A. Yes, sir.

5 Q. All right. Let's turn to page 20 and just to be --
6 actually page 19.

7 A. Page 19.

8 Q. Okay. And just to be abundantly clear, what you're
9 saying here today, Mr. Cade --

10 A. Yes, sir.

11 Q. -- what you're saying here today, what you've told
12 this jury under oath, is that the property was stabilized
13 -- seeded or stabilized? Which one?

14 A. I said seeded.

15 Q. So it was not -- it was stabilized?

16 A. Well, I don't know what the definition of stabilize
17 would be. As far as the -- the condition of the property,
18 we were complete -- we were done with the stump removal and
19 the property had been seeded on the lower side or the right
20 side of our driveway --

21 Q. Well, let's --

22 A. -- the opposite side of our pond.

23 Q. -- think about it this way. Was grass growing?

24 A. Yes.

25 Q. So it's your testimony that it was seeded and there

1 was grass growing, things to hold the ground together,
2 before Sep -- before you got the stop work order?

3 A. That is correct.

4 Q. All right. This -- on page 19, my -- what we're
5 gonna do is just I'm gonna read the "Q" and you're gonna
6 read the "A", okay?

7 A. Okay.

8 Q. "What does the -- is the condition of the -- is the
9 grass stabilized now? Is it established?".

10 What was your answer?

11 A. "Yes.".

12 Q. "So when you're talking about sprig, let me get back
13 there real quick. It's not like sod --"

14 A. "No.".

15 Q. "-- that you roll out?".

16 A. "No.".

17 Q. "And it's not like just a seed --"

18 A. "No.".

19 Q. "-- that you dis -- that you just broadcast, it's
20 a --"

21 A. "It's a grass sprig.".

22 Q. "So like a seed, which has grass growing out of it."
23 I said that not like a question.

24 "So like a seed which has grass growing out of it."

25 What was your answer? Do you see it? Line 18 on

1 page 19. I -- I flipped my page. You didn't need to
2 flip yours. My pages are messed up. Do you see where we
3 are?

4 A. Yes.

5 Q. All right.

6 A. "From my understanding -- I'm referring to the
7 gentleman that did the sprigging for us --"

8 Q. "Okay.".

9 A. It's basically established hay.

10 Q. No, I'm asking you to read your answer.

11 A. Okay.

12 Q. Okay. So from my understanding --

13 A. "From my understanding, this is what he has at his as
14 farm. This is what he does. He goes out, removes the
15 grass off of his farm and it's in pieces. Bermuda grass
16 grows. It's what we commonly have around here as hay and
17 that's what he brought to sprig it. That's what they call
18 it, sprigging, but it's actually grass sprigs.".

19 Q. "And when was that done?".

20 A. "Christmas Day. It was a three-day process, so it was
21 the 24th, 25th and the 26th.".

22 Q. "2018?".

23 A. "Yes, sir.".

24 Q. "So the property was -- what was done to stabilize the
25 soil before then?". What was your answer?

1 A. "That's the only thing we've done."

2 Q. Okay. So when you testified under -- and you were
3 sworn to tell the truth when I took your deposition, right?

4 A. Yes, sir.

5 Q. Okay. So do you stand by that answer that you didn't
6 stabilize it until after Christmas of 2018?

7 A. We seeded it. I didn't clarify being stabilized. I
8 said we seeded it.

9 Q. So -- okay. You'd just agree with me it wasn't
10 stabilized until after Christmas?

11 A. I wouldn't even say sprigging it was -- as far as the
12 definition of stabilizing, I don't understand what you're
13 trying to get to.

14 Q. Well, let's think about it this way. If you've got --
15 if you have bare earth, if it -- and you've got grass on
16 it, if the grass is grown and established, it's stabilized.
17 Do you agree with that?

18 A. I agree with that, yes.

19 Q. Okay. At what point in time on all the earth -- the
20 work that was done, at what point in time -- you saw the
21 video --

22 A. Yes.

23 Q. -- which had -- it looked like grasses and the
24 pastures and all that kind of jazz. At what point in time
25 was that actually established?

1 A. As far as growing and heavily grassed?

2 Q. And holding the earth together.

3 A. I would say that would probably be February to March
4 of '19 before that was -- actually before it was all filled
5 in.

6 Q. Okay.

7 All right. So you got the stop work order in October
8 that mentioned stabilizing and you didn't start that
9 process for another two months?

10 A. It did not mention stabilizing, sir. The stop work
11 order did not.

12 Q. All right. I'm gonna hand you the letter if I can
13 find it.

14 A. You said the stop work order, sir.

15 Q. Do you remember receiving the letter?

16 A. I requested a letter.

17 Q. Okay. And the letter -- what does the -- Garland
18 Exhibit Number 8, what does it -- do you see the sentence
19 that references stabilization?

20 A. It says "Please move forward with the stabilization of
21 the project site to eliminate offsite impacts.".

22 Q. And that was two months later before you actually
23 started that?

24 A. No, sir. It had been seeded and there was grass
25 growing.

1 Q. But your -- your buddy who came out with the
2 sprigging, that -- that was not for another two months.

3 A. That's correct, but we did have it established as far
4 as having grass growing.

5 Q. Okay. And Exhibit Number 9, we've only met I think on
6 -- how many times have we met? Just once?

7 A. Just -- there's been a few. A handful here or there.

8 Q. All right. Do you -- on November the 27th of 2018,
9 do you recall receiving a letter from me?

10 A. I don't recall, no, sir.

11 Q. Okay. I'm handing you what's marked as Garland
12 Exhibit Number 9 and I'd like for you to read that letter.

13 A. Dear, Mr. Cade. I represent Suzan Garland, who owns
14 a pond downstream from your property located at Newcastle
15 Drive and Fish Hatchery Road. Since you began
16 land-disturbing activities at your property heavy loads
17 of sediment laden stormwater, have been discharged and
18 deposited into Ms. Garland's pond. Enclosed are
19 photographs of Ms. Garland's pond dated November 8th,
20 November 13th, November 15th, November 24th that depict
21 the damage. Please be advised that your negligent failure
22 to stabilize your property after logging, stumping and
23 grading it violates Federal, state, county and common law,
24 and I am writing for two reasons. One, to put you on
25 notice of an environmental water quality and property

1 damage claim that I intend to file and, two, to instruct
2 you to immediately take measures to cease and desist
3 further discharges.

4 Q. And you got that letter and then you called Mr. Lee;
5 is that right?

6 A. I got this letter and I turned it over to Mr. Moore.

7 Q. Okay. You don't need to -- I don't want to know what
8 he has to say, but you --

9 A. Then I called Mr. Lee.

10 Q. You called Mr. Lee?

11 A. Yes.

12 Q. And you heard -- and Mr. Lee gave you the report?

13 A. Yes.

14 Q. Okay. And you never gave -- you never bothered to
15 give that report to Roger to say hey, Roger, you know,
16 we've got a problem?

17 A. Roger was not named in this, sir. I was.

18 Q. But you knew at least -- whether or not you actually
19 had a problem, you knew that somebody was saying you had a
20 problem?

21 A. Yes.

22 Q. Okay. And you got Mr. Lee to investigate it and he
23 said yeah, I mean, I know you're paying me and I'm -- you
24 asked me for an objective opinion and in my opinion, yeah,
25 you've got a problem?

1 MR. MOORE: Your Honor, I object to that hearsay.
2 That's not -- the report speaks for itself; otherwise,
3 he's basically pitting one witness against the other.
4 It's hearsay with that.

5 THE COURT: Rephrase it, Mr. Belser.

6 MR. BELSER: I can't remember what I said, but...

7 BY MR. BELSER:

8 Q. Mr. Lee. All right. So you got the letter from me,
9 you called Mr. Lee for an objective opinion, right?

10 A. Yes.

11 Q. And you paid him for an objective opinion?

12 A. Yes.

13 Q. Okay. And we've already seen -- and he -- the report
14 that he walked the jury -- walked everybody through, that's
15 what he gave to you; is that right?

16 A. That's correct.

17 Q. And do you remember the sentence in there which says
18 the short answer is yes?

19 A. Yes, I do remember that.

20 Q. Okay. But you didn't think that was important to
21 you?

22 A. I do think that was important to me, but I also
23 noticed that there was a sentence in there that also noted
24 -- notated that it took a severe rainfall event.

25 Q. So you didn't think you'd done anything wrong?

1 A. No, sir.

2 Q. Even to this day you have absolutely no remorse for
3 what has happened?

4 A. I feel sorry for Ms. Garland, I do, but as far as the
5 fault on myself, it's not there, sir.

6 Q. You wouldn't do anything different, would you?

7 A. I did. I took the appropriate measures in everything
8 that I did.

9 Q. You would not do anything differently, would you?

10 A. No, sir.

11 Q. All right. Just briefly -- and again, this is -- so
12 can you see this okay?

13 A. Yes, sir.

14 Q. I've got to stand so everybody can see it. This is
15 a Lexington County map. Oops. I'm looking -- well, all
16 right. This is the one -- I'm not sure -- there's not a --
17 I'm not sure what date this is, but this is before you
18 cleared your property, right?

19 A. Yes, sir.

20 Q. Okay. And what we saw in the video was kind of the
21 road goes down right here and then loops and then there's
22 all the different paddocks and that kind of stuff?

23 A. Yes, sir.

24 Q. Okay. There's no -- the only land use change in
25 this area since 2018 is you clearing your thirty-six,

1 thirty-nine acres?

2 A. I -- I wouldn't have any other knowledge of anybody
3 else.

4 Q. So you don't know of any other land use change?

5 A. No, sir.

6 Q. And you don't deny that you're the only land use
7 change since 2018?

8 A. Again, I have no knowledge of anybody else.

9 Q. And we saw the -- going through the video, we saw
10 there -- you've got an asphalt kind of road that comes down
11 to your property?

12 A. Yes, sir.

13 Q. And you've got that nice big house?

14 A. Yes, sir.

15 Q. And you've got those multiple structures. One I think
16 was at least a three-door garage?

17 A. A barn.

18 Q. A barn?

19 A. Yes, sir.

20 Q. Okay. What do you park in there?

21 A. Usually a tractor, animal feed, pond supplies and
22 just --

23 Q. And for your -- sorry. I didn't mean to interrupt.

24 A. No, no.

25 Q. And for your trucking business, you occasionally park

1 your trucks on your -- on your property?

2 A. Yes.

3 Q. And in your deposition -- and so in realty the --
4 the flyover of the paddocks, which has the sprigs, that was
5 not -- that didn't really take until, you know, February,
6 March, 2020 -- 2019?

7 A. Bermuda grass is dormant in the winter -- in the
8 winter months, so that's why we pre-seeded with a winter
9 grass so that we would have some establishment of grass
10 until it was sprigged, so when the -- when Bermuda hay
11 grows, it grows in the spring to summer months.

12 Q. So when did the -- I guess when did the -- your
13 property look like it did in the video?

14 A. It's looked like that since probably February of 2019.
15 February to March. Because the winter -- the winter grass
16 we had growing was up by -- was really high by then. It
17 was probably waist high.

18 Q. And you started in May of 2018; is that right?

19 A. I believe so.

20 Q. Okay. All right. We're getting close. I want to
21 talk about -- we saw the video of -- of you outside of
22 Ms. Garland's gate. Do you remember that? I can pull it
23 up again.

24 A. Yes. Yes. The one we showed yesterday -- or you
25 showed yesterday.

1 Q. Yeah, the one that I -- yeah, that Ms. Garland said
2 she felt intimidated, threatened. Do you remember that?

3 A. Yes, sir.

4 Q. Okay. That was your truck?

5 A. That was my truck. Yes, sir.

6 Q. And that was -- it's kind of hard to see because it's
7 kind of pixilated, but in your truck you had your camera
8 out and you were doing this towards Ms. Garland; is that
9 right?

10 A. I was -- I was doing the same exact thing she was
11 doing. Yes, sir.

12 Q. Okay. And you said that -- and, I mean, in this day
13 and age, it is so easy to take videotapes, isn't it?

14 A. Yes, sir. It sure is.

15 Q. I mean, we can -- I can photograph -- I'm not taking a
16 photograph of you right now --

17 A. That's right.

18 Q. -- but it's as easy as all get out?

19 A. Yes, sir.

20 Q. Okay. And you say that there were hundreds of times
21 when she came and videotaped you?

22 A. Our property, yes, sir. Sometimes with us in it and
23 sometimes with us not.

24 Q. Okay. And on -- on public roads?

25 A. On public roads.

1 Q. And do you have any videotapes of that?

2 A. Yes.

3 Q. Dueling videotapes?

4 A. I've got the one videotape of the same identical
5 incident that you referred to yesterday with her.

6 Q. And --

7 A. And I can tell you one of the occasions, and you have
8 photographs of it, where she was on a chain link fence
9 bordering my property, which shows her trespassing on a
10 neighbor's property.

11 Q. Whose property was that?

12 A. Mr. Harvey Reynolds.

13 Q. And she was -- she was on the chain link fence?

14 A. Yes.

15 Q. Like --

16 A. Newcastle Drive is here. He owns a very small strip
17 of property here. My chain link fence starts here. She
18 was at my chain link fence.

19 Q. Now when you heard -- how big are you?

20 A. I'm six-foot-three.

21 Q. Six-foot-three?

22 A. Yes, sir.

23 Q. When you heard -- when your wife told you that
24 Mr. Melichar was filming her with a gun and -- and yelling
25 obscenities towards her, that made you mad as all get out,

1 didn't it?

2 A. My wife's not intimidated very easily, sir.

3 Q. I'm asking how you felt. Did you -- you heard her --

4 A. I felt that my wife can handle herself.

5 Q. But you were mad, weren't you?

6 A. I -- she took care of the situation herself, sir, and
7 explained to me that she handled herself.

8 Q. But you and -- but eventually you and Mr. Melichar got
9 mutual restraining orders against each other?

10 A. That was -- I believe that was -- yes. Yes, that was
11 after that fact.

12 Q. Okay. Do you understand why Ms. Garland would be
13 intimidated when a six-foot-three man as big as you are
14 parks in front of her driveway filming her like that? Do
15 you understand?

16 A. Sir, she had never seen me outside of a vehicle. She
17 didn't know how tall I was or how large I was.

18 Q. But she'd seen you before if she'd --

19 A. No, sir.

20 Q. So even -- so in all the hundreds of times -- so
21 you're saying the hundreds of times --

22 A. Yes, sir.

23 Q. -- she had driven on a public road and filmed you,
24 right?

25 A. Yes, sir.

1 Q. Were you -- were you always in the truck when that
2 happened?

3 A. I was either in a truck or I was -- I was on what --
4 we have one of our side-by-sides that I would ride the
5 property with.

6 Q. And your -- it's your testimony that you -- you don't
7 think she had any idea how big a boy you were?

8 A. That's correct.

9 Q. Okay. Assuming that she -- that she knew you were
10 six-foot-three and a big guy, do you understand why she
11 would feel intimidated, bullied and threatened?

12 A. No, sir.

13 MR. BELSER: I have no further questions.

14 MR. MOORE: Your Honor, he asked him three times
15 about what he would understand about what she might
16 believe, in my humble opinion it's totally irrelevant
17 facts of the case, but the question's been asked about
18 three times.

19 THE COURT: Okay.

20 MR. BELSER: I don't have any further questions,
21 Your Honor.

22 THE COURT: He's not gonna ask any more.

23 All right. Go ahead.

24 MR. DOUGALL: May it please the Court?

25 THE COURT: Absolutely.

1 CROSS-EXAMINATION

2 BY MR. DOUGALL:

3 Q. Mr. Cade, you hired Mr. Singleton, right?

4 A. Yes, sir.

5 Q. You paid him a lot of money for the work he did?

6 A. Yes, sir.

7 Q. Because he did a lot of work?

8 A. He did a lot of work.

9 Q. And you inspected all that work?

10 A. I was there most days.

11 Q. And you were happy with that work?

12 A. I was satisfied, yes, sir.

13 Q. Okay. And as Mr. Moore testified to earlier, you sued
14 Mr. Singleton because he told you to?

15 A. Yes.

16 Q. On the eve of trial, in other words, December 6th of
17 last year, correct?

18 A. Yes, sir.

19 Q. This case has been going on for three years and right
20 before trial you decided to sue Mr. Singleton because your
21 lawyer told you to?

22 A. Yes.

23 Q. That's the only reason you sued him, right?

24 A. Yes.

25 Q. And you have absolutely no evidence that he did

1 anything wrong, do you?

2 A. No, sir.

3 MR. DOUGALL: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. MOORE:

6 Q. Robert, you sure didn't want to sue him, did you?

7 A. No, sir.

8 Q. And that's because you don't believe that he did
9 anything wrong?

10 A. That's correct.

11 Q. Just like you don't believe you did anything wrong?

12 A. That's correct.

13 Q. If you did something wrong --

14 MR. DOUGALL: Objection, Your Honor. He's going
15 into -- basically Mr. Moore's now trying to testify
16 as to why he told his client to sue my client and
17 that's improper.

18 THE COURT: Well, I think it might be improper
19 there, Mr. Moore. Let's rephrase it and not on a
20 hearsay.

21 MR. MOORE: Sure.

22 BY MR. MOORE:

23 Q. If you did something wrong, what do you believe about
24 Roger?

25 A. That if I did something wrong?

1 Q. Yeah.

2 A. Then -- then it would have to have been Roger did it
3 wrong.

4 Q. All right. Now I do want to pull up something that
5 you were asked about?

6 MR. MOORE: Callee, can you help me, please?

7 Q. You were asked about your property being valued at
8 some \$13,000 and you were asked about a tax bill. I'm
9 gonna show you the tax bill that you were asked about.

10 And there we have the rock in the middle of the ocean
11 again.

12 Robert, is this the document that you were asked about
13 from the County of Lexington?

14 A. That the County of Lexington asked me about?

15 Q. No, that you were asked about by the lawyer?

16 A. No, that's not the document he showed me. No, sir.

17 Q. Well, this appears to be a Lexington County, I think,
18 tax bill.

19 Bring it down one, Callee, if you can. That should
20 be it.

21 Robert, I think this is what he showed you from what
22 I understand because they just sent it to us, okay?

23 A. Okay. Well, it was a smaller screen and it might have
24 been displayed a little differently.

25 Q. It was a smaller screen.

1 MR. BELSER: No.

2 MR. MOORE: That's not it?

3 MR. BELSER: That's not the same document, but I
4 did send it to you, so.

5 THE WITNESS: I was gonna say it didn't look
6 familiar, but it could have been.

7 BY MR. MOORE:

8 Q. All right. Well, this appears to be a document from
9 Lexington County and it has taxable value of land at 190
10 some odd thousand, taxable value of building at \$320,000
11 and then assessment of the building \$13,170, and it's got a
12 homestead exemption and the property is basically assessed
13 as agricultural property, isn't it?

14 A. Yes, sir. Other than the acre our house sits on.

15 MR. MOORE: Thank you, sir.

16 Nothing further, Your Honor.

17 RECROSS EXAMINATION

18 BY MR. DOUGALL:

19 Q. Mr. Cade, to get to the point --

20 A. Yes, sir.

21 Q. -- can you tell this jury anything that Mr. Singleton
22 has done wrong to justify him being sued in this case?

23 A. No, sir.

24 MR. DOUGALL: Thank you.

25 THE COURT: Mr. Belser, anything?

1 MR. BELSER: No, Your Honor.

2 THE COURT: May I let him step down?

3 You may return to the table.

4 (Witness excused.)

5 MR. MOORE: And that would be our case, Your Honor.

6 THE COURT: All right. Madam Forelady, I have just
7 a couple of things I need to take up with the lawyers.
8 I'm gonna let you go back to the jury room and I'll
9 call you back in in just a moment.

10 (Whereupon, the jury retires to the jury room at
11 4:31 PM.)

12 MR. DOUGALL: Your Honor, I would move for a
13 directed verdict on behalf of Mr. Roger Singleton. As
14 you well know, Mr. Belser and his client have not sued
15 him, they've put up no evidence. None of the experts,
16 none of the witnesses they called provided any testimony
17 that Mr. Singleton had done anything wrong. Both Mr.
18 and Ms. Cade, who have sued him, have both testified he
19 did nothing wrong. There is absolutely no evidence in
20 front of this jury that Mr. Singleton has done anything
21 wrong and he's entitled to a directed verdict in the
22 third-party case.

23 THE COURT: And I'll be glad to hear from you,
24 Mr. Moore.

25 MR. MOORE: He's just wrong. Here's the -- here's

1 what the evidence shows. We're in a Catch-22 situation
2 here. We agree that Mr. Singleton did nothing wrong;
3 however, if what they say we did is wrong, then what he
4 did is wrong because he did it for us.

5 So we get up and say no, we did nothing wrong_and
6 neither did he, but the answer is this. If what they
7 say is true, then the person who got paid to do it right
8 is Roger Singleton, which clearly under any theory of
9 indemnification or any theory of liable over has to
10 work that way.

11 The defense is basically one of we didn't do it,
12 he didn't do it, but if we did it, he did it, and that's
13 the way it basically has to be. I'm not limited in my
14 case against him on simply what my clients say was done
15 wrong. We basically have said in our pleadings that he
16 didn't do anything wrong, but if -- if we did anything
17 wrong, he's the one who did it and he did it wrong and
18 he's liable over.

19 As a matter of fact, Mr. Singleton said if anything
20 was done wrong, I'm responsible for it. That's in the
21 record. And no matter how much Mr. Dougall wants to say
22 it's not in the record, it is. Mr. Singleton says the
23 exact same thing we do. Neither of us did anything
24 wrong, but if something was done wrong, I'm responsible
25 for it, which is the law, and which is true.

1 So we're in a posture to where if in our lawsuit
2 we have to adopt what they say and say okay, from the
3 record as a whole if there's evidence that we did
4 anything wrong, he did it and is responsible for it as
5 he says, there's no way that they can be dismissed in
6 this case.

7 Now I think everybody should be dismissed based
8 upon this record. I think both of them should be
9 dismissed because there is no proof of negligence,
10 there is no proof of duty and -- and there is no proof
11 of any proximate cause nor rational proof of damages
12 nor actually any legitimate expert opinion that says
13 anybody did anything wrong.

14 So Mr. Dougall and I totally agree neither of
15 us did anything wrong, but if we did...

16 THE COURT: I think you might agree with
17 Mr. Dougall, but I don't believe Mr. Dougall agrees
18 with you.

19 So, Mr. Dougall, let me hear your response.

20 MR. DOUGALL: Very briefly.

21 THE COURT: Because I'm gonna tell y'all, this
22 is a trial. This is a court of law. This is why we
23 have a jury. I've got a jury in the jury box. You
24 just can't tell me y'all have got an agreement on the
25 side and, therefore, I don't -- I can't dismiss the --

1 MR. DOUGALL: We have no agreement on the side.

2 MR. MOORE: We have no agreement on the side.

3 THE COURT: Well, saying that the indemnification
4 -- this is -- he came and went to trial. Let me hear
5 about that.

6 MR. DOUGALL: That's exactly what I was getting
7 ready to say, Your Honor. He -- Mr. Singleton was sued
8 for breach of contract and negligence. There's been
9 no proof of any contract because there wasn't one and
10 there's been no proof.

11 THE COURT: I haven't even seen a contract.

12 MR. DOUGALL: There isn't one and -- but they sued
13 him for breach of contract and there is no proof on
14 their negligence claim that he did anything wrong.

15 So now if Mr. Moore wants to turn this into an
16 indemnity case, which it appears he's trying to do,
17 the fact of the matter is that if it is an indemnity
18 case, it's an equitable indemnity case.

19 Mr. Singleton has already settled with the
20 plaintiff, so if he's gonna try to get indemnity from
21 him, he's still got to show that he did something wrong
22 and there's no evidence. He says well, if -- it's not
23 a matter of if anymore.

24 THE COURT: And y'all even talked about a setoff.
25 I guess that's what I'm -- I'm talking about.

1 MR. DOUGALL: He's entitled to a setoff from what
2 we paid, but he's -- he's proven no right to any
3 indemnity. He's proven no knowledge, he's proven no
4 breach of contract. It's time to let Mr. Singleton go.

5 MR. MOORE: No. No. That's absolutely wrong.
6 There is no requirement that there be a written contract
7 in order to bring an action on a contract. Mr. Singleton
8 clearly testified he was hired to do such certain work
9 and he was hired to do it correctly.

10 MR. DOUGALL: And there's been no evidence he did
11 it incorrectly.

12 THE COURT: And there's no testimony to the
13 contrary.

14 MR. MOORE: Then I agree. Then there's no
15 evidence to the contrary that anything he did was
16 incorrect. I agree. And if that's the case, then
17 the defendants both are entitled to judgment as a
18 matter of law. If there's no evidence, as the Court
19 has just indicated, there's no evidence that he did
20 anything wrong.

21 THE COURT: No, your --

22 MR. MOORE: He did all the work.

23 THE COURT: -- clients have said that he did
24 nothing wrong. This -- the plaintiff hasn't said that.

25 MR. MOORE: But the case is judged from the

1 evidence as a whole. We're in a posture of where we
2 say we had a contract for him to do it right. He said
3 if it's found that something was done wrong, it's on
4 me, I did it wrong. He did all the work that he did
5 for us pursuant to a contract. Everything that was
6 done or not done out there was done pursuant to a
7 contractual agreement with my client. If the Court
8 determines that something was done wrong according to
9 the evidence as a whole --

10 THE COURT: It's not the Court that's gonna
11 determine, it's the jury that's going to determine.

12 MR. MOORE: Good. Then his motion should be
13 dismissed. I agree. It's a jury question. Absolutely,
14 and you're correct.

15 THE COURT: It's nothing but for the jury to
16 decide, but not on his client on a directed verdict.
17 I have heard absolutely no evidence whatsoever that
18 he's done anything wrong. Your clients who are suing
19 him just took the stand and said there's nothing that
20 he did wrong.

21 MR. MOORE: We agree and we would like -- if the
22 Court's gonna direct the verdict, we want a charge to
23 this jury consistent with the Court's order that
24 Mr. Roger Singleton did nothing wrong. Good. If that's
25 the ruling. If, as a matter of law -- if, as a matter

1 of law Robert Singleton did nothing wrong, then the
2 Cades have done nothing wrong.

3 THE COURT: That's not the way it works.

4 MR. MOORE: It is the way it works.

5 THE COURT: No, it's not the way it works,
6 Mr. Moore, because I'm gonna tell you there is not
7 enough evidence to go forward to prove to this Court
8 that this man did anything wrong in what your clients
9 stated or wrong or -- to even let it go to the jury.
10 There's not enough. There is enough from the plaintiff
11 to come against your clients.

12 MR. MOORE: What did my clients do that
13 Mr. Singleton didn't do?

14 MR. DOUGALL: They did lots of things, Your Honor.
15 They got permits. They maybe didn't get the right
16 permits. They had some other company come and clear
17 the land. They decided what the buffer was gonna be.
18 They then hired my client who said yeah, if I had done
19 anything wrong, I would be responsible for it, but
20 there's absolutely not one iota of evidence in this
21 courtroom that he did anything wrong.

22 THE COURT: I agree. And I agree that you're
23 entitled to a directed verdict, and it's granted --

24 MR. DOUGALL: Thank your, Your Honor.

25 THE COURT: -- based on those reasons.

1 All right.

2 MR. MOORE: Well, then, Your Honor, I now move for
3 a directed verdict.

4 THE COURT: I understand that you do and -- and
5 the Court's denied it and I'm gonna deny it again. I
6 think that there's enough to go to the jury for a duty.
7 I think there's -- and I'll let you do it, Mr. Belser.

8 I've already ruled on this once before. There's
9 a common law duty. There's been testimony about
10 causation, there's been testimony on damages. I'm
11 gonna let it go to the jury.

12 MR. MOORE: Your Honor, I just would like to --
13 to add some additional language to my motion.

14 THE COURT: You can.

15 MR. MOORE: The Court has now ruled as a matter
16 of law that Mr. Singleton did nothing wrong.

17 THE COURT: I ruled on a directed verdict motion.
18 You did not present enough evidence for this case,
19 Mr. Dougall's case and his client, to go to the jury
20 period. It's a directed verdict.

21 MR. MOORE: I understand. I'm not arguing against
22 what you ruled. I'm making my own motion for directed
23 verdict.

24 THE COURT: Okay.

25 MR. MOORE: The Court has now ruled as a matter

1 of law that there is no evidence that Mr. Singleton
2 did anything wrong. As a result of that, I move to
3 strike from the complaint all allegations of negligence
4 pertaining to anything that Mr. Singleton did or did
5 not do. There's plenty of testimony on those things
6 that he did and plenty of things on the things that he
7 did not do.

8 Now the Court has ruled as a matter of law that
9 none of those amount to wrongful conduct. That being
10 the case, I ask the Court to strike all of the
11 allegations of the complaint against my clients related
12 to those things that Mr. Singleton did or did not do
13 because none of those as a matter of law have been
14 determined to be negligent or wrongful and if if it's
15 not enough proof there, then it's not enough proof
16 there. The proof that has to be -- if I might finish.
17 I mean, I'm happy to -- the Court can say what the Court
18 wants to say, but I'm right about this. If, as a matter
19 of law, Mr. Singleton did nothing wrong and there's not
20 enough evidence to prove that he did, and yet of all
21 these things that he did there's no proof that any of
22 that was wrong, then the allegations that relate to what
23 he did have to be stricken from the complaint.

24 THE COURT: Okay. I understand your position, and
25 I know you keep saying as a matter of law, now let me

1 explain to you. This is a jury trial. It is -- your
2 clients are suing Mr. Dougall's client. You have the
3 burden of proving that he did something wrong. I'm
4 telling you you haven't met your burden, okay? I don't
5 know how else to say it because your client's testimony
6 that I have heard from this witness stand, from your
7 own clients, not the Court and as a matter of law, but
8 from your own clients, have testified that he has done
9 nothing wrong.

10 As a matter of fact, that is the only testimony
11 that I have heard about Mr. Singleton throughout this
12 whole trial period. The burden has not been met. I
13 grant the directed verdict.

14 MR. MOORE: But that's not my motion. My motion
15 is basically --

16 THE COURT: And I understand and you -- and you
17 want me to strike it and I'm telling you I've denied
18 that motion --

19 MR. MOORE: Thank you, Your Honor.

20 THE COURT: -- and for the reasons that I've just
21 stated for the record.

22 So I also deny your directed verdict and we will
23 go forward with this case.

24 Are y'all ready to give closings or do y'all need
25 a quick break?

1 MR. MOORE: We can break.

2 MR. BELSER: Your Honor, I think for record I have
3 to move for a directed verdict, too. It's not that I'm
4 jumping on the direct verdict --

5 THE COURT: Let's see. Who are you being sued by?

6 MR. BELSER: Right. A directed verdict on -- on
7 my claim that as a matter of law --

8 THE COURT: Okay.

9 MR. BELSER: -- we have -- we have proven our
10 case. There is completely incompetent evidence from
11 the defense as to -- to rebut the allegations of duty,
12 breach, causation and damages. There's absolutely no
13 competent evidence from the defense that there was
14 not a trespass and damage and -- and an unreasonable
15 interference and damage, so for those reasons I move
16 for a directed verdict.

17 THE COURT: And I understand your reasons and I,
18 too, deny it. I do think that it is a question for
19 the jury, but I appreciate your argument and it is so
20 noted for the record.

21 All right. Let's take a 15-minute break and then
22 we will go into closings.

23 MR. DOUGALL: May Mr. Singleton and I be excused,
24 Your Honor?

25 THE COURT: You may, Mr. Dougall.

1 MR. MOORE: And can we put on the record there's
2 a 62,500 dollar payment --

3 THE COURT: Now let me tell you, that's the other
4 thing, too.

5 Could you tell me, Mr. Dougall, the exact amount?

6 MR. DOUGALL: Yes, ma'am.

7 THE COURT: Because I don't know what this jury's
8 gonna do. I don't even try to second guess a jury.

9 MR. DOUGALL: \$62,500.

10 THE COURT: Okay. And you are in agreement that
11 if there is an any verdict, this shall be a setoff?

12 MR. DOUGALL: That's my understanding of the law.

13 THE COURT: Okay. Then so be it.

14 And, Mr. Belser, do you have anything on that?

15 MR. BELSER: I agree.

16 THE COURT: And may -- do you need Mr. Singleton
17 or Mr. Dougall anymore?

18 MR. BELSER: No. No, Your Honor.

19 THE COURT: Okay. You are excused.

20 MR. DOUGALL: Thank you.

21 THE COURT: Have a good weekend.

22 MR. BELSER: The only thing that I do need is a
23 copy of the final jury charge and the -- whatever the
24 final verdict form is.

25 THE COURT: Okay.

1 MR. BELSER: Your Honor, it's 4:45. What time do
2 you want to roll?

3 THE COURT: I can start -- we can start at five.

4 Let me ask you. I guess -- because the jury's
5 willing to work late to get this case done. I know
6 Mr. Moore's go~~n~~ to be somewhere. If I let you close
7 and charge tomorrow, it is not gonna be until about
8 1:00.

9 MR. MOORE: That's fine.

10 THE COURT: I guess I could call the jury back
11 in and see what they want to do or we can go ahead
12 and close and charge and let you go to your meeting
13 and see how long they're gonna be out.

14 MR. MOORE: I can't imagine any way we could
15 argue and charge from 5:00 until 6:15.

16 THE COURT: And that's the time you need to leave,
17 6:15?

18 MR. BELSER: As much as I'd love to get this thing
19 over today, I do think that's probably pushing it.

20 THE COURT: Let's bring the jury back in and let
21 me tell them what we're gonna do. And then I'm going
22 to tell both lawyers. Jury charges. Please read them
23 tonight. We're fixing to give you a printed copy. I
24 think we've worked -- I know, Mr. Moore, you wanted
25 Act of God, I put that in there, and some stuff you

1 wanted.

2 MR. BELSER: Act of God's in there?

3 THE COURT: For the hurricane.

4 MR. BELSER: Well, Your Honor, that's an
5 affirmative defense and it was never pled, so.

6 THE COURT: Well, let me hear from the other
7 side.

8 Hang on. Let me get this jury out of here and
9 then we're gonna talk about this while we've got time.

10 (Whereupon, the jury return to the courtroom at
11 4:49 PM.)

12 THE COURT: All right. Madam Forelady, and ladies
13 and gentlemen of the jury, we're finished with testimony;
14 however, what is left in this case is closing arguments
15 and also the charge on the law. I do not believe that
16 there is going to be enough time for me to do that
17 because by the time that -- even if we started now, it
18 is 5:00. This case wouldn't go to you until 8:00 tonight
19 and I don't want to do that to you because this case is
20 important to both sides and I want you to have time to
21 think about it, so.

22 Tomorrow is Friday. If I could ask you to come
23 back at about 12:30, I will -- everybody be here at
24 12:30. I'm sitting here thinking of my travel time.
25 If I can get here at 12:30, then we could do closings

1 and I can charge and then I can let you deliberate.
2 I know it's been a long week, and I really was hoping
3 we'd get it done today, but I also do not, do not, want
4 you rushed at all.

5 So if that's amenable with everybody, I'm gonna
6 tell you don't talk about this case tonight to anybody,
7 don't do any research, and I'll see you about 12:15
8 tomorrow.

9 Thank you. Hopefully that helps you out with the
10 babysitting.

11 JUROR: Thank you.

12 FOREPERSON: Thank you.

13 THE COURT: Have a good evening.

14 (Whereupon, the jury was excused for the day at
15 4:52 PM.)

16 THE COURT: All right. While we're -- while we're
17 here and this way maybe it will save us a little bit of
18 time tomorrow, let's flip through these jury charges
19 right quick.

20 And, Stacy, this doesn't need to be on the record.

21 Is that okay?

22 (Off the record discussion.)

23 MR. MOORE: Your Honor, you might want to keep the
24 court reporter because we've got some --

25 THE COURT: Okay. Let's put it on the record. I'm

1 all for the record.

2 MR. BELSER: Could we just take a quick bathroom
3 break?

4 THE COURT: Yeah, I could take a break, too. We'll
5 come back because we've got till when Mr. Moore needs to
6 go.

7 (Recess taken at 4:54 PM.)

8 (Back on the record at 5:12 PM.)

9 THE COURT: Okay. Let's go through these.

10 Page Number 2, introductions, are we okay with that?

11 MR. MOORE: Yes, ma'am.

12 MR. BELSER: Yes, ma'am.

13 THE COURT: Page Number 3, duties of judge and jury,
14 are we okay?

15 MR. MOORE: Yes, ma'am.

16 MR. BELSER: Yes, ma'am.

17 THE COURT: Page Number 6, direct and circumstantial
18 evidence and what is not evidence?

19 MR. BELSER: Yes.

20 MR. MOORE: Yes, ma'am.

21 I would also have one other motion, please, Your
22 Honor, if we might.

23 Can I do that right now?

24 THE COURT: Yes.

25 MR. MOORE: I move to strike punitive damages on

1 all claims. There has certainly been no proof of gross
2 negligence nor reckless. There certainly has been no
3 intentional proof and all the factors required to be
4 proven in regard to punitive damages, which are set
5 forth in the case law such as history of recklessness,
6 awareness of the attempts, degree of punishment, the
7 wealth and the amount of impact it would have on
8 defendant's future and likelihood of deterrents, none
9 of those have been placed into evidence as required
10 by the statute and I would object to punitive damages
11 being considered until an actual award has come back.
12 I'd ask that it be bifurcated.

13 THE COURT: Bifurcated? Do you agree on
14 bifurcation?

15 MR. BELSER: Yeah, I've done it both ways. It's
16 kind of a pain in the rear end thought because then
17 you've got to argue twice and you've got to charge.
18 It just -- it elongates the process and if we start
19 at 12:30 tomorrow, then -- I mean, I would -- I would
20 rather -- first of all, I do think -- for a lot of
21 reasons think this is a punitive damages case. I'm
22 happy to roll through that. I don't think -- I think
23 that --

24 THE COURT: Roll through it because I want to hear
25 it.

1 MR. BELSER: Okay. Well, Your Honor, there's --
2 I mean, punitive damages really are appropriate if
3 there is conscious disregard for the rights of others.
4 In this situation, there's ample evidence that the
5 Defendants Cade were on notice that what they were
6 doing was actually causing harm to Ms. -- Ms. Garland,
7 not only from Ms. Garland herself and from me, but from
8 the County and also from their own expert witness, yet
9 they seem to disregard that whole thing and are still
10 to this day steadfast in their defiance that they have
11 not done anything wrong.

12 So, you know, is there kind of reckless disregard
13 for her rights? Yes. Is a deterrent function necessary
14 to teach these folks what the responsibilities are to
15 their fellow neighbor? Yes.

16 As to the -- the relative wealth of the defendants,
17 we were taken on the HGTV tour of the property. There's
18 ample evidence of this property that they own, all the
19 different structures that are out there, you could see
20 vehicles, you could see farm equipment, you could see
21 a very nice brick house. There's been -- this is a
22 punitive damages case. Not to mention the fact that
23 there's evidence in the record that there's a willful
24 violation of an ordinance, which is evidence in and of
25 itself of recklessness.

1 THE COURT: Okay.

2 MR. MOORE: Your Honor, proof of ownership of a
3 house is not proof of net worth. The way you basically
4 put into evidence in regard to the ability to pay is
5 not that you have a big house, but what your net worth
6 is.

7 In this situation, you could have a million dollar
8 house with a \$2 million --

9 THE COURT: Mortgage.

10 MR. MOORE: -- mortgage. That doesn't prove it.

11 THE COURT: I know.

12 MR. MOORE: The indication is that -- the evidence
13 is replete that these folks didn't receive notice of
14 anything until after the hurricane had hit. They went
15 to the County, according to them, asked them what they
16 had to do, were given the permits they needed, came back.
17 Still nothing in the record indicating they even needed
18 a permit. The record is devoid of that particular fact.
19 There has to be not only intentional conduct in doing
20 what they did, but there has to be some proof that they
21 were actually doing what they did with knowledge of some
22 sort that it was going to harm this lady's property.
23 There is no evidence of that in effect. There's no
24 indication of intentional wrongdoing, nor is there any
25 evidence of negligence or gross negligence. It has to

1 be foreseeable.

2 When they're -- they have an ordinance that says
3 they're exempt, when they've been to the County and they
4 don't have to have a permit, and there's no indication
5 that there's going to be any harm done to anybody, that's
6 simply not a punitive case. This case -- punitive should
7 actually be stricken. If anything, it's negligence, but
8 there's no -- there's not adequate proof of -- of any
9 type of intentional wrongdoing or gross misconduct that
10 would give rise to a punitive case. It's just not there.

11 MR. BELSER: Your Honor, Mr. Moore is arguing the
12 facts in the light most favorable to him. If he wants
13 to argue that to the jury, that's fine. I've argued
14 cases like this and gotten punitive damages -- gotten
15 punitive damages in cases just like this that have been
16 up to the court of appeals and have been affirmed. This
17 is a punitive damages case if there ever was one with a
18 conscious disregard for her rights.

19 THE COURT: Well, I'm gonna tell y'all, I'm gonna
20 take it under advisement. I'll let y'all know in the
21 morning, but I'm gonna tell you the thing that bothers
22 me is their own letter from the engineer that they hired
23 and totally disregarded that. At that point, I knew
24 they were on notice because they hired somebody to
25 figure out what was going on. That bothers me. I also

1 think that --

2 MR. MOORE: Your Honor, that was after the suit
3 was already filed and whatever injuries happened had
4 already happened.

5 MR. BELSER: That is absolutely false.

6 MR. MOORE: And the evidence also is --

7 THE COURT: I thought it was before the suit was
8 filed.

9 MR. MOORE: No, ma'am. It was after.

10 MR. BELSER: That is false.

11 THE COURT: Okay. Then y'all two need to look at
12 the evidence and -- and find out if it was before or
13 after and let me know tomorrow. I'll take it under
14 advisement and you'll have my decision tomorrow.

15 I'm just telling you that to me is a reckless
16 disregard. I'm not convinced -- on the County, I'm not
17 real sure I know what happened there. It looks like
18 somebody dropped the ball because they do a stop order
19 and the next thing I know there's supposed to be grass
20 planted and it appears that it -- it wasn't until months
21 later. So that, you know, is also disregarding. And
22 why they didn't get a permit under the statute, I don't
23 know, but it looks to me clearly it was well over a
24 hundred acres. They built a pole barn. They probably
25 should have gotten a -- or well over one acre. I think

1 it was one acre, not a hundred.

2 But I will take it under advisement, but be able
3 to answer those questions for me tomorrow.

4 MR. MOORE: Thank you, ma'am.

5 THE COURT: All right. The direct and
6 circumstantial evidence and what is not evidence, are
7 we okay with that?

8 MR. MOORE: Yes, ma'am.

9 MR. BELSER: Yes, ma'am.

10 THE COURT: The preponderance of the evidence
11 charge on page 7, are we okay?

12 MR. MOORE: Yes, ma'am.

13 MR. BELSER: Yes, ma'am.

14 THE COURT: Depositions. I changed the deposition
15 to add video deposition because that's what it was.

16 MR. MOORE: Yes, ma'am.

17 THE COURT: So I made some changes on that, but I
18 think it will be fine.

19 My expert witness is the same expert witness charge
20 on 9 and 10. Any problems with that?

21 MR. BELSER: No, Your Honor.

22 THE COURT: Then I've got the ordinance.

23 MR. MOORE: And it's apparent one of us is not
24 reading the ordinance correctly.

25 THE COURT: Well, I think it's gonna be up to the

1 jury to decide what --

2 MR. MOORE: Well, Your Honor, if this ordinance is
3 going to be charged, there is a portion of the ordinance
4 which says exemption and it says if it is over an acre,
5 then no permit is required unless there's --

6 THE COURT: Yeah, that's on page 13. This is the
7 whole complete statute. I didn't know if y'all wanted
8 me to read that or I could shorten it.

9 MR. MOORE: I would prefer -- the ordinance has
10 been placed into evidence --

11 THE COURT: Evidence.

12 MR. MOORE: -- and I think that when it is placed
13 into evidence, they are required to do that if they
14 claim it applies, but if it is a piece of evidence, it
15 should not be read as basically --

16 THE COURT: A charge.

17 MR. MOORE: -- the charge. This should come out
18 in my humble opinion.

19 MR. BELSER: I mean --

20 THE COURT: I'm gonna tell you now I know that I
21 have in here negligence per se that says if you violate
22 a statute you're negligent.

23 I'll be glad to hear from you, but I'm gonna tell
24 you I'm kind of inclined to agree with him. It is a
25 piece of evidence. They go can and read the statute

1 their selves. All I'm doing is reading it to them on
2 a charge, the exact statute.

3 MR. BELSER: Well, I'm all for not boring them. I
4 mean, it is in evidence. I'm fine. Let's just --

5 THE COURT: I could do this. Let me ask this. I
6 could just put in addition to the common law duty of
7 care, Lexington County has a stormwater management
8 ordinance codified in the code of laws and just leave
9 it. They've got it in the evidence.

10 MR. BELSER: I think that's perfect.

11 MR. MOORE: I think then you have to basically say
12 it is up to you whether an exemption applies or doesn't
13 apply.

14 THE COURT: Okay. There you go. I -- I think
15 that's good.

16 MR. BELSER: That's works.

17 THE COURT: All right. She's fixing that. I think
18 that works good. I like that.

19 MR. BELSER: And you can determine the applicability
20 of it.

21 THE COURT: It is up to you -- what did you say,
22 Mr. Moore?

23 MR. MOORE: It is up to you to decide whether the
24 statute does or does not apply.

25 THE COURT: There you go. And I think that's the

1 law. I think it follows perfectly.

2 MR. BELSER: That's very fair and it cuts all that
3 junk out.

4 THE COURT: It does and they've got a copy of the
5 statute. They're gonna get all of this stuff back in
6 the jury room just to let those of you who don't know
7 what in world we're talking about, they'll get it back
8 there in the back.

9 All right. Negligence on page 14. I found a
10 typo, I've corrected that, but it goes onto page 17.

11 MR. BELSER: Your Honor, my only -- well, I've got
12 a couple of comments on this. One is the plaintiff --
13 the second paragraph. First, the plaintiff must prove
14 da-da-da-da-da, this is a question of law, which I will
15 decide.

16 LAW CLERK: It should say "you" and that's what we
17 caught, correct?

18 THE COURT: Yes.

19 MR. BELSER: Oh, okay.

20 MR. MOORE: Your Honor, I do think that something
21 ought to be added there which basically is the defendant
22 is not to be held liable for any injury not proven to
23 have been caused by the defendant's actions.

24 THE COURT: All right. Let me find a place that
25 we can put that, Mr. Moore.

1 All right. Let's go over page 14. I am changing
2 this is a question of law which you will decide, and I
3 put in there on the next, if you decide there was a duty
4 of care, I had to change that, too, that was just a
5 typo, then you must decide the remaining questions.
6 Then we go into preponderance and whether they breached
7 a duty of care by negligence act or omission. Then it
8 goes on to explain what negligence is.

9 MR. BELSER: I don't have any issue with that.

10 THE COURT: And then on page 15 we're going into
11 the plaintiff must also prove by the greater weight
12 damages as a result of a breach of duty and then they
13 must prove that the damages were proximately caused.
14 Then I go on to explain proximate cause.

15 MR. BELSER: Your Honor, my only thought on that
16 is I didn't -- I tried to look through this as quickly
17 as I could, I didn't see anything in here on damage --
18 like an instruction as to what actual damages are.

19 THE COURT: What actual damages are and I didn't
20 see it either. We're gonna need that.

21 MR. BELSER: And there's -- I think that the
22 restatement of torts, which is in my pre-trial brief,
23 is -- is applicable, which is the measure of damages
24 when property has been harmed by something and is
25 capable of remediation, which that's the case that was

1 cited -- I think that both of us cited the case of
2 Vaught versus Hardee, which cites the restatement with
3 approval. It's in my pre-trial brief on page 5, if you
4 have it, which basically says that the damages are the
5 difference in value or at the election of cost of
6 restoration, the loss of use, discomfort and annoyance.

7 THE COURT: All right. Are you wanting to put that
8 in with negligence?

9 MR. BELSER: Well, I thought that -- I thought I
10 had that as like a separate charge. I think that can
11 be just after this.

12 THE COURT: Okay. Let me get through so I can put
13 in what Mr. Moore needs and then we'll add --

14 MR. BELSER: Sure.

15 THE COURT: -- and I'll get this all typed up here.
16 She's typing it as we go.

17 Then I into proximate cause, the natural chain
18 of events. I'm on page 15. And then the last paragraph
19 on 15 is that the proximate cause injury would not have
20 occurred but for the negligence.

21 Then I put on here they must prove legal cause
22 that it was foreseeable, the consequences, and then
23 proximate cause does not mean the only cause.

24 And then I think this is where I need to put in
25 yours at the bottom of page 16. It says however, if

1 the real cause of the claimed injury or damage is left
2 in doubt by the testimony, the plaintiff has not met
3 his burden. I charge you that where the cause of the
4 plaintiff's injuries may be reasonably attributed to an
5 act for which the defendants are not liable as to one
6 for which they are liable, the plaintiff has failed to
7 carry the burden of establishing that his injuries were
8 the proximate result of the defendant's negligence and
9 the verdict must be for the defendant.

10 MR. MOORE: It also should say, Your Honor, that
11 the defendant would only be liable for those damages
12 which the defendant actually caused.

13 MR. BELSER: I think that that's already covered,
14 but, I mean --

15 THE COURT: I'll add that as the last paragraph.
16 The defendant would only be liable for the damages for
17 which the defendant caused.

18 Should I say actually caused?

19 MR. MOORE: Actually caused, I think.

20 THE COURT: Actually caused.

21 MR. BELSER: That's fine.

22 THE COURT: Okay.

23 All right. Then on page 18, I've got the common
24 law duty of landowners.

25 MR. BELSER: Yes.

1 MR. MOORE: I -- I don't have any problem with that.

2 THE COURT: Okay. Then I've got negligence per se.
3 This is gonna go with the statute -- or not the statute,
4 the ordinance --

5 MR. MOORE: Right.

6 THE COURT: -- that they will determine whether...

7 All right. Page 21 is gonna be a question mark
8 per my ruling. That's punitive damages. I need to
9 add what damages -- what they can give. So I'm gonna
10 take out page 21. I'll decide on that. I'll look at
11 it tonight.

12 Then I've got trespass to real property on page 24.

13 MR. MOORE: I think that's okay.

14 THE COURT: Because I took out the permanent
15 because there's no testimony of any permanent. All of
16 it's temporary.

17 MR. BELSER: Your Honor, my only -- sometimes -- I
18 had one request to charge, which was trespass can be in
19 the form of siltation or like particles.

20 THE COURT: I said no.

21 MR. BELSER: You said no? Okay.

22 THE COURT: I'm just gonna tell you I'll let the
23 jury decide. It's just like that case law that came
24 down -- I can't remember. It came down last year us
25 giving examples.

1 MR. BELSER: Okay.

2 THE COURT: The Supreme Court wasn't happy with us.
3 I don't know what judge did it, but they gave an example
4 and said y'all let the jury decide. They can get it.

5 MR. BELSER: Okay.

6 THE COURT: So I -- I saw that and I originally had
7 it in here and I marked it out. I just thought it was
8 too close.

9 And I did put in here -- because I think it's
10 hard to explain trespass without -- because you can
11 just -- I could pour bacon grease out my window and it
12 roll over on your property and that's trespass. It's
13 hard for them to understand. I did put in here if one
14 walks upon it, casts a twig upon it, pours a bucket of
15 water on it, he commits a trespass.

16 MR. BELSER: I like bacon grease.

17 THE COURT: I do, too, because I throw bacon
18 grease out all the time.

19 MR. BELSER: I was just kidding.

20 THE COURT: Do we have any problems with 24
21 and 25?

22 MR. BELSER: No, Your Honor.

23 MR. MOORE: No, ma'am.

24 THE COURT: All right. It's part of 26.

25 All right. Then the specific charge to trespass

1 to real property on damages?

2 MR. BELSER: No objection.

3 LAW CLERK: It does go into punitive damages in --

4 THE COURT: There's a part of it --

5 MR. BELSER: I looked for that and didn't see that.

6 THE COURT: Yeah, it's on page 28. I'm gonna hold
7 that out until we decide on punitives.

8 MR. BELSER: Okay.

9 THE COURT: Now I will add -- evidently I thought
10 that was on it, but --

11 MR. MOORE: Your Honor, I would ask that we add
12 that basically any award of damages must be reasonable
13 and that if you find -- if you find damages and the cost
14 of repair would be unreasonable, the -- the award of
15 damage would be the amount the property has depreciated.
16 I think that's the law. That was in our -- at the
17 beginning.

18 THE COURT: Yeah, the fair market value is for the
19 permanent.

20 MR. BELSER: That's right.

21 THE COURT: Is for permanent trespass.

22 MR. MOORE: But if there is a -- if there's a
23 damage and it has to be remediated, it doesn't --

24 THE COURT: That's the cost of --

25 MR. MOORE: If it doesn't make sense to remediate,

1 then the -- the reasonable thing to do is to leave it
2 as it is and simply give an award for the depreciated
3 amount.

4 MR. BELSER: I don't think that's what the law is.
5 I think that in the Vaught --

6 THE COURT: I know, but I think I read something --

7 MR. BELSER: In the Vaught case, there's no --
8 there's no cap which limits the -- the recovered damages
9 to the diminution of value.

10 MR. MOORE: An example, if the cost to remediate
11 a two-acre pond is \$10 million, it would be totally
12 unreasonable to provide an award of \$10 million for
13 a property that's worth \$200,000 or \$400,000. In
14 that instance, the damages would not be the cost of
15 remediation, it would be the difference before and
16 after.

17 MR. BELSER: Your Honor, the --

18 THE COURT: I want to say I read something, and
19 I'm just doing this off the top of my head because I
20 did do some research on this case before I heard it,
21 but I think there's something that if the restoration
22 value is what you said, an example like that, then I
23 think you go -- or either they can add the value of the
24 property when it wasn't -- they weren't able to use it.
25 I don't know that it was fair market value.

1 MR. BELSER: Here's -- I think this is what you're
2 referring to. It says when the cost of restoration
3 exceeds the diminution of value, then the greater cost
4 of restoration will be allowed when the landowner has a
5 personal reason relating to the land for restoring the
6 land to its original condition when cost of restoration
7 is reasonable in relation to the damage inflicted.
8 However, the landowner may not recover restoration
9 costs which exceed the market value of the entire
10 parcel prior to the loss, and so I think that there's
11 no -- that the question I think here is that, you know,
12 if the property is worth half a million dollars, then
13 she can't get more.

14 In the case of --

15 THE COURT: She can't get 500,000.01. The one
16 cent's gonna be gone.

17 MR. BELSER: Yeah, as to that element of the
18 damage. I think the actual -- I mean, the damages are
19 the cost of restoration and the kind of annoyance and
20 discomfort on account of -- those types of things.

21 THE COURT: The loss of enjoyment of the property.

22 MR. BELSER: And all that jazz, which I didn't see
23 in here.

24 THE COURT: And that's what we're -- we're gonna
25 work on that.

1 MR. BELSER: Okay. But I think that the -- and
2 I've got this kind of marked up if you want it. I just
3 read it to you.

4 THE COURT: Well, then we need to add underneath
5 here that it is limited to -- if the cost of restoration
6 exceeds -- see, I even hate to put that in there because
7 then I'm limiting the jury for whatever they want to do.

8 MR. BELSER: Isn't that a post-trial thing? I
9 mean, isn't that --

10 THE COURT: It could certainly be that. If they
11 came with, let's say, \$501,000, then I would certainly
12 do a post-trial motion and reduce it and then I would
13 reduce it by the sixty-two five. Whatever -- whatever
14 the verdict is gonna be is gonna be reduced by the
15 sixty-two five.

16 MR. MOORE: But the law basically provides that the
17 restoration value -- the damages for restoration cannot
18 exceed the fair market value of the property.

19 THE COURT: Well -- and I can add a line in here.
20 Restoration value cannot exceed the fair market value of
21 the property.

22 MR. MOORE: I would ask that, but I also would add
23 in addition to that that whatever the damage award is,
24 it must be reasonable.

25 THE COURT: Do you have any objection to reasonable?

1 If I add reasonable into that and state -- and this is
2 what it would say. If the cost of restoration exceeds
3 the diminution in value, then the greater cost of
4 restoration will be allowed when the landowner has a
5 personal reason relating to the land for restoring the
6 land to its original condition and when the cost of
7 restoration is reasonable in relation to the damage
8 inflicted. Restoration cannot exceed the fair market
9 value of the property.

10 MR. MOORE: That's fair.

11 MR. BELSER: Your Honor, then my only -- just a
12 few on that. What that last sentence says in the case
13 is however, the landowner may not recover restoration
14 costs which exceed the market value of the entire parcel
15 prior to the loss.

16 THE COURT: Okay.

17 All right. We're gonna type that in.

18 MR. BELSER: Okay.

19 THE COURT: Okay.

20 All right. Page 29, private nuisance. Straight
21 out of the Anderson book.

22 MR. BELSER: Good.

23 MR. MOORE: Fine.

24 THE COURT: The elements of the action. All this
25 is straight out of the Anderson book.

1 MR. BELSER: That's good.

2 MR. MOORE: All that's fine.

3 THE COURT: And then private nuisance, negligence
4 is not required.

5 MR. BELSER: Yes.

6 MR. MOORE: That's fine.

7 Do we have act of God?

8 THE COURT: I'm getting there.

9 Then I've got private nuisance, whether particular
10 use is reasonable and whether use constitutes nuisance
11 depends on the facts.

12 Do we need that in there? I really don't think --

13 MR. BELSER: I kind of wasn't listening because I
14 -- I think we can probably go without it.

15 THE COURT: You look at page 34 and tell me if we
16 need this charge.

17 MR. BELSER: 34. Okay. I don't think that's
18 really --

19 THE COURT: I really don't think it's relevant in
20 here.

21 MR. BELSER: It's redundant.

22 THE COURT: All right. And then this is the charge
23 on damages.

24 MR. BELSER: My only thought about this is that
25 the victim -- it needs to -- it's my understanding a

1 nuisance -- the first part of private nuisance is
2 defined as causing material annoyance, discomfort or
3 hurt to another person. There needs to be some
4 reference to compensation for annoyance, discomfort
5 and hurt in the damages section because it says --

6 THE COURT: That's on page 35?

7 MR. BELSER: Yes, ma'am.

8 LAW CLERK: You're talking about in the damages
9 portion?

10 MR. BELSER: Yeah, I'm just saying that in the
11 damages thing, if it causes it, then you're entitled
12 to compensation for it.

13 THE COURT: You want it copied and put over on this
14 part?

15 MR. BELSER: Yeah, that's good.

16 I mean, like it said, the victim of either a
17 permanent -- or of a temporary nuisance can also recover
18 for specific and identifiable losses, comma, such as --

19 THE COURT: Okay. And then we'll add that.

20 MR. BELSER: -- material annoyances, discomfort or
21 hurt.

22 THE COURT: Okay. We've done that.

23 Is that okay with you, Mr. Moore?

24 MR. MOORE: Yes, ma'am.

25 THE COURT: All right. And then I've got the

1 sympathy charge. That's something that I always charge.

2 My closing. That's in every case that I do.

3 Now the act of God charge. I'm gonna tell you,
4 there's testimony in here about two hurricanes; one in
5 2015, specifically 2018. I've heard testimony that the
6 2015 was the one that caused all the rain, the 2018
7 didn't cause much rain, then I heard it vice versa, so
8 there's conflicting testimony on that issue.

9 It's been brought up. It's hard for me not to
10 charge it when I'm asked to charge it unless you can
11 give me a good reason, Mr. Belser.

12 MR. BELSER: Your Honor, the act of God defense
13 is an affirmative defense and it was not pled in this
14 case, therefore, I think there's no reason to charge it.

15 THE COURT: What law do you -- I don't see anything
16 in the rules of evidence that keeps me from charging --
17 or just the general rules of civil procedure that keeps
18 me from charging an act of God.

19 Do you know, Mr. Moore?

20 MR. MOORE: Your Honor, I don't, but if necessary
21 I'd ask that you conform the pleadings to the proof.

22 THE COURT: I would conform it to what the testimony
23 was.

24 MR. MOORE: Yes, ma'am. If the Court would do
25 that, I believe that would take care of that issue.

1 Thank you.

2 THE COURT: All right. I'm -- there's plenty of
3 testimony on that.

4 I'll be glad to hear from you, Mr. Belser, but I'm
5 inclined to do it.

6 MR. BELSER: Your Honor, it's totally at your
7 discretion, but I do believe it's an affirmative defense,
8 which was not pled, and so for that reason it should
9 not be charged. But if you want to charge it, there is
10 the specific charge in the Anderson book which -- which
11 talks about it.

12 THE COURT: And I think that's what you gave us,
13 Mr. Moore, wasn't it?

14 MR. MOORE: Yes, ma'am.

15 THE COURT: I thought it was. I'm gonna grant
16 your motion to conform the testimony -- conform your
17 pleadings to the testimony that was presented in court.

18 Just like I get onto y'all about discovery process,
19 I'm just gonna tell you I never know what's gonna be
20 testified to, so it's only fair and right that the
21 hurricane -- I heard plenty of testimony on that and
22 I'm -- I'm satisfied.

23 Now let me tell you, the hurricane, I always like
24 my charges to kind of tell a story as I'm going. I
25 was like that as a lawyer when I tried a case. I've got

1 to tell a story. I'm gonna put the hurricane charge
2 right before the sympathy charge because I think that
3 they've got all the law in their head and these are the
4 things they've got to consider at the end.

5 All right. Then the only thing that I have left
6 to do is the -- you want a damages charge. Actual
7 damages, is that what you wanted?

8 MR. BELSER: Yes, ma'am. I think that there needs
9 to be just some explanation as to what --

10 THE COURT: All right. Is there one that I can
11 put?

12 MR. BELSER: Well, whatever the one -- you know,
13 actual damages are designed to put the person in the
14 place they'd otherwise be in, just kind of what damages
15 are.

16 And then the restatement -- is the restatement
17 gonna be in there, too? 929, the -- which is the
18 damages in property damage cases?

19 THE COURT: Well, a lot of this stuff I'm
20 repeating over and over again.

21 MR. BELSER: Well, if it's already in there, then
22 that's fine. I just -- I don't recall. I couldn't
23 remember if you said you were putting it in there or
24 not.

25 THE COURT: All right. If the landowner is

1 entitled to judgment -- well, this goes back to the
2 cost of restoration that has been and may be reasonably
3 incurred. I've got that --

4 MR. BELSER: We've already got that.

5 THE COURT: I've got that in there.

6 The loss of the land, I don't have that, and not
7 applicable here.

8 MR. BELSER: Loss of use. I mean --

9 THE COURT: I think I'm going to put that in the
10 actual damages.

11 MR. BELSER: Or maybe that goes in the nuisance
12 damages.

13 THE COURT: Or the nuisance. I think we did the
14 loss of enjoyment of her property in that.

15 MR. BELSER: Yeah, that's right.

16 THE COURT: And it covered it. When I read that,
17 I knew I had already seen it.

18 Let me ask you this. Interferes with her enjoyment,
19 the use of the land -- yeah, we've got that in there
20 already.

21 I know in some of my criminal cases -- I did it
22 in a medical malpractice case. Does anybody want the
23 jury to have a copy of the jury instructions in the
24 jury room?

25 MR. BELSER: Absolutely not.

1 MR. MOORE: No.

2 THE COURT: Okay.

3 MR. BELSER: I know a med mal defense lawyer wants
4 that, but --

5 THE COURT: Oh, yeah, and they both agreed and it
6 took me two weeks to try that case and the next thing I
7 know...

8 All right. If you look -- have you got the
9 Anderson charge book?

10 MR. BELSER: The book with me? What are you
11 looking for?

12 THE COURT: We've got that 13.4 for the actual
13 damages.

14 MR. BELSER: Yeah. I mean, just --

15 THE COURT: Just put like -- all we want is a
16 charge that says when one person is injured by the
17 negligent act of another, the injured person is entitled
18 to be fully compensated for all injuries directly or
19 proximately resulting from an negligent act or omission
20 by the defendant. In determining the amount of
21 compensation suffered by the plaintiff, it is proper
22 for you to consider, and this is where we're gonna
23 differ --

24 MR. BELSER: Yeah.

25 THE COURT: -- because the damages in this is

1 limited. She's not -- there's no --

2 MR. BELSER: That's when it goes into almost like
3 a car wreck thing.

4 THE COURT: Yes. There's no loss of income.

5 MR. BELSER: I think just something saying designed
6 to put the plaintiff in the position that she would
7 otherwise be in. I mean, just like a basic here's what
8 damages are, here's how they're -- here's how they're
9 considered.

10 And I don't know if you want to put cost of repair
11 in there, restoration cost. I don't think that's
12 absolutely -- well, something short and sweet.

13 THE COURT: Yeah.

14 MR. BELSER: And it may not even be necessary.

15 THE COURT: And I just have a tough time even
16 calling what we've got actual other than the
17 restoration.

18 MR. BELSER: Well, the charge goes -- I mean, it
19 talks about damages and then it goes on to kind of
20 explain it as to the restoration and the loss of use
21 and all that jazz.

22 (Pause in proceedings.)

23 THE COURT: Okay. I think this is what we should
24 say, what I just read. When a person is injured, it
25 is proper for you to consider the reasonable cost of

1 repairs plus the value of the use of the property during
2 a reasonable repair time.

3 I don't think we have any personal items that she
4 lost.

5 MR. BELSER: I was also looking at loss of use
6 during the -- not only during the repair time, but,
7 you know, since the injury began, the loss of use and
8 enjoyment and annoyance --

9 THE COURT: And during a reasonable -- and the
10 value -- let's see. Plus the reasonable cost of
11 repairs and the value of the use of the property during
12 a reasonable repair time. Because the rest of it was
13 all like permanent stuff.

14 Can you read that for us?

15 LAW CLERK: Yes.

16 I have when one person is injured by the
17 negligent act of another, the injured person is
18 entitled to be fully compensated for all injuries
19 directly or proximately resulting from any negligent
20 acts or omission by the defendant. In determining the
21 amount of compensation for injuries suffered by the
22 plaintiff as a result of the defendant's negligence, it
23 is proper for you to consider the reasonable cost of
24 repairs and the value of the use of the property during
25 a reasonable repair time.

1 MR. MOORE: I would add to that while damages do
2 not have to be proven to a mathematical certainty, they
3 do have to be proven to be reasonable by a preponderance
4 of the evidence.

5 THE COURT: That's true. Okay. That sounds good.

6 All right. We're fixed. Thank goodness for Little
7 Abigail.

8 LAW CLERK: Thank you.

9 THE COURT: Now the only thing that's left is
10 punitive.

11 MR. MOORE: And I think that would be -- I think
12 the Court said -- with all due respect, I think the
13 Court said you were gonna look at it over the evening
14 and let us know.

15 THE COURT: I am. I'm gonna think about it.

16 MR. BELSER: Your Honor, I will -- I'll put the
17 timeline of things when the lawsuit was filed.

18 THE COURT: I want to know specifically. I was
19 under the impression from the testimony I heard, and
20 I probably have about forty pages of notes up here,
21 that the engineer who wrote that letter saying if you
22 want to avoid a lawsuit you need to do this, this,
23 this, and this.

24 MR. BELSER: And that was December the 12th of
25 2018. The lawsuit was not filed until 2019, which is

1 -- that's -- the case caption has the '19.

2 MR. MOORE: And the testimony I believe is that
3 we actually did put up the silt fences after we talked
4 to the County.

5 THE COURT: And I don't know when the County was.

6 MR. BELSER: Well --

7 MR. MOORE: The County stop work order was 2018
8 and the letter letting us go back to work was 2018 and
9 following that the testimony is, I believe, we put up
10 silt fences.

11 THE COURT: Y'all look at that and give me a
12 timeline because that's gonna make a difference to me.
13 I'm just telling you.

14 MR. BELSER: June of 2018 was a verbal stop work
15 order, did the work, October 2018 is when there was a
16 written stop work order lifted based on promise of
17 stabilization and then there was a cease and desist
18 letter from me in November, then there was the Gerald
19 Lee thing -- report in December and the testimony was
20 that it was not actually stabilized until -- it was
21 seeded but it wasn't actually stabilized until February.

22 MR. MOORE: But we put up the silt fences after
23 Mr. Lee gave us his report.

24 THE COURT: Can y'all get me a date on when you
25 put up the silt fences? Y'all just have that for me

1 tomorrow.

2 MR. BELSER: I think it's all in the Lee report
3 because he said there were no sediment controls -- there
4 was completely uncontrolled sediment leaving the site
5 when he was there in December.

6 MR. MOORE: And we put up the silt fences as a
7 result of his report, his advice. I don't know when the
8 date was. I'm not sure the date's in evidence, but
9 I'm reasonably certain it's in evidence when we talked
10 to him and put up the silt fences.

11 THE COURT: Okay. We are e-mailing y'all right
12 now the jury charges.

13 MR. BELSER: Thank you.

14 MR. MOORE: Thank you, ma'am.

15 THE COURT: Less the punitive.

16 We've left punitive in there. She's highlighted
17 everything in red so we know to delete them if I decide
18 not to.

19 MR. MOORE: Thank you, ma'am.

20 THE COURT: So that's what we would delete if I
21 decide no punitive damages.

22 MR. BELSER: And the only -- the only thing else
23 I think we need is the verdict form, but we don't need
24 that until kind of before the --

25 THE COURT: Yeah. Anybody want to work on a verdict

1 form?

2 LAW CLERK: You didn't like the simple one I came
3 with?

4 THE COURT: Did you see what Abigail came up with?

5 LAW CLERK: Y'all said something simple, so I went
6 all simple.

7 THE COURT: I like simple.

8 MR. BELSER: I do, too. I think juries need
9 simple.

10 LAW CLERK: I'll be happy to e-mail it for y'all.
11 If anything, it will give you --

12 THE COURT: Please make any changes on the verdict
13 form. I'm not very good at verdict forms. I don't mind
14 telling anybody. It can be on the record.

15 MR. BELSER: K-I-S-S.

16 MR. MOORE: I never have been good at those either.
17 (Off the record discussion.)

18 THE COURT: All right. I'll see y'all at 12:15
19 tomorrow.

20 MR. BELSER: Thank you, Judge.

21 THE COURT: Just be prepared for closings. We'll
22 address punitive. I'll have an answer in the morning
23 and then we'll charge and let them go.

24 MR. BELSER: Sounds great. Thank you, Judge.

25 THE COURT: Okay.

1 (Whereupon, the proceedings were concluded for
2 March 31, 2022, at 6:01 PM.)

3 (The following proceedings were held April 1,
4 2022, beginning at 12:35 PM.)

5 THE COURT: All right. I looked over it and I
6 think the only thing I need to rule on is punitive
7 damages.

8 Did you get a copy of his timeline? I'd like to
9 hear from you on that?

10 MR. MOORE: Your Honor, we have a timeline as well,
11 if I might. We -- I only have one copy of it, but this
12 is the best --

13 THE COURT: Mona, can you make us two copies so I
14 can have one and Mr. Belser can have one?

15 THE CLERK: I can. .

16 MR. MOORE: I think we pretty much agree except for
17 the fact of this. The County came out and gave a stop
18 work order and the work stopped. The County turned the
19 work back on again. They came to see me, I told them
20 to hire Mr. Chao and Associates. Mr. Lee came out and
21 indicated that we needed to do some prevention measures
22 and he immediately put up the silt fences. As soon as
23 -- as soon as we had an engineer look at it, he told us
24 to stabilize, we immediately put up the silt fences and
25 the property had already been sodded -- seeded. Not

1 sodded, seeded. You can't sod that many acres.

2 So we had seeded the property and we had -- is
3 this the rest of it, Callee?

4 MS. JUMPER: That's just an extra copy.

5 MR. MOORE: So when -- when we talked to Chao,
6 he came out, told us what to do, we put up extra silt
7 fences, and that's basically what happened. As soon
8 as we had information from our engineer, he gave us
9 advice, we followed it. I don't think it's a punitive
10 case, Your Honor.

11 MR. BELSER: Your Honor, I think it's a little bit
12 different than that. I think that most importantly in
13 terms of what was installed when, I think that Chao's
14 report -- Mr. Lee's report is very instructive on that.
15 He's very clear when he went out there on December the
16 11th --

17 THE COURT: 12th.

18 MR. BELSER: Well, yeah. Well, when he went out
19 there, there was -- the site remained in a disturbed
20 state and no stabilization or sediment control is in
21 place period. He took a number of photographs,
22 et cetera, and then he recommended that -- that they
23 hire an engineer to get in compliance with the County.

24 But the actual timeline of events is -- well,
25 there was this -- this verbal stop work order, lots of

1 questions about that, I don't really know what was going
2 on there back in June. They received on October -- at
3 least on October the 18th, they knew that Ms. Garland
4 was claiming to be hurt. Now whether or not they
5 disagree with it is irrelevant. They knew of an alleged
6 -- of an injury and it took at least seven weeks -- well,
7 in the seven weeks that followed, not only did they get
8 a letter from me and not do anything, but there was also
9 a stop work order from the County which said please go
10 ahead and stabilize to eliminate impacts. By the time
11 we get to December the 12th nothing had happened.
12 December the 24th through the 26th is the testimony
13 from Mr. Cade as to when they actually started sprigging
14 the Bermuda grass, so that's five notices over eight
15 months before anything was actually happening. And
16 then the testimony yesterday from Mr. Cade was that the
17 Bermuda grass was not established until February of 2019.

18 And so in terms of a punitive damages case, as the
19 Court well knows, if you are -- if you know or have
20 reason to know that what you are doing is harming
21 somebody else, then that is conscious disregard for
22 their rights. And I think that the timeline -- the
23 self-serving statements of the Cades notwithstanding,
24 Gerald Lee's report tells you all you need to know.

25 MR. MOORE: That's just not accurate. What he's

1 telling you is simply not accurate. They're basically
2 taking bits and pieces of the evidence and basically
3 trying to extrapolate. What Roger Singleton said was
4 the grass was not an established grass bed until
5 February. What he also said, we had already seeded the
6 property by the time the County came out.

7 One of the ways that you stabilize soil is seeding.
8 You can't hydro -- you can't -- you can't -- you can't
9 roll out twenty-nine acres of sod.

10 THE COURT: Well, by their own expert on December
11 the 12th it hadn't been seeded.

12 MR. MOORE: Well, not necessarily. He didn't say
13 that.

14 THE COURT: Yeah, he did. He said at the time of
15 this observation the site remains in a disturbed state
16 and no stabilization or sediment control is in place.

17 MR. MOORE: That's exactly right, but he didn't
18 say it hadn't been seeded. He said no stabilization
19 control was in place. For it to be stabilized, it would
20 have had to be growing. You have to plant it before it
21 grows. He did not say it hadn't been seeded.

22 Now the testimony is it had been seeded and as soon
23 as he -- Your Honor, as soon as he -- as soon as he told
24 them to do it, they went out and put the silt fences up.

25 And, you know, Mr. Belser makes a big deal about

1 his cease and desist order, which has a legal import
2 of nothing. They're not obligated to follow his
3 instructions. As a matter of fact, when the guy from
4 the County came out -- they say that we knew it was a
5 result of Ms. Garland. There's no testimony they told
6 them that Ms. Garland was the one complaining. They
7 just came out and said we've had a complaint. There's
8 no indication they knew it was Suzy Garland or that she
9 said her property was being -- being inundated. The
10 first time we had any information it was coming from
11 Ms. Garland was when Christy went down to try to talk
12 to her or we got the letter from Mr. Belser.

13 We went and hired an engineer as soon as the County
14 told us to do something. The first thing they did is
15 they came to a lawyer and said what do we do? Do what
16 the engineer says. Do we do what Mr. Belser says? No.
17 Do what an engineer says. So you go out and you hire
18 an engineer, you pay him. He says stabilize the soil,
19 put up some -- some silt fences, which is exactly what
20 we did. We did exactly what we were asked to do by the
21 County, by the attorneys, and we weren't even on notice
22 that it was Ms. Garland who was complaining until we got
23 Mr. Belser's letter. But they seeded it, they got an
24 engineer, paid an engineer, put up a silt fence, and I
25 don't know what else they expect them to do.

1 It's just not a punitive case, Your Honor.

2 THE COURT: Anything else, Mr. Belser?

3 MR. BELSER: Just in response to that, Mr. -- it
4 sounds like a closing argument to me from Mr. Moore that
5 he can make to the jury. He's arguing the facts. The
6 legal import of my letter is -- you know, he doesn't
7 have to -- he doesn't care what I say obviously, we're
8 still here, but legal notice is important for purposes
9 of punitive damages.

10 Now the statement that as soon as they got -- were
11 informed by the County they hired an engineer is just a
12 false statement. There is -- October the 22nd is when
13 they got the notice from the County. It wasn't until
14 seven weeks later that they hired -- that they went and
15 even talk to Chao. Now if I hadn't written that letter --

16 THE COURT: And they'd already said that they had
17 started stabilization.

18 MR. BELSER: Ma'am?

19 THE COURT: And at that time they had already --
20 the way it was lifted is that we said we are stabilizing
21 it right now.

22 MR. BELSER: They said that they were and they did
23 not.

24 THE COURT: And then they go -- and that was in
25 October and then in December they hire -- I guess is it

1 Mr. Lee?

2 MR. BELSER: Yes, ma'am.

3 THE COURT: Mr. Lee doesn't see anything about
4 stabilization, sediment control. I don't even think he
5 mentions anything about anything being planted and even
6 tells them pointblank to avoid litigation from the
7 downstream property owner, you should work with the
8 County to bring the site into compliance and a stable
9 condition.

10 And then in December there's testimony --
11 December 24th through 26th that they're out there
12 sprigging grass. That is from October the 23rd.
13 October, November, December -- two months later when
14 it was supposed to have already been done in October
15 or in the process.

16 MR. BELSER: Well, then by the way, it should have
17 been done in the first place. Not -- it was kind of a
18 warning that --

19 THE COURT: And the lawsuit was not filed until
20 2019. I'm gonna tell you, I looked at the law about
21 punitives and it says ordinarily the test is whether
22 the tort had been committed in such a manner or under
23 circumstances that a person of ordinary reason or
24 prudence would have been conscious of it as an invasion
25 of the plaintiff's rights. That is the Cartee case.

1 The test may also be satisfied by evidence of the
2 causation, violation of the statute. In this case, we
3 do have a statute and whether they violated it or not
4 and it was a proximate cause is a question for the
5 jury.

6 And then I turn to the trespass and it says
7 trespass through mere negligence affords no ground for
8 punitive damage, but damages may be awarded -- punitive
9 damages may be awarded where the trespass is willful
10 and deliberate.

11 I'm gonna find -- I think they were placed on
12 notice and I'm gonna charge punitive damages for both
13 of them. Both causes I think it falls under.

14 MR. MOORE: Of course, Your Honor, we still have
15 the question as to whether or not the appropriate
16 elements of punitive damages have been met. There's
17 no -- there's no testimony as to the ability to pay.
18 There's no testimony about the degree -- punitive
19 damages are not going to be allowed to bankrupt.
20 There's a whole litany of things which the Court has
21 to have in the record before punitive damages are even
22 considerable -- considered, and most of those elements
23 are really not in the record.

24 THE COURT: I'd be glad to hear from you,
25 Mr. Belser.

1 MR. BELSER: Your Honor, I'd disagree. There are
2 a number of factors in awarding punitive damages and
3 it's a combination. You don't have to go through all
4 eight. It's kind of the duration of the conduct, it's
5 the -- we know about that. We know the nature of the
6 conduct, we know that there's conscious disregard.

7 In terms of the wealth -- relative wealth or
8 ability to pay, probably the best evidence that we
9 have of that is the flyover video that we had yesterday
10 with the beautiful house and the well-manicured paddocks
11 and there's ample evidence from which a jury could
12 assess an appropriate amount of punitive damages. Not
13 to mention the fact that -- I haven't looked at it, but
14 there's a statute which relates to punitive damages and
15 has certain elements to it I can't remember -- I mean,
16 in terms of like caps. I can't remember if that applies
17 or not, but there's no -- there's no requirement if --
18 just because a party pleads -- makes a prayer for
19 punitive damages does not mean that they have to put
20 up the defendant's personal financial statement or any
21 other assets. We know that he has a trucking business,
22 they own equipment, they own real estate. Based on the
23 valuation that we have, their forty-six acres could be
24 worth a substantial amount of money, so the jury will
25 know how to send a message.

1 THE COURT: I don't know. Mr. Belser, I see ten
2 factors. I don't see anything that tells me I've got
3 to have all ten factors.

4 MR. BELSER: That's right.

5 THE COURT: I think that I can have a combination
6 depending on their acts, determent, the duration of the
7 conduct, whether they -- the nature and extent of the
8 harm done to the plaintiff, the awareness, and the
9 defendant's wealth or ability to pay. I don't think I
10 have to have all of those in the record.

11 I'm gonna tell you, evidence of net worth is not
12 a prerequisite to a punitive damage award. It's clear
13 and convincing evidence. And I'm just gonna tell you,
14 it's gonna be for the jury to decide the punitive
15 damages, but to me I think there's pretty of evidence.
16 I think it's right clear. Mostly Mr. Lee's report is
17 pretty damaging to walk away from that on notice and
18 not do anything. But this started back in May and I
19 guess did not end until sometime early of 2019. Not to
20 say the damage wasn't still happening to the pond.

21 So I'm gonna allow it and that's my -- that's my
22 -- and that's the record for that and my ruling.

23 Anything else from the plaintiff?

24 MR. BELSER: No, Your Honor.

25 What time do you want to start? I just wanted to --

1 THE COURT: I'm fixing to start here in two seconds.
2 I've got all --

3 MR. BELSER: Can I just go real quick to the
4 restroom?

5 THE COURT: Sure.

6 Anything else from the defense?

7 MR. MOORE: We are going to basically have
8 the issue of punitives considered separately as I
9 understand?

10 THE COURT: To tell you the truth, Mr. Moore,
11 I'm gonna do it all at once.

12 MR. MOORE: Thank you, ma'am.

13 THE COURT: And I'm just gonna put a one-liner on
14 the verdict sheet. If the jury find that it's clear
15 and convincing evidence and they want to award punitive
16 damages, it's up to them. I think a one-liner is
17 sufficient.

18 All right. Mr. Belser did you look at the verdict
19 form?

20 MR. BELSER: Yeah, it looks fine, the one I saw
21 yesterday.

22 Are you gonna add the part about punitive damages?

23 THE COURT: That's what we're trying to do. We're
24 trying to put in there should the jury find by clear
25 and convincing evidence the defendant's conduct to be

1 willful, wanton or reckless, you may award punitive
2 damages.

3 MR. BELSER: In the amount of blank.

4 I think conscious dis -- if you want to just say
5 conscious disregard of rights, then -- rather than
6 willful, wanton because that's kind of -- I mean,
7 those are confusing words. Wonton soup.

8 THE COURT: All right. Are y'all ready? I'm
9 gonna bring the jury in.

10 Oh, you weren't -- we're gonna give you a
11 makeshift verdict form until you two can look at it
12 and agree on the verdict form.

13 Did you look at the verdict form, Mr. Moore, that
14 we sent yesterday?

15 MR. MOORE: I did.

16 THE COURT: We're gonna give y'all another copy.
17 If y'all look at it and y'all want it changed, then
18 we've got time to change it after closings. Y'all can
19 look at it while I'm charging the jury and Abigail can
20 change anything right afterwards.

21 THE COURT: All right. Let's bring the jury in.

22 MR. BELSER: Yes, ma'am.

23 With reference to Mr. Singleton being let out of
24 the case, will you address that with the jury before
25 closings? I just don't know. He's here, but I didn't

1 know if the jury may -- I mean, they didn't -- obviously
2 don't know about the directed verdict and they may kind
3 of wonder well, where's Mr. Tom.

4 THE COURT: Well, I don't know that I need to --

5 MR. BELSER: I don't know.

6 THE COURT: -- specifically address it. I don't
7 even -- to be honest with you, I'm not real sure they
8 even knew he was here.

9 MR. BELSER: Okay. I was just curious.

10 THE COURT: Unless somebody wants me to instruct
11 them, I don't think it's --

12 MR. BELSER: That's fine with me.

13 MR. MOORE: Your Honor, I think that -- again, I
14 think it's appropriate that they be told that he was
15 let out of the case and the reason why.

16 MR. BELSER: No way.

17 MR. MOORE: Well, the Court found he did nothing
18 wrong.

19 THE COURT: The Court found nobody proved anything
20 against him.

21 MR. MOORE: I agree, and that's what I think the
22 jury needs to be told. I've got no problem with that
23 at. That's basically what happened. The jury -- nobody
24 proved anything --

25 THE COURT: I mean, I just don't know and I don't

1 know that I've ever addressed a jury to tell them what
2 happened in somebody else's case.

3 MR. BELSER: Then let's just -- you know, Tom -- I
4 told Tom last night word for word he's probably the best
5 lawyer in town considering he only said about ten words
6 all trial and got out on a directed verdict. So they
7 might not even notice.

8 MR. MOORE: I think counsel is correct. They
9 should be told and I think they should be told the
10 reason why. The Court has found that nobody prove
11 he'd done anything wrong.

12 THE COURT: We'll discuss it after closings.

13 MR. MOORE: Thank you.

14 THE COURT: Because I have time to let them know
15 during the charge.

16 Let's bring them in.

17 (Whereupon, the jury enter the courtroom at
18 1:01 PM.)

19 THE COURT: Good morning. Or should I say good
20 afternoon? Good afternoon.

21 Madam Forelady, is the jury ready?

22 FOREPERSON: We are, Your Honor.

23 THE COURT: Okay. Mr. Belser.

24 MR. BELSER: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

1 MR. BELSER: Madam Forelady, and ladies and
2 gentlemen of the jury, good afternoon. First, I want
3 to thank y'all for listening so intently over the last
4 couple of days and paying attention to all the witnesses
5 as they testified and to the documents as they were
6 entered in. I realize that y'all are not here by choice,
7 you were summoned to be here to served as a jury -- on
8 the jury, but I hope that while you've been here it's
9 been educational for you and entertaining in some way.
10 It's a good thing to experience.

11 Of course, you know, Ms. Garland is here technically
12 by choice. She filed a lawsuit and so if that lawsuit
13 had not been filed and this not come up, then we wouldn't
14 be here in this setting, but really this case is about
15 how she really had no other choice than to file this
16 lawsuit. If she wanted to protect herself and what was
17 so precious to her, her land, she had to come and file
18 this lawsuit and spend the last three and a half years
19 working on this.

20 You heard Ms. Garland testify just how important
21 and precious her land is to her. You have thirty-five
22 years in a place with people and memories, that's an
23 important -- it kind of becomes a part of who you are,
24 and that's what Ms. Garland testified to. You know,
25 your -- your property is not just a collection of dirt

1 that has, you know, boundary lines. It's your home.
2 It's your sanctuary. It's where you try to get away
3 from all the hubbub of regular life, of traffic, of
4 being around -- you know, just being out and about.
5 It's your sanctuary. It's also the place where you
6 spend most of your valuable time and your leisure time.
7 It's where you create sentimental value, that's what --
8 you make memories on your property with friends and
9 family and experiences and kind of relaxing and just
10 being in your sanctuary.

11 And it's also, for many people, it's a place where
12 you can kind of have a legacy. If you own a piece of
13 property and you have a family, and everybody knows you
14 can't take it with you and so it's got to go to somebody,
15 and your land is what you've got. It's your legacy.
16 That's certainly true for Suzy Garland. The only choice
17 that she had to protect what was so precious to her
18 three and a half years ago was to stand up for herself
19 and fight.

20 So what did she do? You know, we saw that around
21 October the 18th of 2018 her pond as described by
22 Mr. Mac Watson was yucky. Y'all saw pictures of the
23 yuckiness and know what that means. The muddiness,
24 the discoloration. I think somebody described it as
25 Nestle Quik-looking, cloudy, whatever you want to call

1 it. She talked to her friend Mac and then went to the
2 County. The County issued a stop work order. Then she
3 hired a lawyer, me, to try to -- to send a letter to
4 try to put the Cades on notice as to what was going on.
5 Then she filed a lawsuit several months later in April
6 of 2011 when nothing was happening.

7 She, over the last three years -- it was actually
8 April 11, 2019. The reason I know that is because
9 that's my birthday and I looked at it this morning and
10 today's April Fool's Day, too. A little April Fool's
11 Day joke. But it's been about three years since this
12 was filed and Suzy, who's now 83 years old, has been
13 spending the last three years waiting to get here, and
14 here we are.

15 This has been a tough fight. It's been a real
16 tough fight. What's she been up against? Well, she's
17 been up against a defiant defendant who still doesn't
18 think he's done anything wrong even in the face of
19 overwhelming evidence to the contrary.

20 Now normally in a case like this -- and the judge
21 is gonna instruct you about what an expert witness is,
22 and you saw a couple of witnesses who were qualified
23 as expert witnesses, most cases are kind of a battle
24 of the experts. There's often a fertile battlefield,
25 battleground, for experts to argue because the standard

1 is more likely than not. You may have heard the
2 witnesses testify to a reasonable degree of certainty
3 as an engineer, more likely than not, here's my opinion.
4 That leads to lots of different disagreements because
5 people can disagree on that.

6 Here we don't have that. I want you to remember --
7 I think the most important witness that you heard this
8 week was Mr. Gerald Lee, and you'll have his report --
9 you'll have all the exhibits with you back in the room
10 and when you're deliberating. Remember that he was the
11 undisclosed expert that was hired by the Cades in
12 December of 2018 for an objective opinion on hey, are
13 we doing anything wrong, and there's one sentence which
14 says it all. The short answer is yes.

15 Ladies and gentlemen, this is the proverbial smoking
16 gun. The smoking gun was not disclosed to us. It was
17 uncovered kind of by accident in some depositions.

18 Now Mr. Lee's testimony provides some very important
19 -- really an objective view, and remember he is -- he
20 was paid by the Cades. He was asked by the Cades to
21 come out, paid by the Cades, and issued a report, and
22 that report was kept secret, not given to Mr. Singleton,
23 not given to me. It shed some light on some really
24 important issues in this case.

25 Number one, did the Cades need a permit to do

1 what they did? You heard Mr. Lee. I think we were
2 downstairs actually when he testified. Yes, they
3 needed a permit because of the impervious surface. You
4 saw the video of how much impervious surface there is
5 on the Cade property. What's also important is he
6 gave an objective view of what the site looked like,
7 the condition of the Cade property site, on December
8 the 11th of 2018. Remember he went out there at the
9 Cades' request and he walked around and he took
10 photographs and issued a report and in his report he
11 says, and I quote, "At the time of this observation the
12 site remains in a disturbed state and no stabilization
13 or sediment control is in place". That is an objective
14 view of what he -- of what the site looked like. It's
15 not the Cades' self-serving statements as to what they
16 were doing on the site to stabilize.

17 Now why is Mr. Lee's findings -- why are his
18 findings on December -- as stated in his report so
19 important? Well, because it goes to the notice that the
20 Cades had that Ms. Garland's property was being damaged.
21 Mr. Lee's report was seven weeks after the Cades knew
22 that Ms. Garland was being -- was at least claiming to
23 be hurt. Whether or not they agree that she was being
24 hurt, that was seven weeks after Mr. Brandon Corder came
25 out and seven weeks after the stop work order was issued.

1 It was actually -- well, six weeks after the stop work
2 order was issued. And let's remember you heard Michael
3 Spires testify downstairs on Wednesday that the stop
4 work order was released based on those statements by the
5 Cades that they were gonna stabilize the property.
6 According to Mr. Lee, seven weeks later nothing had
7 happened. You'll have a lot of photographs back in the
8 room with you that are all dated which will show that
9 critical period of time what was happening and how
10 Ms. Garland's property was being damaged.

11 Mr. Lee's report is three weeks after I sent a
12 letter. If I hadn't sent a letter, do you think that
13 they would have done anything? It was seven weeks after
14 they knew that Ms. Garland was being damaged that they
15 did something, but I don't think it was because they
16 knew she was being damaged. I think it was because they
17 got a letter from me saying I intend to file a lawsuit
18 unless you clean this up.

19 Now December the 11th of 2018. It was -- you heard
20 Mr. Cade's deposition testimony it was actually two weeks
21 later before they actually started to sprig the Bermuda
22 grass on the property. I think he said it was Christmas
23 Eve, Christmas Day and Boxing Day. And what he said
24 yesterday on the stand was that it was another two months
25 before that was actually established.

1 So my -- the question, why did it take so long to
2 do so when they knew that their neighbor was being hurt?
3 It was nine weeks of not doing anything at all and then
4 nine weeks plus two additional months to get established.
5 What does -- what does that say? That's a symptom of
6 the defiance and lack of responsibility and accepting
7 that they've done something wrong. They won't listen
8 to the County, they won't listen to their expert, they
9 certainly won't listen to me, but ladies and gentlemen,
10 they have to listen to you.

11 You are the ones that have the ability to send a
12 message as to how neighbors in Lexington county are
13 supposed to treat each other and to behave towards each
14 other. On behalf of Suzy Garland, I ask that you send a
15 message.

16 Now speaking of behavior, in opening statements I
17 told that you that the evidence would show that the
18 Cades' defiance turned into aggression toward Suzy.
19 You saw the video where Mr. Cade's truck was blocking
20 Ms. Garland's driveway. You heard Ms. Garland testify
21 as to how that made her feel and yesterday you heard
22 Mr. Cade testify about what happened. And I wrote this
23 down because I thought it was very important. He said
24 it was time to, quote, put an end to this. Good grief.
25 Good grief.

1 You have a six-foot-three, 45-year-old man staring
2 down an 83-year-old woman who probably weighs a hundred
3 pounds soaking wet. Let's be honest. Mr. Cade said
4 yeah, it was childish. What he really should have said
5 is I was being a bully. That's the bully that Suzy
6 Garland has stood up to.

7 Now Mr. Cade tried to explain that well, there were
8 hundreds of videos that Ms. Garland had taken on the
9 property -- of their family on the property and that he
10 was returning the favor. There are no videos. There's
11 nothing in evidence. Regardless, that's not an excuse
12 for behavior to block somebody's driveway. Remember,
13 this man, Mr. Cade, already had a mutual restraining
14 order with Mr. Melichar, his other neighbor. So was
15 Suzy scared? Absolutely. Again, this is the bully
16 that she had to stand up to.

17 Now I also told you in opening statements that the
18 Cades' defiance turned into blame against their friend
19 Roger Singleton. Even after all this time being involved
20 in this case for as long as they have, I still don't
21 understand exactly what was going on between the two of
22 them, Mr. Singleton and the Cades, but if you remember
23 on the stand yesterday Mr. Singleton was completely at
24 ease talking to Mr. Moore. Mr. Moore's a tough guy.
25 You saw him rattle some of the witnesses. He's tough.

1 Mr. Singleton was not concerned at all.

2 And also the Cades sued him. If he -- if they
3 sued him, then explain that behavior. It's just bizarre.
4 What their -- what their testimony -- this is where the
5 blame comes in. It was we're defiant, we did absolutely
6 nothing wrong, but by the way, if we did, it's on him.
7 It doesn't make any sense.

8 Now one of the things that I did not mention in
9 opening statement, which has become kind of evident in
10 the trial surprisingly, is that the Cades' defiance has
11 not only turned into aggression toward Suzy and blame
12 toward Roger, but it's also turned into this kind of
13 victim complex for themselves.

14 You heard Mr. Moore talk in opening statement that
15 the lawsuit is shameful and that the Cades' American
16 dream is now a nightmare. Ladies and gentlemen, the
17 American dream does not mean that you can do whatever
18 you want to do without regard to what the law is or
19 without regard to what your neighbor's rights are.
20 That's not what it is. The American dream, as we all
21 know, is if you work hard and if you live right, you can
22 own your own house where you have your sanctuary, where
23 you make your memories and where you can create a legacy.

24 Significantly, a big part of that, the American
25 dream does not exist without the American laws and courts

1 and juries. You have the right to use and enjoy and own
2 your property without interference and harassment from
3 your neighbors. That is exactly what Suzy Garland is
4 trying to do in her twilight. She's trying to enjoy
5 the American dream and create a legacy for her family,
6 protect what she has.

7 Now after the closing statements -- I'll talk and
8 then Mr. Moore will talk and I'll get to talk one more
9 time, you'll receive the jury instructions from the
10 judge. This is an explanation as to the law that's
11 applicable to the case and then you'll get -- you'll
12 return back to the verdict -- to the jury room with
13 something called a verdict form, which Madam Forelady
14 will have, which will say -- it will reference the
15 three causes of action that Ms. Garland has, and you'll
16 say on the cause of action for negligence I find for
17 blank or blank and if you found for Ms. Garland, you
18 plug in the damages, and the same for the other two
19 causes of action. And I'm gonna go -- I want to go
20 through those with you and kind of explain what that is.

21 Before I do that though, a couple of other things
22 that -- that Judge McCaslin will tell you is about the
23 burden of proof. The burden of proof is on Suzy Garland.
24 Judge McCaslin will tell you about the scales of justice.
25 Imagine the scales. If the burden of proof is on the

1 plaintiff, it's to tip the scales ever so slightly in
2 her favor. You don't have to prove a hundred percent,
3 you don't have to prove beyond a reasonable doubt.
4 That's for criminal cases. You've got to tip the scales
5 of justice in your favor. That's important. It's hard
6 to make the decisions that y'all have to make, but in a
7 civil case like this it's more likely than not.

8 There's one very important exception to that about
9 the burden of proof, and I'll come back to this later.
10 The defense alleges that this was an act of God. Not
11 an act of man, but an act of God that caused this
12 problem. That is something that the defendants must
13 prove, not Ms. Garland. She doesn't have to disprove
14 that. The defendants have burden of proof to show by
15 engineering testimony or something that this would not
16 have happened but for the natural forces of God.

17 Now, three causes of action. Number one,
18 negligence. Negligence, and the judge will describe
19 this to you, you have a common law -- a person has a
20 common law duty to not alter their property and leave
21 it disturbed in a way that damages somebody else. If
22 you -- if you own property, then you have an obligation
23 to keep your property in an unaltered condition or in a
24 stabilized condition so it doesn't harm your neighbor.
25 That's the law. That's the common law.

1 There's also an ordinance. There's a lot of talk
2 about the ordinance and the ordinance will be in the
3 record, be back in the jury room with you. If there's
4 an ordinance and the ordinance is violated, you find
5 that it's violated, then that is negligence in and of
6 itself. If you find that the Cades have violated the
7 ordinance by not getting a permit, then you can check
8 that box, find for the plaintiff on negligence, and
9 move onto damages. That's called negligence per se.

10 The second thing is trespass and trespass is the
11 -- legally defined as the intentional interference with
12 the rights and possession of somebody else and their
13 property. Now most people when you think of trespass
14 you think like here's the property line, I'm stepping
15 over, I'm on your property, now I'm off. In civil tres
16 -- civil trespass is actually broader than that. It
17 can either be by water through casting water on somebody
18 else's property or casting a twig or by a baseball.

19 If somebody's out there throwing a baseball and
20 they throw it across and it breaks the neighbor's
21 window, guess what? You break it, you buy it. That's
22 what civil trespass is.

23 Now it's an intentional tort, and what that means
24 is -- the intent is important. It's not the intent to
25 harm, it's not that that little kid with the baseball

1 said I'm gonna break that window right there and throw
2 it and break that window. It's the intent to do the
3 act which resulted in the damage. So the kid's throwing
4 the baseball, lets one go, he's intentionally throwing
5 the baseball, it went through the window. Sorry. You
6 break it, you buy it. It's the same with silt. Silt's
7 the same way.

8 Nuisance -- the private nuisance claim is a little
9 bit similar to trespass and slightly different. Its
10 called the unreasonable inference with property rights.
11 What really makes it different is that the harm that it
12 seeks to address is that everybody has the right -- in
13 addition to not having the windows broken by a baseball
14 or have silt get in their pond, they have the right to
15 use and enjoy their property without interference from
16 their neighbors. It's kind of a recognition of the fact
17 that property is not just that collection of dirt with a
18 boundary, but it's your sanctuary, it's your home, it's
19 where you find your peace and comfort. That's what that
20 seeks to address.

21 All right. Those are the three causes of action.
22 The judge will instruct you as to the law. I'm not gonna
23 go through all of the evidence and all the individuals
24 who've testified. I think there's an abundance of
25 evidence. If you have any question about that, I think

1 look at Mr. Lee's report on the issue of liability.

2 The first question. Do you find for the plaintiff?

3 Yes. The next question is how much? What are the
4 damages? Well, the design of -- and there are two
5 types of damages. There's actual damages and punitive
6 damages. We're gonna come to punitive damages in a
7 moment.

8 Actual damages are designed to restore the
9 plaintiff to the position that they would be in had
10 the negligent acts not occurred. In cases like this,
11 it's the cost of restoration. There's somewhat of a
12 limitation on it though. As long as the cost does not
13 exceed the value before the loss. And so if you have
14 a ten thousand dollar -- well, I don't know, but if
15 your property is worth \$10,000 and it gets damaged and
16 it would take \$100,000 to fix it, you can only recover
17 \$10,000. That's the law. That's to actual damages.

18 So what is the value of Suzy Garland's property?
19 Well, one thing that the judge will instruct you is that
20 a property owner has the right to testify as to the value
21 of their property. Suzy Garland testified as to that
22 and she described several very well-maintained structures,
23 one that she lives in, one kind of a shop-type place,
24 and then a second structure in addition to the gardens
25 and the pond and everything that she's built there over

1 the last thirty-five years. It's thirteen acres. Suzy
2 said it's not for sale, but it's worth at least \$500,000,
3 but not only because that's what she has in it, but also
4 based on what she knows about the other transactions and
5 other kind of -- other listings in the neighborhood.

6 One, we know of a transaction where Paul Shearer
7 bought less than a quarter of an acre for \$10,000.
8 That's \$40,000 an acre. Mr. Davis, and you remember the
9 Zillow thing that came up, that was five acres, \$350,000.
10 That's 50,000 or whatever per acre. Both of those, if
11 you use those reference points, puts the value over
12 \$500,000, which is consistent with what Suzy said.

13 Now on cross-examination, and I'm sure in closing
14 argument from Mr. Moore they're gonna imply that well,
15 Suzy's property is not worth fixing. You know, if it's
16 damaged that bad, it's -- it's taxed at \$91,000, so you
17 can't possibly -- it makes absolutely no sense to fix
18 this property.

19 You know, for me this is really just symptomatic
20 of -- of the Cades' attitude -- kind of careless attitude
21 toward Ms. Garland and the value of her property to her.
22 Ms. Garland's property has substantial value to her not
23 only because of what she's invested in it dollar-wise,
24 but years and feelings.

25 Now let's talk about the numbers. There are two

1 numbers I'm gonna talk about. One is \$435,000 and the
2 other one is 1428 cubic yards, and I'm gonna talk about
3 1428 cubic yards from Mr. Mathews first because that
4 feeds into the 435. Mr. Mathews, I think, also testified
5 on the third floor. He's an expert geotechnical engineer.
6 He has forty years' experience. What he explained that
7 he did was he looked for loose unconsolidated sediment
8 with the sludge judge. Do you remember the -- having a
9 straw and sticking it down into loose and unconsolidated?
10 He wasn't looking for the bottom of the pond as it existed
11 as of 1950. He was looking for loose consolidated --
12 unconsolidated deposits because that is indicative to him
13 of recency and he testified with a reasonable degree of
14 certainty that the sediment deposits in the Cade pond --
15 I mean, in Ms. Garland's pond were from the Cade property.

16 Is Ms. Garland claiming -- is Mr. Mathews saying
17 that every spec of dirt or sediment in that pond since
18 the pond was built in 1950 or whenever is from the Cade
19 property? No. Mr. Mathews explained that. He's looking
20 for loose unconsolidated sediment. The older sediment
21 by hydrostatic pressure, if you have the weight of water
22 sitting on top of you, over time it compresses it down.
23 It's not gonna be captured by the sludge judge.

24 Is he -- is that saying that none of the sediment
25 in Ms. Garland's pond came from the road or from

1 Mr. Davis's field? No, that's not -- that's not what
2 we're saying. He said the bulk, at least 90 percent,
3 is from the Cade property. There's not -- there's no
4 absolutes. It's not all or none. It's within a
5 reasonable degree of certainty this is the amount of
6 sediment that is from the Cade property.

7 And how did -- how did he identify the Cade
8 property as the source? Well, that's because it was
9 the only land disturbance activity that had happened
10 in the area. And he did look at topographical maps on
11 the Internet. Everybody's familiar with the Internet
12 now. He also read Mr. Lee's report, which y'all will
13 have as well, that led him to that conclusion.

14 Now getting back to the battle of the experts,
15 there's -- there's no battle here. You have Mr. Moore's
16 statements against Mr. Mathews, but the judge will
17 instruct you that what I say and what Mr. Moore says is
18 not evidence. If y'all can't tell by now, I'm a sports
19 guy. When we talked on Monday, the lawyer's the point
20 guard, he doesn't get to shoot, he's the facilitator, he
21 passes it. The witnesses are the ones who get to shoot.
22 It doesn't matter what I say and it doesn't matter he
23 says. We're here to facilitate evidence. Mr. Mathews's
24 testimony is completely unopposed by an expert.

25 Mr. Hanna. Let's talk about Mr. Hanna's number.

1 Sure, it's a big number. I mean, cleaning -- cleaning
2 all that sediment out of -- from this that's underwater,
3 it's not gonna be easy. You've got to get a permit the
4 right way as we know, you've got to use precaution so
5 that you don't damage it on the way in, you've got to
6 dispose of it properly. You can't just dump it wherever
7 you want to. You've got to take it to a landfill.

8 Mr. Hanna testified about all the work that he's done
9 in Lexington county. He's a local guy. He's a grading
10 contractor. He is the type of person who -- to do the
11 job, not somebody like Mr. Singleton. Again, this is
12 unopposed by any competent testimony. There are
13 statements by counsel, but that's not evidence.

14 So when you're -- when you're filling out the
15 damages form on these different causes of action, I ask
16 that you consider the restoration estimate of Mr. Hanna
17 and award that amount.

18 Now the other part of actual damages, and this kind
19 of relates back to nuisance damages, is -- it's a little
20 bit harder. There are damages that are hard to quantify,
21 but they're real. What is the value of being able to
22 use your -- have your house as a sanctuary, as your home,
23 where you can make memories and where you can create a
24 legacy? If that's taken away from you for some period
25 of time, what's that worth? You can't -- there's no

1 calculator. You can't get any expert witness to say I
2 looked in Suzy's head and this is what she places on it,
3 so X numbers. That's completely within your discretion
4 to decide and I want you to remember that those damages
5 while they're hard to calculate, they're very real.

6 All right. I also want to talk -- there's a
7 second category of damages called punitive damages and
8 Ms. Garland has a claim for punitive damages. The judge
9 will instruct you as to what punitive damages are, how
10 they're to be considered and what their purpose is. The
11 judge will instruct you that there's a -- if you do
12 something with a conscious disregard of the rights of
13 others, that is what's called -- that's what's called
14 reckless, willful and wanton. If you are doing -- it's
15 one thing if you do something and you realize oh, my
16 goodness, I cannot believe that I just -- I hurt you, I
17 can't believe that, I had no idea. It's another thing
18 if you do something and you realize it's hurting somebody
19 else or at least they're claiming that it's hurting that
20 person and you continue to do it without changing your
21 behavior. You're acting with conscious disregard for
22 the rights of -- of that person.

23 Now negligence per se. The ordinance is important
24 here because if you violate an ordinance, then that is
25 evidence of recklessness. What other evidence do we

1 have of recklessness? Well, we've got a number of
2 things and this kind of goes back to where we started.
3 We've got the -- you know, you're presumed to know what
4 the law is. Whether or not the Cades knew what the law
5 was, they knew that Ms. Garland was claiming on October
6 the 18th of 2018 that her pond was being silted in by
7 their land clearing. Then we have Mr. Lee's report
8 nearly two months later. Well, seven weeks later. Then
9 we have Mr. Cade's admission that during that two-month
10 period that they didn't start stabilizing it until
11 Christmas. But most importantly we have Mr. Lee's
12 report, which is, again, an objective view. Seven weeks.
13 Seven weeks. It's one thing when you're just kind of
14 going -- you know, the days and the year -- the weeks
15 and the months and the years kind of roll together. If
16 you know that you are hurting somebody and you wait
17 seven weeks before you do anything, that's a conscious
18 disregard for the rights of that person.

19 Now the purpose of punitive damages is not to
20 compensate the plaintiff because that's what actual
21 damages do. The purpose of punitive damages is to send
22 a message and it is to tell people within the community
23 that this is not how we treat each other. If we are
24 hurting our neighbors -- we value our land. If we are
25 doing something which hurts our neighbor's land, we must

1 act. Again, the Cades, they didn't listen to the County,
2 they didn't listen to Mr. Lee and they certainly won't
3 listen to me, but they have to listen with you -- listen
4 to you and you, and only you, can send that message.

5 Now, you know, what are we asking for? You know, I
6 am asking for justice for Suzy Garland. Suzy Garland is
7 asking for justice. The only way -- the only way that
8 y'all -- or that a jury is able to speak is by awarding
9 money. That's the only thing that they can do. Nobody
10 has the ability to turn back the clock and undo the
11 damage and make like this never happened and make the
12 Cades stabilize. The only way to address the problem
13 and to allow her to fix the pond and to compensate her
14 for her loss and to send a message is by awarding money.
15 Yes, it's a -- you cannot really distinguish justice
16 from money because that's why the courts exist. That's
17 the only thing that we have the power to do.

18 So two of the most beautiful words in any closing
19 argument are in conclusion. I want to thank you, again,
20 for your attention and your time and on behalf of Suzy
21 ask for your verdict.

22 Thank you.

23 MR. MOORE: May it please the Court, Your Honor?

24 THE COURT: It may.

25 MR. MOORE: Thank you, Your Honor.

1 Madam Forelady, and ladies and gentlemen, on
2 behalf of Robert and Christy, I also would like to thank
3 you for being here with us. I want to thank you for your
4 time and your attention. You paid close attention to
5 the evidence as it came down. We noticed that. You're
6 a very good jury and we appreciate your time.

7 You know, when this case is over you people are
8 gonna get a check. A big check from the County for your
9 service. Ladies, I would not plan any wardrobe change.
10 You might be able to take your family to McDonald's and
11 get some change, but the check's gonna be small, and
12 there's no way financially you can be paid for the time
13 and effort you've put in this case.

14 I like to think that a juror receives a little bit
15 more pay than just the little check they get, and that's
16 this. You know if you try to do something on your
17 property and make it better and your neighbor ever sues
18 you and you're sitting where Robert and Christy are and
19 you're looking at a jury and you're looking at accusations
20 against you, you're looking at claims of intentional
21 wrongdoing, claims for punishment damages, you know that
22 twelve good people from this county will come and sit
23 where you are. They'll exercise their common sense and
24 they'll treat you fairly and they will basically do the
25 right thing. And I really appreciate you being here and

1 I hope you can agree with me that you appreciate the
2 fact that if you're ever in their seat folks will come
3 listen to you.

4 Now when we started this process, I told you I
5 was not having any fun. This -- a lawsuit is not for
6 entertainment value, it's not playing basketball, it's
7 not sports. It's real life where real people's
8 livelihood and standards of living are in play. At
9 times in this job I hate it. I hate having to confront
10 adverse witnesses. I hate having to be hard on a juror
11 and to press and to press and to press. I don't enjoy
12 the fight. Apparently my adverse counsel does. This
13 isn't fun for me. I never have liked the fight. But,
14 you know, sometimes a lawyer has to be a little bit hard
15 in order to uncover the truth and sometimes the truth
16 isn't actually very pretty.

17 You know, the truth finally came out in Mr. Belser's
18 closing argument. He starts talking about punitive
19 damages. Those damages are designed to punish the
20 wrongdoer. That's what Ms. Garland wants. She wants
21 them punished. Why I have no idea, but punishment is
22 what they're looking for. They tell you that justice
23 and money is the same thing. I've seen lots of things
24 in forty-seven years practicing law, but I submit to
25 you justice and money are not the same thing. They're

1 quite different. Justice is about truth, decency,
2 honor, respect, rational conduct, civil conduct. If
3 your neighbor comes to talk to you about a problem,
4 you don't -- you don't refuse to shake her hand and tell
5 her to get off your goddamn property. That ain't the
6 way things work.

7 One of the things that concerns me is the
8 plaintiff's an 80-some-odd-year-old lady and she's
9 sympathetic. At least she was when she was testifying
10 on direct, but we heard some of the language she's
11 capable of and some of the actual vitriol in her voice
12 when she was talking about Mr. Shearer throwing water
13 all over the GD road. Again, there's no pleasure in
14 this, but if at any time in this trial I did something
15 that was offensive, hold it against me, please, and
16 please don't hold it against Robert and Christy. I
17 love these people. They're some of the nicest people
18 I've ever met in my life. Hold it against me and not
19 against them.

20 I've always thought a trial was a little bit unfair
21 to the jury. It's unfair to you. We get to ask the
22 questions and we don't allow you to ask questions. The
23 people who've got to make the decision are you and all we
24 can do is ask the questions we think you're gonna want to
25 know. It would be kind of like teaching a course for a

1 semester to the students and never allow the students to
2 ask any questions. That wouldn't be fair to the students.
3 So all we can do is do what we think you want to know as
4 best we know how.

5 You know, sometimes in a trial you uncover things
6 that are ugly. Mr. Mathews had the audacity to climb
7 on that witness stand and proudly proclaim numerous times
8 he was being paid in exchange for his testimony. That
9 in this case he was hired by the lawyer and he was being
10 paid by the lawyer in exchange for his testimony. No
11 witness is supposed to be paid in exchange for testimony.
12 That's not justice and that's not right.

13 In order to rule for the plaintiff, I would
14 respectfully submit you're going to have to accept the
15 testimony of Mr. Mathews because he is the only
16 professional who ever said one drop of sand came from
17 the Cades' property onto the plaintiff's property.
18 Mr. Gerald Lee gave a report and he said your dirt's
19 unstable. We already knew that. It was in the process
20 of being graded and repaired and he suggested that we
21 stabilize the soil or put up measures, which we did, but
22 Mr. Lee said I cannot tell you if any dirt ever wound up
23 on Ms. Garland's property and then he said something
24 more important than that. He said this. The only way --
25 the only way you could ever determine if siltation had

1 actually come from the Cades' property was to do a
2 hydrological study. You'd have had to go to the ground,
3 you would have had to figure the contours, you would
4 have to know the consistency of the dirt and you would
5 have had to do a proper engineering study, which I
6 didn't do. So you ask him. Mr. Lee, you suggested that
7 they put up some silt fences? Yes. All right. Are you
8 able to testify that any dirt from my client's property
9 ever wound up on the Lee's {sic} property? No. Why?
10 Because, Mr. Moore, to do that you've got to do a proper
11 engineering study.

12 Then we have Mr. Mathews. Oh, yes, I can give the
13 opinion that 90 percent of the silt in this pond came
14 from the Cades' property. Oh, yeah? Well, let's look
15 at your report. Here is your map, sir, and your report.
16 Would you please look at your map and tell me where Davis
17 Drive is and then he points to a driveway behind the
18 property. He can't even tell you where the road is on
19 the map that he used in his report that he was paid to
20 testify from.

21 I did a calculation. I did a calculation that is
22 incredibly interesting I think. If he is correct, he
23 says that there's 1428 cubic yards of silt that is in
24 Ms. Garland's pond total and then he says that 90 percent
25 of that came from the Cades' property. A cubic yard is

1 a yardstick high and a yardstick wide and a yardstick
2 long. A cube. It's a cube. Width, height and length.
3 If he's correct and there's 1428 cubic yards of silt in
4 her pond and 1280 of it came from the hurricane, that
5 would be the equivalent of 128 football fields high.
6 Imagine what 128 football fields high would look like.
7 Not only would it be 128 football fields high, it would be
8 128 football fields long and then it would be 128 feet
9 wide. Can you imagine what a stack of dirt 128 football
10 fields cubed would look like? That's what Roger told us
11 yesterday. If that much dirt had come off the Cades'
12 property, it would look like the Grand Canyon. Remember
13 that statement? There's no way.

14 And everybody testified that the only way the silt
15 could get onto Ms. Garland's pond is to go through that
16 pipe and Ms. Garland said in deposition anyway that the
17 only time she had any problems was during the two
18 hurricanes. We know according to Mr. Shearer that
19 anything on the far side of his property runs off through
20 a -- through a creek.

21 Now, folks, I ask this of you because you've got
22 good common sense. You've got a 28-inch pipe that runs
23 under Davis Road. How during a hurricane -- and it's
24 half clogged, so it's, what, 14? It's a 24-inch pipe,
25 so it's a foot of clearance to get through it. Is there

1 any way in a hurricane or any other time that 128 cubic
2 yards or cubic football fields, 1280 cubic yards, could
3 run through that pipe? I submit to you it's impossible.
4 That pipe wouldn't hold 1280 cubic yards of dirt. Not
5 in ten years, not in twenty years. It couldn't possibly
6 pass through. It's physically impossible.

7 I know Mr. Mathews's testimony was bought and paid
8 for and I know that it was very questionable because he
9 couldn't even identify the documents in his own report.
10 As a matter of fact, he actually added that after he had
11 given the report, but if that much dirt had moved off of
12 the Cade property, I respectfully submit to you in common
13 sense it wouldn't have gone through the pipe, it would
14 have had to go across Paul Shearer's property and then
15 across the road and then into the pond. But if that much
16 dirt had rolled, the wetlands would have been torn to
17 shreds. You would have seen silt trails, dirt trails,
18 mountains of dirt on the road. If that much dirt had
19 gone on that road, you couldn't get by the road, you
20 couldn't cross the road. It would be totally impossible.

21 Counsel talks about oh, Mr. Mathews is the guy to
22 believe. Oh, yeah? Well, let's talk about what probably
23 really happened with Mr. Mathews. They hired, as you
24 know a firm, called Dennis Engineering, a Columbia,
25 South Carolina firm. Not a firm from Greenville. And

1 you'll notice they did not call Dennis Engineering to
2 the stand. What happened is Mr. Belser realize that
3 Dennis Engineering was smart enough to know that 1280
4 cubic yards of sand didn't get in that pond from this
5 storm or from anything the Cades did and he realized
6 that he had to have an expert and then he realized that
7 Mr. Lee wasn't gonna say it either and he was stuck
8 because he had to have an expert who would testify that
9 the silt in the pond came from my client's property,
10 but he knew he had old Mr. Mathews and all he had to do
11 was pay Mr. Mathews and Mr. Mathews would say anything
12 he wanted him to, which he did. Which is ugly. And
13 the bought and paid for expert basically said yeah, what
14 I did is after I'd issued my original report I talked to
15 Mr. Belser and then I went on the Internet and I looked
16 at some maps and came to the conclusion that all that
17 silt in that pond, 90 percent of it, came from what the
18 Cades did.

19 Now Mr. Belser is so interested in talking about
20 Mr. Lee's testimony. Mr. Lee did fine. The soil was
21 unstable and he did tell us to put some silt fences up,
22 but he didn't say that the silt got into Ms. Garland's
23 pond and he also said, if you listened to him, Mr. Mathews
24 is full of poohy because Mr. Mathews did not do what he
25 had to do if he were going to give a legitimate non-paid

1 for professional opinion as to how the soil had got there
2 in the pond. He doesn't know because it didn't happen.

3 Folks, you've got a pond that's been out there for
4 fifty years and like the -- the gentleman Mac said yeah,
5 there was silt in it, there's been silt in it. You get
6 any pond out in Gaston in the sandy soil there's gonna be
7 silt in it. It's not gonna hurt anything. It's gonna
8 settle on the bottom and be fine.

9 I want to talk about this burden of proof. In
10 opening statement, they -- they told us they were going
11 to prove that the Cades violated the Lexington County
12 stormwater ordinance. They said that. Now we looked at
13 that ordinance and the ordinance has something called an
14 exemption and it says if you've got over an acre of land
15 and it's rural property, it's agricultural property, what
16 you do is exempt from the requirements of the stormwater
17 -- stormwater ordinance. That's hard to say. Stormwater
18 ordinance. It's exempt. Exempt means the ordinance
19 doesn't apply. Now it does say except if you're going
20 to do an impermeable surface, but what they claim to be
21 the impermeable surfaces are the two buildings we put
22 up, but the Cades got separate permits for those. The
23 Cades had permits for those. The work they were doing
24 in clearing the stumps had nothing to do with those two
25 buildings. So the ordinance didn't apply. As a matter

1 of fact, Mr. Cade went to the County before doing any
2 work to try to get any permits they needed and he left
3 understanding that no permit was required.

4 Now what's interesting, too, about the stormwater
5 ordinance is when Ms. Cade complained -- I'm sorry,
6 Ms. Garland complained, out comes the field worker, and
7 he did his job. He put a stop work order on and said
8 stop work until we can figure this out and at that point
9 in time the supervisor got ahold of it and they looked at
10 it and the day after they lifted that order and said you
11 can go back to work.

12 Now if a permit was needed, they would have said you
13 can go back to work once you get your permit, but they
14 didn't do that. If they were in violation of the law,
15 if the Garlands {sic} were in violation of the law, you
16 can bet the County would have gotten its money for its
17 permit. They're good about that. The County wants
18 that money because they use that permit money and if a
19 permit was needed, they would have required it before.
20 But what did that gentleman say? We staffed it and told
21 them to go back to work, we didn't require a permit, and
22 we asked them to do stabilization. Didn't tell them,
23 asked them to.

24 Now the problem with the way this thing is being
25 argued is they're wanting to say the stop work order is

1 the equivalent of a citation. If they're gonna prove
2 to you that my clients violated the Lexington stormwater
3 ordinance, then a charge should have been brought against
4 them and they should have been entitled to go to court and
5 have their day in court and let a court decide whether or
6 not they had violated the ordinance. But there's a reason
7 no citation was issued. Because the word "exemption"
8 applied. The law provides on page 9, if you look at it,
9 a clear exemption. That is why Robert wasn't required
10 to have a permit -- the first permit in the first place.
11 That is why no permit was required for him to start work
12 again. At no time on that witness stand did anybody from
13 the County of Lexington ever say the man is in violation
14 of the stormwater ordinance.

15 Now the worker who came out and gave the stop work
16 order thought that might be the case, but that's not his
17 determination. That determination is for his supervisor
18 and like the supervisor said we staffed it, we looked at
19 the facts and we let them go back to work again without a
20 permit and without any directives to do anything. The
21 Lexington County officials also said we came back out
22 later and looked at the pipe and the water that was in
23 the pipe was clean.

24 There is no doubt in this case, but that in the
25 deposition Ms. Garland said that the only time she had

1 problems with siltation in the pond were during the
2 two hurricanes. Did y'all hear her say that in the
3 deposition? She tried to change it on the stand, but
4 she admitted that what she said was true. The only time
5 she'd ever had problems with siltation was during the
6 two hurricanes.

7 Now think of about this. Mr. Shearer told us that
8 part of that berm blew out during the hurricane and all
9 of the sand would have flown down into the direction of
10 Ms. Garland's pond, which it did. Would that not have
11 silted her pond? Certainly it would have and it would
12 have been an awful lot of dirt.

13 Ms. Garland tells us that somebody else at some
14 time would come by and put cuts into the berm and they
15 showed us a film of sediment going into the pond, but it
16 wasn't from the Cades' property. Nobody's said that.
17 Did it come from one of those cuts? Did it come from
18 somewhere else? We don't know, but nobody's ever told
19 you that silt was coming from our property. As a matter
20 of fact, what we've been told is that the Cades built a
21 trap and that the water that comes out of their pond has
22 to be clean because it's coming out of the top, not the
23 bottom, and we know that sand falls to the bottom. So
24 the only water that goes into the stream that goes onto
25 the wetlands that goes into the pipe that goes into the

1 additional wetlands and then goes to the pond, according
2 to everybody else, that water's clean. It's clean.

3 There's no indication anywhere that anyone ever
4 saw any major erosion, ruts, anything from major sand
5 coming off these people's property. I respectfully
6 submit to you that the testimony of Mr. Mathews is highly
7 questionable. Highly questionable. And unless you
8 accept the testimony of Mr. Mathews, which the judge
9 will tell you you don't have to accept anything from
10 any expert, if you don't accept the testimony of
11 Mr. Mathews, there's not one shred of evidence that
12 anything from the Cade property got into Ms. Garland's
13 pond.

14 This case doesn't hinge on the County, it doesn't
15 hinge on Mr. Lee, it doesn't hinge on Dennis Engineering.
16 If you don't accept as true the testimony of Mr. Mathews
17 from Greenville, there's no proof of anything at all in
18 this case because there's no proof by anybody that
19 anything got from my client's property into the pond.

20 Can you -- can you issue a guilty verdict of
21 wrongdoing on the basis of Mr. Mathews, their paid
22 witness, who was paid in exchange for his testimony?
23 Can you really do that? Can you do that? Justice.
24 The same thing as money. I do not know where this comes
25 from.

1 Let's talk about credibility. We do have to
2 consider the credibility of the witnesses and the
3 plaintiff has the burden not only of proving wrongdoing
4 through Mr. Mathews, he also has to prove damages.
5 Reasonable damages.

6 Okay. What is the reasonable cost of repairing
7 this pond? If we assume and take Mr. Mathews's word
8 for it, which I submit you shouldn't, but you can if
9 you want to because that's the law. You folks find the
10 facts, not me. Is it reasonable that any sane human
11 being would spend \$435,000 to clean out a two-acre
12 pond in Gaston, South Carolina? I asked the gentleman
13 himself. Sir, do you know anybody that would be crazy
14 enough to spend \$435,000 to clean out a two-acre pond?
15 You can build one for \$50,000. No, I don't know anybody
16 that's ever done anything like that. Do you know anybody
17 that's ever spent \$335,000 to clean out a two-acre pond
18 in Gaston or anywhere? No. \$225,000? No. The reason
19 he doesn't know of anybody is because that would be
20 commercially unreasonable. It would be commercially
21 unreasonable for anybody to spend that kind of money.

22 Again, any proof of damages they have to prove
23 them to a reasonable extent. They're not entitled to
24 unreasonable damages and the only number you have is
25 \$435,000. If we look at the man's report, he's going

1 to spend \$10,000 to drive two pieces of heavy equipment
2 and two trucks twenty miles. If that's the case, I
3 would like to be in the heavy equipment moving business.
4 \$10,000 to move a track hoe twenty miles?

5 If you listen to his report, he's going to dump
6 good clean sand, dirt material, into the landfill. Do
7 we know anybody who would be dumb enough to pay the
8 landfill money to dump clean dirt? Builders are buying
9 dirt all over this county. They want it. They need it.
10 They stockpile it. This man is going to charge 100 and
11 some odd thousand dollars to dump clean dirt at the
12 landfill? The landfill is a construction and demolition
13 landfill. It's for things like old shingles and old
14 bricks. It's not for dirt. Surely to goodness a
15 hundred and some odd thousand dollars to dump dirt at
16 the landfill, I would respectfully submit is highly
17 questionable. I'd just ask you to look at those numbers.

18 The -- Ms. Garland says that justice is that she
19 gets \$435,000 and that a 1200-foot, 60-year-old home in
20 Gaston with thirteen acres and a pond is worth \$500,000.
21 That's what she says. If we look at the -- and everybody
22 knows the County has recently reassessed the property,
23 reappraised it. The tax value is only \$90,000. If you
24 say that the house is worth twice the tax value, it's
25 180. She wants the equivalent of two and a half times

1 the value of her house and to keep the house, and that's
2 justice.

3 And, in addition, she wants to punish these people
4 with punitive damages. And that's justice. That's money,
5 but I respectfully submit it's not justice. And there
6 is a difference between money and justice contrary to my
7 friend's apparent belief. There's a major difference
8 between money and justice.

9 If you listened to Paul Shearer's testimony, he's
10 lived there for a long time, Mr. Moore, I didn't see
11 any evidence of any dirt going across that road into
12 Ms. Garland's yard or her pond. I looked at it. I
13 know what was there. There was no evidence of any major
14 erosion as a result of rainstorms, hurricanes or anything
15 else. And I can tell you this. The pipe on the other
16 side of the road, we saw pictures of it, is covered up
17 with of dirt. In order for the water to even get into
18 the wetlands on the other side, it's got to bubble up
19 through the ground carrying dirt with it.

20 Mr. Shearer seemed to be a fairly credible
21 individual. He had nothing against Ms. Garland, but
22 apparently she thinks she's got something against him.
23 But he has nothing against anybody. He's just trying
24 to tell you what he saw.

25 I don't remember exactly how much money is it that

1 the man -- Mr. Mathews testified he was being paid for
2 his testimony. I hope you will consider that when you
3 go back to consider his credibility because this case
4 certainly rises very much on his testimony. Can you
5 really believe that man? Honestly is he credible? Look
6 at the report from Mr. Mathews because we have a written
7 report. His written report says nothing about where the
8 dirt came from. His report says nothing about the Cades'
9 property being the cause of it. His report says nothing
10 about 90 percent of the silt being from my clients'
11 property. All his report says is I went out, I got the
12 vote and I made a determination that 1485 cubic yards of
13 silt is in this pond. That was everything that we knew
14 he was going to say before he climbed on the witness
15 stand and then what did he say? Oh, I've got an addition
16 to that. Sometime ago I talked to Mr. Belser and he said
17 he'd pay me to look at the Internet and come back and
18 tell y'all it all came from the Cades' property. It's
19 just not -- it's frustrating to listen to that.

20 I submit Mr. Mathews was kind of sad. You know,
21 y'all were able to watch him on the stand. You were able
22 to watch him on the stand. You know, he admitted he's
23 being paid for his testimony. Paid in exchange for his
24 testimony is the words. He looked like he was embarrassed
25 to admit it. He should have been. Nobody should abuse

1 his professional privileges like that. A bought and
2 paid for expert, a bought and paid for witness, is no
3 witness at all, and that's all this man is, is a bought
4 and paid for expert. It is not worthy of consideration
5 at all. He looked embarrassed when I asked him that
6 question and then he really looked embarrassed when I
7 said sir, here's your map, show me where Davis Drive is,
8 and he says I don't know. First of all, he pointed it
9 out to us and, of course, it was backwards and it's like
10 okay, Mr. Bought and Paid for Expert, where's my client's
11 property? I don't know. Sir -- I started to ask him
12 aren't you really humiliated by trying to tell somebody
13 that you're gonna be the witness in the case and that
14 you're willing to sell your soul for a dollar? You're
15 willing to basically abuse your professional standing
16 to make a buck. Where were the real engineers? Where
17 was Dennis Engineering, the people they hired to go out
18 and do an evaluation as to whether my client's property
19 had silted the pond? They weren't here. Look at
20 Mr. Mathews's report. It's addressed to Mr. Belser.
21 Look at the gentleman's report who says it was \$435,000
22 to clean the pond. It's addressed to Mr. Belser.

23 When we started this case, I told you the evidence
24 would show that this case is one that had been built by
25 the lawyer, and that's the truth. Every report you see

1 is addressed to Mr. Belser. Every potential estimate
2 is addressed to Mr. Belser. Mr. Belser. Mr. Belser.
3 Mr. Belser. Who's paying you? Mr. Belser. Who are
4 you billing? Mr. Belser. Who did you work your payment
5 arrangement with? Mr. Belser. Come on, man.

6 I submit to you, again, a bought and paid for expert
7 is no expert at all and certainly not someone that would
8 basically be a legitimate basis to bankrupt somebody to
9 the tune of \$435,000.

10 Mr. Shearer testified that the pipe that goes under
11 Davis Drive is stopped up. When a pipe is stopped up,
12 water backs up. Didn't we see a photograph of water that
13 was backed up from the pipe? Is that not photographic
14 proof that what Mr. Shearer said to you is true? That
15 pipe had been clogged for years. And, of course, it
16 makes sense. I don't know if any of you live around a
17 county road, but the county maintenance on its roads
18 isn't what you would call stellar. And I don't fault
19 the County for that. I love Lexington county. I've
20 lived here forty-seven years, but the County doesn't
21 have the manpower or the money to keep these pipes
22 cleaned out and when they scrape the road, thank God
23 they do that, the silt goes in, it goes in the ditch,
24 rolls in the pipe, rolls under the pipe eventually and
25 rolls straight into Suzy Garland's property. That is

1 exactly what everyone's testified to. But, oh, no,
2 twelve football -- 120 football fields high, 120
3 football fields wide and 120 football fields long rolled
4 through a 12-inch pipe at two occasions and wound up
5 in Ms. Garland's pond. I submit to you, folks, that
6 testimony is just not credible. It couldn't happen.

7 In regard to the \$435,000 to clean the pond, would
8 any reasonable person actually do that? The Court will
9 tell you that any award, any award -- if they've proven
10 anything, any award has to be reasonable and has to be
11 based upon reason and justice.

12 We talked about Mac Watson, the caretaker of the
13 pond. He said oh, yeah, there's been hydrological
14 plants there for years. That's where it silts. That's
15 where it started silting. The silt's been there. Those
16 plants we saw, they couldn't have been there if there
17 hadn't been silt for a long, long time. He testified
18 that pond's been silty for years. But, oh, no, the pond
19 had no silt, hardly at all, before the hurricane.

20 You know, we have been dealing with this case now
21 for four or five years. The fees and costs that we've
22 incurred and depositions and other things has been
23 outrageous. My clients have had five years of worry and
24 money and concern and absolute fear. And does anybody
25 blame Robert when every time he turns around there's

1 Ms. Garland with a videocamera in her hand, which she
2 didn't deny, videotaping him almost every day in some
3 form or fashion? Do you blame him for one day following
4 her and videotaping her? I mean, sometimes, you know,
5 enough's enough. You've got to stop it sometime. These
6 folks are entitled to some peace, aren't they? At some
7 point aren't they entitled to some peace? The case has
8 already about bankrupt them. I hate the fact that they've
9 have to pay all this money just to defend themselves. I
10 despise it.

11 You saw Christy on the stand and she cried. She
12 cried to the point that she was snuffling. Have you ever
13 seen anyone get so upset they're snuffling? The pressure,
14 the worry, the financial impact has been devastating on
15 these people. She tried to tell you what happened. When
16 she explained to you how Ms. Garland chased her off the
17 property when she extended the hand of friendship and
18 cursed at her. That's one of the things that concerns
19 me about this case. They made it very, very clear that
20 this lady is 83 years old and she's a little old lady
21 and, boy, she's being picked on. You ought to be
22 sympathetic. That's what they're appealing to is your
23 sympathy. Oh, doesn't everybody want to help a little
24 old lady? Sure, I want to help a little old lady. And,
25 boy, when she was on the stand with her lawyer questioning

1 her, oh, she was the little old lady, but when I started
2 cross-examining her, that little old lady's personality
3 shows up and when Christy goes down and extends a hand
4 of friendship, get off my GD property. I'm not gonna
5 say those words again. I'm trying to stop using that
6 kind of language. I need a cuss jar or something so I'm
7 not gonna say the words again. Get off my GD property.
8 Then the telling words. I'm going to sue you for
9 \$500,000. Remember that? You're gonna pay me \$500,000.
10 That's what she told her when she ran Christy off her
11 property. I'm gonna sue you for half a million dollars
12 and, lo and behold, coincidentally, the amount of the
13 actual damages they say is \$435,000 to clean out a
14 two-acre pond. Coincidence maybe, but please don't be
15 fooled into judging this case because you feel sorry
16 for an 83-year-old lady. This case has been miserable,
17 absolutely miserable. It has taken a physical toll on
18 these people.

19 Mr. Belser tells you that justice is about money
20 and that money needs to be awarded to punish these people.
21 That's really what they're trying to do. This case
22 isn't really about money. It's about this lady wanting
23 to punish these people. She wants to get them for
24 something, I'm not sure exactly what, but what really
25 happened is she is an environmentalist and when they cut

1 down the trees it made her mad if you want to know the
2 honest truth about it. She got mad because they cut
3 down the trees, she was gonna get them, and here we are.

4 It rains, she calls the County, the County comes out,
5 and because she was complaining they issue a stop work
6 order, they check it out, ain't nothing wrong here, take
7 the stop work order away and off we go, but then off
8 we go. Mr. Belser takes it upon himself. Cease and
9 desist. Stop. What authority does he have to tell
10 anybody anything? None. Oh, he makes a big deal about
11 I ordered them to cease and desist. He's like me. He's
12 just a lawyer. He doesn't have the authority to order
13 anybody to cease and desist anything. He's trying --
14 what he's trying to do is to bully them and to scare
15 them and to try to get money from them, and here we go.

16 Now he has an opportunity to have a case and to
17 build it. He even tries to use his correspondence
18 threatening my clients as a way to tell you he needs
19 all this money which equals justice.

20 I've done this forty-seven years and I am
21 exhausted, but I know this in my heart. Justice is not
22 about money. It's about what's right, it's about what's
23 wrong, and it's about truth. Nobody should be convicted
24 of wrongdoing on the basis of a bought and paid for
25 so-called engineer. At this time, I've worked on this

1 case hard for three or four years and I've done
2 everything I know how to do. I got aggressive with
3 some witnesses, but I think I had to. I didn't like it,
4 I don't like it, but we got the truth.

5 All I can do now is sit down and listen. I have
6 tried to care for my friends the entire time this case
7 is going on and at this time I put their care into your
8 hands. I ask you for some peace. I ask you to properly
9 end this thing. Let that little lady go home and have
10 the peace she so rightly deserves. Let her sleep at
11 night for a change.

12 Thank you.

13 THE COURT: Thank you, Mr. Moore.

14 Mr. Belser.

15 MR. BELSER: You know, I need to do a quick math
16 exercise, so let me just bring this up here. The
17 purpose of this, I get to address a couple of things
18 that Mr. Moore has raised. And I was a history major in
19 college, not a math guy, but I do have an iPhone, so
20 I'm empowered, and I believe that Mr. Moore said that
21 the amount of sediment that Mr. Mathews found was
22 120 football fields wide, 120 football fields high and
23 120 football field long, something like that.

24 All right. Let's -- again, I'm going back to a
25 sports metaphor, and I've got bad handwriting, but let's

1 say this is the goal line of a football field right here.

2 This is the endzone. Touchdown.

3 All right. A football field is sixty yards wide,
4 so we've got here and right here. So sixty yards wide,
5 all right? Sorry to keep jumping back and forth.

6 Therefore, you can fit sixty of those cubes and those
7 cubes are not cement block types, they are blocks of
8 loose sediment that have water in them, so you can fit
9 sixty of them across right here. So 1400 -- 1400 divided
10 by 60 is 23 and one-third. So you start at -- he's at
11 the one, he passes the five, the ten. You get here to
12 the twenty -- so let's just say the twenty-five yard line.
13 You've got -- the amount of sediment that Mr. Mathews
14 discovered was sideline to sideline from the goal line
15 to about the twenty-five yard line, three feet high. I
16 don't know where in the calculations came from about 128
17 football fields. I mean, that's enormous. That's bigger
18 than this courthouse. How many football fields can you
19 fit on the Cade property? How many football fields can
20 you -- if you were to disperse this sediment, instead of
21 having it within this little box, disburse it over the
22 entire thirty-six acres that were cleared? It makes
23 sense and that's -- this is the map. Mr. Moore's map, I
24 have no idea where that came from, and that's all I have
25 to say about that.

1 All right. Mr. Moore went on and on and on about
2 how Mr. Mathews sold his soul, bought and paid for.
3 Fortunately, the law recognizes that people have to get
4 paid for their work. The judge is gonna instruct you
5 that when an expert witness is called by either a
6 plaintiff or a defendant he expects to be paid and
7 should be paid. You should not take into consideration
8 the fact that the witness is paid unless there's some
9 evidence or circumstance appearing from the evidence
10 which would fully and reasonably convince you that the
11 testimony of the witness has been influenced because
12 of the sum which he has been paid as a witness.

13 Mr. Mathews was paid just like Mr. Lee by -- just
14 like Mr. Lee was paid by the -- by the Cades, all right?
15 I'm not doing this for free. Mr. Moore is not doing
16 this for free. There is nothing wrong, and that is the
17 law that the judge will instruct you, that just because
18 somebody gets paid for a professional opinion, that does
19 not taint what they find.

20 Now I'm not -- Ms. Garland hired me not to be the
21 bully. She hired me to stand up to the bully. The legal
22 effect -- I know he's not gonna listen to me. I can tell
23 him you must stop. Guess what? I don't have a badge, I
24 don't have a gun. I don't have anything. I have no
25 authority. But the legal significance of that letter is

1 that it put him on notice. Attached to my letter were
2 photographs and the same ones that y'all are gonna see.
3 Yeah, he doesn't have to listen to what I say, but he
4 is on notice of the problem.

5 Now Mr. Moore talked a lot about the Lexington
6 County officials and what was -- about how they never
7 said this and never saw that. Y'all saw those gentlemen
8 testify on the stand. You also saw Mr. Lee testify on
9 the stand that they needed to have a permit. There's
10 nobody from the County or an expert or anything which
11 supports their position. The only thing -- the only
12 basis for them to say that we did not need a permit is
13 their self-serving statement that it was for agricultural
14 purposes only. You saw the video. That is not just a
15 horse and cattle farm. That is a manse.

16 Now the encounter between Christy Cade and
17 Ms. Garland, the only reason I'm bringing that up
18 is because Mr. Moore brought that up. Remember what
19 Ms. Cade omitted from her testimony describing that event
20 on direct examination. She came over -- she immediately
21 -- she came over to Ms. Garland's property after this
22 guy, Mr. Melichar, who y'all are probably wondering who
23 in the world is this Melichar guy and what in world was
24 going on there. Well, there was this nasty brouhaha
25 between Melichar and Cade and both of -- right before

1 she came to Ms. Garland's property unannounced she got
2 into a verbal disagreement with Mr. Cade {sic} where
3 they were both exchanging vulgarities. So just kind of
4 -- let's live in the moment here for a second. You're
5 on your property, somebody is screaming at you about a
6 half million dollar lawsuit -- not Ms. Garland,
7 somebody's doing that, they're screaming vulgarities
8 at you, you're screaming back. You know, as Mr. Cade
9 said, Ms. Cade can stick up for herself. Let's go.
10 Let's get up. Let's put an end to this. That's what
11 Mr. Cade said later, but that's what was going on. Look
12 at Ms. Garland. Come on.

13 Now the hurricane. Let's talk about the hurricane.
14 You know, the -- the testimony from Mr. Shearer about
15 the blow -- the blowout, those are Mr. Moore's words,
16 not Mr. Shearer's words, was that it was a two-foot by
17 two-foot area that -- that breached. A two-foot by
18 two-foot area. It's not the entire road. It's not like
19 a tsunami wave came through and blew it out. It was a
20 small area that got pushed open so the water could get
21 through and that was in 2015. That was the 2015 flood.

22 Mr. Shearer -- I mean, as y'all saw, I was confused.
23 Wait, are you talking about the big flood when the Cades
24 were there or when everybody else lost their property or
25 what are you talking about and he was like no, no, no.

1 Just so everybody's clear, what I was talking about,
2 that was in 2015. That has nothing to do with this
3 case. This act of God defense has nothing to do with
4 this case. The judge will instruct you as to what the
5 act of God defense is. It must be an event which is
6 completely unexpected. Not one which is mentioned on
7 the news, we've got a big storm coming. Like, you know,
8 that's -- you know, we know everything about the weather,
9 a good thing or bad. Every single time. Everybody knows
10 storms are coming. We knew the 2015 storm was coming
11 days before it came. This wasn't a surprise popup
12 disaster that came out of nowhere that was the sole
13 cause of what happened. And guess what? Even if it was
14 a -- even if the storm in 2018 had been a surprise popup
15 disaster that the weathermen had no idea was coming and
16 didn't report, it wouldn't have happened if they hadn't
17 cleared their land and not put up any sediment controls.
18 In order for the act of God defense to apply, it has to
19 be something which is completely unforeseeable, not
20 something which is reported on the news multiple days
21 in advance. It has to be -- that act of God has to be
22 completely separate from any act of man in order to apply
23 and we have the acts of men that caused this.

24 You know, I -- you know, I told you this before,
25 the judge will instruct you that the statements by

1 counsel, arguments by counsel, are not evidence. You
2 know, we're here to argue and we're here to facilitate.

3 There's a statement by counsel that it's not
4 commercially reasonable for Mr. Hanna to remove this
5 twenty-five yards worth of sediment from the pond.
6 That's just not reasonable. There's no competing
7 evidence, there's no competing estimate. If it's
8 commercially unreasonable, show me. Have somebody else
9 come and say what it's gonna cost. We -- none of us
10 are experts in draining ponds, moving heavy equipment,
11 pulling out sediment and then getting a permit and
12 knowing what to do with it. You rely on professionals
13 and that's what our quote is.

14 You know, the tax value of \$91,000. Again, I
15 anticipated this. They completely discount the value of
16 Ms. Garland's property. You know, Mr. Cade certainly
17 agrees that whatever the tax value is not representative
18 of what the value is. I mean, their property is assessed
19 at, what, \$13,000? Again, you saw the video. No.
20 Everybody knows that.

21 You know, the thing about Mr. Mathews, you know,
22 being disoriented, you know, throughout this trial we've
23 had this thing where north has been south and south has
24 been north and in that situation with that photograph,
25 north was east. You know, if we look at the map as it

1 is, you know, Ms. Garland's pond is north. The way that
2 Mr. Moore had this oriented the whole time is it was
3 south and when it was in front of Mr. Mathews, zoomed in,
4 it was west. Not to mention the fact that he's sitting
5 on the stand having Mr. Moore ask him questions in the
6 heat of battle.

7 You know, Mr. -- I understand why the defense tries
8 to kind of blow off the Lee report, but, you know, one
9 other thing, if you -- when y'all have the chance to
10 read it, it will be back there with you, by removing the
11 vegetation on the site the runoff characteristics have
12 been altered and a more detailed study that is beyond
13 the scope of this report would be required to quantify
14 the overall impact to the basin. The downstream impacts
15 resulting from the denuding of the site would be not
16 only runoff laden with suspended particles, but also an
17 increase volume of runoff and rate of runoff now being
18 received downstream. It cannot be more clear. That's
19 why it wasn't provided to us. It's the smoking gun.

20 Thank y'all very much. I appreciate it. We're
21 now at the point where the judge will charge you as
22 to the law.

23 THE COURT: All right.

24 Madam Forelady, I'm gonna give y'all a break
25 because it's probably gonna take me about forty minutes

1 to charge y'all, okay?

2 FOREPERSON: Okay.

3 THE COURT: So let's take a quick break and I'll
4 bring you back in. In the meantime, I'm gonna get the
5 lawyers to get of all the exhibits together and we'll
6 come and get you in just a minute.

7 (Whereupon, the jury retires to the jury room at
8 2:36 PM.)

9 (Back on the record at 2:47 PM.)

10 BAILIFF: Court's back in session.

11 THE COURT: Okay. Mr. Belser, is there anything
12 that -- any videos being placed into evidence?

13 MR. BELSER: Well, there are videos, yes, but
14 they're -- if they ask for them, I'm happy to show them
15 to them, but they're on my computer or on my little iPad
16 thing. Or I can e-mail them -- I could e-mail them to
17 Abigail or I could put them on a -- I could create a
18 separate folder. I've got them in my thing on --

19 THE COURT: I'm just wondering if I had something
20 to send back to the jury.

21 MR. BELSER: Yeah.

22 THE COURT: All right. Everybody -- oh, you're
23 looking at the verdict form, Mr. Moore.

24 Let me tell you, to answer your question,
25 Mr. Belser, about Mr. Singleton's case, this is what

1 I'm gonna say to the jury. The defendant, Roger
2 Singleton, is no longer a party to this case. You do
3 not need to speculate as to why, nor is it to be
4 considered by you in any way, nor is it to be discussed
5 at all in the jury room.

6 MR. BELSER: Makes sense.

7 THE COURT: That's all I can say. Otherwise, I
8 think it would be prejudicial.

9 Now how about the verdict form?

10 MR. MOORE: I think that the only part I would
11 object to on the verdict form would be in large part
12 is if you, the jury, in the above-captioned case,
13 unanimously find by clear and convincing evidence the
14 defendant's conduct was with a conscious disregard,
15 you may award punitive damages.

16 You've already told them what punitive damages are.
17 That right there should be stricken. They've already
18 heard what you said in the charge. The only line we
19 need is that last one, I believe. That's simply --

20 THE COURT: Let me ask, are you in agreement,
21 Mr. Freeman?

22 MR. BELSER: I'm -- I think it's fine as it is
23 actually. I mean, I think that that -- I don't really
24 -- I don't care.

25 THE COURT: I don't mind striking it. I'm going

1 to read punitive damages, so they'll know.

2 MR. BELSER: That's fine.

3 THE COURT: Y'all discussed it also in closing.

4 Okay. Can I bring the jury in?

5 MR. BELSER: Yes, ma'am.

6 MR. MOORE: Yes, ma'am.

7 THE COURT: All right. Let's bring them in.

8 (Whereupon, the jury return the courtroom at
9 2:52 PM.)

10 THE COURT: Okay. Madam Forelady, are we ready?

11 FOREPERSON: We're ready, Your Honor.

12 THE COURT: Okay. I want y'all to bear with me
13 because there is a lot of charges for me to read, but
14 before I do that I want you to know that the defendant,
15 Roger Singleton, is no longer a party to this case.
16 You do not need to speculate as to why, nor is it to
17 be considered by you in any way. In fact, it should
18 not even be discussed in the jury room during your
19 deliberations.

20 All right. With that said, it is now my duty as
21 the trial judge to instruct you on the law applicable
22 to this case and in that regard it is your duty as
23 jurors to accept and apply the law as I now state it
24 to you.

25 Furthermore, it is your exclusive duty to decide

1 all the issues of fact in this case and to determine
2 the effect, value and weight of the evidence. All the
3 parties have the right to expect that you will carefully
4 consider and evaluate the evidence and apply the law of
5 this case to it so that in the end all parties will
6 receive a fair and impartial trial.

7 During this trial you and I have separate duties
8 to perform. As the trial judge, it is my responsibility
9 to preside over this trial and to rule upon the
10 admissibility of the evidence offered during the trial.
11 In that regard, you are to consider only the evidence
12 before you. You are to consider only the testimony
13 which has been presented from the witness stand, together
14 with any exhibits admitted into the record.

15 Furthermore, I have the additional duty to charge
16 you on the law to this case and in that regard it is
17 your duty to accept and apply the law as I now state it
18 to you. If you have any preconceived ideas as to what
19 the law is or what you think the law ought to be and it
20 does not agree with what I tell you the law is, you
21 are obligated under your oath to abandon these
22 preconceptions because you are sworn to accept the law
23 as I now state it to you.

24 In this trial, you are the sole and exclusive judges
25 of the facts. Do not infer that I have any opinion about

1 the facts in this case from anything I have said or done
2 during the course of this trial. In this regard, the law
3 simply does not permit me to have an opinion about the
4 facts. As jurors, it is your duty alone to determine the
5 effect, value and weight of the evidence presented during
6 the course of the trial.

7 Furthermore, it is your job as jurors to determine
8 the credibility or believability of the witnesses who
9 have testified in this case. In determining the
10 believability of witnesses who have testified, you may
11 believe one witness over many or many over one. You may
12 believe a part of the testimony of a witness and reject
13 the remaining part. You may believe the testimony of a
14 witness in its entirety or reject it in full. You may
15 consider whether the witness has an interest in the
16 result of the trial, whether the witness is prejudiced
17 toward either party, the opportunity for the witness to
18 have seen the matters and things about which the witness
19 may testify and the way the witness acts on the witness
20 stand.

21 Now evidence may be direct or circumstantial.
22 Direct evidence is testimony by a witness about what the
23 witness personally saw, heard or did. Circumstantial
24 evidence is indirect evidence. In other words, it is
25 proof of one or more facts from which one can find

1 another fact. You may consider both direct and
2 circumstantial evidence equally.

3 The following things are not evidence and you must
4 not consider them as evidence in deciding the facts of
5 this case. Statements and arguments of the attorneys,
6 questions and objections of the attorneys, and testimony
7 that I've instructed you to disregard.

8 I believe in this case I did strike something and
9 you are to disregard it.

10 The burden of proof in this case is by a
11 preponderance of the evidence. A preponderance of the
12 evidence simply means the greater weight of the evidence.
13 It is evidence which as a whole shows that the fact
14 sought to be proved is more likely true than not true.

15 This can be illustrated by imagining a set of
16 scales. When the case begins the scales are even.
17 After all of the evidence has been presented, if the
18 scales remain even or if they tip even slightly in favor
19 of the defendants, then the plaintiff has failed to meet
20 the burden of proof and would not be entitled to recover
21 in this case. If, on the other hand, the scales tip
22 even slightly in favor of the plaintiff, the plaintiff
23 will have met the burden of proof and you should return a
24 verdict for the plaintiff.

25 The preponderance of the evidence is not determined

1 by the number of witnesses. Instead, it must be
2 determined by the greater weight of all of the evidence.

3 During the trial of this case we had testimony by
4 way of a video deposition of a witness that was taken
5 outside of the courtroom. The deposition was taken in
6 the manner prescribed by law and you will consider the
7 testimony from that deposition just as if the witness
8 were here upon the stand testifying. You take this
9 deposition testimony in connection with all the other
10 testimony and you assess the credibility of that witness
11 from anything that is in the record that will aid you in
12 doing so.

13 You should consider that deposition evidence along
14 with the testimony of the witnesses who have appeared
15 in person and you determine from all the evidence in
16 this case whether by witnesses present or by deposition
17 or whether by exhibits in this case what the truth of
18 this controversy is according to the facts as you find
19 them to be and then apply the law as I give it to you.

20 The rules of evidence ordinarily do not permit
21 witnesses to testify to opinions or conclusions. An
22 exception to this rule exists for witnesses we call
23 expert witnesses. A witness who by education and
24 experience has become an expert in some art, science or
25 profession may give an opinion as to the subject the

1 witness claims to be an expert in and may also give the
2 reasons for the opinion.

3 You should consider any expert opinion given by a
4 witness and like any other evidence give it the weight
5 you think it deserves. If you decide that an expert
6 witness's opinion is not based on sufficient education
7 and experience or if you decide that the reasons given in
8 support of the opinion are not sound or that the opinion
9 is outweighed by other evidence, you may disregard the
10 opinion entirely.

11 An expert witness's testimony is to be given no
12 greater weight than that of other witness simply because
13 the witness is an expert. You do not have to accept an
14 expert's opinion even though it is uncontradicted.

15 When an expert is called by either a plaintiff or
16 a defendant he expects to be paid and should be paid.
17 You should not take into consideration the fact that
18 the witness is paid unless there's some evidence or
19 circumstances appearing from the evidence which would
20 fully and reasonably convince you that the testimony
21 of the witness has been influenced because of the sum
22 of which he has been paid as a witness.

23 In addition to the common law duty of care,
24 Lexington County has a stormwater management ordinance
25 codified in the Lexington County Code of Ordinances. It

1 is up to you to determine if the statute does or does not
2 apply.

3 The plaintiff claims that the defendants were
4 negligent and should compensate the plaintiff for
5 the injuries the plaintiff suffered as a result of
6 the defendants' negligence. A plaintiff's right of
7 recovery may not rest on the mere fact that an accident
8 or injury occurred. Instead, in order to prove that
9 the defendants were negligent, the plaintiff must prove
10 by a preponderance or greater weight of the evidence
11 the follow things.

12 First, the plaintiff must prove by a preponderance
13 or greater weight of the evidence that the defendants
14 owed the plaintiff a duty of care. This is a question
15 of law which you will decide. If you find there was
16 a duty of care, then you must decide the remaining
17 questions.

18 The first of these is whether the plaintiff has
19 proven by a preponderance or greater weight of the
20 evidence that the defendants breached the duty of care
21 by a negligent act or omission.

22 Negligent means that a person has done something
23 that a reasonable person would not have done or has
24 failed to do something that a reasonable person would
25 have done in the same situation. The plaintiff must

1 also prove by a preponderance or greater weight of the
2 evidence that they suffered damages as a result of the
3 defendants' breach of duty.

4 Finally, the plaintiff must prove by a preponderance
5 or greater weight of the evidence that the damages were
6 proximately caused by the defendants' breach of duty.
7 There is no countervailing burden on defendants to prove
8 that their negligence did not cause the plaintiff's
9 injuries.

10 Proximate cause is something that produces a
11 natural chain of events which in the end brings about
12 the injury. It is the direct cause of the injury. To
13 prove that the defendants' negligence proximately
14 caused the plaintiff's injury, the plaintiff must first
15 prove causation in fact. This is proven by showing
16 that the injury would not have occurred but for the
17 defendant's negligence.

18 The plaintiff must also prove legal cause. Legal
19 cause is proven by showing that the injury was
20 foreseeable. This means that the injury occurred as a
21 natural and probable consequence of the defendant's
22 negligence.

23 The plaintiff must prove that some injury from the
24 defendants' negligence was foreseeable, but does not have
25 to prove that the particular injury that occurred was

1 foreseeable. However, the defendants cannot be held
2 responsible for things which could not be expected to
3 happen.

4 Proximate cause does not mean the only cause.
5 The defendants' act can be a proximate cause of the
6 plaintiff's injury if it was at least one of the direct
7 concurring causes of the injury. However, if the real
8 cause of the claimed injury or damage is left in doubt
9 by the testimony, the plaintiff has not met his burden
10 of proof.

11 I charge you that where the cause of the plaintiff's
12 injuries may be reasonably attributed to an act for
13 which the defendants are not liable as to one for which
14 they are liable, the plaintiff has failed to carry the
15 burden of establishing that his injuries were the
16 proximate result of the defendants' negligence and the
17 verdict must be for the defendants. The defendants would
18 only be liable for the damages for which the defendants
19 actually caused.

20 A landowner has an affirmative duty not to permit
21 his land to remain in an altered state if such altered
22 state creates a condition of natural and foreseeable
23 result of which will result in injury to the adjoining
24 property. The breach of this duty constitutes actionable
25 negligence. He cannot fill up his own lot in such a

1 manner as to let the earth pass or slide over his land
2 into the lot of his neighbor.

3 Where there is a duty arising from an ordinance
4 and the plaintiff shows the defendants violated the
5 ordinance, the violation of the ordinance is negligence
6 per se. The violation of any of the provisions of an
7 ordinance is negligence per se. That is, negligence in
8 and of itself, negligence as a matter of law.

9 Negligence per se simply means you, the jury, need
10 not decide if the defendant acted as would a reasonable
11 man in the circumstances, the ordinances fixes the
12 standard of the conduct required of the defendant leaving
13 you merely to decide whether the defendants breached the
14 ordinance. If they did, their failure to take due care
15 is established as a matter of law. The only issue then
16 left for you to determine is whether the defendants'
17 conduct proximately caused damage to the plaintiff.

18 Accordingly, proof of a violation of an ordinance
19 is, in fact, proof of negligence so that your only
20 concern then would be whether such violation of the
21 ordinance so shown was a proximate cause of the injury
22 and damage.

23 The violation of an ordinance does not constitute
24 recklessness, willfulness and wantonness per se, yet
25 such violation is shown is evidence of recklessness,

1 willfulness and wantonness and may be considered in
2 connection with other facts and circumstances surrounding
3 the case in determining whether the defendants have been
4 reckless, willful and wanton.

5 The violation of an ordinance will support a recovery
6 of damages if such a violation proximately caused or
7 proximately contributed to the injuries or damages
8 complained of.

9 When one person is injured by the negligent acts
10 of another, the injured person is entitled to be fully
11 compensated for all injuries directly or proximately
12 resulting from any negligent act or omissions by the
13 defendant.

14 In determining the amount of compensation for
15 injuries suffered by the plaintiff as a result of the
16 defendants' negligence, it is proper for you to consider
17 the reasonable cost of repairs and the value of the use
18 of the property during a reasonable repair time.

19 Damages do not have to be proven to a mathematical
20 certainty. They do have to be proven to be reasonable
21 by a preponderance of the evidence.

22 The plaintiff claims that the defendants acted
23 with recklessness, willfulness and wantonness and that,
24 therefore, the plaintiff is entitled to punitive damages
25 from the defendants.

1 Recklessness means a conscious failure to use
2 reasonable care. A person who is negligent acts
3 carelessly. However, a person who acts recklessly,
4 willfully and wantonly is not only careless, but is also
5 aware that he is being careless.

6 You may only award punitive damages to the
7 plaintiff if you find that the plaintiff has proven a
8 wanton, willful and malicious violation of her rights
9 by the defendants. Punitive damages should be awarded
10 only for conduct so gross that it implies wantonness,
11 willfulness and recklessness.

12 The words "recklessness", "willfulness" and
13 "wantonness" are syn -- synonymous. Thank you. The
14 terms are used to describe a conscious failure to
15 recognize and observe reasonable or due care.
16 Recklessness implies the doing of a negligent act
17 knowingly. When a person acts negligently and realizes
18 that he is acting negligently, the law says he is
19 reckless, willful and wanton. Whichever term you
20 prefer they all mean the same thing. That is, the
21 conscious failure to exercise due care.

22 Recklessness is distinguished from negligence.
23 Negligence is the failure to use due care. Negligence
24 is carelessness. Negligence is failure by omission
25 or commission to exercise due care as a person of

1 ordinary reason and prudence would exercise in the same
2 circumstances. Recklessness is a higher degree of
3 culpability and responsibility. Recklessness signifies
4 a conscious failure to exercise due care. Recklessness
5 is a conscious indifference to the rights of the
6 plaintiff or a reckless disregard of the rights of the
7 plaintiff.

8 Recklessness is an awareness of wrongful conduct
9 and a continuation to act regardless of the consequences.
10 In other words, while negligence proves -- while negligent
11 -- in other words, while a negligent person -- let me read
12 that one more time.

13 In other words, while a negligent person is one who
14 acts carelessly, a person whose behavior is reckless,
15 willful and/or wanton is not only careless in his actions,
16 but is also aware that he is careless.

17 The test for determining whether a tort may be
18 deemed reckless, willful or wanton is whether it has been
19 committed in such a matter and such circumstances that a
20 person of ordinary reason or prudence would have been
21 conscious of it as an invasion of the rights of the
22 injured party.

23 The plaintiff must prove by clear and convincing
24 evidence that he is entitled to an award of punitive
25 damages. This burden of proof is over and above the

1 normal burden of proof or proof by a preponderance of
2 the evidence.

3 Clear and convincing evidence is that degree of
4 proof which will give you a firm belief as to the
5 facts sought to be proved. This is more than a mere
6 preponderance of the evidence but less than beyond a
7 reasonable doubt.

8 I'm about halfway through.

9 Trespass is any interference with one's right to
10 the exclusive peaceable possession of his property. To
11 prove a trespass, the plaintiff must present evidence
12 which establishes that he was in legal possession of the
13 property, that the defendant voluntarily entered upon
14 the plaintiff's property, and that such entry was made
15 without the plaintiff's permission.

16 To maintain a trespass action, there must be
17 possession and a right to it. One in peaceable
18 possession though lacking title is entitled to remain in
19 possession until ousted by the true owner and need only
20 show prior peaceable possession of the defendant.

21 An action in trespass will lie if the defendant
22 intentionally entered the property. The unwarrantable
23 entry on land in the peaceable possession of another
24 is a trespass without regard to the degree of force
25 used, the means of entry or extent of damage.

1 The entry itself is the wrong.

2 For example, if one without a license from the
3 person in possession of land walks upon it or casts a
4 twig upon it or pours a bucket of water upon it, he
5 commits a trespass. It is immaterial whether any
6 further damage results.

7 To constitute an actionable trespass, there must
8 be an affirmative act. The invasion of the land must
9 be intentional and the harm caused must be the direct
10 result of that invasion. Trespass does not lie for
11 nonfeasance or for failure to perform a duty.

12 Intent is proved by showing the defendant acted
13 voluntarily and that he knew or should have known the
14 result would follow from his act. Although neither
15 deliberation, purpose, motive or malice are necessary
16 elements of intent, the defendant must intend the act
17 which in law constitutes the invasion of the plaintiff's
18 rights.

19 Trespass is an intentional tort and while the
20 trespasser to be liable need not intend or expect the
21 damaging consequence of his entry, he must intend the
22 act which constitutes the unwarranted entry on another's
23 land.

24 Finally, lack of permission is an essential element
25 of a cause of action for trespass. If the plaintiff

1 proved the defendants trespassed on his prop -- on her
2 property, she is entitled to recover at least nominal
3 damages even if no proof of injury or damage to the
4 property exists. Entry alone entitles a possessor to
5 at least nominal damages.

6 The plaintiff is entitled to recover for any other
7 actual damages that have been proved by the greater
8 weight of the evidence to have been proximately caused
9 as a result of the trespass. It is the well-settled law
10 of this state that an owner is qualified by the fact of
11 ownership to give his or her estimate of the value of the
12 damaged real and personal property.

13 When injury to property resulting from a trespass
14 is -- trespass is restoration or repair, it is considered
15 to be temporary and the measure of damages is the cost of
16 the restoration and repair. If the cost of restoration
17 exceeds the reduction in value, then the greater cost of
18 restoration will be allowed when the landowner has a
19 personal reason relating to the land for restoring the
20 land to its original condition and when the cost of
21 restoration is reasonable in relation to the damage
22 inflicted. However, the cost of replacing the land in
23 its original condition is disaprop -- disproportionate
24 to the reduction to the value of the land caused by the
25 trespass unless there is a reason personal to the owner

1 for restoring the original condition.

2 Damages are measured only by the difference between
3 the value of the land before and after the harm. The
4 restoration cannot exceed the fair market value of the
5 property. Punitive damages may be awarded only where the
6 trespass was willful, wanton or reckless or in reckless
7 disregard of the plaintiff's rights.

8 Generally a private nuisance is that class of
9 wrongs that arise from the unreasonable, unwarrantable or
10 unlawful use by a person of his own property, personal
11 or real. A nuisance is anything that works hurt,
12 inconvenience or damage or which essentially interferes
13 with the enjoyment of life or property. It has been
14 described as the unlawful use of property causing
15 material annoyance, discomfort or hurt to another person.
16 It is an unreasonable interference which is continuous
17 or has the potential to reoccur with the use and
18 enjoyment of the plaintiff's land by the defendant's
19 conduct on his or her land.

20 Every citizen holds his property subject to the
21 implied obligation that he will use it in such a way
22 as to not to prevent others from enjoying the use of
23 their property.

24 The plaintiff must demonstrate that the defendants
25 unreasonably interfered with her ownership or possession

1 of the land. A nuisance is a substantial and
2 unreasonable interference with the plaintiff's use and
3 enjoyment of her property. It is anything which hurts,
4 inconveniences or damages anything which essentially
5 interferes with the enjoyment of life or property.

6 To prevail in a private nuisance cause of action,
7 the plaintiff must demonstrate unreasonable interference
8 with use and enjoyment of land and proximate causation of
9 the interference by the defendants.

10 To make out a case for nuisance, the plaintiff must
11 prove by the greater weight of the evidence that the
12 defendants made an unreasonable use of their property
13 that proximately caused harm to her. While everyone has
14 the right to use his property as he sees fit, the right
15 is subject to the implied obligation of every owner or
16 occupant of property to use it in such a way that it will
17 not be unreasonably injurious to the equal right to the
18 enjoyment of their property.

19 For there to be a nuisance, the defendant's use of
20 their property must be unreasonable. Whether a use is
21 reasonable depends on the facts and circumstances of
22 the case. In determining whether nuisance exists, resort
23 must always be had to sound common sense and due regard
24 should be given to notions of comfort and convenience
25 entertained by persons generally of ordinary taste.

1 A reduction in property value alone is not
2 sufficient to constitute an actionable interference
3 with the use and enjoyment of land although maybe be
4 relevant -- it may be a relevant factor in determining
5 that a nuisance exists. For there to be an actionable
6 nuisance, a wrongful act by the defendants must be shown
7 and the nuisance must be the natural and proximate cause
8 of the injury suffered by the plaintiff.

9 It is no defense that the nuisance must be the
10 natural and proximate cause of the injury suffered by
11 the plaintiff. It is no defense that the nuisance
12 complained of is contributed to by the acts of others
13 over whom the defendants have no control if there would
14 be a nuisance without such contribution.

15 It is generally held that a nuisance may exist
16 either with or without negligence. A lawful activity
17 may be a nuisance if conducted negligently. However,
18 nuisance does not require negligence. If a nuisance
19 exists, the fact that due care was exercised and due
20 precautions were taken against the annoyance or injury
21 complained of are immaterial. A nuisance may exist where
22 no negligence is involved because lack of due care is not
23 essential to a cause of action for nuisance.

24 Where injury results from the creation or
25 maintenance of a nuisance, the measure of damages is

1 compensation for the injury or loss sustained by the
2 plaintiff. The victim of either a permanent or temporary
3 nuisance can also recover for specific identifiable
4 losses, such as material annoyance, discomfort or hurt.
5 Consequential, as well as direct damages, may be recovered
6 in an action for nuisance.

7 In the law, an act of God means an unusual,
8 extraordinary, sudden and unexpected manifestation of
9 the forces of nature in a manner that man cannot resist.
10 It is an act occasioned exclusively by forces of nature
11 without the interference of any human agency. A
12 misadventure or casualty is to said to be caused by the
13 act of God when it happens by the direct, immediate and
14 exclusive operation of the forces of nature uncontrolled
15 and uninfluenced by the power of man and without human
16 intervention and is of such a character that it could not
17 have been prevented or escaped from by any amount of
18 foresight or prudence or by any reasonable degree or care
19 or diligence or by the aid of any appliances which the
20 stipulation of the parties might reasonably require him
21 to use.

22 An act of God is generally described as an
23 occurrence that is abnormal or unusual, strictly natural
24 in origin with no human assistance or influence and
25 inevitable so that it could not have been reasonably

1 prevented or provided against by the exercise of ordinary
2 human foresight.

3 In order for an event to be considered an act of
4 God, it must be abnormal. An event is abnormal within
5 the meaning of the term "act of God" where it is such an
6 unusual and extraordinary manifestation of the forces
7 of nature that it could not under normal conditions
8 have been anticipated or expected or whether history
9 of the climatic vari -- variations or other conditions
10 in the particular locality afford no reasonable warning
11 of it.

12 Conversely, where conditions are predictable and
13 not without precedence, they may not constitute acts
14 of God. However, the occurrence need not to be
15 unprecedented to be abnormal so long as it could have
16 been anticipated under normal conditions.

17 The question of precedence relates to the manner
18 of reasonable anticipation and opportunity to avert the
19 consequences and it is in that sense that the term
20 "unprecedented" is used with regard to the nature of the
21 catastrophe.

22 Since an act of God has been defined in the law
23 as an unusual, extraordinary, sudden and unexpected
24 manifest -- I can't pronounce that word for nothing --
25 manifestation of the forces of nature, which man cannot

1 resist and which cannot under normal conditions be
2 anticipated or expected.

3 An occurrence rising to the dignity of an act of
4 God shields a defendant from liability. Generally, if
5 the injury was caused by some extraordinary or unusual
6 natural force or condition that could not have been
7 foreseen or that would have caused the injury even if
8 there had been no negligence, the negligence is not the
9 proximate cause of the injury. If the natural condition
10 or force that affects a negligent act or omission is
11 unusual or extra -- extraordinary, the negligent party
12 will not in general be held to have known or contemplated
13 it unless the circumstances of the particular negligent
14 act or omission are such that the negligent party should
15 have known of or contemplated the probable appearance and
16 effect of such unusual or extraordinary natural condition
17 or force.

18 To constitute an act of God, an act must be one
19 occasioned exclusively by the violence of nature and
20 all human agency must be excluded from creating or
21 entering into the cause of the mischief. When the
22 negligence of a responsible person concurs with an
23 ordinary flood, storm or other natural force or with a
24 so-called act of God in producing an injury, the party
25 guilty of such negligence will be held liable for the

1 injurious consequences if the injury would not have
2 happened except for his failure to exercise care. In
3 other words, where an act of God is the cause of an
4 injury but an act or omission of a defendant so mingles
5 with it as to also be an efficient and -- and cooperating
6 cause, the defendant is liable.

7 The act of God defense is an affirmative defense.
8 The burden of proving this defense is on the defendant.
9 The law imposes no liability for injuries or damages
10 sustained as the result of an act of God. A defendant
11 is not liable for damages caused by the act of God if
12 such act be the direct or proximate cause of the injury.

13 However, for you to find for the defendants on this
14 issue, you must determine the act of God was the sole
15 cause of the plaintiff's injuries. An act of God is a
16 valid defense only when it is the sole cause of the
17 injury. In other words, the defendants must prove that
18 they were without negligence which contributed as a cause
19 of the plaintiff's injuries.

20 Should you find that an act of God was the sole
21 cause of the plaintiff's damages, then your verdict much
22 be for the defendants.

23 A verdict in this case cannot be based upon
24 sympathy, passion, prejudice or emotion or some other
25 consideration not found in the evidence. I charge you

1 that as jurors you must decide the issues involved in
2 this proceeding based solely upon the evidence which
3 you hear during the course of the trial. Your verdict
4 must be without bias and without prejudice to any party.
5 You can't -- you cannot allow yourself to be governed by
6 sympathy, by prejudice, by passion, by public opinion or
7 by some other consideration not found in the evidence.

8 All right. Let me say something about your
9 deliberations. Deliberation is defined as a careful
10 consideration, weighing up, with a view to decision.
11 The genius of our jury system is that it allows twelve
12 good men and women from twelve different backgrounds,
13 life experiences and perspectives to consider the
14 evidence, talk about it, and ultimately reach a verdict.

15 We call them deliberations for a reason. You are
16 to consider the evidence in this case carefully and
17 deliberately and discuss it in a calm, thorough and
18 courteous manner. Remember, you are not partisans or
19 advocates for either side favoring one side over the
20 other. You are judges. Judges of the facts. Listen to
21 the views of all your fellow jurors, consider other
22 people's points and points of view, and talk through and
23 discuss the evidence. And, remember, if you are doing
24 something deliberately, you are not in a big hurry and
25 you should not be in a hurry here. This case is very

1 important to both sides and this is their only day in
2 court.

3 When you retire to the jury room, you should
4 discuss the case with your fellow jurors and to reach
5 an agreement if you can do so. Each of you must decide
6 the case for yourself, but you should do so only after
7 you have impartially considered all of the evidence,
8 discussed it fully with the other jurors and listened
9 to the views of your fellow jurors. Do not be afraid
10 to change your opinion if the discussion persuades you
11 that you should, but do not come to a decision simply
12 because other jurors think it is right.

13 It is important that you attempt to reach a
14 unanimous verdict as to each cause of action, but, of
15 course, only if each of you can do so after having made
16 your own decision. Do not change an honest belief about
17 the weight and effect of the evidence simply to reach a
18 verdict. In other words, do not change your opinion
19 solely for the sake of reaching a verdict. Your verdict
20 must be unanimous. One as to each cause of action.

21 Madam Forelady, when the jury agrees on a verdict,
22 you will sign your name as foreperson on the verdict
23 sheet, then knock on the jury room door, let the bailiff
24 know that y'all have reached a decision, and at that time
25 I'll have you back into the courtroom.

1 I'm gonna ask you to go back to your jury room.

2 Madam Forelady, if there are any questions, the
3 bailiff will give you a pencil and a piece of paper.
4 It must be in written form.

5 I think in this case there were some videos. If
6 you need to see the videos, please write us a note and
7 we'll make sure those videos are played for you again.

8 Also, when you are deliberating all twelve of you
9 must be in the room. So if one is excused to go to the
10 ladies room or the mens room, you must wait. Hold your
11 discussions until that juror comes back. All twelve
12 jurors must be in the room.

13 There will be no use of telephones or any kind of
14 communications, okay?

15 Now I'm gonna tell you, go back. Do not start
16 deliberating yet. We're gonna bring this evidence back
17 to you. The bailiff will bring it back with the clerk
18 and she will tell you when to start, okay?

19 With that said, I'm gonna send you back.

20 (Whereupon, the jury retires to the jury room at
21 3:41 PM.)

22 THE COURT: All right. Any -- I'm sorry.
23 Anything from the plaintiff --

24 MR. BELSER: No, Your Honor.

25 THE COURT: -- as to the jury charges?

1 MR. MOORE: Nothing as to the jury charges that's
2 not already been stated at some point.

3 Your Honor, I do -- we have put the sixty-two-five
4 setoff on the record, have we not, already?

5 THE COURT: No, I have not. I mean, I put it on
6 the record that there is a sixty-two-five and I intend
7 if there is -- I think I even said it yesterday. If
8 there is any verdict in favor of the plaintiff, it will
9 be reduced by the sixty-two-five.

10 MR. MOORE: Thank you, ma'am.

11 THE COURT: I think even Mr. --

12 MR. BELSER: Dougall.

13 MR. MOORE: Dougall.

14 THE COURT: -- Dougall said that yesterday, too,
15 so it's on the record. If not, I just said it and it's
16 on it.

17 All right. Then we are in recess.

18 Don't go anywhere yet. She's printing the verdict
19 from and I need to make sure the alternate is out.

20 (Recess taken at 3:42 PM.)

21 (Whereupon, the evidence and verdict form was sent
22 back to the jury room at 3:45 PM.)

23 (Back on the record at 4:04 PM.)

24 THE COURT: All right. We've got a jury question.
25 We'll make this Court's Exhibit Number 7.

1 (Court's Exhibit Number 7 was marked for
2 identification.)

3 THE COURT: This is the question. May we have a
4 copy of the judge's charge to remind us of what nuisance,
5 negligence and trespass are?

6 MR. BELSER: I'm fine with that.

7 MR. MOORE: I think we said yesterday we agreed
8 we weren't gonna do that.

9 MR. BELSER: Well, that was before they asked the
10 question. I mean --

11 MR. MOORE: I --

12 MR. BELSER: Sorry. Go ahead.

13 MR. MOORE: I would object to that.

14 MR. BELSER: We've had a -- well, the alternative
15 is to recharge it, which I don't really want to do, and
16 so I think the thing to do is to take -- just give them
17 those sections.

18 MR. MOORE: I just don't think that -- we discussed
19 that yesterday and counsel agreed with us that that
20 should not be done. I think you're just asking for
21 mischief. They've been told and I think they -- they've
22 been charged properly. I really think that's not good
23 especially when we talked about this issue yesterday and
24 both lawyers agreed not to do it.

25 THE COURT: All right. Do y'all have a copy of

1 your jury instructions there?

2 MR. MOORE: Your Honor, if we're gonna send that
3 back, I'd just as soon send everything back.

4 THE COURT: I wasn't gonna do that. I was gonna
5 read it to them. Bring them back in and read it again
6 from page 23 to page 33.

7 MR. BELSER: Your Honor, what was the question
8 again?

9 THE COURT: To remind us of what nuisance,
10 negligence and trespass are.

11 MR. BELSER: Okay.

12 THE COURT: I'm gonna read from page 23 to 33.

13 MR. BELSER: Well, I think the nuisance charge --
14 that's -- just trespass and nuisance and negligence
15 starts -- negligence starts on page 12.

16 THE COURT: Well, I'm gonna read from page 12 to
17 page 33 to them.

18 MR. MOORE: Thank you, ma'am.

19 THE COURT: Let's bring them back in.

20 I think page 16 I can take out because that's just
21 the duty of landowners, so I'm just gonna read the
22 negligence.

23 MR. BELSER: Doesn't that -- Your Honor, doesn't
24 that go to the duty of care though under negligence?

25 THE COURT: You're right. It does.

1 All right.

2 MR. MOORE: I'm assuming, Your Honor, that the
3 damages aspects of it could come out like on 20,
4 punitive damages and that stuff. That's not the
5 elements of -- of negligence. The damages portions
6 can come out.

7 THE COURT: I wasn't reading the damages part.

8 MR. MOORE: Thank you.

9 THE COURT: Tell them to come on.

10 (Whereupon, the jury return to the courtroom
11 at 4:10 PM.)

12 THE COURT: All right. Madam Forelady, I have
13 your notes. I cannot send back a copy of the jury
14 charge, but what I will do is I'll be happy to read
15 the trespass, the nuisance and the negligence part of
16 the charges again.

17 FOREPERSON: There's a -- can I ask a question?

18 THE COURT: No.

19 FOREPERSON: Thank you.

20 THE COURT: I'll be happy to read this to you again,
21 so please pay attention.

22 The plaintiff claims that the defendants were
23 negligent and should compensate the plaintiff for the
24 injuries the plaintiff suffered as a result of the
25 defendants' negligence. A plaintiff's right of recovery

1 may not rest on the mere fact that an accident or injury
2 occurred. Instead, in order to prove that the defendants
3 were negligent, the plaintiff must prove by a preponderance
4 or the greater weight of the evidence of the following
5 things.

6 First, the plaintiff must prove by a preponderance
7 or greater weight of the evidence that the defendants
8 owed the plaintiff a duty of care. This is a question
9 of law which you will decide. If you find there was a
10 duty of care, you must then decide the remaining
11 questions.

12 The first of these is whether the plaintiff has
13 proven by a preponderance or the greater weight of the
14 evidence that the defendants breached the duty of care
15 by a negligent act or omission.

16 Negligent means -- negligence means that a person
17 has done something that a reasonable person would not
18 have done or has failed to do something that a reasonable
19 person would have done in the same situation.

20 The plaintiff must also prove by a preponderance or
21 greater weight of the evidence that they suffered damages
22 as a result of the defendants' breach of duty.

23 Finally, the plaintiff must prove by a
24 preponderance or greater weight of the evidence that
25 the damages were proximately caused by the defendants'

1 breach of duty. There is no countervailing burden on
2 the defendants to prove that their negligence did not
3 cause the plaintiff's injuries.

4 Proximate cause is something that produces a
5 natural chain of events which in the end brings about
6 the injury. It is the direct cause of the injury.

7 To prove that the defendants' negligence
8 proximately caused the plaintiff's injury, the plaintiff
9 must first prove causation in fact. This is proven by
10 showing that the injury would not have occurred but for
11 the defendants' negligence.

12 The plaintiff must also prove legal cause. Legal
13 cause is proven by showing that the injury was
14 foreseeable. This means that the injury occurred as a
15 natural and probable consequence of the defendants'
16 negligence.

17 The plaintiff must prove that some injury from the
18 defendants' negligence was foreseeable, but does not
19 have to prove that the particular injury that occurred
20 was foreseeable. However, the defendants cannot be held
21 responsible for things which could not be expected to
22 happen.

23 Proximate cause does not mean the only cause.
24 The defendants' act can be a proximate cause of the
25 plaintiff's injury if it was at least one of the direct

1 concurring causes of the injury. However, if the real
2 cause of the claimed injury or damage is left in doubt
3 by the testimony, the plaintiff has not met the burden
4 of proof.

5 I charge you that where the cause of the plaintiff's
6 injuries may be reasonably attributed to an act for which
7 the defendants are not liable as to one for which they
8 are liable, the plaintiff has failed to carry the burden
9 of establishing that her injuries were the proximate
10 result of the defendants' negligence and the verdict must
11 be for the defendants. The defendants would only be
12 liable for the damages for which the defendants actually
13 caused.

14 A landowner has an affirmative duty not to permit
15 his land to remain in an altered state if such altered
16 state creates a condition the natural and foreseeable
17 result of which will result in injury to the adjoining
18 property. The breach of this duty constitutes actionable
19 negligence. He cannot fill up his own lot in such a
20 matter as to let the earth pass or slide over his line
21 to the lot of his neighbor.

22 Where there is a duty arising from an ordinance
23 and the plaintiff shows that the defendant violated
24 the ordinance, the violation of the ordinance is
25 negligence per se. The violation of any of the

1 provisions of an ordinance is negligence per se. That
2 is, negligence in and of itself. Negligence as a matter
3 of law.

4 Negligence per se simply means that you, the jury,
5 need not decide if the defendant acted as would a
6 reasonable man in the circumstances. The ordinance
7 fixes the standard of conduct required of the defendant
8 leaving you merely to decide whether the defendant
9 breached the ordinance. If they did, their failure to
10 take due care is established as a matter of law. The
11 only issue then left for you to determine is whether the
12 defendant's conduct proximately caused damage to the
13 plaintiff.

14 Accordingly, proof of a violation of an ordinance
15 is, in fact, proof of negligence so that your only
16 concern then would be whether such violation of the
17 ordinance so shown was the proximate cause of the injury
18 and damage. The violation of an ordinance does not
19 constitute recklessness, willfulness and wantonness
20 per se. Yet such violation if shown is evidence of
21 recklessness, willfulness and wantonness and may be
22 considered in connection with all other facts and
23 circumstances surrounding the case in determining
24 whether the defendants have been reckless, willful
25 and wanton.

1 The violation of an ordinance will support a
2 recovery of damages if such a violation proximately
3 caused or proximately contributed to the injuries or
4 damages complained of.

5 When one person is injured by the negligent acts
6 of another, the injured person is entitled to be fully
7 compensated for all injuries directly or proximately
8 resulting from any negligent acts or omissions by the
9 defendant.

10 In determining the amount of compensation for
11 injuries suffered by the plaintiff as a result of the
12 defendant's negligence, it is proper for you to consider
13 the reasonable costs of repairs and the value of the
14 use of the property during a reasonable repair time.
15 Damages do not have to be proven to a mathematical
16 certainty. They do have to be proven to be reasonable
17 by a preponderance of the evidence.

18 The plaintiff claims that the defendants acted
19 with recklessness, willfulness and wantonness and that,
20 therefore, the plaintiff is entitled to punitive damages
21 from the defendants. Recklessness means a conscious
22 failure to use reasonable care.

23 A person who is negligent acts carelessly, however,
24 a person who acts recklessly, willfully and wantonly is
25 not only careless, but is also aware that he is being

1 careless. You may award punitive damages to the
2 plaintiff if you find that the plaintiff has proven a
3 wanton, willful or malicious violation of her rights
4 by the defendants. Punitive damages should be awarded
5 only for conduct so gross that it implies wantonness,
6 willfulness or recklessness.

7 The words "recklessness", "willfulness" and
8 "wantonness" are synopsis -- that word again --
9 synonymous. It's a lot of reading. Bear with me.
10 The terms are used to describe a conscious failure to
11 exercise and observe reasonable or due care.

12 Recklessness implies the doing of a negligent
13 act knowingly. When a person acts negligently and he
14 realizes that he is acting negligently, the law says he
15 is reckless, willful and/or wanton. Whichever term you
16 prefer, they all mean the same thing. That is, the
17 conscious failure to exercise due care.

18 Recklessness is distinguished from negligence.
19 Negligence is the failure to use due care. Negligence
20 is carelessness. Negligence is failure by omission or
21 commission to exercise due care as a person of ordinary
22 reason and prudence would exercise in the same
23 circumstances. Recklessness is a higher degree of
24 culpability and responsibility. Recklessness signifies
25 a conscious failure to exercise due care. Recklessness

1 is a conscious indifference to the rights of the
2 plaintiff or a reckless disregard of the rights of the
3 plaintiff. Recklessness is an awareness of wrongful
4 conduct and a continuation to act regardless of the
5 consequences. In other words, while a negligent person
6 is one who acts carelessly, a person whose behavior is
7 reckless, willful or wanton is not only careless in his
8 actions, but is also aware that he is careless.

9 The test for determining whether a tort may be
10 deemed reckless, willful or wanton is whether it has
11 been committed in such a manner and under such
12 circumstances that a person of ordinary reason or
13 prudence would have been conscious of it as an invasion
14 of the rights of the injured party.

15 The plaintiff must prove by clear and convincing
16 evidence that he is entitled to an award of punitive
17 damages. This burden of proof is over and above the
18 normal burden of proof by a preponderance of the
19 evidence.

20 Clear and convincing evidence is that degree of
21 proof which will give you a firm belief as to fact
22 sought to be proved. This is more than a mere
23 preponderance of the evidence, but less than beyond a
24 reasonable doubt.

25 Trespass. Trespass is any interference with one's

1 right to the exclusive peaceable possession of his
2 property. To prove a trespass, the plaintiff must
3 present evidence which establishes that she was in
4 legal possession of the property, that the defendant
5 voluntarily entered upon the plaintiff's property and
6 that such entry was made without the plaintiff's
7 permission.

8 To maintain a trespass action, there must be
9 possession and a right to it. One in peaceable
10 possession though lacking in title is entitled to
11 remain in possession until ousted by the true owner
12 and need only show prior peaceable possession against
13 the defendant.

14 An action in trespass will lie if the defendant
15 intentionally entered the property. The unwarrantable
16 entry on land in the peaceable possession of another
17 is a trespass without regard to the degree of force used,
18 the means of entry or the extent of damage. The entry
19 itself is the wrong.

20 For example, if one without a license from the
21 person in possession of land walks upon it or casts a
22 twig upon it or pours a bucket of water upon it, he
23 commits a trespass. It is immaterial whether any further
24 damage results. To constitute an actionable trespass
25 there must be an affirmative act. The invasion of the

1 land must be intentional and the harm caused must be
2 the direct result of that invasion. Trespass does not
3 lie from nonfeasance or failure to perform a duty.

4 Intent is proved by showing the defendant acted
5 voluntarily and that he knew or should have known the
6 result would follow from his act. Although neither
7 deliberation, purpose, motive nor malice are necessary
8 elements of intent, the defendant must intend the act
9 which in law constitutes the invasion of the plaintiff's
10 right.

11 Trespass is an intentional tort and while the
12 trespasser to be liable need not intend or expect the
13 damaging consequence of his injury, he must intend the
14 act which constitutes the unwarranted entry on another's
15 land.

16 Finally, lack of permission is an essential element
17 of a cause of action for trespass. If the plaintiff
18 proved the defendants trespassed on his prop -- on her
19 property, she is entitled to recover at least nominal
20 damages even if no proof of injury or damage to the
21 property exists. Entry alone entitles the possessor to
22 at least nominal damages.

23 The plaintiff is entitled to recover for any other
24 actual damages that have been proved by the greater
25 weight of the evidence to have been proximately caused

1 as a result of the trespass.

2 It is well-settled law of this state that an owner
3 is qualified by the fact of ownership to give his or her
4 estimate of the value of the damaged property and personal
5 property. When injury to property resulting from a
6 trespass is remedial by restoration or repair, it is
7 considered to be temporary and the measure of damages
8 is the cost of restoration and repair. In the cost -- if
9 the cost of restoration exceeds the reduction in value,
10 then the greater cost of restoration will be allowed when
11 the landowner has a personal reason relating to the land
12 for restoring the land to its original condition and when
13 the cost of restoration is reasonable in relation to the
14 damage inflicted. However, the cost of replacing the
15 land in its original condition is disproportionate to
16 the reduction in the value of the land caused by the
17 trespass unless there is a reason personal to the owner
18 for restoring the original condition.

19 Damages are measured only by the difference between
20 the value of the land before and after the harm. The
21 restoration cannot exceed the fair market value of the
22 property. Punitive damages may be awarded only where
23 the trespass was willful, wanton or in reckless disregard
24 of the plaintiff's rights.

25 Generally a private nuisance is that class of wrongs

1 that arises from the unreasonable, unwarrantable or
2 unlawful use by a person of his own property, personal
3 or real. A nuisance is anything that works hurt,
4 inconvenience or damage or which essentially interferes
5 with the enjoyment of life or property. It has been
6 described as the unlawful use of property causing
7 material annoyance, discomfort or hurt to another
8 person. It is an unreasonable interference which is
9 continuous or has the potential to reoccur with the use
10 and enjoyment of the plaintiff's land by the defendants'
11 conduct on his or her land.

12 Every citizen holds his property subject to the
13 implied obligation that he or she will use it in such
14 a way as not to prevent others from enjoying the use of
15 their property. The plaintiff must demonstrate that the
16 defendants unreasonably interfered with her ownership or
17 possession of the land.

18 A nuisance is a substantial and unreasonable
19 interference with the plaintiff's use and enjoyment of
20 her property. It is anything which hurts, inconveniences
21 or damages anything which essentially interferes with the
22 enjoyment of life or property.

23 To prevail in a private nuisance cause of action,
24 the plaintiff must demonstrate unreasonable interference
25 with the use and enjoyment of land and proximate

1 causation of the interference by the defendants. To
2 make out a case of nuisance, the plaintiff must prove by
3 the greater weight of the evidence that the defendants
4 made an unreasonable use of their property that
5 proximately caused harm to her.

6 While everyone has a right to use his property
7 as he sees fit, this right is subject to the implied
8 obligation of every owner or occupant of property to
9 use it in such a way that it will not be unreasonably
10 injurious to the equal rights to the enjoyment of their
11 property. For there to be a nuisance, the defendants'
12 use of their property must be unreasonable. Whether
13 a use is reasonable depends upon the facts and
14 circumstances of the case.

15 In determining whether nuisance exists, resort
16 must always be had to sound common sense and due regard
17 should be given to notions of comfort and convenience
18 entertained by persons generally of ordinary taste.

19 A reduction in property value alone is not
20 sufficient to constitute an actionable interference
21 with the use and enjoyment of land although it may be a
22 relevant factor in determining that a nuisance exists.
23 For there to be an actionable nuisance, a wrongful act
24 by the defendants must be shown and the nuisance must
25 be the natural and proximate cause of the injury

1 suffered by the plaintiff. It is no defense that the
2 nuisance must be the natural and proximate cause of the
3 injury suffered by the plaintiff. It is no defense that
4 the nuisance complained of is contributed to by the acts
5 of others over whom the defendant had no control. If
6 there would be nuisance without such contribution, it
7 has generally been held that a nuisance may exist either
8 with or without negligence.

9 A lawful activity may be a nuisance if conducted
10 negligently. However, nuisance does not require
11 negligence. If a nuisance exists, the fact that due
12 care was exercised and due precautions were against the
13 annoyance or injury complained of are immaterial. A
14 nuisance may exist where no negligence is involved
15 because lack of due care is not essential to a cause of
16 action for nuisance.

17 Last page. Where injury results from the creation
18 or maintenance of a nuisance, the measure of damages
19 is compensation for the injury or loss sustained by the
20 plaintiff. The victim of either a permanent or temporary
21 nuisance can also recover for specific identifiable
22 losses such as material annoyance, discomfort or hurt
23 consequentially as a direct -- as well as direct. Damages
24 may be recovered in an action for nuisance.

25 I hope that helps. I'm gonna let you return to

1 your jury room.

2 (Whereupon, the jury retires to the jury room at
3 4:38 PM.)

4 THE COURT: All right. Everybody okay with what I
5 read back?

6 MR. BELSER: Thank you, Your Honor.

7 MR. MOORE: Yes, ma'am. Thank you.

8 THE COURT: We'll yell at you when we hear
9 something else.

10 (Recess taken at 4:38 PM.)

11 (Back on the record at 6:58 PM.)

12 THE COURT: All right. Well, let's get the lawyers.
13 Have we got everybody?

14 MR. MOORE: Yes, ma'am.

15 MR. BELSER: Yes, ma'am.

16 THE COURT: All right. Let's bring the jury in.

17 (Whereupon, the jury return to the courtroom at
18 7:00 PM.)

19 THE COURT: All right. Madam Forelady, the jury
20 has a verdict?

21 FOREPERSON: We do.

22 THE COURT: Is it unanimous?

23 FOREPERSON: It is, Your Honor.

24 THE COURT: Can you hand it to the bailiff, please.

25 BAILIFF: (Handing.)

1 THE COURT: All right.

2 THE CLERK: 2019-CP-32-01442, Suzan Garland versus
3 Robert and Christy Cade. Number one, on the plaintiff's
4 cause of action for negligence, we, the jury, find for
5 the plaintiff.

6 Number two, on the plaintiff's cause of action for
7 trespass, we, the jury, find for the defendant.

8 Number three, on the plaintiff's cause of action
9 for nuisance, we, the jury, find for the plaintiff.

10 If you, the jury, find for the plaintiff on any of
11 the above, please go to the next page.

12 So we, the jury, in the above-captioned case
13 unanimously find for the plaintiff against the
14 defendant in the amount of zero dollars actual damages
15 for trespass.

16 We, the jury, in the above-captioned case
17 unanimously find for the plaintiff against the defendant
18 in the amount of \$125,000 actual damage for nuisance.

19 We, the jury, unanimously find for the plaintiff
20 against the defendant in the amount of \$8,000 punitive
21 damages.

22 It is signed and dated by the foreperson of the
23 jury.

24 THE COURT: Okay. Anybody want the jury polled?

25 MR. MOORE: No, ma'am.

1 MR. BELSER: (Shakes head.)

2 THE COURT: Okay. Are you gonna -- do we do like
3 you always do, Mona? Are we gonna ask them if this is
4 their true verdict all of them?

5 THE CLERK: I don't know how general sessions is.
6 I call their name and do it that way.

7 THE COURT: Okay. But that's polling.

8 THE CLERK: Yes, ma'am.

9 THE COURT: Okay.

10 All right. Thank y'all. Y'all have done a
11 fantastic job.

12 I'm gonna tell the lawyers, I'm gonna excuse the
13 jury, let them go back to the jury room, so I can get
14 them going home and I'll be back in just a minute to
15 hear anything y'all might have.

16 (Whereupon, the jury was excused at 7:02 PM.)

17 THE COURT: I'm gonna give y'all just a few minutes
18 and I'll be right back.

19 (Recess taken at 7:03 PM.)

20 (Back on the record at 7:13 PM.)

21 THE COURT: All right. Do I have any motions from
22 the plaintiff?

23 MR. BELSER: Your Honor, just briefly for the
24 record, a motion for additur to increase the verdict to
25 reflect the -- the evidence that's actually submitted

1 in terms of the restoration cost of \$435,000.

2 MR. MOORE: Your Honor, I would assume that's a
3 motion for a new trial additur.

4 MR. BELSER: I haven't really thought about it.

5 MR. MOORE: That's the way an additur has to be.
6 If he's moving for new trial additur, which he just did,
7 and we don't consent to the additur, that results in a
8 new trial. He's asked for new trial additur. That's
9 new trial nisi unless we consent. So what he's done and
10 we have before the Court right now is a motion from the
11 plaintiff for a new trial. We would not consent to any
12 additur, so I think we might be in a position -- and I'd
13 like to look at the law on that, but I think if I -- if
14 I consent to the granting of the order nisi, which is
15 what that would be, if we didn't consent to it, it goes
16 back for a new trial, but we might think about that.

17 We're not particularly dissatisfied with the
18 verdict, but, in fact, we're pretty satisfied with the
19 verdict.

20 But we have -- we have some legal issues that we
21 care to raise, but if the Court could basically allow
22 me to take a look at the law, you know, I might consider
23 that new trial after talking to my clients because we
24 obviously wouldn't consent to the additur. It would
25 be nisi -- nisi additur is what they call it and that

1 basically means we -- nisi means unless and what it
2 would basically mean would be a new trial unless we
3 consent to the additur, which we wouldn't do.

4 I don't know if Mr. Belser wants to withdraw that
5 or not. If I were in his shoes, I probably would, but
6 it is certainly something I would like to ask the Court
7 to let us look at before we respond to it.

8 MR. BELSER: Your Honor, respectfully I guess if
9 we could have ten days to actually file any post-trial
10 motions, if any, so I can withdraw that. I just haven't
11 really thought about it all the way through.

12 THE COURT: I will. You can certainly have the
13 ten days, Mr. Belser.

14 MR. BELSER: Thank you, Your Honor.

15 MR. MOORE: I would assume that I could have that,
16 too.

17 THE COURT: Absolutely, Mr. Moore, you can.

18 MR. MOORE: Thank you, Your Honor.

19 THE COURT: I would not keep any of y'all from
20 doing that. Ten days. Let me know what y'all want.

21 As long as I've got an answer within the ten days,
22 if I need to schedule something, I'll schedule it. If
23 we need to do a status conference, we'll do a status
24 conference.

25 MR. MOORE: I'd ask the Court to please not to

1 schedule it the week after next or I'll get a divorce.

2 THE COURT: No, no, no, no. I'm in Edgefield --
3 I'm telling you, next week I'm in a murder trial. Next
4 week after that I'm in Edgefield. I'm back here for
5 another murder trial and then I am up in Lancaster for
6 some other kind of trial.

7 MR. MOORE: I would like to thank the Court
8 personally for the quality of the trial we got, the
9 patience the Court demonstrated and the patience the
10 Court had, as well as the -- the Court working with
11 us in regard to scheduling issues. I enjoyed working
12 with you and I thank you and I'm sure Mr. Belser --

13 MR. BELSER: Of course. Likewise.

14 THE COURT: The only way that stuff happens and
15 everything goes smoothly is when I've got two good
16 lawyers. It makes my life so much easier and y'all
17 are awesome. I think you've done a very good job for
18 your clients, both of you. I think we had a good jury.
19 I think they -- you know, they were very conscientious.
20 I went back there to go talk to them. They -- they had
21 a good time.

22 MR. MOORE: They did.

23 THE COURT: You could hear them laughing. I always
24 like it -- I always tell them when I pick a jury it's
25 gonna be educational and the worse thing that's gonna

1 happen to you is you're gonna make some new friends,
2 and it did. That's exactly what happened to them, but
3 I thought they were very good and patient with us.

4 MR. MOORE: Thank you very much.

5 MR. BELSER: Thank you very much.

6 THE COURT: Thank y'all. I hope everybody has a
7 good weekend.

8 MR. BELSER: Thank you.

9 MR. MOORE: Thank you. I assume we are adjourned?

10 THE COURT: We are adjourned.

11 (Whereupon, the proceedings were concluded for
12 April 1, 2022, at 7:18 PM.)

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on March 28, of 2022, reported by Tara Scott, Circuit Court Reporter, and transcribed by me to the best of my ability.

This transcript may contain quoted material. Such material is reproduced as read by the speaker. This transcript may also contain inaudible or indiscernible portions due to being transcribed from digital audio files.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

August 12, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on March 29th, 31st and April 1st, 2022.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

August 12, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on March 30, 2021, recorded by the Digital Court Reporter
Program, and transcribed by me to the best of my ability.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

August 12, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

3/25/2022

PAUL SHEARER

Page 1	Page 3
1 STATE OF SOUTH CAROLINA } IN THE COURT OF COMMON PLEAS 2 COUNTY OF LEXINGTON } C/A NO.: 2019-CP-32-01442 3 Suzan Garland, } 4 Plaintiff, } 5 v. } 6 Robert Cade, Christy Cade } 7 and Roger Singleton, } 8 Defendants. } 9 10 VIDEO DEPOSITION OF 11 PAUL SHEARER 12 ***** 13 Friday, March 25, 2022 14 9:59 a.m. - 12:02 p.m. 15 The video deposition of PAUL SHEARER was taken before 16 Mary H. Occhipinti, a notary public in and for the State of 17 South Carolina at the offices of Moore Bradley Myers Law 18 Firm, PA, 1700 Sunset Boulevard, West Columbia, SC on 19 Friday, March 25, 2022, pursuant to Notice of Deposition 20 and/or agreement of counsel. 21 22 23 24 25	1 2 INDEX 3 4 Stipulations. 05 5 Direct Examination by Mr. Moore 05 6 Cross Examination by Mr. Belser 68 7 Re-Direct Examination by Mr. Moore. 96 8 Re-Cross Examination by Mr. Belser. 101 9 Re-Cross Examination by Mr. Moore 103 10 Certificate 104 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 2	Page 4
1 APPEARANCES 2 3 4 H. Freeman Belser, Esquire 5 BELSER & BELSER, PA 6 Post Office Box 96 7 Columbia, South Carolina 29202 8 Freeman@belserpa.com 9 Attorney for the Plaintiff 10 11 S. Jahue Moore, Esquire 12 MOORE BRADLEY MYERS, LAW FIRM, PA 13 1700 Sunset Boulevard 14 West Columbia, South Carolina 29069 15 Diane@mbmlawsc.com 16 Attorney for the Defendants, 17 Robert Cade and Christy Cade 18 DOUGALL AND COLLINS 19 1700 Woodcreek Farms Road 20 Suite 100 21 Elgin, South Carolina 29045 22 Tdougall@Dougallfirm.com 23 Attorney for the defendant, 24 Roger Singleton 25 26 Also present: Pamela Crabtree, Videographer 27 28 29 30 31 32 33 34 35	1 EXHIBITS 2 3 Defendant's Exhibit Number 8 4 (Photograph of Davis Drive) 49 5 6 Defendant's Exhibit Numbers 1 through 7 7 (Photographs) 55 8 9 Plaintiff's Exhibit Number 15 10 (Photographs) 85 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0768

3/25/2022

PAUL SHEARER

Page 5	Page 7
1 STIPULATIONS 2 It is stipulated by and between counsel 3 for the respective parties that all objections 4 are reserved until the time of trial, except as 5 to the form of the questions. 6 This deposition is being taken pursuant 7 to the South Carolina Rules of Civil Procedure. 8 It is further stipulated and agreed 9 that the formalities of taking a videotaped 10 deposition are hereby waived. 11 - - - - 12 The reading and signing of this 13 deposition is hereby waived. 14 Whereupon, 15 PAUL SHEARER, being duly sworn and 16 cautioned to speak the truth, the whole truth, 17 and nothing but the truth, testified as follows: 18 DIRECT EXAMINATION 19 BY MR. MOORE: 20 Q. What is your name? 21 A. Paul Shearer. 22 Q. Mr. Shearer, I believe that you have been 23 asked to come to court with us this week, but 24 you're going to be out of town. 25 A. That's correct.	1 A. Julie. 2 Q. And y'all's address is where? 3 A. 108 Davis Drive. 4 Q. And how close do you live to Mr. and Mrs. 5 Cade? 6 A. They are immediately behind me. 7 Q. And how about Ms. Garland, how close do you 8 live to them? 9 A. She is just on the other side of the road from 10 me. 11 Q. You've lived out there approximately how long? 12 A. August of 2003. 13 Q. And you are a computer engineer, is that 14 correct? 15 A. That's correct. 16 Q. So you have a college degree and education? 17 A. I do. 18 Q. Now, how long have you lived on Davis drive? 19 A. Since August of 2003. 20 Q. You have your home there? 21 A. I do. 22 Q. How many acres do you have? 23 A. It depends on which survey you believe, but 24 approximately somewhere between .75 and 1.3. 25 Q. And I believe at some point in time Mr. and
Page 6	Page 8
1 Q. And what we decided to do is to record your 2 testimony just like it's in a courtroom except 3 we're doing it here today in my law office, is 4 that correct? 5 A. That's correct. 6 Q. I believe that I met you personally once 7 before out at Mr. and Mrs. Cades' property? 8 A. Correct. 9 Q. And you had about a 15 minute conversation 10 with me before testifying today? 11 A. That's correct. 12 Q. Other than that, have you and I had any 13 conversations at all? 14 A. This morning and two or -- two or three days 15 ago when I was calling specifically about the 16 issue with the subpoena and my preplanned 17 travel. 18 Q. Right. The substantive conversations, there 19 was once on the scene and once about 15 20 minutes ago? 21 A. Correct. 22 Q. Tell me a little bit about you, are you 23 married? 24 A. I am. 25 Q. What is your wife's name?	1 Mrs. Cade bought their property and began 2 doing some work, is that correct? 3 A. That's correct. 4 Q. Now, if you'll turn on this map right here, 5 the area right here, this would be -- this 6 would reflect -- this actually is a county 7 contour map. 8 A. All right. 9 Q. I've just blown it up so it's easy to see. 10 This area right here would be what? 11 A. Give me a second, I'm just getting my bearings 12 on this map. 13 Q. I believe this is the -- this is the pond that 14 belongs to Ms. Garland. 15 A. Oh, okay. I got it. Yes, so that would be -- 16 that would be the Cades' pond. 17 Q. And this area outlined in yellow would be 18 what? 19 A. That's Davis Drive. 20 Q. And this piece of property right here would be 21 what? 22 A. That would be my property. 23 Q. How about right here? 24 A. That's also my property. 25 Q. So your property fronts Davis Drive for about

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0769

3/25/2022

PAUL SHEARER

Page 9

1 how many feet?
 2 A. Two hundred. This is a guess.
 3 Q. That's close. That's fine. And so the
 4 property that Mr. and Mrs. Cade bought
 5 basically adjoins you right at this line right
 6 here, is that correct?
 7 A. That's correct.
 8 Q. Now --
 9 A. One thing probably to mention, so when they
 10 bought that property, that line would have
 11 been further in.
 12 Q. Okay.
 13 A. So this map incorporates the property changes
 14 that happened with two subsequent property
 15 transactions.
 16 Q. You bought a small piece of property from Mr.
 17 Cade?
 18 A. That's correct.
 19 Q. Where was the property that you bought.
 20 A. Immediately behind. So if you see the little
 21 wedge there --
 22 Q. Right.
 23 A. -- and kind of follow the contour of that out.
 24 Q. Right.
 25 A. That is basically representing what we bought

Page 10

1 along with --
 2 Q. That strip right there?
 3 A. -- that little strip right there.
 4 Q. You were basically trying to square your
 5 property up?
 6 A. Correct.
 7 Q. And Mr. and Mrs. Cade were willing to let you
 8 do that?
 9 A. They were.
 10 Q. And you appreciated that?
 11 A. I did.
 12 Q. So by doing that, you now own this whole wedge
 13 between where your house is and all the way
 14 down?
 15 A. That's correct.
 16 Q. So let's talk about the distance between Davis
 17 Drive and where the Cades' property starts.
 18 How deep would that be between Davis roughly?
 19 A. It's going to vary based on what portion of
 20 the property you're at. So even though we
 21 tried squaring it up --
 22 Q. Yep.
 23 A. -- it's still, it's still not quite square.
 24 Q. I get it.
 25 A. So the wider portion is going to be up near

Page 11

1 the Davis', the narrower portion is going to
 2 be down by 106 Davis Drive.
 3 Q. All right. What are you talking about, 300
 4 feet or so?
 5 A. Property 300 feet or so on the widest area.
 6 Q. Basically right in here?
 7 A. No, the widest area would be right here.
 8 Q. Oh, right in here. All right. How about
 9 right through here, how wide is it?
 10 A. I'm going to guess 200, 250, but I'm not sure.
 11 Q. All right. Is there a -- after the work was
 12 done by Mr. and Mrs. Cade on their property, I
 13 guess their property, the work we're talking
 14 about, was in this area right here, is that
 15 right?
 16 A. That's correct.
 17 Q. After the work was done, did they leave any
 18 type of a vegetative buffer between your
 19 property and theirs?
 20 A. They did. There was about 20 or 30 foot of
 21 woods that they left.
 22 Q. And would that have adjoined woods on your
 23 property?
 24 A. It did.
 25 Q. And would those woods be right about here?

Page 12

1 A. It would be right along that property line.
 2 Q. So about 60 feet of depth, if you add their
 3 property to your property, it's going to be a
 4 wooded buffer area?
 5 A. Well, not really. So there's going to be
 6 about 30 foot on their side.
 7 Q. And how many feet on your side?
 8 A. On my side, up until -- so this whole area
 9 here is wooded.
 10 Q. Right.
 11 A. This area here, there are some trees, but it's
 12 not heavily wooded.
 13 Q. All right.
 14 A. It's grass.
 15 Q. Right. This area down here is what's referred
 16 to as wetlands, isn't it?
 17 A. No, that's this area up here.
 18 Q. This is the wetlands?
 19 A. This is the wetlands.
 20 Q. And your house is here?
 21 A. No, my house is right here.
 22 Q. Your house is here, okay. So you've got
 23 wetlands here --
 24 A. Correct.
 25 Q. -- and the wetlands would be about 300 feet

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0770

3/25/2022

PAUL SHEARER

Page 13

- 1 deep?
- 2 A. Correct.
- 3 Q. Did anybody ever disturb this wetlands?
- 4 A. No.
- 5 Q. So you've got vegetative wetlands that is on
- 6 this side and through here is about a 50 or 60
- 7 foot buffer.
- 8 A. Correct.
- 9 MR. BELSER: Objection, leading.
- 10 Q. How far would your buffer be in this area
- 11 between the -- adding yours to theirs, the
- 12 vegetative buffer in this area would be
- 13 roughly how deep?
- 14 A. Probably 30 or 40 foot.
- 15 Q. And is there vegetation in addition to the
- 16 trees that are in that buffer area?
- 17 A. There is.
- 18 Q. All right. Now, is there a fence that runs
- 19 between your property and the Cades' property?
- 20 A. There is.
- 21 Q. Does the fence go down the property line here?
- 22 A. I believe so.
- 23 Q. And part of the fence is chain link and part
- 24 of it is another sort of substance, right?
- 25 A. It's all chain link.

Page 14

- 1 Q. All right. Can trash or anything get through
- 2 that chain link fence easily?
- 3 A. No.
- 4 Q. So we have the fence here, wetlands here and a
- 5 buffer area here?
- 6 A. Correct.
- 7 Q. All right. Now, when you bought the property
- 8 from the Cades, did you pay market rate for it
- 9 or did you pay something else?
- 10 A. I paid above market rate.
- 11 Q. Why did you pay above market rate?
- 12 A. Because the situation at the time with Mr.
- 13 Melichar, there was -- there was a lot of
- 14 hostility that was going on at that time. And
- 15 Mr. Cade had indicated that he was not
- 16 interested in selling any of property. So I
- 17 made an unsolicited above-market offer to him
- 18 for selling that, which he accepted.
- 19 Q. And Mr. Melichar lives somewhere in this area.
- 20 Where was he living?
- 21 A. 106 Davis Drive, so right here.
- 22 Q. Right here. All right. And you basically
- 23 bought the squared-up piece for over market
- 24 rate, but that was your idea?
- 25 A. Correct.

Page 15

- 1 Q. And when you made the offer, Mr. Cade said
- 2 yes, and you did the transaction?
- 3 A. Correct.
- 4 Q. All right. Now, this wetlands area that we
- 5 talked about that is on this side of your
- 6 home, does it hold water on a pretty regular
- 7 basis?
- 8 A. It does.
- 9 Q. How long has it done that?
- 10 A. Since we've been there.
- 11 Q. Since the Cades did the work on their
- 12 property, does it hold more or less water than
- 13 it's always held?
- 14 A. It held more water at the beginning, before
- 15 they had planted grass and stuff back there.
- 16 Q. Right.
- 17 A. Before that grew there was definitely an
- 18 increase in the amount of water it was
- 19 holding.
- 20 Q. But it still held it?
- 21 A. Yes, but it still held there.
- 22 Q. All right. And let me ask you this about the
- 23 Cades' property here. This is their pond, is
- 24 that right?
- 25 A. Correct.

Page 16

- 1 Q. Did they do any work to the pond dam in order
- 2 to make it more secure?
- 3 A. They did.
- 4 Q. Were you happy or sad about that?
- 5 A. I was happy about that.
- 6 Q. Why is that?
- 7 A. The pond itself had been in pretty, in pretty
- 8 rough shape. It had just kind of grown over,
- 9 not in -- not in great shape. And what they
- 10 were doing with the pond was increasing the
- 11 property values of the overall area.
- 12 Q. And was it also increasing the safety for all,
- 13 everyone that came downward?
- 14 A. Yeah, I would say so, because I don't think
- 15 any work had ever been done on the previous
- 16 dam that was there since it had been built.
- 17 Q. And before the Cades did the work to improve
- 18 the dam, did you have any uneasy-type feeling
- 19 of any type about the security of that dam?
- 20 A. I didn't.
- 21 Q. All right.
- 22 A. Yeah, I really hadn't thought about it until I
- 23 saw Robert doing the work.
- 24 Q. When you saw him doing the work, did you start
- 25 thinking about it?

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0771

3/25/2022

PAUL SHEARER

Page 17

1 A. Yeah, I did.
 2 Q. And did it concern you, the condition it had
 3 been in?
 4 A. Not really. I mean, I was just -- I was happy
 5 that he was doing it.
 6 Q. All right. And additionally there were some
 7 trees removed down here and the stumps were
 8 taken out and ground, correct?
 9 A. Correct.
 10 MR. BELSER: Objection, leading.
 11 Q. What work was done below the dam in addition
 12 to repairing the dam like he was doing?
 13 A. Grass was planted.
 14 Q. Now, the Cades' property through here, I'll
 15 see if I can make this thing work again, is it
 16 hilly or is it relatively flat?
 17 A. It's relatively flat.
 18 Q. The work, did you -- were you able to tell if
 19 Robert did it himself or if somebody else did
 20 it?
 21 A. There was a number of contractors that were
 22 out there doing the work.
 23 Q. Your property over here where your house is,
 24 is that residential or agriculture?
 25 A. That's residential.

Page 18

1 Q. How about the Cades' property, is that
 2 residential or agriculture?
 3 A. It's agricultural. When I first moved out
 4 here, I had actually tried -- I had looked at
 5 the property taxes on that particular lot, and
 6 they were significantly less than mine. So I
 7 had went to the county to try getting mine
 8 reduced and that's when I got explained the
 9 difference between the two.
 10 Q. So you personally know this was zoned
 11 agriculture?
 12 A. Correct.
 13 Q. And have the Cades made an agricultural use of
 14 the property since they bought it?
 15 A. Oh, yeah. There was livestock out there for
 16 probably close to two years.
 17 Q. And has the property, since the Cades bought
 18 it, has it been upgraded or downgraded?
 19 A. Both.
 20 Q. All right.
 21 A. In terms of the actual property value itself -
 22 -
 23 Q. Yes.
 24 A. -- the property value has definitely gone up.
 25 Q. And what have they done to make the property

Page 19

1 value go up?
 2 A. Basically the house and the work on the pond.
 3 Q. And now they have pasture land down here, is
 4 that right?
 5 A. And now they have pasture land down there.
 6 Q. The property that we're talking about all
 7 through here, is this basically now pasture
 8 land?
 9 A. It is.
 10 Q. And it's fenced pasture land?
 11 A. It is.
 12 Q. Have they grassed it?
 13 A. They have.
 14 Q. And since the property is relatively flat on
 15 the Cades' property, when it rains, is there
 16 any violent runoff that you've ever seen?
 17 A. Only when the work was originally done.
 18 Q. Okay.
 19 A. So when the stumps were pulled out, when the
 20 soil was -- when the soil was disturbed.
 21 Q. And that, the area, how long did it actually
 22 take them to do the work in there to get those
 23 stumps pulled out?
 24 A. I'm going to say over a month, but I'm not
 25 entirely sure.

Page 20

1 Q. All right. Now, I want to talk about a Mr.
 2 Davis. Do you see this scarfed off area on
 3 the right side? This would be Ms. Garland's
 4 property, right?
 5 A. Right.
 6 Q. And this is her pond?
 7 A. Right.
 8 Q. This scarfed out area, this would belong to
 9 Mr. Paul Davis, is that right? No.
 10 A. Claude.
 11 Q. Claude Davis.
 12 A. Claude Davis.
 13 Q. This scarfed out area, what is that?
 14 A. That is -- oh, I think this is his house right
 15 there.
 16 Q. All right. This is his house.
 17 A. No, that's his house, that's the barn.
 18 Q. Right.
 19 A. That's just an area of land adjacent to Davis
 20 Drive.
 21 Q. Looking at this map it appears to simply not
 22 be vegetated at all. Does he just disc that
 23 up from time to time?
 24 A. Yeah. He does that every year and then plants
 25 wheat or winter wheat.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0772

3/25/2022

PAUL SHEARER

Page 21

1 Q. And so on a regular basis, this portion of Mr.
 2 Davis' land is basically used for farming?
 3 A. Yeah. I don't know that he actually harvests
 4 it or does anything with it. I think it's
 5 mainly just --
 6 Q. All right.
 7 A. -- to stabilize things on that side.
 8 Q. But it's disced up pretty regular?
 9 A. I'd say once or twice a year.
 10 Q. Now, the area where Mr. Davis discs up on a
 11 regular basis and plants wheat, would this be
 12 upstream or downstream from Ms. Garland's
 13 pond?
 14 A. That would be upstream.
 15 Q. So water would flow from this direction down
 16 toward the pond?
 17 A. It would.
 18 Q. All right. When he discs it up, how loose is
 19 the dirt?
 20 A. I've never actually really looked at it.
 21 Q. But it's disced?
 22 A. It's disced. I see him out there on the
 23 tractor and that's about it.
 24 Q. All right. Now I want to talk for a minute
 25 about Davis Drive. This is the road that you

Page 22

1 live on right through here, right?
 2 A. Correct.
 3 Q. And Ms. Garland, if you were considering south
 4 being the bottom and north being the top, Ms.
 5 Garland would live on which side of Davis
 6 Drive?
 7 A. The south side.
 8 Q. And you would live on?
 9 A. The north side.
 10 Q. And the Cades would live on?
 11 A. The north side.
 12 Q. All right. Now let's talk about Davis Drive
 13 in regard to is it a county maintained road?
 14 A. It is.
 15 Q. Is it paved or is it dirt?
 16 A. It's dirt.
 17 Q. Now, the county, does it do any type of
 18 regular maintenance to Davis Road out here?
 19 A. It does.
 20 Q. What does it do?
 21 A. They regrade the road every couple of months.
 22 Q. So when they regrade the road, do they do it
 23 with a motor grader? It's a blade.
 24 A. With a blade, yes.
 25 Q. And the blade, does it push dirt off of the

Page 23

1 road?
 2 A. Yeah, actually it does, yes.
 3 Q. And because of that, is there a berm on either
 4 side of Davis Drive?
 5 A. There's a berm on Suzy's side.
 6 Q. That would be right through here?
 7 A. Correct.
 8 Q. How tall is that berm?
 9 A. It's 18 inches, two foot.
 10 Q. And Davis Drive, does it slope towards your
 11 property or does it slope towards her
 12 property?
 13 A. I think it slopes towards mine.
 14 Q. Yeah. So the water that actually hits the
 15 road would run towards you?
 16 A. Correct.
 17 Q. The water that hits the road wouldn't run
 18 towards her?
 19 A. No.
 20 Q. And if the water did start running towards
 21 her, could it get across the berm?
 22 A. Most of the time, no.
 23 Q. You would have to have a real heavy rain for
 24 it to top the berm?
 25 A. Correct.

Page 24

1 Q. Now, is the water that runs down to Davis
 2 Drive, does it just come from the Cades'
 3 property?
 4 A. No. It's from all over. I mean, there's not
 5 a, there's not a traditional gutter system
 6 there on the roads.
 7 Q. So the entire drainage system would run
 8 towards the pond that is on Ms. Garland's
 9 property?
 10 A. I don't know for sure. I can see that that is
 11 the low point where you're talking about this
 12 area --
 13 Q. Right.
 14 A. -- but if you're talking about the larger
 15 Davis Drive --
 16 Q. Okay.
 17 A. -- I'm not sure on the contours.
 18 Q. When you say that is the low point, you mean
 19 Ms. Garland's pond?
 20 A. Correct.
 21 Q. And it would be for the area that we are
 22 generally speaking of that would be shown on
 23 this map?
 24 A. I guess. I mean, this is a topological map.
 25 Q. Sure.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0773

3/25/2022

PAUL SHEARER

Page 25	Page 27
1 A. There shouldn't be any questions on -- 2 Q. Yeah. 3 A. -- in my opinion of what that is should be 4 irrelevant, it's the data is the data. 5 Q. Absolutely. I'm just trying to make it easy 6 for the jury. So a lot more than the Cades' 7 property naturally flows towards Ms. Garland's 8 pond. 9 A. Yes. 10 Q. Now, how is it designed, how is the system 11 designed for the water to get from your side 12 of the road to Ms. Garland's side of the road 13 as it naturally flows? 14 A. There is a culvert running underneath the road 15 roughly about that area. 16 Q. And is there a ditch? 17 A. No. 18 Q. The culvert that runs under -- there's not a 19 ditch on your side of the road? 20 A. No, there's not. There's a ditch on this side 21 of the road -- 22 Q. Right. 23 A. -- but there's not a ditch up here. 24 Q. Oh, yeah. The ditch is further down in front 25 of the -- in front of this section?	1 majority of it go into the culvert? 2 A. Probably the culvert because all of that land 3 there is wet. 4 Q. Okay. 5 A. So it's, given that that ground is already 6 saturated, it's not going to be soaking any of 7 the stuff up. 8 Q. All right. Well, the wetlands that you 9 described for me, this area, stays wet all the 10 time? 11 A. Sure. 12 Q. So this portion of the Cades' property would 13 drain into the wetlands? 14 A. Correct. 15 Q. This portion of the Cades' property would 16 drain into the ditch? 17 MR. BELSER: Objection. 18 Q. All right. Wait a minute. 19 MR. BELSER: Once I state my objection. Mr. 20 Melichar has not been offered as an expert 21 witness in hydrology. He's not an engin -- 22 he's not a civil engineer. I don't think he's 23 qualified to answer questions about 24 hydraulics. 25 MR. MOORE: I don't think his name is
Page 26	Page 28
1 A. Correct. 2 Q. But the ditch is supposed to hold water to go 3 into the culvert? 4 A. No. 5 Q. All right. Where does the water from the 6 ditch go? 7 A. So it's going to go further down. There is 8 another culvert right here. 9 Q. All right. 10 A. And all the way down to where the drain of 11 this pond is and then across to the Campbell's 12 pond. 13 Q. All right. So then when water runs from the 14 Cades' property, it's got to go to your 15 property? 16 A. Right. 17 Q. Then it goes to the ditch? 18 A. Right. 19 Q. And then it goes down Davis Drive away from 20 Ms. Garlands? 21 A. Some of it does. 22 Q. And some of it goes towards that culvert? 23 A. Correct. 24 Q. Would the majority of the flow from the Cades' 25 property go into the ditch or would the	1 Melichar. 2 A. I'm Mr. Shearer. I'm Mr. Shearer. 3 MR. BELSER: I'm sorry, I'm sorry. I was 4 looking at that ... 5 Q. Paul, you've been living there a long time? 6 A. I have. 7 Q. Now, do you have to be an engineer to go out 8 and see where the water's going? 9 A. No. 10 Q. Just take this pointer. You've got to point. 11 You've got to push this button, I think, right 12 here. Show me, if you would, take that 13 pointer and just show me the portion of the 14 Cades' drainage that you can see going towards 15 the culvert and the portion that you can see 16 going towards the ditch. 17 A. So what I -- what I'm going to see most of the 18 time is going through here. 19 Q. All right. 20 A. I really don't see very much coming across 21 here -- 22 Q. Okay. 23 A. -- unless it's an exceptionally heavy 24 rainfall. 25 Q. Is the -- is the topography along this entire

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0774

3/25/2022

PAUL SHEARER

Page 29

1 line, as far as being flat or hilly, about the
 2 same?
 3 A. It's about flat but there is, there is a slope
 4 to it. So at this, probably about this point
 5 here, we're kind of sloping down.
 6 Q. All right. So this point, from what you can
 7 see, does this portion of the drainage
 8 actually go into the ditch and go away from
 9 Ms. Garland's property?
 10 A. It does.
 11 Q. So the only real amount of the drainage that
 12 you can see coming from the Cades goes into
 13 the wetlands and eventually finds it way to
 14 the culvert?
 15 A. Correct.
 16 Q. Now, let's talk about the culvert for half a
 17 minute. Have you ever gone down and looked at
 18 it?
 19 A. I have.
 20 Q. How deep would you estimate it to be?
 21 A. I'm going to guess two foot.
 22 Q. Twenty-four inches.
 23 A. Twenty-four inches, although I'm not positive
 24 on that size.
 25 Q. And the culvert is designed to run under Davis

Page 30

1 Drive?
 2 A. Correct.
 3 Q. From your side of the property where your
 4 house is over to Ms. Garland's property?
 5 A. Correct.
 6 Q. Now, to your knowledge, during the entire time
 7 that you have lived out there, have you ever
 8 seen anybody from the county or anywhere else
 9 doing any work on that culvert?
 10 A. No.
 11 Q. At some point did you try to do some work on
 12 the culvert?
 13 A. Yes.
 14 Q. Now, the culvert, help me with the light, it's
 15 going to be right about here?
 16 A. No, the culvert is going to be right in about
 17 here.
 18 Q. The culvert is way on up?
 19 A. Correct.
 20 Q. Right there, okay. Now, why -- what was wrong
 21 with the culvert that made you want to do some
 22 work on it?
 23 A. It's filled with silt and dirt on my side
 24 probably about fifty, fifty percent clogged.
 25 And then on Ms. Garland's side, it -- I can't

Page 31

1 find the end of it.
 2 Q. What do you mean by that?
 3 A. So when I was trying to clean it out, this was
 4 probably more than ten years ago, we had taken
 5 a shovel and a hoe and got in as far as we
 6 could on our side and got all of the dirt out
 7 of it, and had gotten permission from Mrs.
 8 Garland to go on her side and try to do the
 9 same thing, but we couldn't find the end of
 10 the culvert on her side.
 11 Q. Because of what reason?
 12 A. It was completely buried.
 13 Q. Completely buried by dirt?
 14 A. Completely buried by dirt.
 15 Q. Now --
 16 A. We would -- we would try to dig down to it,
 17 but we couldn't because dirt would just cave
 18 back in as fast as we could pull it out.
 19 Q. Were you ever able to fix the culvert to where
 20 it became free-flowing?
 21 A. No, no.
 22 Q. So the water that comes from that culvert
 23 today, is it free-flowing?
 24 A. It is -- it's clogged. Water flows through
 25 there, because I see water go in. So water's

Page 32

1 got to be coming out the other side.
 2 Q. Does it flow freely or does it flow non-
 3 freely?
 4 A. I would say it's non-freely. There's got to
 5 be a certain amount of hydraulic pressure that
 6 kind of pushes it through --
 7 Q. All right.
 8 A. -- the other end on her side.
 9 Q. So we know that, from the best that you know
 10 since there's been work done on it, on Ms.
 11 Garland's side of the yard, the pipe is
 12 covered up --
 13 A. Correct.
 14 Q. -- with dirt?
 15 A. Correct.
 16 Q. And the pipe is about 50 percent clogged all
 17 the way through with dirt and silt?
 18 A. Correct. If it were an artery, I'd be in the
 19 ER right now.
 20 Q. What do you mean by that?
 21 A. Just the level of how clogged it is.
 22 Q. Now, but you do know that water still is able
 23 to get through?
 24 A. Yeah. Because we see water go in, water's got
 25 to be coming out the other side.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0775

3/25/2022

PAUL SHEARER

Page 33

- 1 Q. Now, are you able to see water coming out the
2 other side through the ground?
3 A. You see it bubbling up.
4 Q. I'm going to come back to that in a minute.
5 So when the water passes through the pipe, it
6 bubbles out of the ground?
7 A. Correct.
8 Q. How do you know that?
9 A. I've seen the water bubbling up out of the
10 ground. I have been over there trying to dig
11 it out in the past and --
12 Q. It didn't work?
13 A. -- it didn't work.
14 Q. Now, the -- this berm that we talked about
15 that goes along Ms. Garland's property, is
16 that all the way up and down Davis Road, that
17 18 foot, 18 inch berm?
18 A. That's all the way down the length of her
19 property.
20 Q. When the county brings that blade out there
21 and scrapes that road, do they add to or
22 subtract from the berm?
23 A. I think it's relatively been stable most of
24 the time I've been out there.
25 Q. But, I mean, when they scrape the road, do

Page 34

- 1 they throw more dirt up on top of the berm?
2 A. I'd say not really.
3 Q. The berm that's out there, is it made out of
4 sand or clay or what is it?
5 A. Just dirt.
6 Q. When they scrape the road, what do they do with
7 the dirt?
8 A. They're, well, not trying to get rid of dirt,
9 they're just trying to level out the ... Now,
10 some of it ends up in the ditch on my side.
11 Q. Okay.
12 A. And actually causes some drainage issues for
13 me just from where that fills up.
14 Q. Okay. Now, the -- when it rains, is the berm
15 vegetated totally that runs along Ms.
16 Garland's property?
17 A. No.
18 Q. What stops the loose dirt or the dirt from the
19 berm from running towards her pond?
20 A. Nothing that I would be aware of.
21 Q. What stops the dirt from Mr. Davis' farm from
22 running towards her pond?
23 A. Nothing that I'm aware of.
24 Q. But, of course, this is agricultural property,
25 right?

Page 35

- 1 A. Right.
2 Q. When Mr. --
3 A. Actually, a correction. I don't know what the
4 --
5 Q. Okay.
6 A. -- what his property is.
7 Q. Well, when he farms his land planting that
8 wheat, do you ever see him put up a silt fence
9 or anything like that?
10 A. No, but I really don't have -- I really don't
11 have any visibility to what's back there.
12 Q. Okay. Now, at some point in time when Mr.
13 Cade was doing his improvements to his pond
14 and to his land back there, did you have any
15 hurricanes?
16 A. We had a couple of hurricanes. I'm not sure
17 on the exact sequence and timing.
18 Q. All right. I'm showing, and I could be wrong,
19 that these two hurricanes happened in close
20 proximity to each other. Would that be true?
21 A. Yeah. We had two that were fairly close, I
22 think within a year of each other.
23 Q. Did you have any type of a major rain event
24 with either one of those floods?
25 A. So, and I believe it was the first one, we got

Page 36

- 1 a substantial amount of water to the point
2 where it had backed up within a couple foot of
3 the corner of my house.
4 Q. So water, you got so much rain it almost got
5 to your house which is here?
6 A. Yeah. So from Davis Drive kind of all the way
7 back here up to the corner of my house was
8 standing water.
9 Q. Had you ever had that much rain before?
10 A. No.
11 Q. What, if any, type of flooding then, how would
12 you describe the flooding that you had related
13 to the hurricane?
14 A. Tremendous.
15 Q. And --
16 A. It was portions of Davis Drive were impassable
17 for a while.
18 Q. Why?
19 A. Because of the standing water.
20 Q. They were under water?
21 A. Correct. Basically this area here and then
22 further up towards Fish Hatchery.
23 Q. So Davis Drive, the whole length of Davis
24 Drive, had a major problem with flooding?
25 A. Correct, during that hurricane.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0776

3/25/2022

PAUL SHEARER

Page 37	Page 39
1 Q. From what you could see, was that because of 2 the Cades' work or was that because of the 3 hurricane? 4 A. That was the hurricane. 5 Q. Now, the flood waters that came from the 6 hurricane, did they have any impact on the 7 berm that was over at Ms. Davis' property? 8 A. Yeah. It washed out in this area a portion of 9 it. And then this area basically started 10 draining, draining through there. 11 Q. When the berm blew out, did it blow out in the 12 direction of the pond? 13 A. It did. 14 Q. And the berm was made out of dirt, right? 15 A. Right. 16 Q. The water flowed towards her pond? 17 A. It did. 18 Q. How about the dirt and sand that -- 19 A. Well, I mean, I'm speculating because it's 20 obvious. I didn't see it firsthand. 21 Q. All right. But you would have seen it after 22 it blew out? 23 A. Correct. 24 Q. And you would have seen the direction that the 25 dirt from the berm that had blown out was	1 how long a section? 2 A. That I don't exactly remember, but several 3 feet. 4 Q. And all the dirt that got blown out was gone 5 when you saw it? 6 A. Correct. 7 Q. And, of course, the water was gone when you 8 looked at that area too, right? 9 A. Well, the water level had dropped 10 tremendously. 11 Q. Right. 12 A. It was still standing on Davis Drive at that 13 point but it was no longer, no longer needed 14 wading pants to go out there in it. 15 Q. Did anybody ever find where the dirt that had 16 blown out and washed wound up? 17 A. I don't think anybody was looking for it. 18 Q. It would have pretty much had to go into the 19 pond, wouldn't it? 20 A. That or on the land upstream of the pond. 21 Q. Well, but it blew out right -- it blew out 22 pretty close to where that culvert is, didn't 23 it? 24 A. Right. So up in here. 25 Q. It blew out over here?
Page 38	Page 40
1 headed? 2 A. Right. And I don't remember seeing anything 3 specific with dirt heading in that direction, 4 just that a section of the berm had blown out. 5 Q. And when the section blew out, the water would 6 have traveled in the direction of this pond? 7 A. Right. 8 Q. And if the dirt wasn't there anymore, it would 9 have had to go with the water towards the 10 pond? 11 A. That makes sense. 12 Q. To the best of your knowledge, based upon what 13 you saw, is it your belief that the dirt from 14 the blown out berm actually went towards that 15 pond? 16 A. Yes, it went towards the pond. 17 Q. And -- 18 A. Just based on the grading of the road. Again, 19 nothing that I saw firsthand. 20 Q. Sure. That would have been a lot of dirt, 21 though, wouldn't it? 22 A. A fair bit. I mean, the berm itself isn't 23 that thick, so it's probably two foot by -- 24 two foot by two foot. 25 Q. Right. And it would have been blown out for	1 A. Right. 2 Q. The natural water path would have been, water 3 and silt path, would have been right that way, 4 wouldn't it? 5 A. Right. 6 Q. And we know that the dirt was gone, from what 7 you could see, that means it had to wind up in 8 the pond? 9 A. Well, unless some of it just ended up in this 10 area here. 11 Q. Did you see any of it in this area here? 12 A. I didn't go back there. 13 Q. Sure. 14 A. I mean there is a fence there. 15 Q. One thing we know is, a bunch of dirt headed 16 that way? 17 A. Correct. 18 Q. All right. And I would -- were there any 19 other damages to the berm or Davis Drive from 20 that major flood that we're talking about? 21 A. I mean the road itself was just potted 22 terribly. They had to get the equipment back 23 out there to regrade it. 24 Q. Right. You didn't happen to notice if any 25 dirt had moved from this direction towards the

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0777

3/25/2022

PAUL SHEARER

Page 41

1 pond either?
 2 A. Not that I saw.
 3 Q. Or from this direction toward the pond, or
 4 from this direction toward the pond, or from
 5 this direction toward the pond?
 6 A. I mean, I'm sure -- I'm sure it did as that's
 7 kind of a low spot and everything was just
 8 getting torrential rain at that point.
 9 Q. When you say that's kind of a low spot, what
 10 are you talking about?
 11 A. In this immediate area, that's going to be the
 12 low point.
 13 Q. Right. So basically everything from the flood
 14 would have headed in that direction, right?
 15 A. Right.
 16 Q. And you never -- did you ever look at the pond
 17 to see how much damage was done to the pond by
 18 the flood?
 19 A. No, or at least not that I recall.
 20 Q. Do you have any indication that Mr. Cade's
 21 property had anything to do with the damage to
 22 the pond caused by the flood?
 23 A. No. That was just -- that was the hurricane.
 24 Q. Okay.
 25 A. That was, what did they call it, a hundred

Page 43

1 Drive area, for the most part, we all made it
 2 out pretty well. Just other, other people, in
 3 the larger Columbia area just completely lost
 4 their houses.
 5 Q. Yeah. I can remember that. Was the berm,
 6 except for right in the area, right in the
 7 area of Ms. Garland's pond, was the berm blown
 8 out anywhere else?
 9 A. Not that I was aware of. That was the only
 10 spot or the only spot that I was aware of.
 11 Q. This area down here that's wetlands --
 12 A. The wetlands is up here.
 13 Q. I'm sorry, wetlands here, does it, from what
 14 you can see, does it have any impact on
 15 impeding or slowing down the flow of water,
 16 siltation or anything else?
 17 A. I couldn't tell one way or the other.
 18 Q. How about the fence, does the fence that's on
 19 Mr. Cade's property, does it impede water or
 20 trash or anything?
 21 A. It's not going to impede water, but if there
 22 were any trash, it would catch the trash and
 23 accumulate on the fence.
 24 Q. They say fences make good neighbors.
 25 A. Right.

Page 42

1 year flood.
 2 Q. Yeah. Your house is pretty good elevation.
 3 How close did that water get to your house?
 4 A. Within a foot or so of the corner of my house.
 5 Q. How about the wetlands down there, what
 6 happened to them?
 7 A. It was completely submerged.
 8 Q. How about the area, the buffer, that 60-foot
 9 buffer that runs through here, 50-foot buffer
 10 that runs through here, was it submerged too?
 11 A. Not that I recall.
 12 Q. It did okay?
 13 A. I think so.
 14 Q. Okay.
 15 A. I mean, like I said, what I remember was the
 16 traumatic elements which was the standing
 17 water where the road was and worrying if that
 18 was going to actually end up in my crawl
 19 space.
 20 Q. The flood was scary, wasn't it?
 21 A. It was. A lot of people lost everything
 22 during it.
 23 Q. A lot of your neighbors got hurt too pretty
 24 bad?
 25 A. Not my immediate neighbors. In the Davis

Page 44

1 Q. I guess you're glad to have that fence back
 2 there.
 3 A. I don't mind having the fence back there.
 4 Q. Okay. Now, the water table out here, does it
 5 impact septic systems at all?
 6 A. Yeah, it does.
 7 Q. Explain that to me.
 8 A. Basically if I were to go in this area back
 9 here and start digging, within about two to
 10 three foot I'd get water.
 11 VIDEOGRAPHER: Mr. Shearer, your microphone.
 12 A. Oh.
 13 Q. Within about two or three feet you'd hit
 14 water?
 15 A. How long was that off? I'm good?
 16 Q. You're fine. So it's got a real high water
 17 table?
 18 A. It does.
 19 Q. Do you know if Ms. Garland's property is
 20 spring fed, rain fed or both?
 21 A. I have no knowledge.
 22 Q. A moment ago, before we started this
 23 deposition, you were shown a videotape of
 24 water bubbling out of the ground. Is that
 25 videotape more or less than what you would

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
ROA0778

3/25/2022

PAUL SHEARER

Page 45

1 normally see out there?
 2 A. Oh, that was a lot more.
 3 Q. When the water bubbles out of the ground there
 4 where the pipe comes in and is covered up, is
 5 it a giant amount of water or a small amount
 6 of water? How would you describe it?
 7 A. It depends on the time of the year. So if
 8 you're talking about kind of March through --
 9 March, April, May, a very wet time of the
 10 year, we'll see a lot more increase on that.
 11 Coincidentally, that's also when we tend to have
 12 septic problems --
 13 Q. All right.
 14 A. -- on that road. The rest of the year, unless
 15 there is some type of exceptional amount of
 16 rain, it's just kind of a pretty general
 17 bubbling that you see coming out on the other
 18 side.
 19 Q. How long has this dirt road, Davis Drive, how
 20 long has it been there?
 21 A. Since the Davis' put it in some 50, 60 years
 22 ago.
 23 Q. Were you able to determine, we talked about
 24 that pipe being silted up, that pipe was
 25 silted up, the 24-foot pipe, 50 percent

Page 47

1 A. And I think a lot of what I see in the pipe on
 2 this side where we get the accumulation is
 3 actually as a result of the grading of the
 4 road. So it loosens up that sand. We get a
 5 rain, it washes into this side --
 6 Q. Right.
 7 A. -- and accumulates.
 8 Q. So what happens is the motor grader pushes the
 9 dirt around, some of it winds up going off
 10 into the road, draining into the pipe and
 11 through the pipe, and headed eventually
 12 towards Ms. Garland's pond?
 13 A. Right.
 14 Q. Now, so we know for at least 19 years silt's
 15 been headed in that direction, right?
 16 A. Right.
 17 Q. Is there any way to tell how much of the silt
 18 that's in there came from Mr. Cade's work and
 19 how much came from the motor grader?
 20 A. I couldn't even -- I could not speculate.
 21 Q. Now, we know then for at least 19 years silt
 22 has been headed from the road into Ms.
 23 Garland's pond. At any point in time during
 24 those 19 years that the silt from the road has
 25 been headed towards Ms. Garland's pond, have

Page 46

1 clogged, was that silt there, that pipe,
 2 before or after the Cades did the work on
 3 their property?
 4 A. The silt's been in the pipe since I moved in.
 5 Q. How many years is that?
 6 A. Nineteen, 2003.
 7 Q. So for at least 19 years that pipe has been
 8 catching silt?
 9 A. Correct. And we'll periodically go and try to
 10 clean out our end of it but we can't get more
 11 than about four or five foot into that side.
 12 Q. So we know that water and silt has been headed
 13 towards the Garlands' pond for at least 19
 14 years?
 15 A. Correct.
 16 Q. Is the silt that's been going towards that
 17 pond for 19 years, is it all coming from the
 18 Cade property?
 19 A. I would suspect not.
 20 Q. But one thing is for certain, if the natural
 21 drainage heading in that direction and surface
 22 water carries silt, doesn't it?
 23 A. Right.
 24 Q. And the silt carried by the surface water is
 25 what --

Page 48

1 you ever seen Ms. Garland do anything to go
 2 over and clean out her pond?
 3 A. I haven't, but I don't have a direct
 4 visibility to that area either.
 5 Q. Sure.
 6 A. And she's always out there working, doing
 7 stuff on the property.
 8 Q. Have you ever seen any signs that anybody in
 9 those 19 years has ever done anything to clean
 10 out the silt that's been coming from the road
 11 that the county is supposed to maintain?
 12 A. No.
 13 Q. At any point in time have you ever seen the
 14 county go out and clean out any of the silt
 15 that its been putting in Ms. Garland's pond?
 16 A. No.
 17 Q. Have you ever seen the county come out and
 18 clean out the silt from the pipe that's
 19 basically running under Davis Road?
 20 A. No.
 21 Q. From what you can tell, most of the silt
 22 that's in that pipe, is it coming from the
 23 road or is it coming from someone else's
 24 property?
 25 A. I'd say most of that is coming from the road.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
 ROA0779

3/25/2022

PAUL SHEARER

Page 49

1 Q. All right. Could you hand me, do you have --
 2 off the record for a moment.
 3 (OFF THE RECORD BREAK FROM 10:47 A.M. TO 10:48 A.M.)
 4 MR. MOORE: I am going to mark a document here
 5 as Exhibit Number 8. I'm just going to write
 6 this very, very faintly in the left-hand
 7 corner of this photograph.
 8 Q. Would this photograph be a fairly typical view
 9 of what Davis Drive looks like in the area
 10 we're talking about?
 11 A. It would.
 12 MR. BELSER: Can you flip it just so I can see
 13 it? I don't need a copy.
 14 MR. MOORE: I'm going to hand it to you because
 15 I want to introduce it into evidence.
 16 (Defendant's Exhibit Number 8 was introduced
 17 into evidence.)
 18 Q. Thank you, Paul.
 19 MR. BELSER: No objection.
 20 MR. MOORE: Any objection Tom?
 21 MR. DOUGALL: No objection.
 22 Q. Okay. And if you would just point on this
 23 map, this would be roughly what area of the
 24 road?
 25 A. This is, this would be here looking back.

Page 50

1 Q. All right.
 2 A. So probably this is where the photo was taken,
 3 it would be looking back this direction.
 4 Q. All right. Now, if I look at the top end of
 5 this photograph, am I looking at that berm
 6 that you're talking about?
 7 A. You are.
 8 Q. Now, water seems to be standing next to that
 9 berm in the road, is that right?
 10 A. That is correct.
 11 Q. So this is an example of the fact that the
 12 berm won't let the water from the road across?
 13 A. Correct.
 14 Q. And there's water standing on your side, is
 15 that right?
 16 A. Correct.
 17 Q. Now, if we look at this photograph, does Davis
 18 Drive, is it Davis Road or Davis Drive?
 19 A. Davis Drive.
 20 Q. Does Davis Drive then shed water towards you
 21 or towards the pond?
 22 A. Towards me.
 23 Q. And the water that is standing there on your
 24 side of the property, is that in front of the
 25 wetlands?

Page 51

1 A. It is. So the wetlands would be there off to
 2 the right.
 3 Q. Okay. So you can basically see that the water
 4 from the road doesn't go into her pond, does
 5 it?
 6 A. The water from the road is going to go
 7 ultimately onto my property and then to that
 8 culvert.
 9 Q. Okay. Well, there's not much -- how can water
 10 that's -- see where the water has ponded up?
 11 A. Right. So you see right here where you can
 12 see you've got almost this little bridge?
 13 Q. I see.
 14 A. So water builds up here. It's going to flow
 15 across that and then it goes in behind there.
 16 Q. All right. If you look at it here, though,
 17 you can see all this loose dirt on the berm,
 18 right?
 19 A. Right.
 20 Q. What prevents that loose dirt from going
 21 across that water bridge into that ditch and
 22 then ultimately through the pipe?
 23 A. Nothing that I'm aware of.
 24 Q. And if you look at the color of that water
 25 that is ultimately headed towards the culvert

Page 52

1 from the road, is that clouded or is that
 2 clear?
 3 A. It's cloudy.
 4 Q. So what's happening is, the water on Davis
 5 Drive that falls there naturally --
 6 A. Right.
 7 Q. -- either goes into your ditch or ponds up by
 8 the berm?
 9 A. Correct.
 10 Q. Then it will cross the road at one little low
 11 place --
 12 A. Right.
 13 Q. -- go back down the ditch, go through the
 14 ditch into the culvert --
 15 A. Right.
 16 Q. -- and then drain onto Ms. Garland's property?
 17 A. Correct.
 18 Q. Now, let's talk about the area --
 19 MR. MOORE: Well, this thing is not working
 20 again for some reason and I don't know why,
 21 but I'm going to try. My little fancy --
 22 yeah.
 23 Q. If you look there at the pond, yes, there's a
 24 difference, there's a distance between Davis
 25 Drive and Ms. Garland's pond, is that right?

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
 ROA0780

3/25/2022

PAUL SHEARER

Page 53	Page 55
1 A. There is. 2 Q. How great a distance is it from where the 3 water bubbles up because the pipe is covered 4 up to where her pond starts? 5 A. I don't know. I mean the water is going to 6 bubble up right here. 7 Q. Yep. 8 A. What that distance is, I don't know. 9 Q. And we estimated it on the other property to 10 be, the berm there or the buffer, was 11 estimated at about, what 300 feet, 50 feet? 12 A. Right. It's roughly about the same amount. 13 Q. So it's about 300 feet from where the water 14 bubbles up to actually get to her pond, right? 15 A. Assuming that buffer is that, which is -- I'm 16 not great on -- 17 Q. I know. 18 A. -- estimating that stuff. 19 Q. But all you're doing is ball parking numbers 20 for me? 21 A. Right. 22 Q. I understand that. So the distance between 23 Davis Drive where it bubbles up and Mrs. 24 Garland's pond, is that also covered with 25 vegetation?	1 ground, right? 2 A. Right. 3 Q. And then if it bubbled up out of the ground 4 through the ground, it would then have to go 5 over about 300 feet of vegetated area to find 6 its way into the pond? 7 A. Right. 8 Q. And of course that would be the natural 9 drainage system for the area anyway? 10 A. Right. 11 Q. And it's been that way for about 50 years? 12 A. I can only comment on how it's been since I've 13 been there. 14 Q. Twenty years? 15 A. Twenty years. 16 Q. All right. Okay. Now, you did some work. 17 Like you said, you bought some property and 18 did some work on your property? 19 A. Right. 20 Q. Do these photographs show the type of work 21 that you did on your property? 22 A. It does. 23 Q. Okay. 24 MR. MOORE: If I might introduce these. 25 (Defendant's Exhibits 1 through 7 were
Page 54	Page 56
1 A. It is. 2 Q. Is that also wetlands? 3 A. I would assume so, although I don't know that 4 for sure. 5 Q. So in order for -- in order for silt to get 6 from the Cade's property, it would have to 7 first get picked up by water, right? 8 A. Right. 9 Q. Then it would have to either go across the 10 wetlands or the buffer that we've talked 11 about, right? 12 A. Right. 13 Q. Then it would have to go across your property? 14 A. Right. 15 Q. Then it would have to either go and bump up 16 against the berm or get into the creek or the 17 ditch, right? 18 A. Right. 19 Q. Then it would have to eventually make its way 20 into the pipe? 21 A. Right. 22 Q. Then it would have to go into the pipe and 23 under the road through the silted pipe? 24 A. Right. 25 Q. And then it would have to bubble up out of the	1 introduced into evidence.) 2 A. Only clarification, you said you bought some 3 property, but that was property I already had. 4 Q. Right. You already owned this property 5 anyway? 6 A. Correct. 7 MR. BELSER: Objection. 8 Q. Were you able to make any of the surfaces in 9 the area where you did your work impervious? 10 A. Impervious? 11 Q. Yeah, where it doesn't -- it sheds water? 12 A. Yes. 13 Q. Where did you -- where did you do this work, 14 is it right about here? 15 A. No, it's -- 16 Q. It's up here? 17 A. -- it's right in about here. 18 Q. I see. 19 A. About where that line is. 20 Q. Well, I might point it out again. We'll 21 figure this out. The first photograph I've 22 got labeled as Exhibit 1. What does this 23 actually show? 24 A. This shows the spreading of asphalt millings. 25 Q. Okay. And Exhibit Number 2, what does this

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0781

3/25/2022

PAUL SHEARER

Page 57

1 show?
 2 A. This shows a pile of asphalt millings.
 3 Q. Okay.
 4 MR. MOORE: I've already got them marked up
 5 here, Exhibit Number 2.
 6 MR. BELSER: Oh, here's Number 1.
 7 MR. MOORE: Okay.
 8 Q. Tell me what an asphalt milling is?
 9 A. It's basically asphalt that was previously a
 10 road or a highway somewhere that's been
 11 reclaimed and ground up.
 12 Q. You use it kind of like pea gravel?
 13 A. Yeah. Kind of that or crush and run.
 14 Q. Right. Exhibit Number 3 here, does this show
 15 any of the work that you were doing?
 16 A. It does.
 17 Q. Is that your house there?
 18 A. It is.
 19 Q. Really pretty house.
 20 A. Thank you.
 21 Q. What is this showing about the work, not much?
 22 A. Not much.
 23 Q. It does show some standing water there,
 24 doesn't it?
 25 A. It does.

Page 58

1 Q. Is it unusual for water to stand like that out
 2 there?
 3 A. No.
 4 Q. All right. Would that water eventually find
 5 its way into the pipe or is that some of the
 6 water that goes somewhere else?
 7 A. It would eventually find its way into the
 8 pipe.
 9 Q. Okay. But it's a slow process?
 10 A. Right.
 11 Q. Is this some of the asphalt milling area that
 12 you did?
 13 A. It is.
 14 Q. And what happens is, when you put the asphalt
 15 milling down, the water will run off it and
 16 not be a problem to you?
 17 A. Correct.
 18 Q. Okay. Did your work increase the problems
 19 that Ms. Garland was having that you know of?
 20 A. No. It would be -- it would be a net
 21 difference or it would net out, because the
 22 total amount -- all that water ends up in that
 23 wetland.
 24 Q. Right.
 25 A. And the net amount of water going there is not

Page 59

1 changing.
 2 Q. And the water going to the wetlands doesn't go
 3 onto her land anyway?
 4 A. It does through the culvert.
 5 Q. Oh, that's right. Well, okay. We know that
 6 the water, this water, goes in this direction?
 7 A. Correct.
 8 Q. And this water goes in the culvert?
 9 A. Correct.
 10 Q. And the work that you did was here?
 11 A. That's correct.
 12 Q. Okay, fine. As a matter of fact, did anybody
 13 from the Federal Government come out and check
 14 the work you were doing?
 15 A. Yeah. There had been a complaint that had
 16 been made about it. The Army Corps of
 17 Engineers came out and inspected it.
 18 Q. Anybody find anything you did anything wrong?
 19 A. No.
 20 MR. BELSER: Objection, hearsay.
 21 Q. Were you cited for having done anything wrong?
 22 A. No.
 23 Q. This Exhibit Number 5, does this show sort of
 24 the finished product?
 25 A. It's getting close to the finished product.

Page 60

1 Q. And Exhibit 6 is getting close to the finished
 2 product?
 3 A. That's correct.
 4 Q. Okay. Could I hold those again. All I'm
 5 doing right now is getting you to identify
 6 these photographs.
 7 A. Sure.
 8 Q. Now, there is a Number 7 here. Is this a
 9 photograph of what the wetlands looks like
 10 that we've talked about?
 11 A. It is.
 12 Q. And that would be standing water?
 13 A. It is. This would also be more of like the
 14 March, April, May time area where there would
 15 have been heavy rain.
 16 Q. Right. When we have the rainy season, the
 17 wetlands holds water more?
 18 A. Correct.
 19 Q. And you can go out there about any time and
 20 you can see something that looks like that?
 21 A. Correct.
 22 Q. It would have been like that before the Cades
 23 did their work, it would have been like that
 24 after the Cades did their work?
 25 A. That's correct.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
 ROA0782

3/25/2022

PAUL SHEARER

Page 61	Page 63
1 Q. Okay. Now, do you have anything at all 2 against Ms. Garland? 3 A. I don't. 4 Q. Anything against the Cades? 5 A. I don't. 6 Q. You just live out there? 7 A. Yeah. I try to maintain friendly 8 relationships with everyone as much as I can. 9 Q. Pretty good idea. You've been awful nice to 10 me. And you've talked to some of these other 11 lawyers too and been nice to them? 12 A. I have. 13 Q. When that ditch fills up, the ditch being 14 basically here -- 15 A. Oh, yes, correct. 16 Q. -- and we know the ditch runs in this 17 direction away from Ms. Garland's property -- 18 A. Correct. 19 Q. -- when that ditch fills up, how long does it 20 take for the water to actually go in the 21 direction away from Ms. Garland's property? 22 A. I couldn't even speculate. 23 Q. Now the culvert is about here? 24 A. That's right. 25 Q. Does water coming onto your property here go	1 Who would own that? 2 A. Hold on. I'm trying to get my mental bearings 3 here. 4 Q. Lives next-door to Al and Susan. 5 A. Oh, okay. That would be the Browns. 6 Q. And who owns this property that would drain in 7 that direction? 8 A. That would be Bert. 9 Q. And do you know who would own these properties 10 that would drain in that direction? 11 A. I do not. 12 Q. But all of the stuff basically heads towards 13 that culvert and eventually towards the pond? 14 A. Right. 15 Q. And you know that because you've seen it? 16 A. Right. 17 Q. Okay. How well do you know Claude who owns 18 the wheat field up here? 19 A. Fairly well. We're friends. 20 Q. And he just plants it with wheat? 21 A. He does. 22 Q. Just for the heck of it? 23 A. Yeah. It's kind of my suspicion, an excuse to 24 get on his tractor. 25 Q. He likes that tractor, doesn't he?
Page 62	Page 64
1 in this direction towards the culvert? 2 A. It does. 3 Q. And water coming from the other neighbors goes 4 towards the culvert. 5 A. So if you take where my house is -- 6 Q. Yeah. 7 A. -- everything on this side of the house is 8 going to go towards the culvert. Everything 9 on the other side of the house is going to 10 that ditch where it ultimately ends up over at 11 the Campbells side. 12 Q. How about the land, the drainage from over 13 here, is all this heading towards the culvert 14 too? 15 A. It is. 16 Q. Who owns these properties, who owns this 17 property here that would drain toward the 18 culvert? 19 A. That would be Al -- oh, is this showing the 20 property ... 21 Q. This is the property next-door to you. 22 A. Okay. So that would be the Davis'. 23 Q. Which Davis, there are a bunch of them. 24 A. I'm sorry, Al and Susan Davis. 25 Q. And this property would drain that way too.	1 A. He does. 2 Q. He's out there all the time plowing up this 3 thing, tilling it up? 4 A. No, I wouldn't classify it as all the time. 5 Probably twice a year. 6 Q. Twice a year. He loves to do that, though, 7 right? 8 A. Right. 9 Q. And of course his land as we can see is about 10 12-feet higher than the pond? 11 A. I can't read a contour map, so ... 12 Q. That's 202 and that's 190, so it looks like 13 it's about a 12-foot difference. 14 A. I was trying to figure out what those numbers 15 were. 16 Q. Yeah. 17 A. Okay. 18 Q. And that would be a pretty good drop, wouldn't 19 it? 20 A. It would. 21 Q. When you cut the trees off your property, 22 where were they, behind your house? 23 A. There were a couple that were over here. Most 24 of them were on this side? 25 Q. All right. Did you have to get a permit to do

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
ROA0783

3/25/2022

PAUL SHEARER

Page 65	Page 67
1 that? 2 A. No, we had a tree service come out and do it 3 for us. 4 Q. Okay. 5 A. We had a bad case of pine beatles. 6 Q. Oh, wow. By the way, did you build a 7 retaining wall out here somewhere? 8 A. I did. 9 Q. Where? 10 A. Close to this line right here. 11 Q. Now, why did you need the retaining wall? 12 A. That was basically to keep erosion from going 13 down into that wetland area. 14 Q. You had a problem with that for awhile? 15 A. We have. 16 Q. How long has it been eroding like that, just 17 years? 18 A. I mean, since we've been out there. 19 Q. All right. 20 A. And mainly just during times of heavy rain. 21 Q. Right. How hard did you try to find how deep 22 that pipe was buried on Ms. Garland's side? 23 A. I probably spent a good hour on it before I 24 gave up. 25 Q. Just digging?	1 thousand Mickey Mouse ears. 2 A. I hope not. 3 Q. Thank you for answering my questions. I'm 4 going to ask to go off the record for a 5 moment, because with the cold that I have, I'm 6 drinking gallons of water and I need a 7 restroom again. So if you'll excuse me, I 8 appreciate your answering my questions. 9 (OFF THE RECORD BREAK FROM 11:08 A.M. TO 11:18 A.M.) 10 MR. MOORE: If somebody would hit the button. 11 MR. DOUGALL: Here. 12 MR. SHEARER: The play button there in the 13 corner. 14 MR. DOUGALL: Yeah, I know. I just need it -- 15 MR. SHEARER: Oh. 16 MR. DOUGALL: -- it was going to pull it 17 across the glass and it wasn't working. 18 (VIDEO IS SHOWN.) 19 Q. You saw, did you see that little movement of 20 the water? 21 A. I did. 22 Q. Is that more what it looks like when it 23 bubbles? 24 A. Generally a little bit more than that, but 25 yeah.
Page 66	Page 68
1 A. Just digging. And the problem was, is the 2 water, the sand, would be coming back down as 3 quickly as we were trying to pull it out of 4 there. 5 Q. Is that because the sand is so loose? 6 A. It is. 7 Q. Most of this whole area is covered in sandy 8 soil, right? 9 A. It is. 10 Q. And it's -- 11 A. Sand or clay. 12 Q. Sand or clay or sand clay. And it's very 13 loose soil, isn't it? 14 A. It is. 15 Q. And since it's loose soil, all of it will move 16 with the water, won't it? 17 A. Anything that's loose soil. 18 Q. Yeah. Mr. Shearer, I am delighted that we 19 were able to save you from having to be in 20 court this week. I hope you have a good trip. 21 I believe you're going to Orlando? 22 A. I am. 23 Q. But you're going on business? 24 A. But I'm going on business. 25 Q. Well, maybe you can get to the land of a	1 Q. Okay, thank you. I don't have any further 2 questions and if you would answer any 3 questions counsel might have. 4 CROSS EXAMINATION 5 BY: MR. BELSER: 6 Q. Thank you very much. And, Mr. Shearer, I 7 apologize for calling you Mr. Melichar when I 8 first got started, I've just got names running 9 through my head, but why don't we -- why don't 10 we start there. 11 MR. BELSER: And Jake, can I borrow your laser 12 -- 13 MR. MOORE: Sure, it's right there. 14 MR. BELSER: -- just so I don't have to jump 15 on over you? 16 MR. MOORE: Would you like my seat? You can 17 have the seat if you want it? 18 MR. BELSER: Well, that may be easier if you 19 don't mind. 20 MR. MOORE: I don't mind, but the court 21 reporter is going to shoot me about my tie and 22 the microphones. I'll you go under, I'll -- 23 I'll go under, you go over. That will do it. 24 (LAUGHTER IS HEARD). 25 MR. MOORE: All right, very good. I'm not

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
ROA0784

3/25/2022

PAUL SHEARER

Page 69	Page 71
1 going to look at your notes, I'll move this 2 paper. 3 MR. BELSER: All right. My handwriting is 4 indecipherable, but I do need that. 5 MR. MOORE: Okay, you're all right. 6 MR. SHEARER: You dropped that pen. 7 MR. BELSER: Okay, thanks. 8 Q. All right. So speaking of Mr. Melichar, and 9 I'm not looking at the video, I'm looking at 10 this right here. 11 A. Oh, okay. 12 Q. I'm sorry. I couldn't get the video to work. 13 So Mr. Melichar is a former neighbor of yours 14 who had owned this property right here with 15 the pond? 16 A. Yes. 17 Q. Right, okay. And he has had a -- he's now 18 left the neighborhood, right? 19 A. Correct. 20 Q. And he had a pretty nasty set of disagreements 21 with Mr. Cade, is that correct? 22 A. That's correct. 23 Q. And they had mutual restraining orders, is 24 that correct? 25 A. That's correct.	1 the transaction -- 2 Q. Uh-huh. 3 A. -- there was fence posts all the way down 4 Mark's driveway -- 5 Q. Uh-huh. 6 A. -- where he was not going to be able to get 7 his vehicles in and out. 8 Q. And is it fair to say that you're kind of a 9 conflict adverse guy, conflict avoider? 10 A. Yeah, that's fair to say. 11 Q. Okay. And you've tried to maintain a friendly 12 relationship with Mr. Cade, is that right? 13 A. That is true. 14 Q. Okay. All right. I want to talk, to start by 15 talking about, do you remember all the 16 questions that Mr. Moore asked about the 17 flood? 18 A. Yes. 19 Q. And do you remember about, do you remember how 20 y'all talked about how you know that a lot of 21 people were, were damaged in -- 22 A. Right. 23 Q. -- in the Columbia area. I mean, the dams 24 broke in the Northeast and there was a lot of 25 loss of life and limb?
Page 70	Page 72
1 MR. MOORE: Object to the relevance. 2 Q. And they were out filming each other on 3 occasion? 4 A. Yes. 5 MR. MOORE: Object to the relevance. 6 Q. And Ms. -- 7 A. Quick question, so when -- 8 MR. MOORE: You just keep answering. 9 MR. SHEARER: I just keep answering him. Okay. 10 Q. And Ms. Garland has had obviously disputes 11 with the Cades, that's why we're here, right? 12 A. Right. 13 Q. But you've managed to stay on their good side, 14 is that right? 15 A. That's correct. 16 Q. Okay. And he actually did you a favor by 17 accepting your \$10,000 to clear off your 18 property, right? 19 A. That's correct. 20 Q. I mean, not to clear it off, but to -- 21 A. Just to square it off. 22 Q. -- square it off. And one of the things that 23 -- 24 A. As well as favoring directly to Mark, when he 25 had the dispute, because at the time we did	1 A. Right. 2 Q. Not limb, but nor life. 3 A. Right. 4 Q. I don't think. I think there was a lot of 5 property damage, maybe some life, mostly 6 property damage. You remember that well, 7 right? 8 A. Yes, very well. 9 Q. Okay. That was three years before the Cades 10 bought this property in 2018, right? 11 A. I'm not sure on the exact dates, but I'm -- 12 it's whenever the, whatever was labeled the 13 100 flood. I think that's what I'm referring 14 to. 15 Q. Okay. I think that was in October of 2015 and 16 that was a thousand year flood. 17 A. Okay. 18 Q. Okay. Does that, so does sound about right? 19 A. Yes, it does. 20 Q. Okay. And that was before Mr. Cade bought the 21 property in 2018, if he bought it in 2018? 22 A. If he bought it in 2018, yes. 23 Q. Okay. And I believe that you said that after 24 Mr. Cade bought the property, that there were 25 some hurricanes and that you've never seen the

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
ROA0785

3/25/2022

PAUL SHEARER

Page 73

1 tremendous amount of flooding that you saw
 2 then, is that right?
 3 A. I may have been confusing the timeline in
 4 terms of the hurricanes. So the amount of
 5 flooding associated with that first hurricane,
 6 I had never seen anything like that. In terms
 7 of what was the sequence of events, when it
 8 happened when the Cades moved in, I'd have to
 9 sit there and look at the dates of when all
 10 that happened.
 11 Q. Okay. But the tremendous flooding that you
 12 saw and the blowout that you saw, that was all
 13 after Mr. Cade and Mrs. Cade bought the
 14 property and cleared it, is that right?
 15 A. No. That was associated with that 1,000 year
 16 flood. So if that happened before they moved
 17 in, then obviously that would be before.
 18 Q. Okay. So the hurricanes you were talking
 19 about, what -- were there any hurricanes in
 20 2018 that you're talking about?
 21 A. There was one hurricane specifically that I'm
 22 talking about and that was the 1,000 year
 23 flood. Now, there was another hurricane where
 24 we got a lot of rain associated with it, but
 25 nothing on the scale that I was talking about

Page 74

1 before.
 2 Q. Okay. So I'm just, I'm having a hard time
 3 understanding here. So there was the 2015
 4 flood --
 5 A. Right.
 6 Q. -- which was three years before the Cades
 7 bought that.
 8 A. Okay.
 9 Q. And then you said that --
 10 A. And so that was in 2015.
 11 Q. Yes.
 12 A. Okay.
 13 Q. The 2015 1,000 year flood.
 14 A. Okay.
 15 Q. And then the Cades bought their property in
 16 2018 and started to clear it. And in your
 17 direct testimony you talked about, the Cades
 18 were mentioned about how that flooding event
 19 in 2018 was like something you'd never seen
 20 before, is that right?
 21 A. So if I said that was 2018, I was referring to
 22 the 2015 flood.
 23 Q. So were the Cades there or not?
 24 A. Not if it was 2015.
 25 Q. Okay. I mean the jury will have heard your --

Page 75

1 already heard your testimony --
 2 A. Okay.
 3 Q. -- but as I heard your testimony, it was the
 4 hurricanes, when the Cades owned the property
 5 in 2018, which is like something you had never
 6 seen before?
 7 A. Yes. So if I specifically said when the Cades
 8 owned the property, I don't remember saying
 9 that. What I remember talking about was the
 10 hurricanes, the amount of rain that was
 11 associated with them, and specifically that
 12 first one being the, I think what we've
 13 established, the date is 2015 which would have
 14 been before the Cades moved in.
 15 Q. And did you take -- if in fact there was a
 16 blowout in 2015 which is disputed, was that --
 17 did you take any photographs?
 18 A. No.
 19 Q. Okay.
 20 A. Or at least not that I'm aware of.
 21 Q. And do you know when -- let's look at this map
 22 here, have you ever seen this map before?
 23 A. No.
 24 Q. Okay.
 25 A. I mean, I've seen a Lexington County version

Page 76

1 of it, I'm sure.
 2 Q. Okay. But this was obviously before the Cades
 3 bought their property and cleared their land,
 4 right?
 5 A. The flood was before?
 6 Q. I'm talking about this photograph is -- this
 7 is all wooded right here --
 8 A. Okay.
 9 Q. -- where the Cades property is now.
 10 A. Right. So does the green indicate that it's
 11 wooded?
 12 Q. The green, that's trees.
 13 A. Okay.
 14 Q. The --
 15 A. Yes. So that would be before then.
 16 Q. Okay.
 17 A. Well, it would be before or right after.
 18 Q. Okay. But you don't know, but presumably it's
 19 sometime between the 2015 flood and the time
 20 that the Cades cleared the property?
 21 A. I've never seen this map before today.
 22 Q. Okay.
 23 A. So I don't know what the date of this map is
 24 as of.
 25 Q. Okay. But you see that -- you will agree that

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0786

3/25/2022

PAUL SHEARER

Page 77

1 these are trees right here, and you see Ms.
 2 Garland's black water pond right there?
 3 A. Uh-huh.
 4 Q. Okay. Had you ever over the years, had you
 5 ever been to the Garland pond and met with
 6 either Suzy or her late husband and enjoyed
 7 their property?
 8 A. We've been on the -- we've been on the
 9 property before but we've never spent much
 10 time over there. I have seen the pond as we
 11 would walk up the driveway.
 12 Q. And as you remember it, back before the Cades
 13 bought it, it was a black-water pond just like
 14 what you see on this map?
 15 A. I don't have any specific recollection of the
 16 pond itself. It wasn't anything that I was
 17 really focused on until after this whole event
 18 started.
 19 Q. Okay. And the black -- there's the black-
 20 water pond, but Davis Drive is on there.
 21 Davis Drive has been on there for decades,
 22 right?
 23 A. Right.
 24 Q. And Mr. Claude Davis who likes to ride his
 25 tractor --

Page 79

1 maybe last September and you sent some
 2 photographs back?
 3 A. Correct.
 4 Q. Okay. I've printed out a stack of them here
 5 and I've got handwritten notes as to the dates
 6 which match the metadata or whatever you call
 7 it.
 8 A. The metadata.
 9 Q. Is that what it's called?
 10 A. That's what it's called.
 11 Q. Oh, okay. And I've written those on there,
 12 but my question is did you start taking
 13 photographs of the work that Mr. and Mrs. Cade
 14 were doing on their property after they
 15 started to do it?
 16 A. Yes.
 17 Q. And that's because you were just -- it's easy
 18 to take photographs, right?
 19 A. It's easy to take photographs.
 20 Q. And you were curious about it, right?
 21 A. Right. And there was a lot of really cool
 22 heavy equipment out there that looked very
 23 fun.
 24 Q. And you also had sediment coming on your
 25 property, is that right?

Page 78

1 A. Right.
 2 Q. -- there's a black-water pond and he's been
 3 doing that for years, right?
 4 A. Since we've been out there.
 5 Q. And when -- I've got -- you started to take
 6 photographs of Mr. Cade's -- or from your
 7 backyard of the work that Mr. Cade was doing
 8 once he started doing it, right?
 9 A. I think so. I mean, the dates are on the
 10 pictures.
 11 Q. Okay.
 12 A. Do you have those?
 13 Q. Yeah.
 14 MR. BELSER: Jake, could you just hand me those
 15 photographs right there, right underneath?
 16 MR. MOORE: Yeah.
 17 MR. BELSER: Thanks.
 18 MR. MOORE: Oh, golly. Could we go off the
 19 record please.
 20 (OFF THE RECORD BREAK FROM 11:29 A.M. TO 11:34 A.M.)
 21 Q. All right. Mr. Shearer, I believe when we
 22 went off I was asking you about some
 23 photographs?
 24 A. Right.
 25 Q. And do you recall that I sent you a subpoena

Page 80

1 A. That's correct.
 2 Q. Okay. And you had never seen sediment like
 3 that before on your property coming from
 4 uphill, right?
 5 A. That's correct.
 6 Q. Okay. And so let's walk through, and that's
 7 like back in 2015, the 2015 flood, you did not
 8 have sediment on your property like you had in
 9 2018 after the land was cleared?
 10 A. Oh, I couldn't tell with that particular flood
 11 because of the amount of standing water that
 12 would have been there. I mean, literally, it
 13 was -- the road was completely submerged.
 14 Q. All right. If you wouldn't mind just walking
 15 through, just identifying. Do these
 16 photographs that were taken by you accurately
 17 depict what they purport to show?
 18 A. Yes.
 19 Q. Okay. And what is -- what is this first one,
 20 what's the date on it and what's the first
 21 one?
 22 A. The first one is July 7, 2018 and it's an
 23 earth mover.
 24 Q. And was that -- is that generally consistent
 25 with what you observed on the site, just the

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0787

3/25/2022

PAUL SHEARER

Page 81	Page 83
1 clearing off of the property, the de-stumping 2 of the property and the mass grading of it? 3 A. What do you mean by mass grading? 4 Q. Well, just big heavy, cool heavy equipment 5 moving earth around? 6 A. Yes, yes. That is. 7 Q. Okay. And the next one is what? 8 A. The next one is just showing some of the 9 cleared land. 10 Q. Okay. 11 A. And that's also the same date. More of the 12 same. 13 Q. What's the -- 14 A. This one is November 21, 2018 and basically 15 shows water that is heading into the culvert. 16 Q. Okay. And describe what the water looks like? 17 A. It looks cloudy. 18 Q. Okay. And you had never seen water in that 19 area that color before 2018, is that correct? 20 A. No, I've seen water, yeah, I've seen water 21 like this before then. There's various times 22 that it's -- it's -- various times that it's 23 been muddy, but the comment I had made earlier 24 was kind of earlier in -- when the excavations 25 were happening. And it was actually a lot	1 A. 12/30/2018. 2 Q. Okay. And do you remember when you saw some, 3 it looked like antifreeze looking dye in the 4 water? 5 A. I do. 6 Q. Okay. And is that what that picture shows? 7 A. Yeah. That's what turned out to be pond dye. 8 Q. Okay. 9 A. I was very concerned that perhaps when things 10 had gotten unearthed or whatever that 11 something had been buried and punctured and 12 was leaking and -- but that turned out not to 13 be the case. 14 Q. And what was, when you say unearthed, was 15 there like a lot of turning over of the earth? 16 And kind of when I say mass grading I mean 17 like big equipment -- 18 A. Well there was -- there was pulling out of the 19 stumps. There was the work that was going on 20 with the repair of the dam. 21 Q. Okay, I'll just grab these. 22 A. Sure. 23 Q. This next photograph is April the 1st of 2019. 24 Does that -- that's from your backyard showing 25 the improvements on the Cade property?
Page 82	Page 84
1 darker than the color that's being shown here. 2 Q. With the excavations, are you talking about -- 3 well, there's only -- 4 A. Or not the excavations but the clearing of the 5 land. 6 Q. Okay. And is that when you mentioned the 7 violent runoff when the soil was disturbed? 8 A. Yeah. There was a lot of runoff when the soil 9 was disturbed. 10 Q. Okay. And did I hear you, I thought I heard 11 you say violent, is that the word you used? 12 A. Not that I recall. 13 Q. Okay. Well, then if it wasn't violent -- 14 A. It was significant runoff. 15 Q. Okay. And that was like something you'd never 16 seen before? 17 A. Yeah. It was, correct. Short of -- short of 18 that previous flood we were talking about. 19 Q. Okay. What is that, is that just more of the 20 same? 21 A. Just more of the same. 22 Q. Okay. And then the next photograph is dated 23 what? 24 A. It's dated 12 -- I can't tell. 25 Q. That's 12/30.	1 A. It is. 2 Q. And so in addition to the mass grading, there 3 are a number of structures that were built as 4 well? 5 A. Correct. 6 Q. Including and on that property on occasion are 7 stored at least one truck which relates to Mr. 8 Cade's commercial business? 9 A. Correct. 10 Q. And that property looks a lot different than 11 it used to look, right? 12 A. It does. 13 Q. It used to just be completely wooded? 14 A. Correct. 15 Q. No there's hardly a tree on the whole place, 16 is that right? 17 A. Except for the buffer they left. 18 Q. Okay. And then this last photograph, 19 7/7/2019, that's the picture of the berm, is 20 that right? 21 A. That is correct. 22 Q. And that's the berm that's on Ms. Garland's 23 side? 24 A. It is. So this is her fence you can see in 25 there and then this is built up against the

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
ROA0788

3/25/2022

PAUL SHEARER

Page 85	Page 87
1 fence. 2 Q. Okay. 3 MR. BELSER: Jake, I'm going to move to admit 4 these. 5 MR. MOORE: Sure. I have no objection to those 6 at all. 7 MR. BELSER: Okay. These are Exhibit 15, 8 Plaintiff's Exhibit Number 15. And I'll stick 9 these in front of you, but don't walk out with 10 them. 11 Q. Now, you don't have any knowledge at all about 12 any kind of permitting requirements in 13 Lexington County for storm water, correct? 14 A. I do not. 15 Q. Okay. Now, when you're talking about Mr. -- 16 the discussion about Mr. Davis right here, I 17 can't remember, is that Claude? 18 A. Claude. 19 Q. Okay. You said that he -- you used the word 20 stabilize. So is what he does is he discs the 21 soil, has his diesel therapy and then plants 22 it with his winter wheat? 23 A. Correct. 24 Q. Okay. So he just doesn't -- he doesn't leave 25 it, you know, kind of bald for months at a	1 A. Only through Suzy. 2 Q. Now, you mentioned Mr. Moore asked you about 3 silt. He asked you about Mr. Davis' property 4 and you said Mr. Davis doesn't have any silt 5 fences or anything like that. 6 A. Right. 7 Q. And so you know what a silt fence is? 8 A. I learned what a silt fence was through this 9 whole thing. 10 Q. Okay. But when this clearing first began, 11 looking at Plaintiff's Exhibit Number 15, 12 there are no silt fences in that photograph, 13 are there? 14 A. No, but the silt fences that would have been 15 put up would have been further on this side. 16 And I'm not sure on the exact date for when 17 those went in, but I know that there was a 18 complaint about the runoff happening. And 19 very shortly after that, the Cades put in silt 20 fences which were pretty close to where the 21 fence line runs right there. 22 Q. Okay. But that was -- there was a long period 23 of time where the property was unstabilized 24 with no silt fences and no grass either? 25 A. I wouldn't classify it as a long period. Like
Page 86	Page 88
1 time? 2 A. No. No, he doesn't. 3 Q. And why did you use the word stabilized? 4 A. Because the root system on that is basically 5 going to hold the soil together. 6 Q. Which is a lot different, isn't it, than what 7 happened when Mr. Cade cleared his property in 8 2018. It took a long time for that to get 9 stabilized. 10 A. Well, right after they had cleared it, they 11 immediately went through with what looked like 12 a giant fire hose and was spraying the 13 property with grass seed. And there were two 14 different occasions I saw that happening. 15 Q. And do you know how long the property sat in 16 it's condition, sat unstabilized, before that 17 happened? 18 A. In terms of sequence, it was all back to back, 19 but how much of the time span that was, I'm 20 really not sure. 21 Q. Do you know if that was before or after the 22 county came out and issued a stop work order? 23 A. I don't know. 24 Q. Did you know that the county had issued a stop 25 work order?	1 I said, I'm not -- the whole thing runs 2 together. 3 Q. Uh-huh. 4 A. There was a continuous sequence amount of 5 activity. I can't tell you what amount of 6 time that was over. 7 Q. So it could have been six months, it could 8 have been six days? 9 A. I don't think it was six months and it wasn't 10 six days. 11 Q. So -- 12 A. I mean, we're probably -- we're probably 13 talking in the timeframe of like one to three 14 months, somewhere in there. 15 Q. And when you first started taking photographs 16 in July of 2018, well I guess this -- you sent 17 me a number of photographs in a folder that 18 had silt on it, it was titled silt, do you 19 remember that folder? 20 A. Right. 21 Q. Okay. The first photograph that shows silt in 22 the -- in the creek is November the 2nd of 23 2018. 24 A. And to be clear on that title, the subpoena 25 was extremely open-ended.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
ROA0789

3/25/2022

PAUL SHEARER

Page 89	Page 91
1 Q. Uh-huh. 2 A. In so much that I considered getting a quash 3 because there were things that were not 4 defined. One of them was the word disputes. 5 And I asked about the nature of disputes and I 6 was -- basically got back a non-answer that 7 said, well, just whatever disputes that you 8 happen to be aware of. So I went through and 9 I categorized what I thought the disputes were 10 and that's where that silt folder came in, is 11 anything that might be related to silt got put 12 into that folder as a result of the subpoena. 13 Q. Okay. And we had a series of -- we've always 14 had a nice relationship? 15 A. Sure. 16 Q. I mean you called me back immediately, we've 17 talked a couple of times. I accidentally called 18 you a couple of days ago, didn't mean to -- 19 A. Right. 20 Q. -- but you called me back and I appreciate 21 that. And we've emailed back and forth, 22 correct? 23 A. Correct. 24 Q. And we even talked about we tried to get your 25 depositions set but then just a lot of things	1 I understand from our conversation, you know 2 about this case and it's about the sediment 3 that came out of the Cades' -- came from the 4 Cades' property after it was cleared, after it 5 was cleared onto your property and then onto 6 Suzy's property but you do not know the extent 7 of the impact. If you agree with that, please 8 respond to this email so that I don't need to 9 take your deposition. And my response was, 10 this is an accurate representation of our 11 conversation. 12 Q. And do you stand by that? 13 A. I do. 14 Q. Okay. 15 A. And it's like I've told both attorneys all 16 along, I don't think I have any specifics that 17 are really in dispute by anybody. There was 18 sediment that went across my property, went 19 into the culvert and presumably out the other 20 side. Shortly after complaints were made to 21 the Cades about it, they put up silt fences. 22 Q. But you don't know how bad the damage is on 23 Suzy's property? 24 A. I don't. 25 Q. Okay.
Page 90	Page 92
1 happened? 2 A. Right. 3 Q. We've never had your deposition until just 4 earlier today, right? 5 A. Correct. 6 Q. And do you remember when we exchanged emails 7 about kind of what, what this case is about, 8 just so I understood from your perspective 9 what this was about? 10 A. Sure. 11 Q. Okay. Can you, I'm handing you this document, 12 is that the email exchange? 13 A. Yes, that is. 14 Q. And can you please read for the record my 15 email to you and then my your response? 16 A. Sure. It says thank you for our call this 17 morning. As I understand our conversation, 18 you -- 19 Q. I'm sorry. Can you start, just so everybody 20 knows who is writing here? 21 A. Sure. 22 Q. So this is an email from me to you? 23 A. Correct. 24 Q. Okay. 25 A. Paul, thank you for our call this morning. As	1 A. And I understand that there are several 2 engineers that have been brought out to do 3 that assessment. 4 Q. Uh-huh. And obviously you rely on them? 5 A. I certainly wouldn't rely on mine. 6 Q. Okay. All right. Talking about the culvert 7 just briefly, there were lots of questions 8 about that. Just so everybody is clear, there 9 are obviously two sides to the culvert, one on 10 your property and one -- 11 A. Correct. 12 Q. -- on Suzy's property, correct? 13 A. Correct. 14 Q. And the last time that you really looked at 15 this 24-inch culvert on your property was two 16 to three years ago? 17 A. Correct. 18 Q. And it was at that time that you got a shovel 19 in there and you were able to dig out four or 20 five feet? 21 A. No. That would have been before that. 22 Q. Okay. 23 A. This would have been the same time where I had 24 talked about trying to go onto Suzy's side and 25 dig out her side.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0790

3/25/2022

PAUL SHEARER

Page 93

1 Q. Okay. And just to be clear, that event was
 2 ten to 15 years ago?
 3 A. That's correct.
 4 Q. So sometime when Mrs. -- Mr. Garland passed
 5 away in 2012, so sometime when he was still
 6 alive, you tried to unclog the pipe and you
 7 said that you couldn't find the other end
 8 because it was completely buried?
 9 A. Correct.
 10 Q. And do you remember that -- so as I understand
 11 it, you had -- you were concerned about
 12 drainage on your property?
 13 A. Correct. Basically water backing up on my
 14 property because it wasn't flowing through
 15 the, through the culvert.
 16 Q. And so what you're saying is more than ten to
 17 15 years ago, you went over there and spent an
 18 hour trying to dig out the other side and
 19 couldn't find it?
 20 A. Correct. And that's because the water was
 21 bubbling up and it was falling back in as fast
 22 as I could pull it out.
 23 Q. Okay. Now, there was some discussion about
 24 whether water was flowing freely or non-
 25 freely. Do you remember that?

Page 94

1 A. I do.
 2 Q. And water is obviously flowing through that
 3 pipe, right?
 4 A. Yeah. Water is coming out the other end of
 5 the pipe.
 6 Q. Okay. And there's water with sediment in it
 7 which is coming out the other end and has been
 8 since the Cades cleared their property, right?
 9 A. I mean, I would assume so.
 10 Q. Okay.
 11 A. Because I have seen sediment go into the pipe.
 12 Q. Okay.
 13 A. And just to be clear, on the comment about the
 14 sediment going into the pipe, this is in
 15 reference to when all of that work initially
 16 happened --
 17 Q. Uh-huh.
 18 A. -- is when I had observed that going in.
 19 Q. Uh-huh. When, like after the Cades cleared
 20 the property?
 21 A. Correct.
 22 Q. Kind of in between the clearing and then the -
 23 -
 24 A. And the grass.
 25 Q. -- and the stabilization?

Page 95

1 A. Yes.
 2 Q. Okay.
 3 A. The grass and the silt fences.
 4 Q. And you don't recall, you've never gone down
 5 to Suzy's property to see what it looks like
 6 when there's sediment in it?
 7 A. Not that, not that I recall.
 8 Q. Okay.
 9 A. And that's not to say that I haven't, but I
 10 have no recollection of that.
 11 Q. And have you seen photographs of Suzy's
 12 mudding pond?
 13 A. I think she showed me photographs before when
 14 her and I were over at Mark's, Mark's before
 15 he moved.
 16 Q. And have you seen videos of Suzy's muddy pond?
 17 A. I don't think I've seen videos.
 18 Q. Okay.
 19 A. I think I've seen photos.
 20 Q. And it looks muddy, right?
 21 A. And it looked muddy.
 22 Q. Thank you very much. I don't have anymore
 23 questions. Mr. Moore probably has some
 24 questions on direct-examination. I appreciate
 25 your time.

Page 96

1 A. No problem.
 2 Q. I hope you have a safe trip.
 3 A. Thank you.
 4 MR. MOORE: I'll ask Mr. Dougall, do you have
 5 any?
 6 MR. DOUGALL: I have none.
 7 RE-DIRECT EXAMINATION BY MR. MOORE:
 8 Q. I have just one or two more, Paul.
 9 A. Sure.
 10 Q. I understand there were three hurricanes, two
 11 of which resulted in significant flooding.
 12 There was one in 2015 and then there were two
 13 in 2018. And from a timeline standpoint, the
 14 Cades bought their property in either late
 15 2017 or 2018.
 16 A. All right.
 17 Q. If the -- if the time when the berm blew out
 18 was 2015, any damage that had been done to Ms.
 19 Garland's pond from that would have been done
 20 long before the Cades even moved out there,
 21 wouldn't it?
 22 A. That's correct.
 23 Q. And if it was the 2018, I believe it was
 24 Hurricane Florence that also flooded, both the
 25 2015 and 2018 hurricanes were listed as 1,000

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0791

3/25/2022

PAUL SHEARER

Page 97

Page 99

1 year floods. So you have two floods like
 2 that, 1,000 year floods, in about three years.
 3 If it was the 2018 flood, whatever damage was
 4 done to Ms. Garland's pond from the berm
 5 blowing out in 2018, that would have been done
 6 by the flood.
 7 A. So there's only one time that I've seen the
 8 berm blow out.
 9 Q. Right. And you don't know if that's 2015 or
 10 '18?
 11 A. It was the one where significant portions of
 12 Columbia were under water. Where houses were
 13 completely submerged.
 14 Q. That's 2015.
 15 A. Okay. It was 2015 then.
 16 Q. So then if that's the case, any of the damage
 17 that has been done to Ms. Garland's pond, if
 18 any, by the blowout would have been done
 19 before the Cades even owned their property?
 20 A. Yeah. Any, yeah, anything associated with
 21 that for 2015 would have been.
 22 Q. All right. Now, counsel asked you something
 23 about mass grading of the Cades' property. As
 24 I understand it, the Cades replaced the core
 25 of the dam and made it safe?

1 A. Right. In terms of changing the elevation of
 2 the land, no. Nothing happened that I'm aware
 3 of.
 4 Q. So did the Cades ever do anything that you saw
 5 that would change the natural water flow of
 6 the land from their property towards Davis
 7 Road?
 8 A. No, other than just the removing of the trees
 9 themselves.
 10 Q. That wouldn't change the topography as far as
 11 --
 12 A. No, it wouldn't have changed the topography,
 13 they were a water sink though.
 14 Q. Okay. But it's agricultural property and
 15 people clear that from time to time.
 16 A. Sure.
 17 Q. You didn't call the authorities or think there
 18 was anything wrong with that, did you?
 19 A. No. It was his property.
 20 Q. Yeah. Now, counsel asked you about this stop
 21 work order. Did you know the stop work order
 22 was lifted the day after it was issued?
 23 A. Yeah. I heard that from Robert.
 24 Q. Right. And you've talked about this sediment
 25 that goes into the pipe. Some of it comes

Page 98

Page 100

1 A. Right.
 2 Q. And they cut down some trees?
 3 A. Right.
 4 Q. And their land was flat, right?
 5 A. Right.
 6 Q. And they had the stumps --
 7 A. Removed.
 8 Q. -- removed by basically a bulldozer pushing
 9 them up?
 10 A. Right.
 11 Q. Then they filled in the holes?
 12 A. Right.
 13 Q. Other than pushing up the stumps and filling
 14 in the holes, was there any type of mass
 15 grading out there?
 16 A. So by grading, do you mean changing the --
 17 Q. Topography.
 18 A. -- the topography of the land?
 19 Q. Yeah. Did they change the topography?
 20 A. No, no. I took the previous term just to mean
 21 that everything had been clear cut.
 22 Q. Right.
 23 A. Clear cut and the stumps removed.
 24 Q. Stumps removed and the land was immediately
 25 grassed?

1 from the road scraping.
 2 A. Right.
 3 Q. But there's been sediment going into that pipe
 4 for years before the Cades ever came out
 5 there, right?
 6 A. Sure. And what I was specifically referring
 7 to with the sediment going in was the period
 8 of time initially after that had all been
 9 clear cut and the stumps had been moved out.
 10 Q. There was --
 11 A. That was atypical.
 12 Q. Yeah, that was what, a very short period of
 13 time that it stayed like that?
 14 A. Right.
 15 Q. And there would have been --
 16 A. More than two weeks, less than six months.
 17 Q. All right. But for years there's been
 18 sediment going into that pipe going onto Ms.
 19 Garland's property and going into her pond if
 20 water flows like it normally flows?
 21 A. I would say so, yes.
 22 Q. Okay. If the pipe, this might be a question I
 23 ought not ask, but I'm going to ask it anyway
 24 --
 25 A. Feel free to object.

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com

ROA0792

3/25/2022

PAUL SHEARER

Page 101

1 Q. If the pipe is already half filled with silt
2 like you've testified, how would anymore silt
3 get through it?
4 A. I would suppose the pressure of the water. So
5 the more silt there is, the more water that's
6 going to build up on my side. The more water
7 that builds up, the more pressure there is
8 pushing against it.
9 Q. But that comes from basically water being
10 impounded and damming. Was there anymore
11 impounded water during that period of time
12 that the Cades were trying to fix their
13 property?
14 A. There was.
15 Q. A lot?
16 A. A fair bit when they first did the clear-
17 cutting.
18 Q. Sure. But that was mostly water, wasn't it?
19 A. I'm not sure I understand the question.
20 Q. That's okay. It was pretty much, when they
21 put the grass in, grass grew and then
22 everything went back to normal?
23 A. Correct.
24 Q. All right. Nothing further, thank you.
25 RE-CROSS EXAMINATION BY MR. BELSER:

Page 102

1 Q. Just one question. So I think you used the
2 expression a water sink. Did I hear you?
3 A. Right.
4 Q. And then so what you're talking about is that
5 the Cades property is water sink and then the
6 outlet, it kind comes down where that, the
7 sinkhole --
8 A. Oh, no. And just to be clear, I was saying
9 that the trees were a water sink. So you get
10 rain coming in, the trees are going to be
11 soaking up a lot of that rain. That's what I
12 meant by a sink.
13 Q. Oh, okay. And so when the, based on your
14 experience out there, when it was -- when the
15 trees were -- when it was a wooded area, that
16 vegetation soaked up a lot of the water that
17 fell?
18 A. Yeah. That's my supposition.
19 Q. Okay. And we talked, you looked at this topo
20 thing earlier and you said you don't know how
21 to read it, but do you see where the numbers
22 are on there?
23 A. I do.
24 Q. Okay. And you see the 194 right at the corner
25 of your property?

Page 103

1 A. Right.
2 Q. And then you see the 224 line that is up on
3 the Cades' property right here?
4 A. Right.
5 Q. And that follows that line right there and
6 then it keeps going up, that's not flat. I
7 mean, that's like a 30-foot, I mean it's a
8 hill that comes right down there, right?
9 A. Right.
10 Q. Okay.
11 A. Well, it's -- it's flat, it's not level. And
12 by flat, I mean it's kind of consistent.
13 Q. It's sloped.
14 A. Right. It's a consistent slope.
15 Q. Okay. But it's not like level?
16 A. Yeah.
17 Q. I got what you're saying. No further
18 questions.
19 RE-DIRECT EXAMINATION BY MR. MOORE:
20 Q. All of the property in that watershed slopes
21 down towards Ms. Garland's pond, doesn't it?
22 A. It does.
23 Q. All right, thank you.
24 (There being nothing further, the video deposition
25 concluded at 12:02 p.m.)

Page 104

CERTIFICATE

1 Be it known that I, Mary H. Occhipinti, do
2 hereby certify that PAUL SHEARER appeared before me and
3 I took the foregoing deposition at the time and place
4 aforesaid by means of stenomask with backup; that I was
5 then and there a notary public in and for the State of
6 South Carolina and that by virtue thereof, I was duly
7 authorized to administer an oath; that the witness was
8 by me first duly sworn to testify the truth, the whole
9 truth, and nothing but the truth.
10 I further certify that the foregoing
11 transcript represents a true, accurate and complete
12 transcript of said deposition. This transcript may
13 contain quoted material; said material is transcribed as
14 read or quoted by the speaker.
15 I further certify that I am neither employed
16 by nor related to any of the parties in this matter nor
17 their counsel; nor do I have any interest, financial or
18 otherwise, in the outcome of this action.
19 Witness my hand and seal this 27th day of
20 March, 2022.
21
22

Mary H. Occhipinti
Notary Public for South
Carolina
My Commission Expires:
10/8/2030

MARY H. OCCHIPINTI, COURT REPORTER

75 Rocky Cove Road, Lexington, SC 29072 / (803)730-1661 / occhipintimary@gmail.com
ROA0793

March 29, 2022

Judge McCaslin,

I regret to inform you I cannot be impartial during this trial.

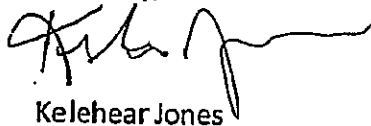
Yesterday, I thought this case had to do with South Congaree, while I was wrong, I continued to feel like there was some sort of connection to this case.

In 2020 my Father-in-law ran for reelection as Mayor of South Congaree. Last night, I went to my Father-in-law's former Facebook Campaign page and clicked the comments and sure enough, there was Robert Cade. Mr. Cade's stark and persistent opposition to my Father-in-law's campaign was so intense that I do not believe I could give him a clean slate mentally for this trial.

I wish I could have confirmed this sooner but I did not have my phone in court yesterday. While I still have never spoken to or seen Mr. Cade until yesterday, his online presence was one left to be desired.

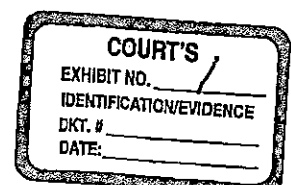
I apologize for this inconvenience.

Sincerely,



Kelehear Jones

Juror 105



Judge McCaslin

URGENT

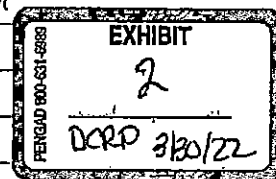
176 JUROR

BAD STOMACH
RUNNING -

STARTED YESTERDAY

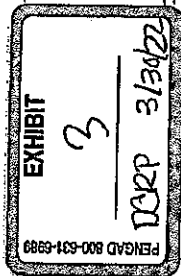
WORSE TODAY

JUST NERVOUS
SOMETHING MIGHT
HAPPEN



JUROR #25 - ^{DRIVE} Michael Butler

I'm currently going thru
a nasty divorce & I have
a 5 year old daughter that
attends Lake Murray Elementary
& One of my custody nights
is Tonight. My normal schedule
is to pick her up at 5pm @
LMEs. I have to drop her off
at her mothers in Gilbert by 7:30pm
If I leave late again today It
may affect my custody case!
Thankks Judge.



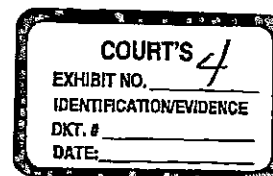
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Suzan Garland,	)	Case No: 2019-CP-32-01442
	)	
Plaintiff,	)	
	)	
v.	)	
	)	VIDEOCONFERENCE
Robert Cade and	)	DEPOSITION OF
Christy Cade,	)	
	)	Suzan M. Garland
Defendants	)	

Date: Tuesday, March 9, 2021

Time: 10:03 a.m.

Location: Via Remote Videoconference for All Parties

Reported by:
Darlene Pastel, CVR-CM



ORIGINAL

REMOTE APPEARANCES

For the Plaintiff: H. Freeman Belser, Esq.
Belser & Belser, P.A.
Columbia, South Carolina

For the Defendants: S. Jahue Moore, Esq.
Moore Taylor Law Firm, P.A.
West Columbia, South Carolina

Thomas F. Dougall, Esq.
Dougall & Collins
Elgin, South Carolina

INDEX

Stipulations:	3
Examination by Mr. Moore:	3
Examination by Mr. Dougall:	45
Reexamination by Mr. Moore:	48
Examination by Mr. Belser:	50

EXHIBITS

(No exhibits were marked during the deposition.)

1 STIPULATIONS

2 It is stipulated by and between counsel for the
3 respective parties that all objections are reserved
4 until the time of trial, except as to the form of
5 the questions.

6

7 The reading and signing of this deposition is
8 reserved by the deponent and counsel for the
9 respective parties.

10 Whereupon,

11 Suzan M. Garland, being duly sworn and cautioned to
12 speak the truth, the whole truth, and nothing but
13 the truth, testified as follows:

14 EXAMINATION

15 BY MR. MOORE:

16 Q What is your name?

17 A Suzan May Garland.

18 Q How old are you?

19 A 81.

20 Q Ms. Garland, my name is Jake Moore, and I'm about
21 to take your deposition. Do you know what a
22 deposition is?

23 A Yes, I do.

24 Q What is it?

25 A You're going to question me.

1 Q That's part of it. All right. I'm going to
2 question you. And what else?

3 MR. BELSER: Jake, just ...

4 MR. MOORE: I don't need instructions
5 throughout the deposition. I've done it before.

6 A Regarding a civil suit.

7 Q (MR. MOORE) My job is to ask questions. What's
8 yours? What's your job?

9 A To answer your questions.

10 Q That's exactly right. Now, many times people start
11 telling me about things I don't ask about. And
12 please assume if I don't ask about it, I don't want
13 to know about it. Okay?

14 A Okay.

15 Q So I -- you have a right to fully explain your
16 answers. But please don't tell me about things
17 that I don't ask you about. Okay?

18 A Okay.

19 Q Now, the court tells me that I've got to tell you
20 some things. We've been so bad to each other in
21 depositions the court has actually gotten involved,
22 your lawyer is entitled to make what's known as
23 nonspeaking objections. Unless he tells you not to
24 answer a question, you ignore anything he says and
25 just answer what I ask you. Do you understand?

1 A Yes.

2 Q If you have a question about a question, ask me,
3 not him. Okay?

4 A Yes.

5 Q Do not talk to anybody about your testimony until
6 this deposition is over except me and Mr. Dougall
7 and then when it's your lawyer's turn if he wants
8 to ask questions. Okay?

9 A Yes.

10 Q Now, have you ever been involved in a lawsuit
11 before?

12 A Yes.

13 Q Who all have you been involved in suits with?

14 A It was a construction company.

15 Q Just one other lawsuit?

16 A Yes.

17 Q Did they sue you, or did you sue them?

18 A We sued them.

19 Q You say "we." Who is we?

20 A My husband and I.

21 Q What did you sue them for?

22 A They didn't get permits to do work and their -- all
23 of their work was denied. They -- when the
24 inspectors came, they said that they had violated
25 all the codes.

1 Q Did you go to court with them?

2 A It was settled out of court.

3 Q How long ago was that?

4 A Probably 30 years ago.

5 Q Have you ever been to any other courtroom before to

6 testify?

7 A No. I was -- I testified in a federal courthouse

8 in Boston in the '60s.

9 Q What was that about?

10 A I was in a bank when it was held up, and I

11 identified the robber.

12 Q Now, are you married?

13 A I'm a widow.

14 Q When did your husband die?

15 A March 15, 2011.

16 Q Do you want to take a minute and get yourself

17 together?

18 A I'm all right.

19 Q You ready?

20 A Yes.

21 Q Who owns the piece of property that you presently

22 live on?

23 A I do.

24 Q How long have you lived there?

25 A 35 years.

1 Q Is there a pond on your property? ..

2 A Yes, there is.

3 Q What do you use it for?

4 A Fishing, pleasure. It's my front yard. My husband

5 used to swim in it. I don't swim in it. We boat

6 on it. We have a little jon boat.

7 Q Do you fish in it?

8 A Yes. Used to.

9 Q My question is: Do you do it now?

10 A I don't know if there's any fish left in it.

11 Q Well, how long has it been since you tried to fish

12 in it?

13 A I think about a year ago.

14 Q And you say you don't know if there are fish in it

15 or not?

16 A I can't see through the water anymore. I used to

17 be able to see the bream beds and the bass. And

18 now I can't see because the water is all murky.

19 Q Well, when you said you don't know if there are

20 fish in it or not, what did you mean by that?

21 A I can't see them. I used to be able to see them.

22 Q I see. Now, how many acres do you own out there?

23 A I think it's a little over 13.

24 Q Is this agricultural property?

25 A Some of it's agricultural. I don't know. It

1 was -- we applied for the Homestead Act and --
2 because we grow our own vegetables and we cut wood
3 for our -- to heat with, it's considered
4 agricultural property, yes.
5 Q So I guess the answer to my question is yes?
6 A Yes.
7 Q So your property is agricultural. How about my
8 clients' property? Is it agricultural?
9 A Whose property?
10 Q My clients' property?
11 MR. BELSER: The Cades' property.
12 A Oh, your clients' property. I don't know.
13 Q (MR. MOORE) So you don't know if my clients'
14 property is agricultural or not. You just don't
15 know?
16 A He said in his deposition it is. I don't know.
17 Q I'm just asking you, ma'am, what you know, not what
18 he said. So you don't know --
19 A I don't know --
20 Q You don't know; right?
21 A Right.
22 Q How much land do the Cades have?
23 A I think it's somewhere around 40 acres.
24 Q Do you know Mr. Paul Shearer?
25 A Yes.

1 Q Does he have any land out that way?

2 A Yes.

3 Q Is his property agricultural?

4 A I don't know.

5 Q All right. Well, let's talk half a minute about my

6 clients' property. You're familiar where my

7 clients' property is; correct?

8 A Yes.

9 Q Does my clients' property adjoin your property?

10 A No.

11 Q How far would the closest property line of my

12 client be to your property?

13 A I wouldn't have a clue.

14 Q It's a pretty good ways, isn't it?

15 A I would guess at the closest point probably it's

16 only 100, 150 feet.

17 Q All right. How far would my clients' property line

18 be from your pond?

19 A I don't know.

20 Q Probably be at least another 150 feet, wouldn't it?

21 A Yes.

22 Q How far is your pond from your property line?

23 A I don't know that either.

24 Q Well, do you know where something called Davis Road

25 is?

1 A Yes. It's Davis Drive, not Davis Road. There is a
2 Davis Road.
3 Q Davis Drive.
4 A That is correct.
5 Q Does your property adjoin Davis Drive?
6 A Yes.
7 Q Is your house on Davis Drive?
8 A Yes.
9 Q So your address is Davis Drive?
10 A Yes.
11 Q How long has Davis Drive been a dirt road?
12 A Ever since -- I don't -- I don't know. It's been a
13 dirt road ever since I've lived there.
14 Q Who maintains Davis Drive?
15 A The County.
16 Q Does the County scrape it?
17 A Yes.
18 Q How often does the County scrape it?
19 A I don't know. They do it on an irregular basis.
20 Q Is it a one-lane dirt road or a two-lane dirt road?
21 A Mostly a one-lane. In some areas, it's wide enough
22 for two vehicles. In many, it's only wide enough
23 for one.
24 Q Well, where it adjoins your property, is it one
25 lane or two lanes?

1 A It's pretty narrow there. Because there's a
2 drainage ditch on the opposite side of the road.
3 Q Yes, ma'am. Let me ask you this question. When
4 they scrape Davis Road, do they use a motor grader
5 to do that? scraper?
6 A They use a grader.
7 Q And as I understand it, it scrapes the road level
8 and throws dirt up on either side of the road;
9 right?
10 A On the opposite side of the road, they make a
11 ditch. On my side of the road, there's a berm.
12 Q Well, when they scrape the road, do they put any
13 dirt on the berm?
14 A Yeah, it usually comes -- not over the top. It
15 just kind of scrapes along the berm.
16 Q Well, there's a berm on your side of the road; is
17 that right?
18 A Yes.
19 Q Does it go all along Davis Drive on your property?
20 A Yes.
21 Q What does that berm do?
22 A Prevents any water going onto my property.
23 Q Right. So that berm basically prevents water from
24 coming off of Davis Road onto your property; right?
25 A That's correct.

1 Q So then any water coming off of Davis Road can't
2 get onto your property, can it?

3 A No.

4 Q So then really the only way water can get onto your
5 property is to come through that pipe, isn't it?

6 A That's correct.

7 MR. DOUGALL: Jake, may I interrupt for just
8 a second. We keep changing back and forth from
9 Davis Drive to Davis Road.

10 MR. MOORE: I'm sorry. I'm referring to it
11 as Davis Road. It's Davis Drive. You're correct.

12 Q (MR. MOORE) Ma'am, now, as I understand it, there
13 is a creek on -- there's a creek there that runs on
14 Mr. Shearer's property, isn't there?

15 A Yes. That's where the creek comes down from
16 Cades' property onto Shearer's property under the
17 road and fills my pond.

18 Q That berm that you got over there on your side that
19 runs all along Davis Drive that keeps water from
20 the road onto your property, is it made of sand?

21 A Sand and clay, what's in the road.

22 Q Well, ma'am, when it rains, how do you keep
23 property from running off the berm down towards
24 your pond?

25 A Well, it's been there for years. There's stuff

1 growing on it.

2 Q Right. Well, how do you keep water from -- how do
3 you keep that sand from coming off the berm into
4 your pond? Is it the vegetation?

5 A I would guess.

6 Q Well, is that your understanding? The vegetation
7 on the berm keeps the berm dirt from running into
8 your pond?

9 A Yes.

10 Q All right. And vegetation will do that, won't it?

11 A Yes.

12 Q Now, I want to go back to the other side of the
13 road on Mr. Shearer's property. That side is lower
14 than Davis Drive, isn't it?

15 A I don't know.

16 Q Well, ma'am, your side is higher because of the
17 berm, and his side is lower.

18 A Oh, you're talking about the berm on the road.

19 Yes.

20 Q All right. So, basically, then Davis Drive keeps
21 water from coming off of Paul's property into the
22 road, doesn't it? Because it's built up; right?

23 A I guess.

24 Q Well, ma'am, you've lived out there for 35 years;
25 correct?

1 A It's a dead-end road. I very seldom ever turn
2 right to go up -- to the dead-end road.

3 Q Well, ma'am, Mr. Shearer's property, is it higher
4 than Davis Drive, like yours with the berm? Or is
5 it lower than Davis Drive where it adjoins?

6 A I don't know.

7 Q Well, you've already told us that water can't get
8 off of Davis Drive onto your property because of
9 the berm; right?

10 A That's correct.

11 Q So the only way that water can get off of Paul's
12 property is to come through a pipe; right?

13 A No. He put in French drains, and they have made a
14 big ditch that goes down the opposite side of the
15 road that drains his property. Because he had
16 trouble with his septic tank and drainage on his
17 property.

18 Q Who did that? Paul did that?

19 A I have no idea who he hired. He told us that he
20 had put in French drains.

21 Q Well, those French drains are on Paul's property;
22 right?

23 A Yes. And they go down the ditch on the opposite
24 side of the road.

25 Q When you say "the opposite side of the road," on

1 his side or on your side?

2 A On his side.

3 Q All right. So the French drain is on the side of

4 the road; correct?

5 A That's correct.

6 Q And the ditch he dug or had dug is on his side of

7 the road; right?

8 A That's right.

9 Q Does that ditch dump any water onto your property?

10 A No. That ditch goes down into the stream from the

11 pond that he now owns that drains into the

12 Campbells' property.

13 Q All right. So we do know then that there is no

14 water from Paul's property coming onto your

15 property except the water that comes through the

16 pipe; right?

17 A Except the water that comes down the spring that

18 feeds my pond.

19 Q Well, is that spring -- is that on your side of the

20 road or is that on Paul's side of the road?

21 A It's on Paul's side of the road.

22 Q All right. Well, how does water get off of Paul's

23 property onto your property?

24 A It goes down the French drains and down the ditch.

25 Q Well, are you telling me that you can get silt out

1 of a French drain?

2 A I have no idea.

3 Q You don't have any idea. Okay. Well, let me ask
4 you this. We know that you got the berm that goes
5 all the way down your property. And we know that
6 Paul's property is lower than Davis Drive. We know
7 that Paul has got a ditch, but that ditch diverts
8 water onto somebody else's property; right?

9 A That's correct.

10 Q Now, how long has Paul had that ditch there?

11 A I don't know.

12 Q Has it been there more than two years?

13 A I really don't know when he put the French drains
14 in.

15 Q Has the ditch been there more than five years?

16 A I don't know.

17 Q Was the ditch there when we had the two hurricanes?

18 A I don't know that either.

19 Q Was the ditch there before the two hurricanes came
20 through?

21 A I don't know.

22 Q Well, one thing we do know, though, is that because
23 of the ditch the runoff from Paul's property goes
24 to somebody else's property; right?

25 A That's correct.

1 Q Now, I want to make sure I understand what we have
2 here. We know that you have a pond; right?
3 A Yes.
4 Q How big is that pond?
5 A I think it's a little over 2 acres.
6 Q And there is a distance of -- a decent amount of
7 distance between Davis Drive and your pond; right?
8 A Yes.
9 Q And that area between Davis Drive and your pond, is
10 it vegetated?
11 A There's a wetland above my pond.
12 Q Is it vegetated? Is there something growing there?
13 A I don't understand the question.
14 Q All right. On your property, between your pond and
15 the road, is there any vegetation?
16 A There is a wetland.
17 Q Well, I know it's wetlands. But things can grow in
18 the wetlands. There are plenty of things --
19 A Yes. It's a vegetated wetlands.
20 Q Good. That's all I wanted to know. So we know the
21 area between your pond and Davis Drive, at least
22 for a part, contains vegetated wetlands; right?
23 A That's correct.
24 Q Is that vegetated wetland silted in?
25 A Yes.

1 Q So I can go out there now in the vegetated wetlands
2 and I can see silt?

3 A Yes.

4 Q Well, ma'am, if water doesn't run onto your
5 property off of Paul's property, where is all that
6 silt coming from?

7 A Mr. Cade's property.

8 Q How does it get there? I mean, Mr. Cade's property
9 is on the other side of Davis Drive; right?

10 A That's correct.

11 Q And we know that Davis Drive blocks water from
12 getting on that side of the road onto your side of
13 the road; right?

14 A There's a culvert that feeds my pond from the
15 stream from Cades' property.

16 Q Yes, ma'am. That culvert is about a 6-inch pipe,
17 isn't it?

18 A I think it's larger than that. I think it's an 8-
19 or 10-inch.

20 Q All right. Let's say it's an 8- or 10-inch pipe.
21 The only way that water can get on the Cades' -- on
22 your property from the Cades' side of the property
23 is through that pipe; correct?

24 A That's correct.

25 Q All right. So whatever siltation you claim existed

1 into your pond came through that pipe; right?

2 A That's correct.

3 Q Is there any silt in the pipe?

4 A I don't -- I wouldn't know.

5 Q You've looked, haven't you?

6 A No.

7 Q Well, ma'am, if siltation is coming through the

8 pipe, you would expect for the pipe to be silted,

9 too, wouldn't you?

10 A Not if it's coming through at a very high flow. It

11 would all wash through, which I have filmed and we

12 have evidence of.

13 Q So you have evidence of water coming through a

14 pipe; right?

15 A That's correct.

16 Q How long has water flown through that pipe onto

17 your wetlands and then into your pond, to feed your

18 pond?

19 A For 35 -- well, ever since the pond has been built.

20 Q When was the pond built?

21 A I believe the Davises told me that when Mr. Davis,

22 who originally owned all that property -- was the

23 one that built the dams and the ponds, of which

24 there are three -- he owned all that property.

25 And that pond has been there, I would guess,

1 more than 50 years.

2 Q When you say that the pipe on Paul's side of the
3 road "feeds your pond," what do you mean by that?

4 A The pond has been spring-fed from the spring
5 that --

6 Q Okay. You said a moment ago that that pipe that
7 comes under Davis Drive "feeds your pond." What do
8 you mean by that?

9 A That's where the source of water for my pond comes
10 from.

11 Q You need that water in order for you to keep a pond
12 there, don't you?

13 A That's correct.

14 Q So the water runs off of Paul's property through
15 the pipe into your pond to feed your pond; right?

16 A The source of the water is not Paul's property.

17 Q I didn't ask you where the source was, ma'am. I
18 asked you if the water came off of Paul's property
19 through the pipe to feed your pond. Is that true?

20 A I guess it does.

21 Q And you need that water to feed that pond, don't
22 you?

23 A That's correct.

24 Q Because you want that pond to keep water in it;
25 right?

1 A That's correct.

2 Q You don't object to that water that comes off of

3 Paul's property into your pond, do you?

4 A I want to have my pond.

5 Q So you like to have your pond. So you don't object

6 to water coming off of Paul's property to feed your

7 pond, do you?

8 A Clean water, no.

9 Q All right. Well, let's make sure we understand

10 what's between your pond and my clients'

11 agricultural property. Let's just start with your

12 pond. Okay? We know that pond is there. How big

13 is it?

14 A A little over 2 acres.

15 Q You have a 2-acre pond. Then between your pond and

16 Davis Road there is a vegetated wetlands area;

17 right?

18 A That's correct.

19 Q And like you told me, vegetation can basically

20 filter silt; right? You already told me that.

21 Right?

22 A That's correct.

23 Q Then we have a berm which keeps water off of your

24 property from Davis Road, and that's vegetated,

25 too; right?

1 A Yes.

2 Q Then we have Davis Road, which is the road
3 everybody uses for access; right?

4 A Right.

5 Q Then on the other side, we have Paul's property;
6 right?

7 A That's correct.

8 Q And that property has some pretty heavy vegetation
9 on it, too, doesn't it?

10 A Yes, it does.

11 Q Does Paul live over there?

12 A Yes.

13 Q And he has trees and underbrush and all sorts of
14 growth on his property; right?

15 A That's correct. It's a heavily wooded wetland.

16 Q Yes, ma'am. It's a heavily wooded wetlands on
17 Paul's property.

18 A That's correct.

19 Q How wide is Paul's property?

20 A How what?

21 Q Wide.

22 A I don't know. I think his property originally,
23 before he bought the other piece, was like 4 acres
24 altogether.

25 Q And then you get to my clients' property; right?

1 A Yes.

2 Q So for water to get into your pond from my clients'
3 property, it's got to go through my clients'
4 property onto Paul's property, through Paul's
5 property into Paul's ditch, into the culvert,
6 through the culvert, into the wetlands, and then
7 into your pond; is that correct?

8 A It goes through Paul's wetland under the road into
9 my wetlands and then my pond.

10 Q Is what I said true?

11 A I don't know. Your question was very confusing.

12 Q Well, I'm going to ask it so you're not confused.
13 So let's start over again.

14 The water, in order to get to Paul's property,
15 has got to come from the Cades' property; right?

16 A Yes.

17 Q Then if the water is coming onto your land, it's
18 got to go across a heavily vegetated wetland that
19 belongs to Paul; right?

20 A That's correct.

21 Q Then it's got to go into a ditch that Paul built;
22 right?

23 A No, no. Paul's ditch is on the other side of his
24 house. It's on the left-hand side of his house and
25 goes down -- there is no ditch where it goes under

1 the road.

2 Q Well, does the ditch direct water to the pipe that

3 goes under the road?

4 A No.

5 Q All right.

6 A It directs water to the -- down beyond --

7 Q Well, is there a ditch --

8 A There is no ditch --

9 Q Wait a minute. Let me finish asking the question.

10 Does Paul's ditch run parallel to Davis Drive?

11 A Yes, it does.

12 Q And you've told me it runs all the way down the

13 property.

14 A It runs down one side of his property.

15 Q Parallel to the road; correct?

16 A That's correct.

17 Q As a matter of fact, that ditch is right there and

18 adjoins the roadbed; right?

19 A That ditch what?

20 Q Adjoins the roadbed. You got the road and then the

21 ditch; right?

22 A That's right.

23 Q So all the water that goes into the ditch goes onto

24 somebody else's property; right?

25 A That's correct.

1 Q Well, now, how does my clients' water come across
2 Paul's property and then jump the ditch?

3 A It doesn't go anywhere near the ditch. It comes
4 down the stream that goes under the road onto my
5 property. The ditch is not anywhere near the
6 stream.

7 Q Oh, let me see if I understand now what you're
8 saying. That stream is actually a creek, isn't it?

9 A I don't know what you call it.

10 Q Well, I'm going to call it a creek. The creek runs
11 into the ditch, doesn't it?

12 A No.

13 Q Well, how is it possible that the creek doesn't run
14 into the ditch? Let me ask you this. Okay.

15 Now, you've told me that there's a stream or a
16 creek. The water in that stream or creek comes
17 from underground springs; right?

18 A Yes.

19 Q All right. Now, how do you know the water that
20 feeds that spring, that creek, comes from
21 underground springs?

22 A Back when my husband and I first bought the
23 property, we walked up and investigated.

24 Q So you now know that the water that gets into the
25 creek comes from springs; right?

1 A That's correct?

2 Q That's not runoff water. Spring water is not

3 runoff water, is it?

4 A No.

5 Q All right. So the water that gets into the creek

6 comes from the underground springs; right?

7 A That's correct.

8 Q And those underground springs -- that water gets

9 into the creek or the stream, goes down to the

10 culvert, and comes under the road?

11 A That's correct.

12 Q Truly, the water coming from that culvert is the

13 only water that can reach your property from Paul's

14 side of the road; isn't that true?

15 A That comes down the stream is the only water that

16 reaches my property, yes.

17 Q All right. Now, do you know if the Cades' property

18 drains into that creek?

19 A Yes.

20 Q All of it?

21 A I guess so.

22 Q Well, how much of the Cades' property drains into

23 the creek?

24 A I've never been on that property. So I don't know.

25 Q Well, is the creek silted?

1 A Yes. I've seen photographs of it.

2 Q How long has it been silted?

3 A Since the Cades bought the property and denuded it.

4 Q I see. Now, so we know that when it rains in

5 addition to the spring water, water goes into the

6 creek from the Cades' property; right?

7 A That's correct.

8 Q So for you to get any water from the Cades', the

9 water has to run onto their property; right?

10 A That's correct.

11 Q Then it has to go into the creek; right?

12 A That's correct.

13 Q Then it has to run onto Paul's property; right?

14 A That's correct.

15 Q Then it has to go into the culvert; right?

16 A Uh-huh.

17 Q Is that yes?

18 A Yes.

19 Q Then it has to go across your wetlands, vegetated

20 wetlands; right?

21 A That's correct.

22 Q And then into your pond?

23 A That's correct.

24 Q When the creek comes under the road onto your side

25 of the property, does it remain a creek?

1 A Yes.

2 Q All right. So we know the creek is designed to
3 carry water from Paul's property and from the
4 Cades' property; right?

5 A Yes.

6 Q And it's been doing that for years; right?

7 A That's correct.

8 Q Now, your vegetated wetlands area -- how big is
9 that?

10 A Probably a couple acres.

11 Q And the area on the Cades' property where the creek
12 runs, have they left a vegetated buffer anywhere
13 between the properties?

14 A Not in the photographs I've seen.

15 Q Would it surprise you to learn that there are trees
16 and all kinds of undergrowth for a right
17 significant way on their property?

18 MR. BELSER: Object to form. You can
19 answer.

20 Q (MR. MOORE) Would that surprise you to learn --

21 A Yes, it would.

22 Q Do you know that the creek where it runs on the
23 Cades' property runs through a vegetated area?

24 A It runs through Paul's property that's heavily
25 vegetated.

1 Q Well, it also runs through the Cades' property that
2 still has a heavily vegetated area, doesn't it?

3 A I don't know. I've never been on their property
4 since they bought it.

5 Q Well, if you don't know, how come you sued them?

6 MR. BELSER: Object to the form.

7 A Because the silt is coming from their property.

8 Q (MR. MOORE) Well, yes, ma'am. Now, have you seen
9 those videos y'all sent over here?

10 A Yes.

11 Q Have you listened to what you said on those videos?

12 A What I said on videos?

13 Q Right. Let me give you a quote I wrote down. You
14 say, "When Paul Shearer filled in the wetlands,
15 that's when the water started coming across" --

16 A I never said that.

17 Q Let me play it for you. I'm going to hit it, and
18 you can listen to it.

19 (Video clip played.)

20 MR. BELSER: Jake, it's really hard to hear
21 that.

22 THE DEPONENT: I can't hear it.

23 Q (MR. MOORE) Well, it says this -- it says, "When
24 Paul filled in the wetlands here, that's when it
25 started coming out across the God damn road."

1 A I never used that -- I don't know whose voice that
2 is.

3 Q It's yours. Y'all sent it to us. As a
4 conversation you were having.

5 Now, you said, "When Paul filled in the
6 wetlands here, that's when the water started coming
7 out over the God damn road." I'm assuming that
8 Davis Drive is what you were referring to as the
9 God damn road; is that right?

10 A I have no memory whatsoever of that conversation.

11 Q Well --

12 A When was that -- and when was it sent to you?

13 Q Well, it was sent to me in discovery. But I'm
14 happy -- were you not able to hear that?

15 MR. BELSER: Jake, it was really hard to
16 hear. If you can identify when it was, then I can
17 play it a little easier. Or maybe --

18 MR. MOORE: I don't know. It was one of the
19 videos y'all sent over here. I'll play it again.
20 I'll get it as close as I can to the machine so she
21 can hear it.

22 MR. DOUGALL: Freeman, while he's setting
23 that up, I don't have that discovery. Could you
24 send those videos to me?

25 MR. BELSER: Yeah, I'm not sure exactly what

1 videos he's talking about. But I will, yes.

2 MR. MOORE: Well, listen.

3 (Video clip played.)

4 Q (MR. MOORE) All right. You say, "Paul filled in
5 all this wetland here so now it's all coming out
6 over the God damn road."

7 A All right. I know what you're talking about.
8 We're talking about the -- all the water that was
9 running down the ditch from the French drains.
10 Because after that happened, every time it rains
11 there's a huge amount of water pouring down the
12 ditch from his French drains.

13 Q Yes, ma'am.

14 A That was -- that is what it was referring to.

15 Q Well, it says it was coming out all over the God
16 damn road. I would assume that's referring to
17 Davis Drive?

18 A That's right. It was running over the road.

19 Q So when Paul filled in the wetlands, that's when
20 water started running down the ditch; right?

21 A That's when he put in the French drains, I assume.
22 I don't know.

23 Q And when he -- you say he "filled in the wetlands."
24 What wetlands did Paul fill in?

25 A He had an area that he had someone bring in loads

1 and loads of sand and filled in and then tarred
2 over and made into a parking lot.

3 Q When did Paul haul in all that sand? Loads and
4 loads of sand. When did he do that?

5 A I don't know when that was.

6 Q Well, let's talk about when Paul hauled in all that
7 sand and filled in all that wetlands and started
8 getting water all over the God damn road.

9 Would that be more than a year ago?

10 A Yes.

11 Q More than three years ago?

12 A I don't know.

13 Q Well, ma'am, when Paul throws all that water into
14 the ditch and all into the road, does any of that
15 water get into the drain pipe?

16 A No.

17 Q How is that possible? If it gets into the God damn
18 road, how is it possible that it doesn't wash off
19 the road and get into the drain pipe?

20 A It isn't any -- his ditch is not anywhere near
21 where the stream goes under the road and into my
22 pond. His ditch is on the other side of his house
23 and runs down.

24 Q How many acres of wetland did he fill in?

25 A I wouldn't know.

1 Q How many loads of sand did he bring in and dump out
2 there?
3 A I don't -- I don't know that either.
4 Q Did he have a silt fence when he dumped all that
5 sand?
6 A He built a cement wall and then filled in.
7 Q Did he have a silt fence?
8 A No. He put up a cement wall before he -- a cement
9 block wall where he filled in. Before he filled
10 in.
11 Q All right. Now, as I understand it, do you like
12 the fact that my clients cleared their property?
13 A I have no opinion about it one way or the other.
14 Q How much clearing did they do?
15 A They stripped the land entirely except for a few
16 trees.
17 Q How do you know that?
18 A I live on Davis Drive, and they -- the property is
19 on Fish Hatchery Road. It's perfectly visible from
20 the highway.
21 Q Did they plant anything when they stripped it? Did
22 they plant any type of vegetation there?
23 A Not for a long time.
24 Q How long is a long time?
25 A I don't know.

1 Q Now, at some point in time, you complained to the
2 County about what they did, didn't you?

3 A That was -- I called the storm drain people after
4 the hurricane when my pond turned into a mud
5 puddle.

6 Q Is the answer yes?

7 A Yes.

8 Q Now, before the hurricane, did you have any problem
9 with mud in your pond?

10 A No, never.

11 Q And there were two hurricanes; right?

12 A That's correct.

13 Q So before the hurricane, there was no mud in your
14 pond; right?

15 A When we had the 13-inch hurricane, there was
16 absolutely no issue whatsoever. When we had the
17 last hurricane with 4 inches of rain, my pond
18 turned into a mud puddle.

19 Q All right. So there were two hurricanes in close
20 proximity to each other; right?

21 A I think they were a few years apart. There was a
22 100-year hurricane. That was the 13 inches of
23 rain.

24 Q All right. Actually, the way this thing worked is
25 there was one that was the 13 inches, and then two

1 hurricanes came in that were one month apart; isn't
2 that right?

3 A I don't know.

4 Q Did you know that Hurricane Florence was
5 September 14, 2018?

6 A I guess so.

7 Q Did you know that Hurricane Michael was October 10,
8 2018?

9 A Yes.

10 Q Was there any vegetation growing on my clients'
11 property in September 2018?

12 A Not that I know.

13 Q Well, how about in October 2018?

14 A Not that I know of.

15 Q But the only thing that you're telling me that put
16 mud in your pond would have been those two
17 hurricanes; right?

18 A That's when it started.

19 Q Well, you told me that -- I thought you told me the
20 only time you saw mud was when the two hurricanes
21 came through.

22 Is there still siltation going on?

23 A I don't know how much rain we got from the first
24 hurricane. We had had a drought, and it had been
25 very, very dry.

1 Q Well, ma'am, have you had problems with your pond
2 getting muddy except for those two hurricanes?

3 A Never.

4 Q Okay. That's it? When the hurricanes came, the
5 mud came in your pond?

6 A That's correct.

7 Q Did the hurricanes wash any water off of Davis
8 Drive?

9 A No.

10 Q How do you know that?

11 A Because there were berms.

12 Q The water that came through the pipe under Davis
13 Drive was moving rapidly when it rained hard with
14 the hurricanes, didn't it?

15 A Yes.

16 Q Let me ask you this. When you complained to the
17 storm water people, did they tell you that my
18 client had to have some permits?

19 A They came out and they said that the silt was
20 coming from his property and that it was illegal.
21 And then I heard that they had been -- that they
22 had issued a stop work order.

23 Q And then they came out and recognized that because
24 it was agricultural property it wasn't illegal,
25 didn't they?

1 A I don't know. They would not give me any further
2 information, period.
3 Q Well, who is "they"? Who were you talking to from
4 the County that refused to talk to you?
5 A I don't know what the gentleman's name was.
6 Q All right. Do you know that the stop work order
7 was lifted?
8 A The Cades said in their deposition it was.
9 Q Do you know if that's false?
10 A I don't know.
11 Q Do you know Claude Davis?
12 A Yes.
13 Q Who is he?
14 A He's one of my neighbors.
15 Q Does Mr. Davis have property that adjoins yours?
16 A Yes, he does. He has 100 acres.
17 Q And is your property downhill from his?
18 A No.
19 Q Is it uphill? Is his property uphill from yours?
20 A No. His property is downhill from mine, I believe.
21 Q Do you know?
22 A No. I believe it's downhill from my property.
23 Q When my client was doing the work on their
24 agricultural property, do you know of any
25 requirements that they have a silt fence?

1 A No.

2 Q Do you know of any requirement that they violated
3 in doing the work they did on their property?

4 A I'm not familiar with the laws.

5 Q Did they dump any more water than usual into the
6 creek?

7 A I can't tell you. I don't know.

8 Q Are you able to testify they put more water than
9 usual into the creek?

10 A I don't know.

11 Q This work that Paul did on his property, would it
12 surprise you to learn he did it in January 2019?

13 A No.

14 Q I want to get back to the scraping of this road.
15 This is a County dirt road; correct?

16 A Yes.

17 Q When they scrape the property, they push loose dirt
18 on top of that berm, don't they?

19 A No, not on top of it.

20 Q Well, how do they keep the loose dirt out of the
21 road when they scrape?

22 A They just push it up along the side of the berm.
23 There's a fence on the berm that's been there ever
24 since we bought the property.

25 Q Well, how do they keep the loose dirt out of the

1 pipe that comes through?

2 A The road is tilted this way.

3 Q Well, is the road tilted toward your property or

4 towards Paul's property?

5 A It's tilted toward my property. There's always a

6 big mud puddle when we get heavy rain there.

7 Q What do you mean by that?

8 A When we get heavy rain, there's a big mud puddle

9 there.

10 Q Well, how can that be? If the berm is vegetated,

11 how is it possible that there's a mud puddle on

12 your side of the road when it rains?

13 A Because there's no place for the water to go. The

14 road tilts down, and the water gradually perks

15 through the dirt road.

16 Q And goes where?

17 A Into the ground.

18 Q Did you ever -- when we had those hurricanes and

19 you had a problem -- like you've told me, the only

20 time you had a problem was when the hurricanes came

21 through; right?

22 A Not when the 100-year hurricane came through with

23 13 inches of rain.

24 Q That didn't create any problem at all, did it?

25 A No, it did not.

1 Q So the only two times you've had a problem was the
2 two hurricanes; right?

3 A That's correct.

4 Q Well, ma'am, if that's the case, and the hurricanes
5 were -- let's see, three years ago, how are the
6 hurricanes keeping your pond still muddy? Silt
7 goes down.

8 A There's still --

9 Q How can your pond still be muddy?

10 A There's still silt coming into my pond.

11 Q Coming from that pipe?

12 A Yes.

13 Q So where does the silt originate?

14 A I can only assume it's still coming from the Cades'
15 property.

16 Q What do you mean "assume"? You say you can only
17 assume it comes from the Cades' property. What do
18 you mean?

19 A I have never been on the Cades' property, so I
20 don't know.

21 Q So whatever silt is getting into your pond, you
22 don't know where it's coming from?

23 A It's coming under the road.

24 Q Okay. We know it's coming under the road. But you
25 don't know where it's coming from, though, where it

1 originates; right?

2 A I guess.

3 Q Now, how many engineers have you had out there?

4 A Two.

5 Q Who are they?

6 A I don't know.

7 Q Have you had them come onto the Cades' property?

8 A No.

9 Q Have you had them come onto Paul's property?

10 A No, not that I'm aware of.

11 Q Well, if they haven't been on the Cades' property

12 and if they haven't been on Paul's property, do you

13 have any idea how they know what they're talking

14 about?

15 MR. BELSER: Object to the form.

16 A They were hired to do a siltation study of how much

17 silt has been deposited into my pond.

18 Q (MR. MOORE) Well, were they hired to tell you

19 where the silt was coming from?

20 A I don't know.

21 Q Were they hired to tell you how long that silt has

22 been in that pond?

23 A I don't know that either. I'm not an engineer.

24 Q The pond has been there for how many years?

25 A At least 50.

1 Q During those 50 years, did the pond silt at all
2 where it was being fed?

3 A No.

4 Q How do you know that?

5 A Because the water has always been crystal clear.

6 Q Just because the water is crystal clear doesn't
7 mean there's not siltation up there.

8 How do you know that all the silt up there
9 came from my clients' property?

10 A All of -- well, Mr. Lee's testimony made it very
11 clear that that's where the silt was coming from.
12 He went up and filmed it and told them that what
13 they were doing was illegal and that they were
14 going to be sued.

15 Q Who is Mr. Lee?

16 A He's the engineer that the Cades hired.

17 Q I see. He went up and told them they were going to
18 be sued?

19 A That's what he said in his deposition. He told
20 them what they were doing was illegal and that they
21 were going to be sued.

22 Q How much silt did you have there before
23 September 2018? None?

24 A Nothing.

25 Q Now, let me ask you this. You've got how many

1 acres of land there?

2 A 13.

3 Q And a 2-acre pond; right?

4 A That's correct.

5 Q What does -- what is your property worth? Do you

6 know?

7 A No, I don't.

8 Q If you were going to sell it, what would use ask

9 for?

10 A I wouldn't sell it. My daughter is going to

11 inherit it.

12 Q Well, if you were going to sell it, what would you

13 ask for?

14 MR. BELSER: Object to the form.

15 A \$2 million.

16 Q (MR. MOORE) Do you know what it appraises for at

17 the County?

18 A Yes.

19 Q How much?

20 A I would have to look at my tax bill.

21 Q Well, you said you know. So if you know, how much

22 does it appraise for?

23 A I would have to get my tax bill and look and see.

24 Q So you don't know; right?

25 A Well, I know it's on the form.

1 Q So you don't know?

2 A Not offhand. I can't tell you.

3 Q How much do you contend it would take to get the
4 silt out of your pond?

5 A Well, the engineer said it was going to cost over
6 \$400,000 to clean it out. And that did not include
7 restocking or relandscaping anything that they
8 destroyed at the time.

9 Q Now, what engineer said that?

10 A The first engineers that were hired.

11 Q Who hired him? You?

12 A Mr. Belser.

13 Q Oh, those are Mr. Belser's engineers?

14 A He -- I didn't know about engineers, and he said he
15 would find people for me.

16 Q So all the engineers from your side were hired and
17 found by your lawyer; is that right?

18 A That's correct.

19 Q So you didn't hire any engineers?

20 A No, I did not.

21 Q I see.

22 MR. BELSER: Jake, when we get to a stopping
23 point, can we take a quick break?

24 MR. MOORE: Yeah, we can take a break.

25 Let's do that. That would be good.

1 (Recess taken from 11:09 a.m. until 11:15 a.m.)

2 MR. MOORE: That's all the questions I have
3 at this time.

4 EXAMINATION

5 BY MR. DOUGALL:

6 Q Mrs. Garland, my name is Tom Dougall. I represent
7 a gentleman named Roger Singleton in this case.
8 I've got a few questions I would like to ask you.

9 Have you ever met Mr. Singleton?

10 MR. BELSER: Tom, would you be able to
11 rotate your screen down. That way we can see
12 your -- that may help.

13 A Have I ever -- I've never spoken to him. I've seen
14 him. I know who he is. But I've never spoken to
15 him.

16 Q (MR. DOUGALL) Where did you see him?

17 A When the Cades were deposed, he was there. But he
18 had to leave. And he was at court -- at
19 magistrates court when Mark Melichar was there. He
20 testified for the Cades, and I saw him then.

21 Q Did you ever see him on the Cade property?

22 A I believe I saw him once. He was talking to
23 Mark Melichar.

24 Q Did you ever see him doing any work on the Cades'
25 property?

1 A Did I? No.

2 Q So you have no idea what kind of work he did, if

3 any, on the Cades' property?

4 A No, I don't know. He said he did --

5 Q I didn't ask you what he said. I said do you have

6 any idea what kind of work Mr. Singleton did, if

7 any, on the Cades' property.

8 A No.

9 Q On -- going back to your land, on another side of

10 the property, there's some property owned by the

11 Davises; correct?

12 A Yes.

13 Q And that's on the same side of Davis Road as your

14 property; correct?

15 A Yes.

16 Q And they do farming on that property; is that

17 correct?

18 A No.

19 Q Is that property normally tilled?

20 A There is one small area that he tills.

21 Q What do you mean by a "small area"? How many

22 acres?

23 A Maybe an acre and a half. I don't know.

24 Q And that property is higher than your property;

25 correct?

1 A No. Below mine.

2 Q You're saying the Davis property is below yours?

3 A Yes. I'm up on a hill.

4 Q Does any water from the Davis property come onto

5 your property?

6 A No.

7 Q How is that water diverted away from your property,

8 if it is?

9 A I don't know that any water has ever -- it's all

10 sand. I think it just soaks in.

11 Q You've never seen sand wash out when it rains?

12 A No.

13 Q Never seen sand wash out after three hurricanes?

14 A No.

15 Q All right. Give me about two minutes. I've got to

16 talk to my client, and then I'll decide if I'm

17 going to ask any more questions.

18 (Recess taken from 11:20 a.m. until 11:21 a.m.)

19 Q (MR. DOUGALL) Going back to the Davis property

20 that abuts your property --

21 A Yes.

22 Q -- are you saying that water and dirt can't get

23 from the Davis property to your pond?

24 A That's correct.

25 Q And you're sure of that?

1 A Yes.

2 MR. DOUGALL: Okay. Jake, that's all I've
3 got for right now.

4 REEXAMINATION

5 BY MR. MOORE:

6 Q Ma'am, I'm looking at a map of Davis Drive right
7 now, which I wish I could show, but I can't.

8 And if we look at Davis Drive, the culvert
9 that we're talking is at elevation 192. Above that
10 is elevation 194. And if you go down Davis Drive,
11 it's 196, which tends to indicate the culvert is in
12 kind of a V between each end of Davis Drive.

13 That would mean that water would constantly be
14 running off of Davis Drive into that culvert. Now,
15 am I wrong about that?

16 A Yes, you are.

17 Q How can that be when water runs downhill?

18 A Because the road angles toward my property, which
19 is why there's always a big mud puddle on my side
20 of the road when it rains.

21 Q Yes, ma'am. But if it angles towards your
22 property, and the berm keeps it from going onto
23 your property, it would have to basically back up
24 and run on the other side of the road when it rains
25 heavy.

1 A You would have to ask the Davises. I don't live at
2 that end of the road. But to my knowledge, it has
3 never run back across the road. Because it's all
4 sand and it gets absorbed rather quickly.

5 Q Well, when the sand gets running, where does it go?
6 It can't go up the berm. It's got to go on the
7 other side down into that ditch, down into that
8 culvert.

9 A It soaks into the ground.

10 Q No, ma'am. The sand.

11 A I recently spoke with the man who grades the road
12 and asked him if they could put gravel there so it
13 wouldn't make a big mud puddle. And he said no,
14 they weren't going to do that. The sand would --
15 it perks perfectly well through the sand and
16 doesn't cause a problem. And that was an engineer
17 who grades the road, the County man.

18 Q Let me ask the question another way. What form of
19 engineering device is there that keeps sand from
20 Davis Drive out of the culvert on Paul's side of
21 the road?

22 A Device? Nothing except that the road slopes
23 towards my property.

24 Q It may do that. But the -- if a car is coming
25 through, it's going to throw sand on both sides.

1 When it rains, it's in a V. You got a mud hole
2 there.

3 A That's because the people don't drive through the
4 mud puddle. They go on the other side of the road.

5 Q Yes, ma'am. And when they do, the wheels basically
6 throw dirt down the side and it winds up going into
7 the culvert. My question is this: How do you keep
8 that sand out of the culvert? For 50 years?

9 A I wouldn't know what you're talking about.

10 Q Ma'am, you've got a dirt road. Dirt -- the road
11 has to be graded from time to time because the sand
12 continues being disturbed. When the sand is
13 disturbed, it's got to go somewhere.

14 How do you keep sand from getting onto Paul's
15 side of the road and eventually getting into that
16 culvert? How does that happen?

17 A You'd have to ask the County engineer who grades
18 the road. I'm not an engineer.

19 MR. MOORE: Okay. Thank you very much. I
20 don't have any further questions.

21 MR. DOUGALL: Neither do I.

22 EXAMINATION

23 BY MR. BELSER:

24 Q I just have one follow-up question. There were
25 some questions that were -- can y'all hear me okay?

1 MR. DOUGALL: Yes.

2 Q (MR. BELSER) Some questions were asked about the
3 hurricanes in the fall of 2018, Hurricane Florence
4 and Hurricane Michael. Do you remember those
5 questions?

6 A Yes.

7 Q Is that when the problem began?

8 A Yes.

9 Q And what have you observed as to whether it's
10 continuing?

11 A It is still continuing. When we get heavy rain,
12 I've got current pictures of my -- of silt still
13 coming through the pipe and onto my property.

14 MR. BELSER: I don't have any further
15 questions.

16 FURTHER DEPONENT SAITH NOT.

17 (Whereupon, there being no further questions, the
18 deposition was concluded at 11:28 a.m.)

19 (*This transcript may contain quoted material.
20 Such material is reproduced as read or quoted by
21 the speaker.)

22

23

24

25

State of South Carolina)
)
County of York) CERTIFICATE

Be it known that Darlene Pastel took the foregoing proceeding and hereby attests:

That I was then and there a notary public in and for the State of South Carolina at-large and that by virtue thereof I was duly authorized to administer an oath;

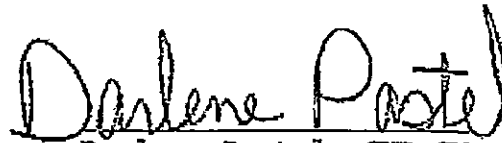
That the deponent/witness was first duly sworn to testify to the truth, the whole truth, and nothing but the truth concerning the matter in the controversy aforesaid;

That the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Unless otherwise noted, this notary public administered the oath. Please refer to the transcript for any exceptions.

In witness thereof, I have hereunto affixed my signature and title.


Darlene Pastel, CVR-CM

Date: 03/11/2021
Notary public for South Carolina
My Commission expires 09/20/2027

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEXINGTON

3

4 SUZAN GARLAND,

5 Plaintiff,

6

vs.

CASE NO. 2019-CP-32-01442

7 ROBERT CADE AND CHRISTY CADE,

8

Defendants.

9

10 D E P O S I T I O N

11 WITNESS: CHRISTY CADE

12 DATE: Tuesday, August 27, 2019

13 TIME: 1:20 p.m. - 3:11 p.m.

14 LOCATION: Moore Taylor Law Firm
15 1700 Sunset Boulevard
West Columbia, South Carolina

16 TAKEN BY: Attorneys for the Plaintiff

17

18 REPORTED BY: Laura Chamblee
Registered Professional Reporter

19

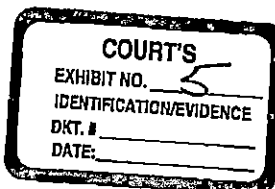
20 COMPUSCRIPTS, INC.
Client focused. Deadline driven.

21

22 CHARLESTON COLUMBIA HILTON HEAD GREENVILLE MYRTLE BEACH

23

24 www.compuscripts.com
25 1-888-988-0086



2

1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFF:

3 BELSER & BELSER, P.A.
4 BY: H. FREEMAN BELSER, ESQUIRE
5 1325 Park Street
6 Suite 300
7 Columbia, South Carolina 29201
8 803-929-0096
9 freeman@belserpa.com

7 ATTORNEYS FOR THE DEFENDANTS:

8 MOORE TAYLOR LAW FIRM, P.A.
9 BY: HOOD DAWSON, ESQUIRE
10 1700 Sunset Boulevard
11 West Columbia, South Carolina 29169
12 803-796-9160
13 hood@mttlaw.com

11

ALSO PRESENT:

12

Suzan Garland

13

Robert Cade

14

15 (INDEX AT REAR OF TRANSCRIPT)

16

17

18

19

20

21

22

23

24

25

1 (Deposition Exhibit Numbers 1-21 were marked
2 for identification prior to beginning the
3 deposition.)

4 CHRISTY CADE, being first duly sworn,
5 testified as follows:

6 EXAMINATION

7 BY MR. BELSER:

8 Q Good afternoon, Ms. Cade.

9 A Good afternoon.

10 Q My name is Freeman Belser. I'm a lawyer in
11 Columbia. We've convened today for your deposition.
12 I've never met you before.

13 A No, sir.

14 Q Never been to Jahue's office before, so I
15 feel like I'm part of the family almost being in here.
16 But we've convened for your deposition. This is my
17 opportunity to ask you questions under oath and to
18 gather facts.

19 I know this is a property dispute between
20 neighbors. And at times disputes between neighbors can
21 get hot and testy, but this is my opportunity to just
22 ask you questions.

23 A Yes, sir.

24 Q During the course of the deposition the court
25 reporter is transcribing everything that we say, all of

4 .

1 my questions and all of your answers. Before we get
2 started, let me just kind of give you some ground rules
3 as to how this works.

4 I'm going to try to ask questions one at a
5 time and I'm going to try to stop when my question is
6 finished and give you the opportunity to talk. It's
7 important that we try not to talk over each other
8 because that makes it hard for the court reporter to
9 type everything down. It also makes it hard to read
10 the record later, if we're talking over each other.

11 So even though this is like a conversation,
12 even if you anticipate where I'm going with my question
13 or if I anticipate where you're going with your answer,
14 I'll let you finish; you let me finish. Sound good?

15 A Yes, sir.

16 Q Also it's important to give verbal responses
17 to the questions. The court reporter can try to
18 interpret head nods, and uh-huhs, huh-uhs, but it's
19 much easier for her if it's a yes or a no so that
20 there's no -- there's no gray areas as to what your
21 answer was. Do you understand?

22 A I do.

23 Q This is not an endurance contest. If you
24 need to take a break, let me know. Jahue has provided
25 water for us, and that might lead to other things that

1 you need, too. So if you need to take a break, let me
2 know. Hopefully we'll be out of here and start your
3 husband's deposition before too long, but if you need a
4 break, let me know.

5 A Okay.

6 Q If -- During the course of the deposition you
7 may hear objections to questions. Most of the time,
8 though, the majority of the time, large majority of the
9 time, that's the lawyers making a note on the record, a
10 placeholder, so they can then argue about something
11 with the Judge later. Unless there's an objection and
12 then an instruction for you not to answer, you need to
13 go ahead and answer the question.

14 I don't anticipate that we'd have anything
15 like that today, but if you hear "Objection," that
16 doesn't mean things are about to get exciting between
17 the lawyers. It's just the lawyers doing a placeholder
18 so they can argue about things later. Do you
19 understand?

20 A Yes, sir.

21 Q I'll try to ask my questions clearly and
22 concisely. If any of my questions are not clear, I'm
23 happy to rephrase it. You will have the opportunity
24 after the deposition is concluded to read the
25 deposition and to sign the deposition and to make any

6.

1 changes that you want to make.

2 MR. BELSER: I don't know -- Hood, does she

3 want to read and sign?

4 MR. DAWSON: Yes.

5 BY MR. BELSER:

6 Q So after the deposition the court reporter
7 will get your -- you'll have an opportunity to read it
8 and make any charges, mostly non-substantive changes,
9 but you will have that opportunity.

10 In the deposition this is my opportunity to
11 not only to learn about the case but also to learn
12 about you as an individual as well. Because at the
13 trial of this case, if we get that far, it's
14 Ms. Garland versus the Cades, and I need to know who
15 you are and who your relatives are in Lexington County
16 and that type of thing.

17 So can you give me just a brief background of
18 where you're from, your educational background,
19 employment history.

20 A I was born and raised in Bennettsville, South
21 Carolina, which is Marlboro County. I'm self-employed.
22 I graduated high school.

23 Q Did you go to Marlboro County High School?

24 A I did.

25 Q When did you graduate from there?

1 A In 1990.

2 Q And what's your employment history from, say,
3 when you graduated high school to the present?

4 A Goodness. I was a stay-at-home mom. I
5 got -- I was a stay-at-home mom for years. I was a
6 customer service manager for Walmart. I was a
7 translator and then became translator/HR assistant for
8 Columbia Farms.

9 Q Translator for Spanish?

10 A Hispanic, yes.

11 Q Okay.

12 A For Columbia Farms. From there I worked
13 with -- in a lady's trucking company in her office.

14 Q Which company was that?

15 A Choice Trucking. And I did her fuel taxes.
16 And from there we started our own business.

17 Q We being you and your husband?

18 A My husband and myself.

19 Q And when did that business start?

20 A Approximately 2003 I think. Approximately
21 2003.

22 Q What type of business is it?

23 A Trucking, transportation.

24 Q Do you broker freight or do you actually own
25 trucks as well?

8

1 A We own equipment and we -- Actually, the
2 majority of the work that we do at this point is like
3 museum quality pieces for the government. We transport
4 museum pieces.

5 Q What range do you transport them? All over
6 the country or --

7 A To be specific, wherever. Like if they have
8 a piece that needs to go from another state into --
9 They're opening a new museum, they're in the process
10 of, and we will bring that piece from -- So, wherever
11 the pieces are, and they need it, we transport it for
12 them, whether it's Oklahoma to Virginia or wherever.
13 So, yes.

14 Q What's the name of the company?

15 A Our company is Cade Trucking Company.

16 Q We're here today to talk about this
17 particular piece of property. Exhibit 1 that I've got
18 in front of you is a Goggle Earth map showing the --
19 Those are the copies for -- Those are going to be the
20 copies for Hood.

21 A Oh, I'm sorry.

22 Q And these are the court reporter's copies
23 right here. So I'm going to ask you to look at these.
24 One important thing is don't walk off with them. That
25 happens a lot, but these actually belong to the court

1 reporter. But this particular property, which I think
2 is off of New Cassel Drive; is that correct?

3 A Yes, sir.

4 Q Is this where you live?

5 A No, sir.

6 Q Where do you live?

7 A I live at 1003 Skyview Drive, and that's West
8 Columbia 29170.

9 Q How far is that from this piece of property?
10 And I'm just going to refer to this as the New Cassel
11 property.

12 A Approximately ten minutes. Mileage-wise, I'm
13 not great with that. So approximately ten miles I'm
14 going to say, give or take.

15 Q One other thing, sometimes when I take
16 husbands and wives depositions, even though your
17 husband is here, I'm going to ask you questions. There
18 may be certain questions I ask that you may want to
19 defer to your husband. And then eventually he may want
20 to defer to you later on. So if there's any question
21 that I ask that you want to defer to him, I can ask
22 that to him later.

23 MR. BELSER: But, Mr. Cade, as also part of
24 the process, while I'm taking her deposition, as
25 much as you may want to chime in, your time to

10

1 chime is coming up.

2 MR. CADE: Understood.

3 BY MR. BELSER:

4 Q All right. So this particular piece of
5 property, this New Cassel Road property, Exhibit 1 is a
6 Google Earth image from September 6 of 2017. How
7 did -- how did y'all discover this property?

8 A Off of -- I don't recall. I don't recall the
9 website. It's a real estate website, but I don't
10 recall the name of it.

11 Q Did you have a realtor at the time?

12 A No, sir.

13 Q But this was -- this property was just listed
14 for sale on some real estate website?

15 A It was.

16 Q Were you looking for a particular type of
17 property or size of property?

18 A No, sir. Just definitely was looking for
19 something that was not way out, as far as way away from
20 Columbia.

21 Q What were you looking for? Like an
22 investment purpose or for some particular use?

23 A We wanted to have a farm and eventually build
24 there.

25 Q Build like -- build a husband there?

1 A Uh-huh. Yes, sir. I'm sorry, I apologize.

2 Q That's good. You caught yourself, that's
3 good. Did you grow up on a farm or why did you want a
4 farm?

5 A I did not grow up on a farm. I've always had
6 animals and I like animals.

7 Q And what was particularly attractive about
8 this New Cassel property?

9 A For me, location. It was close to everything
10 and it was agricultural. That's why for me.

11 Q Did you walk the property? The process of --
12 I guess at some point you saw it on the internet?

13 A I did.

14 Q And then I assume there was a number; call
15 this person if you're interested?

16 A Yes. There was a -- there was a number and
17 my husband called.

18 Q And how long was the process of initially --
19 initially finding this piece of property? Exhibit 2 is
20 a deed dated March 16 of 2018. How long was the
21 process -- did you have like a real estate contract and
22 due diligence? Did a significant amount of time
23 transpire?

24 A I don't recall exactly the amount of time.

25 Q Did you actually walk the property before it

12

1 was purchased?

2 A We did.

3 Q You and your husband?

4 A Yes.

5 Q Was anybody else with you?

6 A My daughter at some point. I don't recall if
7 anyone else did before we purchased it.

8 Q Where does your daughter live?

9 A With us.

10 Q With you?

11 A She goes to school.

12 Q How old is she?

13 A She just turned 15.

14 Q Do you have any relatives in Lexington County
15 who are over the age 18?

16 A Yes, my children.

17 Q What are their surnames? What are their
18 names?

19 A My daughter, her last name is Rojas. And I
20 have a son whose last name is Saucedo. And I have a
21 step-daughter, her last name is Cade.

22 Q So do you have children from a prior
23 marriage?

24 A I do.

25 Q Do you and Mr. Cade have any children

1 together?

2 A One.

3 Q And that's the 15-year-old daughter?

4 A Yes.

5 Q Does Mr. Cade have children from a prior
6 marriage?

7 A He has a daughter.

8 Q The reason I ask is because I don't want your
9 daughter on the jury if we get there so I need to know
10 who your daughter is.

11 A Okay.

12 Q So when you walked the property -- Looking at
13 Exhibit Number 1, it appears to me that it was wooded,
14 a wooded piece of property; is that correct?

15 A Yes.

16 Q How big were the pine trees?

17 A Different sizes, small, a lot of them were
18 small, a lot of them were bigger, but I can't -- I
19 don't know. As far as size, I couldn't tell you. I
20 didn't measure them.

21 Q When you walked the property, did you walk --
22 I'm pointing at Exhibit Number 1 here. Where all did
23 you walk on the property?

24 A In this front corner here there was like a
25 little fence that was put up, a piece of a fence,

14

1 because it was like a previous driveway that went into
2 the property. We walked through there and just
3 different areas and walked down by the pond.

4 Q What was the condition of the pond before you
5 bought it?

6 A It was in really bad condition.

7 Q What do you mean it was in really bad
8 condition?

9 A It was losing a lot of water. It was
10 dried -- really most of it was dried. There was water
11 in it but it was not to the -- where it was supposed to
12 be.

13 Q Did it look like there were holes in the dam?

14 A At the time I don't know. I'm not an expert
15 on that. I wouldn't know why.

16 Q But it just wasn't holding water?

17 A It didn't have a lot of water. I don't...

18 Q How big is the dam itself? How tall is it?

19 A I don't know.

20 Q Is it taller than you?

21 A Can you be more specific as...

22 Q Well, is there a standpipe in the bottom
23 of -- A lot of ponds have -- like the dam will be, you
24 know, kind of a slope like this.

25 A Uh-huh.

1 Q And then there will be a standpipe that comes
2 up, which is how the pond actually drains. Does this
3 particular pond have a standpipe?

4 A It has a -- I don't know what you call it,
5 but there is a thing there that if the water gets too
6 full, it would go in there.

7 Q When I refer to a standpipe, it's like a
8 metal tube that goes to the bottom of the dam.

9 A I don't know.

10 Q You don't know. I can maybe ask your husband
11 about it. Was there -- In looking at Exhibit Number 1,
12 it looks like there was no portion of this property, of
13 the New Cassel property, that was cleared. It was all
14 wooded and vegetative?

15 A I mean there were like areas in the woods
16 that were -- Like I know apparently years ago there was
17 a cabin in there of some sort that was no longer there.
18 So there were areas that were not like loaded with
19 trees or anything.

20 Q In looking at Exhibit Number 1 -- It looks
21 like the second page of Exhibit Number 1, it's kind of
22 a zoom in, it looks like there's a lot of vegetation
23 that was growing in the pond; is that correct?

24 A Yes.

25 Q Were those trees that were growing in the

16

1 footprint of the pond?

2 A You talking about here?

3 Q Yes, ma'am.

4 A There were a few trees around the edges here,
5 but it was mostly lily pads in the pond.

6 Q Did y'all get in a boat or anything?

7 A No.

8 Q Did you --

9 A You mean before we bought?

10 Q Before you bought it.

11 A No.

12 Q Before you bought it, did you cruise the
13 property for timber? Cruise, that's what foresters
14 talk about when they actually walk a piece of property
15 and try to get some values for timber.

16 A Before we bought the property, did we do
17 that?

18 Q Yes.

19 A No.

20 Q Is Mr. Singleton, is he a forester?

21 A I don't know.

22 Q How about this, did y'all sell the trees that
23 you cut down?

24 A Yes.

25 Q Who actually did the -- cut the trees down?

1 Did you have a forester that helped you?

2 A We had a company come in and I don't recall
3 their name.

4 Q Exhibit Number 2, this is a deed from
5 McCutchen Holdings, LLC, Warren Irvin, and Wilmot Irvin
6 to the two of y'all for \$156,800. Did you actually
7 meet the Irvin brothers?

8 A No.

9 Q Did you have any direct -- So you didn't have
10 any direct contact with them at all?

11 A No.

12 Q Did you and your husband have any discussions
13 before you bought it about your plans with the
14 property?

15 A Briefly, yes. Like I say, we planned on
16 purchasing a piece of property to have some pasture
17 land and build.

18 Q Exhibit Number 3, this is a Google Earth
19 image from May 2 of 2018. The color photograph did not
20 come out all too well, but this is about six months or
21 maybe eight months after Exhibit Number 1 where you can
22 see all the trees and the vegetation on the property.
23 How soon after you purchased it did you actually have
24 people out there doing work?

25 A Approximately -- approximately a month.

18

1 Q And it looks like -- Looking at Exhibit 3, I
2 think I can see -- There's the intersection of --
3 There's two roads right here. What is this road that's
4 going north and south?

5 A This one right here?

6 Q Yes, ma'am.

7 A That's right Fish Hatchery Road.

8 Q Fish Hatchery. What is that road that
9 circles the south side of the property?

10 A This would be New Cassel Drive.

11 Q And I can see at the intersection of New
12 Cassel and Fish Hatchery it looks like -- is that the
13 gate where the timber trucks came in?

14 A Yes.

15 Q Do you remember -- I may have already asked
16 you this. Do you remember who the timber company was
17 that actually cut the timber?

18 A I don't recall.

19 Q Do you recall whether or not the timber was
20 actually sold?

21 A Yes.

22 Q How much money came from cutting of the
23 timber?

24 A I don't recall offhand.

25 Q And if you look at the second page of Exhibit

1 Number 3, it looks like there were some -- you can see
2 where the trees have been -- where the timbering has
3 been done. And you can see an area right here in kind
4 of the center of the property where there's been some
5 clearing. What is in that area right now?

6 A Right here?

7 Q Yes, ma'am.

8 A At present time right now?

9 Q At present time.

10 A We have a barn there.

11 Q What work did y'all perform on the dam itself
12 or on the pond?

13 A I did not do the work, so I would not -- I
14 can't answer that because I didn't do the work.

15 Q Okay. How frequently do y'all go out to the
16 property?

17 A I'd go out there several times a week. Not
18 daily. I may skip a day here and there, so...

19 Q Has your husband been the one who has been
20 primarily involved and responsible for engaging
21 contractors to do work on the site?

22 A Yes.

23 Q Of the property right now, are there any --
24 is there any wooded area that's still on the property?

25 A Yes. All the areas back behind the dam, and

20

1 then there's still wooded areas along the very back
2 portion of the property back there, and then up the New
3 Cassel side there's still some wooded area there.

4 Q So it looks like on Exhibit Number 3, the
5 same areas where it looks like there's still mature
6 trees on this photograph, there's still mature trees
7 now?

8 A There's still some wooded area in those
9 areas.

10 Q And what about the area which is where the
11 trees were cut, was that -- were those stumps removed?

12 A Yes.

13 Q And what else was done to that? I mean is it
14 grass now or --

15 A It has been sprigged and seeded and it's
16 pasture.

17 Q Do you have animals on the property?

18 A Yes, we do.

19 Q How many animals?

20 A Approximately -- Approximately 20 cows, two
21 llamas, four donkeys, approximately 15 to 20 ducks, two
22 geese.

23 Q Are the ducks wild or are they --

24 A Mallards and Peking, and then there's these
25 brown ones. I don't know what kind they are. We just

1 bought them as babies and I don't know the kind.

2 Q So you have like a Mallard release program?

3 A No. I just wanted ducks for my pond.

4 Q Okay.

5 A And I have two geese. And I think that was
6 it. The geese, the ducks, donkeys, two llamas, cows.

7 Q Is there a structure on the property?

8 A There is.

9 Q How big of a structure? You said it was a
10 barn, how big is it?

11 A It's 30 --

12 Q Thirty feet?

13 A It's the 30 x 76, with 15 feet of that un --
14 not enclosed, 15 feet of that.

15 Q Now when the property was being timbered and
16 the stumps were being removed, was your husband the one
17 who was out there kind of overseeing the work and
18 monitoring what the workers were doing?

19 A Yes, and I mean I came and went. I wasn't
20 out there, per se, monitoring what they were doing, but
21 I would come and go, but, yes, my husband dealt more
22 with the...

23 Q Now the pond, to your knowledge was there any
24 kind of dredging or anything that took place in the
25 pond?

22

1 A No, sir.

2 Q How was -- what work was done on the dam
3 itself?

4 A It had to be like -- they had to take the
5 trees and roots off of it because it was leaking and it
6 had to be repacked, redone.

7 Q Who was the contractor who did that work?

8 A Singleton Landworks, Roger Singleton.

9 Q I guess the -- how high is the water now? Is
10 it elevated?

11 A I don't know the depth of the water.

12 Q Does it hold more water now than it did
13 before?

14 A Yes.

15 Q And before you did any of this work, did you
16 consult with the Army Corps of Engineers on doing work
17 to the dam?

18 A I did not.

19 Q Have you had any contact with the Army Corps
20 of Engineers since this started?

21 A I have not.

22 Q Has your husband?

23 A I don't know.

24 Q Before any of this work was done, did you
25 have--when I'm talking about this work, I'm talking

1 about this timbering and the grubbing--did you have any
2 communication with the County?

3 A My husband did.

4 Q But you did not?

5 A The only time -- the first time I did -- I
6 have but not in the early stages.

7 Q But later, after some complaints were made,
8 that's when you had contact?

9 A I did, along with my husband.

10 Q Did you ever have any -- Have you ever seen
11 any silt fences that were installed?

12 A Yes.

13 Q When were those installed?

14 A I don't recall.

15 Q Was that after the work was performed?

16 A Be more specific.

17 Q Well, if the trees were cut and there's some
18 grading that took place on the site, were the -- who
19 actually -- do you know who did the grading work?

20 A Roger Singleton did the work out there.

21 Q So he would have done all the work all
22 throughout the property, the earth work?

23 A He didn't take the trees out. He didn't,
24 like, cut the trees down.

25 Q Except for the -- The cutting of the trees,

24

1 that was somebody else. But in terms of removing the
2 stumps and getting it ready to turn into a pasture...

3 A Roger Singleton.

4 Q How much did y'all pay Mr. Singleton, if you
5 recall, to do that work?

6 A I don't recall.

7 Q So your husband would know that probably?

8 A He may. Without it being in front of me, I
9 don't have that answer. I would have to have that in
10 front of me.

11 Q Okay. How long of a process was that that he
12 was working?

13 A Months.

14 Q Months.

15 A I don't recall exactly.

16 Q Okay. Do you remember, were the silt fences
17 and those kinds of things installed -- why were they
18 installed?

19 A To prevent erosion or sediment flow and
20 whatnot.

21 Q Who told you to install them?

22 A Nobody told me.

23 Q Did you receive complaints first or was it --
24 did you do it --

25 A I don't know because I didn't have -- I

1 didn't install them.

2 Q Exhibit Number 4 is a building permit that's
3 dated May 15, 2008 [sic]. There are actually two
4 building permits that you've produced. Exhibit Number
5 5 is a building permit from June 27 of 2018. What's
6 the difference between these two permits?

7 A One is -- This one, Number 4, is for the barn
8 itself. Number 5 is for an overhead built structure.
9 It just has a roof; it doesn't have sides. So it's an
10 overhead shelter.

11 Q Where is that in relation to the pond -- I
12 mean to the barn itself?

13 A I could show you on here. Other than that,
14 it would be hard for me to tell you.

15 Q Yeah, why don't you show me.

16 A With the barn being here, it's approximately
17 in this area over here.

18 Q Why don't you -- Just for the record, why
19 don't you mark on there. Mark on that one.

20 A And this is approximate.

21 Q Yeah, that's fine. If we're reading this
22 deposition trying to figure out where over there is and
23 over here is, it's hard.

24 A Approximately on this area.

25 Q Why don't you do an arrow to that, an arrow

26

1 from the white to where you just drew, and write on
2 what that is.

3 A Should I put overhead building? I don't know
4 how you want me to word it.

5 Q Yeah, let me see it. All right. If you
6 could just write "overhead building" right there. And
7 then wherever the second structure is, if you could do
8 the same.

9 A Our accessory building. I don't know what
10 you want to call it. Call it an overhead shelter.

11 Q Just shelter is fine. Is that for like
12 picnics and --

13 A Yes, sir. It's just -- Like I say, it's got
14 the roof and no sides.

15 Q Is anything parked underneath it?

16 A No, sir.

17 Q Mark on Exhibit Number 3 where the second
18 structure is.

19 A Approximately here. This is approximate as
20 well.

21 Q That's fine. I'll put these back in order.
22 When you submitted -- Did you have to submit plans and
23 things for this permit?

24 A I don't recall that. My husband -- I would
25 defer that to my husband.

1 Q Did you get the permit before you started
2 work or was it after?

3 A I'm going to refer that to him as well. I
4 didn't do this permit.

5 Q And the same thing for Number 5, you'll defer
6 to your husband on that?

7 A Yes, please.

8 Q Exhibit Number 6 is -- this is a letter from
9 Michael Spires to your husband about the Stop Work
10 Order being removed. Did you have any direct contact
11 with Michael Spires?

12 A My husband did.

13 Q But you did not?

14 A I don't recall.

15 Q You're only graded on your honesty, not your
16 memory. So don't worry --

17 A I'm trying to think back.

18 Q If you don't remember, you don't remember.

19 A I don't recall.

20 Q Do you remember when a Stop Work Order was
21 placed on the property?

22 A I do.

23 Q Tell me what you remember about that.

24 A Do you mean for this letter here?

25 Q Yes, ma'am.

28

1 A It was in October, and I came -- we came out
2 and there was a pink paper on there. And I actually
3 did take the pink paper and went to where the
4 stormwater is at.

5 Q Ball Park Road?

6 A It's either Ball Park or Barr, I don't
7 remember which one.

8 Q Okay. But you took it to the stormwater
9 folks?

10 A Yes, with intentions to speak to Ms. Swygert
11 because -- and when I got there, she was not there and
12 I spoke with a Ms.-- I believe it's Ms. Jenkins, I
13 think was her name. And upon speaking with her, it was
14 released. She said that a gentleman had come by and
15 saw the work was being done. And when he went back to
16 the office, he did not see a permit, so he put the Stop
17 Work Order.

18 However, prior to that we had already been
19 told we did not need a permit via Ms. Swygert. And
20 Ms. Jenkins explained to me that Ms. Swygert did not
21 make a file that she should have made. And so
22 therefore, the gentleman who had put the Stop Work
23 Order did not know about the prior contact. So it
24 was -- it was removed because I was told we were not
25 going against any of the -- the ordinance that was

1 placed on there; that we had not done anything wrong.

2 Q Did you actually speak with Ms. Swygert?

3 A In June.

4 Q In June of 2018?

5 A Yes.

6 Q What led you to a --

7 A A verbal -- a verbal Stop Work Order. He had
8 stopped by and --

9 Q Who is he?

10 A A gentleman that works for the -- their
11 office. I don't know his name. And it was a verbal,
12 so we immediately went -- my husband and I went to see
13 Ms. Swygert. We had our documentation. She said due
14 to the fact that our property was agricultural, we did
15 not need anything, that we were good, you can go.

16 I actually never -- She didn't even take us
17 in her office. She was just standing in the front
18 office there and said you're good. I see that it's
19 agricultural property; you're good, you don't need
20 anything. So we did ask her, are we good, do we need
21 anything else, are we missing anything, and she said
22 no.

23 Q So let me see if I understand this correctly.
24 So sometime in June 2018 a male representative of
25 Lexington County came to the property and told you to

30

1 stop work because you needed a permit for what you were
2 doing. And you responded to that by going to talk to
3 Ms. Swygert and told her --

4 A To see about a permit if we needed one.

5 Q And she said you didn't need one?

6 A She said we did not.

7 Q That was also in June of '18?

8 A That was in June. And she said we would have
9 no more issues because she was calling him immediately,
10 that we could go ahead and do what we were doing. And
11 we never had any more issues until October when I came
12 out, the pink paper was there. I went back.

13 Ms. Swygert was, I was told, in a meeting.
14 And I spoke to a Ms. Jenkins. She looked up
15 everything. She looked up the documentations and seen
16 that everything was agricultural and said we didn't
17 need anything. It was released.

18 And then I told them that I would be -- They
19 had actually put one there, a formal Stop Work Order,
20 that we wanted a formal release. So they did send us
21 one.

22 Q Did you actually -- When the gentleman from
23 Lexington County came by in June, did you have any
24 direct contact with him?

25 A No, sir, I never even seen him. He just left

1 the piece of paper there.

2 Q Do you still have that sheet of paper?

3 A I think -- I think I turned that in to Mr.
4 Moore.

5 Q Okay. Have you seen that gentleman since?

6 A I never seen him to start with. I don't --
7 no.

8 Q Who all -- Did you talk to your County
9 Council person?

10 A I did not.

11 Q Did your husband?

12 A I'm not sure who all he talked to.

13 Q So the only people you talked to: You and
14 your husband went together in June and talked to
15 Ms. Swygert the first time?

16 A Uh-huh.

17 Q Then you also went back, the two of y'all --

18 A No, not the two of us, just me.

19 Q Just you, okay.

20 A And I spoke to Ms. Jenkins. I'm sure her
21 name is Jenkins.

22 Q Did you know Ms. Swygert or Ms. Jenkins from
23 any other circumstance?

24 A No, sir, I'd never met them before.

25 Q Have you ever worked in construction before?

32

1 A No, sir.

2 Q Had you ever done any earthwork projects or
3 anything?

4 A As in?

5 Q Were there any other pieces of property like
6 this New Cassel Road property that y'all had cleared
7 before for a farm?

8 A My husband and I?

9 Q Uh-huh.

10 A No.

11 Q How did you meet Mr. Singleton?

12 A We've known Roger for several years.

13 Q How did you meet him?

14 A He was a police officer in the town of South
15 Congaree. He used to be the K-9 officer.

16 Q How did you come to know him as a police
17 officer in South Congaree?

18 A I worked down there off and on. I
19 volunteered and worked down there as a volunteer basis.

20 Q Did your husband serve in a capacity in South
21 Congaree?

22 A He did.

23 Q What did he do?

24 A He was on the finance committee there for a
25 brief time.

1 Q Do you know if you had like a written
2 contract with Mr. Singleton?

3 A No.

4 Q You don't know or you didn't have one?

5 A To my knowledge, no.

6 Q To your knowledge you did not have one?

7 A Yes.

8 Q Have you ever spoken with Michael Spires?

9 A Me?

10 Q Uh-huh.

11 A No.

12 Q Has there ever been an occasion --

13 A I'm trying to think. Did he -- no, that was
14 a phone call. He called my husband. I'm just making
15 sure I did not answer the phone. To my knowledge I
16 have not spoken, that I recall, I have not spoken to
17 Mr. Spires.

18 Q So other than Ms. Jenkins and Ms. Swygert,
19 you have not had any direct contact with anybody at the
20 County?

21 A I spoke with Ms. Swygert and Ms. Jenkins.
22 No, other than that.

23 Q When you went in June of 2018 --

24 A Now can I ask you to clarify? As far as when
25 you say any contact with anybody at the County

34

1 concerning...

2 Q Well, concerning this case. I mean what
3 we're talking about, damage to Ms. Garland's pond.

4 A No, no.

5 Q So you haven't -- with reference to this case
6 or with reference to this Stop Work Order, you haven't
7 spoken with anybody at the County about, you know, the
8 work that you're doing or anything?

9 A I have not.

10 Q Have you spoken with anybody at the County
11 about any other issues with Ms. Garland?

12 A At the County?

13 Q Uh-huh.

14 A Yes, I did a Freedom of Information Act
15 request and got the information -- information through
16 that.

17 Q Those have been produced. We'll get to those
18 in a minute. But have you ever talked to any sheriff's
19 deputies about any incidents involving Ms. Garland?

20 A Involving Ms. Garland?

21 Q Uh-huh.

22 A Let's see. That I can recall, no. Not me.

23 Q Now when you went to the stormwater office in
24 June of 2018, what did you tell Ms. Swygert?

25 A That we had a gentleman call and that there

1 was a Stop Work Order issued verbally, and we went to
2 find out why and what -- you know, the reason it was
3 being put there, and what we needed to do as far as to
4 straighten it out or whatever.

5 Q What did she tell you and how did you
6 respond? What did you tell her you were doing on the
7 property?

8 A We told her the work we were doing on the
9 property, and she asked us how the property was zoned.
10 And we told her it was zoned agricultural. I provided
11 her the documentation showing that. And she told us we
12 were good, that we didn't need anything.

13 Q Did she mention anything about having
14 stabilization devices or anything?

15 A She did not. She didn't ask or mention any
16 of that.

17 Q When you went back in October, what did you
18 tell Ms. Jenkins you were doing at the property?

19 A I went in and I told her that there was a
20 Stop Work Order. I said, we've been here before, I
21 spoke with Ms. Swygert. Told her what I was told then.
22 She looked at the order and she went and looked and saw
23 that the property was agricultural. And she pulled up
24 their ordinance that they were saying that there was an
25 issue with. And she saw in the ordinance where, being

36

1 that it was agricultural, that it didn't apply. And
2 she told us we were good.

3 Q Now in Exhibit Number 6, the second sentence.
4 I guess you requested this letter -- because your
5 husband did not accompany you in that visit in October,
6 correct?

7 A He did not. It was just me.

8 Q And you requested something official saying
9 that the Stop Work Order had been removed?

10 A That day when I spoke with Ms. Jenkins, I
11 told her that -- she said that they would have it
12 removed and I left. My husband requested the
13 official...

14 Q The second sentence talks about, Please move
15 forward with the stabilization of the project site to
16 eliminate offsite impacts. Did you ever have any
17 discussion with anybody from the County about the need
18 to stabilize the project site?

19 A No.

20 Q Did you ever have any discussion with anybody
21 about any offsite impacts?

22 A No.

23 Q This is October -- Number 6 is October 23,
24 2018. Number 7 is -- this is an email from Harrison
25 Cahill to you. This is October 29 at 2:52 p.m. How

1 did you -- Did you actually speak with Mr. Cahill?

2 A I did.

3 Q Is he just like the Freedom of Information
4 Act officer?

5 A Apparently he is the person that when you do
6 a Freedom of Information Act request, it goes through
7 him. I don't know what his title is, but he is the one
8 who sent me the information.

9 Q So it looks like you submitted a Freedom of
10 Information Act request on October 22. Would that have
11 been around the time that you went to see Ms. Jenkins?

12 A I don't recall the exact date. I would have
13 to see the --

14 Q What did you want to know?

15 A I wanted to know, as you see, regarding any
16 and all correspondence or complaints or inquiries
17 concerning the property.

18 Q Had you had any -- Were you upset that
19 somebody was complaining about what you were doing with
20 your property?

21 A No, the neighbor next door to my property,
22 Mark Melichar, he kept yelling over my fence at me to
23 enjoy my half a million dollar lawsuit that apparently
24 Ms. -- I did not know Ms. Garland, had never met her
25 before at that time. And he kept yelling over my

38

1 fence, enjoy your half a million dollar lawsuit that
2 Ms. Garland supposedly had against me.

3 I didn't know her. So I went around -- I
4 decided to go and introduce myself to see if she was
5 upset. I didn't know her. I did that. I pulled into
6 her property. First person I met was a Mr. Shelby. I
7 don't know his last name. He was polite. Shook my
8 hand, I shook his hand. He took me around the edge of
9 the home. I think she may have been in a garden of
10 some sort, I'm not sure.

11 She come out. And when I introduced myself,
12 she got very upset and very nasty. She told me to get
13 off of her property. With some ugly words, told me to
14 get off her property and that I had ruined -- I tried
15 to tell her, ma'am, I don't know you. I would never do
16 anything to upset you, but according to Mark you're
17 upset with me, and I wanted to come around and
18 introduce myself and see if that was the case. If I've
19 done something, please show me what you're upset about,
20 and I'll be more than happy to rectify it, you know.

21 And she in not so many nice words told me to
22 get off of her property; that she had an attorney; that
23 she was going to sue me and that I was going to pay
24 her.

25 Q How long was that encounter?

1 A As soon as she said that, I said I apologize,
2 I'm sorry to have bothered you, and I got in my car and
3 left. And I've never spoken to her again.

4 Q Was anybody there with you?

5 A No, it was just me.

6 Q And Mr. Sheldon was there?

7 A Shelby I think is his name. I'm pretty sure
8 it was Shelby.

9 Q This was just another gentleman?

10 A I think that's her significant other, her
11 spouse or something. I'm not sure.

12 Q At that point in time you were already kind
13 of in a disagreement with Mr. Mark?

14 A That's actually the first encounter I had
15 ever had with Mark. I was out there checking the fence
16 line. My husband was not there. We were having some
17 fence installed. I went out checking the fence, I was
18 by myself. He proceeded to start being very nasty with
19 me, cursing at me, calling me names, and told me some
20 vulgar ugly stuff about going to suck on people. And
21 that's when he started telling me how she was suing me
22 for a half a million dollars.

23 Q At what point was the large -- the things
24 between, I guess, the Cades and Mr. -- what is his last
25 name? Melichar?

40

1 A I don't know how to pronounce his last name.
2 I'm not quite sure.

3 Q Let's just call him Mark. Things have
4 escalated, and I know there's a lawsuit concerning
5 injuries to llamas that's been filed. Is there -- when
6 did things really dust up between the two of y'all?

7 A He -- From actually before we signed the
8 documentation on our property. We asked to be able to
9 have it surveyed just to kind of know what we had, what
10 was there. And so we did. We were given permission to
11 have it surveyed. And during the process of having it
12 surveyed, he came out and got my husband's name and
13 phone number from the surveyor. And he proceeded to
14 call my husband and was telling him that he wanted to
15 buy property, and my husband explained to him, you
16 know, I don't know what's here yet and whatnot.

17 So once the survey was back and everything
18 was said and done, there was encroachment issues on the
19 survey, his driveway, and he had cut a turnaround spot
20 into the property. Once we got the survey back, my
21 husband did call him back because he asked him to
22 because he wanted to get with him about the
23 encroachment issues and let him know what was going on,
24 that we had gotten it back and there were some issues.

25 And he goes, well, that doesn't matter.

1 You're going to sell. He said, you're going to sell me
2 the property anyway. When my husband told him he
3 wasn't interested, he started cursing my husband. So
4 he ended the phone call.

5 So it's been nasty with him since the very
6 beginning because he -- from there when we had our
7 fence -- We were having fence work done. He came out
8 and cursed out our fence person and threatened to
9 confiscate their tools. Apparently he --

10 The same surveyor came back out, but actually
11 for the neighbor, not for us. I don't know if he
12 assumed it was for us, but he apparently blocked the
13 surveyor in and Lexington County had to be called,
14 because he wouldn't let them leave unless they paid him
15 \$500.

16 Q When was the big Trump flag put up?

17 A I don't recall exactly when.

18 Q Did y'all put that right at the closest point
19 on your property to where he is?

20 A No, it's not the closest point to where he
21 is. It's I don't know how many feet back.

22 Q Let's look at Exhibit Number 3. Can you
23 circle on here where the large Trump flag has been
24 placed?

25 A And by the way, that's who he told me to go

42

1 suck, by the way, was Trump. I'm just trying to make
2 heads or tails of this. I don't know exactly. This is
3 an approximate, but it's approximately back here. I'm
4 not good with measuring there.

5 Q Can you draw a line?

6 A I will.

7 Q Just put flag or Trump flag, whatever.

8 A (Witness complies.)

9 Q Okay. Did you put that flag down there to
10 kind of -- why did you put the flag down there?

11 A Because I wanted to, to be honest.

12 Q Because he made you mad?

13 A No, I said something back to him.

14 Q What did you say?

15 A He called me fat, told me I needed to go lose
16 weight. I told him maybe he needed to look at his own
17 fat-assed wife and not worry about me.

18 Q Have you had any other -- Can you mark on
19 this one where the flag is?

20 A This is approximate.

21 Q Okay. Did y'all put large kind of stacks of
22 manure down there as well?

23 A No.

24 Q No? What other -- Besides Mark, what other
25 neighbors on your property line do you have any

1 problems with?

2 A Nobody.

3 Q He's the only one; is that correct?

4 A That's correct. I'm sorry.

5 Q Have you and Mr. Mark ever exchanged any
6 other -- have y'all had any other encounters,
7 unpleasant encounters?

8 A Yes. The day we put our animals on the
9 property, which was May 5, he came out and started
10 shooting his gun by the -- close proximity of the
11 fence. Then he lit firecrackers and threw them in
12 close proximity of my fence, but only when my animals
13 would go to that corner. He did not do it unless the
14 animals went to that corner.

15 Q Was that during the day?

16 A Uh-huh. Yes. I'm sorry, I apologize.

17 MR. DAWSON: Make sure you say yes.

18 THE DEPONENT: I caught myself. I'm sorry.

19 BY MR. BELSER:

20 Q By the time you sent this first FOI request,
21 you had already -- you already had had a major
22 disagreement with Mark. You didn't know that Ms.
23 Garland existed until he said whatever he told you.

24 A Exactly. I had never met her before, no.

25 Q Then this stack, Number 7, it looks like

44

1 there's -- just a different version of the building
2 permit, May 15, then June 27. And then there's some
3 images attached. To your knowledge, what are these
4 five images in Exhibit 5 [sic]? And I produced them as
5 they were produced to me; I don't know if you have
6 color copies or not.

7 A I have -- I did not -- I don't know -- that
8 was just something they sent me with the Freedom of
9 Information Act request. I honestly don't exactly know
10 what that is.

11 Q Did you ask for clarification?

12 A I did not.

13 Q And then -- So Number 7 is October 29th at
14 2:52. And then there's another email from Mr. Cahill,
15 Exhibit Number 8, at 3:07 p.m.

16 A That's just more pictures, as you see.
17 Apparently the file was too big for him to send in one
18 so he sent it in multiples.

19 Q Did you say, hey, what are these?

20 A I did not. I just let him -- As a matter of
21 fact, he had called me to tell me that he was sending
22 me the Freedom of Information Act request that I had
23 done. He said, I'm sending you over what I have but
24 it's just in -- it'll be in multiple emails. He called
25 just to tell me that so that I would look for multiple

1 emails. And once I got them, no, I did not question as
2 to what they were. I just...

3 Q This would have been before you went over to
4 Ms. Garland's house?

5 A I would have to go back. I can look on -- I
6 think I went to her house on the -- Approximately it
7 was the 22nd or 23rd.

8 Q Have you ever seen photographs of her muddy
9 pond?

10 A I have, that she sent.

11 Q Uh-huh. Do you understand why she's upset?

12 A I know she's upset. I know her pond is not
13 muddy now. So, no, I don't know why she's upset. I
14 know were there two major hurricanes that had just came
15 through within a month of each other, and she lives on
16 a dirt road as well. So I don't know why she's upset
17 with me.

18 Q The next, Exhibit Number 9, is some
19 additional photographs. Here it says, the file is too
20 large to send all this information at once.

21 A Uh-huh.

22 Q At the time that you went to see Ms. Garland,
23 was there any -- when you saw these photographs, was
24 there anything that you did to change the conditions on
25 your property?

46

1 A When I saw the photographs from her? Because
2 these photographs right here, I don't know what they
3 are. The ones that came from Mr. Cahill, I'm not even
4 for sure what these photographs are. I couldn't kind
5 of make heads nor tails of them.

6 Q Okay. Exhibit Number 10, this is more
7 Freedom of Information Act documents. It looks like
8 it's a lot of the same things that we've already seen.
9 I was curious why there were so many versions, but I
10 think the size is the explanation.

11 A Yes, sir. They just said it was too big to
12 send in one.

13 Q Exhibit Number 11 is -- these are two
14 inspection reports.

15 A Uh-huh.

16 Q There are two three-page inspection reports.
17 The first one is dated October 22, 2018. Do you see
18 where it says that? It's on the -- flip the top page.
19 And you see this is page 1 of 3?

20 A Uh-huh.

21 Q It says inspection date 10/22/18?

22 A Uh-huh.

23 Q And there's nothing that's filled out on this
24 except for -- until page 3. It says -- You see where
25 it says additional comments?

1 A I do.

2 Q Spoke with property owner and talked about
3 the muddiness of their pond. Noticed from their spring
4 that sediment was coming across from adjoining property
5 owners' property and took pictures of the pond to show
6 the color. Told them we would be in touch with
7 property owner next to them.

8 A Uh-huh.

9 Q It looks like -- I don't see the name of the
10 inspector on here. When this -- there's reference to
11 this inspector speaking with property owner in the
12 adjoining property.

13 A The adjoining property, that's not you.

14 Q Not you? That's your husband?

15 A No, I don't adjoin her. That property where
16 that spring is, that adjoining property is not mine.
17 So they never contacted us about any of this. We never
18 had any contact with them at all about her complaints
19 ever because we're not her adjoining neighbors.

20 Q Exhibit Number 12 -- Actually, there's two
21 inspection reports in Exhibit Number 11. The second
22 one in the packet is actually dated October 18, 2018.

23 A I need to find that one, excuse me. Okay,
24 I'm there.

25 Q You see that?

48

1 A Yes.

2 Q Okay. This is a -- Do you see the comment
3 section?

4 A Page 3 again?

5 Q Yes, ma'am.

6 A Yes.

7 Q It says, Had a complaint that a property
8 owner had cleared some land and the runoff was clouding
9 up their pond. Gary and I rode out to the address of
10 Fish Hatchery and New Cassel and saw where the property
11 had been cleared and stumped. Took pictures. And
12 while we were there taking pictures, a neighbor came
13 out and told us that the owner was putting cows on the
14 property.

15 There's several different property owners
16 we're talking about here. I believe that the property
17 owner who complained was Ms. Garland. And then there's
18 a reference to another neighbor who came out. Was that
19 likely Mark; do you know?

20 A I don't know.

21 Q Did you ever speak with anybody named Gary
22 from the County?

23 A No, I did not. Like I say, I've never spoken
24 to any of them. They never -- In reference to these
25 complaints or anything else, they've never come over

1 and physically spoken to me at all.

2 Q Brandon Corder, do you see that name on the
3 bottom of this page right here, page 3? Do you
4 recognize that name?

5 A I'm looking. There it is. Yes, I know he is
6 one of their inspectors in talking with Ms. Jenkins.
7 And I actually attempted later -- not during this time
8 at all, it was after I had spoken to Ms. Jenkins. And
9 I wanted to speak with him, but he was not there. And
10 she called him on his phone while in her office.

11 Q Who is she?

12 A Ms. Jenkins. And had him on speaker phone
13 and she was addressing him on speaker phone.

14 Q What do you mean addressing?

15 A She was talking to him.

16 Q Wasn't like dressing him down or anything?

17 A No. Addressing.

18 Q Talking?

19 A Talking to him, yes. And I don't know who
20 else she spoke to. She spoke to several people while I
21 was there, explaining how they did not do their due
22 diligence and whatnot for a second time in a row.
23 Meaning the County.

24 Q How much actual earth moving did
25 Mr. Singleton do at the property?

50

1 A I don't know.

2 Q Do y'all have any heavy equipment yourselves?

3 A That we own?

4 Q Uh-huh.

5 A We own a mini-excavator. When I say mini,
6 it's like a little -- I don't know the number. He
7 would tell you the whatever.

8 Q I wouldn't know anyway.

9 A But, yes, a little mini-excavator that we
10 own.

11 Q How much work did you do -- I mean did your
12 husband --

13 A I don't know. That's a question for him. I
14 can't answer that.

15 Q The last page of Exhibit 11 talks about
16 references Kimberly, Stop Work Order per Kimberly to
17 get something. Did you ever speak to anybody named
18 Kimberly at the County?

19 A That Ms. Swygert.

20 Q Ms. Kimberly Swygert?

21 A Uh-huh.

22 Q How many times have you spoken with her about
23 this?

24 A I spoke with her just in June. And then
25 again, like I say, when I went back in October she was

1 not there. I was told she was in a meeting and I spoke
2 to Ms.-- I think it's Ms. Jenkins. I don't want to be
3 100 percent on that name, but I'm pretty sure it's
4 Ms. Jenkins.

5 Q But those were two conversations in 2018.
6 Have there been any conversations since?

7 A Since that?

8 Q Uh-huh.

9 A No.

10 Q Did you -- Did y'all threaten the County that
11 you were going to sue them if they didn't pull the Stop
12 Work Order?

13 A I did not. I don't recall if my husband said
14 anything like that. I have not, no.

15 Q Exhibit Number 12.

16 A I have 21, is that --

17 Q Let me see here.

18 A Oh, there we go.

19 Q I got them out of order. Let's do Number 21
20 here. It's at the back of your stack.

21 A I'm sorry. I've been flipping mine here
22 because that's where you started putting them.

23 Q Yeah, that's right.

24 A I'm just trying to keep them --

25 Q Put 11 right here and let's go ahead and just

52

1 talk about 21.

2 A Okay.

3 Q This is another request, November 28, 2018.
4 Did you have further conversations with -- what led you
5 to send this Freedom of Information Act request?

6 A Just trying to see if there were any other
7 complaints or phone calls, because we were told she has
8 complained at one time against everybody on the street.

9 Q Tell me about that.

10 A Apparently she's complained about everybody
11 on Davis Drive at some point.

12 Q Who told you that?

13 A Some of the neighbors.

14 Q Who?

15 A It was not told directly to me, but in front
16 of me the Shearers said it, and then someone -- another
17 neighbor said it to my husband.

18 Q Who is the other neighbor?

19 A The Davises said that she has complained
20 about everyone on the street at some point.

21 Q When was that conversation?

22 A I don't recall the date of the conversation.
23 As far as with the Shearers, there's been multiple
24 conversations.

25 Q How did that come up?

1 A I don't recall. I don't recall.

2 Q Was that on your property?

3 A I'm not sure. I'm not sure because they've
4 been on our property, we've been on theirs.

5 Q Are y'all friendly?

6 A Sure, we get along.

7 Q The Shearers and the Davises?

8 A I've not met the Davises, my husband has.

9 Q What did the Shearers -- When you overheard
10 this conversation who all was there?

11 A Myself -- I was part of the conversation, we
12 were just talking. And they said that she has
13 complained against everyone on the street at some point
14 or another.

15 Q Did you ask them what she was complaining
16 about?

17 A No, I did not. They just said she's a
18 complainer.

19 Q What did you -- Did you say anything at all
20 or did you just listen?

21 A I don't recall. I don't recall if I said
22 anything. And if I did, I don't even know what I said.
23 I don't recall the conversation other than I remember
24 them saying she is a complainer.

25 Q You don't remember when that was?

54

1 A I don't.

2 Q How frequently do you see the Shearers?

3 A I haven't seen them lately. I know his wife,
4 Julie, has not been feeling well, so she's not out a
5 lot. I see Paul out and about on their property,
6 but...

7 Q Getting back in order here with the exhibits,
8 Exhibit Number 12 is a letter from me to your husband,
9 November 27, 2018. This 1003 Skyview Drive, that's the
10 address where y'all live?

11 A Yes.

12 Q Do you remember when you got this -- What do
13 you remember about receiving this letter?

14 A Can you be more specific?

15 Q When you got -- This letter came to your
16 house. Do you know if you signed for it?

17 A I don't remember if we signed for it or not.

18 Q But you got it about this time?

19 A We got the letter, yes.

20 Q And were you mad when you got it?

21 A No.

22 Q Did you take a look at any of the photographs
23 that Ms. Garland provided with the letter?

24 A I did.

25 Q And did you -- how did you -- What did you

1 think about her complaint and my letter? Did you care?

2 A Well, sure, I care. I mean I don't know her,
3 but -- What do you mean did I care?

4 Q If your pond looked like this, what would
5 you -- how would you feel?

6 A I maintain my pond. I maintain my pond,
7 which is what I do.

8 Q How would you maintain it?

9 A We make sure to keep our -- We put things in
10 to keep the algae and the vegetation down that's not
11 supposed to be there. And we put pond dye in our pond
12 to keep the sun from going down to help it -- to
13 prevent it from growing.

14 Q What kind of pond dye do you put in?

15 A I don't know the name of it, but it's -- we
16 order it and it's not harmful to the fish or anything
17 like that. You can even drink it, but it just keeps
18 the sun from getting down to help the lily pads and
19 stuff, because the sun helps them grow. And it keeps
20 them from growing.

21 Q So it like darkens the water?

22 A It does.

23 Q To cut down on lily pad growth?

24 A Yes.

25 Q We're going to come to a photograph here in a

56

1 minute which has blue dye. Is it a -- What color is
2 it?

3 A It is a blue dye.

4 Q Where do you get it?

5 A You can get it Tractor Supply. We have
6 bought some before at Tractor Supply, but I usually
7 order it online.

8 Q From where?

9 A We order pond dye and we also order some
10 stuff for the lily pads, and I believe it is Aquacide,
11 I think.

12 Q How do you spell that?

13 A A-Q-U-A-C-I-D-E, Aquacide.

14 Q So it's designed to kill--I guess -cide is
15 water [sic]--kill algae?

16 A Lily pads. Basically it's specific to what
17 you have, the type of lily pads you have.

18 Q How did you learn about that?

19 A Online.

20 Q We've been going for a while. You doing
21 okay?

22 A Sure.

23 Q Do you want to take a break?

24 A If we could.

25 (A brief break was taken.)

1 BY MR. BELSER:

2 Q Exhibit Number 13, it looks like Exhibit
3 Number 13 and 14 are two -- They're pictures of the
4 same thing, just in reverse order. So if you want --
5 That's only mine. Exhibit Number 13 is a photograph of
6 Ms. Garland's pond from January of 2019. What do you
7 see in this photograph?

8 A I see a picture of her pond and a tree and
9 something hanging in the tree.

10 Q What do you see coming into the pond?

11 A I see water.

12 Q So you deny -- Well, do you deny completely
13 that the land-disturbing activities on your property
14 have had anything to do with the impact to
15 Ms. Garland's pond?

16 A I don't think it's my property. I think she
17 lives on a dirt road and there were two major
18 hurricanes. And again, the adjoining property is not
19 my property. And there's also property up just past
20 hers at a higher level than hers as well that is dirt.

21 Q So in your belief, your -- the work that
22 y'all have done on your property has had absolutely no
23 impact on Ms. Garland's pond?

24 A I don't know if it did or didn't. I didn't
25 do the work. I can't say it did or did not.

58

1 Q So you don't know one way or the another?

2 A I don't think it did, but again, I'm not an
3 expert.

4 Q Have you -- outside of the present -- I don't
5 want to know if you have spoken with any engineers or
6 anything with Mr. Moore or with Hood --

7 MR. BELSER: What's your last name?

8 MR. DAWSON: Dawson.

9 BY MR. BELSER:

10 Q -- Mr. Dawson. Have you been in contact with
11 any engineers on your own or any expert witnesses?

12 A Have I?

13 Q Yes.

14 A My husband and I went and sat down and spoke
15 with someone.

16 Q Who was that?

17 A I don't recall his name. I don't know, I
18 don't recall.

19 Q When was this?

20 A I don't recall the date. I don't know if it
21 was late 2018 or it was in 2019. So I'm going to say I
22 don't recall.

23 Q Did he come to your -- Was it a man or a
24 woman?

25 A It was a man.

1 Q Old or young?

2 A I don't know how old he was. I would say
3 old -- older than me I would say. Older guy.

4 Q Did you meet at his office?

5 A We did.

6 Q Where was his office?

7 A I think it was over -- Irmo-ish area I think.

8 Q What did you tell him?

9 A We just spoke to him about our property and
10 about him taking a look at our property.

11 Q In connection with this lawsuit?

12 A We just wanted him to just take a look and
13 tell us what he thought of it and if there was anything
14 different we needed to do with our property.

15 Q Did you pay him?

16 A Yes.

17 Q How much did you pay him?

18 A I don't remember.

19 Q Was it hundreds of dollars or thousands of
20 dollars?

21 A It was not thousands, no.

22 Q Did he give you anything in writing?

23 A Yes.

24 Q What did he give you?

25 A He went out and looked at our property and he

60

1 told us what he thought.

2 Q Do you still have that piece of paper?

3 A I do not. I don't. I don't know where it's
4 at.

5 Q You say you don't know where the paper is?

6 A I don't have it.

7 Q You don't recall the guy's name. Do you
8 recall what it said?

9 A I think his name, I believe, was a Mr. Chao,
10 but I'm not 100 percent sure and I would not know how
11 to spell that.

12 Q Yeah.

13 A I believe.

14 Q There's a Chao & Associates. I think it's
15 C-H-O-A [sic].

16 A I don't know how to spell that, sir. I don't
17 know how to spell his last name, I don't know. And I'm
18 not for sure that's how you pronounce his name, so...

19 Q His first name is Jimmy?

20 A I don't know. I don't know.

21 Q So you reached out -- You reached out to him
22 or did he reach out to you?

23 A I believe my husband reached out. I'm not
24 sure. I believe my husband reached out to him.

25 Q Did you ever have any prior relationship with

1 Mr. Chao?

2 A I don't know him, no, sir. I'm not sure that
3 that's his name either.

4 Q Was the office in a little kind of strip mall
5 complex?

6 A Yes. It was this little small area and there
7 was multiple little places there.

8 Q Uh-huh. Mr. Chao --

9 A But I don't recall the address.

10 Q Mr. Chao is an Asian-American gentleman. Was
11 that -- Does that ring a bell?

12 A Yes.

13 Q Was the person with whom you met an Asian
14 American?

15 A I don't know what his -- I don't know what
16 his ethnicity is. I don't know. I don't know if he
17 was Asian or Japanese, I don't know what he is. So...

18 Q Okay. I'm showing you a picture.

19 A Okay.

20 Q Is that -- That's Jimmy Chao. Is that him?

21 A I'm not sure that that's him or not.

22 Q I guess we can figure it out. Was it that
23 guy, Gerald Lee?

24 A I don't know.

25 Q Was it David Chao?

62

1 A I don't think it was him.

2 Q Okay. What --

3 A That first guy, he just looks -- I don't
4 know. I'm just not sure if that's him or not. I don't
5 know.

6 Q Okay. What -- And you don't remember what he
7 told you?

8 A He told my husband that he could come out and
9 show him some stuff that he could do to the property if
10 he wanted him to, but I don't -- Other than that, I
11 don't recall the conversation.

12 Q Have there been any -- Have y'all put any
13 berms on your property to divert water flow?

14 A Any berms? No.

15 Q You know what a berm is?

16 A Like a mound?

17 Q Like a little mound to divert.

18 A No.

19 Q Okay. Number 14.

20 A I was going to say I think I've done passed
21 the pictures.

22 Q Number 14 is a photograph of the wetlands
23 area in between Davis Drive and the Garland pond. Does
24 this look like the blue Aquacide that y'all put in?

25 A The blue pond dye, yes.

1 Q Did y'all actually come down the road and
2 pour it in the road?

3 A No.

4 Q So do you have any idea how that got there?

5 A As far as -- Exactly where do you mean as far
6 as -- We put it in our pond and we put -- we have a --
7 I can't think of the name of it, like an area that is
8 put there for the cows. And there's a pipe that goes
9 from that and -- I can't think of what you call it.

10 Q Where do you put the manure from your cows?

11 A Over -- Now, as far as the manure from our
12 cows?

13 Q Uh-huh.

14 A It's just out in the pasture.

15 Q You don't go pick it up or anything?

16 A No.

17 Q What about the -- are there any animals that
18 stay in the barn?

19 A The big barn?

20 Q Uh-huh.

21 A No. That's where we store our hay and our
22 equipment and whatnot. We do have shelters out on the
23 pastures for the animals.

24 Q But y'all don't go out and kind of hunt and
25 gather for cow patties and stockpile them in any one

64

1 place on the property?

2 A No. We have over in the far -- I could show
3 you. I don't -- it's harder for me to try to tell you.
4 I can show you.

5 Q Let's look at Exhibit 3 here.

6 A Over here in this area right here. We've got
7 a corral at our house where we live. Like, for
8 instance, when we brought our donkeys in, we kept them
9 there for a while just to get them acclimated to us and
10 everything. And when we cleaned that out, we bring it
11 and we put it over -- again, let's see, over here
12 because Mr. Harvey, which is a neighbor, he likes to
13 have it for his garden.

14 Q Why don't you put a circle right there and
15 just put --

16 A And this is what comes from a small corral we
17 have at our home because -- It's just around in the
18 corner.

19 Q Right by the gate?

20 A Past, near the dam area, yeah. See how the
21 dam goes around right here. And then there's a gate
22 right over here. And Mr. Harvey lives over here. It's
23 right there.

24 Q Okay. I was looking at this thing upside
25 down. All right. So that's where you bring -- you

1 have a corral at your house. How many animals are at
2 your house?

3 A Right now we've only got left is four goats,
4 four pigmy goats. We just brought our donkeys out a
5 couple of days ago.

6 Q Why don't you do a line right there and put,
7 I don't know, manure or something, whatever you want to
8 call it.

9 A (Witness complies.)

10 Q How long have the other animals been out
11 there?

12 A Since May 5th.

13 Q Of this year?

14 A Uh-huh. Yes, sir.

15 Q Did you -- So all 20 cows and -- were they
16 all at your other place?

17 A No. We didn't get them all at the same time.
18 We've gotten them over time. But, no, not all of them
19 were at our other place, no.

20 Q Okay.

21 A Some of them have been there for a few days
22 and then come out but not all of them, no.

23 Q Who else has access to this property, to the
24 Cassel Drive property?

25 A Mr. Harvey, our kids, right now Davey Tree

66

1 Service is parking a few of their trucks there, so they
2 have access.

3 Q Where are they parking?

4 A And it's just for a brief, little bit because
5 they're cutting in the area. About right here. This
6 is Fish Hatchery.

7 Q So up near Fish Hatchery?

8 A Yes, sir.

9 Q And when your children go, do they -- go to
10 the property, do they just fish or what do they do?

11 A Typically fish or we're out there and we'll
12 go at our overhead thing. We feed our animals. My
13 daughter, she's usually out with me on the property.
14 We go around and check our fences and whatnot, just
15 hang out there. I mean it's our property, we just kind
16 of hang out, you know.

17 Q Exhibit Number 15 is a report from Dennis
18 Corporation, March 20, 2019. Have you ever seen this
19 before --

20 A No, sir.

21 Q -- today? Okay. So it just goes without
22 saying this report is not what led you to go talk to
23 Mr. Chao or whoever it was?

24 A I've never seen this before.

25 Q Never seen it, okay. Exhibit 16 is a pond

1 remediation estimate dated April 10, 2019. Have you
2 ever seen this before?

3 A No, sir.

4 Q You see where the estimate to remove all the
5 sediment from Ms. Garland's pond is over \$400,000?

6 A Right here?

7 Q Uh-huh.

8 A Okay.

9 Q You've never seen this before?

10 A No, sir, I've never seen this before.

11 Q Exhibit Number 17, this is a complaint that
12 was filed -- is this your husband's handwriting or is
13 this --

14 A That's my husband's handwriting.

15 Q Can you read his handwriting?

16 A I can.

17 Q What is -- where it says, I make this
18 complaint on the following, can you read that?

19 A On numerous occasions Mark has harassed my
20 livestock by firing his gun and fireworks near my
21 property line causing one of my llamas to give birth
22 prematurely. He only does this when my animals are
23 near the property corner where he resides. I have
24 several --

25 Wait a minute. There's a line there.

68

1 Q Camels? Does it say camels?

2 A Oh, I'm sorry, I see now. I have several
3 animals that are expecting and this is stressing them.

4 Q So this was a complaint for veterinarian
5 medicines, supplies, and milk, \$500; 24/7
6 around-the-clock care for \$2,500; and then punitive
7 damages for \$4,500. You don't allege that Ms. --
8 There's nothing that Ms. Garland is doing that is
9 stressing your animals out, is there?

10 A Is she stressing my animals? Not to my
11 knowledge. She just comes up and down the dirt road
12 videoing and filming us all the time and taking our
13 picture.

14 Q And have you done the same thing with her?

15 A My husband, after quite a number of months
16 and days of her doing it, he did it back. She was over
17 there doing it, and he did it back to her. So she
18 called the police. And then the police called him.
19 And he invited them over to see the video that he took,
20 and they wouldn't --

21 Per the police officer, because he had the
22 phone on speaker, he was not writing her a report
23 because he told her why would he write a report against
24 my husband; that he didn't do anything wrong, no more
25 than she did. As far as he did only what she had done

1 to him, that she started it, and that he was not going
2 to provide her with a report for something that she
3 clearly was starting and initiating, and he didn't do
4 anything worse than what she did.

5 Q Number 18, this is a police report dated
6 July 9, 2019. Why don't you just take a minute to read
7 that and we can talk about it.

8 A Okay, I read it, this first page. Is that
9 all I was supposed to read?

10 Q Yeah. This recounts some incidence of
11 following someone in a truck. Were you in the truck?

12 A No, I was not, but I see where she says he
13 has no business on that road. She don't have any
14 business on New Cassel either.

15 Q But have you ever taken any video footage of
16 Ms. Garland?

17 A Have I?

18 Q Uh-huh.

19 A One of the times she was coming up the road,
20 I held my phone up but I didn't video her, no. But I
21 didn't follow her either. But I held it up while she
22 was going by just to let her think I was because,
23 again, she constantly is down there on New Cassel and
24 constantly stopping down there with her camera and all
25 out. As a matter of fact, Mr. Harvey has had to run

70

1 her off of the property, her hanging over the fence.

2 Q Were you ever interviewed by the Sheriff's
3 Department?

4 A Me?

5 Q Uh-huh.

6 A Yes.

7 Q When was that?

8 A Several times. Concerning her?

9 Q Uh-huh.

10 A Okay. Let me go back. Then, no. Concerning
11 Ms. Garland, I have not been, no. I've spoken with
12 police officers concerning Mark. But concerning
13 Ms. Garland, no, I have not.

14 Q Okay. Exhibit Number 19, this is the written
15 discovery responses. So Singleton Landworks, that's
16 Robert Singleton?

17 A Roger.

18 Q Roger.

19 A That's the gentleman that was here earlier.

20 Q Uh-huh. I think that these -- I think you
21 already answered this, but you don't know the scope of
22 work that Mr. Singleton performed?

23 A I do not. What exactly do you mean? Be
24 specific as far as...

25 Q Well, exactly what -- Number 6 says, Identify

1 the contractor you hired to timber, grub, and grade
2 your property. And Singleton Landworks is included.

3 A He did not timber it. He did not.

4 Q Okay. But you don't know who timbered it?

5 A I have the paperwork at home in a file. I
6 don't have it in front of me, so I don't remember the
7 name. But I do have the paperwork at home in a file.

8 Q But you don't know what areas of the property
9 Mr. Singleton may have grubbed and graded?

10 A He would be better to answer that because I
11 didn't do the work.

12 Q He as in your husband?

13 A Mr. Singleton.

14 Q Number 8 says, what have you done to divert
15 the flow -- the water flow on your property. And it
16 says, reserves the right to supplement. To your
17 knowledge have any diversion ditches or swells been --
18 or berms or swells been installed?

19 A There have been no berms. We have -- I don't
20 know the name of it. I can't -- Can I ask him the name
21 of that water thing I'm trying --

22 Q Sure.

23 THE DEPONENT: What's the name?

24 MR. CADE: Retention pond.

25 THE DEPONENT: A retention pond. I could not

72

1 think of that. I'm sorry.

2 BY MR. BELSER:

3 Q Where is that?

4 A There's a retention pond on the property.

5 And from that retention pond, we did put a pipe in so
6 that that goes to the -- so it doesn't run across the
7 ground. It goes to -- There's a little -- like where
8 the water would come out if our pond was to overflow.

9 Where the water would come out, right there.

10 Q Here you go.

11 A It's there.

12 Q Why don't you mark on here where the
13 retention pond is and the pipe and all that jazz.

14 A The spillway for our pond is right here.
15 This is the spillway. Where it goes back through, if
16 water was to leak out of our pond --

17 Q Like an emergency spillway?

18 A Yes, like if the pond was to overfill, and
19 that spillway is there, and that's where the water
20 would go. And it's like a little canal thing right
21 there. The retention pond that I couldn't think of is
22 approximately -- this is approximate because this is a
23 tiny little drawing and it's hard for me. It's
24 approximately back here. And the pipe goes to where it
25 would go into the little canal, the same place where

1 the water would spill out in the event that anything
2 spills. Goes to the same canal as the spillway.

3 Q Just so -- Can you do a line and write
4 retention.

5 A And this is approximate.

6 Q Yeah, of course. Just to where retention
7 pond is and then pipe.

8 A Retention pond.

9 Q Is it a buried pipe?

10 A Yes. And it was kind of back a little bit.
11 And this, again, is approximate.

12 Q Yeah, that's fine.

13 A Just put a line and put pipe?

14 Q Pipe, yeah.

15 A Other than that, no, we have not done
16 anything to divert water.

17 Q Was that -- How big is the retention pond?

18 A I don't know. It's not large, it's not huge.
19 But I'm -- as far as measurements, I don't know.

20 Q Is it like the size of this office?

21 A Oh, no, no.

22 Q The size of the table?

23 A It's bigger than that but -- I would defer
24 that to my husband. He's --

25 Q Sure, sure. Who told you -- Did somebody

74

1 tell you to do that or you just --

2 A I don't know. I didn't have anything -- I
3 would defer that to my husband, too.

4 Q Number 9, it's on page 4.

5 A Okay. I'm there.

6 Q Identify any sediment and erosion control
7 measures that you have implemented. It says you have
8 installed silt fencing and fabric design to stop the
9 erosion. Additionally, Defendant created a
10 detention/retention area on their property to stop any
11 movement of soil from their property onto anyone
12 else's.

13 Is your husband the one who would be the best
14 to talk about the silt fences and fabric design?

15 A I know they were put out there and I know
16 there was silt fencing and the carpet things, fabric
17 things, and these big rolls, but, yes, I would defer
18 that to him because I don't...

19 Q Is there any connection between this work
20 that was done and what Mr. Chao told you to do?

21 A I don't -- I don't recall when this stuff was
22 put out. I would defer all that to him.

23 Q The next is the Defendants' Responses to
24 Request for Production.

25 A Number 20?

1 Q No, it's actually kind of the second half of
2 this document.

3 A Okay.

4 Q Produce copies of all photographs in your
5 possession of your property. Number 2, Produce copies
6 of all photographs in your possession of your property,
7 whether before or after land-disturbing activities
8 began. None at this time.

9 When you -- After you bought it -- Before or
10 after you bought the property, before any of the work
11 was done, did you take any pictures of the property
12 just to show what it looked like?

13 A I've probably got a few in my camera.

14 Q Well, basically -- Even though we've got
15 these aerial photographs, to the extent you have any
16 photographs of the property during your ownership -- if
17 it's picture of your husband holding up a big fish or a
18 duck by its neck or something like that, you don't need
19 to send me that.

20 A Okay.

21 Q But if it's a picture that would show the
22 condition of the property, that would be helpful.

23 A Okay, okay.

24 Q Same with -- While you're looking for stuff,
25 if you would -- anything you have relating to the

76

1 timbering that y'all did, how much -- the scope of the
2 timber contract, any money that came from it, any of
3 that kind of stuff. Any contracts you have with
4 Mr. Singleton, any evidence of any payments that were
5 made, anything that would kind of relate to what we've
6 talked about today.

7 A Okay.

8 Q Number 5 is all communications with any
9 governmental entity or third-party concerning the
10 complaints. Other than the Freedom of Information Act,
11 have you -- are you aware of any letters that were sent
12 to the County on your behalf or by you?

13 A No.

14 Q Have you had any communication with any of
15 your other neighbors about this complaint, either by
16 email or text or anything?

17 A I have not.

18 Q And Number 20 --

19 A Exhibit 20?

20 Q Yes, ma'am. At the back of this document
21 there's a timeline. Who typed this up?

22 A I did.

23 Q Just kind of walking through this, you had a
24 written contract to purchase the property February
25 26th. Did Mr. Smith actually perform a survey of the

1 property?

2 A Yes, he did.

3 Q Do you know if he did any kind of wetlands
4 delineation or anything?

5 A Not that I'm aware of.

6 Q It was just a boundary survey?

7 A Yes, sir, as far as I know.

8 Q Now March 5, 2018, Mark approached M. Smith
9 about what he was doing and demanded information from
10 him. Does that mean --

11 A That should have been Mr.

12 Q Oh, Mr. Smith.

13 A Mr. Smith.

14 Q Mr. Shearer is referenced on April 11, 2018.
15 And there's a purchase of a small piece of property
16 adjacent to Mark's property.

17 A Yes, sir.

18 Q Can you point out to me where that is on
19 Exhibit 3?

20 A Yes.

21 Q Why don't you go to the second page where
22 it's --

23 A The property -- Let me make sure I'm in the
24 right. Okay, I was about to be wrong here. There's
25 Fish Hatchery, it was kind of cut off. Back in this

78

1 very back corner, the Shearers live here. And the
2 property line kind of went -- the line like juttetd back
3 just a tad bit that way.

4 Q Uh-huh.

5 A What we did was where -- it's hard to see
6 because of these trees. Basically do you want me to
7 draw the line to show what I'm talking about?

8 Q Yes, ma'am.

9 A The kind of like went back and -- I'm not
10 quite sure on here but I'm just going to draw and show
11 you. It kind of went and kind of juttetd back a little
12 bit like so. What we did is straightened it out
13 basically back there. And it like straightened it out
14 once you cut off like a triangle like piece.

15 Q Why don't you do a line right there and put
16 Shearer.

17 A This is approximate again because --

18 Q How much did he pay for that?

19 A \$10,000.

20 Q Do you still have any incidents or, I guess,
21 bad encounters with Mr. Mark?

22 A Do I still have?

23 Q Yeah.

24 A I have not had an encounter at all with
25 Mr. Mark as far as an actual conversation encounter

1 since, I believe it was, the 7th of May approximately.
2 However, he did continue to shoot and throw his
3 fireworks at our animals and drove his car as if he was
4 going to drive it through the fence trying to scare our
5 animals. There's now a restraining order in effect
6 right now.

7 MR. BELSER: Let's take a quick break. I
8 make be finished with you, then I'll ask questions
9 of your husband. Let's take a break.

10 (A brief break was taken.)

11 MR. BELSER: No questions.

12 MR. DAWSON: I don't have any questions.

13 (The deposition was concluded at 3:11 p.m.)
14
15
16
17
18
19
20
21
22
23
24
25

80

1

SIGNATURE OF DEPONENT

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I, the undersigned, CHRISTY CADE, do hereby
certify that I have read the foregoing deposition and
find it to be a true and accurate transcription of my
testimony, with the following corrections, if any:

PAGE	LINE	CHANGE	REASON

See Inside Back Cover

CHRISTY CADE

DATE

1 CERTIFICATE OF REPORTER

2 I, Laura Chamblee, Registered
3 Professional Reporter and Notary Public for the
4 State of South Carolina at Large, do hereby certify:

5 That reading and signing of the
6 foregoing deposition by the witness is not waived.

7 That the foregoing deposition was
8 taken before me on the date and at the time and
9 location stated on the title page of this transcript;
10 that the deponent was duly sworn to testify to the
11 truth, the whole truth and nothing but the truth; that
12 the testimony of the deponent and all objections
13 made at the time of the examination were recorded
14 stenographically by me and were thereafter transcribed;
15 that the foregoing deposition as typed to the best of
16 my ability is a true, accurate and complete record of
17 the testimony of the deponent and of all objections
18 made at the time of the examination.

19 I further certify that I am neither
20 related to nor counsel for any party to the cause
21 pending or interested in the events thereof.

22 Witness my hand, I have hereunto
23 affixed my official seal this 3rd day of September
24 2019, at Hartsville, Darlington County, South Carolina.

25

26

27

28

29

30

31

32

33

34

Laura Chamblee

Laura Chamblee
Registered Professional Reporter
Notary Public
State of South Carolina at Large
My Commission expires:
September 27, 2028

82

1

I N D E X

2

PAGE

3

EXAMINATION:

4

BY MR. BELSER

3

5

SIGNATURE OF DEPONENT

80

6

CERTIFICATE OF REPORTER

81

7

E X H I B I T S

8

EXH. NO. DESCRIPTION

PAGE

9

No. 1 Google Earth images

3

10

No. 2 Limited Warranty Deed

3

11

No. 3 Google Earth images

3

12

No. 4 Building Permit, 5/15/18

3

13

No. 5 Building Permit, 6/27/18

3

14

No. 6 Letter removing Stop Work Order

3

15

No. 7 Response to FOIA request

3

16

No. 8 Response to FOIA request

3

17

No. 9 Response to FOIA request

3

18

No. 10 Response to FOIA request

3

19

No. 11 Two inspector reports

3

20

No. 12 Cease and desist letter

3

21

No. 13 Photograph

3

22

No. 14 Photograph showing blue dye

3

23

No. 15 Report from Dennis Corporation

3

24

No. 16 Bid from Contour Mining

3

25

No. 17 Complaint in Cade v. Melichar

3

1	E X H I B I T S (Cont'd)		
2	EXH. NO.	DESCRIPTION	PAGE
3	No. 18	Incident/Investigation report	3
4	No. 19	Defendants' responses to interrogatories and request for production	3
5	No. 20	Amended Complaint, Cade v. Melichar	3
6	No. 21	Response to FOIA request	3
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

A A-Q-U-A-C-I... 56:13 ability 81:10 able 40:8 absolutely 57:22 access 65:23 66:2 accessory 26:9 acclimated 64:9 accompany 36:5 accurate 80:4 81:10 Act 34:14 37:4 37:6,10 44:9 44:22 46:7 52:5 76:10 activities 57:13 75:7 actual 49:24 78:25 additional 45:19 46:25 Additionally 74:9 address 48:9 54:10 61:9 addressing 49:13,14,17 adjacent 77:16 adjoin 47:15 adjoining 47:4 47:12,13,16 47:19 57:18 aerial 75:15 affixed 81:14 afternoon 3:8,9 age 12:15 ago 15:16 65:5 agricultural 11:10 29:14 29:19 30:16 35:10,23 36:1 ahead 5:13 30:10 51:25 algae 55:10 56:15 allege 68:7 Amended 83:5 American 61:14 amount 11:22 11:24 animals 11:6,6 20:17,19 43:8 43:12,14	63:17,23 65:1 65:10 66:12 67:22 68:3,9 68:10 79:3,5 answer 4:13,21 5:12,13 19:14 24:9 33:15 50:14 71:10 answered 70:21 answers 4:1 anticipate 4:12 4:13 5:14 anybody 12:5 33:19,25 34:7 34:10 36:17 36:20 39:4 48:21 50:17 anyway 41:2 50:8 apologize 11:1 39:1 43:16 apparently 15:16 37:5,23 41:9,12 44:17 52:10 APPEARAN... 2:1 appears 13:13 apply 36:1 approached 77:8 approximate 25:20 26:19 42:3,20 72:22 73:5,11 78:17 approximately 7:20,20 9:12 9:13 17:25,25 20:20,20,21 25:16,24 26:19 42:3 45:6 72:22,24 79:1 April 67:1 77:14 Aquacide 56:10 56:13 62:24 area 19:3,5,24 20:3,8,10 25:17,24 59:7 61:6 62:23 63:7 64:6,20 66:5 74:10 areas 4:20 14:3 15:15,18 19:25 20:1,5,9 71:8	argue 5:10,18 Army 22:16,19 around-the-cl... 68:6 arrow 25:25,25 Asian 61:13,17 Asian-Americ... 61:10 asked 18:15 35:9 40:8,21 assistant 7:7 Associates 60:14 assume 11:14 assumed 41:12 attached 44:3 attempted 49:7 attorney 38:22 Attorneys 1:16 2:2,7 attractive 11:7 August 1:12 aware 76:11 77:5 B B 82:7 83:1 babies 21:1 back 19:25 20:1 20:2 26:21 27:17 28:15 30:12 31:17 35:17 40:17 40:20,21,24 41:10,21 42:3 42:13 45:5 50:25 51:20 54:7 68:16,17 70:10 72:15 72:24 73:10 76:20 77:25 78:1,2,9,11,13 background 6:17,18 bad 14:6,7 78:21 Ball 28:5,6 barn 19:10 21:10 25:7,12 25:16 63:18 63:19 Barr 28:6 basically 56:16 75:14 78:6,13 basis 32:19 BEACH 1:21 began 75:8	beginning 3:2 41:6 behalf 76:12 belief 57:21 believe 28:12 48:16 56:10 60:9,13,23,24 79:1 bell 61:11 belong 8:25 Belser 2:3,3,3 3:7,10 6:2,5 9:23 10:3 43:19 57:1 58:7,9 72:2 79:7,11 82:4 Bennettsville 6:20 berm 62:15 berms 62:13,14 71:18,19 best 74:13 81:9 better 71:10 Bid 82:24 big 13:16 14:18 21:9,10 41:16 44:17 46:11 63:19 73:17 74:17 75:17 bigger 13:18 73:23 birth 67:21 bit 66:4 73:10 78:3,12 blocked 41:12 blue 56:1,3 62:24,25 82:22 boat 16:6 born 6:20 bothered 39:2 bottom 14:22 15:8 49:3 bought 14:5 16:9,10,12,16 17:13 21:1 56:6 75:9,10 Boulevard 1:14 2:9 boundary 77:6 Brandon 49:2 break 4:24 5:1,4 56:23,25 79:7 79:9,10 brief 6:17 32:25 56:25 66:4 79:10	Briefly 17:15 bring 8:10 64:10,25 broker 7:24 brothers 17:7 brought 64:8 65:4 brown 20:25 build 10:23,25 10:25 17:17 building 25:2,4 25:5 26:3,6,9 44:1 82:12,13 built 25:8 buried 73:9 business 7:16,19 7:22 69:13,14 buy 40:15 C C-H-O-A 60:15 cabin 15:17 Cade 1:7,7,11 2:13 3:4,8 8:15 9:23 10:2 12:21,25 13:5 71:24 80:2,24 82:25 83:5 Cades 6:14 39:24 Cahill 36:25 37:1 44:14 46:3 call 11:14 15:4 26:10,10 33:14 34:25 40:3,14,21 41:4 63:9 65:8 called 11:17 33:14 41:13 42:15 44:21 44:24 49:10 68:18,18 calling 30:9 39:19 calls 52:7 camels 68:1,1 camera 69:24 75:13 canal 72:20,25 73:2 capacity 32:20 car 39:2 79:3 care 55:1,2,3 68:6 Carolina 1:1,15 2:5,9 6:21	81:3,15,20 carpet 74:16 case 1:6 6:11,13 34:2,5 38:18 Cassel 9:2,10 10:5 11:8 15:13 18:10 18:12 20:3 32:6 48:10 65:24 69:14 69:23 caught 11:2 43:18 cause 81:12 causing 67:21 Cease 82:20 center 19:4 certain 9:18 CERTIFICA... 81:1 82:6 certify 80:3 81:3,12 Chamblee 1:17 81:2,19 change 45:24 80:6 changes 6:1,8 Chao 60:9,14 61:1,8,10,20 61:25 66:23 74:20 charges 6:8 CHARLEST... 1:21 check 66:14 checking 39:15 39:17 children 12:16 12:22,25 13:5 66:9 chime 9:25 10:1 Choice 7:15 CHRISTY 1:7 1:11 3:4 80:2 80:24 cide 56:14 circle 41:23 64:14 circles 18:9 circumstance 31:23 clarification 44:11 clarify 33:24 cleaned 64:10 clear 5:22 cleared 15:13

32:6 48:8,11 clearing 19:5 clearly 5:21 69:3 Client 1:20 close 11:9 43:10 43:12 closest 41:18,20 clouding 48:8 color 17:19 44:6 47:6 56:1 Columbia 1:15 1:21 2:5,9 3:11 7:8,12 9:8 10:20 come 17:2,20 21:21 28:14 32:16 38:11 38:17 52:25 55:25 58:23 62:8 63:1 65:22 72:8,9 comes 15:1 64:16 68:11 coming 10:1 47:4 57:10 69:19 comment 48:2 comments 46:25 Commission 81:21 committee 32:24 COMMON 1:1 communication 23:2 76:14 communicatio... 76:8 company 7:13 7:14 8:14,15 8:15 17:2 18:16 complained 48:17 52:8,10 52:19 53:13 complainer 53:18,24 complaining 37:19 53:15 complaint 48:7 55:1 67:11,18 68:4 76:15 82:25 83:5 complaints 23:7 24:23 37:16 47:18 48:25 52:7 76:10	complete 81:10 completely 57:12 complex 61:5 complies 42:8 65:9 COMPUSCR... 1:20 concerning 34:1 34:2 37:17 40:4 70:8,10 70:12,12 76:9 concisely 5:22 concluded 5:24 79:13 condition 14:4,6 14:8 75:22 conditions 45:24 confiscate 41:9 Congaree 32:15 32:17,21 connection 59:11 74:19 constantly 69:23,24 construction 31:25 consult 22:16 Cont'd 83:1 contact 17:10 22:19 23:8 27:10 28:23 30:24 33:19 33:25 47:18 58:10 contacted 47:17 contest 4:23 continue 79:2 Contour 82:24 contract 11:21 33:2 76:2,24 contractor 22:7 71:1 contractors 19:21 contracts 76:3 control 74:6 convened 3:11 3:16 conversation 4:11 52:21,22 53:10,11,23 62:11 78:25 conversations 51:5,6 52:4,24 copies 8:19,20	8:22 44:6 75:4 75:5 Corder 49:2 corner 13:24 43:13,14 64:18 67:23 78:1 Corporation 66:18 82:23 Corps 22:16,19 corral 64:7,16 65:1 correct 9:2 13:14 15:23 36:6 43:3,4 corrections 80:5 correctly 29:23 correspondence 37:16 Council 31:9 counsel 81:12 country 8:6 County 1:2 6:15 6:21,23 12:14 23:2 29:25 30:23 31:8 33:20,25 34:7 34:10,12 36:17 41:13 48:22 49:23 50:18 51:10 76:12 81:15 couple 65:5 course 3:24 5:6 73:6 court 1:1 3:24 4:8,17 6:6 8:22,25 cow 63:25 cows 20:20 21:6 48:13 63:8,10 63:12 65:15 created 74:9 cruise 16:12,13 curious 46:9 cursed 41:8 cursing 39:19 41:3 customer 7:6 cut 16:23,25 18:17 20:11 23:17,24 40:19 55:23 77:25 78:14 cutting 18:22 23:25 66:5	D D 1:10 82:1 daily 19:18 dam 14:13,18 14:23 15:8 19:11,25 22:2 22:17 64:20 64:21 damage 34:3 damages 68:7 darkens 55:21 Darlington 81:15 date 1:12 37:12 46:21 52:22 58:20 80:24 81:6 dated 11:20 25:3 46:17 47:22 67:1 69:5 daughter 12:6,8 12:19 13:3,7,9 13:10 66:13 Davey 65:25 David 61:25 Davis 52:11 62:23 Davises 52:19 53:7,8 Dawson 2:8 6:4 43:17 58:8,8 58:10 79:12 day 19:18 36:10 43:8,15 81:14 days 65:5,21 68:16 Deadline 1:20 dealt 21:21 decided 38:4 deed 11:20 17:4 82:10 Defendant 74:9 Defendants 1:8 2:7 Defendants' 74:23 83:4 defer 9:19,20,21 26:25 27:5 73:23 74:3,17 74:22 definitely 10:18 delineation 77:4 demanded 77:9 Dennis 66:17 82:23 deny 57:12,12	Department 70:3 deponent 43:18 71:23,25 80:1 81:7,8,10 82:5 deposition 3:1,3 3:11,16,24 5:3 5:6,24,25,25 6:6,10 9:24 25:22 79:13 80:3 81:4,5,9 depositions 9:16 depth 22:11 deputies 34:19 DESCRIPTI... 82:8 83:2 design 74:8,14 designed 56:14 desist 82:20 detention/rete... 74:10 devices 35:14 difference 25:6 different 13:17 14:3 44:1 48:15 59:14 diligence 11:22 49:22 direct 17:9,10 27:10 30:24 33:19 directly 52:15 dirt 45:16 57:17 57:20 68:11 disagreement 39:13 43:22 discover 10:7 discovery 70:15 discussion 36:17,20 discussions 17:12 dispute 3:19 disputes 3:20 ditches 71:17 diversion 71:17 divert 62:13,17 71:14 73:16 document 75:2 76:20 documentation 29:13 35:11 40:8 documentations 30:15 documents 46:7 doing 5:17	17:24 21:18 21:20 22:16 30:2,10 34:8 35:6,8,18 37:19 56:20 68:8,16,17 77:9 dollar 37:23 38:1 dollars 39:22 59:19,20 donkeys 20:21 21:6 64:8 65:4 door 37:21 drains 15:2 draw 42:5 78:7 78:10 drawing 72:23 dredging 21:24 dressing 49:16 drew 26:1 dried 14:10,10 drink 55:17 drive 9:2,7 18:10 52:11 54:9 62:23 65:24 79:4 driven 1:20 driveway 14:1 40:19 drove 79:3 duck 75:18 ducks 20:21,23 21:3,6 due 11:22 29:13 49:21 duly 3:4 81:7 dust 40:6 dye 55:11,14 56:1,3,9 62:25 82:22

E

E 1:10 82:1,7
83:1
earlier 70:19
early 23:6
earth 8:18 10:6
17:18 23:22
49:24 82:9,11
earthwork 32:2
easier 4:19
edge 38:8
edges 16:4
educational
6:18
effect 79:5

eight 17:21	exciting 5:16	feet 21:12,13,14	follow 69:21	gentleman	76:9
either 28:6 61:3	excuse 47:23	41:21	following 67:18	28:14,22	grade 71:1
69:14,21	EXH 82:8 83:2	fence 13:25,25	69:11 80:5	29:10 30:22	graded 27:15
76:15	Exhibit 3:1 8:17	37:22 38:1	follows 3:5	31:5 34:25	71:9
elevated 22:10	10:5 11:19	39:15,17,17	footage 69:15	39:9 61:10	grading 23:18
eliminate 36:16	13:13,22	41:7,7,8 43:11	footprint 16:1	70:19	23:19
else's 74:12	15:11,20,21	43:12 70:1	foregoing 80:3	Gerald 61:23	graduate 6:25
email 36:24	17:4,18,21	79:4	81:4,5,9	getting 24:2	graduated 6:22
44:14 76:16	18:1,25 20:4	fences 23:11	forester 16:20	54:7 55:18	7:3
emails 44:24	25:2,4 26:17	24:16 66:14	17:1	give 4:2,6,16	grass 20:14
45:1	27:8 36:3	74:14	foresters 16:13	6:17 9:14	gray 4:20
emergency	41:22 44:4,15	fencing 74:8,16	formal 30:19,20	59:22,24	great 9:13
72:17	45:18 46:6,13	figure 25:22	forward 36:15	67:21	GREENVILLE
employment	47:20,21	61:22	four 20:21 65:3	given 40:10	1:21
6:19 7:2	50:15 51:15	file 28:21 44:17	65:4	go 5:13 6:23 8:8	ground 4:2 72:7
enclosed 21:14	54:8 57:2,2,5	45:19 71:5,7	Freedom 34:14	15:6 19:15,17	grow 11:3,5
encounter 38:25	64:5 66:17,25	filed 40:5 67:12	37:3,6,9 44:8	21:21 29:15	55:19
39:14 78:24	67:11 70:14	filled 46:23	44:22 46:7	30:10 38:4	growing 15:23
78:25	76:19 77:19	filming 68:12	52:5 76:10	41:25 42:15	15:25 55:13
encounters 43:6	exhibits 54:7	finance 32:24	Freeman 2:3	43:13 45:5	55:20
43:7 78:21	existed 43:23	find 35:2 47:23	3:10	51:18,25	growth 55:23
encroachment	expecting 68:3	80:4	freeman@bel...	63:15,24 66:9	grub 71:1
40:18,23	expert 14:14	finding 11:19	2:6	66:9,12,14,22	grubbed 71:9
ended 41:4	58:3,11	fine 25:21 26:11	freight 7:24	70:10 72:10	grubbing--did
endurance 4:23	expires 81:21	26:21 73:12	frequently	72:20,25	23:1
engaging 19:20	explained 28:20	finish 4:14,14	19:15 54:2	77:21	guess 11:12
engineers 22:16	40:15	finished 4:6	friendly 53:5	goats 65:3,4	22:9 36:4
22:20 58:5,11	explaining	79:8	front 8:18 13:24	goes 12:11 15:8	39:24 56:14
enjoy 37:23	49:21	firecrackers	24:8,10 29:17	37:6 40:25	61:22 78:20
38:1	explanation	43:11	52:15 71:6	63:8 64:21	gun 43:10 67:20
entity 76:9	46:10	fireworks 67:20	fuel 7:15	66:21 72:6,7	guy 59:3 61:23
equipment 8:1	extent 75:15	79:3	full 15:6	72:15,24 73:2	62:3
50:2 63:22		firing 67:20	further 52:4	Goggle 8:18	guy's 60:7
erosion 24:19	F	Firm 1:14 2:8	81:12	going 4:4,5,12	
74:6,9	fabric 74:8,14	first 3:4 23:5	G	4:13 8:19,23	H
escalated 40:4	74:16	24:23 31:15	garden 38:9	9:10,14,17	H 2:3 82:7 83:1
ESQUIRE 2:3,8	fact 29:14 44:21	38:6 39:14	64:13	18:4 27:3	half 37:23 38:1
estate 10:9,14	69:25	43:20 46:17	Garland 1:4	28:25 30:2	39:22 75:1
11:21	facts 3:18	60:19 62:3	2:12 6:14	38:23,23	hand 38:8,8
estimate 67:1,4	family 3:15	69:8	34:11,19,20	39:20 40:23	81:14
ethnicity 61:16	far 6:13 9:9	fish 18:7,8,12	37:24 38:2	41:1,1 51:11	handwriting
event 73:1	10:19 13:19	48:10 55:16	43:23 45:22	55:12,25	67:12,14,15
events 81:13	33:24 35:3	66:6,7,10,11	48:17 54:23	56:20 58:21	hang 66:15,16
eventually 9:19	52:23 63:5,5	75:17 77:25	62:23 68:8	62:20 69:1,22	hanging 57:9
10:23	63:11 64:2	five 44:4	69:16 70:11	78:10 79:4	70:1
everybody 52:8	68:25 70:24	flag 41:16,23	70:13	good 3:8,9 4:14	happens 8:25
52:10	73:19 77:7	42:7,7,9,10,19	Garland's 34:3	11:2,3 29:15	happy 5:23
evidence 76:4	78:25	flip 46:18	45:4 57:6,15	29:18,19,20	38:20
exact 37:12	farm 10:23 11:3	flipping 51:21	57:23 67:5	35:12 36:2	harassed 67:19
exactly 11:24	11:4,5 32:7	flow 24:19	Gary 48:9,21	42:4	hard 4:8,9
24:15 41:17	Farms 7:8,12	62:13 71:15	gate 18:13	Goodness 7:4	25:14,23
42:2 43:24	fat 42:15	71:15	64:19,21	Google 10:6	72:23 78:5
44:9 63:5	fat-assed 42:17	focused 1:20	gather 3:18	17:18 82:9,11	harder 64:3
70:23,25	February 76:24	FOI 43:20	63:25	gotten 40:24	harmful 55:16
examination 3:6	feed 66:12	FOIA 82:15,16	geese 20:22 21:5	65:18	Harrison 36:24
81:8,11 82:3	feel 3:15 55:5	82:17,18 83:6	21:6	government 8:3	Hartsville 81:15
exchanged 43:5	feeling 54:4	folks 28:9		governmental	Harvey 64:12

64:22 65:25 69:25 Hatchery 18:7,8 18:12 48:10 66:6,7 77:25 have--when 22:25 hay 63:21 head 1:21 4:18 heads 42:2 46:5 hear 5:7,15 heavy 50:2 held 69:20,21 help 55:12,18 helped 17:1 helpful 75:22 helps 55:19 hereunto 81:14 hey 44:19 high 6:22,23 7:3 22:9 higher 57:20 HILTON 1:21 hired 71:1 Hispanic 7:10 history 6:19 7:2 hold 22:12 holding 14:16 75:17 Holdings 17:5 holes 14:13 home 38:9 64:17 71:5,7 honest 42:11 honestly 44:9 honesty 27:15 Hood 2:8 6:2 8:20 58:6 hood@mttlaw... 2:10 Hopefully 5:2 hot 3:21 house 45:4,6 54:16 64:7 65:1,2 huge 73:18 huh-uhs 4:18 hundreds 59:19 hunt 63:24 hurricanes 45:14 57:18 husband 7:17 7:18 9:17,19 10:25 11:17 12:3 15:10 17:12 19:19 21:16,21	22:22 23:3,9 24:7 26:24,25 27:6,9,12 29:12 31:11 31:14 32:8,20 33:14 36:5,12 39:16 40:14 40:15,21 41:2 41:3 47:14 50:12 51:13 52:17 53:8 54:8 58:14 60:23,24 62:8 68:15,24 71:12 73:24 74:3,13 75:17 79:9 husband's 5:3 40:12 67:12 67:14 husbands 9:16 I idea 63:4 identification 3:2 Identify 70:25 74:6 image 10:6 17:19 images 44:3,4 82:9,11 immediately 29:12 30:9 impact 57:14,23 impacts 36:16 36:21 implemented 74:7 important 4:7 4:16 8:24 incidence 69:10 Incident/Inve... 83:3 incidents 34:19 78:20 included 71:2 INDEX 2:15 individual 6:12 information 34:14,15,15 37:3,6,8,10 44:9,22 45:20 46:7 52:5 76:10 77:9 initially 11:18 11:19	initiating 69:3 injuries 40:5 inquiries 37:16 inspection 46:14,16,21 47:21 inspector 47:10 47:11 82:19 inspectors 49:6 install 24:21 25:1 installed 23:11 23:13 24:17 24:18 39:17 71:18 74:8 instance 64:8 instruction 5:12 intentions 28:10 interested 11:15 41:3 81:13 internet 11:12 interpret 4:18 interrogatories 83:4 intersection 18:2,11 interviewed 70:2 introduce 38:4 38:18 introduced 38:11 investment 10:22 invited 68:19 involved 19:20 involving 34:19 34:20 Irmo-ish 59:7 Irvin 17:5,5,7 issue 35:25 issued 35:1 issues 30:9,11 34:11 40:18 40:23,24 it'll 44:24 J Jahue 4:24 Jahue's 3:14 January 57:6 Japanese 61:17 jazz 72:13 Jenkins 28:12 28:20 30:14 31:20,21,22 33:18,21	35:18 36:10 37:11 49:6,8 49:12 51:2,4 Jimmy 60:19 61:20 Judge 5:11 Julie 54:4 July 69:6 June 25:5 29:3 29:4,24 30:7,8 30:23 31:14 33:23 34:24 44:2 50:24 jury 13:9 juttred 78:2,11 K K-9 32:15 keep 51:24 55:9 55:10,12 keeps 55:17,19 kept 37:22,25 64:8 kids 65:25 kill--I 56:14 Kimberly 50:16 50:16,18,20 kind 4:2 14:24 15:21 19:3 20:25 21:1,17 21:24 39:12 40:9 42:10,21 46:4 55:14 61:4 63:24 66:15 73:10 75:1 76:3,5,23 77:3,25 78:2,9 78:11,11 kinds 24:17 know 3:19 4:24 5:2,4 6:2,14 13:9,19 14:14 14:15,19,24 15:4,9,10,16 16:21 20:25 21:1 22:11,23 23:19 24:7,25 26:3,9 28:23 29:11 31:22 32:16 33:1,4 34:7 35:2 37:7 37:14,15,24 38:3,5,7,15,20 40:1,4,9,16,16 40:23 41:11 41:21 42:2 43:22 44:5,7,9	45:12,12,13 45:14,16 46:2 48:19,20 49:5 49:19 50:1,6,8 50:13 53:22 54:3,16 55:2 55:15 57:24 58:1,5,17,20 59:2 60:3,5,10 60:16,17,17 60:20,20 61:2 61:15,15,16 61:16,17,24 62:4,5,15 65:7 66:16 70:21 71:4,8,20 73:18,19 74:2 74:15,15 77:3 77:7 knowledge 21:23 33:5,6 33:15 44:3 68:11 71:17 known 32:12 L lady's 7:13 land 17:17 48:8 land-disturbing 57:13 75:7 Landworks 22:8 70:15 71:2 large 5:8 39:23 41:23 42:21 45:20 73:18 81:3,20 late 58:21 lately 54:3 Laura 1:17 81:2 81:19 Law 1:14 2:8 lawsuit 37:23 38:1 40:4 59:11 lawyer 3:10 lawyers 5:9,17 5:17 lead 4:25 leak 72:16 leaking 22:5 learn 6:11,11 56:18 leave 41:14 led 29:6 52:4 66:22 Lee 61:23	left 30:25 36:12 39:3 65:3 let's 34:22 40:3 41:22 51:19 51:25 64:5,11 79:7,9 letter 27:8,24 36:4 54:8,13 54:15,19,23 55:1 82:14,20 letters 76:11 level 57:20 Lexington 1:2 6:15 12:14 29:25 30:23 41:13 likes 64:12 lily 16:5 55:18 55:23 56:10 56:16,17 Limited 82:10 line 39:16 42:5 42:25 65:6 67:21,25 73:3 73:13 78:2,2,7 78:15 80:6 listed 10:13 listen 53:20 lit 43:11 little 13:25 50:6 50:9 61:4,6,7 62:17 66:4 72:7,20,23,25 73:10 78:11 live 9:4,6,7 12:8 54:10 64:7 78:1 lives 45:15 57:17 64:22 livestock 67:20 llamas 20:21 21:6 40:5 67:21 LLC 17:5 loaded 15:18 location 1:14 11:9 81:6 long 5:3 11:18 11:20 24:11 38:25 65:10 longer 15:17 look 8:23 14:13 18:25 41:22 42:16 44:25 45:5 54:22 59:10,12 62:24 64:5

looked 30:14,15 35:22,22 55:4 59:25 75:12 looking 10:16 10:18,21 13:12 15:11 15:20 18:1 49:5 64:24 75:24 looks 15:12,20 15:22 18:1,12 19:1 20:4,5 37:9 43:25 46:7 47:9 57:2 62:3 lose 42:15 losing 14:9 lot 8:25 13:17 13:18 14:9,17 14:23 15:22 46:8 54:5	72:12 77:8 78:21,25 Mark's 77:16 marked 3:1 Marlboro 6:21 6:23 marriage 12:23 13:6 matter 40:25 44:20 69:25 mature 20:5,6 McCutchen 17:5 mean 5:16 14:7 15:15 16:9 20:13 21:19 25:12 27:24 34:2 49:14 50:11 55:2,3 63:5 66:15 70:23 77:10 Meaning 49:23 measure 13:20 measurements 73:19 measures 74:7 measuring 42:4 medicines 68:5 meet 17:7 32:11 32:13 59:4 meeting 30:13 51:1 Melichar 37:22 39:25 82:25 83:5 memory 27:16 mention 35:13 35:15 met 3:12 31:24 37:24 38:6 43:24 53:8 61:13 metal 15:8 Michael 27:9,11 33:8 Mileage-wise 9:12 miles 9:13 milk 68:5 million 37:23 38:1 39:22 mine 47:16 51:21 57:5 mini 50:5 mini-excavator 50:5,9 Mining 82:24	minute 34:18 56:1 67:25 69:6 minutes 9:12 missing 29:21 mom 7:4,5 money 18:22 76:2 monitoring 21:18,20 month 17:25 45:15 months 17:20 17:21 24:13 24:14 68:15 Moore 1:14 2:8 31:4 58:6 mound 62:16,17 move 36:14 movement 74:11 moving 49:24 Ms.— 28:12 51:2 muddiness 47:3 muddy 45:8,13 multiple 44:24 44:25 52:23 61:7 multiples 44:18 museum 8:3,4,9 MYRTLE 1:21	need 4:24 5:1,1 5:3,12 6:14 8:11 13:9 28:19 29:15 29:19,20 30:5 30:17 35:12 36:17 47:23 75:18 needed 30:1,4 35:3 42:15,16 59:14 needs 8:8 neighbor 37:21 41:11 48:12 48:18 52:17 52:18 64:12 neighbors 3:20 3:20 42:25 47:19 52:13 76:15 neither 81:12 never 3:12,14 29:16 30:11 30:25 31:6,24 37:24 38:15 39:3 43:24 47:17,17 48:23,24,25 66:24,25 67:9 67:10 new 8:9 9:2,10 10:5 11:8 15:13 18:10 18:11 20:2 32:6 48:10 69:14,23 nice 38:21 nods 4:18 non-substantive 6:8 north 18:4 Notary 81:2,20 note 5:9 Noticed 47:3 November 52:3 54:9 number 11:14 11:16 13:13 13:22 15:11 15:20,21 17:4 17:18,21 19:1 20:4 25:2,4,7 25:8 26:17 27:5,8 36:3,23 36:24 40:13 41:22 43:25 44:13,15	45:18 46:6,13 47:20,21 50:6 51:15,19 54:8 57:2,3,5 62:19 62:22 66:17 67:11 68:15 69:5 70:14,25 71:14 74:4,25 75:5 76:8,18 Numbers 3:1 numerous 67:19 O O 1:10,10 oath 3:17 objection 5:11 5:15 objections 5:7 81:8,10 occasion 33:12 occasions 67:19 October 28:1 30:11 35:17 36:5,23,23,25 37:10 44:13 46:17 47:22 50:25 offhand 18:24 office 3:14 7:13 28:16 29:11 29:17,18 34:23 49:10 59:4,6 61:4 73:20 officer 32:14,15 32:17 37:4 68:21 officers 70:12 official 36:8,13 81:14 offsite 36:16,21 Oh 8:21 51:18 68:2 73:21 77:12 okay 5:5 7:11 13:11 19:15 21:4 24:11,16 28:8 31:5,19 42:9,21 46:6 47:23 48:2 52:2 56:21 61:18,19 62:2 62:6,19 64:24 65:20 66:21 66:25 67:8 69:8 70:10,14 71:4 74:5 75:3	75:20,23,23 76:7 77:24 Oklahoma 8:12 old 12:12 59:1,2 59:3 older 59:3,3 once 40:17,20 45:1,20 78:14 ones 20:25 46:3 online 56:7,19 opening 8:9 opportunity 3:17,21 4:6 5:23 6:7,9,10 order 26:21 27:10,20 28:17,23 29:7 30:19 34:6 35:1,20,22 36:9 50:16 51:12,19 54:7 55:16 56:7,9,9 57:4 79:5 82:14 ordinance 28:25 35:24,25 outside 58:4 overfill 72:18 overflow 72:8 overhead 25:8 25:10 26:3,6 26:10 66:12 overheard 53:9 overseeing 21:17 owner 47:2,7,11 48:8,13,17 owners 48:15 owners' 47:5 ownership 75:16 P P 1:10 P.A 2:3,8 p.m 1:13,13 36:25 44:15 79:13 packet 47:22 pad 55:23 pads 16:5 55:18 56:10,16,17 page 15:21 18:25 46:18 46:19,24 48:4 49:3,3 50:15 69:8 74:4

77:21 80:6	49:10,12,13	52:11,20	project 36:15	77:15	recall 10:8,8,10
81:6 82:2,8	52:7 68:22	53:13 77:18	36:18	purchased 12:1	11:24 12:6
83:2	69:20	pointing 13:22	projects 32:2	12:7 17:23	17:2 18:18,19
paid 41:14	photograph	police 32:14,16	pronounce 40:1	purchasing	18:24 23:14
paper 28:2,3	17:19 20:6	68:18,18,21	60:18	17:16	24:5,6,15
30:12 31:1,2	55:25 57:5,7	69:5 70:12	property 3:19	purpose 10:22	26:24 27:14
60:2,5	62:22 82:21	polite 38:7	8:17 9:1,9,11	put 13:25 26:3	27:19 33:16
paperwork 71:5	82:22	pond 14:3,4	10:5,5,7,13,17	26:21 28:16	34:22 37:12
71:7	photographs	15:2,3,23 16:1	10:17 11:8,11	28:22 30:19	41:17 51:13
Park 2:4 28:5,6	45:8,19,23	16:5 19:12	11:19,25	35:3 41:16,18	52:22 53:1,1
parked 26:15	46:1,2,4 54:22	21:3,23,25	13:12,14,21	42:7,9,10,21	53:21,21,23
parking 66:1,3	75:4,6,15,16	25:11 34:3	13:23 14:2	43:8 51:25	58:17,18,20
part 3:15 9:23	physically 49:1	45:9,12 47:3,5	15:12,13	55:9,11,14	58:22 60:7,8
53:11	pick 63:15	48:9 55:4,6,6	16:13,14,16	62:12,24 63:6	61:9 62:11
particular 8:17	picnics 26:12	55:11,11,14	17:14,16,22	63:6,8,10	74:21
9:1 10:4,16,22	picture 57:8	56:9 57:6,8,10	18:9 19:4,16	64:11,14,15	receive 24:23
15:3	61:18 68:13	57:15,23	19:23,24 20:2	65:6 72:5	receiving 54:13
particularly	75:17,21	62:23,25 63:6	20:17 21:7,15	73:13,13	recognize 49:4
11:7	pictures 44:16	66:25 67:5	23:22 27:21	74:15,22	record 4:10 5:9
party 81:12	47:5 48:11,12	71:24,25 72:4	29:14,19,25	78:15	25:18 81:10
passed 62:20	57:3 62:21	72:5,8,13,14	32:5,6 35:7,9	putting 48:13	recorded 81:8
pasture 17:16	75:11	72:16,18,21	35:9,18,23	51:22	recounts 69:10
20:16 24:2	piece 8:8,10,17	73:7,8,17	37:17,20,21		rectify 38:20
63:14	9:9 10:4 11:19	ponds 14:23	38:6,13,14,22	Q	redone 22:6
pastures 63:23	13:14,25	portion 15:12	40:8,15,20	quality 8:3	refer 9:10 15:7
patties 63:25	16:14 17:16	20:2	41:2,19 42:25	question 4:5,12	27:3
Paul 54:5	31:1 60:2	possession 75:5	43:9 45:25	5:13 9:20 45:1	reference 34:5,6
pay 24:4 38:23	77:15 78:14	75:6	47:2,4,5,7,11	50:13	47:10 48:18
59:15,17	pieces 8:3,4,11	pour 63:2	47:12,13,15	questions 3:17	48:24
78:18	32:5	prematurely	47:16 48:7,10	3:22 4:1,4,17	referenced
payments 76:4	pigmy 65:4	67:22	48:14,15,16	5:7,21,22 9:17	77:14
Peking 20:24	pine 13:16	present 2:11 7:3	49:25 53:2,4	9:18 79:8,11	references
pending 81:13	pink 28:2,3	19:8,9 58:4	54:5 57:13,16	79:12	50:16
people 17:24	30:12	pretty 39:7 51:3	57:18,19,19	quick 79:7	regarding 37:15
31:13 39:20	pipe 63:8 72:5	prevent 24:19	57:22 59:9,10	quite 40:2 68:15	Registered 1:18
49:20	72:13,24 73:7	55:13	59:14,25 62:9	78:10	81:2,19
percent 51:3	73:9,13,14	previous 14:1	62:13 64:1		relate 76:5
60:10	place 21:24	primarily 19:20	65:23,24	R	related 81:12
perform 19:11	23:18 64:1	prior 3:2 12:22	66:10,13,15	raised 6:20	relating 75:25
76:25	65:16,19	13:5 28:18,23	67:21,23 70:1	range 8:5	relation 25:11
performed	72:25	60:25	71:2,8,15 72:4	reach 60:22	relationship
23:15 70:22	placed 27:21	probably 24:7	74:10,11 75:5	reached 60:21	60:25
permission	29:1 41:24	75:13	75:6,10,11,16	60:21,23,24	relatives 6:15
40:10	placeholder	problems 43:1	75:22 76:24	read 4:9 5:24	12:14
permit 25:2,5	5:10,17	proceeded	77:1,15,16,23	6:3,7 67:15,18	release 21:2
26:23 27:1,4	places 61:7	39:18 40:13	78:2	69:6,8,9 80:3	30:20
28:16,19 30:1	Plaintiff 1:5,16	process 8:9 9:24	provide 69:2	reading 25:21	released 28:14
30:4 44:2	2:2	11:11,18,21	provided 4:24	81:4	30:17
82:12	planned 17:15	24:11 40:11	35:10 54:23	ready 24:2	remediation
Permit,6/27/18	plans 17:13	Produce 75:4,5	proximity 43:10	real 10:9,14	67:1
82:13	26:22	produced 25:4	43:12	11:21	remember
permits 25:4,6	PLEAS 1:1	34:17 44:4,5	Public 81:2,20	really 14:6,7,10	18:15,16
person 11:15	please 27:7	production	pull 51:11	40:6	24:16 27:18
31:9 37:5 38:6	36:14 38:19	74:24 83:4	pulled 35:23	realtor 10:11	27:18,20,23
41:8 61:13	point 8:2 11:12	Professional	38:5	REAR 2:15	28:7 53:23,25
phone 33:14,15	12:6 39:12,23	1:18 81:2,19	punitive 68:6	reason 13:8	54:12,13,17
40:13 41:4	41:18,20	program 21:2	purchase 76:24	35:2 80:6	59:18 62:6

71:6 remove 67:4 removed 20:11 21:16 27:10 28:24 36:9,12 removing 24:1 82:14 repacked 22:6 rephrase 5:23 report 66:17,22 68:22,23 69:2 69:5 82:23 83:3 REPORTED 1:17 reporter 1:18 3:25 4:8,17 6:6 9:1 81:1,2 81:19 82:6 reporter's 8:22 reports 46:14 46:16 47:21 82:19 representative 29:24 request 34:15 37:6,10 43:20 44:9,22 52:3,5 74:24 82:15 82:16,17,18 83:4,6 requested 36:4 36:8,12 reserves 71:16 resides 67:23 respond 35:6 responded 30:2 Response 82:15 82:16,17,18 83:6 responses 4:16 70:15 74:23 83:4 responsible 19:20 restraining 79:5 retention 71:24 71:25 72:4,5 72:13,21 73:4 73:6,8,17 reverse 57:4 right 8:23 10:4 18:3,5,7 19:3 19:5,6,8,23 26:5,6 41:18 46:2 49:3 51:23,25 64:6	64:14,19,21 64:22,23,25 65:3,6,25 66:5 67:6 71:16 72:9,14,20 77:24 78:15 79:6 ring 61:11 road 10:5 18:3 18:7,8 28:5 32:6 45:16 57:17 63:1,2 68:11 69:13 69:19 roads 18:3 Robert 1:7 2:13 70:16 rode 48:9 Roger 22:8 23:20 24:3 32:12 70:17 70:18 Rojas 12:19 rolls 74:17 roof 25:9 26:14 roots 22:5 row 49:22 ruined 38:14 rules 4:2 run 69:25 72:6 runoff 48:8 S S 1:10 82:7 83:1 sale 10:14 sat 58:14 Saucedo 12:20 saw 11:12 28:15 35:22,25 45:23 46:1 48:10 saying 35:24 36:8 53:24 66:22 says 45:19 46:18,21,24 46:25 48:7 67:17 69:12 70:25 71:14 71:16 74:7 scare 79:4 school 6:22,23 7:3 12:11 scope 70:21 76:1 se 21:20 seal 81:14	second 15:21 18:25 26:7,17 36:3,14 47:21 49:22 75:1 77:21 section 48:3 sediment 24:19 47:4 67:5 74:6 see 17:22 18:2 18:11 19:1,3 26:5 28:16 29:12,18,23 30:4 34:22 37:11,13,15 38:4,18 44:16 45:22 46:17 46:19,24 47:9 47:25 48:2 49:2 51:17 52:6 54:2,5 57:7,8,10,11 64:11,20 67:4 68:2,19 69:12 78:5 seeded 20:15 seen 23:10 30:15,25 31:5 31:6 45:8 46:8 54:3 66:18,24 66:25 67:2,9 67:10 self-employed 6:21 sell 16:22 41:1,1 send 30:20 44:17 45:20 46:12 52:5 75:19 sending 44:21 44:23 sent 37:8 43:20 44:8,18 45:10 76:11 sentence 36:3 36:14 September 10:6 81:14,21 serve 32:20 service 7:6 66:1 Shearer 77:14 78:16 Shearers 52:16 52:23 53:7,9 54:2 78:1 sheet 31:2 Shelby 38:6 39:7,8	Sheldon 39:6 shelter 25:10 26:10,11 shelters 63:22 sheriff's 34:18 70:2 shook 38:7,8 shoot 79:2 shooting 43:10 show 25:13,15 38:19 47:5 62:9 64:2,4 75:12,21 78:7 78:10 showing 8:18 35:11 61:18 82:22 sic 25:3 44:4 60:15 sic]-kill 56:15 side 18:9 20:3 sides 25:9 26:14 sign 5:25 6:3 SIGNATURE 80:1 82:5 signed 40:7 54:16,17 significant 11:22 39:10 signing 81:4 silt 23:11 24:16 74:8,14,16 Singleton 16:20 22:8,8 23:20 24:3,4 32:11 33:2 49:25 70:15,16,22 71:2,9,13 76:4 sir 3:13,23 4:15 5:20 9:3,5 10:12,18 11:1 22:1 26:13,16 30:25 31:24 32:1 46:11 60:16 61:2 65:14 66:8,20 67:3,10 77:7 77:17 site 19:21 23:18 36:15,18 six 17:20 size 10:17 13:19 46:10 73:20 73:22 sizes 13:17 skip 19:18 Skyview 9:7	54:9 slope 14:24 small 13:17,18 61:6 64:16 77:15 Smith 76:25 77:8,12,13 soil 74:11 sold 18:20 somebody 24:1 37:19 73:25 son 12:20 soon 17:23 39:1 sorry 8:21 11:1 39:2 43:4,16 43:18 51:21 68:2 72:1 sort 15:17 38:10 Sound 4:14 south 1:1,15 2:5 2:9 6:20 18:4 18:9 32:14,17 32:20 81:3,15 81:20 Spanish 7:9 speak 28:10 29:2 37:1 48:21 49:9 50:17 speaker 49:12 49:13 68:22 speaking 28:13 47:11 specific 8:7 14:21 23:16 54:14 56:16 70:24 spell 56:12 60:11,16,17 spill 73:1 spills 73:2 spillway 72:14 72:15,17,19 73:2 Spires 27:9,11 33:8,17 spoke 28:12 30:14 31:20 33:21 35:21 36:10 47:2 49:20,20 50:24 51:1 58:14 59:9 spoken 33:8,16 33:16 34:7,10 39:3 48:23 49:1,8 50:22	58:5 70:11 spot 40:19 spouse 39:11 sprigged 20:15 spring 47:3,16 stabilization 35:14 36:15 stabilize 36:18 stack 43:25 51:20 stacks 42:21 stages 23:6 standing 29:17 standpipe 14:22 15:1,3,7 start 5:2 7:19 31:6 39:18 started 4:2 7:16 22:20 27:1 39:21 41:3 43:9 51:22 69:1 starting 69:3 state 1:1 8:8 81:3,20 stated 81:6 stay 63:18 stay-at-home 7:4,5 stenographica... 81:9 step-daughter 12:21 stockpile 63:25 stop 4:5 27:9,20 28:16,22 29:7 30:1,19 34:6 35:1,20 36:9 50:16 51:11 74:8,10 82:14 stopped 29:8 stopping 69:24 store 63:21 stormwater 28:4,8 34:23 straighten 35:4 straightened 78:12,13 street 2:4 52:8 52:20 53:13 stressing 68:3,9 68:10 strip 61:4 structure 21:7,9 25:8 26:7,18 stuff 39:20 55:19 56:10

62:9 74:21 75:24 76:3 stumped 48:11 stumps 20:11 21:16 24:2 submit 26:22 submitted 26:22 37:9 suck 39:20 42:1 sue 38:23 51:11 suing 39:21 Suite 2:4 sun 55:12,18,19 Sunset 1:14 2:9 supplement 71:16 supplies 68:5 Supply 56:5,6 supposed 14:11 55:11 69:9 supposedly 38:2 sure 31:12,20 33:15 38:10 39:7,11 40:2 43:17 46:4 51:3 53:3,3,6 55:2,9 56:22 60:10,18,24 61:2,21 62:4 71:22 73:25 73:25 77:23 78:10 surnames 12:17 survey 40:17,19 40:20 76:25 77:6 surveyed 40:9 40:11,12 surveyor 40:13 41:10,13 Suzan 1:4 2:12 swells 71:17,18 sworn 3:4 81:7 Swygert 28:10 28:19,20 29:2 29:13 30:3,13 31:15,22 33:18,21 34:24 35:21 50:19,20	9:14,15 22:4 23:23 28:3 29:16 54:22 56:23 59:12 69:6 75:11 79:7,9 taken 1:16 56:25 69:15 79:10 81:6 talk 4:6,7 8:16 16:14 30:2 31:8 52:1 66:22 69:7 74:14 talked 31:12,13 31:14 34:18 47:2 76:6 talking 4:10 16:2 22:25,25 34:3 48:16 49:6,15,18,19 53:12 78:7 talks 36:14 50:15 tall 14:18 taller 14:20 taxes 7:15 Taylor 1:14 2:8 tell 13:19 25:14 27:23 34:24 35:5,6,18 38:15 44:21 44:25 50:7 52:9 59:8,13 64:3 74:1 telling 39:21 40:14 ten 9:12,13 terms 24:1 testified 3:5 testify 81:7 testimony 80:5 81:8,10 testy 3:21 text 76:16 theirs 53:4 thereof 81:13 thing 6:16 8:24 9:15 15:5 27:5 57:4 64:24 66:12 68:14 71:21 72:20 things 4:25 5:16 5:18 24:17 26:23 39:23 40:3,6 46:8 55:9 74:16,17	think 7:20 9:1 18:2 21:5 27:17 28:13 31:3,3 33:13 38:9 39:7,10 45:6 46:10 51:2 55:1 56:11 57:16 57:16 58:2 59:7,7 60:9,14 62:1,20 63:7,9 69:22 70:20 70:20 72:1,21 third-party 76:9 Thirty 21:12 thought 59:13 60:1 thousands 59:19,21 threaten 51:10 threatened 41:8 three-page 46:16 threw 43:11 throw 79:2 timber 16:13,15 18:13,16,17 18:19,23 71:1 71:3 76:2 timbered 21:15 71:4 timbering 19:2 23:1 76:1 time 1:13 4:5 5:7,8,9 9:25 10:11 11:22 11:24 14:14 19:8,9 23:5,5 31:15 32:25 37:11,25 39:12 43:20 45:22 49:7,22 52:8 54:18 65:17,18 68:12 75:8 81:6,8,11 timeline 76:21 times 3:20 19:17 50:22 69:19 70:8 tiny 72:23 title 37:7 81:6 today 3:11 5:15 8:16 66:21 76:6 told 24:21,22	28:19,24 29:25 30:3,13 30:18 35:8,10 35:11,19,21 35:21 36:2,11 38:12,13,21 39:19 41:2,25 42:15,16 43:23 47:6 48:13 51:1 52:7,12,15 60:1 62:7,8 68:23 73:25 74:20 tools 41:9 top 46:18 touch 47:6 town 32:14 Tractor 56:5,6 transcribed 81:9 transcribing 3:25 transcript 2:15 81:6 transcription 80:4 translator 7:7,9 translator/HR 7:7 transpire 11:23 transport 8:3,5 8:11 transportation 7:23 tree 57:8,9 65:25 trees 13:16 15:19,25 16:4 16:22,25 17:22 19:2 20:6,6,11 22:5 23:17,23,24 23:25 78:6 trial 6:13 triangle 78:14 tried 38:14 truck 69:11,11 trucking 7:13 7:15,23 8:15 trucks 7:25 18:13 66:1 true 80:4 81:10 Trump 41:16,23 42:1,7 truth 81:7,7,7 try 4:4,5,7,17	5:21 16:15 64:3 trying 25:22 27:17 33:13 42:1 51:24 52:6 71:21 79:4 tube 15:8 Tuesday 1:12 turn 24:2 turnaround 40:19 turned 12:13 31:3 two 17:6 18:3 20:20,21 21:5 21:6 25:3,6 31:17,18 40:6 45:14 46:13 46:16 47:20 51:5 57:3,17 82:19 type 4:9 6:16 7:22 10:16 56:17 typed 76:21 81:9 Typically 66:11	38:5,12,16,17 38:19 45:11 45:12,13,16 upside 64:24 use 10:22 usually 56:6 66:13 V v 82:25 83:5 values 16:15 vegetation 15:22 17:22 55:10 vegetative 15:14 verbal 4:16 29:7 29:7,11 verbally 35:1 version 44:1 versions 46:9 versus 6:14 veterinarian 68:4 video 68:19 69:15,20 videoing 68:12 Virginia 8:12 visit 36:5 volunteer 32:19 volunteered 32:19 vs 1:6 vulgar 39:20 W Wait 67:25 waived 81:4 walk 8:24 11:11 11:25 13:21 13:23 16:14 walked 13:12 13:21 14:2,3 walking 76:23 Walmart 7:6 want 6:1,3 9:18 9:19,21,25 11:3 13:8 26:4 26:10 37:14 51:2 56:23 57:4 58:5 65:7 78:6 wanted 10:23 21:3 30:20 37:15 38:17 40:14,22 42:11 49:9

59:12 62:10 Warranty 82:10 Warren 17:5 wasn't 14:16 21:19 41:3 49:16 water 4:25 14:9 14:10,16,17 15:5 22:9,11 22:12 55:21 56:15 57:11 62:13 71:15 71:21 72:8,9 72:16,19 73:1 73:16 way 10:19,19 41:25 42:1 58:1 78:3 we'll 5:2 34:17 66:11 we're 4:10 8:16 25:21 34:3 47:19 48:16 55:25 66:11 we've 3:11,16 32:12 35:20 46:8 53:4 56:20 64:6 65:3,18 75:14 76:5 website 10:9,9 10:14 week 19:17 weight 42:16 went 14:1 21:19 28:3,15 29:12 29:12 30:12 31:14,17 33:23 34:23 35:1,17,19,22 37:11 38:3 39:17 43:14 45:3,6,22 50:25 58:14 59:25 78:2,9 78:11 West 1:15 2:9 9:7 wetlands 62:22 77:3 whatnot 24:20 40:16 49:22 63:22 66:14 white 26:1 wife 42:17 54:3 wild 20:23 Wilmot 17:5	witness 1:11 42:8 65:9 81:4 81:14 witnesses 58:11 wives 9:16 woman 58:24 wooded 13:13 13:14 15:14 19:24 20:1,3,8 woods 15:15 word 26:4 words 38:13,21 work 8:2 17:24 19:11,13,14 19:21 21:17 22:2,7,15,16 22:24,25 23:15,19,20 23:21,22 24:5 27:2,9,20 28:15,17,22 29:7 30:1,19 34:6,8 35:1,8 35:20 36:9 41:7 50:11,16 51:12 57:21 57:25 70:22 71:11 74:19 75:10 82:14 worked 7:12 31:25 32:18 32:19 workers 21:18 working 24:12 works 4:3 29:10 worry 27:16 42:17 worse 69:4 wouldn't 14:15 41:14 50:8 68:20 write 26:1,6 68:23 73:3 writing 59:22 68:22 written 33:1 70:14 76:24 wrong 29:1 68:24 77:24 www.compus... 1:22 X x 21:13 82:1,7 83:1 Y	y'all 10:7 16:6 16:22 17:6 19:11,15 24:4 31:17 32:6 40:6 41:18 42:21 43:6 50:2 51:10 53:5 54:10 57:22 62:12 62:24 63:1,24 76:1 yeah 25:15,21 26:5 51:23 60:12 64:20 69:10 73:6,12 73:14 78:23 year 65:13 years 7:5 15:16 32:12 yelling 37:22,25 young 59:1 Z zoned 35:9,10 zoom 15:22 0 1 1 8:17 10:5 13:13,22 15:11,20,21 17:21 46:19 82:9 1-21 3:1 1-888-988-0086 1:23 1:20 1:13 10 46:6 67:1 82:18 10,000 78:19 10/22/18 46:21 100 51:3 60:10 1003 9:7 54:9 11 46:13 47:21 50:15 51:25 77:14 82:19 12 47:20 51:15 54:8 82:20 13 57:2,3,5 82:21 1325 2:4 14 57:3 62:19 62:22 82:22 15 12:13 20:21 21:13,14 25:3 44:2 66:17	82:23 15-year-old 13:3 156,800 17:6 16 11:20 66:25 82:24 17 67:11 82:25 1700 1:14 2:9 18 12:15 30:7 47:22 69:5 83:3 19 70:14 83:4 1990 7:1 2 2 11:19 17:4,19 75:5 82:10 2,500 68:6 2:52 36:25 44:14 20 20:20,21 65:15 66:18 74:25 76:18 76:19 83:5 2003 7:20,21 2008 25:3 2017 10:6 2018 11:20 17:19 25:5 29:4,24 33:23 34:24 36:24 46:17 47:22 51:5 52:3 54:9 58:21 77:8,14 2019 1:12 57:6 58:21 66:18 67:1 69:6 81:15 2019-CP-32-0... 1:6 2028 81:21 21 51:16,19 52:1 83:6 22 37:10 46:17 22nd 45:7 23 36:23 23rd 45:7 24/7 68:5 26th 76:25 27 1:12 25:5 44:2 54:9 81:21 28 52:3 29 36:25 29169 2:9 29170 9:8 29201 2:5	29th 44:13 3 3 17:18 18:1 19:1 20:4 26:17 41:22 46:19,24 48:4 49:3 64:5 77:19 82:4,9 82:10,11,11 82:12,13,14 82:15,16,17 82:18,19,20 82:21,22,23 82:24,25 83:3 83:4,5,6 3:07 44:15 3:11 1:13 79:13 30 21:11,13 300 2:4 3rd 81:14 4 4 25:2,7 74:4 82:12 4,500 68:7 400,000 67:5 5 5 25:5,8 27:5 43:9 44:4 76:8 77:8 82:13 5/15/18 82:12 500 41:15 68:5 5th 65:12 6 6 10:6 27:8 36:3 36:23 70:25 82:14 7 7 36:24 43:25 44:13 82:15 76 21:13 7th 79:1 8 8 44:15 71:14 82:16 80 82:5 803-796-9160 2:10 803-929-0096 2:5 81 82:6	9 9 45:18 69:6 74:4 82:17

Certificate: Failure by Witness to Sign Transcript

November 22, 2019

Deposition of: Christy Cade
Case: Suzan Garland v Robert Cade and Christy Cade
Case Number: 2019-CP-32-01442
Deposition Date: 8-27-2019

I, Deborah L. Dusseljee, President of CompuScripts, Inc., do hereby certify that the foregoing deposition was taken before Laura Chamblee, a Court Reporter for CompuScripts, Inc., and that upon completion of the transcription by the court reporter, CompuScripts, Inc., did provide notification to the Deponent that the transcript was available to review and sign.

This transcript has been sealed absent the deponent's signature for the following reason:

Deponent failed to return signature sheet within the allotted time.

Deborah L. Dusseljee, President
Registered Professional Reporter

