

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CALHOUN COUNTY
COURT OF COMMON PLEAS

Diane Schafer Goodstein, Circuit Court Judge
Case No. 2008-CP-9-135
Appellate Case No. 2012-212463

W. Peter Buyck, Jr., ... Respondent,

v.

William Jackson, ... Appellant.

RECORD ON APPEAL
Volume I

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)

COUNTY OF CALHOUN)

W. Peter Buyck, Jr.,)

Plaintiff,)

-vs-)

William C. Jackson,)

Defendant.)

IN THE COURT OF COMMON PLEAS

FOR THE FIRST JUDICIAL CIRCUIT

Civil Action No.: 2008-CP-09-135

ORDER

This matter came before me for trial in St. Matthews on October 5 and October 6, 2010. Present at the trial were the Plaintiff, W. Peter Buyck, Jr. ("Plaintiff"), represented by Andrew C. English, III of Callison Tighe & Robinson, LLC and the Defendant, William C. Jackson ("Defendant" or "Defendant Jackson"), represented by William Booth, III of Booth Law Firm, LLC.¹

This action was initiated by the filing by Plaintiff of his Lis Pendens, Summons and Complaint on September 18, 2008 and his Amended Complaint on October 9, 2008 seeking an order that Plaintiff has certain easement rights, established by prescription and/or by express grant, over a particular road, termed the "Red Road" herein, which traverses lands of Defendant Jackson. Plaintiff's Amended Complaint further seeks an injunction restraining and enjoining Defendant Jackson from obstructing the Red Road or otherwise interfering with Plaintiff's use of the Red Road. Although Plaintiff sought in his Amended Complaint to recover damages resulting from Defendant Jackson's interference with Plaintiff's use of the Red Road, Plaintiff

¹ Prior to the hearing of any evidence in this case, the parties stipulated to the dismissal of Defendant Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust Under Agreement dated March 30, 2000 ("Defendant Conrad") from this action and the Court hereby orders that Defendant Conrad shall be dismissed from this action without prejudice.

elected not to proceed on this cause of action, rendering this matter essentially an easement case.² Defendant Jackson filed his Answer to the Amended Complaint on November 12, 2008 denying that Plaintiff has any right to use the Red Road.

Plaintiff and Defendant Jackson are the fee simple owners of adjacent tracts of real property located in Calhoun County, South Carolina. The Plaintiff's property, which shall hereinafter be referred to as the "Buyck Property," consists of approximately 700 acres and is located generally as shown on Exhibit A attached hereto and incorporated herein by this reference. The Buyck Property was initially acquired by Plaintiff's father, W.P. Buyck, and an uncle in 1942 and was ultimately conveyed to Plaintiff by deed of his father, W.P. Buyck, recorded on December 7, 1977 as Deed 6623 in the Calhoun County records. The Buyck Property is more particularly described on Exhibit B attached hereto and incorporated herein by this reference.

Defendant Jackson's property is hereinafter referred to as the "Jackson Property" and consists of approximately 108 acres located adjacent to the Buyck Property and generally as shown on the attached Exhibit A. In April of 2000, Defendant Jackson and Defendant Conrad (who has been dismissed from this action) purchased, as tenants-in-common, those tracts identified on Exhibit A as the Jackson Property and the Conrad Property, which properties at that time comprised one undivided tract of approximately 203 acres. The undivided 203-acre tract which has now been subdivided into the Jackson Property and the Conrad Property was once owned by Grace McAlister and therefore the 203-acre tract will be referred to herein as the "McAlister Tract." Thereafter, in May of 2000, Defendant Jackson and Defendant Conrad

² Nonsuit was granted denying Plaintiff's claim for damages following Plaintiff's election to refrain from introducing evidence as to such damages.

effectively partitioned the McAlister Tract with Defendant Jackson receiving the Jackson Property by way of a deed from Defendant Conrad recorded with the Calhoun County Clerk of Court on May 22, 2000 in Book 141 at Page 319. The Jackson Property is more particularly described on Exhibit C attached hereto and incorporated herein by this reference.

The road that is at issue in this action, over which Plaintiff claims to have an easement, is shown and identified as the "Red Road" on Exhibit D and will herein be referred to as the "Red Road."³ Another road runs along the boundary line between the Jackson Property and the Conrad Property and terminates upon the Buyck Property. This other road is shown and identified on Exhibit D and referred to herein as the "Blue Road." The Blue Road primarily provides access to a "hayfield" located on the Buyck Property near the boundary line between the Buyck Property and the Jackson Property.

In 1984, Grace McAlister, as owner of the McAlister Tract (comprised of the Jackson Property and the Conrad Property), granted an easement in favor of Plaintiff; which easement was recorded in the Office of the Clerk of Court for Calhoun County on June 7, 1984 in Book 6 at Page 2615 (the "McAlister Easement"). The McAlister Easement grants the following easement rights over the McAlister Tract for the benefit of the Buyck Property:

An easement or right-of-way, twenty (20) feet in width for ingress and egress from South Carolina Highway #S-9-25 and extending generally in a northwesterly direction from lands of the Grantee across lands of the Grantor herein to the property line of other lands of the Grantee and along the present existing road over the [203 acre tract of Grantor].

³ As discussed below, the Red Road shown on Exhibit D also crosses through the corner of a parcel of land owned by a neighboring property owner. The testimony shows that this neighboring property owner has never challenged Plaintiff's right to use the Red Road crossing his property, and therefore it was not necessary to make this owner a defendant to this lawsuit. For purposes of this Order, unless specifically stated otherwise, all references to the Red Road shall mean and refer to those portions of the Red Road shown on Exhibit D which are located upon the Jackson Property. Nothing contained in this Order shall be construed as an adjudication of any rights that Plaintiff and the aforementioned neighboring property owner may have vis-à-vis one another.

Plaintiff testified that he believed the McAlister Easement granted him access rights over both the Red Road and the Blue Road traversing the McAlister Tract. When cross-examined as to the language of the McAlister Easement referencing "the present existing road," Plaintiff testified that such "present existing road" would have been the Red Road which was the only main road that had ever been used for access to the Buyck Property. Defendant Jackson, however, claims that the road described in the McAlister Easement is in fact the Blue Road.

In any event, Plaintiff claims to have acquired a prescriptive easement over the Red Road for access to the Buyck Property for farming and logging activities as well as for recreational purposes. I find Plaintiff has presented ample evidence to establish a prescriptive easement over the Red Road for the aforementioned purposes, and therefore I will address the prescriptive easement claim first, which is dispositive of the remaining claims in this case.

I. PRESCRIPTIVE EASEMENT

The elements necessary for establishment of a prescriptive easement are (1) the continued and uninterrupted use or enjoyment of the right for the full period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under a claim of right. Babb v. Harrison, 220 S.C. 20, 24-25, 66 S.E.2d 457, 458 (1951); Jones v. Daley, 363 S.C. 310, 316, 609 S.E.2d 597, 599-600 (Ct. App. 2005). Plaintiff has presented ample evidence, through the testimony of Plaintiff and many others, regarding the historic use of the Red Road which is sufficient to satisfy each of these elements necessary for the establishment of a prescriptive easement over the Red Road.

A. Continuous and Uninterrupted Use.

Plaintiff has shown that he and his predecessors in title, as well as numerous guests, invitees and licensees of Plaintiff, have used the Red Road crossing the Jackson Property

continuously and without interruption for a period far exceeding twenty years. In fact, the period of use has been established by Plaintiff to have begun as far back as the 1940s, and this use continued until the actions of Defendant gave rise to the instant lawsuit.

Plaintiff presented a number of witnesses who have testified to the following facts, and I find each and every one of these witnesses to be credible and reliable:

- Plaintiff, who is 64 years old, testified that he has used the Red Road for his entire life for access to the Buyck Property for farming and logging activities as well as for hunting, fishing and general recreation and that his father and uncle used the Red Road for these same purposes since 1942. During this period of continuous use, various types of vehicles have used and traveled the Red Road for access to the Buyck Property specifically including cars, trucks, farm trucks, tractors hauling equipment, tractor-trailers hauling crops, and logging trucks.
- Mark Buyck, a cousin of Plaintiff and member of the South Carolina Bar, testified that he has used the Red Road on a regular basis for access to the Buyck Property for general recreational purposes beginning around 1946 and continuing until around 1964, and that he continued use of the Red Road on a less regular basis thereafter, particularly during the late 1970s and the 1980s.
- Mike Nickells, who is 61 years old and a former owner of the McAlister Tract, testified that he used the Red Road for access to the Buyck Property as a child, with Plaintiff and Plaintiff's father. Mr. Nickells further testified that when he purchased the McAlister Tract in 1990, and during his ownership of the McAlister Tract for six years thereafter, he knew that Plaintiff and Plaintiff's family, as well as their invitees and licensees, had used the Red Road for access to the Buyck Property "for a long, long time" and were currently still using the Red Road. Mr. Nickells further testified that Plaintiff had used the Red Road to bring his tractor and other equipment onto the Buyck Property and for logging activities on the Buyck Property. Mr. Nickells testified that he did not think that he could stop Plaintiff from using the Red Road.
- Jack Brady, a retired Calhoun County farmer and owner of property along the Congaree River, testified that he used the Red Road as far back as the mid 1970s, and before, for access to the Buyck Property for recreational purposes.
- Robert Martin, a logger from Summerton, testified that he used the Red Road for access to the Buyck Property to cut timber as recently as 1994 and periodically over several years thereafter. Mr. Martin further testified that as long as 40 years

ago or more he engaged in logging activities including the removal of timber from the Buyck Property by means of the Red Road.

- Brock Conrad, a retired wildlife biologist with the South Carolina Department of Natural Resources, testified that he used the Red Road for access to the Buyck Property in connection with the administration of certain hunting programs affiliated with the Wildlife Department in the 1970s. Mr. Conrad further testified that in connection with his (through Defendant Conrad identified herein) eventual purchase with Defendant Jackson of the McAlister Tract, he was aware of and even made Defendant Jackson aware of the historic and continuous use by Plaintiff and his predecessors of the Red Road for access to the Buyck Property.

Even a witness called by Defendant Jackson, James Medlin, who is the President of the Buyck Hunt Club (which leases rights to hunt the Buyck Property), testified that he and the other members of the Hunt Club had used the Red Road for access to the Buyck Property for a period of approximately 40 years. Mr. Medlin also testified that he recalled logging activities previously taking place in the area -- perhaps in the 1980s. The testimony further established that, prior to the acts of Defendant Jackson giving rise to this lawsuit, none of the witnesses were ever precluded from using the Red Road for the various purposes described above.

I find the testimony of each of Plaintiff's witnesses and Mr. Medlin (a defense witness) to be credible and reliable with respect to the historic use of the Red Road for farming, logging and recreational activities. Defendant Jackson did not present even one witness or any other evidence which refuted or contradicted the testimony set forth above regarding the historic use of the Red Road.

As mentioned above, Plaintiff's father and uncle initially purchased the Buyck Property in the 1940s and the property was subsequently conveyed to Plaintiff in 1977. To the extent necessary, periods of use may be "tacked" to make up the prescriptive period so long as the use by each owner during the prescriptive period meets the requirements necessary to establish a prescriptive easement. Matthews v. Dennis, 365 S.C. 245, 249, 616 S.E.2d 437, 439 (Ct. App.

2005). It is also worth noting that "in order to satisfy the continual use requirement, the use must only be of a reasonable frequency as determined from the nature and needs of the claimant." Jones at 318, 609 S.E.2d at 601 (stating further that this element "does not require the use thereof every day for the statutory period or even on a weekly or monthly basis; but simply the exercise of the right more or less frequently according to the nature of the use and the needs of the claimant").

Regarding the requirement that use be uninterrupted for the duration of the prescriptive period, our Supreme Court has held that in order to constitute an "interruption" of the prescriptive period, a servient owner must engage in overt acts which prevent use of the servient estate. Pittman v. Lowther, 363 S.C. 47, 52, 610 S.E.2d 479, 481 (2005) ("[w]e conclude actions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, such as erecting physical barriers, which cause a discontinuance of the dominant landowner's use of the land, no matter how brief"); see also Jones at 317, 609 S.E.2d at 600 (holding that "[i]t is undisputed that since [the servient owner]'s acquiescence to the [dominant owner]'s use, no overt actions were taken by the owners of the [servient parcel] to prevent use of the right of way prior to the actions that gave rise to this action. Jones's use, therefore, has satisfied the 'uninterrupted' requirement."); see also Matthews at 250, 616 S.E.2d at 440 (holding that conveyance of the roadway in question to the defendants did not "interrupt" the plaintiff's continuous use of the roadway).

Plaintiff and each of his witnesses testified that their use of the Red Road had never been challenged prior to Defendant Jackson's purchase of the Jackson Property in 2000. Indeed, Mike Nickells, a former *owner* of the McAlister Tract (which includes the Jackson Property) testified that he was not able to stop or prevent Plaintiff's or Plaintiff's licensees' and invitees' use of the

Red Road. Moreover, Mr. Medlin testified that prior to Defendant Jackson's purchase of his property, no one had ever challenged *his or his hunt club's* use of the Red Road. Such testimony of a defense witness is important to Plaintiff's claims and I find it to be exceedingly probative. As discussed below, any actions taken by Defendant Jackson after his purchase in 2000, specifically any actions taken by Defendant Jackson to block the Red Road from use by Plaintiff, are irrelevant to a ruling on Plaintiff's prescriptive easement claim as Plaintiff's prescriptive easement rights over the Red Road ripened long before Defendant Jackson's purchase in 2000.

The evidence presented clearly shows the use of the Red Road by Plaintiff, and his family members, friends, employees and business associates for farming and logging activities as well as hunting, fishing and other recreational purposes (including use by the hunt club) continuously and without interruption since the 1940s – a period far longer than the required twenty years, and I find the evidence presented sufficient to satisfy the “continuous and uninterrupted use” requirement for establishment of a prescriptive easement.

B. Identity of Thing Enjoyed.

Plaintiff has also sufficiently established the location of the Red Road enjoyed by Plaintiff and his predecessors and this Red Road in question is shown and identified on Exhibit D. The entire length of the road encompassing the Red Road at issue runs from Fort Motte Road (SC 9-25), through the lands of another, then through other property of Plaintiff, then through the Jackson Property crossing the corner of a tract owned by a neighboring property owner and then re-entering the Jackson Property, and then has its terminus on the Buyck Property, being the dominant estate. There is no dispute over the physical location of the Red Road as the parties and all witnesses have recognized the location of the Red Road to be as shown on Exhibit D.

C. Use Either Adverse or Under a Claim of Right.

Plaintiff has also presented ample evidence that his use of the Red Road and the use by his predecessors was at all times either adverse or under a claim of right, which is sufficient to establish rights to the Red Road through prescription. In order to establish a prescriptive easement, it is only necessary that the use be adverse *or* under a claim of right. Jones at 315-316, 609 S.E.2d at 600-601 (noting that any interpretation of Nelums v. Cousins, 304 S.C. 306, 403 S.E.2d 681 (Ct. App. 1991), as requiring use that is both adverse *and* under a claim of right is incorrect; only a showing of use *either* adverse *or* under a claim of right is necessary); see also Revis v. Barrett, 321 S.C. 206, 467 S.E.2d 406 (Ct. App. 1996) (holding that only use adverse *or* under a claim of right is required and that cases requiring use both adverse and under claim of right have misquoted the requirements of Babb v. Harrison, 220 S.C. 20, 66 S.E.2d 457 (1951), in this respect).

It is well settled that adverse use is presumed once the claimant of a prescriptive right establishes open, notorious, continuous and uninterrupted use. Poole v. Edwards, 197 S.C. 280, 15 S.E.2d 349, 350 (1941). Plaintiff, through his testimony and that of his witnesses, has presented ample evidence of open, notorious, continuous and uninterrupted use by himself and his predecessors so as to satisfy this presumption of adverse use, and no evidence has been presented by Defendant in rebuttal of this presumption.

In addition, Plaintiff and each of his witnesses testified that their use of the Red Road was based on a belief that they, or at least the Plaintiff, had the right to use the Red Road. This belief was premised upon the historic and long continued use of the Red Road by Plaintiff and his father and uncle since the 1940s and the general belief throughout the area that this was "Peter's

Road.”⁴ Mike Nickells, a former owner of the McAlister Tract, testified that he never tried to stop Plaintiff or anyone else from using the Red Road crossing his property because he did not think that he could stop them. Mr. Nickells further believed that Plaintiff and his family members, friends, employees and business associates had the right to use the Red Road. Accordingly, Plaintiff has shown that the use of the Red Road by himself and his family members, friends, employees and business associates has been under a claim of right, and there are several South Carolina cases on point with respect to this issue. See, e.g., Jones v. Daley, 363 S.C. 310, 609 S.E.2d 597 (Ct. App. 2005); Matthews v. Dennis, 365 S.C. 245, 616 S.E.2d 437 (Ct. App. 2005).

A prescriptive easement can be established under a “claim of right” when a party is under the mistaken belief that he has a right to use the property. Loftis v. South Carolina Electric & Gas Co., 361 S.C. 434, 604 S.E.2d 714 (Ct. App. 2004). In addressing this issue, the Loftis Court held that “a party may earn a prescriptive easement under a claim of right if ‘he demonstrate[s] a substantial belief that he had the right to use’ the property in a manner consistent with the alleged easement.” Id. at 440, 604 S.E.2d at 717 (quoting Hartley v. John Wesley United Methodist Church of Johns Island, 355 S.C. 145, 151, 584 S.E.2d 386, 389 (Ct. App. 2003)).

In order for use to be considered “under a claim of right” a party must “demonstrate a substantial belief that he had the right to use the parcel or road based upon the totality of the

⁴ Plaintiff testified that he thought he had the right to use the Red Road because he had always used it, and his father and uncle had always used it before him, and no one had ever challenged his right to use it. Plaintiff testified that “it’s the only road that everybody’s ever used to go in and out of there; the loggers and everyone else.” Plaintiff further testified that he never asked permission of anyone to use the road because he didn’t need anyone’s permission. Brock Conrad, who participated in the initial purchase of the McAlister Property with Defendant Jackson, testified that it was his belief that Plaintiff had an easement to go across the Red Road. Even Defendant’s witness, James Medlin, testified that he thought Plaintiff and his father had the right to use the Red Road based on the fact as he stated that “it’s been open so many years.”

circumstances surrounding his use.” Matthews at 250, 616 S.E.2d at 440 (emphasis in original) (expressly disagreeing with the plaintiff’s contention that a claim of right cannot be established based on a mistaken belief of ownership); Hartley at 151, 584 S.E.2d at 389; see also Jones at 316, 609 S.E.2d at 600 (requiring either a “justifiable claim of right” or adverse use). In this respect, our Court of Appeals has found a prescriptive easement to exist in a case where “[p]laintiffs have established that theirs has always been a belief that they have had a right to use of the subject roadway for ingress and egress, and had openly done so for well in excess of twenty years.” Matthews at 250, 616 S.E.2d at 440.

Our courts have found easements to have been established by prescription in circumstances almost identical to the case at hand. In Jones, *infra*, the dominant owner believed she had a right to use the access because her family had used it to get to and from their land “as long as she could remember.” 363 S.C. 310, 316, 609 S.E.2d 597, 600 (Ct. App. 2005). The dominant owner’s family members testified that “they openly asserted their perceived right to use the pre-existing path with the full knowledge and acquiescence of” the servient owner and the Court held that there was “abundance” of testimony reflecting the easement holder’s claim of right to the easement in that the easement holder demonstrated “a substantial belief that she had the right to use the property in a manner consistent with the alleged easement, originating from her family’s prior use of the access.” Id.

Likewise, in Matthews, the plaintiff testified that members of her family had always used the roadway in question for access and that, while acknowledging they may not have had legal documents granting them the right to do this, they thought they had the right to use the roadway. 365 S.C. 245, 250-51, 616 S.E.2d 437, 440 (Ct. App. 2005). Our Court of Appeals held this use

was under a claim of right sufficient to support the establishment of a prescriptive easement. Id. at 250, 616 S.E.2d at 440.

Similarly, in Hartley, the Court held that a sufficient claim of right was established by testimony of many residents that they had used the roadway in question since childhood and claimed their right flowed from their own continuous use of the road and use by prior generations of their families. 355 S.C. 145, 153, 584 S.E.2d 386, 390 (Ct. App. 2003). The Court went on to hold that it was clear that the residents and their predecessors in title "carried on a tradition of use for several decades" and that "the residents relied upon their use by their predecessors in title to gird their belief that they held a claim of right to use [the roadway]." Id. at 152, 584 S.E.2d at 388.

Based upon the overwhelming and unrebutted testimony presented at trial on this issue and the controlling precedent discussed above, I find that the use of the Red Road by Plaintiff and his predecessors was not only open, notorious, continuous and uninterrupted and therefore considered adverse, but was clearly under a "claim of right"; thus satisfying the final element necessary for a prescriptive easement. The Plaintiff and all witnesses called by Plaintiff testified that Plaintiff and his family members and employees and friends have always used the Red Road for access to the Buyck Property, for farming and logging activities as well as for recreational purposes and that, prior to the actions of Defendant Jackson, this use had never been challenged or interrupted. Each of these witnesses testified that they always believed that Plaintiff and his father before him had the right to so use the Red Road. Plaintiff himself testified that he always believed he had the right to use the Red Road for these purposes. No evidence or testimony was presented by Defendant Jackson as to the use of the Red Road by Plaintiff prior to his purchase of the Jackson Property, much less that anyone interrupted Plaintiff's use thereof. During cross-

examination, several of Plaintiff's witnesses were questioned as to whether they investigated their right to use the Red Road for access to the Buyck Property or why they believed they had the right to use the Red Road for such access. The witnesses' responses to these inquiries were consistent - that they used the Red Road because Plaintiff instructed them to do so and because they believed Plaintiff had the right to use the Red Road, or that the Red Road was the Plaintiff's road. These responses are entirely consistent with a finding that Plaintiff's use of the Red Road was under a claim of right.

Based on the foregoing, I find a prescriptive easement has been established over the Red Road, for the benefit of Plaintiff and his successors and assigns and appurtenant to the Buyck Property, for the purposes of providing ingress to, and egress from, the Buyck Property by means of the Red Road for use of the Buyck Property by Plaintiff and his family members, friends, employees and business associates for farming and logging activities as well as for hunting, fishing and other recreational purposes (including use of the Red Road by the members of the Buyck Hunt Club and other such organizations). As is consistent with the easement law of this State, the prescriptive easement which Plaintiff has established, and which is recognized herein, is for the benefit of and appurtenant to the Buyck Property, permanent in nature, and the burdens and benefits thereof run with the title to the Jackson Property and the Buyck Property, respectively.⁵

⁵ In order for an easement to be considered an appurtenant easement it must inhere in the land, concern the premises, have a terminus on the land of the benefitted property, and must be essentially necessary to the enjoyment of the benefitted property. Clearly the Plaintiff's prescriptive easement concerns the Buyck Property, and the Red Road has a terminus upon the Buyck Property. In addition, and as stated elsewhere in this Order, I find that based upon the testimony and evidence presented, the Blue Road is inadequate for access to the Buyck Property for Plaintiff's historical purposes - particularly for logging and farming operations, but also for hunting and recreational use of the majority of the Buyck Property. Therefore Plaintiff's prescriptive easement is essentially necessary to the enjoyment of his property.

As stated above, it is important to note that no evidence whatsoever was presented by Defendant Jackson relating to the character and use of the Red Road at any time prior to his acquisition of the Jackson Property in 2000. To be clear, I find that Plaintiff's prescriptive easement rights over the Red Road were established long before Defendant Jackson took title to the Jackson Property, and he therefore took title subject the rights of Plaintiff, and Plaintiff's licensees and invitees, to use the Red Road. No evidence presented by Defendant Jackson as to Plaintiff's use of the Red Road after Defendant Jackson's purchase of the Jackson Property is relevant to this analysis.

Although our technical analysis with respect to this case ends with the finding that Plaintiff has, in accordance with the applicable and binding case law of this State, established a prescriptive easement over the Red Road, it is worth mentioning that this result is not unduly harsh as to Defendant Jackson. Brock Conrad testified that he advised Defendant Jackson, prior to his purchase of the McAlister Tract (and subsequently the Jackson Property), that Plaintiff had the right to use the Red Road for access to the Buyck Property and that Plaintiff and his predecessors had used the Red Road for many, many years. Mr. Conrad further advised Defendant Jackson that he did not think the Red Road could be closed after such an extended period of use by Plaintiff and Plaintiff's predecessors. In addition, the preliminary survey prepared for Defendant Jackson in connection with his initial purchase of the McAlister Tract noted that the road subject to the McAlister Easement could be either the Red Road or the Blue Road. The subsequent, recorded, version of this survey prepared for Defendant Jackson included a note as follows:

Location of [the McAlister Easement] is unplotable. The description describes an easement along the present existing road. There's no way to determine from the description which road the deed is referring to.

Although this survey was subsequently revised after this litigation was commenced, the information described above was that which Defendant Jackson was aware of at the time of his purchase. In other words, until such time as this dispute arose, the opinion of the surveyor was that the location of the McAlister Easement was unknown and "unplottable." The testimony of Mr. Conrad and the substance of the surveyor's notes support but one conclusion: that Defendant Jackson knew or at least should have known of the rights of the Plaintiff to use the Red Road when he purchased the Jackson Property.⁶

The purpose of the foregoing analysis, though not essential to my finding that a prescriptive easement has been established in favor of Plaintiff, is simply to illustrate the fact that Defendant Jackson purchased the Jackson Property with actual knowledge (or at the very least inquiry notice) of Plaintiff's easement rights in the Red Road. As the evidence has shown, Plaintiff's prescriptive easement rights in this Red Road were established long before Defendant Jackson's purchase of the Jackson Property. Therefore, Defendant Jackson purchased the Jackson Property subject to those easement rights and, in this particular case, I believe with knowledge of those easement rights.

D. Necessity Argument Inapplicable.

Defendant has gone to great lengths to introduce testimony and evidence relating to the use and condition of the Blue Road, which serves as an additional access to the Buyck Property. Although there is conflicting testimony in this regard, upon my review of all evidence presented, which includes photographs and video footage of both the Blue Road and the Red Road, I find

⁶ Defendant Jackson has testified that the use of the Red Road for access to the Buyck Property disrupts Defendant Jackson and his wife at their home that they have built in relatively close proximity to the Red Road. Although this fact might be unfortunate, Defendant Jackson was made aware of the use and nature of the Red Road prior to his purchase of the Jackson Property and prior to his construction of his home at this particular location.

the Blue Road to be inadequate for access to the Buyck Property for Plaintiff's historical purposes – particularly for logging and farming operations, but also for hunting and recreational use of the majority of the Buyck Property.⁷

However, the condition and status of the Blue Road is simply not relevant with respect to Plaintiff's claim for a prescriptive easement over the Red Road. Even if, for the sake of argument only, the Blue Road was in perfectly acceptable condition and usable by Plaintiff for access to the Buyck Property for all purposes, that fact would have no application to the analysis of whether Plaintiff has established a prescriptive easement over the Red Road. Necessity is not a requirement for the establishment of a prescriptive easement.⁸ See Babb at 24-25, 66 S.E.2d at 458 (setting forth the three elements necessary to establish a prescriptive easement, which elements do not include any mention of necessity); JON W. BRUCE & JAMES W. ELY, JR., THE LAW OF EASEMENTS AND LICENSES IN LAND § 5.2 (2011) ("Moreover, necessity is not an element in proving a prescriptive easement."); see also 28A C.J.S. *Easements* § 110 (2011) (noting that "[e]asements by necessity and easements by prescription are distinguished from each other since they arise by virtue of different and mutually exclusive conditions." and that therefore different

⁷ In reaching this conclusion I have placed great weight not only upon the testimony of the Plaintiff and other witnesses called in the Plaintiff's case who testified as to the unsuitable condition of the Blue Road, but also upon the testimony of certain of Defendant Jackson's witnesses. James Medlin, a witness for the defense and the President of the Buyck Hunt Club, testified that it took 23 men a full day to clear the Blue Road such that it could be traveled by hunters for their purposes, and that the Blue Road was not in a condition that could be traveled by any vehicle other than an all terrain vehicle, and not by a car or truck without four wheel drive. Another witness for Defendant Jackson, Michael R. Mills who is Defendant Jackson's surveyor and who has a forestry background, testified that a logging truck must have a ten or eleven foot clearance, at a minimum, in order to pass. Upon my review of the photographs and video footage presented I do not find it plausible that a logging truck, or even a larger truck utilized in farming operations or hauling farm machinery, could safely travel the Blue Road to and from those areas of the Buyck Property which are in question.

⁸ Defendant Jackson has relied upon the case of Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997), for his claim that necessity is a requisite element to establishment of a prescriptive easement. Tupper, however, was not a prescriptive easement case, but instead involved an express easement sought to be established by virtue of a recorded plat. Clearly a different test is applicable to such situations.

rules apply to acquisitions of rights by prescription and acquisitions of rights by necessity.) (citing Clemson Univ. v. First Provident Corp., 260 S.C. 640, 197 S.E.2d 914 (1973) and Brasington v. Williams, 143 S.C. 223, 141 S.E. 375 (1927)). Certainly (unless of course an easement is being claimed through necessity) nothing prevents a landowner from having two easements providing access to his property – particularly when the parcel of land in question consists of 700 acres, as with the Buyck Property.

E. Historic Use of the Red Road was not Permissive.

Defendant Jackson has presented evidence presumably in support of a claim that Plaintiff's and his predecessors' historic use of the Red Road was permissive. This evidence relating to "permission" is entirely based upon actions taken by Defendant Jackson after his purchase of the Jackson Property in 2000.⁹ I find that, based upon Plaintiff and his predecessors' historic use of the Red Road since the early 1940s, the Plaintiff's prescriptive easement rights had ripened and been fully perfected long before Defendant Jackson's purchase of his property in 2000. No actions taken by Defendant Jackson after the perfection of Plaintiff's prescriptive easement can alter or diminish Plaintiff's previously established rights. Defendant Jackson purchased the Jackson Property subject to Plaintiff's prescriptive easement.

F. Plaintiff's Prescriptive Easement has not been Abandoned.

Defendant argued that the Plaintiff "disavowed" any claim to the Red Road by obtaining the express grant of the McAlister Easement. This argument is misplaced. Even if I found that the McAlister Easement was for the Blue Road as contended by Defendant, and which issue is discussed more fully below, the fact that Plaintiff obtained a written easement over a road in

⁹ Defendant Jackson and others testified that after Defendant Jackson's purchase of the Jackson Property in 2000, Defendant Jackson erected a gate across the Red Road and provided Plaintiff with a key to the gate.

another location, serving another portion of Plaintiff's property (the hayfield), does not affect or in any way prevent Plaintiff from establishing a prescriptive easement over the Red Road. There is no legal principle limiting a landowner to one access route to his property. In addition, the testimony at trial established that Plaintiff's use of the Red Road continued unchanged following the grant of the McAlister Easement and Plaintiff never took any action to "disavow" or abandon his easement. It is well settled that abandonment of established easement rights requires an affirmative act of the easement holder evidencing such abandonment. Witt v. Poole, 182 S.C. 110, 188 S.E. 496 (1936) (stating that "to justify the conclusion that there has been an abandonment, there must be some clear and unmistakable affirmative act or series of acts indicating a purpose to repudiate ownership"); see also 2 AM. JUR. PROOF OF FACTS 3D *Establishment of Prescriptive Easement* 125 (2011) ("[a]bandonment has to do with an unequivocal act of the claimant inconsistent with the further assertion of prescriptive rights and evidencing an intentional relinquishment of those rights"). Clearly such acts are not present in the instant case.

G. Plaintiff's Prescriptive Easement has a Terminus.

Defendant Jackson also contends that the easement claimed by Plaintiff does not have a terminus on the Buyck Property. I disagree. Defendant Jackson's contention is based on the fact that a small portion of the Red Road actually leaves the Jackson Property, crosses over certain property owned by another, and then re-enters the Jackson Property before terminating on the Buyck Property. In support of this contention, Defendant Jackson relies upon Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997), and Moore v. Reynolds, 285 S.C. 574, 330 S.E.2d 542 (Ct. App. 1985). Both of these cases, however, involve easements by express grant and analyze terminus issues with respect to express grants.

Regardless, it is clear that Plaintiff has established through prescription an easement across the Red Road¹⁰ and therefore the terminus of the entire easement, taken as a whole, is clearly upon the Buyck Property. There is no evidence that the neighbor has ever challenged Plaintiff's prescriptive easement rights across his property and in fact Plaintiff and others testified to this effect. Therefore, it has not been necessary for Plaintiff to litigate his rights in Court, as has been necessary with respect to Defendant Jackson. The fact that Plaintiff has not been forced to litigate with his neighbor who, according to the record, has never challenged Plaintiff's use of the portion of the Red Road crossing his property, does not derogate the quality of the prescriptive easement established by Plaintiff over the Red Road by creating any terminus issue with respect thereto.

An established prescriptive easement, by its nature, exists of its own accord. It is not a prerequisite to the creation or recognition of a prescriptive easement that a legal action be undertaken to create or confirm prescriptive easement rights which have not been challenged. The prescriptive easement which exists over the Red Road and traverses the Jackson Property as well as a corner of a neighbor's property has its terminus upon the Buyck Property. If neighboring owner in question were to challenge Plaintiff's right to cross his property, then those issues between Plaintiff and his neighbor would be adjudicated in a separate lawsuit.

II. EASEMENT BY EXPRESS GRANT

Both parties have advanced arguments relating to the grant of the McAlister Easement. Plaintiff argues that, in addition to his prescriptive rights over the Red Road, the McAlister Easement grants Plaintiff express easement rights over the Red Road. Defendant Jackson argues

¹⁰ Again, nothing contained in this Order shall constitute and adjudication of any rights between Plaintiff and the referenced neighboring property owner with respect to Red Road or either party's rights relating thereto and nothing contained herein shall be construed to make any findings, rulings or declarations with respect to that portion of the Red Road which is not located upon the Jackson Property.

that the rights granted Plaintiff in the McAlister Easement relate to the Blue Road only, and not the Red Road. Defendant Jackson further argues that Plaintiff's acquisition of an express easement (allegedly) over the Blue Road had the effect of terminating or causing an abandonment of Plaintiff's prescriptive rights over the Red Road.

I find the testimony and evidence presented concerning the McAlister Easement, and whether the existing road over which Ms. McAlister granted easement rights was the Red Road or the Blue Road, to be inconclusive. Specifically, I do not find the evidence sufficient to conclude as a matter of law that the McAlister Easement describes and grants access rights over the Blue Road only.¹¹ However, no legal determination relating to the McAlister Easement, including the location of the easement rights granted therein, is necessary in order to dispose of this case on the merits. A prescriptive easement has already been proven in Plaintiff's favor over the Red Road, and no interpretation of the McAlister Easement is necessary to support such a finding. Likewise, no interpretation of the McAlister Easement could be used to destroy or derogate any such prescriptive easement rights.

As discussed above, there is nothing in the law to prevent an owner from having two access roads serving his property. I have already determined and held that Plaintiff has acquired

¹¹ Plaintiff testified that when the McAlister Easement was negotiated he thought it would allow him access rights over both the Red Road and the Blue Road, and that in the least he thought his access rights would be over the Red Road as the Red Road is his primary access to the Buyck Property. Michael R. Mills, Defendant Jackson's surveyor, testified that he believed the McAlister Easement to describe the Blue Road. However, the previous surveys of the McAlister Property prepared for Defendant Jackson first identified both the Red Road and the Blue Road as being subject to the McAlister Easement, and then later included a note that the location of the McAlister Easement grant was unplotable. Mr. Mills further testified that the road which traveled in a northwesterly direction as contemplated in the McAlister Easement would have to be the Blue Road, and cannot be the Red Road as the Red Road did not travel in a northwesterly direction. However, the McAlister Easement was one of a chain of easements granted to form one access way traveling from Fort Motte Road up to the Buyck Property. On cross-examination, Mr. Mills testified that the road beginning at Fort Motte Road, taking the right fork on the McAlister Property and then continuing northward on the Red Road to the boundary of the Buyck Property was also a road that traveled in a northwesterly direction – and again this northwesterly route was over the Red Road instead of the Blue Road. Based on the foregoing conflicting testimony, I find that no legal conclusion can be made as to the location of the easement rights granted in the McAlister Easement.

a prescriptive easement to use the Red Road for access to the Buyck Property for farming and logging activities and for recreational use. According to the testimony, Plaintiff's use of the Red Road began in the early 1940s and continued uninterrupted thereafter until Defendant purchased the Jackson Property in 2000. As such, Plaintiff and his predecessors had perfected their prescriptive rights in the Red Road long before the grant of the McAlister Easement in 1984. Accordingly, the grant of the McAlister Easement in Plaintiff's favor, providing Plaintiff access to the Buyck Property over one of the two existing roads upon the McAlister Tract, truly has no bearing or effect upon Plaintiff's prescriptive easement rights and thus a legal determination as to the true location of the easement rights granted in the McAlister Easement is unnecessary.

III. PERMANENT INJUNCTION

Based upon the foregoing, I have determined that a prescriptive easement has been established over the Red Road for the benefit of Plaintiff and his successors and assigns for the purposes of providing ingress to, and egress from, the Buyck Property by means of the Red Road for use of the Buyck Property by Plaintiff and his family members, friends, employees, business associates, and any others given permission to use the Red Road, for farming and logging activities as well as for hunting, fishing and other recreational purposes (including use of the Red Road by the members of the Buyck Hunt Club and other such organizations, with permission from Plaintiff). As such an easement has been duly established by Plaintiff, I find that Plaintiff is entitled to a permanent injunction restraining and enjoining Defendant Jackson from obstructing the Red Road or otherwise interfering with Plaintiff's rights to the use of the Red Road as set forth in this Order.

The Red Road easement has always been used as the primary road. Moreover, it travels to very desirable part of the property, including the Congaree River, and it has always been

utilized for various purposes by many people. It is clear that Mr. Conrad knew the Red Road, knew why it was used, knew who used it, and knew how it was used. Considering all of the evidence, it was always the intention for the Red Road to run with the land. Mr. Jackson knew prior to buying the property that the Red Road was the primary road. It is clear to the Court that he has chosen to build a cabin in the face of the history of this easement. Moreover, Mr. Jackson indicated in his testimony that prior to purchasing the land he and Mr. Conrad toured the property and witnessed the existence and use of the Red Road.

In order for an easement to be considered an appurtenant easement it must inhere in the land to which it is appurtenant, have a terminus on the land of the benefitted property, must be essentially necessary to the enjoyment of the benefitted property, and pass with the property. Whaley v. Stevens, 21 S.C. 221, 224 (1884); Steele v. Williams, 204 S.C. 123, 28 S.E.2d 644, 646 (1944). Clearly, the Plaintiff's prescriptive easement concerns the Buyck Property, and the Red Road has a terminus upon the Buyck Property. In addition, and as stated elsewhere in this Order, I find that based upon the testimony and evidence presented, the Blue Road is inadequate for access to Buyck Property for Plaintiff's purposes – particularly for access to the Congaree river. Thus, Plaintiff's prescriptive easement is clearly essentially necessary to the enjoyment of his property.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust Under Agreement dated March 30, 2000 shall be and hereby is dismissed from this action by stipulation and agreement of the parties; AND

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a prescriptive easement has been established and is judicially recognized herein over the Red Road (as such

Red Road is shown and depicted on Exhibit D hereto), for the benefit of Plaintiff and his successors and assigns and appurtenant to the Buyck Property, for the purposes of providing ingress to, and egress from, the Buyck Property by means of the Red Road for use of the Buyck Property by Plaintiff and to whom he grants permission; AND

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the prescriptive easement recognized herein shall benefit the Buyck Property as the dominant estate and burden the Jackson Property as the servient estate and the burdens and benefits of said easement shall run with the title to the Jackson Property and the Buyck Property, respectively; AND

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Order shall be recorded in the real property records for Calhoun County and indexed under the names of both Plaintiff and Defendant Jackson in both the Grantor and Grantee indices; AND

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Jackson is and shall be permanently enjoined from obstructing the Red Road or otherwise interfering with any of Plaintiff's rights to the use of the Red Road as set forth in this Order.

AND IT IS SO ORDERED.

26
October 19, 2011
St. George, South Carolina

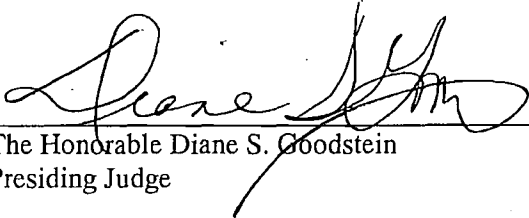

The Honorable Diane S. Goodstein
Presiding Judge

EXHIBIT A

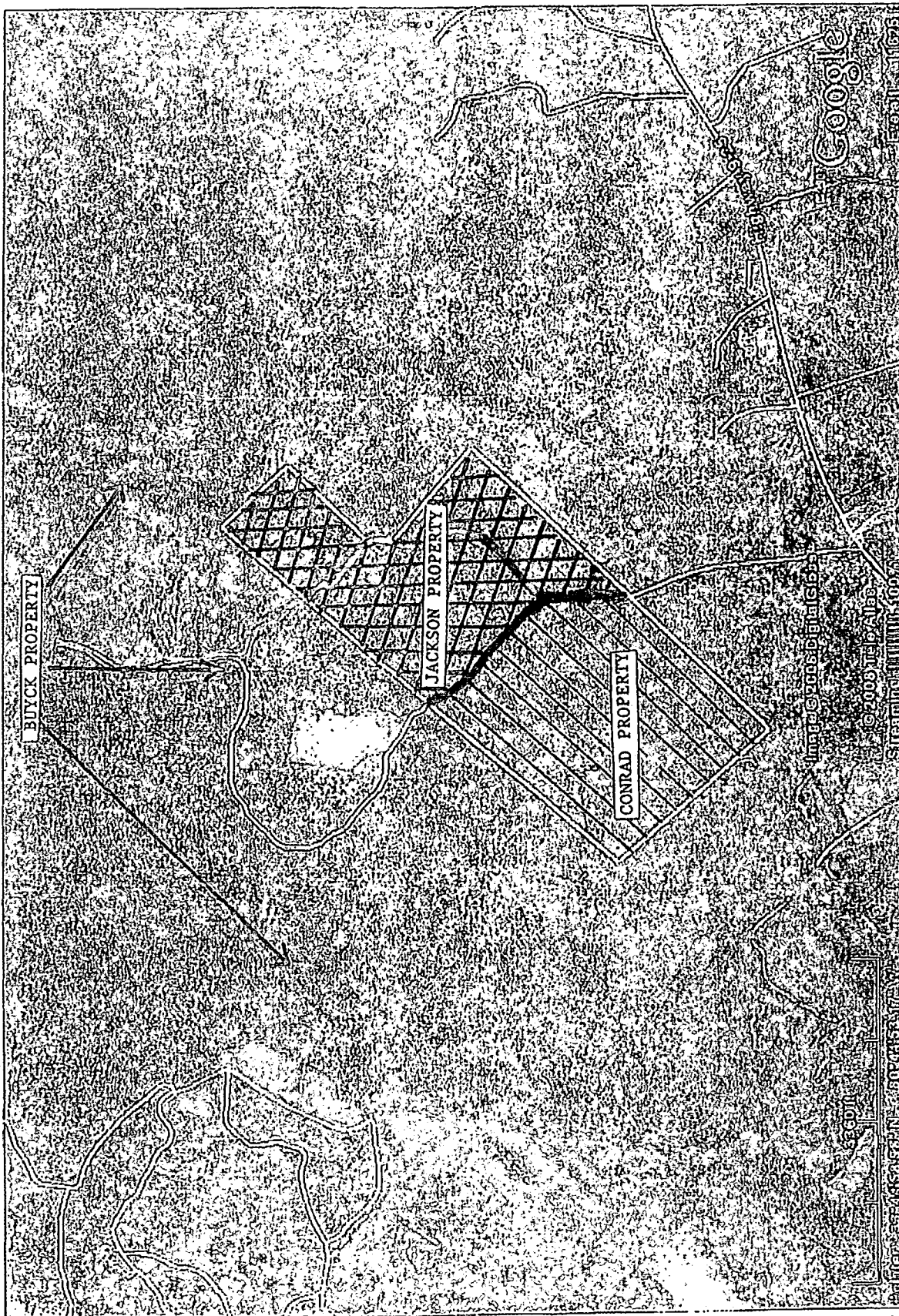


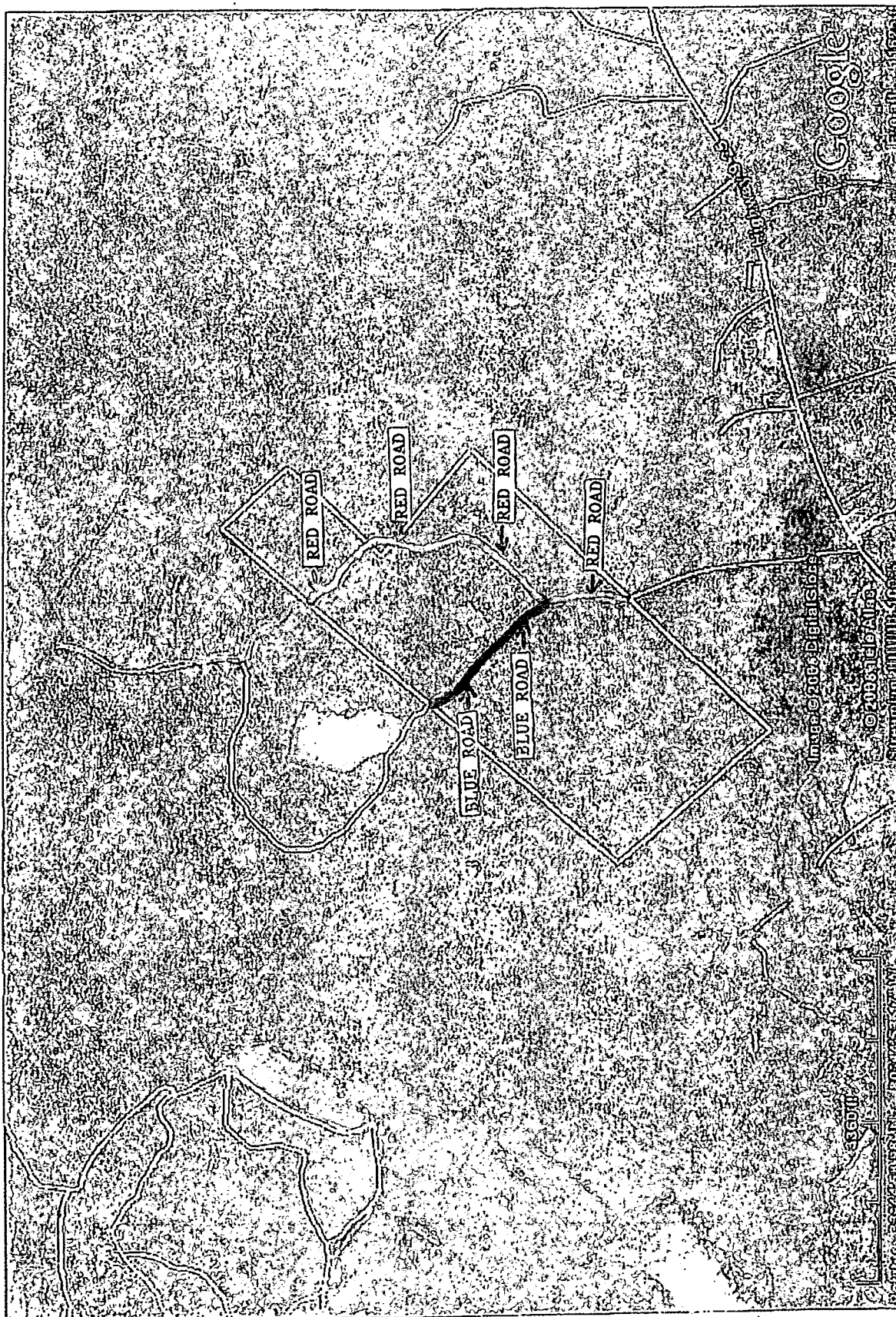
EXHIBIT B
BUYCK PROPERTY

All that certain piece, parcel or tract of land situate in Amelia Township, Calhoun County, South Carolina, about eight (8) miles north of the Town of St. Matthews, containing seven hundred ten (710) acres, more or less, and bounded as follows: On the north by Congaree River; on the northwest by High Hill Creek and Congaree Rive and lands of H. P. Paulling; on the south by lands of Menriette and D. D. Buyck now owned by O'Neal; all of which is more accurately described by metes, bounds and directions on a plat thereof made by F. H. Grambling, Sur. and record of which is found in Plat Book 2 at Page 9 in the Office of the Clerk of Court for Calhoun County, South Carolina

EXHIBIT C

JACKSON PROPERTY

All that certain piece, parcel or tract of land, together with all improvements thereon, situate, lying and being approximately three miles west of the Town of Fort Motte, in the County of Calhoun, State of South Carolina, containing 108.653 acres, more or less, and shown and delineated on a plat dated March 30, 2000, last revised April 27, 2000, prepared for William C. Jackson by J.H. Walker & Associates and recorded in the Office of the Register of Deeds for Calhoun County, South Carolina, in Plat Book 4122 at Page ___, such plat being incorporated herein by reference as if fully set forth herein. Said 108.653 acres is bounded on the southwest by property now or formerly of Rocco D. Cassone, the center line of the private unpaved road being the line; on the northwest by property now or formerly of W.P. Buyck, Jr., on the northeast by property now or formerly of Allen P. Burner, et al; and on the southeast by property now or formerly of W.P. Buyck, Jr.



STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

W. Peter Buyck, Jr.,)
Plaintiff,)
-vs-)
William C. Jackson,)
Defendant.)

Civil Action No.: 2008-CP-09-135

ORDER

This matter comes before me on motion of the Defendant, William C. Jackson, to alter or amend this Court's prior Order dated October 26, 2011 and entered on November 15, 2011.

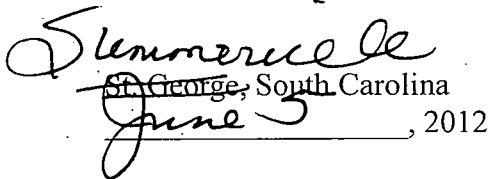
Having fully considered the matters set forth in the Order, the matters raised in Defendant's Motion to Alter or Amend, the Plaintiff's Memorandum in Opposition to Defendant's Motion, and the submissions of counsel, this Court is not inclined to alter or amend its Order. Specifically, this Court finds that the Defendant's property is not unenclosed woodlands as has been argued by the Defendant in his Motion to Alter or Amend.

Accordingly, the Motion of the Defendant, William C. Jackson, is hereby DENIED.

AND IT IS SO ORDERED.



The Honorable Diane S. Goodstein
Presiding Judge, First Judicial Circuit



St. George, South Carolina
June 5, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

W. Peter Buyck, Jr.,)
Plaintiff,)

Civil Action No.: 2008-CP-09-0135

-vs-

William C. Jackson and Lorraine)
Ruple Conrad, Trustee for the)
Lorraine Ruple Conrad Revocable)
Trust Under Agreement dated)
March 30, 2000,)
Defendants.)

AMENDED COMPLAINT

(Non-Jury)

NOW COMES THE PLAINTIFF, W. Peter Buyck, Jr., who, complaining of the Defendants, William C. Jackson and Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust Under Agreement dated March 30, 2000 ("Defendants"), does hereby allege and state as follows:

PARTIES AND JURISDICTION

1. Plaintiff is citizen and resident of the County of Calhoun, State of South Carolina.
2. Upon information and belief, Defendants are citizens and residents of the County of Richland, State of South Carolina.
3. The real property which is the subject of this action ("Jackson Property") is located in the County of Calhoun, State of South Carolina and is more particularly described as:

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Amelia Township, School District No. 1, County of Calhoun, State of South Carolina, containing 203 acres, more or less, shown on a plat of H.R. Oliver, RLS. dated December 12, 1963, and recorded in the Office of the Clerk of Court for Calhoun County in Plat Book 8 at Page

259, and bounded as follows: on the Northwest by lands of Buyck; on the South and Southwest by lands of Hancock, on the Northeast by lands of A.P. Bruner; and on the Southeast by lands of Buyck.

LESS AND EXCEPTING THEREFROM THE FOLLOWING PROPERTY:

All that certain piece, parcel or tract of land, together with all improvements thereon, situate, lying and being approximately three miles west of the Town of Fort Mottee, in County of Calhoun, State of South Carolina, containing 108.653 acres, more or less, and shown and delineated on a plat dated March 30, 2000, revised April 27, 2000, prepared for William C. Jackson by J.H. Walker & Associates and recorded in the Office of the Register of Deeds for Calhoun County, South Carolina, in Plat 4122, such plat being incorporated herein by reference as if fully set forth herein. Said 108.653 acres is bounded on the southwest by property now or formerly of Rocco D. Cassone, the center line of the private unpaved road being the line; on the northwest by property now or formerly of W.P. Buyck, Jr.; on the northeast by property now or formerly of Allan P. Bruner, et al; and on the southeast by property now or formerly of W.P. Buyck, Jr.

Tax Map No. 135-00-00-002 (a portion thereof)

4. Jurisdiction and venue are proper in the Court of Common Pleas for the First Circuit, in the County of Calhoun, State of South Carolina.

GENERAL ALLEGATIONS

5. On or about July 1, 1944, J. B. Williams conveyed certain real property (which conveyance included the Jackson Property) to J. T. McAlister, as evidenced by a deed recorded in the Office of the Clerk of Court for Calhoun County in Book 23 at Page 365.

6. J. T. McAlister died on January 10, 1966, leaving a Will dated January 25, 1964 of record in the Office of the Probate Judge for Calhoun County, filed in Apartment 96 in Package 2233, and through which he devised certain real property (including the Jackson Property) to Grace J. McAlister.

7. Thereafter, and after a series of prior conveyances, on or about December 12, 1996, James M. Nickells and Rachel C. Nickells conveyed approximately 203 acres (which included the Jackson Property) to Rocco D. Cassone, as evidenced by a deed recorded in the Office of the Clerk of Court for Calhoun County in Book 105 at Page 313.

8. On or about April 7, 2000, Rocco D. Cassone conveyed same 203-acre tract (which includes the Jackson Property) to Defendants, as evidenced by a deed recorded in the Office of the Clerk of Court for Calhoun County in Book 140 at Page 179.

9. On or about May 19, 2000, Defendants effectively partitioned the said 203-acre tract, with Defendant Jackson receiving the Jackson Property by way of a deed from Defendant Conrad, as Trustee, recorded in the Office of the Clerk of Court for Calhoun County in Book 141 at Page 324 and Defendant Conrad, as Trustee, receiving a 95-acre tract lying to the west of the Jackson Property, by way of a deed from Defendant Jackson, recorded in the Office of the Clerk of Court for Calhoun County in Book 141 at Page 319. True and correct copies of these deeds are attached hereto as Exhibit A-1 and Exhibit A-2.

10. On or about November 5, 1976, W. P. Buyck conveyed to Plaintiff, as evidenced by a deed recorded on December 7, 1977 in the Office of the Clerk of Court for Calhoun County as Deed 6623, certain real property located in Calhoun County which is adjacent and contiguous to the Jackson Property ("Buyck Property"). A true and accurate copy of said deed is attached hereto as Exhibit B.

11. On or about June 7, 1984, Grace J. McAlister executed and delivered unto Plaintiff a non-exclusive easement ("Easement") for, Plaintiff is informed and believes, access to and regress from the Buyck Tract over and across the Jackson Property. The Easement was recorded in the

Office of the Clerk of Court for Calhoun County in Book 6 at Page 2615 and is attached hereto as Exhibit C.

12. For many years, but in any event more than twenty (20) years, Plaintiff has traveled to and from the Buyck Property by way of a dirt road ("Dirt Road"), which crosses the Jackson Property. A sketch showing the location of the Dirt Road utilized by Plaintiff is attached hereto as Exhibit D.

13. Presently, Defendant Jackson is deliberately, wilfully and unlawfully blocking Plaintiff's use of a portion of the Dirt Road by means of a locked gate and is thereby preventing Plaintiff from having access to and regress from the Buyck Property by way of the Dirt Road.

FOR A FIRST CAUSE OF ACTION
(Easement by Express Grant)

14. Each and every allegation of this Complaint is incorporated herein as if set forth verbatim.

15. As aforesaid, in 1984, Grace J. McAlister delivered unto Plaintiff the Easement, which grants Plaintiff access to and regress from the Buyck Property over, through and across the Jackson Property, or a portion or portions thereof.

16. The written and recorded Easement from Grace J. McAlister was and is an express grant in favor of Plaintiff and is senior and superior to Defendant Jackson's title in and to the Jackson Property.

17. Plaintiff is informed and believes that the way of ingress to and regress from the Buyck Property as granted in the Easement is via the Dirt Road, in the area as shown on Exhibit D.

18. Accordingly, Plaintiff is entitled to an order of this Court declaring that he has an easement over, through and across the Jackson Property, in the area of the Dirt Road, which

easement is permanent and non-exclusive in nature and, as such, has inured to the benefit of Plaintiff, his heirs, successors, assigns, employees, agents, licensees and invitees.

FOR A SECOND CAUSE OF ACTION
(Easement by Prescription)

19. Each and every allegation of this Complaint is incorporated herein as if set forth verbatim.

20. As aforesaid, Plaintiff purchased the Buyck Property in 1976 and has enjoyed the continued and uninterrupted use of the Dirt Road for access to and regress from the Buyck Property since that time, a period greater than twenty (20) years.

21. Plaintiff's continued and uninterrupted use of the Dirt Road for many years has allowed him, his family, his employees and others to enjoy the Buyck Property.

22. Plaintiff has, since he purchased the Buyck Property, always believed he had the right to the use of the Dirt Road for access to and regress from the Buyck Property. Plaintiff would further show that his father, W. P. Buyck, Sr., and his predecessor-in-title to the Buyck Property, used the Dirt Road for access to and regress from the Buyck Property for many years prior and Plaintiff knows of no instance where either his or his father's use of the Dirt Road was ever challenged, disputed or questioned.

23. Accordingly, Plaintiff has a prescriptive right and easement to the use of the Dirt Road for access to and regress from, the Buyck Property, which right and easement is permanent and non-exclusive in nature and, as such, has inured to the benefit of Plaintiff, his heirs, successors, assigns, employees, agents, licensees and invitees and is senior and superior to Defendant Jackson's title in and to the Jackson Property.

FOR A THIRD CAUSE OF ACTION
(Injunction)

24. Each and every allegation of this Complaint is incorporated herein as if set forth verbatim.

25. Heretofore, as aforesaid, Defendant Jackson has deliberately and wilfully blocked (and continues to block) the Dirt Road with a locked gate, thereby preventing the Plaintiff's ingress to and regress from the Buyck Tract by way of the Dirt Road.

26. In so doing, Defendant Jackson has acted, and continues to act with wilful and wanton disregard of the Plaintiff's interests and rights in and to the Dirt Road.

27. As a consequence of the maintenance of the locked gate across the Dirt Road, Defendant Jackson continues to substantially and unreasonably interfere with Plaintiff's use and enjoyment of the Buyck Property, thereby resulting in irreparable damage to the Plaintiff, and for which Plaintiff has no adequate remedy at law.

28. If Defendant Jackson is permitted to continue to block the Dirt Road, Plaintiff will suffer irreparable injury, as he, and his successors, assigns, guests, licensees and/or invitees seeking to enter the Buyck Tract will be deprived of access thereto by way of the Dirt Road.

29. Plaintiff is informed and believes that he is entitled to the peaceful possession of the Buyck Tract and is thus entitled to an order requiring Defendant Jackson to immediately remove any and all obstructions placed on or across the Dirt Road (including, without limitation, any locked gates), and to immediately cease and desist from obstructing or blocking Plaintiff's access to the Buyck Tract by way of the Dirt Road.

30. Plaintiff is further informed and believes that he is likely to succeed on the merits of the within action, as based upon the allegations as set forth in this Amended Complaint.

31. Accordingly, Plaintiff is therefore entitled to a temporary injunction and permanent injunction restraining and enjoining Defendants, their heirs, successors or assigns, or any other person or entity, from obstructing the Dirt Road in any manner, or taking any other or further action which may prevent or interfere with the Plaintiff, his heirs, successors, assigns, guests, licensees, or invitees from using the Dirt Road.

WHEREFORE, having fully complained of the Defendants herein by way of this Amended Complaint, Plaintiff prays for the following relief:

a. An Order of this Court declaring that Plaintiff has a permanent and non-exclusive easement over the Dirt Road, with said easement right being senior and superior to Defendants' title in their respective tracts;

b. An Order of this Court issuing a temporary injunction and a permanent injunction enjoining Defendants from barring or in any way interfering with Plaintiff's and his heirs', assigns', agents', employees', licensees' or invitees' use and enjoyment of the Dirt Road for access to and regress from the Buyck Tract;

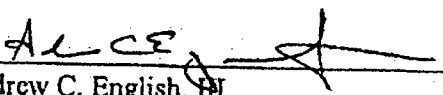
c. An Order of the Court awarding Plaintiff his damages resulting from Defendants' interference with his use of the Dirt Road; and

d. For such and other and further relief as may be deemed just and proper.

32. Plaintiff is further informed and believes that he is entitled to the recovery of any actual or consequential damages that may result or flow from Defendants' interference with his use of the Dirt Road.

SIGNATURE ON FOLLOWING PAGE

CALLISON TIGHE & ROBINSON, LLC



Andrew C. English, III
Ian D. McVey
1812 Lincoln Street, Suite 200
Post Office Box 1390
Columbia, South Carolina 29202
Telephone: (803) 256-2371
Facsimile: (803) 256-6431

ATTORNEYS FOR PLAINTIFF, W. PETER
BUYCK, JR.

Columbia, South Carolina
October 8, 2008
5240.001 Amended Complaint

EXHIBIT A-1

F:\DATA\OCCRP-FDA\1043211\Doc6-3.doc 5/18/00 11:22 AM

STATE OF SOUTH CAROLINA)

COUNTY OF CALHOUN)

DEED OF REAL PROPERTY

FILED

MAY 22 12 00 PM '00

THIS DEED, executed the 19th day of May, 2000, by Lorraine Ruppel Conrad, Trustee for the Lorraine Ruppel Conrad Revocable Trust Under Agreement dated March 26, 2000 (hereinafter referred to as "Grantor") to William C. Jackson (hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, Grantor and Grantee purchased as tenants in common approximately 203 acres of land located in Calhoun County, South Carolina from Rocco D. Cassone by deed dated April 7, 2000, and recorded in the Office of the Register of Deeds for Calhoun County in Deed Book 140 at Page 275; and

WHEREAS, Grantor and Grantee desire to divide the property, with Grantee receiving approximately 108.653 acres of land and Grantor receiving approximately 94.347 acres of land (203 acres less 108.653 acres), and in connection with such property division, Grantor and Grantee will each grant to the other an easement for ingress and egress over the 20-foot-wide unpaved road located on the common boundary of the two tracts (the centerline of such 20-foot-wide road being the common boundary line between the property received by Grantor and the property received by Grantee);

NOW, THEREFORE, the receipt and sufficiency of which is acknowledged by Grantor, Grantor has granted, bargained, sold and released, and by this Deed grants, bargains, sells and releases to Grantee, his heirs and assigns, all of Grantor's one-half (1/2) undivided interest in the following real property:

ALL that certain piece, parcel or tract of land, together with all improvements thereon, situate, lying and being approximately three miles west of the Town of Fort Motte, in County of Calhoun, State of South Carolina, containing 108.653 acres, more or less, and shown and delineated on a plat dated March 30, 2000, revised April 27, 2000, prepared for William C. Jackson by J.H. Walker & Associates and recorded in the Office of the Register of Deeds for Calhoun County, South Carolina, in Plat Book 4122 at Page , such plat being incorporated herein by reference as if fully set forth herein. Said 108.653 acres is bounded on the southwest by property now or formerly of Rocco D. Cassone, the center line of the private unpaved road being the line; on the northwest by property now or formerly of W.P. Buyck, Jr.; on the northeast by property now or formerly of Allan P. Bruner, et al; and on the southeast by property now or formerly of W.P. Buyck, Jr.

AND GRANTOR FURTHER grants and conveys to Grantee and Grantee's heirs, successors and assigns, and hereby reserves unto Grantor and Grantor's heirs, successors and assigns, a twenty-foot (20') wide non-exclusive perpetual easement

BOOK -141 PAGE 324

for pedestrian and vehicular ingress and egress, such easement running over and along the twenty-foot (20') wide private unpaved road as shown on the plat prepared for William C. Jackson as described above, the center line of such road being the common boundary of the parcel containing 94.347 acres, more or less, retained by Grantor and the parcel containing 108.653 acres, more or less, hereby conveyed to Grantee. The center of said road has such bearings and lengths (L1 - L29) as shown on such plat. The easement over such 20-foot-wide private unpaved road shall run with the land for the benefit of Grantor and Grantor's heirs, successors and assigns, as owner of the parcel containing 94.347 acres, more or less, and for the benefit of Grantee and Grantee's heirs, successors and assigns, as owner of the parcel containing 108.653 acres, more or less. Grantee is simultaneously granting and conveying to Grantor in the deed from Grantee to Grantor a reciprocal easement over the 20-foot-wide road, such that each of Grantor's property and Grantee's property shall be subject to an easement being ten feet (10') in width for a total width of twenty feet (20').

TOGETHER with an easement twenty (20) feet in width for ingress and egress granted by W.P. Buyck, Jr. by instrument dated June 1, 1984, and recorded in Miscellaneous Book 6-2614; an easement ten (10) feet in width for ingress and egress granted by Patsy S. Podings by instrument dated May 15, 1984, recorded in Miscellaneous Book 6-2613; and an easement ten (10) feet in width for ingress and egress granted by Charles B. Stuck by instrument dated May 17, 1984, and recorded in Miscellaneous Book 6-2612.

Tax Map No. 135-00-00-002 (a portion thereof)

Derivation: This being a portion of the same property conveyed to William C. Jackson, Individually, and Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust dated March 30, 2000, by deed of Rocco D. Cassone dated April 7, 2000, and recorded in Deed Book 140, page 179.

Grantee's Mailing Addresses for Tax Notices:

William C. Jackson
2803 Canterbury Road
Columbia, South Carolina 29204

I HEREBY CERTIFY THAT THE WITHIN
INSTRUMENT HAS BEEN THIS 25 DAY
OF May, 20 00 A.D.
RECORDED IN BOOK 4 OF DEEDS,
PAGE 112
James A. Jabe
AUDITOR FOR CALHOUN COUNTY

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, his heirs and assigns forever.

GRANTOR binds herself and her successors to warrant and forever defend all and singular said property unto Grantee, his heirs and assigns, from and against Grantor and Grantor's successors and all persons whomsoever lawfully claiming by, through or under Grantor, but no further.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed the day and year first above-written.

Signed, sealed and delivered
in the presence of:

John N. S. McLeod
Shirley D. McLeod

Lorraine Ruple Conrad
Lorraine Ruple Conrad, Trustee for the
Lorraine Ruple Conrad Revocable Trust
Under Agreement dated March 30, 2000

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned, who, being sworn, depose and said that (s)he saw Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust Under Agreement dated March 30, 2000 sign, seal and deliver the foregoing Deed and that (s)he, together with the other witness subscribing above, witnessed the execution thereof.

SWORN TO and subscribed
before me this 14th day
of May, 2000.

Shirley D. McLeod (SEAL)
Notary Public for South Carolina
My commission expires 2-7-2007

The within instrument has been received
this 15th day of May, 2000 at
10:40 o'clock A.M.
In the Assessor's office, Tax map
No. 135-00
Assessor's Office, Calhoun County, S. C.
Eric R. Mason

John N. S. McLeod

I hereby certify that the within Deed
was filed for record in my office at
10:40 A.M. o'clock on the 15th day
of May, 2000, and was
immediately entered upon the proper
index duly recorded as

Deed Book 141 Page 324
Shirley D. McLeod
CLERK OF COURT OF S. C. AND S.A.
FOR CALHOUN COUNTY, S. C.

EXHIBIT A-2

STATE OF SOUTH CAROLINA)

COUNTY OF CALHOUN)

FILED
JUL 11 2000
DEED 11 59 AM '00

DEED OF REAL PROPERTY

THIS DEED, executed the 19th day of May, 2000, by William C. Jackson (hereinafter referred to as "Grantor") to Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust Under Agreement dated March 30, 2000 (hereinafter referred to as "Grantee").

WITNESSETH:

WHEREAS, Grantor and Grantee purchased as tenants in common approximately 203 acres of land located in Calhoun County, South Carolina from Rocco D. Cassone by deed dated April 7, 2000, and recorded in the Office of the Register of Deeds for Calhoun County in Deed Book 140 at Page 275; and

WHEREAS, Grantor and Grantee desire to divide the property, with Grantor receiving approximately 108.653 acres of land and Grantee receiving approximately 94.347 acres of land (203 acres less 108.653 acres), and in connection with such property division, Grantor and Grantee will each grant to the other an easement for ingress and egress over the 20-foot-wide unpaved road located on the common boundary of the two tracts (the centerline of such 20-foot-wide road being the common boundary line between the property received by Grantor and the property received by Grantee);

NOW, THEREFORE, in connection with the partition of the above-referenced property and the payment by Grantee to Grantor of the sum of Twenty-Five Thousand Four Hundred Eighty-One and 70/100 Dollars (\$25,481.70), the receipt and sufficiency of which is acknowledged by Grantor, Grantor has granted, bargained, sold and released, and by this Deed grants, bargains, sells and releases to Grantee, her heirs, successors and assigns, all of Grantor's one-half (1/2) undivided interest in the following real property:

ALL that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Amelia Township, School District No. 1, County of Calhoun, State of South Carolina, containing 203 acres, more or less, shown on a plat of H.R. Oliver, R.L.S. dated December 12, 1963, and recorded in the Office of the Clerk of Court for Calhoun County in Plat Book 8 at Page 259, and bounded as follows: on the Northwest by lands of Bayck; on the South and Southwest by lands of Hancock; on the Northeast by lands of A.P. Bruner; and on the Southeast by lands of Bayck.

LESS AND EXCEPTING THEREFROM THE FOLLOWING PROPERTY:

ALL that certain piece, parcel or tract of land, together with all improvements thereon, situate, lying and being approximately three miles west of the Town of Fort Motte, in County of Calhoun, State of South Carolina, containing 108.653 acres, more or less, and shown and delineated on a plat dated March 30, 2000, revised April 27, 2000, prepared for William C. Jackson by J.H. Walker &

BOOK - 141 PAGE 319

Associates and recorded in the Office of the Register of Deeds for Calhoun County, South Carolina, in Plat Book 4122 at Page , such plat being incorporated herein by reference as if fully set forth herein. Said 108.653 acres is bounded on the southwest by property now or formerly of Rocco D. Cassone, the center line of the private unpaved road being the line; on the northwest by property now or formerly of W.P. Buyck, Jr.; on the northeast by property now or formerly of Allan P. Bruner, et al; and on the southeast by property now or formerly of W.P. Buyck, Jr.

AND GRANTOR FURTHER grants and conveys to Grantee and Grantee's heirs, successors and assigns, and hereby reserves unto Grantor and Grantor's heirs, successors and assigns, a twenty-foot (20') wide non-exclusive perpetual easement for pedestrian and vehicular ingress and egress, such easement running over and along the twenty-foot (20') wide private unpaved road as shown on the plat prepared for William C. Jackson as described above, the center line of such road being the common boundary of the parcel containing 108.653 acres, more or less, retained by Grantor and the parcel containing 94.347 acres, more or less, hereby conveyed to Grantee. The center of said road has such bearings and lengths (L1 - L29) as shown on such plat. The easement over such 20-foot-wide private unpaved road shall run with the land for the benefit of Grantor and Grantor's heirs, successors and assigns, as owner of the parcel containing 108.653 acres, more or less, and for the benefit of Grantee and Grantee's heirs, successors and assigns, as owner of the parcel containing 94.347 acres, more or less. Grantee is simultaneously granting and conveying to Grantor in the deed from Grantee to Grantor a reciprocal easement over the 20-foot-wide road, such that each of Grantor's property and Grantee's property shall be subject to an easement being ten feet (10') in width for a total width of twenty feet (20').

TOGETHER with an easement twenty (20) feet in width for ingress and egress granted by W.P. Buyck, Jr. by instrument dated June 1, 1984, and recorded in Miscellaneous Book 6-2614; an easement ten (10) feet in width for ingress and egress granted by Patsy S. Pedings by instrument dated May 15, 1984, recorded in Miscellaneous Book 6-2613; and an easement ten (10) feet in width for ingress and egress granted by Charles B. Sluck by instrument dated May 17, 1984, and recorded in Miscellaneous Book 6-2612.

Tax Map No. 135-00-00-002 (a portion thereof)

Derivation: This being a portion of the same property conveyed to William C. Jackson, individually, and Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust dated March 30, 2000, by deed of Rocco D. Cassone dated April 7, 2000, and recorded in Deed Book 140, page 179.

I HEREBY CERTIFY THAT THE WITHIN
INSTRUMENT HAS BEEN THIS 25TH DAY
OF May, 20 00 A.D.
RECORDED IN BOOK 4 OF DEEDS,
PAGE 112
Charles A. Jabe
AUDITOR FOR CALHOUN COUNTY

2

BOOK -141 PAGE 320

Grantee's Mailing Addresses for Tax Notices:

Lorraine Ruple Conrad
201 Old Woodland Road
Columbia, South Carolina 29209

TOGETHER with all and singular rights, members, hereditaments and appurtenances
belonging or in any way incident or appertaining thereto;

TO HAVE AND TO HOLD all and singular said property unto Grantee, her heirs,
successors and assigns forever.

GRANTOR binds himself and his heirs to warrant and forever defend all and singular said
property unto Grantee, her heirs, successors and assigns, from and against Grantor and his heirs and
all persons whomsoever lawfully claiming by, through or under Grantor, but no further.

IN WITNESS WHEREOF, Grantor has caused this Deed to be executed the day and year
first above written.

Signed, sealed and delivered
in the presence of:

Quinn O'Chick

Herbert R. Jackson

William C. Jackson (SEAL)
William C. Jackson

The within instrument has been received
this 20th day of May, 2002 at
10:30 O'clock a.M.
in the Assessor's office. Tax map
No. 133-20
Assessor's Office-Calhoun County, S. C.
Paul E. Mandy

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }

PROBATE

Before me, the undersigned notary public, personally appeared the undersigned, who, being sworn, deposed and said that (s)he saw William C. Jackson sign, seal and deliver the foregoing Deed and that (s)he, together with the other witness subscribing above, witnessed the execution thereof.

SWORN TO and subscribed
before me this 17th day
of May, 2000.

Veronica A. Steele (SEAL)
Notary Public for South Carolina
My commission expires 6/14/06

Shirley O'Neal

I hereby certify that the within Deed
was filed for record in my office at
11:53 AM, o'clock on the 23rd day
of May, 2000, and was
immediately entered upon the proper
index as duly recorded as

Dep. Book 141, Page 319
A. K. [Signature]
CLERK OF COURT OF S. C. AND GA.
FOR DADE COUNTY, S. C.

EXHIBIT B

State of South Carolina,

TITLE TO REAL ESTATE

Form 11

The S. L. Byrns Company, Columbia, S.C.

Know All Men by These Presents, that I, W. P. Byrns, Jr.

to the State aforesaid, for and

in consideration of the

sum of One Dollar (\$1.00)

to and paid by W. Peter Byrns, Jr.

in the State aforesaid Calhoun County

have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said W. Peter Byrns, Jr. eight hundred twenty one (821) acres, comprised in two parts. One of a tract of one hundred eleven (111) acres situate in Richland County, South Carolina, and the other of seven hundred ten (710) acres in the aggregate with the Congaree River serving the two parts as follows: (1) All that certain piece, parcel or tract of land situate in Amelia Township, Calhoun County, South Carolina, about eight (8) miles north of Town of St. Matthews, containing seven hundred eight (708) acres, more or less, and bounded as follows: On the north by Congaree River; on the northwest by High Hill Creek and Congaree River and lands of H. P. Fadling; on the south by lands of Henriette and D. D. Byrns now owned by O'Neal; all of which is more accurately described by Metes, bounds and directions on a plat thereof made by F. H. Gracbling, Sur. and record of which is found in Plat Book 2 at page 9 in the office of the Clerk of Court for Calhoun County, South Carolina.

Also all that certain other tract of land situate in Richland County, South Carolina, directly across the Congaree River from the above mentioned tract containing one hundred eleven (111) acres, more or less, and bounded as follows: on the north by lands now or formerly of Williams and on all other sides by the Congaree River.

The above described tracts being the same conveyed to Alfred G. DeLores et al. by deed dated the 18th day of January, 1942 Recorded in Vol 324 page 527

The above tracts were conveyed to W. P. Byrns by S. L. Byrns and are recorded in Book 34, page 183 for Calhoun County and in Book B.M. page 88 for Richland County

Also the part of Tract 9 referred to as 20 acres of open land. Deed to W. Peter Byrns, Jr. in January 1975. Being the remainder of Tract 9. This will give him the entire control of Tracts 9, 10 and 13 as shown on plat of Reference Plantation Book 2, page 48. as I am now in process of clearing out. This is part of lands bought from H. O. & Dorothy B. Shackelford, see Deed book 26, page 67 recorded October 22, 1947

Book 34, Page 183, Recorded Calhoun County April 19, 1967

662654

Grantpo's Address: P.O. Box 416, St. Matthew, S.C. 29115

To have and to hold all and singular the premises before mentioned unto the said
W. Peter Buyok, Jr., his

Holds and Assigns forever

And I do hereby bind myself, and my
and Administration, to warrant and forever defend all and singular the said premises unto the said
W. Peter Buyok, Jr., his

Holds, Executors

Holds and Assigns, against all and singular the persons whomsoever lawfully claiming, or to claim, the same or any part thereof

WITNESS my Hand and Seal this 5th day of November
in the year of our Lord one thousand nine hundred and seventy-six
and in the one hundred and
and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

James R. Lane

W. P. Buyok (Seal)
(Seal)

STATE OF SOUTH CAROLINA,

Calhoun County,

Personally appeared before me Lynn P. Ault
and made oath that she saw the within-named W. P. Buyok
live, well and, as his act and deed, deliver the within-written Deed for the uses and purposes therein men-
tioned and therein, with Oris A. Price witnessed the
execution thereof.

SWORN to before me this 5

day of Nov

1976

Mary Arthur Ault (L.S.)
Comm. Expires Notary Public of S.C.
1-5-80

Lynn P. Ault

STATE OF SOUTH CAROLINA,

County,

RENUNCIATION OF DOWER

unto all whom it may concern, that Mrs. Elizabeth S. Buyok do hereby certify
the wife of the within-named W. P. Buyok
did this day appear before me, and upon being privately and separately examined by me, did declare that she does freely,
voluntarily and without any compulsion, dread, or fear of any person or persons whatsoever, renounce, release and fore-
ever relinquish unto the within-named
W. P. Buyok, Jr.

and assigns, all her interest and estate, and also all her right and claim of Dower of, in or to all and singular the premises
within mentioned and released.

Given under my Hand and Seal, this 5th

day of November

Ann 1976

Mary Arthur Ault (L.S.)
Comm. Expires Notary Public of S.C.
1-5-80

Elizabeth S. Buyok

208626

FILED
Dec 7 4 06 PM '77
C. B. BAILEY
CLERK OF COURT
CALHOUN COUNTY
STANTON, S.C.

State of South Carolina,
County of _____

W. P. Boyd Sr.
TO
W. P. Boyd Jr.
TITLE TO REAL ESTATE

I hereby certify that the within Deed was filed for
record in my office at 4:06 P.M. on the
7th day of December, 1977.
Witness my hand and the seal of my office this 7th day of December, 1977.
6626

Clerk of Court of Calhoun County and General Solicitor
for Calhoun County, S.C.

I hereby certify that the within Deed has been
filed for record in my office this 7th day of December, 1977.
6626

Deed Book 204 Deed Page 87
to Book 204 Deed Page 87
for Calhoun County
The B. B. Brown Company, Calhoun, S.C.

The within instrument has been transmitted
this 7th day of December, 1977, at
O'clock _____ M., and recorded
in Transfer Book _____ Page _____
in Tax Assessor's office. Tax map _____
No. _____
Transfer No. _____
Tax Assessor's Office, Calhoun County, S.C.
W. P. Boyd Sr.

EXHIBIT C

STATE OF SOUTH CAROLINA,
COUNTY OF CALHOUN.

REL: C 84;
EASEMENT OR RIGHT-OF-WAY

KNOW ALL MEN BY THESE PRESENTS, That I, Grace J. McAllister, in the State aforesaid, in consideration of the sum of Five (\$5.00) Dollars to me in hand paid at and before the sealing of these presents by W. P. Buyck, Jr., the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said W. P. Buyck, Jr., the following:

An easement or right-of-way, twenty (20) feet in width for ingress and egress from South Carolina Highway #S-9-25 and extending generally in a northwesterly direction from lands of the Grantee across the lands of the Grantor herein to the property line of other lands of the Grantee and along the present existing road over the following described lands of the Grantor:

All that certain piece, parcel or tract of land, with improvements thereon, situate, lying and being in Amelia Township, School District #1, Calhoun County, South Carolina, containing two hundred three (203) acres, more or less, as shown on a plat by H. R. Oliver, Reg. L.S., dated December 12, 1963, and recorded in the office of the Clerk of Court for Calhoun County in Plat Book 8 at page 259, and bounded on the Northwest by lands of Buyck; on the South and Southwest by lands of Hancock; on the Northeast by lands of A. P. Bruner; and on the Southeast by lands of Buyck.

This being the same tract of land conveyed to J. T. McAllister by deed of J. B. Williams, dated July 1, 1944, and recorded in the office of the Clerk of Court for Calhoun County in Deed Book 23 at page 365, the said J. T. McAllister having died on January 10, 1966, leaving a Will dated January 25, 1964, of record in the office of the Judge of Probate for Calhoun

Vol. 6 2615

County, South Carolina, filed in Apartment 96 in Package 2233,
by which he devised the above-described property to Grace J.
McAllister.

TO HAVE AND TO HOLD the easement or right-of-way herein
granted to the said W. P. Buyck, Jr., his heirs and assigns
forever.

And I do hereby bind myself and my Heirs, Executors and
Administrators, to warrant and forever defend all and singular
the said promises unto the said W. P. Buyck, Jr., his Heirs and
Assigns, against myself and my Heirs and against every person
whosoever lawfully claiming, or to claim, the same or any part
thereof.

WITNESS my Hand and Seal this 7th day of June,
in the year of our Lord one thousand nine hundred and
eighty-four and in the two hundred and eighth year of the
Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Paul R. King
Paul R. King

Grace J. McAllister

6 2615

STATE OF SOUTH CAROLINA,
COUNTY OF CALHOUN.

PERSONALLY appeared before me Paul D. King
and made oath that s/he saw the within-named Grace J.
Heallioter sign, seal and as her Act and Deed, deliver the
within-written Easement or Right-of-Way for the uses and
purposes therein mentioned, and that s/he with
F. Hall Yerberow witnessed the execution thereof.
Paul D. King

SWORN to before me this 7th
day of June, 1984.

(SEAL) F. Hall Yerberow
Notary Public, South Carolina

My Commission Expires: 10-16-90

CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

JUN 7 3 47 PM '84

FILED

I hereby certify that the within
Right of Way
was recorded in my office at
3:47 P.M. o'clock on the 7th day
June 1984 and was
correctly entered upon the proper
books and duly recorded as
min. 6 2615
[Signature]
CLERK OF COURT FOR CALHOUN COUNTY
BY: MATTHEWS, B. G.

min. 6 2615

051

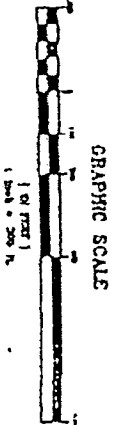
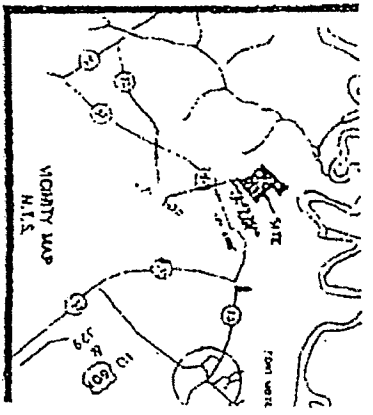
1. STATE & LOCAL COMPANIES ESTABLISHED BY OTHER JURISDICTIONAL AGENCIES.

2. 30 MONTHS & FURTHER MOST OF WAY ALONG THE COASTAL UNPAVED ROAD LEADING TO W. P. ENTER. IN ESTIMATED RECORDS AT HCC. BOOK 3 AT PAGE 193.

3. LOCATION OF EASEMENT RETAINED IN BOOK 6 AT PAGE 213 IS UNCORRECT. THE EASEMENT OCCUPIES A EASEMENT ALONG THE PREVIOUS EASING ROAD. THERE IS NO WAY TO EASEMENT FROM THE OCCUPYING ROAD WOULD BE HELD BE DETERMINED IN

ATTORNEYS: MR. HOS. PC. 311
MR. HOS. PC. 312
MR. HOS. PC. 313
MR. HOS. PC. 314
MR. HOS. PC. 315
MR. HOS. PC. 316
MR. HOS. PC. 317
MR. HOS. PC. 318
MR. HOS. PC. 319
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I hereby state that to the best of my knowledge, information and belief, the foregoing information was true and is incorporated in this statement to the extent it was so incorporated. I am a resident of the State of Florida and I am not a resident of any other state, territory, possession, or foreign country. I am not a resident of any other state, territory, possession, or foreign country. I am not a resident of any other state, territory, possession, or foreign country.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CALHOUN	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
W. Peter Buyck, Jr.,	)	Civil Action No.: 2008-CP-09-0135
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	<u>AMENDED LIS PENDENS</u>
William C. Jackson and Lorraine	)	
Ruple Conrad, Trustee for the	)	
Lorraine Ruple Conrad Revocable	)	
Trust Under Agreement dated	)	
March 30, 2000,	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

NOTICE IS HEREBY GIVEN THAT an action is being commenced and is now pending in the Court of Common Pleas for Calhoun County, South Carolina, upon a complaint of the above-named Plaintiff against the above-named Defendants to obtain a declaratory judgment that Plaintiff has an easement over property of the Defendants, the same being property which, at the time of the filing of this Notice, was situate in the County of Calhoun, State of South Carolina, and more fully described below and for injunctive relief in connection therewith:

All that certain piece, parcel or tract of land, together with all improvements thereon, situate, lying and being approximately three miles west of the Town of Fort Motte, in County of Calhoun, State of South Carolina, containing 108.653 acres, more or less, and shown and delineated on a plat dated March 30, 2000, revised April 27, 2000, prepared for William C. Jackson by J.H. Walker & Associates and recorded in the Office of the Register of Deeds for Calhoun County, South Carolina, in Plat 4122, such plat being incorporated herein by reference as if fully set forth herein. Said 108.653 acres is bounded on the southwest by property now or formerly of Rocco D. Cassone, the center line of the private unpaved road bing the line; on the northwest by property now or formerly of W.P. Buyck, Jr.; on the northeast by property now or formerly of Allan P. Bruner, et al; and on the southeast by property now or formerly of W.P. Buyck, Jr.

Tax Map No. 135-00-00-002 (a portion thereof)

This being the same property conveyed to William C. Jackson by deed of Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust Under Agreement dated March 30, 2000, dated May 19, 2000 and recorded on May 22, 2000 in the Office of the Register of Deeds for Calhoun County in Book 141 at Page 324.

AND ALSO THE FOLLOWING DESCRIBED PROPERTY:

All that certain piece, parcel or tract of land, with improvements thereon situate, lying and being in Amelia Township, School District # 1, Calhoun County, South Carolina containing two hundred three (203) acres, more or less, as shown on a plat by H. R. Oliver, Reg. L.S., dated December 12, 1963, and recorded in the office of the Clerk of Court for Calhoun County in Plat Book 8 at Page 259, and bounded on the Northwest by lands of Buyck; on the South and Southwest by lands of Hancock; on the Northeast by lands of A. P. Bruner; and on the Southeast by lands of Buyck.

LESS AND EXCEPTING THEREFROM THE FOLLOWING PROPERTY:

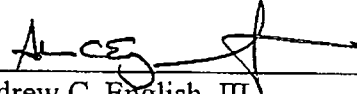
All that certain piece, parcel or tract of land, together with all improvements thereon, situate, lying and being approximately three miles west of the Town of Fort Motte, in County of Calhoun, State of South Carolina, containing 108.653 acres, more or less, and shown and delineated on a plat dated March 30, 2000, revised April 27, 2000, prepared for William C. Jackson by J.H. Walker & Associates and recorded in the Office of the Register of Deeds for Calhoun County, South Carolina, in Plat 4122, such plat being incorporated herein by reference as if fully set forth herein. Said 108.653 acres is bounded on the southwest by property now or formerly of Rocco D. Cassone, the center line of the private unpaved road being the line; on the northwest by property now or formerly of W.P. Buyck, Jr.; on the northeast by property now or formerly of Allan P. Bruner, et al; and on the southeast by property now or formerly of W.P. Buyck, Jr.

Tax Map No. 135-00-00-002 (a portion thereof)

This being the same property conveyed to Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust Under Agreement dated March 30, 2000 by deed of William C. Jackson dated May 19, 2000 and recorded on May 22, 2000 in the office of the Register of Deeds for Calhoun County in Book 141 at Page 319.

SIGNATURE ON FOLLOWING PAGE

CALLISON TIGHE & ROBINSON, LLC

A handwritten signature in black ink, appearing to read 'A. C. English, III', written over a horizontal line.

Andrew C. English, III

Ian D. McVey

Palmetto Armory Building

1812 Lincoln Street, 2nd Floor

Post Office Box 1390

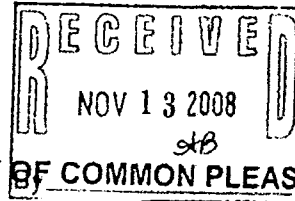
Columbia, South Carolina

Tel. (803) 256-2371

Fax (803) 256-6431

ATTORNEYS FOR PLAINTIFF W. PETER
BUYCK, JR.

Columbia, South Carolina
October 8, 2008



STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

W. Peter Buyck, Jr.,

Plaintiff,

vs.

William Jackson and Lorraine Ruple
Conrad, Trustee for the Lorraine Ruple
Conrad Revocable Trust Under Agreement
dated March 30, 2000,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 08-CP-09-0135

ANSWER OF
WILLIAM JACKSON
TO AMENDED COMPLAINT
DATED OCTOBER 8, 2008

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FILED
CLERK OF COURT
SOUTH CAROLINA

Defendant, William Jackson, answering the Amended Complaint dated October 8, 2008, would respectfully show and request the following:

FOR A FIRST DEFENSE

1. Each and every allegation not herein after specifically admitted, qualified or explained, is denied and strict proof demanded thereof.

FOR A SECOND DEFENSE

2. Answering the allegations of Paragraphs 1 and 2: Defendant admits that he is a citizen and resident of the County of Richland, State of South Carolina, and would show that he also owns a second home located in the County of Calhoun, State of South Carolina. As far as this Defendant knows, Plaintiff is a citizen and resident of the County of Calhoun, State of South Carolina.

3. The allegations of Paragraph 3 are denied except as to the ownership of real property by this Defendant as may be craved from an examination of real estate records of the County of Calhoun, State of South Carolina.

4. The allegations of Paragraph 4 are admitted.

5. Answering Paragraphs 5, 6, 7, 8, 9, 10 and 11, this Defendant denies the allegations except as may be craved from an examination of the real estate records of the County of Calhoun, State of South Carolina.

6. The allegations of Paragraphs 12 and 13 are denied.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

7. Defendant repeats and re-alleges each and every answer contained in Paragraphs 1 through 6, as set forth fully herein.

8. Answering Paragraphs 15 and 16, this Defendant denies any allegations other than as may be craved from an examination of the real estate records of the County of Calhoun, State of South Carolina.

9. The allegations of Paragraphs 17 and 18 are denied.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

10. Defendant repeats and re-alleges each and every answer contained in Paragraphs 1 through 6, as set forth fully herein.

11. The allegations of Paragraphs 20, 21, 22, and 23 are denied.

FOR A SECOND DEFENSE TO THE SECOND CAUSE OF ACTION
(Rule 12(b)(6), SCRCP)

12. Defendant repeats and re-alleges each and every answer contained in Paragraphs 1 through 6, as set forth fully herein.

13. This cause of action should be dismissed pursuant to Rule 12(b)(6), SCRCP, in that there are no allegations that the use or enjoyment of the Dirt Road was adverse and does not contain any allegations of a claim of right as required by South Carolina Law. Horry County v. Laychur, 315 S.C. 364, 434 S.E.2d 259 (1993).

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

14. Defendant repeats and re-alleges each and every answer contained in Paragraphs 1 through 6, as set forth fully herein.

15. The allegation of Paragraph 25 is admitted.

16. The allegations of Paragraphs 26, 27, 28, 29, 30, and 31 are denied.

WHEREFORE, having fully set forth his answer to the Amended Complaint, the Defendant, William Jackson, respectfully requests that this action be dismissed as to him, with costs, and for such other and further relief as this Court may deem just and proper.

BOOTH LAW FIRM, LLC



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(T) (803) 791-9211
(F) (803) 791-3159
BoothLaw@bellsouth.net

West Columbia, South Carolina
November 7, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CALHOUN	)	FOR THE FIRST JUDICIAL CIRCUIT
W. Peter Buyck, Jr.,	)	Civil Action No.: 2008-CP-09-135
	)	
Plaintiff,	)	
	)	
-vs-	)	
	)	<u>PLAINTIFF'S PRE-TRIAL BRIEF</u>
William C. Jackson and Lorraine	)	
Ruple Conrad, Trustee for the	)	
Lorraine Ruple Conrad Revocable	)	
Trust Under Agreement dated	)	
March 30, 2000,	)	
	)	
Defendants.	)	
	)	

I. NON-ARGUMENTATIVE STATEMENT OF FACTS

A. Parties and Jurisdiction

The Plaintiff, W. Peter Buyck, Jr., is a citizen and resident of Calhoun County, South Carolina. The Defendant, William C. Jackson, is a citizen and resident of Richland County, South Carolina¹. The real property which is the subject of this action is located in Calhoun County, South Carolina. This Court has jurisdiction of this matter.

B. Non-Argumentative Facts

Plaintiff and Defendant Jackson are the owners of adjacent and contiguous tracts of real property located in Calhoun County. The dirt road in issue (the "Dirt Road") runs from the nearest public road, being Fort Motte Road (SC 9-25), through the lands of another, then through other property of Plaintiff, then through Defendant Jackson's property and finally having its terminus on additional lands of Plaintiff, which for the purposes herein, Plaintiff maintains to be

¹ Defendant Lorraine Ruple Conrad, Trustee for the Lorraine Ruple Conrad Revocable Trust Under Agreement dated March 30, 2000, will be dismissed from this action, by stipulation of Plaintiff and Defendant, William C. Jackson.

the dominant estate. The Dirt Road eventually meets and runs along the Congaree River. The Dirt Road has been used for many years by Plaintiff and Plaintiff's predecessors for access to and regress from Plaintiff's property. By the use of a locked gate Defendant Jackson has prevented Plaintiff from accessing that portion of the Dirt Road which is located upon Jackson's property thus interfering with Plaintiff's use of the Dirt Road for access to his property.

II. FACTS IN CONTROVERSY

Plaintiff maintains and will prove unto this Court that he and his predecessors in title with respect to the dominant estate have used the Dirt Road continuously and without interruption for a period well exceeding twenty years, that such use has been under a claim of right, and that Plaintiff has therefore established a prescriptive right and easement to the permanent and continued use of the Dirt Road in this manner. Based upon Plaintiff's prescriptive rights in the Dirt Road, Plaintiff is entitled to a permanent injunction restraining and enjoining Defendant Jackson and his heirs, successors and assigns, and any other person or entity, from obstructing the Dirt Road in any manner, or taking any further action which may prevent or interfere with the use of the Dirt Road by the Plaintiff, his heirs, successors, assigns, guests, licensees or invitees.

Plaintiff will further show that he has suffered damages as the result of Defendant's interference with Plaintiff's use of the Dirt Road and the amount of these damages will be proven unto this Court at trial.

III. LEGAL ISSUES

1. Plaintiff has a Prescriptive Easement to Enjoy the Use of the Dirt Road.

Plaintiff's continued and uninterrupted use of the Dirt Road exceeds the twenty years required for establishment of a prescriptive right and has at all times been under a claim of right

and, therefore, Plaintiff has an easement established through prescription to the Dirt Road, including that portion of the Dirt Road which crosses Defendant Jackson's property.

In order to establish a right by prescription one must show: (1) the continued and uninterrupted use or enjoyment of the right for the full period of twenty years; (2) the identity of the thing enjoyed; and (3) that the use or enjoyment was adverse or under a claim of right. Babb v. Harrison, 220 S.C. 20, 66 S.E.2d 457 (1951); Jones v. Daley, 363 S.C. 310, 609 S.E.2d 597 (Ct. App. 2005). The evidence to be presented by Plaintiff at trial will show that Plaintiff's use of the Dirt Road satisfies each of these elements necessary for the establishment of a prescriptive easement over the Dirt Road.

2. Plaintiff is Entitled to a Permanent Injunction Preventing Defendant's Interference with the Dirt Road.

It will be shown at trial that Plaintiff has an established prescriptive easement over the Dirt Road crossing Defendant's property. Therefore, Defendant Jackson should be enjoined from further acts which interfere with or prevent Plaintiff's exercise of his prescriptive rights to use the Dirt Road crossing the Jackson property for access to Plaintiff's property.

IV. LIST OF PLAINTIFF'S WITNESSES AND EXHIBITS

A. Witnesses

1. W. Peter Buyck, Jr.
P.O. Box 416
St. Matthews, SC 29135
2. Mark W. Buyck, Jr.
Willcox, Buyck & Williams, P.A.
248 West Evans Street
Florence, SC 29501
3. Mike Nickells
780 Doodle Hill Road
St. Matthews, SC 29135

4. Brock Conrad
201 Old Woodlands Road
Columbia, SC 29202
5. Charles W. Whetstone, Jr.
Whetstone Myers Perkins & Young, LLC
P.O. Box 8086
Columbia, SC 29202
6. Jack Brady
120 Herlong Avenue
St. Matthews, SC 29135
Home: 803-874-2603
7. Robert Cante Martin
Martin Brothers, Inc.
P.O. Box 1109
Summerton, SC 29148
Office: 803-478-2922
8. John Porth
Porth Contracting Co., Inc.
151 Beacon Light Road
St. Matthews, SC 29135
Mobile: 803-600-1452
Office: 803-655-7470
9. James M. Simons
Post Office Box 3335
Holly Hill, SC 29059
Mobile: 843-708-1560
Office: 843-496-3573

B. Exhibits

1. Deed into W. P. Buyck for property along the Congaree River, and deed from W. P. Buyck to W. Peter Buyck, Jr. for same property.
2. Deed from John T. McAlister, Jr. to James M. Nickells for property now owned by Defendant Jackson.
3. Photographs, drawings and depictions of subject road and surrounding property.

**V. UNUSUAL QUESTIONS OR MATTERS WHICH
SHOULD BE BROUGHT TO THE ATTENTION OF THE COURT**

Plaintiff has a diagnosed hearing impairment; and is, at times, uncomfortable in formal

settings, such as a courtroom. Plaintiff's counsel receptively requests the Court's indulgence during his testimony, on direct and cross-examination. Attached hereto is a copy of a letter from Dr. Michele B. Frazier, M.Ed. with Midland Hearing Associates which described Plaintiff's condition.

VI. SETTLEMENT NEGOTIATIONS

Settlement negotiations have been unsuccessful.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC



Andrew C. English, III
1812 Lincoln Street, Suite 200
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902

ATTORNEYS FOR PLAINTIFF

October 1, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

W. Peter Buyck, Jr.,

Plaintiff,

vs.

William Jackson,

Defendant.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 08-CP-09-0135

**TRIAL BRIEF
OF
DEFENDANT WILLIAM JACKSON**

The Complaint in this action was filed on September 18, 2008, amended by Amended Complaint filed on October 9, 2008, and contains Four (4) Causes of Action – (1) Declaration of Easement by Express Grant, (2) Declaration of Easement by Prescription, (3) Award of Damages for Interference, and (4) Temporary and Permanent Injunctions.

By ex parte Order of the Honorable James C. Williams, Jr. issued on September 17, 2008, a Temporary Restraining Order was issued restraining Defendant from interference with the use of the Dirt Road¹ for completion of a timber sales contract entered into by Plaintiff with Rebel Lumber Company. The TRO granted by Judge Williams contained an expiration provision for 10:00 a.m. on September 22, 2008. The TRO also specifically stated that Judge Williams would consider Plaintiff's motion for temporary injunction at 9:00 a.m. on September 22, during his jury term of court in Dorchester County, but prior to the hearing, the parties agreed to continue the hearing for the temporary injunction, and stipulated that Judge Williams could extend the TRO until 10:00 a.m. on September 25, 2008. Judge Williams then issued an order on the



¹ The "Dirt Road" as used in the Amended Complaint is the road that travels over the land of Defendant for approximately 2,785 feet.

record extending the TRO until 10:00 a.m. on September 25, 2008. Plaintiff did not seek any further relief before Judge Williams before or after the expiration of the TRO. After the expiration of the TRO, the pending request for a temporary injunctive was heard by the Honorable Diane Schafer Goodstein on November 10, 2008, and she ruled at the conclusion of the hearing to deny the request for a temporary injunctive. Subsequently, an Order was issued on August 18, 2009, by Judge Goodstein specifying the reasons for the denial of the request for a temporary injunction.

The disposition of the remaining Causes is pending, and this case is scheduled to be tried on October 5 and 6, 2010.

**SUMMARY OF ARGUMENTS AGAINST THE EXISTENCE OF EITHER
AN EXPRESS EASEMENT OR A PRESCRIPTIVE EASEMENT**

There is no doubt that the language of the easement grant relied upon by Plaintiff and recorded on June 7, 1984, cannot be interpreted to place the location of the road as being the Dirt Road because the Dirt Road (1) does not directly connect to other property of Plaintiff/Buyck, and (2) does not go in a northwesterly direction from either the point where the granted easement road begins as established by all landowners from Fort Motte Road, or from the point at which the granted easement road enters the property of McAlister, the grantor of the easement right.

Plaintiff cannot prevail on showing the existence of a prescriptive easement either. For the following reasons, Plaintiff will not be able to satisfy the burden of proof for the requisites necessary to establish a right by prescription because he will not be able to prove the following: (1) adverse use or use under a claim of right, (2) necessary for the enjoyment of his property, or (3) a termini for the road ending on his property.

WITNESSES

Defendant's Witnesses:

1. William Jackson
2. W. Peter Buyck, Jr.
3. J. Henry Walker, III (Expert)
4. Barbara A. Jackson
5. Mark E. Mills (Expert)
6. John Helms (Expert)
7. James Medlin
8. Chris Bass (Expert)

SETTLEMENT EFFORTS

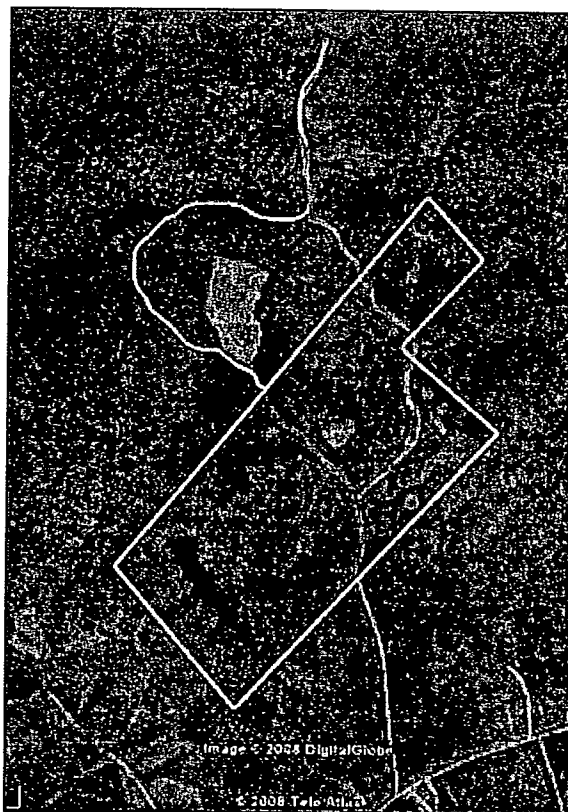
The parties have not conducted any formal mediation, and although there was discussion prior to the filing of the lawsuit for a possible settlement, there has been no meaningful discussion since then.

FACTUAL BACKGROUND

The parcel of land owned by Defendant (the "Jackson Parcel") was created by the division of a tract of land consisting of 203 acres and was acquired at the same time as the parcel of land owned by Ruple Conrad, as Trustee. The original tract of land is shown on a plat prepared by H.R. Oliver, RLS, dated December 12, 1963, and recorded in Plat Book 8 at Page 259 (the "Oliver Plat"). The original tract was owned by Grace J. McAlister from January 10, 1966, until her death on June 19, 1989.

Plaintiff owns land on the northwesterly and southeasterly sides of the Jackson Parcel, and none of the parcels owned by the parties has direct access to a public road.

Plaintiff filed his original Complaint after Defendant stopped Rebel Lumber Company from using the Dirt Road for the hauling of timber obtained from Plaintiff's property. Defendant has no objection to the use of an existing dirt road that follows the boundary line between the property of this Defendant and the property of Ruple Conrad, as Trustee, and ends on the large tract of land owned by Plaintiff where the tree cutting occurred at the time of the filing of this action. This access road is shown in BLUE below:



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This BLUE marked road is well established and leads directly to the upper portion of the property of Plaintiff that is located along the northwesterly boundary of the property owned by Defendant.

During 1984 when the original 203 acres was owned by Grace J. McAlister, she along with Plaintiff obtained granted easement rights for access to a public road – Fort Motte Road (SC Hwy. 9-25). Grace J. McAlister, W.P. Buyck, Jr., Patsy S. Pedings, and Charles D. Stuck established mutual easement rights over their respective properties so that all the properties would have access to Fort Motte Road. The recorded grants of easements are as follows:

1. Charles B. Stuck to Grace J. McAlister dated May 17, 1984, and recorded in Book 6 at Page 2612;
2. Grace J. McAlister to W.P. Buyck, Jr. dated June 7, 1984, and recorded in Book 6 at Page 2615; and
3. Patsy S. Pedings to Grace J. McAlister dated May 15, 1984, and recorded in Book 6 at Page 2613.

At that time, the property owned by Patsy S. Geddings was described as 21 acres as shown by a plat prepared by Woodrow W. Evett dated January 6, 1978, Plat# 1284. The property owned by Charles B. Stuck was described as 15 ½ acres as shown by a plat prepared by Woodrow W. Evett dated January 6, 1978, Plat# 1285.

The easement granted by Grace J. McAlister to Plaintiff described the easement area² as follows:

² A full copy of this easement is attached to the original Complaint and Amended Complaint as Exhibit "C".

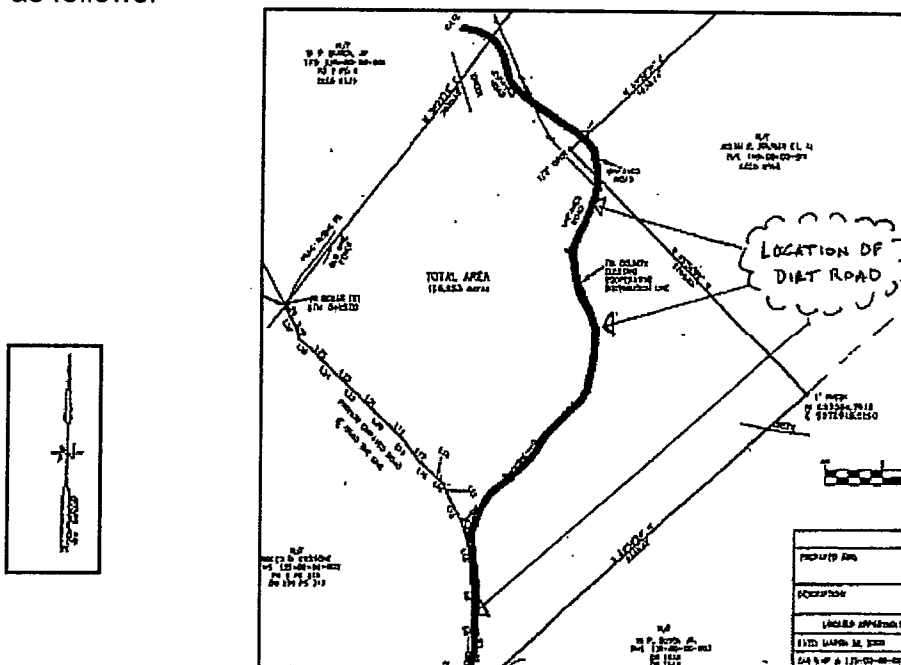
An easement or right-of-way, twenty (20) feet in width for ingress and egress from South Carolina Highway #S-9-25 and extending generally in a northwesterly direction from lands of the Grantee across the lands of the Grantor herein to the property line of other lands of the Grantee and along the present existing road . . .

(Emphasis added).

LEGAL POSITIONS OF PARTIES

AS TO EXPRESS EASEMENT

Plaintiff has claimed that the easement area is the RED marked road and marked the location of his granted easement right on a plat done by J. Henry Walker, III in 2000, at the time Defendant acquired his parcel of land by drawing a solid line along the road³ as follows:



³ Remarkably, Plaintiff suggests that there is nothing unusual for him to be able claim rights over the Dirt Road even though a portion of the Dirt Road travels over a parcel owned by Bruner.

Mike Mills, an expert surveyor, is expected to testify that the location of the easement area is the BLUE marked road. He will testify that the legal description of the easement area granted Plaintiff by Defendant's predecessor in title, Grace J. McAlister, is clear as to its reference to the BLUE marked dirt road because that road is the only road that runs in a "northwesterly direction" directly "to the property line" of other lands of Plaintiff. In fact, the RED marked road does not extend directly onto Plaintiff's property because it traverses another parcel not owned by Defendant and was never owned by McAlister. For the Plaintiff to prevail, the Court would need to interpret the language in the easement grant as giving him easement rights over both the RED marked dirt road and the BLUE marked road. However, such an interpretation would burden the Jackson parcel more than necessary. "Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted." Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980).

AS TO PRESCRIPTIVE EASEMENT

It has long been recognized in South Carolina case law that the requisites necessary to establish a right by prescription are: (1) the continued and uninterrupted use or enjoyment of the right for the full period of twenty years, (2) the identity of the thing enjoyed, and (3) the use or enjoyment was adverse or under claim of right. Babb v. Harrison, 220 S.C. 20, 24-25, 66 S.E.2d 457, 458 (1951); Sanitary & Aseptic Package Co. v. Shealy, 205 S.C. 198, 203, 31 S.E.2d 253, 255 (1944); Poole v. Edwards, 197 S.C. 280, 283, 15 S.E.2d 349 (1941); Williamson v. Abbott, 107 S.C. 398, 400, 93 S.E. 15, 16 (1917).

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Plaintiff cannot prove adverse use or use under a claim of right since he disavowed any need or claim to the Dirt Road in 1984 when he obtained a granted easement right for the BLUE marked road. Certainly, since Plaintiff had the right to access his land over the BLUE marked road, he cannot also make the argument that he was adversely using the RED marked road as well.

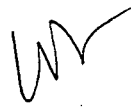
Moreover, Plaintiff will not be able to prove that his use was ever adverse even before the granting of the easement over the BLUE marked road in 1984. The subject of permissive use between neighbors when dealing with a driveway is dealt with in several cases decided by appellate courts in North Carolina and appears to be consistent with the law of this State. The presumption followed in North Carolina courts is that one's use of another's land is by permission. Therefore, to establish a prescriptive easement in North Carolina, one must first overcome the presumption that the party is using the true owner's land with the owner's permission. Pitcock v. Fox, 119 N.C.App. 307, 309, 458 S.E.2d 264, 266 (N.C.App. 1995) citing Johnson v. Stanley, 96 N.C.App. 72, 74, 384 S.E.2d 577, 579 (N.C.App. 1989) (and Dickinson v. Pake, 284 N.C. 576, 580-81, 201 S.E.2d 897, 900 (N.C. 1974)). In order to overcome this presumption, "[t]here must be some evidence accompanying the use which tends to show that the use is hostile in character and tends to repel the inference that it is permissive and with the owner's consent." Dickinson at 284. A mere permissive use of a way over another's land, however long it may be continued, can never ripen into an easement by prescription. Potts v. Burnette, 301 N.C. 663, 273 S.E.2d 285 (N.C. 1981).



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The fact that there is a gap of approximately 160 feet within the property of Bruner defeats the establishment of a prescriptive easement right over the RED marked road. In Moore v. Reynolds, 285 S.C. 574, 578, 330 S.E.2d 542 (Ct. App. 1985), the court stated that "an essential feature of an appurtenant easement is that it must have one of its termini in the dominant property." In Moore, he claimed that the old road over which an easement appurtenant was granted by the lower court crossed property of Brevard, while Moore presented evidence that when the easement for the old road was granted by a previous owner of the tract of land owned by Reynolds that the location did cross the property of Reynolds.

In Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997), the court dealt with an action to remove an in ground swimming pool claimed to be located within an ingress and egress easement. The swimming pool had been installed by Suggs and he argued that the access easement was "in gross" rather than "appurtenant" such that it did not survive the transfer of ownership from the Tuppers to a corporation. The court found that the easement was not appurtenant since the easement did not have a terminus on the land of the party claiming it. The court stated the following about the requirements for an appurtenant easement:



The character of an express easement is determined by the nature of the right and the intention of the parties creating it. 25 Am.Jur. (2d) *Easements and Licenses* § 13 (1966). An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. (fn4) *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. *Id.*; *Smith v. Commissioners*, 312 S.C. 460, 441 S.E.2d 331 (Ct.App.1994); *Carolina Land Company, Inc. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975); *Sandy Island Corp. v. Ragsdale*, *supra*; 12 S.C. Juris. *Easements* § 3. It also passes with the dominant estate upon conveyance. *Carolina Land Co.*,

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Inc. v. Bland, supra. Unless an easement has all the elements necessary to be an appurtenant easement, it will be characterized as a mere easement in gross. 12 S.C. Juris. *Easements* § 3(c). Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. *Hamilton v. CCM, Inc.* 274 S.C. 152, 263 S.E.2d 378 (1980).

Id. at 325.

Because Plaintiff has access over the BLUE marked road, he cannot maintain a prescriptive easement right is necessary for the enjoyment of his property. Clearly on point is Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997).

We find a genuine issue of material fact exists as whether or not the easement was necessary to the enjoyment of the Tupperts' estate. Although the Tupperts assert they have no other access from their property through Corey Pointe Subdivision III to Four Iron Court, nor to any other Street in that subdivision, it is clear from the hearing that there is other access which is simply less convenient. Accordingly, the trial court erred in finding that the easement was "necessary to the enjoyment of the dominant estate." We reverse the grant of summary judgment on this issue and remand for further proceedings

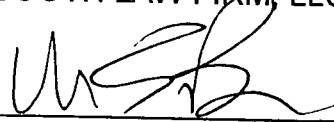
(Emphasis added).

Courts carefully scrutinize claims of easement by prescription because the recognition of such a servitude is inconsistent with the right of the servient owner to fully utilize the servient land. The Supreme Court of Oklahoma declared: "It is axiomatic that easements by prescription are not favored in law because they necessarily work losses or forfeitures of the rights of others." Zimmerman v. Newport, 416 P2d 622, 629 (Okla. 1966).⁴

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⁴ See also McNeil v. Kingrey, 237 Va. 400, 406, 377 S.E.2d 430, 433 (Va. 1989) ("The imposition of a prescriptive easement is the taking of a property right of the servient owner without payment of compensation."); Caribou For Corners, Inc. v. Chapple-Hawkes, Inc., 643 P2d 468, 471 (Wyo. 1982) (characterizing claim of prescriptive easement as "a judicially unpopular cause to take another's land"); Comment, "Death of

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06-1, 2010

the Dark Ages? The Troubled Law of Easements in Wyoming," 27 Land & Water L.
Rev. 151, 167-168 (1992).

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Trial Brief of Defendant William Jackson

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

IN THE COURT OF COMMON PLEAS
2008-CP-09-000135

W. PETER BUYCK, JR.)

PLAINTIFF,)

VS.)

WILLIAM JACKSON,)

DEFENDANT.)
_____)

TRANSCRIPT OF RECORD

OCTOBER 5 - 6, 2010
ST. MATTHEWS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

ANDREW C. ENGLISH III
ATTORNEY FOR THE PLAINTIFF

WILLIAM E. BOOTH III
ATTORNEY FOR THE DEFENDANTS

BONNIE H. KELLY
CIRCUIT COURT REPORTER

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1 THE COURT: All right. Good morning, Counsel. Good
2 morning. My court reporter has asked me to ask you to
3 identify yourself for the record. So, we start ...

4 MR. ENGLISH: I'm Drew English. I represent the
5 plaintiff Peter Buyck.

6 MR. BOOTH: William Booth representing the defendant
7 William Jackson. Oh. You want the other people to
8 identify themselves, too, our clients?

9 THE COURT: No. You mean your clients? Oh, we'll get
10 to know them, I'm sure, quite well by the time we're done.
11 Wonderful. Wonderful.

12 All right. Do we have any preliminary matters?

13 MR. ENGLISH: Yes, ma'am, Your Honor. Just a matter
14 of housekeeping.

15 THE COURT: Sure.

16 MR. ENGLISH: The caption indicates that there is a
17 second defendant, Lorraine Ruple Conrad as trustee.

18 THE COURT: I saw that.

19 MR. ENGLISH: At one point, Mr. Jackson and Ms. Conrad
20 purchased the property as co-tenants. And when the lawsuit
21 was filed, I named both of them as defendants.

22 It turns out that they subdivided the property, and
23 the road that we're claiming access over is wholly across
24 Mr. Jackson's property. So, we're certainly dismissing Ms.
25 Conrad as -- as the -- as a defendant.

1 THE COURT: Read that in the pre-trial brief, and
2 noticed that on Mr. Booth's pretrial brief that he's
3 already done the caption -- he's already reformed the
4 caption. Not a problem at all. Thank you for that.

5 All right. Now, do you all want to -- let me just --
6 just for your information, I have -- I have read your
7 wonderfully, wonderfully done trial briefs. And thank you
8 for them. And been through the -- the documents.

9 I will tell you that yesterday in that (a) I have a
10 law clerk, which is thrilling; and (b) you know all of them
11 -- all these young people are ridiculously computer geeks.
12 They're so good with computers it's amazing. And he
13 yesterday said, "Judge, watch -- hey y'all watch this."

14 And so, we actually pulled up on Google Earth and we
15 had the best time because we were actually able -- because
16 of the diagram, Mr. Booth, that you had in your pre-trial
17 brief that shows a little piece of the river and it has the
18 fields -- if you'll remember that in your pre-trial brief -
19 - we were actually able to pull the -- pull it up on
20 Google Earth, which was just a whole bunch of fun. But
21 because I looked at that on Google Earth, I felt like I
22 needed to tell you all that.

23 And it really looks like the -- the -- in your brief
24 that's what you took.

25 MR. BOOTH: Yes, it was from Google Earth. And we

1 have a few more, same Google Earth. Yeah.

2 THE COURT: Well, it's -- so ---

3 MR. BOOTH: It is amazing. I agree, it's amazing that
4 you can just ---

5 THE COURT: --- it's ---

6 MR. BOOTH: --- go to any place in the world.

7 THE COURT: --- it's -- I would like -- so, I would
8 like to tell you all that I am a budding computer geek. I
9 -- I will make that disclosure.

10 But in any event, I want to thank you both for your --
11 for the excellent, wonderful job that y'all done in your
12 trial briefs.

13 I am, of course, happy to hear from you in your
14 openings. This is a lot of explanation. To tell you, you
15 know, I feel a little more informed than I would normally.
16 And if you -- if you want to make openings I'm not going to
17 keep you from doing it, but I don't think you need to.

18 MR. BOOTH: I just have a very, very brief -- I would
19 like to make that opening.

20 THE COURT: You got it. Absolutely.

21 MR. BOOTH: But it'll be brief.

22 THE COURT: (To Mr. English) Then we'll start with
23 you.

24 MR. ENGLISH: All right, Your Honor. Thank you very
25 much. May it please the Court?

1 Again I'm Drew English, I represent Peter Buyck.
2 Peter owns the property at issue on the Congaree River.
3 He's owned it since 1976. His father owned it before him,
4 along with his uncle for a period of time. But it goes
5 back in the family to at least 1942 of continuous
6 ownership. And if I may move around a little bit?

7 THE COURT: You sure can.

8 MR. ENGLISH: You've seen -- this is a Google Earth

9 ---

10 THE COURT: It sure is.

11 MR. ENGLISH: --- it might be the same thing you've
12 seen.

13 THE COURT: It is exactly what I saw. Yep.

14 MR. ENGLISH: And ---

15 THE COURT: Uh-huh.

16 MR. ENGLISH: --- Mr. Booth and I -- everybody's seen
17 this plenty of times.

18 (Indicating) But this yellow is a 203 acre tract. The
19 portion to the right is Mr. Jackson's property. The
20 portion to the left is Ms. Conrad's, the trustee. This is
21 not an issue in the case.

22 The boundary of these two parcels is the Blue Road,
23 which you're going to hear blue and red a lot.

24 THE COURT: Uh-huh.

25 MR. ENGLISH: (Indicating) And then you see a red road

1 here. Mr. Buyck is claiming the right to use the Red Road
2 for access to his property. We believe the evidence will
3 show and satisfy the requirements of a prescriptive
4 easement. More than 20 years of continuous and
5 uninterrupted use of identity of the thing enjoyed, which
6 is the road under claim of right.

7 And so, that's what the evidence is going to be. Our
8 case is fairly straight forward. We have a number of
9 historical witnesses in addition to Mr. -- in addition to
10 Mr. Buyck. And we believe we will be able to establish
11 that he has the right to use that road as a matter of law.

12 And you're going to hear a lot of argument and
13 discussion and perhaps testimony on the Blue Road. The
14 Blue Road is known as the "Hayfield Road." And it does, in
15 fact, touch Mr. Buyck's property.

16 But we think that -- I wouldn't say it's a red
17 herring, Your Honor, but nothing that happens with respect
18 to the Blue Road matters in this case, because Mr. Buyck's
19 prescriptive easement ripened a long time ago, much -- much
20 soon than 1984 even. And you'll hear about an easement
21 that was done in 1984.

22 So, we would just respectfully suggest that anything -
23 - that anything you hear about the Hayfield Road is -- is a
24 non-starter, because Mr. Buyck's rights to go over the Red
25 Road -- the River Road, as sometimes you'll hear it

1 referred to as -- ripened long ago.

2 THE COURT: Thank you ---

3 MR. ENGLISH: Thank you.

4 THE COURT: --- so much. Yes, sir.

5 MR. BOOTH: Yes, ma'am. Thank you. I have my
6 computer geek who I brought with me.

7 THE COURT: Good for you. Wonderful. Wonderful.

8 MR. BOOTH: Yes.

9 THE COURT: Yeah.

10 MR. BOOTH: Judge, just for -- as I indicated earlier,
11 I do have some PowerPoint slides that I'm going to use for
12 my opening. Very, very few. I think it's seven or eight.
13 I hope this will help you.

14 And what I usually do is prepare a printout, which
15 I've done in this case. And those -- there are the
16 printouts of what I'm going to be showing.

17 THE COURT: Okay. Great.

18 MR. BOOTH: I've given those to counsel -- opposing
19 counsel. So, I hope this helps.

20 THE COURT: And we've marked these as exhibits?

21 MR. BOOTH: Yes, we've marked those ---

22 THE COURT: Great. All right.

23 MR. BOOTH: --- as an exhibit. So, we'll be ready to
24 go in just a minute.

25 Your Honor, I've already introduced myself, but let me

1 also introduce Mr. William Jackson, who is the named
2 defendant. And also introduce his wife Barbara Jackson,
3 who has a vested interest in the case, too.

4 THE COURT: Sure. Of course.

5 MR. BOOTH: So, I thought both of them here would be
6 the appropriate way.

7 Now, the -- the action in this case has sort of taken
8 a turn that I wasn't sure would be what I was going to
9 present today. And I'll tell you what that turn is and
10 then we'll show ---

11 THE COURT: Okay.

12 MR. BOOTH: --- you the slides. The turn that I am
13 hearing now from counsel is that this case is solely going
14 to be on whether or not Mr. Buyck has a prescriptive
15 easement right.

16 THE COURT: Okay.

17 MR. BOOTH: The road he's shown you I'm going to show
18 you myself in a minute. So, I didn't hear any words based
19 on the first cause of action from his complaint. Well, the
20 first cause of action states he has an express grant of
21 easement. And that cause of action -- I'm hearing him say
22 that that will not be pursued today. So, I'm going to make
23 that assumption, unless he tells me in a few minutes that
24 he still wants to pursue that cause of action.

25 So, some of this introduction was -- was done before I

1 saw this turn in the road. But I -- I don't think it's
2 going to be too confusing.

3 Your Honor, before you I have a slide that I created
4 that does show the property. It's a different aerial
5 photo. It's from the -- I think, the USDA, but it's a very
6 current photo. And I have couple of gentlemen that live
7 looking at these type of aerials in case of any
8 introduction issue. But I don't think so.

9 But, I think looking at this, it sort of sets the
10 stage for how things were in 1984. And you'll hear me talk
11 about 1984 as kind of an important fact in this case. 1984
12 -- which, you know, in my mind wasn't too long ago, but it
13 was a few years ago -- the ownership of four -- they had
14 four different owners owning property that we're going to
15 talk about today. You had Mr. Buyck, Peter Buyck, who
16 owned two tracts -- two separate tracts. The assessor
17 lists them as two separate tracts for tax-making purposes.
18 The first one is 200 acres, which I've got there on the
19 screen. It's 200 acres.

20 And then on the other side of -- of this property
21 called the "McAlister's tract," is another property. It is
22 700 acres.

23 Now, the -- and then as I mentioned to you, I got the
24 Pedings's tract down here, which is 21 acres; and then the
25 Stuck tract, which is about 15 acres.

1 I'll tell you why that's important to look at all four
2 of these land owners, the two down the road -- again that's
3 the Fort Motte Road; I think we all know that -- then you
4 have the McAlister tract -- Mrs. McAlister owned it in 1984
5 and she owned 203 acres, which is my client's property --
6 plus the property that's now Brock Conrad's. So, I'm not
7 dividing it yet. But that's the way it looked in 1984.

8 Those -- those four property owners got together --
9 and we'll introduce the actual grant of easements where --
10 and there a formal set of documents were executed by these
11 four land owners setting up a road easement by express
12 grant.

13 Now, the express grant easement road is shown here.
14 It's the road that travels from Fort Motte to the part of
15 Mr. Buyck's property that's the 700 acres, which is slide
16 No. 2.

17 So, in 1984, these four property owners got together
18 and created a series of easement grants, which are recorded
19 here in Calhoun County, identifying a road that all four
20 would be able to use to a certain extent. Twenty feet wide
21 is what the area was set up to be, and it -- and because
22 Mr. Buyck owned the 200 acres and the 700, this was vital
23 to his access rights to both of his tracts.

24 Mrs. McAlister, who was in the middle so to speak,
25 needed a road to get access to Fort Motte also.

1 Now, what you'll notice from this map is the easement
2 grant road does not -- does not include any portion of what
3 Mr. Buyck wants to claim as the prescriptive grant. That's
4 the road that -- and I think it's been identified on this
5 as colored coded red.

6 THE COURT: Uh-huh. Yes.

7 MR. BOOTH: The easement grant road, which I'm showing
8 -- because the aerial -- from an aerial photo, you can see
9 the road. You can see the other road, too.

10 The other road -- now, we're going to be talking
11 about where it kind of starts here and it swings around and
12 goes up to here (indicates.) And again, I'll show you some
13 better pictures in a minute. So, that's kind of where the
14 road looks in Google Map, which has been marked up.

15 Now, like I said, Mr. Jackson owns about 108 acres as
16 a result of the split of Mrs. McAlister's property. It
17 split at the easement road that split Mrs. McAlister's
18 property before she -- when she owned it. So, it split her
19 property. So, these two landowner's, Mr. Conrad and Mr.
20 Jackson -- of course, Mr. Jackson, again, is my client --
21 they bought the entire tract. And they created a split, so
22 that he owned the part that sort of up to the right and
23 they split it right at that easement road: Two -- 108
24 acres for Mr. Jackson; about 95 for Brock Conrad.

25 THE COURT: Hold on one second so -- I want to make

1 that note.

2 MR. BOOTH: In 2000 -- in the year 2000, Mr. Jackson
3 acquired about 108 acres; Mr. Brock Conrad acquired 95
4 acres. All of it was at one time Mrs. McAlister's
5 property.

6 THE COURT: And they -- the dividing line --

7 MR. BOOTH: Was the --

8 THE COURT: -- was along the -- if I can -- if I may,
9 the Blue Road.

10 MR. BOOTH: Yes, ma'am. The road that I've shown here
11 -- again, I'm backing up on my slide. But yes, as you see
12 the little arrows --

13 THE COURT: Uh-huh.

14 MR. BOOTH: -- that's where the dividing line. You
15 kind of look at those one after another, you see that.

16 THE COURT: I did. I went -- I did. I looked at the
17 -- at the arrows that you had. And then I went and looked
18 at the diagram in your pre-trial brief --

19 MR. BOOTH: Right.

20 THE COURT: -- which is this Blue Road --

21 MR. BOOTH: Yes, ma'am.

22 THE COURT: -- if you will. Okay.

23 MR. BOOTH: All right. So, that's what happened in
24 2000.

25 THE COURT: Okay.

1 MR. BOOTH: Roughly May of 2000.

2 THE COURT: And if you looked at the deed between the
3 property of Mr. Conrad and Mr. Jackson when they did that
4 division, does the -- does the property line -- is it the
5 same as the road?

6 MR. BOOTH: Yes, ma'am.

7 THE COURT: Okay.

8 MR. BOOTH: Ten feet each. They used ---

9 THE COURT: Okay.

10 MR. BOOTH: --- the road as the boundary line ---

11 THE COURT: Okay.

12 MR. BOOTH: --- the middle of it. So, basically you
13 have 10 feet encumbered by the easement grant road -- for
14 Mr. Jackson 10 feet -- still 20 feet total. And again,
15 going to Mr. Buyck's large tract of 700 acres, again, near
16 the river.

17 THE COURT: Okay.

18 MR. BOOTH: All right. Here is the survey that was
19 done for Mr. Jackson when he bought his house. I only show
20 that, again, just to show you how they -- the surveyor used
21 that road ---

22 THE COURT: Uh-huh.

23 MR. BOOTH: --- as a dividing line.

24 You can see that the courses and distances along here
25 and they're all along here. So, that's what he used as a

1 dividing line.

2 THE COURT: All right. And this is the -- the plat,
3 if you will --

4 MR. BOOTH: Of Mr. Jackson's property.

5 THE COURT: Uh-huh. All right.

6 MR. BOOTH: And it does show -- it does show --

7 THE COURT: Yeah, I noticed that too.

8 MR. BOOTH: -- a road, which ---

9 THE COURT: Sure.

10 MR. BOOTH: --- we -- we -- we agree is the Red Road -
11 --

12 THE COURT: Okay.

13 MR. BOOTH: --- along this power line and some other
14 physical aspects.

15 THE COURT: Okay.

16 MR. BOOTH: But the roads were shown on the survey,
17 both roads in this case.

18 All right. Now, just to give you a little bit of a
19 picture of how everything looks, when you come off Fort
20 Motte Road --

21 THE COURT: Uh-huh.

22 MR. BOOTH: -- this is sort of how the entrance to the
23 series of roads begins. You've got Mrs. Stuck on one side,
24 Mr. -- Mrs. Pedings -- Mr. Stuck on the left, right.

25 That's that little part that you come in before you get to

1 Mr. Buyck's property. Again, they had two small tracts
2 fronting Fort Motte, 20 feet -- 10 from each -- and then
3 you go to Mr. Buyck's 200 acres, go straight across that,
4 hit Ms. -- Ms. McAlister, and then you go straight across
5 to hit Mr. Buyck's other 700 acres.

6 So again, just a few pictures. That's kind of what it
7 looks like coming off the public road, Fort Motte.

8 Then you got an important fact. Again, going back to
9 where the -- the Red Road starts, which I'll call the "fork

10 -- THE COURT: Uh-huh.

11 MR. BOOTH: -- in the road."

12 THE COURT: Yes.

13 MR. BOOTH: That's just my term, "fork in the road."
14 You will see this gate and you will see "Private Property"
15 sign. You will see a lock on that gate. That's Mr.
16 Jackson's gate. He will testify that that's what he placed
17 there in 2000. It was right around the time he bought this
18 property. So, that's what you see when you drove up the
19 road and made a right -- sort of a right turn or right cut
20 before you -- before you got actually completely on the Red
21 Road, which again is the road Mr. Buyck claims that he has
22 prescriptive easement rights on.

23 Just -- just going on again, still using the easement
24 grant road, if you follow that road instead of turning to
25 the right and unlocking the gate, you would proceed again

1 directly to Mr. Buyck's 700-acre tract, directly to it.

2 And you would see roughly this kind of picture. In other
3 words, that picture --

4 MR. ENGLISH: Your Honor, I know this is not a jury
5 and I hate to object, but I would just ask Mr. -- he -- he
6 -- Mr. Booth can't testify that that's the easement grant
7 road. He's got experts that are going to testify that the
8 1984 easement goes across one or the other road and that's
9 okay.

10 But I just -- I just want to make sure that in the --
11 in the opening statement, we don't characterize that
12 necessarily as the easement road. It's not in evidence
13 yet.

14 THE COURT: I got you.

15 MR. BOOTH: Well --

16 THE COURT: Okay.

17 MR. BOOTH: -- the alleged, whatever you want to call
18 it. But anyway ---

19 THE COURT: Okay. Sure. Sure.

20 MR. BOOTH: --- the point -- the point where this
21 picture's taken is right there where this road, which is
22 the Blue Road over there, ends --

23 THE COURT: Okay.

24 MR. BOOTH: -- onto Mr. Buyck's property. In other
25 words, again, where the dividing line between Jackson and

1 Conrad.

2 So, that particular point is roughly -- this is the
3 Blue Road -- at that spot right there (indicates.) You can
4 see by the aerial it's a large field, and you can see part
5 of the field in that picture.

6 THE COURT: It goes beyond the -- what began as the
7 McAlister property line. It goes beyond that.

8 MR. BOOTH: Yeah. There's a road --

9 THE COURT: Okay.

10 MR. BOOTH: Yes, ma'am. There's a road that goes
11 inside an interior road to Mr. Buyck's property.

12 THE COURT: Okay.

13 MR. BOOTH: Again, he has 700 acres.

14 THE COURT: Uh-huh. All right.

15 MR. BOOTH: This is the part of the road that's,
16 again, on Mr. Jackson's property --

17 THE COURT: Okay.

18 MR. BOOTH: -- part of the road.

19 Now, why did Mr. and Mrs. Jackson -- what do they have
20 on their property? Well, they have this beautiful little
21 cabin that's located over on that side of the property.
22 And I took a picture. Of course, they're here to testify,
23 both Mr. and Mrs. Jackson.

24 And that's located about right in here (indicates.)
25 That's their little cabin that they spend a lot of time at.

1 Then, why did this lawsuit get filed? I believe the
2 lawsuit was filed, because Mr. Jackson found one day these
3 three items sitting on his road or sitting on his property.
4 On the left you see a logging truck. That logging truck
5 was traveling up and down the red marked road or the road
6 that's -- we're going to talk about today, the prescriptive
7 easement road that the plaintiff claims.

8 But he found a logging truck going up and down this
9 road. He saw vehicles up there in the right-hand corner.
10 Vehicles that belong to a company called "Rebel Lumber" --

11 THE COURT REPORTER: Sorry?

12 MR. BOOTH: Rebel, R-e-b-e-l. -- Rebel Lumber sitting
13 very close to where their house was right in here
14 (indicates) and they observed the road now had become
15 beaten up a little bit from the logging trucks.

16 He took action to stop the logging trucks from coming
17 up and down his road, to stop them from parking within a
18 short distance from his house. Then the lawsuit was filed.

19 You were introduced to the lawsuit November of -- 2
20 years ago. November of '08, we had a hearing across the
21 street to determine if Mr. Buyck should be getting or
22 should get a temporary injunction to allow him to use that
23 road.

24 Now, at the time of the hearing, the logging work had
25 been finished. That had been taken care of. It was

1 something that was some concern of Mr. Buyck's. When we
2 filed the lawsuit in September, by the time we got to you,
3 that logging work was completed, as far as I remember. At
4 least ---

5 THE COURT: Yes.

6 MR. BOOTH: --- most of it.

7 THE COURT: Judge Williams, as I -- as I -- had issued
8 a preliminary injunction -- the logging -- and y'all had
9 consented to allow it to continue a few days. The logging
10 was ended, and then there was a request for a temporary
11 injunction.

12 MR. BOOTH: Correct. That's exactly right. So
13 anyway, that's what -- that's what he saw -- Mr. and Mrs.
14 Jackson saw in September of '08, saw those things.

15 So, once he put the gate in, changed the lock -- I
16 think he had to change the lock a couple of times -- that's
17 when the lawsuit was filed. And again, that's just another
18 aerial of what we've been looking at.

19 So, in -- in summary on my opening -- I usually
20 summarize at the end, but I'll summarize a little bit.
21 Again, I'm hearing that the plaintiff will only seek a
22 declaration from you, the trial judge, to grant him a
23 prescriptive-right easement over this blue marked road.
24 Red marked -- excuse me -- the red marked road. He wants a
25 prescriptive easement.

1 In addition, even though Mr. English doesn't want to
2 talk about the easement road, he does have an easement here
3 by grant in '84. So, he has two -- two different
4 easements, two different roads to use to access his 700
5 acres, which again, is there (indicates.)

6 He wants two easements to go on Mr. Jackson's
7 property, in addition to the one that he and the McAlister,
8 the Pedings, and the Stucks got together and created in
9 1984.

10 We don't think under the prescriptive easement law
11 that the evidence will show or prove that. Of course,
12 that's a question for you to decide. But we don't think,
13 based on the several arguments and case law that I've read,
14 that Mr. Buyck will be able to prove that he's entitled to
15 a prescriptive easement.

16 So, that's pretty much what we're going to focus on,
17 unless I hear something different as we proceed forward.
18 Again, I appreciate the time to do this opening.

19 THE COURT: Absolutely. Let me make myself a quick
20 note.

21 MR. ENGLISH: Your Honor, just one point.

22 THE COURT: Sure.

23 MR. ENGLISH: We are claiming a prescriptive easement
24 over the Red Road, but I'm not prepared to stipulate that
25 we don't have -- I mean, I'm -- I'm not going to consent

1 that that's all we're going for. I mean, we'll let you
2 consider the evidence, but yes, we are pursuing a
3 prescriptive easement over the Red Road.

4 THE COURT: I understand. Call your first witness.

5 MR. ENGLISH: (To his client) Mr. Buyck.

6 (To the Court) Call Peter Buyck.

7 THE WITNESS: Good morning.

8 THE COURT: Good morning. Come on and have a seat
9 right there.

10 THE WITNESS: (Complies.) Okay. Thank you.

11 WILLIAM PETER BUYCK, JR., having
12 been first duly sworn, testifies as follows:

13 THE COURT: Please be seated.

14 THE WITNESS: Nice to meet you.

15 THE COURT: Good to meet you, sir. And -- come on and
16 help him with the microphone just a little bit for me.
17 Thank you.

18 (Brief pause as the microphone is adjusted.)

19 THE COURT: He probably feels like he's Frank Sinatra
20 with -- going to sing "My Way."

21 State your full name for the record and spell your
22 last name.

23 THE WITNESS: My whole name?

24 THE COURT: Got it. Yes.

25 THE WITNESS: William Peter Buyck, B-u-y-c-k, Junior.

1 THE COURT: Thank you. Your witness.

2 MR. ENGLISH: Mr. Buyck, if you have a -- I'm going to
3 talk to you ---

4 THE WITNESS: Okay.

5 MR. ENGLISH: --- as close as I can. If you don't
6 understand what I'm saying, ask me to say ---

7 THE WITNESS: Fine.

8 MR. ENGLISH: --- ask me to say it again. I'm going
9 to ask you some question, and then Mr. Booth is going to
10 have an opportunity to ask you some questions. Okay?

11 THE WITNESS: Okay.

12 MR. ENGLISH: All right.

13 DIRECT EXAMINATION BY MR. ENGLISH:

14 Q All right. You've given us your name.

15 A Huh?

16 Q You've given us your name. What's your address?
17 Where do you live?

18 A Physical address?

19 Q Yes, sir.

20 A 2327 Old Belleville Road.

21 Q And where is that?

22 A Saint Matthews.

23 Q Okay. Close to Fort Motte?

24 A Going towards Fort Motte.

25 Q Okay. All right. Now, and how old are you, Mr.

1 Buyck?

2 A 64.

3 Q 64. What's your birthday?

4 A April 9, 1946.

5 Q Okay. Now, I'm about to show you a deed.

6 (Counsel hands document to the witness.)

7 Q I'm going to ask you if you -- if you've seen that --
8 are you familiar with that deed?

9 A Yes, I am.

10 Q Okay.

11 A It's the deed that my father gave when he gave the
12 property to me.

13 THE COURT: Has this been marked?

14 MR. ENGLISH: No, ma'am.

15 THE COURT: Okay. Any objection?

16 MR. BOOTH: No, ma'am.

17 THE COURT: Very well.

18 MR. ENGLISH: She's going to mark this as Exhibit 1.

19 This will be Exhibit 1.

20 (Plaintiff's Exhibit No. 1,

21 4-page deed document, marked.)

22 Q All right. What's been marked as Exhibit 1 is a deed.
23 Is this the -- what property did you get by this deed?

24 A What property did I ...

25 Q Did you get.

1 A Did I get?

2 Q Yes, sir.

3 A This is all the property that I have down on the
4 river. The one that's 200 acres, and -- and the remaining
5 acreage on the -- on the river.

6 Q So, this is the property that we're talking about in
7 the lawsuit today?

8 A Yes.

9 Q Okay. Show you another deed.

10 (Counsel hands document to the witness.)

11 Q Have you ever seen that deed?

12 A Yes, I've seen this before.

13 THE COURT: Any objection?

14 MR. BOOTH: No, ma'am. No objection.

15 (Marked Plaintiff's Exhibit No. 2, 1-page deed document.)

16 MR. ENGLISH: Do you have the original? Is that the
17 sealed copy or he has the sealed copy? Okay. All right.

18 THE COURT: This is going to be Plaintiff's 2?

19 MR. ENGLISH: Two.

20 Q Mr. Buyck, who is R. L. Buyck? Who was R. L. Buyck?

21 A R. L. Buyck was my father's father.

22 Q Okay. And who was W. P. Buyck -- W. P. ---

23 A That was my father.

24 Q --- W. Peter Buyck was your father.

25 A Uh-huh. Right.

1 Q And this deed was just -- was from your uncle?

2 A This deed was -- my father and Russ bought the
3 property together. And this deed was when they split the
4 property up.

5 Q Okay. It looks like that was in 1960.

6 A Yes.

7 Q That's the final deed.

8 (Hands document to the witness.)

9 THE COURT: Any objection.

10 MR. BOOTH: I need to look at this one.

11 THE COURT: Oh sure.

12 (Brief pause as Mr. Booth looks at the document.)

13 MR. BOOTH: No objection.

14 THE COURT: Very well. Plaintiff's 3.

15 MR. BOOTH: And what -- this one you said was 1960?

16 MR. ENGLISH: No, the second one. Two is back in
17 1960. This -- I'll just tell you, this -- this is the deed
18 into W. L. Buyck -- or R. L. Buyck and Peter's father, '42,
19 I think; 1942. If you'll look at the bottom.

20 MR. BOOTH: Yes, I see that now. No objection, Your
21 Honor.

22 THE COURT: All right. Plaintiff's 3.

23 (Marked Plaintiff's Exhibit No. 3, 1-page deed document.)

24 DIRECT EXAMINATION BY MR. ENGLISH (Resuming):

25 Q So, the purpose of those -- those three deeds, what

1 we're trying to show is, is the ownership of your property.

2 A Uh-huh.

3 Q Okay.

4 A Right.

5 Q And you -- it was your uncle and your father, and then
6 your father to you.

7 A Uh-huh.

8 Q Okay.

9 A That's right.

10 Q Okay.

11 MR. ENGLISH: Now, Your Honor, what I might like to do
12 is have Mr. Buyck step down and ---

13 THE COURT: Uh-huh.

14 MR. ENGLISH: --- and talk about the -- the property
15 over here.

16 THE COURT: Sure.

17 MR. ENGLISH: Okay.

18 (The witness steps down from the stand.)

19 THE COURT REPORTER: Your Honor, I'm having great
20 difficulty when they move over there hearing them because
21 of the acoustics. So, they're going to have to either
22 speak a lot louder, or move it closer.

23 MR. ENGLISH: Can you hear over here?

24 THE COURT REPORTER: It's just a lot of distortion
25 when you're over there.

1 MR. ENGLISH: Okay. We can bring everything over
2 here.

3 THE COURT: Sure.

4 (Brief pause as Mr. English moves demonstrative aid.)

5 THE COURT REPORTER: Thank you so much.

6 THE COURT: And I tell you what, too, it's completely
7 up to you where you want to put your chair. If you want to
8 pull your chair closer, come on closer so you're able to
9 see. In other words, I don't want you restricted. You can
10 roll -- you can roll one of those or ---

11 THE WITNESS: I -- I've got a chair.

12 THE COURT: --- do whatever.

13 THE WITNESS: Thank you.

14 THE COURT: Absolutely.

15 MR. ENGLISH: Your Honor, can you see okay?

16 THE COURT: Absolutely.

17 MR. ENGLISH: Okay.

18 THE COURT: I've got so much technology and I'm good
19 to go. I've got diagrams and everything.

20 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

21 Q Okay, Mr. Buyck. How much property do you own on the
22 -- on the river?

23 A What about it?

24 Q How -- how much property do you own on the -- on the
25 Congaree River?

1 A On the river? This portion is around 700 acres.

2 Q About 700 acres? Now, you owned some to the south,
3 too?

4 A (Indicating) This the portion back -- back this way.
5 It's about 200, over 200.

6 Q And those two tracts are in those deeds?

7 A Right. Right.

8 Q Okay.

9 MR. ENGLISH: I've got another. We can mark these.
10 Do you have any objections to these, Bill? I think this is
11 just an aerial photograph showing the area. And that's the
12 red and blue.

13 (Attorneys confer over exhibits.)

14 MR. BOOTH: No objection, Your Honor.

15 MR. ENGLISH: And I apologize, Your Honor. I only
16 have one of these. So, what I'm going to do is have Mr.
17 Buyck make some -- some -- some markings on the --

18 THE COURT: Okay.

19 MR. ENGLISH: -- on the road.

20 THE COURT: Sure.

21 MR. ENGLISH: He might use one or the other.

22 THE COURT: Absolutely. No problem at all.

23 MR. ENGLISH: As I ask you questions, Mr. Buyck, if
24 you want to use this one, you can.

25 THE WITNESS: Okay.

1 MR. ENGLISH: You can use either one of these, or we
2 have a copy of the plat --

3 THE WITNESS: Okay.

4 MR. ENGLISH: -- over there that you can use. And
5 just feel free to do that.

6 THE COURT: I tell you what might be helpful, is maybe
7 just to pull, gosh, one of the chairs with arms.

8 MR. ENGLISH: There's actually another easel over
9 here.

10 THE COURT: Oh, there's another easel? This is a --
11 this is a technologically advanced courtroom.

12 (Brief pause as another easel is set up.)

13 THE COURT: Great. Now, do you -- did you bring your
14 markers?

15 MR. ENGLISH: Yes, ma'am.

16 THE COURT: Because I've got them if you need them.
17 Okay?

18 MR. ENGLISH: I've got red and blue so he can be
19 consistent.

20 THE COURT: Oh, I have green. So, if you need green,
21 let me know. I've got a black one. And what other color?
22 I've got a light blue one, red one --

23 MR. ENGLISH: Okay.

24 THE COURT: -- and yellow. How about that.

25 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

1 Q Mr. Buyck, looking at either or both of these
2 pictures, could you --

3 A Uh-huh.

4 Q Could you point ---

5 THE COURT: Let me -- let me stop you just a second.

6 And I -- I apologize for doing this. But we ---

7 MR. ENGLISH: We got to ---

8 THE COURT: --- got to name these two for our record,
9 otherwise, this record will never be clear.

10 MR. ENGLISH: Let's make -- let's make this 4, and
11 this 5.

12 THE COURT: Now, what exhibit is -- what we're calling
13 4, what exhibit is that in the record?

14 MR. ENGLISH: That would be Plaintiff's 4.

15 THE COURT: This is going to be Plaintiff's 4? Any
16 objection?

17 MR. BOOTH: No objection.

18 THE COURT: All right.

19 THE COURT REPORTER: Tell me what they are, though.

20 MR. ENGLISH: All right. Plaintiff's 4 is a --
21 aerial photographs of the subject area showing the Red Road
22 and the Blue Road.

23 THE COURT: And it says "Google" in the bottom right-
24 hand corner.

25 MR. ENGLISH: And it also has a yellow outlined -- a

1 boundary outline that shows both the defendant's property
2 and Mrs. Conrad's property.

3 THE COURT: And -- and you will get a sticker in a
4 minute and you will put that sticker on it. We're going to
5 turn you into a court reporter, Mr. English.

6 And Mr. Booth, you feel free to have Mr. Jackson pull
7 his seat over where he can see.

8 (Marked Plaintiff's Exhibit No. 4,

9 Google aerial map photo.)

10 Marked Plaintiff's Exhibit No. 5,

11 distant aerial map photo.)

12 (Brief pause as seating is adjusted.)

13 THE COURT: All right. Now, the -- so, we've got --
14 we've got Plaintiff's Exhibit 4 and Plaintiff's Exhibit 5.
15 Any objection to Plaintiff's Exhibit 5, which is the river
16 road -- or the river shown?

17 MR. BOOTH: No, Your Honor, those -- those two
18 exhibits are fine.

19 THE COURT: Very well.

20 MR. ENGLISH: And, Your Honor, for the purposes of the
21 record, Exhibit 5 is -- is another aerial photo, which is
22 taken from higher elevation. It shows more area.

23 THE COURT: Clearly shows the river.

24 MR. ENGLISH: Clearly shows Congaree River, right.

25 THE COURT: Yes.

1 MR. ENGLISH: Okay. And it shows the area in
2 controversy as well.

3 THE COURT: Yes.

4 MR. ENGLISH: Okay.

5 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

6 Q Now, Mr. Buyck, I think maybe Exhibit 5 will be
7 clearer. Where is your property shown on Exhibit 5, the
8 river copy?

9 A The river property is actually all this and that there
10 (indicates.)

11 THE COURT: And you know -- Mr. Buyck's talking to
12 you, but he needs to be focused on talking so our court
13 reporter can hear.

14 Q What she's saying is, is that when you're answering a
15 question, make sure the court reporter can hear you. Talk
16 to the court reporter.

17 A Okay.

18 Q So, no boundary lines -- there are no boundary lines
19 shown on Exhibit 5, are there?

20 A No what?

21 Q Boundaries. They're not shown here?

22 A No. No. That's not.

23 Q Okay. Did you -- with this pin just mark the general
24 area of your property on the river.

25 A All right.

1 (The witness complies.)

2 A Do you mean the old property lines?

3 Q Just -- you can just put an asterisk or just -- just
4 some marks, so we know -- so that the judge knows where
5 your property is in relation ---

6 A (Indicating) All this, and the -- the line goes
7 roughly that way. And just trace the creeks. That whole
8 area.

9 Q Okay.

10 THE COURT: Now, is there a line that's drawn, Mr.
11 English, because I can't see that line.

12 MR. ENGLISH: If you don't mind, I'm going to just go
13 over it.

14 THE COURT: Can you go bold it? Bold it.

15 (Mr. English complies.)

16 (Mr. English confers with the witness.)

17 THE COURT: Yes.

18 MR. ENGLISH: Do you understand?

19 THE COURT: Yes.

20 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

21 Q Now, and that's about 700 acres?

22 A Approximately 700 acres.

23 Q Okay. And Mr. Jackson -- and that's -- Mr. Jackson's
24 property is down here (indicates.)

25 A And it's roughly over here, roughly about in that area

1 (indicates.)

2 Q Okay. Mr. Jackson's property is shown here

3 (indicates.)

4 A (No audible response.)

5 Q Okay. So, looking at Exhibit 4, No. 4, this is your
6 property up here (indicates)?

7 A Right.

8 Q Okay. And that's Mr. Jackson's property (indicates) -

9 --

10 A Right.

11 Q --- here. Okay. All right.

12 Now, this is the highway (indicates)?

13 A That's the main highway.

14 Q Okay. What I'd like for you to do with this red pen -

15 -

16 A Okay.

17 Q -- I want you to trace on this one and this one the
18 road that you claim to have access over, principle access.

19 A On this one (indicates)?

20 Q On this one.

21 A From the main highway?

22 Q Yes, sir.

23 (The witness complies.)

24 Q Okay. Now, let's just also -- let's also do it here
25 (indicates.)

1 A Same thing on this one?

2 Q Same thing, yes, sir.

3 (The witness complies.)

4 MR. BOOTH: Let the record show that -- I believe he's
5 -- Mr. Buyck, if you'll look at me for just -- I believe
6 you've shown the Red Road both on Mr. Jackson's property
7 and on your property; is that right? Both -- both --

8 THE WITNESS: The Red Road goes from my property ---

9 MR. BOOTH: See what I'm trying to clarify?

10 THE WITNESS: --- over across Mr. Jackson's property,
11 back to my property.

12 MR. BOOTH: So, that's more than the Red Road that
13 was shown --

14 MR. ENGLISH: Yes, that's right.

15 MR. BOOTH: -- as far as on Mr. Jackson's property?

16 MR. ENGLISH: Yeah. The one ---

17 MR. BOOTH: Right.

18 MR. ENGLISH: He's shown the Red Road running all the
19 way from the highway.

20 THE COURT: From Fort Motte -- what is known as Fort
21 Motte Highway looks like all the way -- way to the river --
22 to the Congaree River. And it traverses -- it appears to
23 traverse beginning with the Stuck tract, across the --
24 certainly Mr. Jackson's tract, and right on across Mr.
25 Buyck's tract, and right on to the river.

1 MR. ENGLISH: Right. And also goes across Mr. -- Mr.
2 Buyck also owns piece of property below Mr. Jackson. It
3 goes across that ---

4 THE COURT: Right.

5 MR. ENGLISH: Right.

6 THE COURT: Exactly. And so, it goes Stuck, Buyck,
7 Jackson, Buyck, Congaree.

8 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

9 Q Okay. Now, you've shown the Red Road on these two
10 drawings.

11 A Right.

12 Q Two -- two drawings.

13 A Yes.

14 Q Okay. How long have you used the Red Road for access
15 to the river property?

16 A All of my life.

17 Q And you're 63 years old -- 64? All your life?

18 A 64.

19 Q All of your life?

20 A (No audible response.)

21 Q Okay. When's your -- when's your first recollection
22 of using the Red Road?

23 A Probably -- I'm not exactly how -- I was probably at
24 least 6 or 7 years old. Because I would go down with some
25 of the people that worked on our place and they would go

1 fishing and take me as a child.

2 Q And that was when your father owned it?

3 A Right.

4 Q Your father owned it at that time --

5 A Uh-huh.

6 Q -- because you got it in 1976.

7 A Right.

8 Q Okay. All right. So, is it fair to say that during
9 your father's ownership of this property, that he used the
10 Red Road?

11 MR. BOOTH: Objection, Your Honor.

12 THE WITNESS: He used ---

13 MR. BOOTH: Objection. Objection.

14 THE COURT: Yeah.

15 MR. BOOTH: Objection. He's asking for a speculation
16 that his father, prior to him being born, used that Red
17 Road. So, we think that's speculative.

18 THE COURT: Sustained.

19 MR. BOOTH: I don't have a problem with him -- him
20 when he was alive.

21 THE COURT: Okay.

22 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

23 Q When you were a boy -- when you were 15 years old, did
24 your father use this road?

25 A Yes, he did.

1 Q Okay. What did he use the road for?

2 A He used it for hunting, farming, logging, general
3 recreation. Same things I would use it for, I guess.

4 Then I'd go and watch the wild life. This was a field
5 at one time, and we used to farm that field. This was back
6 in the '60s. And --

7 Q Mark -- mark the field.

8 (The witness complies.)

9 Q So, this area that looks cleared, that's a cleared
10 field?

11 A Uh-huh. It was clear, because I remember when this
12 picture was taken. But it's -- it's grown back up now.

13 We had -- my father dyked the whole field. We put
14 dykes up to keep the river out. And the river has eroded
15 and washed all of the dykes down. And that's one reason
16 that I had to quit farming most of that field, because we
17 couldn't keep the water out of the fields.

18 But this is the field that we farmed, and I still farm
19 that little area there. I did truck farms in this area in
20 here (indicates) and my duck ponds and stuff that we
21 planted in this area and back in here, and right in here
22 (indicates) and this back in here (indicates.)

23 Q Now, what -- what kind of crops did you grow in the
24 field?

25 A We grew -- we grew soy beans, we grew wheat, we grew

1 corn. Mostly corn.

2 Q How did you get your equipment ---

3 A (Indicates) And up in this area I grew truck crops:
4 okra, peas, miscellaneous vegetables.

5 Q Okay. Now, when your family was farming this area,
6 how did you get -- which way did you get your equipment in
7 and out?

8 A Always down this way. That's the only road we could
9 get it down. There wasn't any other road we could use to
10 go down there.

11 Q Now, you mentioned that you had some duck ponds?

12 A Right.

13 Q Can you -- can you approximate the location of the
14 duck ponds?

15 A Yes. There's one right there (indicates). We used
16 part of that, we planted that, too, as a duck pond.

17 (Indicating) We had one back in this location and back
18 up in there. Right there.

19 Q And how did you access the duck ponds?

20 A Same road.

21 Q The Red Road?

22 A Yeah.

23 MR. ENGLISH: Your Honor, would it help you if we put
24 "DP" by the duck ponds?

25 THE COURT: Sure. Sure.

1 Q Is that a duck pond?

2 A That's a duck pond. (Indicating) That's a duck --
3 duck pond, duck pond, duck pond.

4 (Brief pause as the witness marks the map.)

5 Q And this is a field?

6 A The main one was under this one, yes, sir.

7 Q And this is your crop field?

8 A That was the crop field.

9 MR. BOOTH: The right field.

10 THE COURT: Uh-huh.

11 MR. BOOTH: He said, "was."

12 THE COURT: Uh-huh.

13 MR. BOOTH: I heard him say it was a crop field.

14 Q This was a crop field?

15 A Was.

16 Q Okay.

17 A The only crop field now is still that one (indicates)
18 and this -- this. All that's in trees -- timber now.

19 Q Do you have any -- is there a cabin or any structures
20 on your property?

21 A What's that?

22 Q Structure. Like a cabin.

23 A Structure.

24 Q Cabin?

25 A I do have a structure right here at the edge of the

1 river. (Indicates) Right there. That's a shelter we put
2 up. So, when we -- a shelter we put up, so when we're
3 down there, if it starts to rain, we'd have a place to go.
4 I have electricity in it, refrigerator. It's just
5 something to use when we're down -- down for entertainment.
6 We want to cook, get out of the weather. If the mosquitoes
7 are bad, we go in there.

8 Q Okay. Now, how far can you test -- what's the first -
9 - how far back can you testify as to your father's use of
10 the Red Road?

11 A My father?

12 Q Yes, sir.

13 A Again, as far as I can remember. So, you're talking -
14 - so, I'd been 4/5/6 years old.

15 Q More than 50 years.

16 A No. It's --

17 Q Okay.

18 A -- more than 50.

19 Q Now, not including this lawsuit, to your knowledge did
20 anyone ever tell your father he couldn't use that Red Road?

21 A No.

22 Q Did anyone ever tell you, you couldn't use the Red
23 Road?

24 A No.

25 Q How often would you go up and down the Red Road?

1 A I'd go four or five times a week. Some days I'd go
2 down there three or four times a day. But most of the
3 time, on average, four or five times a week.

4 Q Okay. Now, you got the property in 1976.

5 A I think so. Uh-huh. That's the date on the -- 1976.

6 Q Before then -- and when -- Mr. Jackson bought the
7 property in about 2000; is that right?

8 A I think it was, yes.

9 Q From 1976 to 2000, did anybody ever tell you, you
10 couldn't use that Red Road?

11 A No.

12 Q Okay. Did anybody ever challenge your use of the Red
13 Road?

14 A No.

15 Q All right. Who else used the Red Road?

16 A Who else used it?

17 Q Who else used it?

18 A The group that leased our hunting -- deer hunting
19 rights on my property. All my friends that hunt with me,
20 or occasionally somebody will want to go in, go fishing and
21 I'll allow them to go in and go right back out.

22 Q Do you think you have the right to use the Red Road?

23 A Yes, I do.

24 Q Okay. Why do you think you have the right to use the
25 Red Road?

1 A Because I've always used it, never had anybody
2 complaining about it, always used it. It's the only road -
3 - we've always used it. And even when I went -- my father
4 -- with my father in the '60s, it's the only road we've
5 ever used. And it's the only road that everybody's ever
6 used to go in and out of there; the loggers and everything
7 else.

8 Q How often do -- how often had loggers used it?

9 A How what?

10 Q How often had loggers used it?

11 A Whenever we logged, which was -- it was based on -- on
12 -- on the tree growth. Trees were harvested as they
13 matured. And so, you really can't say, but it's usually
14 every five years, every ten years. It depends on how much
15 the trees grow and -- and that sort of situation. But
16 you'd probably say within the last 10 years I've probably
17 logged it twice. Prior to that, it might have been 10
18 years before we logged it.

19 Q When is the first time you remember any logging
20 activities?

21 A First time I remember logging? Back when I was a
22 child. I remember going down with my father to check on
23 the logging operations. And that's -- that's been -- I
24 couldn't even begin to tell you how long ago that was.

25 Q Now, the loggers, which road would they use to go in

1 and out of the property? Not your river property, to your
2 property?

3 A What about it?

4 Q Which -- which road would they use ---

5 A They used the Red Road.

6 Q Okay. Did they use any other roads?

7 A No, they used the Red Road.

8 Q Okay. And who told them they could use the Red Road?

9 A I did.

10 MR. ENGLISH: Now, looking at Exhibit 4 now, Your
11 Honor.

12 THE COURT: All right.

13 Q Exhibit 4 --

14 A Okay.

15 Q -- also shows the Red Road.

16 A That's the Red Road.

17 Q Okay. Now, I noticed that it crosses somebody else's
18 property.

19 A Yes, that's Dr. Bruner's.

20 Q Okay.

21 THE COURT REPORTER: Doctor ...?

22 MR. ENGLISH: Bruner, B-r-u-n-e-r.

23 Q The Bruner's, they own property over here (indicates)

24 ---

25 A Right.

1 Q --- to the right?

2 A All of this (indicates).

3 Q To the right?

4 A To the right.

5 Q To the east?

6 A Uh-huh.

7 Q Okay. And the -- and the Red Road actually goes over
8 a piece of his property?

9 A It goes over a corner of his property.

10 Q Has anybody -- Dr. Bruner ever told you you couldn't
11 go over his property?

12 A No, he hasn't.

13 Q Did -- did any member of the Bruner family ever tell
14 you that you couldn't go over that corner of their
15 property?

16 A No, they have not.

17 Q Okay. And how long have you been going over that
18 corner of his property?

19 A As long as I can remember. Same as -- same as the
20 rest of the Red Road.

21 Q Okay. And do you know if your father went across --

22 A Yes, he did too.

23 Q Do you know if Mr. -- if Dr. Bruner or any member of
24 the Bruner family ever told your father he couldn't --

25 A No, they didn't.

1 Q -- go across?

2 A No, they didn't.

3 Q Okay. So, the use was consistent?

4 A Yes.

5 Q Yeah. So, if you travel over the Red Road, you travel
6 the whole length of the Red Road?

7 A Right.

8 Q Now, just generally, Mr. Buyck, we've talked about
9 this a little bit, but what kind of traffic -- what kind of
10 vehicles and equipment would go over the Red Road?

11 A Well, generally, most all -- all kind of vehicles
12 would go over the road. You're talking about the logging
13 trucks, you're talking about tractors with equipment behind
14 it. You're talking about tractor-trailer trucks, and like
15 I say, logging trucks. But tractor-trailers hauling --
16 hauling crops out of the fields. Regular farm trucks,
17 pickup trucks, automobiles, cars.

18 We used to go down and we would cook occasionally on
19 the river bank. Some of them fishing and -- and we'd bring
20 a crowd from -- from Saint Matthews. A lot of friends
21 would come down and cook that afternoon and night. And
22 they would drive their cars down. The road was in good
23 enough shape to drive their cars down. And -- and so, just
24 about every vehicle that travels has been down that road.

25 Q All right. Now, there is another road, and we've

1 talked about it, the Hayfield Road.

2 A Yes.

3 Q That's the Blue Road. What's the condition of the
4 Blue Road?

5 A Well, the condition of the blue is -- is not in very
6 good condition. It's -- it's terrible condition. The Blue
7 Road led to the hayfield. And that's basically as far as
8 we went on the Blue Road. But it is in bad shape.

9 And we would -- we would farm the hayfield. We -- we
10 had row crops in the hayfield at one time. To get our
11 equipment there, we had to cut a road off -- off of the
12 main -- off of that Blue Road, and back through the woods
13 in here to get the equipment in.

14 And then the grass -- your Coastal Bermuda grass more
15 or less took over that field, and it's easy to make a
16 hayfield out of it. And hay -- and the hay equipment is
17 not as wide as your normal farm equipment. And we could go
18 up and down that road. So, we abandoned the other road
19 that we put in there.

20 MR. BOOTH: Your Honor, just for clarification, could
21 you -- okay. There's a road -- when you talk the Blue
22 Road.

23 THE WITNESS: Right.

24 MR. BOOTH: Because you have had to identify the
25 entire length of the Blue Road?

1 THE WITNESS: Pardon?

2 MR. BOOTH: The entire length of the Blue Road?
3 Because I only see the Blue Road stopping on Mr. Jackson's
4 boundary.

5 MR. ENGLISH: Do you want him to draw the Blue Road?

6 MR. BOOTH: Well, I'm just asking if you could clarify
7 -- he talks about the Blue Road. If you could just show me
8 where it starts and ends that you're talking about.

9 MR. ENGLISH: If you -- when you cross-examine him,
10 you can -- you can talk about that, I think. Because all
11 we're talking about now is where -- where it ends on his
12 property. Okay.

13 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

14 Q I want -- I want you to take this red pen --

15 A Okay.

16 Q -- and I want you to show -- I want you to show me
17 where the Red Road terminates on your property.

18 A Pardon me?

19 Q Where it ends on your property. And we'll just say as
20 -- as you go north off of Fort Motte Road.

21 A Well, the actual road itself, you can't -- you cannot
22 go to the end of it right there. I mean, you stop it at
23 the river.

24 Q Okay.

25 A But it actually goes all the way around -- around the

1 whole field and all the way back out into to where they
2 were logging. But you'd have to go into this picture
3 (indicates) and it goes all the way around and it comes all
4 the way back around over here.

5 The loggers -- last logger we had were logging over in
6 this area (indicates.)

7 Q Okay.

8 A And that road goes all the way back -- comes all the
9 way back around here (indicates.)

10 Q Now, looking at Mr. Jackson's property --

11 A Okay.

12 Q -- where does the Red Road -- we'll say where does it
13 terminate as it goes through Mr. Jackson's property on your
14 property? Where's the last point --

15 A Well, right --

16 Q All right. Put a ---

17 A -- right there (indicates).

18 Q --- put a property line.

19 A (Complies.)

20 Q Okay. So, his property and your property bound each
21 other?

22 A Right.

23 Q Okay. And the road exits his property and continues
24 onto your property.

25 A Right.

1 THE COURT: For the record, you have pointed, if you
2 will, to the northerly section of Mr. Buyck's properly --
3 property, as opposed to the southern portion of his
4 property; the 700 acres rather than the 200 acres.

5 MR. ENGLISH: That's correct. That's correct, Your
6 Honor. Yes. That's right. Yeah. The northern -- that's
7 correct. Thank you.

8 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

9 Q Okay. Let's talk about the 1984 easement.

10 A Okay.

11 Q Okay. Now, Mr. Booth mentioned that at the beginning
12 -- at the -- during his open -- opening statement, if you
13 know, what were -- what was the purpose of the 1984
14 easements, the series of easements between all of the
15 landowners?

16 A Well, Ms. McAlister owned the property -- owns -- she
17 owned this (indicates.) She's used to cut a little bit of
18 a timber every year to have some spending money. And her
19 forester -- who was Michael Sally at the time --

20 THE COURT: Michael who?

21 THE WITNESS: Michael Sally.

22 THE COURT: Michael Sally.

23 THE WITNESS: From Orangeburg.

24 THE COURT: Got it.

25 THE WITNESS: I told Michael one time if she ever was

1 interested in selling the property, that I'd like to buy it
2 privately, just because it's in the middle of my property.

3 Well, one afternoon I was -- I was doing some work in
4 the peach orchard, and Michael came by and he said ---

5 MR. BOOTH: Objection. Hearsay.

6 THE COURT: Yeah. You can't -- hold on.

7 MR. BOOTH: Yes, ma'am.

8 THE COURT: Hold on. There's an objection to what Mr.
9 Sally said. But let's let the lawyers -- is it -- is it
10 being admitted for an exception or a non-hearsay purpose?

11 MR. ENGLISH: It's okay. You can't -- you can't say
12 what Mr. Sally said.

13 THE WITNESS: Okay.

14 MR. ENGLISH: Okay. Just say anything that you and
15 Ms. McAlister might have talked about, or -- but it can't
16 be any third party. Okay?

17 A Well -- well, I ---

18 THE COURT: And you're in the peach orchard.

19 THE WITNESS: Pardon me?

20 THE COURT: You were in the peach orchard or she is in
21 -- who's in the peach orchard? I've got to get back to the
22 peach orchard.

23 MR. ENGLISH: She's talking about -- she's asking you
24 about the peach orchard.

25 THE WITNESS: Okay.

1 MR. ENGLISH: You're in -- are you in the peach
2 orchard?

3 THE COURT: Or is she?

4 THE WITNESS: I was.

5 MR. ENGLISH: Or is she?

6 THE COURT: That's what I thought. You were in the
7 peach -- that's what I thought. Okay. We're in the peach
8 orchard.

9 A In other words, she wanted to clear cut the property.

10 THE COURT: Okay.

11 A And so, she used to cut a load of timber every year
12 just to have a little spending money. We never had any
13 problems with it.

14 But -- but asked us -- and I think the logging
15 company's insurance company or somebody required them at
16 that time -- because they would clear cut the whole
17 property. I think their insurance company required them to
18 have a legal easement rather than by what we've always
19 used.

20 And so, that's why I -- I said, "Well, I -- that's
21 okay with me." And then she said, "Well, while we're doing
22 it, why don't we both just swap easements?" And I said,
23 "That's fine," and never thought anymore about it; it's
24 something that we need for legal purposes. And that's
25 where the easement came about.

1 Q So, you didn't give it much thought.

2 A No, I didn't give it any thought.

3 Q Okay.

4 A It was just to satisfy them.

5 Q Okay. All right. The easement was in 1984.

6 A I think so.

7 Q Okay. After 1984, did any of your use of the Red Road
8 change?

9 A No.

10 Q You continued to use the Red Road?

11 A I continued to use it.

12 Q In what way?

13 A Same way I've always used it.

14 Q Okay. So --

15 A Nothing changed.

16 Q -- nothing changed?

17 A Nothing changed.

18 Q When did something finally change?

19 A When did what?

20 Q When did something finally change with the Red Road?

21 A 2008.

22 Q And what happened?

23 A When Mr. Jackson put a lock on -- changed the lock on
24 his gates.

25 Q Okay.

1 A He had discussed -- we had discussed the road a little
2 after he bought the property. And I told him the road was
3 -- was never -- not an issue and had never been an issue.
4 But -- and that was all there was to it. We never had any
5 problems with it until 19 -- 2008.

6 Q During your use of the Red Road, did anybody ever give
7 you permission to use it? Did you need ---

8 A No.

9 Q --- permission to use it?

10 A Never asked permission.

11 Q You didn't need permission.

12 A No, I didn't need permission.

13 MR. ENGLISH: I beg the Court -- Court's indulgence?

14 THE COURT: Sure.

15 MR. ENGLISH: Excuse me one second.

16 (Brief pause.)

17 Q Mr. Buyck, have you -- have you ever abandoned -- have
18 you ever abandoned or stopped using the Red Road?

19 A No.

20 Q Okay. So, have you ever abandoned or stopped using
21 the Red Road in favor of the Blue Road?

22 A No.

23 Q Did you ever use the Blue Road for -- for primary
24 access to any of your property?

25 A Other than -- other than the hayfield? That's all.

1 Q Okay. But even if you were using the Blue Road --
2 well, you were -- so, you used the Blue Road to get to the
3 hayfield?

4 A I used the Blue Road to get to the hayfield.

5 Q And you also used -- did you continue to, at the same
6 time, use the Red Road?

7 A Oh, yeah. Yes.

8 Q All right.

9 MR. ENGLISH: One moment, Your Honor.

10 THE COURT: Sure.

11 Q All right. One more question. I'm trying to figure
12 out a length of time that you -- that you and your family
13 have used the Red Road.

14 A All right.

15 Q Okay. Between you and your -- between your father and
16 your uncle and you, how long have y'all used the Red Road?

17 A Since 1942.

18 Q Okay. And you have personal -- and you have personal
19 knowledge since you were a boy?

20 A Right.

21 Q Okay. So, 55 years --

22 A That's right.

23 Q -- that you have personal knowledge of it?

24 A Probably a little bit more than that, 56/57 years.

25 Q Okay. And at no point during that time until this

1 lawsuit came up did anyone ever challenge or question your
2 use of the Red Road?

3 A No, they did not.

4 Q And no one challenged your father's use of the Red
5 Road as far as you know?

6 A Never. Never that I know of. No.

7 Q Okay. And you used the Red Road consistently, you've
8 testified, several times a week?

9 A Several times a week.

10 Q Okay. How often did your father use it?

11 A He would use it -- well, when he was younger, he used
12 it as much as I did. Then when he got older, he would not
13 go down much. I'd take him down a couple of times. And he
14 would go down -- in the winter especially he would go down
15 about every day just to watch the ducks going back to
16 roost.

17 Q All right. Okay.

18 MR. ENGLISH: I don't have anything further, Your
19 Honor.

20 THE COURT: Very well. Cross-examination.

21 MR. ENGLISH: Mr. Booth, is going to ask you some
22 questions. Okay?

23 THE WITNESS: (No audible response.)

24 MR. BOOTH: Do you want to continue or have a break,
25 Judge?

1 THE COURT: I ---

2 MR. BOOTH: I'm ready if you are.

3 THE COURT: Well, I'd love a comfort break, and I
4 think my court reporter would like a comfort break. So,
5 we'll take one. We'll take about 10 minutes --

6 MR. BOOTH: And that ---

7 THE COURT: -- and we'll be back.

8 MR. BOOTH: --- will be perfect.

9 THE COURT: Wonderful.

10 MR. ENGLISH: Your Honor, may I ask --

11 THE COURT: Yeah.

12 MR. ENGLISH: --- what time do you want to have lunch?

13 THE COURT: What time do I want to have lunch? I
14 don't know. If -- if we're leaving it to my stomach, it
15 would be like now, but let's say around one o'clock.

16 MR. ENGLISH: Okay.

17 THE COURT: Will that work all right?

18 MR. ENGLISH: Yes, ma'am.

19 THE COURT: Okay. Great.

20 MR. BOOTH: All right. I assume you're going to
21 instruct the witness not to talk with his counsel and
22 confer during the break.

23 THE COURT: Mr. Buyck, you can talk about the Yankees,
24 and you can even talk about the Braves if you want to. But
25 you can't talk about your testimony during the break.

1 Okay?

2 THE WITNESS: Okay.

3 THE COURT: Very well.

4 (Briefly off the record at 11:37 a.m.)

5 (On the record at 11:54 a.m.)

6 (Pre-marked Defendant's Exhibits
7 1 through 4, easement documents.)

8 (Pre-marked Defendant's Exhibit 5,
9 1 page plat document.)

10 THE COURT: All right. Thank you. Thank you so much
11 and please be seated. All right. Y'all still marking
12 things? Good. That's good.

13 MR. BOOTH: Your Honor, I'm ready to do my cross-
14 examination.

15 THE COURT: Very well. Cross-examination.

16 CROSS-EXAMINATION BY MR. BOOTH:

17 Q Mr. Buyck, we've met before.

18 A Okay.

19 Q I'm Bill Booth --

20 A Right.

21 Q -- and I represent William Jackson. Do you understand
22 all that?

23 A I know that.

24 Q Everything -- can you hear me okay?

25 A I know.

1 Q All right. Sir, I'm going to show you several
2 documents in these folders, one at a time.

3 A Okay.

4 Q And I've had them marked with a number. And each time
5 I present one, I'll say "Number." You can, of course, see
6 the number down here (indicates.)

7 A All right.

8 Q The first number is 5. You recognize that plat?

9 A Do I -- I recognize it, yeah.

10 Q I believe this plat depicts the acreage that Mrs.
11 McAlister owned, correct? That -- that's Mrs. ---

12 A I don't recognize this as -- I know what it is ---

13 Q Yes.

14 A --- but I don't -- I never have seen this.

15 Q Okay. So, you -- you do know that Mrs. McAlister
16 owned 203 acres?

17 A Right.

18 Q All right. And that plat, I'm telling you, is the
19 plat of her property. Is that fair enough with you?

20 A That's fine.

21 Q Good. Now, the next exhibit -- what we're going to
22 do, as I -- as I go through them -- because I'm not going
23 to spend much time on them. I'm going to lay them right
24 down here where we can go back and pull them back up if you
25 want to.

1 The next is number 4; Number 4. You see the number in
2 the corner?

3 A (No audible response.)

4 Q You recognize that document?

5 A Yes, I've seen that.

6 Q All right. Describe what you know about that
7 document. Describe what you know about that document, No.
8 4.

9 A Well, this is an easement that we discussed earlier
10 from 1984.

11 Q And that's actually the one that Mrs. McAlister signed
12 for your right. Can you see it well enough to know --

13 A This is what she signed.

14 Q Yes, sir. And you're the one that got the easement
15 with that document over --

16 A And what -- what about it?

17 Q Yeah. That's the one Mrs. McAlister --

18 A Yeah, this is the one she signed.

19 Q --- signed. Right. Okay.

20 So, again she owned 203 acres at the time she signed
21 this easement.

22 A Right.

23 Q And that easement -- we've already discussed that
24 easement, that 20-foot-wide easement, is the one that goes
25 to your hayfield area; is that correct?

1 A No. The easement -- I was -- as I understood at the
2 time that the easement pertained to the same rights that
3 I've always had over the property and any road -- any road
4 on the property.

5 Q All right. That's number 4.

6 Number 3; I show you No. 3. And ask if you would --
7 can identify that document for me. Can you identify that
8 document?

9 A Yes, I do.

10 Q And what is that document?

11 A This is a -- an easement that I granted to Ms.
12 McAlister.

13 Q And I believe that would be over the 200 acres that
14 you own?

15 A Right.

16 Q Good.

17 THE COURT: And this is marked as...?

18 MR. BOOTH: Number 3.

19 THE COURT: All right. Defendant's 3?

20 MR. BOOTH: Yes, ma'am.

21 THE COURT: Okay.

22 Q Now, I'm going to show you two -- two other easements.
23 Number 2, Exhibit 2 is the one signed by Mrs. Peddings. Do
24 you remember her, Mrs. Peddings?

25 A I -- I've not heard of Mrs. Peddings.

1 Q All right.

2 A Pedings.

3 THE COURT: Pedings.

4 A Pedings.

5 Q Thank you. Pedings.

6 THE COURT: Yes.

7 Q I added a "d." Apologize.

8 And then the next one, Exhibit 1 --

9 A Yes.

10 Q -- is one signed by Mr. Stuck; is that correct?

11 A That's the one signed by Mr. Stuck.

12 Q Right. Okay.

13 MR. BOOTH: (Addresses the Court) I'm missing -- some
14 of these -- I didn't have an extra copy of one of them.

15 THE COURT: That's okay.

16 MR. BOOTH: But I've identified them --

17 THE COURT: You're fine.

18 Q Now, Mr. Buyck, I'd like to direct your attention to
19 this screen over here.

20 A Okay.

21 Q Can you see it okay?

22 A I can see it.

23 Q You're welcome to get up and go near it if you need
24 to.

25 A Okay.

1 Q All right. The reason I've got this slide and I gave
2 -- I've already furnished these to the judge and to your
3 counsel.

4 And I know that's something that was created. I know
5 you didn't create it, but I do want to use that screen to
6 identify these roads.

7 A Okay.

8 Q Is that fair?

9 A (No audible response.)

10 Q All right.

11 THE COURT: And for identification purposes, the first
12 slide is ...?

13 MR. BOOTH: Well, the first slide, introduce that into
14 evidence.

15 Q And the first slide is our aerial photo that you were
16 looking at a few minutes ago, correct?

17 A Yes.

18 Q The one that the judge knew was from Google Earth;
19 Google Earth. I'm not sure if you know what that is, but
20 this is the Google Earth.

21 THE COURT: Any objection?

22 MR. ENGLISH: Okay.

23 MR. BOOTH: Yeah. I just want to make sure. This --
24 this is basically that --

25 MR. ENGLISH: Of the same photo.

1 MR. BOOTH: -- aerial photo with some addition. So,
2 we're okay on that? You understand what it is?

3 THE WITNESS: Uh-huh.

4 MR. BOOTH: All right.

5 (Marked Defendant's Exhibit No. 5, aerial
6 photo from Google Earth.)

7 THE COURT: All right. And is this -- the slide is
8 going to be marked as Defendant's Exhibit ...

9 MR. BOOTH: Six.

10 THE COURT: Six?

11 MR. BOOTH: Six.

12 THE COURT: Got it.

13 (Marked Defendant's Exhibit No. 6, slide.)

14 MR. BOOTH: Done.

15 THE COURT: Okay.

16 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

17 Q Hold that -- hold that in your hand. I'm going to go
18 up here. Again, I -- again, I have -- the same thing
19 you're looking at is right here.

20 A Okay.

21 Q Okay? So, let's talk about what this shows. You
22 notice I have "Road 1" on there. And I have -- do you see
23 the little arrows?

24 A (No audible response.)

25 Q All right. I'm saying, for demonstration purposes,

1 Road 1 starts down here at Fort Motte Road. Is that okay
2 with you?

3 A Okay.

4 Q All right. And travels along this white line, until
5 it reaches this intersection. I'll call it an
6 "intersection."

7 A Okay.

8 Q And then continues up to your property, the 700 acres.

9 A Okay.

10 Q All right. I'd like to call that "Road 1," for you
11 and me to talk; Road 1.

12 A Okay.

13 Q Road 2 is over here (indicates.) Road 2 is here and
14 it starts at that intersection --

15 A Okay.

16 Q -- and travels over here (indicates.) I think you
17 mentioned that little corner is Mr. Bruner's property,
18 correct?

19 A It goes through the Bruner property.

20 Q Yes, right. Then it proceeds on and while it's on Mr.
21 Jackson's property, again, it -- it leaves his property at
22 this point right here (indicates.) Do you see that point
23 where I'm circling?

24 A Right there. Yeah.

25 Q I'd like to call that "Road 2." From this point in

1 the intersection, all the way up until it enters your
2 property, all of the ---

3 THE COURT: The 700 acres.

4 MR. BOOTH: Yes, ma'am.

5 Q --- the 700 acres tract that you own, call that "Road
6 No. 2." Are you with me?

7 A Okay.

8 Q Okay. Road No. 3, I'd like to have it start here
9 (indicates) on your property --

10 A Okay.

11 Q -- and go back here (indicates) and around, and then
12 go over here where it intersects other ---

13 A No, it does not.

14 Q It doesn't intersect?

15 A No.

16 Q All right. So, this road that leaves Mr. Jackson's
17 property here (indicates) -- I thought you said you had a
18 road that you travel that got you out to your cabin or at
19 least to the river. It's not -- there's no intersection
20 there?

21 A That's my property.

22 Q Yes, sir. On your property.

23 A Right.

24 Q I'm just saying, this Road No. 3, starting here, does
25 it not intersect and go into ---

1 A That is not the location of the road.

2 Q Well, good. But does it intersect first? Then we'll
3 talk about location. Does it intersect this road here
4 (indicates) that I've got marked as Road 3, does it --
5 wherever it's located on your property, does it intersect
6 the road that you'd be on if you started here (indicates)
7 and went through this -- Mr. Jackson's property? Does it
8 intersect? Do they come together?

9 A Well, they'll come together.

10 Q Okay. So, you're saying that the actual location of
11 the road I -- I didn't do a very good job of depicting it?
12 I didn't do a good job of showing it with this white ---

13 A No, there's not -- that's not nowhere close to where
14 the road goes.

15 Q Oh, I see. So now, when we go to your exhibit -- I'm
16 going to pull up your exhibit just for a second or two.

17 Remember this exhibit from earlier? Do you remember
18 this exhibit?

19 A Yes, I do.

20 Q All right. Come down here and take this little red
21 thing and show me -- come on down.

22 A (Complies.)

23 Q Okay. The red -- if you push this top button here, it
24 will light that red thing.

25 A Show you what?

1 Q Where the white road is.

2 A Where the white road is?

3 Q Yes, the white.

4 THE COURT: Wait a minute now, because I can't see.

5 MR. BOOTH: Yeah.

6 THE COURT: The -- yeah. Okay.

7 MR. BOOTH: Okay?

8 THE COURT: There you go. Thank you.

9 Q That -- that little red thing, you -- you can step
10 away.

11 A Which one you want to show first?

12 Q Well, let me go back.

13 A The Red Road or the white road?

14 Q Just -- just the road that you said -- just the road
15 that you said --

16 A That's not shown.

17 Q -- is not shown. Yeah. Very well.

18 THE COURT: Mr. English, just come stand with him.

19 A The one -- one ---

20 Q Yes, sir. Yeah, Road -- Road 3. Road 3 we're talking
21 about. Road 3.

22 THE COURT: Mr. Booth, I tell you what I'm going to
23 do. Hold on one second. Hold on -- hold on guys. Hold on
24 a second for me.

25 I'm going to get Mr. English to just come sort of

1 ---

2 MR. ENGLISH: Right here?

3 THE COURT: --- anchor --

4 MR. ENGLISH: Okay.

5 THE COURT: -- Mr. Buyck. And then I'm -- I'm going
6 to let you move forward just a tiny bit., because --
7 because Mr. Buyck is, of course, using the laser pointer.
8 And normally I -- I like for people, when they use laser
9 pointers on the graph like this, to hang from the ceiling
10 so they don't get in the way of the jury. But I didn't
11 bring my stuff for you to hang from the ceiling.

12 So, I'm going to ask Mr. English to just hang with you
13 right there. I'm going to ask Mr. Booth to just back up
14 maybe six inches with just -- not you, bless your heart.
15 But just that. Just a tiny bit.

16 And I want you to trust that the little laser pointer
17 that Mr. Booth has given you is going to go to the -- to
18 the --

19 THE WITNESS: Okay.

20 THE COURT: -- to the map. You see what I'm saying?
21 Because I want to see what you're talking about.

22 THE WITNESS: Okay.

23 THE COURT: All right. Now -- now, Mr. Booth, let me
24 tell you, I know y'all are talking about the white road.
25 Unfortunately, there are two white roads on your exhibit.

1 So, can we talk about the white road on the 700 acres,
2 because there's a white road on the 700 acres and a white
3 road on the 200 acres.

4 And if -- if -- you know, when you -- they ask you to
5 sit with the Supreme Court and you read our transcripts,
6 you'll learn that you got -- that you've got to be mindful
7 that somebody might be reading it one day. I hope not, but
8 you never know. And having done that a couple of times,
9 I'm -- I'm mindful of that.

10 So, can we talk about the red -- the white road.
11 Because you don't -- I got that you want to call it -- and
12 I understand you're delineating between the Blue Road. So,
13 let's say it'd be the white road on the 700 acres as
14 opposed to the white road on the 200 acres.

15 MR. BOOTH: Right.

16 THE COURT: Okay?

17 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

18 Q So, we're talk -- Mr. Buyck, we're talking about your
19 700 acre tract of land.

20 A Okay.

21 Q And we're talking about a road that I've not shown
22 correctly, according to you, but it's shown as Road 3,
23 which is white. But again, it's within your 700 acres. We
24 both understand that.

25 A Okay.

1 Q All right. Now, if you would take the laser, which
2 produces a red dot, and if you would now show me, starting
3 with Mr. Jackson's property, and how that Road 3 -- or the
4 white road -- goes on your property before it intersects
5 with another part of the white road. Just show me with
6 that laser.

7 A Show you where the white road is on the 700 acres?

8 Q Yes, sir.

9 A (Complies) Okay. We have to go down this way roughly.
10 And back -- let me go back. There's the road right there.

11 Q All right, sir. Let me just stop you. I think,
12 starting -- this -- this area here, can we call that the
13 hayfield?

14 A That's the hayfield.

15 Q All right. And can you start following the road at
16 the hayfield?

17 A (Complies.)

18 Q All right. So, we're following the road at the point
19 where there's a hayfield-looking area of your 700 acres,
20 right there where it --

21 A Right.

22 Q -- okay. So again, start from the beginning. You're
23 -- you're starting ---

24 A I did start from the beginning. Right there.

25 Q I'm sorry. Go ahead. Go ahead. Talk me through it.

1 The road starts there and goes where?

2 A (Continues to indicate using the laser pointer.)

3 Q Road's -- you're -- you're following with the red.

4 We'll get a marker here in a minute. So -- gotcha. But it
5 does intersect with this road that you talked about
6 earlier, right?

7 A Right.

8 Q Okay.

9 A It stops right there.

10 Q This is a very -- a person -- I'm a person that
11 doesn't really understand topo maps that well. But it
12 looks like to me you were following a ridge line for that
13 road.

14 A Huh?

15 Q A ridge line.

16 A The road at the bottom -- the road is at the bottom of
17 the ridge --

18 Q Right.

19 A -- and the swamp.

20 Q Right.

21 A Not on -- not on the ridge. You have the road going
22 somewhere along in that way.

23 Q Okay. And what I'm going to do, I will -- this is the
24 last thing I want to do.

25 What I'm going to do is have you sit back down and

1 we'll have you take that blue marker -- and we'll move that
2 microphone a little bit -- if you will just draw for me
3 where you just outlined with the laser. I think you can
4 draw if I hold it.

5 A (Complies).

6 Q Yeah, perfect. I think you can do it.

7 So again, do you understand my instructions? Move --
8 move -- move your leg. Perfect. Perfect.

9 A You want to draw the road I just showed to you?

10 Q Yes, sir. Yeah, you showed me the, but --

11 A Let me make sure.

12 Q Okay.

13 A I've got to find -- I've got to find it myself.

14 THE COURT: I know. That's okay. You take your time.

15 MR. BOOTH: The witness, just for the record, is
16 taking a blue magic marker and following over his 700 acres
17 where he believes -- or he says, I should say -- says that
18 the road is located.

19 A And right there -- right there.

20 Q All right. I think that's all we need.

21 THE COURT: Now, do it -- do it again darker and color
22 a little bit.

23 THE WITNESS: That's what I thought.

24 THE COURT: Yeah, you -- now -- you had to do it.

25 Now, just color.

1 THE WITNESS: I just go backwards since I'm left-
2 handed.

3 THE COURT: Yeah.

4 THE WITNESS: I can't see when I'm going that way.

5 THE COURT: I have a left-handed brother. I know
6 exactly what you're talking about.

7 (Pause as the witness re-colors the drawing.)

8 THE COURT: Come on. You can go left-hand, you ain't
9 -- you can do it whatever way is best for you. Just darken
10 a little bit.

11 THE WITNESS: (Complies.)

12 THE COURT: Perfect. Perfect. Perfect.

13 MR. BOOTH: All right. And if you would hand up the
14 blue -- yeah, you're doing it -- hand up the blue marker to
15 her, because I'm not going --

16 THE WITNESS: (Complies.)

17 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

18 Q All right. So again, for the record, on Exhibit -- on
19 Exhibit 5 -- I'm just stating a fact. On Exhibit 5, Mr.
20 Buyck has taken a blue magic marker and shown where what I
21 call Road 3, but he's saying it's not accurately shown.
22 But is it okay if we call that Road 3? That blue -- that
23 Blue Road, can I call it Road No. 3?

24 A If that's -- that's what you -- yeah. The blue mark.

25 Q Yes, sir.

1 A It's not what you've drawn perfectly, but what I drew.

2 Q Right.

3 THE COURT: Go ahead and move that where it's
4 comfortable for you.

5 THE WITNESS: You don't need that?

6 THE COURT: Yeah, that's great.

7 THE WITNESS: Okay.

8 THE COURT: Yeah, that's fine.

9 MR. BOOTH: You need any water to drink or anything?

10 THE WITNESS: No, I'm fine.

11 MR. BOOTH: You're okay? All right.

12 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

13 Q Mr. Buyck -- Mr. Buyck, you talked about on your
14 direct testimony the activities, I'll use the word
15 "activities," that are conducted on your 700 acres. Do you
16 recall giving a list of activities that are conducted?

17 A Okay.

18 Q And would you repeat that list of activities that are
19 conducted on your 700 acres at least within the last five
20 years? Let's just go back five years.

21 A My activities?

22 Q Yes, sir.

23 A Activities.

24 Q Right.

25 A All right. We hunted the property, and we use the

1 property for logging, forestry. We use it for growing --
2 growing crops. I -- I use it for fishing. I use it for --
3 for recreational use. I would go down -- I would go down
4 just to get away from things. It's -- it's quiet. I go
5 down at times and just walk through the woods and sit down
6 at the river and watch -- and watch -- watch the water go
7 by. It's just quiet and relaxing.

8 I use it just about -- I go down and -- and watch the
9 wildlife. I'd go down late in the afternoon and watch --
10 watch the ducks going back to roost. Sometimes I go down
11 early in the morning and watch -- watch the birds and all
12 the wildlife roost. Just for my general pleasure, my
13 general pleasure.

14 Q And what vehicle do you normally travel in to do those
15 visits?

16 A What what?

17 Q Vehicle.

18 A Field?

19 Q The vehicle. What -- what do you drive --

20 A Oh.

21 Q -- usually?

22 A I would drive -- mostly -- I drive my pickup mostly.

23 Q What brand is your pickup?

24 A What variety?

25 Q Brand.

1 A Brand? It's a Dodge pickup.

2 Q All right. And what color?

3 A I've got two.

4 Q All right. What color?

5 A One is -- one is burgundy or red, and the other is --
6 I don't what you -- silver.

7 Q Dirty?

8 A I'm really not sure.

9 Q Okay. Dirty.

10 A It's old.

11 Q All right. Mr. Buyck --

12 A There are times we'd go in cars.

13 Q -- you're here today to be able to get those
14 activities where you can do them again?

15 A Correct.

16 Q Because, for what, two years now, you've not been able
17 to use the Red Road through Mr. Jackson's property,
18 correct?

19 A No, I have not.

20 Q All right. And that's prevented you from doing those
21 activities, correct?

22 A Exactly.

23 Q And that's prevented you from having farming
24 operations within your property, correct?

25 A Having what?

1 Q Farming operations within your 700 ---

2 A That's correct.

3 Q --- acres.

4 A It's prevented that.

5 Q Now, going back to Exhibit No. 6, Exhibit 6. I'm
6 going to refer you to Road 1.

7 A Okay.

8 Q We're sure that's located correctly, right, Road 1?

9 A Road 1 is correct.

10 Q All right. And part of Road 1 goes on the boundary
11 line between Mr. Jackson's property and Mr. Conrad Brock's
12 property, correct?

13 A That's correct.

14 Q All right. How is that -- what is the condition of
15 that -- how's the condition of that road been for the last
16 couple of years?

17 A The last couple of years?

18 Q Just -- just -- just Road 1. Just Road 1.

19 A That road is -- is -- is not in -- not in very good
20 condition, but it's -- it's not in the same condition as
21 road -- what you call Road 2.

22 Q Okay. The condition --

23 A You cannot get any equipment down road -- Road 1.

24 Q Okay. And "condition" to me is a very -- I use the
25 word "vague term." Because "condition" can mean a lot of

1 things.

2 Just tell me what in particular about Road 1 -- at
3 least the part that goes over Mr. Jackson's property
4 splitting it with Mr. Brock's property, what specifically
5 is wrong with the condition that makes it harder to travel?
6 Just give me a couple of specifics.

7 A Well, it's -- it's -- it's -- it's portions of it is
8 very narrow, and we can't get equipment -- I told -- as I
9 said earlier when Mr. English asked me. That road -- when
10 we farm the hayfield and we go up that road, what you call
11 Road 1 --

12 Q There you go.

13 A Now, Road 1 is in good condition from the main highway
14 up til where it divide -- it forks.

15 Q Yes, sir.

16 A And we got -- which would be Road 2.

17 Q All right.

18 A From the -- from the intersection of Road 2 and -- and
19 Road 1, up to the hayfield, the road is not in that good
20 condition. It's narrow, and the main part of it, it's very
21 narrow. You cannot get equipment through.

22 Q Okay. And Mr. Buyck, again --just to say it again,
23 but for right at two years, you've not been able to go over
24 the Red Raod at all, correct?

25 A Not over the Red Road, no.

1 Q Okay. Now, look up here at the screen. You see it
2 okay?

3 A I see it.

4 Q All right. So, November -- September of '08, roughly,
5 is when you could not use Mr. Jackson's road?. We'll just
6 say September of '08.

7 Now, look at these pictures here. Isn't that a
8 vehicle, piece of equipment traveling over ---

9 A I don't know what that is.

10 Q --- the Hayfield Road?

11 A No. I can't tell where that is. I have no idea where
12 that is. But that's not my equipment.

13 Q I understand that. But you have other people that
14 travel down your ---

15 A No.

16 Q --- road.

17 A Yeah. I've got somebody who leases the hayfield.

18 Q Right. So, that could be his equipment. You just
19 don't know?

20 A It could be. I mean, I --

21 (Picture is shown to the witness.)

22 Q Is that your pickup truck?

23 A I can't tell from here.

24 Q All right. You recognize that road?

25 A (No audible response.)

1 Q So, you -- you don't recognize that road as being your
2 road that you just talked about?

3 A I don't know ---

4 Q The road that ---

5 A --- I do not know whose vehicles those are. No.

6 Q Okay. But is it your Road No. 1, as far as after the
7 fork?

8 A I mean, if you want to get a specific, I cannot tell
9 you that was the road or whether it wasn't the road. I
10 mean, that could be any road in -- in the country.

11 Q Okay.

12 A You don't have enough background enough to identify
13 the whole road.

14 Q Yes, sir. Well, we're going to ---

15 A That just showing one portion without any -- any --
16 any prior background to see if that's the way the camera's
17 set up.

18 Q Right. You're aware -- aren't you aware of the fact
19 that Mr. Jackson's had a camera filming ---

20 A I'm knew he had a camera, yeah.

21 Q --- filming your Road No. 1 after the fork? Didn't
22 you know that from previous conversations?

23 A He had a camera set up.

24 Q Okay. And you ---

25 A And that could be from the camera, but I cannot

1 specifically tell you ---

2 Q All right.

3 A --- 100 percent sure that I know that's exactly where
4 it is.

5 (Shows another picture to the witness.)

6 Q Okay. Recognize that piece of equipment or recognize
7 the road?

8 A I don't know what that is.

9 (Shows another picture to the witness.)

10 Q How about that piece of equipment? Do you recognize
11 that piece? You're welcome to come down and look if you
12 want.

13 A No. I still cannot tell you whose equipment or what
14 it is. I mean ...

15 Q All right.

16 (Shows another picture to the witness.)

17 Q Still don't recognize that or the road? I know ---

18 A Same thing. And are you talking -- you got pictures
19 some with leaves in front of it, and some without leaves in
20 front of it. I can't tell you what -- whether -- you can't
21 tell if that's the same camera or not.

22 Q Okay. But that piece of equipment, you recognize it?

23 A I mean, that's -- that's farm equipment or something
24 going that way. But I mean, I -- I'm not going to tell you
25 whose it is, because all you have as identification -- a

1 picture of a piece of equipment.

2 Q All right.

3 (Shows the witness another picture.)

4 Q Another piece of equipment. Do you recognize that
5 piece of equipment?

6 A It's not mine.

7 THE COURT REPORTER: I'm sorry?

8 Q Say it again. Repeat that answer. Repeat it.

9 A That's not my equipment.

10 Q Okay.

11 A But I ---

12 Q But -- but you do allow other people to travel down
13 Road No. 1?

14 A If they have a right to go down that road, they do. Q
15 Okay.

16 A That could be if the pictures are -- are correct, that
17 could be very well from the hayfield, or it could be some
18 of the hunt club's equipment. I don't know.

19 Q All right.

20 A I don't know what equipment they have and what they
21 don't have.

22 Q I thought you went down there several times every day
23 or every week. I thought you made quite a few visits to
24 your property. Is that ---

25 A No ---

1 THE COURT: Stop.

2 A --- because ---

3 THE COURT: Stop.

4 MR. BOOTH: Stop, stop.

5 THE COURT: I've tried to ignore the comments coming
6 from the audience. It happened prior to our break, it is
7 continuing to happen. It is distracting. I cannot listen
8 to the testimony. It is not appropriate, it is
9 inappropriate, and if I hear anymore comments I'm going to
10 have to ask you to please leave the courtroom.

11 And I do not want to specifically address anyone, but
12 I will. That is absolutely inappropriate. If you cannot
13 keep your comments and your conversation to yourself,
14 meaning don't have it while court is in session, you're
15 going to have to leave the courtroom. I'm now to the point
16 where it has been such a distraction that I cannot listen
17 to the -- to the testimony.

18 Very well. You may proceed, Mr. Booth.

19 MR. BOOTH: Thank you, Your Honor.

20 THE COURT: Yes.

21 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

22 Q Mr. Buyck, back with me. I'm going to just show you a
23 few more of these pictures. And I only have a few more.

24 A Okay.

25 Q All right. Again, do you recognize that piece of

1 equipment?

2 A That's the same as -- it's a tractor. Yeah.

3 Q Right. Okay. Now, let's look at that piece of
4 equipment, and it has a name -- a company name on the side
5 of the vehicle. You see that company name?

6 A (No audible response.)

7 Q Do you see the company name written over here
8 (indicates)?

9 A Yeah, I see that.

10 Q Okay. What name's written there?

11 A Well, you don't have the full name. You've got part
12 of it cut off.

13 Q All right.

14 A But that's who --

15 Q But you know who that is though?

16 A He rents -- he rents the hayfield.

17 Q All right. What's his name?

18 A His name is Jeff Gates.

19 Q All right. Has Mr. Gates been able to get to the
20 hayfield these past two years?

21 A Well, he can go through, because hay equipment is not
22 very wide.

23 Q And that's his truck, as far as you know, and that's
24 his tractor on the back?

25 A As far as I know. I mean, it's on the back of his

1 truck.

2 Q So, we'll assume it's his.

3 A I'm -- I guess it's his.

4 Q Okay. Do you recognize those vehicles or recognize
5 the road? That's a little bit better picture of the road.
6 Do you recognize that road?

7 A I don't know whose car that is.

8 Q Okay. Do you recognize the road?

9 A Again, I couldn't tell you where that road was. I
10 mean, that has nothing in the background to identify exact
11 location of it.

12 Q Did -- did you bring any pictures today of the road
13 that you say is not usable, Road No. 1? Did you bring any
14 pictures today?

15 A Did I bring any?

16 Q Yes, sir.

17 A No, I did not.

18 Q Okay.

19 (Shows another picture to the witness.)

20 Q All right. What type of vehicle is that?

21 A (No audible response.)

22 Q Here's a picture of it; a little easier to see.

23 (Mr. Booth puts up another picture.)

24 Q I'll put these into evidence. I'd already furnished
25 them to everybody, so I'm about through.

1 Do you recognize that piece of equipment?

2 A That's a fertilizer spreader.

3 Q Okay. Fertilizer spreader. So, the purpose of that
4 is to go to your hayfield and fertilize it?

5 A That's what they usually use to spread fertilizer.
6 And I guess he's going to the hayfield. I don't know where
7 he's going.

8 Q Okay.

9 MR. BOOTH: So, we'd like -- we'd like to have these
10 marked as an exhibit.

11 THE COURT REPORTER: On one?

12 MR. BOOTH: Yes. These are the -- slide that I just
13 showed.

14 THE COURT: For identification purposes at this point?
15 Because he's not been able to authenticate them.

16 MR. BOOTH: No. Let me do this. Let me get them just
17 marked, because we don't have a witness that's give a
18 foundation.

19 THE COURT: Okay. I understand.

20 MR. BOOTH: If that's appropriate.

21 THE COURT: We'll just mark them for identification
22 purposes.

23 MR. BOOTH: Your Honor, I -- I'd appreciate that.
24 Just so we can have it a number on them.

25 (Defendant's Exhibit No. 7, slide,

1 marked for identification.)

2 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

3 Q So, those pictures ---

4 THE COURT: She can't do both. She can't mark the
5 exhibits and take down what you are saying. So, you're
6 going to have to wait a moment.

7 MR. BOOTH: Yes, ma'am.

8 THE COURT: You're ready?

9 MR. BOOTH: Yes. All right.

10 Q Mr. Buyck, the Buyck Hunt Club, are there any members
11 of the Buyck -- Buyck Hunt Club in the audience today?

12 A Yes, they are.

13 Q Name them?

14 A Ray Medlan and Pat Kaufman.

15 Q All right. Mr. Medlan and Mr. --

16 A Kaufman.

17 Q -- Kaufman are in attendance.

18 A Say what?

19 Q They're here. They're here.

20 A Oh, they're here. You just asked me that.

21 Q I just asked you. I apologize.

22 How long has the Buyck -- Buyck Hunt Club, which
23 obviously Buyck's your name -- Buyck Hunt Club been in
24 existence paying you for leasing rights to hunt? How long
25 roughly?

1 A Well, they've paid me ever since I've -- I've owned
2 the property, but they paid my father for years and years
3 before that.

4 Q All right. And hunting season for deer occurs when
5 every year?

6 A Every January 1st.

7 Q Say that one more time?

8 A January 1st.

9 Q I know. But when does it start?

10 A Usually August 15th most the time.

11 Q All right. So, there was a hunting season for deer
12 last year, and of course, we're in the middle of hunting
13 season this year, correct?

14 A More or less, right.

15 Q Okay. Are they still hunting deer on your property?

16 A Yes, they are.

17 Q And the -- the lease fee that you charge them -- the
18 hunt club, these two gentlemen and whoever else in the hunt
19 club -- you give them a good deal, because they have to
20 take care of your roads, correct?

21 A They maintain the roads. They also have -- they
22 usually file charges against trespassers. They take care
23 of the property. They are overseers of the property more
24 or less. That's about -- as much as I would be.

25 If they see somebody that doesn't belong on the

1 property, they have -- they -- they'll have them arrested.

2 Q Okay. But my question was: The rent you charge, the
3 leasing fee you charge the Buyck Hunt Club, is a reduced
4 rent because they have an obligation to keep up the roads
5 on your 700 acres, correct?

6 A No. Their -- their -- their rent was not based on
7 anything. Their rent is based on -- on -- on mutual
8 understanding.

9 They do have to keep up the road, maintain the road.
10 But that has nothing to do with the price of the rent.

11 Q Mr. Buyck, do you remember taking -- me taking your
12 deposition?

13 A Yes, I do.

14 Q Okay. You remember I asked you that same question
15 about what the fee is based on, how much you charge?

16 A Yeah, I mean, they --

17 MR. BOOTH: Judge, give me just a minute.

18 THE COURT: Sure.

19 (Pause as Mr. Booth presents a document to the witness.)

20 Q All right. Mr. Buyck, here's your deposition. You
21 remember that I also videoed your deposition, had a person
22 there videoing it. You remember that?

23 A (No audible response.)

24 Q Do you remember the video camera there?

25 A Yes, I do.

1 Q Okay. Good. I'm just going to ask you about a
2 question to an answer you just gave.

3 So, here's your deposition, and I'm going to go to
4 page 73; page 73. And I'm going to show you this, and I'm
5 also going to play the video that goes with this, starting
6 with line 20 through 25. And then over on page 75 --

7 (Brief pause as Mr. Booth looks through the document.)

8 Q I'm going to direct you to page 78, and starting with
9 line 7.

10 A Okay.

11 Q And I want you to read -- starting with line 7, read
12 on down to the end of that page.

13 A (Complies.)

14 Q You said in your deposition that they did get a
15 reduced payment because the hunt club had to maintain your
16 roads. Isn't that what ---

17 A Well ---

18 Q --- your deposition says?

19 A --- they maintain the roads, because that's part of
20 the lease. They do other work for me.

21 Q Okay.

22 A They do a lot of other work for me, repairing
23 buildings and stuff, and they don't charge me for. And I
24 take that in consideration later on.

25 Q All right. Well, let's listen to your deposition on

1 that question.

2 THE COURT: Can we just read it, please? I mean, I
3 see him.

4 MR. BOOTH: All right.

5 THE COURT: I know what impeachment is.

6 MR. BOOTH: Yeah. Okay.

7 THE COURT: Okay.

8 CROSS EXAMINATION BY MR. BOOTH (CONTINUES):

9 Q Have you read it?

10 A Right.

11 Q Okay. What's the right answer? Do they get a reduced
12 rent because they maintain the roads, or they don't get a
13 reduced rent for maintaining the roads?

14 A For the maintenance of most of the roads. But they --
15 but when you sign a hunt lease, most hunt clubs have to
16 maintain the roads. And they don't pay it -- if they
17 didn't, they couldn't use it. And that's part of their
18 lease.

19 They had a reduced rate on their rent, because as I
20 just told you, of other work that they do for me at times
21 on -- on the farm. And they don't do as much now as they
22 used to, but they have done some work for me in building
23 some stuff and they don't charge me for it. And so, I
24 don't feel like --

25 Q Okay.

1 A -- they're doing me favor. And as a favor to them, I
2 don't feel I can charge them for full -- full rent that I
3 could normally get if I put out on bids.

4 Q All right. On July 31 of this year, did the hunt club
5 do work on the Road No. 3?

6 A Did they do work on the road?

7 Q No. Road No. 3.

8 A I discovered they did work on Road No. 3 a couple of
9 weeks ago.

10 Q I know. But -- but you now know the date that they
11 did the work, right?

12 A (No audible response.)

13 Q July 31st is the date they did work on Road No. 3 as -
14 - as shown on Exhibit 6, correct?

15 A Well, that's what I -- I -- I -- I discovered that a
16 couple of weeks ago.

17 Q All right. In fact, Mr. Buyck, they spent all day
18 clearing, grading Road No. 1, correct?

19 A Which road?

20 Q Road No. 3. Road No. 3, correct?

21 A What about it?

22 Q They did the work on Road No. 3, grading, clearing the
23 vegetation; isn't that correct?

24 A They did -- they did some, yes.

25 Q All right. And they were required to do that to have

1 your lease, correct?

2 A They're required to maintain the roads. But like I'm
3 -- I don't know what to say. I mean, say they want brush
4 out usually. But it's hard for me to say that they
5 maintain -- maintain the roads that they use.

6 Q All right. And last week you traveled on Road No. 3;
7 did you not?

8 A Yes, I did.

9 Q All right. And did you have any problems traveling
10 over Road No. 3 last week?

11 A Other than it being rough in -- in truck, I mean, it's
12 impossible to go down there in a -- in a -- you wouldn't
13 take an automobile down there.

14 Q I -- I understand.

15 A You'd have to have a truck or a four-wheeler or
16 something with four-wheel drive or something to get down
17 there. But, no, you cannot go down that road completely.
18 But I had -- I did go down and back.

19 Q No trouble getting down and back in your Buick pickup?
20 I think you said Buick, didn't you? Or Dodge. Dodge
21 pickup. Dodge. You went up and down with your Dodge
22 pickup ---

23 A I went up and down the road with my pickup with --
24 with -- with no problem other than being very rough on my
25 truck and -- and probably knocking the front-end out of

1 alignment, because the road is so washed and rough.

2 Q Mr. Buyck, did the front ---

3 A In the truck ---

4 Q --- did the front-end alignment get messed up from
5 that trip last week?

6 A I hadn't checked it.

7 Q Okay. And in fact, the hunt club did the same work
8 this time last year, the hunting season that was last year,
9 correct?

10 A Did what?

11 Q Did the same work last year for hunting season in '09,
12 that they just did for hunting season 2010, correct?

13 A Who?

14 Q Buyck Hunt Club. Mr. Medlan ---

15 A Did they do that? I do not know.

16 Q Okay. And they -- this year, you know for a fact,
17 that the work took them one day, one eight-hour day, to get
18 your Road No. 3 so that you could drive down it, correct?

19 A I don't know how long it took them, because I didn't
20 know that -- I didn't know when they were doing it.

21 Q But you talked to Mr. Medlan; did you not?

22 A I didn't talk with him before they did it, no.

23 Q Okay. But you're here today wanting a second road to
24 get to your property or to have your hunters get to your
25 property, correct, a second road?

1 A What do you mean?

2 Q Well, you've mentioned a road that you call the Red
3 Raod, that's one road. And now you got Road No. 3, which
4 your hunt club takes care of. That's two roads that get
5 you into your property, correct?

6 A Well, it goes onto my property, right.

7 Q Okay. But that's two ways you can get to your
8 property? Seven hundred acres is what you have. You have
9 a fine road that properly goes to the hayfield, correct?

10 A I know that you can get -- that's the road -- one road
11 goes to the hayfield, other road goes other direction.

12 Q All right. Now, you mentioned that the Road No. 2 --
13 Road No. 2 travels across property owned by Mr. Bruner,
14 correct?

15 A Right.

16 Q Is that right?

17 THE COURT: He's Dr. Bruner.

18 MR. BOOTH: Dr. Bruner. Dr. Bruner.

19 THE COURT: Doctor. Is that who he is?

20 MR. BOOTH: Yes, ma'am.

21 THE COURT: Doctor -- just want to be sure I'm
22 straight. May I ask you this question?

23 MR. BOOTH: Ask me? Yes, ma'am.

24 THE COURT: Because I have this wonderful group that
25 you've given me, and I didn't see -- I would like to have -

1 - if you happen to have one of those, I would love to have
2 one. I -- I don't -- with the roads, where you've named
3 the roads. Is there an extra one?

4 MR. BOOTH: I probably --

5 THE COURT: Because I've got everything else. It's
6 just I'd love to be able to follow along as you are talking
7 about the different roads.

8 MR. BOOTH: Your Honor, I apologize. I thought I
9 handed those up in the beginning.

10 THE COURT: You -- you did.

11 MR. BOOTH: But I probably --

12 THE COURT: You -- you did. You did. And I just ---

13 MR. BOOTH: Here it is. This is yours to write on and
14 use.

15 THE COURT: Wonderful.

16 MR. BOOTH: That's Exhibit ---

17 THE COURT: Thank you so -- this is so ---

18 MR. BOOTH: --- Exhibit 6.

19 THE COURT: --- nice to have. Thank you.

20 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

21 Q So, again, Mr. Buyck, you want two roads to get to
22 your 700 acres, correct?

23 A Do I want two roads?

24 Q Two roads, correct? You want two roads?

25 A No, I don't need but one.

1 Q Okay. Which one will you take?

2 A The Red Raod.

3 Q The Red one. Okay. So, you don't -- you're not --
4 you don't want to take Road No. 1?

5 A (No audible response.)

6 Q So, you -- can we -- can we agree to cancel your
7 rights to use No. 1, Road No. 1?

8 A No. That's not the issue.

9 Q I agree it's not the issue. But I'm just ask ---

10 A Okay.

11 Q Go ahead.

12 A (No audible response.)

13 Q Okay. But you have an easement road. You know what
14 an easement grant is. We -- we entered those -- introduced
15 those into evidence. So, we know where that road is, it's
16 Road No. 1. So, you have that, a legal access to an
17 easement grant, correct?

18 MR. ENGLISH: Objection, Your Honor. We don't ---

19 THE WITNESS: The road --

20 MR. BOOTH: Slow down, slow down.

21 MR. ENGLISH: --- he's -- he's asking for Mr. Buyck to
22 make a legal conclusion as to the location of Road 1.

23 MR. BOOTH: Your Honor, I'd like to have that
24 discussed, and I'll tell you why.

25 THE COURT: Well, hold on one second. Hold on one

1 second. I'm orienting myself on my map.

2 Now, I think, Mr. Booth, that you can ask Mr. Buyck
3 what is -- what is his position with regards to Road 1,
4 does he believe that that is his road by easement.

5 MR. BOOTH: Right.

6 THE COURT: I think you can ask him that. So, in --
7 and -- and -- insofar as that's overruling the objection, I
8 would certainly overrule it, because I think you're
9 entitled to ask him --

10 MR. BOOTH: Right.

11 THE COURT: -- do you think that's the easement road
12 or do it in cross-examination.

13 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

14 Q All right. Question: Road No. 1, I've got it back on
15 the screen --

16 THE COURT: (To Clerk of Court) You know what? Let's
17 see if we can lower the lights just a little bit, Claudia.
18 Can we lower them just a -- just -- just a tad? I think
19 it'll be easier to see the screen. I started to do it
20 earlier.

21 MR. BOOTH: Okay.

22 (Pause as the lights are adjusted.)

23 Q Mr. Buyck, Road No. 1, it starts at Fort Motte Road
24 and extends to the beginning of where your hayfield is.
25 Road No. 1. You've got it in front of you, right?

1 A (No audible response.)

2 Q All right. Do you believe that is the road that you
3 have an easement for, based on the exhibits and documents I
4 showed you earlier?

5 A I believe that easement pertains to all the roads.

6 Q Okay. All right. So, why do you need a prescriptive
7 easement? Why do you need a prescriptive easement if you
8 think that document pertains ---

9 A This doesn't pertain ---

10 Q --- to all roads?

11 A --- the easement pertaining -- what I was
12 understanding -- understood -- was understanding of the
13 easement was pertaining to all the roads that go through
14 her property.

15 Q All right. Now I understand the position. Okay.

16 And Mr. -- okay. We're going to turn off the
17 projector now, and I'm almost through. So, we can put the
18 lights back up. I'm through. Thank you, though, that did
19 look a lot better. We're through.

20 THE COURT: Can I ask this question now that I have my
21 -- my map. Remember we talked about the white road and
22 then Mr. Buyck drew it in blue on the map?

23 MR. BOOTH: Right.

24 THE COURT: That's considered to be Road 3?

25 MR. BOOTH: Correct.

1 THE COURT: Okay. Good. I just want to be clear.

2 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

3 Q All right. Now, Mr. Buyck, I show you Exhibit --
4 Exhibit No. 4. This is where Grace McAlister gave you the
5 easement in your name, W. P. -- W. P. Buyck, Junior,
6 correct?

7 A Okay.

8 Q Okay. I'm going to read to you the first part of that
9 easement (as read): "An easement of right of way 20 feet
10 in width from -- for" -- excuse me -- "ingress and egress
11 from South Carolina Highway No. S-9-25; and extending
12 generally in a northwesterly direction from lands of the
13 grantee, cross the lands of the grantor herein, to the
14 property line of other lands of the grantee; and along the
15 present existing road, over the following described lands
16 of the grantor."

17 Okay. You want to look at that? I read it.

18 A No. That's fine.

19 Q Seems like to me it says one road in a northwesterly
20 direction, Mr. Buyck. I don't ---

21 A I don't ---

22 Q --- see the word "multiple roads" there at all.

23 A (As Read) "In a direction from lands of the grantor -
24 - across the lands of the grantor -- and across the lands
25 of the grantor herein, to the property lines of other lands

1 of the grantee." Other lands. That's plural. That's --
2 that's more than one.

3 Q And you're the grantee in that document.

4 A (As read) "And along the present existing road," which
5 is what we always considered the Red Road. That's the only
6 main road we've ever used.

7 Q Okay. So, we've gone from all roads to the Red Road,
8 is what that's talking about; is that what you just said?

9 A Correct.

10 Q So, you -- you've gone from all roads -- which we know
11 of two -- to just one road, the Red Road, is the way you're
12 reading it now?

13 A I'm going back to it says (as read) "across the lands
14 to the -- to other lands of the grantee." That was me.
15 "Other lands."

16 Q Right. The other lands would be your 700 acres?

17 A And that means more than one piece of land. That goes
18 --

19 Q Okay.

20 A -- I take it to mean both roads going up through
21 there.

22 Q Okay.

23 MR. BOOTH: Now, Your Honor, at this time I just --
24 this is why I -- I want to discuss it. And I do understand
25 what he's saying. Thank you.

1 I just need to know from Counsel -- go ahead.

2 MR. ENGLISH: Go ahead.

3 MR. BOOTH: They have ---

4 THE COURT: You got to hold on for Mr. Booth. Go
5 ahead, Mr. Booth.

6 MR. BOOTH: They have a Cause of Action No. 1 that
7 asks you to declare that what we just read is -- the road
8 is -- is the red-marked road. That's what I read it. This
9 is -- not by prescription, but by this easement grant.

10 I just need to know if that's still -- if they're
11 still pursuing Cause of Action No. 1.

12 THE COURT: Well, it could be -- obviously, it could
13 have some relevance in Cause of Action No. 1 and Cause of
14 Action No. 2 and Cause of Action No. 3.

15 Cause of Action No. 1 would be a declaration that the
16 easement by expressed grant includes the Red Road. It
17 could also have relevance with regards to Mr. Buyck's
18 position, so that it is clear that it is an easement by
19 prescription; and that the -- the possession is one -- oh,
20 what's the term? under -- not color of law. What's the
21 term?

22 MR. ENGLISH: Claim of right.

23 THE COURT: Say again?

24 MR. ENGLISH: Claim of right.

25 THE COURT: There you go. Claim of right, and of

1 course, then the injunctions would follow.

2 And I just -- to sort of cut to the chase, I would
3 presume that that's what Mr. English is going to tell me.
4 Huh?

5 MR. ENGLISH: Yes, ma'am.

6 MR. BOOTH: Well, I ---

7 THE COURT: So, I think that Mr. English doesn't
8 really care how he gets there. He'll take one or the
9 other. But I -- I think that -- I -- I think that his
10 focus is on the prescriptive easement, and that that
11 language from the easement, "the northwesterly direction"
12 language, is probably what he is talking about. Yes?

13 MR. BOOTH: But -- but their -- I'm still trying to
14 understand whether their position is that that Red Road is
15 the easement grant --

16 THE COURT: Uh-huh.

17 MR. BOOTH: -- and is a prescriptive easement. I just
18 need to know.

19 THE COURT: Which is he going for?

20 MR. BOOTH: Well, I don't ---

21 THE COURT: I think he'd ---

22 MR. BOOTH: --- no one has to make a choice.

23 THE COURT: --- take either one.

24 MR. BOOTH: I just wanted to know if he's located
25 where he thinks that easement is on that property.

1 THE COURT: I understand.

2 MR. BOOTH: That's all.

3 THE COURT: Okay.

4 MR. BOOTH: Two easements.

5 MR. ENGLISH: Two -- we can have two easements. I
6 mean, we're not ---

7 (Counselors begin talking at the same time.)

8 MR. BOOTH: The same road, though. The same road.

9 MR. ENGLISH: No, not the same road. There's nothing
10 wrong with having two easements. We could -- if -- if Mr.
11 Booth -- if he's -- he's going to go to great lengths, with
12 surveyors and other technicians --

13 THE COURT: Right.

14 MR. ENGLISH: --- and they're going to put stuff all
15 over that board and say that that Blue Road is a 1984
16 easement.

17 THE COURT: Right.

18 MR. ENGLISH: We don't have a surveyor to say -- to --
19 to counter that. So, you can have two. Our prescriptive
20 rights -- as Mr. Buyck testified, right came prior to 1984
21 anyway. And we've done nothing to abandon those
22 prescriptive rights. And there's nothing that would
23 prevent a landowner from -- from having two easements
24 benefit his property.

25 THE COURT: All right.

1 MR. BOOTH: Okay.

2 THE COURT: Tell me what your -- all right. Yes? And
3 your response to that is?

4 MR. BOOTH: Is -- well, I mean, again, I can't put my
5 finger on it, but Road No. 1 --

6 THE COURT: Road No. 1.

7 MR. BOOTH: -- as it goes through Mr. Jackson's
8 property, that splits with Mr. -- you know, splits with
9 Conrad's property. You remember that's the road that was -
10 -

11 THE COURT: I'm with you.

12 MR. BOOTH: -- used for the boundary line. I thought
13 that's what Mrs. McAlister granted Mr. Buyck as an easement
14 to get to his property, because she can't grant an easement
15 over Mr. Bruner's property.

16 So, the easement cannot be the Red Road, because Mrs.
17 McAlister is not -- is the only one that granted that
18 easement, and she doesn't own part of that road. So, how
19 can the road -- easement be over a road that she didn't
20 own? That's just my question, Judge.

21 THE COURT: Well, she could grant -- let me -- let me
22 ask this question: Could she not, though, grant that what
23 she has? She -- I mean, she has -- you -- you're exactly
24 right. I understand your point.

25 In fact, I just sent my law clerk and he's been

1 researching whether or not Dr. Bruner is a necessary party
2 to this action.

3 However, I guess my question would be: Why could Ms.
4 McAlister not grant -- assuming this is the road, I -- I
5 don't know what the status is at this point at that -- Dr.
6 Bruner -- I may never know what the status is with regards
7 to Dr. Bruner.

8 Is there any reason why Ms. McAlister could not grant
9 an easement over the portions of the road that are over her
10 land? Seems like she'd have to do that.

11 MR. BOOTH: Well, the language says it goes directly
12 to his property. It doesn't mention going over Mr.
13 Bruner's property. It doesn't mention there's a third-
14 party, unrelated to the document, that somehow is affected
15 by the road easement. The road easement speaks for itself.
16 It says --

17 THE COURT: Right. I understand.

18 MR. BOOTH: -- you know, (as read) "to the lands..."

19 THE COURT: Right.

20 MR. BOOTH: (As read) "... along the present existing
21 road to the lands."

22 So, I -- I just don't think Ms. McAlister had the
23 desire or intention to do anything but grant an easement
24 over land that ---

25 THE COURT: I ---

1 MR. BOOTH: --- she owned.

2 THE COURT: -- I got it.

3 MR. BOOTH: That's the kind of way I look at it.

4 THE COURT: I -- I got it. I got it. I absolutely
5 understand that -- that -- that that is your position. I
6 understand that very fully.

7 MR. BOOTH: I mean -- okay.

8 THE COURT: Yes, I do.

9 MR. BOOTH: All right.

10 THE COURT: Hence my question to my law clerk: Dr.
11 Bruner need to be a -- is he a necessary party to this
12 action? I don't know the answer to that. Okay.

13 MR. BOOTH: I think he should be, and because he
14 isn't, I think they can't get a granted easement. That's
15 all ---

16 THE COURT: All right.

17 MR. BOOTH: --- I can say to that. So, don't do
18 anymore research. You know ...

19 THE COURT: Sure.

20 MR. BOOTH: I hope, you know, in our ---

21 THE COURT: He's working away.

22 MR. BOOTH: --- in our ---

23 THE COURT: Okay.

24 MR. BOOTH: --- system. Okay.

25 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

1 Q All right. One last series of questions relating to
2 Rebel Lumber Company, 2008. Who hired Rebel Lumber Company
3 to do the timber work or timber cutting on your 700 acres?
4 Who hired Timber Lumber -- Rebel Lumber? I said, Rebel?
5 Yeah, Rebel Lumber.

6 A They submitted bids. It was put out to bids. It was
7 -- and they submitted the highest bid.

8 Q Tight.

9 A And James Simmons was the forester and he handles all
10 the bids. And when the highest bid comes in, they grant it
11 -- they granted the contract.

12 Q And who gave either Mr. Simmons or anybody at Rebel
13 the key to Mr. Jackson's gate, the lock? Who gave the key?

14 A I did.

15 Q You gave it to who, though? Mr. Simmons? I just ---

16 A I'm not sure who got the key, because Mr. Simmons had
17 the key and whether he left his key for the loggers to use
18 or I left another key for them to use, I'm not sure.

19 Q And did you notify either Barbara Jackson or William
20 Jackson prior to giving the key to whoever?

21 A No, I did not.

22 Q And why did you not notify one of them?

23 A Because I've never notified any of the -- any --
24 anybody else before that. And we logged -- we logged out
25 of there six years before that with no -- with no -- no

1 objections to it.

2 Q So, you had one other logging company ---

3 A We logged out of there six years before that and Mr.
4 Jackson owned the property. Nobody objected to it.

5 Q Do you know for a fact that Mr. Jackson knew you used
6 Road No. 2 to do logging six years ago?

7 A He never objected.

8 Q I know. But do you know if he knew about it?

9 A Did he know about it?

10 Q Yes, sir.

11 A If he went down there within a couple -- couple of
12 months and -- and as much as he says he goes down there,
13 then he had to.

14 Q All right. But we're talking six years ago.

15 A Roughly six years ago.

16 Q So, you're assuming his activity as to going to his
17 property was just as much as it is the last two or three
18 years. You assume that, assume.

19 A In fact, probably more trucks were going through.

20 Q Okay. Now, isn't it true that the Rebel Lumber
21 Company vehicles parked on Mr. Jackson's property?

22 A Did what, now?

23 Q Parked. Parked their vehicles on Mr. Jackson's
24 property while they were doing lumber.

25 A I don't know that.

1 Q You don't know?

2 A No.

3 Q Did you personally tell anybody at Rebel or tell Mr.
4 Simmons that the road that Mr. Jackson has on his property,
5 Road No. 2, was the only road they could use?

6 A That's the only road we've ever used.

7 Q I understand that. So, you told him to use that road
8 and you gave the key.

9 A There was no other road for him to use.

10 Q So, the road that the hunting club takes care of, that
11 wouldn't have been useable?

12 A Which one?

13 Q The one that the hunt club takes care of.

14 A That's not even -- not even in question.

15 Q Okay.

16 A That's never been the main road.

17 Q I understand that. But ---

18 A I don't know what you're asking.

19 Q --- but the logging work tore up their road, didn't
20 it? It created huge piles of mud all over their road, Road
21 No. 2?

22 A When they log, they usually mess up the road. That's
23 why they have in their contracts to repair all roads back
24 to the same standards they were when they went in or
25 better.

1 Q Did they repair your road?

2 A No, they did not, because Mr. Jackson stopped them.

3 Q Stopped them from doing what?

4 A From repairing the roads.

5 Q What road?

6 A The -- the main road -- the main -- my road from all
7 the way from where they logged, all the way -- all the way
8 up.

9 Q All right. Let's look back at our Exhibit No. 6 --

10 A Okay.

11 Q -- where I've got the roads marked 1, 2, 3. Tell me
12 what road they weren't able to repair because of Mr.
13 Jackson?

14 A Road 2.

15 Q Road 2.

16 A Right.

17 Q Well, that's his road on his property.

18 A Who?

19 Q You said it's -- you said on your property.

20 A No. You're considering Road 2 for here all the way
21 down. I'm talking about the exhibit that you had up here
22 before, that we call the "Red Road."

23 Q Right.

24 A And the Red Road went from the main highway all the
25 way to the back of the swamp where they logged.

1 Q I understand that. But I want you to ---

2 A Where they were.

3 Q Okay. I want you to identify -- I'm going to put back
4 in front of you Exhibit No. 5. Again, if you'll come down
5 -- if you'll come down --

6 MR. ENGLISH: That's Plaintiff's 5.

7 MR. BOOTH: Yeah, Plaintiff's 5.

8 Q Show me with your finger where the road couldn't be
9 repaired by Rebel Lumber.

10 (The witness steps down from the stand.)

11 A Where it couldn't be repaired?

12 Q Because of Mr. Jackson interfering.

13 A (Indicates) This road here, all the way -- all the way
14 back around here.

15 Q Okay. Your finger started at Fort Motte Road,
16 correct?

17 A What?

18 Q Your finger started at Fort Motte Road.

19 A That's exactly right.

20 Q All right.

21 A Because they -- that's the way to get on the main
22 highway. And they're responsible for repairing the roads
23 from the -- from -- from where they start log -- where they
24 log, all the way out to the main highway.

25 Q But you just said, Mr. Buyck, that Mr. Jackson stopped

1 them from repairing the road.

2 A Exactly.

3 Q Well, part of that road's on your property.

4 A The part that he wouldn't allow them to repair -- he
5 didn't allow them to repair any of it. He stopped them
6 from the beginning of his property, right -- (indicates)
7 from this part all the way around.

8 Q All right. Go ahead and sit back.

9 (The witness complies.)

10 MR. BOOTH: Your Honor, I've completed my cross at
11 three minutes to one.

12 THE COURT: Excellent.

13 MR. BOOTH: It's lunch -- it's lunchtime ---

14 THE COURT: Re-direct?

15 MR. ENGLISH: It's lunchtime. No, ma'am. No, ma'am.

16 THE COURT: No re-direct.

17 (To the witness) Come one down and let's go get some
18 lunch. You are finished with your testimony right at lunch
19 time. Mr. Booth has done a wonderful job of planning his
20 examination. You can come on back to your table.

21 (The witness complies.)

22 THE COURT: We going to take an hour for lunch. I
23 will see everybody back at 2:00. Have a wonderful lunch.

24 MR. ENGLISH: Thank you, Your Honor.

25 THE COURT: All right.

1 (Off the record at 12:58 p.m.)

2 (On the record at 2:13 p.m.)

3 THE COURT: Thank you all so much and please be
4 seated. And I hope you all had a very good lunch.

5 And Mr. English, if you'd call your next witness.

6 MR. ENGLISH: Your Honor, may I -- I just want to get
7 these exhibits in. Your Honor, just a housekeeping ---

8 THE COURT: Sure.

9 MR. ENGLISH: Defendant's Exhibits 1 through 5 have
10 been marked -- introduced and at least discussed with Mr.
11 Buyck. My understanding, Counsel has agreed those can be
12 introduced into evidence. So, I would like those
13 introduced officially as evidence.

14 MR. BOOTH: Which ones were those?

15 MR. ENGLISH: 1 through 5.

16 THE COURT: Take a look at them ---

17 MR. ENGLISH: Not the pictures. Not the pictures.

18 THE COURT: --- so everybody's clear.

19 MR. BOOTH: Oh, the easements?

20 MR. ENGLISH: Yeah. And not the pictures.

21 MR. BOOTH: No objection.

22 THE COURT: Okay.

23 MR. BOOTH: 1 through 5 into evidence. Thank you.

24 THE COURT: Defendant's Exhibits 1 through 5 are in
25 evidence without objection.

DIRECT EXAMINATION BY MR. ENGLISH - MARK BUYCK, JR. 122

1 Now, Ms. Kelly, you're clear about what those are?

2 THE COURT REPORTER: Yes, ma'am.

3 (Defendant's Exhibits 1 through 5, in evidence.)

4 THE COURT: Wonderful. All right. Great. Fantastic.

5 Now, call you're next witness.

6 MR. ENGLISH: Thank you, Your Honor. May it please
7 the Court? I call Mr. Mark Buyck.

8 (The witness approaches the stand.)

9 MARK W. BUYCK, JR., having been
10 first duly sworn, testifies as follows:

11 CLERK OF COURT: Please state your full name for the
12 record.

13 THE WITNESS: My name is Mark W. Buyck, Jr.; B-u-y-c-
14 k.

15 DIRECT EXAMINATION BY MR. ENGLISH:

16 Q Good afternoon, Mr. Buyck.

17 A Good afternoon.

18 Q Mr. Buyck, tell us a little bit about yourself. What
19 -- what -- what's your occupation?

20 A I'm a lawyer and I practice law with the firm of
21 Wilcox, Buyck, and Williams in Florence.

22 Q How long have you been practicing law?

23 A Fifty-one years.

24 Q Okay. All right. What kind of legal organizations
25 are you a member of?

1 A I belong to the American College of Trial Lawyers, the
2 American Board of Trial Advocates. I'm a permanent member
3 of the Fourth Circuit Judicial Conference. I belong to the
4 American Bar, the South Carolina Bar, and the Florence
5 County Bar Associations.

6 Q Okay. Thank you, sir.

7 THE COURT: It was nice of you not to say when you
8 were -- how long you've been practicing law that you didn't
9 say, "Long enough."

10 THE WITNESS: Well, this is an unusual place to be, to
11 be sitting on this side.

12 THE COURT: I was going to say -- I was going to say
13 probably feels a little funny.

14 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

15 Q You know the plaintiff?

16 A I do. He's a cousin of mine.

17 Q Okay. And were your -- was your father and his father
18 cousins?

19 A My dad and Big Peter were contemporaries. They were
20 first cousins. Since he was a contemporary, my -- my dad
21 and Peter's dad, I always called him "Uncle Peter,"
22 although he wasn't actually my uncle. He was a cousin.

23 Q Okay. Where'd you grow up?

24 A I grew up right here in Saint Matthews.

25 Q Okay. Are you familiar with the property we've been

1 taking about today?

2 A Yes, I am.

3 Q Okay. And I'll represent to you that this is -- we're
4 in the Saint Matthews Fort Motte area. (Indicates) This is
5 a public road here. Mr. -- Mr. Buyck, the plaintiff,
6 marked this -- this exhibit, which is Plaintiff's Exhibit
7 5. And we've been talking about the river property.

8 Q Are you familiar with the river property?

9 A I am.

10 Q The 700 acres tract. Okay. And how -- how so.

11 A Well, when I was in -- I -- I guess about the eighth
12 grade, maybe seventh grade, my brother and I would go out
13 to that property with my dad, duck hunting. There's
14 several duck hunting -- duck ponds on the property, and we
15 would go out there early mornings and -- and hunt.

16 Q So, seventh or eighth grade. About how long ago would
17 that have been?

18 A Let's see, I graduated in -- from Saint Matthews High
19 School in 1952. So, it would be about 50 -- 47 or 48.

20 Q Okay. So, 60/62 years ago?

21 A Okay.

22 Q Okay. Now, are you familiar with the -- how did you
23 get -- when you would go hunting -- so, you would hunt on
24 the 700 acre tract?

25 A Right.

1 Q Okay. How would you get -- how would you get back to
2 the 700 acre tract?

3 A Well, we would -- we would go on the road that y'all
4 have talked about today called "the Red Road," go in and --
5 and hunt. Often times afterwards, we would go over the
6 river and -- and cook breakfast before we came back -- back
7 to town.

8 Since those days, I probably -- I probably didn't hunt
9 much after undergraduate school and I went to law school.
10 Then I had to do three years as a judge advocate in the Air
11 Force, and I was stationed where you didn't have a hunting
12 place.

13 (Train goes by blowing horn.)

14 THE COURT: Oh. We haven't had to do this since we
15 moved from the old courthouse in -- in Saint George to the
16 new courthouse. That sort of brings back memories. All
17 right. Go ahead.

18 A But -- but we'd come back home -- come back to Saint
19 Matthews from Florence to family things, and often times
20 we'd go back down to the river and -- and have a picnic and
21 that sort of thing.

22 So, I've been -- and I -- I have hunted down there
23 since practicing in Florence from 1950 -- '62 onward. I've
24 gotten to where I don't like to get up that early in the
25 morning, and I don't like to get that cold. So, I haven't

1 duck hunted in a few years. But I'm familiar with the
2 property.

3 Q Okay. Let's just say -- just so we can kind of get
4 bookends about what period of time. So, I think you
5 started, maybe, hunting on the property you said the
6 seventh or eighth grade, which would be sometime in the
7 late '40s.

8 Just give us an idea of -- of what length of time that
9 might have extended to that you used the property at least
10 -- you know, at least on some regular basis.

11 A Well, that would be from like '46, right after the war
12 I guess, to about -- I graduated from college in '56. So,
13 it was about 10 years.

14 And then even in college, occasionally we'd come down
15 and bring some friends and we'd come hunting. And I
16 remember, after I started practicing, I came over one
17 Christmas Eve. The one thing I remember about it is all
18 the ducks we -- we got that day. They gave them to me and
19 my father-in-law who had come. So, we -- we had a trunk
20 full of duck going back to Florence.

21 Q That would have been sometime --

22 A That would have been about '64, I would say.

23 Q All right. And access was had by way of which road?

24 A I didn't know anything about -- quite frankly, about
25 anything but one road. And -- and that's what y'all have

1 called the "Red Road" today. But I didn't -- I really
2 never heard of the other road until -- until today.

3 Q The Hayfield Road.

4 A Hayfield Road.

5 Q So, you -- as far as you know, you never went down the
6 Hayfield Road.

7 A Never.

8 Q So, I guess your earliest memories would -- would be
9 when Peter's father was alive?

10 A We -- yeah, Uncle Peter, he would always invite us to
11 come and we would come. And -- and I think later years, my
12 brother -- Bill Buyck, who lives in Manning -- he and Peter
13 sort of -- they -- they would plant some corn fields and
14 flood them.

15 And that would be, you know, in the -- in the late
16 '70s and '80. I just thought about that. And I came up
17 here a couple of times and -- and saw what they were doing
18 and -- and that sort of thing. And hunted with them, too.

19 Q Did -- in your visits to the -- to the river property,
20 did anyone ever question or challenge your right -- your
21 use, not -- not your right, but your use of the Red Road?

22 A You know, I -- I didn't know that -- I always thought
23 that -- that Peter, Sr. -- I didn't realize it went through
24 anybody else's property quite frankly.

25 No, nobody ever challenged us. I -- I just -- until -

1 - until you talked to me a couple of months ago, I -- I
2 never knew anybody else owned any. I thought it was
3 Peter's all the way to the river.

4 Q So, in your mind to -- or to your way of thinking,
5 Uncle Peter had the right to use that road.

6 A Yeah.

7 MR. BOOTH: Objection, Your Honor.

8 THE WITNESS: Beg pardon?

9 MR. BOOTH: He's leading the witness.

10 THE WITNESS: Oh. Excuse me.

11 THE COURT: Sustained. Don't lead.

12 Q Did you think that Uncle Peter had the right to use
13 that road?

14 A I did. In fact, as I said, we went in every day --
15 every time we went down there, that's how we went and
16 nobody ever ---

17 Q And ---

18 A --- nobody ever challenged us.

19 Q And I'm sorry, I should have said the Red Road.

20 A Yeah.

21 Q How about Peter -- how about the plaintiff's use of
22 the road? Do you have -- or you may not -- you may -- your
23 involvement may have stopped before Mr. Buyck got it in
24 '76.

25 A Yeah. We've -- I -- I've been involved since then.

1 But you know, I don't know what Peter does on a day-to-day
2 basis. I'm just too far away now. But every time we've
3 come back and they ask us to go down there, we would always
4 go straight down that same road.

5 Q Okay. Now, has -- has Mr. Buyck -- the plaintiff,
6 other than this lawsuit, has he ever told you about any
7 problems he's had with using the road?

8 A No.

9 MR. BOOTH: Objection, Your Honor. I don't think he
10 can use -- ask a question of what somebody else said, like,
11 "Mr. Buyck told him." That would be hearsay. He's not a
12 party --

13 THE COURT: It is hearsay.

14 MR. BOOTH: Yes, ma'am.

15 THE COURT: The objection is hearsay.

16 MR. ENGLISH: Well, I'm asking if Mr. Buyck, the
17 plaintiff, said anything to Mr. Buyck the witness.

18 MR. BOOTH: Yeah.

19 THE COURT: In other words, the question is, "Did he
20 say anything about him being challenged?" That would be
21 hearsay, because it's not a party -- you see, it's not a
22 party ---

23 MR. ENGLISH: Right.

24 THE COURT: --- opponent? Right.

25 MR. ENGLISH: My apologies.

1 THE COURT: That's okay.

2 A I was sent a copy of the complaint at -- at one point.
3 So, I -- I knew what the issue was.

4 Q Okay. To your knowledge, did Mr. Buyck ever have a
5 problem using the Red Road?

6 A To my knowledge, no; no problem.

7 Q Do you -- well, I think you answered that question.

8 A I will say I don't -- I didn't know the river twisted
9 and turned quite as much as I see on that -- that map.

10 MR. ENGLISH: Beg the Court's indulgence?

11 THE COURT: Certainly.

12 MR. ENGLISH: Your witness.

13 MR. BOOTH: All right.

14 THE COURT: Cross-examination?

15 MR. BOOTH: Yes. Just --

16 THE COURT: Sure.

17 MR. BOOTH: -- a couple --

18 THE COURT: Of course.

19 CROSS-EXAMINATION BY MR. BOOTH:

20 Q Good afternoon, Mr. Buyck. I'm the other lawyer from
21 West Columbia. Very nice to meet you.

22 A Thank you. Good to meet you.

23 Q I've heard of you, never met you. Just a few
24 questions. I want to just ask you the question that you
25 already answered, but just to make sure I heard it

1 correctly. You're saying that -- so, you -- you said
2 during the times that you traveled from Fort Motte Road out
3 to the river area, you assumed -- you assumed that you were
4 traveling on property owned by Peter or somebody in your
5 family, correct?

6 A Right.

7 Q All right. So, you never really, on your own,
8 investigated ownership of any of the area that we're
9 talking about?

10 A I did not.

11 Q Okay. But -- and that was done because you were,
12 again, believing that you could travel that route.

13 A And probably riding with -- early on with my dad and
14 maybe with Uncle Peter --

15 Q Okay.

16 A -- down that road.

17 Q I gotcha. So, when was the last time you were on the
18 Red Road? Can you give me a rough idea about how long ago
19 it was?

20 A I'm trying to think. I remember we went down after --
21 after a family wedding, we all went down and -- and
22 picnicked on the river. I'd say that was 8 or 10 years
23 ago.

24 Q All right. Now, even though -- I'm going to put up
25 this other map, which is Plaintiff's Exhibit 4. And have

1 you seen this map -- exhibit before today -- before just
2 now?

3 A I have not.

4 Q Okay. Will you at least confirm that this looks like
5 the property we've been talking about today? And I'm just
6 going to ask you one question about it. So, if you're not
7 -- if you don't feel comfortable talking about this aerial
8 photo, I'll be glad to move on.

9 A I see what I think are the -- are the duck ponds and I
10 see the -- the -- the river.

11 Q All right. The only -- only question I have, again,
12 is -- again, the road that you traveled on, I think has
13 already been identified by Mr. Buyck as this road right
14 along here (indicates).

15 And again he showed it to you on the other map. And
16 that's -- that's about where -- where it is, right? The
17 Red Road, starting at Fort Motte.

18 A I know we came off the Fort Motte Road and we -- we
19 would go down here (indicates.) I think that's --

20 Q Okay. The only question I've got: Do you recall
21 somewhat of a fork in the road where my little red dot's
22 circling? Do you recall a fork in the road ---

23 A I -- I honestly don't.

24 Q That's ---

25 A And, you know, when we'd go hunting, we'd go down in

1 the dark --

2 Q Okay.

3 A -- and then we'd be coming back the other way, you
4 know. But I -- I really don't remember a fork.

5 Q Okay. So again, just to clarify, the purposes that
6 you traveled on this road, the purposes were primarily
7 recreational -- recreational related -- if that's -- you
8 know what I'm trying to say -- recreation activities?

9 A Absolutely.

10 Q Fair to say? Good.

11 MR. BOOTH: That's all I have, Your Honor.

12 THE COURT: Very well. Re-direct?

13 MR. ENGLISH: No, Your Honor.

14 THE WITNESS: Thank you. Good to see you, Judge.

15 THE COURT: Call your next witness, please.

16 MR. ENGLISH: Can he be excused, Your Honor.

17 THE COURT: Indeed.

18 MR. BOOTH: Excuse me. Oh, yeah. Thank you.

19 (The witness retires from the stand.)

20 THE COURT: Indeed.

21 MR. ENGLISH: Mike Nickells.

22 (The witness approaches the stand.)

23 THE COURT REPORTER: I didn't hear his last name, Your
24 Honor, because of the doors. I didn't hear his last name.

25 THE COURT: Nickells.

1 THE COURT REPORTER: Nickells.

2 THE COURT: Mr. Mike Nickells.

3 JAMES MICHAEL NICKELLS, having
4 been first duly sworn, testifies as follows:

5 CLERK OF COURT: And state your full name for the
6 record.

7 THE WITNESS: James Michael Nickells.

8 DIRECT EXAMINATION BY MR. ENGLISH:

9 Q Good afternoon, Mr. Nickells.

10 A Good afternoon.

11 Q You also go by James M. Nickells?

12 A "Mike" is what I'm called.

13 Q All right. I'm going to show you a document and ask
14 you if you've ever seen that document?

15 A Yes.

16 Q What is that document, sir?

17 A That's the plat to the land I used to own, McAlister
18 tract.

19 THE COURT: Let's move that microphone just a little
20 bit closer. And I was just -- is this document in
21 evidence?

22 MR. ENGLISH: It's not yet. Well ---

23 THE COURT: Very well. We ---

24 MR. BOOTH: No objection.

25 THE COURT: --- do -- do you -- are you aware of what

1 it is?

2 MR. BOOTH: Yes, ma'am. He gave it to me before.

3 THE COURT: Is -- is there any objection, because I'm
4 -- I'm always cautious not to look at a document until it's
5 in evidence.

6 MR. BOOTH: No objection to that exhibit ---

7 THE COURT: Very well.

8 MR. BOOTH: --- being into evidence.

9 THE COURT: Thank you.

10 MR. BOOTH: Yes, ma'am.

11 MR. ENGLISH: I'd like to mark this Plaintiff's next.

12 THE COURT REPORTER: Six.

13 (Marked Plaintiff's Exhibit No. 6, 2-page deed
14 document dated 6/29/90, in evidence.)

15 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

16 Q Okay. This is the deed to your property?

17 A No.

18 Q Not your property. Property that you owned in the
19 past?

20 A Right.

21 Q Now, Mr. Nickells, what -- what -- what property is
22 referenced in that deed?

23 A McAlister tract, 203 acres.

24 Q And a portion of that property is now owned by the
25 defendant, Mr. Jackson; is that right?

1 A Right.

2 Q And just for the record, this deed looks like it was
3 dated June 22, 1990. Does that sound right? When you got
4 the property?

5 A 1989. I think 1989.

6 Q On the second page?

7 A '89 on that side. Okay.

8 Q Yeah. It looks like it was recorded on June 28, 1990.

9 A Okay. Down at the bottom? Yeah, I it see now.

10 Q So, you owned -- does this deed describe this entire
11 yellow piece (indicates)?

12 A Right.

13 Q Okay. About 203 acres?

14 A Right.

15 Q You bought it from McAlister, right?

16 A Right.

17 Q Who'd you sell it to?

18 A Dr. Cosone in Orangeburg.

19 Q Okay. Do you remember when you sold it to him?

20 A Not right off hand.

21 MR. BOOTH: Your Honor, everybody else I heard very
22 well. But I'm not sure if it's the mic or his voice. I
23 can hardly hear him.

24 THE COURT: I know -- I agree with you 100 percent.

25 THE WITNESS: It might be my voice.

1 THE COURT: I'm having trouble hearing him, too.

2 THE WITNESS: Throat's -- my throat's dry.

3 MR. BOOTH: Okay. Water?

4 THE COURT: Oh, I'm so sorry.

5 THE WITNESS: That might help.

6 THE COURT: Let me see if we can get you some water.

7 Tap that microphone and see if it's ---

8 (The witness taps the microphone.)

9 THE COURT: Yeah, it's on. I want you to imagine that
10 you are Frank Sinatra and you're going to sing us "My Way."

11 THE WITNESS: No, you don't want me to sing.

12 MR. ENGLISH: All right.

13 THE COURT: Start back over because, I -- I didn't --
14 I was having trouble hearing and I think you were too.

15 MR. BOOTH: Yeah.

16 THE COURT: So, just start back -- and we know we got
17 a June 22, 1990 deed, and now ask your next question,
18 please.

19 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

20 Q Okay. And then who'd you -- how long did you own the
21 property roughly?

22 A Six years, I think it was.

23 Q Okay. And you sold it to ...?

24 A Dr. Cosone.

25 THE COURT: Pull that microphone up a little bit.

1 (The witness complies.)

2 THE COURT: There you go. Now, you really are like
3 Frank Sinatra.

4 A Dr. Cosone.

5 Q In Orangeburg -- from Orangeburg.

6 A Right.

7 Q Okay. So, you owned the property for about six years.

8 A Right.

9 Q And you owned all 203 acres?

10 A Right.

11 Q Okay. Now, looking at -- I have before you an exhibit
12 that's been marked as Plaintiff's Exhibit 4. And what it
13 shows is an aerial photograph, which I represent to you it
14 shows the yellow boundary line. Is -- that yellow boundary
15 line, is that ---

16 A Right.

17 Q --- familiar to you?

18 A Right. Yeah.

19 Q Okay. How's that familiar to you?

20 A Because I walked about every square inch of it.

21 Q That's what you owned?

22 A Right. Right.

23 Q And there's been a couple of -- there's a blue line
24 and a red line that crosses part of that property.

25 A Right.

1 Q Okay. Now, do you know the plaintiff, Mr. Buyck?

2 A Yes, I do.

3 Q Okay. How do -- how do you know Mr. Buyck?

4 A Kind of raised up with him. We went to the same
5 church; we went to school together.

6 Q So, you grew up around -- around here, too?

7 A Right.

8 Q Okay. And you've known him all your life?

9 A Practically, yes.

10 Q Y'all about the -- how old are you?

11 A 61.

12 Q So, y'all are about the same age.

13 A Right.

14 Q All right. Now, do you know if Mr. Buyck owns any
15 property in this area?

16 A Yes, I do.

17 Q Okay. Where -- where does he own property?

18 A Down the Red Road, cross the McAlister's tract, and
19 down the Blue Road to the hayfield, all of that back down
20 to the river.

21 Q So, he owns a good bit of property.

22 A Yeah.

23 Q Which is also shown -- bigger area.

24 A Right.

25 THE COURT: On Plaintiff's Exhibit?

1 MR. ENGLISH: Number 5.

2 Q So, did Mr. Buyck own property north of you?

3 A Yes.

4 Q Okay. And how did he -- to your -- to your knowledge,
5 how did he access his property above you?

6 A Down the river road, down the Red Road like everybody
7 else.

8 Q Like who?

9 A Hunting club, Brunerdale Hunt Club; Tri-County
10 Electric Co-op; Peter's friends; my friends; you know,
11 everybody used that road. It's been there for a long, long
12 time.

13 Q Okay. Were you familiar with any of this property
14 before you bought it?

15 A I'd been down to the river with Peter one time when I
16 was a little boy, with his daddy.

17 Q You remember which way you went with him?

18 A It wasn't but one road far as I can remember.

19 Q And which one?

20 A That river road, the Red Road.

21 Q The Red Road? Okay. So, that was many years ago.

22 A Yeah.

23 Q Okay. Now, when you bought your property -- when you
24 bought the yellow, what did you think about Peter's use of
25 the Red Road?

1 A I didn't see any problem. I mean, he's had access --
2 access to it for a long, long time, and nobody's complained
3 about it until Mr. Jackson moved in. So, you know, I don't
4 see why he's complaining, but that's his rights I reckon.
5 We never had a bit of problems in there.

6 Q When you bought the property, did you believe that
7 Peter had the -- the right to use the Red Road?

8 A Yes, I did.

9 MR. BOOTH: Your Honor, I object to that.

10 THE COURT: Leading?

11 MR. BOOTH: Leading, very much so. And also
12 speculating.

13 THE COURT: With regards to the leading -- hold on one
14 second. I -- I have to do the judge thing. So, you got to
15 hold on --

16 THE WITNESS: Okay.

17 THE COURT: -- for me. Okay. Hold -- everybody hold
18 on. It is leading and I will sustain the objection on the
19 basis of leading.

20 THE WITNESS: Okay.

21 THE COURT: Hold on.

22 MR. ENGLISH: Let me ask ---

23 THE COURT: When I sustain the objection, that means
24 you got to hold on for your next question.

25 MR. ENGLISH: I'll ask you another question.

1 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

2 Q Did you ever stop Peter from going across your
3 property by the river?

4 A Never.

5 Q Did you think you could stop him?

6 A No.

7 Q All right. Okay.

8 MR. ENGLISH: One moment.

9 THE COURT: Okay.

10 MR. BOOTH: Mr. Nickells --

11 MR. ENGLISH: Wait.

12 MR. BOOTH: Oh. I'm sorry. I completely ---

13 THE COURT: So, if he's not finished, he ought to be.

14 MR. BOOTH: My apologies.

15 MR. ENGLISH: I'm sorry. I should have -- I should
16 have beg --

17 THE COURT: That's all right. That's okay. It's all
18 right.

19 MR. ENGLISH: I have Ms. Milligan here. So, she has
20 to tell me if I ---

21 THE COURT: I -- I -- I know that. I understand.

22 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

23 Q Mr. Nickells, thank you for bearing with me. Do you
24 recall what kind of vehicles or machinery Peter might take
25 across the Red Road?

1 A Yeah. He used to bring his tractor with this disc
2 header. They would go up -- Pete would go up to the
3 hayfield with hay equipment.

4 Q Did -- I -- I don't know, but during the period of
5 your ownership, do you know if he logged -- did any logging
6 activities?

7 A I -- I'm pretty sure he did. I -- I did some logging
8 myself, but I think he did, too. Because I'm pretty sure
9 they -- right down there where the Brunerdale corner is,
10 right there where the Red Road -- that point --

11 Q (Indicating) Right here?

12 A -- right there (indicates.) That's where they always
13 parked all the logging trucks. They usually parked right
14 there.

15 Q On the Red Road?

16 A On the Red Road.

17 Q Okay. All right.

18 A But I can't -- I can't -- I -- like I say, I cut
19 timber down there, that bottom half where that rectangular
20 -- that small rectangular is, that's what I logged. And I
21 -- I might be confused with -- with the log -- but the
22 logging crew always parked right there.

23 Q Okay. For the record, are you -- are you talking
24 about this area (indicates), which is kind of the little --

25 -

1 A Point.

2 Q --- panhandle?

3 A That's the little piece of Brunerdale came across my
4 property at the time, and went under the power line and
5 stopped. We're just talking about 100 yards or less, and I
6 don't even think it's that wide. But that's -- that's the
7 little easement. They're talking about the Brunerdale
8 property. That's the only piece Brunerdale had in there.

9 Q All right. I appreciate it. Just to recap, did you -
10 - so, you never challenged Peter's right to the road?

11 A No. Never.

12 Q The Red Road?

13 A Red Road.

14 MR. ENGLISH: Thank you, Your Honor. Nothing further.

15 THE WITNESS: I owned the Blue Road, too, at one time.

16 THE COURT: All right. Mr. Booth, cross-examination?

17 MR. BOOTH: I think he's ready.

18 THE WITNESS: He's about ready to jump on me.

19 CROSS-EXAMINATION BY MR. BOOTH:

20 Q Mr. Nickells, I'm Bill Booth. I'm a lawyer
21 representing William Jackson.

22 And looking at your deed, it looks like you bought the
23 property from John T. McAlister, Jr.?

24 A Right. He lived out in California.

25 Q Right. So, how did you learn about the sale of the

1 property? Was there a sign on the property?

2 A No. I had an agent looking for me a piece of
3 property, and when it came up, they came to me for it ---

4 Q All right. Did ---

5 A --- to buy it.

6 Q --- did you actually ever see Mr. McAlister ---

7 A No, I did not.

8 Q --- John T. ---

9 A No.

10 Q --- okay. Now, I've got up here on the screen this
11 exhibit that we've been looking at. I think you've been
12 here for most of the day, right?

13 A Yeah.

14 Q Okay. Can you see it okay?

15 A Uh-huh.

16 Q Great. All right. Let me just ask you a few
17 questions about the roads that are shown on here. Okay?
18 And again, at one time you owned all of this piece of land,
19 correct?

20 A Correct.

21 Q And your deed -- when you bought it from Mr.
22 McAlister, Jr., who lived in California; your deed is 203
23 acres. It's shown on a plat by H. R. Oliver, dated
24 December 12, '63, and recorded in this courthouse. And the
25 plat located at 259. You -- you remember that being part

1 of your deed?

2 A Not really.

3 Q All right. Let me -- well, you -- you -- exhibit --
4 if you don't mind just looking at the exhibit to verify. I
5 read the plat first.

6 And I'm just going to show you the plat, just have you
7 verify -- just have you verify -- okay, here's a plat,
8 Exhibit 5, Defendant's Exhibit 5. Have you -- have you
9 ever seen that plat before today?

10 A Yes, sir, I sure have.

11 Q All right.

12 A I've got one at home.

13 Q All right. So, that's the plat of your property at
14 one time.

15 A Right.

16 Q All right. Did you know Mr. Oliver, the surveyor?

17 A No, sir.

18 Q All right. But you didn't get your own plat done, you
19 used that one ---

20 A Correct.

21 Q --- correct?

22 A Correct.

23 MR. BOOTH: Okay. Your Honor, that's the --

24 THE COURT: Uh-huh. Got it.

25 MR. BOOTH: -- got that.

1 THE COURT: Got it.

2 MR. BOOTH: All right.

3 Q Now, looking at this plat, Defendant's Exhibit 5, it's
4 got Mr. Buyck's name on the sort of northern side and also
5 the southern side, correct? Do you see that, Mr. Buyck's
6 name?

7 A Buyck?

8 Q Yes.

9 A Buyck. Yeah.

10 Q Okay. And where is the north arrow on that plat?

11 A Right up there (indicates).

12 Q Straight up, right?

13 A Right.

14 Q So, the plat is orientated where the north is at the
15 top of the page, correct?

16 A Right.

17 Q South would be the bottom.

18 A The bottom.

19 Q West would be the left.

20 A East to the right.

21 Q East to the right. All right. Thank you.

22 And you owned this property for about six years,
23 correct?

24 A Roughly, yeah.

25 Q Okay. Well, we'll both -- we'll both say about six

1 years.

2 Now, let's go back to my slide up here. Of course, I
3 marked this up, but you did confirm this is the plat -- the
4 -- the plat we just looked at, pretty much follows the
5 green box, correct? Yes, sir ---

6 A Correct.

7 Q All right. You knew Mrs. McAlister had obtained an
8 easement for you to enter Mr. Buyck's property and -- and
9 travel into your property, correct?

10 A Right.

11 Q All right. Even though you weren't a party to that
12 easement, you know she had it.

13 A It was written in one of the plats, I think, or I
14 don't -- my lawyer looked it up to make sure we had an
15 easement all the way in there.

16 Q Got you. All right. So, that was important to you to
17 know there was an easement getting you from Fort Motte Road
18 to your property, correct?

19 A Right.

20 Q All right. And that pretty much follows -- remember
21 earlier we talked about Ms. Peding -- did I pronounce her
22 name -- Ms. Peding and Ms. Stuck?

23 A Right.

24 Q Remember that? And then Mr. Buyck himself gave you an
25 easement over his 200 acres, correct?

1 A Right.

2 Q All right, sir. Now, did you know that Mr. Buyck had
3 an easement ---

4 A No.

5 Q --- this ---

6 A No.

7 Q --- a granted easement. You didn't know about that?

8 A No.

9 Q So, your lawyer didn't mention that, in addition to
10 your easement to get you to your property, there was also
11 an easement that Mr. Buyck had to go over your property?

12 A No. Only easement I was worried about was getting
13 from -- from the river -- from the highway to the end of my
14 property line.

15 Q Okay. But this road here, which I've got marked as
16 Road 1 -- and again that's pretty easy to follow, right,
17 Road 1?

18 A You're going down the Blue Road to the hayfield,
19 you're calling that 1?

20 Q Yes, sir. From here to here (indicates) I'm calling
21 that Road 1. Is that okay for you for right now?

22 A Fine. Fine.

23 Q Great. Now, Mr. Buyck, of course, also used that road
24 also for his activities, correct?

25 A Yes, he did.

1 Q All right. And there were vehicle traffic, hayfield
2 work etc., etc.; were vehicles of his traveled on this part
3 of Road 1, correct?

4 A Right.

5 Q But you also observed traffic on Road 2?

6 A Right.

7 Q Why -- why were people using Road 1 to get to Mr.
8 Buyck's property? Do you have any idea?

9 A Well, he cut hay up there. Plus, the hunting club
10 used it.

11 Q Why did they use it?

12 A To go hunting.

13 Q Okay. As far as you know, that's the only road they
14 used to get to Mr. Buyck's property, the hunt club?

15 A No. They used the river road, too.

16 Q All right. Is -- can you think of any reason why
17 they'd use one road one day and another road the next day?

18 A Sure. They got tree stands on -- on the hayfield;
19 they got tree stands down on the river. So, they got two
20 different directions to go.

21 Q All right. But of course, you could -- once you got
22 on Mr. Buyck's property, no matter where you got on it, you
23 could get to all those stands, couldn't you?

24 A Not that -- I don't know.

25 Q Don't know?

1 A Y'all got -- you've got that crooked road drawn [sic]
2 up in there. I've never been on it, so I don't have any
3 idea about that road past the hayfield.

4 Q Okay. I'll just ask a very general question. Once
5 they got on his property -- wherever the stands were to do
6 deer hunting, once you got on his property, it doesn't
7 matter where you got on his property, you could get to
8 those stands if you're a hunter, right?

9 A I guess if you want to walk a couple of miles, yeah,
10 you probably could. Yeah.

11 Q But you could use all-terrain vehicles and other type
12 vehicles?

13 A I have no idea how -- if that's swamp, no, you
14 probably couldn't use them.

15 Q Okay.

16 A I don't know.

17 Q All right. And you know Mr. Buyck very, very well,
18 correct?

19 A Yes, I do.

20 Q All right. And he's -- you'd even call him a dear
21 friend, right?

22 A Yes, I would.

23 Q Okay. So, the reason you never objected or complained
24 about him using any of these roads -- you got two roads now
25 he's using on your property -- you would have never

1 objected, would you, because y'all are friends?

2 A No. No, I never objected. Brunerdale Hunting Club
3 used to come through my property to go hunting. I never
4 objected about them either. I'm a -- I'm a good neighbor.

5 Q Right. Good neighbor. So, as far as you're
6 concerned, everybody had permission to go onto your
7 property at anytime.

8 A If hunting club, yes.

9 Q Yeah. Had permission. Okay. All right.

10 MR. BOOTH: That's all I have, Mr. Nickells. Again,
11 thanks for picking up that mic. It made it a lot better.
12 You can reattach it now.

13 THE COURT: All right. Re-direct?

14 RE-DIRECT EXAMINATION BY MR. ENGLISH:

15 Q Yeah. Stay -- stay right there for just -- that's why
16 I jumped up here. Because I knew ---

17 A I may leave.

18 Q Mr. Nickells, you testified earlier -- I'll ask you
19 again: Did you believe that you could stop Mr. Buyck from
20 going across that Red Road?

21 A No.

22 Q Did you believe he had the right to use it?

23 A Yes.

24 Q Okay. So, was -- was it really that you were giving
25 him permission, or could you not have stopped him?

1 A Well, let's put it this way, I don't think I could
2 stop him by law, because the road's been open for over 20
3 years, because I -- I've already heard that law before.

4 Plus, he had the right way before I moved out there.
5 So, you know, that's the way I feel about it.

6 Q Thank you, sir.

7 MR. BOOTH: Nothing -- nothing, Your Honor --

8 THE COURT: Very well.

9 MR. BOOTH: -- more from me.

10 THE COURT: And is this witness free to leave?

11 MR. ENGLISH: Yes, ma'am.

12 THE COURT: Very well.

13 MR. BOOTH: Yes, ma'am.

14 THE COURT: Thank you. You may come down.

15 ((The witness retires from the stand.))

16 THE COURT: Call your next witness, please.

17 MR. ENGLISH: Jack Brady.

18 THE COURT: Very well. Yes, sir.

19 ((The witness approaches the stand.))

20 JACK RUDOLPH BRADY, having been
21 first duly sworn, testifies as follows:

22 CLERK OF COURT: And would you state your full name
23 for the record, please.

24 THE WITNESS: Jack Rudolph Brady.

25 CLERK OF COURT: Okay. Have a seat.

1 THE COURT REPORTER: Middle name? I'm sorry.

2 THE WITNESS: Pardon me?

3 THE COURT REPORTER: Your middle name again?

4 THE WITNESS: Rudolph.

5 THE COURT REPORTER: Rudolph.

6 THE WITNESS: Hi, Judge.

7 THE COURT: How are you? How are you? And Brady is
8 B-r-a-d-y?

9 CLERK OF COURT: Right.

10 THE WITNESS: One "d."

11 THE COURT: One "d."

12 MR. BOOTH: I think Mr. Nickells -- doesn't he have
13 two "l"s in his name?

14 MR. ENGLISH: Right.

15 MR. BOOTH: Yes.

16 THE COURT: Very well. Your witness.

17 MR. ENGLISH: Thank you, ma'am.

18 DIRECT EXAMINATION BY MR. ENGLISH:

19 Q Mr. -- Mr. Brady --

20 A Yes, sir.

21 Q -- could you state your name again just so everybody
22 can hear it?

23 A Jack Rudolph Brady.

24 Q Okay. And ---

25 THE WITNESS: Excuse me.

1 THE COURT: You went from "Braddy" to "Brady."

2 MR. ENGLISH: I thought it was "Braddy." Pete --
3 Peter was very adamant that it was "Braddy" and not
4 "Brady."

5 THE WITNESS: Okay. "Braddy."

6 MR. ENGLISH: If you say "Brady," I'll call you Mr.
7 "Brady."

8 THE COURT: Well, see now let me tell you. When you
9 said there's one "d" instead of two "d"s, Braddy is a Pee
10 Dee name. So, I -- you know, I -- so, when there was one
11 "d," I knew -- I believed it to be "Brady" and not
12 "Braddy." And boy, you messed me up.

13 MR. ENGLISH: I would have thought that, too. In
14 fact, there are some Braddys on the Confederate Memorial
15 down there. So, with two "d"s.

16 THE WITNESS: No. The one "d" is mine.

17 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

18 Q Mr. Brady --

19 A Yes, sir.

20 Q -- how old are you?

21 A I'm 80 years old.

22 Q 80. What's your date of birth?

23 A May the 1st, 1930.

24 Q 1930. Okay. And are you retired now?

25 A More or less.

1 Q Okay. What did you do?

2 A Farmed.

3 Q Where -- you from -- where are you from?

4 A Calhoun County, Saint Matthews.

5 Q Okay. And do you know ---

6 THE COURT: From where now? I'm having trouble.

7 MR. BOOTH: I lost him on that one answer.

8 THE COURT: All right.

9 MR. ENGLISH: Make it a little bit slower.

10 THE COURT: It's not you. The acoustics in this
11 courtroom, as magnificent as it is -- it's one of the most
12 beautiful courtrooms anywhere in the country, but the
13 acoustics are tough.

14 THE WITNESS: Okay.

15 MR. ENGLISH: I'll try to do better, too.

16 THE WITNESS: All right. Here we go.

17 THE COURT: Now, that was perfect. See now, that was
18 like a sound check, too, you know. Go ahead, Mr. English.

19 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

20 Q You testified that you were -- you're a farmer.

21 A Correct.

22 Q Okay. Here in Calhoun County.

23 A Correct.

24 Q All right, sir. And -- now, where do you -- you still
25 own -- own property?

1 A Oh, yeah.

2 Q Where all do you own property?

3 A Mostly on the Congaree River like Buyck.

4 Q Do you own any property near ---

5 A No.

6 Q --- Mr. Buyck?

7 A It's on up -- up the river, north of me.

8 Q Okay. All right. Do you know -- do you know Peter
9 Buyck?

10 A Oh, yeah. Been knowing him all my life and his dad.
11 Great people.

12 MR. BOOTH: That was not responsive, but I'll still
13 accept it. I won't object to ---

14 THE COURT: I understand -- I'm with you completely,
15 Mr. Booth.

16 DIRECT EXAMINATION BY MR. ENGLISH (CONTINUES):

17 Q So, you -- you said you knew the plaintiff, Mr. ---

18 A Oh, yes, sir.

19 Q --- Peter's father?

20 A Correct.

21 Q Okay. How long did you know Peter's father?

22 A Since I was just a kid.

23 Q Did y'all do things socially together?

24 A He would get my dad and I to come down with our dogs
25 and run hogs out of his corn field right on the river. And

1 my dad's been deceased 35 years. And my dad and I went
2 down there several years before he deceased. So, I know
3 the road's been there for over 40 years.

4 Q Okay.

5 A I know that.

6 Q We'll get to that. Okay.

7 So, you're talking about you and your father --

8 A Correct.

9 Q -- visited Mr. Buyck's property on the Congaree River.

10 A Correct.

11 Q Okay. Do you see -- does -- does this Exhibit No. 5,
12 Plaintiff's -- does this aerial photo look familiar to you
13 at all?

14 A Yeah. Yeah.

15 Q Okay. It's got the river to the north at the top.

16 A Correct.

17 Q Okay. All right. Now -- so, that's interesting to me
18 what you just said about your visits to the property. Tell
19 -- what happened -- why would Mr. Buyck, Sr., call you? To
20 help him ---

21 A They had a lot of corn on the river, planted corn
22 fields. And these hogs would come across the river and
23 just demolish his corn.

24 We had hog dogs. We'd catch them, bay them. And we'd
25 go down with our dogs, and we'd help him get rid of them.

1 Q So, those hogs would swim across the river?

2 A Oh, yes, sir. In a heart beat. Wild hogs, most of
3 them.

4 Q Okay. So, what would happen -- so, you would get a
5 phone -- you'd get a call or a message from --

6 A Right. Correct.

7 Q -- Mr. Buyck, Sr.?

8 A Correct.

9 Q Then -- then what would you do?

10 A We'd make plans and an appointment and meet him down
11 there. We would get some of those hogs, bring our dogs.
12 We'd catch them, shoot them, any way we could get rid of
13 them.

14 Q Okay. And how did you get to the -- how did you get
15 to Mr. Buyck's property?

16 A I never knew but one road, only time I -- I ever seen
17 or heard or known, one road, the Red Road.

18 Q The Red Road.

19 A Correct.

20 Q Okay. And when -- how far back would you go to say
21 that -- that you'd clean -- we'll just say that you cleaned
22 these hogs out? When was that?

23 A Oh, in the mid '70s.

24 Q Okay.

25 A In the '70s.

1 Q And you said your father died when?

2 A It was in '75.

3 Q Okay. Did you ever visit the property before the mid
4 '70s?

5 A Yeah. Sure did. Sure did.

6 Q What else -- other than the hogs, what else might you
7 do on his property?

8 A We'd just go down, visited. Because sometimes they
9 have difficulties with the crops on the river, and I was on
10 the river also. And they'd have similar difficulties we
11 did. And we'd share our thoughts on how to destroy
12 different type of weeds in our corn. I'd visit them, he'd
13 visit us.

14 Q Okay. All right. And you traveled one way?

15 A It's the onliest [phonetic] way I ever saw.

16 Q Okay. If you know, do you know if anybody ever
17 challenged Mr. Buyck's right to use the Red Road?

18 A I've never heard of such a thing. Never. Ever. I
19 didn't think that was possible.

20 MR. ENGLISH: Okay. One moment, please?

21 THE COURT: Okay.

22 (Brief pause.)

23 Q Mr. Brady, do you have -- can you -- do you know of --
24 of the frequency that -- that either Mr. Buyck or Mr.

25 Buyck's father might have used the Red Road, how often they

1 used it?

2 A What I know of, they'd use -- always they used that.
3 Always have.

4 Q Okay.

5 A Could I tell of a small incident concerning me and my
6 neighbor?

7 Q Well --

8 A Concerning something similar to this.

9 Q Is it about this?

10 A Not this.

11 Q Well --

12 A It referred a lot to this.

13 Q Let's -- I would love to hear it, but -- and I think
14 the Judge would love to hear it. But maybe we'll -- maybe
15 we can hear that out -- outside of -- when you're not under
16 oath.

17 A Good.

18 MR. ENGLISH: All right. Well, I appreciate your
19 time. Thank you. Mr. -- Mr. Booth might have some
20 questions.

21 THE COURT: Mr. Booth, cross-examination.

22 MR. BOOTH: Yes.

23 CROSS-EXAMINATION BY MR. BOOTH:

24 Q Yes. Mr. Brady. Mr. Brady, right?

25 A Brady.

1 Q Brady. Yeah.

2 Are you aware of the fact that for the last two years
3 hunting -- the hunters have not used the Red Road to get to
4 hunting sites within Mr. Buyck's property?

5 A I haven't been down in the last two years, so I -- I
6 wouldn't know.

7 Q So, would it surprise you to know that there's a new
8 road that's being used by the hunters to get to the river?

9 A I hadn't heard nothing like that.

10 Q You ---

11 A I ---

12 Q --- you don't now.

13 A --- I don't know that. I don't know about that.

14 Q Gotcha. Gotcha. So, really my point is, every time
15 you went down the Red Road, that's where either Mr. Buyck
16 or his father told you to travel, correct?

17 A Correct.

18 Q You didn't really take the time to explore any other
19 routes to get to the river, correct?

20 A Oh, no. I go where he specified me go.

21 Q Didn't need to. You had -- they told you go down this
22 road to get to the river, correct?

23 A As far as I knew, that was the onliest [phonetic] road
24 he had.

25 Q But you're wrong about that. You've heard testimony.

1 There is another road that will get you to where you -- you
2 would help him with the hog. There is another road.

3 You've heard that today, right?

4 A I didn't know it then.

5 Q Right. I realize you didn't know it back then. But
6 today you do know it.

7 A I heard that today.

8 Q Right. But you do -- do you have any reason not to
9 believe there's another way to get to the areas that you
10 used to get to, to do the hogs?

11 A I don't know it. I don't -- I didn't know there was
12 another road. Wasn't a reason to know it.

13 Q Yes, sir. I know in the past you had no reason to
14 explore any other roads.

15 A No.

16 Q Okay. And you don't even know today whether there is
17 another road besides the Red Road; is that what you've been
18 saying?

19 A Correct.

20 Q Okay. So, it wouldn't surprise you, one way or the
21 other, if there's another road that could have been used by
22 you back in the '70s, other than the Red Road.

23 A But by then everybody had -- probably have a little
24 small secondary road -- little two-rut road somewhere down
25 through the woods. I didn't know anything about that.

1 Q I understand that. You followed where the property
2 owner told you to travel, correct?

3 A Right.

4 Q All right. Let me just ask you: Do you know about
5 ownership of land along the route of that road, the Red
6 Road, to the river?

7 A As far as my knowledge, I thought Buyck owned it all
8 the way from the -- the paved road all the way to the
9 river.

10 Q Again, Mike is -- you said, as far as you knew you're
11 talking about Mike Buyck, or I missed that name you just
12 said?

13 A The public road, the paved road. Fort Motte Road.

14 Q Yes, sir. But you said, "as far as I knew so-and-so
15 owned ---

16 A Buyck.

17 Q Buyck. You did say "Buyck" instead of ---

18 A Buyck owns from the Fort Motte Road all the way up to
19 the river as far as I knew.

20 Q All right. Now, again, just to make sure I understand
21 your use, you mentioned going to kill hogs.

22 A Right.

23 Q What other -- would you call that recreational use or
24 would you that business use?

25 A That's more or less business. You ever done any

1 farming, you'd know what I mean.

2 Q Right. Gotcha.

3 A For they'll destroy your property.

4 Q Right. And you did that about how many times in the
5 past, a couple of times?

6 A I don't know.

7 Q Three or four times?

8 A Numerous of times.

9 Q I'm sorry.

10 A Numerous of times.

11 Q Numerous. Okay. And that's been a long time ago,
12 right?

13 A Good while back.

14 Q Right. Since then, have you been going up and down
15 the Red Road for any purpose other than hogs?

16 A I hadn't been down that road in quite a while.

17 Q All right. Okay.

18 MR. BOOTH: All right. Your Honor, that completes my
19 cross.

20 THE COURT: Very well. Re-direct?

21 MR. ENGLISH: No, Your Honor.

22 THE COURT: And is this witness free to leave?

23 MR. BOOTH: Right.

24 THE COURT: Very well. Thank you, sir.

25 (The witness retires from the stand.)

1 THE COURT: Call your next witness, please.

2 MR. ENGLISH: I call Bobby Martin; Robert Martin.

3 THE COURT: All right.

4 (The witness approaches the stand.)

5 ROBERT CANTY MARTIN, having been
6 first duly sworn, testifies as follows:

7 CLERK OF COURT: And please state your full name for
8 the record.

9 THE WITNESS: My name is Robert Canty Martin.

10 CLERK OF COURT: Martin?

11 THE WITNESS: Martin.

12 CLERK OF COURT: Have a seat.

13 THE COURT REPORTER: Canty? Your middle name is
14 Canty?

15 THE WITNESS: Canty, uh-huh.

16 DIRECT EXAMINATION BY MR. ENGLISH:

17 Q Good afternoon, Mr. Martin. I'm Drew English and I
18 represent Mr. Buyck. Can you hear me okay?

19 A Yeah.

20 Q Okay.

21 A Uh-huh.

22 Q All right. And what's your -- where -- where do you
23 live?

24 A I live in Summerton. Summerton, South Carolina.

25 Q Clarendon County.

1 A That's where I'm from.

2 Q Okay. I'm from Manning. And what -- what business
3 are you in?

4 A We're in the timber business.

5 Q Okay. How long have you been in the timber business?

6 A Ever since the '40s.

7 Q Okay.

8 A With my dad and brothers.

9 Q Now, you're partners with your brothers now?

10 A No. I'm partners with my nephews and sons now.

11 Q Okay. And what's your company called?

12 A Martin Brothers, Incorporated.

13 Q Okay. And you're based there in Summerton?

14 A That's right.

15 Q All right. What kind of logging do you do?

16 A We chip.

17 Q All right.

18 A We cut smaller timber and chip it for paper. And
19 actually got a machine that does everything. And when it
20 gets to the mill, it's ready to be made into paper. It's -
21 - it's a fine chip.

22 Q Okay. All right, sir. And that -- and that's --
23 that's -- so, that's -- that's your primary timber
24 business?

25 A That's right.

1 Q Is that all you do?

2 A That's it.

3 Q Okay. All right. Now, do you know Mr. Buyck?

4 A Yeah, I sure do.

5 Q How do you know Mr. Buyck?

6 A I -- we cut on his land.

7 Q Okay.

8 A Back in there.

9 Q Which land would that be?

10 A We cut on the land that -- where he owns that timber
11 back in there, off that place back in there.

12 Q Near the river?

13 A Near the river. We chip back in there. We chip the
14 small timber out. He had large timber, but we use -- we
15 use the small stuff.

16 Q Okay. You've done that over a period of time, or ...?

17 A Oh, yeah, we've been doing it for years now.

18 Q Remember when the first time you did it was?

19 A In '94.

20 Q In '94?

21 A Uh-huh.

22 Q Okay. Do you have any -- is that the first time you
23 ever went on Mr. Buyck's property?

24 A No. I went years ago. Maybe 40 years ago or more we
25 might have went back in there. Uh-huh.

1 Q Okay. For what purpose?

2 A To -- we load then.

3 Q Now, how does that work? Would y'all buy timber from
4 them?

5 A We'd buy timber, yes.

6 Q How'd you come -- how'd you come to know the Buycks?
7 Now, were you dealing -- let me back up. Were you dealing
8 with Peter Buyck or his father then?

9 A That's probably with his father.

10 Q Okay.

11 A We had a go-between anyway. We had a man to buy the
12 timber for us.

13 Q Did you ever -- did you ever have any conversations
14 with Mr. Buyck ---

15 A I ---

16 Q --- Sr.?

17 A --- I had -- no Sr. I -- I -- well as I can remember
18 though.

19 Q Okay. How about Mr. ---

20 A Peter, there.

21 Q Peter, Jr.?

22 A Uh-huh.

23 Q Okay. All right. So, how long have you known Peter
24 Jr.?

25 A Oh, my gosh. See, Dr. Davis, he married Marie Davis,

1 and I've been knowing Dr. Davis for a long time. So, I got
2 acquainted with Peter, Marie.

3 Q Okay. All right. Does this look familiar to you?

4 A Yeah.

5 Q Okay. Tell me what you see here.

6 A I see ---

7 Q We're looking -- I'm sorry -- at Plaintiff's Exhibit
8 5.

9 A Okay. Over there, where you've got the red, that's
10 the road going to the Fort Motte Highway. And that's the
11 way we came off the highway.

12 Q Okay. Now, where -- you can -- you can step down if
13 you need to. But I'd be interested in knowing where you --
14 where you logged.

15 A We -- we cut back in there when we got to Peter's
16 property back in the swamp --

17 Q Okay.

18 A -- here.

19 Q Back -- so, your chipping operation, how much -- how
20 much acreage might you cut in one time?

21 A Oh, gosh. We'd cut hundreds of acres if we -- if he
22 sold that much, we cut it -- we thinned it.

23 Q Okay. Was there a typical amount of acreage that he
24 would sell to you?

25 A Yeah. He would probably sell a few hundred acres

1 sometime.

2 Q All right.

3 A But he -- he'd -- he had his big timber left. I -- we
4 only cut the small timber out.

5 Q Okay. Now, what kind of equipment do you use for your
6 operation?

7 A We use a big chipper, which manufactures the chips.
8 And it's about -- well, it's not cheap. It's about a 8 or
9 \$900,000 machine. Then you use these machines to cut the
10 timber with. That's a saw head that saws it right off.

11 Q Okay.

12 A And then we have these skidders. We bunch it, they
13 pick it up and bring it to the chipper, and they go from
14 there. See, it's a total tree chipper. You can put
15 everything in it.

16 Q All right. So -- so, you'd chip them on site; is that
17 right?

18 A Right.

19 Q Then you -- how do you get them out? Where -- where
20 do you -- what kind of vehicle takes them -- takes the
21 chips out?

22 A We blow them into the back of a van, a chip van.

23 Q Okay. How big is that?

24 A Oh, it's 40 feet or 42 feet long. And it's -- it can
25 hold 27 tons or more.

1 Q And what pulls it?

2 A A tractor or a truck. A Mac or -- we use Mac truck.

3 Q Okay. All right. And how big is the equipment that
4 actually does the chipping?

5 A Oh, it's a big machine. It's -- it's almost as long
6 as from here to the back of the shop -- back of the
7 courtroom.

8 Q And you carry -- you carry it on a trailer?

9 A No, sir. It's -- we have to use a big army truck that
10 -- get around with. And this has three -- three axles
11 under it. We get on the highway with it, too.

12 Q Okay. All right. Okay. And again, if you need to
13 come down here and point, that's fine.

14 A Okay.

15 Q But I'm trying to figure out where -- if you know, if
16 you can recall looking at this -- where your logging -- the
17 chipping operations would happen?

18 A Yeah. Well, we -- we didn't go too far back in there
19 as well as I can remember. See, we did this about six
20 years ago. And -- back in that swamp back in there and --

21 Q All right. So now, six years ago --

22 A Yeah.

23 Q -- okay. You did it for Peter?

24 A Uh-huh.

25 Q Okay. How did you get back to Peter's property?

1 A We used the road there from the highway all the way
2 back.

3 Q Do you see that road on this --

4 A Yeah.

5 Q -- Exhibit 5?

6 A Yeah.

7 Q Okay. How -- how does the road appear on Exhibit 5?

8 A It's a -- went on back.

9 Q Okay. Come point to it for me.

10 A Okay.

11 (The witness complies.)

12 THE COURT: There you go.

13 Q I'm sorry. Say it -- the court reporter needs to hear
14 it.

15 A (Indicates) The red road. We used this road that came
16 in off the highway and went right on back. It was the
17 easiest way to get in here. And that's the road we used.
18 That's the one they intended for us to use to go in.

19 Q Who's "they"?

20 A We didn't -- well, the consultant is here, and it is -
21 - we used the road to get to his property. That was the
22 easiest way to get in there. That heavy equipment, you
23 have to have a fairly good road. And it -- it's heavy.

24 In fact, we had one trailer to come loose and turn
25 over while we were cutting that tract of land.

1 But we used that road, because it's the best one to
2 get out. When you're in our business, you want to use the
3 easiest way to get out.

4 Q All right. Did you have any problems using the Red
5 Road?

6 A I had no problem.

7 Q Anybody told you not -- anybody told you not to use
8 it?

9 A No, no. No one mentioned that whatsoever.

10 Q All right. And you say that was about six years ago?

11 A Six or -- six years ago.

12 Q It was in this century?

13 A Pardon?

14 Q It was after 2000?

15 A Oh, yeah. After 2000.

16 Q Now, you -- I think you mentioned earlier that -- that
17 -- that you might have timbered -- had some timbering
18 activities on -- on the Buyck property 40 years ago?

19 A Probably 40-some years ago.

20 Q Okay. Are you sure that -- are you sure that you had
21 -- that you timbered --

22 A Well, we ---

23 Q -- earlier than '90 -- earlier than six years ago?

24 A --- we -- not only that, we used other roads also on
25 the Fort Motte side. But we never had a problem getting to

1 the timber, I mean, on either side.

2 They always -- everybody seemed to be in pretty good
3 with they neighbors. They got along real good. And so,
4 that's why we didn't have a problem, I guess.

5 Q Okay. So, when you were doing your activities six
6 years ago, you were working -- was it James Simmons? Is
7 that who you were working with?

8 A Yeah. James was handling the tract of timber.

9 Q Okay. All right. And do you ever log any -- anything
10 over from the other side of the river?

11 A Oh, yeah. We -- we used high-line skidders, that's
12 cable, to go across the other side.

13 Q Okay.

14 A They logged the other side, and we brought it across
15 the river. And we used -- we moved a good bit of timber
16 that way, bring it across the river.

17 Q Okay. So, it would be cut across the river.

18 A And ---

19 Q Then you had a machine --

20 A I had cables running across. And they would hook the
21 logs and I'd bring them back.

22 Q Across the river?

23 A In fact, I ran the machine to bring them over.

24 Q Okay. And how did you get -- so, when was that?

25 A That was back in, well, '69 or '70. '70 is when my

1 brother got killed. He got killed over there on the Bible
2 side. It was 1970. He got killed with a limb.

3 Q Sorry about that. Okay. So, what would be the
4 process for -- what -- you -- you dragged the -- the log
5 across the river.

6 A We ---

7 Q And then -- then what -- what would happen then?

8 A --- we had crawler tractors and skidders on the other
9 side cutting the timber and bringing it to the bank --
10 river bank. And we had this cable that would go back and
11 forth to bring the loads across. You would hook them. It
12 would -- every two and a half minutes I could bring a load
13 across.

14 Q Okay. And so, when a load was ready to go --

15 A They would bring it to a loader. They would buck it
16 up, because it would be long stuff. They'd buck it up, and
17 we'd separate the species, then take them to the mill.

18 Q Okay. How would you get -- how would you get back to
19 Fort Motte Road?

20 A Pardon?

21 Q How would you get to the paved -- how would you get
22 out of the property to the paved road?

23 A Use the road.

24 Q Which one?

25 A The same -- looks like the same one to me.

1 Q What color is it?

2 A The red.

3 Q Okay. All right. Okay.

4 MR. ENGLISH: Nothing -- I don't have anymore
5 questions. If you'd answer any questions Mr. Booth might
6 have.

7 THE COURT: Cross-examination.

8 MR. BOOTH: My I have a five minute break?

9 THE COURT: Indeed you may.

10 MR. BOOTH: Just five minutes and I'll finish up.

11 THE COURT: We'll have -- shall we take 10?

12 MR. BOOTH: That will be even better.

13 THE COURT: We'll take a 10 minute break.

14 (To the witness) Just don't discuss your testimony
15 with anyone during our break.

16 THE WITNESS: No, I won't. Thank you.

17 THE COURT: Very well.

18 (Off the record at 3:11 p.m.)

19 (On the record at 3:25 p.m.)

20 THE COURT: Thank you. Thank you so much, and please
21 be seated. All right.

22 Come on -- there you go, Mr. Martin. Come on back
23 around.

24 (The witness re-takes the stand.)

25 THE COURT: Your witness.

1 MR. BOOTH: Thank you, Your Honor.

2 CROSS-EXAMINATION BY MR. BOOTH:

3 Q Mr. Martin, again, my name is Bill Booth. I'm a
4 lawyer representing William Jackson. Have you -- have you
5 ever met Mr. Jackson or his wife Barbara?

6 A I don't know. I don't think so.

7 Q All right. And again your business does logging work
8 for various landowners, correct?

9 A Right.

10 Q Okay. And in the particular case of the cutting that
11 you did approximately 2003/2004, you said everything was
12 arranged through an intermediary. You -- you mentioned the
13 intermediary's name as Simmons.

14 A Simmons, yeah.

15 Q James Simmons?

16 A Yeah. I believe he was -- he's the consultant,
17 forester.

18 Q Right.

19 A He used to -- he handles the land for the landowner --
20 the timber for the landowner.

21 Q So, in -- back -- I know you knew Mr. Buyck before.
22 You -- I think you said through his wife, I believe.

23 But the particular cutting, did you personally come
24 here during that cutting that occurred roughly in '03 or
25 '04, in this century as Mr. English said?

1 A (No audible response.)

2 Q Did you personally come to that cutting; you,
3 yourself?

4 A Yeah, I was there. Uh-huh.

5 Q Okay. And what -- what did you do while you were down
6 here?

7 A While I was there?

8 Q Yes, sir.

9 A We -- I went from different parts and tended to
10 different things with the labor. Then see that the
11 machines was kept up and running.

12 Q Okay. Now, as far as the route -- the road, that
13 we've been talking about, the Red Road.

14 A Uh-huh.

15 Q Who told you to travel that route?

16 A We just took it for granted that that was the best
17 road to go in. I'm sure that's what the landowner and --
18 and Mr. Simmons wanted us to use. And it was the easiest
19 way to come out, so that's the road we used.

20 Q But it sounds like you didn't try any other road or
21 nobody suggested a different route other than that Red
22 Road; is that what you're saying?

23 A We didn't -- we didn't think about any other road but
24 the best one to get in there at the time.

25 Q Yeah. But are you giving me an opinion that the road

1 that you traveled was the best road to get back there? Is
2 that your opinion, it was the best road?

3 A I'm sure it was.

4 Q Now, we got to be careful ---

5 A Or we wouldn't -- we wouldn't have used it.

6 Q Okay. But ---

7 A It was a good -- it was a pretty good road.

8 Q You know, I'm a lawyer. I don't like to say things
9 like "best" and "only." I'd have to be able ---

10 A Okay.

11 Q --- to equivocate it, I guess is the word.

12 A Uh-huh.

13 Q So really, what you call the "best road" is kind of
14 helping Mr. Buyck out to call it the best road, isn't it?

15 A It's the best road for me to use to bring that timber
16 out.

17 Q But you really don't know -- you haven't traveled any
18 other roads?

19 A No, I didn't travel any other road at that time. No.

20 Q So, as far as you know, the best road may actually be
21 a different route to get over to the river? Might be,
22 right? Could be?

23 A It might be.

24 Q Yeah, that's right. You know, you felt like that was
25 the best road at the time.

1 A Uh-huh.

2 Q But again, Mr. Simmons or Mr. Buyck or both told you
3 to travel this (indicates.) And any description of the
4 road as being the best road really came from them, right?

5 A Right.

6 Q Right. So, you -- you, again, were here (indicates)
7 but you really didn't explore any other roads.

8 About how many days do you think you were on this ---

9 A Oh, we were there a few weeks. Maybe two to -- two to
10 three weeks. Uh-huh. We move a lot of timber at the time.

11 Q Now, I'm going to ask you the same question I've asked
12 the last three witnesses: Did you personally know who
13 owned the land on the route that you traveled to get to the
14 river, the Red Road? Did you personally know who owned the
15 land?

16 A I did not.

17 Q Okay.

18 A I did not know who owned that property where -- where
19 it is now.

20 Q Now, I heard earlier about getting legal access to do
21 timber growing. Is that your job as a logger, or is that
22 the job of the consultant to make sure you had legal
23 access?

24 A I think the consultant and the logger -- sometimes the
25 logger handles it with the landowner.

1 Q Right. And this ---

2 A If we -- we need a new route or something, we'll move
3 on a tract that say -- say a month ago, we moved on a
4 tract, we got a big rain. But it was better to use another
5 road. And ---

6 Q But ---

7 A --- we went to the landowner and he said, "okay" ---

8 Q But ---

9 A --- "you can use my road."

10 Q But there are occasions you've experienced where the
11 landowner -- you couldn't get to that landowner's land
12 without going over somebody else's land. That happens
13 occasionally, doesn't it?

14 A Uh-huh.

15 Q Isn't that right?

16 A Right.

17 Q Yes?

18 A You have to cross over.

19 Q Sometimes?

20 A Sometimes.

21 Q Okay.

22 A Uh-huh.

23 Q All right. And to do that, you have to have the legal
24 rights to go over somebody's land, don't you?

25 A Yeah.

1 Q The legal right ---

2 A I guess.

3 Q You guess? Okay.

4 A Well, what I'm talking about -- let me tell you. The
5 landowner that -- the landowner, if he's in good standings
6 with his neighbor, they can usually cross it. Then that's
7 not my problem. I just use it.

8 MR. BOOTH: All right. Okay. Well, thank you again
9 for letting me have that break.

10 THE WITNESS: Uh-huh.

11 MR. BOOTH: And I'm through with my cross.

12 THE COURT: Re-direct?

13 RE-DIRECT EXAMINATION BY MR. ENGLISH:

14 Q Mr. Martin, a couple of more questions. Looking at
15 Plaintiff's Exhibit 4, were you familiar with the Red Road?

16 A Yeah.

17 Q Had you used the Red Road before?

18 A I -- probably years ago.

19 Q When you're ---

20 A Probably. Probably.

21 Q -- when you were taking timber from across the river?

22 A Yeah. Probably.

23 Q Okay.

24 A Uh-huh.

25 Q Did you have any reason to believe you couldn't use

1 the Red Road?

2 A No.

3 MR. ENGLISH: Thank you.

4 THE COURT: Re-cross?

5 MR. BOOTH: Nothing -- nothing further from me.

6 THE COURT: Is this witness free to leave?

7 MR. ENGLISH: Yes.

8 THE COURT: Yes. You are free to go.

9 THE WITNESS: Okay.

10 THE COURT: Thank you, sir.

11 (The witness retires from the stand.)

12 THE COURT: Call your next witness, please.

13 MR. ENGLISH: I call Brock Conrad, please.

14 THE COURT: Sure.

15 (The witness approaches the stand.)

16 THE COURT: Yes, sir. You bring your water right with
17 you. I've got my bottle of water. You bring your's right
18 on. Yes, sir. That's fine. That's fine.

19 They're going to swear you in, Mr. Conroy [sic.]

20 THE WITNESS: Okay.

21 WRISTON BROCK CONRAD, JR., having
22 been first duly sworn, testifies as follows:

23 CLERK OF COURT: And state your full name for the
24 record.

25 THE WITNESS: My name is Wriston Brock Conrad, Jr.

1 CLERK OF COURT: Okay. Thank you. Be seated.

2 THE COURT REPORTER: Can you spell your first name?

3 THE WITNESS: W-r-i-s-t-o-n.

4 THE COURT: And when you are situated --

5 THE WITNESS: Okay.

6 THE COURT: -- there you go. You just let us know.

7 Thank you, Mr. English. Your witness.

8 DIRECT EXAMINATION BY MR. ENGLISH:

9 Q Good afternoon, Mr. Conrad. I'm -- I'm Drew English.
10 I represent Mr. Buyck. I just want a couple of background
11 items.

12 You've given us your name. Where -- where do you
13 live, sir?

14 A I live at 201 Old Woodlands Road in Columbia, South
15 Carolina.

16 Q All right. And give us a little bit of your -- your -
17 - your employment background?

18 A I was a -- I became a wildlife biologist with South
19 Carolina Wildlife in 1965; and I became Chief of Game in
20 1970; and then I became Director of Wildlife, the
21 Freshwater Fishery Division later.

22 Q Okay. You're retired now?

23 A I'm retired.

24 Q When did you retire?

25 A In 1999.

1 Q Okay. All right. And where'd you grow up?

2 A I grew up in Orangeburg.

3 Q Okay. One county over?

4 A (No verbal response.)

5 Q Okay.

6 THE COURT: But still in the First Judicial Circuit.

7 MR. ENGLISH: Still in the First Circuit; that's
8 right.

9 THE COURT: Exactly.

10 Q Okay. Now, do you know the plaintiff, Peter Buyck?

11 A Yes.

12 Q And how do you know Mr. Buyck?

13 A Well, I guess the first time I know that I met him was
14 in -- I went with Billy Buyck, who was a college classmate
15 of mine, out to his house to go fishing. That was in about
16 1955.

17 So -- and he was -- he was probably 8 or 9, maybe 10
18 years old at that time. But he was there and I met him
19 then. And I might have even known him before that, because
20 Orangeburg and Saint Matthews played in sports back and
21 forth. I don't remember meeting him prior to that time.

22 Q Is that about when you were in high school?

23 A Well, when -- I was in -- no. I was in college at
24 Carolina in probably 1955 or '56. And I went with his
25 cousin who was from Saint Matthews, Billy Buyck, out to his

1 house to go fishing.

2 Q Peter -- Peter's house?

3 A Peter's house, yeah.

4 Q Okay. Okay. Did -- okay. Did you know -- did you
5 know Peter's father?

6 A Yeah, I knew Peter's father also.

7 Q How -- how did you know Peter's father?

8 A Well, I knew him mainly in -- in 19 -- in the early
9 1970s, the Wildlife Department started a program of
10 harvesting doe deer. And that was a controversial program,
11 because it had never been done before. And there'd been a
12 buck law in South Carolina. And so, a Wildlife biologist
13 was required to visit each site, to determine the need for
14 -- for harvest, and then doe tags would be issues.

15 And I worked with two different game wardens in
16 Calhoun County. Monroe Sykes lived near Peter and was
17 familiar with the land. And I -- I went with him out and
18 we went to see -- talk with Mr. Buyck. And then Monroe
19 carried me on into the -- look at the Buyck property.

20 Q Okay. So, the Buyck property was subject to some --
21 what was it subject to? What was the -- it was subject to
22 this program or subject to ---

23 A Yeah. They were subject to being issued doe tags to
24 harvest whatever number of tags that we issued on that
25 particular property.

1 Q Okay.

2 A Mr. Buyck was a big farmer. He had a lot of crops,
3 and he had a lot of crop damage. That's why the program
4 was started. So, I -- I met him then, and -- and then went
5 on down and looked at his property with Monroe Sykes.

6 Q Okay. And when you say Mr. Buyck, are you talking
7 about Mr. Buyck, Sr.?

8 A Peter Buyck, Senior.

9 Q Okay. Peter's father?

10 A Right. Peter's father.

11 Q Okay. All right. Now -- so, you visited -- this was
12 when Mr. Buyck, Sr. owned property. And do you see the
13 property that you visited?

14 A Yes.

15 Q I just -- for your reference this is -- I put on the
16 easel Plaintiff's Exhibit 5.

17 A Right.

18 Q Does that look familiar to you?

19 A Yeah, I'm familiar with that property.

20 Q Okay. Is that the property ---

21 A Yeah.

22 Q --- that you ---

23 A That's the property -- part of the property we visited
24 around his house where he had agricultural fields as wells
25 as down in the swamp --

1 Q Okay.

2 A -- where he had agricultural fields planted.

3 Q Okay. All right. And do you recall how you accessed
4 Mr. Buyck, Sr.'s property?

5 A Right. I -- I rode again with Conservation Officer or
6 Game Warden, Monroe Sykes. And we -- we went -- we took
7 the right fork in -- in the road, and I went straight down
8 to the river property where he had crops planted at that
9 time.

10 Q Okay. All right. You said -- okay. So, do you see
11 that -- do you see the road -- the route that you took
12 marked on that -- on Exhibit 5?

13 A Yes. That would be the -- I guess, the Red Road is
14 what it's been referred to.

15 Q Okay. All right. So, what was the purpose -- so, did
16 you go count the doe? Is that what you would do or ---

17 A No. You would just look at the numbers of tracks in
18 the road and the briars out through the woods and the
19 browsing on the -- on the crops. Like soybeans, deer are
20 fond of them, and they will, in some cases, destroy parts
21 of fields or whole fields if they're small fields, so...

22 Q All right. So -- so, this was -- you were dealing
23 with Monroe Sykes, who was a game warden; is that right?

24 A I was dealing with ---

25 Q Did you say Monroe Sykes was a game warden?

1 A Yeah, Monroe Sykes was a game warden. He was familiar
2 with all the property and all the landowners in that part
3 of Calhoun County.

4 Q And he took you --

5 A He took me down there.

6 Q Up the -- up the Red Road?

7 A Uh-huh.

8 Q Okay.

9 A Yes.

10 Q All right. Now, did he ever -- I'm interested in
11 knowing what visits you might have had to Mr. Buyck's
12 property, maybe with Peter. Did you ever have any visits
13 with Peter?

14 A Well later, when I was interested in buying this 203
15 acre tract of land when Mike Nickells had it for sale, I
16 talked with Peter about it then. I think we went down in
17 there at that time just to look at the pond and the
18 property.

19 Q Okay. Do you remember -- was that -- so, that was
20 when? That was later -- much later?

21 A Yeah, that was probably -- let's see, it was six --
22 about five or six years prior to the year 2000.

23 Q So, you -- at one point you -- you considered buying
24 the property from ---

25 A Yeah.

1 Q --- Michael ---

2 A His property was for sale. It was 203 acres and I
3 couldn't afford it. I looked at it, but I just could not
4 afford it at the time. And so, I didn't do anymore with
5 it.

6 Q Okay. All right. Then what happened?

7 A Well, then later, I -- I guess, in '99, the property -
8 - I had -- I did a lot of hunting in Calhoun County. And I
9 had several friends that I -- I had talked with about -- I
10 said, "If you find a small piece of property that's for
11 sale with a pond, I mean, I'd be interesting in hearing
12 about it."

13 So, I talked with Peter about that. I saw him from
14 time to time when I was down in that area. And he told me
15 that Dr. Cosone had -- his property was for sale. And
16 growing up in Orangeburg I knew Dr. Cosone. So, I called -
17 - I called him and asked him about it. He said, "Yeah," he
18 -- he would be interested in selling it.

19 So, then I said, "Well, can you give me some time. I
20 -- I -- I need to find a partner to go into -- to purchase
21 the property with me." And I -- and I asked him, said, "If
22 you get somebody that's really interested in it, how about
23 calling me back so I can maybe make some -- make an offer
24 at that time."

25 So anyway, I -- I started looking for a partner. And

1 I contact ---

2 Q If I could just stop you just so we ---

3 A Okay.

4 Q --- make sure we know what we're talking about.

5 A Okay.

6 Q You're talking about -- I'm looking at Exhibit 4.
7 You're talking about the yellow property?

8 A Yeah. The 203 acre tract land.

9 Q That was -- I think Mike Nickells testified earlier
10 here that he owned it.

11 A Yeah. Yeah, Mike Nickells owned it, and I looked at
12 it, but -- and Dr. Cosone bought it.

13 Q Okay. All right. Okay. Go ahead.

14 A Okay. And so, anyway I contacted a lot of -- several
15 friends that I knew that would be -- may be interested in
16 that kind of property, but none of them were. And I -- one
17 of my friends said, "Well, I know somebody who might be
18 interested."

19 So, he had William Jackson to call me. And we got
20 together and talked about it, and went down to look at the
21 property. And he -- he was interested in it.

22 That first visit, we rode both roads. I showed him
23 where both roads went. And I think I had permission from
24 Peter to ride to the river. So, I -- I carried him -- I
25 think we probably went at some point. I'm not sure if it

1 was that day or another day.

2 But anyway, at some point we traveled both of those
3 roads to get down -- down to the river.

4 And I -- I explained the situation of the road, that I
5 had looked at a deed that, I guess, Mike Nickells, when he
6 sold it to Dr. Cosone had the deed referred to an easement
7 across about a hundred yards stretch of road adjacent to
8 Fort Motte Road that Mr. Stuck and Mrs. Pedings owned. And
9 we had an easement to get across their land. And then we
10 also had an easement to get across Peter's 200 acre tract
11 of land, which he owned on both sides of the road, and ends
12 up -- and -- and then went into our land.

13 I explained to William that -- that -- that Peter had
14 an easement to get across our road, and it was referred to
15 in the deed. So, I knew his family had been using it, and
16 I had myself used it.

17 Q Okay. Which -- when you're talking about Peter's
18 road, which color road are you talking about?

19 A Well, the -- the road -- both roads, after you get
20 past our property, belong to Peter. The road that goes to
21 the hayfield belongs to him, and the -- and the road -- the
22 two roads that went to our property is -- is what I told
23 William that we had -- that Peter had an access. And he
24 had given us an access by easement, and we -- and the deed
25 required us to give him an easement.

1 I also knew that it had been used by his family for
2 all these years and I -- it was my understanding in the
3 law, that you could not -- could not close a road that had
4 been used for that long of a period of time.

5 Q When you're talking about you understood Peter and his
6 family used the road, which -- which road are you talking
7 about?

8 A Well, it was the road to the -- to the right fork, the
9 Red Road. I knew his family, that was the main road they
10 used because of the farming operations down in the bottom
11 there and also the duck pond.

12 And when I went in there in the '70s, Mr. -- Mr.
13 Buyck, Sr., had okra planted down in the bottom. And then
14 -- and Peter had a -- he continued to do that. He -- it
15 was his kind of recreation, I think. He enjoyed doing
16 that. And he went down there almost every day in the -- in
17 the summer when that okra was growing. So anyway, he -- I
18 knew that he used it on a regular basis.

19 Q Again, which -- which road?

20 A The Red Road.

21 Q The Red Road. And so ---

22 A Right.

23 Q --- he -- he used the red -- you're saying -- I just
24 want to make sure that I understand what you're saying:

25 A Right. I've ridden down there with him on -- when

1 we've run into each other. And I'd ride down to the river
2 with him. And that's the road we'd always took --

3 Q So ...

4 A -- the Red Road.

5 Q Okay. So -- so, at this point in time, this is late
6 1999?

7 A Yes.

8 Q And you and Mr. Jackson are considering buying the
9 whole 203 acres?

10 A Right.

11 Q And what -- what was the relationship there? What was
12 your understanding of what the agreement was?

13 A My proposal to him was that we purchase this as joint
14 owners, and we would own it together and use it together.
15 We could fish whenever we wanted to fish. We could hunt
16 whenever we wanted to hunt.

17 There was a little house on the property that we would
18 use jointly. And then each of us -- if we wanted to build
19 our own house, that we could do that at whatever location
20 we wanted. And then we would have some agreement that
21 would increase the value of our share by whatever that
22 house cost.

23 And then we would also have the right of first refusal
24 if one of the -- one of the owners, joint owners, decided
25 to sell the property. Then we could -- we would give the

1 other one the first -- first chance to buy it.

2 So, that -- that was our understanding. And -- and I
3 guess shortly after he looked at it -- we looked at it
4 together, he started talking about moving the road. And I
5 -- I told him, I said, "Well ---

6 Q Which road?

7 A Moving that -- that -- the Red Road. We'd move it to
8 a different location, so it didn't go right through the
9 middle of the property. Because the other one goes right
10 slam through the middle of the property, too. And he
11 wasn't concerned about that road, but he -- he was
12 concerned about -- about the Red Road.

13 And I guess his -- his idea was there was -- it was a
14 bluff overlooking the -- the Congaree River Swamp, right
15 back in the corner, the far north corner of -- of that
16 property. You can see -- you can see the Union Camp
17 property. You can see SG -- E&G property across that --
18 that swamp. It's a beautiful view across there. And that
19 was where he wanted to -- to build his house.

20 And so, I said that would be fine with me. I was more
21 interested in the pond. So, I was planning to build my
22 house on the pond.

23 So anyway, he started -- we started -- before we ever
24 talked with Dr. Cosone again, we started talking about --
25 about -- he started talking about dividing the property.

1 And so I said, "Well, yeah, I would agree to do that.
2 And then let me figure out what I think each side is
3 worth."

4 And so I did -- did figuring on that, and came up with
5 what I thought was a fair division and cost for each half
6 of the property. And we never could agree to that. So, he
7 said, "Well, we'll just become -- we'll just buy it as --
8 in a partnership. We'll buy it and be partners."

9 And so, we -- we went ahead and closed with Dr.
10 Cosone. And then after we did that, he started talking
11 again about dividing.

12 Q Okay. Let's go back in time a little bit earlier.
13 You said that at some point before you bought the property,
14 that Mr. Jackson wanted to relocate the Red Road?

15 A Right. He started talking about relocating that Red
16 Road and going -- his measured proposal was we would go
17 through the hayfield and then cut a road directly down,
18 back into Peter's property on -- on the other side of the
19 property line.

20 And I just told him, I said, "William, that -- is it
21 going to work? His family's been using this road for all
22 these years. And that -- that is so steep there. It just
23 -- it would be -- I guess the core of engineers could
24 probably build a road in there. But I don't think Peter is
25 going to be at all interested in that.?"

1 And so, I just told him I couldn't be a part of that.
2 Peter had told me about the land, and I wasn't going to try
3 to relocate the road; and I thought he had a -- he had an
4 easement as far as I was concerned. And -- and I knew he
5 had a prescriptive easement as well, because I knew how --
6 how long I had even been using -- been using it myself.
7 And the hunting club, that was established at that time,
8 had been using that road. So ...

9 Q Again, we're talking about which color road?

10 A The Red Road.

11 Q Okay.

12 A And --

13 Q So you -- so you, at that point -- you, in your mind -

14 -

15 A Right.

16 Q -- did you believe -- did you believe that Peter had
17 the right to use ---

18 A I believed it.

19 Q --- the Red Road?

20 A Yeah. I believed that he had a right to use that road
21 all -- at anytime. And I knew that his hunting club had
22 been using it for all these years and his friends had been
23 using it for all these years. So, I told William that I
24 would -- I didn't want to get involved with that.

25 So, I took him to Peter's house -- headed for Peter's

1 house to introduce him to Peter. And Peter was on the side
2 of the road fixing a fence. And we stopped and talked with
3 him on the side of the road. William brought the road up
4 again. So, I -- I said, "Well, I think we just need to go.
5 We not -- I don't want to be getting involved in this."

6 So, we left. And then we finally agreed that we would
7 just buy the land as a partnership.

8 And after we bought the land jointly, then he started
9 talking about -- about dividing the land again. And -- and
10 threatened to sue me if I didn't divide it. He would take
11 the pond side or take whatever side he had the right to, so
12 ...

13 Anyway we -- I got another lawyer. William's lawyer
14 was representing us on -- on the first part of the land
15 tracts transaction. And so, then I got a lawyer who was a
16 childhood friend down in Orangeburg, who handled some real
17 estate things for me.

18 And we got into kind of a letter writing contest
19 between his lawyer and my lawyer. And finally my -- my
20 lawyer just said, "You'd be better off just to go ahead and
21 agree to his price, rather than going to court. Because, I
22 mean, I'd like to go to court with you, but I'm going to
23 charge -- have to charge you if you go. And it -- and you
24 don't know how the division is going to end up. And it
25 doesn't matter whether you found the land and invited him

1 to come in or not. Once he signed the contract and paid
2 earnest money, he had exactly the same right to it as I
3 did."

4 So anyway, I dropped it and I just agreed to -- to
5 divide the land. And he got the land to the -- to the
6 northeast side and I got the land to the southwest side.
7 And --

8 Q So, you got everything, we'll just say --

9 A I got everything ---

10 Q -- to the left?

11 A --- to the left of that -- that Hayfield Road. And
12 the property line is right -- the center line of that road.
13 It goes all the way around.

14 Q And Mr. Jackson --

15 A Right. His ---

16 Q Right.

17 A --- property is to the right of the Hayfield Road and
18 ours is to the left. And he hired a surveyor to get that
19 done. And I didn't -- I knew where all of the property
20 lines were, having walked all of them. And so, I knew
21 where the corners were, and I did not hire a surveyor.

22 And so, I just took what was left, which I assumed is
23 correct.

24 Q Okay. Just for my own interest, is this the pond
25 (indicates)?

1 A That's the pond, yes.

2 Q Do you have -- do you have a cabin there?

3 A Yeah, I have a cabin there. Yeah.

4 MR. ENGLISH: I'm sorry, Your Honor. I'm looking at
5 Exhibit 4 ---

6 THE COURT: Right.

7 MR. ENGLISH: --- and just pointing at the ---

8 THE COURT: Right. Got it. Yes.

9 MR. ENGLISH: Okay. All right. If I could beg the
10 Court's indulgence --

11 THE COURT: Sure.

12 MR. ENGLISH: -- one moment.

13 (Brief pause.)

14 MR. ENGLISH: Thank you, Your Honor. I don't have any
15 further questions at this time ---

16 THE COURT: All right.

17 MR. ENGLISH: --- for Mr. Conrad.

18 THE COURT: Cross-examination, Mr. Booth?

19 MR. BOOTH: Okay.

20 CROSS-EXAMINATION BY MR. BOOTH:

21 Q Mr. Conrad, I'm Bill Booth. I've met you before.

22 A Yes.

23 Q Do you remember me?

24 A Yes.

25 Q All right. So the -- so, the dividing line between

1 your property and Mr. Jackson's property is the middle of
2 the road.

3 A That's right.

4 Q All right. And you own half the road and he owns the
5 other half, correct?

6 A That's my understanding. Yes.

7 Q Your understanding. But he had his -- he had it
8 surveyed?

9 A Yeah, he had it surveyed.

10 Q The half that would be -- the half of the road that's
11 on his property was surveyed, right?

12 A Yes.

13 Q Any problem with the survey that was done ---

14 A No.

15 Q --- as far as dividing it?

16 A As far as I know. I never had a surveyor look at it.
17 So, as far as I know, it's -- it's okay.

18 Q Okay. And why did you decide to use the road as the
19 dividing line between your property and Mr. Jackson's
20 property?

21 A He decided that and I agreed.

22 Q Okay. Why did he decide to use that?

23 A You'd have to ask him. I don't know.

24 Q You're not aware of why he decided ---

25 A I guess he wanted to have access down that road as

1 well. That would be my guess, but I don't -- I'm not --
2 he's not told me that.

3 Q Okay. And did you have the title to checked when you
4 bought the property by your lawyer or by your friend ---

5 A Yeah.

6 Q --- or somebody else?

7 A Yeah.

8 Q Answer's yes?

9 A Well, not -- no. The lawyer that William hired did it
10 -- had a title search done. And I think, you know, John
11 McLeod is his name. And I trust him.

12 Q Right.

13 A And I think he did a good job.

14 Q Okay. And Mr. Conrad, you've mentioned that you
15 discovered, during your research, that Mr. Buyck had an
16 easement across the property.

17 A Right.

18 Q And that easement was what we call a "granted
19 easement," correct?

20 A I guess. I would have called it a deeded ---

21 Q Same -- I would definitely ---

22 A --- easement.

23 Q I would definitely agree. I think deeded easement ---

24 A Okay. Because it was in the deed.

25 Q Right.

1 A That was what I would refer to it as.

2 Q Right. And did you look at that deed, a copy of it,
3 from the courthouse before you bought the property?

4 A No.

5 Q Okay. Have you looked at it since then?

6 A Yeah, I looked at it some time ago. Yeah.

7 Q Okay. I'm going to show you Exhibit 4, which I'll
8 tell you is the easement granted by Ms. McAlister to Mr.
9 Buyck over the McAlister property.

10 (Hands document to the witness.)

11 A Okay.

12 Q All right. In that deeded easement or easement by
13 deed that you just read --

14 A Right.

15 Q -- I'm going to take my red laser pointer and follow
16 along on this slide, and ask you when I finish, if that's
17 the road that that easement is talking about. See where my
18 pointer is going? Can you see that okay?

19 A Yes.

20 Q All right. Following my pointer, straight to what we
21 know as the "hayfield area."

22 A Well, I -- I took it to be both roads, because he had
23 access across both roads for I don't know how many -- his --
24 -- his father used both roads.

25 Q I -- I ---

1 A And anyway, I took it to be both roads, is the way I
2 took to be.

3 Q Well, why would Mrs. McAlister -- I'm getting -- I'm
4 asking you -- why would Mrs. McAlister put in that deeded
5 easement an easement over two roads?

6 MR. ENGLISH: Objection, Your Honor. Speculation.

7 THE COURT: Sustained.

8 A Well, I think if he would have wanted it ---

9 THE COURT: When I sustain it ---

10 (Counsels talking at once.)

11 THE COURT: That's okay. That's okay. Hold on, Mr. -
12 - he's going to ask you another question.

13 THE WITNESS: Okay.

14 THE COURT: And the reason for that, just so you
15 understand so it's not so bewildering, when there is an
16 objection, umpire -- it's sort of -- you know, it's world -
17 - it's getting to be playoff time, right ---

18 THE WITNESS: Right.

19 THE COURT: --- in baseball? If you're a baseball
20 fan.

21 THE WITNESS: Right.

22 THE COURT: I'm like the umpire. Somebody gotta call
23 balls and strikes.

24 THE WITNESS: Okay.

25 THE COURT: So, when they object, I gotta call balls

1 and strikes.

2 THE WITNESS: Okay.

3 THE COURT: If I sustain an objection, that means the
4 lawyer's going to ask you another question.

5 THE WITNESS: Okay.

6 THE COURT: All right. If I overrule the objection,
7 then you can answer.

8 I've just sustained an objection, which means Mr.
9 Booth's going to ask you another. But we're right here to
10 help you.

11 THE WITNESS: Okay.

12 THE COURT: All right. So, hold on. He gonna ask you
13 another question.

14 CROSS EXAMINATION BY MR. BOOTH (CONTINUES):

15 Q All right. Now, the document you just read, did you
16 put it up there on the bench?

17 A Yeah.

18 Q Is that it? If you'll pull it back in front of you,
19 please?

20 A Okay. Well, I need my reading glasses if I'm really
21 going to read this.

22 Q Well, I thought you were reading it. You looked like
23 you were reading it.

24 A Well, I was trying to.

25 Q Okay.

1 THE COURT: You know, I thought ---

2 THE WITNESS: It's kind of ---

3 THE COURT: --- about that, too. I wondered about
4 your reading glasses.

5 Q And where are they?

6 A They're in Columbia. These are distant glasses right
7 here.

8 Q All right. Well, can you read it ---

9 A Why don't you read it to me and I'll --

10 THE COURT: Oh, look at there. That is -- that was
11 impressive.

12 THE WITNESS: Can I do ---

13 THE COURT: Look what they have. They have
14 everything.

15 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

16 Q Do you want to -- can you read it better with a
17 magnifying glass? Because I do want you to read it.
18 Because I'm going to ask you just one question.

19 A All right.

20 THE COURT: Oh, sure. He'll give it a go.
21 Absolutely.

22 Q I only want you to read ---

23 THE COURT: Don't start a fire, though.

24 Q --- that first paragraph.

25 MR. ENGLISH: I'm sorry. Which one -- which one --

1 I'm sorry. Which one are we talking about?

2 MR. BOOTH: Exhibit 4.

3 MR. ENGLISH: Okay.

4 THE COURT: Defense -- Defense Exhibit 4.

5 MR. BOOTH: Yes, Defendant's Exhibit 4. So ---

6 A All right.

7 Q So ---

8 A You want me to read which question?

9 Q Just that paragraph there.

10 A That paragraph right there.

11 (Complies.)

12 A Okay.

13 CROSS-EXAMINATION BY MR. BOOTH (CONTINUES):

14 Q All right. Let the record show that Mr. Conrad, using
15 a magnifying glass, appeared to read the first paragraph;
16 is that correct?

17 A Yes.

18 Q All right. Doesn't it say just "one road" --
19 "existing road," "one existing road"? What you just read,
20 does it say "one existing road"?

21 A Let me look back at it again. It just says -- yeah.

22 (As read) "... along the present existing road."

23 Q Right. Singular existing road. Thank you.

24 So, you may be wrong -- may be wrong?

25 A (No audible response.)

1 Q Now, you mentioned -- and I know your background
2 probably what gives you some help in using a term. You
3 used the term, "I knew he had a prescriptive easement." Do
4 you remember saying that when you were asked some
5 questions?

6 A Yes.

7 Q And that's different from an easement that's granted -
8 --

9 A Right.

10 Q Okay. And you, I assume, do not have a law degree?

11 A No, I do not.

12 Q Okay.

13 A I've heard a lot of talk about prescriptive easement
14 here today.

15 Q So, you just sort of joined in the chorus?

16 A Pardon?

17 Q Sort of joined in the chorus?

18 A Yes.

19 Q Okay. So, you really haven't had the benefit -- and I
20 know I'm not trying to trick you or -- you've not read, you
21 know, the case law that might exist --

22 A No.

23 Q -- dealing with prescriptive easement law in South
24 Carolina?

25 A No. I just always heard that if a road was open for a

1 long period of time and the landowner did not close it,
2 then whenever -- or he could not close it after it had been
3 used for a long period of time.

4 Q Okay.

5 A Especially for somebody that had land on the other
6 side.

7 Q Right. Except -- except where using the road was by
8 permission.

9 MR. ENGLISH: Your Honor, I ---

10 THE COURT: Sustained. Sustained.

11 Q Now, I'd like to ask you some questions about the last
12 two years, the last two years.

13 A Okay.

14 Q I assume you visited your property, which again, is
15 the property sort of to the left of this Road 1 that I've
16 marked here, correct? That's your property ---

17 A Yes.

18 Q --- right up there (indicates)?

19 A Right.

20 Q And I believe, there's a -- you can't see it real
21 well, but there's a pond right in here (indicates),
22 correct?

23 A That's correct.

24 Q And you built a house down there?

25 A The house was already there when -- Mike Nickells

1 built the house.

2 Q Okay. And about how often do you visit your property
3 at least over the last couple of years?

4 A Oh maybe, last couple of years, probably once, maybe
5 twice a week, depending on what was going on. And I hadn't
6 been down there hardly. I had knee surgery a couple of
7 months ago and I've not --

8 Q All right.

9 A -- didn't go down there hardly any for two months.
10 None really.

11 Q Seem to be doing well with the knee surgery. Is
12 everything going okay?

13 A Everything's going okay.

14 Q So, you plan to go back there a little bit more once
15 your knees get ---

16 A I've been down there recently, yeah.

17 Q And I assume you've seen a lot of traffic. I use that
18 term "traffic," like vehicles going up and down this road,
19 next to your property, correct?

20 A Not lately. In fact, there's hardly anybody been down
21 there. The few times I've been down there, I hadn't seen
22 anybody.

23 Q Hadn't seen any traffic.

24 A But over the years, there has been traffic up and down
25 both roads. Yeah.

1 Q So, you -- over the years, you've seen traffic along
2 this road that's now the dividing line.

3 A Right.

4 Q Okay. And you've also seen traffic on the Red Road?

5 A Right.

6 Q Okay. Do you have any familiarity with the Buyck Hunt
7 Club?

8 A Yes, I'm familiar with that.

9 Q Are you a member?

10 A When I did the doe programs, the hunt club was in
11 existence. And then I've seen them down there in the last
12 10 years since we've owned the property.

13 Q All right. Are you a member or have you ever been a
14 member of the Buyck Hunt Club?

15 A I'm not a member of -- of James Medlin's club, who --
16 he'd been, I guess, the president for a long time. But I'm
17 a member of Peter Buyck's friendly duck club. A few
18 friends -- he's got five, maybe six friends --

19 Q Right.

20 A -- that hunt his duck pond.

21 Q But you know that Mr. Medlan -- or the Buyck Hunt
22 Club, Mr. Medlin's group pays Mr. Buyck some money to hunt.

23 A I assume so, yeah.

24 Q Okay. So, you don't know one way or the other?

25 A I don't know one way or the other.

1 Q And have you had any -- have you seen or talked to Mr.
2 Medlan in the last couple of years yourself?

3 A I've ---

4 Q I'm not asking you what was said, just if you -- have
5 you talked with him.

6 A I've talked with him, yeah. I've talked with him one
7 time by telephone, and then one time by -- I think I've
8 seen him on the road a couple of times.

9 Q All right. About a year ago, two years ago, that you
10 saw him on the road? Would you --

11 A I can't really say. I -- I stopped and talk with
12 hunters on the road. If I meet somebody, I usually stop
13 and talk with them.

14 Q Okay.

15 A Mr. Kaufman I've seen more than anybody else down
16 there, I think.

17 Q Right.

18 A He's in the back of the room here.

19 Q Right.

20 A He's been a member for a long time, so ...

21 Q And again, you saw Mr. Kaufman out in that area a lot
22 lately?

23 A Not lately. I have not see him at all this year until
24 today.

25 Q Okay. I misunderstood. Now, one last area of

1 questions. You mentioned a trip that you and William did -

2 -

3 A Right.

4 Q -- over, and I heard you say, both roads.

5 A Yes. I think I did ---

6 Q All right.

7 A --- show him both roads.

8 Q And when we say "both roads," again; I've got them
9 labeled "Road 1," "Road 3," and "Road 2." Tell me the
10 roads that y'all traveled, I guess, before the property was
11 purchased?

12 A Okay.

13 Q Can you see that well enough? I -- I'll show it to
14 you a little bit closer.

15 A Okay. Road -- Road 2 is the Red Road, right?

16 Q Yes, sir. Part of it. But, I mean, clearly it's red
17 on this map.

18 A Right. Well, it's some red on this map.

19 Q Right.

20 A And that's considered the main road down to the river.

21 Q I got that. But you mentioned a -- a trip that you
22 and Mr. Jackson took over both roads. Tell me where the
23 two roads -- and -- and again, if you can by looking at
24 that map, tell me where y'all traveled for that visit.

25 A Well, we took -- as best I can recall --that was over

1 10 years ago. I think we went both roads: One through the
2 hayfield, down way around through the swamp, back to come
3 out down at the -- the river where the duck pond is.

4 Q Okay.

5 A Road 2, or the Red Road, goes directly down to the
6 river where the duck pond is.

7 Q All right. But distance wise, there's not much
8 distance between the two roads, maybe two or three miles at
9 the most?

10 A Well, that's a long way when you go through the swamp.
11 It takes you considerably longer to go -- go through the
12 hayfield, down and around. And the road is -- is bad.

13 It was much better when we looked at it 10 years ago
14 and it got -- last time I went through there was about two
15 years ago, and it was terrible then. It's -- it's -- part
16 of it just goes through the swamp.

17 Q Right.

18 A And the more traffic you have, the worse the road
19 gets. And there's one particular hole that, if it's wet,
20 you got to have a four-wheel drive to get through there.

21 Q Yeah, but it ---

22 A At times you can go through there with a two-wheel
23 drive truck, which is what I have.

24 Q Okay. I mean, again, since you have this background,
25 as far as when it's wet, if it's wet along Road 3 --

1 A Right.

2 Q -- then it's going to be wet beyond where the Red Road
3 ---

4 A With the Red Road, you can go there almost 365 days a
5 year.

6 Q I'm not talking about this part of the Red Road
7 (indicates.) I'm talking about the part up here near the
8 swamp. Isn't it true that if it's wet on Road 3, it's
9 going to be wet further down?

10 A Oh, yeah. It's all -- when the swamp gets wet, it's
11 wet everywhere.

12 Q Right. Right. It's just like a plain.

13 A That's right.

14 Q So, if it's wet at the bottom part of this Road 3, wet
15 from -- where is the water coming from?

16 A It comes out of the river --

17 Q Congaree River. Right.

18 A -- Congaree River or usually you have a lot of rain.
19 Whenever the river comes up, you're going to have rain that
20 falls on the road --

21 Q Right.

22 A -- as well as the river will flood that.

23 Q Yeah. But it -- but it -- the -- but the water from
24 the river comes, again, over other parts of Mr. Buyck's
25 property before it gets to the Road 3, or white road, as

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1 I'm showing it, right?

2 A (No audible response.)

3 Q It's -- it all happens at the same time is what I'm
4 trying to say.

5 A I guess that would be a fair statement.

6 Q Okay.

7 MR. BOOTH: All right. Thank you. That's all I have
8 for you. Let me have that back. I'm through on cross.

9 THE COURT: Okay. Re-direct?

10 RE-DIRECT EXAMINATION BY MR. ENGLISH:

11 Q I want to ask you a question, if you know it. If you
12 know the answer, please tell me. Now, in following up on
13 what Mr. Booth just talked about with the flooding --

14 A Right.

15 Q -- given your familiarity with both the Hayfield Road
16 -- called the "Swamp Road" -- and Road 2, is there a chance
17 that portions of Mr. Buyck's property would be inaccessible
18 by the Hayfield Road, but still be accessible by Road 2?

19 A Yes. The duck pond is one good example of that.

20 Q The duck pond.

21 MR. ENGLISH: Thank you, sir. Nothing further.

22 MR. BOOTH: Nothing further from me.

23 THE COURT: Well, I have something further. And it's
24 a follow up, really, on what is -- what is Road 2. Now,
25 Road 2 the terminus -- based on this map, the terminus of

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1 Road 2 is property line. Do you see that?

2 MR. ENGLISH: Yes, ma'am.

3 THE COURT: So, what were you asking? Were you asking
4 about -- there is no name for the road from the property
5 line -- Red Road -- see the area where it is white down to
6 the river?

7 MR. ENGLISH: Where it turns white?

8 THE COURT: Yes.

9 MR. ENGLISH: Yes, ma'am.

10 THE COURT: Where the Red Road turns white?

11 MR. ENGLISH: Right.

12 THE COURT: That's not Road 2.

13 MR. ENGLISH: Right. Okay. I -- I see what you're
14 saying.

15 THE COURT: And I don't know what your question was.
16 I am -- my concern is -- because you said you can get to
17 the duck pond.

18 THE WITNESS: Right.

19 THE COURT: Well, the duck pond is beyond property
20 line, isn't it?

21 THE WITNESS: Yeah, that's on Peter's land.

22 THE COURT: Right.

23 THE WITNESS: Right.

24 MR. ENGLISH: I see what you're saying. I -- I'll
25 withdraw my question. I see ---

1 THE COURT: No, you don't have to withdraw the
2 question. I just want to be clear.

3 MR. ENGLISH: Well, what -- I mean, I guess what I was
4 ---

5 THE COURT: We don't have name for that road. Let's
6 call it something. We'll call it the "Duck Road."

7 MR. ENGLISH: If you look at it --

8 THE COURT: Because -- because -- because you're --
9 based on the scintillating cross-examination and your re-
10 direct, y'all have now got me confused.

11 MR. ENGLISH: Well, I'm sorry, Your Honor. I didn't
12 mean to get you confused.

13 THE COURT: I know you didn't.

14 MR. ENGLISH: But ---

15 THE COURT: And I don't want that. Put that one --
16 oh, please put that down.

17 MR. ENGLISH: Put this down?

18 THE COURT: Yeah, because that's just going to ---

19 MR. ENGLISH: You don't want this one?

20 THE COURT: --- cause me even more difficulty. I want
21 to name -- this is very simple. I want to name the road
22 from -- thank you. No, you've got it. You know where I
23 am. You know what my confusion is. I know you do, Mr.
24 Booth.

25 MR. BOOTH: The top button; the top button should

1 stretch.

2 THE WITNESS: Peter's Duck Pond Road --

3 THE COURT: Peter's Duck -- that's exactly it.

4 Peter's Duck Pond Road, which for me is right here --

5 THE WITNESS: That's it.

6 THE COURT: -- to right -- to the river, right? To
7 the -- to the river, right in here (indicates.)

8 THE WITNESS: The duck pond is on the right-hand side
9 ---

10 THE COURT: All right. (Indicating) Duck pond's
11 somewhere down in there. Because there's the river right
12 there, but the river does a whole lot of things.

13 THE WITNESS: Right.

14 DIRECT EXAMINATION BY THE COURT:

15 Q So, the question that you just answered Mr. English
16 when you said, "Yeah, you can get down to the duck pond,"
17 were you talking about Peter's Duck Pond Road or were you
18 talking about stopping Road 2 right there (indicates) at --

19 -

20 A Both ---

21 Q --- the property line?

22 A Both roads as -- as -- you've got access all -- pretty
23 well all the time.

24 Q (Indicates) Meaning this road you got access all the
25 time?

1 A No.

2 Q All right. Well, tell me ---

3 A The road that goes ---

4 Q --- what you're talking about.

5 A --- straight --

6 Q (Indicating) This -- this road.

7 A -- ties into the Red -- Red Road ---

8 Q All right.

9 A --- and goes straight on down ---

10 Q Yes.

11 A --- toward the river.

12 Q So, we've got -- the Red Road, you're saying you have
13 access, but Peter's Duck Pond Road, as we've named it,
14 you've got access there more often? Is that what you're
15 saying?

16 A Oh, yeah. All -- pretty well all the time. The other
17 road that goes through the hayfield --

18 Q (Indicating) This one.

19 A -- and around through the swamp --

20 Q This is Road 3.

21 A Yes. -- you do not have access near as good, it's
22 about twice as far, and -- or maybe further than that.

23 It's a long way through there.

24 Q Okay.

25 A And the road is bad.

1 Q As opposed to what we're calling ---

2 A As opposed to ---

3 Q --- Peter's Duck Pond Road.

4 A That's right. That road you can get in ---

5 Q Right. I knew that was going to cause me problems
6 when I looked at this map that I love. But I said, "dag
7 gone, I know there's going to be some point in time I'm
8 going to be wondering about that.

9 This little piece right here (indicates) which we've
10 now named "Peter's Duck Pond Road."

11 Now, I know that that's going to prompt examination
12 from my lawyers. If it does, I want -- I don't -- I want
13 y'all to have every opportunity to examine this witness.

14 But I was getting confused about what was -- and I
15 didn't get confused with you, because I know what Road 3
16 is. But I think Mr. English got me confused when he was
17 talking about Road 2.

18 MR. ENGLISH: I'm sorry. I don't -- I -- what I meant
19 -- and I apologize. What I meant was a continuation of
20 Road 2 when it turns white --

21 THE COURT: Uh-huh.

22 MR. ENGLISH: -- which we've now called "Peter Buyck's
23 Duck Pond Road."

24 THE COURT: "Peter's --

25 MR. ENGLISH: Duck Pond Road.

1 THE COURT: -- Duck Pond Road."

2 MR. ENGLISH: Right.

3 MR. BOOTH: We like to call Road 2 "William Jackson's
4 Road."

5 THE COURT: You call it "William Jackson's Road."
6 We'll call it "William Jackson's Road."

7 MR. BOOTH: Thank you.

8 THE COURT: Absolutely. There you go. William
9 Jackson's Road is no longer the Red Road. Red Road slash
10 William Jackson's Road.

11 We had another name for it earlier. I don't remember
12 what that was. But we'll go with that. Absolutely.
13 Wonderful.

14 Any examination?

15 MR. BOOTH: No.

16 THE COURT: Thank you for being here.

17 THE WITNESS: Thank you.

18 THE COURT: And you are free to go. Yes, sir. Thank
19 you, sir.

20 (The witness retires from the stand.)

21 THE COURT: Call your next witness, please.

22 MR. ENGLISH: If I could have a moment with my client.

23 THE COURT: Sure.

24 MR. ENGLISH: I might be finished.

25 THE COURT: Absolutely.

1 MR. ENGLISH: Your Honor, can I step outside with him
2 a moment to speak with him?

3 THE COURT: Of course.

4 MR. ENGLISH: Thank you.

5 THE COURT: Absolutely.

6 (Briefly off the record.)

7 MR. ENGLISH: Your Honor, we don't have anymore
8 witnesses.

9 THE COURT: Very well. Thank you. All right.

10 Y'all I know -- listen, why don't we take about, I
11 don't know, 5 to 7 minute break. And then we can at least
12 begin your case.

13 MR. BOOTH: Your Honor, I'd like to make a motion,
14 too.

15 THE COURT: Very well. Why don't you make your
16 motion, and then we'll take your break and get ready? All
17 right. I'm listening.

18 MR. BOOTH: Your Honor, Defendant asks you, the trial
19 judge, to issue a directed verdict on the issue of damages.

20 There's been no evidence presented that anything my
21 client did, blocking the William Jackson Road or blocking
22 any other road, caused any damage to the Plaintiff.

23 I didn't hear any figures. I didn't hear any
24 testimony. So, I do not believe they carry -- given you
25 any evidence to -- to even award them damages, which is one

1 of their causes of actions. So, we would ask ---

2 THE COURT: I understand.

3 MR. BOOTH: --- ask for a directed verdict on that.

4 THE COURT: All right. Let -- let me -- and if you're
5 going -- you're going to go to another area, let me -- let
6 me ---

7 MR. BOOTH: No, I'll -- I'll do -- I just got one ---

8 THE COURT: --- let me pause and -- let me pause and
9 ask Mr. English. Yes, sir?

10 MR. ENGLISH: That's fine. Your Honor, we didn't --
11 we did not introduce any evidence on damages. That's
12 right.

13 THE COURT: Very well. Granted.

14 MR. BOOTH: All right. Now, we move for a directed
15 verdict on their, apparently, dual causes of action,
16 dueling causes of action.

17 I -- I feel like, number one, I ask the Court to --
18 two things. I ask the Court to require Plaintiff to elect
19 whether the declarations for a granted easement right over
20 the William Jackson Road, or whether it's a request for you
21 to determine that Mr. Buyck has a prescriptive easement on
22 the William Jackson Road. I believe the rules require the
23 Plaintiff to elect. So, that's number one.

24 Number two, closely related, I -- I -- I would request
25 a directed verdict on the issue of prescriptive easement,

1 mainly due to the fact that, if you look at all these maps,
2 there's no doubt Mr. Buyck has access to his property. The
3 Road 1 -- which you never gave it a name, I'll call it the
4 "Brock Conrad Road," to tack on his -- Brock Conrad Road --
5 that clearly gets Mr. Buyck access to his 700 acres.

6 And I think, as a prescriptive easement claim, that's
7 the third element that he has to prove, the enjoyment of
8 his property. He can get to it. The fact that within his
9 700 acres he's got a swamp road, he's got this, he's got
10 that, that's not part of prescriptive easement law.

11 To give him a prescriptive easement over William --
12 the William Jackson Road would mean he would have two roads
13 to get to his property, both physically very close to each
14 other. Even though I admit it's probably a few hundred
15 feet, but they're physically very close. Both of them
16 giving him access to his 700 acres.

17 As far as within his property, I don't believe the
18 interior road situation is relevant to a prescriptive
19 easement.

20 So, we would -- and then last part of the prescriptive
21 easement, he can't prove terminus, because Mr. Bruner's
22 property is -- is the gap. So, he can't prove terminus,
23 which is a key element of any kind of prescriptive easement
24 case, that you have an appurtenant easement with terminus
25 on the benefitted property. And you have an interruption.

1 If you look at the *Tupper/Dorchester County* case -- I
2 believe there's a couple of others, where the terminus was
3 discussed. If you don't have a terminus, then you cannot
4 give a prescriptive easement.

5 So, we would also argue, on a directed verdict motion,
6 that the prescriptive easement claim should be dismissed
7 also.

8 So, we have the election, prescriptive vs. easement
9 over that one road -- that one road. We don't dispute --
10 we think -- we don't dispute that the easement road is the
11 one that divides the -- the Conrad -- the Brock Conrad
12 Road, which is really the easement road that was granted in
13 1984 by the various landowners. We think it's there.

14 They think it's over there where Mr. Jackson's road
15 is, and they also want you to say, "Well" -- we also want a
16 prescriptive easement. They have to elect.

17 So, the second thing, on the prescriptive easement, I
18 mentioned a terminus, and the fact that he can get to his
19 property, has been getting to it for a number -- for as
20 long as anybody knows.

21 THE COURT: Let me ask you this question -- let me ask
22 you -- work with me here and walk -- you know we used to
23 say in school that you don't get -- get it spoon fed when
24 you get to college. And that always saddened me. I -- I
25 just -- I've always been happy when lawyers would spoon

1 feed me, because it's so much easier.

2 Talk to me about really two things: I want to talk
3 about the McAlister easement grant. I want to talk about
4 that real quick. And then I want to talk about the survey.

5 You know, you -- you -- when we started this morning
6 you were telling me about this survey with all of the -- I
7 guess it was the metes and bounds that had been done. Tell
8 me when that survey was done. And it specifically talks
9 about the -- the Brock Road, Road 1.

10 MR. BOOTH: Yeah. That -- that was done roughly -- I
11 think the first version was done in roughly May of 2000
12 when ---

13 THE COURT: All right. So, that was done at the time
14 of the -- the division of the properties between your
15 client and Mr. Brock, right -- no, Mr. Conrad. Mr. Jackson
16 and Mr. Conrad; is that right?

17 MR. BOOTH: Yes. That's -- that's when it was done.

18 THE COURT: Okay. Okay. That's -- that's when that
19 road was -- was surveyed and laid out.

20 MR. BOOTH: Yes. Yes, ma'am.

21 THE COURT: All right.

22 MR. BOOTH: The -- the survey ---

23 THE COURT: That's very helpful.

24 MR. BOOTH: --- tried -- you know, it went down the
25 middle --

1 THE COURT: Uh-huh. Yes.

2 MR. BOOTH: -- 10 -- basically 10 feet on either side.

3 THE COURT: I understand. Now, talk to me a minute --
4 let's go back to the -- the easement -- the grant of the
5 easement. And I want to get it before me.

6 MR. BOOTH: That's Defendant's Exhibit 4.

7 THE COURT: That's wonderful. Thank you so much. Oh,
8 this is ---

9 MR. BOOTH: Do you have 4?

10 THE COURT: I got it. Here we go. (As read) "Grace -
11 - Grace McAlister receipt ."

12 All right. Let me look at this real quick.

13 (Brief pause.)

14 THE COURT: All right. That was very -- because --
15 because --

16 (Brief pause.)

17 THE COURT: Okay. Now, you said there's no terminus.

18 MR. BOOTH: Correct.

19 THE COURT: Okay.

20 MR. BOOTH: Terminus of the Red Road --

21 THE COURT: Uh-huh.

22 MR. BOOTH: -- is on Mr. Bruner's property. So, I
23 don't -- I don't believe the law allows you to skip -- you
24 know, skip over somebody or go over somebody else's
25 property to start the prescriptive easement over again. I

1 think it's got to terminate -- have a terminus on the -- in
2 this case, Mr. Buyck's property, which is uncontested it
3 terminates as a termini, or terminus, on property owned by
4 Mr. -- Dr. Bruner, as we've heard. So ---

5 MR. ENGLISH: It's not ---

6 THE COURT: Okay.

7 MR. BOOTH: And *Moore v. Reynolds* --

8 THE COURT: Uh-huh.

9 MR. BOOTH: -- that'd be our case for that, *Moore v.*
10 *Reynolds* --

11 THE COURT: Uh-huh.

12 MR. BOOTH: -- decided in 1985.

13 THE COURT: Right.

14 MR. BOOTH: A Sumter County case.

15 THE COURT: Right.

16 MR. BOOTH: And the citation is 285 South Carolina
17 570.

18 So, that case talks about the terminus -- that case
19 also -- it's interesting. That case also gets back to Mrs.
20 McAlister's easement grant. Again, you know -- I mean, we
21 think it's the place where it divides -- Brock Conrad's
22 Road, we think it's there.

23 This case even touches on that. Talks about how -- in
24 that case, they were looking at where a road was located
25 and the road had a name to it -- again, this was an

1 easement grant road -- had a name to it. It was called the
2 "Neighborhood Road" or something like that.

3 So, the discussion in here, you had a Master rule, and
4 then it was reversed. You know, the location was an issue.
5 And Reynolds claimed that (as read): "The old road
6 commenced at Statesburg [sic] and Sumter's Landing Road,
7 crossed property entirely owned by Moore, and terminated
8 upon the 52 acre tract. On the other hand, Moore claimed
9 that the old road left the main road from a different
10 point, took a more circuitous route along Brevard, then
11 along a creek -- and then along a creek road before
12 crossing a small corner of his property."

13 Later the Court of Appeals said (as read): "To accept
14 Moore's claim as to the location of the right-of-way would
15 require the Court to conclude that White gave an easement
16 over property she did not own."

17 So, they -- so, they reversed the Master and said the
18 location of the road is -- the place -- the road where Mrs.
19 White owned all of the property within the road grant.
20 That was a grant case. So, that touches a little bit on
21 that, issue too.

22 Again, this -- the fact that you got a -- you know, a
23 significant piece of the road that goes off on Mr. -- Dr.
24 Bruner's property, I think does impact both the
25 prescriptive easement and also interpretation of the

1 granted easement. Because --

2 THE COURT: Okay.

3 MR. BOOTH: -- so anyway, we think they should elect..
4 But, you know, we just think the McAlister easement, if you
5 look at the plat, it's all pretty clear where that road is.
6 So ...

7 THE COURT: Okay. Mr. English?

8 MR. BOOTH: But anyway, that's just my opinion.

9 MR. ENGLISH: Well, Your Honor, at this point, I don't
10 think it's quite that clear as to where it is, because
11 there hasn't been any -- there hasn't -- it's not
12 uncontroverted that -- well, first, there hasn't been any -
13 - there hasn't been any testimony placing the -- an expert
14 or surveyor type placing the -- the McAlister easement over
15 the Blue Road. There just hasn't been anything.

16 So, I don't think -- I think it's a little bit
17 premature. Let's see what Mr. Booth's people say tomorrow.
18 We're not necessarily wedded to the idea that we have to
19 have a grant over the -- over the Red Road, what I'll call
20 it.

21 Now, as far as terminus goes, we do have terminus.
22 Mr. Buyck put a red "X" where the road crosses his
23 property. A prescriptive easement is an easement that is
24 already in existence, and it happened over the course of
25 time.

1 And it's almost -- what we're doing is essentially
2 asking you to declare that he has a prescriptive easement.
3 The elements are met in the past. And our position is, and
4 Mr. Buyck testified to this, Mr. -- Dr. Bruner has never
5 contested his use of a portion of the road that goes across
6 his property. And I don't think it's fair to say -- I -- I
7 don't think we should have to sue everybody in the
8 neighborhood if we have no problem with them.

9 Mr. Jackson's rights can be fully adjudicated in this
10 lawsuit. And if you establish that -- that Mr. Buyck has a
11 prescriptive easement over the Red Road, then that's not
12 cutting off any of Dr. Bruner's rights. If he wants to
13 close his portion of the roadway, then we'll have to deal
14 with that. But he -- he hasn't done that, and Mr. Buyck
15 testified to that.

16 He's gone up and down this road for 60 years, he and
17 his father. And so, if we meet the elements of a
18 prescriptive easement, it's over his property, too. And if
19 he has -- I just don't -- but we do have a terminus,
20 because it goes across, it picks back up, and it stops on
21 Mr. Buyck's other property.

22 THE COURT: Let me ask you this question. We've got a
23 couple of things going on. With regards to the grant of
24 the easement, the language that is -- that is interesting
25 is -- and it -- really in two areas. And there -- there's

1 three pieces of information that I think are -- are
2 important, and I -- and I share this with you.

3 When you look at the grant, McAlister grant, the
4 McAlister grant talks about an easement that -- it says,
5 (as read): "An easement or right of way to -- is 20 feet
6 in width for ingress and -- egress and ingress from South
7 Carolina S-925, and extending generally -- generally in a
8 northwesterly directions from the lands of the grantee
9 across the lands of the grantor, to the property of other
10 lands of the grantee, and along the present existing road
11 over the following described lands of the grantors."

12 Now, I think that -- and this is -- this, of course,
13 is from 1980 -- June, 1984. At this point -- at this
14 point, there is -- there's testimony that the existing road
15 clearly was the -- was Road 2/Red Road, Red Road plus
16 Peter's Duck Pond Road. There's certainly evidence of
17 that.

18 And if you look at this description, it could be
19 either. Because if you look at the beginning of the
20 description of this easement and the end of the description
21 of this easement, it generally traverses in a northwesterly
22 direction, as does the Blue Road.

23 And the question is -- really gets to be, what -- what
24 is -- what is intended by the existing road, over the
25 existing road, which I think is interesting. I think

1 that's interesting in this case.

2 I don't think that I can throw out, at this point, the
3 Red -- the Red Road. No question but that it does turn.
4 It absolutely turns back towards the east, but then it
5 certainly turns back towards the -- the northwest, if you
6 were -- if you're looking at it from the orientation of
7 Fort Motte Road.

8 And at this point -- at this point I think -- I think
9 the question is -- at the least I think the question is
10 still alive at this point.

11 With regards to the -- the prescriptive easement, I
12 think that the claim, with regard -- and -- and the
13 question is -- I've got to do some research, but I'm
14 looking for you all the help me -- is that it was the
15 testimony of Mr. Buyck, when he's discussing this
16 transaction, that Mrs. McAlister wanted an easement over
17 his property and he said, "That's fine. I -- I want the
18 same thing. I want -- I want it over the road that I
19 travel." And -- and certainly insofar as Mr. Buyck's
20 testimony has been, you know, he's -- it's his -- it's
21 certainly his testimony at this point, and of course, today
22 is -- is -- may very well be different than it was in 1984.
23 But at least today it's like, "Why do I care about -- I
24 don't care about that road. I care about the Red Road.
25 That's the one I've been on all my life."

1 And so, when you listen to him, the existing road, if
2 there's an ambiguity existing road -- I don't think there's
3 any question as -- with regards to his testimony today --
4 it's the Red Road. So -- and -- and if you look at the
5 road, it generally traverses in a -- in a northwesterly
6 direction, which is interesting.

7 So -- so, we are in halftime. I -- I think it
8 proceeds -- I do not believe that you have to elect your
9 remedy, certainly not at this juncture. I think you can --
10 assuming that you must elect, I think that you, you know,
11 can certainly -- certainly in a non-jury matter, you do not
12 have to elect at this point. Nor would I find that you --
13 that you have to -- to elect.

14 With regards to the damages issue, you're absolutely
15 correct, Mr. Booth. And -- and I listened very carefully,
16 because when we heard about the road couldn't be -- wasn't
17 improved north of the defendant's property because they
18 were thwarted -- the -- the logging company was thwarted
19 from -- Rebel Company couldn't -- I was sort of waiting on
20 those numbers, but did not hear them.

21 So, while there certainly was some evidence of that,
22 certainly there was no evidence introduced that I can make
23 a determination, you know, what those -- what those damages
24 would be.

25 So, with regards to the damages, you are absolutely

1 correct. Directed verdict is -- or as Walter Bristow used
2 to opine, "an involuntary non-suit, with prejudice." That
3 one would not be entitled to a directed verdict at this
4 stage of the case, although I don't think anybody says that
5 except Walter Bristow, so...

6 MR. BOOTH: And I've always called it a "directed
7 verdict" at this stage, too. But yeah, I've heard -- I've
8 practiced before him a few times.

9 THE COURT: And did you hear that ---

10 MR. BOOTH: He -- he knew -- he knew the law, and you
11 never ---

12 THE COURT: Listen, I heard that all the time ---

13 MR. BOOTH: Yeah.

14 THE COURT: --- but I never heard it from anybody
15 else. It's like you are outnumbered.

16 MR. BOOTH: Exactly. Exactly. Yeah. He -- he taught
17 me a lot.

18 THE COURT: Now, let me tell you where we are. We are
19 at quarter til five. You -- you -- it's up -- completely
20 up to you. Fifteen minutes is not going to make us or
21 break us.

22 MR. BOOTH: Yeah. I'm -- I would recommend we
23 adjourn.

24 THE COURT: Because -- I think so, too. Because
25 here's what's going to happen to you: Your client, or

1 whomever, might testify for 15 minutes, and you can't
2 prepare them. That's not fair.

3 MR. BOOTH: Right.

4 THE COURT: That's not fair.

5 MR. BOOTH: And, you know, I want to talk to him
6 after. I don't want to have to get in the middle, and then
7 I can't talk to him.

8 THE COURT: Exactly. And I'm not going to let that
9 happen.

10 MR. BOOTH: Because he'll be tempted to chat with me.

11 THE COURT: I'm not going to let that happen to you.
12 I'm not going to put you in a position where you cannot
13 discuss.

14 But in any event, since -- since I have you gentlemen
15 and lady captive -- gentlemen -- my lawyers captive at this
16 point, I might grab you for a moment and make you all come
17 back in chambers.

18 MR. BOOTH: Okay.

19 MR. ENGLISH: Sure.

20 THE COURT: And you might ask your clients not to
21 leave for, like, 15. How about that?

22 MR. BOOTH: Will do.

23 (OFF THE RECORD AT 4:44 P.M.)

24 (END OF DAY ONE.)

25

DAY TWO

(ON THE RECORD AT 9:46 A.M.)

(Pre-marked Defendant's Exhibits 8, 9, and 10, photos.)

(Pre-marked Defendant's Exhibits 11(a) to 11(p), photos.)

THE COURT: Thank you so much, and please be seated.
Good morning, good morning.

All right. We heard from the Plaintiff yesterday. We went handled motions last evening. We will turn to the defense. Mr. Booth, call your first witness, please.

MR. BOOTH: Thank you, Your Honor. We'll go ahead and call Mr. William Jackson to the witness stand.

THE COURT: Yes, sir. Come along, please, and be sworn.

MR. BOOTH: He's the defendant.

(The witness approaches the stand.)

WILLIAM JACKSON, having been first duly sworn, testifies as follows:

CLERK OF COURT: Please state your full name for the record.

THE WITNESS: William Charles Jackson.

THE COURT: I tell you what, I'm tempted to open up the door and let this wonderful fall air come in. Do you know? We may do that.

MR. BOOTH: Opposing counsel is going to take care of that for us.

1 THE COURT: And won't that be fun? Now, if it gets
2 noisy, we'll close it. But won't that be delicious?

3 CLERK OF COURT: Yeah, it would be.

4 THE COURT: That'll be wonderful.

5 CLERK OF COURT: Might have pigeons in here.

6 THE COURT: Well, so long as they -- they're kind,
7 nice, and don't poop, we'll be fine. Great

8 (To the witness) You gonna need a little --

9 You know what, Mr. Booth, can you get your client a
10 little bit of water?

11 MR. BOOTH: My client? I sure can.

12 THE COURT: Yeah. You know why? Because --

13 CLERK OF COURT: We have a glass up there.

14 THE COURT: I know he's gonna ---

15 THE WITNESS: I have some poured right there.

16 THE COURT: There you go. Just -- just cause you know
17 your voice is going to get tired, and you're going to need
18 a sip of water. I should have done that yesterday --

19 THE WITNESS: Thank you.

20 THE COURT: -- when our plaintiff testified. I try to
21 remember that -- I try to remember my manners.

22 But you've got your water and that's a good thing.
23 All right. And if you run out, let us know.

24 MR. BOOTH: And pull the mic kind of up --

25 THE WITNESS: Okay.

1 MR. BOOTH: Seems like to me that's a good position
2 there.

3 THE WITNESS: Very good. Thank you.

4 DIRECT EXAMINATION BY MR. BOOTH:

5 Q Mr. Jackson, go ahead and introduce yourself again,
6 this time giving us your full name, where you reside, who
7 are -- who you are married to, and your date of birth.

8 A My name is William Charles Jackson. I live in
9 Richland County, Columbia, South Carolina. My date of
10 birth is 9/17/53, and I'm married to Barbara Jackson, who
11 is here with us.

12 Q All right. Mr. Jackson, you are going to have -- have
13 to amplify your voice a little bit more. Again ---

14 A Okay. Is that better?

15 Q Yeah, a lot better. Thank you very much.

16 Now, Mr. Jackson, let me get a little bit about your
17 educational background starting with high school -- high
18 school and any other education after that.

19 A I went to Wilson Hall High School in Sumter, and after
20 that I went to Clemson, and then after that I went to the
21 University of South Carolina. And I graduated from there
22 in 1978.

23 Q Okay. I always ask this question: What degree did
24 you finally obtain as you graduated -- as you were
25 graduated or was graduated from USC?

1 A Business administration.

2 Q All right.

3 A Finance.

4 Q Now, lets go into a little bit about your business
5 experience, your business background. Tell us sort of what
6 important job you had during your career and sort of what
7 you're doing today, as -- as we sit here today?

8 A Okay. I have spent my entire career, since right out
9 of college, in the construction and heavy -- heavy
10 equipment construction materials business, starting out in
11 Houston, Texas. Was there for the first part of my career,
12 maybe 6 or 8 years.

13 Returned to South Carolina in Columbia, and I worked
14 for a company there for 15 or 20 years. I was president of
15 the company. Then I left, and started a company of my own,
16 which I owned and ran for a number of years. And sold that
17 business to a larger company in the same business, a
18 Charlotte-based company, about three/four years Attorney
19 General's Office.

20 And now I do various consulting, some for that company
21 and others.

22 Q All right.

23 MR. BOOTH: Judge, I think --

24 THE COURT: I think you're right.

25 MR. BOOTH: -- the traffic noise ---

1 THE COURT: I think we're going to have to close it.

2 MR. BOOTH: Yes.

3 THE COURT: But it was ---

4 MR. BOOTH: But it was great having it open.

5 THE COURT: --- lovely while it lasted, wasn't it?

6 MR. BOOTH: I'll let Eric, my -- my paralegal close
7 it.

8 THE COURT: Sure. That would be great.

9 MR. BOOTH: Felt good but --

10 THE COURT: It was lovely while it lasted.

11 MR. BOOTH: Busy downtown Saint Matthews.

12 THE COURT: Indeed.

13 MR. BOOTH: Definitely has affected our ability to
14 function this morning. So, will let busy Saint Matthews --

15 (Pause to close window.)

16 THE COURT: There we go. Great.

17 MR. BOOTH: I didn't mean that in a negative way.

18 CLERK OF COURT: I understand.

19 DIRECT EXAMINATION BY MR. BOOTH (CONTINUES):

20 Q All right. Mr. Jackson, back -- back on the record.

21 Mr. Jackson, of course, you are the defendant named in this
22 case, correct?

23 A That's correct.

24 Q All right. And this lawsuit's been going on for a
25 couple of years, correct?

1 A That's right.

2 Q And you -- the land in question, you bought when,
3 approximately what date?

4 A It was in year 2000. I think the closing was maybe
5 around May of 2000.

6 Q Okay.

7 A I believe that's right.

8 Q All right. Now, May of 2000. I assume before you
9 bought the property -- I just want just this one narrow
10 question -- I assume before you bought the property you did
11 some investigation ---

12 A That's right.

13 Q --- on site; is that correct?

14 A Yes.

15 Q All right. And did you observe, prior to buying your
16 property, the road that we've been talking about today? I
17 gave it the name the "William Jackson Road."

18 A Yes.

19 Q And then you had the road coming from Fort Motte. You
20 -- you did investigate those roads?

21 A Yes.

22 Q All right. I believe you investigated other roads on
23 the property as well.

24 A That's right.

25 Q All right. You closed in May of 2000. You became the

1 sole owner of the 108 acres, correct?

2 A That's correct.

3 Q Okay. And you were here yesterday when Mr. Buyck
4 testified, correct?

5 A That's correct.

6 Q All right. Did you hear Mr. Buyck -- or do you recall
7 Mr. Buyck testifying that he had a claim of right to use
8 the William Jackson Road?

9 A Yes, I heard that.

10 Q And did you hear him testify that no one, living or
11 dead, had ever challenged his right to use the William
12 Jackson Road; is that correct?

13 A That's correct.

14 Q Is that true, Mr. Jackson?

15 A No.

16 Q It's not true. All right. Let me show you what's
17 been marked as Exhibits 9 and 10, and ask if you could
18 identify what they are first, and then I'll ask you about
19 other things first.

20 A They are both pictures of a gate that I placed across
21 the entry to my property immediately within a few -- maybe
22 a week or so after the closing. And they both are the same
23 picture. One's just from a little further distance.

24 Q All right. So, in other words, pictures of gates that
25 were placed by you on your property, some time after

1 closing, but -- but back in 2000? Is that correct what I -
2 --

3 A That's correct.

4 Q All right. Now, tell me, physically, a little bit
5 about the gate. You have a picture in front of you.

6 A Yes.

7 Q And you have one close up and one a little bit further
8 back. First of all, let's talk about where that gate is
9 located on your property.

10 A Okay. Can we go to the picture --

11 Q Well, we'll do it in a minute.

12 A Okay.

13 Q Just tell me physically where it's located and we'll
14 get into ---

15 A It's -- it's at the very entrance to the property,
16 almost in the center of it.

17 Q All right. And did you put a lock on that gate?

18 A Yes, I did.

19 Q So, anybody that used your road after that date and
20 were able to get the lock open and the gate open, what
21 would you say to anybody using it?

22 A Well, anybody that had a key would be someone I gave
23 the key and gave permission to use it.

24 Q All right. So, you consider that challenging
25 anybody's claim of right?

1 A Absolutely.

2 Q Did Mr. Buyck -- was Mr. Buyck aware that you placed
3 the -- the lock and the gate back in 2000?

4 A Yes.

5 Q How do you know he was aware of that happening on that
6 -- in that time period?

7 A Because after I closed it off, I gave him a key and
8 permission to use it.

9 Q All right. So, you had a meeting with him in other
10 words?

11 A I just saw him on -- on the edge of the road, out near
12 his house one day. I was passing him.

13 Q And you gave him one key?

14 A One key.

15 Q For this gate?

16 A For that gate.

17 Q All right. Have there been times after you put the
18 lock on there that you changed the locks so another key
19 would be required?

20 A Yes.

21 Q All right. Now, let's just look one other time frame,
22 and then we'll get into some more information. The time
23 frame about two years ago.

24 A Okay.

25 Q And we -- you can tell us what happened roughly

1 September of 2008, on the William Jackson Road.

2 A Well, I just -- I changed the lock at that point and -
3 - because it became apparent that a lot of people had keys
4 to it. But when I changed it, I put a lock on it that you
5 couldn't make copies of the keys. And I gave -- I -- even
6 then, I -- I gave another one to Peter Buyck. And -- and
7 again re-emphasized that it was for him and him only.

8 And about, I don't know, not long after that, a few
9 weeks after that maybe, we found logging trucks on the
10 road. And the key that I had given him was hanging on a
11 tree near the road. I could see a foot path where it went
12 over there. And he had put the key there, apparently, and
13 had just allowed people to know where it was.

14 So, I collected the key at that point and changed the
15 lock again. And that time, you know, I -- I told him I was
16 going to change it, but I didn't give a key. And the next
17 day, I think we found where the gate had been cut.

18 Q The gate -- gate had been cut.

19 A Right.

20 Q All right. You said the "gate." You talking about
21 the lock ---

22 A I mean, the lock.

23 Q --- being cut?

24 A The lock.

25 Q Now ---

1 A Actually, the bolt that the lock fits in was cut in
2 half with a torch.

3 Q All right. And what did you observe that day within
4 your William Jackson Road? What did you ---

5 A Logging ---

6 Q --- observe?

7 A --- logging activities. Logging trucks.

8 Q Again, we'll look at pictures in a minute, but
9 physically how did you discover ---

10 A The road was -- in some -- in certain places, was
11 really just almost impassable. It had had some rain and it
12 was rutted and heavy -- lots of mud, particularly right in
13 near where you'd go into our house. And -- which, you
14 know, would be typical of logging trucks, but certainly was
15 a surprise to us.

16 Q All right. Did you later discover what logging
17 company was actually using ---

18 A Yes.

19 Q --- the road?

20 A Yes.

21 Q What name?

22 A Rebel Lumber.

23 Q And so, what did you do next? Did you protest? Did
24 you challenge Mr. Buyck's right to use that road ---

25 A Yes.

1 Q --- for logging?

2 A Yes.

3 Q And I assume you knew it was connected to Mr. Buyck,
4 right?

5 A Yes.

6 Q Did you actually, at that time, locate where the
7 cutting was going on?

8 A I didn't go to the site where the truck -- where the
9 logging was going on. But I could hear them cutting. I
10 could -- I could actually see from my house. I didn't
11 physically go there, but from my house, I could see where
12 they were cutting.

13 Q But you're pretty sure where they were cutting was
14 William --- was Peter Buyck's property?

15 A Oh, absolutely. Yeah.

16 Q And I think we called it the "700 acre tract."

17 A Right.

18 Q Okay. How'd that make you feel as far as the security
19 of your land?

20 A Well, it's -- obviously we weren't happy about it.
21 And hadn't been -- you know, that we had had some
22 discussions about it shortly before that. Like I said, I
23 had changed the key and then that ---

24 Q Did you then --- did you then yourself deal directly
25 with Rebel Lumber?

1 A That's right.

2 Q And did you then give them permission to finish their
3 logging?

4 A I did. I talked to the guy, his name was Chris Yagle.
5 who worked for the Rebel Lumber.

6 Q Be care -- yeah, you know the rule. Don't tell me
7 what he said to you. But you can say ---

8 A Right.

9 Q --- what you said to him.

10 A I -- I spoke to him, and I told him that he could have
11 a key and he could deal with me direct. I wanted them to
12 finish what they were doing. I didn't -- I knew that --
13 that they weren't aware of the road. They -- they sort of
14 happened into this situation innocently. And so, it wasn't
15 their fault.

16 And I gave him a key and we had a nice talk about it.
17 And he told me that it was going to be ---

18 Q No. Don't say what he said to you.

19 A Well --

20 Q Please stop there.

21 A Okay.

22 Q And just continue to whatever you said.

23 A I told him I wanted to know how long it would take,
24 and -- and -- and I told him I'd like for him to report to
25 me, gave him my cell phone number; keep up with me every

1 day or so, let me know how he was progressing. And -- and
2 for him to keep the key and -- and use it as he needed.

3 And when he finished -- not -- not -- not before, I
4 wanted him to finish -- to come and -- and return the key
5 back to me, not hang it back on the nail on the tree where
6 he'd gotten it before.

7 Q Did -- did you find that Rebel Lumber had set up a
8 staging area for --

9 A Yes.

10 Q -- their vehicles? Okay. And where was that staging
11 area set up?

12 A Right in front of my house.

13 Q On your property solely?

14 A On our property.

15 Q Outside the dimensions of the road?

16 A Outside, well outside the dimensions.

17 Q So, the Red Road location -- again, we'll use that Red
18 Road/William Jackson Road. You're saying that Rebel Lumber
19 placed vehicles beyond the --

20 A Right. There was ---

21 Q --- width of that road.

22 A Absolutely.

23 Q And it was near your house.

24 A Right.

25 Q That's what you testify to. All right.

1 I'm going to ask you just two more questions, then
2 we'll get back to more of the history. I'd like for you to
3 look at -- just one second.

4 THE COURT: Of course.

5 (Confers with the court reporter briefly.)

6 MR. BOOTH: She put it on the back, Judge. So, she
7 was on the ball.

8 THE COURT: All right.

9 MR. BOOTH: Judge, we'd like now to introduce into
10 evidence Exhibit No. 8. And we'd also like to move to have
11 9 and 10 accepted into evidence.

12 MR. ENGLISH: No objection. I beg your pardon. I
13 just want -- can I just see which ones ---

14 MR. BOOTH: I'm going to give you a copy right now.
15 It's the one ---

16 MR. ENGLISH: You've given a copy to me. I just want
17 to see which one's which.

18 MR. BOOTH: Yeah. Go right ahead.

19 (Attorneys confer briefly.)

20 THE COURT: Any objection to them being admitted into
21 evidence?

22 MR. ENGLISH: No objection to any of these.

23 THE COURT: All right.

24 (Defendant's Exhibit No. 8, 9, and 10,
25 photos, in evidence.)

1 DIRECT EXAMINATION BY MR. BOOTH (CONTINUES):

2 Q Now, this is a picture that you're looking at,
3 correct, Mr. Jackson?

4 A Yes.

5 Q And who took this photograph; do you recall?

6 A I did.

7 Q All right. And you recall when you took that
8 photograph?

9 A It was -- I don't recall the exact date, but it was
10 this past winter whenever we had that particularly heavy
11 snow for this area. I don't remember if it was -- it was
12 after December.

13 Q Now, describe -- I know it kind of speaks for itself -
14 - but this is on your property, correct?

15 A That's right.

16 Q And in a few minutes, we'll identify the location,
17 though I think we've already got that identified. So, this
18 is the house that you have?

19 A That's right.

20 Q Did you build that house?

21 A Yes.

22 Q All right. In the last couple of years, how much time
23 have you spent at that house?

24 A Quite a bit. It varies seasonally, but a lot.

25 Q All right. Now, let's start back to the history of

1 you buying this property.

2 A Okay.

3 Q We've establish the closing took place in May of 2000.
4 Go back a little bit before that, give me the history of
5 how you learned about the property, what information you
6 obtained about the property, and then walk me through the
7 closing as you recall it. Go ahead.

8 A Okay. It was -- I was -- I have a friend who knew
9 that I was looking and had been looking for some time for -
10 - Barbara and I were looking for a piece of property in the
11 country. And -- and we want it to be, you know, a place
12 potentially retire on, and spend time until then.

13 And he called me and told me that he knew ---

14 Q Now again, you've got to be careful.

15 A Well --

16 Q Just say you had a phone call from somebody.

17 A I was notified by a friend of a piece of property that
18 was -- someone that -- that he knew was looking for a
19 partner to share in a couple of hundred acres. And he had
20 told him that he didn't want to try to do it on his own.

21 He didn't -- didn't -- couldn't -- he couldn't -- he
22 didn't think he could afford it at that time by himself and
23 he was looking for a partner to share in some way of the
24 property.

25 Q Was that Brock Conrad?

1 A That was Brock Conrad.

2 Q We heard from him yesterday. We're okay so far.

3 A That's right.

4 Q Keep going. So, what happened next.

5 A So -- so, Brock Conrad and I made contact. And I
6 don't really recall whether he called me or I called him.
7 We had this mutual friend that was sort of in between us
8 and somehow we connected.

9 And -- and we met, and we went visited the property
10 and talked about the property and agreed to try to get it
11 under contract, even though we hadn't solidified just how
12 we would either subdivide it or any type of partnership
13 might evolve from that.

14 Q Okay. So, you remember the individual that owned the
15 property at that time, his name?

16 A Yes. His name was Dr. Casone in Orangeburg.

17 Q Okay. Now -- So, "Casone" is spelled how?

18 A I think it's with a "c," C-a-s-s maybe ---

19 Q O-n-e. Right.

20 A Yeah. C-a-s-o-n-e.

21 Q All right.

22 MR. BOOTH: I've got three deeds that I've not marked.
23 I've marked pretty much everything else. So, I'm going to
24 stop and let her mark the three deeds. And then we'll go
25 through those.

1 MR. ENGLISH: No objection.

2 MR. BOOTH: And I have copies for the Court.

3 (Marked Defendant's Exhibits Nos. 12, 13 and 14,
4 deed documents.)

5 (Attorneys confer briefly regarding exhibits.)

6 DIRECT EXAMINATION BY MR. BOOTH (CONTINUES):

7 Q All right. Let's first look at the deed from Mr.
8 Cossini [sic], which has been marked as Exhibit No. 12, No.
9 12. Can you put everything -- once you've finished, just
10 stack them right there.

11 This is a deed, which you mentioned, from Mr. Cossini
12 [sic.]

13 THE COURT: Okay.

14 Q So -- and you, of course, have seen that deed before,
15 right?

16 A Yes.

17 Q Okay. So, is this the deed that -- where, I think,
18 you and Mr. Conrad bought the property together?

19 A Yes. That appears to be it.

20 Q And the property described in that deed by what --
21 referenced to what? To a plat, I believe?

22 A Yes. And 203 acres, more or less, and references the
23 plat, the Oliver Platt, dated December 12, 1963.

24 Q Okay. And the Oliver Platt was previously put into
25 evidence as No. 5. All right. Now, if you'll put that

1 deed up and go to the next one, which is 13. Actually it
2 will be 13 and 14 together. Do you recognize those two?

3 A Yes.

4 Q All right. Describe what's happening there with those
5 two deeds with respect, I assume, to the 203 acres.

6 A Yes. This looks like the deed where the -- the
7 property was subdivided into two tracts, Brock Conrad
8 owning one and me owning one.

9 Q So, again, Mr. Cossini [sic] to the two of you
10 jointly.

11 A That's right.

12 Q And then each of you did cross deeds.

13 A Right.

14 Q And the results was...?

15 A The result was I ended up with a partial of
16 approximately a hundred -- I think it's 103 or 108,
17 something like that.

18 Q Okay.

19 A And -- and Brock Conrad with something like 95, with
20 the northwesterly road referenced in this easement as the
21 property line.

22 Q Okay. And let's -- I know you said the word
23 "easement." And you're referring to the easement from Mrs.
24 McAlister ---

25 A Right.

1 Q --- and Mr. Buyck? All right. And that is Exhibit
2 No. 4.

3 So, 5 is the plat--

4 THE COURT: Uh-huh.

5 Q -- for the subdivision, and then 4 is the easement
6 you're referring to, correct?

7 A Right.

8 Q All right. Did you see that easement document prior
9 to closing, Mr. Jackson?

10 A Yes.

11 Q Did you have an attorney represent you in the closing?

12 A Yes.

13 Q Did you have a full title report done?

14 A Yes.

15 Q And that came up in the search.

16 A That's right.

17 Q Now, let me now introduce the plat, because I believe
18 it's deed into you based on a plat, correct?

19 A That's right.

20 Q Looking at the deed -- it should be up there -- and
21 tell me does it refer to the Walker plat? And then we'll
22 put it into evidence, soon as you confirm that.

23 A I'm having trouble finding where it references ---

24 Q All right. And we'll just -- we'll let other people
25 figure that out. But you did have a plat done by Mr.

1 Walker, correct?

2 A That's correct.

3 Q Is this the final version, the current version?

4 A Here it is down at the bottom. Yeah. (As read)
5 "April 27, prepared for William C. Jackson, by J. H.
6 Walker."

7 Q Okay. And again, you're reading Defendant's Exhibit
8 ...?

9 A 13.

10 Q Okay. Now, I've got one more. Get this marked.

11 (Defendant's Exhibit No. 15, map document,
12 marked for identification.)

13 Q Now, I'll show you what's been marked as Defendant's
14 Exhibit 15, and ask if this depicts/describes those courses
15 and distances for the tract of land you currently own?

16 A That's correct.

17 Q It was done by a surveyor?

18 MR. BOOTH: (To the court reporter) This is 15.

19 A Right. Surveyor Walker.

20 Q Okay. Now, did Mr. Conrad get a survey done of the
21 remaining part?

22 A I don't believe he did.

23 Q All right. Now, how did y'all -- I know we've gone
24 over the fact that you got the property from Mr. Cossini
25 [sic] together and you subdivided it. Tell me what sort of

1 process you went through to decide where to divide this
2 property.

3 A Well, there was an easement, and we thought that it
4 would be a logical place because of that for one. And it
5 also, which -- roughly, not exactly, but roughly was a
6 logical division place, because it went directly across the
7 property and -- and left it in two approximately equal
8 partials.

9 Q Okay. It sounds like to me in your answer that you
10 believe that the recorded easement from Ms. McAlister to
11 Mr. Buyck is located on the dividing line.

12 A Right.

13 Q Okay. And you based -- how did you determine the
14 location of that easement?

15 A Based on the language in the granted easement.

16 Q Okay. And did you also consult with a lawyer for your
17 closing?

18 A Yes.

19 Q Does it surprise you today that Mr. Buyck is now
20 testifying that the location of that easement from Mrs.
21 McAlister is located along the William Jackson Road or the
22 road that's been part of the Red Road? Does that surprise
23 you?

24 A Yes. Yes, it does.

25 Q Okay.

1 A Although, I -- I'm not -- I'm still confused as to
2 whether that's what they're claiming or not. It's been ---
3 - they said -- they claimed it to be over both, and then
4 one and then the other. And it's -- it's not been
5 consistent to me whether they're claiming -- which road
6 they're claiming the granted easement over and which road
7 they're claiming a prescriptive easement over.

8 Q But you're -- but you're pretty solid in your belief
9 where that road easement is?

10 A Right.

11 Q Okay.

12 A I know -- I know where I interpret it to be and where
13 my -- by advice interpreted it to be. And where we've
14 divided the property among -- based on that ---

15 Q All right.

16 A --- about that -- that interpretation.

17 Q Now, Mr. Jackson, I'm going to move into actually
18 talking about two roads Mr. Buyck has flip-flopped on which
19 one is the granted easement ---

20 MR. ENGLISH: Your Honor, I don't ---

21 Q Sorry. "Flip-flopped" is probably not a good word.
22 Do you think ---

23 THE COURT: It's not.

24 MR. BOOTH: It isn't.

25 THE COURT: It is not.

1 Q Withdraw that. You described Mr. Buyck in your
2 opinion as -- as -- as identifying the easement road in a
3 couple of different ways, right?

4 A Right.

5 Q Okay. Now, I'm ready to show you either -- we can do
6 the road map 1, 2, 3 or we can use this blow-up here.

7 A That one's fine with me.

8 Q All right. If you would come down.

9 A Yeah.

10 MR. BOOTH: Judge, this is Exhibit -- Plaintiff's
11 Exhibit No. 4.

12 THE COURT: Yes.

13 MR. BOOTH: And Mr. Jackson's going to come down.

14 THE COURT: Okay.

15 (The witness exits from the stand.)

16 Q And you're welcome to use the red thing, or if you
17 just use your finger.

18 All right. First of all, I know we've had testimony
19 on this. Tell me again, this came from a Google Earth
20 picture, right?

21 A Right.

22 Q Okay. And that's something I think you -- is that one
23 that you actually produced?

24 A I think so.

25 Q Okay. But it's an aerial photo taken from a Google

1 site.

2 A Right.

3 Q All right. Mr. Jackson, tell us what's shown here as
4 far as the road systems?

5 A Well, it shows a road entering the original 203 acre
6 tract, proceeding northwesterly to a place that one road
7 forks off to the right in an easterly direction and one
8 road continues on northwesterly to the property line of
9 Peter Buyck.

10 This road easterly, the road to the right, goes off of
11 my property here (indicates) onto the property of Dr. Allan
12 Bruner who owns this tract.

13 And then I think there are a couple of little -- maybe
14 a little road going off this way, too, and then it goes
15 back onto my property. Goes across my property again, and
16 eventually goes to this same tract of Peter Buycks, the
17 same tract that this road goes to. They both go to the
18 same tract, just different places.

19 Q All right. Let's talk about the other -- I know we
20 had testimony -- and you -- you want to go to this exhibit.

21 The road that you kind of got drawn in white, which I
22 identified in my chart as Road 3. But you tell me about
23 Road 3.

24 A On this map?

25 Q Yes. Use that one.

1 A Okay. (Indicating) This -- this road -- this portion
2 of -- of this road, of what's shown here in white, this
3 road -- if that's what we're calling Road 3 -- that's where
4 this road comes -- continues through my property and -- and
5 enters the Buyck tract via this large hayfield here. And
6 it goes along the edge of the hayfield and then it goes
7 into the woods and goes through the woods. And it goes
8 around the -- it traverses sort of around the edge of this
9 bluff area here.

10 And eventually goes down and follows the edge of this
11 bluff around the edge of the swamp and -- and then ties
12 back in with this road. And -- and they basically -- it
13 basically makes a whole circle. It goes all the way
14 around. Not in an exact circle, of course, a loop maybe.

15 Q All right. Now, getting back to the location of the
16 easement road, the one that's in the McAlister ---

17 A Right.

18 Q --- easement. Point that out where you -- you believe
19 that's located currently?

20 A (Indicates) This road here, which is now the property
21 division mark.

22 Q Okay. What in the easement grant did you look at to
23 help you decide where that easement road was as the
24 landowner?

25 A Well, it -- it -- first of all, it -- it describes it.

1 And I'm not reading it right at the -- the moment. But as
2 I recall it says a 20-foot wide easement or ingress and
3 egress, traveling from -- from the property line in a
4 northwesterly general direction, across the land of the
5 grantor and to the other land of the grantee, in a
6 northwesterly direction.

7 Now, it makes no mention of any other landowners other
8 than the series of landowners that -- that all joined
9 together at the time to -- to memorialize these various
10 easements so that everyone would have access.

11 Q Okay. Just to help me, if we start as soon as it
12 enters -- at one time the McAlister tract, now the dividing
13 line, (indicating) if you start here and go again over this
14 road here, and then you intersect back here (indicates) --
15 when I say other road, that's the white road --

16 A Right.

17 Q --- time wise, have you driven both roads and timed
18 them yourself?

19 A Yes.

20 Q Okay. Tell me the difference in time for traveling.

21 A (Indicating) Well, this one -- and we have videos of
22 it that shows time -- this one, if you start at this point
23 where it enters the property and travel directly along this
24 road, directly across the property to the Buyck tract,
25 takes a little over two minutes; something in there. Two

1 minutes and some seconds.

2 (Indicating) This road, which splits off to the right
3 and goes up to Dr. Bruner's property and back on across to
4 here, to the Buyck property, is roughly twice that amount,
5 about four minutes and something.

6 Q All right. Now let's, again ---

7 A It's -- it's ---

8 Q --- if he ---

9 A --- it's not twice as long, but you have to go down a
10 pretty steep embankment here, so it just takes longer.

11 Q All right. Now, do the full route, the circle route
12 that you mentioned.

13 A (Indicating) This -- this -- this route here on the --
14 on -- we have a video, a full video of it, too. And it was
15 something -- something slightly above eight -- eight
16 minutes. From this point to this point is eight minutes
17 and some second.

18 Q All right.

19 A It's less than nine minutes.

20 Q So ---

21 A So -- so, if you add those numbers up, this being four
22 minutes to here (indicates) and I think that's not --
23 that's not much at all, maybe a minute there. So, let's
24 say five minutes to there (indicates) in total, and this is
25 ten minutes in total.

1 Q Okay. Now, you're going to have to be a little
2 careful when you say "from here to here" because, again ---

3 A Okay.

4 Q --- for the record ...

5 A From the point ---

6 Q If you'll go back over ---

7 A --- the point where -- (indicating) if you're coming
8 down this road and you get right here, you got to make a
9 choice whether you're going to continue this way or turn
10 right and go this way. If you were going to make this road
11 --

12 Q The road to the --

13 A --- all the -- the -- the -- the Blue Road, which we
14 are referring to as the easement, if you -- if you follow
15 that road to there (indicates) it takes two minutes. And
16 then you'd enter the Buyck property to follow the White
17 Road through the hayfield, around this ridge, down and
18 along the edge of the woods to here (indicates) which is
19 eight minutes. So, that is a total of 10 minutes.

20 If you go back to this same point at this where -- and
21 make the decision to turn right, it takes four minutes to
22 get here (indicates) and one minute -- four minutes to get
23 to the Buyck property line and one minute to get to the
24 Buyck property line on into his property where these roads
25 intersect.

1 So, it's a total from here to here (indicates) of five
2 minutes. A total from here to here (indicates) of 10
3 minutes.

4 Q All right.

5 A Approximately.

6 Q Now, if you'll get back on the witness chair unless --
7 is there anything else about the road you want to tell the
8 Judge right now? We can always get back to that.

9 A No.

10 Q All right. If you'll get back in the witness chair.

11 (The witness complies.)

12 Q Now, Mr. Buyck -- now, Mr. Buyck -- Mr. Jackson, we
13 know from the record that for about two years now, as far
14 as we know and as far as you know, there's been no traffic
15 on your road other than traffic that comes from you or your
16 wife, correct?

17 A That -- that's correct.

18 Q So, roughly two years ago in October early, up until
19 now, that's the case.

20 A That's correct.

21 Q All right. What about traffic that you observed or
22 filmed, that's gone over the blue part of the road or the
23 easement road? Have you been able to observe that traffic?

24 A Yes.

25 Q So, what have you observe so far?

1 A Just that it's continued, you know, as -- as normal.
2 Various types of equipment, farm equipment, boats going to
3 the river, hunters, passenger vehicles. Various types of
4 vehicles. We got, I don't know, maybe 100 photographs of -
5 - of all sorts of different types of vehicles.

6 Q All right.

7 A People walking on foot, people on four-wheelers,
8 people in trucks, people in cars.

9 Q Have you personally objected to any of that traffic
10 that's, again, on the Blue Road?

11 A No.

12 Q Because why?

13 A Because we've never objected to the use of that road.
14 We intentionally left -- left it gate open when we -- when
15 we originally bought the property and secured our portion.
16 We left that gate open as -- as an easement for all of us
17 to use.

18 Q Now, prior to two years ago, other than the logging
19 work we talked about, when -- during the time that you had
20 let Mr. Buyck have a key, what sort of traffic did -- did
21 you observe on your road, the William Jackson Road?

22 A The same that goes over the other, hunt -- hunting --
23 hunters mostly. No -- never saw any farm equipment go
24 through there. But I did see hunters and people coming and
25 going for recreational activities.

1 And that -- initially, we didn't -- we weren't on the
2 property, because we didn't have a house, you know, there
3 for the first couple of years. So, I -- I know that I saw
4 people occasionally. It seemed to get to be more over
5 time.

6 And, you know, on up around 2006 to 2008, it got to be
7 -- 2007 was when it got to be what we thought was
8 unreasonable and excessive.

9 Q Now, in 2007 did you meet with Mr. Buyck?

10 A Yes.

11 Q Did you tell him you object?

12 A Yes.

13 Q What words did you use to him to voice objection.

14 A Well, we just told him that we --we had intended for
15 the key to be for him, and we'd never given a key to anyone
16 else. And we were -- we were -- if we were going to be
17 good neighbors. We didn't want to have a problem with
18 this. From time to time it's what we expected.

19 But the -- the traffic -- we didn't know who those
20 people were. And it was getting to the point where my wife
21 was afraid to be down there by herself. It was at night,
22 all hours, every day during the week. Not just hunting
23 season, it's, you know, all times of the year,
24 unpredictable.

25 We explained -- addressed to him our concerns about

1 the safety issues and security. We've been -- we'd been --
2 our house had been broken into twice. We certainly weren't
3 implying that that had anything to do with any of Peter's
4 guests or friends, but we didn't know. We -- we just knew
5 that was imperative that we have some security there, and
6 we had no control over what it was.

7 And it -- we began to notice the variety of people and
8 vehicles, and we didn't recognize any of them. And it got
9 to where we -- we rarely saw Peter anymore. We -- we used
10 to -- early on it seemed like when we did see somebody,
11 usually it would be Peter.

12 And in the last few years, I -- I noticed it, because
13 I wanted to talk to him about it. And -- and we know that
14 it's hard to communicate with him on the phone, because he
15 has a hearing -- and I'm not much better. But -- so, I
16 needed to see him. I thought I'd see him face to face.

17 And so, I made it a point to -- to hope to run into
18 him on the road for, I bet, six months or a year. I never
19 saw him, but I -- but I noticed everybody else.

20 And so, finally, I wrote him a letter and I didn't get
21 a response. And eventually, we went to his house and met
22 with him and talked about it.

23 Q Okay. And then, I think, eventually after that, you
24 actually changed the lock one time.

25 A Yeah. Some time after that.

1 Q All right. Now, let's get back to the road that --
2 the Hayfield Road or the Blue Road.

3 A Right.

4 Q I show you a series of pictures -- we marked that as
5 Defendant's 11. And what we've done -- she created "a"
6 through "p." So, what the reporter's done, is she's taken
7 the number 11 and added to it an "a-b-c" down to the letter
8 (p). If you'll look at those first.

9 A Okay.

10 (Brief pause for the witness to look through photos.)

11 Q Identify those.

12 (To Mr. English) If you'd like to -- I've already
13 given them those to you. We'd like to put those into
14 evidence.

15 (To the witness) Pictures that you took, right?

16 A Right. They are ---

17 Q Well, just slow down.

18 (Attorneys confer briefly.)

19 A If you want to hand me that pointer and put that
20 picture back up, I can show you precisely where I took
21 these.

22 MR. ENGLISH: Are these the slides that we saw
23 yesterday?

24 MR. BOOTH: Yes.

25 MR. ENGLISH: Okay.

1 MR. BOOTH: Just had them marked, but this is a new
2 exhibit number. What we decided to do, Judge, just to go
3 through them and have the court reporter start with
4 Defendant's 11(a) through (p). I think yesterday we
5 identified only into evidence, but it's basically the same

6 ---

7 THE COURT: Right. That's right.

8 MR. BOOTH: Yes, we'd like to offer those into
9 evidence.

10 MR. ENGLISH: I assume -- I assume, he's going to say
11 he took them.

12 MR. BOOTH: Yes. Well, let -- let's do a little bit
13 more foundation. Even though I think you're okay with them
14 coming in, I will do a little bit more foundation.

15 (Defendant's Exhibits Nos. 11(a) through 11(p),
16 photos, moved into evidence.)

17 DIRECT EXAMINATION BY MR. BOOTH (CONTINUES):

18 Q This series of pictures, how were they taken, first of
19 all?

20 A I think I have others that some of them were taken
21 with a hand-held camera. But it looks to me like all of
22 these were taken with a surveillance camera that I mounted
23 at our gate.

24 Q And ---

25 A Just above our gate, on -- on the Blue -- I need a

1 picture to confirm ---

2 Q Okay. We can pull that up just for a second. If you
3 want to come down here. I'm not going to put it on the
4 little --

5 A Okay.

6 Q --- hold-up thing. But you're welcome to come down
7 and ...

8 (The witness exits the stand.)

9 A Okay. I had two different cameras.

10 Q Okay. And again, describe where you're pointing and
11 we're looking at ---

12 A One ---

13 Q --- we're looking at, again, Plaintiff's Exhibit No.
14 4.

15 A --- one of them was right at -- on the Blue Road, just
16 outside of my gate, pointing down the road -- this Blue
17 Road that leads to Peter's hayfield. And one was further
18 up on the road about here (indicates). Both -- you have to
19 find a place where you sort of them straight across the
20 road. Car goes through before it gets it, so you have to
21 sort of aim them up the road. So, those were logical places
22 to -- to -- to monitor traffic when using that road.

23 Q Okay. And again, the time period was after the --
24 after you had changed the lock and he could no longer use
25 your road.

1 A Right.

2 Q Okay. All right. Now, let's just go through these.
3 And again, they've got letters on them. If you would --
4 I'm going to show you each one, and you tell me what letter
5 -- what letter is on the exhibit.

6 A Okay.

7 Q Here's the first one. That's "a," I assume.

8 A Correct.

9 Q All right. What is that a picture of?

10 A That's actually Peter himself.

11 Q Peter Buyck?

12 A Yes.

13 Q How do you know it's him?

14 A Well, it's his truck.

15 Q Okay. So, based on the fact that it's the type truck
16 that he drives?

17 A Well, it's the type truck, and I have a number of
18 other pictures of that truck on this road. And it's --
19 it's got a -- it's a Dodge truck, it's -- it's red in
20 color. It's got decals on the window in the same place.
21 It's got a dented fender.

22 Q All right.

23 A But I -- I just recognize as it being Peter's truck.

24 Q Okay. At the very bottom -- I assume it's on all the
25 others -- is a date stamp. Do you see that?

1 A Right. Date, temperature, and the time.

2 Q Okay. Just for this one, we won't do it for all of
3 them, for "a," what's the date?

4 A That's April 16, 2009.

5 Q And the time?

6 A 16:12.

7 Q Okay. That would be 4 --

8 A 4:12.

9 Q 4:12 in the afternoon?

10 A Right.

11 Q All right. Now, look at the next one. What is that?
12 Again, these were taken from your camera.

13 A Yes. That is -- I -- I -- I met that guy. His name
14 is -- is Gates. And he has been leasing -- leasing the
15 rights to farm Peter's property for about 10 years. And
16 the -- he comes and goes routinely down that Blue Road that
17 leads directly into Peter's hayfield. And he may do other
18 things on the property, but I -- I know that he manages
19 that hayfield.

20 Q All right.

21 A He harvests the hay and --

22 Q Now, if you don't mind, we'll go through the others
23 mainly just identifying the road that we're talking about -
24 --

25 A Okay.

1 Q ---the Hayfield Road.

2 A Sure.

3 Q And so, just go through it. I'm not sure you -- is
4 this another one, showing ---

5 A That's one ---

6 Q --- another vehicle?

7 A --- that's another piece of equipment going to spray
8 in the hayfield.

9 Q Next one, again.

10 A That's a --

11 Q Look at the letters on the -- Mr. Jackson, as we go
12 through them. Let me go back.

13 A That's farm equipment that's ---

14 Q Okay. This is "b." This is "b," right? The one with
15 the -- Mr. Gates's truck? "B," as in boy, right?

16 A That's correct.

17 Q "C" is ---

18 A "C" is a farm tractor with spraying equipment that
19 they use in the hayfield.

20 Q Okay. All right. And then "d" ---

21 A "D" is -- that's what they use to actually pick up hay
22 bales, that fork on the front. And that's -- that's the --
23 one of Gates's people that come and go routinely in that
24 hayfield.

25 Q Let's, again, go to the next one, which is letter ...

1 A "E," that's just a boat that we see routinely coming
2 and going along that Hayfield Road. They go through the
3 hayfield, down to the river.

4 Q Okay. Next letter is "f."

5 A Another -- that's "f." That's another boat.

6 Q "G"?

7 A "G," that's just an early morning in December, deer
8 hunting season. That's a caravan of hunters routinely
9 coming through to go hunting.

10 Q "H"?

11 A That's a lowboy -- "h," that's a lowboy trailer,
12 hauling a tractor into the hayfield.

13 Q "I"?

14 A "I" is maybe that same piece of equipment coming back
15 out.

16 Q Okay. "J"?

17 A "J" is another piece of heavy farm equipment being
18 moved. That one appears to be going in.

19 Q All right. Next letter?

20 A That's the hay baling equipment that -- that they
21 operate in that upper portion of Peter's property where
22 they have the hayfield.

23 Q That's letter "k."

24 A "K," right.

25 Q "L"?

1 A That is that piece of equipment for -- that -- that
2 collects the hay -- the sort of spinner things on the back
3 -- coming out of the hayfield.

4 Q "M"?

5 A That's just a big tractor, looks like, pulling a piece
6 of farm equipment coming back out.

7 Q "N"?

8 A Those are just passenger vehicles that come and go
9 routinely. I guess they're hunters or friends of Peter's
10 or somebody that -- some guests of -- of Peter's.

11 Q "N" [sic]?

12 A Those -- those are other pictures of I presume to be
13 hunters or guests of people coming through at -- before
14 daylight, six o'clock/6:40 in the morning.

15 Q "O"?

16 A "O" is -- that's a fertilizer spreader going in to
17 spread fertilizer somewhere on -- on the upper portion of
18 Peter's property around that hayfield. I -- I suppose
19 would be where he's going.

20 Q All right. Again, those have been put into evidence.
21 And I think the best thing to do with the exhibits, Mr. --
22 let's get them off the shelf here.

23 So, based on these photographs and other photographs
24 you -- that you've been taking, do you have an observation
25 as far as Mr. Buyck's ability to use that Hayfield Road,

1 that Blue Road, for activity?

2 A Yes.

3 Q What is your observation?

4 A We've noticed virtually no change. They -- they still
5 come and go on the property. It's simply all the traffic
6 goes down the Blue/Hayfield Road, where before some of it,
7 depending on which portion of the property they wanted to
8 go, would come through our property, now, it's all funneled
9 down the Hayfield Road.

10 The big -- the big, heavy farming equipment has pretty
11 much always used that. They don't come through our
12 property because they don't do farming activities up on
13 the other part of Peter's property.

14 Q Okay. You mentioned earlier about having some photos
15 that you've taken?

16 A Yes.

17 Q I mean, movies?

18 A Yes.

19 Q Videos? And we have two videos marked "Jackson Video
20 1" and "Jackson Video 2."

21 A Okay.

22 Q I haven't put them into evidence yet, but you -- you
23 know what's on both of those videos, right?

24 A Yes.

25 Q Okay. Before we enter them into evidence, just tell

1 me briefly what's Video 1 and Video 2. And then we'll ...

2 A Okay. I think if I can look at this map while I'm
3 doing it, it would be helpful.

4 Q Sure. I'll get it up. All right. Putting back up
5 Plaintiff's Exhibit 4. Again, come down. Tell me what
6 these videos show. I think they're what, a minute each,
7 two minutes each?

8 (Witness steps down from the stand.)

9 A Well, as I mentioned before ---

10 Q "Yes" or "no" on the time? Aren't they bout a minute
11 ---

12 A Two and four --

13 Q Two and four. Okay.

14 A -- I think.

15 As -- as I mentioned before, if you start at the entry
16 to the -- to our 200 -- original 203 acre tract and travel
17 directly through to the hayfield, that's a full video of
18 that route, straight through to Peter's property. And it
19 takes approximately two minutes.

20 But then, so I would know the time, I came back and
21 started at the very same point where you -- it's obvious
22 because there's a survey mark there -- and made the same
23 route across -- this is our property and -- and to -- to
24 the road to the right, to this point (indicates) and
25 Peter's property.

1 Two separate videos, starting at the same place, so
2 you can get a feel for the times and the -- and the
3 conditions of the roadway.

4 Q So, Video 1 is the trip up to the hayfield, right?

5 A I -- I -- I assume that's Video No. 2.

6 Q What I mean ---

7 A Yeah. One's one, and one's the other.

8 MR. BOOTH: Okay. Your Honor, we're -- we have the
9 ability to present these videos here on the screen.

10 THE COURT: Okay.

11 MR. BOOTH: And we'll ---

12 THE COURT: Sure.

13 MR. BOOTH: --- also have them to mark into evidence.

14 THE COURT: I understand.

15 MR. BOOTH: I actually created box that have two
16 slots.

17 THE COURT: Sure.

18 (Defendant's Exhibits Nos. 16 and 17, videos,
19 marked for identification.)

20 Q All right. We got them marked. Now, again, not sure
21 Defendant's Exhibit 16 -- or 17's going to be the first
22 one. But you -- you help me out when it gets --

23 A Right. I know.

24 Q Right.

25 A Well, I'll have to wait til it gets to where it forks.

1 Q That's fine

2 A But they're the same after that.

3 Q Okay. Let's go ahead and start the movie. Hopefully
4 it'll work.

5 A Can I -- can I point at the picture while we're doing
6 this? Will that be helpful?

7 Q No, just go ahead.

8 A Okay.

9 Q I think we've got the pictures ---

10 (The witness speaks as the video is played.)

11 A This is -- this is entering the 203 acre tract coming
12 onto the property. And this -- this is all -- this is the
13 Blue Road, the beginning of the Blue Road. And see, it's -
14 - it's narrow. There's shoulders on either side of the
15 road. And -- and pretty much like that whole way.

16 There are places that it gets wider, arguably, but
17 sometimes it gets near a power line. But it's generally
18 that width.

19 And you see the time's 5:42 seconds now. And you're
20 approaching where the road splits. And if you go -- I
21 don't know which way we're going to go on this video, but
22 it'll go both ways.

23 Okay. This is going to be my road, turning easterly
24 and going through my gate. This is -- this is my gate here
25 that we're going through now. And this section of road is

1 a little wider because the power line's right over there,
2 right on the side of it. And I keep that mowed, try to
3 keep that as nice -- because it's our primary entrance into
4 our house.

5 But it's -- they're all dirt roads and woods. None of
6 them are especially good.

7 Here's the point where it starts to get narrow.
8 Again, you have a serious blind curve, which is -- well,
9 part of our concern is the safety of being on the road.
10 You see the steep bank? You can't get out of the road if
11 you're -- if you meet a vehicle head on and you're walking
12 a dog right there, you're stuck.

13 And you see you can't see around the curves. The
14 roads are real sandy. Again, blind curves, narrow. More
15 curves.

16 Okay. Right there -- right here is where you're now
17 on Dr. Bruner's property. It's a blind curve there.

18 THE COURT: I'm concerned about the characterization -
19 --

20 MR. BOOTH: Slow -- slow down. Stop it there.

21 (Video is paused.)

22 THE COURT: I'm concerned about the characterization
23 of this witness. The video speaks for itself.

24 THE WITNESS: Absolutely.

25 MR. BOOTH: Sure.

1 THE COURT: And he's making a record that is not
2 necessarily accurate based upon, at least, my observation
3 of what I am seeing.

4 So, I don't want those characterizations as part of
5 the record.

6 MR. BOOTH: Yes, Your Honor.

7 THE COURT: This video speaks for itself. I am
8 interested to know where the boundaries are, but beyond
9 that, I don't want him to saying things are blind curve.
10 They certainly don't appear to me to be a blind curve.

11 MR. BOOTH: That was his counsel's fault for not
12 giving him those instructions.

13 THE COURT: I understand -- I understand that.

14 MR. BOOTH: So, I take full blame.

15 THE COURT: But as you know, Counselor, the video
16 speaks for itself. It is in evidence, being shown to the
17 Court.

18 (Defendant's Exhibit No. 17, video, in evidence.)

19 THE COURT: You may proceed.

20 MR. BOOTH: All right. Mr. Jackson, the Court has
21 instructed you not to add any narrative ---

22 THE WITNESS: I understand. I'm sorry.

23 MR. BOOTH: --- unless I ask you and the Judge
24 approves it. So, we're just going to finish watching it,
25 Judge?

1 THE COURT: Thank you.

2 MR. BOOTH: All right.

3 THE COURT: And I do want to know when you're back on
4 your property.

5 THE WITNESS: Okay.

6 THE COURT: And then I want to know when it go -- when
7 the video goes onto Mr. Buyck's property. So, I think
8 that's -- that's the most important information ---

9 MR. BOOTH: All right.

10 THE COURT: --- to be able to view.

11 MR. BOOTH: So, she's saying the origin -- which
12 you've already described. And then the designation --
13 destination -- that's a better word -- and then again when
14 it comes back on your property from Mr. -- Dr. Bruner's
15 property.

16 THE WITNESS: All right.

17 THE COURT: All right. Good.

18 MR. BOOTH: All right. We'll start the video from
19 where we stopped it.

20 THE COURT: Right.

21 MR. BOOTH: Go ahead.

22 THE COURT: At this point we're on Dr. Bruner's
23 property --

24 THE WITNESS: Right.

25 THE COURT: -- as I understand.

1 THE WITNESS: Yeah.

2 THE COURT: Okay. Tell me when we get back on your
3 property ---

4 THE WITNESS: Okay.

5 THE COURT: --- and when we go on Mr. Buyck's
6 property. Okay.

7 MR. BOOTH: So, the answer to that question was, yes,
8 he's currently on Dr. Bruner's property.

9 THE WITNESS: Right.

10 MR. BOOTH: All right. So, you get to speak twice
11 more when it goes onto your property and then secondly
12 where it stops --

13 THE WITNESS: Right.

14 MR. BOOTH: -- the vehicle. All right. Go ahead.

15 (The video resumes.)

16 THE WITNESS: All right. We're on my property now.

17 (Video plays to the end.)

18 THE WITNESS: Okay. This is the gate that is Peter
19 Buyck property.

20 MR. BOOTH: All right. Now, I've got another -- that's
21 Video 1 that's marked on the exhibits. So, that would be
22 the first exhibit number, the one we just watched, would be
23 Exhibit number ---

24 THE COURT: Whose gate ---

25 MR. BOOTH: --- 16.

1 THE COURT: --- was that?

2 MR. BOOTH: Mr. Buyck's. I'll let him answer.

3 DIRECT EXAMINATION BY MR. BOOTH (CONTINUES):

4 Q Whose gate ---

5 THE COURT: Yeah. Who's gate is that?

6 Q --- when were we looking at that last -- that last ---

7 A (Indicating) This is -- this is the gate right here
8 where the private road goes onto Mr. Buyck's property.

9 Q Okay. Again ---

10 THE COURT: Whose gate was that?

11 THE WITNESS: It's Mr. Buyck's.

12 MR. BOOTH: Again, he's referring to Exhibit 4 that we
13 marked. I think somebody already marked a red "X" there.

14 MR. ENGLISH: I'm not sure. That was done by somebody
15 else.

16 MR. BOOTH: Okay. Your Honor, it looks like there's a
17 red "X" where he was pointing to. I'd like the record to
18 show that. Thank you.

19 THE COURT: Okay.

20 MR. BOOTH: All right. That's -- now, we move to the
21 second movie. And again, he's already described what this
22 movie is. So, we'll just let it play.

23 THE COURT: Wonderful.

24 THE WITNESS: Do I -- do I mention the property lines
25 that -- when it -- when it enters and when it forks and --

1 MR. BOOTH: I think she --

2 THE WITNESS: It's three times.

3 THE COURT: That would be wonderful.

4 THE WITNESS: Three times.

5 MR. BOOTH: Okay.

6 THE COURT: That would be wonderful.

7 MR. BOOTH: We got it? Okay.

8 THE COURT: That would be very helpful. Thank you.

9 THE WITNESS: Okay. Okay. This ---

10 THE COURT: Because, now, where are we starting? Are
11 we starting. Are we starting ---

12 THE WITNESS: We start in the exact same spot.

13 THE COURT: --- we -- Fort Motte or your property?

14 THE WITNESS: It's -- it's at the beginning of the 203
15 acre original tract, our property.

16 THE COURT: Gotcha.

17 THE WITNESS: Okay.

18 THE COURT: I'm with you. I understand.

19 THE WITNESS: (Indicates) It's a survey marker right
20 there --

21 THE COURT: Uh-huh.

22 THE WITNESS: --- on the right.

23 THE COURT: Uh-huh. Gotcha.

24 MR. BOOTH: Start the movie, please.

25 (Video plays)

1 MR. BOOTH: Pause it there, please.

2 (Video paused.)

3 THE WITNESS: Okay. This is the fork.

4 THE COURT: Got it.

5 THE WITNESS: And we're going around ---

6 THE COURT: You going to left.

7 THE WITNESS: --- to the left.

8 THE COURT: Okay.

9 MR. BOOTH: Start back.

10 (Video plays.)

11 THE WITNESS: Okay. That's Peter Buyck's gate right
12 there. It's open.

13 (Video plays to the end.)

14 MR. BOOTH: That completes ---

15 THE WITNESS: Show you on the map where that gate is?

16 THE COURT: Got it.

17 MR. BOOTH: --- that completes Movie No. 2. Did --
18 did you want to do something?

19 THE COURT: He was going to show me where on the map,
20 but --

21 MR. BOOTH: Okay.

22 THE COURT: -- I kind of know.

23 MR. BOOTH: For the record -- that's Exhibit 17. And
24 for the record, these video files, that are on two separate
25 CDs, are in Window's Media WMA format, which is the format.

1 THE COURT: You geek, you.

2 MR. BOOTH: I -- I --

3 THE COURT: Great. Excellent. Excellent.

4 MR. BOOTH: So, these are being given to the reporter.

5 (Video 1, marked as Defendant's Exhibit No. 16 and Video 2,
6 marked as Defendant's Exhibit No. 17, in evidence.)

7 MR. BOOTH: Now, just ---

8 THE COURT: I didn't get -- I'm so excited I didn't
9 get nauseous on the trip.

10 THE WITNESS: Oh, that video? I sort of did.

11 MR. BOOTH: Let me just put a little foundation on
12 something that'll come later.

13 DIRECT EXAMINATION BY MR. BOOTH (CONTINUES):

14 Q You -- you hired an expert surveyor, correct?

15 A Right.

16 Q For this case? For this case?

17 A Yes.

18 Q All right. And what is his name?

19 A His name -- it's a company. It's Glen and Associates
20 and his name is Mike Mills.

21 Q All right. And he'll be testifying a little bit
22 later, correct?

23 A That's right.

24 Q All right. Mr. Jackson, just to lay some foundation,
25 is Mr. Mills accompanying you -- has he accompanied you or

1 you accompanied him on visits to Mr. Buyck's property?

2 A Yes.

3 Q All right. And just to make sure you confirm where
4 you guys traveled -- I know Mr. Mills is going to be here.
5 But is Mr. Mills ready to present a video or movie of his
6 trip down another road?

7 A Yes.

8 Q All right. And we're going to use these three map --
9 or whatever we're calling them now -- just to confirm where
10 you and he traveled and approximately when.

11 Those other two videos, the ones we put into evidence,
12 about when were those videos taken by you?

13 A It's probably -- you can probably get it off the
14 property thing in the camera, but it was in -- within the
15 last month.

16 Q Okay. Last month. I've got you.

17 A Very recently.

18 Q All right. Now, I've produce back up our exhibit,
19 Plaintiff -- Defendant's 6.

20 MR. BOOTH: Which, Judge, do you still have yours up
21 there from yesterday? If not, I've got another one. This
22 is No. 6.

23 THE COURT: You know, I've been carrying that around
24 with me, so ...

25 MR. BOOTH: I thought -- I thought you had it ---

1 THE COURT: I -- I have been ---

2 MR. BOOTH: --- in your back pocket, so ...

3 THE COURT: --- literally carrying it around with me.

4 So, maybe. Ah, see? And here's my map.

5 MR. BOOTH: Good. I've got another one for you.

6 THE COURT: It's been everywhere with me.

7 DIRECT EXAMINATION BY MR. BOOTH (CONTINUES):

8 Q All right. Looking at Defendant's Exhibit 6 -- which
9 has now been put on the screen in front of you, Mr. Jackson
10 -- and again, refreshing Road 1, Road 2, Road 3. We've
11 already been over that.

12 A All right.

13 Q MR. BOOTH: So, I want to now talk about Road 3. And
14 can you tell me -- use your red laser, tell me where Road 3
15 starts and where it ends according to that?

16 THE COURT: Uh-huh.

17 A According to this, once you enter the Buyck property
18 on ---

19 MR. ENGLISH: Your Honor, I'd like to object to -- to
20 this -- I think what he's going to say, because there's --
21 no foundation has been -- there's no evidence in the record
22 as to anybody putting Road 3 on the ground.

23 And I'm not even sure who prepared this document as
24 far if a surveyor did. There's evidence in the record,
25 through Mr. Buyck, that -- that Road 3 is in a different

1 location, I guess.

2 I just want to point that out that -- I just object to
3 that. I just don't think it's -- I don't think a
4 foundation's been laid for the preparation of that
5 document.

6 MR. BOOTH: Well --

7 THE COURT: Okay.

8 MR. BOOTH: -- it's already admitted into evidence.
9 But, Judge, I don't mind using their exhibit to do the same
10 thing, if that's a big problem. I just like to use that.

11 I thought that had been introduced into evidence as
12 Exhibit ---

13 THE COURT: It's in the exhibits. I mean -- I mean,
14 excuse me, this is in evidence.

15 MR. BOOTH: Right.

16 THE COURT: Now, there's -- there has been some -- as
17 you know, Mr. Buyck, when asked about Road 3 said, "No, no,
18 no. That's not where it's located."

19 But that hadn't kept Exhibit 6 from being in evidence.
20 And he did draw it on the -- the exhibit. Is that Exhibit
21 5? Is that the number of that one, Mr. Booth?

22 MR. BOOTH: Yes. Yes.

23 THE COURT: Very well. But with regards to Exhibit 6
24 being in evidence, it's in evidence. And if -- you know,
25 if your client has information about the contribution of

1 that and he knows it, I'm -- I'm not going to keep him from
2 testifying to that.

3 MR. BOOTH: All right. We'll -- we'll stay with the
4 one up there.

5 THE COURT: Okay. All right.

6 DIRECT EXAMINATION BY MR. BOOTH (CONTINUES):

7 Q Mr. Jackson, again ---

8 THE COURT: Sure. I mean, he can talk about ---

9 Q --- Road ---

10 THE COURT: --- based on ---

11 Q --- Road ---

12 THE COURT: --- based on his -- what he knows where
13 that came from.

14 Q And Road 3, again, start over where that starts and
15 where it ends.

16 A Okay. And if I could just make one comment. I -- I
17 realize that Mr. Buyck drew this road slightly differently,
18 maybe coming out a little further this way (indicates)
19 yesterday.

20 And I don't dispute that. I mean, it's his road. He
21 -- he should know better than I exactly where it is.

22 But for purposes of this, it starts as you enter the
23 gate of the hayfield and it goes through the hayfield, it
24 goes down and through here (indicates) and -- and either
25 this way or maybe a little more that way, and around this

1 ridge. And -- and they meet together here (indicates).

2 Q All right. So, the intersection point -- I think Mr.
3 Buyck confirmed there was an intersection ---

4 A Right. And then yesterday ---

5 Q --- of Duck Pond Road ---

6 A Yesterday, I think there was some confusion as to
7 whether this little portion of the White Road here, are
8 we're also including that in the description of 3 or -- or
9 -- or does 3 just go to there (indicates.)

10 Q Okay. And what the Judge did, because I didn't have
11 it identified as a separate road, we named that little
12 section "Duck Pond Road."

13 A Oh, Duck Pond Road. That's right. Yeah.

14 Q That's why she -- that's why she did that. So anyway,
15 it's -- obviously the record's got that in there.

16 THE COURT: And where did the road come from? Where
17 did that -- where did the -- the sketching come from of
18 that portion?

19 THE WITNESS: (No audible response.)

20 THE COURT: Do you know what I'm -- you know what I'm
21 --

22 MR. BOOTH: Yes. Oh yeah.

23 Q Who produced the sketch of the -- of the route of the
24 Road 3? Who produced that?

25 A I traced it. Again, it may not be exactly accurate

1 here, but we can look at the other one there -- this
2 portion here may be a little more this way (indicates).

3 And I traced it on Google Earth, and --

4 Q Right.

5 A -- using a tax map and aerial photograph that shows
6 the road as a -- approximate location.

7 Q Yeah. The location of Road 3, you know, we're not --
8 you're not saying that's exactly where it is?

9 A No. No. Actually, I -- I think -- I'm sure Peter
10 would know better than me, that if it goes a little further
11 here (indicates) and I think that's what it shows on this
12 picture. But --

13 Q That ---

14 A The only thing I can confirm having traveled it on
15 foot is that -- and in the car -- is that it starts here
16 and ends there (indicating) --

17 THE COURT: Uh-huh.

18 A -- and it goes through that.

19 Q All right. And now, Mr. Jackson, again laying a
20 little bit of foundation for Mr. Mills, I believe the two
21 of you traveled wherever that road's actually located. And
22 there's a movie that y'all made, correct? That's all I was
23 trying to get to.

24 A Right. We -- we traveled it on more than one
25 occasion.

1 Q Okay. So -- but Mr. Mills ---

2 A And there is a video ---

3 Q --- right. You got video.

4 A --- that documents that.

5 Q And I believe also that Mr. Mills' company has also --
6 could -- if necessary, but we don't think it's necessary
7 right now, could actually use GIS technology to actually --
8 -

9 A Right. Right. They shot ---

10 (The witness and Mr. Booth talking over each other.)

11 Q --- accurately show the road exactly where it is?

12 A They took GIS survey measurements all along the entire
13 route ---

14 Q Again ---

15 A --- and they -- they can plot that if it's necessary.

16 Q Again, that was done after the Judge gave us
17 permission to do that.

18 A On that day ---

19 Q Right.

20 A --- that she gave us ---

21 Q And I believe the way the GIS -- this is fascinating
22 to me, so I apologize for getting geeky again.

23 It looks like the GIS information, not only did it
24 take a coordinate point, but they also took photographs at
25 several points along Mr. Buyck's road, correct?

1 A That's correct. And it's with a camera that -- that
2 stamps the -- the GIS coordinates and the direction the
3 cameras are facing and all sorts of ---

4 Q Right.

5 A --- information.

6 Q But again, we don't plan to show that unless it's
7 necessary to do that.

8 THE COURT: That's neat.

9 MR. BOOTH: All right. Let me just have just a minute
10 to think a little bit.

11 (Brief pause.)

12 THE COURT: You know, we've reached a little pause in
13 the action. Why don't we take a break?

14 MR. BOOTH: Okay.

15 THE COURT: Let's take about a 10 minute break.

16 (To the witness) And again, you can talk about the
17 playoffs, you can talk about anything except your
18 testimony. And enjoy your break.

19 THE WITNESS: How bout if I just sit right here.

20 THE COURT: Exactly. Well, you may change your mind,
21 and decide you want to take a comfort break. And if you
22 do, feel free to do that. We'll take about 10 minutes.

23 (Off the record at 10:53 a.m.)

24 (On the record at 11:15 a.m.)

25 THE COURT: Yes.

1 MR. BOOTH: Your Honor, we're back on the record. And
2 again, Mr. Jackson's on the witness stand. So, I've
3 completed my direct. He's now subject to cross.

4 THE COURT: I didn't know we were so -- I did not
5 realize. Wonderful. All right. Cross-examination.

6 MR. ENGLISH: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MR. ENGLISH:

8 Q Good morning, Mr. Jackson.

9 A Morning.

10 Q I want to go back and talk a little bit about how you
11 came to -- to buy this property.

12 A Okay.

13 Q Okay. And I think you testified earlier that a friend
14 introduced you to Mr. Conrad; is that right?

15 A That's right.

16 Q Okay. Is that Yancy McLeod?

17 A Yes, it was.

18 Q Okay. How did all that happen?

19 A Yancy and I know each other and as do Brock and Yancy.
20 And Yancy knew that I was looking for some property and --
21 cause I'd asked him to help me look around some. And I
22 think, just by chance, Brock had made similar comments to
23 him.

24 And then when Brock was looking for somebody to help
25 him as a partner or someone could participate in some

1 manner trying to buy this property, he told Yancy and Yancy
2 told me and then we connected after that.

3 Q Okay. So, that was -- when was -- when was the first
4 communications -- the first conversation you might have had
5 with Brock?

6 A I don't -- I don't remember. It was some time, you
7 know, a few months before we bought -- bought the property.
8 I don't remember the exact --

9 Q Late '99/early 2000?

10 A Yeah.

11 Q All right. Did -- had you ever seen the property that
12 you bought before this period of time?

13 A No.

14 Q All right. Had you ever seen Mr. Buyck's property
15 before you decided you were interested in buying the tract?

16 A No. Okay. All right. So, you don't know what
17 happened with any of these roads or any of these properties
18 or anything before -- when ---

19 A No. Before -- before I saw the property.

20 Q Okay.

21 A That's right.

22 Q All right, sir. Now, when -- when did you -- that's a
23 very nice cabin. When did y'all build that cabin?

24 A Well, we built it -- we kind of built it in phases.

25 And we started -- and I won't remember the exact dates on

1 this either. But we -- we built one section of it, I'm
2 going to guess, maybe 2003 or '04, somewhere along in
3 there. And then we added another wing onto it in -- maybe
4 two years later than that. It -- it's a -- it's just sort
5 of a master plan to be built in sections as you grow into
6 it, sort of.

7 And we started out so we'd have water and place to get
8 out of the rain and bathroom and so forth, shower, coffee
9 pots, our basics. And then we added on to it, and we have
10 plans to continue to do that.

11 But to answer your question, maybe 2003, and this
12 addition again in 2004 or 5, something like that.

13 Q Now, when did y'all start spending the nights there or
14 staying there on a regular basis?

15 A At -- about that time when we first built -- built the
16 initial structure. Before that, all we had was -- we built
17 an equipment shed to keep the tractor and some tools and
18 things under. And we would spend time down there and stay
19 sometimes late at night, built a fire and sit out there.
20 But we didn't -- we didn't spend the night until we built
21 the first phase of the structure in those dates.

22 Q All right. Getting back to your consideration of
23 buying the property.

24 A Right.

25 Q How -- the first time you went to the property, did

1 you go with anybody? Tell me -- tell us a little bit about
2 that.

3 A I went -- yes. I went with Brock Conrad.

4 Q Okay. All right. And so, how did that -- how did
5 that visit go? What -- what did you observe in your -- in
6 your ---

7 A Can I point to a map?

8 Q Sure. Yeah. This one okay?

9 A Yeah.

10 Q We'll assume the position with the easel. You're
11 welcome to come down, if you'd like.

12 A No. I -- I can probably just do it from here, if it's
13 all right, with this thing.

14 THE COURT: Sure.

15 MR. ENGLISH: Okay.

16 THE WITNESS: Okay?

17 (Puts map on easel.)

18 A Okay. We -- there's a little pond house down here
19 (indicates). So, the first time we visited the property
20 that's sort of where we went. We went -- went in Brock's
21 vehicle.

22 And we drove down and we went down to this pond and --
23 and looked at the pond and then there's -- you know, looked
24 at the house.

25 Brock had -- had told me that he and Peter were old

1 friends and had grown up together. So, he was very
2 familiar with the surrounding lands. And we -- we -- it
3 was a nice day like today. And we were enjoying riding
4 around.

5 So, he said he knew Peter and had permission to go on
6 Peter's property. And he was going to ride me around and
7 show me. So, we left -- (indicates) this is where Brock
8 put his gate right here, eventually.

9 So, we left and came out this road (indicates) back to
10 this Blue Road. And we drove directly through the property
11 to this hayfield. And this is -- we -- there was activity
12 going on in this hayfield; farm tractors and things going
13 on.

14 We drove through this field and -- and down this road.
15 And I -- and I understand we -- we're not sure if we agree
16 if that's exactly where it is.

17 But we drove this direction around this loop road to
18 here (indicates) and then back up through the property,
19 through here, back onto the property and then back out and
20 -- and finished up where we started.

21 And then, you know, we -- we drove all on the side
22 roads here and there where they are, and some other roads
23 that go to these little openings and things. And just
24 generally observed the property.

25 And -- and that was one of the reasons that -- why we

1 had always been of the opinion that -- or -- or at least
2 our interpretation, that this was the road that was
3 primarily used, because there was activity there. There
4 was this big open field and farm tractors and there were
5 actually people working in that field on that day.

6 And then we drove down through here (indicates) it's
7 beautiful down through here. And we went all down through
8 here, but we didn't see any other activity. He told me
9 that they sometimes shoot ducks. It's a little duck pond
10 right here (indicates).

11 And -- but we didn't encounter any activity or farming
12 activity or anything. So, I just assumed from that and
13 what -- how I interpreted the easement to be -- I think it
14 was later when I actually saw the easement. But my first
15 impressions were that it was this road from visibly what I
16 saw it. And then, of course, later when I saw the
17 easement, I -- it sort of confirmed my thinking.

18 So, we -- we rode generally around the property. And
19 -- and then I think we met probably a couple of times
20 talking about how to go about purchasing it and so forth.

21 Q Did you see the Red Road when you made your first --
22 any of these visits?

23 A Yeah. We started here (indicates) -- we started here,
24 drove all the way around this whole loop. And then ended
25 back here (indicates).

1 Q But you saw the Red Road?

2 A Yeah.

3 Q You knew the Red Road was crossing this property.

4 A Sure.

5 Q Okay. All right, sir.

6 MR. ENGLISH: And Your Honor, I -- I apologize. I
7 actually left my office today, because I had some exhibits.
8 I left my office without them today. Ms. Milligan is
9 downstairs making some copies of some plats. I didn't
10 realize that Mr. Booth was complete -- had completed his
11 examination.

12 But I've got this and I've got some other things.
13 They're not the best copies. I apologize.

14 THE COURT: That's okay.

15 MR. ENGLISH: But I think we can make it through.

16 THE COURT: Okay.

17 MR. ENGLISH: When she -- when she comes in, hopefully
18 she'll have some others. I have one copy of this at this
19 time.

20 THE COURT: All right. I'm going to ask you to do
21 this for me: Has Mr. Booth seen it? Does he know what ---

22 MR. ENGLISH: He -- he has seen it. He hasn't seen
23 how -- Bill, I'll ask ---

24 THE COURT: Just show it, so he'll know ---

25 MR. ENGLISH: Yes.

1 THE COURT: --- what you're referring to.

2 MR. BOOTH: Thank you, Your Honor.

3 (Counsel confers.)

4 MR. BOOTH: Well, Your Honor, I'm going to object a
5 little bit just to clarify the record. I do recognize this
6 survey, but I do know for a fact that this survey has been
7 revised.

8 So, as long as that's part of my objection, that this
9 is not the survey that was finally used for this
10 transaction. So, I do object on that ground. This is not
11 the final survey as I understand.

12 But again, it's a small objection, because I know Mr.
13 Jackson can clarify that better than I can.

14 THE COURT: Well, he may not be able to authenticate
15 it. So, we're going to have to see if he can authenticate
16 it.

17 There is an objection to it. So, see if you can put
18 it in evidence.

19 CROSS-EXAMINATION BY MR. ENGLISH (CONTINUES):

20 Q If you'd take a look at that document there. And that
21 was a larger document that we had to make --

22 A Right.

23 Q -- multiple copies of.

24 A Okay.

25 Q See if you've ever seen that, please.

1 A Is this -- this is one document?

2 Q It's all -- it's one large document.

3 A So really, what we will probably be talking about is
4 all on this page?

5 Q Yes, sir.

6 A Okay.

7 Q Well -- right. That's where the principal part of it
8 is.

9 A Right. Okay.

10 Q And I just ask you: Do you recognize that?

11 A Yes.

12 Q Okay. And I believe -- can you identify that, please,
13 for the record?

14 A It was the preliminary plat, the first one, I think,
15 that we saw after I hired Walker to do a survey -- a
16 boundary survey of the property

17 Q Henry -- Henry Walker?

18 A Yes, sir.

19 Q Okay. And he was -- you hired him --

20 A Right.

21 Q To survey. Okay. All right.

22 MR. ENGLISH: Your Honor, I'll have a copy for you
23 momentarily.

24 THE COURT: That's all right. That's all right.

25 MR. BOOTH: The only objection I have now is just

1 based on best evidence. The best evidence should be the
2 original and should be the final version, rather than
3 through this witness.

4 THE COURT: I understand.

5 MR. BOOTH: It's something that was produced by a
6 surveyor who's, I understand, not going to be here to
7 testify.

8 THE COURT: Okay.

9 MR. BOOTH: That's my understanding.

10 THE COURT: All right.

11 MR. BOOTH: So, that objection is best evidence.

12 THE COURT: Sure. Sure.

13 MR. BOOTH: Objection.

14 THE COURT: Yes?

15 MR. ENGLISH: Well, Your Honor, I think that my line
16 of questioning will be on -- on this particular document,
17 and Mr. Jackson's seen the document, and I ---

18 THE COURT: I'm with you. The calvary has arrived.

19 THE WITNESS: I don't have a problem with this.

20 THE COURT: The -- is that -- that is a survey. I
21 gather that the -- the possession of the survey is -- it's
22 not a filed document. That was not retrieved, I gather,
23 from -- from the Clerk's office or the RMC office; is that
24 right?

25 MR. ENGLISH: That's -- that's correct, Your Honor.

1 THE COURT: Okay.

2 MR. ENGLISH: This one has not been recorded.

3 However, it was made a part of Mr. Jackson's deposition.

4 I'm not going to put words into his mouth.

5 THE COURT: What does that mean, "it was made a part
6 of"?

7 MR. ENGLISH: He's -- I would say that he's familiar
8 with it. And I'm --

9 THE COURT: Did he identify it in his deposition?

10 MR. ENGLISH: I believe he did. Yes, sir -- yes,
11 ma'am.

12 THE COURT: Okay.

13 MR. BOOTH: Well, you know I reserve -- I get to
14 object. I mean, just because he identified it at his
15 deposition, I reserve my objections to now for
16 introduction.

17 THE COURT: Without question.

18 MR. BOOTH: Thank you. I just want to make sure I
19 knew what ---

20 THE COURT: Absolutely.

21 MR. BOOTH: --- thank you.

22 THE COURT: I'm just trying to figure out where I am.
23 Because your client, bless his heart, is up here saying, "I
24 don't have a problem with that. I don't have a problem
25 with that." So, I'm trying to ---

1 MR. BOOTH: And ---

2 THE COURT: --- trying to figure out where I am.

3 MR. BOOTH: -- and to really -- to really move things
4 along, we ---

5 THE COURT: Sure.

6 MR. BOOTH: --- we did introduce a version,
7 Defendant's 15. We -- we put that into evidence.

8 MR. ENGLISH: Which was a later revision of the same -
9 --

10 THE COURT: I -- I'm with you. I'm -- I'm completely
11 with you. All right. And for this reason -- hold on a
12 second.

13 All right. Now, as -- as I understand, both of you
14 agree that this is a survey -- it is a copy of a survey.
15 It is not the original survey, but it is a copy of the
16 survey. And it's Mr. Booth's concern that the -- that it
17 is best evidence rule in that it is not the original survey
18 -- the original survey. But it is the survey that was --
19 that has been identified here and in court, and it was
20 identified in -- I gather, in his deposition.

21 MR. ENGLISH: It was identified at his deposition.

22 THE COURT: All right.

23 MR. ENGLISH: And I will say, just -- I'm not trying
24 to mislead the Court, it -- this is a survey of the same
25 property. However, it is an earlier revision.

1 THE COURT: Yeah, exactly. It may be clear -- you
2 made it clear about that --

3 MR. ENGLISH: Right.

4 THE COURT: -- that this particular -- this was a
5 survey that was revised.

6 MR. ENGLISH: Correct.

7 THE COURT: So, it is what it is. I'll admit it over
8 the objection of Counsel and -- because it's -- best
9 evidence rule, as I understand it, is the objection.

10 And let me just cite for the record the rule of
11 admissibility of duplicates.

12 Okay. You may proceed.

13 MR. ENGLISH: I'd like to -- if I could have that one.
14 This will be Plaintiff's next --

15 THE COURT REPORTER: Seven.

16 MR. BOOTH: Just to clarify for the record -- I know
17 you already admitted it, but just to clarify for the record
18 ---

19 THE COURT: Uh-huh.

20 MR. BOOTH: --- my other objection was the person that
21 did the survey is not here to introduce it also.

22 THE COURT: Very well.

23 MR. BOOTH: I assume that Mr. English is not going to
24 call Mr. Walker; is that correct?

25 THE COURT: I don't know, sir. I don't know. The

1 exhibit is in evidence. Okay?

2 MR. BOOTH: Yes, ma'am. I'm just ---

3 THE COURT: Very well.

4 MR. BOOTH: --- just clarifying the record.

5 THE COURT: You've objected on the basis that,
6 although your client retained someone to do the survey and
7 said this is the preliminary survey, that he identified
8 that this is the survey that he -- a requisition --
9 although it is a preliminary and not the final one, that he
10 recognizes and he knows and he's authenticated the
11 document. He hired the man to do it and this is what he
12 has done. Your objection has been overruled.

13 I don't know who he's going to call. I don't know if
14 he's going to have any rebuttal at all. But thank you.

15 (To Mr. English) You may proceed.

16 MR. ENGLISH: Thank you.

17 CROSS-EXAMINATION BY MR. ENGLISH (CONTINUES):

18 Q So, Mr. Jackson, you recognize this survey?

19 A Yes.

20 Q Okay. Now, why did -- just tell -- tell the Judge why
21 you commissioned this survey.

22 A Well, the primary reason was, when we subdivided the
23 property, the sales price based was based on a price per
24 acre, acreage price. And there had not been a survey done
25 since that one, I think, the 1960s or something like that.

1 And I wanted to be sure of, you know, where the
2 corners were. And then the main reason was to know how
3 many acres it was.

4 Q Right.

5 A But that's what we'd agreed to pay the seller who had
6 also never had it surveyed. And we just wanted to confirm
7 it was 203 acres, and if we divided it what were the -- the
8 divided pieces.

9 Q Okay. All right. So -- so, this was in connection
10 with yours and Brock's split -- subdivision property?

11 A Right.

12 Q Okay. Now, looking at the first page of this, Exhibit
13 No. 7, and there's a note that appears on the -- on the
14 first page of the survey?

15 A Right.

16 Q Okay. And I'll just read that note for the record
17 just so we'll make it easier.

18 A Right.

19 Q I'm reading on the first page. It says (as read):
20 "Twenty-foot ingress and egress right-of-way, along the
21 existing unpaved road, granted to W. D. Buyck, Jr., by
22 instrument recorded at miscellaneous book 6, at page 2615."

23 You ---

24 A Yes. I've seen that.

25 Q --- you see that note. Okay.

1 And on each side of that note there appears to be two
2 arrows.

3 A Right.

4 Q Okay. And those arrows are pointing to apparently two
5 different roads.

6 A That's right.

7 Q Okay. Now, did you see this before you bought the
8 property?

9 A I saw a survey that had -- that -- that looked similar
10 to this. I don't know if this is the same one, but I --
11 but I do know that there was a preliminary survey. And
12 yes, I saw it.

13 Q Okay. And what's the date of this survey? It's at
14 the bottom.

15 A March 3rd.

16 Q Okay. Of what year?

17 A 2000.

18 Q Okay. And when did you buy the property?

19 A I think it was May.

20 Q Of ...?

21 A 2000.

22 Q Okay. So, this survey predates ---

23 A That's right.

24 Q --- your purchase of the property.

25 A Yeah.

1 Q Okay. Now, do you recall if you saw this particular
2 survey?

3 A I -- I -- I'm gonna assume it's the same survey. Yes,
4 it looks like it to me.

5 Q Okay. What did you think when you saw the note and
6 those arrows on this survey?

7 A Well, I thought that -- I wanted to know why he had
8 indicated two roads when we had thought it was one road.

9 Q Okay. And -- but it -- but it clearly indicates two
10 roads.

11 A Yes.

12 Q Okay. So, at that point, were you on notice that
13 there may be some easement rights over either or one or
14 both roads?

15 A We were notified that there were easement rights over
16 a road. But we weren't -- he wasn't sure. It didn't
17 indicate which one, so he just pointed at both.

18 Q Okay. So, he -- okay. He wasn't sure. Okay. All
19 right. Ask you --

20 A Yes.

21 Q -- identify that.

22 A That's -- that looks like a plat dated March -- looks
23 like March 30, 2000. Yeah. Same date I think.

24 Q Okay.

25 A Yeah.

1 Q All right. Have you ever seen that?

2 A Yes.

3 Q Okay. Now, has this document been recorded in the
4 courthouse here?

5 A I believe this is the one that's recorded. Yeah.

6 Q Okay.

7 MR. ENGLISH: Now, I'd like to move this into evidence
8 as Plaintiff's Exhibit 8.

9 THE COURT: Any objection?

10 MR. BOOTH: Well, Your Honor, if this was recorded,
11 there's no objection.

12 THE COURT: Very well. Is this the one that's already
13 in evidence?

14 MR. ENGLISH: No, ma'am.

15 MR. BOOTH: No.

16 THE COURT: Okay. Okay. All right.

17 (Plaintiff's Exhibit No. 8, plat document, dated 3/30/00,
18 in evidence without objection.)

19 CROSS-EXAMINATION BY MR. ENGLISH (CONTINUES):

20 Q Okay. And just for the record, this is a survey
21 prepared for you, Mr. Jackson. But it appears to be
22 recorded on -- I'm sorry for the small copy, but this is
23 what they gave us -- filed, looks like May 22, 2000. And
24 that's plat No. 4122.

25 A Right.

1 Q I got that information off the top there.

2 Now, who prepared this survey?

3 A The same surveyor.

4 Q Mr. -- Mr. Walker?

5 A Yes.

6 Q Okay. And is this a revision of the March 20th
7 survey?

8 A Right.

9 Q Okay. And I think there's a revision date at the
10 bottom of it. You can read it.

11 A Yeah. (As read) April 27th.

12 Q Right, I see. Okay. So, how did this -- how -- how
13 did the plat get revised from March 20th to April -- April
14 27th ---

15 A Well ---

16 Q --- 2000?

17 A --- I'll tell you how I recall it. The plat was --
18 was forwarded to my closing attorney, who was John McLeod -
19 -

20 THE COURT: John who now?

21 THE WITNESS: John McLeod.

22 THE COURT: John McLeod. Okay.

23 THE WITNESS: And -- and that's when he raised the
24 question that the -- about the earlier survey pointing to
25 more than one road.

1 And we called him and said, you know, it's our
2 interpretation of this easement that it's one road. And he
3 said that ---

4 Q And who -- who -- who's he?

5 A The surveyor, Mr. Walker.

6 Q Mr. Walker. Okay.

7 A And he said that he had -- that he didn't disagree
8 with that. He said he had put the notes on there. He
9 wanted to alert us of the fact that there were more than
10 one road on the property.

11 Q And what -- which -- let's just slow down a little
12 bit. Now which one? You said the notes. On which
13 document are you talking about?

14 A He said that he didn't ---

15 Q Wait a minute. Just tell me which document you're
16 talking about.

17 A Okay. We're talking about the one that was never
18 recorded. The preliminary ---

19 Q Okay.

20 A Okay. Which is 7.

21 He said that --

22 Q No. Without saying what he said, what I'm trying to
23 figure out is what did you think?

24 A I thought we needed to get clarification, because my
25 interpretation was and my lawyer's interpretation was that

1 the deed was referencing a single road. And we wanted to
2 clarify that.

3 Q Okay.

4 A So, we called him and asked him to clarify.

5 Q Okay. And the result of that conversation was
6 Plaintiff's Exhibit 8?

7 A Was the revised -- yeah.

8 Q Okay. Now there are notes to the right-hand side of
9 Exhibit 8.

10 A Right.

11 Q Right? And -- and -- and we presume those are
12 surveyor notes?

13 A Right.

14 Q Okay. Now, note number two -- read number two,
15 please.

16 A (As read) "Twenty-foot ingress and egress right-of-way
17 along the existing unpaved road granted to W. D. Buyck,
18 instrument recorded Miscellaneous Book 6, at page 2615."

19 Q Okay. Now, could you read note 3, please?

20 A (As read) "Location of easement referenced in book is
21 -- at Page 2615, is unplottable. The description describes
22 an easement along the present existing road. There's no
23 way to determine from the description which road the deed
24 is referring to."

25 Q Okay. Okay. And you went ahead -- and this -- was

1 this survey the survey of the plat that was recorded in
2 connection with your purchase of the property?

3 A Yes.

4 Q It looks like about the same time.

5 A Uh-huh.

6 MR. ENGLISH: Okay. All right. Now ... okay. And
7 looking back at Defendant's 15, did you -- do we have a
8 written -- was it on the -- was 15 on the PowerPoint?

9 (Brief pause as counsel confers.)

10 MR. ENGLISH: That's Defendant's 15, which -- which --

11 -

12 THE COURT: Let me see which one that is.

13 MR. ENGLISH: It's a 2008 revision.

14 THE COURT: Oh, okay.

15 THE WITNESS: Right.

16 CROSS-EXAMINATION BY MR. ENGLISH (CONTINUES):

17 Q Now, in 2008, who -- who prepared Defendant's 15?

18 A Walker.

19 Q The same surveyor?

20 A Yes.

21 Q Okay. And when did he do this revision?

22 A September 18, 2008.

23 Q Okay. And this is already in evidence. And there's a
24 note there in the middle of that survey which says what?

25 A It says (as read): "The center line of the road is

1 the center of a 20-foot easement recorded in Deed Book 6,
2 Page 2615."

3 Q Okay.

4 A And it's pointing to the road.

5 Q Okay. So --

6 A Which would be the Blue Road.

7 Q -- sometime between 2000 and 2008, the survey changed.

8 A Right.

9 Q Okay. And why did you commission this survey?

10 A Well, because I had been sued. And -- and the
11 location of this easement being questioned, and it was
12 different than I'd interpreted it.

13 So, I called and asked him -- told him that there was
14 a lawsuit and I needed for him to further evaluate and
15 clarify his findings of the location of the easement, which
16 he did. And he revised it to this. After further
17 investigation, he made those conclusions.

18 Q So, after the lawsuit started.

19 A Right.

20 Q Okay.

21 A There was no dispute before that. I -- I had no
22 reason to ask him about it.

23 Q Okay. All right. So, we have three different surveys
24 at three different points in time.

25 A Right.

1 Q They're all different.

2 A One of them not being recorded.

3 MR. ENGLISH: Thank you.

4 (Counsel confer briefly.)

5 Q I think you testified earlier as to your observations
6 of Mr. Buyck's use of the Red Road. Did you testify ---

7 A No.

8 Q I'm sorry?

9 A I didn't testify to that.

10 Q You didn't? Okay.

11 A All right.

12 Q Do you know all the uses that he makes on his
13 property, the 700 acres?

14 A Excuse me? Say it again?

15 Q Do you know all -- do you know everything that he does
16 when he's on his property and his 700 acres?

17 A No.

18 Q Okay. All right. And again, you had never seen this
19 property before late 1999 or early 2000; is that right?

20 A No. I -- I looked at it on those aerial photographs
21 and things. But I'd never ---

22 Q But you had no personal visit or personal knowledge?

23 A No. Not until that original visit.

24 Q So, anything that happened on the Red Road or any of
25 this property before then ---

1 A No.

2 Q --- you wouldn't have had any idea ---

3 A No.

4 MR. ENGLISH: All right. Nothing further. Thank you.

5 MR. BOOTH: Nothing from me, Your Honor.

6 THE COURT: No re-direct?

7 MR. BOOTH: That's correct.

8 THE COURT: Okay.

9 DIRECT EXAMINATION BY THE COURT:

10 Q Just so I'm clear, the reason that the first survey
11 was not recorded wasn't based -- you didn't make that
12 decision on your own?

13 A No.

14 Q You did that in consultation with your real property
15 lawyer?

16 A Right.

17 Q Who, I -- I gather, you believed had all of the
18 appropriate information.

19 A Right.

20 Q And you didn't tell your lawyer, "Don't record this
21 plat. Have it redone."?

22 A No.

23 Q Because, you know, while you might could build one or
24 both or any number of roads with your heavy equipment, you
25 -- that's not what you do?

1 A Right.

2 Q Okay. And -- and needless to say, you were relying on
3 the advice --

4 A Right.

5 Q -- that was the purpose of having a lawyer.

6 A Right.

7 Q Okay. And so, it was -- and -- but obviously, your
8 lawyer's sharing the information with you, right?

9 A Yes.

10 Q I mean -- and you are obviously very bright, and --
11 and that decision -- though it was made, that decision, not
12 to -- to ask for something --

13 A Right.

14 Q -- for this plat to be reviewed --

15 A Right.

16 Q -- was based on your consultation with your lawyer.

17 A Right.

18 Q All right.

19 A Both then and the recent one.

20 Q I understand. I understand. Was it your property
21 lawyer the second time, or your -- or your litigation
22 lawyer, the second time?

23 A Both.

24 Q Okay. Okay. Okay. All right. Very well. And let
25 me ask this question, because I don't know. Let me -- I

1 wanted to see the Exhibit 15, to see if the Note 3 is still
2 on there.

3 (Mr. English hands a document to the Court.)

4 THE COURT: Is that 15? I'm so glad it's so small.

5 (The Court reviews the document.)

6 THE COURT: I'm looking at it. Y'all, it's written so
7 little, and I -- and -- but I don't see that the note -- I
8 don't see ---

9 MR. ENGLISH: It's not.

10 THE COURT: --- Note 3.

11 MR. ENGLISH: It's not.

12 THE COURT: It's not --

13 MR. ENGLISH: It's just this --

14 THE COURT: Okay. That note 3 is not on 15.

15 MR. ENGLISH: He -- he removed that. He removed note
16 3 and put the description of the easement on the ---

17 THE COURT: Gotcha.

18 MR. ENGLISH: -- Red Road.

19 THE COURT: Gotcha.

20 MR. BOOTH: Your Honor, for the ---

21 THE COURT: I have one other question.

22 DIRECT EXAMINATION BY THE COURT (CONTINUES):

23 Q And that prompts -- was this -- the purchase, was it
24 "X" number of dollars per acre, or was it "X" number of
25 dollars for the tract?

1 A It was "X" number of dollars -- if I recall --

2 Q Sure.

3 A --- it was "X" number of dollars for the tract, the
4 203 acre tract. But it was sort of -- once we divided it,
5 we took the total number and -- and we were gonna calculate
6 that based on what the two sides were.

7 Q Well, you needed to ---

8 A And at that point, we didn't really know if it was
9 even 203 acres. So, it just made sense to do it.

10 Q It looks like it was more than 203. It looks like it
11 -- it's 208. Is that right?

12 A Well, maybe it's 208. Yeah.

13 Q Okay. Because I think we -- we're talking about 203,
14 but it looks like it might have been a little bit more.

15 A Yeah. That -- that's right.

16 Q Okay. Very well. So, irrespective of whether it was
17 a per acre, because you wanted to know what you were
18 buying.

19 A Yeah. I might have been getting 60 acres and paying
20 for 70 or something.

21 Q Absolutely. Absolutely.

22 THE COURT: Very well. Does that prompt any questions
23 from either of you?

24 MR. ENGLISH: No, ma'am.

25 THE COURT: No? How about you, Mr. Booth?

1 MR. BOOTH: Your Honor, for Exhibit 15 --

2 THE COURT: Sure.

3 MR. BOOTH: -- we'd like to offer a full size --

4 THE COURT: You've got a bigger one?

5 MR. BOOTH: Yes, ma'am.

6 THE COURT: Hallelujah. I might can read that one.

7 MR. ENGLISH: Yeah. But it's the same -- it's the
8 same as 15?

9 MR. BOOTH: 15. We'd like to have it introduced as a
10 full-sized version of Exhibit 15 by giving it a new
11 Defendant's number.

12 THE COURT: I think that is a marvelous change.
13 That's great.

14 THE COURT REPORTER: 18.

15 MR. BOOTH: So, it's going to be Defendant's 18.

16 THE COURT: Okay. But it's also 15. But it's --

17 MR. BOOTH: Yes, ma'am.

18 THE COURT: -- it's a real one.

19 MR. BOOTH: Yes, ma'am.

20 THE COURT: Wonderful. I might be -- I might be able
21 to read this one.

22 (Counselors confer briefly.)

23 THE COURT: This is great.

24 MR. BOOTH: We'll keep both versions in.

25 MR. ENGLISH: As long as it's the same, I have no

1 objection.

2 THE COURT: Yep. Yeah. It's the same.

3 (Defendant's Exhibit No. 18, full-size version of map,
4 in evidence without objection.)

5 THE COURT: All right. Y'all got to remind me. Might
6 as well do it now, because y'all would help me so much.

7 When was -- and I know about the deeds, but what is
8 the date that the property was divided between -- your
9 property, Mr. Jackson, your property was divided. What --
10 when was that? I know y'all got the deeds.

11 THE WITNESS: Yeah. It -- it's somewhere in the
12 neighborhood of May of 2000, I think.

13 THE COURT: May -- it was -- it was somewhere in that
14 time.

15 THE WITNESS: Yeah. As part of the closing
16 arrangements we wanted to get the survey.

17 THE COURT: Sure.

18 THE WITNESS: It was all done at the time.

19 THE COURT: Wonderful. And was -- was the survey --
20 the -- the April the 27th survey used for that transaction?

21 THE WITNESS: For the acreage, yes.

22 THE COURT: Right.

23 THE WITNESS: I think.

24 THE COURT: Right. Well, because you all talked about
25 your boundary line as being the -- the road. Because you

1 owned half of it and he owns half of it.

2 THE WITNESS: That's right. That's why we chose it.

3 THE COURT: Yeah. And so -- and so, the -- the April
4 the 27, 2000 plat was used for that transaction, too?

5 THE WITNESS: Right.

6 THE COURT: Okay. Because y'all talk about the road
7 and --

8 THE WITNESS: Right.

9 THE COURT: -- and it being divided and --

10 THE WITNESS: Right.

11 THE COURT: -- and that that's the dividing road, and
12 each of you own ---

13 THE WITNESS: Right.

14 THE COURT: --- half of that.

15 THE WITNESS: Right. Uh-huh.

16 MR. ENGLISH: I think, Your Honor, if it helps clear
17 it up --

18 THE COURT: Uh-huh.

19 MR. ENGLISH: -- the closing -- Dr. Casone sold the
20 property on April 7th. And that deed was recorded on April
21 10th of 2000.

22 THE COURT: Okay.

23 MR. ENGLISH: And he description that they -- that was
24 used in that deed was the 203 acres, because they -- they
25 bought that as tenants in common. And then ---

1 THE COURT REPORTER: I'm sorry? Say that again.

2 MR. ENGLISH: I'm sorry?

3 THE COURT REPORTER: They bought that what?

4 MR. ENGLISH: As tenants in common, as co-tenants.

5 And then, subsequent to that would have been, I think,
6 the -- the -- the -- the final revision of plat, and then
7 recording the plat.

8 I'm not trying to testify, but I'm just trying to
9 clear that up.

10 THE COURT: Okay. The -- the property was so proud to
11 be owned by y'all, it puffed up from 203 to 208.

12 Wonderful. Thank you so much. Thank you.

13 I think these gentlemen -- are y'all -- he's -- he's
14 right here for y'all. Anybody got more questions?

15 MR. BOOTH: Thanks for the offer, but I'm through
16 myself.

17 THE COURT: Done and done?

18 MR. ENGLISH: Yes.

19 THE COURT: And I'm done.

20 (To the witness) Thank you so much. Come on back
21 down.

22 (The witness retires from the stand.)

23 THE COURT: Call your next witness.

24 MR. BOOTH: Yes. We have a short witness, Mr. Medlan.

25 THE COURT: Wonderful. All right.

1 (The witness approaches the stand.)

2 MR. BOOTH: Can you hear me okay?

3 THE COURT: He heard -- he heard his name. Come on,
4 Mr. Medlan.

5 MR. BOOTH: Okay. You know the procedure. Go up
6 there and be sworn in, if you don't mind.

7 (The witness complies and takes the stand.)

8 THE COURT: Is Mr. Medlan going to need plats, because
9 I got all the plats?

10 MR. ENGLISH: No.

11 THE COURT: Is he going to need some ---

12 CLERK OF COURT: Please raise your right hand.

13 JAMES MEDLAN, having been first
14 duly sworn, testifies as follows:

15 THE COURT: Please state your full name for the
16 record.

17 THE WITNESS: James Nelson Medlan, M-e-d-l-a-n.

18 THE COURT: Thank you for spelling your last name.
19 Thank you, sir. And pull that microphone just a little bit
20 closer. And if your voice gets a little dry, let us know.
21 We'll get you some water.

22 THE WITNESS: I'm fine. Thank you.

23 THE COURT: Now, if you need it, you just let us know.
24 Does he need -- does ~~he need the~~ plats?

25 MR. BOOTH: He ~~might~~. We can put them here.