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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, and
The Honorable Alex Kinlaw, Jr., Circuit Court Judges

Appellate Case No. 2022-001499
Trial Court Case No. 2020-CP-39-00266

Click Properties, LLC and Hyper Formance, LLC,.....Respondents,

v.

Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC.....Appellants.

AMENDED RECORD ON APPEAL
VOLUME II

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IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' RESPONSE IN
	)	OPPOSITION TO DEFENDANTS'
	)	MOTION IN LIMINE
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
	)	
Defendants.	)	
_____	)	

I. THE INTERACTIONS BETWEEN THE PARTIES

Brent and Shelly Click have been living through hell caused by Defendant Thomas and his employees since he took over his father-in-law's business. Now Thomas wants to exclude his outrageous behavior so the jury will have no idea what is really going on. This is not the purpose for Motions in Limine, and Brent and Shelly oppose them for the following reasons.

A. Thomas's Interactions with the Clicks are Relevant

Brent and Shelly Click had been renting, and then purchased the property adjacent to the Thomas property at 3670 Calhoun Memorial Highway. Originally, Greg Grissinger, the father-in-law of Thomas, ran the All-Tech business, and was very helpful to Brent. Once Thomas took over the business everything changed. Thomas' behavior toward the Clicks shows his motive for excavating in a manner that was intentionally reckless.

On Thomas' first day of business, Brent brought a dozen doughnuts in order to welcome him to the neighborhood. Thomas pulled a knife and held it to Brent's throat saying something along the lines of "I want to let you know who's in charge around here..." (Ex. A, Click 30(b)(6) Deposition, p. 83, l. 24-p. 84, l. 9. See also Ex. B, May 13, 2022 Affidavit of Brent Click ¶9).

In the early summer of 2017, Brent grilled a bunch of burgers and hotdogs, and invited the guys that worked in the neighboring shops for lunch. Thomas walked up like he was going to say thank you but instead cocked his head to the side and told Brent that he has dreams of cutting Brent's head off. (Ex. B, May 13, 2022 Affidavit of Brent Click ¶10).

In August of 2018, Brent and Shelly came back from boating at the lake late one afternoon and found that Thomas had removed their gate from the bottom of the hill and driven an excavator up the hill. Brent walked up to where Thomas was standing under his carport and asked him "what is going on?" Thomas responded with "Man, I slept great last night... want to know why?... I had my favorite dream where I get to cut your giant head off with a tiny knife and the smaller the knife the better I sleep," and then he strolled down the hill. (Ex. B, May 13, 2022 Affidavit of Brent Click, ¶11).

Several days later Thomas started digging away the embankment, and Brent was very concerned about the safety of the excavation. He went to Thomas's office to inquire about Thomas' plan and whether he had contacted "811" to have the utilities located. Thomas's bizarre response was to laugh and say words along the lines of, "I'm going to dig until your building falls, and when it does, I'm going to build a shop where yours is now and put my boat and four wheelers in it." (Ex. B, May 13, 2022 Affidavit of Brent Click, ¶12). Mr. Thomas had the plan drawn out on a whiteboard with a giant "X" over the Click back building. He then erased it and drew another square for where his building would be. Brent left to the sounds of Thomas laughing. (Ex. B, May 13, 2022 Affidavit of Brent Click, ¶12).

Brent's first cause of action in his Complaint is nuisance per se, where he alleges in Paragraph 24 that the "excavation was unreasonable, intentional and/or reckless, and continues to interfere with Plaintiffs' use and enjoyment of their property." Therefore, it is quite obvious that this is relevant for the jury to know the actual motive for Thomas to carry out such a dangerous

excavation that he: 1) removed the lateral support from the Click property. (Ex. C, May 12, 2022 Affidavit of David Hall); 2) never hired an experienced professional excavation company or engineer (Ex. D, Thomas Deposition, p. 69, ll. 6-18); and 3) never installed a retaining wall to protect the Click property. (Ex. D, Thomas Deposition, p. 76, l. 16-p. 77, l. 9). Thomas' goal was to cause Brent's building to collapse. Thus, this evidence is necessary to prove Thomas's motive, as stated in the first cause of action.¹

B. Thomas Cannot Meet His Burden that the Relevant Evidence Should be Excluded on the Grounds of Prejudice under SCRE 403.

Defendants rely on South Carolina Rule of Evidence 403 and misstate the grounds for exclusion of this relevant evidence. Rule 403, SCRE sometimes is incorrectly stated as providing that for evidence to be admissible under a Rule 403 analysis the probative value of evidence must substantially outweigh the danger of unfair prejudice to the defendant, whereas "[t]he correct test is the opposite: whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice." *State v. King*, 424 S.C. 188, 200 n.6, 818 S.E.2d 204, 210 n.6 (2018). The misstated test "incorrectly places the burden on the proponent of the evidence to establish admissibility, while the proper test places the burden on the opponent of the evidence to establish inadmissibility" under Rule 403. *Id.* Thomas cannot show that the probative value of the evidence is substantially outweighed by the danger of unfair prejudice; therefore, it should be admitted.

II. THE PROPERTY BOUNDARY DISPUTE IS NOT SUBJECT TO *RES JUDICATA*

Defendants, in yet another effort to avoid responsibility for their actions, dredge up an old settlement of a lawsuit from 1998. They claim that *res judicata* precludes the present lawsuit when

¹ Prior bad act evidence is admissible where the evidence is of such a close similarity to the charged offense that the previous act enhances the probative value of the evidence so as to outweigh the prejudicial effect. *Winters v. Fidele*, 394 S.C. 629, 650, 716 S.E.2d 216, 324 (Ct. App. 2011).

in fact the issues in this case were never litigated in the previous lawsuit. The Complaint filed in 1997 by a predecessor owner of the Click property shows there was a dispute over a 15-foot strip of land that apparently erroneously had not been included in a prior deed, which was settled by execution of a quit claim deed by the other interested parties, confirming rights in the 15-foot strip to Betty M. Ramey. The claims in the present litigation are not based on an erroneous metes and bounds description in a deed. Therefore, the subject matter is just not the same. As stated in the case of *Nelson v. QHG of South Carolina Inc.* 354 S.C. 290, 580 S.E 2d 171 (2003):

. . . privity does not embrace relationships between persons or entities, but rather it deals with a person's relationship to the subject matter of the litigation . . .

To be in privity, a party's legal interests must have been litigated in the prior proceeding. Having an interest in the same question or in proving or disproving the same set of facts does not establish privity. Nor is privity found when the litigated question might affect a person's liability as a judicial precedent in a subsequent action.

354 S.C. at 308-09 (citations omitted).

Therefore, settlement between the parties in 1998 to quiet title as to the 15-foot strip of land, and which pre-dated the time frame upon which Plaintiffs base their claims in this suit to the turnaround area and entire gravel driveway, cannot be *res judicata*.

Further, if the first case was dismissed with prejudice on purely procedural grounds, without consideration of the underlying merits of the action, then the party in the later case is barred from asserting collateral estoppel or *res judicata*. *Nelson*, 354 S.C. at 311. Here, the old lawsuit was never tried, and the underlying merits never considered. The parties simply settled the case. Therefore, *res judicata* does not apply. *See also Sealy v. Dodge* 289 S.C. 543, 347 S.E.2d 504 (1986).

Finally, the fact that Thomas excavated the property cannot be excused by the doctrine of *res judicata*. *Res judicata* does not apply where the actions of Thomas were not sufficiently foreseeable at the time of the initial action. *Nelson*, 354 S.C. at 307. There was no attempt in the

Ramey lawsuit in 1997 by the neighbor to dangerously excavate with the reckless indifference as to the effect on the Ramey building. This was entirely unforeseeable, and no such thing happened from 1997 to 2018, 21 years later.

Public policy requires Brent (and other landowners) to have a solution to this egregious behavior. *Res judicata* should not be invoked in order to allow Defendants' behavior. *Res judicata* should not be applied where there is a potential adverse impact on the public interest. *Id.* Therefore, this is further reason that Defendants' attempt to claim *res judicata* should be denied.

III. THE TESTIMONY OF DAVID HALL SHOULD NOT BE EXCLUDED OR LIMITED

In determining whether to admit expert testimony, the Court must first determine whether the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury. *Watson v. Ford Motor Co.*, 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010). Defendants do not dispute that expert testimony will assist the jury in understanding the issue of soil stability and erosion and the relationship between Thomas' excavation and the effect on the Click property. "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE.

Second, the expert must have "acquired the requisite knowledge and skill to qualify as an expert in the particular subject matter," although he "need not be a specialist in the particular branch of the field." *Watson, supra*. Mr. Hall has a BS in Civil Engineering from Clemson University. He is a registered Professional Engineer. After serving for four years as an Army combat engineer, Mr. Hall has worked as a civil engineer in all areas of civil site engineering and

has more than 30 years' experience in the field of civil engineering. (Ex. E, Hall Deposition, p. 5, l. 21- p. 8, l. 18)

Finally, the substance of the testimony must be reliable. *Watson. Supra*. In analyzing the reliability of proposed expert testimony, the Court must consider the following factors: "(1) the publications and peer review of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012) (quoting *State v. Council*, 335 S.C. 1, 19, 515 S.E.2d 508, 517 (1999)).

In giving an opinion, an expert may rely on facts or data which are not admitted in evidence or even admissible in evidence. See Rule 703, SCRE. An expert witness may state an opinion based on facts not within his firsthand knowledge. *State v. Hutto*, 325 S.C. 221, 481 S.E.2d 432 (1997) (finding that an expert's opinion testimony comparing a footprint found at the scene of the crime to that of the shoe belonging to the defendant, based in part upon a non-testifying expert's report which was not introduced into evidence and in part upon the non-testifying witness's work raising the latent shoe print on a business card found at the scene was properly admitted); *see also Ellis v. Oliver*, 323 S.C. 121, 473 S.E.2d 793 (1996) (finding there was nothing improper in allowing respondent's experts to give opinions based in part on the statements in medical records). An expert witness may base his opinion on information, whether or not admissible, made available to him before the hearing if the information is of the type reasonably relied upon in the field to make opinions. *Halbersberg v. Berry*, 302 S.C. 97, 394 S.E.2d 7 (Ct.App.1990).

Plaintiffs' expert, David Hall, P.E., can rely upon the analysis and conclusions prepared for him by Bunnell Lammons Engineers (BLE). Bill Matthews with BLE is experienced in the field of geotechnical engineering, had knowledge of the soil types at the Click property, and made

preliminary findings based on his knowledge and experience, including published documentation, and the cross section from the Click Property provided by Hall to BLE. Hall is experienced in site development (more than 40 years), and worked with BLE to obtain a global stability analysis, the industry standard, to assist him in arriving at his opinion. The global stability analysis was conducted by a Geotechnical Engineer in Hall's charge. (Ex. F, David Hall, P.E. Supplemental Affidavit dated May 12, 2022, ¶ 5, 6, 7, 8).

Defendants appear to incorrectly suggest that Mr. Hall was speculating as to his opinions at the time of his deposition, however he noted that additional data need to be collected, specifically soil samples obtained from borings and survey data in order to finalize the global stability analysis. At the time of Hall's deposition only the BLE preliminary report was in hand. (Ex. E, Hall Deposition, p. 34, ll. 18-23). Hall has attested to the following, based on the BLE final report:

There is a likelihood, to a reasonable degree of engineering certainty, that the embankment will collapse and result in further damage to the Click Property. . . BLE's methodology, analysis, and conclusions support the likelihood of damage to Clicks' back building based on evidence of differential settlement.

(Ex C. Affidavit of David Hall, ¶4, 5).

Following Hall's deposition, BLE refined its preliminary report by taking borings on April 7, 2022 and completing soil analysis on April 13, 2022 (Ex. C, May 12, 2022 Affidavit of David Hall) and issuing its final report. The final report concluded that the flatter slope (Section B-B) exhibited a satisfactory factor of safety. However, the steep slope (A-A boring B-1) has an insufficient factor of safety, measuring at a safety range of 1.16 (compared to the recommended minimum of 1.5). The final report supports Hall's testimony and provides reliable evidence of insufficient slope stability in the A-A testing section of the Click Property. The fact that the soil was too brittle to allow for the completion of the pocket penetrometer test does not render the BLE report unreliable. Bill Matthews was able to rely upon his experience and peer reviewed, published

information from the Journal of Geotechnical and Geoenvironmental Engineering; October 2009; Volume 135, No. 10 p.1359 *Geotechnical Properties of Cemented Sands in Steep Slopes* by Collins and Sita, along with other testing and analysis to reach his conclusions. (Ex. C, Affidavit of David Hall dated May 4, 2022; Ex. F, Supplemental Affidavit of David Hall dated May 12, 2022).

It is for the jury to determine the weight to be given to the conclusions of Mr. Matthews or Mr. Hall, this is not an issue of admissibility. See *McKissick v. J.F. Cleckley & Co.*, 325 S.C. 327, 479 S.E.2d 67 (Ct. App. 1996) (finding any differences between the testing methods employed by McKissick's expert and those used by the Department, as well as the effect of the differences on the reliability of the test results, went to the weight to be accorded the evidence, not its admissibility); see also *Corley v. Rowe*, 280 S.C. 338, 312 S.E.2d 720 (Ct.App.1984) (the weight to be given evidence lies within the province of the factfinder).

Because Expert Hall can rely upon data and analysis provided to him by others pursuant to Rule 703, SCRE, he could speak to the prior use of the properties at trial if he were asked. The fact that Hall had not reviewed information and formed an opinion at the time of his deposition does not mean that he would not be qualified to testify regarding the issue if asked at trial. A Motion in Limine is premature without the context in which any questions are asked and the proffered answer by Hall.

For the same reason, Hall is qualified to speak to the manner in which Plaintiffs have been damaged in that he has reviewed data and formed an opinion regarding his personal inspection, the stability of the Click property as a result of the excavation, the impending failure, and the impact that failure will have upon the Click property. He is also qualified to testify as to remedial measures required to remedy the erosion problem, the need for installation of a retaining wall, and the cost to construct a retaining wall. (Ex. F, Supplemental Affidavit of David Hall, dated May

12, 2022, ¶ 12; Ex. C, Affidavit of David Hall dated May 4, 2022, ¶ 5). Therefore, Defendants' Motion in Limine should be denied.

IV. BRENT CLICK IS QUALIFIED TO TESTIFY AS TO THE DAMAGES TO THE CLICK PROPERTY

Defendants correctly state that a property owner is generally considered competent to testify as to the value of his property. *See Seaboard Coast Line R. R. v. Harrelson*, 262 S.C. 43, 202 S.E.2d 4 (1974) (a landowner, who is familiar with his property and its value, is allowed to give his estimate as to the value of the land and damages thereto, even though he is not an expert); *State v. Brown*, 402 S.C. 119, 131, 740 S.E.2d 493, 499 (2013) ("Unless it affirmatively appears that the owner does not know the market value of his property, it is generally held that he is competent to testify as to its value even though his knowledge on the subject would not qualify him as a witness were he not the owner."); *Rogers v. Rogers*, 280 S.C. 205, 209, 311 S.E.2d 743, 746 (Ct.App.1984) (an owner of property "is competent to estimate its value as a matter of law") Defendants also acknowledge that "While mathematical certainty of the amount of loss or damage is not required. *See Whisenant v. James Island Corp.*, 277 S.C. 10, 11, 281 S.E.2d 794, 796 (1981).

Defendants then suggest that because this is a commercial property, only an expert can testify as to damages regarding the property even though they cite *Whisenant*, in which the South Carolina Supreme Court found the testimony of expert witnesses was not needed in a commercial setting. The South Carolina Court of Appeals rejected a similar argument in *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct. App. 1997) when defendant argued it was error to allow Hawkins to testify about the value of the neighboring intersection as a "comparable" intersection because Hawkins had no qualifications as a real estate appraiser and was therefore unqualified to testify about comparable property. The Court of Appeal found Hawkins did not exceed the bounds of proper testimony when he based the value of his own

property on land values surrounding a comparable intersection. *Id.* 328 S.C. at 597, 493 S.E.2d at 881.

Brent Click is qualified, as the property owner, to testify regarding the damage to his land and to his back building as a result of the excavation. As the operator of the business, he is also qualified to testify regarding the loss of business suffered as a result of the excavation, the loss that will be incurred when the erosion cuts off all access to the back building, preventing the operation of a large portion of the business, and what would be required to relocate the business. Therefore, Defendants' Motion in Limine should be denied

Respectfully submitted,

May 17, 2022

s/Bradford N. Martin

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**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

EXHIBIT A

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF PICKENS FOR THE 13th JUDICIAL CIRCUIT

3 - - -
4 CLICK PROPERTIES, LLC, : Case No.
5 and HYPER FORMANCE, LLC, : 2020-CP-39-00266
6 Plaintiffs, :
7 vs. :
8 THOMAS SC PROPERTIES, et al. :
9 Defendant. :
10
11

12 RULE 30(B)(6) DEPOSITION OF CLICK PROPERTIES, LLC,
13 and HYPER FORMANCE, LLC, by ROBERT BRENT CLICK

14 DATE TAKEN: Tuesday, September 22, 2020
15 TIME BEGAN: 10:01 a.m.
16 TIME ENDED: 12:36 p.m.
17 LOCATION: Given Remotely
18 REPORTED BY: Karen Kidwell, RMR, CRR
19 EVERYWORD, INC.
20 P.O. Box 1459
21 Columbia, South Carolina 29202
22 803-212-0012
23
24
25

1 Q. Do you know if he ever -- if Mr. Hill ever
2 had any discussions with counsel for Mr. Thomas?

3 A. I am -- I never heard anything.

4 Q. All right. So Mr. Hill didn't -- have any
5 of those conversations?

6 A. I said, "Why would I buy something I
7 already had the right to use, and why would I buy
8 something that's going to erode away very quickly?"

9 Q. And so the -- in the letter, again, they
10 talk about items of yours that are on the Thomas
11 property. Did you ever move those items?

12 A. No, ma'am.

13 Q. Okay. I want to back up a little bit and
14 talk a little bit more about your -- the relationship
15 with Mr. Thomas and with All-Tech that your business
16 has had. We spoke earlier, and you said that you had
17 approached Jimmy Watkins because relations with
18 Mr. Thomas were not good. Tell me a little bit more
19 about that, and what was going on between the two of
20 you.

21 A. J.T. had just been always very aggressive
22 toward us.

23 Q. How so?

24 A. The day I met him, he pulled a knife on
25 me.

1 Q. How did that happen?

2 A. I brought doughnuts over, and I said,
3 "Hey, your father-in-law said you're taking over over
4 here. I came to introduce myself. I have a little
5 shop next door."

6 And he held a knife to my throat: "I want
7 to let you know who's in charge around here, and I'm
8 not going to take any shit," and et cetera and
9 et cetera. And he went on about how he was head dog.
10 And I just --

11 Q. I'm sorry. Go ahead.

12 A. You go ahead.

13 Q. You had never met Jonathan before then?

14 A. No, no. It was quite a reaction to
15 meeting somebody new.

16 Q. What -- what, if any, issues did you have
17 after that?

18 A. Just kind of -- there would be -- I work a
19 lot of hours to begin with. And I would keep an eye
20 on his property. And back when Greg was there, it
21 was a great little thing, because he was a very
22 early, early morning person, and I liked -- I liked
23 working more in the cooler evenings.

24 And so we kept an eye on each other's
25 property. And when J.T. took over, that stopped. So

EXHIBIT B

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	SUPPLEMENTAL AFFIDAVIT OF
	)	ROBERT BRENT CLICK
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. I have personal knowledge of the facts contained in this Affidavit.
2. I am co-owner (with my wife Shelly Click) of Hyper Formance, LLC, a body and machine shop located at 3668 Calhoun Memorial Highway. This property has a front and a back building and is owned by Click Properties, LLC (the "Click Property"). I am owner of Click Properties, LLC.
3. This affidavit responds to the supplemental discovery produced by Defendants on May 10, 2022, the Affidavit of Paul Mills, P.E. submitted with Defendants Motion for Summary Judgment and the harassment evidence Defendants attempt to exclude by their Motion in Limine.
4. Defendants produced screen shots from a Hyper Formance You Tube video publicly posted in 2013 that show some cracks in the concrete floor of the back building. In my deposition testimony I was not asked about cracks in the floor. My answer "No, ma'am ... Not before the digging" responds to the question about cracks in the foundation.

(30(b)(6) Deposition p. 48, lines 9-19). The floor (slab) is not the foundation of this building, the foundation is the walls (the blocks). The slab (concrete floor) would have been poured after the foundation was built in this older type construction. The Exhibit A attached to this affidavit illustrates this older type of construction where the slab is not the foundation.

5. There were some existing cracks in the concrete floor; I have not claimed the floor had no cracks, but before the Thomas excavation the existing cracks were not a problem and were not getting worse. After the excavation more cracks have developed, existing cracks have gotten larger, and the foundation has split and tilted toward the Thomas excavation.
6. I have carefully compared the screen shots from the 2013 video (Thomas 000174-000184) to the current condition of the concrete floor and took photos of the same areas, attached as Exhibit B. Thomas 000174, 000177 and 000180 show the same area, when compared to the current photo (PL 202), now there are an expanded number of cracks and an elevation change, and Thomas 000174 shows how flat the area was in 2013. Thomas 000175, when compared to the current photo (PL 203), shows now the cracks have widened, with more height difference, and the board on the floor in the 2013 screen shot shows how flat the floor was in 2013. Thomas 000176 and 000178 show the same small crack, when compared to the current photo (PL 204), now there is significant chip-out and the floor is more elevated. Thomas 000179 shows a small crack, when compared to the current photo (PL 205), the area now has a large crack. Thomas 000181 does not show a crack, that is the leg of the camera monopod. Thomas 000182, when compared to the current photo (PL 206) shows now the crack continues to the wall and is T'ing off in several

directions. Thomas 000183 and 000184 shows the line across the concrete at the end of the building's floor and beginning of the building's apron, not a crack. The height direction across the control joint on the apron, shown by the level in the current photo (PL 207) is proof of the erosion in the distance of the Thomas excavation.

7. Paul Mills, P.E., Defendants' expert, visited the outside of the back building on April 18, 2022. He did not enter the building, but concluded: "I did not observe cracks in the outside slab. If the cracks in the inside slab were caused by the grading work on the Thomas property, I would expect to see cracks or movement in the outside slab as well." In response, the outside slab was poured in 2014 to a strength to support a car lift, has special concrete that contains fiber, is reinforced with \$800 worth of rebar and a layer of wire mesh, is 14 inches thick under the car lift and 10 inches thick everywhere else, and contains 11.5 yards total quantity of concrete. The inside slab (concrete floor) does not contain fiber (based on 1970s construction), is thinner and a larger surface area, therefore more susceptible to ground movement and settling than the outside slab.
8. The outside carport foundation is even more robust than the outside slab, and is closest to the Thomas excavation, and it shows a crack (PL 208). A 2013 photo of the paint booth floor (Exhibit C to Brent Click Affidavit filed 03.25.22 and PL 209) shows minor cracks, and recent photos of the paint booth floor (PL 210, PL 211) show extensive cracks. Existing cracks in the prep room floor have developed into large, deep cracks (PL 212, PL 213, PL 214), and one is "shelved" and measures .55 of an inch. The condition of the outside block wall facing towards the highway has gotten worse since the excavation, showing "step out" (PL 215). The grassy area between the back building and the back of the front building has dropped

significantly. The once buried carport foundation is exposed and subsequent to the Thomas excavation, the excess concrete at the end has fallen away (PL 216). The ground here has dropped approximately 12 inches. A gap shows separation between the building and the carport foundation that I added in 2015 (PL 217). An enlarged crack outside the apartment door inside the back building has developed that is parallel to the direction of the Thomas excavation (PL 218).

9. In January 2014, when Thomas took over All-Tech from his father-in-law, I brought him a dozen donuts to welcome him to the neighborhood. He took the donuts, placed them on the car beside him, then turned around and pulled a knife, grabbing the back of my head, and holding the knife to my throat. His threat included that he was going to be “top dog around here all the time.”
10. Then, in the early summer of 2017, I grilled a bunch of burgers and hot dogs, and invited the guys that worked in the neighboring shops for lunch. Thomas walked up like he was going to thank me, but instead cocked his head and told me he has dreams of cutting my head off.
11. In August of 2018, Shelly and I came back from boating at the lake late one afternoon and found that Thomas had removed our gate from the bottom of the hill and driven an excavator up the hill. I walked up to where Thomas was standing under his carport and asked him “what is going on?” Thomas responded with words along the lines of “Man, I slept great last night... want to know why?... I had my favorite dream where I get to cut your giant head off with a tiny knife and the smaller the knife the better I sleep,” and then he strolled down the hill.
12. Several days later, Thomas started digging away the embankment between the two properties, and I was very concerned about the safety of what he was planning to

do. I went to Thomas's office and asked what was his plan, whether he had called "811" (to locate underground utilities). Thomas's bizarre response was to laugh and say words along the following lines: "I'm going to dig until your building falls, and when it does, I'm going to build a shop where yours is now and put my boat and four wheelers in it." He had his excavation plan drawn out on a whiteboard with a giant "X" over my back building and then he erased it and drew another square to show where his new building would be. When I left, Thomas was laughing.

FURTHER AFFIANT SAYETH NOT.


Robert Brent Click

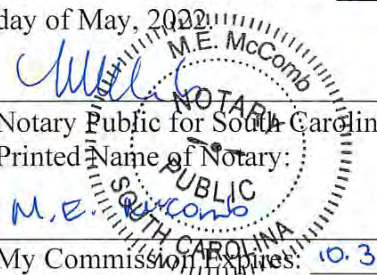
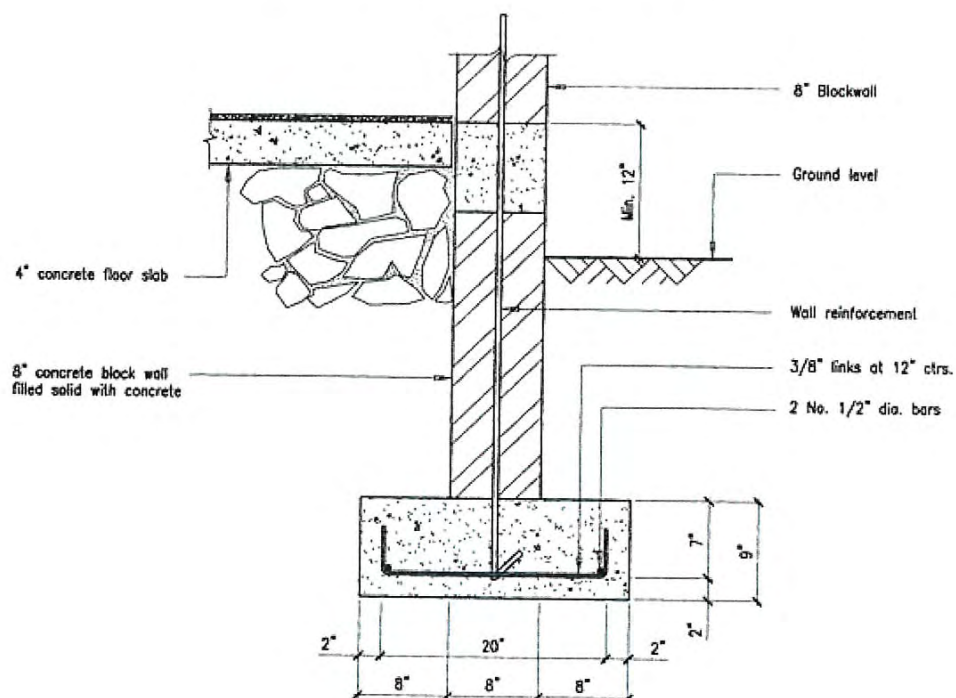
SWORN TO before me this 13th
day of May, 2022.

Notary Public for South Carolina
Printed Name of Notary:
M.E. McComb
My Commission Expires: 10.3.23

EXHIBIT A

[Materials and measurements may differ]



[Photo for illustration purposes – not the Click building]



EX. B

ELECTRONICALLY FILED - 2022 MAY 17 5:24 PM - PICKENS - COMMON PLEAS - CASE#2020CP4900266



PL 202





EX. B

ELECTRONICALLY FILED - 2022 May 17 5:24 PM - PLOKENS - COMMON PLEAS - CASE#2020CP3900266



PL 205



EX. B

ELECTRONICALLY FILED - 2022 May 17 5:24 PM - PICKENS - COMMON PLEAS - CASE# 2020CP2900266



PL 207



PL PHOTO C



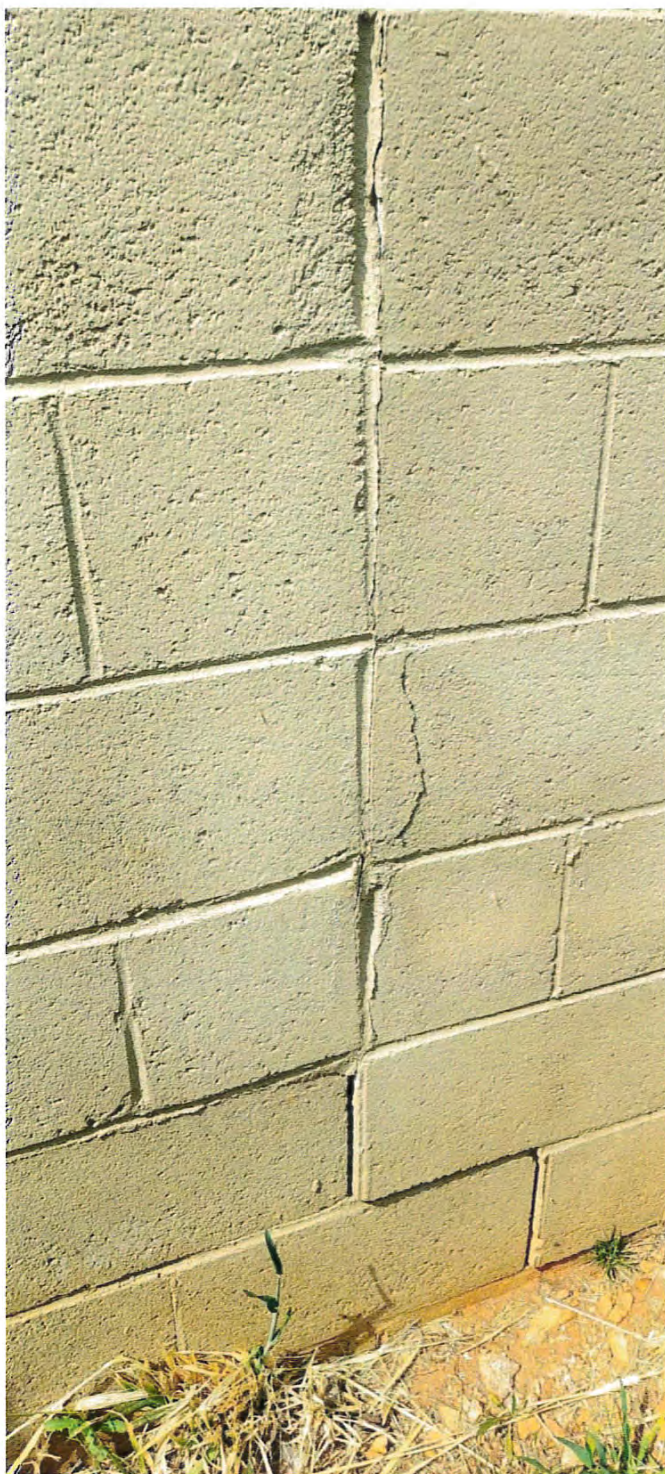
















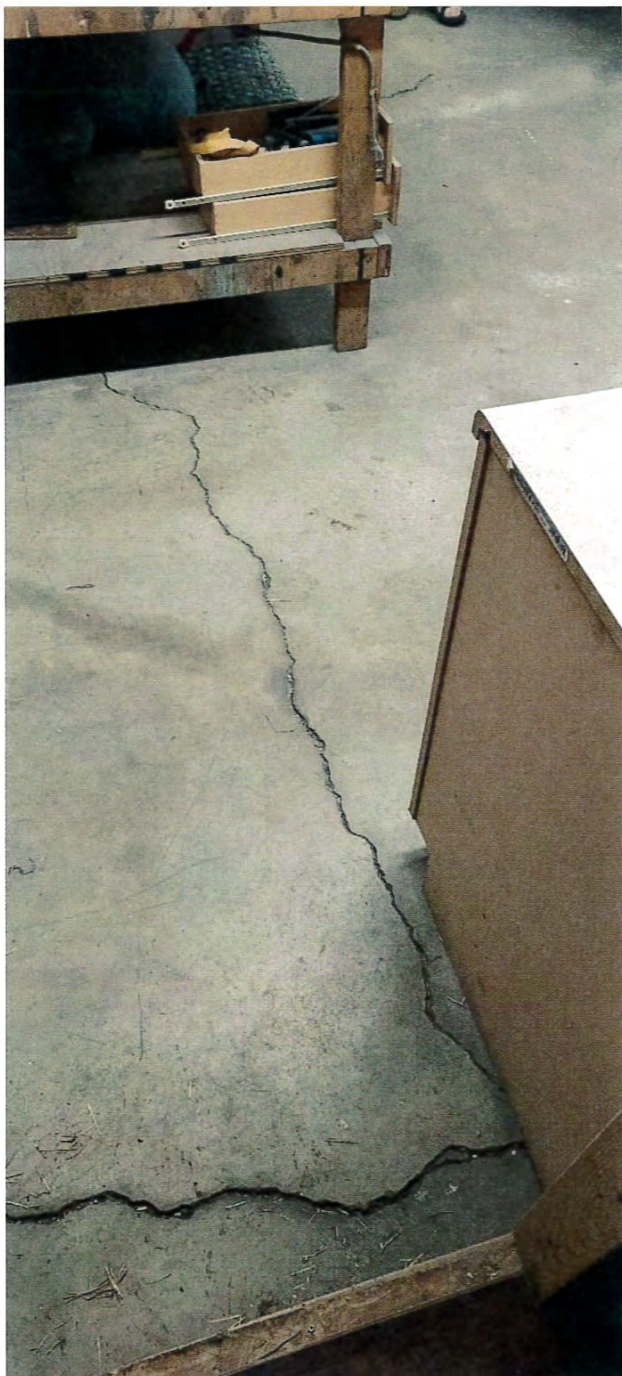


EXHIBIT C

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	WILLIAM DAVID HALL, P.E.
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants,	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I received my Bachelor of Science in Civil Engineering from Clemson University. I have held registrations in multiple states as a licensed Professional Engineer, and currently I am a licensed Professional Engineer in South Carolina. I have 42 years of civil engineering experience. I am currently the Civil Department Manager at H2L Engineering in Greenville, South Carolina. Prior to joining H2L, I operated my own civil engineering firm, Hall Engineering, Inc., and managed civil engineering site design projects across the southeast. My areas of expertise include preparation of site development plans including grading, retaining walls, storm drainage, utilities, and details required for construction of commercial and residential projects.

3. I conducted a site investigation at 3668 and 3670 Calhoun Memorial Highway, Pickens County, South Carolina, with site visits made on June 3, 2021, December 10, 2021, March 15, 2022 and April 7, 2022. I investigated the potential impact, if any, of soil removal in August 2018 by the owner of 3670 Calhoun Memorial Highway (the "Thomas Property") that altered the steepness of the slope of an embankment between the two properties.
4. I engaged the services of Bunnell Lammons Engineers/BLE, geotechnical engineers, to conduct a Global Stability Analysis of the Click property. BLE's preliminary report was later refined by borings drilled on April 7, 2022 and a soils analysis by BLE. BLE drilled at two locations I selected at the site, identified as boring B-1 and boring B-2. See Figure 2 (PL 173). The April 13, 2022 BLE analysis of the collected samples evaluated the stability of the embankment under static and seismic loading conditions. The flatter slope at B-2 has a satisfactory factor of safety under both static and seismic loading conditions, an improved result compared to the preliminary study. However, the steep slope at B-1 has an insufficient factor of safety for both the static case and seismic loading conditions.
5. In my professional opinion, to a reasonable degree of engineering certainty, the embankment between the two properties has been shown to be unsafe, having at best a 1.16 factor of safety at B-1. There is a likelihood, to a reasonable degree of engineering certainty, that the embankment will collapse and result in further damage to the Click property. The embankment's failure zone for the static case is depicted in colors in the drawing identified as PL 173. In my professional opinion, when the failure occurs the Clicks will lose access to the back building and the utilities under the gravel driveway on the Click property will likely be impacted. BLE's methodology, analysis and

conclusions support the likelihood of damage to Click's back building based on evidence of differential settlement. BLE's analysis notes that the face of the embankment is exposed to weather and therefore will continue to lose cohesion. The topsoil is sliding off the embankment. The grading and soil removal performed on the adjacent Thomas property removed the lateral support of the Click Property and has impacted, and will continue to impact, the Click Property. Therefore, a retaining wall is necessary to prevent ongoing damage to the Click Property through further erosion, and to restore safety to the embankment. In my professional opinion, the expected cost of the retaining wall, including design, grading, backfilling, and installation is \$80,000.00, based on my own calculations and expertise, based on installation of a concrete retaining wall.

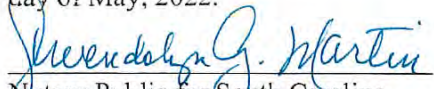
6. Based on my professional knowledge and experience, multiple site visits, review of materials in this case, including the reported observations of the property owner, Brent Click, and the preliminary and final BLE reports, it is my professional opinion that the excavation performed on the Thomas property has negatively impacted the safety of the Click property which impact is likely to continue over time. Based on my professional experience, the fact that an abrupt failure has not taken place does not mean the area is safe. The excavation performed on the Thomas Property has caused a permanent impact on the Click property by removing the lateral support of the Click Property and has created an impending failure state at the location identified as B-1 in the BLE April 13, 2022 report. Although there has not been an abrupt failure of the embankment at this time, the Global Stability Analysis predicts that such failure will occur and the excavated embankment in its current state poses a safety risk.

FURTHER AFFIANT SAYETH NOT.



William David Hall, P.E.

SWORN TO before me this 14th
day of May, 2022.



Notary Public for South Carolina
Printed Name of Notary:

Gwendolyn G. Martin
My Commission Expires: 05.29.2029

EXHIBIT D

1 A. Apparently, there were too many unknown variables that
2 anybody would even want to do it, I guess. Once I
3 talked to a couple people and nobody really wanted to
4 actually get involved and make a plan on how to do it,
5 I just gave up on trying to hire someone to do it.

6 Q. Okay. Did you ever try any what I would call a
7 reputable excavation company that's in the business,
8 that has engineers and all that could do it for you?
9 Did you ever call any of them? I mean, the name that
10 everybody in Greenville knows is Strange Brothers. Did
11 you ever call --

12 A. No, I never --

13 Q. -- Strange Brothers?

14 A. -- spoke to Strange Brothers or anybody like --

15 Q. Are you familiar with them?

16 A. Yes, sir.

17 Q. Okay. Is there a reason why you didn't call them?

18 A. I knew I couldn't afford them.

19 Q. Okay. Fair enough.

20 A. After speaking with people, I went down to the County
21 and spoke to them about permitting and requirements on
22 what I had to do if I wanted to excavate the property
23 and clear the property. And I was told because the
24 property was under an acre, that I didn't need a
25 permit.

1 to follow this general line here, or at least, I wanted
2 to at least leave room to where there would be no
3 chance of what I'm doing causing the issues with his
4 building or anything. I wasn't going to dig to the
5 property line. I wanted to dig further than what I
6 did, but reasonably so. I mean, I'm close to the area,
7 but down on the -- this end over here, like I said, we
8 didn't quite finish everything the way I wanted it to
9 be.

10 We're still considering the possibility of whether
11 I wanted to asphalt it or concrete it, whether I wanted
12 to try to put another building up there, and how I
13 would have to change anything if I did put a building
14 up there. So like I said, I don't consider the project
15 finished.

16 Q. What was the purpose of the retaining wall, the block
17 retaining wall?

18 A. We had to put in a block retaining wall around the
19 driveway because there's a pretty steep drop here
20 behind the building.

21 Q. Okay. Now, the driveway you're talking about is the
22 new driveway going around the All-Tech building?

23 A. Yes, sir.

24 Q. Okay. Is there a steep drop on the side of the Click
25 property, too, due to the dig?

1 A. Here?

2 Q. Yes.

3 A. No. There's always been a steep drop here.

4 Q. Okay. So would the retaining wall also avoid erosion
5 from that area, too? Would that be a purpose for the
6 retaining wall?

7 A. Yes, sir.

8 Q. Okay. But you didn't put one in?

9 A. No, not yet.

10 Q. And you did this, you started, I think, in August of
11 2018. Is that right? Does that sound about right?

12 A. Yes, sir.

13 Q. And it's now October of '20. Have you noticed
14 significant erosion in that area since you did the
15 digging?

16 A. I've noticed erosion in this area behind the shop.
17 I've not noticed erosion in this area of any
18 significance. The majority of all this section right
19 here is already rock. That is very solid. It's not
20 red clay.

21 Q. And you're talking about the driveway turnaround area
22 where the hill is for the Click property going to the
23 -- around to the --

24 A. I'm talking about the driveway entrance that goes
25 beside my building. This is rock. And this back

EXHIBIT E

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS) IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT

CLICK PROPERTIES, LLC and) C.A. No. 2020-CP-39-00266

HYPER FORMANCE, LLC,)

Plaintiffs,)

vs.)

THOMAS SC PROPERTIES, LLC)

and ALL-TECH TIRE and AUTO)

REPAIR, LLC,)

Defendants.)

D E P O S I T I O N

WITNESS: WILLIAM DAVID HALL

DATE: March 23, 2022

TIME: 9:57 a.m.

LOCATION: Campbell Teague
16 West North Street
Greenville, South Carolina

REPORTED BY: Treasa Hix

LEGAL EAGLE

Post Office Box 5682
Greenville, South Carolina 29606

864-467-1373

depos@legaleagleinc.com

Deposition of William David Hall

1 just going to go over a few ground rules to help this
2 go smoothly for all of us. You understand that you're
3 under oath and sworn to tell the truth; correct?

4 A. Yes.

5 Q. Okay. Are you under any medication -- the influence of
6 any medications or anything else that would affect the
7 truth of your testimony?

8 A. No.

9 Q. Okay. You are here and you've got Brad Martin here as
10 attorney for the plaintiffs, but I will instruct you to
11 ask any questions of me since I'm the one asking you
12 questions here today. If you don't understand the
13 question, please let me know and I'll be happy to
14 rephrase it. Okay?

15 A. Okay.

16 Q. If you answer a question I'm going to assume that you
17 understood it and were able to answer; is that fair?

18 A. That's fair.

19 Q. Okay. And I'm happy to take any breaks, so if you need
20 a break just let me know. All right. All right.

21 David, tell me a little bit about your education.

22 Where did you go to college?

23 A. I have a -- a BS in Civil Engineering from Clemson
24 University.

25 Q. Okay. And did you get any other degrees after that?

Deposition of William David Hall

1 A. No.

2 Q. Okay. Any certifications that you received after that?

3 A. Registrations in multiple states, that's a process you
4 go through when getting certified in that state.
5 That's all.

6 Q. Is that Registrations as a Professional Engineer?

7 A. Correct.

8 Q. Okay. So you have that PE designation?

9 A. Yes.

10 Q. Which states do you hold that in?

11 A. Washington State, that was the first one. Kentucky,
12 Tennessee, Virginia, North Carolina, South Carolina,
13 and Georgia. Not all of those are current. As I've
14 gotten older my business model has changed. I've drawn
15 in, and it's just currently South Carolina that are
16 active.

17 Q. Okay. And have you always worked in the engineering
18 field?

19 A. Spent four years in the Army right out of college, and
20 after that all in engineering.

21 Q. Okay. Out of college you said you went into the Army.
22 Were you doing engineering in the Army or were you
23 doing something else?

24 A. I did a little bit of everything, but I was an engineer
25 -- Army combat engineer.

Deposition of William David Hall

1 Q. Okay. And after getting out of the Army what was your
2 first position after that?

3 A. I worked for the City of Greenville in their
4 Engineering Department.

5 Q. Okay. About what years was that?

6 A. 1980 to 1984.

7 Q. Okay. And where did you go after the City of
8 Greenville?

9 A. I worked for a landscape architect, William Renninger &
10 Associates. I worked for him for almost two years.

11 Q. Okay. And is that here in Greenville as well?

12 A. Yes, it is.

13 Q. And where did you go after that?

14 A. MBTB, which is no longer in existence. It was a multi-
15 disciplined firm. I was a civil engineer on their
16 staff.

17 Q. Okay. How long were you there?

18 A. A short time. They were going the wrong direction that
19 I wanted to go, so it was less than a year.

20 Q. Okay. Fair enough. So where did you head from MTB
21 (sic)?

22 A. Gray Engineering. I was there for nine years.

23 Q. Okay.

24 A. Then I started my own company, Hall Engineering, which
25 I have had for -- this is my 29th year.

Deposition of William David Hall

1 Q. Okay.

2 A. In business with myself.

3 Q. And Hall Engineering, has that been principally in
4 Greenville?

5 A. Meaning where I work?

6 Q. Yes.

7 A. No, I've worked all over the southeast --

8 Q. Okay.

9 A. -- for clients that are in Greenville, but they travel
10 all these far places and do projects.

11 Q. Okay. And with Hall Engineering what do you focus on?

12 A. It is a civil site engineering company. I do
13 everything on a site except the building. Outside of
14 building walls I do site labs, and designs, grading
15 plans, storm drainage plans, retaining walls of a
16 certain size. That -- that's changed over time, but
17 used to do all of that. I do commercial, multi-family,
18 single family. Really a little bit of everything.

19 Q. Okay. All right. Have you ever been involved with
20 either party in this case prior to being retained by
21 Mr. Martin?

22 A. No.

23 Q. Okay. Had you ever worked at -- or worked with either
24 one of the properties involved off of Calhoun Memorial
25 Highway?

Deposition of William David Hall

1 Q. If there were a failure?

2 A. If there were a failure.

3 Q. Okay. Okay. At the bottom of Bill's email he says
4 that this is based on assumed parameters. What were
5 those parameters; do you know?

6 A. He's listed those in his bullet points up here.

7 Q. Okay.

8 A. Friction of the soil. All of those are things that are
9 determined when you take an actual boring and test the
10 soil on the land you get the friction, you get the
11 cohesion, and you get the density, and all of that
12 stuff. He's assumed -- this is based on the conditions
13 for soils in this area.

14 Q. Okay.

15 A. Pending borings.

16 Q. Okay. So that is not for the specific property where
17 this embankment is?

18 A. Yes, that is. He knows -- and these soil conditions,
19 cecil soils, which these are, that these are the
20 numbers he's going to find. Now, borings will just
21 help us tie that down --

22 Q. Okay.

23 A. -- more closely.

24 Q. And you mentioned the rock that's there in the
25 embankment. How, if any, does that impact the

EXHIBIT F

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020 CP-39-00266
	)	
Plaintiffs,	)	
	)	SUPPLEMENTAL
vs.	)	AFFIDAVIT OF
	)	WILLIAM DAVID HALL, P.E.
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	
	)	
Defendants.	)	

PERSONALLY APPEARED before me, the undersigned, who being duly sworn, deposes and states as follows:

1. I am over the age of 18 and competent to make this Affidavit. Except for matters stated upon information and belief, I have personal knowledge of the facts contained in this Affidavit.
2. I received my Bachelor of Science in Civil Engineering from Clemson University. I have held registrations in multiple states as a licensed Professional Engineer, and currently I am a licensed Professional Engineer in South Carolina. I have 42 years of civil engineering experience. I am currently the Civil Department Manager at H2L Engineering in Greenville, South Carolina. Prior to joining H2L, I operated my own civil engineering firm, Hall Engineering, Inc., and managed civil engineering site design projects across the southeast. My areas of expertise include preparation of site development plans including grading, retaining walls, storm drainage, utilities, and details required for construction of commercial and residential projects.

3. I conducted a site investigation at 3668 and 3670 Calhoun Memorial Highway, Pickens County, South Carolina, with site visits made on June 3, 2021, December 10, 2021, March 15, 2022 and April 7, 2022. I investigated the potential impact, if any, of soil removal in August 2018 by the owner of 3670 Calhoun Memorial Highway (the "Thomas Property") that altered the steepness of the slope of an embankment between the two properties.
4. My affidavit dated May 4, 2022 was given to respond to Defendants' Motion for Summary Judgment and its contents are incorporated into this affidavit and are affirmed. This additional affidavit is given to respond to Defendants' Motion in Limine challenging my qualifications to render an expert opinion in this case.
5. Based on my knowledge, training, and experience in site development for over 40 years, I am able to provide an expert opinion on this matter.
6. My opinion is based on my personal observation, familiarity with these soil types, and a global stability analysis (industry standard) performed by a Geotechnical Engineer in my charge.
7. A preliminary report was prepared, at my direction, with the best information available at that time. After my deposition, additional information was obtained by survey and borings. The final global stability analysis further confirms my opinions regarding the stability of the embankment on the defendant's property. The embankment fails to meet the minimum factor of safety of 1.5. The embankment is in an unsafe condition.
8. Any assumptions made by the Geotechnical Engineer are consistent with industry standards and are based on his years of experience as a Geotechnical Engineer. Though the pocket penetrometer test would not work, the value for the global stability analysis could be obtained with the blow count, based on his experience.

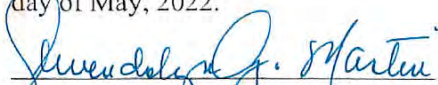
9. I am not a "mouth-piece" for Bill Mathews, P.E. He assisted me by providing the analysis. Based on my knowledge, training, and experience, I agree with his findings that the embankment is in an impending failure condition.
10. The distance, from the embankment to the buildings, is shown on the cross-sections and plan exhibit. The distance to the property line can be measured on the plan. The addition of this information was made after additional survey work was completed and is reflected in the final global stability analysis report. I have provided an updated Exhibit S-1 (to update PL194) which shows the location of the property line on the cross section. Section A-A shows that the critical failure surface extends to the Click property line.
11. The determination that the upper building was affected by the removal of lateral support, is based on reason from personal observation, knowledge, training, and experience. The testimony of the Plaintiff about the change in the building condition, before and after the removal of lateral support, has been an essential component in my professional opinion.
12. More information has been made available regarding permitting and costs to remedy problems resulting from the grading on the Defendants' property. A retaining wall is required to achieve a factor of safety of 1.5 or greater.
13. The embankment on the Defendants' property is in an unsafe condition and is likely to fail. This is based on visual sluffing of soil, overburden and vegetation movement above the embankment, building and utility issues, and the global stability analysis. For the safety and protection of the Plaintiff, in the use of his property and the Defendant and for the safety of his employees, customers, and building, the embankment's stability should be addressed, and a higher factor of safety achieved.

FURTHER AFFIANT SAYETH NOT.



William David Hall, P.E.

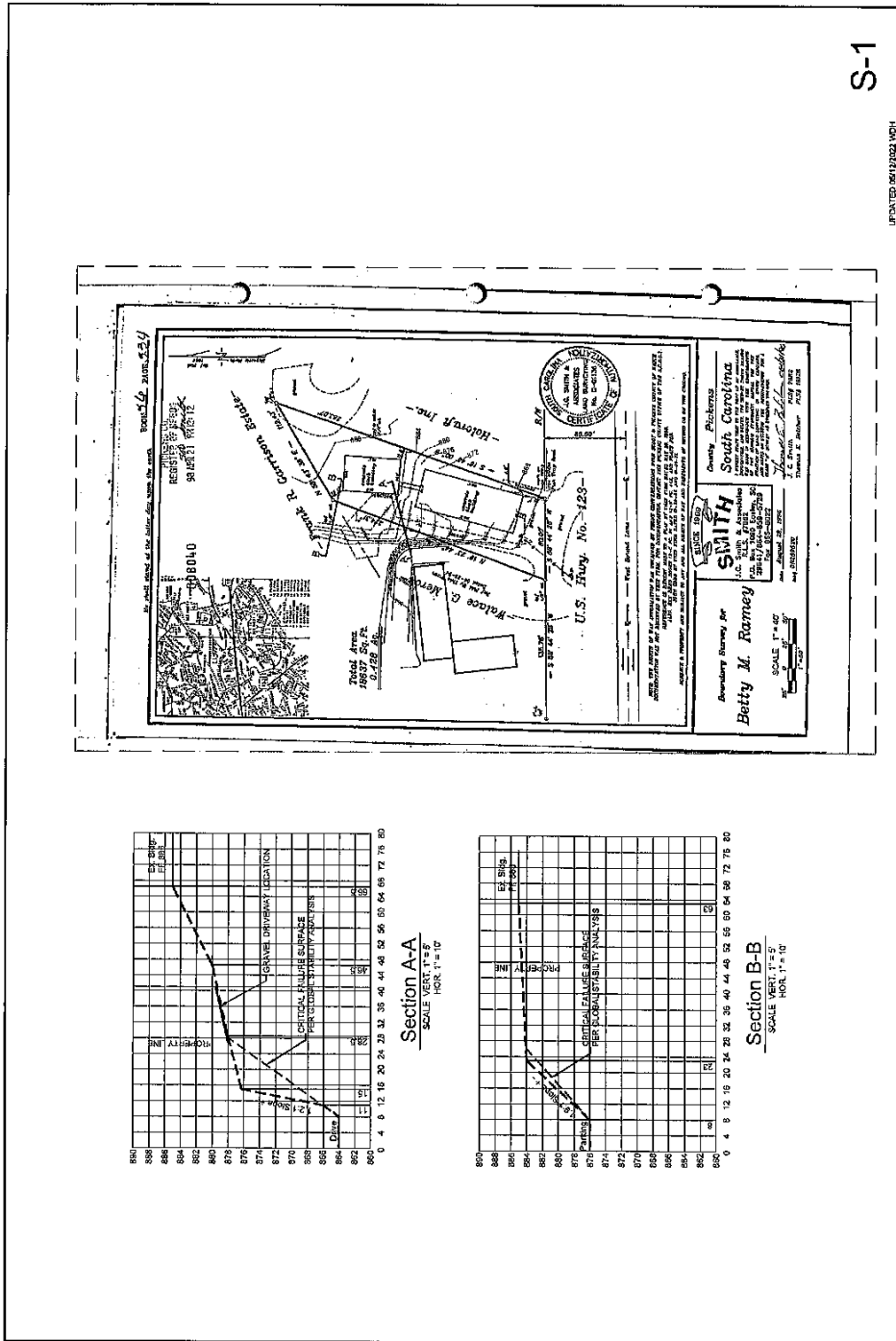
SWORN TO before me this 12th
day of May, 2022.



Notary Public for South Carolina

Printed Name of Notary:

Gwendolyn G. Martin
My Commission Expires: 05.29.2029



STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Click Properties, LLC and Hyper
Formance, LLC,

Plaintiffs,

v.

Thomas SC Properties, LLC and All-
Tech Tire and Auto Repair, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE 13TH JUDICIAL CIRCUIT

Case No. 2020-CP-39-00266

**DEFENDANTS' POST-TRIAL
MOTIONS**

The above captioned case was tried before the Honorable Perry Gravely on May 23-26, 2022. Prior to the start of trial, Defendants' Motion for Summary Judgment was heard. Throughout trial, Defendants then made timely motions for directed verdict pursuant to South Carolina Rule of Civil Procedure 50. Four causes of action survived these motions—nuisance *per se*, negligence, acquiescence, and prescriptive easement. These claims were then submitted to the jury on May 26, 2022.

After deliberations, the jury returned its verdict form, finding for the Plaintiffs on all claims but awarding \$0 in damages for nuisance *per se*. The Court instructed the jury to go back and deliberate again because damages for the claim could not be \$0. No other instructions or clarifications were given to the jury. After 5-10 minutes, the jury submitted an updated verdict form, finding \$28,000 in damages for nuisance *per se* and reducing the damages for negligence by \$28,000.

Pursuant to the South Carolina Rules of Civil Procedure Defendants now move for judgement notwithstanding the verdict on all claims or, in the alternative, for a new trial, for the following reasons:

I. Plaintiffs did not present any evidence of a nuisance *per se*, which requires a showing that a condition is “dangerous at all times and under all circumstances.”

The test for determining the existence of a nuisance *per se* in South Carolina is “whether the nuisance has become dangerous at all times and under all circumstances to life, health, or property.” *Suddeth v. Knight*, 280 S.C. 540, 545, 314 S.E.2d 11, 14 (Ct.App.1984); Black's Law Dictionary 1094 (7th ed.1999) (a nuisance *per se* is an interference so severe that it would constitute a nuisance under any circumstances). No evidence was presented that the excavation performed on the Thomas Property is dangerous “at all times and under all circumstances.” Brent Click and his wife Shelly both testified that they have continued to use the gravel driveway adjacent to where the excavation work was completed on a regular basis to access their back building and the apartment inside it. Additionally, Plaintiffs’ own expert—David Hall—concluded only that there was potential for the embankment to fail, not that failure had occurred. In fact, he also testified that there had been no impact on the back building from the excavation work. In short, none of the offered testimony or documentary evidence supports a finding of nuisance *per se* as a matter of law. For the jury to find that the excavation resulted in a condition that is dangerous at all times and under all circumstances is contrary to the evidence presented.

South Carolina nuisance law further elaborates that “mere fears of the plaintiff” are insufficient to support a cause of action for nuisance. *Emory v. Hazard Powder Co.*, 22 S.C. 476, 483 (1885). There are no reported cases in South Carolina where a plaintiff has successfully made a showing of anticipatory nuisance. *See Welborn*, 247 S.C. 554, 148 S.E.2d 375 (denying injunctive relief against proposed automobile wrecking service);

Strong, 240 S.C. 244, 125 S.E.2d 628 (denying injunctive relief against proposed grocery store); *Moss v. South Carolina State Highway Dep't*, 223 S.C. 282, 75 S.E.2d 462 (1953) (refusing to issue temporary restraining order against relocation of highway); *Emory v. Hazard Powder Co.*, 22 S.C. 476, 483 (1885) (stating that "mere fears of the plaintiff" are insufficient basis for nuisance action); *Roach v. Combined Util. Comm'n*, 290 S.C. 437, 351 S.E.2d 168 (Ct. App. 1986) (denying injunctive relief against proposed sewage treatment plant); *Charleston Comm. for Safe Water v. Commissioners of Pub. Works*, 286 S.C. 10, 331 S.E.2d 371 (Ct. App. 1985) (holding that plaintiff failed to meet burden of showing that proposed fluoridation of city's water supply would constitute a nuisance). As nuisance *per se* requires a showing of danger *at all times*, by definition anticipating that something might become a nuisance in the future cannot be a nuisance *per se*. Plaintiffs cannot prevail or be awarded a judgment based on their claim for nuisance *per se*.

II. Plaintiffs presented no evidence of damages resulting from the excavation work performed on the Thomas Property.

Plaintiffs assert that the excavation work on the Thomas Property in 2018 caused damages to the back building of the Click Property. However, Plaintiffs' own expert explicitly testified that this was not the case, stating that there were no damages sustained to the back building. Mr. Hall further elaborated that minimal if any damage had occurred to the driveway area, commenting that there could have been some nominal erosion of gravel. The jury's finding of damages as to the claims for nuisance *per se* and negligence does not comport with the evidence presented.

III. Plaintiffs' claim of acquiescence must fail because Plaintiffs provided no evidence that any owners of the Thomas or Click Properties ever agreed the true boundary line was such that the turn-around area was on the Click Property.

Acquiescence is a very particular claim and requires a mutual intent to agree to a particular property line. "Absent recognition by both [parties] that a particular line constituted the true property line, a new boundary [can] not be established by acquiescence." *Croft v. Sanders*, 283 S.C. 507, 510 (S.C. Ct. App. 1984) (rejecting plaintiff's argument that a fence constituted a particular property line and finding that the parties' establishment of a marker between adjacent properties did not prove intent to establish a new boundary line). Acquiescence by one party is not sufficient. *Pittman v. Lowther*, 363 S.C. 47 (S.C. 2005) (noting that a landowner "is not required to battle successfully for his rights... if the principle of prescription be attributed solely to the acquiescence of the servient owner").

Here, *none* of the prior owners of the properties testified that they agreed to a boundary line different than that shown on the 1996 Plat. *In fact, each one specifically acknowledged that the boundary line was that shown on the 1996 Plat.* Therefore, Plaintiffs' claim for acquiescence cannot stand.

Further, there was neither testimony nor documentary evidence defining any specific new boundary between the properties. General statements regarding where the parties thought a boundary line might be does not meet the strict requirements to prove acquiescence to a specific new boundary line. Further, these types of general statements do not provide the specific information necessary to meet South Carolina Code requirements for recording of property boundary lines. For these reasons, the jury's finding

of acquiescence does not comport with the evidence presented, and judgment notwithstanding the verdict is appropriate.

IV. Because Plaintiffs’ use of any portion of the Thomas Property was permissive, Plaintiffs’ claims for prescriptive easement fail as a matter of law.

South Carolina law is “well-established that evidence of permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse or under a claim of right.” *Bundy v. Shirley*, 412 S.C. 292, 310, 772 S.E.2d 163, 173 (2015). *See also Paine Gayle Properties, LLC v. CSX Transp., Inc.*, 400 S.C. 568, 586, 735 S.E.2d 528, 538 (Ct. App. 2012) (quoting *Williamson* and recognizing that a claimant's permissive use of landowner's property cannot begin to ripen into a prescriptive easement until the claimant makes a distinct and positive assertion of right hostile to the landowner); *Horry Cnty. v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993) (holding evidence, which established that use of property was permissive, showed use of property was not adverse); *Williamson v. Abbott*, 107 S.C. 397, 401, 93 S.E. 15, 16 (1917) (stating that permissive use of property “stamps the character of the use as not having been adverse, or under claim of right”); *see also* 12 S.C. Jur. *Easements* § 10 (Supp. 2015) (“Use with the permission of the owner is not adverse.”). “Stated another way, when a claimant uses property with the permission of the owner, he or she acknowledges the owner's rights and uses the property without an affirmative, hostile act toward the owner's rights.” *Bundy v. Shirley*, 412 S.C. at 310, 772 S.E.2d at 173.

Prior owners of the Thomas Property allowed owners and renters of the Click Property to use the turn-around area. Because the use of the area was permissive, there can be no hostility. Thus, Plaintiffs’ claim for prescriptive easement fails as a matter of law.

For these reasons, Defendants request this Court enter judgment notwithstanding the verdict or grant Defendants' request for a new trial.

Additional Grounds for New Trial

The verdict of the jury is both internally inconsistent and inconsistent with the law and, therefore, judgment cannot be entered on this verdict. The following are apparent errors in the verdict:

- An essential element of nuisance *per se* is damages. The jury found for Plaintiffs on this claim but found \$0 in damages. This is inconsistent and demonstrates an obvious lack of understanding and/or proper application of the law. The jury is bound by the law and cannot reinvent the law to reach a desired result. The jury's alteration of the verdict form after being sent back to deliberate was insufficient to cure the underlying issue as the jury was not reinstructed on the law and only returned to the jury room for 5-10 minutes before revising the damages amount.
- A finder of fact cannot find acquiescence in a new property boundary (an essential element of which is mutual agreement) and also find hostility that would support a prescriptive easement. The facts of a case cannot simultaneously demonstrate mutual agreement *and* hostility. Therefore, the finding by the jury in favor of Plaintiffs on both of these claims is inconsistent, illogical, and should be void.

Due to these errors, a new trial must be conducted.

Additionally, a new trial is warranted due to Plaintiffs' counsel's deliberate violation of this Court's ruling on Defendants' motion in limine regarding alleged interactions and altercations between Mr. Click and Mr. Thomas. Evidence related to such alleged altercations was excluded before trial as irrelevant. Several objections were raised

by Defendants during the course of Mr. Click's testimony to ensure Plaintiffs' compliance with this ruling. Before the testimony of Mr. Danner and Mr. Eleazar, Plaintiffs were reminded of the requirement to comply with the Court's order with regard to testimony of altercations between the parties. During the direct of Mr. Eleazar, counsel for Plaintiffs asked about such altercations, specifically the involvement of firearms during one of the parties' interactions. Counsel for Defendants promptly objected, but the information was already shared with the jury, prejudicing them in their decision-making. Based on this inappropriate and prejudicial conduct, a new trial is warranted.

Motion for Equitable Determination and Modification of Damages

Plaintiffs' claims for acquiescence and prescriptive easement are actions in equity and, thus, this Court acts in equity to determine any remedies. To the extent these claims are not resolved through the motions above, Defendants request a hearing on the issue of remedies prior to this Court making its equitable determination on these claims.

Additionally, and subject to the motions above, Defendants request that this Court act in equity to modify and/or clarify the verdict of the jury as related to the issue of damages. During trial, Mr. Click testified about damages he claims to have suffered, which included future loss of use of the driveway and back building, costs for construction of a retaining wall, and damages for repairs to utilities. Plaintiffs' expert, David Hall, testified that to date there had been no damages to the back building caused by excavation on Defendants' property and minimal if any damages to the driveway. Mr. Hall also testified that stopping erosion of the embankment would prevent future damages, which includes loss of use of the driveway and back building. Therefore, to comport with the offered testimony, the judgment must be *either* for remedial measures to prevent future damages

or compensatory for actual losses. A judgment for preventative remedies *and* future losses would create an incongruous double recovery that cannot be permitted at law or in equity.

Respectfully submitted this 3rd day of June, 2022.

CAMPBELL TEAGUE LLC

/s/ Emily O'Brian

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Beau Brogdon (SC Bar #103803)

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Attorneys for Defendants

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing document was served upon the following individuals on June 3, 2022 via electronic notification system and via email:

Brad Martin and Gwen Martin
Bradford Neal Martin & Associates, PA
bmartin@bnmlaw.com
gmartin@bnmlaw.com

s/Emily O'Brian

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13TH JUDICIAL CIRCUIT
Click Properties, LLC and Hyper Formance, LLC,	)	
	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	PLAINTIFFS' MOTIONS AND
	)	MEMORANDUM FOR DECLARATORY
vs.	)	JUDGMENT IMPLEMENTING
	)	ACQUIESCENCE AND PRESCRIPTIVE
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	EASEMENT AND FOR ORDER
	)	GRANTING TEMPORARY AND
	)	PERMANENT INJUNCTIONS
Defendants.	)	
	)	

TO: GEORGE CAMPBELL, ESQ., BEAU BROGDON, ESQ., JESSE GLENN, ESQ., AND EMILY O'BRIEN, ESQ., ATTORNEYS FOR DEFENDANTS;
AND TO THE DEFENDANTS ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, Click Properties, LLC and Hyper Formance, LLC, by and through their undersigned counsel, pursuant to Rules 49, 57 and 58(a)(2), SCRCF, hereby move the Court as follows:

- (a) For a Declaratory Judgment to implement the Jury Verdict finding in favor of Plaintiffs on the issue of acquiescence (third and fourth causes of action), by declaring a new boundary line that includes the Disputed Property (defined below) and ordering conveyance of the Disputed Property to Plaintiff Click Properties, LLC, in fee simple;
- (b) For a Declaratory Judgment to implement the Jury Verdict finding in favor of Plaintiffs on the issue of prescriptive easement (fifth cause of action);
- (c) For an Order of the Court keeping in place the temporary injunction (eighth cause of action) granted by the Court on May 8, 2020 (and reaffirmed by the Honorable

- Alex Kinlaw, Jr. on April 7, 2022), until all post-trial motions and any appeals taken are final, and then be made permanent; and
- (d) For an Order of the Court granting a permanent injunction related to the Jury's Verdict in favor of Plaintiffs on nuisance per se (first cause of action), and as equitable relief to Plaintiffs, to require Defendants to abate the continuing nuisance per se by hiring a qualified site civil engineering company and/or other qualified erosion control and retaining wall design and installation company (hereinafter "Erosion Control Professional") acceptable to Plaintiffs, at Defendants' expense, to design and install an appropriate erosion control, to include a retaining wall and/or other recommended erosion control method(s) to prevent ongoing damage to Plaintiffs' property.

JURY VERDICTS REQUIRING COURT IMPLEMENTATION

This case was tried before the Honorable Perry H. Gravely and a Jury from May 23 through May 26, 2022. The Verdict Form prepared by the Court was in part a special verdict form within the meaning of Rule 49, SCRPC. The Court submitted four causes of action to the Jury: nuisance per se, negligence, acquiescence and prescriptive easement. The Jury found in favor of Plaintiffs on all four causes of action and awarded monetary damages for nuisance (\$28,000) and for negligence (\$168,000).

The acquiescence and prescriptive easement causes of action to determine Plaintiffs' rights in property encroaching over the common boundary line, and used by Plaintiffs and their predecessors in title for more than 20 years, are not matters for which the Jury can award monetary relief but instead require a Declaratory Judgment of the Court (as sought in Plaintiff's Complaint) to implement the Jury's findings. Therefore, Plaintiffs move the Court to enter a

Declaratory Judgment that orders Plaintiffs and Defendants to take the necessary actions to carry out the Jury's decision on acquiescence, and to protect Plaintiffs by implementing the prescriptive easement, as more specifically set forth below.

ACQUIESCENCE

The "Thomas Property" refers to the property titled in the name of Defendant Thomas SC Properties, LLC (and previously titled to Wallace G. Merck, Greg Porter, and Jimmy Watkins) and the "Click Property" refers to the property titled in the name of Plaintiff Click Properties, LLC (and previously titled to Betty M. Ramey, Bradley S. Dobson, Mark Smith and Brent Click). Plaintiffs' fourth cause of action sought to establish that Defendants' and its predecessors in title acquiesced to the western boundary of the Click Property as encompassing the portions of the gravel driveway and turn-around area that encroached on the Thomas Property, as depicted on the 1996 Betty M. Ramey Boundary Survey ("the Ramey Survey") recorded in the Pickens County deed office at Book 56, Page 534 (admitted in evidence as PL Exhibit 8). In addition to the Ramey Survey, which established that the driveway and turnaround had existed a long period of time, detailed testimony about the use of the gravel driveway and turnaround and how adjoining predecessor owners were silent in response to use of the entire back portion of the Click Property, including areas encroaching on the Thomas Property, was testified to by Brent and Shelly Click and predecessors in title, Bradley S. Dobson and Mark Smith.

The Jury was instructed as follows:

If adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced in is not the true one.

If a party stands by, and sees another dealing with the property in a manner

inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits or encourages others to part with their money or property, and he cannot complain that his interests are affected. His silence is acquiesced and it estops him.

The Jury determined that Defendants and their predecessors in title, and Plaintiffs and their predecessors in title, acquiesced to the boundary line mutually recognized, as submitted by Plaintiffs' evidence, finding in favor of Plaintiffs. Plaintiffs' witnesses described their use of the entire back portion of the property where the driveway and turnaround are located, including the portions of the driveway and turnaround that encroach onto the Thomas Property. Mr. Dobson also had personal knowledge of the use of the gravel turnaround and gravel driveway by his predecessor in title, Betty M. Ramey and her husband, whose cabinet shop he purchased, which occupied the back building at the rear of the Click Property.

The Jury found that acquiescence by Defendants was proven by a preponderance of the evidence and therefore that the true boundary line of the Click Property shall include the property at the rear of the Click Property used and maintained by Plaintiffs and their predecessor owners. The property acquiesced to will hereafter be referred to the "Disputed Property".

Therefore, Plaintiffs respectfully request this Court to declare a new boundary line along the western boundary of the adjoining properties that includes the Disputed Property as part of the Click Property. Plaintiffs further request that the Court order:

- a. that a new survey be obtained by Plaintiffs that defines by an accurate metes and bounds description the exact location and dimensions of the Disputed Property to be conveyed;
- b. that counsel for Plaintiffs prepare a special warranty deed that incorporates the metes and bounds description contained in the new survey; and
- c. that Defendant Thomas SC Properties, LLC, within ten (10) days of receipt of the

deed of conveyance shall execute and deliver the special warranty deed conveying the Disputed Property to Plaintiff Click Properties, LLC.

PRESCRIPTIVE EASEMENT

Plaintiffs' fifth cause of action sought to establish that Plaintiffs have obtained an unfettered prescriptive easement over and across the Disputed Property. The Jury was instructed as follows:

In order to establish a prescriptive easement, the Plaintiffs must identify the thing enjoyed; show their use has been open, notorious, continuous, uninterrupted and contrary to the true property owner's rights for a period of 20 years. A party may "tack" the period of use of prior owners in order to satisfy the twenty-year element of the prescriptive easement theory. However, the use by the previous owners must also satisfy all of the elements of a prescriptive easement. Permissive use defeats the establishment of a prescriptive easement because use that is permissive cannot also be adverse.

The Jury found that Plaintiffs are entitled to a prescriptive easement, by clear and convincing evidence. Therefore, Plaintiffs respectfully request this Court to declare a prescriptive easement encompassing the Disputed Property during the interim period before the acquiescence verdict becomes final. In the event that the acquiescence verdict does not become final, to include the conveyance of the Disputed Property to Plaintiff Click Properties, LLC, then Plaintiffs request that the interim prescriptive easement be implemented permanently by the Court, subject only to any appeal taken becoming final.

LOCATION OF THE DISPUTED PROPERTY AND THE NEW BOUNDARY LINE

The location of the Disputed Property to which the Jury found there had been acquiescence, and the new boundary line, has been clearly demarcated by the evidence presented by Plaintiffs. In addition to the depiction on the Ramey Survey, Plaintiffs and their predecessors were consistent in describing the many years over which the entire back portion of the Click

Property, including areas encroaching on the Thomas Property, were treated as their own property. However, due to dirt removal and a new steep slope created by Defendants' excavation in August 2018, a significant portion of the turnaround area as depicted on the Ramey Survey was excavated by Defendants and therefore can no longer be used by Plaintiffs in the manner previously used by Plaintiffs and their predecessors in title. If the new boundary line were to be located all the way to the westernmost edge of the turnaround area as it was depicted on the Ramey Survey, the result would transfer a portion of Defendants' back parking lot to Plaintiffs. Plaintiffs are not seeking that outcome and instead seek what remains of the turnaround.

The Court is requested to implement the Jury's finding of acquiescence by issuing its Declaratory Judgment that the Disputed Property be conveyed to Plaintiff Click Properties, LLC. A final survey by a Registered Surveyor in the State of South Carolina is required for a deed of conveyance. The Court may identify the Disputed Property to be surveyed and conveyed by reference to the testimony and to the Ramey Survey (PL Trial Exhibit 8) and PL Trial Exhibit 42, which shows the excavated embankment as it presently exists, superimposed on the Ramey Survey, and based on an engineer's survey conducted in the field by David Hall, P.E. As an aid to the Court, Mr. Hall has created the attached Exhibit A (Click Property Exhibit Revised 06/02/2022), which incorporates the metes and bounds from the Ramey Survey and the metes and bounds from the engineer's field survey that establishes the top of the excavated embankment as it exists today. The Disputed Property is shown in the yellow shaded area of Exhibit A. Exhibit B sets forth the metes and bounds description as shown in Exhibit A. The final survey by a registered surveyor will contain minor adjustments to the exact conditions in the field.

INJUNCTIVE RELIEF

1. Motion for Abatement of Nuisance

The Jury's finding in Plaintiffs' favor on nuisance per se (first cause of action) resulted in an award of actual damages in the amount of \$28,000. When the existence of a nuisance has been established by the verdict of a jury, the party injured is entitled as a matter of right to an injunction to prevent its continuance. *Dill v. Dance Freight Lines*, 247 S.C. 159, 146 S.E.2d 574 (1996). Plaintiffs sought such relief from the Court in ¶26 of their Complaint. The Jury found that the nuisance per se was proven. However, the Jury was not empowered to order the non-monetary relief of the installation of a retaining wall. Therefore, Plaintiffs request that the Court find that the nuisance per se is continuing and needs to be abated.

The only reasonable way to abate the nuisance (to prevent further ongoing damage to Plaintiffs' property) is for the Court to issue its Order enjoining Defendants from continuing the nuisance unabated. Plaintiffs move the Court for an Order requiring Defendants to hire an Erosion Control Professional (acceptable to Plaintiffs) to perform erosion control and install a retaining wall between the two properties, and to carry out any further recommendations of the Erosion Control Professional to abate the erosion, at Defendants' expense. Plaintiffs request that the erosion control and retaining wall installation be ordered to be completed within three months of the date of the Court's Order. Plaintiffs respectfully request this relief based on the testimony of Plaintiffs' expert witness David Hall, P.E. that a retaining wall is necessary to prevent continuing damage to Plaintiffs' property, and the testimony of Brent Click, Shelly Click, Chris Eleazer, and Chris Danner, and photographic evidence, that continuing erosion is occurring on the property and there is continuing impact on the building based on enlarged and new cracks and the dropping of the ground in the grassy area beside the building, all showing

that the impact of the nuisance is continuing, and that the impact on the stability of the Click property is continuing.

2. Motion to Make Permanent the Temporary Injunctions issued on May 8, 2020 and reaffirmed on April 7, 2022

The testimony of Defendants' owner, Jonathan Thomas, was clear that he firmly believes he has the right to excavate on his property right to the property line, showing no understanding that a neighbor's property can be significantly impacted by extreme slope cuts and digging out truckloads of dirt and thereby removing the lateral support of the adjoining property. Therefore, Plaintiffs move for an Order of the Court keeping the Temporary Injunction in place until all post-trial motions and any appeals taken are final, and then be made permanent, as follows (quoting the Temporary Injunction):

- 1) Defendants Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC shall not construct a fence or obstruction of any kind or take any action which would restrict Plaintiff's use of the gravel drive or turn-around area;
- 2) Defendants Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC shall not take any action on its property which would damage Plaintiff's property, the building, the gravel drive, or the turn-around area; and
- 3) The Court further direct that both parties and their respective agents and representatives refrain from harassing the other party, their employees and/or customers.

CONCLUSION

Plaintiffs seek from this Court a Declaratory Judgment that quiets title by implementing the Jury's finding that acquiescence was proven, by establishing the new boundary line and ordering conveyance of the Disputed Property based on a new survey to be obtained by

Plaintiffs, and a Temporary Injunction enforcing the prescriptive easement during the pendency of all Motions, including JNOV and New Trial, and any appeals taken. When the Temporary Injunction was granted by the Court on May 8, 2020, the Court found a likelihood of success on the merits by Plaintiffs. The meritoriousness of Plaintiffs' claims has now been proven by a Jury Verdict in Plaintiffs' favor on all causes of action submitted.

Based on Plaintiffs' first cause of action for nuisance per se and eighth cause of action for temporary and permanent injunction, Plaintiffs request the Court to declare that the nuisance found by the Jury is continuing and therefore compel Defendants to abate the nuisance by the hiring of an Erosion Control Professional (acceptable to Plaintiffs) and ordering erosion control and installation of a retaining wall and/or any other recommended remedies, at Defendants' expense.

Respectfully submitted,

June 6, 2022

s/Bradford N. Martin

Bradford N. Martin, Esq., SC Bar No. 3658

Gwendolyn G. Martin, Esq., SC Bar No. 1897

Laura W. H. Teer, Esq., SC Bar No. 16698

BRADFORD NEAL MARTIN & ASSOCIATES, PA

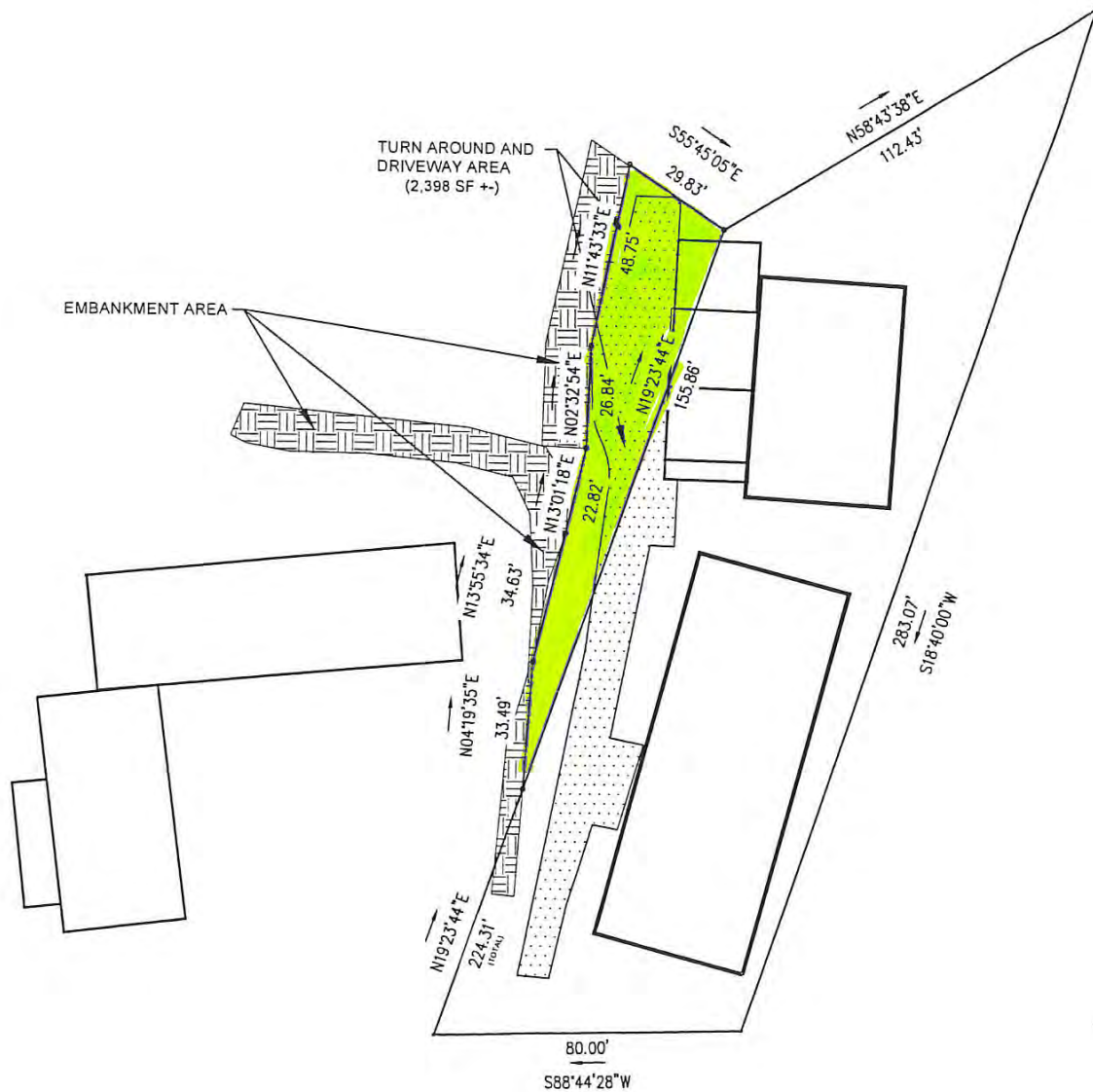
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ATTORNEYS FOR PLAINTIFFS CLICK

PROPERTIES, LLC and HYPER FORMANCE, LLC



CLICK PROPERTY EXHIBIT

PREPARED BY: DAVID HALL, PE
 06/01/2022 (REVISED 06/02/2022)
 SCALE 1" = 20'

PRELIMINARY METES AND BOUNDS DESCRIPTION

Beginning at the northeast right of way of U.S. Highway 123 on an iron pin at the corner of Thomas and Click properties, on a bearing of N 19-23-44 E for a distance of 68.45 ft to the true point of beginning; thence, N04-19-35 E for a distance of 33.49 ft to a point; thence, N 13-55-34 E for a distance of 34.63 ft to a point; thence, N 13-01-18 E for a distance of 22.82 ft to a point; thence, N 02-32-54 E for a distance of 26.84 ft to a point; thence, N 11-43-33 E for a distance of 48.75 ft to a point located on the Thomas northwest property line; thence, S 55-45-05 E for a distance of 29.83 feet to an iron pin located at a property corner of the Thomas and Click properties; thence, along the southwest property line of the Thomas and Click properties S 19-23-44 W for a distance of 155.86 ft to the true point of beginning. Said property is a total of 2,398 sq ft +/- and the western face of the embankment remains the property of Thomas SC Properties, LLC.

IN THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	FOR THE 13 TH JUDICIAL CIRCUIT
	)	
Click Properties, LLC and Hyper Formance, LLC,	)	C. A. No. 2020-CP-39-00266
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' MEMORANDUM
	)	IN OPPOSITION
Thomas SC Properties, LLC and All-Tech Tire and Auto Repair, LLC,	)	TO DEFENDANTS' MOTION FOR
	)	POST-TRIAL RELIEF
	)	
Defendants.	)	
	)	

INTRODUCTION

The Jury's award of actual damages and findings that acquiescence and prescriptive easement were proven are well grounded in the evidentiary record and the law charged to the Jury. Plaintiffs presented documentary evidence and lay and expert testimony from seven witnesses over the course of a four-day trial. Defendants' Motions asking the Court to take away the Jury's verdict and deny equitable relief cannot withstand the standard of review required to be applied by the Court.

STANDARD OF REVIEW

In ruling on a JNOV motion or motion for new trial, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the non-moving party. *Gilliland v. Doe*, 357 S.C. 197, 592 S.E.2d 626 (2004); *Law v. S.C. Dept of Corrections*, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006); *Swicegood v. Lott*, 379 S.C. 346, 351, 665 S.E.2d 211, 213 (Ct. App. 2008); *Israel v. Carolina Bar-B-Que, Inc.*, 292 S.C. 282, 287, 356 S.E.2d 123, 127 (Ct. App. 1987). The Court must deny a motion for JNOV when the evidence

yields more than one inference or its inference is in doubt. *Steinke v. South Carolina Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). The Jury's verdict may not be overturned if *any evidence* sustains the factual findings implicit in its decision. *Welch v. Epstein*, 342 S.C. 279, 300, 536 S.W.2d 408, 419 (Ct. App. 2000); *Smalls v. South Carolina Dep't of Educ.*, 339 S.C. 208, 215, 528 S.E.2d 682, 686 (Ct. App. 2000). The Jury's determination of damages is entitled to substantial deference. *Knoke v. S.C. Dep't of Parks, Recreation & Tourism*, 324 S.C. 136, 141, 478 S.E.2d 256, 258 (1996). A new trial is warranted only if the trial court determines that the verdict is contrary to the fair preponderance of the evidence. *See Dent v. Redd*, 270 S.C. 585, 243 S.E.2d 460 (1978).

ARGUMENTS AND AUTHORITIES

I. The Jury's Verdict for Nuisance *per se* was Supported by the Evidence

A. The trial court correctly handled the jury's initial completion of the verdict form

The Jury completed the verdict form finding in favor of Plaintiffs on the nuisance *per se* and the negligence causes of action, the two causes of action for which damages could be awarded. The Jury initially filled in "\$0" as the damages under nuisance *per se* and "\$196,000" under negligence. The trial Judge carefully addressed the Jury explaining he was sending them back to the Jury room to complete the verdict form in accordance with the verdict form and instructions they had been given. Once the jurors left the courtroom the Judge advised the parties and counsel that he had recently reviewed the law on this issue and the correct way to handle the legally inconsistent verdict form. As the Court of Appeals summarized in *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996):

A trial court is vested with very limited power to correct a jury verdict which is defective in form, but which in substance clearly and definitely expresses the jury's intentions.

The law rather forbids this court assuming to take upon itself the powers, duties, rights, and privileges of a jury.” [citations omitted].

The quintessential case presenting the issue of reformation of the jury verdict is a jury verdict for “no dollars.” The court cannot lawfully enter judgment on an inconsistent or incomplete verdict. *Johnson v. Phillips* 315 S.C. 407, 433 S.E.2d 895 (Ct. App. 1993) rev’d in part on other grounds 318 S.C. 453, 458 S.E.2d 427 (1995)...

When the jury returns a verdict of "no damages" for the plaintiff, the judge should inform the jury that he cannot legally accept the verdict, and should return the case to them with instructions explaining nominal and compensatory damages and charging them either to assess a definite dollar amount in damages (nominal or actual) for the plaintiff or to return a verdict for the defendant. *Vinson, supra*, 477 S.E.2d at 724-725.

The Trial Court followed this process, explaining to the Jury the necessity to return to the Jury room to complete the verdict form in accordance with the verdict form and instructions. Based on the time taken by the Jury to return its verdict (approximately 10 minutes), the jurors clearly understood that they had to either find in favor of Defendants on nuisance *per se* or, if they found for Plaintiffs, needed to determine the amount of damages. The Jury reduced the \$196,000 award for negligence by \$28,000 and awarded \$28,000 for nuisance *per se*. The outcome is well within a reasonable decision. The total amount awarded was approximately 2/3 of the amount of damages Plaintiffs had sought. The fact that the Jury deliberated quickly is merely an indication of their overwhelming agreement on the issues to be decided in the case. *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 636, 529 S.E.2d 758 (2000).

The Jury did not need to be re-instructed on the law beyond the Judge’s brief instructions before it returned to the Jury room, as they already had copies of the Judge’s written instructions to refer to and the verdict form itself was explicit as to the options for decisions that could be made. South Carolina law makes the Jury the sole judge of the facts, including the issue of damages. *Johnson, supra*, 315 S.C. at 416-17, n. 7, 433 S.E.2d at 901, n. 7. The Trial Court correctly handled

the verdict form issue just as appellate courts have instructed, and therefore the verdict form issue cannot be the basis for granting of JNOV or a New Trial.

B. Plaintiffs presented ample evidence of nuisance *per se*

Defendants rely on a list of cases based on “mere fears of the plaintiff” to argue that Plaintiffs’ cause of action for nuisance *per se* was not supported by the evidence. Defendants’ characterization of Plaintiffs’ evidence as “mere fears” flies in the face of the ample evidence presented by Mr. and Mrs. Click, their expert witness David Hall, and witnesses Chris Danner and Chris Eleazer, and photographic evidence of the changes in the condition of the gravel driveway, the gravel turnaround area, and the back building. There were new and extended cracks in the floor, the floor became uneven, there was movement of the cement block exterior wall, and the ground outside referred to as the “grassy area” had dropped over time. Photographic evidence also showed the extreme angle of the cuts into the embankment and the erosion of the embankment.

Plaintiffs’ testimony certainly exceeded mere expressions of future fears! Plaintiffs’ evidence did include proof that the deteriorating condition of the property would be ongoing (testified to by David Hall), which supports the need for remedial measures (the installation of a retaining wall) to prevent continuing damage to Plaintiffs’ property. Therefore, Defendants’ line of cases based on anticipatory nuisance are a red herring that have no application to this case because those cases were based on attempts to stop planned future actions of the adverse parties and fears of potential future consequences of those future actions. Plaintiffs’ cause of action, proven to the Jury’s satisfaction, is nuisance *per se*, not anticipatory nuisance. And as the Court made clear in the very case most emphasized by Defendants, the question of whether or not a nuisance has become dangerous is for the jury. *Suddeth v Knight*, 280 S.C. 540, 545-546, 314 S.E.2d 11, 15 (Ct App. 1984).

Defendants erroneously claim “No evidence was presented that the excavation performed on the Thomas Property is dangerous ‘at all times and under all circumstances,’” citing *Suddeth*. The *Suddeth* case makes clear that the question of whether or not a nuisance has become dangerous is for the jury. *Id.* 280 S.C. at 545-546, 314 S.E.2d at 15. In *Suddeth*, the defendant constructed a ditch and drainage system causing surface waters to collect and cast in concentrated form upon Suddeth’s land and blocked a water course thereby causing the ponding of water on Suddeth’s property. Relying upon *Deason v. Southern Railroad Company*, 142 S.C. 328, 140 S.E. 575 (1927) the Court of Appeals held that the question of whether or not the nuisance had become dangerous at all times and under all circumstances to life, health or property was for the jury. If the ponding of water is sufficient to create a question of fact of a nuisance becoming “dangerous at all times and under all circumstances to life, health, or property,” then the digging of a steep embankment endangering the Click’s home and business is certainly a nuisance as well.

Defendants also overlook the fact that a nuisance is “anything which works hurt, inconvenience, or damages; anything which essentially interferes with the enjoyment of life or property.” *Neal v. Darby*, 282 S.C. 277, 285, 318 S.E.2d 18, 23 (Ct. App. 1984).

Plaintiffs presented sufficient evidence of nuisance *per se* that the excavation had resulted in the property becoming dangerous “at all times and under all circumstances.” Geotechnical testing, obtained by Plaintiffs’ expert, David Hall, P.E., substantiated that the excavation in the area towards the top of the Click gravel driveway had an insufficient factor of safety being at best 1.16 compared to the recommended minimum of 1.5. This industry standard certainly meets the definition of nuisance *per se*. Defendants’ expert, Paul Miller, did not dispute the acceptance of the industry standard of the Global Stability Analysis to evaluate the stability of embankments. It was a Jury question whether or not the condition was dangerous.

Further, there was testimony from Brent and Shelly Click, Chris Danner, Chris Eleazer, Bradley Dobson, and Mark Smith regarding new and increased cracking in the back building after the excavation, compared to before the excavation, as well as the outside of the building and the dropping of the outside grassy area. The evidence was sufficient for the Jury to find that conditions existed as the Click property that met the definition of nuisance *per se*.

Further, Brent and Shelly Click and David Hall testified that the gravel driveway adjacent to where the excavation work was completed has limited the access to the back building. Large trucks were no longer able to be safely transported up the driveway and worked on due to the instability of the driveway. The testimony was clear that the improper excavation had caused this loss of business. Brent Click, as co-owner of Hyper Formance, was competent to testify about his loss of business. The determination of damages may depend, to some extent, on the consideration of contingent events when a reasonable basis of computation is afforded, permitting a reasonably close estimate of the loss. *Pope v. First Heritage Communities Inc.* 395 S.C. 404, 434, 717 S.E.2d 765, 781 (Ct. App. 2011). David Hall testified that he agreed with the decision to limit the use of the back building by no longer working on large vehicles, due to the instability of the driveway.

II. Plaintiffs Presented Abundant Evidence of Damages Resulting from the Excavation Work Performed on the Thomas Property

As previously discussed, Plaintiffs' evidence showed significant erosion at the property and changes in and around the back building. Brent Click testified about utilities under the ground that were impacted, requiring repair, and additional maintenance expenses he had incurred since the excavation, and the need to stop doing the repair and body work to large trucks which were unsafe to transport up and down the gravel driveway. Therefore, the Jury's conclusion that the Thomas excavation caused significant damage to Plaintiffs and the verdicts awarding damages for nuisance *per se* and negligence are not without evidentiary support.

The amount of damages awarded (\$196,000 in total) is not excessive, and is less than the \$296,000 total damages sought by Plaintiffs. “A verdict which may be supported by any rational view of the evidence and bears a reasonable relationship to the character and extent of the injury and damage sustained, is not excessive.” *Kunst v. Loree*, 424 S.C. 24, 46-47, 817 S.E.2d 295, 306 (Ct. App. 2018) quoting *Young v. Warr*, 252 S.C. 179, 187, 165 S.E.2d 797, 801 (1969). The grant of a new trial based on damages must be granted “only when the verdict is shockingly disproportionate to the injuries suffered and thus indicates that passion, caprice, prejudice, or other considerations not reflected by the evidence affected the amount awarded.” *Burke v. AnMed Health*, 393 S.C. 48, 56, 710 S.E.2d 84, 88 (Ct. App. 2011) quoting *Becker v. Wal-Mart Stores, Inc.*, 339 S.C. 629, 635, 529 S.E.2d 758, 761 (2000).

III. Plaintiffs’ Cause of Action based on Acquiescence is Amply Supported by the Evidence and was Recognized by Prior Owners of the Adjacent Properties

Plaintiffs’ witnesses who previously owned the Click property, Mark Smith and Bradley Dobson, testified in detail about their use of the gravel driveway and turnaround area, essentially using these areas as though they owned them. Dobson had personal knowledge of this use by his predecessors, the Rameys, as he worked with them prior to the buying of the property. Defendants seem to assert there needs to be some very explicit agreement made between the landowners that they will recognize and accept a new property line. However, by their actual conduct consistent over the years, the assent to a different boundary line has been established.

The prior owners of the adjoining Thomas Property - Wallace Merck, Ken Porter, and Jimmy Watkins – did not use these areas, according to Smith’s and Dobson’s testimony.

[I]f a party stands by, and sees another dealing with property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits or encourages others to part with their money or property, and he cannot complain that his interest[s] are affected. *His silence is acquiescence and it estops him.*

Jordan v. Judy, 413 S.C. 341, 348-349, 776 S.E.2d 96, 101 (Ct. App. 2015) (quoting *McClintic v. Davis*, 228 S.C. 378, 383, 90 S.E.2d 364, 366 (1955) (emphasis added)).

Watkins came once to the Click property, in 2015 when the Clicks were renters, walked around looking at the cars that Mr. and Mrs. Click were working on, but was silent about their use of the turnaround area. The poured concrete slab and awnings that encroached upon the Thomas Property was not commented on. Watkins acted inconsistently with his rights by remaining silent. His silence in 2015 encouraged Brent Click to purchase the property in 2017. Thomas, as renter since 2014, did nothing to insist Watkins object, even though he knew of the encroachment. Their silence over the many years is acquiescence to the use of the gravel turnaround and entire upper portion of the driveway. “If adjoining landowners occupy their respective premises up to a certain line, which they mutually recognize and acquiesce in for a long period of time, they are precluded from claiming the boundary line thus recognized and acquiesced in is not the true one.” See *Gardner v. Mazingo*, 293 S.C. 23, 26, 358 S.E.2d 390, 392 (1987) quoting *Klapman v. Hook*, 200 S.C. 51, 32 S.E.2d 882 (1945); *Kirkland v. Gross*, 286 S.C. 193, 332 S.E.2d 546 (Ct. App. 1985).

The boundary line whereby the turnaround and the entire gravel driveway were exclusively used by the owners of the Click Property was recognized as a result of the topography of the land and treated as the boundary by the predecessor owners of the Click and Thomas properties. The fact that Smith and Dobson both knew where the boundary line is drawn on a plat is irrelevant. The acquiescence cause of action is not founded on whether prior owners were ignorant or not about where the boundary was drawn on the plat, but on the consistent course of conduct over time by the prior owners.

Finally, there was consistent testimony and documentary evidence defining the new boundary that was acquiesced to between the properties. Plaintiffs’ witnesses described their use

of the driveway and turnaround prior to the excavation in August 2018. The 1996 Ramey Boundary Survey (PL Trial Exhibit 8) also outlined the area of use that the Rameys had enjoyed and that subsequent owners Dobson, Smith and Click continued to use for access to the back building. The area, as it presently exists, is documented by David Hall's "S-1" drawing (Plaintiffs' Trial Exhibit 42). *See also* Exhibit A and Exhibit B to Plaintiffs' Motions and Memorandum for Declaratory Judgment Implementing Acquiescence and Prescriptive Easement for a metes and bounds description and drawing of the area being acquiesced to that would be the new boundary, based on Plaintiffs' Trial Exhibit 42.

IV. The Jury's Finding for Plaintiffs on Their Claim for Prescriptive Easement is a Consistent Verdict

The Jury accepted the testimony of Plaintiffs' predecessor owners and the Clicks, by clear and convincing evidence, that they did not seek or receive permission to use the gravel turnaround and entire gravel driveway, and these areas were adversely used. While Defendants continue to argue the use of the area was permissive, the Jury weighed this claim by Defendants' witnesses and rejected it. They believed the testimony of Dobson, Smith, and the Clicks.

The proper standard is not "hostility," as Defendants claim, but the use must be open, notorious, continuous, and uninterrupted. "Notorious" generally means that the use is actually known to the owner, or is widely known in the neighborhood. *Simmons v. Berkeley Elec. Corp. Inc.*, 419 S.C. 223, 234, 797 S.E.2d 387, 392 (2016). *See Morrow v. Dyches*, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997). Consistent with the "notorious" use was Brent Click's act of pouring the slab and adding three awnings at different times to the turnaround area, with no objections from Watkins, Porter, or Thomas. Plaintiffs met their burden (by clear and convincing evidence) that the use was open, notorious, continuous, and uninterrupted. The burden then shifted

to Defendants to rebut the presumption. Defendants failed to rebut the presumption. *See Poole v. Edwards*, 197 S.C. 280, 15 S.E.2d 349 (1941).

The years of use by Dobson, Smith, and Click are allowed to be “tacked” together in order to satisfy the 20-year requirement. *See Morrow v. Dyches*, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997); *Carolina Ctr. Bldg. Corp. v. Enmark Stations, Inc.*, 433 S.C. 144, 857 S.E.2d 16 (S.C. App. 2021). “When it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse.” *Simmons v. Berkeley Electric Co-op., Inc.*, 419 S.C. 223, 797 S.E.2d 387, 390 (2016). Bradley Dobson's testimony established his ownership and use of the Click property since 1996, 24 years before this lawsuit was filed, and he also had personal knowledge of and testified about the use by the Rameys, his predecessor in title. His use was without permission and thus adverse to the ownership of the Thomas property. Dobson sold the Click property to Mark Smith in 2005. Smith's use was also without permission and was adverse, as he testified. Smith sold the property to Brent Click in 2017 (who titled the property in the name of his business, Click Properties LLC), who continued to use the gravel turnaround and upper part of the gravel driveway in an adverse manner.

V. Defendants' Additional Grounds for a New Trial are Not Sufficient for the Grant of a New Trial

Plaintiffs have already responded to Defendants' arguments on the issues of the Jury being sent back to complete the verdict form, nuisance *per se*, damages, acquiescence, and prescriptive easement. The Defendants have focused on “hostility,” not an element of prescriptive easement. Use that is “adverse” is an element, and as discussed above, Plaintiffs' evidence showed adverse use by the Clicks and their predecessors. Defendants say “mutual agreement” must be shown, but the acquiescence can be established by conduct that evidences assent.

Finally, Defendants argue that the Court's evidentiary ruling on admissibility of "alleged interactions and altercations between Mr. Click and Mr. Thomas" was violated during the direct testimony of Plaintiffs' witness, Chris Eleazer. Prior to the start of trial, the Court ruled it would exclude testimony related to Mr. Thomas's use of a knife and expressions of wanting to cut off Mr. Click's head, as experienced in a dream. The Court allowed testimony concerning Mr. Thomas's intention to dig until Mr. Click's building fell in. Eleazer was asked about his observations regarding weapons when he was present observing the active excavation work. This question was not improper or covered by the Court's previous ruling because it was not about an altercation between Click and Thomas. Defendants did not seek a curative instruction. Defendants' claim that the question was prejudicial rings hollow given that Defendants did not take the opportunity to ask the Court to instruct the Jury to disregard the question. The claim that a new trial should be granted on this basis is not persuasive.

Plaintiffs presented evidence of damages in the amount of \$296,000. The Jury returned a verdict in the total amount of \$196,000. Therefore, there was no overlap of damages or double damages, as argued by Defendants. Expert David Hall testified that the driveway is now in a state of imminent failure. He testified that he agreed it was a prudent decision by Brent Click limiting heavier equipment on the driveway and near the edge of the embankment. Mr. Click testified they had to sell their RV because it was no longer safe to keep it, due to the instability caused by the excavated embankment, which was unstable and therefore unsafe. In short, there is no good reason to depart from the Jury's determination of the appropriate amount of damages. The Jury's award of actual damages in the total amount of \$196,000 is supported by the evidence, is reasonable and should not be disturbed.

VI. Equitable Remedies

The Jury's findings that both acquiescence and prescriptive easement were proven are not inconsistent verdicts, as already discussed above. Defendants appear to conflate the element of "mutual agreement" that must be shown to establish acquiescence with the need for an explicitly voiced agreement of where on a plat the boundary line is shown. In acquiescence cases, of course the boundary line in a plat or deed (unless erroneously rendered in such instruments) is going to differ from the boundary acquiesced to over a period of time by mutual conduct.

Defendants have incorrectly described the basis of Plaintiffs' claims for damages, none of which sought an award of future damages. Plaintiffs asked to be compensated for damages that had already occurred: three weeks of loss of business (large vehicles), expenses of special driveway maintenance, septic tank, sewer line and waterline repairs, and loss of fair market value of the back building (total damages sought was approximately \$296,000). In addition, Plaintiff sought the cost of a retaining wall (\$89,000) to prevent the continuing erosion of the excavated embankment, and to prevent additional damages. Contrary to Defendants' assertion, there is no inconsistency and no basis for the Court to modify the amount of damages awarded by the Jury.

Finally, with regard to equitable remedies, Plaintiffs' position is set out in its separate Motion for Declaratory Judgment Implementing Acquiescence and Prescriptive Easement, all of which are herein incorporated by reference, rather than being repeated here. The Jury found that Plaintiffs met their burden of proof to establish both acquiescence and prescriptive easement. Plaintiffs ask the Court to issue its Declaratory Judgment in favor of Plaintiffs implementing the Jury's findings.

CONCLUSION

For the foregoing reasons, Defendants' Motion for JNOV and/or New Trial should be denied in its entirety, and the Jury's verdict should stand and be fully implemented by the Court by issuing its Declaratory Judgment in favor of Plaintiffs.

Respectfully submitted,

July 19, 2022

s/Bradford N. Martin

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**ATTORNEYS FOR CLICK PROPERTIES, LLC AND
HYPER FORMANCE, LLC**

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

CLICK PROPERTIES, LLC AND)
HYPER FORMANCE, LLC,)

PLAINTIFFS,)

-VS-)

2020-CP-39-00266

THOMAS SC PROPERTIES, LLC)
AND ALL-TECH TIRE AND)
AUTO REPAIR, LLC,)

DEFENDANTS.)

TRANSCRIPT OF RECORD

MAY 23 - 26, 2022
PICKENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE PERRY H. GRAVELY

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

ATTORNEYS FOR PLAINTIFFS:

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SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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1 (Whereupon Plaintiffs' exhibits 1 - 43 were marked for
2 identification)

3 (Whereupon Defendants' exhibits 1 - 20 were marked for
4 identification)

5 (Whereupon court convened at 10:20 am)

6 (Whereupon the jury pool was present in the courtroom)

7 **THE COURT:** Please be seated. Mr. Allsep, the clerk
8 advised me that you realized that you may have a conflict this
9 afternoon.

10 **MR. ALLSEP:** Yes, sir. I didn't realize how long court
11 actually went throughout the day.

12 **THE COURT:** All right. And what's the nature of the --
13 first of all, you are -- let me make sure I've got our juror
14 number correctly.

15 **THE BAILIFF:** Juror number 3.

16 **THE COURT:** Okay. What's the nature of your appointment?

17 **MR. ALLSEP:** I have a dentist appointment at 4:00 today.

18 **THE COURT:** All right. And is it something that you
19 can't change or ...

20 **MR. ALLSEP:** I could probably reschedule it, yes, sir.

21 **THE COURT:** All right. If you can, I mean, if it's an
22 emergency situation, then, ---

23 **MR. ALLSEP:** It's just a routine thing.

24 **THE COURT:** Okay. If you don't mind, then, I mean, if
25 it's not an emergency or something, then if you could just get

1 it rescheduled, then.

2 **MR. ALLSEP:** Yes, sir.

3 **THE COURT:** All right. Thank you.

4 All right, ladies and gentlemen, we are now going to ask
5 -- I'm going to ask you some questions about the case that's
6 going to be tried this week. And the whole purpose of these
7 questions are a lot different than what we just heard.

8 These questions are, one, to give the attorneys a little
9 more information about you, and also, ultimately to make sure
10 that you can be fair and impartial in the trial of this case.
11 So those were -- these questions -- that's the purpose of
12 these questions.

13 First of all, the nature of the case or -- the Plaintiffs
14 in this case, for your purposes, the Plaintiff is the party
15 that initiated the lawsuit, that brought the lawsuit against
16 another party. And those are commonly referred to as
17 defendants. And this case is Click Properties, LLC and Hyper
18 Formance, LLC versus Thomas SC Properties, LLC and All-Tech
19 Tire and Auto Repair, LLC.

20 Now I'm going to give you just a little bit of
21 information about the case. This is -- these are adjoining
22 landowners on a piece of property that is on 123. And it's
23 actually -- I just had it. I just had that address -- it is
24 360 -- 3668 Calhoun Memorial Highway in Easley. It's
25 adjoining property owners down 123 past the racetrack. Okay.

1 That's the general ...

2 And these are -- it's a dispute over a driveway, and some
3 actions between the adjoining landowners and property lines,
4 and those types of -- that's just the general nature -- there
5 are a lot more details that you will get into as we get into
6 court, but that's the general nature of the dispute.

7 First of all, I would ask if anybody is related by blood
8 or marriage, has any business, social relationship or anything
9 to do with Click Properties, LLC, Hyper Formance, LLC, Thomas
10 SC Properties, LLC and All-Tech Tire and Auto Repair, LLC?
11 What are their common -- for the Plaintiff, what is the --
12 what is the name that your people go by?

13 **MR. MARTIN:** Brent and Shelly Click.

14 **THE COURT:** Okay. But that's what -- the name of their
15 business goes by that?

16 **MR. MARTIN:** Hyper Formance is the business.

17 **THE COURT:** Okay. Hyper Formance. And then ...

18 **MR. BROGDON:** Yes, Your Honor. It's All-Tech Auto Tire
19 Repair.

20 **THE COURT:** All right. So is anybody connected by --
21 have any business relationship with or connected by blood or
22 marriage to anybody that's an employee of either of these --
23 any of these businesses? If so, please stand.

24 (No response)

25 **THE COURT:** All right. And we'll go through the

1 witnesses in just a minute, but at this time I'm going to ask
2 that the attorneys stand, introduce themselves and whoever's
3 going to be helping them with the case.

4 **MR. MARTIN:** Ladies and gentlemen, I'm Brad Martin. I'm
5 a lawyer in Greenville. And helping with the case is Gwen
6 Martin, a lawyer also in my firm in Greenville.

7 **MR. BROGDON:** Good morning. My name is Beau Brogdon.
8 I'm an attorney in Greenville with Campbell Teague. This is
9 my co-counsel, Jesse Glenn, also with Campbell Teague, co-
10 counsel George Campbell with Campbell Teague, and co-counsel
11 Emily O'Brian with Campbell Teague.

12 **THE COURT:** All right. Is anybody related by blood or
13 marriage, have any close personal, social or business
14 relationship with any of the attorneys or their law firms? If
15 so, please stand.

16 (No response)

17 **THE COURT:** Okay. Has anybody ever been represented by
18 the attorneys or anybody in their law firm or have you ever
19 been involved in something where these attorneys or their law
20 firms were on the other side of you? If so, please stand.

21 (No response)

22 **THE COURT:** All right. And no response.

23 Now at this time I'm going to list -- I'm going to give
24 you a list of witnesses. And it's going to be the same
25 question, if you have any -- basically I'm looking for any

1 connection with these folks.

2 And then let me ask you -- the follow-up question is --
3 that doesn't disqualify if you know one of these individuals
4 because the follow-up question is going to be can you be fair
5 and impartial in the trial of this case. In other words, can
6 you listen to the facts and make a decision based on those
7 facts?

8 But possible witnesses in this case -- I guess if you're
9 here, if you could stand just so that the jury can see you.
10 Jonathan Thomas. All right. And just turn and face the jury.
11 All right. Thank you. You can be seated.

12 Robert Clint -- Robert Brent Click. Okay. Thank you.
13 Shelly Click. All right. Those are the primary for the
14 parties. And these other witnesses I don't believe are here.
15 But David Hall of H2L Professional Engineers. Bradley Dobson,
16 Chris Danner, Chris Eleazer, Mark Smith, Andy Sherard, Paul
17 Mills, Greg Porter, Jimmy Watkins, Jessie Lingerfelt.

18 Is anybody connected by blood or marriage, have any close
19 personal, business or social relationship with any of these
20 individuals? If so, please stand.

21 (No response)

22 **THE COURT:** Okay. Has any member of the jury panel
23 formed or expressed an opinion about any issue or matter
24 involved in this case? If so, please stand.

25 (No response)

1 **THE COURT:** All right. And no response.

2 Has any member of the jury panel, family member or close
3 personal friend employed or brought any car or truck to All-
4 Tech Auto Repair? If so, please stand.

5 (No response)

6 **THE COURT:** Okay. And no response.

7 Has any member of the jury panel been involved in a
8 dispute involving an easement, property line dispute, improper
9 grading or excavating a property? If so, please stand. All
10 right. Stand. First, state your name.

11 **JUROR:** Sherri Smith.

12 **THE COURT:** Sorry?

13 **JUROR:** Sherri Smith.

14 **THE COURT:** All right. And what was the nature of your
15 dispute that you were ---

16 **MS. SMITH:** It was personal property we had in Pickens
17 County. And it was -- and I don't know if this counts, but
18 like our neighbors, I guess, when they pinned it or whatever,
19 they basically -- they built over the line.

20 **THE COURT:** Okay.

21 **MS. SMITH:** And they -- there was -- there was some shady
22 dealings ---

23 **THE COURT:** Okay.

24 **MS. SMITH:** I shouldn't say shady. Anyway. And we had
25 to actually like hire an attorney. We didn't have to go to

1 court, but we had to hire an attorney to make it ---

2 **THE COURT:** All right.

3 **MS. SMITH:** --- right.

4 **THE COURT:** Could you still be fair and impartial in the
5 trial of this case?

6 **MS. SMITH:** Yes.

7 **THE COURT:** All right. Thank you.

8 Your name and number? I'm sorry. No, we got yours.

9 Your name and number?

10 **JUROR:** 107. Patrick Page, 107.

11 **THE COURT:** Okay.

12 **MR. PAGE:** I wasn't directly, but my parents were
13 involved in a similar issue that she's talked about where
14 somebody assumed the right of way. My dad bought property and
15 the right of way was for the people he bought it from. Long
16 story short, we found out that it wasn't for him, so he
17 couldn't use it to sell the back side of his property.

18 **THE COURT:** All right. Could you still be fair and
19 impartial in the trial of this case?

20 **MR. PAGE:** Yes.

21 **THE COURT:** All right. Thank you.

22 Yes. Your name and number?

23 **JUROR:** I'm number 47, Jane ---

24 **THE COURT:** Okay.

25 **MS. TEDDY:** I think -- I don't know the specifics, but I

1 think ---

2 **THE COURT:** Can you speak up just a little bit.

3 **MS. TEDDY:** Oh. I'm not sure of the specifics, but my
4 father in North Carolina, I think, was involved in something
5 similar because they have a grading company.

6 **THE COURT:** Okay.

7 **MS. TEDDY:** But I have no idea ---

8 **THE COURT:** All right. Could you still be fair and
9 impartial in the trial of this case?

10 **MS. TEDDY:** Yes.

11 **THE COURT:** All right. Thank you.

12 Anyone else?

13 (No response)

14 **THE COURT:** Is there any member of the jury panel have
15 any connection with Gray Court or Gray Court Body Shop? If
16 so, please stand. All right. And no response. I'm sorry.
17 Yes. Your name and number again?

18 **JUROR:** 107, Patrick Page. I used to play golf with him
19 in the past. It's been a while.

20 **THE COURT:** All right. And if he is a witness in this
21 case, can you still be fair and impartial in the trial of this
22 case?

23 **MR. PAGE:** Sure.

24 **THE COURT:** All right. Thank you.

25 Yes, your name ---

JURY QUALIFICATION

19

1 **JUROR:** Carolyn Brice, number 12.

2 **THE COURT:** Okay.

3 **MS. BRICE:** His body shop did work on my cars 25 years
4 ago.

5 **THE COURT:** All right. Could you still be fair and
6 impartial ---

7 **MS. BRICE:** Yes, sir.

8 **THE COURT:** --- in the trial of this case? All right.
9 Thank you.

10 Anyone else?

11 (No response)

12 **THE COURT:** Has any member of the jury panel heard
13 anything about this case prior to today? If so, please stand.

14 (No response)

15 **THE COURT:** Okay. No response.

16 Has anyone discussed this case with you prior to today?
17 If so, please stand.

18 (No response)

19 **THE COURT:** Okay. Has anyone formed an opinion about
20 this case? If so, please stand. I realize you don't have a
21 lot of information.

22 (No response)

23 **THE COURT:** Is there any member of the jury panel aware
24 of any bias or prejudice that they would have either against
25 the Plaintiffs or the Defendants in this matter? If so,

1 please stand.

2 (No response)

3 **THE COURT:** All right. And no response.

4 Is there any member of the jury panel know of any reason
5 whatsoever that they could not be fair and impartial to both
6 the Plaintiffs and the Defendants in this matter? If so,
7 please stand.

8 (No response)

9 **THE COURT:** All right. No response.

10 Any additional questions from the Plaintiffs?

11 **MR. MARTIN:** No. Thank you, Your Honor.

12 **THE COURT:** Any additional questions from the Defendants?

13 **MR. BROGDON:** None, Your Honor.

14 **THE COURT:** All right. At this time, ladies and
15 gentlemen, what we will do is we will -- the computer will
16 generate a random list from the panel. Then we'll -- that
17 list will be presented to the attorneys. And we'll give them
18 a few minutes to look at it.

19 And they will determine -- and then after that we'll have
20 the striking of the jury to determine who's going to be on the
21 jury in this case. So y'all just hang tight for just a few
22 minutes.

23 And we'll give y'all -- y'all can go in -- y'all want to
24 sit out here or you want to go to the conference -- there are
25 two conference rooms out there if y'all need to go into one of

1 those.

2 (Whereupon court was in recess at 10:36 am)

3 (Whereupon court reconvened at 10:50 am)

4 **THE COURT:** Ready?

5 **MR. MARTIN:** Yes, Your Honor.

6 **THE COURT:** Defendants ready?

7 **MR. BROGDON:** Yes, Your Honor.

8 **THE COURT:** All right. I'll turn it over to the clerk.

9 And what we'll do at this point is we'll begin the selection
10 process, ladies and gentlemen. Mr. Clerk.

11 **THE CLERK:** I'll sit right over here so they can see me.

12 **THE COURT:** Okay.

13 **THE CLERK:** As I call your name, if you would, please
14 stand so the attorneys can see you.

15 **THE COURT:** No, this isn't criminal.

16 **THE CLERK:** That's wrong.

17 **THE COURT:** We had criminal last week. Criminal -- yeah,
18 criminal court is a totally different selection process. So
19 we've been in a criminal state of mind here lately. So that's
20 why ---

21 **THE CLERK:** Thank you, Your Honor. I appreciate that.
22 All right. Plaintiffs' first strike?

23 **MR. MARTIN:** All right. Plaintiffs will strike number 2.

24 **THE CLERK:** And Defense first strike?

25 **MR. BROGDON:** Defense would strike number 45.

1 **MR. MARTIN:** No, that's wrong.

2 **THE COURT:** Numbers on the left.

3 **MS. MARTIN:** Number 10?

4 **MR. BROGDON:** Oh, on the -- okay. Sorry. Yeah, number

5 10. Thank you.

6 **THE CLERK:** All right. And Plaintiffs' second strike?

7 **MR. MARTIN:** Number 5.

8 **THE CLERK:** And Defense second strike?

9 **MR. BROGDON:** Number 11.

10 **THE CLERK:** And Plaintiffs' third strike?

11 **MR. MARTIN:** Number 7.

12 **THE CLERK:** And Defense third strike?

13 **MR. BROGDON:** Number 17.

14 **THE CLERK:** And Plaintiffs' fourth strike?

15 **MR. MARTIN:** Number 16.

16 **THE CLERK:** And Defense fourth strike?

17 **MR. BROGDON:** No more strikes for us.

18 **THE COURT:** You have to strike somebody.

19 **MR. MARTIN:** You have to.

20 **MR. BROGDON:** Number 13.

21 **THE CLERK:** And then for the alternate, Defense [sic]

22 first strike?

23 **MR. MARTIN:** Number 21. You mean Plaintiffs' first?

24 **THE CLERK:** Plaintiffs' strike.

25 **MR. MARTIN:** Number 21.

1 **THE CLERK:** And Defense strike?

2 **MR. BROGDON:** Number 23.

3 **THE CLERK:** And for the second alternate, Plaintiff
4 strike?

5 **MR. MARTIN:** Number 26.

6 **THE CLERK:** And Defense strike.

7 **MR. BROGDON:** Number 24.

8 **THE CLERK:** Okay. As I call your ---

9 **THE COURT:** Confirm the strikes.

10 **THE CLERK:** Okay. Plaintiff strikes number 2, number 5,
11 number 7, number 16.

12 **MR. MARTIN:** Correct.

13 **THE CLERK:** And on the alternate, number 21 and 26.

14 **MR. MARTIN:** Correct. Thank you.

15 **THE CLERK:** And Defense strikes number 10, number 11,
16 number 17, number 13. And for the alternate, number 23 and
17 number 24.

18 **MR. BROGDON:** That's correct.

19 **THE COURT:** And let me say this, too. Ladies and
20 gentlemen, the numbers you heard were not the numbers that
21 relate to your actual numbers, your juror numbers. Those are
22 the numbers that are on the sheet. Just to let you know that
23 if you thought your number was called, that's not what you
24 heard. All right. You may proceed.

25 **THE CLERK:** As I call your name, if you would, please,

1 come forward and have a seat in the jury box. Juror number
2 42, Melissa Finley. Juror number 102, Ashton Nalley. Juror
3 number 68, Tracy Jackson. Juror number 69, Christopher Jones.
4 Juror number 116, Mary Price. Juror number 137, Thomas
5 Thrasher. Juror number 34, Elexis Earle. Juror number 60,
6 Bradley Hobbs. Juror number 98, Caleb Morgan. Juror number
7 65, Patrick Hudson. Juror number 48, Cheryl Gravely. Juror
8 number 122, Catherine Rogers. And for the first alternate,
9 juror number 97, Ashlee T. Moore. And for the second
10 alternate, juror number 44, Dhaval Gajjar.

11 **THE COURT:** All right. Any objection or exception from
12 the Plaintiff on the jury selection?

13 **MR. MARTIN:** No, Your Honor.

14 **THE COURT:** Anything from the Defendant?

15 **MR. BROGDON:** No, Your Honor.

16 **THE COURT:** All right. Ladies and gentlemen, now let me
17 talk to this crowd and then I'll talk to y'all. Y'all've been
18 selected for the jury in this case. And, like I said, we're
19 going to start it -- since it's 11:00, we're going to start it
20 at 1:30. Does that work for everybody?

21 So what you'll do is you'll come back in your jury room,
22 be back at 1:30, okay? And then we'll start the case there,
23 start it today. We should go til about 5:00. That's what we
24 try to shoot for. Sometimes that changes a little bit
25 depending on what -- where our witnesses stand.

1 We try to shoot for 5:00, as close to possible. For some
2 reason -- if there's a witness, it may be going longer, I'll
3 make sure I let you know before we -- if you need to make any
4 arrangements. We wouldn't go very far after that. All right.

5 I'm going to give you a couple of rules. And it's very
6 important that y'all follow these rules not only during this
7 break, but at all times. And that is do not discuss the case
8 among yourselves or with anyone else. I know that's difficult
9 to do because when you go home you're [sic] going to say, what
10 did you do all day? Well, you know, it's real important that
11 you not discuss the case, okay?

12 It's also important that you do not do any type of
13 research. Don't be Googling the parties. Don't be going by
14 the property. Don't be Googling the attorneys or Googling the
15 law. That is totally improper because everything that you're
16 going to need to make your decision, you need to get from this
17 courtroom under our court rules. And that's very important.
18 All right.

19 I'm not aware of any media coverage, any media out there.
20 But as to social media, if there's any social media out there,
21 please do not look at that or pay any attention to that.

22 And last, if somebody -- I don't expect this to happen,
23 but I always throw this out. If anybody should contact you
24 other than somebody from the clerk's office, then just let the
25 bailiffs know when you get back. So at this point you're free

1 to go. And I'll see you back at 1:30. All right. Y'all have
2 a good lunch.

3 (Whereupon the jury exited the courtroom at 10:59 am)

4 **THE COURT:** All right. For the remaining panel, I know
5 y'all are anxious to get out there with the beautiful day that
6 we're going to have. It's supposed to get pretty bad,
7 apparently.

8 I want to thank you. You're getting released from your
9 jury duty this week. So you're going to be good to go. But I
10 do want to thank you very much for your being here because it
11 was important for y'all to be there so we -- entire panel so
12 we could select a jury for this case.

13 And if the other cases had not resolved, then we may have
14 tried another case at the end of the week, and we would have
15 needed you. So -- but we didn't. So this is kind of -- I
16 guess your lucky day. Go out and buy a lottery ticket, maybe,
17 or something. Other than that, thanks again for your service.
18 And, like I said, you're free to go.

19 (Whereupon the remaining jurors exited the courtroom)

20 **THE COURT:** All right. Let's take a five, ten minute
21 break. And then we'll hear motions.

22 **MR. MARTIN:** Thank you, Your Honor.

23 **MR. BROGDON:** Thank you, Your Honor.

24 (Whereupon court was in recess at 11:01 am)

25 (Whereupon court reconvened at 11:14 am)

1 **THE COURT:** All right. I feel like the best -- obviously
2 start with the motion for summary judgment. So, Mr. Brogdon,
3 are you arguing this one?

4 **MR. BROGDON:** Yes, Your Honor. And if you don't mind, we
5 would first like to address a discovery related issue ---

6 **THE COURT:** Oh, okay.

7 **MR. BROGDON:** I think it may make more sense for the
8 Court.

9 Your Honor, we served some requests to admit primarily to
10 simplify some of the issues that will be presented at trial
11 today. We had those due on the 21st, which would make it due
12 today to start trial to kind of, again, limit some of the
13 issues under that request to admit.

14 We were served with an objection this morning. I believe
15 the objection on behalf of the Plaintiff is going to be that
16 the requests were not timely. There is -- there was a
17 discovery deadline in this case, Your Honor. But, again, this
18 was for purposes of trial to limit some of those issues.

19 So I'm not sure what the Plaintiffs' position will be on
20 that. But we do want to ---

21 **THE COURT:** But, I mean, isn't request to admit, though,
22 discovery?

23 **MR. BROGDON:** Yes, Your Honor.

24 **THE COURT:** I know it's used for trial and all that, but,
25 I mean, it's governed by the Rules of Discovery. I'm just,

1 you know.

2 **MR. BROGDON:** Yes, Your Honor. And that's absolutely
3 true. But, again, our purpose was to limit some of the issues
4 to help the Court. It was things that we thought could have
5 been stipulated prior to coming into trial. There was really
6 no hidden curve balls in these requests to admit.

7 But my understanding is that Plaintiffs' counsel doesn't
8 intend to answer those. We just wanted to bring that in front
9 of the Court just so they're aware.

10 **THE COURT:** All right. Mr. Martin.

11 **MR. MARTIN:** May it please the Court? The Defendants
12 insisted on a discovery deadline. We entered into a discovery
13 deadline. And it said all of discovery shall be completed by,
14 I think it was, April 15th. Then we agreed to move it to
15 April 22nd. So you can't complete discovery by the deadline
16 if you serve admissions that are less than 30 days. And
17 that's why we're objecting.

18 Under their -- they asked us to have a discovery
19 deadline. It said all discovery shall be completed. So if
20 you serve requests to admit within three weeks of the trial,
21 you can't complete it because we get 30 days to answer. And
22 that's why we objected.

23 **THE COURT:** All right. Anything?

24 **MR. BROGDON:** Yes, Your Honor. Just to that point, the
25 Plaintiff did supplement their discovery after the discovery

1 deadline. I believe they're intending to use some of the
2 supplemental discovery in the trial in this case. There was
3 supplementation on April 25th, which would have been after the
4 discovery deadline, and I believe again on May 13th.

5 So to the extent Plaintiff is going to take the position
6 that that discovery deadline is a hard cut-off, we would
7 request that that supplemental discovery is not introduced in
8 the trial of this case.

9 **THE COURT:** And I guess the question is did you respond
10 to it?

11 **MR. BROGDON:** This was served on us. It was just
12 supplemental ---

13 **THE COURT:** Oh, okay.

14 **MR. BROGDON:** --- yes, responses.

15 **MR. MARTIN:** And, of course, everything that was
16 supplemented was in response to motions that were filed on the
17 last day of discovery deadline. So the only way we could
18 respond to the new issues raised in the summary judgment
19 motion and the motion in limine was to serve additional
20 responses. So it was all in reply to motions that were filed
21 on the last day of the discovery deadline and the motions
22 deadline.

23 **THE COURT:** So anything further?

24 **MR. BROGDON:** Just that, Your Honor, that the
25 supplemental discovery clearly was available to them during

1 the pendency of this action. This action's been pending for
2 years now. We've requested it for years. Some of it was a
3 supplement to our first set of interrogatories and requests
4 for production of documents. So to say now that the documents
5 were necessary on the eve of trial, we're just having a hard
6 time believing that, Your Honor.

7 **THE COURT:** Well, and I guess what I'm really addressing
8 at this point, though, is a request to admit. I mean, I
9 appreciate your -- your position. It sounds like it would be
10 something that could narrow some of the issues.

11 But I believe if y'all had a discovery deadline, and
12 requests to admit are clearly discovery, I'm not sure that I
13 can enforce anything based on that. So I'm not sure exactly
14 if your motion is to enforce them or require them to answer.

15 Like I said, I don't believe in light of -- and I haven't
16 seen exactly -- I guess if it was an agreement or an order or
17 stipulation as to discovery, but I believe if y'all had a
18 deadline, then that -- anything, the requests to admit would
19 not fall within that deadline. So I guess I'll deny your
20 request.

21 **MR. BROGDON:** Yes, Your Honor. And just so we're clear,
22 in the supplemental discovery that the Plaintiffs produced
23 after the discovery deadline, would that be ---

24 **THE COURT:** I guess -- I guess the -- did they just send
25 them to -- I'm not ---

1 **MR. BROGDON:** They were supplementing previous requests.

2 Yes, Your Honor.

3 **THE COURT:** Additional -- they sent additional discovery?

4 **MR. BROGDON:** No, they served additional answers to our
5 requests for production of documents and interrogatories,
6 providing additional documents and additional statements for
7 the interrogatories.

8 **THE COURT:** And ...

9 **MR. MARTIN:** Your Honor, they were affidavits in response
10 to these motions that were filed right at the deadline. They
11 actually have stipulated to several of the documents that are
12 photos. They've already stipulated to them. So I'm kind of
13 confused.

14 **THE COURT:** Yeah. I mean, if they're in connection with
15 the motions, then I think that's -- that's not necessarily
16 discovery, is it?

17 **MR. BROGDON:** But, Your Honor, my understanding is that
18 some of these affidavits were in response to our motion for
19 summary judgment. But there was an additional document that
20 was produced by or identified by the Plaintiff in regard to
21 their expert -- using their expert report with regard to
22 itemization of damages. And we'll get into that in the
23 summary judgment argument as well if you'd prefer to wait to
24 hear ---

25 **THE COURT:** Yeah, let's just address that because -- so I

1 can have the proper context.

2 **MR. BROGDON:** Okay.

3 **THE COURT:** All right. So motion for summary judgment.

4 And do y'all want to take these -- it may make sense to take
5 these one at a time, each issue. I mean, does that work for
6 you?

7 **MR. BROGDON:** Yes, Your Honor. And if it would please
8 the Court, I have a courtesy copy binder ---

9 **THE COURT:** Okay.

10 **MR. BROGDON:** May I approach?

11 **THE COURT:** Yes.

12 **MR. MARTIN:** Do you have one for me?

13 **MR. BROGDON:** We do.

14 **THE COURT:** All right.

15 **MR. BROGDON:** Thank you, Your Honor. May it please the
16 Court?

17 **THE COURT:** Yes.

18 **MR. BROGDON:** Today we're here on behalf of Defendants'
19 motion for summary judgment that we filed in this case with
20 regard to the following claims filed by the Plaintiff in this
21 case. Your Honor, the remaining claims are nuisance per se,
22 negligence, declaratory judgment, quiet title, declaratory
23 judgment, acquiescence, declaratory judgment, prescriptive
24 easement, declaratory judgment, easement by estoppel,
25 declaratory judgment, easement by necessity and injunction.

1 Your Honor, just for purposes of clarification, I believe
2 the Plaintiff did withdraw their easement by necessity claim.
3 It was in a footnote in their memorandum in opposition to our
4 motion for summary judgment. So we'll ---

5 **MR. MARTIN:** That's correct, Your Honor. We have.

6 **THE COURT:** I was wondering how that was going to
7 survive, but -- so good.

8 **MR. MARTIN:** It's not necessary. No pun intended, ---

9 **THE COURT:** Yes.

10 **MR. MARTIN:** --- but you know my puns are always
11 intended.

12 **THE COURT:** All right.

13 **MR. BROGDON:** Thank you, Your Honor. And for -- to
14 answer the Court, we will take these one at a time.

15 **THE COURT:** Okay.

16 **MR. BROGDON:** And maybe that'll simplify it for the
17 parties.

18 Your Honor, if it would please the Court, I would also
19 present a narrative of undisputed facts in this case.

20 **THE COURT:** Yeah, by all means.

21 **MR. BROGDON:** Thank you, Your Honor.

22 The Plaintiffs and Defendants own adjacent parcels of
23 commercial property and, as you know, here in Easley at 3668
24 Calhoun Memorial Highway, which is the Click property and the
25 Thomas property, which is 3670 on Calhoun Memorial Highway,

1 which is identified as the Thomas property.

2 Both properties were purchased subject to a boundary
3 survey of record, which is going to be the 1996 survey that
4 we're going to talk about today and in this trial. The 1996
5 survey shows the precise location of the common property lines
6 between the two properties being the Click property and the
7 Thomas property.

8 In August of 2018 you will hear that Thomas excavated a
9 portion of his land to build a driveway and a parking area.
10 That excavation and grading work that was performed is
11 demonstrated in a topography map created by the Plaintiffs'
12 expert. There are also two slopes along the eastern boundary
13 line of the Thomas property.

14 And the Plaintiffs' expert, David Hall, has submitted
15 documentation in discovery in this case that the slope at the
16 back of the property, which is the furthest from the highway,
17 is stable. Mr. Hall's also provided a cross-section of the
18 slope towards the front of the property, which is closest to
19 the highway, showing where alleged failure of the slope would
20 occur in the future. The area where this cross-section shows
21 potential failure from the front slope is at least 10 feet
22 from the property line and approximately 40 feet away from the
23 Plaintiffs' building.

24 Not over a year and a half later, after this excavation
25 work was completed, the Plaintiffs filed this lawsuit alleging

1 two basic categories of claims that you will hear about today.
2 Claims for damages caused by the excavation and grading
3 performed on the Thomas' land and claims asserting a property
4 interest in Thomas' private property or in the Defendants'
5 private property.

6 Your Honor, taking one claim at a time, nuisance per se,
7 which was a claim filed by the Plaintiff in this case.
8 Nuisance per se requires a showing of a condition that is
9 dangerous at all times and under all circumstances. The
10 Plaintiffs' daily use of their property over the past three
11 and a half years shows there's no evidence that it is
12 dangerous at all times and under all circumstances.

13 Your Honor, the Plaintiffs reside at this property. And
14 there's been deposition testimony to that effect. They built,
15 I believe, a 300 square foot apartment inside of this property
16 and currently reside there upon information and belief.

17 And with regards to this nuisance claim, the Plaintiff
18 has pled this affirmative claim since the inception of this
19 litigation. And what you will see in the Plaintiffs'
20 memorandum in opposition to our motion for summary judgment, I
21 believe the Plaintiff's attempting to argue -- admit to allege
22 something else other than nuisance per se.

23 I believe they attempt to argue that it was nuisance per
24 accidens, which I believe is a Latin phrase, and stating that
25 we were on notice of the general claim of nuisance. The

1 problem with that argument, Your Honor, is that the strict
2 definition of nuisance per se is dangerous at all times under
3 all circumstances.

4 In this case the Plaintiffs assert the Defendants'
5 excavation work that was done in 2018 is nuisance per se. And
6 that's in the complaint in count one. However, there's no
7 evidence that excavation performed on the Thomas property is
8 dangerous at all times and under all circumstances.

9 Brent Click, who is a -- and his wife is a member of the
10 Plaintiffs in this case. Both testified they continue to use
11 the gravel driveway that's in dispute in this case adjacent to
12 where the excavation work was completed on a regular basis and
13 accessed the back building and apartment inside of it.

14 Furthermore, Your Honor, David Hall provided a report on
15 April 22nd, 2022 that showed the slope as graded at the back
16 of the Thomas property is safe and stable and while Mr. Hall
17 alleges that the front slope is unsafe. The cross-section
18 diagram he submitted shows potential error for slope that's 40
19 feet away from the Plaintiffs' building.

20 There are reported cases, Your Honor, considering the
21 related concept of strict liability in the nuisance context,
22 but only activity has been found to support strict liability
23 is blasting. Obviously, Your Honor, there's no blasting
24 allegations in this case neither made by the Plaintiff nor the
25 Defendants.

1 Thus, as a matter of law, Plaintiffs' claims for nuisance
2 per se cannot survive based on the speculation of potential
3 future failure of that front slope. It's not dangerous at all
4 times and under all circumstances.

5 With regard to comments made by the Plaintiff in his
6 opposition memorandum, nuisance per accidens, although may be
7 a claim pled, has not been pled at this stage. To the extent
8 the Plaintiffs are attempting to now amend their pleading on
9 the eve of trial would not only be prejudicial to the
10 Defendants, but would also be futile at this stage.

11 We would also comment to the Court that the Defendants
12 attempted to amend their pleading a few months back, which was
13 vigorously opposed by the Plaintiff and ultimately ruled on by
14 Judge Kinlaw. I'll take any questions you have regarding
15 negligence -- nuisance per se, Your Honor.

16 **THE COURT:** Mr. Martin.

17 **MR. MARTIN:** Well, if you don't mind, let me use the
18 podium, please, sir.

19 **THE COURT:** Okay.

20 **MR. MARTIN:** Would that be all right?

21 May it please the Court? The first issue is the idea of
22 negligence per se. And as you know, they're citing the case
23 of Suddeth versus Knight, which is that case that says at all
24 times under all circumstances. But they miscite the case
25 because the case literally says that a question of whether

1 there's a negligence, I mean, a nuisance per se is a question
2 for the jury.

3 So the Suddeth case cites Deason versus Southern Railway.
4 And it literally says Deason involved a factual situation
5 where the railway company closed a ditch and raised an
6 embankment which caused water to pond on an uphill landowner's
7 land.

8 The court, in affirming a jury verdict for the landowner,
9 said that the question of whether or not the nuisance had
10 become dangerous at all times under all circumstances to life,
11 health or property was for the jury. So -- and that's exactly
12 what the holding was in Suddeth.

13 And the South Carolina Supreme Court in Deason noted that
14 the question regarding nuisance per se was peculiarly a
15 question for the jury. So if you've got water ponding and it
16 only is a problem when it rains, that meets the definition of
17 all times and under all circumstances as defined by the South
18 Carolina Supreme Court.

19 **THE COURT:** Let me ask you this. In the Deason case, was
20 the water ponding on the plaintiff's property?

21 **MR. MARTIN:** Yes.

22 **THE COURT:** Okay.

23 **MR. MARTIN:** Yes, it was. And it's a -- that was the
24 same situation in the Suddeth case, the same situation. So if
25 water ponding and causing water to go on your neighbor's

1 property is dangerous at all times and all places when it
2 rains, because it doesn't rain all the time, certainly when
3 you dig an excavation of a 30 foot -- 36 foot sheer cliff
4 right to the, not 10 feet from the line, but literally on the
5 line. And we've got an expert witness who says it is now a
6 pending failure.

7 In order to -- we have a site engineer for 30 years he's
8 hired to do sites for developers. And if you have a one point
9 five (1.5) or higher, you're safe. But if it's under one
10 point five (1.5), it's absolutely unsafe. And he's under a
11 duty as a professional engineer to put them on notice to fix
12 it and actually sent a separate letter. And it came out at
13 one point one three (1.13). That's all in the record.

14 Also, Brent and Shelly -- and Brent's -- in his affidavit
15 said we can no longer take big trucks up that hill. It's too
16 dangerous. It has -- it is literally falling and eroding as
17 time goes on.

18 We've got a professional engineer that says it is very
19 dangerous and that eventually you're going to lose access to
20 the back building. So the idea that this is not a negligence
21 case, I mean, nuisance case is kind of silly.

22 Also, the Neal versus Darby case, which was Judge
23 Sanders, defined nuisance as, quote, anything which works --
24 hurt, inconvenience or damages, anything which essentially
25 interferes with the enjoyment of life or property.

1 We've got Brent Click's testimony. We've got the
2 affidavit of the David Hall, who was the engineer that clearly
3 shows that this is working an inconvenience, there is damage.
4 We also have the actual inside of the property where the floor
5 has literally cracked and it's now uneven and it's all going
6 towards the digging.

7 And the clear evidence is there was no retaining wall put
8 in, there was no engineer hired. This is something that Mr.
9 Thomas just did on himself. He just hired some people, dug it
10 out for three weeks and even testified to Brent on several
11 occasions that his goal was to have Brent's back building fall
12 into his land so he could put a building up there in its
13 place.

14 So if this is not a nuisance per se case, I don't know --
15 I don't know which one it -- which one is. And we think it's
16 clearly, because of Suddeth and Deason, it's clearly a
17 question for the jury.

18 **THE COURT:** All right. Anything in response, Mr.
19 Brogdon?

20 **MR. BROGDON:** Yes. Thank you, Your Honor.

21 Your Honor, just briefly in response. This is only a
22 question for the jury when there's evidentiary support. Here
23 there is no evidentiary support. By Plaintiffs' own
24 testimony, they use the property daily.

25 And their expert cannot say definitively that it is

1 currently dangerous. To the contrary he says that a portion
2 of it is not currently dangerous. When we asked the expert in
3 deposition when impending failure was, he could not answer
4 that question.

5 Furthermore, Your Honor, as you mentioned regarding where
6 the actual excavation occurred, there was no excavation or
7 grading on the Plaintiffs' property at all. Plaintiff here is
8 attempting to bootstrap, I think, an argument from a nuisance
9 context stating that if it originated on one property and went
10 to the other that it would apply in this case. Your Honor, it
11 simply does not apply in this case.

12 You'll also see, it's been provided as exhibits to our
13 motion for summary judgment, including a supplement that we've
14 produced as well substantial cracking in the flooring in the
15 Plaintiffs' back building that predate by many years the
16 excavation in 2019 including a YouTube video that was produced
17 eight years ago showing substantial cracking in the floor. At
18 the end of the day, Your Honor, this is not dangerous under
19 all -- at all times under all circumstances.

20 And to be fair to opposing counsel, I think he's still
21 confusing whether nuisance per se, nuisance -- or nuisance per
22 accidens has been pled in this case. Your Honor, nuisance per
23 se has been pled in this case. And it just simply does not
24 apply. Thank you, Your Honor.

25 **THE COURT:** All right. And let me -- I'm going -- let me

1 read that case before I let you know what my decision is on
2 that. All right.

3 Next argument.

4 **MR. BROGDON:** Thank you, Your Honor. May it please the
5 Court?

6 Your Honor, both nuisance per se and negligence require a
7 showing of damages. And here the Plaintiffs have no evidence
8 of damages resulting from the excavation work performed on the
9 Thomas property as to the cracks in the building they allege
10 were caused by the grading and excavation that were there
11 years before the excavation work occurred.

12 Your Honor, the Plaintiffs asserted that the excavation
13 work on the Thomas property in 2018 caused the damages to the
14 back building of the Click property, which include cracks in
15 the building and in the flooring of the back building. Your
16 Honor, to support this theory the Plaintiffs point to cracks
17 in the floor and in the Smith block wall.

18 Your Honor, the Plaintiffs cannot link these cracks to
19 the excavation work performed on the Thomas property. It
20 defies logic that the cracks in the back building were caused
21 by the excavation work. And as Your Honor knows, the
22 Plaintiff must prove not only but for causation, but proximate
23 causation.

24 Your Honor, if the excavation work had caused damage to
25 the inside floor of the back building, it also would have

1 caused damage to the outside slab outside the back building.

2 There has been evidence that's been produced, Your Honor, that
3 there are no cracks, there are no issues with that outside
4 slab. And the experts in this case will testify to the same.

5 Your Honor, even if this Court finds that there's even a
6 scintilla of evidence to support Plaintiffs' claims for
7 damages, there's no credible evidence to the value of the
8 alleged damages. Your Honor, in discovery we have asked for
9 an itemization of damages for years as to the value of such
10 damages, an explanation as to how and by whom the amount was
11 calculated and originated.

12 And the Plaintiffs responded that the Plaintiffs' member,
13 Brent Click, could testify as to the current value and
14 diminution in value of the Click property. Your Honor, Mr.
15 Click by all understanding is not an appraiser, he's not a
16 real estate agent. He has no experience in business
17 valuation. He has no professional degrees in any kind of
18 commercial real estate appraisals or valuations.

19 And he states that he would value his property based on
20 unknown or unidentified industrial properties that at some
21 point have come on the market after 2017 when he purchased the
22 property. There's no admissible evidence as to the value of
23 damages and, therefore, the Plaintiff cannot succeed on a
24 claim for negligence.

25 To this point the Plaintiffs attempt to argue in their

1 memorandum of opposition that the Plaintiffs have become
2 limited in the work they can perform because the turn-around
3 area in dispute in this case cannot support large vehicles.
4 But, Your Honor, that's not the Plaintiffs' property. We have
5 discussed this and agreed throughout discovery that that's not
6 the Plaintiffs' property. And they've stipulated to the same
7 in deposition.

8 Furthermore, the Plaintiffs attempt to state that the
9 cracks in the floor before the excavation were of the type
10 expected for a building of that age and construction. But who
11 can testify to this, Your Honor? They haven't produced
12 anybody that can testify -- any expert in construction or
13 aging of buildings. It's just personal knowledge from the
14 Defendant [sic], himself, who, again, has no experience, no
15 background in commercial real estate appraisals or any kind of
16 -- any kind of valuation of a commercial business.

17 Furthermore, Your Honor, the Plaintiffs relied on the
18 Pope case cited in footnote seven of their opposition in
19 memorandum. There, Your Honor, the Court of Appeals affirmed
20 the trial court's denial of appellant property developer,
21 Heritage Communities, for a directed verdict and a JNOV
22 arguing that the respondent condominium claimed the damages
23 were merely speculative. Your Honor, if you turn to exhibit
24 12 provided in support of the Defendants' motion for summary
25 judgment you'll see where the itemization of damages alleged

1 by the Plaintiffs have been produced.

2 And to that point, Your Honor, back to the Pope case.
3 While testifying regarding the water intrusion, construction
4 defects, they stated that there were often hidden damages
5 associated with water intrusion defects. The expert in that
6 case said that there were hidden damages at a value of 10
7 percent on top of the estimate to repair the condominiums by
8 using prior repairs he had done in a similar context. So the
9 expert submitted a repair estimate in discovery and simply
10 added a 10 percent kicker on top of that to account for the
11 hidden damages in that case.

12 The Court of Appeals found that this was a reasonably
13 sufficient basis for the computation of damages to be
14 submitted to the jury essentially finding that the expert's
15 repair estimate that depended to some extent on a 10 percent
16 contingency value was added on top of the repair estimate made
17 by that expert.

18 In short, Your Honor, this case, this Pope case is a very
19 narrow ruling by the Court of Appeals in a water intrusion
20 construction defect case in which an actual repair estimate,
21 which had not been submitted in evidence or produced in
22 discovery, was submitted to prove damages and then adding a 10
23 percent contingency on top of that. Again, it was expert
24 testimony that presented that.

25 This does not come close to applying to this case to the

1 lack of evidence as you will see in exhibit 12 proving damages
2 in this case. They've submitted no repair estimates. They've
3 only served self-serving affidavits on what their thoughts of
4 the cost of repair might be. And they have not provided any
5 basis to compute any contingency value of damages in order to
6 permit anything approaching a reasonably close estimate of
7 their claim of loss.

8 Your Honor, this cannot be considered a sufficient basis
9 for computation of damages in order to submit the issue to the
10 jury. It's simply not enough, Your Honor. Mere speculation
11 does not equal damages.

12 Your Honor, we've also been produced in discovery a line
13 -- one line that says please produce any documents you intend
14 to introduce as damages in this case. They produced one line
15 stating it would be their expert report, their expert would
16 testify about what the damages he thought might be.

17 There have been no documents that have been produced
18 showing any damages. There have been no financials that have
19 been served even though we asked for them. There's been no
20 business valuation that's been done. There's been no showing
21 of loss of business income. There's been no showing of loss
22 of business use. Your Honor, there's just no damages. And
23 the Plaintiffs cannot prove that in this case.

24 **THE COURT:** Well, I mean, I think looking at 12, I mean,
25 he's -- the owner can testify about the value of the property,

1 can't they?

2 **MR. BROGDON:** Yes, Your Honor. And to that point,
3 Seaboard Coast, which has been cited by the Plaintiff in this
4 case, deals with a condemnation proceeding brought by Seaboard
5 Coast.

6 At the trial the jury awarded the landowners a twenty
7 thousand dollar (\$20,000.00) verdict. And the railroad in
8 that case appealed arguing error in the admission of both the
9 landowners' and their expert witness testimony regarding the
10 value of a condemned area and the damages to the remaining
11 properties.

12 The Court of Appeals affirmed that trial court's ruling
13 allowing that personal knowledge testimony. But while
14 testifying both landowners gave their opinions as to the value
15 of their land and special damages to their property, however,
16 the opinions of the value were the same opinion given by their
17 expert witness, a local realtor, during his testimony.

18 The Court of Appeals, while admitting the landowners were
19 unaware of the recent purchase prices and the properties in
20 the area, seemed to give weight to the amount of time that the
21 landowners had spent being around and owning the properties,
22 again, in the condemnation context, which was their entire
23 lives.

24 Brown is a very narrow holding by the Supreme Court,
25 which goes to an additional issue as to whether or not a

1 landowner can testify with his personal knowledge as to the
2 value of his property. Cited by the Plaintiff, State v.
3 Brown, in that case the Supreme Court held that the property
4 owner's testimony alone is sufficient to support a conviction
5 for grand larceny.

6 But, Your Honor, in that case it was a criminal case
7 discussing the property, which was a vehicle estimated to be
8 twelve hundred dollars (\$1200.00) at trial. The quote used by
9 the Plaintiff in this case was dicta from a North Carolina
10 case used by the Brown case to support this very narrow
11 holding that the Plaintiff can testify to his personal
12 knowledge as to the value of his property.

13 For these reasons, Your Honor, the landowner in Seaboard
14 Coast had an expert witness testify as to the value of their
15 properties. The landowner's also estimated value was the same
16 as their expert. And in this case, Your Honor, there's been
17 no expert that's been put forward to testify as to the value
18 of property or any loss.

19 Furthermore, Your Honor, the landowners had each been
20 familiar with their properties for their entire lives and they
21 had inherited the properties from their father. The land at
22 issue in Seaboard Coast was unimproved acreage whereas in this
23 case the Plaintiffs' property is commercial in nature by his
24 own admission, thus, more specialized knowledge is required to
25 adequately estimate the value of this property and any claimed

1 loss resulting therefrom.

2 Your Honor, furthermore, the Brown case relied on by
3 opposing counsel is a criminal case with an incredibly narrow
4 holding. So it does not apply to our case.

5 The jury in the Brown trial did not even have the ability
6 to award damages. This was a criminal context. The actual
7 testimony at issue in that case, twelve hundred dollar
8 (\$1200.00) estimate for a vehicle he purchased for seven
9 hundred dollars (\$700.00) and put five hundred dollars
10 (\$500.00) into it. There's clearly a large disparity between
11 estimating the value of the used vehicle to support a criminal
12 conviction and estimating the value of commercial property to
13 support submitting a claim for damages to a jury.

14 **THE COURT:** But don't a lot of your arguments go more to
15 the weight as opposed to admissibility?

16 **MR. BROGDON:** In terms of damages, ---

17 **THE COURT:** I mean, just for the damages ---

18 **MR. BROGDON:** --- Your Honor?

19 **THE COURT:** --- that the Plaintiff can testify about the
20 -- I mean, a lot of your questions that you raise, don't they
21 go more towards the weight of this testimony, which is subject
22 to cross-examination, versus the actual admissibility?

23 **MR. BROGDON:** Yes, Your Honor, they certainly do go to
24 weight and could be used in any purpose for impeachment
25 purposes, but in this case we are arguing that the cases

1 relied on by the Plaintiff in the itemization of damages just
2 don't support any damages in this case, Your Honor.

3 We've asked for financials. We've asked for a break-
4 down, a more thorough break-down of damages. And as you can
5 see right in front of you, this is just mere speculation.
6 This is saying it might cost eighty thousand dollars
7 (\$80,000.00). It might cost forty thousand dollars
8 (\$40,000.00) to move.

9 There's been no documents that have been produced that
10 show what the actual damages are. In fact, the only thing
11 that they've produced is this one expert report that says
12 there might be some issues with sloping. But even part of
13 that's safe and the other part isn't. So there's been --
14 there's been no break-down of damages to show me what those
15 damages actually are.

16 And, in fact, Your Honor, there's been nothing that's
17 been produced showing that there's been any loss of business.
18 There's been no tax returns been produced that show that the
19 business was hurt in any way. There's been nothing showing
20 that they've lost any kind of profits. There's just no
21 damages, Your Honor.

22 They are alleging that cracks in the building equals
23 monetary damages. We haven't been produced anything in this
24 case showing what those monetary damages actually are. And to
25 that point, the Plaintiff doesn't estimate the value lost due

1 to cracks. It's just a broad sweeping estimate of the total
2 property value as you can see with no support.

3 I believe he says that the difference of diminution in
4 value is roughly a hundred and ninety-two thousand, five
5 hundred dollars (\$192,500.00), but, Your Honor, there's been
6 nothing that's been produced other than him just saying that,
7 that that's what -- that's what it actually is. We have to be
8 specific itemizing damages. They just haven't given that to
9 us.

10 An expert can't testify as to their damages in this case
11 because they're not qualified to do so. They can only testify
12 about their experience in engineering with regard to the
13 excavation and grading, not the alleged damages.

14 **THE COURT:** Okay. Mr. Martin.

15 **MR. MARTIN:** May it please the Court? First of all, we
16 need to remember this is a negligence claim. And all I have
17 to show is a scintilla of evidence. Don't you just love that
18 word, scintilla? So if I just get a little bit over the hill,
19 it's to the weight and not to the admissibility.

20 As far as Rule 703, it allows an expert to give an
21 opinion to rely on facts and data not admitted into evidence.
22 And even though Mr. Brogdon has characterized David Hall's
23 opinion as being kind of, sort of, what a, it's not at all.

24 In fact, on page 5 of my memo I quote directly from his
25 affidavit, which says, the excavation -- and this is a site

1 engineer. Now their speciality is to go out and literally
2 find how can you safely build something on a site. He's got
3 over 30 some years experience. He's putting his professional
4 reputation on the line.

5 And what he says is the excavation performed on the
6 Thomas property has caused a permanent impact on the Click
7 property by removing the lateral support of the Click property
8 and has created an impending failure state at the location
9 identified as B-1 on the BLE April 13th report.

10 Although there's not been an abrupt failure of the
11 embankment at this time, the global stability analysis
12 predicts that such failure will occur. And the excavated
13 embankment in its current state poses a safety risk.

14 **THE COURT:** But get to the damages part. That's mainly
15 what he argued.

16 **MR. MARTIN:** Okay. So -- and as far as damages, what he
17 says about the damages is there's no retaining wall. And
18 it'll cost about eighty thousand dollars (\$80,000.00) to build
19 that retaining wall that Mr. Thomas has to build to keep it
20 from being unsafe.

21 And he does that all the time. He is in the business of
22 site planning. And he knows what retaining walls cost. And
23 he's going to testify. So that's damage right there.

24 As far as Brent testifying, the cases clearly show and
25 they hold as a matter of law that a landowner who is familiar

1 with his property and its value -- and, remember, he said it's
2 not only commercial, but it's residential because we live
3 there. A landowner who is familiar with the property and its
4 value is allowed to give his estimate as to the value of the
5 land and damages thereto even though he's not an expert.

6 They keep screaming and yelling, you've got to have an
7 expert, you've got to have an expert, you've got to have an
8 expert. No, that's not what the Seaboard Coastline case
9 holds, okay?

10 State versus Brown says exactly the same thing. It says
11 unless it affirmatively appears that the owner does not know
12 the market value of his property, it is generally held that he
13 is competent to testify as to its value even though his
14 knowledge on the subject would not qualify him as a witness
15 were he not the owner.

16 And Brent's going to testify that since May of 2018, when
17 an event occurred that we're going to talk about in this case,
18 he has been looking at commercial property as to what the
19 values were in '18, '19, '20 and '21 in an attempt to move.
20 So he has a tremendous amount of knowledge that he can back up
21 his opinion.

22 So his opinion is I'm going to lose my back building.
23 That's one-third of my square footage. So I value that the
24 loss, that the present value now is two hundred and seventy-
25 five thousand dollars (\$275,000.00) based on what the market

1 is doing.

2 And, I mean, there's property in Easley and property in
3 Pickens that has gone from thirty-five thousand (35,000) to
4 six hundred thousand (600,000) in five years. So he's going
5 to testify that it's worth two hundred and seventy-five
6 thousand (275,000), which was disclosed in discovery and that
7 we've lost -- we're going to lose one-third of the value
8 because we'll lose the back building.

9 And as far as the damage to the back building, there's
10 plenty of testimony -- you're going to have testimony from
11 previous owners from the 1978 to 1998 to 2005 to 2013 when
12 Brent rented the building. And you're going to hear how nice
13 and flat the floor -- sure there's hairline cracks in the
14 floor. It's a 30 something year old building. The building
15 was built in '78.

16 So he comes in in 2013 and there's small little cracks,
17 but it's nice and even. Well, guess what's happened since
18 August of '18 when the digging occurred? It's just
19 unbelievable how bad the cracks are now and how they're
20 separating, how they're uneven.

21 And we're going to have David Hall, an engineer, testify
22 to that. We've got two witnesses, Danner and Eleazer, who are
23 going to say we were there in '17, we saw the changes over
24 time. So this is all evidence that we have to have a
25 scintilla of evidence to show that there have been damages and

1 that we've suffered.

2 And Brent's going to tie it all together by saying the
3 value of my property has dropped from two seventy-five (275),
4 one-third, as a result of all this that continues to go on
5 including the expert witness, the engineer who says a minimum
6 retaining wall has to be built to try to stop this dangerous
7 erosion. And that's going to be eighty-two some thousand
8 dollars right there. So these are damages that are definitely
9 for the jury to hear. And certainly we survive the scintilla
10 test for summary judgment.

11 **THE COURT:** Yeah, I believe under the standard for
12 summary judgment the Plaintiff has met that. So I'm going to
13 deny your motion on that, on negligence. All right.

14 Next argument.

15 **MR. BROGDON:** Your Honor, if I may clarify, too. You're
16 denying it on which basis? Causation or damages?

17 **THE COURT:** Both. I mean, for this purpose, scintilla.
18 All right.

19 Next argument.

20 **MR. BROGDON:** Thank you, Your Honor.

21 Your Honor, the next cause of action presented by the
22 Plaintiff is a claim for acquiescence. Your Honor,
23 acquiescence requires a mutual intent to agree to a particular
24 property line that is inconsistent with a recorded plat. Your
25 Honor, the Plaintiffs have provided absolutely no evidence

1 that any of the owners of either the Thomas property or the
2 Click property, including Brent Click, himself, ever agreed to
3 a property line that was different than that of the recorded
4 plat.

5 Your Honor, acquiescence is a very particular claim and
6 requires mutual intent to agree to that property line. And,
7 Your Honor, the Croft v. Sanders case holds absent recognition
8 by both parties that a particular line constituted the true
9 property line, a new boundary cannot be established by
10 acquiescence.

11 Your Honor, in this case Mr. Click testified that he was
12 given the 1996 plat after he closed on the property that he
13 purchased and that Mark Smith, the prior owner, affirmed the
14 property lines conveyed in that plat. Furthermore, Your
15 Honor, Mr. Click had surveyed -- had surveyors come out to his
16 property after he purchased it and located the property pins,
17 which were shown on the 1996 plat. Mr. Click then informed
18 Mr. Thomas of where the property lines were in accordance with
19 the 1996 plat.

20 And, finally, Your Honor, Mr. Click testified that Jimmy
21 Watkins, who was the prior owner of the Thomas property,
22 specifically acknowledged the location of the property line,
23 which was consistent with the placement shown in the 1996
24 plat.

25 Your Honor, at this point ---

1 **THE COURT:** All right. Is the only issue that -- I mean,
2 the primary issue is that turn-around area?

3 **MR. BROGDON:** That's one of the issues.

4 **THE COURT:** Okay.

5 **MR. BROGDON:** Yes, Your Honor.

6 In closing, Your Honor, Click purchases property, but to
7 testify when looking at the plat Mark Smith commented that
8 there was a right to use the plat. He never stated, oh, yes,
9 this is the boundary line, it's been moved.

10 In response to this argument, Your Honor, the Plaintiffs
11 completely ignore the fact that the parties jointly agreed the
12 1996 plat established the line, Mr. Click was made aware of
13 that plat upon closing on the property, and that Click
14 testified to the same. At this point it would be an absurd
15 result to now say there is a mutual acquiescence based on the
16 topography of the land that created a new boundary line. At
17 no point has that ever been agreed on by the parties or
18 acquiesced by the parties. It just seems as though that's the
19 best argument the Plaintiff can come up with to change the
20 boundary line.

21 **THE COURT:** Mr. Martin.

22 **MR. MARTIN:** May it please the Court? I would like to
23 show you a document that will help you understand how this is
24 going up. We've done a big blow-up of it. And I'm not real
25 good at putting stuff together. Unfortunately, I went to law

1 school, I didn't go to engineering school. But what I'd like
2 to show you is an aerial photograph that was actually produced
3 by the Defendants. Can you see that?

4 **THE COURT:** Yes.

5 **MR. MARTIN:** This was actually taken in 2005. And what
6 it shows is this is the Click property and this is the All-
7 Tech or Thomas property. There was a tremendous hill here,
8 okay? This goes up -- if you're standing on 123, it's 50 feet
9 to this back building.

10 And what happened was -- this back building was built in
11 '78. And the expert engineer's going to testify that it was
12 there at '78. This driveway and turnaround were built in '78.
13 And most of the driveway is on the Click property. And I
14 think the property line comes like this.

15 So since 1978 Mr. Ramey had a cabinet shop here. And Mr.
16 Ramey and his wife, Betty, used this cabinet [sic] in the
17 '70s, in the '80s and in the '90s. And then he had a heart
18 attack and died. And he sold the property to Mr. Dobson in
19 '96 or she sold it because he was deceased.

20 There was no question based on the topography and the use
21 that the driveway and turnaround were for this building.
22 Everyone -- even if -- there's no doubt that the technical
23 line went this way as showed in the '96 plat. But everyone
24 from the '70s, '80s and '90s all the way up til Mr. Thomas
25 decided to create a problem treated this entire thing as the

1 property of the Clicks' building.

2 So acquiescence is not based on the title to real estate.
3 Acquiescence is based on that everybody knew in the '70s,
4 '80s, '90s, 2000s, 2010s and until Mr. Thomas bought in May of
5 '18. He's the first person in history that claims that this
6 is wrong and that just because the line happens to go this
7 way.

8 So the whole purpose of acquiescence, Your Honor, is the
9 -- say you've got to have acquiescence and there's not even a
10 -- you don't have to have 10 years, you don't have five years,
11 you just have to have long enough that people acquiesce.

12 Now we're going to have testimony that Mr. Watkins, who
13 bought this property and owned it -- now Mr. Grissenger rented
14 it and we thought he said he owned it, but he didn't. It
15 turned out that Watkins owned it.

16 Well, Watkins came up here in 2015 in January and Brent
17 actually poured awnings and a slab in the front of this
18 building, which was definitely on the Watkins' property.
19 Watkins came in in January 2015, he didn't say, what are you
20 doing? You put an awning on my property. Get it out of here.
21 He did -- he acquiesced, okay? That's what the evidence is
22 going to show.

23 Mr. Merck acquiesced. Mr. Grissenger, the renter,
24 acquiesced. Mr. Watkins acquiesced. In fact, Mr. Porter, he
25 owned it for less than a year in 2003 to 2004, he walked up

1 there, too. He knew they were using it. No one ever stopped
2 this driveway and turnaround to be used by the Click back
3 building since the 1978. So ---

4 **THE COURT:** But is that actually -- but is that actually
5 acquiescing if the property lines change or is it just that
6 they didn't ---

7 **MR. MARTIN:** No, ---

8 **THE COURT:** --- object to him using it?

9 **MR. MARTIN:** An enjoining landowner who occupies a
10 respected premises up to a certain line, which they mutually
11 recognize and acquiesce in for a long period of time, they are
12 precluded from claiming the boundary line thus recognized and
13 acquiesced to is not the true one. That's the Gardner versus
14 Mozingo case.

15 So what we're saying is even though technically Betty
16 Ramey had a plat done in '96 when she sold the business to Mr.
17 Dobson, even though the line was wrong, they all acquiesced
18 that the driveway and turnaround were really the property of
19 the Click property at that time that was owned by Dobson,
20 owned by Ramey.

21 So the whole theory of acquiescence is if adjoining
22 landowners occupy their respective premises up to a certain
23 line, which they mutually recognize and acquiesce in for a
24 long period of time -- it doesn't even have to be 10 years,
25 doesn't have to be five years, but in this case it's 42 years

1 -- they are precluded from claiming the boundary line thus
2 recognized and acquiesced is not the true one. Gardner versus
3 Mazingo, 293 S.C. 23 at page 26, 358 S.E. 2d 390 at 392.

4 The boundary line was recognized as a result of the
5 topography of the land and treated as the boundary between the
6 Click and the Thomas properties for 40 years. It was only in
7 May of 2018 when Mr. Thomas -- Brent had offered Watkins two
8 hundred and ten thousand dollars (\$210,000.00) for the
9 property because Thomas was acting really weird and
10 threatening Brent. And Brent said if I buy this property, if
11 I improve All-Tech, I'll be his landowner, and he'll treat me
12 like a reasonable human being.

13 Well, instead of that, Watkins sold it for seventy
14 thousand dollars (\$70,000.00) less to Thomas. And the first
15 thing Thomas did was say I'm going to dig so close to your
16 property, it's going to fall in, and I'm going to laugh ---

17 **THE COURT:** Let's just stick to the acquiescence part.

18 **MR. MARTIN:** Okay.

19 **THE COURT:** All right.

20 **MR. MARTIN:** So the whole purpose is there was
21 acquiescence all the way up to 2018, from 1978 to 2018.
22 Nobody raised their hand and said, no, that's not the line.
23 You can't use it. They acquiesced. That's for the jury to
24 decide.

25 We're here on summary judgment. I'm saying I just need

1 to show the facts to the jury. Let them decide. If they
2 disagree, they disagree, but I have a right to bring the cause
3 of action.

4 And, frankly, I'm kind of proud of myself because I found
5 that case. And it's a theory I wasn't familiar with before.
6 But you know how it is when you find something, you get really
7 excited about it. And I thought that was the closest case
8 that really fits the facts of this case is acquiescence. So
9 it's very important for us to have it in this case.

10 **THE COURT:** And what's the name of the case again? Was
11 it cited in your ---

12 **MR. MARTIN:** The case, Your Honor, is Gardner versus
13 Mozingo, 293 S.C. 23.

14 **THE COURT:** All right.

15 **MR. MARTIN:** And 358 S.E. 2d 390. Would you like a copy
16 of it?

17 **THE COURT:** Yes. You got a copy?

18 **MR. MARTIN:** I do.

19 **THE COURT:** All right. Mr. Brogdon.

20 **MR. BROGDON:** Yes, Your Honor.

21 **THE COURT:** And we've got to move along here. We don't
22 ---

23 **MR. BROGDON:** Yes, ---

24 **THE COURT:** --- interrupt the jury ---

25 **MR. BROGDON:** Very briefly, Your Honor.

1 **THE COURT:** They're coming in at 1:30.

2 **MR. BROGDON:** Your Honor, the parties never agreed to
3 anything other than the 1996 plat lines. Use is a different
4 claim than acquiescence. Again, it's a very particular claim
5 that requires mutual assent.

6 None of the deeds that have been produced in this case
7 include the turnaround area in the legal description. Mr.
8 Martin talks about things happening since 1978. The
9 property's been sold multiple times and never has included
10 that turnaround area.

11 And owners of both properties historically understood
12 that they could use portions of each other's properties.
13 There will be testimony -- there's been evidence been
14 presented already as to that effect. And that does not equate
15 to a mutual understanding of a wholly new property. And
16 silence is not an affirmative agreement.

17 And, furthermore, Your Honor, this is also going to come
18 up in the motion in limine with regard to the res judicata
19 issue. There's a lawsuit in the 1990s involving Betty Ramey
20 and these property lines that was ultimately resolved. If
21 there's been mutual acquiescence as to a new topography
22 boundary line for years, and years, and years, and years, then
23 why that lawsuit in the 1990s? Your Honor, it's just simply
24 not there. There's not enough evidence to survive summary
25 judgment.

1 **THE COURT:** All right. I'm going to review this case.

2 All right.

3 Next argument.

4 **MR. BROGDON:** Thank you, Your Honor.

5 May it please the Court? This is with regard to the
6 adverse possession and prescriptive easement causes of action
7 filed by the Plaintiff in this case.

8 Your Honor, it's not entirely clear based on the
9 Plaintiffs' response whether or not they intend to move
10 forward with the adverse possession claim. So we will just
11 discuss the prescriptive ---

12 **THE COURT:** All right. Are you going forward on adverse?

13 **MR. MARTIN:** Yes, we are.

14 **THE COURT:** Okay.

15 **MR. BROGDON:** Okay. Thank you, Your Honor.

16 The Plaintiffs' use of the portion of the Thomas property
17 they claim was permissive. And permissive use defeats the
18 establishment of the element of adversity as a matter of law.
19 And, therefore, the Plaintiffs' claims for adverse possession
20 and prescriptive easement must fail.

21 Your Honor, in response to the Defendants' motion for
22 summary judgment it appears as though South Carolina is well
23 established that evidence of permissive use defeats the
24 establishment of a prescriptive easement claim because the use
25 -- permissive cannot also add the adverse for under a claim of

1 right.

2 Your Honor, stated another way, when a claimant uses
3 property with the permission of the owner, he or she
4 acknowledges the owner's rights and uses the property without
5 an affirmative hostile act towards the owner's rights. That's
6 the Bundy v. Shirley case.

7 Your Honor, the prior owners of the Thomas property
8 allowed owners and renters of the Click property to use the
9 turnaround area. That's in exhibits 9 and 10 to the motion
10 for summary judgment. Because the use of the area was
11 permissive there cannot be any claim of adversity or
12 hostility, thus, Plaintiffs' claims for adverse possession and
13 prescriptive easement must fail.

14 Permissive use, Your Honor, can be implied. It doesn't
15 have to be expressed. But hostility must be shown by a
16 distinct and positive assertion of right, a hostile to the
17 owner in this case.

18 Your Honor, hostility is an intent to dispossess. That's
19 the Brasington v. Williams case. Adverse possession is
20 hostile, a hostile possession with an intention to dispossess
21 by the owner.

22 Furthermore, Your Honor, the Plaintiff in this case
23 stated in a February 27, 2020 affidavit that when he rented
24 the property he thought it included the turnaround area. You
25 cannot establish hostility, Your Honor, by mistake. Hostility

1 is specifically with the intent to dispossess or act contrary
2 to the rights of the true owner. Mistake defeats hostility
3 and, thus, breaks the prescriptive easement time period, which
4 is abundantly clear in this case, Your Honor.

5 **THE COURT:** Mr. Martin.

6 **MR. MARTIN:** First of all, we have not sued for adverse
7 possession, Your Honor. So when I said, yes, I didn't mean
8 it. Strike that from the record.

9 We did sue for estoppel. And we are still seeking
10 estoppel. But the pleadings will show we did not sue for
11 adverse possession, we sued for estoppel. Okay.

12 As far as prescriptive easement, there is no question
13 that the gravel driveway and turnaround have been used since
14 the late '70s. And our evidence shows that. We have
15 affidavits of Dobson and affidavits of Smith that go back that
16 far.

17 The elements for a prescriptive easement are continuous
18 on the use of enjoyment of the right for a period of 20 years.
19 We've got 42 years. The identity of the thing enjoyed, which
20 is the gravel driveway and the turnaround, which has been
21 there since the 70s. No question about where it is.

22 And then the use and enjoyment, which is either adverse
23 or under a claim of right. That's the Pittman case, which we
24 cite on page 8 of our brief.

25 So the question is did we use this in an adverse or under

1 a claim of right since the 70s? Absolutely, we did. There's
2 sufficient evidence to show the continuous and uninterrupted
3 use and enjoyment of the driveway and turnaround since 1978.
4 You can't get to the upper building, the back building without
5 using the driveway and turnaround. You can't get cars in to
6 work on that property.

7 And Mr. Smith had a body shop since 2005. And Mr. Dobson
8 had a cabinet shop since '96. And his only access was through
9 that driveway and turnaround. And he actually had trucks that
10 went inside. There was one garage door, now there's two
11 garage doors. So it's clearly -- was used.

12 And we have evidence even though they have people who
13 say, yeah, we gave permission, both Mr. Dobson, who owned it
14 from '96 to 2005, and Mr. Smith, who owned it from 2005 to
15 2017 have testified we never had permission. We never asked
16 permission. They never used it. It was totally understood
17 that it was a natural boundary. All that testimony is in the
18 record in affidavits before you.

19 So as far as prescriptive easement, we have continuous
20 use and enjoyment for a period of 20 years, which is, like I
21 said, it's really 42. We have the identity of the thing
22 enjoyed. And then we have the enjoyment, which is adverse or
23 under a claim of right.

24 So when Mr. Watkins, who owned the property in 2015, came
25 in and saw the poured concrete and the awning on his property,

1 he had a duty to say, hey, Click, get this out of here. He
2 had -- he had a duty. But he knew that it was prescriptively
3 easement.

4 And when Brent bought it from Mr. Smith, Mr. Smith said I
5 have the absolute right to use it, which means a prescriptive
6 easement. When Mr. Dobson sold it to Mr. Smith in 2005, he
7 said you have the absolute right to use it. I've had it since
8 '96 and Mr. and Mrs. Ramey had it since '78. That is the way
9 you get to the building. That's the only way to get to the
10 building. You have the absolute right to use it. And no one
11 has ever done anything.

12 So as far as a question of the material fact, there is
13 evidence to support a prescriptive easement in this case. Now
14 the jury will get to decide it. And it'll go to the weight of
15 the evidence, not to the admissibility of the evidence.

16 So, finally, also, the affidavits make it clear from
17 start to finish because we have -- we have the line going all
18 the way from Mr. Dobson, who is going to testify and did sign
19 an affidavit, from '96 all the way to when Brent bought it in
20 2017. And it only became an issue in May of 2018. So that's
21 why we have ---

22 **THE COURT:** All right. Brief ---

23 **MR. MARTIN:** Do you want me to talk about estoppel or
24 not?

25 **THE COURT:** I mean, we kind of got off -- off there with

1 the adverse possession.

2 **MR. BROGDON:** Just very briefly, Your Honor. Use in and
3 of itself is not adverse or hostile. Use of the driveway and
4 the turnaround area was never hostile between the owners of
5 both properties historically. And historically they used
6 portions of each other's property.

7 Your Honor, opposing counsel doesn't address that Brent
8 specifically acknowledged he thought the turnaround area was
9 his to use, not that he was trying to claim it in any kind of
10 hostile manner. Mistake of thinking that the turnaround area
11 was available for his use defeats the hostility requirement
12 necessary to survive summary judgment on a prescriptive
13 easement claim.

14 **MR. MARTIN:** And I would just cite the Simmons versus
15 Berkley Electric case, which says when it appears that the
16 claimant has adjoining easement openly, notoriously,
17 continuously and uninterruptedly in derogation of another's
18 rights for the full period of 20 years, the use will be
19 presumed to have been adverse. That's exactly what we have.
20 We've got 42 years.

21 **THE COURT:** All right. And I think that's going to be a
22 question for the jury. So I'm going to deny your motion on
23 that. All right.

24 Next argument.

25 **MR. BROGDON:** Yes, Your Honor. Very briefly.

1 Easement by estoppel is another claim pled by the
2 Plaintiffs in this case. Your Honor, the Plaintiffs have not
3 asserted that the existence of a false misrepresentation or
4 representation for a concealment of a material fact by the
5 Defendants would support the grant of easement by estoppel.

6 Your Honor, to establish a claim by estoppel the party
7 claiming estoppel must show the following elements sought to
8 be estopped; conduct that amounts to false misrepresentation
9 or concealment of material fact or at least that is calculated
10 to convey the impression that the facts are otherwise and
11 inconsistent with those partly -- the party subsequently
12 attempts to assert. And then, also, Your Honor, intention or
13 the expectation that such conduct shall be acted on by the
14 other party with knowledge, actual or constructive, of the
15 real facts.

16 Your Honor, the Plaintiffs have not provided any evidence
17 of a false representation or a concealment of any material
18 fact by the Defendants. In fact, even Plaintiffs' complaint
19 does not allege such conduct. The claim must be dismissed,
20 Your Honor. There's been no assertion that the title has not
21 been properly recorded by either property.

22 And, Your Honor, a 2006 case that is Boyd v. Bell South
23 directly on point to this issue that in viewing the light --
24 the evidence in the light most favorable to Boyd in that case,
25 Boyd assumes she would always have access to the rear building

1 of Bell South's driveway. It was also another driveway
2 dispute. The fact that there was not an easement allowing
3 Boyd to cross Bell South's property was a matter of public
4 record, which Boyd and her predecessors in title had knowledge
5 of or at least the means to obtain knowledge.

6 Your Honor, the Binkley versus Rabon Creek Watershed
7 case, 348 S.C. 58, further holds a properly recorded title
8 normally precludes an equitable estoppel against assertion of
9 that title due to the requirement that the party raising the
10 estoppel be ignorant of the true state of title or reasonable
11 means of discovery.

12 In short, Your Honor, this case is exactly on point. If
13 there's a properly recorded title, which there's been no
14 disagreement about, properly recorded titles in this case, the
15 Plaintiffs were on notice, either actual or constructive, what
16 that title was and, therefore, the easement by estoppel claim
17 fails as a matter of law.

18 **THE COURT:** Mr. Martin.

19 **MR. MARTIN:** May it please the Court? I agree with my
20 friend that there are three elements to estoppel, okay? What
21 is conduct that amounts to a false representation or
22 concealment of material facts?

23 The evidence will show and the affidavits show that Brent
24 and Shelly rented this property in January of 2013. They were
25 in the back building. Their only access to the back building

1 was the driveway and turnaround. The only way they could get
2 cars in to paint and work on them -- they actually had Clemson
3 boats -- was to get and use this driveway and turnaround.
4 They were told by Mark Smith, who was the owner of the
5 property, that it's yours, that's yours to use.

6 The owner of the Thomas property at the time was Mr.
7 Watkins. He -- Mr. Grissenger rented and ran All-Tech at the
8 time and told us that he was the owner, but actually the owner
9 was Mr. Watkins. Well, on January 15th, 2015 Mr. Watkins
10 along with Greg Porter walked up the hill, walked in here, saw
11 the whole thing, didn't say a word, refused to identify who
12 they were, that's all in the affidavits, and walked out.

13 So if Brent, who was pouring this concrete and putting up
14 this awning thought that he didn't have the land to do it, he
15 relied upon the fact that Watkins recognized that it was his
16 to use. So when Brent bought it four or five years later in
17 2017 he was relying on the fact that the driveway and
18 turnaround were his, otherwise, he wouldn't have any access to
19 his building. So why would he buy it?

20 So the negative inference is Watkins says, yeah, it's
21 yours. I'm not going to say a word. I'm not going to keep
22 you from doing it. Yeah, you can pour here. Yeah, you can
23 put the awning up. I'm not going to say a word.

24 And then in 2017 Brent buys it in reliance on the fact
25 that the driveway and the turnaround is his ---

1 **THE COURT:** But didn't he also buy in reliance upon the
2 plat that was filed -- of record?

3 **MR. MARTIN:** Yeah. And he knew that he had a
4 prescriptive easement. And he knew he had the absolute right
5 to use it.

6 And you see the whole idea about estoppel is did Mr.
7 Watkins mislead him? Did Mr. Watkins in 2015, or '16 or '17
8 have to say, hey, wait a minute, you can't use my property?
9 But he relied upon that it was his to use and there was no
10 doubt about it. No question about it.

11 And as a result of his reliance, he purchased it. He
12 bought it because he knew -- I mean, who would buy a building
13 if you can't get to it? If your whole business is out of this
14 upper building, on the back building, why would you even spend
15 the money to buy it if you couldn't do it?

16 **THE COURT:** Isn't that addressed usually in closing?
17 Somebody says, oh, you're over the line here. We need to get
18 this worked out.

19 **MR. MARTIN:** And he addressed it in closing. And the guy
20 said it's yours to use. And the lawyer agreed.

21 So, like I said, 42 years no one had a problem. Everyone
22 knew that the driveway and turnaround belonged to the Click
23 property. It was only when Thomas shows up in May of '18 that
24 it's a problem.

25 So the whole purpose here is do we have the cause of

1 action for easement by estoppel? Do we have sufficient
2 evidence for the jury to decide? Now the jury may not agree
3 with me. And they may agree with Mr. Thomas, and I might lose
4 on estoppel. But that goes to the weight of the evidence, not
5 to the admissibility of evidence.

6 And, again, here is the standard on summary judgment.
7 Does Brent have sufficient evidence to meet the elements of
8 estoppel for a jury to decide that it's fair or not fair?
9 Should they be estopped from denying him the right to use it
10 now? Should they be allowed to dig until he literally can't
11 do his business anymore? Because that's what -- actually what
12 Thomas is planning to do. And I'm just saying on summary
13 judgment, that's something for the jury to decide.

14 **THE COURT:** All right. And I think some of your other --
15 I think your other causes of action cover what you're seeking.
16 But I believe -- when you've got a show of misrepresentation
17 when you have a plat that's clearly in place that shows
18 contrary to your position, so I'm going to grant the motion as
19 to ---

20 **MR. MARTIN:** Okay. And I ---

21 **THE COURT:** --- easement of estoppel.

22 **MR. MARTIN:** Respectfully except ---

23 **THE COURT:** Oh, I know. Yeah, definitely.

24 **MR. MARTIN:** --- because the plat we didn't know until
25 2017 -- in 2015 when he made the misrepresentation about it's

1 not a problem for you to have ---

2 **THE COURT:** All right. And it looks like this plat was
3 recorded back in '98. So, I mean, it was ---

4 **MR. MARTIN:** I know, but Brent was not the landowner
5 until he closed in February 2017. And the plat, for the first
6 time in his life he saw, was in February of 2017. And the
7 misrepresentation was two years earlier.

8 **THE COURT:** That sounds like maybe like a malpractice
9 claim for somebody, closing attorney.

10 **MR. MARTIN:** But -- but it ---

11 **THE COURT:** All right. I'm going to grant ---

12 **MR. MARTIN:** I understand what ---

13 **THE COURT:** --- the -- yeah. All right.

14 **MR. BROGDON:** Your Honor, and just very briefly. If
15 that's the case, then how can the acquiescence claim survive?
16 If the 1996 ---

17 **THE COURT:** I think -- I think because the
18 misrepresentation -- but I think you have a different standard
19 there.

20 **MR. BROGDON:** For acquiescence ---

21 **THE COURT:** Yes.

22 **MR. BROGDON:** --- to require mutual intent for a
23 different boundary line? I mean, it appears as though if the
24 1996 boundary line is going to be the boundary line, then
25 there can't be a separate one.

1 **THE COURT:** My basis was that the misrepresentation and
2 concealment when -- as an element when you have a plat. So I
3 think you can definitely have acquiescence without -- there's
4 a different standard there. So ...

5 **MR. BROGDON:** Okay. Thank you, Your Honor.

6 **THE COURT:** All right. What's next?

7 **MR. BROGDON:** Your Honor, we had filed some motions in
8 limine ---

9 **THE COURT:** All right. So the rest of them, I guess,
10 injunctive relief -- I guess you've got an injunctive relief,
11 which I think that's been addressed already. Several I think
12 by myself and with Judge Kinlaw. The same -- because you had
13 some other -- attorney's fees, obviously, that's not in play
14 at this point. So, yes, motion in limine.

15 **MR. BROGDON:** Thank you, Your Honor. Your Honor, in
16 preparation for trial in this case we'd filed four separate,
17 technically, motions in limine to exclude certain evidence
18 from coming in to the jury. Based on Your Honor's rulings on
19 the summary judgment motions, some of these may already be
20 addressed or may not be applicable.

21 Your Honor, one in particular that I believe will be very
22 important is evidence regarding certain alleged interactions
23 between the parties unrelated to the causes of action alleged.
24 They must be excluded because they are irrelevant and
25 certainly more prejudicial than probative.

1 Your Honor, throughout the course of this litigation the
2 Plaintiffs have made claims regarding certain behaviors by
3 Jonathan Thomas, the Defendant, an employee of the Defendants.
4 These include unsupported claims of surveillance, yelling at
5 Mr. Click and his wife, vandalism, stirring up of dust to
6 affect the paint jobs.

7 And Mr. Click has also asserted for the first time that
8 the first time he met Mr. Thomas, Mr. Thomas threatened him
9 with a knife. That's in exhibit 2, page 83 and 84.

10 Your Honor, the Defendants anticipate that the Plaintiffs
11 will attempt to offer such evidence at the trial in this case.
12 But the aforementioned allegations have no tendency to make
13 the existence of any material fact with any of the existing
14 causes of action related to the Plaintiffs' various claims
15 more or less probable.

16 Your Honor, the legal standard here -- the evidence to be
17 admissible must tend to make a consequential fact determining
18 the Plaintiffs' claims that exist more or less probable
19 without the evidence, South Carolina Rules of Evidence 401 and
20 402.

21 Additionally, Your Honor, otherwise relevant evidence
22 should be excluded if its probative value substantially
23 outweighs the danger of unfair prejudice, confusion of the
24 issues or misleading the jury. Now Plaintiffs' counsel
25 certainly disagrees with what we believe the standard and the

1 Rule is with regard to prejudicial evidence and unfair
2 prejudice, but, Your Honor, the Plaintiffs' lawsuit relates to
3 boundary between Thomas and Click. And as we've already
4 discussed in our motions for summary judgment, this is a
5 property dispute. This is not any kind of personal attack on
6 character, although the Plaintiffs want it to be that.

7 Your Honor, with regard to any altercation we vigorously
8 contest that any of these altercations actually occurred. And
9 for the first time in support of -- in opposition of the
10 motion in limine we were presented an additional affidavit by
11 Brent Click alleging a bunch of additional altercations that
12 apparently or allegedly occurred.

13 Your Honor, these have no weight at all for any
14 evidentiary value as to any of the existing claims. Your
15 Honor, in response to the Defendants -- in response to our
16 motion in limine are the Plaintiffs -- the Plaintiffs have
17 provided this affidavit. And they have attempted to state in
18 their response that the claim of nuisance per se, which is
19 under advisement by this Court for granting summary judgment,
20 would go to the motive or intent behind the Defendants'
21 actions and that such elements are part of that nuisance per
22 se claim. And, Your Honor, that's completely unnecessary.

23 If the Plaintiffs intended to argue that there was some
24 kind of intentional tort or there was some kind of intent
25 necessary behind the claims they assert, they would have done

1 so, and they didn't. Your Honor, for that reason as well
2 under the negligence claim there's no motive or intent behind
3 the negligence claim.

4 By sheer definition, it's not an intentional tort. And
5 for that reason alone this testimony and this evidence is
6 simply meant to sling mud, harass our client, attempt to make
7 him look like a bad guy when, in fact, he is not, an attempt
8 to confuse the issues for the jury, which as you've already
9 identified, Your Honor, are pretty straightforward and right
10 in front of you.

11 This has nothing to do with character, has nothing to do
12 with pulling knives, has nothing to do with any altercations
13 on both sides. And we would -- we would concede that as well.
14 So any introduction of this evidence would absolutely be
15 prejudicial and unfair to our client at a trial on this case.

16 **THE COURT:** Mr. Martin.

17 **MR. MARTIN:** Your Honor, the essence of this case is you
18 had no problem with the use of this driveway and turnaround
19 for 42 years. All of a sudden Mr. Grissenger sells his
20 business to his son-in-law, Mr. Thomas, in February of 2014
21 and he goes up to -- and Mr. Grissenger has a really good
22 relationship with Brent. And they helped each other out. And
23 Mr. Grissenger goes up and says, look, I'm retiring, selling
24 my business to my son-in-law, Thomas, take good care of it.

25 So Brent goes and buys a dozen doughnuts, takes them to

1 the All-Tech property, welcomes Thomas to the neighborhood.
2 Thomas takes the doughnuts, puts them down, pulls out a knife
3 and holds it to Brent's ---

4 **THE COURT:** But let me ask you this. How does that go to
5 any of the claims that you're ---

6 **MR. MARTIN:** I'm about to tell you.

7 **THE COURT:** Okay.

8 **MR. MARTIN:** That's the first instance. It shocked
9 Brent. Brent went up the hill. Shelly will testify to the
10 whole thing. It was absolutely off the charts shocking.

11 So Brent, who had a really good neighbor in Mr.
12 Grissenger, realizes that he has a problem with this neighbor,
13 with Mr. Thomas. So he says, what can I do to improve the
14 relationship?

15 So he continues to -- people come to try to steal the
16 tires off of Thomas' -- he runs them off 'cause he's there at
17 night where Thomas is not. He does all these nice things for
18 Thomas.

19 And then he decides to have a cookout with hamburgers and
20 hotdogs for all the workers on the street. Thomas' people get
21 invited. And this is in the summer of '17.

22 Thomas comes up the hill, comes over to Brent, and rather
23 than thanking Brent for the hamburgers and hotdogs, tells him
24 that he is going to -- he had his favorite dream last night.
25 And that was cutting his head off with a small knife, okay?

1 So that's all the way up from '14, '15, '16, '17.

2 So Brent goes, what can we do? Talks to Shelly. And
3 they say, well, maybe if we buy the property, improve the
4 property from Mr. Watkins, I'll be his landlord, and he'll
5 treat me like a human being. And that'll solve the problem.

6 So he goes to Watkins, offers two hundred and ten
7 thousand (210,000), which Watkins agrees, two hundred and ten
8 thousand dollars (\$210,000.00) to buy the All-Tech property.
9 Ten thousand dollars (\$10,000.00) down.

10 And Watkins says, well, let me -- I'm going to give Mr.
11 Thomas a right -- first right to refusal. And Brent says
12 that's fine. And then in May of 2018 he finds out that Thomas
13 buys it for seventy thousand dollars (\$70,000.00) less. And
14 Watkins said I'm not going to ---

15 **THE COURT:** I mean, I've read all this. Again, get to it
16 -- I mean, I don't ---

17 **MR. MARTIN:** Okay.

18 **THE COURT:** --- understand how any of these ---

19 **MR. MARTIN:** So this ---

20 **THE COURT:** --- are elements to the ---

21 **MR. MARTIN:** This is all to do with the motive. We have
22 alleged that they have intentionally, recklessly and
23 negligently dug this thing.

24 So what happens is -- the next thing that happens is once
25 Thomas becomes the owner he goes to Brent and he's starting

1 the digging in August of '18. And Brent said, what are you
2 doing? What are you doing? You got an engineer? He says,
3 that's not for you to worry. He digs it as close as he can.
4 He digs a 36 foot cliff, one to one. And it's supposed to be
5 minimum three to one.

6 And then he says, Brent, I can't wait to watch your
7 building fall down into my property. And then I'm going to
8 put my property in there. It goes to motive. Why did he do
9 this?

10 **THE COURT:** Well, do we -- where's the requirement of
11 motive?

12 **MR. MARTIN:** The requirement of motive is why did he
13 negligently and recklessly build this excavation? What was
14 his motive to do it? His motive to do it was to have Brent's
15 building fall in because he hates Brent. It goes right from
16 the start. Then the second incident, the third incident, now
17 this fourth incident.

18 So -- and then once we had -- we had a hearing, as you
19 remember, you granted an injunction in 2020. In the spring of
20 2020 you granted an injunction saying we had a likelihood of
21 success.

22 Well, he then files another motion in front of another
23 judge in 2022. He loses that. But before he does, he goes up
24 the hill with a fence man and he literally is right under the
25 carport, and he tells Brent that he is going to complete the

1 digging, and it's going to totally cause his building to fall
2 in, and he won't be able to do his business.

3 So the whole purpose of all of these events will tell the
4 jury what his motive was when he did the excavation, what his
5 motive is when he continues the excavation when this case is
6 over. And the jury has the absolute right to know why the
7 nuisance has been done the way it is.

8 Why did he remove the support for the land? Why does he
9 want the building to fall in? It's because he has this animus
10 towards Brent. And Brent has done everything he could to be a
11 good neighbor, instead he's got this just thrown in his face
12 every time.

13 And if you take this out of the case, there is no case.
14 This is our whole case. And it shows exactly what -- now the
15 jury can believe it or not believe it.

16 Is it -- now as far as the Rule on 403, they state the
17 Rule absolutely improperly. And I cite the Supreme Court,
18 which says that the correct test is the opposite of what they
19 said. Whether the probative value of the evidence is
20 substantially outweighed by the danger of unfair prejudice.
21 So there's a presumption that it's relevant and that it's
22 probative.

23 And they have to show that it is substantially
24 outweighed. Substantially outweighed. That's the State
25 versus King case, which is Rule 403 of the South Carolina

1 Rules of Evidence.

2 So what we're saying here, Your Honor, is there is
3 nothing more important from the start to explain why we're
4 here. You told us in the spring of 2020, get this case
5 settled. Well, normally you can settle cases like this. But
6 when a guy holds your knife to your throat, who tells you that
7 his dreams are to cut your head off, he tells you I can't wait
8 for your building to fall in, that's why this case hasn't
9 settled.

10 And why can't the jury hear that? That is our case. We
11 need -- we have pled it, and we want to prove it. And to take
12 it away based on the Rules, these are probative, relevant
13 evidence. And they have a high burden to show that it's --
14 we're not trying to go into his criminal record that 20 years
15 ago he was -- he was arrested and served time. We're talking
16 about the exact facts of this case.

17 What happened? Why is he doing this? The jury's going
18 to go what in the world? Why would a man do what this man
19 did? You know, our engineer's going to say no one digs like
20 this. Nobody. This is terrible. I have a professional duty
21 to write a letter to these people because it's so unsafe.
22 Nobody does this.

23 Well, if we're -- if we can tell the story as to Mr.
24 Thomas and his actions towards Brent, it makes sense. And
25 it's relevant. And it's very important.

1 **THE COURT:** Mr. Brogdon.

2 **MR. BROGDON:** Thank you, Your Honor. It's just not
3 relevant at all. Your Honor, this evidence -- if this is the
4 whole case, why are we being provided some of these
5 statements, you know, 14 days before trial that our client
6 allegedly made? It's a little bit disingenuous to say that
7 this is what the entire case rests on considering none of the
8 elements for any of the causes of action have any kind of a
9 motive or intent.

10 And, candidly, which one is it? Is it intent or is it
11 negligence? Because it seems as though they want to have it
12 both ways. It's one or the other. There's no intentional
13 tort that's been proven. There's no motive to element to any
14 of these claims.

15 And Mr. Martin very cleverly deflected that question
16 mainly because I don't think he can answer it accurately,
17 which is there is no motive to any of these claims. It will
18 be entirely prejudicial to our client and should be excluded
19 from the trial.

20 **THE COURT:** All right. And I don't have any problem --
21 no, I'm going to -- I don't have any problems with any
22 comments made in connection with excavation and those comments
23 along the line -- as he excavated it and made those comments
24 there. But any of the animus beforehand, I'm not going to
25 allow it. I mean, the knife to the throat and I had this

1 dream that I could cut your head off and all that, I'm not
2 going to allow that.

3 **MR. MARTIN:** Well, I understand you've ruled, but I just
4 want to say that paragraph 32 of my complaint says Defendants
5 negligently, carelessly, willfully, recklessly, and wantonly,
6 and grossly, negligently breached their duty to Plaintiffs ---

7 **THE COURT:** And I think you could show that -- I mean,
8 I'm allowing testimony around the excavation and his comments
9 of why he did it. I don't have a problem with that. But the
10 stuff that predated that and just the general animosity, I'm
11 not going to allow that.

12 **MR. MARTIN:** Okay.

13 **THE COURT:** So -- all right.

14 Next argument.

15 **MR. BROGDON:** Yes, Your Honor. We have another -- a
16 motion in limine we'd like to present, Your Honor, regarding
17 the property boundary dispute. The adverse use of the Thomas
18 property prior to October of 1998 must be excluded under the
19 doctrine of res judicata.

20 Briefly, Your Honor, as mentioned before, in the summary
21 judgment motion, Betty Ramey in 1997, who is the former owner
22 of the Click property, sued Wallace Merck, who was the former
23 owner of the Thomas property, for adverse possession and ---

24 **THE COURT:** Isn't that a defense and should be presented
25 at summary judgment? I mean, this isn't -- I mean, I don't

1 know that that's a basis for motion in limine, though.

2 **MR. BROGDON:** Your Honor, the basis of the motion in
3 limine should be that the Plaintiff should be precluded from
4 re-litigating any claims that would be brought prior to the
5 1997 lawsuit because that case was dismissed October 19th,
6 1998 under the doctrine of res judicata.

7 The elements of res judicata are clear, Your Honor. The
8 Plaintiffs are in privity during that time. The subject
9 matter of the 1997 action consisted of the boundary line at
10 dispute in this case and the rights to use the Thomas
11 property.

12 And the dismissal of the 1997 lawsuit served as a final
13 adjudication of the issues regarding the actions involving the
14 property. Thus, as of October 19th of 1998 no dispute existed
15 as to the property boundary lines and there was no claim for
16 adverse possession for use.

17 Your Honor, in response to the Plaintiffs' arguments
18 responding to us, they write that the lawsuit predated the
19 time-frame upon which the Plaintiffs base their claims and end
20 this suit to the turnaround area and the entire gravel
21 driveway.

22 If the only objection is to calling it res judicata, then
23 we can stipulate to that that any information prior to the
24 1998 settlement and dismissal that is subject to res judicata
25 is irrelevant.

1 **THE COURT:** All right. And I'm going to deny that. I
2 think that's a -- I'm not sure that's what res judicata is the
3 purpose for. All right.

4 Next argument.

5 **MR. BROGDON:** Your Honor, this argument is with regards
6 to the proffered expert by the Plaintiff, David Hall, a motion
7 in limine. Mr. Hall should not be permitted to testify
8 because the scientific testimony he's offering is unreliable.
9 Your Honor, at the deposition of Mr. Hall the most consistent
10 answer that we were provided was that he did not have enough
11 information to make certain conclusions.

12 Your Honor, as you know, expert testimony is governed by
13 South Carolina Rules of Evidence 701, 705. And to determine
14 whether the expert testimony is admissible at trial, the court
15 must consider whether the subject matter is beyond the
16 ordinary knowledge of the jury, whether the proposed expert
17 has the necessary knowledge and skills to qualify as an expert
18 and whether the substance of the expert testimony is reliable.

19 Your Honor, in the Graves v. Cas Med System, Inc. the
20 court further clarified the scientific testimony must be
21 assessed as follows; the publications and peer review of the
22 technique, prior application of the method to the type of
23 evidence involved in the case, the quality and control
24 procedures used to ensure reliability and the consistency of
25 the method would recognize scientific laws and procedures.

1 Your Honor, in this case the proffered testimony by the
2 Plaintiffs' expert, David Hall, does not meet the reliability
3 standards required under this Rule. The underlying facts and
4 data that Mr. Hall relied upon for his conclusions are
5 unreliable, mere conjecture and not derived from properly
6 applied scientific methods.

7 Your Honor, Mr. Hall relies heavily on factor of safety
8 calculations performed by Bill Mathews of Bunnell Lammons
9 Engineering, a separate engineer. However, Mr. Hall admits
10 that Mr. Mathews needs additional information including
11 borings and a very detailed survey to conduct his analysis.

12 Your Honor, while an expert can certainly rely on
13 information and opinions of others, Mr. Hall is essentially a
14 mouthpiece for Mr. Mathews, who is not presently being
15 disclosed to testify in this case. He was never disclosed as
16 a discovery witness and has not been disclosed as a trial
17 witness in this case. Allowing his analysis and conclusions
18 to come through Mr. Hall would -- the ability to vet Mr.
19 Mathews' qualifications, processes and overall reliability
20 would be prejudicial to the Defendants.

21 For example, in a deposition when asked Mr. Mathews about
22 what Mr. Mathews looked at when visiting the Click and Thomas
23 properties, Mr. Hall responded, Bill would have to answer that
24 question, not me. Therefore, the work performed by Mr.
25 Mathews should be excluded as the standard for providing

1 expert testimony is articulated in the Graves case above.

2 Your Honor, furthermore, with regard to the work
3 performed by Mr. Mathews, Mr. Hall testified that he does not
4 know where the property line is in relation to the cross-
5 section provided by Mr. Mathews, does not know what the
6 different cross -- colors on the cross-section indicate and
7 cannot testify as to what Mathews' conclusion of impending
8 failure actually means.

9 The only work done by Mr. Hall, himself, was some survey
10 work. And with regard to that work Mr. Hall states that he
11 would need to have more precise data in his deposition.

12 Mr. Hall further admits there are a number of reasons the
13 concrete slab in the back building could be cracking, but then
14 concludes without any reasoning that the excavation work done
15 by the Thomas accelerated the cracking. He further admitted
16 that he needed additional information to make firm
17 conclusions.

18 In addition to the above limitations on reliability of
19 Mr. Hall's analysis, Mr. Hall's testimony must also be limited
20 to what he's able to opine on within his field of expertise
21 based on scientific data available to him. Accordingly, Mr.
22 Hall cannot testify regarding the prior use of the properties,
23 of whether a permit was required for this particular case to
24 perform the excavation or the quantification of the
25 Plaintiffs' alleged damages.

1 This does not go to the weight of the -- of the evidence
2 presented in this case. Reliability is an element of
3 admissibility of this evidence, Your Honor. And Hall does not
4 add anything to Mathews' finding. He can't just be a conduit.
5 Prior use of the properties does not need an expert nor is it
6 scientific testing by nature. Thank you, Your Honor.

7 **THE COURT:** Mr. Martin.

8 **MR. MARTIN:** Well, if Mr. Hall didn't do anything after
9 his deposition some of this might make sense. But, of course,
10 counsel has, from reading from his brief verbatim, completely
11 left out the fact that there was significant amount of work
12 done since the deposition. And that is all included in Mr.
13 Hall's affidavit.

14 So, first of all, is Mr. Hall a site engineer? And is he
15 qualified?

16 **THE COURT:** And I'm -- that's something that I'm going to
17 have to address when he's testifying. I mean, you know,
18 you're going to have to -- if he establishes the proper
19 foundation, then that'll be admissible. If he doesn't, then
20 I'm sure he'll object, and we'll address it at that time.

21 **MR. MARTIN:** Okay. Thank you, Your Honor.

22 **MR. BROGDON:** Your Honor, and with regards to the final
23 motion in limine filed by the Defendants, this is with regard
24 to lay witness testimony by Mr. Click as to the value of his
25 property.

1 Your Honor, we are moving in limine to exclude any
2 testimony regarding any testimony presented as to the form of
3 an opinion which are not, A, rationally based on the
4 perception of the witness or helpful to a clear understanding
5 of the witness' testimony that does not require specialized
6 knowledge, skill, experience, skill or training.

7 Your Honor, we've already discussed this in our motion
8 for summary judgment. The South Carolina law does provide
9 that a property owner so completely lacks knowledge as to the
10 value of the property, the property's testimony -- the
11 property owner's testimony is worthless and such testimony can
12 be excluded. And that's in the Barton case v. Superior
13 Motors, Inc.

14 Your Honor, that case holds ordinarily a property owner
15 who is familiar with his property and its value may give an
16 estimate of its value or the damage inflicted upon it even
17 though he's not an expert. However, this general proposition
18 does not suddenly enable the property owner to become an
19 expert in the field of appraisals and commercial real estate
20 comparisons.

21 Your Honor, we've already discussed how Mr. Click is not
22 qualified in any of those areas. These are just his opinions
23 without any basis in fact or any documents in evidence. These
24 are opinions given by him with no estimate provided, no
25 financial provided and no appraisals done on the value of his

1 business. For that reason, Your Honor, he should not be
2 allowed to testify as to any personal knowledge as a lay
3 witness as to the value of his property because he does not
4 have the requisite foundation, experience, skill, knowledge in
5 order to do so.

6 **THE COURT:** Well, I mean, he's not required to have all
7 that. But, I mean, doesn't that make him an expert at that
8 point? I mean, generally, you know, a person can testify to
9 the value of their property. They can kind of come up with
10 some reasons why they think that's the value. I mean, now
11 it's pretty limited as to what all they can testify to, but, I
12 mean, as far as the value of their property, I mean, isn't
13 that kind of wide open?

14 **MR. BROGDON:** Your Honor, as stated in South Carolina
15 under South Carolina law a property owner can testify with
16 property he's familiar with in its value. But in this case
17 evidence of damages that applies to the Whisenant -- I think
18 Whisenant case that we submitted to you as well, that evidence
19 of damages is not permitted to be based on conjecture, guess
20 or speculation.

21 We've already gone through exhibit 12 to our summary
22 judgment. These damages appear to be pure guess and
23 speculation. I mean, I can say that I think the value of my
24 car is thirty-five thousand dollars (\$35,000.00), but Kelly
25 Blue Book's probably going to disagree with me. I mean,

1 that's just a guess. That's speculation as to what he thinks
2 it might be.

3 That's not damages, Your Honor. And he can't testify as
4 to the exact value as to what those damages are. There's also
5 no documents or anything in evidence other than his expert
6 report that's going to attempt to establish that there's
7 eighty thousand dollars (\$80,000.00) to build a retaining wall
8 with no estimates provided, no ---

9 **THE COURT:** And, I mean, that's a little different --
10 and, again, estimates and value are totally two different
11 standards there, okay? Value, I'll have to, you know, a lot
12 of that will depend on how the question's asked, what kind of
13 foundation he lays. You know, it's hard to address it at this
14 point.

15 Now estimates, you know, again, that's something
16 different because that'll be based on hearsay unless they have
17 -- I'm not sure what they're planning to do as far as
18 estimates goes. But ---

19 **MR. BROGDON:** Your Honor, I'll briefly state that in his
20 deposition Mr. Click, who was a 30(b)(6) deponent for both
21 Plaintiffs in this case, testified in his depo that he doesn't
22 even know the profits of his business. He thinks they may be
23 10 to twenty thousand dollars (\$20,000.00) a year. He
24 generally guessed what his revenue would be each year. So how
25 can he possibly testify as to what the business has lost, what

1 the value of the business -- it's in his deposition ---

2 **THE COURT:** You talking about the business -- you talking
3 about the value of the business or value of the property?

4 **MR. BROGDON:** Both, Your Honor. In this case we were
5 talking about the value of the business and the value of the
6 property.

7 **THE COURT:** Well, I think the value ---

8 **MR. BROGDON:** We're trying to limit his ---

9 **THE COURT:** I think the value of a business is something
10 totally different. That's an economic evaluation. That's not
11 the value of property. I mean, we're -- I mean, I thought the
12 whole thing was -- I mean, a property owner can testify about
13 the value of their property. I mean, are y'all trying to use
14 him to establish the value of the business?

15 **MR. MARTIN:** (Negative nod).

16 **THE COURT:** Okay. I mean, I don't ---

17 **MR. BROGDON:** Well, we would like to get that on the
18 record, Your Honor, because there have been some allegations
19 of loss of business use, loss of business income. And this is
20 the first time I'm hearing that they're not alleging that
21 there's any loss of business or loss of ---

22 **THE COURT:** Well, I mean, all we're here for is whether
23 he can testify as to the value of that loss of business,
24 which, I mean, unless they establish some other way. I mean,
25 that's not -- that's not what these line of cases are. I

1 mean, he can testify to the value of the property that he owns
2 if they lay the proper foundation. Again, that's something
3 that'll have to be addressed at the -- at the time.

4 **MR. BROGDON:** Thank you, Your Honor.

5 **THE COURT:** All right. So that's all your motions in
6 limine?

7 **MR. BROGDON:** Yes, Your Honor.

8 **THE COURT:** And I think based on these arguments I don't
9 think -- I don't think y'all are going to finish by Wednesday,
10 but we'll try. All right.

11 You have a motion in limine as well, I think?

12 **MR. MARTIN:** Yes, Your Honor.

13 **THE COURT:** I think yours is limited to one particular
14 area.

15 **MR. MARTIN:** Okay. Our motion in limine, Your Honor, is
16 prohibiting the Defendants from offering expert testimony from
17 Andy Sherard. What happened was is -- as you know you've got
18 four lawyers here representing the Plaintiffs, but the
19 discovery deadline was on a Friday, April 15th. And on
20 Wednesday, April 13th we got a new lawyer, the senior partner
21 showed up in our office and asked us to come over.

22 And he said, I've got a problem. Andy Sherard's going to
23 be out of the country, and I need -- I need to get another
24 expert. Can you help me? And would you agree to move the
25 deadline a week so we can get this new expert up to the Click

1 property to take a look at it and get an opinion? And we
2 said, sure. So we moved it from April 15th to April 22nd.

3 Then Mr. Paul Mills was hired by them. Came up, I think,
4 on Tuesday of that next week when the original discovery was
5 over, either the 17th or the 18th, and then we got an opinion.

6 And then on the Friday when everything was due, for the
7 first time he said we're going to use Sherard, who's in
8 Europe, and we're going to use him by video, and we're going
9 to use Mills. And never in my wildest dreams would I have
10 agreed to give them a second expert when the deadline was done
11 and there's no way in the world they could do it. But as a
12 professional courtesy to my friend, I agreed to move one week
13 on the representation that, hey, if we can't get Sherard here,
14 we'll use Mills.

15 So, you know, here I am asking you, which is a
16 discretionary issue, to rule that that's just not fair. And
17 that Brent and Shelly shouldn't have two experts against one
18 when he came hat in hand as the new lawyer on the case, the
19 senior partner, and said please help me, and we agreed to help
20 him.

21 And now we find ourselves not only do we get Sherard, but
22 he wants to do Sherard by video from Europe. And under the
23 new Rule, that's 612 of the SCAR, you have the absolute
24 discretion to say whether it comes in or does not come in.

25 There's been no evidence that Andy Sherard is sick.

1 There's no evidence that he's got COVID. There's no evidence
2 that -- the reason for the Rule was is, hey, if we've got some
3 COVID problems, this gives him a chance to testify. Instead,
4 we were totally misled and we're asking the Court ---

5 **MR. CAMPBELL:** Your Honor, I object ---

6 **MR. MARTIN:** --- in your discretion not -- you can object
7 all you want, but let me finish.

8 **THE COURT:** All right, folks.

9 **MR. MARTIN:** What happened was exactly what I said. And
10 there's a witness right here, my wife, who was in the same
11 discussions. And under the Rules you have the absolute right
12 to rule in your discretion whether or not that would be fair
13 or not.

14 **THE COURT:** Okay.

15 **MR. BROGDON:** Your Honor, in response, I believe my co-
16 counsel was going to say this as well, we did that and came to
17 his -- to the office, Your Honor, in attempt to work out a
18 resolution to maybe even continue the case. It was their
19 stance that they did not want to do that. But we would
20 happily do that, Your Honor.

21 I think everyone's available in October. We'd like to
22 pack up and they could go hire a second expert if they'd like
23 to try even though it's past the discovery deadline. You
24 know, that was the purpose of that issue for us.

25 We appreciate opposing counsel stepping in and allowing

1 us to do that. But, Your Honor, it wasn't any kind of
2 professional courtesy. It was a request in this case to help
3 streamline the issues considering they had an expert, we had
4 an expert, ours unfortunately is out of the country due to ---

5 **THE COURT:** I guess you're trying -- you're planning to
6 use him by Webex?

7 **MR. BROGDON:** Yes, Your Honor.

8 **THE COURT:** All right. And I haven't looked at any Rule
9 -- I mean, my standard that I've followed since -- and we've
10 had lots of trials by Webex. That's usually -- I mean, I --
11 I'm going to look at that Rule.

12 But, I mean, I've always taken the position that I don't
13 have a problem with Webex if everybody consents. But if
14 there's consent, I usually am not -- I mean, I've never had it
15 come up because it's usually consented to when -- so -- but
16 I'll look at that. But that's kind of my general standard
17 would be if parties aren't consenting to Webex, then I don't
18 feel like I can force it down somebody's throat.

19 **MR. BROGDON:** Yes, Your Honor. And to that degree, Mr.
20 Mills -- Mr. Sherard, I think there's an allegation they're
21 going to have cumulative presentations on evidence to slow
22 down the issues. That may not necessarily be the case.

23 We are -- these are experts that have been disclosed.
24 Mr. Sherard's been disclosed for a long time. I don't believe
25 that any deposition testimony was taken of him in this case.

1 So it's a little unfair at this point to say that they know
2 what the testimony is going to be when they really don't.

3 At this point, Your Honor, I think it's just a numbers
4 game for them. They don't like the idea for a jury to see two
5 experts versus one. That was not our intention in any way.

6 Again, we were attempting to get a solution to a
7 scheduling issue. This wasn't any kind of slight to opposing
8 counsel. It was a solution to a scheduling issue. And like I
9 said, we are happy to continue this case to October if
10 Plaintiffs' counsel really wants to do that.

11 **THE COURT:** I mean, why couldn't you have taken a video
12 deposition of Sherard or Sherad?

13 **MR. BROGDON:** For the purposes of trial?

14 **THE COURT:** Yeah.

15 **MR. BROGDON:** Your Honor, due to timing. This kind of
16 came up, I guess, about 45 days ago. It was going to be
17 difficult to coordinate all that timing and with opposing
18 counsel's schedules as well. That's why we didn't take his
19 deposition.

20 And we also thought this really wouldn't be a problem.
21 My understanding is the meeting went very well. There was no
22 real issues. We said we're going to be needing to get an
23 additional expert out there. And it's now at the eve of trial
24 they have an issue with us having two separate experts that
25 say the same thing, by the way, Your Honor. Their position is

1 very similar.

2 So I can understand why opposing counsel wouldn't want
3 the jury to see that because it's going to look as though our
4 case is as stronger than his. So I get it.

5 But, Your Honor, this was no kind of slight to them.
6 This was just a scheduling issue. Mr. Mills is fully prepared
7 and ready to testify in person and plans to do so. And Mr.
8 Sherard is available via Webex to the extent the Court allows
9 him to testify.

10 **THE COURT:** All right.

11 **MR. MARTIN:** Once again it's totally within the Court's
12 discretion. We think it was -- it was -- the deadline was the
13 deadline. We were helping out counsel who had a problem.
14 Literally two days before the deadline he comes to us for the
15 first time and says Mr. Sherard's going to be out of the
16 country, can you help me out?

17 **THE COURT:** And let me just -- your position is that you
18 don't have a problem with Mills except if he's cumulative to
19 Sherard testifying?

20 **MR. MARTIN:** We don't have a problem with Mills -- we
21 would have never agreed to an additional change in the
22 discovery deadline if we knew the plan was to have two experts
23 instead of one. So we have -- we have an objection to two
24 experts. Whether it's Mills or whether it's Sherard, we don't
25 care which one it is.

1 But -- and the use of Webex, we think, is prejudicial
2 because we just don't think it'll come through for the jury as
3 if we had a witness here.

4 **THE COURT:** So ---

5 **MR. MARTIN:** So those are the two reasons.

6 **THE COURT:** All right. Let me take a look at that Rule.
7 Like I said, that's come out -- like I said, hasn't come up
8 because most of the time everybody -- any issues with Webex
9 have always been consented to, but let me look at that Rule
10 specifically. All right.

11 Anything else?

12 **MR. CAMPBELL:** May I be heard, Your Honor?

13 **THE COURT:** Yes.

14 **MR. CAMPBELL:** It's the first time in 14 years I've ever
15 had opposing counsel accuse me of trying to mislead someone.
16 And that's a gross mischaracterization of our conversation.

17 I approached opposing counsel and said now that we have a
18 trial date set, I've been informed by our expert witness that
19 he will be out of the country, not in Europe, but in Mexico
20 with unreliable access to telecommunications. We have three
21 options; we can try to do Webex testimony, I can try to get a
22 substitute expert, we can continue the case to October when
23 everyone is here.

24 And so I just wanted to state on the record ---

25 **THE COURT:** Okay.

1 **MR. CAMPBELL:** --- that there was never any misleading of
2 opposing counsel. I'm shocked that he'd make that allegation.

3 **MR. MARTIN:** And I would totally and one hundred percent
4 disagree ---

5 **THE COURT:** All right. Well, I'm not going to -- I'm not
6 going to mediate that conversation.

7 **MR. MARTIN:** Well, if you want -- that's in the record --
8 I would be happy to put what's in the record what really
9 happened, ---

10 **THE COURT:** Okay.

11 **MR. MARTIN:** --- if you'd like to hear it. If not,
12 that's okay.

13 **THE COURT:** No, that doesn't -- that will not affect my
14 decision. So -- all right. Anything else before we break for
15 lunch?

16 **MR. BROGDON:** Nothing from the Defense, Your Honor.

17 **THE COURT:** Plaintiff?

18 **MR. MARTIN:** No, Your Honor. Thank you.

19 **THE COURT:** All right. And I guess I'm going to tell the
20 jury wait a little bit because I want to make sure staff has
21 enough time to have their lunch. So -- all right. So it'll
22 probably be closer to 1:45. So let them know when they come
23 in.

24 **THE BAILIFF:** Yes, sir.

25 **THE COURT:** All right. See y'all back -- I'll let y'all

1 know -- I'll let y'all know before we bring the jury in, of
2 course.

3 (Whereupon court was in recess at 12:57 pm)

4 (Whereupon court reconvened at 1:46 pm)

5 **THE COURT:** All right. Back on the record here. I've
6 reviewed materials at lunch. I think the only two that I had
7 outstanding to make a -- well, as far as the motion for
8 summary judgment, is nuisance per se and the acquiescence
9 argument, correct? That's the only thing I took under
10 advisement?

11 **MR. BROGDON:** I believe so, Your Honor.

12 **THE COURT:** I mean, I'm looking -- I looked at that. I
13 think that under the standards of summary judgment, I believe
14 that that's sufficient for denial. Now, again, I'm not saying
15 that that ultimately means it's going to go to the jury. I
16 think there's, you know, if the directed verdict stays, there
17 might be a different version of that order. But I think for
18 now under the standard for summary judgment I'm going to deny
19 your motion on those two.

20 The motion on the expert whether -- I mean, this is my
21 take. And this has been kind of my policy is that unless
22 there's compelling reasons for a Webex, use of Webex for a
23 witness, without consent, I just don't feel like -- until
24 somebody tells me differently, I don't think that I can --
25 it's my opinion and my rule is not to enforce that, force

1 somebody to have Webex. And I think in this particular case
2 there were other measures that could have been taken to
3 preserve that testimony if needed, you know.

4 And at this point there was a reference to a continuance,
5 there was no request for a continuance prior to this point.
6 So I'm not going to allow Dr. or Mr. Sherard to testify by
7 Webex.

8 But I think -- now it's my understanding you have another
9 -- you have another expert that's going to testify similar, I
10 know it's maybe not the exact same thing, similar to what you
11 need, don't you?

12 **MR. BROGDON:** Yes, Your Honor.

13 **THE COURT:** Okay.

14 **MR. BROGDON:** We do. And, Your Honor, the testimony by
15 Mr. Sherard -- the only reason why we would prefer that he
16 move forward is just his opinions have been given throughout
17 the case.

18 **THE COURT:** Yeah.

19 **MR. BROGDON:** Mr. Mills has come in later in the last
20 hour for him, so it may be beneficial for the Court and for
21 the jury to hear Mr. Sherard's opinions considering he's been
22 part of this case for a long time.

23 **THE COURT:** Right.

24 **MR. BROGDON:** But we understand the Court's preference
25 with regard to no consent ---

1 **THE COURT:** Right.

2 **MR. BROGDON:** --- by opposing counsel.

3 **THE COURT:** And, again, I want to make sure -- I don't
4 want to -- and, again, also went into that is it sounds like
5 from everything I've heard that I realize it may be -- put you
6 in a better position, but that you're not prejudiced by using
7 Mills by himself.

8 **MR. BROGDON:** No, Your Honor.

9 **THE COURT:** Okay. All right. And anything else from the
10 Plaintiff?

11 **MR. MARTIN:** No, Your Honor.

12 **THE COURT:** Anything else from the Defendants?

13 **MR. BROGDON:** No, Your Honor.

14 **THE COURT:** All right. What I'll do is -- I normally
15 just have a few minutes. I tell them just some -- kind of
16 give them what I call my roadmap, what the case, you know,
17 what they need to expect and that kind of stuff. And then
18 I'll turn it over to y'all for opening statements.

19 **MR. MARTIN:** Thank you, Your Honor.

20 **THE COURT:** All right. If the jury's ready, bring them
21 in.

22 (Whereupon the jury entered the courtroom at 1:50 pm)

23 **THE COURT:** All right, ladies and gentlemen, first I'm
24 going to start off with an apology. I said 1:30, and I'm
25 bringing you out here at ten til. And I want to explain that

1 a little bit.

2 Sometimes on Monday morning there's lots of things that
3 we have to go over, not only in this case, but some other
4 matters. And that went to a little after 1:00. And I wanted
5 to make sure that my clerks and my court reporter had
6 sufficient time for lunch. So I do apologize.

7 That's my fault for not having planned a little better on
8 timing. So please don't hold that against anybody because I
9 kind of pride myself on timing and stuff. So I apologize.
10 I've started off on a wrong foot with you.

11 Now, first I'm going to have the clerk administer the
12 oath for this case. And then I've got some preliminary
13 information before I turn it over to the attorneys. Ms.
14 Broom.

15 **MADAM CLERK:** If y'all would all rise. Raise your right
16 hand. And after I administer the oath, just, if you would,
17 say I will.

18 You shall well and truly try the case, joined in the case
19 of Click Properties, LLC and Hyper Formance, LLC versus Thomas
20 SC Properties, LLC and All-Tech Tire and Auto Repair, LLC and
21 a true verdict rendered according to the law and evidence so
22 help you God?

23 **THE JURY:** I will.

24 **THE COURT:** I always like to start off with like telling
25 y'all a little bit about who -- some of the other people in

1 the courtroom. Y'all have met the parties and y'all've met
2 the attorneys, but just so you know some of the other players
3 in the courtroom.

4 Seated right in front of me is the court reporter. She
5 takes down all of the testimony that's presented and in charge
6 of marking exhibits and so forth. That's her role there.

7 We have our clerk of court, our assistant clerk of court,
8 who administers the oath and in charge of the records and so
9 forth.

10 Seated behind me is my law clerk. She's a law school
11 graduate. And she assists me with any research and things
12 like that.

13 For your purposes, the most important people are these
14 gentlemen right here with the coats. They're the bailiffs.
15 And let me tell you, I go around the State, we have fantastic
16 bailiffs here in Pickens.

17 And their job is to look after you. If you have any
18 questions or you have any comments, direct those to the
19 bailiffs. And if it's something I need to get involved in,
20 they will let me know. So if you have any questions, please
21 just let them know.

22 Now you and I have two separate duties here. My job is
23 to rule on the evidence in the case, preside over the trial
24 and determine what the law of the case is. And when I
25 determine what the law is, that will be the charge at the end

1 of the case that you'll hear. I will tell you what the law
2 is.

3 Your job is totally separate. Your job is to determine
4 what the facts of this case are. And if there's anything that
5 I do or say throughout this trial that makes you think I have
6 an opinion on those facts, you're to disregard that because
7 you're the sole judge of the facts.

8 How do you determine what the facts are? Well, you will
9 apply the law that I give you, you will listen to the evidence
10 that's presented. And evidence may be -- it'll be live
11 testimony. You could have deposition testimony, which was
12 under oath. It's treated the same as if somebody was here.
13 You may have stipulation of counsel. You may have documents,
14 exhibits and so forth. All of those are to be considered by
15 you and to determine what the facts are.

16 And one of the things that you would consider is
17 believability of witnesses or the credibility of witnesses.
18 That's something that you make a decision on is to -- the
19 credibility of witnesses. Ultimately your decision's going to
20 be based on looking at the evidence. And you give it the
21 weight and value which you feel is appropriate.

22 As I told you, one of my rules that I give you each time
23 is not to discuss the case. And the reason I tell you that is
24 it's important that you not -- because when you start
25 discussing, that means you're making up your mind. And you

1 don't need to start making up your mind until you've heard all
2 of the evidence and you've heard the law. And at that point
3 you've got all the tools you need to make that, you know,
4 decision on what the facts are.

5 I also told you it is so important that you not do any
6 type of research, whether that's Googling the parties, the
7 lawyers, the law in this case because, one, that is, you know,
8 that is totally prohibited and you've taken an oath to follow
9 what I'm telling you. And that is because anything that you
10 get outside this courtroom is not governed by our court rules
11 and our Rules of Evidence, which are very important. So
12 that's why it's important that you only use what you have in
13 this courtroom to make your decision.

14 Likewise, the same with media. Again, I'm not aware of
15 any, you know, media coverage as far as your standard TV,
16 newspaper or anything like that. But social media is
17 important, too. Do not -- I'm not aware of any social media
18 that may come into play, but do not pay any attention to any
19 type of social media if something should pop up out there.

20 Now in this case with any -- the party that has -- that's
21 trying to prove something, they have a burden of proof. The
22 Plaintiff will have its burden of proof on certain things.

23 And, again, as I told you when I was qualifying the jury
24 earlier, asking questions, the Plaintiff is the person that
25 brought the lawsuit against the Defendant. The Defendants are

1 the people who are being sued in this case.

2 These are -- the parties are LLCs. And as I will tell
3 you -- are companies. And they're to be treated the same as a
4 regular individual would be for all intents and purposes.

5 But the burden of proof in this matter is by a
6 preponderance of the evidence, primarily. And that's greater
7 weight or more likely than not. And the reason I tell you
8 this in the beginning is that is just -- that has, you know,
9 you have the scales of justice. So there's a party that has
10 the burden of proof, and they tip those scales in their favor.

11 The reason I kind of bring this up now is because I want
12 to make sure that you do not confuse this with criminal cases.
13 I don't know if you've ever sat on a criminal jury, or you may
14 have been involved in a criminal case or you watch a lot of
15 TV. All of you may hear the term beyond a reasonable doubt.
16 That is a criminal burden of proof. And that has nothing
17 whatsoever to do with this case. Okay? This is more likely
18 than not.

19 A lot of this stuff, too, I know I'm just kind of
20 throwing it at you now, but I will explain a little further at
21 the end of the case before you begin your -- your charges.

22 I usually ask jurors not to take notes. I think you --
23 it's important for you to pay close attention to the
24 witnesses. You will have any exhibits that will be
25 introduced. Those will be things that you will have in your

1 jury room when you begin deliberation.

2 Procedure in trial, the Plaintiff has the burden of proof
3 on its claims. They will go first. And, again, that's by
4 evidence. Whatever evidence that they feel is appropriate,
5 testimony. Then the Defense will have the opportunity to
6 present any evidence that they feel's appropriate on the
7 burden of proof on their defenses. And then the Plaintiff
8 will have a reply or rebuttal. They'll have a chance to put
9 forth anything in response to what the Defendant presented.

10 After all the evidence has been presented, then we'll
11 have closing arguments. And then I'll charge you on the law.
12 And then at that point you'll go back and you'll begin your
13 deliberations.

14 I will give you a verdict form that you'll have to
15 complete. And that will tell you, you know, I'll discuss that
16 with you at the conclusion of the trial. There may be certain
17 questions that you have to answer. And it'll clearly state
18 those on the verdict form.

19 So you don't need to worry about like, oh, I wonder
20 what's the decision -- that'll be real clear at the conclusion
21 of the trial as far as what your job is, not what -- it may
22 not be clear as to what your decision should ultimately be,
23 but what your job to do is.

24 As far as the kind of procedure for the timing, normally
25 we try to go about every hour, hour and a half. Sometimes

1 that may depend on the witnesses, okay? One witness is on the
2 stand, we may not break quite as quickly. And we will try to
3 break after a witness if possible. If anybody needs to take a
4 break prior to that, kind of indicate and we'll just -- as
5 soon as we find a good stopping place, we'll do that.

6 We try, like I said, we'll run til close to 5:00. It may
7 be earlier than 5:00. If it goes after 5:00, it will not be
8 way after 5:00. And if it looks like that, I'll say, hey, we
9 may be going after five. Does anybody need to make any
10 arrangements?

11 In the morning we'll start at 9:30. That's -- is
12 suitable for everybody. Lunchtime is, you know, that depends
13 on where we are. We'll try to break somewhere between twelve
14 and one. Again, that may depend on where we are in witnesses
15 and stuff like that. But I'll try not to starve you out or
16 anything like that. So that's, you know, and if anybody needs
17 to take, as I said, take a break in the meantime, just let us
18 know.

19 Your first break you're going to have an assignment. And
20 that is you will select your foreperson from the original 12.
21 The alternates, y'all don't -- sorry, y'all don't qualify for
22 that. But -- and that is, you know, that's not somebody that
23 has any huge difference in their role, but your role is to
24 communicate with the Court. And it is also to lead any
25 discussions when you begin your deliberations. So that's just

1 what the foreperson will be -- that'll be their duties.

2 So with that being said, those are just kind of my
3 opening remarks. At this point I will -- turning it over to
4 the attorneys for their opening statements, which is not
5 evidence. This is their summary of what the case is going to
6 be about. So at this point, ---

7 **MR. MARTIN:** May it please the Court?

8 **THE COURT:** --- Mr. Martin.

9 **MR. MARTIN:** Thank you.

10 Hi, there. I'm Brad Martin. And I'm trying this case
11 with Gwen Martin, which happens to be my wife. We're lawyers
12 in Greenville. We represent Shelly Click and Brent Click.
13 And we're the ones that brought this lawsuit. And we are very
14 thankful that you're here to listen to this testimony, take it
15 in very seriously because we want you to decide what's right
16 and wrong in this situation.

17 This case involves a young man. Brent Click graduated
18 from high school in 2008. He decided that he wanted to get
19 into the specialty business of making body work and parts.
20 And he originally started in just auto repair. If you had a
21 patch and you needed to have something fixed, he worked for a
22 couple of places that did that.

23 And then in 2013 he was encouraged, because he was so
24 good with his hands, to go into his own business. So he
25 decided to rent -- and I'm going to have a visual here so you

1 can see what I'm talking about.

2 He decided to rent some property that was on 123 or
3 Calhoun Memorial Parkway as it's originally -- as it's
4 officially called. And this property was owned by a gentleman
5 by the name of Mark Smith. I'm not very good at this stuff.
6 I'm better at it now.

7 So this is an aerial photograph of the area that was
8 taken in 2005. So Brent didn't come until 2013. But this is
9 the 3668, is that right? And this is the All-Tech property,
10 which is 3670.

11 And in 2005 you can see that there's this back building
12 here. And Brent rented it. He ran his auto body shop and his
13 machine shop out of here. It had a new roof by that time.
14 But you can't tell it, but this is on a really tall hill. If
15 you're standing on 123, it's a 50 foot rise to get to the top
16 of the hill. It's a real high hill.

17 So he rented this building. And the only way to get to
18 his property was this gravel driveway and turnaround. And he
19 rented it from Mark Smith, who owned both buildings and the
20 whole thing. And he was allowed for several years to do his
21 business up here.

22 Now he would actually do the work on the gravel driveway
23 because you know when you have cars coming up and down, and
24 gravel gets spent, and you've got to put new gravel on it.
25 And Brent would do all that. And the people over here at All-

1 Tech never said one word about this is our property, you can't
2 do that.

3 Because the way you look at it, anyone could tell that
4 this only served this building. And there's going to be
5 testimony that you're going to hear that this building -- it
6 was actually built in 1978. And that somebody named Mr. Ramey
7 had a cabinet shop up here since the 70s. And he died in '94.

8 And then there was a fellow named Mr. Dobson who bought
9 it from her in '96 after her husband died. And the whole darn
10 time everyone knew that this turnaround area and driveway was
11 servicing this building.

12 So when Brent came in in January '13, he just assumed --
13 he was renting and everything was fine. You're going to find
14 out that the actual owner, Mr. Grissenger, ran All-Tech at the
15 time, was Brent's neighbor, was a very nice gentleman. He
16 told Brent he owned it, but, in fact, he didn't. Actually he
17 rented it from a Mr. Watkins.

18 You're going to hear testimony that in January of -- or
19 October 2014 Brent poured a concrete slab and actually put an
20 awning because awnings are very helpful when you're painting
21 and doing body work on property. So this is another document
22 that is blown up to show you -- if I can put it on here
23 without falling -- that you see there's these three awnings
24 here. So that actually went into the turnaround area.

25 So he put those up in October of '14. And Mr. Watkins,

1 who he didn't know owned the property, literally came up in
2 January of '15, inspected the whole place with another man
3 named Greg Porter. They didn't say who they were. They
4 didn't identify who they were. They just kind of looked
5 around and then they left.

6 But they never said, Brent, what are you doing putting
7 these awnings and these -- there's a pour that went -- there's
8 a plat -- a slab outside that he put the car on. And these
9 guys never said one word about, oh, you shouldn't do that. So
10 Brent was -- did his business.

11 And then he decided as he grew his business and grew his
12 business that he needed to expand. So he talked to Mr. Smith
13 about buying the property from Mr. Smith. And in February of
14 2017 he actually did that. Brent and Shelly literally bought
15 the property from Mark Smith in February '17.

16 And his accountant said you need to be an LLC. That's
17 just like a corporation. It's sort of like a corporation. So
18 in February he bought it. In March he gave it to the LLC for
19 tax purposes. So he was thoroughly convinced that he had this
20 -- these were all done in 2015. Everything was fine. He
21 bought it in 2017.

22 And in early 2014 Mr. Grissenger, who ran this All-Tech
23 business, came and said, I'm retiring and I'm turning my
24 business over to my son-in-law, be nice to him. So Brent was
25 nice to him. Turned out Mr. Thomas was not nice to Brent.

1 So after that happened Brent figured out what can I do to
2 try and get Mr. Thomas to like me? And after the relationship
3 was negative, he decided that he would ask to see if he could
4 buy this property next door from Mr. Watkins to become the
5 landlord and to fix this building up and make it nice so Mr.
6 Thomas would be happier with it. And he would then rent from
7 Brent. And Brent figured, well, if I'm his landlord, he'll
8 have to respect me.

9 Well, Brent offered two hundred and ten thousand dollars
10 (\$210,000.00) to Mr. Watkins. Watkins said, okay, but I'm
11 going to let Mr. Thomas have the first right of refusal. So
12 Brent kept waiting, and waiting, and waiting. And finally May
13 of 2018 comes along and it turns out Mr. Watkins, rather than
14 selling it to Brent, sold it to Mr. Thomas for seventy
15 thousand dollars (\$70,000.00) less.

16 And the minute that happened, Mr. Thomas then decided
17 that he was going to dig as close to the line as he could.
18 And he did it without an engineer. He did it without a plan.
19 He's never done digging like this before. But there was
20 literally a 36 foot cliff, sheer cliff.

21 And you're going to hear testimony from an expert site
22 engineer to say this is totally unsafe. No one builds a one
23 to one. You've usually got to do it three to one or two to
24 one. And it was built, unfortunately, very dangerous. And in
25 August of 2018, you're going to hear about that.

1 And you're going to hear that Brent went to the lake with
2 Shelly. This is his land here. And his fence was cut down.
3 And Thomas had put these excavators up here. And for three
4 weeks just dug, and dug, and dug, and cut trees and started
5 this mess. And Brent said, what are you doing? And he said,
6 I'm going to dig so close that your building is going to fall
7 in.

8 So then after that happened in August of 2018, Brent
9 decided that -- what in the world can we do? And finally
10 right about February of 2020 when Brent went to do some work
11 and Shelly was there by herself, because when they were
12 talking to Mr. Watkins to buy this proerpty, they owned a
13 home. And they knew that they could get a bank, Bank of
14 Travelers Rest that would finance the purchase for the two
15 hundred and ten thousand (210,000) if they sold their house.

16 So they sold their house in April of 2018 thinking that
17 they were going to buy this property over here. They built a
18 300 square foot apartment in the back here, very nice
19 apartment, and actually lived back here. And then, of course,
20 they were very surprised in May of '18 to find out that
21 Watkins didn't sell it to them, but sold it to Thomas.

22 So in 2020 Brent goes to work in February. And all of a
23 sudden Thomas and a fence guy come up here and they're
24 literally measuring to put the fence literally right in the
25 front of their building so he couldn't even work. And Thomas

1 said, that's my property, that's my property, and I'm going to
2 finish my digging. I'm going to dig until your building falls
3 in. And that's why we're here today. We're here asking the
4 jury under several legal theories that that's not just right.

5 The first legal theory that we're asking is called
6 nuisance. When you have property and you have a neighbor, you
7 can't do anything -- and the Judge will charge you the law --
8 you can't do anything to disturb the enjoyment of your
9 neighbor.

10 So if you dig a big excavation and it's going to cause
11 the neighbor's property to fall in, you can't do that. And
12 that's for you to decide. And that's what we're asking you to
13 do is say, no, Mr. Thomas, you cannot do that. That is wrong.

14 You're going to hear testimony from an expert witness
15 that this area right here, which is as close as he can get to
16 the property -- because the property line goes about up to
17 here, about 70 percent of this road is on Brent's property.
18 And then about 29 percent is on the property of Thomas.

19 And you're going to hear from an engineering expert that
20 it is unsafe in the condition it's in. It's going to fall.
21 And it's going to cut off all access that Brent and Shelly
22 have to their building. And they won't be able to get to
23 where they live, let alone do their business back there. And,
24 of course, now they've bought this building, so they're using
25 both buildings for their business. So you're going to hear

1 testimony about that.

2 So the first thing is nuisance. You just don't have a
3 right to do that when you're the neighbor. You just can't do
4 that.

5 The second theory is called negligence. And what
6 negligence -- you've probably heard that before. That's like
7 when you're driving and you are negligent when you're driving
8 across the double yellow line and you hit somebody, then
9 you're responsible for it. That's what negligence is.

10 Well, here we're saying that when they did the
11 excavation, they should have done it safely. They should have
12 built a retaining wall. They should have hired an engineer.
13 They should have hired some people who knew what they were
14 doing and not just literally cut it off so that your
15 building's going to fall in like Mr. Thomas was happy to tell
16 Brent. So that's the second theory of our case.

17 The third theory is -- it's called to quiet the title.
18 And the fact is you're going to hear testimony that this
19 building was put here in 1978. You're going to hear testimony
20 that the natural run of the land shows that this driveway and
21 turnaround belong to this building and not to this property.
22 And you're going to hear that in '78, '88, '98, 2008 and 2018,
23 almost 42 years everyone knew that the property was for
24 Brent's property and not for the Click [sic] property over
25 here until Mr. Thomas took over in May of '18 and the world

1 changed then.

2 So we are asking for -- there's something called
3 acquiescence. It's a fancy legal term. And what it basically
4 means is that everyone for a long period of time agrees that
5 the land is to be used by these folks over here and not over
6 here, that over time, it doesn't have to be five years, or 10
7 years, or 20 years, it's just a long time.

8 That's what the law says. And that's for you to decide.
9 That the owners here, which you'll hear the owners will be Mr.
10 Merck, then Mr. Porter and then Mr. Watkins. And the owners
11 here would be Ramey, Dobson, and then Mr. Mark Smith and
12 finally the Clicks. That everyone acquiesced in the use of
13 this driveway and turnaround. And that's for you to decide,
14 whether there's an acquiescence.

15 The final thing is called a prescriptive easement. And
16 what the law says is when we have a situation where if the
17 actual line is not the same, over time if it's used for 20
18 years, okay, and, remember, we go back to '78, so that's 42
19 years, but if for 20 years you find that it was used by the
20 Click property, it was openly used, it was notoriously used,
21 it was used against their rights because it only served this
22 building, then you could say, yes, there's a prescriptive
23 easement over the use, everyone used it for 20 years or more,
24 and you can decide whether a prescriptive easement is there.

25 So the final thing is we're going to ask you for damages.

1 The damages are what value has Brent and Shelly lost? Because
2 if they're going to lose, you know, this upper building, what
3 -- how does that damage them? And you're going to hear
4 testimony about that.

5 You're also going to hear damages about what would it
6 cost to make this safe? Because right now it's not safe.
7 It's literally falling down. What would a retaining wall
8 cost? You're going to hear from a site engineer whose job is
9 to put in retaining walls where it's needed to be safe. And
10 that's exactly what you're going to hear.

11 So we're going to ask you for a verdict. Once you hear
12 all the testimony, if you agree with us, that what we have
13 here is a situation where there needs to be a safety, where
14 they violated their right, they created this nuisance, they
15 negligently dug the excavation, and it's only fair that these
16 neighbors have this situation settled once and for all. And
17 that's why we're here.

18 We thank you very much for being here. I know it's going
19 to take a couple of days, but we appreciate you paying close
20 attention to it. Thank you very much.

21 **THE COURT:** Mr. Campbell.

22 **MR. CAMPBELL:** May it please the Court? My name is
23 George Campbell. Along with my colleagues, Beau Brogdon and
24 Jesse Glenn, we represent the Defendant, Jonathan Thomas of
25 All-Tech.

1 Now that'd be a pretty good story if it was all true, but
2 it ain't. And I'm going to remind you what the Judge just
3 told you a few minutes ago and what you'll hear again at the
4 end of this case, what the lawyers say is not evidence. We're
5 advocates. But unless you hear it come out of a witness'
6 mouth, or it's on a document that gets admitted into evidence
7 from this Court, you can't consider it. That's why the Rules
8 of Evidence are there to make sure that people play fair and
9 play by the rules.

10 Now these demonstratives that we have give you a pretty
11 good idea of what's -- that's the old one, and this one's more
12 recent. This is a case about a deal gone bad. When you think
13 you bought something or you order something, and then once you
14 get it it ain't exactly what you thought you ordered.

15 And it turns out that the deeds and the property line
16 reference a plat that was drawn from a survey. And they will
17 show that this property line runs straight up here, sort of
18 diagonal-ways, and actually right to the corner of that
19 building. That's the property line. It's always been that
20 way, since the 90s.

21 In fact, you'll hear evidence that there was another
22 lawsuit by the previous owner.

23 **MR. MARTIN:** Objection, Your Honor. May we approach the
24 bench?

25 **THE COURT:** Yes.

1 (Whereupon a bench conference was held off the record in
2 the presence of the jury, but out of their hearing)

3 (Whereupon the bench conference was ended)

4 **MR. CAMPBELL:** Anyway, as I was saying, you'll hear
5 evidence that Mr. Click could have looked all this up before
6 he got into a deal to purchase the property. Didn't do it.
7 Didn't check. Didn't ask where the property line was. Didn't
8 get a survey. Just bought it. And then we found out that the
9 property line does run right here and that he doesn't own this
10 gravel turnaround place.

11 He told Mr. Thomas, well, you know, I don't like people
12 coming through my driveway here anymore. I don't want you to
13 do that. Mr. Thomas said, well, you know, the whole deal that
14 we share and share alike as good neighbors, if I can't use
15 this to turn around because it's easier to get tow trucks in
16 the front, it's a lesser grade, then you can't use my property
17 in the back for the turnaround area to store your stuff.
18 That's the way we've always done it. Share and share alike,
19 the permissive use between neighbors so everybody can get
20 along. So now we're here today.

21 This excavation right here, you're going to hear
22 testimony it's not even anywhere close to his building. It's
23 not close enough to cause it to fall. It could fall in the
24 future just as your house could fall down, your yard could
25 erode away, but it's not falling now. In fact, Mr. Click uses

1 that driveway every day. He's still got stuff stored right
2 back here, heavy equipment even.

3 So the main thing you need to listen to -- you're the
4 judge of the facts. Your job is to evaluate the credibility
5 of the witnesses, the documents that are presented to you and
6 you get to decide what actually happened. Don't listen to
7 what I say. Don't listen to what Mr. Martin says. We're
8 advocates, but we're not witnesses.

9 At the end of this case the Judge is going to come back
10 and give you the law on the case, jury instructions. There's
11 an important distinction. This is not a criminal case where
12 proof beyond a reasonable doubt is required. Preponderance of
13 the evidence is required for some causes, but for other causes
14 of action it's clear and convincing evidence. And the Judge
15 will instruct you on those standards.

16 And then your job is to apply the facts to the law that
17 the Judge gives you and then render your verdict. And I'm
18 confident that when we get done with all this you will render
19 a verdict for the Defendant. Thank you.

20 **THE COURT:** All right. Mr. Martin, call your first
21 witness.

22 **MR. MARTIN:** I'd like to call Brent Click, please.

23 **THE COURT:** Mr. Click, if you'd come forward and be
24 sworn.

25 **MADAM CLERK:** Raise your right hand.

1 **Robert Brent Click**, being
2 duly sworn testified as follows;

3 **MADAM CLERK:** State your full name for the record.

4 **MR. CLICK:** I'm Robert Brent Click.

5 Direct Examination by Mr. Martin:

6 Q. Brent, do you mind if I call you Brent?

7 A. Yeah. No, not at all.

8 Q. Not at all. Please tell the jury who you are and where
9 you're from.

10 A. My name is Brent Click. I'm from Conway, South Carolina.
11 And I went to high school in Aynor, South Carolina. And I
12 moved here in 2008.

13 Q. Okay. Did you graduate from high school?

14 A. Yes.

15 Q. Okay. And what brought you to Greenville?

16 A. Greenville Tech and Clemson and just all the -- a lot
17 more engineering going on up here.

18 Q. Okay. And what did you enjoy doing with your hands?

19 A. Making things.

20 Q. Okay.

21 A. Since seventh grade I started collecting tools, and
22 machines and stuff to build things. And I worked in body
23 shops because a neighbor had told me when I was in middle
24 school, well, a body-man can repair anything. And that stuck
25 with me. And I was like, that's what I want to do.

1 Q. Okay. And did you actually get in the business of body
2 repair?

3 A. Yes, sir.

4 Q. Okay. When was that?

5 A. I started doing it around middle school working for
6 shops. And then 2013 we opened our own shop, was pushed by
7 some of the people I worked for who said, you know, you should
8 have your own place. You should have your own -- I'll really
9 miss you, but you should have your own place. You'll really
10 grow.

11 Q. Okay. And you said you opened your own shop. Was that
12 in January of 2013?

13 A. Yes, sir.

14 Q. Tell the jury how that came about and where it was.

15 A. It's the upper -- it's the rear building at the 3668
16 Calhoun Memorial Highway property. The building was owned by
17 Mark Smith, who I'd worked for previously, and I still did
18 work for nights, evenings or when he got behind on things.
19 And I helped fix problems with paint booths, and air flow and
20 other things around the shop that I was good for.

21 Q. What kind of business did Mark Smith have?

22 A. Mark Smith owned a body shop that he used to operate in
23 the same building years before.

24 Q. Okay. By body shop, what do you mean?

25 A. Bumper repair, collision repair, heavy frame repair.

1 Q. For cars and trucks?

2 A. Yes.

3 Q. That were in accidents?

4 A. Yes, sir.

5 Q. Okay. All right. So how did it come about in January of
6 2013 that you got over in this building?

7 A. I was being pushed by several people I worked for or had
8 worked for, including Mark Smith, to be -- you should have
9 your own shop. You'll have your own shop one day.

10 And Mark Smith told me, I have a building I'll rent you.
11 And we went over there, we looked at the building. And he
12 walked me around the property.

13 And there was a geographical terrain that kind of
14 outlined where he used to use the building and how he used the
15 area around cars and such. And the building had some -- boat
16 and some things in it. So we helped him empty it out. And we
17 started renting that building.

18 Q. Okay. Would you come down here and kind of show the jury
19 where you're talking about, what you decided to rent?

20 (Whereupon the witness left the witness stand)

21 A. We rented this upper area here and this building.

22 Q. Okay. And what was the access? How did you get there?

23 A. The access was this driveway, which as soon as I started
24 moving tools, and welders and things in, I started parking a
25 car sideways on the hill because the building's so isolated I

1 was afraid someone would be able to back a truck up there and
2 steal my life savings and tools.

3 Q. Okay. Now describe the driveway. What was it? Was it
4 asphalt? Was it gravel? What condition was it in?

5 A. It's gravel. It was in pretty good condition, but we did
6 end up putting more gravel on than we had through the years to
7 upkeep the gravel.

8 Q. And why did you ---

9 **THE COURT:** Make sure you speak up so the court reporter
10 can hear you.

11 A. Okay.

12 Q. Why did you have to put more gravel in?

13 A. Gravel sinks into the dirt as you drive on it because of
14 gravity.

15 Q. Okay. Now when you first saw this did it look naturally
16 like this driveway and turnaround belonged to this building?

17 A. Yes, sir.

18 Q. Tell us why.

19 A. It wasn't accessible for anything other than the
20 building. This area was a little more grown up, but it --
21 other than that looked exactly the same as this.

22 Q. Okay. So the only access was to this building?

23 A. (Affirmative nod).

24 Q. Did you ever have anyone over on this -- let's call this
25 the Thomas property. When you were there in 2013 what

1 business was located here next door?

2 A. Greg Grissenger. He owned -- it was just All-Tech -- it
3 was just All-Tech then was -- then as a Tire and Auto. And
4 ---

5 Q. What kind of business was it?

6 A. He repaired cars and general mechanics.

7 Q. Okay. Mechanical repair?

8 A. Yes, sir.

9 Q. Not body shop?

10 A. No, sir.

11 Q. Okay. And what was he like?

12 A. He and I got along great. We called him Uncle Greg. We
13 helped fix up him and his wife's car. And he helped me with a
14 lot of things on the building and just -- we were really good
15 neighbors and got along very well.

16 Q. Okay. Now when you ---

17 **MADAM COURT REPORTER:** Judge, can he retake the ---

18 **THE COURT:** You're going to have -- she's not going to be
19 able to hear him. He needs ---

20 **MR. MARTIN:** You can't hear him?

21 **MADAM COURT REPORTER:** Not good enough.

22 **THE COURT:** Yeah, you need to rearrange it somehow.

23 **MR. MARTIN:** I'm sorry.

24 (Whereupon the witness returned to the witness stand)

25 Q. Okay, Brent. So when you decided to rent the building

1 did you have pictures of the floor at the time that you rented
2 in 2013?

3 A. We didn't specifically take a picture of the floor, but
4 we took a picture of the inside of the building.

5 Q. Okay. I would like to show you what's been marked as
6 Plaintiff's 11 and ask you if you can identify that picture?
7 Plaintiffs' 11, number 105. Plaintiffs' 105.

8 A. 105 is a photo of the building.

9 **THE COURT:** Hold on. Before -- this, any objection?

10 **MR. BROGDON:** No objection.

11 **THE COURT:** Okay. That's in without objection.

12 (Whereupon Plaintiffs' exhibit 11 was admitted into
13 evidence)

14 **MR. MARTIN:** Okay. And actually, Your Honor, it's two --
15 two documents, I believe, exhibit 11.

16 **THE COURT:** All right.

17 Q. What's the second picture of?

18 A. The second photo is of the custom paint booth that we
19 ordered to specifically fit this building so we could have the
20 largest work area. And this photo was taken in roughly March
21 'cause we ordered that ---

22 Q. Okay.

23 **MR. MARTIN:** Can you turn the Elmo on? This is called an
24 Elmo. And you will all be able to see the document. Judge,
25 would you mind if I just handed it to the jury for them to

1 take a look?

2 **THE COURT:** Are you going to put it up there? Whatever

3 ...

4 (Pause)

5 Q. Now what is the second photo of, Brent?

6 A. It's a photo of the -- it's the -- it's the area further
7 back from the other photo. But this is the paint booth that
8 we had custom ordered to fit in the building so we could paint
9 vehicles and not get in trouble with the EPA and we could have
10 all the paint fumes contained and do it safely.

11 Q. Okay. Is that required for a paint booth?

12 A. Yes, sir.

13 Q. All right. Now can you describe the condition of the
14 floor and the building in 2013?

15 A. It had -- it had some cracks in the floor. It was an
16 older building. It had some sheetrock damage and repaired and
17 stuff. But they were pretty insignificant cracks. We could
18 still roll jacks over. We had the little go-jacks that we'd
19 spin cars around on so we could stick everything in at night.
20 We had machines that had wheels that we'd roll around. And
21 other than when we swept, we never really noticed the cracks.

22 Q. What were you told when that building was built? What
23 year? Do you remember?

24 A. I was -- I was told it was built around '81.

25 Q. '81?

1 A. Um-hum (affirmative).

2 Q. Okay. And this is 2013. So this is about 30 years
3 later?

4 A. Yes, sir.

5 Q. Was the floor -- describe the condition of the floor when
6 you moved in. Was it -- was it flat?

7 A. It was very flat. We ---

8 Q. Were there any cracks in it?

9 A. There were some cracks, but they weren't -- they weren't
10 steps or they weren't noticeable. There's the pressure washer
11 in the photo that we pressure washed the building out. We
12 knew we were going to replace the sheetrock anyway. So we
13 replaced the lights, pressure washed the inside. All the
14 water ran out the floor -- out the doors. It was -- it was
15 not a -- not an issue.

16 Q. Okay. And then you put -- you installed the paint booth,
17 is that right?

18 A. Yes.

19 Q. And did the paint booth need to be flat?

20 A. Yeah, the paint booth needed to be flat or else all the
21 joints wouldn't have matched.

22 Q. Okay. And did the joints match?

23 A. Yes, sir. It went together very smooth.

24 Q. And when did you install that paint booth?

25 A. March of 2013.

1 Q. Okay.

2 A. It took a few weeks to install.

3 Q. All right. Now -- and I want to call your attention to
4 later in the year, October of 2013, and ask you whether you
5 decided to add a carport to the front of the building?

6 A. Yes. Every body shop I ever worked in -- and a lot of --
7 even the body shops around us, they always have a work area in
8 front of the paint booth where like you prep the car and tape
9 the car, clean the car, final little work before you put it in
10 the paint booth. So you're not doing any cleaning work or
11 anything like that in your paint booth so you're keeping that
12 as a sterile environment.

13 I had planned from even renting to put a carport in front
14 of the paint booth. And I was going to put a nice concrete
15 pad down. And I was going to make it wide enough that I could
16 also have a two-post lift for cleaning underneath the vehicles
17 so I could get a cleaner paint job and just higher quality
18 work.

19 Q. A two-post lift, what is that?

20 A. It's a car lift.

21 Q. A car lift?

22 A. Mounts in two places and needs a good foundation to be
23 able to work ---

24 Q. Okay.

25 A. --- to be safe.

1 Q. So what did you do before you did this slab, this floor
2 you're talking about and the awning or the carport? What did
3 you do?

4 A. I talked to Mark Smith and I asked him permission. And
5 he ---

6 Q. Okay.

7 A. He told me to do -- he said, do a good job on the
8 concrete and take the tacky carport with you whenever you
9 move.

10 Q. Okay.

11 A. He hated carports.

12 Q. Now did you ever think that you had to ask All-Tech for
13 the right to pour that concrete and put that carport up?

14 A. No, because Mark Smith, whenever I went to go rent the
15 property, he said that's what I was renting up there, that
16 large turnaround area.

17 Q. So you were under the impression that the turnaround was
18 yours?

19 A. Yes, sir.

20 Q. And that's why you asked him because you were renting?

21 A. Yes, sir.

22 Q. Okay. Now did you actually build that carport in October
23 of 2014?

24 A. We poured the concrete on the 23rd. And we put our
25 ducks' footprints in it and we assembled the carport several

1 days later. And ---

2 Q. When you say your ducks' footprints, what are you talking
3 about?

4 A. We have pet ducks that are trained.

5 Q. Oh, okay. So ---

6 A. Had several sets.

7 Q. So did you actually put the date when you actually poured
8 it?

9 A. Yep. Yes, sir.

10 Q. Okay. Now did anyone help you or give you advice on how
11 to make that pour?

12 A. It was the longest -- largest concrete pour I'd ever
13 tried to do myself. And it was much thicker than any sidewalk
14 or anything I'd ever done for my dad growing up. So I was a
15 bit nervous about it. And also because a car lift was going
16 to be on it. And if a car lift isn't secure, it could topple
17 and kill someone. And so I was nervous about it and also I
18 wanted to do a really good job because I thought very highly
19 of Mark Smith, and this was Mark Smith's property. And so I
20 wanted to keep that good.

21 Q. Okay. And did you get any advice on how to do it?

22 A. Yes. Greg Grissenger knew a lot about concrete. He knew
23 a lot about car lifts. He told me what kind of rebar to use.
24 He explained, oh, get the -- get the -- if you're really
25 worried about this being the pull strength and stuff on your

1 bolts for your car lift, use the concrete with the fiber in
2 it. And we built a very over-built concrete pad for this.

3 Q. Okay. And how deep was it?

4 A. The whole pad was 10 inches deep. And then the area
5 under the carport was 14 inches deep. And it connected to --
6 it was butted up against the apron panel, but not connected
7 through or anything to the apron panel ---

8 Q. Just by way of comparison, how did that compare to the
9 floor inside your building?

10 A. The floor inside is like four to six inches thick. And
11 it's fine for bolting a paint booth to, but it's old concrete.
12 So we definitely wanted to put the lift outside where we had
13 more height where we would be able to wash it off and ---

14 Q. Inside is four to six inches?

15 A. Yes.

16 Q. And outside is 10 to 14 inches?

17 A. Yes, sir.

18 Q. Okay. And it has this rebar and special concrete?

19 A. Yes, sir.

20 Q. Okay. And was done in 2014?

21 A. Yes, sir. And wire mesh.

22 Q. And the floor was done, you say, in '81?

23 A. Or was '70 -- late '70s, early '80s when the building was
24 built.

25 Q. Okay. Now I want to show you this carport. I want to

1 show you a picture and ask if you can identify it. Actually,
2 several pictures.

3 **MR. MARTIN:** It's exhibit 13, Your Honor, Plaintiffs' 4,
4 110, 112 and 113.

5 **THE COURT:** All right. Have you seen these?

6 **MR. BROGDON:** Yes, Your Honor.

7 **THE COURT:** Any objection?

8 **MR. BROGDON:** No objection.

9 **THE COURT:** All right. In without objection.

10 (Whereupon Plaintiffs' exhibit 13 was admitted into
11 evidence)

12 A. This is the -- this is a car in the turnaround area. It
13 shows -- at one point I had put racks kind of around the
14 perimeter of the turnaround area. You can still see some cars
15 in various disassembled states. The car without any doors is
16 in line with the front of the paint booth. And this is the
17 turnaround area.

18 Q. Okay. And is it gravel?

19 A. Yes. Clean gravel, catches dust and keeps the inside of
20 the shop clean and you don't track dirt in 'cause it's just
21 clean gravel.

22 Q. And did you replenish this gravel over the years when you
23 rented?

24 A. Yes. We replenished it multiple times.

25 Q. Okay. Did All-Tech ever replenish it?

1 A. No.

2 Q. Did they ever use the turnaround?

3 A. No, sir.

4 Q. Okay. All right. The next picture is what?

5 A. PL10?

6 Q. Yes. PL110. What does that show?

7 A. This was -- we had a few rainy months and a lot of work
8 kind of backed up on me. And I took a photo and -- 'cause
9 there were so many cars. You see a lot of the classic BMWs
10 and stuff we work on. These cars are all in the turnaround.

11 I'm standing on the concrete pad underneath the carport.
12 At the bottom of the photo you see the end of the concrete
13 pad. You can see the clean gravel. You can see the
14 turnaround. And you can see the roof of the All-Tech building
15 down behind ---

16 Q. Is this the concrete pad right here?

17 A. Yes, sir.

18 Q. Okay.

19 A. Off behind the M3 you'll see the roof of All-Tech.

20 Q. Now I want to show you a third picture. What does that
21 show?

22 A. This shows the roof of the All-Tech building. This is
23 the top of the turnaround area, like on top of the hill.

24 These are more racks I brought in and I put around the
25 building for storing wheels, and tires and bumpers. And I

1 didn't have to worry about things disappearing really because
2 these were heavy things and you'd have a long walk down the
3 hill to try to carry it away because we blocked the hill. So
4 they were pretty secure.

5 Q. So that also shows how you used the turnaround?

6 A. Yes, sir. It also shows how I used the turnaround.

7 Q. Okay. And what's the final picture?

8 A. PL113 is an example of some of the more specialty repairs
9 we do. This was a Clemson row boat that had fallen off the
10 trailer and gotten badly damaged.

11 Q. Clemson row boat, what do you mean?

12 A. These are 60 foot long pieces of carbon fiber that they
13 get in and they row. It's a competitive ---

14 Q. For the Clemson rowing team?

15 A. Yes.

16 Q. The NCAA rowing team at ---

17 A. Yes, sir.

18 Q. --- Clemson? And it fell off a truck and they needed
19 someone to fix it?

20 A. Yes, sir.

21 Q. And you all fixed it?

22 A. And we did a lot of custom work on the trailers and did a
23 lot of work for the row team.

24 Q. Okay. And what's the -- what's underneath that row boat?
25 What do you see?

1 A. It's just sitting on a few stands because despite this
2 thing being 65 feet long, it can be carried by two people.

3 You see the two-post lift to the right, and you see ---

4 Q. The two-post lift?

5 A. The car lift.

6 Q. The car lift? Is that in blue?

7 A. Yes, sir.

8 Q. Okay. And what do you see below the car lift?

9 A. You see the concrete pad that we poured.

10 Q. Okay.

11 A. And you see the water running away because we poured this
12 at a three degree slope so when we washed cars and washed the
13 undersides of cars and stuff the water would run away and it
14 would be nice and good for cleaning things before we put them
15 in the paint booth.

16 Q. Okay.

17 A. And you see the inside of the paint booth with it all
18 furnished and lit up.

19 Q. I see.

20 A. And the doors open.

21 Q. Okay.

22 A. The paint booth -- the row boat sticks fully into the
23 paint booth.

24 Q. All right. You said that the All-Tech business was run
25 by -- was run by Greg Grissenger. Did you do anything to help

1 them out?

2 A. Yes.

3 Q. Tell the jury what your situation was with them and you
4 from 2013 until he left in 2014?

5 A. Greg Grissenger had the shop next door. I looked up to
6 him a lot. He really knew all his stuff. He -- like on
7 several occasions people tried to take wheels or tires from
8 behind the building down there, and ---

9 Q. They were gone?

10 A. Yes. I worked -- I worked til later like eight or 9:00
11 at night, just til dark, and then we'd go home. And whenever
12 I'd be working up the hill and you'd hear some clanging or
13 something, you look -- we walked down and looked past the
14 trees and there would be someone messing with a car or someone
15 picking up a car that kind of I knowed that they hadn't paid
16 for yet or something like that, and we'd go down and say, hey,
17 you can't take this.

18 And we stopped a break-in. And we stopped people from
19 dumping shingles in their dumpsters on the weekends because we
20 worked seven days and he only worked five. And one time ---

21 Q. What was his response every time you did something nice
22 ---

23 A. Oh, super appreciative. We called him Uncle Greg. We
24 fixed his wife's wheels on her car because she was always
25 bending them and scrubbing them up and stuff. And she had a

1 nice little Mercedes. And she really took a lot of pride in
2 it. So we kept that repaired for her.

3 Q. Was there a time that he had a car that caught on fire?

4 A. Yes. He had a customer car that had a fire under the
5 hood. It was an older Cadillac. It wasn't like a cart fire,
6 but it was something they were working on.

7 And he said, hey, can you fix this real quick? And I was
8 like, one, does the customer know? You know, let's -- you
9 know, he took a photo of it. And we made sure that they knew
10 that we weren't just trying to cover up something that had
11 happened. And the paint on the front of the car was kind of
12 bad. We repainted the hood and we buffed the fenders.

13 And we dropped everything we were doing that day and we
14 switched over to doing that, and we stayed up all night to get
15 it finished for him so he -- his customer could have their car
16 back as soon as possible. And we get it back to him, and I
17 think he brought us lunch or something also on top of that.
18 And ---

19 Q. Okay. Was he ---

20 A. --- his customer was happy.

21 Q. --- appreciative?

22 A. He was very appreciative.

23 Q. Okay. Tell us about when he came in the start of 2014
24 and what did he tell you?

25 A. He came up and he said ---

1 **MR. BROGDON:** Objection, Your Honor. Hearsay.

2 **THE COURT:** Response?

3 **MR. MARTIN:** This is just to -- it's hearsay technically,
4 yes, but it's only not to prove -- proof for matter asserted,
5 it's simply to show that he decided that he was retiring and
6 going to ---

7 **THE COURT:** Well, I mean, you don't need to testify to
8 what -- his objection is for him to testify. I'm going to
9 sustain the objection unless you can lay a better foundation.

10 **MR. MARTIN:** Okay.

11 Q. Did Greg Grissenger come and visit you in the beginning
12 of 2014?

13 A. Yes. He was retiring. He was selling his business to
14 his son-in-law. And he told me, hey, you know, be nice to
15 him. Y'all will get along great. And, you know, just keep
16 being a good neighbor.

17 Q. Okay. And did you attempt to do that?

18 A. Yes. I brought him doughnuts and ---

19 Q. And what was -- was that Mr. Thomas here?

20 A. Yes.

21 Q. And what was his reaction?

22 A. Disturbingly negative.

23 Q. Okay. All right. After you poured these concrete slabs
24 in January of -- oh, by the way, who said that they owned the
25 All-Tech property? Who did you think owned the All-Tech

1 property?

2 A. Greg Grissenger because he said he did. And I thought
3 highly enough of him that I didn't doubt him.

4 Q. Okay. Well, tell us what happened in January of 2015.

5 A. In January of 2015 two men walked up our hill. I was in
6 the paint booth. My wife was standing and working on stuff.
7 She works every bit as I do. It's full 50/50 split of tasks.
8 And sometimes she does more.

9 So she knocked on the paint booth door and was like, hey,
10 come out here for a minute. And these two guys were walking
11 around our shop and walking inside looking at different
12 things. And I had just gotten a few new machines.

13 And I was like -- these were older guys. They kind of
14 looked like the age and type of guys that have hot-rods. And
15 that was true. But they didn't talk to me. They just walked
16 around and looked at things.

17 And I was like, hi. This is who I am. This is what I
18 do. This is some of my sheet metal shaping equipment. This
19 is some of my, you know, hammering equipment. This is -- oh,
20 this is some of my vintage machine equipment. And kind of
21 gave them a shop tour, like maybe these guys will start
22 talking. And they never did. And then I walked them down the
23 hill and didn't know who they were and was a little creeped
24 out.

25 Q. Did you ask them who they were?

1 A. Many times.

2 Q. And would they -- what did they say?

3 A. They just ignored me.

4 Q. Ignored you? Okay. Did you later find out who they
5 were?

6 A. Yes, I did.

7 Q. And how did they -- how did you find out?

8 A. I found out one person was Greg Porter, who was my
9 neighbor through the trees. And he owned a hot-rod shop. And
10 the other person was Jimmy Watkins, who I later found out was
11 the actual owner of the Thomas property.

12 Q. Okay. And when they -- when the two of them came had you
13 already poured the concrete and put up your ---

14 A. Yes.

15 Q. --- carport?

16 A. The carport -- the concrete was poured. The carport was
17 up. The carport was wired for lights. The paint -- the lift
18 was in. And we had added another third carport behind it.

19 Q. Okay. So there were three carports?

20 A. Well, we call it a third, but it was really a second one
21 put up. I hadn't put up the one -- the first one, the large
22 one yet.

23 Q. And did any of these gentlemen ever say that you didn't
24 have the right to do that or that it was their property and
25 you were encroaching on their property?

1 **MR. BROGDON:** Objection, Your Honor. The same, hearsay.

2 **THE COURT:** Sustained.

3 **MR. MARTIN:** All right.

4 Q. What did these gentlemen say? Did they do anything in
5 any way to exercise their right over the property?

6 **MR. BROGDON:** Same objection, Your Honor.

7 **THE COURT:** All right. I'm going to -- I'll overrule on
8 that. I mean, because he asked what they did. So, I mean,
9 but also it's limited. He can't testify to anything he said.

10 **MR. MARTIN:** Right.

11 Q. Not interested in what they said, but what did they do?

12 A. They said nothing. They walked around. They were very
13 interested in several pre-war vehicles I was working on. And
14 they just -- they walked everywhere.

15 Q. Okay. Did they notice the carports?

16 A. Yes, they clearly did. They opened drawers and cabinets.
17 They were just -- at one point I thought maybe they're with
18 the County. I don't know. Maybe -- I didn't know.

19 Q. Okay.

20 A. I felt like I was being cased.

21 Q. All right. Now tell us about how it came about that you
22 decided to be the purchaser of the property? How did that
23 happen?

24 A. The building was for sale the entire time I rented. So I
25 was renting month to month. And I was moving more equipment

1 into the building. And they weren't as large of machines as
2 like we have in the lower building now, but they were 2000,
3 3000 pound machines that were not easy to move. And you had
4 to wire them up. And they were just, you know, old vintage
5 mills and lathes and things that we used.

6 And I wanted more floor space because it was getting --
7 it was -- the building's like 2000 square feet and half of
8 it's a paint booth. So I always wanted more square footage.
9 And I was looking at purchasing a building. And I was worried
10 about the moving costs and the down time from working.

11 And I talked to Mark Smith about leasing the lower
12 building. And he gave me a rough price. And I made the
13 comment, well, I can get a mortgage for that. And he goes,
14 well, if you want to do that, I'll owner finance it to you.
15 So that started the ball rolling on us purchasing it.

16 Q. So in February of 2017 did you actually purchase the
17 property?

18 A. Yes. I saved up a down-payment for him and we purchased
19 the building.

20 Q. Okay. Did you have a lawyer?

21 A. Yes. We used someone Mark Smith knew and recommended.
22 And we went and used him.

23 Q. And did that lawyer have a property check done?

24 A. Yes. We paid for it.

25 Q. And at the closing were you given a copy of what we call

1 the Ramey Plat?

2 A. Yes. I had not seen any sort of property line thing
3 since, you know, -- I rented the building and I felt like I
4 knew where the property lines were because I'd been there for
5 several years. And Greg Grissenger kind of like indicated
6 where with trees that he had taken down behind his shop that
7 he was worried about falling on. And it was -- he was very
8 clear like, oh, this tree's mine ---

9 **THE COURT:** Is there any objection before we put this up?
10 I mean, this is not into evidence.

11 **MR. MARTIN:** Any objection?

12 **MR. BROGDON:** No, Your Honor.

13 **THE COURT:** All right.

14 **MR. MARTIN:** I'll only put -- I'm sorry, I should have
15 done that ---

16 **THE COURT:** Yeah.

17 Q. All right. I want to show you what is exhibit 8. Can
18 you identify that, please?

19 A. This is the 1996, August 28 plat.

20 **THE COURT:** And it's what exhibit number?

21 A. 8.

22 **MR. MARTIN:** Exhibit 8.

23 **THE COURT:** All right. That's in without objection,
24 correct?

25 **MR. MARTIN:** Yes.

1 **THE COURT:** I'm not asking you, I'm asking them.

2 **MR. MARTIN:** Oh.

3 **MR. BROGDON:** Yes, sir.

4 **THE COURT:** Okay.

5 **MR. MARTIN:** Oh, I thought you were asking me. I didn't
6 see them way over there. Sorry, Your Honor.

7 (Whereupon Plaintiffs' exhibit 8 was admitted into
8 evidence)

9 Q. Okay. So at the closing you were handed this plat. And
10 what did you do?

11 A. I -- wait, is this correct? Because this would -- this
12 shows the entrance-way, the only entrance-way into the lower
13 building being cut off in half, the little concrete -- you see
14 at the bottom right. And it showed that I didn't own the
15 turnaround. And it showed the property going way back on Mr.
16 Porter's property including part of his turnaround where he
17 had things parked and where ---

18 Q. Whose property?

19 A. Greg Porter's.

20 Q. Okay.

21 A. And he had shipping containers and stuff back there.
22 Like looking at the properties, especially then, the geography
23 looked very squared off. It looked like your typical
24 neighborhood kind of building, building, building. But all
25 the property lines are slanted across one another.

1 Q. Okay.

2 A. And this was the first time I'd seen this. And I was
3 very concerned about it. I asked Mark Smith, hold up, what's
4 -- do I not -- what's with the turnaround? How do I -- how am
5 I going to get vehicles into my building? And he goes, well,
6 you have a right to that. Don't worry about it. And the
7 closing attorney nodded vehemently along with him.

8 Q. Okay.

9 A. And I asked -- I asked about several things on --
10 relating to that corner. And they were all, yeah, you're
11 fine.

12 Q. Okay. And is this the same property and turnaround that
13 existed back since the building was originally structured?

14 A. Yes, sir. The gravel was a little wider around. And
15 this is -- this is an odd angle. So you see underneath the
16 trees, but, yes.

17 Q. Okay. So for -- when you rented you thought it was
18 yours, ---

19 A. Um-hum (affirmative).

20 Q. --- but when you bought it in 2017, four and a half years
21 later, you saw this plat, that you -- what were you told?

22 A. I was told I had a right to use it.

23 Q. Okay. Now are you asking this jury to give you the
24 right?

25 A. Yes.

1 Q. And what is your understanding of how it had been used --
2 who used it and how it had been used for almost 40 years?

3 A. Well, Mark Smith did a lot of mobile -- mobile repairs.
4 He painted cars and car lots, and I did that with him some,
5 and right before he really grew his shop or he needed me there
6 full-time. And so he had a lot of vans and trailers for
7 painting vehicles and lots of tools and stuff for doing bumper
8 repairs on the nicer car lots around town.

9 So he kept all of his vans, and trailers up there around
10 the upper building. He added extra car spots. He did a
11 retaining -- he added the retaining wall there so he could
12 even have more parking for customer cars along the side of the
13 building. He had a lot of vehicles around the place.

14 Q. Okay.

15 MR. MARTIN: Your Honor, I would like to introduce this
16 as number 2, exhibit 2.

17 THE COURT: Any objection?

18 MR. MARTIN: 2005 photo.

19 MR. BROGDON: What's the dates on that?

20 MR. MARTIN: 2005. This photo. Plaintiffs' 2.

21 MR. BROGDON: Plaintiffs' 260?

22 MR. MARTIN: No, Plaintiffs' 2 -- exhibit 2, Plaintiffs'
23 exhibit 2, Thomas 20.

24 MR. BROGDON: Thomas 20?

25 MR. MARTIN: It's actually your exhibit.

1 **MR. BROGDON:** No objection, Your Honor.

2 **THE COURT:** All right. In without objection.

3 (Whereupon Plaintiffs' exhibit 2 was admitted into
4 evidence)

5 Q. So were you aware who was the property owner back in the
6 70s?

7 A. Yes, because a lot of the people -- I knew his name
8 because a lot of the people still referred to the building
9 that I currently own as Ramey's old shop.

10 Q. Ramey what?

11 A. Ramey Cabinet Shop, Ramey's old shop. Anytime -- most of
12 the time, if I'm in Pickens and I'm giving people directions,
13 I say the old cabinet shop on 123 and everyone knows what it
14 is.

15 Q. Okay. And do you know who the Rameys sold it to?

16 A. They -- I didn't meet him at the time, but it was Dobson.

17 Q. Okay. Bradley Dobson?

18 A. Yes, sir.

19 Q. '96? 1996?

20 A. Yes, sir.

21 Q. And was -- are you aware that Bradley Dobson sold it to
22 Mark Smith in 2005?

23 A. Yes, sir.

24 Q. And then Mark Smith sold it to you in 2017?

25 A. Yes, sir.

1 Q. Okay. Are you aware at any of that time -- during all
2 that time did anyone else use that driveway and turnaround
3 other than for the business that was at the back building?

4 MR. BROGDON: Objection, Your Honor. Personal knowledge.

5 THE COURT: If he has personal knowledge. I mean, if he
6 has personal knowledge he can answer that.

7 MR. MARTIN: Yes.

8 A. Around the outside of the turnaround there were like some
9 old cabinet doors. Like there were half buried things around
10 the outside of the -- where things had been, I guess, trash
11 piles had been made, clean-up had been done.

12 Q. Okay.

13 A. It seemed like it.

14 Q. So when you purchased the property in February of 2017
15 who was your neighbor on the west side?

16 A. Watkins owned the property. And ---

17 Q. Not the -- I'm sorry. The east side?

18 A. The east side? Greg Porter.

19 Q. Okay. And did anything happen in February 2017 after you
20 bought it on the east side of the property?

21 A. He put up a fence blocking me from the access to the
22 building. And I had some customer cars inside. And I had
23 gotten there early that morning to meet a customer so he could
24 pick up his little blue BMW. And he had turned the rental in
25 the night before. And we pull up, and there's a fence being

1 built, and we can't get the car out.

2 Q. So I'm talking about the west side of the property right
3 here. Is this where the fence showed up over night?

4 A. Yes. On the -- as like the lot kind of shows, across the
5 concrete, hill, drive that you saw on some of the other
6 photos.

7 Q. Okay. So this says it was Holcraft, Inc. at one time,
8 but then it's -- apparently Porter bought it?

9 A. Yes.

10 Q. Okay.

11 A. In the 2005 photo you see the concrete that they built
12 the fence across, that was the access into the building.

13 **MR. MARTIN:** Your Honor, I would like to introduce as
14 exhibit 1, which is this blown-up picture of the overhead of
15 the property.

16 **THE COURT:** Any objection?

17 **MR. BROGDON:** None, Your Honor.

18 **THE COURT:** All right. In without objection.

19 (Whereupon Plaintiffs' exhibit 1 was admitted into
20 evidence)

21 Q. Okay. How did you get cars in this lower building before
22 the fence was built by Porter?

23 A. Up the little concrete ramp to the right of the red
24 pickup truck in the photo.

25 Q. Okay. Let me see if I can make this a little bigger.

1 You see the red pickup truck in the photo. And you're saying
2 to the right is how you got up -- cars into the ---

3 A. Yes.

4 Q. --- building?

5 A. There's a big sliding door. It was long enough that you
6 could just drive a car in at an angle.

7 Q. Okay. And when you bought it in February of 2017 and
8 when you -- that's the first time you used the lower building,
9 is that right?

10 A. Yes.

11 Q. Did you actually put cars in there?

12 A. Oh, yeah. We moved our -- we moved machines in. We
13 bought new machines that we had pre-purchased before getting
14 the building that we moved in once we had the building. We
15 brought customer cars in and started working in immediately
16 and, you know, cleaning the building up, making it nice.

17 Q. Was there any warning? Did Porter tell you he was going
18 to do this?

19 A. No, there was ---

20 **MR. BROGDON:** Objection, Your Honor.

21 A. --- no warning.

22 **MR. BROGDON:** Hearsay.

23 **THE COURT:** All right. I'm going to overrule it. I
24 think it's appropriate.

25 **MR. MARTIN:** Okay.

1 Q. So you just literally -- you had cars in there, you're
2 working on them, you wake up one morning and you find out
3 what?

4 A. I had a fence.

5 Q. Okay. So what did you do?

6 A. I wasn't too surprised because I already know that Porter
7 didn't like me because of a carport. And so I did what I did
8 best. We asked questions. And we bought a giant metal I-
9 beam. We cut the concrete blocks. I think I gave -- I think
10 my customer gave me one extra day to get his car out. So we
11 put a metal I-beam, and I saw, cut through the wall. And ---

12 Q. What wall?

13 A. The left side wall kind of right at the -- in front of
14 where the 3 is.

15 Q. The west wall?

16 A. West wall, yes, sir.

17 Q. Okay. Right here. Okay. And were you able to get the
18 car out?

19 A. We cut the wall. We backed the forklift into the wall,
20 laid the wall down, put some boards over and drove his lowered
21 BMW out over boards.

22 Q. Okay.

23 A. And we put up a garage door that night.

24 Q. Okay. Was there a time that you decided to have a cook-
25 out in the summer of 2017? If so, tell the jury about that.

1 A. After I bought the building, got a lot of my machines
2 moved in, it looked really good in there, a lot of stuff that
3 was more crowded than when they was in the upper building, got
4 spread out in the lower building, it looked -- nice little
5 work areas. I had the upper building all clean and more
6 specifically focused for paint and body.

7 And I was like, JT didn't like me, Porter had issues with
8 me. And I was like, well, I want to -- I want to get along
9 better with people around here. So I invited all the around
10 shops and all their employees for a cook-out for lunch on a
11 slow day before -- yeah, middle of the week, I think it was.
12 Yeah.

13 Q. Okay. And did Thomas come to that luncheon?

14 A. Yes, he did.

15 Q. And did he eat the food and drink the drink?

16 A. Yes. I didn't really want to invite Thomas because of
17 how he had been toward me, but I thought that leaving him out
18 would make things a lot worse, and I had a good potential of
19 just maybe winning him over finally.

20 Q. Okay. And what was his reaction?

21 A. Disturbingly aggressive.

22 **MR. BROGDON:** Objection, Your Honor.

23 **MR. MARTIN:** Okay.

24 **MR. BROGDON:** Based on previous rulings ---

25 **MADAM COURT REPORTER:** I can't hear you. Can you speak

1 up?

2 **MR. BROGDON:** By previous rulings by the Court regarding
3 our motion in limine. We're getting into that territory, I
4 think.

5 **THE COURT:** That's the limit of what you're going to be
6 ...

7 **MR. MARTIN:** Yes.

8 **THE COURT:** Okay. I'll allow that as long as he doesn't
9 go any further.

10 **MR. BROGDON:** Thank you, Your Honor.

11 Q. So as a result of that disturbing experience with Mr.
12 Thomas, what did you decide to do?

13 A. I decided something needed to be done to improve the
14 situation between Thomas and I.

15 Q. Okay. And what was that?

16 A. One thing was is I found out who actually owned the All-
17 Tech building.

18 Q. And who was that?

19 A. Jimmy Watkins.

20 Q. Okay.

21 A. And I found out his shop was down the street. He had a
22 little hot-rod shop across from his transmission shop. And
23 that explained why he was so interested in all my cars, I
24 guess. And so I got doughnuts and I went down and introduced
25 myself. And the second we walked in the door, my wife and I

1 recognized him as the person that had walked around our shop
2 in 2015.

3 Q. Okay. And did you start negotiating with him for
4 something?

5 A. Initially I was saying I'm having a problem with your
6 tenant, and I want to get along with people here. I own this
7 building here. I'm going to be here for a number of years. I
8 really asked him for advice on getting along with his tenant
9 or asking how he could help me. And he ---

10 Q. And did that improve the relationship between you and
11 Thomas?

12 A. No. It extremely backfired because one of the things
13 Watkins and I thought up was I would purchase the building.
14 And Watkins gave me a price on the building ---

15 Q. And what was that price?

16 A. Two hundred and ten thousand dollars (\$210,000.00).

17 Q. Okay. And what did you do as a result of that?

18 A. I talked to the bank. And they said, well, you've just
19 bought a building and it's owner finance, but you just bought
20 a building. And our house was majorally [sic] paid off and we
21 were really equity positive with it with -- we had been there
22 eight years.

23 And so I said, well, we don't -- we're at the shop seven
24 days a week. We barely have time to go home to sleep. And we
25 slept on the floor of the shop quite a lot. So we said, look,

1 we'll sell the house and then we'll be able to afford and get
2 the loan to really improve -- improve our building and we were
3 going to purchase the Thomas building.

4 And my dad was taking a building down in Myrtle Beach.
5 At the time a business he had sold, they were remodeling it.
6 And there were a lot of glass panels, like floor to ceiling
7 glass panels. And I measured the All-Tech building. And I
8 drew up how I could put a glass front where the office was and
9 really make it look like one of those modern discount tires.
10 And I said, man, if I buy this and do this and it looks great,
11 Thomas will -- he'll have to like me.

12 Q. Okay. So what happened? Did you sell your house?

13 A. Yes.

14 Q. Did you build an apartment at the back building?

15 A. Yes. I put air conditioning in the building and improved
16 our building to make it safe and healthy enough to live in the
17 same shop that we painted in.

18 Q. Okay. When did you move in?

19 A. April 2017.

20 Q. Okay. And did the bank know all about this?

21 A. Yes.

22 Q. And did they approve your loan if you were going to buy
23 the All-Tech building?

24 A. If we got our sales contract signed. And so I had ten
25 thousand dollars (\$10,000.00) in earnest money in a ziploc

1 bag. And I kept going over to Watkins.

2 And he'd tell me stories about how when he bought that
3 property it was on a corn sack and he didn't need a contract
4 and all this kind of stuff. And I was like, well, if you want
5 the money, you've got to sign a contract. So -- and he said
6 he would like to give -- he said I need to give Grissenger the
7 ability to -- the first right of refusal. And I said, well,
8 ---

9 Q. Grissenger?

10 A. He said Grissenger.

11 Q. Okay.

12 A. And I said, well, Grissenger's not even over there
13 anymore. He hasn't been over there in like a year. So
14 Grissenger was, you know, retired. And so I said, okay, you
15 know, give me a date. Give me something to work toward.

16 And that was -- the date that he gave me to work toward
17 is the date we worked around fixing and selling our house and
18 all that that entails. So we worked super hard that summer
19 and that spring and we got that done.

20 And Watkins goes over to ---

21 Q. Spring of 2018?

22 A. Spring of 2018, yes. Yes.

23 Q. Okay.

24 A. And so Watkins goes over to All-Tech. I saw him down
25 there. And I said, oh, this was -- we're coming up close on

1 the date, maybe, you know, this is good. Okay. This is going
2 to be great.

3 So next thing I know, Thomas is storming up the hill,
4 very angry. Watkins had spun it like I was trying to purchase
5 it to get rid of him. And he was -- he was very aggressive.

6 Q. Okay. And what happened in May of 2018?

7 A. May of 2018 Watkins sold Thomas the All-Tech property for
8 seventy thousand dollars (\$70,000.00) less than what I was
9 going to pay for it. We had come up with a value of -- there
10 was two property plats for the Thomas property. And he had
11 given a value for both. And he sold both plats for the price
12 of what the front plat was going to be.

13 Q. So he sold it for a hundred and forty thousand (140,000)?

14 A. Yes, sir.

15 Q. And in May of 2018 you found that out?

16 A. Yes, sir.

17 Q. I want to show you what's been marked as Plaintiffs'
18 exhibit 43, if you can identify that.

19 **MR. MARTIN:** Any objection?

20 A. Yes. This is a ---

21 **MR. BROGDON:** No, Your Honor.

22 **THE COURT:** In without objection.

23 (Whereupon Plaintiffs' exhibit 43 was admitted into
24 evidence)

25 A. Yes. This is from Jimmy Watkins to Thomas Properties.

1 Q. Okay. And how much is it for?

2 A. A hundred and forty thousand dollars (\$140,000.00).

3 Q. Okay. And what's the date of it?

4 A. It was the 23rd of May, 2018.

5 Q. Okay. So what happened next?

6 A. I found out he even owner financed it to Thomas, which is
7 something he said he specifically did not want to do because
8 of his age and I'm not going to be around by the time you pay
9 off a eight to 10 year loan on -- okay, it makes sense, you
10 know. He's telling me he wanted the money.

11 Q. So now that Thomas owned the property, what happened
12 next?

13 A. They -- they started digging.

14 Q. Okay. Was it -- when was this?

15 A. This was in August. So this was a few months later. We
16 take one day off a year for my wife's birthday. And sometimes
17 it's delayed, depending on what we're working on. And that
18 year it was delayed til the end of August. And so we took our
19 little boat out, we go out once a year. And when I was
20 pulling back in I noticed our gate had been cut off its
21 hinges.

22 Q. What gate are you talking about?

23 A. We had put up a gate years before. We were working on
24 nicer and nicer cars where I no longer had like a junky Honda
25 or something to park down the hill to block. And I didn't

1 want to leave a car that far away from the cameras. So we had
2 put up a gate before we purchased the building. And then we
3 improved that gate when we purchased the building.

4 And so we had a gate at the bottom of the hill because
5 originally it was further up the hill. And we had problems
6 with Thomas' employees and -- parking cars midway up the hill
7 and leaving them there so we couldn't access the top building.

8 Q. Can you see the gate on that photograph?

9 A. Yes. It is -- if you -- there's some water on the
10 pavement where I guess we had washed a car. Right above it
11 you see a little grid looking area at the bottom of the
12 driveway. If the red car on the Thomas property is like the
13 back of it -- it's at the bottom of the driveway, the gravel
14 drive.

15 Q. Okay. And where was that gate when you came back from
16 the lake?

17 A. It had been cut on this end. And since the lock was
18 still on the other end, it had been swung around and laid in
19 the grass.

20 Q. Okay. And what did you find up on the hill?

21 A. There was a giant excavator up there, had driven up and
22 driven around our cars. Thankfully we didn't have a lot of
23 cars because we had gotten a lot done so we could have our day
24 off. And they were taking down trees.

25 Q. Okay. And what did you do?

1 A. Well, I was worried about all my gravel in the turnaround
2 because if you have a, you know, 21 metric ton -- it was a
3 210, I think, so, yeah, if you had a -- if you had a large
4 excavator driving around on gravel, you're going to push all
5 that gravel in the dirt and you're going to ruin all the nice
6 clean gravel.

7 So I took my bobcat and I pushed all my gravel up in a,
8 you know, against -- kind of like -- not quite to what is left
9 now, but it was -- it was almost to there. I pushed the
10 majority of it from the turnaround area, I pushed over some
11 bushes and stuff so they'd have a spot to work because when we
12 first walked up there, they had all their tools, and coolers
13 and people were all under our carports and sitting and leaning
14 on our customer cars. And I was like, I'll make you a little
15 spot where you can be over there. I figured he was cleaning
16 past the turnaround area on his property.

17 Q. Did you have any interaction with Thomas?

18 A. Yes.

19 Q. What did he say?

20 **MR. BROGDON:** Objection, Your Honor. May I approach?

21 **THE COURT:** Yes. Come around here.

22 (Whereupon a bench conference was held off the record in
23 the presence of the jury, but out of their hearing)

24 (Whereupon the bench conference was ended)

25 Q. Okay. I asked you, Brent, what did -- what was your

1 interaction with Thomas? What did he say to you and what did
2 he do?

3 A. I came up to him and I asked what -- I was very careful
4 around him by this point from some of our previous
5 interactions. So -- and he told me -- can I say the whole
6 thing?

7 Q. Yeah.

8 A. Okay. He had told me he slept great ---

9 Q. No. Don't tell us ---

10 A. Okay.

11 Q. --- about the dream. Just tell us about what he said
12 about the building. What the plan was.

13 A. He said he was going to dig and make himself a parking
14 lot. And so they're taking down trees and stuff. And they
15 built up a bonfire. And he said he was going to dig until my
16 building fell. And he said he was going to run me out of
17 there.

18 Q. Okay.

19 A. And ...

20 Q. And did he start a fire?

21 A. Yes. He piled up all of the trees he cut down in front
22 of the white carport. And we lived in that upper building,
23 still do. It was level with the front of that trailer almost.
24 He piled up a pile of brush taller than my building, doused it
25 with gasoline, sat around with his friends and got drunk. And

1 then when the fire was fully enveloped, they left.

2 Q. And what happened? What happened with that fire?

3 A. I called the fire department. It was -- I was moving
4 cars that I had put under the carport to be safe from their
5 trees and stuff. I was trying to move those cars to the lower
6 parking lot, but I didn't have a lot of room. I was afraid
7 ---

8 Q. Was there any smoke?

9 A. Oh, yes. Lots of ---

10 Q. Was there any soot?

11 A. --- smoke, lots of -- I had -- I had just -- we had just
12 come back from the lake and we hadn't put our boat back in
13 storage yet. And so I had flaming embers falling in my boat.

14 I was more worried about my customer cars and trying to
15 fit them all in the lower building and move machines to make
16 room. And then by the time we got all that done and we were
17 very tired, we go in the top shop and the kind of two am fog
18 rolls in. And it smushes all the smoke down and it completely
19 smoked us out of our shop.

20 And so I worked on trying to control the fire. And I
21 cranked up my truck, and my wife slept on the front seat of my
22 truck in the lower parking lot.

23 Q. Okay. And did you call the fire department?

24 A. Yes. I called the fire department as soon as they left
25 and I realized they had left the fire unattended. And there

1 was -- the fire pile wasn't really a pile. It was just a pile
2 with everything else they had cut around still around it.
3 There was nothing separating it from the rest of the woods.
4 There was no fire break area. I was a boy scout. You don't
5 light a fire like that.

6 I called the fire department because it was such a large
7 -- they sent a truck out. We cut up limbs around, dragged
8 them away from the fire, decreased the size of the pile. We
9 worked with them for a couple of hours. And then they took
10 their fire hose and sprayed the ground around it because there
11 was no way they could put it out without calling multiple pump
12 trucks.

13 And they said, you know, you live here, right? It's
14 like, yeah. Well, be a good neighbor and keep an eye on this
15 fire for him. Okay.

16 Q. So the next day did you go down and have a conversation
17 with Thomas?

18 A. Yes.

19 Q. Tell us about that.

20 A. I wanted to know, okay, what's your plan? Who's your
21 engineer? What are you planning? Like, are -- it made most
22 sense that they would put a parallel driveway to ours and just
23 flatten some of the -- there was a hill in front of the
24 carports. When looking out -- especially looking at some of
25 the excavation photos, you see that where they took the trees

1 down, the ground was actually higher to the west of us.

2 So I was thinking, oh, you can take some of that dirt and
3 build yourself a ramp, driveway, and you could put your own
4 gate on it, a good fence or whatever, and it'll be fine.
5 Also, my whole turnaround area, you can use that area that was
6 the woods. This will be -- this'll be fine.

7 And because of his aggressiveness, I made a lot of
8 excuses for him. I went down to talk to him about what his
9 plan was. And he drew a picture that we have a later picture
10 of of his building and where he was going to do a parking lot.
11 And he drew my building. Then he erased my building. And he
12 drew another building facing the other direction and said,
13 this is where I'm going to park my boats, and four wheelers,
14 and I'm going to dig til your building falls down and you're
15 homeless.

16 Q. Okay. And as a result of that did you do anything to try
17 to prevent him from doing what he promised to do?

18 A. Yes. I had -- when we sold our house and we didn't get
19 the shop next door, I bought a cheap RV figuring my wife
20 needed a break from this place every once in a while now with
21 -- since things have not been panning out the way we wanted it
22 to. So I parked the RV up the hill on what was left of the
23 turnaround area. I left it with plenty ...

24 **THE COURT:** Is this a good stopping place?

25 **MR. MARTIN:** Yes.

1 **THE COURT:** All right. We've been going for about an
2 hour and a half. I'm going to -- and I feel like that may be
3 -- so you stay right there. Ladies and gentlemen, we're going
4 to take a break, just a ten minute break. So go back to your
5 jury room. Do not discuss the case.

6 But also go ahead and select your foreperson. And if you
7 -- when that's been selected, just write on a piece of paper
8 and give it to the bailiff. All right. And don't discuss the
9 case. We'll bring you back out in just a few minutes.

10 (Whereupon the jury exited the courtroom at 3:20 pm)

11 **THE COURT:** All right. Sorry, I just felt like -- I felt
12 like you were at a good break ---

13 **MR. MARTIN:** That's good. Thank you.

14 **THE COURT:** --- and we'd been going for a while. I know
15 you're getting ---

16 **MR. MARTIN:** Thank you, Judge.

17 **THE COURT:** All right. Mr. Cinch -- Clinch ---

18 A. Click.

19 **THE COURT:** Click, okay. You're in what I call my
20 witness bubble. That means once you've started testifying you
21 can't discuss your testimony with your attorney or with
22 anybody.

23 A. Um-hum (affirmative).

24 **THE COURT:** You can discuss the weather or anything like
25 that, but you can't discuss your testimony. And you can step

1 down. We'll bring you back up.

2 **MR. MARTIN:** Thank you, Your Honor. How much time do you
3 want to give ---

4 **THE COURT:** Just 10 minutes.

5 **MR. MARTIN:** Ten minutes? Okay.

6 (Whereupon court was in recess at 3:21 pm)

7 (Whereupon court reconvened at 3:31 pm)

8 **THE COURT:** All right. Is the Plaintiff ready?

9 **MR. MARTIN:** Yes, Your Honor.

10 **THE COURT:** Defendants ready?

11 **MR. BROGDON:** Yes, Your Honor.

12 **THE COURT:** Brad Hobbs, number 60, is the Foreman. There
13 you go.

14 (Whereupon Court's exhibit 1 was marked)

15 **THE COURT:** All right. Okay. If the jury's ready, bring
16 them in.

17 (Whereupon the jury entered the courtroom at 3:33 pm)

18 **THE COURT:** All right, Mr. Hobbs, I understand you have
19 been duly elected as the Foreperson. So thank you for serving
20 in that role.

21 Mr. Martin, you may proceed.

22 **MR. MARTIN:** All right.

23 **Direct Examination by Mr. Martin Continued:**

24 Q. Just by way of clean-up, I want to show you what's been
25 marked as Plaintiffs' exhibit 5, which is Plaintiff 260, which

1 is the deed, the title -- the title to real estate from Mark
2 Smith to Brent Click. I ask if you could identify that and if
3 there's any objection?

4 **THE COURT:** Any objection?

5 **MR. BROGDON:** No, Your Honor.

6 **THE COURT:** And that's Plaintiffs' exhibit what?

7 **MR. MARTIN:** 5.

8 **THE COURT:** All right. In without objection.

9 (Whereupon Plaintiffs' exhibit 5 was admitted into
10 evidence)

11 A. That's the real estate deed.

12 Q. Then I want to show you what's been marked as exhibit 4
13 where Brent Click gave the property to Hyper Formance. I'm
14 sorry, to Click Properties, LLC.

15 **MR. MARTIN:** Any objection? Number 5. Plaintiffs' 4,
16 rather.

17 **MR. BROGDON:** No, Your Honor.

18 **THE COURT:** I think that was already in without
19 objection.

20 (Whereupon Plaintiffs' exhibit 4 was admitted into
21 evidence)

22 A. This is from me to Click Properties.

23 Q. Okay. All right. Now we have talked about the digging
24 and the fire and all of that. I want now to get some pictures
25 in. Exhibit 3 is prior to the embankment between the

1 properties that had a slope. I want to show exhibit 3. This
2 is Plaintiffs' exhibit 3, which is PL1. Any objection?

3 **MR. BROGDON:** None, Your Honor.

4 **THE COURT:** All right.

5 (Whereupon Plaintiffs' exhibit 3 was admitted into
6 evidence)

7 Q. Can you identify that, Brent?

8 A. This is an aerial photograph we took with the drone back
9 in spring, early summer of 2017.

10 Q. Okay. And what does it show?

11 A. It shows the door we had to put in when Greg Porter
12 bought this from the other side.

13 Q. Okay. What does it show about the slope between the
14 Thomas property and the Click property?

15 A. It shows that -- there was a little bit of a slope here
16 from the driveway that goes up the hill about level with the
17 -- like the white car you see on the right, it's actually
18 below the driveway slightly, but where like the bumper is on
19 the driveway, yeah, that blue thing, like from there to the
20 truck that is parked down there, that's 10 feet, 12 feet
21 height difference, but it was a good 10 feet or 12 feet with
22 the difference as well, like a rise of one.

23 Q. Okay.

24 A. You see some of the scars on the side of the hill from
25 where a tow truck had rolled off the side. They were still

1 present there.

2 Q. I want to show you which is part of exhibit 3. What does
3 that show?

4 A. This is that said tow truck. I ordered some metal from a
5 metal supplier. And they -- they were short on drivers. And
6 he says, tell you what, I'll just send it with a local tow
7 guy.

8 So my metal was slid underneath this car that was already
9 coming to Easley from my metal supplier. And this guy backed
10 up the hill, we unloaded the metal. And then he was messing
11 with something on the truck, and the truck started rolling.

12 And he, little short guy, ran around the front of the
13 truck, thought he was going to stop it, himself, and we
14 grabbed him by the collar and pulled him away. And then the
15 truck rolled down the hill with us shouting, you know, look
16 out. And the truck is parked on the side of the slope. And
17 this shows the angle that the slope is.

18 Q. I see. Okay. And that's all exhibit 3. All right. Now
19 I need exhibit 14. Exhibit 14 are five photos, Brent. I'd
20 like to introduce them, Your Honor, if there's any objection.

21 **THE COURT:** What number?

22 **MR. MARTIN:** 14. And it's P 6, 7, 8, 10 and 11.

23 **MR. BROGDON:** No objection, Your Honor.

24 **THE COURT:** All right. In without objection.

25 (Whereupon Plaintiffs' exhibit 14 was admitted into

1 evidence)

2 Q. Tell us what that shows, Brent.

3 A. That's a -- that was the big tree that was over our shop.
4 I'm standing down where the carports are. And you see -- you
5 see the pile of dirt to the -- slide it over to the left.

6 Q. Sorry?

7 A. Slide it over to the left -- to the right.

8 Q. Slide it over ---

9 A. Yeah, yeah.

10 Q. --- to the left?

11 A. You can't see the whole picture. There you go. You see
12 part of the dirt that was the higher hill part of the -- of
13 behind -- that was like the area beyond the turnaround area.
14 It was higher. That's why it was -- that's why it was
15 geographically outlined for the turnaround area. You see a
16 lot of the -- this is where they built the fire. You see some
17 of the smoke from it. This is how close they did the fire to
18 our shop.

19 Q. Okay.

20 A. This was several days into it.

21 Q. The next picture.

22 A. And the next photo is of ---

23 Q. Oh, I'm sorry. You ---

24 A. Yeah, I have them. The next photo is of the fire
25 fighters. And this shows how close they built the fire to our

1 property. This was -- we only called them the first two days
2 after we realized they were just going to say the same thing
3 every time, cut the limbs up with a chainsaw, draw them away,
4 make a fire break and just keep an eye on the fire. So for
5 the remaining five or six days, we just would go to work
6 whenever they left. And we'd work late into the night to keep
7 it safe.

8 Q. Okay. What's the next picture?

9 A. The next picture is the day labor they hired and the
10 excavator they rented. This is looking down toward the north
11 western corner of the property. Where I'm standing is still
12 part of the turnaround that was later dug away.

13 Q. Okay. And the next picture?

14 A. The next picture is much later. They had already
15 excavated most of the -- behind the building to create their
16 driveway. On the right you still see the overburden that they
17 were moving to create this parking lot. You see the sharpness
18 of the elevation change between the left and right drive part
19 that you see here. This was the finished height almost.

20 Q. Okay. And the final picture?

21 A. The final picture is standing on the top of our drive
22 looking 36 feet down into the bed of a 22 ton dump-truck. And
23 it looks like a toy. And this was them -- this truck came and
24 went for days on end hauling away load, after load, after load
25 of dirt.

1 Q. All right. I want to show you what's been marked as
2 exhibit 15. Tell -- tell me if you can identify that.

3 A. So this is the report of that. On that photo you can see
4 dirt lines on the back of the building. And on this photo you
5 see where the dirt was. This was the slope going up the hill
6 behind the Thomas property and above my property. This kind
7 of created like a cat bridge that flowed all the water from
8 behind our properties and the water off of Porter's property
9 to the rear and back and around the retired postman's property
10 on the other side of All-Tech.

11 Q. And did that change?

12 A. Yes. This excavation caused a lot of water to go
13 straight across the neighbor's yard. It caused water to come
14 off the front of the All-Tech property. It -- as our hill
15 sank from lack of lateral support, more water ran off the
16 front of the property, ran down the hill and was increasing
17 the erosion of our side of our driveway.

18 Q. Okay. What's the next picture?

19 A. This is the area that the water would run. This is
20 looking back toward my three carports. And you can see the
21 excavator. And you see the hill -- well, the partially
22 excavated part of the hill to the right here. And this was
23 just -- that's just kind of -- where the bobcat is and where
24 that hill is was the geographical kind of outline of our
25 turnaround area.

1 Q. Okay. What's the next picture show?

2 A. The next photo is after they were excavating behind the
3 building. You see the 90 degree sheer wall. And you see our
4 driveway up to our top shop. You see our carports, they're
5 still straight and square.

6 Q. Is that the 90 degree sheer wall?

7 A. Yes. That was -- you see the two -- you see the bucket
8 marks in the photo from the teeth of the excavator and how
9 they scraped it into a vertical wall.

10 Q. Okay. And how tall was that wall? When they first did
11 it?

12 A. They continued to excavate at the bottom of this for the
13 driveway, but they dug out that corner more. And whenever we
14 first measured it, when that dump-truck was there, you know,
15 it was 36 feet.

16 Q. Okay.

17 A. This was the beginning of that excavation because they
18 were just making a spot to get the dump-truck in.

19 Q. What does that show?

20 A. This is the top of the hill behind the All-Tech property
21 with the trees removed. This was the wooded area you see
22 beyond the cars. And this was -- it shows the gradual slope
23 toward the All-Tech property. It shows how it was a hill. It
24 shows how the, you know, there's always some movement on that
25 side, but it kept the water from going off the front of the

1 All-Tech property.

2 Q. Okay. And the next photo is what?

3 A. The next photo is my RV. I was fixing this for my wife.
4 And we were going to go on some trips. And we -- whenever
5 Thomas said he was going to dig until my building fell, I
6 parked this up the hill to protect what was left of the
7 turnaround.

8 When I parked this up here, you could walk with your arms
9 outstretched around this vehicle. They took the excavator and
10 dug all the way to the vehicle to the point where even in
11 front of and behind the tires they had dug -- we actually
12 dragged this away from the edge with a bobcat before we could
13 back it back down the hill.

14 Q. Why did you do that?

15 A. It was going to fall. It was going to just topple over
16 to the edge. And they were still digging.

17 Q. What does the next picture show?

18 A. The next photo shows several days later, the excavation.

19 Q. Are those your carports on the top?

20 A. Yeah, those are our carports. We started with the middle
21 one. Then we added the third one. And then I bought the
22 large one. It was a smaller carport that I bought from Greg
23 Porter's son. And then widened it into the large so I could
24 work on large commercial vehicles and moving vans. I did a
25 lot of specialty attachments for those to be able to move

1 things like pianos and stuff.

2 Q. Okay. What's the last picture?

3 A. It shows the elevation change, difference. The last
4 photo is the same as before, but shows with less dirt removed.
5 You could see the elevation change between where the
6 turnaround used to be and the new parking lot. They did end
7 up taking more away even in this. They kind of smoothed this
8 all out.

9 And then they realized their drainage wasn't right, so
10 they -- they scraped it again and took off more dirt with the
11 excavator and the bobcat that you see in the picture. You can
12 see how nice and squared off our hill is because our hill went
13 up and then it kind of crested. So the water would run to the
14 back of our property and not down the hill. You kind of had
15 to go up over a point.

16 That's not the case anymore because the lost lateral
17 supports collapsed and it's now more like a rounded soft
18 feature. But you can see it behind the bobcat, the nice
19 square, straight edge of the turnaround area, what was left of
20 it.

21 Q. All right. Now the next thing I want to do is to tell
22 you -- give you this and explain to the jury what this is.

23 A. This is a model of what our upper shop currently looks
24 like. Layout-wise I measured and modeled it and put it in
25 Fusion 360 and printed a little copy. I have my paint booth

1 that we originally put in in 2013. I have the walls that we
2 put in when we moved in. I have our little 300 square foot
3 rear apartment. I have the sanding and prep area with all of
4 its cabinets, sandblast cabinets, countertops. It has the
5 apron panel that Mark Smith poured at some point before I
6 rented. And then it has the added concrete pad that we put
7 the carport over and the lift on.

8 Q. Okay. Is that an exact scale?

9 A. I modeled it in actual size, even the wall thicknesses
10 and such, and then I scaled it down to a size that would
11 print.

12 Q. Okay. So is that a yes?

13 A. Yes.

14 Q. You're too technical for me. And is that where your
15 apartment is now?

16 A. Yes.

17 **THE COURT:** Excuse me. Has that been placed into
18 evidence?

19 **MR. MARTIN:** No. It's just demonstrative, Your Honor.

20 **THE COURT:** Well, you don't need to hand it to the jury.

21 **MR. MARTIN:** Huh?

22 **THE COURT:** You don't hand it to the jury.

23 **MR. MARTIN:** Just for them to look at?

24 **THE COURT:** They looked at it with him holding it up.

25 **MR. MARTIN:** Do you want me to take it back?

1 **THE COURT:** Well, I mean, you can leave it there, but, I
2 mean, it's not into evidence, correct?

3 **MR. MARTIN:** No, I didn't ---

4 **THE COURT:** Okay.

5 **MR. MARTIN:** --- want to put it into evidence. Unless
6 there's an objection?

7 **MR. BROGDON:** Your Honor, they can look at it right here.
8 I don't think they need to pass it around.

9 **THE COURT:** Yeah.

10 **MR. MARTIN:** Okay. Well, maybe I should move it into
11 evidence so they can pass it ---

12 **THE COURT:** Well, I mean, that's up to you.

13 **MR. MARTIN:** I make a motion to -- or I move it into
14 evidence. Any objection?

15 **MR. BROGDON:** No objection, Your Honor.

16 **THE COURT:** Okay.

17 **MR. MARTIN:** There you go.

18 **THE COURT:** Mark it ---

19 **MR. MARTIN:** What number is that? Exhibit 10.

20 **THE COURT:** No, put the marker on it.

21 **MR. MARTIN:** I am -- I'm getting it.

22 **THE COURT:** We've got to do this the right way, ---

23 **MR. MARTIN:** I know.

24 **THE COURT:** --- Mr. Martin.

25 **MR. MARTIN:** I was just coming back. But thank you for

1 reminding me, Your Honor.

2 (Whereupon Plaintiffs' exhibit 10 was admitted into
3 evidence)

4 **MR. MARTIN:** Don't yell at me for not doing it straight.

5 **THE COURT:** All right.

6 **Direct Examination by Mr. Martin Continued:**

7 Q. Okay, Brent. Tell me the slope that they dug that
8 excavation, that 36 foot.

9 A. It was straight, vertical.

10 Q. Okay. Do you know what slope that would be?

11 A. That would be ---

12 Q. Would it be three to one, two to one, one to one? Do you
13 know?

14 A. It would be -- well, one to one is a 45. So this would
15 be straight, vertical. So no matter what you put it in, X, Y
16 is just going to be, yeah.

17 Q. Okay.

18 A. Or X ---

19 Q. And do you know what a safe slope is?

20 A. From -- whenever they started the excavation, I went and
21 bought every geotechnical engineering book I could and
22 retaining wall book I could and every -- and I couldn't even
23 find an example of how to work with that sort of soil on that
24 sort of slope. There wasn't even an example to work with.
25 But it was three to one.

1 Q. Three to one ---

2 A. Two to one to three to one ---

3 Q. Okay.

4 A. --- depending on height and other factors of cohesion.

5 Q. All right. Tell us whether or not you changed your work
6 hours. And if so, why?

7 A. Well, they're -- while they're digging they're kicking up
8 lots and lots of dust. I wasn't told anything to plan for
9 this. I couldn't move customer schedules back. I had
10 vehicles -- we had repairs that we were running through the
11 paint booth. I had -- that was the week that I had one of the
12 Clemson ICARs there that we were doing the roll cage and stuff
13 for. And ---

14 Q. What do you mean one of the Clemson ICARs?

15 A. I help with the project Deep Orange. And I'm involved in
16 a lot of like automated car, like, programs and stuff in
17 Mooresville and companies like that.

18 Q. You said something about the Clemson ICAR. Tell the jury
19 what you mean by that ---

20 A. So ---

21 Q. --- and what you did.

22 A. If you ever go to the airport, they usually have these
23 cars on display from Clemson. And it's the project Deep
24 Orange. And I get to help with those. And ---

25 Q. Okay.

1 A. --- it's fun.

2 Q. So we -- I asked you about changing your work hours and
3 you went and talked to me about ---

4 A. Sorry.

5 Q. --- Clemson cars.

6 A. Well, -- so I had a -- I had a lot to do that week. And
7 it was end of August. It was, you know, we had a lot of stuff
8 going on and busy time of year to begin with. So I still had
9 to get my work done, but I was having aggressive neighbors.

10 I had digging going on. I had tons of clouds of dust. I
11 was trying to repair damage from the partying. I was having
12 to repaint parts of cars. I had even an added work load. And
13 the only time we could get work done was at night.

14 So when they finished hanging around their bonfires, and
15 drinking beer, and going home, we would get to work. And we'd
16 work til they came back in in the morning. And it was good
17 because we were able to avoid them during the day and get work
18 done at night. And it was good.

19 Q. And did that become a permanent ...

20 A. Yes. We had to -- we still had to work during the day
21 some because we had to meet appointments and be up for certain
22 customers and meet with people during certain times. But to
23 this day we majorally [sic] work at night to avoid our
24 neighbors and avoid conflicts.

25 Q. And were they doing anything after the fires and all and

1 all the digging was dug, did they do anything to cause you to
2 have to change your work hours?

3 A. They were -- well, one thing was we couldn't run our
4 paint booth even after they'd finished the digging because
5 they would take -- like the elevation change you see here
6 behind the bobcat, if you had a SUV or something that you took
7 there for repairs, it's a good chance it'd just get parked on
8 that slope, and the tires would get spun, and they'd kick up
9 this huge dust cloud right outside our paint booth.

10 So we couldn't run our paint booth at night because you'd
11 be -- they were just -- they were doing doughnuts in the loose
12 gravel. The millings that they put down, it was just ---

13 Q. What do you mean by doing doughnuts?

14 A. Spinning cars around in circles, spinning tires, kicking
15 up stuff. It was ---

16 Q. And as a result of them doing the doughnuts and spinning
17 the cars around, what ---

18 A. All this dirt would go up in the air. They'd see our
19 paint booth running, you could hear it. And, you know, we had
20 the doors open. There are big filter walls and stuff to make
21 it a sterile environment. And all this dust would just come
22 through. It would clog our filters or work our way -- its way
23 through our filters.

24 Or if we were running multiple loads of parts, they'd
25 fall and set on the part. And then it kept trash in the

1 paint, and then I can't give my customers that. So it was
2 like -- it was 20 percent more work every job we did at that
3 time because we were having to do extra cutting and buffing
4 and extra paint finishing and -- just to do the same quality
5 work that we did before.

6 Q. So as a result of all that, what did you do?

7 A. I started working at night to avoid them.

8 Q. Okay. And do you work at night to this day?

9 A. Yes.

10 Q. Okay. All right. I want to ask you about an incident
11 that occurred with Mr. Thomas in February of 2020. Tell us
12 about that.

13 A. I left -- this was right when a lot of the overseas
14 suppliers were having a hard time coming in. And I was going
15 to BMW. I make parts in machines, and I machine things for
16 them and build automated machines and things like -- I was
17 going for a meeting.

18 And a few minutes after I left, I'd just got on 85, and
19 my wife called me and she was extremely upset. Thomas had
20 come up the hill and had ---

21 **MR. BROGDON:** Objection, Your Honor. Objection. May we
22 approach?

23 **THE COURT:** Yes.

24 (Whereupon a bench conference was held off the record in
25 the presence of the jury, but out of their hearing)

1 (Whereupon the bench conference was ended)

2 Q. Okay, Brent. Shelly calls, what did you do?

3 A. She was hysterical. And I came home and I watched the
4 security footage of Thomas and another person walking around
5 fully under our carports against the roll-up doors to the
6 building on like fully under -- like moving things around.
7 They'd pick something up and shake it or bang it against the
8 wall to make it make noise. They were trying to get my wife's
9 attention.

10 And she came out and they were like, we're going to build
11 a fence across the front of your doors, and there's nothing
12 you can do about it. And then we're going to finish digging
13 until your building falls or we're going to dig as far as we
14 want until your building falls. And so I confronted Thomas
15 about it.

16 Q. And what did Thomas say?

17 A. Nothing. He just smiled. And all of his employees did
18 all the talking.

19 Q. Did he agree that that's what he said?

20 A. Yes.

21 Q. Did you hear him -- did he repeat it?

22 A. Yes. He did say -- he wouldn't reply to anything else,
23 but he was -- I'm going to finish digging and your building's
24 going to fall.

25 Q. And what did you do as a result of that?

1 A. I called you.

2 Q. Okay. And this lawsuit was filed?

3 A. Yes, sir.

4 Q. All right. Answer any questions that the Defense lawyers
5 will have.

6 A. Yes, sir.

7 **THE COURT:** Mr. Brogdon.

8 **MR. MARTIN:** Oh, oh. I forgot about damages.

9 **THE COURT:** All right.

10 **MR. MARTIN:** I'm sorry.

11 **MR. BROGDON:** Do you want me to start?

12 **THE COURT:** Yeah. No. He caught you just before you
13 stood up.

14 **MR. MARTIN:** I'm sorry. Thank you, Gwen.

15 **Direct Examination by Mr. Martin Continued:**

16 Q. All right. There's tons of other photos that I haven't
17 introduced. So I'd better introduce them. Okay. Yes. I
18 want to now introduce some photos that have to do with the
19 damages you've suffered. And the first one I want to show you
20 is labeled Plaintiffs' exhibit 16. Brent, can you identify
21 that?

22 **MR. MARTIN:** First of all, if there's any objection?

23 **MR. BROGDON:** No objection, Your Honor.

24 **THE COURT:** All right.

25 (Whereupon Plaintiffs' exhibit 16 was admitted into

1 evidence)

2 A. This is -- this was taken in April of 2020 shortly after
3 the last incident. You see our turnaround area. You see our
4 carports. You see our drive up the hill. You see some of the
5 trees we planted. You see the silt trees. All these little
6 spindly guys up at the top at the back of the car and all.

7 Those -- there were a few growing there before, but after
8 -- immediately after excavation, my wife got her little
9 Audubon book out and she was looking at fast growing, erosion
10 control plants. And so she said, hey, look, I identified this
11 plant we already have behind the shop. We can dig these up.
12 They grow super fast. And so we dug them up from behind the
13 shop and planted them all along the top edge of the hill to
14 kind of try to help hold the hill together, at least keep the
15 top area of it from eroding away.

16 Q. Okay. When you first planted them, when did you plant
17 them?

18 A. We planted them in August/September of -- well, September
19 because they finished the digging in September. But September
20 of 2018.

21 Q. Okay. And where did you plant them originally?

22 A. We planted them up in line with the evergreens you see.
23 So they were, you know, we gave, you know, up to the most like
24 20 foot space. And then we started planting them so they
25 would really reenforce that corner.

1 Q. Okay. And where are they -- when was this picture taken?

2 A. This picture was taken in April of '22 -- of 2020.

3 Sorry.

4 Q. April of 2020?

5 A. Yes, sir.

6 Q. And what has happened to those silt trees?

7 A. They have migrated over the side of the hill.

8 Q. Okay. When you say migrated, are they ---

9 A. The dirt they are hooked to has slid over the side of the
10 hill ---

11 Q. Okay.

12 A. --- as the hill has collapsed and the dirt part that is
13 the side of the hill has weathered away causing the held
14 together topsoil held together by the tree to move. And then
15 you see the Thomas -- the southern-facing excavation, you see
16 the difference between the trees and everything we tried to
17 grow on the side of the hill, which included the smaller step
18 between the All-Tech parking lot and our -- what was left of
19 our turnaround area?

20 Q. Um-hum (affirmative).

21 A. But you compare our -- these two faces to that southern-
22 facing -- the southern-facing wall and there's no ground cover
23 at all, nothing has grown. They haven't made any efforts to
24 control their erosion. And as you look at all these photos,
25 you'll see this space looks different in every single one of

1 them due to this erosion.

2 Q. I want to show you now two pictures, Plaintiffs' number
3 17, PL 117 and 118.

4 **THE COURT:** Any objection?

5 **MR. BROGDON:** No, Your Honor.

6 **THE COURT:** All right. In without objection.

7 (Whereupon Plaintiffs' exhibit 17 was admitted into
8 evidence)

9 Q. Can you identify that for us, Brent?

10 A. Yes. 117 is a slightly angled photo looking at the
11 deepest area of the excavation. You see our hill here to the
12 right. That is -- or our driveway to the right. You see our
13 -- the silt trees and things that we planted. And you see how
14 as they come down here away from the stability of the other
15 facing wall, they have migrated further down the hill.

16 In the corner and along to the left side you see the
17 shearing where the upper overburden of the dirt has slid
18 between the softer, sandier layers of dirt, they have sheared
19 and slid. And they've caused these overhanging undercut cave-
20 looking things. And this ---

21 Q. You talking about this area?

22 A. Yes, this assemble of instability of the area.

23 Q. Okay. And these are the silt trees that continue to fall
24 down?

25 A. Yes. And those lines -- somewhere in that hill they're

1 going up toward the building. And that entire area is just
2 sliding and slipping.

3 Q. Okay. What's the next picture show?

4 A. The next picture is a direct overhead over that area.
5 One major thing you see here ---

6 **THE COURT:** Now is this in?

7 **MR. MARTIN:** Yes, both of these are in. This is 117 ---

8 **MR. BROGDON:** Yes, Your Honor.

9 **MR. MARTIN:** --- and 188.

10 **THE COURT:** Oh, okay.

11 **MR. MARTIN:** Exhibit 17.

12 **THE COURT:** Okay. All right.

13 A. What I'm really showing here is the -- the silt run-off.
14 As you look at this southern-facing wall, and as you look at
15 the southern-facing wall of the All-Tech building, you notice
16 the red clay dirt streaks out of the All-Tech building. You
17 see the red clay dirt streaks away from the corner of the All-
18 Tech building. And you see all the red clay dirt streak in
19 the corner of the driveway.

20 This is all of the red clay that is holding this wall
21 together and holding this excavation together being eroded by
22 water and being washed away. It's either washing into All-
23 Tech's building -- and every time we see a rain, we see them
24 with push brooms sweeping muddy water out of their building
25 because it was so badly planned that all the water runs from

1 this drive area into their building and carrying the dirt that
2 is washing away.

3 **THE COURT:** Mr. Martin, you make sure that if you've got
4 two pages or more than one page connected as one exhibit, you
5 need to make sure they're connected because that's going ---

6 **MR. MARTIN:** Right.

7 **THE COURT:** --- to be a problem.

8 **MR. MARTIN:** I'm trying to use paperclips.

9 **THE COURT:** Yeah, just something just so that they're --
10 there's not ---

11 **MR. MARTIN:** Right.

12 **THE COURT:** --- a confusion about what the exhibit is.

13 **Direct Examination by Mr. Martin Continued:**

14 Q. All right. Brent, I want to show you now exhibit 18,
15 which is Plaintiffs' 107, 108, 109 and see if you can identify
16 it.

17 **MR. MARTIN:** And if there's any objection, I'd like to
18 introduce this into ---

19 **MR. BROGDON:** No objection, Your Honor.

20 **MR. MARTIN:** --- evidence, Your Honor.

21 **THE COURT:** All right. In without objection.

22 (Whereupon Plaintiffs' exhibit 18 was admitted into
23 evidence)

24 A. These are more photos of, I believe, what is the June
25 2020 -- was that -- these are more -- more photos of the

1 excavation. And they show the rivulets and the channels of a
2 cut into the dirt face there.

3 Q. What is a rivulet?

4 A. It is -- it is the -- whenever you -- the water has run
5 down and cut channels in the dirt. It's made like the big
6 crevasses, but it's made by smaller tricklings of water.

7 Q. Okay.

8 A. You see all the sedimentary of silt and stuff on the
9 driveway down here at the bottom. You see a lot of the local
10 plants and stuff we'd dig up and throw the seeds on or -- and
11 we fertilized all this with the scoopings of the duck poop
12 from their pen. So -- and you see the -- there's a lot of
13 silt here. And you see the change in the angle from when the
14 original excavation was done, that this area is eroding away
15 and collapsing.

16 Q. What's the next picture show?

17 A. The next photo is of that same kind of overburden
18 shearing effect that's going on and that is causing all the --
19 it's a result of the loss of lateral support on this because
20 it's allowing it to slide sideways. At the bottom you see a
21 lot of rocks and gravel and heavier items. Those are the
22 items that the water couldn't wash away that it eroded out of
23 the side of the face. The silty dirt and all that washed
24 away. And these more like, you know, like local little like
25 rocks and pebbles and things that were in the face ---

1 Q. Okay.

2 A. --- have just fallen.

3 Q. Tell us what the last picture is.

4 A. The last photo is looking toward the southern face of the
5 All-Tech property. And on the right you see the face that
6 we've grown and tried to grow. You see the silt trees and how
7 they are -- silt trees. And they are over halfway down the
8 side of the hill.

9 This little tree that you see here, it was planted at the
10 top of the -- of the hill. It has -- all of these -- when
11 comparing these to the excavation photos with the claw marks
12 from the excavator, you can see how the features have all been
13 softened, how this area has mushroomed out, especially in
14 comparison to the corner where it has more lateral support
15 from the other face and the taller parking lot. It has
16 ballooned out from lack of lateral support and the hill has
17 dropped. And all of the features you see are eroding, being
18 eroded by the water.

19 Q. Okay.

20 **MR. MARTIN:** Exhibit 19 is Plaintiff 91, 92, 93, 94 and
21 95. Plaintiffs' exhibit 19 I ask to introduce into evidence,
22 Your Honor.

23 **THE COURT:** Any objection?

24 **MR. BROGDON:** No, objection, Your Honor.

25 **THE COURT:** All right. In without objection.

1 (Whereupon Plaintiffs' exhibit 19 was admitted into
2 evidence)

3 Q. Please explain to us what they are, Brent.

4 A. This is -- this is the same area later. You see things
5 are starting to grow in the collection of the sediment at the
6 bottom of the hill. You see the harder material in the right
7 hand face of the hill in compared to the other where you see
8 more dirt. And it starts off with washing away the red clay
9 and the stuff that washes away easy.

10 And then you have the harder compaction. And this is
11 more of like a -- this is more like a ground rock kind of
12 material. You can easily break it off with your hand. You
13 could stick a thumb into it. But it's very gritty kind of
14 like -- kind of like at the beach where the sea shells and the
15 thicker sand could accumulate.

16 Q. It's not sheer rock?

17 A. It's not sheer rock. You could dig it out with a -- with
18 a plastic shovel.

19 Q. And if you take your hand, what did you say will happen
20 to it?

21 A. You can break off pieces of it. You can stick your thumb
22 into it, but it's like -- it's like the harder, compactor at
23 the beach with the sea shells and stuff. It's not -- it's
24 rougher, but it's not -- it's not rock.

25 Q. What's the next photo?

1 A. The next photo is a photo facing the western facing wall.
2 This is the wall along the side of -- this is our driveway up
3 here. You see at the top, it's an extremely rounded feature.
4 The -- where I stood to take the photo of the dump-truck was
5 more in line with the edge of this carport. And you see how
6 that is now feet below further up the hill. This whole area
7 has just collapsed and mushroomed out and lost lateral support
8 and been eroded.

9 Q. Okay.

10 A. And you see the silt trees on their migration further and
11 further over the hill.

12 Q. Okay. Next picture.

13 A. We ought to pay very close attention to the silt at the
14 bottom of this hill how it had kind of collected against the
15 driveway. This is very soft, very fine, grainy material.
16 You're starting -- this is -- this is a lot more recent photo.

17 You're starting to see -- this is 2021, I think. You're
18 starting to see more things starting to naturally grow on the
19 slope now that it has like eroded to a slope that more favors
20 something growing and they can get a purchase handle on to
21 start growing. This is -- and you see the staining in the
22 dirt still in the All-Tech driveway where it's still
23 continuing to erode.

24 Q. Okay. The next picture.

25 A. The next photo is again looking down that -- as the first

1 photo, you're just further back. At the very back of the
2 photo -- this is the part of the excavation that was right
3 against the property line. You see a lot of sand and
4 sedimentaries and stuff that have -- further back, like to the
5 right, to the right, right. One more inch. There you go.
6 Like that pile of sand there.

7 And you see like the poisonous sumac growing there and
8 stuff. And you see some of the harder material sticking out
9 of the hill as more of that kind of compacted, rocky, gritty
10 material is eroding away now. And further toward the rear you
11 still see some of that.

12 But this area right here had more water coming over the
13 side of the hill. It's harder to control in this area. So
14 you're seeing more water erosion than just the weathering you
15 see further up.

16 Q. Now the final picture, what does that show?

17 A. This is that -- the gravelly, grainy, rock impaction type
18 material. You can just break it off, stick your fingers in
19 it. It looks like rock. It's not rock. It has none of the,
20 you know, it's like a big mud, dirt clog more than a rock.

21 Q. All right.

22 **MR. MARTIN:** Exhibit 20 shows Thomas 104, 144, two
23 pictures, exhibit 20, Plaintiffs' exhibit 20 I'd move to
24 introduce into evidence, Your Honor.

25 **THE COURT:** Any objection?

1 **MR. BROGDON:** No objection, Your Honor.

2 **THE COURT:** In without objection.

3 (Whereupon Plaintiffs' exhibit 20 was admitted into
4 evidence)

5 Q. All right, Brent, tell us what this shows.

6 A. This shows the area between the upper area where that car
7 is parked and our carports that was left of the turnaround
8 area and the eastern side of the Thomas parking lot. One big
9 thing to see here is you see all the stuff we've been trying
10 to grow on the side of the hill, you do see some knocked over
11 things here.

12 This is from All-Tech pulling SUVs up on the side of the
13 hill. They were still doing that up to -- past this point.
14 You see some of the red clay exposure where tires has spun.
15 And as a result you see this -- this staining down here on the
16 gravel and on the vegetation where this recently exposed spot
17 from the SUV or whichever it was ripping up the ground cover
18 so some of that red clay could erode.

19 Q. Okay. And the final poicture of this exhibit.

20 A. The final photo is standing on top of that looking back
21 down. You still see the same tail panel on that Corvette.
22 This is shortly -- this is a day after a rain or so. You see
23 puddlings of water underneath where the cars are because the
24 hill -- that's obviously the other side of the fracture line
25 for that face where the hill's collapsing from.

1 And one big thing you see here is you see lots and lots
2 of red clay silt running toward -- away from this corner.
3 That is all asphalt millings. They brought a lot in. They
4 compacted it down. It made a nice parking lot cover, but it
5 didn't -- it's being stained here by all the red clay being
6 eroded away by the water. And that drainage bit does run off
7 the back of the property that some of it will run down their
8 driveway.

9 Q. All right. I think I'm going to make an executive
10 decision and stop. We've got lots more pictures, but I don't
11 see -- all right. I want to show you Plaintiffs' exhibit 26,
12 which encompasses Plaintiff 96, 97, 98, 99 and 103.

13 **MR. MARTIN:** Any objection?

14 **MR. BROGDON:** No objection, Your Honor.

15 **THE COURT:** All right. In without objection.

16 (Whereupon Plaintiffs' exhibit 26 was admitted into
17 evidence)

18 A. This was a weekend ---

19 Q. When?

20 A. 2021.

21 Q. Okay.

22 A. This was in the summertime. And this is Thomas on a --
23 either he owned it or he rented it or something -- it was a
24 little mini excavator, mini Kubota. He's digging away the
25 silt that you saw on the other photos. This is the silt that

1 had run over the driveway.

2 As you see behind him, that driveway is a lot narrower
3 than what it had been. If you look further up at the top of
4 the photo, you see where the silt isn't covering as much. And
5 you see down where he is digging directly behind kind of looks
6 like a slice of cake out of it. It's still -- it's a lot
7 further over on it. He's digging the silt away where the
8 slope has collapsed and narrowed his driveway onto it. He --
9 this is -- he's using the bucket to the side.

10 Q. And what's up here?

11 A. This is the parking lot up here.

12 Q. Okay.

13 A. And this is right after those other photos were taken
14 that we're starting to see some vegetation get a purchase on
15 the hill.

16 Q. Okay.

17 A. And he's digging away the silt.

18 Q. Okay. The next picture -- I'm sorry. Tell us what that
19 shows.

20 A. Oh, this is taken several hours later that night after
21 Thomas had left. I went down and took some photos. You saw
22 the overhang and the overburden and where it was shearing.
23 And he had dug up that silt and pushed it into this corner to
24 hide the evidence of this erosion.

25 Q. Okay.

1 A. And this silt that's still there now, there's more added
2 to it. It makes it harder to measure the drop because we were
3 measuring it. And we were taking a standard -- just our full
4 arm length over the side, but now as the side has sloped, it's
5 now at an angle you can't just shoot a straight line down.
6 And when you do, you're hitting all this silt instead of
7 level with the driveway because this is all -- this is eroding
8 down and this is building up. So it's harder to measure an
9 accurate of the hill.

10 Q. What does this picture show?

11 A. This shows the finished attempt at his digging a ditch, I
12 think. This was -- this was where he was digging in the other
13 ---

14 **MR. BROGDON:** Objection, Your Honor. Speculation.

15 **THE COURT:** All right. Sustained. I mean, he can say
16 what he observed or saw.

17 Q. What does that show?

18 A. It shows an inexperience on the excavator.

19 Q. Okay. And where is it?

20 A. This is -- this is where he is in the -- this is the
21 bottom of the south facing wall. This is where he's digging
22 when -- the photo of him on the excavator. This is the same
23 area. This is a little backed up, closer. This is showing
24 the whole area.

25 Q. And did you take these photos?

1 A. I took these photos.

2 Q. Was it right after he used the excavator?

3 A. The tracks are still fresh in the dirt.

4 Q. Okay.

5 **MR. MARTIN:** Your Honor, ---

6 A. A vehicle ---

7 **MR. MARTIN:** --- we would submit that testimony.

8 Objection?

9 **MR. BROGDON:** Your Honor, still speculating as to who was
10 doing the digging. There's no -- no people were standing
11 around, there's no machine. I don't know when this picture
12 was taken. There's no time stamp or anything like that.

13 **MR. MARTIN:** He testified when it was taken.

14 **THE COURT:** I'm going to allow it. Go ahead.

15 **MR. MARTIN:** Okay. All right.

16 A. It's the same track marks as the excavator in the photo,
17 the Kubota mini tracks. That's a 17. So it uses a very small
18 size track. And when you go into a larger excavator or more
19 standard size excavator, they get zig-zag patterns.

20 Q. Okay. And the final photo is what?

21 A. The final photos is the tracks of him coming and going
22 from that area. And this is showing all the sedimentary dirt
23 that is in front of his building. This is on our hill looking
24 down. This is the eastern facing wall that you see on this
25 side. This is -- this is -- this is the eastern facing wall.

1 And you see the -- you see like -- he didn't do any
2 digging here, but he's still -- because those tracks really do
3 bite into dirt well, you can see how thick the sedimentary and
4 the dirt and all has washed down there onto the driveway.

5 Q. Okay.

6 A. After a large rain you could follow it all the way down
7 to the road and down to the creek.

8 Q. All right. Now I'm going to call your attention to the
9 actual damages that you had to the inner building itself.
10 Were there any changes from when you had the digging in 2018
11 in August to the present? Has there been any changes inside
12 the building?

13 A. Yes, considerable.

14 Q. Okay. I want -- tell the jury about exhibit 25, which is
15 Plaintiffs' 155, 157, 158 and 159.

16 **THE COURT:** Any objection to these?

17 **MR. BROGDON:** No, Your Honor.

18 **THE COURT:** All right. In without objection.

19 (Whereupon Plaintiffs' exhibit 25 was admitted into
20 evidence)

21 Q. So tell us what this -- where this is, when these
22 pictures were taken and what does it show?

23 A. This is the upper prep room area. This is more of my
24 wife's work area. It's air conditioned.

25 Q. Okay. When you say upper prep room, where is it? What

1 building?

2 A. On the demonstrative model it is the room to the right.

3 You see a little table kind of outline on the floor, this is

4 directly next to -- this is the -- this is the rear building.

5 And this is -- once you walk into the access door, this is the

6 crack to the left on the ground.

7 Q. Okay. And has anything happened to that crack since you

8 moved in?

9 A. This crack was visible before. I remember sweeping it

10 out and washing it out and anything else -- like because there

11 was a crack. But this crack is now a step from the movement

12 of the corner of the building.

13 Q. What do you mean a step?

14 A. It's -- you could trip over it.

15 Q. Uneven?

16 A. Uneven, yes. The side that this side is on the photo has

17 tilted this way along with the wall. And that side has tilted

18 this way from another further point further back.

19 Q. Was it that way in August of 2018?

20 A. No. And this is one of the only cracks you can see in

21 the -- in the photo of the boat. And this is just so much

22 larger.

23 Q. Okay. The photo of the boat, was that ---

24 A. The 2013 photo, ---

25 Q. --- 2013?

1 A. --- yes.

2 Q. Okay.

3 A. This was -- this was the worst crack in the building and
4 as in like most visible because you just walked in and saw it.
5 But it is so much now more the worse because it has so much
6 more movement.

7 Q. Okay. What's the next picture?

8 A. Or has movement. It didn't have movement before.

9 This is another crack. This is toward -- this is toward
10 our apartment door. No, no, this is one of the -- this is a
11 crack toward the door between the paint booth area and the
12 prep area. It's that middle wall -- this is a pretty large
13 crack.

14 You see chip-out even at the bottom of this photo. Well,
15 actually to your right of the photo. You see a chunk
16 missing. And that's where when it cracked it had better grip
17 in some areas than others. So when it broke, it actually
18 broke a chip off kind of like when you break plastic or ---

19 Q. Was it like this in August 2018?

20 A. This crack was a small T off of another crack. And this
21 is much larger and much newer and connects now to other cracks
22 in the floor.

23 Q. Okay.

24 A. And it has significant height difference from the one
25 side to the other.

1 Q. Tell us what this is a picture of.

2 A. This is another crack in the floor. This is -- you see a
3 little chunk of it further up that is going to come out
4 because it cracked on both sides of it. This is in front of
5 the paint booth. These cracks weren't here. Yes.

6 Q. So this is a new crack?

7 A. Yes, this is a new crack.

8 Q. So when you say that it was not there, what period are
9 you talking about?

10 A. 2013, 2014, 2015. This crack was not visible til 2009.

11 Q. So when did you -- when did you first start noticing it?

12 A. There was a crack to the right. We noticed it in 2019
13 and 2020. It was -- it was right at that kind of winter we
14 had a lot of rain. And we moved some things and we were like,
15 whoa, look at this thing.

16 We used to roll carpet out in front of the paint booth to
17 kind of help snag some of the dirt that was in the air since
18 we no longer had our cover of all the trees to kind of
19 naturally filter the air before it came into the paint booth.
20 So we put carpet there.

21 We lowered the door down some so the air would have to
22 squish down by the ground so the carpet could grab some of it.
23 And so we rolled the carpet up and down. One day we rolled it
24 up and we noticed, oh, this is worse.

25 Q. Okay. And then the final picture?

1 A. Oh, yes. This is a large substantial crack. That is --
2 this is all new. This is going out the front door of the
3 paint prep area. It's actually kind of upside down. The
4 garage door -- and that's the air line. There you go. That's
5 like looking at the garage door.

6 And this crack has -- we had other photos of it. It's
7 got enough -- some serious height difference where if you put
8 a level on the one side, you can swipe your hand underneath
9 the other side.

10 Q. Okay. And was it this way in August of '18?

11 A. No, because we rolled cars around in this spot and we
12 used those little GoJaks with small wheels. And those
13 couldn't have rolled over these cracks before.

14 Q. All right, Brent. Did you have a habit of doing videos
15 when you were doing your work in order to interest customers
16 in coming?

17 A. We were known for a very specific type of work. And --
18 but it's so specific it was kind of hard to get really known
19 by. So I don't like doing videos, but we would do some videos
20 showing showcases of our work.

21 Q. Okay. And on those videos -- when did you do this?

22 A. I've been building car flares and custom bodies for cars
23 and stuff for several years. And we had a project that was
24 only going to be there for a few weeks. And we thought, oh,
25 you know, this is kind of a short enough one that we could

1 film it, edit it and it wouldn't be like a big production. So
2 we ---

3 Q. What is a car flare?

4 A. It's where you take the car and you make it wider over
5 the wheels. And we would design out how we want it to look,
6 and we'd make it look a lot sportier. And it was -- it was a
7 fad in the early 2010s. It's kind of died off now. But it
8 was also a fad in the 70s. So it's got some kind of benefit
9 to -- it's a come and go fad. It's a lot of work.

10 Q. So did you do a video?

11 A. Yes, we made a video.

12 Q. And did you put that video on YouTube?

13 A. Yes, I did.

14 Q. Okay. And when was that?

15 A. 2013.

16 Q. Okay.

17 A. August.

18 Q. That's about, what, nine years ago?

19 A. Yes, nine years ago.

20 Q. Okay. What was the purpose of the video?

21 A. Just to showcase some of our work. And the video has
22 like hundreds of thousands of views and a lot of likes. And I
23 ended up getting a lot of phone calls about it and ended up
24 with a lot of work from that video.

25 Q. Okay. I would like to show you what's been marked as

1 Plaintiffs' exhibit 27. It includes Thomas 174, Thomas 177,
2 Thomas 180 and it also has -- it has Plaintiff 202, and Thomas
3 175, Plaintiff 203, and Thomas 176, Thomas 178 and Plaintiff
4 204.

5 **MR. MARTIN:** And I'd move these in evidence, Your Honor,
6 and ask ---

7 **THE COURT:** Any objection?

8 **MR. BROGDON:** No objection, Your Honor.

9 **THE COURT:** All right. In without objection.

10 (Whereupon Plaintiffs' exhibit 27 was admitted into
11 evidence)

12 Q. Would you kind of take us through those exhibits and tell
13 us what they show.

14 A. So the first photo shows inside the paint prep area
15 looking out the garage door. This is before any carports were
16 put up. You see some cracks on the floor, but they're very
17 flat. They aren't -- this is -- this is the small
18 continuation. Off to the right here is one of the ones that
19 went toward the access to our paint booth area.

20 And the -- yeah, oh, yeah. This second photo is the same
21 crack. Like where we are now is where that vacuum was in the
22 other photo. So that one crack did terminate at the end of
23 the block, which is kind of normal. You've got a doorway
24 there.

25 Q. The next one?

1 A. It's the same photo of that same crack again. You see
2 the car block -- parked on a piece of wood. And that is
3 because this is a very low car. And I wanted to be able to
4 get underneath to jack it up and work on.

5 I had it parked over a -- I had it parked over a small
6 scissor lift. And if the ground had been uneven, it would
7 have been unsafe to use it because it would have teeter-
8 tottered, and I wouldn't be able to put any power into my
9 work. I could knock the car off.

10 Q. And what is the next photo?

11 A. The next photo is that same crack. The same one pictured
12 in the other thing. This shows the amount of elevation change
13 from the -- the level is pointed in the direction of the
14 Thomas excavation at that corner. And you can see how the
15 area's dropping and moving away in the direction of the Thomas
16 excavation.

17 Q. Okay. So the first photo was in 2013. When was this
18 photo?

19 A. Very recent, like last month.

20 Q. May of 2022?

21 A. May of 2022.

22 Q. Okay. What's the next photo show?

23 A. The next photo shows -- this is the first where you
24 really see some of our -- new panel on the car. But this is
25 -- this is some of the -- this is that crack that you see when

1 you walk in the door of the shop. This was kind of the worst
2 one in the building. You see this in the photo in 2013 of the
3 boat. This is the one in front of it that you can kind of see
4 real well.

5 Q. Was it even back in ---

6 A. It was even. You've got a board laying across it and
7 they're all the same elevation.

8 Q. Okay. What is the next picture?

9 A. The next photo is that same crack. And you can see an
10 immense amount of elevation change.

11 Q. Okay.

12 A. Like you can trip over that. That's over half an inch.

13 Q. Okay. And was it that way in 2013 to 2018?

14 A. No. If you laid a board over it, you would see daylight
15 underneath it.

16 Q. Okay. And when did this change start occurring?

17 A. In 2019, 2020 it really accelerated.

18 Q. Okay. What's the next photo?

19 A. The next photo is -- we moved the car in and out a lot
20 during this. And so this is a crack that is behind the car
21 toward the paint booth area. Yes. Yep. It's kind of where
22 our work table now is.

23 Yeah, it's to the right of the -- it's on the right side
24 of the shop. It's further back than the crack that you saw.
25 It's a flat crack. And you don't -- and you can see a board

1 laying over it. You see hose -- there's no shadow thrown by
2 it. It's not very deep, it's just a hairline crack.

3 Q. Okay. What's the next photo?

4 A. It's the same crack. This is a different part of the
5 car. You see more of the metal panel we made.

6 Q. Okay. And then what is Plaintiff 204?

7 A. 204 is that same crack today.

8 Q. And how's it different?

9 A. It's a lot wider. It has a lot of chip-out from the
10 vertical movement of the -- of the concrete blocks, the
11 concrete to one another. It's like -- it's a lot. And it had
12 some elevation change. You couldn't roll a two inch caster
13 wheel over that now.

14 Q. Okay.

15 **MR. MARTIN:** And, Your Honor, I'd like to have
16 Plaintiffs' exhibit 28, which is Thomas 179, Plaintiff 205,
17 Thomas 182, Plaintiff 206, Plaintiff -- Thomas 183, Thomas
18 184, Plaintiff 207, exhibit 28, and ask it to be introduced.

19 **THE COURT:** Any objection?

20 **MR. BROGDON:** No objection, Your Honor.

21 **THE COURT:** All right. 28 is in without objection.

22 (Whereupon Plaintiffs' exhibit 28 was admitted into
23 evidence)

24 Q. Okay. Brent, tell us what Thomas 179 shows us.

25 A. This is that crack that's closer to the door again, the

1 one of the 2013 photo of the boat. You could see how small it
2 is. You see the wood over the edge of it. It wasn't a
3 nuisance.

4 Q. Okay. And let's see what is Plaintiff 205.

5 A. That same crack now. Well, March of 2022.

6 Q. Okay. And describe it for us.

7 A. It has some serious movement to it. It's really opened
8 up. It's chipped out and away. There's been the elevation
9 change from one to the third to the other. They're all --
10 they're all tilting toward the Thomas property. If you pour
11 water out on any of those, the water runs towards the corner
12 of the building toward the Thomas property.

13 Back when we pressure washed the building out and we
14 rented, back even when this video was made, in the video we
15 wet-sand inside, and the water just ran, you know, toward the
16 door. It was, I mean, it wasn't like aggressively running out
17 like it does on the outside concrete pads because of three
18 degrees. It was just -- you could sweep it out the door. The
19 water would stay wherever you put it.

20 Q. Okay. Now what is Thomas 182?

21 A. Thomas 182 is the crack that was in the paint booth.

22 Q. Okay.

23 A. This is in 2013. This is our paint booth. And you see
24 how -- you see our nice paint work. It's nice. And you see
25 our nice little lit up paint booth.

1 Q. Was it any problem?

2 A. No, no, no. It was -- we just ran a vacuum over that
3 before we painted to make sure there was no dust in it.

4 Q. Okay.

5 A. It was a very small crack.

6 Q. What is Plaintiff 208?

7 A. That same crack today. It has T'd off in multiple
8 directions. It has chip-out. The chunks -- the chunks are in
9 this still because since 2018-ish, 2019-ish we've had the
10 paint booth floor covered with carpet to collect and snag dirt
11 to help cut down on the impact from the dust from the next
12 door excavation.

13 Q. So it's a lot larger?

14 A. Oh, yeah. This is -- it's going off in more -- it's
15 promulgated in more directions. It's a lot larger. You have
16 chip-out. You compare that -- yeah, turn it sideways that
17 way. Counter clockwise 90. Counter clockwise 180. Then you
18 compare that to that and it is substantial. And you see even
19 where it T'd off because the characteristics in the crack.
20 And there's no T off on this. And it's just -- yeah, bad.

21 Q. All right. The next one is Thomas 183.

22 A. Thomas 183 shows me buffing the car. This was inside the
23 doorway of the paint prep area. This is after we already
24 painted the vehicle. This is the flare we built. It's like
25 two and a half inches wider than the car used to be. And that

1 has a larger wheel. It's a fad thing. And the -- what I
2 think they thought was a crack, if you actually follow it and
3 you look behind my heel, it is the electrical cord from my
4 bumper.

5 Q. Okay. So it's not a crack?

6 A. It's not a crack.

7 Q. It's the cord?

8 A. Yes.

9 Q. What's 184?

10 A. 184 shows Shelly washing the cars. It shows her old
11 little Neon parked over in the turnaround area. It shows all
12 the vegetation that used to be up there and how nice and
13 peaceful it used to be.

14 On the concrete you see a line between -- this seems to
15 go underneath the vehicle. This is actually the concrete line
16 that separates the apron panel from the concrete floor.

17 Q. So is it designed that way?

18 A. The concrete apron panel was added by Mark Smith. Mark
19 Smith did not build this building and pour the floor. So they
20 were done at different times. There's a line between the two.

21 Q. So that's the way it was constructed?

22 A. That's the way it was constructed.

23 Q. Okay. And what is Plaintiff 207?

24 A. Plaintiff 207 is that same spot. This is looking from
25 the -- out the door, same kind of angle. You see the line

1 between the concrete apron panel and the floor. It looks
2 rough because before there was an apron panel, this is the
3 edge that took the brunt of any vehicle or anything being slid
4 through the doorway. So -- but that crack is new. And if you
5 look at the level, the level is high off the ground on the
6 right-hand side. This is like peat.

7 Now this apron panel and the control joint you see is a
8 wet formed concrete control joint. It's formed with a trowel.
9 So it's just formed into the wet concrete. And then it gives
10 a spot for the concrete to crack as it compresses and all that
11 kind of stuff.

12 But we have ground movement because you see the finger
13 height distance between the bottom of the level on the right
14 -- you see the shadow? How the shadow increases? That's air
15 space between the bottom of the level and the concrete apron
16 panel on the right-hand side of the apron -- right-hand side
17 of the level. And so this -- and this movement is tipping
18 towards the Thomas excavation.

19 Q. All right. I now -- did you ever build some cabinets in
20 your space?

21 A. I didn't build them, I bought them.

22 Q. Okay.

23 A. And I put them in.

24 Q. Okay. Did you ever install cabinets?

25 A. Yes. I never fully screwed them to the wall or anything

1 because they sat flat on the floor. We thought, oh, if we're
2 backing a boat into here or something, you know, you always
3 have the propeller or the outboard of the boat. And it's nice
4 to have the extra room to be able to walk around.

5 So this is the western facing wall. You see the cabinets
6 in the 3D print. These cabinets were flat. We've played with
7 the ducks on them. We'd lay out big long parts to sand like
8 big long trim pieces that we needed to sand flat. This was a
9 work surface for my wife.

10 This is the wall we built between the apartment and the
11 sanding area of the shop. It's got a AC unit on the wall up
12 there. And it's -- it's nice.

13 But what we're looking at here is a crack in the floor.
14 And as that crack has moved in the direction of the Thomas
15 property, it has caused the upheaval of this cabinet line.
16 Now the countertops are set on the counters. And the counters
17 -- oh, the countertops are set on the cabinets, the cabinets
18 are set along the wall.

19 When we put it all in it was nice and flat. If it hadn't
20 have been flat, I would have built it so it could have been
21 flat. But as -- after the excavation and this has started to
22 really, really start showing signs -- so this is like 2020.
23 And it's gotten a lot worse.

24 As the ground moves it's causing like a teetering effect.
25 And you're seeing -- you see the gap that is wide at the top

1 and small at the bottom on the right. And it's -- you see the
2 gap. And then you see the other side how it has the -- it's
3 showing the ground movement under the concrete floor. It's
4 causing the upheaval of the floor and it's causing the
5 upheaval of the cabinets. And it's a very good visual.

6 **MR. MARTIN:** I'd like to move this into evidence, Your
7 Honor, as exhibit 24.

8 **THE COURT:** Any objection?

9 **MR. BROGDON:** Is this Plaintiffs' 104?

10 **MR. MARTIN:** 24.

11 **MR. BROGDON:** Plaintiffs' 104, Bates ---

12 **MR. MARTIN:** Plaintiffs' 104.

13 **MR. BROGDON:** Plaintiffs' 104. No objection, Your Honor.

14 (Whereupon Plaintiffs' exhibit 24 was admitted into
15 evidence)

16 **THE COURT:** Counsel, can y'all approach over here to
17 discuss scheduling.

18 (Whereupon a bench conference was held off the record in
19 the presence of the jury, but out of their hearing)

20 (Whereupon the bench conference was ended)

21 Q. All right, Brent. Have you noticed any damage to the
22 outside of your building -- your back building?

23 A. Yes.

24 Q. I would like to show Defendants' [sic] exhibit 22, which
25 is Plaintiffs' 15, Plaintiffs' 16, Plaintiffs' 17, 18 and 19

1 and 20. And I'd like to introduce these into evidence.

2 **MR. BROGDON:** No objection, Your Honor.

3 **THE COURT:** You said no objection?

4 **MR. BROGDON:** No objection, Your Honor.

5 **THE COURT:** Okay.

6 (Whereupon Plaintiffs' exhibit 22 was admitted into
7 evidence)

8 Q. Brent, tell us what the first photo shows.

9 A. This is a photo taken at the front corner of the
10 building. And it shows cracking of the concrete block wall
11 that the building is built on.

12 Q. Okay. When you say the front of the building, what is it
13 facing?

14 A. This is the western facing. This is facing the Thomas
15 excavation.

16 Q. Okay. So it's facing the Thomas property?

17 A. Yes.

18 Q. Now in August of 2018 was there any crack here?

19 A. No.

20 Q. Was it -- was it just like sort of down here?

21 A. Yes.

22 Q. Okay. When did you start noticing this ---

23 A. This was the first area we noticed because this area
24 moved first. This was pretty early 2019-ish.

25 Q. Okay. What is that picture of?

1 A. This is a photo of the same crack further down.

2 Q. Okay. And is it even or uneven right here?

3 A. It's uneven because the section that is on the lower side
4 is connected to the ground, and that ground is moving toward
5 the Thomas excavation. So it's being dragged away from the
6 rest of the building.

7 Q. Okay. And was this after the excavation in August of
8 '18?

9 A. Yes.

10 Q. When did you first notice it?

11 A. Early 2019. It was the same crack.

12 Q. When was this picture taken?

13 A. 2021?

14 Q. Okay. What is this picture?

15 A. This is a photo of the same area. And you can see that
16 it's a new crack because that middle crack area there that you
17 can really see into the crack good there. Mark Smith had
18 these buildings painted before I started renting from him.

19 And they sprayed the paint, I know, because the ground
20 was also painted. And it obviously got washed away, abraded
21 in or whatever. But when they sprayed the paint, it's applied
22 with force. So any crack that was there beforehand got filled
23 with paint. And any crack that hasn't been there is now
24 showing the raw white concrete rock inside.

25 Q. Okay.

1 A. And you see the dusting even in there because this is
2 under the carport. So this area, when it gets a lot of
3 movement, you'll get dust there from the abrading and the
4 movements.

5 Q. Okay. The last one? What does that show?

6 A. This shows the crack again further down. This has some
7 -- something like the mortar has actually chipped out. You
8 see the side -- at the very bottom you see the raw concrete
9 colored block in the crack. And you see the mortar line.

10 Q. Okay. The next one is Plaintiff 19. What does that
11 show?

12 A. Another crack. This is the bottom of that same crack
13 because you can tell the other one -- because it has that
14 missing mortar that is chipped out. Whoever built this
15 building mixed their mortar on the site. That's why you see
16 different consistencies of mortar.

17 Q. And the final one, Plaintiff 20, what does that show?

18 A. This shows where the crack kind of ends. It's going
19 toward the access door. On the model, it's from the access
20 door to the corner of the eaves past where the end of the
21 apron panel is. This is where the crack terminates.

22 Q. Okay.

23 A. Terminates into the open doorway.

24 **MR. MARTIN:** Your Honor, I'd like to -- may I introduce
25 exhibit 33, which is Plaintiff 208, 215 and 217.

1 **THE COURT:** All right. Any objection?

2 **MR. BROGDON:** No objection, Your Honor.

3 (Whereupon Plaintiffs' exhibit 33 was admitted into
4 evidence)

5 Q. So tell us what this first photo is.

6 A. This first photo is the concrete foundation we poured for
7 the third and final carport that we didn't talk much about.

8 Q. Okay. And what does it show?

9 A. It shows a crack. This foundation block, I wanted to put
10 -- I wanted to pour concrete underneath the third concrete --
11 underneath the third carport. I was going to put pots in the
12 floor. And I was going to use it for pulling force on
13 vehicles.

14 But instead, I bought a frame machine. So I ended up not
15 doing that. And so this block, I needed to make sure it could
16 handle a lot of pressure. It needed to support the carport.
17 It's -- it's an overdone piece of concrete. Has rebar, mesh,
18 everything else.

19 Q. How deep is it?

20 A. It is over a foot thick. Fifteen inches in some areas.
21 It has rebar. It has post holes dug in, filled with bent
22 rebar and concrete. Like it -- it's a -- it's a small size
23 area that took an entire truckload of concrete. And I said,
24 how much can you fit in a truck?

25 Q. And what does this ---

1 A. And they built it to fit.

2 Q. --- photo show?

3 A. This photo shows a crack in it. This shouldn't crack.

4 This is -- it's showing a crack because it's reaching off
5 toward the Thomas excavation. And this is the point where --
6 this crack corresponds with the spot in the dirt where you're
7 seeing the most drop-off in the property area between the --
8 toward the retaining wall on our property and the duck area
9 and the area that Mark Smith built to park cars in.

10 Q. Was that there before August of '18?

11 A. No, it was not there.

12 Q. When did you first notice it?

13 A. I noticed this -- this was one of the most recent cracks
14 we noticed. This was noticed this year.

15 Q. Okay. Plaintiff 215, tell us what that is.

16 A. This was the second area of cracking we noticed. And
17 this has had the most significant amount of movement. This is
18 ---

19 Q. Where -- where is it?

20 A. This is the south facing wall of the rear building. It's
21 ---

22 Q. South facing wall. So is that facing the highway?

23 A. It's facing the highway.

24 Q. Okay. And what does it show?

25 A. It shows how the movement of the -- as -- so the side we

1 saw the crack on is here. And then this area's dropping.

2 Well, all the pressure from this -- these woven blocks have to
3 go somewhere. So you're seeing cracks at the top. And at the
4 bottom where it's being compressed, so you have expansion at
5 the top and compression at the bottom, is being compressed.
6 The blocks are sliding against one another laterally.

7 Q. Now were these blocks nice and flush back in 2018 before
8 the digging?

9 A. Yes.

10 Q. And are they flush now?

11 A. No. And you can see the edge of the concrete block at
12 the bottom. So these were flush and didn't have cracks on
13 them when this building was painted in 2013 or 2012.

14 Q. So if someone came and looked at it in the last couple of
15 months, they would easily see this by looking just on the
16 outside of the building?

17 A. Yes, you notice this.

18 Q. The final picture of this exhibit, tell us what that is.

19 A. Okay. This shows -- it has some staining line from when
20 I did the concrete. Some of the, you know, ---

21 Q. Where is it, first of all?

22 A. Okay. This is underneath where the crack photos are with
23 the gutter. This is by the personnel door. This is the
24 foundation for the -- carport foundation block that we poured
25 that runs parallel to the highway and is over there by the

1 access door for the third carport so the third carport could
2 be held. We were worried about wind and everything with the
3 third carport because we built it larger. So we wanted to
4 have it attached to something good.

5 Q. So what does it show?

6 A. What it shows -- this shows that the concrete block has
7 dropped away from where we originally poured. This is a
8 perfect match line where it doesn't show that anything has
9 come out. This used to touch the other surface.

10 So as this area is dropping, you're seeing this area open
11 up and you're seeing the distance -- height distance between
12 the staining on the concrete painted wall and the concrete
13 block that we poured. And when we poured it, it caused the
14 staining you see. So these were touching and connected.

15 Q. Okay. Well, thank you, Brent.

16 **MR. MARTIN:** I think ---

17 **THE COURT:** Is this a good stopping point here?

18 **MR. MARTIN:** --- we'll stop. It's a good place to stop.

19 **THE COURT:** All right. Ladies and gentlemen, based on
20 our conference over here, I told them we'd be ending at five
21 today. So Mr. Martin is still in his direct testimony when we
22 continue in the morning with his witness.

23 So I'm going to let you go now. Do not discuss the case
24 among, you know, among yourselves or anybody. Don't do any
25 type of research about the case. Do not pay any attention to

1 any media. If anybody should contact you other than the --
2 somebody from the clerk's office, please let the bailiffs
3 know. And you can -- you'll have those exhibits tomorrow,
4 too.

5 So at this time, I guess make sure we put all the
6 exhibits -- y'all finished with that one there? That one just
7 started. Put that one to the side. How about that? And then
8 we can start with that one. All right, ladies and gentlemen,
9 thank you. And we'll see you at 9:30 in the morning. Is that
10 good with everybody?

11 **THE JURY:** (Affirmative nods).

12 **THE COURT:** All right. We'll see you in the morning.

13 (Whereupon the jury exited the courtroom at 5:00 pm)

14 **THE COURT:** All right. Once again, you're still in that
15 bubble, the witness bubble. So you can't talk to your
16 attorneys about your testimony. It's a solid rule.

17 **MR. CLICK:** Yes, sir.

18 **THE COURT:** All right. Everybody be ready to go at 9:30.

19 **MR. MARTIN:** Thank you, Judge.

20 **MR. BROGDON:** Thank you, Your Honor.

21 **MR. CAMPBELL:** Thank you, Judge.

22 (Whereupon court was in recess at 5:02 pm)

23 **Tuesday, May 24, 2022:**

24 (Whereupon court reconvened at 9:30 am)

25 **THE COURT:** All right. One thing, too, it may kind of --

1 and I don't know how many more exhibits you have, but why
2 don't you show them before we get started and then just ---

3 **MR. MARTIN:** They've all been stipulated to, Your Honor.

4 **THE COURT:** Oh, I know, but -- all right. If they are,
5 we just can put them on the record, then.

6 **MR. MARTIN:** Okay.

7 **THE COURT:** So we don't have to go through that process
8 every time you put a picture up. I mean, if y'all've
9 stipulated, that's fine, then just put a stipulation in and
10 they're marked -- I mean, you haven't put anything on the
11 record as far as that goes is what -- we've got to keep the
12 record clean.

13 **MR. MARTIN:** Well, but that's why we're doing it the way
14 we're doing it. I thought that was ---

15 **THE COURT:** Well, no. I mean, if you've stipulated to
16 all the photographs you're going to put in and you put -- say
17 these are all stipulated -- these are all the pictures that
18 have been -- that are -- there's no objection to, then they're
19 in and she's got it down on her pad.

20 **MR. MARTIN:** Okay.

21 **THE COURT:** I mean, that's just -- I mean, do y'all -- so
22 everything that you're putting in the rest of -- for this
23 witness been stipulated to?

24 **MR. MARTIN:** Yes.

25 **MR. BROGDON:** Yes, Your Honor. There's only a handful,

1 which I don't even think will come up with this witness that
2 we did stipulate to.

3 **THE COURT:** Okay.

4 **MR. BROGDON:** So all these pictures ---

5 **THE COURT:** All right. Any additional pictures that are
6 not in the record that you're going to put in this morning?

7 **MR. MARTIN:** Yes.

8 **THE COURT:** All right. Well, let her know that. You can
9 call them out, exhibits ---

10 **MR. MARTIN:** All right. Exhibit 15, which actually was
11 admitted, but that's the one that the jury didn't get a chance
12 to look at.

13 **THE COURT:** Okay.

14 **MR. MARTIN:** And the court reporter said she didn't have
15 it in evidence, so we're going to move it into evidence. And
16 it's Thomas 28, 29, 30, 31, 32, 35, 36, 28, 29, 30, 31 -- oh,
17 I'm sorry.

18 **MRS. MARTIN:** She has a list.

19 **MR. MARTIN:** I'm repeating. So it ends at Thomas 36.

20 **THE COURT:** And these numbers that you're referring to,
21 those are the Bates numbers?

22 **MR. MARTIN:** Bates numbers, Thomas 28 through 36, which
23 is Plaintiffs' exhibit 15.

24 **MRS. MARTIN:** And they're listed on the list.

25 **THE COURT:** Okay.

1 **MR. MARTIN:** Then Plaintiffs' exhibit 31 has Plaintiff
2 Bates 216, Plaintiff 13, Thomas 103. And that's -- that's it.
3 And then Plaintiff 44 has Thomas 8 and Thomas 89.

4 **MADAM COURT REPORTER:** I don't have that one on the list.
5 44?

6 **MR. MARTIN:** This is Plaintiffs' exhibit 44, which is
7 Thomas Bates 8 and Thomas Bates 89.

8 (Whereupon Plaintiffs' exhibit 44 was marked for
9 identification)

10 **THE COURT:** All right. And you've got those -- I think
11 we decided we're going to staple all photos with the same
12 exhibit. And you have no objection to those exhibits?

13 **MR. BROGDON:** No, Your Honor.

14 **THE COURT:** All right. They're in without -- see, that
15 was easy.

16 (Whereupon Plaintiffs' exhibits 15, 31 and 44 were
17 admitted into evidence)

18 **MR. MARTIN:** Okay. And one other thing, I had a thought
19 overnight. You had made some rulings on evidence that said
20 could not come in. Do I need to have that proffered to have
21 it in the record?

22 **THE COURT:** If you want to.

23 **MR. MARTIN:** Okay. So just whenever it suits you, ---

24 **THE COURT:** Okay.

25 **MR. MARTIN:** --- if you want to do that before the jury

1 comes in ---

2 **THE COURT:** No, we'll do that ---

3 **MR. MARTIN:** At a break?

4 **THE COURT:** --- during a break.

5 **MR. MARTIN:** Okay.

6 **THE COURT:** All right. Plaintiff ready for ...

7 **MR. MARTIN:** Yes, Your Honor.

8 **THE COURT:** Defense ready?

9 **MR. BROGDON:** Yes, Your Honor.

10 **THE COURT:** All right. Bring them in.

11 **MR. MARTIN:** Do you want Brent back up?

12 **THE COURT:** Yeah, that's right. Come on -- well, I'll
13 call you back up when they get in here. And then what you can
14 do is you can say that one exhibit that you introduced, you
15 can publish that to the jury ---

16 **MR. MARTIN:** Okay.

17 **THE COURT:** --- if you want to give any intro, whatever
18 -- however you want to do that since we kind of cut them
19 short.

20 (Whereupon the jury entered the courtroom at 9:34 am)

21 **THE COURT:** All right. I hope everybody had a good
22 evening. As you will recall, the Plaintiff was in their case
23 and the Plaintiff was testifying. Mr. Click, at this time if
24 you'll come back up. And I'll remind you that you're still
25 under oath from yesterday. And you may proceed, Mr. Martin.

1 **MR. MARTIN:** Beg the Court ---

2 **MR. BROGDON:** Your Honor, if I may? Just for the record,
3 if Mr. Click has discussed his testimony with anyone
4 overnight, if that's just on the record, if that's a question
5 the Court can ask?

6 **THE COURT:** That should have been done before we got --
7 before they came out here, but anyway. As I told you
8 yesterday you were not to discuss your testimony with anyone.
9 And have you abided by that order?

10 **MR. CLICK:** Yes, sir.

11 **THE COURT:** Okay. Thank you.

12 **Direct Examination by Mr. Martin Continued:**

13 Q. All right. Brent, we had finished yesterday with
14 Plaintiffs' exhibit 15, which were several pictures of the
15 digging and a picture of your RV. Is that correct?

16 A. Yes, sir.

17 Q. Okay. And we had just handed it to the jury ---

18 **THE COURT:** And that was exhibit what number?

19 **MR. MARTIN:** Exhibit 15.

20 **THE COURT:** All right.

21 **MR. MARTIN:** You were allowed to go home at 5:00, so I
22 wanted you to have a chance to look at those pictures.

23 Q. All right. Now the next area that I would like to talk
24 to you about, Brent, is how has this digging damaged your
25 business and your home? And I want to start with, obviously,

1 you've shown all the pictures of the dirt and digging. Well,
2 what has happened to your business since then?

3 A. We store kind of a lot more RVs, and moving vans, and
4 limousines and large commercial vehicles. And since we can
5 no longer -- kind of like we get them nosed into the paint
6 booth or we get them nosed under the carport for the larger
7 vehicles that barely fit. And we pull the longer vehicles in
8 and work on them half of the time and things like that.

9 And there's no more room anymore to pull them into the
10 top shop. There's no more room to turn them around. And the
11 hill cannot maintain the weight of some of the larger, heavier
12 trucks and moving vans.

13 Q. How much -- what was the turnaround approximately in feet
14 before the digging and what was it after the digging? The
15 turnaround area?

16 A. It extended about 50 feet beyond what is there now. And
17 it was more than enough room to position and turn around a
18 large vehicle.

19 Q. So if it's 50 feet more than it is now, how much is it
20 now?

21 A. It's -- from the building it's like 40 feet at the widest
22 part, but it does contour some. So ---

23 Q. Okay.

24 A. --- it's less ---

25 Q. So before the digging it was 40 plus 50?

1 A. Yes, sir. It was 90 ---

2 Q. It was ---

3 A. --- feet.

4 Q. --- 90?

5 A. Yes, sir.

6 Q. And now it's only 40?

7 A. Yes, sir.

8 Q. And you can't -- are there any other things besides the
9 large vehicles that you can't turn around, the limousine? Are
10 there -- how about the Clemson row boats? Can you work on
11 those anymore?

12 A. No, sir. Those are 60 feet long. And we don't have any
13 room to get them in there anymore.

14 Q. Okay. So you've lost business because of this?

15 A. Yes, sir.

16 Q. And you said something about the drive. Tell us about
17 what's happened to the drive since the digging.

18 A. It's all dropped and sunk. The water -- because as a
19 loss of lateral support the area in front of the building sank
20 and the area, including back to the building, has sunk, the
21 water now that comes off the building and the water that comes
22 from the back of the property now no longer goes back to the
23 north west. Instead, it comes running down the hill.

24 And so we've made ---

25 Q. What direction is that?

1 A. It comes to the south.

2 Q. Okay.

3 A. So it comes down the hill. And we -- originally it was
4 going over the side of the hill. And we were -- so we started
5 grading the driveway in a way to just sacrifice the driveway
6 and let the water go down the driveway at a slower speed than
7 over the side of the hill and to slow the erosion so we could
8 still have a hill to drive on.

9 Q. And what is -- what is the effect of this water going
10 down the south side of the driveway? What effect has that had
11 on the driveway itself?

12 A. It causes a lot of maintenance because we have to go re-
13 rake it and re-rake it before we can move vehicles after any
14 sort of rain storm. We have to -- if we don't keep the pitch
15 correct perfectly or if it gets overwhelmed, I get water in
16 the front building from the west side.

17 And also our septic tank system is along that side of the
18 building. And it will get overwhelmed by the amount of water
19 coming across the -- down the driveway and down that side if
20 we don't perfectly control how the water is coming. It's a
21 good bit of maintenance.

22 Q. Okay. Now on exhibit 15 you told us about your RV. And
23 I'm going to put that picture up to remind -- and this is
24 Thomas 32 on exhibit 15. Tell us what that is again. Remind
25 us.

1 A. When I sold our house to invest in the shop more, I
2 bought a slightly dilapidated RV and started putting money in
3 it to fix it so my wife could have a break from the shop. And
4 we -- at that time it was starting to look really good. Got
5 everything inside working. We were going to use it ---

6 Q. Where did you park it? Why is it parked on the hill like
7 that?

8 A. It's parked there to stop Thomas from digging.

9 Q. Okay. Was this done during the digging?

10 A. This was done during the digging. They were scooping
11 from the side. They were taking away the turnaround area.
12 And I had talked to Thomas. And I didn't know -- I said,
13 what's your plan? Where will you stop digging? What are you
14 doing for grading? What are you doing for water control?

15 And he didn't have any plan other than a drawing on a
16 white board. And none of the people that were doing the work
17 were like a company or anything. They were day hires and then
18 his personal employees. And they're a bunch of mechanics.
19 And it -- I parked this there to stop him from digging the
20 turnaround away, what was left of it.

21 Q. Now describe for us the kind of hill that he dug.

22 **MR. BROGDON:** Objection. Your Honor, objection. This
23 has already -- all been asked and answered, I think,
24 yesterday. Same picture.

25 **THE COURT:** Yeah, I mean, are you going over something

1 ---

2 **MR. MARTIN:** I'm going over it to show how he's been
3 damaged.

4 **THE COURT:** All right. Well, limit it to the damages,
5 but let's don't rehash ---

6 **MR. MARTIN:** Okay.

7 Q. So tell us the angle that he dug of this ---

8 A. It's about 30 degrees off vertical.

9 Q. Okay. And did you have a problem with your driveway
10 after the digging?

11 A. Yes. We had a lot of problems with our driveway.

12 Q. Okay. Did you have a problem removing the RV?

13 A. Yes. Whenever we parked it there, I had parked it five
14 or six feet from the edge thinking he's not going to dig any
15 closer. He doesn't want this thing to fall on his property.
16 And when we went to go move it, we had to drag it away from
17 the edge with some of our bobcats.

18 Q. And why was that?

19 A. Because they had actually scooped dirt away from, in
20 front of and behind the tires.

21 Q. Okay. Now did you ever measure the top of the cliff when
22 you first built it, when you first dug it?

23 A. Yes. Whenever they had it fully squared out and dug out,
24 it was 36 feet holding out a laser measure straight over the
25 side.

1 Q. Okay. And did you measure it a couple of years later?

2 A. In 2020 we measured it and it was 29 feet.

3 Q. So it lost seven full feet?

4 A. Yes, sir.

5 Q. And what caused that?

6 A. Well, part of that is the loss of lateral support and the
7 erosion. There's an accumulation of silt at the bottom. And
8 that raised that area. And then we had the dropping effect of
9 that far corner.

10 And you see -- you can see the area that the RV is parked
11 on is very -- very -- it's all on the same plain all the way
12 out to the end where you see like some little lumps. It was a
13 very square area. Now this entire area, as you saw in some of
14 the other photos, is now much softened features and it is all
15 rolled over.

16 Q. Okay. Now -- so has the erosion continued since the
17 digging?

18 A. Yes. And it's accelerated.

19 Q. All right. And then you've already gone over the
20 pictures of the inside cracks inside your building.

21 A. Yes, sir.

22 Q. Now during the digging did you lose any work?

23 A. Yes, sir. I stopped taking on jobs. And I struggled to
24 finish the ones we had because of the dirt, the dust, the
25 smoke, the fire, the number of people on our property because

1 of the digging and some of the efforts that we made to stop
2 their digging.

3 Q. So approximately how many weeks did you lose?

4 A. Four weeks.

5 Q. Okay. And what would you estimate the loss of value of
6 that work?

7 A. Fifteen, twenty thousand dollars (\$20,000.00).

8 Q. Now in February of 2020 I believe Mr. Thomas told you
9 that he planned to dig straight to your building.

10 A. Yes, he did.

11 Q. Tell us what you do in that upper building and how would
12 it affect you if you lost access to that building.

13 A. Everything we build in the lower building and in the
14 front building, we fabricate in the machine, we build things.
15 And then you can't give a customer a bare metal piece. So all
16 the finishing, painting, detail work is done in the rear
17 building. And that's where the paint booth is, which in order
18 to paint anything, we need to have a paint booth so we can --
19 not get in trouble with the EPA.

20 And we -- the finishing, sanding, any detail little work
21 like that goes up there in the top shop. That's where my wife
22 works. She has her tables and all her little laid out
23 equipment. And it's air conditioned so it's comfortable. And
24 the temperature control up there helps with the quality
25 process on the finishes and such.

1 Q. So would you lose all that use of the back building?

2 A. Yes. If they block and they finish digging, I would lose
3 access and use of that building. And it would considerably
4 hurt us because a lot of the stuff I even do in the lower
5 building is dependent on things in the upper building.

6 Q. Okay. Now did you have any damage to any wires or
7 waterlines or anything like that as a result of the digging?

8 A. Yes. It happened first like 14 months after the digging
9 we had the waterline get sheared where it goes into the
10 building. This is from the building in that area collapsing.
11 We've had the waterline break in several ---

12 Q. Okay. Why did it shear? What happened?

13 A. Well, the waterline's buried in the dirt and like the
14 overburden lines you saw, and you have layers of dirt and
15 sediment and stuff in the hill. And these areas are shearing
16 and moving because of the loss of lateral support.

17 And since the waterline's passing through this, it gets
18 -- it gets pressure and forces applied on it and it will -- it
19 broke off from the building, it sheared it in a place. And
20 it's a yearly thing now where -- and wherever you see the
21 erosion on the hill, it usually -- and the overburden sliding
22 is where you -- it corresponds with where the next water break
23 usually happens.

24 Q. And how many times has that water break -- broke?

25 A. Four times so far.

1 Q. Okay. And how often?

2 A. It was like 14 months the first time. It was like 12
3 months. And then it was like ten months. It was eight
4 months.

5 Q. Okay.

6 A. It's been ---

7 Q. And do you have to repair the waterline every time?

8 A. Yes, sir.

9 Q. And approximately those four repairs, what would that
10 cost?

11 A. The first was terrible. Took us like an entire day to
12 find, dig up and repair. And now we've learned how to look
13 for the signs and we can do it much faster. So we can
14 pinpoint where we think it's going to break and then plan to
15 dig there. And so it's four hundred dollars (\$400.00) plus to
16 dig up and repair a waterline.

17 Q. Four hundred dollars (\$400.00) plus labor?

18 A. Well, it's accounting for like the -- that's our lower
19 cost on it now of shop time with what it costs us to stop
20 doing what we're doing and do that.

21 Q. Okay. So is it fair to say 400 times four?

22 A. Yes, sir. I ---

23 Q. Okay.

24 A. --- believe that's very conservative.

25 Q. Tell us if there's been any effect on the sewer system or

1 the septic system.

2 A. Yes, sir. We had some septic problems as the hill first
3 collapsed. And we had to figure out how we could manage and
4 control the new water flow over the property to keep it from
5 overwhelming the septic system.

6 We did some -- some like grading stuff around the lower
7 building to keep the water from overwhelming the leach fields.
8 And we keep the driveway now at a pitch that holds the water
9 on it to try to keep it off of the leach fields now away from
10 the tank area. So that way the -- it doesn't fill up and you
11 have all those wonderful problems.

12 Q. Okay. And how much work did that take to do?

13 A. That took several days the first time to figure it all
14 out. And now it's just the maintenance.

15 Q. Okay. And how many hours does it take to maintain it?

16 A. We spend about two -- about two hours a month on it now.
17 Originally it took us much longer, but I bought some
18 attachments that allowed me to grade it a lot faster since
19 it's -- with that happening at a faster rate now, we're having
20 to spend more time doing it.

21 Q. Okay. So two hours a month.

22 A. Um-hum (affirmative).

23 Q. So that's 12 months, right?

24 A. Yes, sir.

25 Q. So is that 24 hours a year?

1 A. Yes, sir.

2 Q. And what would you say the fair hourly rate to do that
3 work?

4 A. My shop rate's a hundred and twenty dollars (\$120.00) an
5 hour. If I have to stop doing something on a paying job to go
6 do that, I think that's fair.

7 Q. Okay. Now you talked about the hill being -- changing
8 the water and causing damage to the driveway. Tell us what
9 you do to require you to continue to use that driveway.

10 A. Well, we have to keep it very smooth. We have to keep
11 the gravel up. We want to make sure that rivulets and
12 channels don't start forming because once they start forming,
13 the water accelerates faster and creates larger channels. So
14 we -- any time after a rain, we have to go out there and --
15 I've got an attachment that just power rakes it up and we can
16 ---

17 Q. An attachment to what?

18 A. Attachment to my bobcat.

19 Q. A what?

20 A. Attachment to my bobcat.

21 Q. To your bobcat?

22 A. Um-hum (affirmative).

23 Q. Okay. So you physically do the work every time it rains?

24 A. Yes, sir.

25 Q. Okay. Did you have to do that work before August of '18?

1 A. Before August '18 we would just rake the hill once a
2 year.

3 Q. Okay.

4 A. And we'd bring in a little bit of gravel. We had so
5 little -- the worst damage before August '18 was just
6 occasionally we'd spin a tire or something on the hill and
7 it'd cause a little pothole or something. And then driving
8 over it would make that slightly larger. We work on a lot of
9 low cars and we get some exotics in and stuff. So we don't
10 want to do more damage to the vehicles, so we try to keep it
11 as smooth as possible.

12 Q. So after the digging how many hours a year do you
13 estimate that you have to work on that driveway?

14 A. After the digging?

15 Q. After the digging.

16 A. We probably spend 36 hours a year on the driveway.

17 Q. Okay. And at the same rate of a hundred and twenty (120)
18 an hour?

19 A. Yes, sir.

20 Q. And that's a year, right?

21 A. Yes, sir.

22 Q. So we're talking '19, '20, '21 and '22, that's four years
23 so far?

24 A. Yes, sir.

25 Q. Okay. Four years in August.

1 A. It's been more work this year, but ...

2 Q. Okay. All right. We already talked about what happened
3 in May of 2018 where Mr. Watkins did not sell to you, but sold
4 to Thomas. As a result of that did you start looking at
5 commercial and residential property to move your business?

6 A. Yes, sir. Due to the nature of some of Thomas'
7 conversations with me, I didn't want to be there anymore.

8 Q. Okay. So tell me what you -- what you discovered from
9 May of '18 to the present as far as the value of various
10 commercial properties that you needed.

11 A. Because of -- I got like a weekly email from LoopNet with
12 anything in specific square footages. And I have very
13 specific power requirements for my building because ---

14 Q. You said a weekly what?

15 A. Email.

16 Q. From who?

17 A. LoopNet. It's like ---

18 Q. What is that?

19 A. It's like Zulu and all those other kind of realty based
20 emails where they -- they send you listings of ---

21 Q. Listings of commercial properties?

22 A. Yes, sir. Commercial properties that had square footage
23 requirements, power requirements and accessibility
24 requirements.

25 Q. Okay. And what requirements did you need in order to

1 continue your business?

2 A. I needed three-phase power. I needed a lot of volts
3 because I have a lot of big C&C machines in my lower shop.
4 And those require a lot of power. I needed a good foundation
5 on a building because some of these machines weigh 20, 30,000
6 pounds. I needed a accessible parking lot and doorway, a
7 large door and such because these machines have to get in and
8 out of these buildings, you know, to move into them. I needed
9 at least the amount of square footage I had in my building.

10 Q. And what was that?

11 A. We're at like 60 -- we're over 6,000 square feet. So,
12 yeah. We were looking at like 6,600 square foot minimum
13 because that's kind of what we have and use with the shops and
14 the carports.

15 Q. So tell us the trend in the prices for these commercial
16 properties that were similar to your property from May of '18
17 to the present. What's happened to the prices?

18 A. They've gotten ridiculous.

19 Q. Okay. Give us some examples.

20 A. There was some properties that were selling for -- in the
21 hundreds, hundred and twenty (120), hundred and forty (140).
22 And then they sold again several years later for five hundred
23 (500) or six hundred thousand dollars (\$600,000.00). There
24 were some in the five hundred (500) and six hundred thousand
25 dollar (\$600,000.00) range that have resold now for over a

1 million (1,000,000), one point four (1.4), one point six
2 (1.6), stuff like that.

3 Q. So can you remember any of the specifics of where these
4 properties were located that you saw?

5 A. I was looking all over Pickens, all over the south side
6 of Greenville, north side of Greenville, upper Anderson. It
7 was -- I looked at the newspaper building in Easley. It had a
8 lot of power, and requirements, and good floors and
9 everything, but the zoning was wrong.

10 Q. And what was the change in price at the newspaper
11 building?

12 A. It was over one hundred percent change from when I
13 originally was looking at it and then when it resold again
14 recently.

15 Q. Okay. Did you ever look at something near Tractor
16 Supply?

17 A. Yes. There was a -- it's going to be a roofing business
18 now, but it was a plumbing business, and it was for sale
19 recently. And we had looked at it before.

20 Q. What was the price before?

21 A. It was like a hundred and something, I believe.

22 Q. Okay. And did it sell?

23 A. Like in the six hundreds (600s).

24 Q. Okay.

25 A. It sold for more than asking price.

1 Q. And when did it sell?

2 A. This past year.

3 Q. Okay. So this past year would be 2022 or 2021?

4 A. 2022.

5 Q. 2022. Okay. All right. How about a place on Highway 8?
6 Did you look at a place on Highway 8?

7 A. Yes. I looked at a place on Highway 8.

8 Q. Was it an engineering firm?

9 A. Yes, there was an engineering firm. It used to be an
10 engineering firm that had big thick concrete floors, big dock,
11 loading dock. It was like -- it was like right at 6,000
12 square feet, but it had a lot of property around it.

13 Q. What was the price in 2019?

14 A. It was in the three hundreds (300s), I believe.

15 Q. Okay. And when it sold in 2020, what did it sell for?

16 A. Over a million (1,000,000).

17 Q. Okay. Did you look in Taylors?

18 A. Yes.

19 Q. Do you remember any specifics ---

20 **MR. BROGDON:** Your Honor, ---

21 Q. --- in Taylors?

22 **MR. BROGDON:** --- objection. I just don't think he has
23 any personal knowledge to these prices. We don't have any
24 listings or anything to say anything about a building. I
25 don't know where he's coming up with these numbers.

1 Q. Did you get these numbers from the ---

2 THE COURT: No, I mean, I'm hearing you to respond to his
3 argument.

4 MR. MARTIN: Okay. The answer is he was looking at
5 property, he was getting emails, he was watching the sales and
6 relying upon the sales ---

7 THE COURT: Is that not hearsay?

8 MR. MARTIN: But it's hearsay in the sense -- but it's --
9 he has the ability to testify as to the value of his property
10 ---

11 THE COURT: Exactly, but not testify to the value of
12 other properties, stuff he looked at.

13 MR. MARTIN: But ---

14 THE COURT: Sustained as hearsay.

15 MR. MARTIN: Okay. All right.

16 Q. As a result of this information that you learned did you
17 have a -- do you have an opinion as to the value of your
18 property now?

19 A. A hundred (100) percent more than what it was when we
20 purchased it.

21 Q. Okay. And what did ---

22 A. Conservatively.

23 Q. --- you purchase it for?

24 A. A hundred and forty thousand (140,000).

25 Q. So you think it's now worth about two eighty (280)?

1 A. Yes, sir.

2 Q. Okay. And tell the jury if you think you've lost the
3 value -- any value of your property as a result of this
4 digging, and the loss of the use of the business, and the
5 upper building, and the dangerous situation with your
6 driveway.

7 A. Turnaround excluded, we've lost a third of our property
8 or going to lose a third of our property. And due to the
9 damage to the upper building, when the upper building falls,
10 we're going to lose a third of our property. So
11 conservatively I'd say we lost at least a third.

12 Q. Okay. So you thought your property's lost about a third?

13 A. Yes, sir.

14 Q. Now doing the arithmetic, what's one third of two eighty
15 (280)?

16 A. Eighty-five (85)?

17 Q. Eighty-five thousand (85,000)?

18 A. Eighty-three thousand (83,000).

19 Q. Eighty-three thousand (83,000). Okay. All right. We
20 talked about the damage to your property. And I want to show
21 you exhibit 44 that's been stipulated and ask you what does
22 this show? And then it's actually Thomas 08 and Thomas 89.
23 And tell the jury what the first picture is.

24 A. This is a photo from 2020. This is our little gate,
25 little trees we planted to give some privacy from Thomas --

1 privacy from Thomas. And you see the driveway up the hill.
2 You see the carports. This is the third carport we put up,
3 the red and white one. It's sitting on the carport
4 foundation.

5 Q. Speak up, please. I can't hear you.

6 A. Okay. You see our third carport?

7 Q. Yes, sir.

8 A. It has a carport foundation. You see the hill. You see
9 the elevation of the hill. We'd already noticed changes in it
10 by this time from the excavation.

11 Q. Okay. And I want to show you the second picture of the
12 exhibit.

13 **THE BAILIFF:** Your Honor, they can't see with that board
14 ---

15 **THE COURT:** Oh, okay.

16 **MR. MARTIN:** Sorry.

17 Q. And what does this show?

18 A. This is a photo of -- taken from across the street. And
19 you can clearly see the racking and dropping of the carport.

20 Q. Okay. Is that how you put it in?

21 A. No, sir. I put it at a three degree angle.

22 Q. And why is it dropping and slumping like that?

23 A. Due to the loss of lateral support and the collapsing of
24 the dirt underneath it from the Thomas excavation.

25 Q. Okay. So one picture's before in 2020, ---

1 A. Yes, sir.

2 Q. --- and the other one is more recent?

3 A. Yes, sir.

4 Q. Okay. I'd like to now show you what's been stipulated as
5 exhibit 31, which is Plaintiff 216, Plaintiff 13, Thomas 103
6 and ask you to describe to the jury what this shows.

7 A. This is the concrete foundation we put underneath that
8 third carport. The third carport, we cut and fabricated it.
9 And we built it a lot larger than it normally was so we could
10 -- back moving trucks underneath it, for building lifts and
11 rigs, for moving pianos and installing them in moving trucks.
12 And so we wanted a spot to work on that.

13 Q. I can't hear you. What did you say?

14 A. This is for that third carport. This is the foundation
15 for it. We built a much larger carport. I wanted to make
16 sure that it had a good foundation and stuff. So this is the
17 foundation for it.

18 We dug this area out. I thought maybe I would put a
19 pedestal crane or something on it. So we built this with --
20 we hand dug this out. It was like a standard curb height.
21 And we put wooden forms in it. And we poured this with rebar,
22 mesh, fiber, everything we could to make it a nice concrete
23 foundation.

24 Q. How deep was it?

25 A. It's like 15 inches deep.

1 Q. Okay. And what's happened?

2 A. The dirt has dropped away. It has eroded away. The
3 entire block itself has dropped with the hill. And it's --
4 yeah, it hasn't floated or anything because at the back of the
5 building you can see where it dropped away from the same line
6 from when it had.

7 Q. And is this the same corner we were seeing with the
8 awning that was drooping?

9 A. Yes. This is what the other side -- this is what the
10 near -- this is the near side of the awning you see in the
11 photos we just looked at.

12 Q. Okay. I want you now to tell the jury about this
13 picture. Where is it and what's happened?

14 A. This is the area between the front and rear building.
15 There's a retaining wall. This was a flat area where the
16 previous owner parked cars. We parked cars there, but now we
17 use it as the ducks' area.

18 And this is the concrete foundation for that third
19 carport. And the dirt and everything has dropped away. The
20 concrete -- the concrete that you see that is on the ground
21 was the extra screed off that didn't fit in the mold. We just
22 kind of let it fall to the side because it was extra stuff to
23 walk on. And this has dropped away from the foundation ---

24 Q. Okay. Before ---

25 A. --- with the dirt.

1 Q. --- August of '18 was it flat and were you able to park
2 cars here?

3 A. It was considerably more flat. And you were able to pull
4 a car there.

5 Q. Okay. Has it changed?

6 A. Yes. It's dropped over a foot. And this end ---

7 Q. Can you park anything there anymore?

8 A. No.

9 Q. All right. I want you to show the next picture, Brent.
10 Tell us what that is.

11 A. This is the concrete foundation. This was before I cut
12 the grass. This was -- this is the -- you see the foundation
13 wall. You see the carport side wall. And you see the -- you
14 see the concrete at the base that has -- that used to kind of
15 be level with where we scraped it off the mold.

16 Q. It was level with what?

17 A. It was level with the top of it. It just kind of -- the
18 slight screed off.

19 Q. Level with the footing?

20 A. Yes.

21 Q. Okay. And now it's how many feet below or inches below
22 ---

23 A. About 12 inches.

24 Q. Okay.

25 A. At least.

1 Q. And was it that way in August of '18?

2 A. No.

3 Q. Okay. Has that happened since the digging?

4 A. Yes, sir. It was more like a standard curb height.

5 Q. All right. Thank you, Brent. And answer any questions
6 that the other side might have.

7 **THE COURT:** Cross-examination.

8 **MR. BROGDON:** Thank you, Your Honor.

9 **Cross-examination by Mr. Brogdon:**

10 Q. All right, Mr. Click. Good morning. Mr. Click, in your
11 direct testimony I think you testified about an interaction
12 with some prior owners. Maybe it was Jimmy Watkins and Greg
13 Porter, is that right?

14 A. Yes, sir.

15 Q. Okay. And I think you stated in that interaction they
16 came and visited your property, walked around with you, didn't
17 say anything?

18 A. Yes, sir.

19 Q. Is that right?

20 A. Well, me following them around and they just walked
21 around.

22 Q. Okay. So they walked around, they opened drawers and
23 cabinets, and they don't say anything to you?

24 A. Um-hum (affirmative).

25 Q. And they go and they say they're interested in some pre-

1 war vehicles, but they're not saying anything to you?

2 A. Well, when they're opening doors of cars and looking
3 directly at your work, they're interested in it.

4 Q. And didn't you say in your deposition, in the 30(b)(6)
5 deposition we took back a few years ago that you said, hi, how
6 can I help you?

7 A. Oh, I -- I'd said many things to them. I narrated, this
8 is this, this is this. I thought they were potential
9 customers.

10 Q. So you had an interaction with them?

11 A. I spoke, yes, sir.

12 Q. Okay. Mr. Click, with regard to the property issues and
13 as your attorney introduced to you is the 1996 plat. Do you
14 recall that?

15 A. Yes, sir.

16 Q. And in that 1996 plat, which is part of your closing,
17 wouldn't you agree with me that you don't have any document
18 stating that you own anything in that turnaround area?

19 A. Yes, sir.

20 Q. There's no documents stating you have a right to use that
21 turnaround area?

22 A. No, sir.

23 Q. So there's nothing giving you anything in writing showing
24 you have any rights to that turnaround area, are there?

25 A. No, sir.

1 Q. Let's go back to your first interaction with the
2 property. I believe you stated that your first interaction
3 with the property was in 2013, is that right?

4 A. Yes, sir.

5 Q. And that's when you rented the property?

6 A. Yes, sir.

7 Q. Okay. So you would agree with me you had no interaction
8 with the property prior to 2013, correct?

9 A. Yes, sir.

10 Q. So anything that occurred prior to 2013 at the property
11 was told to you by someone else, is that right?

12 A. Yes, sir.

13 Q. Okay. You have no personal observations of the property
14 prior to 2013, correct?

15 A. I had driven by it and noticed it.

16 Q. Ever visited inside any of the buildings?

17 A. No, sir.

18 Q. Were you there when the original slab of the building was
19 poured?

20 A. I wasn't born yet.

21 Q. When you began renting the property in 2013 did you think
22 that it included the turnaround area?

23 A. Yes, sir.

24 Q. And the first time that you saw the plat that your
25 attorney showed you, that's the 1996 plat, showing the

1 boundary lines when you purchased the property, you purchased
2 that property from Mark Smith in 2017, is that right?

3 A. Yes, sir.

4 Q. And in that closing did you have an inspection done?

5 A. No, sir.

6 Q. Any kind of appraisals done?

7 A. No, sir.

8 Q. Did you have any title work done?

9 A. We had title insurance we paid for. Yeah.

10 Q. Do you recall reviewing any title work during your
11 closing?

12 A. There was a lot of papers.

13 Q. Do you recall anything showing chain of title when you
14 were closing on the property?

15 A. There was -- there was a lot of papers.

16 Q. So you would agree with me that you don't actually know
17 whether or not you had title work done, do you?

18 A. I had -- I paid for it.

19 Q. And in that plat at closing wouldn't you agree with me
20 that you saw where those boundary lines were in that 1996
21 plat, right?

22 A. Yes, sir.

23 Q. And you saw that the turnaround area was part of the
24 Thomas property, not yours, right?

25 A. I saw -- it doesn't specify whose property it is, but it

1 specifies that it's not ours.

2 Q. So you would agree with me that property is not yours?

3 A. Yes, sir.

4 Q. Okay. And after closing on that property and you
5 received this plat, I believe you stated you had surveyors
6 come out and show you where the pins were, is that right?

7 A. Yes, sir. We had called them before, but they were busy.

8 Q. And when they were there, those surveyors confirmed where
9 those pins were pursuant to that plat, is that right?

10 A. Yes, sir.

11 Q. And it showed you where the actual boundary lines were
12 between the two properties, correct?

13 A. Yes, sir.

14 Q. Now talking about the grading that you allege my client
15 did on his property.

16 A. Um-hum (affirmative).

17 Q. Do you use the property daily?

18 A. My property?

19 Q. Your property?

20 A. Yes, sir. I live there.

21 Q. You drive up and down that gravel driveway. And I think
22 the jury's seen about four dozen pictures of that gravel
23 driveway by now. You drive up and down that?

24 A. Yes, sir. We don't drive up and down it every day, but
25 we do use it.

1 Q. So you would agree with me that you use it every day?

2 A. I don't drive my personal vehicle up there to park. We
3 just use it when we move things from one building to the
4 other.

5 Q. So you move vehicles, heavy vehicles, from that front
6 building to that back building?

7 A. We don't work on really heavy vehicles anymore because we
8 can't take them up there, but the vehicles we do have, we do
9 carry ---

10 Q. Vehicles, nonetheless?

11 A. Yes, sir.

12 Q. Do you walk between the buildings using that gravel
13 driveway?

14 A. Yes, sir.

15 Q. And when this grading work was being done by Mr. Thomas
16 did you call the Pickens County Soil and Water Department?

17 A. Yes, sir.

18 Q. And a County representative came out and inspected the
19 grading, is that right?

20 A. Yes, sir. On one of the earlier days before they really
21 started going as deep as they did.

22 Q. And you learned in that interaction that the County ---

23 **MR. MARTIN:** Objection, Your Honor. May we approach?

24 (Whereupon a bench conference was held off the record in
25 the presence of the jury, but out of their hearing)

1 (Whereupon the bench conference was ended)

2 **MR. MARTIN:** Thank you, Your Honor.

3 Q. Mr. Click, going back to that interaction with Pickens
4 County Soil and Water Department, you said that you did have
5 an interaction with them?

6 A. Yes, sir.

7 Q. What was your recollection of that interaction?

8 A. They -- they came out and they were not able to stop the
9 digging.

10 Q. So you would agree with me that they couldn't do
11 anything, is that right?

12 **MR. MARTIN:** Objection, Your Honor. He's talking about
13 what the County could do or could not do.

14 **THE COURT:** Right.

15 **MR. MARTIN:** That's ---

16 **THE COURT:** I mean, you can tell what he did or what he
17 observed, but anything that the County said would be hearsay.

18 Q. Was that your observation?

19 **MR. MARTIN:** Same -- same objection, Your Honor.

20 **THE COURT:** Rephrase your question.

21 Q. To your knowledge was the grading in violation of any
22 ordinances?

23 **MR. MARTIN:** Objection, Your Honor.

24 **MR. BROGDON:** It's his knowledge, Your Honor.

25 **THE COURT:** I'm going to -- if he knows.

1 A. No. I don't know that much about ordinances.

2 Q. So you can't state yes or no?

3 A. Yes.

4 Q. Talking about that gravel turnaround area, didn't you
5 have Jimmy Watkins come to cut down a tree around that gravel
6 turnaround area?

7 A. No, sir.

8 Q. So no one came and cut down any trees around that area?

9 A. Several trees were cut down during my time up there.
10 There was -- on that ridge-line behind All-Tech, that's where
11 the water flowed off of the property and off the property
12 behind me.

13 And we had a very rainy year in 2015. And we had a windy
14 night one night. It was two or three in the morning and there
15 wasn't a lot of traffic noise. And I heard squishing noises
16 and like -- when the wind blew.

17 And I took a flashlight and a stick and I started walking
18 around in the woods poking around at the base of the trees,
19 and I noticed that several trees were -- the bases were
20 moving. And All-Tech had had a tree fall on it in the past.
21 And Greg Grissenger was always worried about that happening
22 again. So I called Greg about the trees. And they removed
23 one then, one later and then a couple more again later.

24 Q. Did anyone access that gravel driveway and turnaround
25 area in order to do that to your recollection?

1 A. No, I wasn't there. They did it really early in the
2 morning.

3 Q. Mr. Click, just a minute ago you testified about damages,
4 is that right?

5 A. Um-hum (affirmative).

6 Q. Wouldn't you agree with me that before any of this
7 grading or excavation started there were cracks in the floor?

8 A. There were hairline cracks, yes, sir.

9 Q. Wouldn't you agree with me that those cracks existed at
10 least as early as 2014?

11 A. Well, 2013, yes, sir. That's ---

12 Q. So even earlier than that?

13 A. When I started renting, they were there.

14 Q. So those cracks have existed at least nine years now,
15 correct?

16 A. Yes, sir. Not all of them, though. And they weren't as
17 large or long as they are.

18 Q. After the grading you also talked about the water flow,
19 is that right?

20 A. Yes, sir.

21 Q. And the grading didn't redirect or dump any water onto
22 your property, is that right?

23 A. It's -- the water that comes off the property behind me
24 is also -- goes across the back of my property and no
25 additional water -- there's -- there's water problems.

1 Q. Was there any grading or excavation done behind your
2 property?

3 A. No, sir. But as this front area has dropped, it no
4 longer stops the water from coming this direction directing it
5 down the back ditch.

6 Q. So in looking at your model that you created of your
7 building and looking at all of these pictures, I think, the
8 jury has, you'd agree with me that your building is above Mr.
9 Thomas' building, correct?

10 A. Yes, sir.

11 Q. Okay. Wouldn't you agree with me that rain goes like
12 this most of the time?

13 A. And the buildings behind me on Porter's property are
14 higher than me.

15 Q. So does it make much logical sense that rain could go up?

16 A. No, sir. Nothing's coming from the Thomas property up
17 the hill.

18 Q. I believe you testified earlier that instead of having
19 the water flow to the west as it had been, you decided to
20 reroute the water to go down the driveway, is that right?

21 A. I didn't, the collapsing hill did. And it would have
22 gone over the side of the embankment and the excavation and it
23 would have -- it was accelerating. The -- it would have
24 accelerated the loss of lateral support. And so we sacrificed
25 our driveway by cutting it as a V or with a berm so that way

1 the water goes down the driveway at a slower rate at this
2 angle rather than coming at a faster rate off this angle.

3 Q. Wouldn't you agree with me that it could have gone over
4 the side, but you changed that?

5 A. It was going over the side. And it was rapidly causing
6 erosion. And so we changed it to go down the driveway rather
7 than over the side because when it went over the side it went
8 into Thomas' property. And ever since we started doing that,
9 you can even see less -- less of his employees having to mop
10 muddy dirt water out of their shop after a rain.

11 Q. I believe earlier you testified that your property has
12 dropped seven feet in the past three years. Is that what you
13 said?

14 A. Yes, sir, the outer most corner.

15 Q. Okay. And I think you also said that the largest
16 elevation change in any crack that you've identified was half
17 an inch?

18 A. Yes, sir.

19 Q. Mr. Click, you're not a realtor, are you?

20 A. No, sir.

21 Q. You're not a property appraiser?

22 A. No, sir.

23 Q. Commercial business valuator?

24 A. No, sir.

25 Q. Have any background or education in the real estate

1 market other than what you can see on Google?

2 **MR. MARTIN:** Your Honor, I would object ---

3 A. Or I buy books ---

4 **THE COURT:** Hold on.

5 **MR. MARTIN:** Let's approach.

6 (Whereupon a bench conference was held off the record in
7 the presence of the jury, but out of their hearing)

8 (Whereupon the bench conference was ended)

9 Q. Mr. Click, we were just talking about how you're not a
10 realtor, you're not a commercial real estate appraiser, you
11 know nothing about real estate other than what you can find on
12 Google, is that right?

13 A. Or buy books on.

14 Q. Okay. Do you have any -- earlier I believe you were
15 talking with your attorney about other commercial properties
16 that you were looking at, right?

17 A. Yes, sir.

18 Q. Do you have any documents of any of these?

19 A. I mean, all the emails.

20 Q. Do you have anything that you can show the jury about
21 their features, their size, ---

22 A. They were all ---

23 Q. --- square footage?

24 A. --- within the range and had three-phase power. I didn't
25 bring anything.

1 Q. Listing price?

2 A. No, sir. That's why we were very conservative with our
3 estimates.

4 Q. Dates sold? Anything like that?

5 A. Oh, yeah, they sold. Yes, sir.

6 Q. Do you have any of those dates that you can show the
7 jury?

8 A. I looked at so many buildings.

9 Q. But you don't have anything with you presently you can
10 show the jury showing any kind of comparisons, is that right?

11 A. No, sir.

12 Q. Okay. And since 2013 you've used these buildings on your
13 property for work, is that right?

14 A. Yes, sir.

15 Q. Primarily for your business, Hyper Formance?

16 A. Yes, sir.

17 Q. And I believe you stated in your testimony earlier that
18 you use heavy equipment, is that right?

19 A. Yes, sir.

20 Q. I think you stated that you use equipment that could be
21 upwards of 20,000 pounds. Did I hear that right?

22 A. Yes, sir. I have 20 and 30,000 pound C&C machines in my
23 lower building.

24 Q. And I think you also stated that you do a lot of power
25 washing and cleaning the vehicles and stuff like that, is that

1 right?

2 A. We don't power wash, we hand wash.

3 Q. But you use a lot of water inside of these buildings?

4 A. We used to. We don't anymore.

5 Q. Didn't you state that there's a three percent slope and
6 that's to help get the water out of the building?

7 A. We're wet-sanding from a five gallon bucket. You sand
8 for several hours, you lose a portion of the bucket. This
9 isn't a large amount of water.

10 Q. Would you agree with me that you used water inside of
11 this building?

12 A. Yes, sir.

13 Q. And going back to this heavy equipment, I believe the
14 jury has also seen some pictures of some of the car jacks that
15 you've put inside of this building, is that right?

16 A. The lift?

17 Q. Lift, yes.

18 A. It's not inside the building. It's on the concrete pad I
19 poured for it.

20 Q. Is there any kind of lifts or heavy equipment that moves
21 in and out between the building, inside and out?

22 A. In the upper building?

23 Q. In the upper building.

24 A. No. My bobcats don't fit in that building.

25 Q. Earlier, Mr. Click, you were talking about your loss of

1 business. Do you recall that?

2 A. Yes, sir.

3 Q. But you don't personally know the margins, revenue, or
4 profits of your business, do you?

5 A. I do.

6 Q. Do you recall the deposition that you took in 2020. I
7 believe my co-counsel, Emily O'Brian, took that deposition.

8 A. Yes, sir.

9 Q. And you were testifying on behalf of your companies. Do
10 you recall that?

11 A. Yes, sir.

12 Q. And that was a 30(b)(6) deposition.

13 A. Yes, sir.

14 Q. And do you recall being under oath in that deposition?

15 A. Yes, sir.

16 Q. And you know that you're under oath today?

17 A. Yes, sir.

18 Q. Okay.

19 **MR. BROGDON:** Your Honor, if I may?

20 Q. This is your deposition transcript. It's sealed from
21 that deposition.

22 (Whereupon the deposition was unsealed)

23 **MR. BROGDON:** May I approach, Your Honor?

24 **THE COURT:** You may.

25 Q. Mr. Click, I want to turn your attention to page 18 here,

1 and then lines 23 to 25. Do you mind reading those for me?

2 A. Yes. Okay. So you don't personally know the margins,
3 revenue, and the profit? I said, no. She had asked me
4 elsewhere in this about margins and such. And I said I didn't
5 know at the current time because I didn't prepare for that.

6 Q. But that states that you don't know the margins,
7 revenues, or profits of your business, is ---

8 A. At this point ---

9 Q. --- that correct?

10 A. --- in the deposition when she asked me, I replied no.

11 Q. Okay. Thank you. And you were under oath in this
12 deposition, right?

13 A. Yes, sir. And we talked about it again in the
14 deposition.

15 Q. Talking about damages, I believe you testified about
16 waterline that you were repairing, is that right?

17 A. Yes, sir.

18 Q. All right. And you said that that happened first within
19 about a year of the excavation, is that right?

20 A. Yes, sir.

21 Q. Didn't you say in your deposition, that we just looked
22 at, that when asked specifically about the damages, you never
23 mentioned waterlines?

24 A. Yes, sir.

25 Q. But you did mention that you had water issues prior to

1 the excavation, is that right?

2 A. Yes, sir, they did.

3 Q. Earlier in your testimony I believe you claimed that the
4 excavation was at a dangerous slope, is that right?

5 A. Yes, sir.

6 Q. But then I believe you stated that you parked your big,
7 recently purchased RV right alongside the edge of that
8 excavation, correct?

9 A. Yes, sir.

10 Q. Why would you risk your RV you just purchased and park it
11 right there?

12 A. Because I parked it feet away, like six, seven feet away.
13 I didn't think Thomas would excavate all the way to it. And
14 this was also not on the steepest part of it. And they had
15 not finished excavating yet. So it was not as steep and
16 dangerous as it is now.

17 Q. Mr. Click, you were present yesterday when we were
18 leaving the courthouse, correct?

19 A. Yes, sir.

20 Q. And there was a tornado watch and warning that was going
21 on, would you agree with me?

22 A. Yes, sir.

23 Q. Yesterday was your bobcat parked right on the edge of
24 that slope?

25 A. No, sir. Well, it was during the day til I had moved it

1 to be safe so it would be in the view of the cameras while I
2 was away from the shop so Thomas' employees wouldn't mess with
3 it.

4 Q. Did the bobcat fall off the hill or anything like that?

5 A. No, sir. The bobcat's on tracks. It's not a tired
6 vehicle. So the ground PSI contact is a lot smaller than a
7 tired vehicle.

8 Q. But it's still intact and it's not falling off the hill,
9 is it?

10 A. No. It wasn't by the steep area, it was by the rear area
11 that has less of a -- less of a height difference and more of
12 a slope, and has a lot more ground cover that we've managed to
13 plant.

14 **MR. BROGDON:** I beg the Court's indulgence.

15 (Pause)

16 **MR. BROGDON:** Your Honor, that's all the questions I have
17 at this time.

18 **THE COURT:** All right. Thank you. You may -- any
19 redirect?

20 **MR. MARTIN:** Yes, Your Honor, please.

21 **Redirect Examination by Mr. Martin:**

22 Q. Brent, ---

23 A. Um-hum (affirmative).

24 Q. --- from 2013 to 2017 when you were renting 3668 Calhoun
25 Memorial Highway what was your only access to the back

1 building?

2 A. The driveway.

3 Q. And what was your only access to get large vehicles in
4 and out of the back building?

5 A. The driveway.

6 Q. Anything else? Turnaround?

7 A. The turnaround, yes, sir.

8 Q. Okay. Did you ask your landlord whether or not the
9 driveway and turnaround was included in your rent?

10 A. I -- we'd parked there. And I believe ---

11 Q. No, did you ask him whether or not the driveway and
12 turnaround was part of your rent?

13 A. Yes, sir.

14 Q. Okay. Was there any question that you didn't have the
15 absolute right to use it?

16 A. There was no question.

17 Q. Okay. So from 2013 to 2017 when you decided to buy it in
18 February 2017 was there any question in your mind or did
19 anyone claim that that land was not yours to use?

20 A. No one ---

21 **MR. BROGDON:** Your Honor, to the extent someone else told
22 him anything would be hearsay.

23 **THE COURT:** All right. Rephrase your question.

24 **MR. MARTIN:** Okay.

25 Q. From 2013 to 2017 did anyone come up and articulate their

1 ownership of that land and you had no right to use it?

2 **MR. BROGDON:** Same objection, Your Honor.

3 **THE COURT:** I'm going to overrule it. Go ahead.

4 A. No, sir, no one objected.

5 Q. Okay. So in February of 2017 you hired a lawyer?

6 A. Yes, sir.

7 Q. He did a title exam?

8 A. Yes, sir.

9 Q. You paid for it?

10 A. Yes, sir.

11 Q. You were handed at the end of the thing this plat?

12 A. Yes, sir.

13 Q. Is this the first time that you saw about 20 some percent
14 of your driveway was on the Thomas property? Was that the
15 first time that you came to realize that your use and the
16 legal situation were different?

17 A. Yes, sir.

18 Q. And what did you do?

19 A. I continued to use it.

20 Q. I'm sorry?

21 A. I continued to use it.

22 Q. Okay. Did you ask, and did you inquire, and did you make
23 sure that you had the absolute right to use it?

24 A. Yes, sir. I asked lots of questions and I left the
25 attorney's and Mark Smith's feeling very confident that, okay,

1 what I thought was the property is still the use of the
2 property.

3 Q. Okay. Now the difference between where the line is on
4 the survey ---

5 A. Um-hum (affirmative).

6 Q. --- and the use of the turnaround and driveway, is that
7 the whole purpose of this lawsuit ---

8 A. Yes, sir.

9 Q. --- to get ---

10 A. No, sir.

11 Q. --- the Court -- to get the Court to award you your
12 right, the permanent right to use the driveway and the
13 turnaround?

14 A. It was also the excavation.

15 Q. Okay. Yeah, there are ---

16 A. Yeah.

17 Q. --- two issues. But the one issue ---

18 A. Yes, sir.

19 Q. --- is the reason why you're coming to court today and
20 you're asking this jury is to solve this problem once and for
21 all?

22 A. Yes, sir.

23 Q. Is that right?

24 A. Yes, sir.

25 Q. Now you were asked questions about 20,000 pound machines

1 and 30,000 pound machines, is that right?

2 A. Yes, sir. They're large cast machines. They're moved in
3 by riggers. They do not go up the hill. They only go into
4 the lower building.

5 Q. Are any of those machines in the upper building?

6 A. No, sir. I would never put them there because the
7 floor's cracked and moving.

8 Q. Okay.

9 A. Because of the excavation.

10 Q. And if you wanted to move them up there, is it safe with
11 the driveway now?

12 A. The riggers would never drive their 100,000 pound
13 forklifts up that driveway.

14 Q. And why is that?

15 A. Because there's no lateral support to the driveway.

16 Q. And where did the lateral support originally come from?

17 A. It came from the slope of dirt that was between the
18 driveway and the All-Tech building.

19 Q. Okay. The Thomas property?

20 A. Yes, sir.

21 Q. And was that lateral support removed?

22 A. Yes, sir, to make a driveway for them.

23 Q. And what is happening to your building and your land over
24 time?

25 A. It is all sliding and collapsing towards the excavation.

1 Q. Okay. You were asked questions about the 2015 visit by
2 Mr. Porter and Mr. Watkins. And they referred to your
3 deposition as to whether you said hi to them. Were you
4 friendly to them?

5 A. I'm friendly to everyone.

6 Q. Okay. Did they respond in any way, shape, or form?

7 A. They -- they were very kept to themselves when they just
8 like mumbled between themselves about the work I was doing.

9 Q. Okay. Did you ask them who they were?

10 A. Yes, sir.

11 Q. And what was their response?

12 A. There wasn't -- I think there was a grumbled response on
13 the way down the hill. I was like, can I -- who are you? And
14 they were like, oh, you should know who we are or something.

15 Q. Okay.

16 A. Yeah.

17 Q. All right. The lawyer asked you several questions about
18 whether or not you had a legal ownership based on the plat.
19 Are you asking this jury to confirm that you have a legal
20 right to use this driveway and turnaround?

21 A. Yes, sir.

22 Q. Okay. He asked you several questions about whether
23 you're a real estate appraiser.

24 A. Yes, sir.

25 Q. Okay. How many years have you been studying the value of

- 1 commercial property in the area?
- 2 A. Since I decided to purchase and look at purchasing a
- 3 building in 2015.
- 4 Q. And when was that?
- 5 A. In 2015.
- 6 Q. 2015?
- 7 A. When I was starting to ---
- 8 Q. Okay.
- 9 A. --- research for ---
- 10 Q. So you have about seven years experience of looking?
- 11 A. Yes, sir.
- 12 Q. You know the condition of your building?
- 13 A. Yes, sir.
- 14 Q. You know your requirements of your business?
- 15 A. Yes, sir.
- 16 Q. Have you looked at similar properties?
- 17 A. Yes, sir.
- 18 Q. And did this all go into your decision of what yours is
- 19 worth now and how much you've lost in value?
- 20 A. Yes, sir.
- 21 Q. Okay.
- 22 A. We were very conservative with those numbers.
- 23 Q. All right. He finally asked you about your deposition
- 24 that was taken in September of 2020, is that right?
- 25 A. Yes, sir.

1 Q. That was about a year and a half ago, right?

2 A. Yes, sir.

3 Q. All right. Since September of 2020 when you were asked
4 about the net profits of your business, ---

5 A. Um-hum (affirmative).

6 Q. --- what have you done to learn those numbers?

7 A. I just started talking with my accountant more.

8 Q. Okay. So before the deposition, that was all in your
9 accountant's bailiwick?

10 A. Right. As long as I -- I got my tax bill, I paid my tax
11 bill, I paid my monthly bills, ---

12 Q. Okay.

13 A. --- and I was ---

14 Q. And after that ---

15 A. --- happy with that.

16 Q. --- deposition what did you do differently?

17 A. I -- I thought, oh, well, I'm being asked about this, I
18 need to learn all this.

19 Q. And did you?

20 A. Yes, sir.

21 Q. And are you confident that you know what your business is
22 making?

23 A. Yes, sir. I know the profit margins and things ---

24 Q. And were you telling the truth to the jury when you gave
25 those numbers today?

1 A. Yes, sir.

2 Q. Okay. Thank you.

3 **MR. MARTIN:** I have no further questions.

4 **THE COURT:** All right. You may step down.

5 A. All right. Thank you.

6 **THE COURT:** Let's take a short break. We've been going
7 for about an hour. So go back to your jury room and we'll
8 take about 10 minutes. And don't discuss the case.

9 (Whereupon the jury exited the courtroom at 10:35 am)

10 **THE COURT:** All right. Ten minutes.

11 **MR. BROGDON:** Your Honor, very briefly, can we approach?

12 (Whereupon a bench conference was held off the record)

13 (Whereupon the bench conference was ended)

14 (Whereupon court was in recess at 10:37 am)

15 (Whereupon court reconvened at 10:53 am)

16 **THE COURT:** All right. Plaintiff ready?

17 **MR. MARTIN:** Yes, Your Honor.

18 **THE COURT:** Defendant ready?

19 **MR. BROGDON:** Yes, Your Honor.

20 **THE COURT:** Bring in the jury if they're ready.

21 **MR. BROGDON:** Your Honor, really briefly, just before the
22 jury comes in.

23 **THE COURT:** All right. Hold the -- hold on a minute.

24 Hold the jury for a second.

25 **MR. BROGDON:** One second, Your Honor.

1 (Pause)

2 **THE COURT:** Okay. Yes.

3 **MR. BROGDON:** Your Honor, very briefly, I understand this
4 is going to be a fact witness for the Plaintiff. My
5 understanding is that there may be some testimony about
6 motions in limine that were ruled on by the Court including
7 some conversations that were had. I just want to make sure
8 that's enforced and aware in front of the Court prior to his
9 testimony.

10 **MR. MARTIN:** I have no idea what he's talking about.

11 **THE COURT:** Well, I mean, Mr. Martin's aware of the
12 motion in limine, so ...

13 **MR. BROGDON:** Okay. Thank you, Your Honor.

14 **THE COURT:** Just throw something at him if he gets --
15 crosses the line. I'll let you have one throw.

16 **MR. MARTIN:** Just one?

17 **THE COURT:** You'd better hit him.

18 **MR. MARTIN:** In baseball you get three ---

19 **THE COURT:** That's right.

20 **MR. MARTIN:** --- before you're out.

21 **THE COURT:** All right.

22 (Whereupon the jury entered the courtroom at 10:53 am)

23 **THE COURT:** All right. Ladies and gentlemen, if you will
24 recall, the Plaintiff's in their case. So, Plaintiff, call
25 your next witness.

1 know, anywhere you bring your car to get fixed or your truck
2 to get fixed. And I do market research, and I do performance
3 testing, and I do product development. So basically test
4 product that we're working on to make sure it meets the needs
5 of the professional automotive mechanic and also look for
6 ideas and things to create innovative and new products for
7 that industry.

8 Q. Okay. And tell us when you first ever called on Hyper
9 Formance and Brent and Shelly Click.

10 A. So I met Brent and Shelly around mid 2017. Again, just
11 building a network of shops to do my job in. They were
12 recommended by a few other body shops. That's usually how I
13 -- how I kind of find people to go talk to and work with is
14 recommendations of shops in the area and people that I already
15 know.

16 Q. And what was the -- what was their reputation?

17 A. So their reputation was just for body work at that time.
18 Brent does a lot of machining now, but at the time it was
19 automotive body repair, basically collision repair, so a shop
20 you'd take your car to if you got in a car crash.

21 And then he did a lot of custom work, so like metal
22 forming and work that not a lot of people do. And he had a
23 good reputation for that. So if you had to get a customer car
24 built or something like that, it was hand-formed steel. He
25 would be one of the few people in this area to bring it to.

1 And he had a solid reputation for doing good work.

2 Q. Okay. So you say this was in mid 2017?

3 A. Yes, sir.

4 Q. And did you form a relationship, a business and personal
5 relationship with the Clicks in the business?

6 A. I did, yeah, mostly professional. So how my schedule
7 works every week or every other week, typically I have a
8 certain rotation of shops that I go to, work on the projects
9 and get updates that -- of things that I'm working on and ask
10 questions and just watching, observe and see what they're
11 doing and see if we can develop product ideas based off their
12 actions and observing the actual applications and functions of
13 a shop.

14 Q. Okay. And did you get to know their work in the back
15 building? Did you notice they had a front building and a back
16 building?

17 A. Yeah. Yeah. So they have two, you know, and a lot of
18 automotive shops function that way, especially body shops.
19 They have one room where they do kind of like the dirty work,
20 and the mud, and the grinding, and things like that, you know,
21 you're grinding metal. And then they have a clean section
22 where they're doing like prep for paint, water-sanding, final
23 sanding, things like that. It's just how a typical shop
24 works.

25 Q. And what did you notice in the back building or the top

1 building? What kind of work were they doing there?

2 A. So they were doing prep work, so sanding, body filling
3 and smoothing and then painting. There's a paint booth in
4 that top building.

5 Q. Okay. And is that -- is it required to have a booth in
6 order to do painting?

7 A. It is, yes. There's OSHA standards. There's government
8 standards that you have to have a booth with, you know,
9 filtration and, you know, different -- basically safety
10 measures so you're not polluting the air.

11 Q. Okay. And did you get to observe the floor at the time
12 when you were in there in 2017, ---

13 A. Um-hum (affirmative).

14 Q. --- 2018? Tell us about what you observed on the back
15 building floor.

16 A. On the back building floor, I mean, it's a concrete
17 floor. It's smooth -- it was smooth then. And what, you
18 know, why I remember that is they have -- when you're working
19 on cars, especially like hot-rods and cars that have been
20 wrecked, you're not always able to move them, right, because
21 they're not running and there's suspension components and
22 things pulled out of them.

23 So we -- and our company does them. We make car dollies.
24 So the dollies go up under each wheel. And then you can
25 basically just push a car around by yourself. You know, one

1 person can move it, and shift it, and turn it to where they
2 need to be. And, you know, to me that's what sticks out as
3 the floor being level because they had cars on dollies there
4 and you could -- one person could go up and shift the car a
5 little bit and move it so ---

6 Q. Okay.

7 A. --- they had a better way to work.

8 Q. Did you notice any cracks?

9 A. Yeah, there were just like some hairline cracks, just
10 normal cracks that you see in a concrete floor. They're
11 inherent to -- to just small cracks.

12 Q. Did it affect the floor balance, and the dollies, and all
13 ---

14 A. No, no, you could still dolly a car. It was still
15 smooth. You could still dolly a car around.

16 Q. Okay. And did you notice the outside of the building?
17 Any kind of erosion problems or anything like that?

18 A. No, I didn't.

19 Q. Okay. Now when you came to visit did you notice that
20 there was a parking area between the back building and the
21 front building?

22 A. Um-hum (affirmative). Yeah, if his gate was open, that's
23 where I would park.

24 Q. Okay.

25 A. Just because his bottom lot is so tight. If it was open,

1 I'd pull up and pull to the right. There's a little flat spot
2 there.

3 Q. Okay. And was there any problem parking there?

4 A. No.

5 Q. Okay. I want to call your attention to August of 2018
6 and the excavation that was done on the Thomas property next
7 door. Were you -- did you notice that or were you around when
8 that ---

9 A. I did, yeah. At that time I was still going to Brent's
10 every week. And, yeah, just saw them -- saw them digging.

11 Q. Okay. This has been marked as Plaintiffs' exhibit 15.
12 Did you get to see when this machine was digging?

13 A. I did. Yes, sir.

14 Q. Okay. And is that what it looked like?

15 A. Yes, sir.

16 Q. Okay. There's another picture. Is that also what it
17 looked like?

18 A. Um-hum (affirmative).

19 Q. That one?

20 A. Yes, sir.

21 Q. That one?

22 A. Yep.

23 Q. Did you ever see Brent's RV?

24 A. I did, yeah.

25 Q. Okay.

- 1 A. I'd forgotten about that.
- 2 Q. Did you ever notice that it was parked on the side of the
3 hill?
- 4 A. Yes, it was, at the upper shop.
- 5 Q. Okay. And did it have to be moved?
- 6 A. Um-hum (affirmative).
- 7 Q. Did you help with that?
- 8 A. I didn't help with that, not that I remember, but I ---
- 9 Q. Did you observe it?
- 10 A. --- do remember it being moved down to the road, to the
11 parking lot on the road.
- 12 Q. Did you observe that happen?
- 13 A. I did, yeah, because after that I couldn't -- it was
14 really hard to get in and out of his parking lot because I --
15 I remember dealing with that.
- 16 Q. Okay. There's another shot. Now were you aware that he
17 had these three carports?
- 18 A. Yes, sir.
- 19 Q. Okay. And ---
- 20 A. Yeah, those have ---
- 21 Q. --- were they even?
- 22 A. --- been there since I've known ---
- 23 Q. Were they nice and flat ---
- 24 A. Um-hum (affirmative).
- 25 Q. --- in 2017 and '18?

1 A. They were.

2 Q. Okay. When you were watching them do this digging did
3 you notice if there was any erosion control techniques used?

4 A. There was not.

5 Q. Okay. Now after the digging and the excavation did you
6 notice any difference in the land or the back building on the
7 Click property over time from August of '18 to -- coming up to
8 the present?

9 A. Yes, a few things. I stopped parking on that -- in that
10 spot beside his building just because it didn't feel safe.

11 Q. Okay.

12 A. And the ground there was eroding out. And that was like
13 -- that's in between his upper and lower shop. At the upper
14 shop, you know, the -- it's eroding towards where they were
15 digging, I guess ---

16 Q. I'm going to ---

17 A. --- would be the best ---

18 Q. --- show you ---

19 A. --- way I could say it.

20 Q. --- what's been marked as exhibit 31. Is this the area
21 that you used to park?

22 A. Yes, sir.

23 Q. And now you couldn't park there anymore?

24 A. No. No, I mean, I -- you could probably still get a
25 vehicle in, but it wouldn't feel comfortable to get in and out

1 of there.

2 Q. And has the topography dropped this way?

3 A. It has.

4 Q. Okay.

5 A. Yeah.

6 Q. And you see that this is the footing or the slab to one
7 of the carports, is that right?

8 A. Yes, sir.

9 Q. When you used to park here, where was the land compared
10 to this footing?

11 A. So I would park kind of where you see the hood of that
12 car, but I would be all the way up.

13 Q. Okay. Parallel to the building?

14 A. No. No. Perpendicular to the building.

15 Q. Okay.

16 A. Yes. What sticks out to me where this photo -- so this
17 -- you can see that little pathway in front of that white car.
18 And then the cut-out of the carport, that's, you know, that's
19 the path you take to get to the upper shop. And that used to
20 be very level with the slab. And now it's a large step. You
21 know, you got to -- you got to lift your, you know, it's -- it
22 went from being comfortable to just walk up, now you're taking
23 like a 12 inch step up to get on that slab.

24 Q. Okay. So it's dropped about 12 inches?

25 A. Yes, sir.

1 Q. Okay. Here's another picture. Does that -- what was the
2 land like in '17 and '18 and what is it like now?

3 A. It's just dropped significantly. And I think that
4 there's chunks of concrete actually on that corner breaking
5 away.

6 Q. Okay. Is that also an accurate depiction of what you
7 saw?

8 A. Yes, sir.

9 Q. All right. I want to go inside the building. Did you
10 ever notice that there was a door between the paint booth area
11 and this area?

12 A. Um-hum (affirmative).

13 Q. Did you ever go through that door and use that door?

14 A. Yeah, a lot every -- probably almost every time I visited
15 the shop.

16 Q. And how -- what would -- tell us about the operation of
17 that door before the digging.

18 A. Just a normal door pull, you know, turn the knob and walk
19 through it, opens right up.

20 Q. Okay. Did the floor scrape? Did it inhibit it in any
21 way?

22 A. It didn't.

23 Q. Okay. Now after the digging was there a change?

24 A. There was. As the time went by it would -- you know, it
25 got to the point -- the best way for me to say it, it got to

1 the point where you had to kind of like bump it with your
2 shoulder to get through.

3 Q. Okay.

4 A. It was scraping. And then Brent would start cutting it
5 and clearancing it. And then he'd start scraping again. And,
6 again, you'd just kind of have to nudge it and shoulder into
7 it to open it.

8 Q. So Brent would actually cut the bottom of the door ---

9 A. Um-hum (affirmative).

10 Q. --- so it'd work? How many times do you think he cut it?

11 A. Probably at least three or four.

12 Q. And why was that?

13 A. I assumed it was because the floor was dropping and the
14 frame was out of square, so the door wouldn't operate
15 properly.

16 Q. Did you observe any vehicles being moved and how they
17 were moved that were different after the excavation than
18 prior?

19 A. Yes. Time went by, he stopped using dollies up there
20 because you could not -- you couldn't move a car around on
21 dollies because of the -- the lips basically in the cracks of
22 the floor. They're pretty small wheels. They're strong
23 wheels, but they're small. So ...

24 Q. The dolly wheels?

25 A. Yeah, the dolly wheels. So once you have an uneven floor

1 or some abnormality in the floor, it's not going to push --
2 push across anymore.

3 Q. Okay. I want to show you what's been marked as exhibit
4 25. And is that an example of how the cracks have changed?

5 A. Yes, sir.

6 Q. Is that another example? This is ---

7 A. Yes, sir.

8 Q. --- Plaintiff 157. Did you notice whether the cracks
9 increased in size?

10 A. They have, yes.

11 Q. Okay. Did you observe these yourself?

12 A. Yes, sir.

13 Q. All right. Were you aware that Brent had built some
14 cabinets in the back side of ---

15 A. Yes, sir.

16 Q. --- the building?

17 A. Um-hum (affirmative).

18 Q. And what were those cabinets used for?

19 A. What I mostly saw them used for is just to stack parts.
20 Brent makes or builds like splitters and things for cars, for
21 performance cars. And that's Shelly's work area. Shelly does
22 the finish work on them. So they would be just flat across
23 that surface.

24 Q. Okay. And did you notice after the digging there was a
25 change in those cabinets?

1 A. I did, yes.

2 Q. And is it now true that the -- it's no longer flat up-
3 front?

4 A. Yes, sir.

5 Q. And did you notice that there were now gaps between the
6 cabinets?

7 A. Yes, sir.

8 Q. Were these gaps there and this split before the digging?

9 A. They were not.

10 Q. Okay. And what do you think caused that?

11 A. The floor dropping from the erosion.

12 Q. Now outside the building we talked about the area that
13 you parked. And that's literally on the south side of the
14 wall that's facing 123, correct? In the back building?

15 A. Yeah. If you're looking at the building, it's on the
16 left side of the building.

17 Q. Okay. And did you notice that the -- there was a
18 significant change in that wall?

19 A. Yes, sir.

20 Q. Okay. Before August of '18 was this outside of the
21 building flush?

22 A. Yes.

23 Q. And what does that picture depict? And have you seen
24 that yourself?

25 A. It's -- yeah, it started cracking. And it's -- it's

1 bulging toward the building.

2 Q. Okay. Thank you. Answer any questions that the other
3 side might have.

4 **THE COURT:** Cross-examination.

5 **MR. BROGDON:** Thank you, Your Honor. May it please the
6 Court?

7 **Cross-examination by Mr. Brogdon:**

8 Q. Mr. Danner, I believe you stated you're employed by a
9 large industrial tool company, is that right?

10 A. Yes.

11 Q. And what's the name of that company again?

12 A. VIS.

13 Q. VIS?

14 A. V as in Victor.

15 Q. Okay. And what type of equipment does that company
16 generally sell or do you sell?

17 A. Everything that you would use on a car. So we call them
18 hard line products, so wrenches, sockets, ratchets, anything
19 that's basically a hard chrome, steel. We sell -- we sell and
20 develop air tools, so pneumatic air tools, cordless power
21 tools, lifting equipment, which would, you know, floor jacks,
22 transmission jacks, car dollies, tire jacks, things like that.

23 Q. Okay.

24 A. Specialty items, so, you know, ball joint removal tools,
25 just anything -- specialty would be anything like specific to

1 a certain car or certain brand of vehicle, lighting, shop
2 supplies to stools, tool boxes, benches, just any -- basically
3 anything that's on a tool truck, anything that you would --
4 that a professional needs to fix your car.

5 Q. And are you a salesperson or like a management role?

6 A. I'm not -- no. So I'm not in sales. So I'm in product
7 development.

8 Q. Okay.

9 A. So we -- we develop, source, supply customers basically
10 with my function of the business.

11 Q. Gotcha. And I believe you stated that you have had a
12 relationship with the Clicks here since about 2017, is that
13 right?

14 A. Yes, sir. Yeah, it was about mid 2017 when I met them.

15 Q. And you were just looking at various pictures of the
16 building, which I can take this down for you now, that Mr.
17 Martin showed you.

18 A. Um-hum (affirmative).

19 Q. And that's your understanding that would be the Click
20 building, essentially, correct?

21 A. Yes.

22 Q. And that's where -- is it your understanding that's where
23 he's been since 2017 as far as you know?

24 A. Yeah. He was -- I think he was there before I met him.

25 But, yeah, that's what I've -- that's the first time I went to

1 that building ---

2 Q. Are you aware that he's been renting it since at least
3 2013?

4 A. I knew he was renting it. I don't know when -- when the
5 date was, no.

6 Q. And earlier you testified that since you've had this
7 business relationship with them since 2017 does your company,
8 VIS, sell any kind of products to the Hyper Formance of the
9 Clicks?

10 A. No.

11 Q. Okay.

12 A. Well, not directly. He could buy our products through a
13 tool distributor. If he ordered something off the internet,
14 it might come from us, but we don't sell direct to anyone.

15 Q. Did you ever deliver any of those products to his
16 business?

17 A. That he was -- that he purchased?

18 Q. Um-hum (affirmative).

19 A. No.

20 Q. I believe you testified when you go to the Clicks'
21 property that's just to observe what they're doing, is that
22 right?

23 A. Yeah, I would watch. So in any shop I watch people work,
24 right? So I look at just kind of their habits, their work-
25 flow to see if we could make it better, more efficient. And I

1 also bring products by to show them and get opinions. And
2 then sometimes I leave products at shops to evaluate for
3 performance testing to make sure they, you know, they test
4 durability, basically.

5 Q. And would you agree with me that you leave products at
6 shops sometimes potentially when you're ---

7 A. Yes.

8 Q. --- when you go into these -- okay. So is it possible
9 that you've left products at the Clicks' shop ---

10 A. Yes. Yeah, I've left products for testing, but he didn't
11 purchase them.

12 Q. Considering your relationship has been since 2017 to
13 present would you consider yourself a friend of the Clicks?

14 A. I'm an acquaintance. I mean, yeah, I'm friends with a
15 lot of people. You know, like Brent doesn't come to my house
16 on the weekends, if that's what you mean. Like, you know,
17 we're not hanging out outside of work hours ---

18 Q. Sure.

19 A. --- and outside of his shop.

20 Q. Sure. And I think you -- in showing some of the pictures
21 to the jury it seems as though you've visited the property a
22 good bit, wouldn't ---

23 A. Yeah, yeah, I have weekly routes, basically. So just
24 like a tool truck driver, I go to the same places on a
25 consistent basis.

1 Q. Okay. So you've been there pretty often ---

2 A. Yes. Yeah.

3 Q. And interacted with them a good bit, is that right?

4 A. Um-hum (affirmative).

5 Q. Okay. And I believe you testified that you were present
6 at the Click property for several days during August of 2018.

7 Do you recall stating ---

8 A. Yeah. Yeah.

9 Q. Okay. And I think you stated that was while Mr. Thomas
10 was excavating his property. Do you ---

11 A. Um-hum (affirmative).

12 Q. --- recall that? Okay. Do you know what Mr. Thomas did
13 before doing any of that excavation ---

14 A. I do not.

15 Q. Do you know any plans that he had made?

16 A. No. No.

17 Q. Do you know what permissions he may have received?

18 A. No.

19 **MR. BROGDON:** That's all the questions I have at this
20 time, Your Honor.

21 **THE COURT:** All right. Any redirect?

22 **MR. MARTIN:** No, Your Honor.

23 **THE COURT:** All right. You may step down.

24 **MR. MARTIN:** I would ask if the witness could be excused.

25 **THE COURT:** Any objection?

1 been married for about a year and a half.

2 Q. Okay. What year was that?

3 A. Well, we got married in 2011.

4 Q. So when did you buy the house?

5 A. Sometime in 2011. I can't remember exactly when.

6 Q. Okay. So the same year you were married you bought the
7 house?

8 A. Yes, sir.

9 Q. Okay. And was there a time that you decided to help your
10 husband with the business?

11 A. Yes. We both decided to start the business together.

12 Q. Okay. When was that?

13 A. That was in early January 2013.

14 Q. Okay. And tell us about what that business was going to
15 be.

16 A. It was going to be a collision -- collision repair and
17 fabrication shop.

18 Q. Okay. And did you decide to leave the work you were
19 doing to work in that business?

20 A. Yes, sir. I was formerly working at Cascar. It was a
21 military contracting facility. So I worked there about a year
22 prior. And then we -- I put in my two weeks notice and we let
23 everyone there know that we were going to start our own
24 business.

25 Q. Okay. And what -- what was your job at the business in

1 2013?

2 A. I'm the paint prep technician and surface finishing
3 technician.

4 Q. Okay. And are these things that you did before?

5 A. I did have some experience prior. I would help with
6 sanding hoods. I would wet-sand hoods. I think that was the
7 first thing I started to learn how to do. And that was
8 actually after hours at Cascar.

9 Our boss was really nice. He let us use the back of the
10 shop. He had a paint booth. So he -- I worked after hours at
11 Cascar, and that's where I learned.

12 Q. Okay. What was the location of your business?

13 A. Our businesses -- whenever we were renting would just use
14 the back building at 3668 Calhoun Memorial Highway.

15 Q. Do you know how it came about that you decided to rent
16 that property?

17 A. Brent used to work for Mark Smith. And Mark Smith let
18 him know about this rental property.

19 Q. Okay. And I'm about to get a blow-up to help us look at
20 -- all right. Now I want to ---

21 **MR. MARTIN:** And would you prefer to look up here or
22 here? I mean, if this is in your way, I'll put it down. And,
23 Judge, I was just trying to figure out what the jury would
24 prefer.

25 **JUROR:** Is that the only picture you're going to have

1 right there?

2 **MR. MARTIN:** Yes.

3 **JUROR:** The board's fine. The stand.

4 **MR. MARTIN:** The stand is fine?

5 **JUROR:** (Affirmative nod).

6 **MR. MARTIN:** Okay.

7 Q. All right. So this picture as we already know was put
8 into evidence and taken in 2005. And tell us what it shows.

9 A. It shows the 3668 property, the entire driveway and
10 turnaround area, front building and back building.

11 Q. Okay. And what building -- you have a front building and
12 a back building, correct?

13 A. Yes, sir.

14 Q. Which one did you rent in January 2013 for ---

15 A. We were ---

16 Q. --- your business?

17 A. --- in the back building up the hill.

18 Q. Okay. And was there any difference in this building when
19 you first got it compared to this picture?

20 A. Yes, sir. This 2005 picture, it shows that the roof
21 needed work done. So we had a new roof when we started
22 renting in 2013.

23 Q. Okay. Okay. Now what was your only access to this upper
24 building or back building?

25 A. The only way we can get to the back building is the

1 driveway.

2 Q. Okay. And when you rented it did you -- what did you
3 understand about your use of the driveway and the turnaround?

4 A. I was told by Mark Smith that we had permission ---

5 **THE COURT:** All right.

6 **MR. BROGDON:** Objection to hearsay.

7 **THE COURT:** All right. Sustained.

8 Q. Okay. You can't tell us what Mark Smith said, but what
9 was your understanding of your use ---

10 **THE COURT:** Well, that'd be the same way. I mean, she
11 can't testify to what anybody told her or her understanding of
12 what they told her.

13 **MR. MARTIN:** No, I'm not asking her what the person told
14 her, Your Honor. I'm asking her what was her understanding of
15 her use of the driveway and turnaround. May she say -- tell
16 the jury that or not?

17 **THE COURT:** As long as she tells what she, you know, what
18 she, you know, ---

19 Q. All ---

20 **THE COURT:** --- was her rights.

21 Q. --- is what your understanding -- not who told you, but
22 what was your understanding of the use of the driveway and
23 turnaround.

24 A. I was shown the property and it was always to my
25 understanding that I was renting the driveway, turnaround area

1 and the back building.

2 Q. Okay. And physically or geographically what -- was this
3 on the top of the hill?

4 A. Yes, sir.

5 Q. Okay. And did that -- just looking at the topography of
6 the land, what did it tell you about who the driveway and
7 turnaround was for?

8 A. Just looking at the topography of the land, I'm seeing
9 that -- that the only way I could access the back building is
10 the driveway. The only way I could turn cars into the
11 building is by using the turnaround area.

12 Q. Okay. And looking at the natural lay of the land, what
13 did it tell you about the owner of this property? Is there
14 any way he could have used that property?

15 A. I never saw anyone else use the property. And it didn't
16 make any sense to me that anyone would be using that property.

17 Q. Okay. So from -- and how long did you rent? From 2013
18 to what year?

19 A. 2013 to sometime in 2017.

20 Q. Okay. At any time in '13, '14, '15, '16, or '17 did
21 anyone else on this property use this driveway and turnaround?

22 A. No, sir.

23 Q. Okay. Did anyone ever tell you that you could not use
24 it?

25 **MR. BROGDON:** Objection, Your Honor. The same, hearsay.

1 **MR. MARTIN:** I'm asking if they told -- if anyone ever
2 told her she could not use it.

3 **THE COURT:** Well, I think -- rephrase your question.

4 **MR. MARTIN:** Okay.

5 Q. Was there ever an occasion where you had to decide
6 whether you could use it or not?

7 A. No, sir.

8 Q. Okay. Did anyone ever build a fence to keep you from
9 using it?

10 A. No, sir.

11 Q. Did anyone ever try to block your use of the driveway or
12 turnaround in any way?

13 A. No, sir.

14 Q. Okay. Tell us whether or not you did any maintenance to
15 the driveway and turnaround from 2013 to 2017?

16 A. We added gravel a good bit of the time. I actually
17 helped spread the gravel. It's quite a job. We added a
18 considerable amount of gravel to the turnaround area in which
19 Greg Grissenger actually helped us spread that out. It was
20 either -- it was around Christmastime 2013.

21 Q. Okay. And who paid for the gravel?

22 A. I believe we paid for it, me and my husband.

23 Q. You believe? What do you mean?

24 A. I'm trying to remember purchases. But, yes, we paid for
25 it because we -- I remember we had a big truck coming and

1 dumped it out.

2 Q. Okay.

3 A. So, yeah, it must have been us.

4 Q. Now did All-Tech, which was the business over here, did
5 they ever pay to fix or keep up the gravel driveway?

6 A. When we were renting or ---

7 Q. Yes.

8 A. --- anytime prior to that? No, I don't remember anything
9 like that.

10 Q. Okay. Did they ever pay for or keep up the turnaround
11 gravel?

12 A. No, sir.

13 Q. That was all on you?

14 A. Yes, sir.

15 Q. Okay. Now did the nature of your business change from --
16 over the years from 2013?

17 A. Yes, sir.

18 Q. Tell us -- tell the jury how the business changed.

19 A. We went from more insurance and collision repair and kind
20 of gradually gravitated over more towards machining and we
21 were acquiring more machines. So my husband started learning
22 how to use a Pullmax and a hand lathe. He actually -- well,
23 that was later.

24 But he purchased a bunch of books. And he's a big
25 reader, so he's always learning. And so I learned some, but I

1 still mainly focused on surface finishing. And so, yeah, so
2 we did gravitate more towards -- I'd say probably 2015 is when
3 he really started getting more into sheet metal work, although
4 he did do that when we first moved in because we repaired
5 limousines, too, in 2013.

6 Q. Okay. What was your -- you mentioned the name of Greg
7 Grissenger. Who was he?

8 A. Greg Grissenger was our neighbor at All-Tech Auto.

9 Q. Okay. And he was the neighbor on the left side?

10 A. Yes, sir.

11 Q. What was your relationship with him?

12 A. He was our friend.

13 Q. Okay. And what kind of friendly things did you do for
14 him?

15 A. We kept an eye on his shop in the later evenings and at
16 night. And he would also give us advice on how to do certain
17 things, like construction and pouring concrete. And he would
18 come over and just see what we were working on.

19 Q. Okay. And was there a time when you first got there that
20 there was a wood pile in that turnaround?

21 A. There was a wood pile. It was in the woods. It was kind
22 of on the edge.

23 Q. Okay. And tell me, did Greg Grissenger ever move that
24 wood pile away to give you more room?

25 A. I remember that was the first time I met him was when we

1 first started in 2013. He -- he said ---

2 Q. Don't tell me what he said, but tell me what he did.

3 A. He moved the wood pile.

4 Q. Okay. Which way did he move it?

5 A. He pushed it further into the woods.

6 Q. Okay. So back in this area?

7 A. Yes, sir. Pretty far back in ---

8 Q. Okay. Away from the turnaround?

9 A. Yes, sir.

10 Q. Okay. Did that give you more room to use the turnaround?

11 A. Yes, sir. We were able to -- we actually had a good bit
12 more gravel in the turnaround area. So we were able to really
13 fully utilize all the area we needed.

14 Q. Okay. And what did you use the turnaround for?

15 A. We parked customer cars up there. We would work on large
16 projects, like limousines I mentioned earlier. Brent would
17 make hand-shaped panels to replace for rusted out limousines.

18 Limousines have a problem with water damage because of a
19 lot of the interior cloth builds up against the sheet metal
20 and actually puts -- a lot of our cars were from up north. So
21 rust -- rust repair was crucial for a lot of these cars.

22 Q. Is this -- what's the picture of? This is exhibit 13.

23 A. This is a picture of the turnaround area.

24 Q. Okay. Does it show the parked cars that you're working
25 on?

1 A. Yes, sir. It shows some freshly laid out gravel. And I
2 had just washed that car, so that's why it's all wet.

3 Q. Okay. And what -- when do you think that picture was
4 taken, approximately?

5 A. Probably 2014.

6 Q. Is that picture also what it looked like back in 2014?

7 A. Yes, sir.

8 Q. And these are all customer cars?

9 A. Yes, sir, every single one.

10 Q. And did anyone ever require you to move those cars?

11 A. No, sir.

12 Q. How many years did you have them up there?

13 A. Probably -- I would say 2013 to, some of them, 2016.

14 Q. Okay. Now I don't mean just the same cars. I mean other
15 cars.

16 A. Oh, yes. Yes, we've always parked cars up there.

17 Q. Okay. What are these pictures of?

18 A. These are metal racks.

19 Q. Who made those? Or who got them?

20 A. We -- I can't remember where we -- I think we acquired
21 them from -- a customer might have had a lot of them in
22 excess.

23 Q. What did you use them for?

24 A. We used them for storing parts on, like bumpers.

25 Q. So if you were going to paint a car, you would take the

1 bumper off and store it there?

2 A. Yes, sir.

3 Q. Okay. And where -- where were these racks?

4 A. These were in the turnaround area, kind of on the --
5 facing -- this is facing All-Tech.

6 Q. Okay. All-Tech's over here?

7 A. Yes, sir.

8 Q. Did anyone from All-Tech ever tell you to move those
9 racks?

10 A. No, sir.

11 **MR. BROGDON:** Objection, Your Honor. He said did anyone
12 from All-Tech. Hearsay.

13 **THE COURT:** Okay. Overruled.

14 **MR. MARTIN:** Okay.

15 Q. How many years were those racks up there?

16 A. Well, they would get moved around a lot because we were
17 moving cars up and down often. So the racks would get moved
18 -- those might have been there for a month, maybe.

19 Q. Well, I mean, I meant ---

20 A. They were moved around a good bit.

21 Q. I understand. And maybe -- and your answer went to
22 specifically. What I want to ask you is how many years did
23 you use racks up there on that property?

24 A. From ---

25 Q. In the turnaround?

1 A. --- 2013 to the current, honestly. We still use racks

2 ---

3 Q. Okay.

4 A. --- outside if we can.

5 Q. So at least nine years?

6 A. Yes, sir.

7 Q. Okay. What is -- what is this a picture of, ---

8 A. Just -- this is a ---

9 Q. --- Shelly?

10 A. --- picture of the Clemson row boat.

11 Q. Okay. And where is it?

12 A. This is underneath our carport on the left-hand side.

13 This is going into the paint booth.

14 Q. Okay. Is this the paint booth here?

15 A. Yes, sir.

16 Q. Okay. And what are you doing to that Clemson row boat?

17 A. It's being painted in this -- or it was probably freshly
18 painted. He either primed over parts of it or it's -- I think

19 it's primer in that specific photo.

20 Q. And how long is it?

21 A. Incredibly long. I can't remember the exact length of
22 it, but it took up the entire turnaround area and would
23 actually go into the woods ---

24 Q. Okay.

25 A. --- and also come down the hill a little, but it's

1 tremendous.

2 Q. Was the turnaround about 90 feet long from your building
3 at this time?

4 A. Yes, sir.

5 Q. And did you need all of that 90 feet to work on that ---

6 A. Definitely, ---

7 Q. --- row boat?

8 A. --- yes, sir.

9 Q. Okay. All right. I would like to call your attention to
10 October of 2014. You talked about this carport. Tell us what
11 happened in October of 2014.

12 A. October of 2014, we ---

13 Q. With respect to the carport.

14 A. We did a concrete pour.

15 Q. A concrete pour?

16 A. Yes, sir.

17 Q. What was the purpose of that concrete pour?

18 A. It was for bringing vehicles into the shop and working on
19 them underneath the shop. So we also erected a carport as
20 well after the concrete pour.

21 Q. And what was the carport used for?

22 A. The carport was used for working -- working on cars.

23 Q. Okay. So was it much easier for you once you put the
24 carport up to do the work that you had to do?

25 A. Yes, sir, it was essential.

1 Q. Okay. And what's this blue thing here?

2 A. That is a car lift.

3 Q. A car lift? Okay. And who installed that?

4 A. Brent installed it.

5 Q. Okay. So this is the pour that he had, right?

6 A. Yes, sir.

7 Q. And this is the carport up here, right?

8 A. Yes, sir.

9 Q. And this is the car lift?

10 A. Yes, sir.

11 Q. Did anyone help him or advise him on how to do that pour?

12 A. Greg Grissenger.

13 Q. Okay. And did this pour come out into the turnaround
14 area?

15 A. Yes, sir.

16 Q. Okay. Was there ever a time that anyone in 2014, or '15,
17 or '16, or '17 said or did required you to move it?

18 MR. BROGDON: Objection, Your Honor. Any statements are
19 hearsay.

20 Q. Was there anything that anyone did that required you to
21 move or told you to move that carport in 2014, '15, '16, or
22 '17?

23 MR. BROGDON: Same objection.

24 THE COURT: I'm going to overrule it. I don't believe
25 it's for the truth of the matter asserted.

1 A. No, sir.

2 Q. Okay. Did you think you had the option and right to use
3 it?

4 A. Yes, sir.

5 Q. Did you -- did you ever ask permission of anyone if you
6 could pour that concrete?

7 A. We asked Mark Smith.

8 Q. Okay. Because he was the landowner?

9 A. Yes, sir.

10 Q. And what did Mark Smith say?

11 A. Mark Smith said, yes.

12 Q. Okay. All right. I'd like to call your attention now to
13 January of 2015. Did you have a strange visit from two
14 gentlemen?

15 A. Yes. This was the first instance I met Jimmy Watkins and
16 Greg Porter.

17 Q. Okay. And who did you find out Jimmy Watkins was?

18 A. I did not figure out who he was until years later when we
19 went to his shop to inquire about our relations with Thomas
20 and All-Tech Auto.

21 Q. Okay. And who -- did you find out that he owned the All-
22 Tech property?

23 A. Yes, sir.

24 Q. Okay. And when he came and visited in January 2015 was
25 there anything he did that required you to move this carport

1 or remove the pour, remove the cars that you had parked up
2 there or any of the parts that you were hanging on those ---

3 A. No, sir. No, sir.

4 Q. Did you ask him who he was?

5 A. Yes, sir. I actually held up my hand and tried to be
6 polite as I could. And he completely ignored me.

7 Q. Okay. How about the person with him?

8 A. The person with him did the exact same thing. Neither
9 one of them said a single word to me as they walked around my
10 shop.

11 Q. Okay. And did Brent -- did you then go get Brent and he
12 dealt with them?

13 A. Yes. Brent was actually spraying in the paint booth. So
14 I had to go and knock on the door and get his attention. And
15 eventually he came out and did the same thing, tried to ask
16 them who they were. And he followed them around to see what
17 they were doing.

18 Q. Okay. Did they observe the awnings and carport during
19 the time they were up there?

20 A. Yes, sir.

21 Q. Okay. As a result of their visit was there any effort in
22 '15, '16, or '17 from any of them to get you to remove it?

23 A. No, sir.

24 Q. Okay. Did you ever ask them permission to use it?

25 A. I did not feel I needed to. And, no, sir, I never spoke

1 to them about any of that.

2 Q. Now I believe this was the first awning. Did you put up
3 two more?

4 A. Yes, sir, later we did.

5 Q. Okay. And was it also in the front of your back
6 building?

7 A. Yes, sir.

8 Q. And was there a pour done for the third ---

9 A. Yes, sir, ---

10 Q. --- carport?

11 A. --- in 2015.

12 Q. Okay. Tell us about how level these awnings were to the
13 carport when you put them in.

14 A. The awnings were level. It was structurally sound. I
15 and a couple of other friends helped Brent install them.

16 Q. Okay.

17 A. I think it was something like a three degree or something
18 drop.

19 Q. All right. Was there a period of time that you decided
20 to expand your building and needed more space?

21 A. Yes, sir.

22 Q. When was that?

23 A. That was a little bit before 2017. We were having -- we
24 were starting to get cramped inside the back building.

25 Q. Okay. And as a result of that, what did you decide to

1 do?

2 A. We decided to purchase the property.

3 Q. Okay. And was that from Mark Smith?

4 A. Yes, sir.

5 Q. Okay. And I believe that your husband went to the
6 closing, and you hired a lawyer, you had a title exam done.

7 And did you ever become aware of the -- what I call the Ramey
8 plat at that time?

9 A. I became aware of the Ramey plat after the purchasing.

10 Q. Okay. And did you notice that a small portion of the
11 driveway and the gravel turnaround was on the, at the time,
12 Merck property, but turned out to be the Thomas property?

13 Were you aware of that ---

14 A. Yes, sir.

15 Q. --- for the first time?

16 A. I was made aware of that after the purchasing.

17 Q. Okay. And did that change your use in any way?

18 A. No, sir.

19 Q. Did you ask permission from All-Tech or anyone at All-
20 Tech after you came to know that the plat showed that?

21 A. No, sir.

22 Q. Okay. What was your understanding of your use at that
23 time?

24 A. My understanding was that we were allowed to use the
25 property that we had purchased.

1 Q. Okay. Now in February of 2017 when you bought this, I
2 believe that on the east side of your property your neighbor
3 was Greg Porter, is that right?

4 A. Yes, sir.

5 Q. And in this exhibit 2 it shows a driveway coming up the
6 hill. Tell us what that was.

7 A. That driveway is the only vehicular access for the front
8 building.

9 Q. Okay. So Porter owned this property over here? Is that
10 right?

11 A. Yes, sir.

12 Q. And prior to your buying this building it appeared to
13 have access to this building for cars, is that right?

14 A. Yes, sir, that was the only access for cars.

15 Q. What happened?

16 A. We purchased the property in 2017 and began to move some
17 cars into there and some machines.

18 Q. And did you use this driveway here?

19 A. Yes, sir, for about three to four weeks.

20 Q. Okay.

21 A. And then all of a sudden I got up one day to go down the
22 hill and noticed that there was a metal fence coming through
23 our driveway and cutting into the middle of the concrete pad
24 going like really far back into the -- it's grassy now, but
25 going all the way back down the middle.

1 Q. And could you then get a car out of your building?

2 A. No, sir, completely cut us off.

3 Q. Okay. Did anyone call you or tell you that that was
4 going to happen?

5 A. No, sir.

6 Q. Okay. So what did you do as a result of that? Did you
7 have a customer car inside this ---

8 A. Yes, sir, we did. I believe it ---

9 Q. --- lower building?

10 A. I think it was a BMW. The customer was expecting to pick
11 it up fairly soon. And we had to figure out a way to get it
12 out of the building.

13 Q. Okay. And how did you figure that out?

14 A. My husband actually built another door on the west side
15 of the building by the driveway. So he -- I can't remember --
16 I was there, but we had a couple of friends help us. So we
17 used like a forklift.

18 And he had it set up to where it was safe to where we
19 wouldn't get hurt, but we knocked some blocks out. And then
20 he put like a metal beam up in top. And I actually helped --
21 busted up a bunch of bricks. So -- and then we smoothed all
22 those bricks out in the front so that a car could properly
23 pull over it. He set up a wooden frame.

24 And then we set up a garage door pretty much that night
25 because having an open shop would have been really unsafe. We

1 would have had stuff stolen probably.

2 Q. Okay. So you basically put an entrance or an exit on
3 this side, is that right?

4 A. Yes, sir.

5 Q. Okay. And is that how you do it today?

6 A. Yes, sir.

7 Q. Okay. I'm going to call your attention now to the summer
8 of '17. Because you had this fence put here by the neighbor
9 on the east and your neighbor on the west was All-Tech, tell
10 us -- did the runner of All-Tech change from Greg Grissenger
11 to somebody else?

12 A. Yes, sir. Eventually his son-in-law, Mr. Thomas, started
13 working there.

14 Q. Okay. And what was the relationship between you and Mr.
15 Thomas?

16 A. It was tense.

17 Q. Okay. Why? Did you ever do anything mean to him?

18 A. No, sir.

19 Q. Okay. So in the summer of 2017 since you had a tense
20 relationship with your neighbor on the west and obviously a
21 tense relationship with your neighbor on the east that he
22 would put this fence up, what did you decide to do?

23 A. We -- my husband decided to go to Jimmy Watkins and
24 inquire ---

25 Q. No, no. This is summer of 2017.

- 1 A. Summer of 2017?
- 2 Q. And I want to call your attention to the hotdog and the
3 hamburger lunch that you guys decided to have. That's what --
4 I'm sorry, I should have introduced it a ---
- 5 A. Yes, sir. We ---
- 6 Q. --- little better.
- 7 A. We actually -- we actually had Mr. Thomas, all of his
8 employees, and Jeff Evans, and a gentleman who works for them
9 named Rob come over.
- 10 Q. And did those work for the Porter businesses?
- 11 A. No, sir. Jeff Evans and Rob work on Porter's property at
12 a car handwash place.
- 13 Q. Okay. So they were renting from Porter?
- 14 A. Yes, sir, they were renting from Porter.
- 15 Q. Okay. So you decided to have everyone in the
16 neighborhood over?
- 17 A. Yes, sir, to establish a friendship.
- 18 Q. Okay. And did everyone come?
- 19 A. Yes, sir.
- 20 Q. Was it a good time?
- 21 A. It was a pretty good time.
- 22 Q. Okay. And what -- did you notice anything between your
23 husband and Mr. Thomas? Did you observe anything yourself?
- 24 A. I personally observed Brent speaking to him some over in
25 the corner, but I remember him leaving fairly early and a few

1 guys staying a little longer.

2 Q. Okay. So as a result of this tension between the All-
3 Tech people and you, what else did you decide to do?

4 A. We ---

5 Q. And this is where I want you to go into the Watkins
6 situation.

7 A. My husband decided to go to Jimmy Watkins and ask him how
8 our relationship can in any way be bettered with Mr. Thomas
9 and the All-Tech employees.

10 Q. Okay. And did it improve at all?

11 A. No. I specifically remember hearing Jimmy Watkins say --
12 say to Brent that if you cannot get along with Mr. Thomas, I
13 will build a fence on your property.

14 Q. Okay. So what did you decide to do?

15 A. We -- we still continued to go to Mr. Watkins for, I
16 would say, for a while. I didn't go with Brent every time
17 over to that property to talk to him because I didn't really
18 feel comfortable.

19 That was the first time I realized that was Jimmy Watkins
20 who had come to our shop and walked around without saying
21 anything in 2013. So I personally did not feel comfortable
22 talking to Mr. Watkins on repeated occasions.

23 But Brent continued to acquire -- inquire about what he
24 could do to better relations. And I heard from Brent later
25 that Mr. Watkins would go off on tangents about how it used to

1 be in the 60s and 70s.

2 Q. But what I'm interested in is did you ever make the
3 decision to try to purchase the All-Tech property?

4 A. Yes, sir. They discussed prices and giving Mr. Thomas
5 the first right of refusal.

6 Q. Okay. What price was agreed to?

7 A. One hundred and forty thousand dollars (\$140,000.00) was
8 -- no, wait. That was the price allotted to Mr. Thomas, I
9 think.

10 Q. Right. What was the price that Brent and Mr. Watkins
11 agreed and that you agreed to purchase the property for?

12 A. The two of them discussed two hundred and ten thousand
13 dollars (\$210,000.00) with no owner finance.

14 Q. Okay. And did you go to the bank and see if you could
15 get a loan to purchase that property?

16 A. Yes, sir. My husband went to the Bank of Travelers Rest.
17 And they agreed to give him a loan.

18 Q. Okay. And did you have to sell your home in order to get
19 that approval?

20 A. That was the only way ---

21 Q. Okay.

22 A. --- we would have been able to.

23 Q. And did you sell your home as a result of that?

24 A. Yes, sir. We sold our home sometime in 2018.

25 Q. April of 2018?

1 A. Yes, sir.

2 Q. And what -- where did you decide to live?

3 A. We actually had already started building an apartment in
4 the back building. So if we had sold our home, we would have
5 had nowhere to live had we not started building that
6 apartment. We had already been building that prior to the
7 selling of our house.

8 Q. And did you finish building it?

9 A. Yes, sir.

10 Q. And when you sold the house, did you move in?

11 A. Yes, sir.

12 Q. Okay. And tell us whether you ever did buy the All-Tech
13 property.

14 A. No, sir.

15 Q. How come?

16 A. Mr. Watkins gave Mr. Thomas the property for seventy
17 thousand dollars (\$70,000.00) less with owner financing.

18 Q. Okay. And once that happened what did you try to decide
19 to do? Did you decide that you could try to move your
20 business?

21 A. We -- actually for years we'd been looking into moving.

22 Q. Okay. And did you start looking at commercial property
23 as to places that were available that you could move?

24 A. Yes, sir.

25 Q. Okay. All right.

1 **MR. MARTIN:** Now, Your Honor, it's about five to 12. I
2 want to go into the digging. That's going to take a while. I
3 don't know if you want to break at 12 or not.

4 **THE COURT:** No. Go ahead.

5 **MR. MARTIN:** Should I start?

6 **THE COURT:** Yes.

7 **MR. MARTIN:** Okay.

8 Q. All right. I want to call your attention to August of
9 2018. And if you could tell the jury what started happening
10 in August of 2018.

11 A. Near the end of August 2018, right after my husband's
12 birthday, our neighbors started digging ---

13 Q. Okay.

14 A. --- into our hill.

15 Q. Now did you take a day off and go to the lake?

16 A. Yes, sir. I believe we went to Lake Jocassee.

17 Q. Okay. And when you came home late at night, what did you
18 discover?

19 A. We discovered our gate had somehow been taken off and
20 carried over to the side and laid down in the grass.

21 Q. And where was this gate?

22 A. The gate is located to the west of the front building.
23 On the left-hand side, if you're facing the road, if you're
24 actually looking from the road, I'm sorry, the gate is to the
25 west side of the front building.

1 Q. Okay.

2 A. Right at the bottom of the hill.

3 Q. What was the purpose of the gate?

4 A. The purpose of the gate was to keep our property safe
5 from theft.

6 Q. Okay. And when was it put up?

7 A. Sometime in 2015 or '16.

8 Q. Okay.

9 A. I'm not entirely sure on that.

10 Q. Did you give anyone at All-Tech permission to use that
11 gate or take it down?

12 A. No, sir.

13 Q. Okay. So when you got home from the lake, what did you
14 find?

15 A. We found the gate removed. And there was, I believe, an
16 excavator or some equipment and material up on top of the
17 hill.

18 Q. Okay. And was there a fire?

19 A. Yes, sir.

20 Q. And how did it affect your business?

21 A. It affected it tremendously. We actually had a paint job
22 lined up, a red truck that was supposed to be painted, various
23 parts on it. And there was a tremendous amount of ash and
24 smoke just filling up the entire area so that we couldn't do
25 any paint during that time.

1 Q. Okay. How many weeks of work did you lose?

2 A. I felt like it was the entire month of September that it
3 was done. It was for at least -- at least a minimum of three
4 weeks that they were burning, and cutting, and digging.

5 Q. Okay. Do you remember anything about your RV and where
6 it was parked, and why it was parked?

7 A. When we didn't realize how much more he was going to keep
8 digging, my husband decided to pull our RV up the hill as a
9 physical barrier to keep our neighbors from -- to keep coming
10 in.

11 Q. Okay. Was that -- was that to protect what remained of
12 the turnaround?

13 A. Yes, sir.

14 Q. Now the turnaround, you said, was about 90 feet across.
15 How much did they cut in and take away, approximately?

16 A. I don't know the exact number on that.

17 Q. Does 50 feet sound right?

18 A. Yes, sir.

19 Q. Okay. Was it about half or a little more than half of
20 your turnaround you lost?

21 A. It was at least half.

22 Q. Okay. Can you describe the embankment that they left?

23 A. I'm sorry?

24 Q. Can you describe the embankment that they left when they
25 were cutting into the property?

1 A. There was a 90 degree cut at the highest point on -- in
2 the turnaround area. So it was -- it was a terrifying drop
3 down at the highest point of where they cut the most in with
4 their excavator.

5 Q. Okay. And how close to your driveway did they start
6 cutting?

7 A. I believe they started somewhere in the middle of the
8 driveway ---

9 Q. So they actually ---

10 A. --- with the digging.

11 Q. --- dug in the middle of the driveway?

12 A. To me it appeared to be somewhere near -- near the front
13 middle half.

14 Q. Okay. And did they angle it off to their -- to the
15 turnaround?

16 A. Yes, sir.

17 Q. Okay. All right. So this was done in August of 2018.
18 Did you notice any change in your back building from the time
19 that you rented it in 2013 til after this digging was done in
20 August of 2018?

21 A. Yes, sir.

22 Q. What -- tell the jury what changed.

23 A. The inner foundation changed and outer walls changed
24 eventually over time. And the most immediate changes I
25 noticed was the hill, and the slope of the hill, and the

1 erosion.

2 Q. Okay. Now let's talk about the inside of the building.

3 Were there cracks in the building when you rented it in 2013?

4 A. Yes, sir, there were minor cracks.

5 Q. Okay. Did it affect the leveling of the floor?

6 A. No, sir.

7 Q. Okay. I would like to show you exhibit 32, which has
8 been stipulated, which is Plaintiff 212, Plaintiff 213,
9 Plaintiff 214 and Plaintiff 218 and ask you to please describe
10 what it shows to the jury.

11 A. Okay. So Plaintiff 212 is a crack right by the door
12 leading into the paint booth. So in this photo you're
13 standing in the block sanding area. And if you open it up,
14 you go into the paint booth area.

15 Q. Okay. How has that crack -- was that crack there
16 originally in 2013?

17 A. There might have been a minor crack.

18 Q. Okay. Explain how it's changed.

19 A. I noticed after the excavation that this area became a
20 bulge. I noticed it started to bulge up and the crack
21 actually turned into a step.

22 Q. Okay. Did it affect the use of the door there?

23 A. Yes, sir. I -- actually the door frequently gets stuck.
24 And a few times I wasn't even able to open it.

25 Q. Okay.

1 A. And Brent's had to modify it quite a few times.

2 Q. How did he modify it?

3 A. He would trim the bottom of the door.

4 Q. Okay. And has that crack gotten progressively worse
5 since 2018?

6 A. Yes, sir.

7 Q. Okay. The next picture, please -- where is that crack?
8 And please describe it to the jury.

9 A. This crack is in the block sanding area. This is almost
10 in the middle of the block sanding area, I guess, kind of if
11 you're standing to the right. This is right near one of the
12 tables I block sand on. Those are actually my feet right
13 there.

14 This is the front door leading out of the building. So
15 this is the most noticeable crack to me. This used to be
16 perfectly level before the excavation. And now it's such a
17 noticeable crack that if I'm sitting on the ground in a low
18 chair, I can actually rub the middle of my foot on the crack.

19 Q. Okay. Has this affected your use of the area?

20 A. Yes, sir.

21 Q. We heard some testimony about some dollies. Are you able
22 to still use dollies?

23 A. It's a difficult process moving things around now.

24 Q. Okay. The next picture, tell us what that shows.

25 A. This is -- a similar crack. This is in the block sanding

1 area again. And I believe this is the same crack. This may
2 be ---

3 Q. Yes, ---

4 A. --- the one ---

5 Q. --- it is.

6 A. --- that's leaning a bit. So this is a measuring device
7 my husband set up. And I believe it measures out to point
8 five five (.55) inches.

9 Q. So what is point five (.5) -- that's over half an inch?

10 A. Yes, sir.

11 Q. So there's over a half an inch drop now in the floor?

12 A. Yes, sir.

13 Q. Was it that way when you rented in '13, ---

14 A. No, sir.

15 Q. --- '14, '15, or, '16, or, '17, or '18?

16 A. No, sir.

17 Q. It is that way now?

18 A. Yes, sir, definitely.

19 Q. And your final picture, what does that show?

20 A. This photo was taken standing in the apartment. So this
21 is actually the edge of the apartment here. And outside of it
22 is the block sanding area. Here's the table again that I sand
23 a lot of parts on.

24 Q. Um-hum (affirmative).

25 A. So this is also a noticeable crack that is becoming a

1 step-up. And it is bulging in the lower right-hand side.

2 There's a noticeable bulge. You can feel it.

3 Q. Okay. And was it that way in '13, '14, '15, and, '16,
4 and '17?

5 A. No, sir.

6 Q. And has it gotten progressively worse?

7 A. Yes, sir.

8 Q. Okay. I'd like to show you what's been marked as exhibit
9 11. And tell us when that photo was taken.

10 A. This was taken right when we started renting in 2013.
11 This is the back building up the hill.

12 Q. Okay. And does it show any cracks?

13 A. I can't see any in this photo.

14 Q. Okay. What about right here?

15 A. There's some minor cracks.

16 Q. Okay. What was the overall condition of the floor at the
17 time?

18 A. The floor was level.

19 Q. Okay. The second photo, which is P2 -- 209, what is that
20 a picture of?

21 A. This is right when we were installing our paint booth in
22 the back building.

23 Q. Okay. So that would have been in what year?

24 A. 2013.

25 Q. Okay. Now I want to show you what's been marked as

1 exhibit 30. And is this the same paint booth area now?

2 A. Yes, sir.

3 Q. What has changed?

4 A. What used to be minor cracks have now elongated, deepened
5 and new small cracks have been forming all throughout the
6 paint booth.

7 Q. Okay.

8 **MR. BROGDON:** Your Honor, may we approach briefly?

9 **THE COURT:** Yes.

10 (Whereupon a bench conference was held off the record in
11 the presence of the jury, but out of their hearing)

12 (Whereupon the bench conference was ended)

13 Q. All right, Shelly. I want to call your attention now to
14 an event that happened in early February of 2020. Can you
15 tell the jury what happened with Mr. Thomas in the early days
16 of February of 2020?

17 A. My husband had left in the afternoon around this time to
18 go run errands. And I was alone in the back building sanding.
19 It was probably between two and four in the afternoon. I
20 noticed on my security cameras Mr. Thomas walking up the hill
21 with another gentleman.

22 And eventually I did go outside to talk to them. I
23 actually didn't speak to Mr. Thomas because he had been such a
24 problem prior. I spoke instead to what I assumed was his
25 friend. I asked his friend, what are you doing up here?

1 Q. Okay. And did Thomas respond?

2 A. Mr. Thomas did not say anything at that time when I was
3 speaking to his friend.

4 Q. Okay. Did he ever respond?

5 A. Eventually he told me this is my property. I do not need
6 to leave. You can go back inside. And I believe he followed
7 that up with an expletive.

8 Q. Okay. And did you go back inside and call your husband?

9 A. Yes, I did.

10 Q. Okay. And did he return from whatever he was doing?

11 A. He came back as soon as he could because he had actually
12 just left.

13 Q. And did you go down the hill with your husband ---

14 A. I followed him down the hill to keep him safe.

15 Q. And what did you hear Mr. Thomas say?

16 A. I heard Mr. Thomas say, we're going to keep digging until
17 your building falls in.

18 Q. Okay. Did he say anything about the fence?

19 A. His friend mentioned building a fence cutting through our
20 turnaround area and going into the carports.

21 Q. Okay. Would you have been able to use your back building
22 in any way if they built such a fence?

23 A. No, sir. We wouldn't have been able to bring vehicles or
24 work on parts out there anymore.

25 Q. And how did Mr. Thomas think your building was going to

1 fall in?

2 A. I assume he knew about the erosion and the damages it was
3 causing to our hill and the damages it was causing to our
4 building.

5 Q. Okay. And did he claim that he was going to dig even
6 further?

7 A. Yes, sir.

8 Q. Okay. And did he -- and if he dug further it'd been
9 closer to your building. What did he say about that? What
10 would be the effect that he said on your building from him
11 digging further?

12 A. That it would fall in.

13 Q. Okay.

14 MR. MARTIN: That's the end of this testimony, Your
15 Honor.

16 THE COURT: All right. You said that's the end of your
17 direct?

18 MR. MARTIN: Yes, Your Honor.

19 THE COURT: All right. How long do you ---

20 MR. BROGDON: Your Honor, I plan on being very brief.

21 THE COURT: All right. Well, then we'll go ahead with
22 it.

23 MR. BROGDON: Thank you, Your Honor.

24 THE COURT: Everybody good here?

25 THE JURY: (Affirmative nods).

1 **THE COURT:** All right. Go ahead.

2 **Cross-examination by Mr. Brogdon:**

3 Q. Mrs. Click, is it okay if I call you Mrs. Click?

4 A. Yes, sir.

5 Q. Okay. Mrs. Click, you've been sitting here since
6 yesterday morning, is that right?

7 A. Yes, sir.

8 Q. And you heard all the testimony from Mr. Click over the
9 past day and a half or so?

10 A. Yes, sir.

11 Q. Is there anything in that testimony that you don't think
12 was true?

13 A. No, sir.

14 Q. Is there anything that you would change that he said?

15 A. No, sir.

16 Q. Earlier you were talking about the digging and the
17 excavation on the Thomas property, is that right?

18 A. Yes, sir.

19 Q. And I believe that your attorney was also showing you
20 that 1996 plat. Do you recall that?

21 A. Yes, sir.

22 Q. And that plat identified the boundary lines and the
23 property lines between two parties. Do you recall that?

24 A. Yes, sir.

25 Q. And in discussing that digging, did that digging ever

1 cross any boundary lines or property lines?

2 A. I believe parts of it were exactly on the property line,
3 but I also believe certain parts or past ---

4 Q. Would you agree ---

5 A. --- the property line.

6 Q. --- with me --- so you said certain parts were past?

7 A. It seemed that certain parts were past the ---

8 Q. Do you ---

9 A. --- property line.

10 Q. --- have any definite proof that any of the digging went
11 on your side of the boundary line?

12 A. In the turnaround area it seemed to be past ---

13 Q. Okay.

14 A. --- the property line.

15 Q. Is it your understanding that you own that turnaround
16 area?

17 A. To my understanding, yes, sir.

18 Q. And you were looking at that 1996 plat that we discussed
19 and ---

20 A. Yes, sir.

21 Q. --- that identifies the boundary lines?

22 A. Yes, sir.

23 Q. Would you agree with me that turnaround area is not in
24 your property in that boundary line in that 1996 plat?

25 A. Yes, sir.

1 Q. So you don't own that turnaround area, correct?

2 A. According to the 1996 plat, we don't.

3 Q. Are you aware of any other deed, instrument, agreement,
4 anything that's written showing that you have any ownership in
5 that turnaround area?

6 A. No, sir.

7 **MR. BROGDON:** Nothing further from me, Your Honor.

8 **THE COURT:** All right. Any redirect?

9 **Redirect Examination by Mr. Martin:**

10 Q. The 1996 plat shows that the turnaround area is on the
11 Thomas property. What was your understanding whether you had
12 the permanent right to use it?

13 A. My understanding was that it was my right to use the area
14 that I'd always used since 2013.

15 Q. And are you asking this Court to make that permanent?

16 A. Yes, sir.

17 Q. Thank you.

18 **THE COURT:** All right. You may step down.

19 A. Thank you, Your Honor.

20 **THE COURT:** All right, ladies and gentlemen, this is a
21 good time for us to break for lunch. So it's now 10 after 12.
22 If you'll be back in your jury room at 1:30. That'll give you
23 a lunchtime.

24 We'll start back in session -- and, again, don't discuss
25 the case. Don't do any type of research about it. And do not

1 pay any attention to media coverage. And if anybody should
2 contact you other than somebody from the clerk's office,
3 please let the bailiffs know. Otherwise, have a good lunch.

4 (Whereupon the jury exited the courtroom at 12:10 pm)

5 **THE COURT:** You had raised -- you raised it a while ago,
6 and I didn't say anything, about other witnesses. I mean, I
7 don't remember anybody ever making a request that witnesses be
8 sequestered.

9 **MR. BROGDON:** Yes, Your Honor. That's no problem. I
10 just -- it was for the first one that I wasn't exactly sure
11 ---

12 **THE COURT:** Yeah. I mean, I didn't -- I mean, y'all
13 didn't ever ask me specifically then, so I didn't volunteer
14 anything. But I was not aware of any request for
15 sequestration, so ...

16 **MR. BROGDON:** Yes, Your Honor.

17 **THE COURT:** All right.

18 **MR. CAMPBELL:** Judge, for the lack of confusion, I think
19 we had a discussion between counsel earlier, but if we could
20 state on the record, I think we both agreed to keep our
21 witnesses out. Is that ---

22 **MR. MARTIN:** No, that's fine.

23 **MR. CAMPBELL:** We'll just agree to keep our witnesses ---

24 **THE COURT:** Okay.

25 **MR. CAMPBELL:** I don't think we need an order from the

1 Court, but ---

2 **THE COURT:** All right.

3 **MR. CAMPBELL:** --- we'll keep our witnesses outside until

4 ---

5 **THE COURT:** All right. Fine with me. All right. I
6 guess everybody be ready to go at 1:30.

7 **MR. CAMPBELL:** Thank you, Judge.

8 **THE COURT:** Oh, and make sure your -- all the exhibits
9 are properly up here because they've been floating around.

10 (Pause)

11 **THE COURT:** Mr. Brogdon, the court reporter says that 30
12 and 32 had not been -- I mean, y'all had stipulated to those
13 photographs?

14 **MR. MARTIN:** Yeah, we're going to get those in ---

15 **MRS. MARTIN:** We've stipulated to them. So ---

16 **THE COURT:** All right. There's no problem with that
17 because I don't think they were ---

18 **MR. BROGDON:** No, Your Honor.

19 **THE COURT:** They were not one of them that you listed
20 earlier. And that's why she doesn't have them on her list.

21 **MRS. MARTIN:** 30 and ...

22 **THE COURT:** 32 is what she ---

23 **MRS. MARTIN:** But also 44 was stipulated.

24 **MR. BROGDON:** 33 to 44?

25 **THE COURT:** I think you added 44.

1 **MRS. MARTIN:** 44 was not on the original list.

2 **THE COURT:** Right. But 30 and 32 were not in the
3 stipulation this morning.

4 **MADAM COURT REPORTER:** That's right, Judge.

5 **THE COURT:** Right. So, therefore, 30 and 32 are in the
6 record -- into evidence now, is that correct?

7 **MR. BROGDON:** I believe so, Your Honor.

8 **THE COURT:** All right. Okay.

9 (Whereupon Plaintiffs' exhibits 30 and 32 were admitted
10 into evidence)

11 (Whereupon court was in recess at 12:13 pm)

12 (Whereupon court reconvened at 1:34 pm)

13 **THE COURT:** Mr. Martin, you mentioned beforehand about
14 proffering your testimony. How long do you think your proffer
15 would be? I'm just trying to figure out a place ---

16 **MR. MARTIN:** Ten minutes, maybe.

17 **THE COURT:** All right. Let's do that. Let's take your
18 next witness and then maybe take a break at that point and
19 then you can proffer your testimony. I just want to make sure
20 we don't forget about that. So anything else from the
21 Plaintiff before we bring the jury in?

22 **MR. MARTIN:** No, Your Honor.

23 **THE COURT:** Anything else from the Defense?

24 **MR. CAMPBELL:** Not at this time, Your Honor.

25 **THE COURT:** All right. It sounds like you anticipate

1 something, though.

2 **MR. CAMPBELL:** Yes, Your Honor. We've had some
3 discussions about whether we'd save more time by putting the
4 experts all in as a stipulation, but we haven't been able to
5 agree on those terms.

6 **THE COURT:** Okay.

7 **MR. CAMPBELL:** So I think we'll have to just wait and see
8 what the witnesses say.

9 **THE COURT:** All right. If the jury's ready, bring them
10 in.

11 (Whereupon the jury entered the courtroom at 1:36 pm)

12 **THE COURT:** All right. I hope everybody had a good
13 lunch. As you will recall, the Plaintiff is still in their
14 case in chief. So at this time, Mr. Martin, if you'll call
15 your next witness.

16 **MR. MARTIN:** I'd like to call David Hall.

17 **THE COURT:** All right. Mr. Hall, if you'll come forward
18 and be sworn.

19 **MADAM CLERK:** Raise your right hand.

20 **William David Hall,** being
21 duly sworn testified as follows;

22 **MADAM CLERK:** State your full name for the record.

23 **MR. HALL:** William David Hall.

24 **Direct Examination by Mr. Martin:**

25 Q. Do you mind if I call you David?

1 A. That'll be fine.

2 Q. Please tell the jury who you are and what you do.

3 A. I am a registered professional engineer in the State of
4 South Carolina and some other states in the south east. I am
5 a site civil engineer. I do everything that's site related;
6 grading, storm drainage water, sewer, embankments, retaining
7 walls, anything goes on on a site, I'm responsible for.

8 Q. Okay. So give us -- give us -- and how long have you
9 been doing this?

10 A. I was registered 42 years ago.

11 Q. Forty-two years ago? So you've had a little experience,
12 is that fair to say?

13 A. I have, yes.

14 Q. Okay. And where did you go to college?

15 A. I graduated from Clemson University in 1976.

16 Q. Okay. And tell the jury what a site engineer is.

17 A. Civil engineering is a real field. You can be a
18 surveyor. You can be a site -- engineer like me. You can be
19 a structural engineer. You can do project managing if you're
20 in construction. There's just a number of different ways that
21 you can go.

22 I've gone the general route, which is site, civil. I've
23 been a part of site development, any shopping center,
24 apartment complex, subdivision has a civil engineer that's
25 done the site design. That's what I do, site design.

1 I place buildings. I do grading plans, storm drainage
2 water, sewer, anything that supports that business. And so
3 it's a lot of reports and plans that go into the hands of
4 contractors to build those plans or build those buildings.

5 Q. And is safety an important priority in your site planning
6 experience?

7 A. Very important.

8 Q. And why is that?

9 A. Well, as an engineer in the State of South Carolina I
10 have to make sure that the public is safe in the things that I
11 design. I mean, that's a high priority to ensure that safe
12 conditions are met during construction as well as after in the
13 use of the facility.

14 Q. Okay. And what's the purpose of a retaining wall? What
15 have you used those in the past for?

16 A. Retaining walls are -- they restrain earth. And they're
17 used in basements. If you've got a basement below grade,
18 that's a retaining wall that's holding that dirt back.

19 When you go down the interstate and you get to a bridge
20 overpass, those are retaining walls that are restraining the
21 earth to create that bridge so the bridge can get people
22 across. So they restrain earth.

23 Q. Okay. How many years have you been working with
24 restraining walls?

25 A. Back when I started I designed retaining walls, but the

1 world changed in those 42 years and wall systems have changed.
2 And you see a lot of modular wall -- block walls. Those are
3 earth restrained systems that are different than reenforced
4 concrete walls. So as time has gone along, I would engage
5 someone who does wall design to design those walls for me.

6 Q. How many years from the start to the present do you think
7 you've been involved in restraining wall engineering?

8 A. I mean, it's -- every job has -- just about has a
9 retaining wall on it, so the whole time.

10 Q. Whole time?

11 A. Whole time.

12 Q. Okay. All right. Do you -- do you -- have you studied
13 Brent and Shelly's property at 3668 Calhoun Memorial Highway?

14 A. I have.

15 Q. Okay. And have you come to an opinion as to what's going
16 on there?

17 A. Well, on my first site visit I recognized that this
18 embankment is ---

19 **MR. CAMPBELL:** Your Honor, may we approach?

20 **THE COURT:** Yes.

21 (Whereupon a bench conference was held off the record in
22 the presence of the jury, but out of their hearing)

23 (Whereupon the bench conference was ended)

24 Q. All right. Before you give your opinion, the Judge has
25 requested -- the other side's requested to lay a better

1 foundation. So we've talked about your background, your
2 education, and your experience. So now I want to talk about
3 your investigation. What exactly have you done with respect
4 to the Click property?

5 A. I've made several site visits. The first site visit was
6 to see what the conditions were at that site. So I made a
7 visual inspection of the embankment. I walked with Mr. Click
8 and he described to me some of the issues that he'd been
9 having as we walked up that gravel drive. I am noting the
10 condition of the building -- the building at the top of the
11 hill, what it was outside and what it was inside. And then in
12 subsequent visits I collected additional information, some
13 site information so that I could determine the steepness of
14 the slope.

15 Q. Okay.

16 A. So my visits were to try to understand exactly what was
17 done and what the result of those actions were.

18 Q. And how many visits did you have?

19 A. Five.

20 Q. And was the first one in June of 2021?

21 A. That's correct.

22 Q. The second, December 10th, 2021?

23 A. That's right.

24 Q. Third, March 15th, 2022?

25 A. Yes.

1 Q. Were you Beware the Ides of March on the -- okay. How
2 about the 16th, the next day?

3 A. That's right.

4 Q. And the final one, April 7th, 2022?

5 A. Correct.

6 Q. Okay. Now the building, the back building, the one on
7 top of the hill, did you determine when it first showed up?
8 How long it's been there?

9 A. Yes. There's a photo service that you can use. It's
10 called EDR. And they collect photographs. Photographs are
11 used to make soil maps. You know, they're always flying and
12 photographing GIS maps. And so they have a collection of
13 photos. And this building first showed up in a 1978 map.

14 Q. Okay. And like ---

15 A. It was there in 1978, but could have been built sooner.

16 Q. Okay. This is an EDR aerial photo decade package. And
17 it shows that a photograph was taken in 1978 showing the
18 building.

19 MR. MARTIN: Do you have any objections?

20 MR. CAMPBELL: Without objection, Your Honor.

21 THE COURT: All right. And that's exhibit?

22 MR. MARTIN: 39.

23 THE COURT: 39 in without objection.

24 (Whereupon Plaintiffs' exhibit 39 was admitted into
25 evidence)

1 Q. And basically that shows that the building was there when
2 this photo was taken. This is an aerial photo, is that right?

3 A. That's correct.

4 Q. And this company saves these aerial photos of various
5 areas of Pickens County. And this one was taken in 1978. And
6 it shows in that red area, if you look real closely you can
7 see the upper building.

8 A. That's right.

9 Q. Okay. So you knew that that building had been there
10 since -- so this red area is the 3668, is that right?

11 A. That's correct.

12 Q. As of 1978. And it shows the upper building?

13 A. Yes.

14 Q. Okay. Now when you were first on the site did you notice
15 that there was a driveway and turnaround?

16 A. No. On the first site visit that I made there had been
17 grading work done on the adjacent property. And that
18 turnaround area was gone. There were still some gravel at the
19 top of the drive that Mr. Click used to get in and out of his
20 building, but the big turnaround area was gone.

21 Q. Okay. Was some of it left?

22 A. There was some gravel left, yes. But there was an
23 embankment that went down to a parking area that was created
24 for the Thomases to park cars at the top of the hill.

25 Q. All right. So I've got a blow-up of this area after the

1 dig. And it shows that the turnaround area, there's still a
2 portion of it, is that right?

3 A. That's right.

4 Q. So you walked up that hill?

5 A. I did.

6 Q. And was it a gravel driveway and a gravel turnaround?

7 A. Yes, it was.

8 Q. Okay. So you conducted an investigation. What were you
9 asked to do?

10 A. Well, the -- when I first looked at the embankment I was
11 concerned. Rarely, if ever, are embankments graded out like
12 that and left unattended to without some sort of mitigation
13 being made for the loss of material, retaining wall, soil
14 milling. There are a lot of options that could be used.

15 But -- so I was concerned about the stability of that
16 slope because you don't just leave slopes that steep,
17 particularly in areas where cars drive. This is an area where
18 cars will drive and go back up to the back on the Thomas
19 property.

20 And so there was no safety fence. It's a 12 foot cut,
21 its highest point. And there's no safety fence. There's --
22 it was just a cut. So I was concerned about the integrity and
23 the stability of that embankment. So I intended after that
24 first visit to collect information to determine what the
25 stability of that embankment was.

1 Q. Okay. And did you engage anyone to do any testing?

2 A. Yes. I contacted Bunnell Lammons Engineering. They're
3 located in Greenville. That's one of their offices in
4 Greenville.

5 And Bill Mathews, a registered engineer, works for
6 Terracon. He does global stability analysis, which is
7 necessary to determine the stability of the slope.

8 Q. Okay. And have you ever used BLE before?

9 A. Yes. I use them on most projects that require that.

10 Q. How many times you think you've used them before?

11 A. Not just them. There are others that do those. But --
12 and I've done thousands of projects in 42 years. I would say
13 25 percent of the time you're having that analysis conducted
14 or I've had that analysis conducted.

15 Q. Okay. So what's an estimate of how many times ---

16 A. Two hundred times.

17 Q. Two hundred times? Okay. And you always use a
18 geotechnical engineer?

19 A. Yeah, sometimes a geologist serves that role. But in
20 this case, Bill Mathews, I like to use him. He's a registered
21 engineer. He's a PE.

22 Q. Okay. And did you -- tell us what testing that he did.

23 A. Well, what -- I had to do something before he could test.
24 Bill and I met there in one of those visits and determined
25 that we would need a couple of borings, one at each location

1 of the embankment. You want to know what the material is
2 behind the embankment. And I refer to them as the lower
3 embankment and the upper embankment, the lower one being the
4 tallest one.

5 So we determined where those borings would be done. But
6 he let me know then that getting boring rigs on sites or
7 drilling rigs on sites, they were about six months out. And
8 so he could make no commitment to getting somebody there to
9 drill that anytime soon.

10 This wasn't weather sensitive because there was a gravel
11 driveway. So on a rainy day they could come do those -- these
12 borings. But I knew that would be a ways off.

13 But also I told him I would collect enough survey
14 information to be able to cut some cross-sections that he
15 would use in his modeling. So I collected that survey
16 information because they couldn't get a surveyor to the site
17 in a timely manner. And then gave that information to him,
18 and he ran his global stability analysis.

19 He ran it first, though, without the benefit of those
20 things in a preliminary way and made assumptions based on his
21 experience and the soils in this area. But all of that got
22 rectified in the final report.

23 Q. So he actually did two -- a preliminary report and a
24 final report?

25 A. Correct.

1 Q. Okay.

2 MR. MARTIN: I would like to introduce as 40A the report
3 of BLE. Any objection?

4 MR. CAMPBELL: Yes, Your Honor. May we approach?

5 THE COURT: Yes.

6 (Whereupon a bench conference was held off the record in
7 the presence of the jury, but out of their hearing)

8 (Whereupon the bench conference was ended)

9 THE COURT: Ladies and gentlemen, I'm going to send you
10 back to your jury room. I think this is something we need to
11 take up outside your presence. So don't discuss the case, and
12 I'll bring you back out just as soon as we're through.

13 (Whereupon the jury exited the courtroom at 1:53 pm)

14 THE COURT: All right. Yes.

15 MR. CAMPBELL: Your Honor, we would object on the basis
16 that this is hearsay. Mr. Mathews is not here to testify to
17 what he did, the reliability of the methods he used. We have
18 to take Mr. Hall's word that Mr. Mathews even wrote this
19 report. So I'm not sure what basis is for admitting this
20 evidence.

21 THE COURT: Mr. Martin.

22 MR. MARTIN: Your Honor, I would call your attention to
23 Rule 703 of the South Carolina Rules of Evidence ---

24 THE COURT: Well, that doesn't apply because he's not
25 qualified as an expert.

1 **MR. MARTIN:** Who's not qualified?

2 **THE COURT:** He hasn't -- nobody's qualified him as an
3 expert. I haven't declared him an expert. So 703 doesn't
4 even apply.

5 **MR. MARTIN:** Okay. Well, maybe I need to do that ---

6 **THE COURT:** Well, I kind of hinted that real strongly
7 over here and nobody took my hint. I mean, at that point, you
8 know, I'm sure you'll still have an objection. He can -- he
9 can testify to anything he relied upon in rendering his
10 opinion. I don't think -- that doesn't make it admissible as
11 evidence, but he could still use it in coming up with his
12 opinion.

13 **MR. MARTIN:** Okay. So your ruling is it will not come in
14 ---

15 **THE COURT:** It will not come in, but he can use it in his
16 -- if that's what he used and that's something normally used
17 in his field in forming his opinion.

18 **MR. MARTIN:** Okay.

19 **THE COURT:** And you can mark it and proffer it as well.

20 **MR. MARTIN:** Okay. Should we proffer it now?

21 **THE COURT:** That'd be fine.

22 **MR. MARTIN:** Okay.

23 **Proffered Testimony by Mr. Martin:**

24 Q. Mr. Hall, I want to show you what's been marked as
25 exhibit 40A and ask you if you can identify that?

1 A. This is the final global stability report produced by
2 Bill Mathews, PE, and it was signed by him. This is what I'd
3 call the final report.

4 Q. Okay. And is this the kind of report that you normally
5 rely upon in forming an opinion?

6 A. It is.

7 Q. Okay. And is this the kind of report that you've gotten
8 for hundreds of times in your training, education, experience
9 as a site engineer?

10 A. It is.

11 Q. Okay. And does it include on RL1, a picture of the site?
12 Plaintiff 169?

13 A. Yes.

14 Q. And does it have the boring -- B1 boring test next on
15 page -- the next sheet?

16 A. Yes, that's the boring log for B1.

17 Q. Okay. And then is there the boring log for B2?

18 A. That's correct.

19 Q. And then what is PL177, the next page? What does that
20 show?

21 A. These are the -- these are the documents that are
22 produced by the global stability analysis. This is -- these
23 are cross-sections. And they are for both slopes.

24 Q. Okay.

25 A. Tall slope, smaller slope.

1 Q. And the first slope it shows a safety factor of two point
2 five six seven (2.567), is that right?

3 A. Correct. That's the upper slope.

4 Q. And then the bottom slope shows one point one six four
5 (1.164)?

6 A. Correct.

7 Q. Okay. Now are these the kind of reports that you
8 normally rely upon to talk about whether an area is stable or
9 not?

10 A. Yes, it's part of what I considered.

11 Q. Okay. I want to show you what's been marked as exhibit
12 40B, which are basically these pictures that are pulled out of
13 that report and ask if you can identify that? What's the
14 first page?

15 A. The first page is a boring location. Plan is imposed --
16 superimposed on top of an aerial photo.

17 Q. Okay. And does it show where the borings were done?

18 A. It does.

19 Q. Okay. What's the second page?

20 A. This is ---

21 Q. PL173.

22 A. This is a colored version in color of what was in that
23 final report.

24 Q. Okay. And does it show the safety factor of one point
25 one six four (1.164)?

1 A. Correct.

2 Q. And what does that tell you?

3 A. That tells me that in a static loaded condition, factor
4 of safety on that embankment is one point one six (1.16),
5 which is less than one point five (1.5).

6 Q. And what is one point five (1.5)?

7 A. One point five (1.5) is the standard of care for
8 embankment.

9 Q. Okay. So it's less than the standard of care?

10 A. It is.

11 Q. And what does that make it?

12 A. Makes it unsafe.

13 Q. Okay. And we have this green area. What does the green
14 area indicate on the picture?

15 A. That's the failure zone. If there were to be a failure,
16 it's likely that material in green would move.

17 Q. Okay. And the next page, PL174, what is that?

18 A. This is a plot of the -- the bottom of what's labeled as
19 sensitivity range. That's the cohesion factor of the soil
20 based on the soil samples that were taken. And it goes up to
21 the -- this line that's struck across this grid. That is the
22 angle of friction for the soil type. And then you go back to
23 the left to determine the factor of safety.

24 Q. Okay. What is PL175?

25 A. This is that same embankment under seismic loading.

1 Q. Okay. And what is the safety factor there?

2 A. One point oh four eight (1.048).

3 Q. And what is the proper safety factor?

4 A. One point five (1.5).

5 Q. So does that mean it's unsafe under seismic loading?

6 A. It does.

7 Q. Okay. And what is the one -- PL176?

8 A. That's, again, a plot for that embankment under seismic
9 conditions.

10 Q. And the factor of safety?

11 A. It's the one point oh four eight (1.048). That's a graph
12 -- graph of that.

13 Q. All right. The Judge made a great point. I would move
14 you to be as an expert witness in site engineering.

15 **THE COURT:** Well, we can do that when the jury's out
16 here.

17 **MR. MARTIN:** But in order for this to be proffered, ---

18 **THE COURT:** Okay.

19 **MR. MARTIN:** I want to make sure that I've got him as ---

20 **THE COURT:** I got you.

21 **MR. MARTIN:** --- that he's expert and he's approved.

22 **THE COURT:** All right. Any objection?

23 **MR. CAMPBELL:** No, Your Honor. We'll concede he's an
24 expert in site engineering.

25 **THE COURT:** All right.

1 **MR. MARTIN:** Okay. And, Your Honor, to make it easier,
2 these last three -- four pages, five pages, that is 40B, are
3 what he normally relies upon, and I'm asking if we could have
4 those introduced into evidence, 40B, if you don't want to
5 introduce 40A.

6 **THE COURT:** And those are the pictures -- do you have any
7 objection to those?

8 **MR. CAMPBELL:** Your Honor, I'd like to state for the
9 record our objection here is that we don't have a proper
10 foundation as to relevance and reliability of these methods.
11 With reliability concerns the fact that we don't have Mr.
12 Mathews' testimony as far as his compliance with accepted
13 scientific methods.

14 And with relevance, I don't know that there's been any
15 testimony that this slope is on Mr. Click's property. We're
16 all talking about things that happened on Mr. Thomas'
17 property. So I'm not sure how it would go to any of the
18 causes of action that we have pending before us today.

19 **THE COURT:** I mean, I think that goes to the nuisance and
20 negligence clearly because they're saying that because of what
21 your guy did on your property, that's the cause of damage
22 there.

23 And I just would point out, looking at one of the cites,
24 Allegro versus Scully, 400 S.C. 33, Court of Appeals, says
25 that 703 does not allow the admission of hearsay evidence

1 simply because an expert used it in forming his opinion, but
2 it does provide that the expert can give an opinion based on
3 those facts and data that -- even though they're not admitted
4 into evidence. So that's kind of where I'm coming from on
5 that.

6 So, again, the photograph, I mean, I don't think that --
7 additional matter, I don't know how -- if this is not
8 something he prepared, again, he can rely on it in his
9 testimony, but I don't know how that I'm going to be able to
10 ---

11 **MR. MARTIN:** So you say he can rely upon it in his ---

12 **THE COURT:** Yeah, he can rely upon it in his testimony,
13 but he just -- that's ---

14 **MR. MARTIN:** Just can't get it admitted?

15 **THE COURT:** Yes.

16 **MR. MARTIN:** Okay.

17 **THE COURT:** So when you ...

18 **MR. MARTIN:** So can I put it on the Elmo as demonstrative
19 evidence ---

20 **THE COURT:** No, because you have to have it admitted to
21 do that.

22 **MR. MARTIN:** Okay. All right. So we've proffered that.
23 That's now on the record. So ---

24 **THE COURT:** Okay.

25 **MR. MARTIN:** --- if we have an appeal, we can have that

1 issue decided.

2 **THE COURT:** Right. And then you're going to -- we're
3 going to bring the jury back out and then you're going to
4 qualify him?

5 **MR. MARTIN:** Yes.

6 **THE COURT:** All right.

7 **MR. CAMPBELL:** Would it help, Your Honor, to go ahead and
8 figure out the basis of his opinion, what his ultimate opinion
9 is?

10 **THE COURT:** I mean, ...

11 **MR. CAMPBELL:** I'm just trying to save time ---

12 **THE COURT:** Well, I mean, he's proffered testimony from
13 -- if there's an -- I mean, that's up to y'all. But if you
14 object to whatever his opinion is at that time, then, you
15 know, raise your objection.

16 **MR. CAMPBELL:** Yes, Your Honor.

17 **THE COURT:** All right. Are you ready for the jury?

18 **MR. MARTIN:** Yes, sir.

19 **THE COURT:** And, again, when you -- I'll ask you -- and,
20 again, you don't have to tell me now, but when he proffers him
21 as his expert, I'll say, do you have any voir dire or do you
22 consent or objection? And if not, then we can go forward ---

23 **MR. CAMPBELL:** Subject to our objections.

24 **THE COURT:** Yeah. All right. Bring the jury in.

25 (Whereupon the jury entered the courtroom at 2:04 pm)

1 **THE COURT:** All right. Mr. Martin.

2 **Direct Examination by Mr. Martin Continued:**

3 Q. Mr. Hall, I'm going to go back to ask some preliminary
4 questions and then I'm going to ask the Court to qualify you
5 as an expert witness. You're a civil engineer, went to
6 Clemson University, yes?

7 A. Yes.

8 Q. Your specialty is site engineering?

9 A. Yes.

10 Q. Done it for about 42 years?

11 A. Yes.

12 Q. You've had the analysis of safety factors and retaining
13 walls as part of your education, training, and experience for
14 those years?

15 A. Yes.

16 Q. Okay. You have licenses and you're registered as a civil
17 engineer in several states?

18 A. Correct.

19 Q. Okay.

20 **MR. MARTIN:** And based on that, Your Honor, I would offer
21 Mr. Hall as an expert in site engineering, especially in the
22 areas of the safety and impact of digging.

23 **THE COURT:** All right. Any objection or voir dire?

24 **MR. CAMPBELL:** Subject to our objection, Your Honor.

25 **THE COURT:** Which is?

1 **MR. CAMPBELL:** Which is we concede he's a site engineer
2 expert witness.

3 **THE COURT:** Okay. But as far as his expertise, the
4 opinion is where you're ---

5 **MR. CAMPBELL:** Yes, sir.

6 **THE COURT:** Okay. All right, ladies and gentlemen, Mr.
7 Hall has been designated as an expert in site engineering.
8 Now normally a witness cannot testify about their opinions or
9 conclusions. They can only testify to what they saw, heard,
10 or felt, or smelled, you know, just your direct knowledge.

11 The exception to that is when somebody has been qualified
12 as an expert witness. And then they can testify about their
13 conclusions. And it has to be based on their experience,
14 their education, their training, their work, those types of
15 things.

16 But just like all evidence, you're to give the evidence
17 the weight and the value which you feel is appropriate. So,
18 Mr. Martin, you may proceed.

19 **MR. MARTIN:** Okay.

20 **Direct Examination by Mr. Martin Continued:**

21 Q. And we were talking about your investigation, walking up
22 the hill, looking at the photograph, how long the building's
23 been there, looking at the driveway and the turnaround. Then
24 you told us that you hired a geotechnical engineer to do some
25 testing, is that right?

1 A. That is correct.

2 Q. And did you rely upon a -- the testing that you
3 requested?

4 A. I did.

5 Q. And did you assist the engineer in doing the testing?

6 A. I did.

7 Q. Tell the jury how you assisted.

8 A. I met Bill Mathews on this site. And we, together,
9 determined where the borings would need to be taken. And
10 that's our collaborative effort between the two of us. And we
11 decided there were two borings that needed to be done, one at
12 the big wall, one -- or big embankment, and one behind the
13 smaller embankment.

14 Then I prepared for Mr. Mathews an exhibit, which is
15 called S1, where in plain view you see looking down, the
16 location, the property line, the buildings in relationship to
17 this embankment that was created. And then for Mr. Mathews,
18 for his analysis, ---

19 Q. Before you go on, let me see if ---

20 **MR. MARTIN:** I would like to introduce, Your Honor,
21 exhibit 41, which is the S1 that he prepared.

22 **THE COURT:** Any objection? Have you shown it to them?
23 (Pause)

24 **MR. CAMPBELL:** Without objection.

25 **THE COURT:** Okay. 41 in without objection.

1 (Whereupon Plaintiffs' exhibit 41 was admitted into
2 evidence)

3 Q. Okay. So I'm going to put this on our friend, Mr. Elmo,
4 to see if we can get it to a size that makes sense. All
5 right. Mr. Hall, tell us what S1 is.

6 A. This is a site plan. It's a plan of the two properties.
7 The buildings are located on that.

8 Q. Okay. So the lower building is here and the back
9 building is here?

10 A. Correct.

11 Q. Okay.

12 A. And there are contour lines on that plan that show
13 location of the embankments. That's one and then the upper
14 one is right there. Those are the two embankments that I'm
15 referring to. The one up top is smaller. It's graded at a
16 two to one slope. It's in pretty good shape. And then
17 there's the big one that's, I think, in an unsafe condition.

18 Q. Okay. So where were the borings done?

19 A. They're noted on that plan. It's hard to -- I might need
20 thicker glasses, if that's possible.

21 Q. I can't see ---

22 A. Basically the center of those two embankments on -- one
23 is located on Mr. Thomas' property in the turnaround area.
24 That's -- the first one is down below. Yeah, that's the
25 second one that you were -- where you were before.

1 Q. Okay. The second one's down here?

2 A. The second one's behind the big embankment. Go up the
3 hill, up the driveway some. Keep going. It's right in that
4 area.

5 Q. Okay. That's the first -- second one?

6 A. That's the first boring. And the second boring is at the
7 upper embankment.

8 Q. Okay. Right up here?

9 A. Yes.

10 Q. Okay. Well, tell us what the first boring showed. What
11 did it tell you?

12 A. Well, I was there to witness the borings. And they are
13 trying to determine several factors, what type of soil is it?
14 So they're bagging samples. Sometimes they come back and get
15 more samples from the tailings, but they bag samples and the
16 depth of those samples is recorded.

17 Then they go to what's called auger refusal. Both
18 borings went to about 25 feet and they couldn't get any deeper
19 because of probably weathered rock, which there was some
20 evidence of. But 25 feet would put it 12 feet below Mr.
21 Thomas' driveway roughly. So they were well below the
22 embankment in that that was created.

23 So they're doing blow counts. They have a hammer that
24 rises and falls. They record the number of blow counts to go
25 a foot. And as you get on down, the soil gets stiffer. There

1 are less, I mean, more blows required. And that's information
2 they use in their model.

3 And then they look for water. And they try to determine
4 if there's any collapse in the hole after they pull the auger
5 out. All those are factors that go into their report.

6 Q. Okay. Do you sometimes use a pocket penetrometer for
7 doing these borings and tests?

8 A. Yeah. There's something called a split spoon on the
9 bottom of the auger. And material is getting pushed up into
10 that split spoon. So at certain levels, like five feet, 10
11 feet, 15 feet, they'll pull the auger out, open up that split
12 spoon sampler, take out the core, take a pocket penetrometer
13 and stick it in the side of that.

14 What happened on this site is what can happen, the
15 material just fell apart when they stuck the penetrometer into
16 it. So they could not get a reading. And that's -- but they
17 arrive at that number with other information. They've
18 collected blow counts, soil ---

19 Q. What is blow counts?

20 A. The number of blows that it takes to drive that auger
21 down every -- a certain distance. I think it's a foot or
22 maybe it's three feet.

23 Q. So if a penetrometer test doesn't work because the soil
24 is so loose, does the blow count take the place of the
25 information to make a qualified decision? An opinion?

1 A. Yeah, they use the blow count to determine -- what
2 they're really trying to get to is the cohesion number, the
3 density of the soil. If they can't get it with a pocket
4 penetrometer, they get it with the blow count.

5 Q. Okay. Now did they use the blow count in this particular
6 situation?

7 A. Yes.

8 Q. Okay. Now when you say that they're trying to get a
9 count, what is the count they're trying to get to?

10 A. Well, they're trying to determine the stiffness of the
11 soil. And they're trying to determine the cohesion and the
12 friction angle, the fee (ph.) angle or called friction of the
13 soil. Those are numbers they need to plug into their model.

14 So they're using the data they collect, the soil type,
15 the stiffness, blow count, penetrometer, if they can get that,
16 they didn't on this one. They're getting -- they're using
17 that information to get the data they need to plug into the
18 model.

19 Q. And does the model show the safety of the particular hill
20 or dig?

21 A. The purpose of the model is to determine the factor of
22 safety that exists on that embankment as it sits today.

23 Q. Okay. And what is considered, in your experience and in
24 your profession, as to what is safe?

25 A. One point five (1.5) is the standard.

1 Q. Okay. So if something's one point five (1.5) or higher,
2 it's safe, is that right?

3 A. Correct.

4 Q. If it's one point five (1.5) or lower, what is it?

5 A. It's unsafe and is in a state of imminent failure. We
6 don't know when that -- the failure manifests itself in a lot
7 of ways; erosion, loss of soil, movement of soil, but it's in
8 a state of failure.

9 Q. Okay. And did the testing show at the first dig, at the
10 first boring whether it was safe or not?

11 A. They had a factor of safety of one point one (1.1), which
12 is less than one point five (1.5), so I would consider that
13 unsafe.

14 Q. Okay. And based on your education, training and
15 experience what is your opinion as to the safety of that --
16 where the first boring was, which I understand was on the
17 driveway going up the hill?

18 A. That embankment is an unsafe condition.

19 Q. Okay. And would you consider it in a situation of
20 imminent failure?

21 A. Yes.

22 Q. Okay. Now what other factors did you consider in order
23 to reach this opinion that the borings and the digging, the
24 actual digging of the excavation, was unsafe for Brent's
25 property?

1 A. Well, as I stated earlier, in my experience no one leaves
2 embankments at that steepness without doing some sort of
3 mitigation to replace the weight of the material that was
4 moved.

5 Q. And why is that?

6 A. Well, ---

7 Q. Is that called lateral support?

8 A. Well, it's lateral support. You have a block of soil.
9 That block of soil is confined by the soil around it and
10 whatever's around it. When that's removed, in this case it
11 was removed from one side, then there's been loss of
12 confinement for that soil and there's no longer the lateral
13 support that was provided by that embankment, that bank of
14 material. It's gone. So there's been loss of lateral
15 support, loss of confinement.

16 Q. Now in your job as a site engineer for the 42 years, if
17 you had the situation where you were going to lose that
18 lateral support in such a dramatic fashion as happened here,
19 what would you do? What engineering would you create and
20 require in order to keep the lateral support?

21 A. I would do two things -- one of two things. I would lay
22 it back at a slope that is stable. Again, the best image I
23 can think of is riding down the interstate are all these big
24 embankments that have grass grown on them. Those are soil
25 embankments. And they've been laid back at a slope that is

1 such til you get to the bridges, the cross-overs.

2 They have retaining walls. That's the second method you
3 use if you can't confine -- I mean, sometimes I have clients
4 that want to put a lot of stuff on a small site and using
5 every square foot you can. And so you build retaining walls
6 to protect -- to provide the lateral support for the material
7 behind it. And then you have more use of your property. This
8 is a case where the property was graded to make use of the
9 property. And -- but what was not done was to protect that
10 slope.

11 Q. Okay. Now if a retaining wall was put there in place
12 today or tomorrow, would that solve the safety problem?

13 A. I think it would. I think it needs a safety fence at the
14 top of it so people don't walk off, but that's another issue.
15 But, yes, if -- a properly designed retaining wall could
16 stabilize that embankment.

17 Q. Okay. Now have you had experience in figuring out how
18 much retaining walls would cost in your 42 years?

19 A. Well, I used to design them, but I got smart and quit
20 doing that. I mean -- because systems have changed. But I
21 used to do concrete retaining walls. I think this is a place
22 where that's about all you could do because some of the newer
23 systems, you have to dig all the dirt out behind it and lay a
24 geogrid down. And it's earth restrained, meaning the earth's
25 sitting on top of the geogrid, keeps it from moving. And

1 that's tied to the block that's on the face. But you couldn't
2 do that ---

3 Q. And why couldn't you do that here?

4 A. Because you take out the driveway to be able to get that
5 grid in.

6 Q. You take out the Clicks' driveway?

7 A. Part of that driveway would have to be removed ---

8 Q. Okay.

9 A. --- to get that system in. So you couldn't use that
10 system. And so a concrete retaining wall, I think, is
11 probably the best solution.

12 So I estimated 65 to 80 feet of wall, average 10 feet of
13 height. There are a lot of factors and design factors have to
14 be considered.

15 If it's -- if you don't have room to develop a toe on the
16 wall for overturning, then you have to build a more massive
17 footing. It's called a cantilevered wall. So I assume the
18 worst, that it would have to be cantilevered.

19 So the footing would have to be very big. And I
20 calculated that volume of concrete in the wall, typical wall,
21 12 inches thick, probably, reenforcement in it. And the
22 volume of concrete was about 120 cubic yards.

23 And I talked to a wall contractor to get current prices
24 because those prices are changing all the time in our
25 environment and used their unit costs for a cubic yard of

1 structural concrete and arrived at the value of replacing that
2 wall. And ---

3 Q. And how much is that?

4 A. I projected that to be eighty thousand dollars
5 (\$80,000.00). Now that includes -- you've got lay-out.
6 You've got other soft costs associated, design costs. I tried
7 to include all that into my estimate.

8 Q. Okay. So your opinion is it's imminent failure now. The
9 retaining wall will fix that and create a safety factor that
10 is acceptable, is that right?

11 A. That's right. And I think it has to be noted that
12 there's material coming off the top of the slope now. Every
13 once in a while that has to be scooped up and taken someplace.
14 That's been done. There's going to continue to be erosion.

15 And the science says that an exposed wall in these soil
16 conditions will continue to deteriorate because of rain and
17 adding water into the mix. So, yeah, so I think a retaining
18 wall would be a solution. Not the only solution, but a
19 solution to stabilizing this wall ---

20 Q. Okay.

21 A. --- or this embankment.

22 Q. Now you have told us that in your professional opinion
23 that it is -- this digging has created an unsafe condition.
24 Has there been -- and is your opinion supported by the fact of
25 the impact on the utilities to Brent's property?

1 A. Well, my first visit, as I walked up that driveway with
2 Mr. Click, he was describing that underneath the driveway
3 there was utilities that served the upper building. There's
4 water, sewer. I think he has a septic system or septic tank.
5 And then the system has to be outside of that, the drainage
6 system. But those utilities are located under that driveway.

7 And he has had to repair, make repairs on waterlines,
8 sewer line that has broken away from where they enter the
9 building. That seems to indicate there's been movement, to
10 me, that there's been movement of the soil that would lead to
11 that.

12 I also asked him the question of awnings that are on the
13 edge of his building are sloped significantly, separated at
14 the top where they tied to the building or used to. And he
15 said they used to be flat. That's, again, seems to indicate
16 there's been some movement of material to produce that slope
17 condition.

18 Q. Okay. And has there been any change in the interior of
19 the back building?

20 A. Well, I have to base my opinion on what I saw. I wasn't
21 there when the building was built in 1978 or anytime since
22 then before 2021. But there was significant cracking in the
23 floor in that upper building. And they were pretty wide
24 cracks.

25 There was differential sediment on some of the cracks,

1 meaning one side has dropped faster than the other. And that
2 -- that was on the side that faces Mr. Thomas' property where
3 the excavation was done. So it does appear that there's been
4 -- and I saw photographs from when Mr. Click moved in. He had
5 it empty and he'd cleaned it up and was going to use it. And
6 there were not cracks in that floor like -- I think that was
7 2013. It's significantly different today.

8 MR. MARTIN: I would like to introduce exhibit 29, Your
9 Honor, which are PL151, 152, 153, 154, 156 and 164.

10 MR. CAMPBELL: Without objection, Your Honor.

11 THE COURT: All right. And that's exhibit what?

12 MR. MARTIN: 29.

13 THE COURT: 29.

14 (Whereupon Plaintiffs' exhibit 29 was admitted into
15 evidence)

16 Q. I want to show you exhibit 29. And if you could, please,
17 take a minute to explain to the jury what they show.

18 A. This first picture that you're looking at is going up the
19 driveway to the back building. That awning that the ridgeline
20 was sloped on, the gray with the -- or silver with the red
21 top, that's at the upper building.

22 Q. Okay. And it's sloping down?

23 A. It's sloping down toward the embankment that's cut out or
24 created. It's on the left side as you go up that driveway.

25 Q. Okay. How about the next photo? And by the way, did you

1 take these photos? Do you remember?

2 A. I did.

3 Q. I thought you did.

4 A. The second photo, -- do you have that pointer?

5 Q. Yeah.

6 A. Point to that little post that he put in the ground, that
7 little silver post.

8 Q. Yes, sir.

9 A. Again, this is -- Mr. Click was describing what we were
10 seeing there. The embankment is to the left of those trees
11 that you see. And then that little post he put into the
12 ground is to the right of those trees. That post is used to
13 measure movement of the soil. And his testimony was that that
14 ---

15 **MR. CAMPBELL:** Objection, Your Honor. I don't know why
16 he's testifying to Mr. Click's testimony. He can talk about
17 his opinion and the methods he's used to write up the expert
18 opinion. He needs to stick to the basis of his opinion of the
19 methods he used ---

20 **THE COURT:** Well, if that applies to it, then I'll let it
21 in.

22 **MR. CAMPBELL:** Okay.

23 Q. Does Mr. Click's testimony of that post moving from here
24 to here relate to your opinion that what's going on here is an
25 unsafe condition?

1 A. It's just an indication to me that that's further
2 information that's needed, I mean, that's being used to
3 determine there is movement in the soil.

4 Q. Okay.

5 A. When you get around to the other side, I don't think we
6 have a photograph of it, where their cars are, look back, you
7 can tell that the topsoil on those trees are coming over the
8 top. That -- I think that soon that will be on the ground.

9 It just looks like the overburden's starting to move,
10 which is common when you have these conditions with weathered
11 rock. There's always a granular layer between the weathered
12 rock, which is stiffer, and the overburden on top of it. And
13 so it moves on that granular material. That seems to be the
14 case there based on my observation.

15 **MR. MARTIN:** Your Honor, I'd move in evidence on that
16 grounds.

17 **THE COURT:** Do what?

18 **MR. MARTIN:** I would move the testimony of Thomas to, I
19 mean, of Brent Click to the expert would be admissible.

20 **THE COURT:** I mean, it's already been admitted.

21 **MR. MARTIN:** If he objected, then I want to be ---

22 **THE COURT:** Well, I mean, I thought -- didn't he just
23 testify about it?

24 **MR. MARTIN:** He did, yes.

25 **THE COURT:** Okay.

1 Q. Now tell me about the silt trees here. What do you know
2 about those?

3 A. Those trees at one time were on the crown of that slope,
4 they're now on the side of the slope.

5 Q. Okay. Are they about halfway down?

6 A. Approximately.

7 Q. Okay. What does that indicate to you?

8 A. Soil movement.

9 Q. Okay. Does that add to your opinion of the safety of
10 this excavation?

11 A. It seems to further confirm that there is a safety issue.

12 Q. Okay. Tell us what this photo is.

13 A. This is the embankment behind Mr. Thomas' building. That
14 driveway that you see at the toe of the slope parallels Mr.
15 Thomas' building. I just photographed that just to give a
16 picture of the erosion that's been occurring, which will be
17 ongoing until that is stabilized in some fashion.

18 Q. Okay. Next photo?

19 A. That -- it's hard to see, but that's a photograph just
20 getting a picture of some of the cracks on the exterior wall,
21 the side facing Mr. Thomas' property.

22 Q. What does the cracks in the wall indicate to you?

23 A. That that wall has moved and produced those cracks.

24 Q. Okay. Next picture?

25 A. That is an example of the cracking and the floor of the

1 interior of the building. I took that picture because you can
2 hardly tell it, but that trash can in the top part of the
3 photo indicates there's been differential sediment because one
4 side's lower than the other. And the side that's -- and this
5 cracking is on the side or near the end of the -- where the
6 embankment was cut.

7 Q. Okay. And the final photograph?

8 A. That's just looking back down the driveway to get some
9 sense of relationship with the lower building and that slope.
10 Those -- I guess those are Leyland cypress. But those green
11 trees, that portion of the embankment looks like it's been
12 there a lot longer. From those trees back is where the new
13 embankment was created.

14 Q. Okay. Now as a result of your investigation and the
15 testing done by the geotechnical engineer, have you formed an
16 opinion based on your education, training, and experience as
17 to whether or not the excavation has created a safety problem
18 for Brent and Shelly Click?

19 A. It is my opinion that that embankment is unstable and
20 it's unsafe, and that needs to be addressed. Mr. Click has on
21 his own determined he will not take wreckers up that driveway
22 to get buildings to -- I mean, get cars or whatever he's
23 working on to the upper building because he's concerned about
24 that embankment, with the loading of a wrecker, which is
25 significant. I think that's the right choice. He -- so he's

1 changing how he's using his property because he's concerned
2 about the safety of that embankment. I am as well. I think
3 that's the right decision.

4 Q. And do you have an opinion based on your education,
5 training, and experience if that driveway will eventually
6 collapse?

7 A. I think unless there is some effort made to stabilize
8 that slope that that likely will happen.

9 Q. Okay. I would like to show you exhibit 42 and ask you if
10 you can identify it?

11 **MR. MARTIN:** And ask if there's any objection to ---

12 **MR. CAMPBELL:** I think this has already been entered into
13 evidence, Your Honor. This is ---

14 **MR. MARTIN:** No, that's a second -- that's a second,
15 different one. It's a completion of it.

16 **MR. CAMPBELL:** Okay.

17 **MR. MARTIN:** The first was a preliminary, this is the
18 final.

19 **MR. CAMPBELL:** Okay. No objection.

20 **THE COURT:** All right. In without objection.

21 (Whereupon Plaintiffs' exhibit 42 was admitted into
22 evidence)

23 A. Yeah, 41 was what I gave Bill Mathews to create his
24 report. And then what 42 shows is his findings put back on
25 this plan and cross-section.

1 Q. All right. Tell us what this shows, the final plan.

2 A. Well, the plan -- the site plan stays the same. The
3 cross-sections, which are on the left, you know, you're
4 slicing that embankment and looking at it -- looking at that
5 slice. I plotted the failure plane on this where the model
6 indicated the failure plane would be. I plotted that on the
7 plan.

8 Also, I noted from the plan, the site plan where the
9 property lines were on the cross-sections. I had not done
10 that before. But just to determine at those two cross-
11 sections where the property line was in relation to -- on the
12 section.

13 Q. And what does this show?

14 A. Well, AA, which is the upper one, is the big wall, the
15 failure plane goes all the way to Mr. Click's driveway about a
16 foot into his driveway. And BB shows that the failure plane
17 is -- it's not really any impact because that's a two to one
18 slope. That's in a good condition.

19 Q. Okay. So the digging in the back, which has the two to
20 one slope does not create a safety factor, but the digging in
21 the front, which is AA, does?

22 A. Right. I mean, the factor of safety that was determined
23 for BB was over two. And -- or over one point five (1.5).
24 And the other one was under.

25 Q. Okay. We have AA. Do you know whether that's B1 or B2?

1 When you did the actual digging?

2 A. AA is where B1 boring was done.

3 Q. Okay.

4 A. BB is where B2 boring was done.

5 Q. Okay. Now if there's no effort to stop the loss of the
6 property, what is your opinion based on your education,
7 training, and experience as to what will happen to Brent's and
8 Shelly's driveway?

9 A. If the failure occurs, I mean, I think it's in the
10 condition of failure now. It's losing material. But if there
11 was a -- if it reached the plane that's described or shown on
12 that plat, he really could not use his driveway to get to the
13 upper building.

14 Q. Okay.

15 A. Because when you lose lateral support, then the next
16 section, it loses its lateral support. So I think this could
17 be a continuation until his driveway is gone.

18 Q. And what is your opinion based on your education, and
19 training, and experience of the impact it will have on his
20 back building?

21 A. I think likely that would get worse over time.

22 Q. Okay.

23 A. Or the condition of that building.

24 Q. Thank you, Mr. Hall. Answer any questions that the other
25 side might have.

1 **THE COURT:** Cross-examination.

2 **MR. CAMPBELL:** Thank you, Your Honor.

3 **Cross-examination by Mr. Campbell:**

4 Q. Okay. Mr. Hall, you chose your words very carefully.

5 **MR. MARTIN:** Is that a question, ---

6 Q. And ---

7 **MR. MARTIN:** --- Your Honor? I would object to ---

8 **THE COURT:** Give him time to -- he's on cross-
9 examination.

10 Q. Let's get down to what your opinion is, please. I want
11 you to clarify for us. You said that -- and, please, if you
12 could repeat for the jury, what is your opinion as to the cone
13 of influence as affecting Mr. Click's back building?

14 A. What do you mean by cone of influence?

15 Q. You're a professional engineer, right?

16 A. I am.

17 Q. An expert in site engineering?

18 A. I know. But you're asking me what ---

19 Q. Do you have an opinion on the ---

20 A. --- I ---

21 Q. Do you have an opinion on the cone of influence and how
22 that impacts Mr. Click's building?

23 A. I do.

24 Q. Okay. What is that?

25 A. The global stability analysis produces a failure plane.

1 And you must be calling the cone of influence as the material
2 that's affected by failure. That does not affect his
3 building.

4 Q. At all?

5 A. Not ---

6 Q. Is that right?

7 A. --- based on that global stability ---

8 Q. Okay.

9 A. --- analysis.

10 Q. And you said that -- I think your testimony was that this
11 driveway may -- I think you said it was a state of failure
12 now, but no failure has occurred such that it's taken out any
13 dirt on Mr. Click's property, is that right?

14 A. Well, I think he's had a loss of gravel, but at some
15 point the gravel driveway starts on his property, the property
16 lines comes through about the end of the first building, and
17 then it's up on Mr. Thomas' property from thereon. There's
18 been some loss of gravel, but, no, I don't -- other than the
19 topsoil that is part of what's being lost, probably not, not a
20 significant amount yet.

21 Q. Okay. And you've never saw this building or this
22 property before any of the alleged digging took place,
23 correct?

24 A. No, I did not.

25 Q. Never saw the back building before the alleged digging

1 took place?

2 A. No, I did not.

3 Q. Never studied any of the soil movement on Mr. Click's
4 property before he bought it? Is that ---

5 A. No.

6 Q. --- right? Okay. So you don't know the existence of the
7 cracking before?

8 A. No, what I have relied on is I've seen the photographs
9 when Mr. Click moved in when the building was empty ---

10 Q. But you don't know who took those photographs?

11 **MR. MARTIN:** Your Honor, would you please let the witness
12 finish his answer.

13 A. I'm assuming Mr. ---

14 **THE COURT:** Hold on. Let me ---

15 **MR. MARTIN:** Excuse me. Excuse me. Counsel is asking a
16 question. The witness is in the middle of his answer and then
17 counsel cuts him off with another question. And I'm ---

18 **THE COURT:** I'm not sure -- I think it was just a pause
19 there. So just make sure you don't cut him off.

20 **MR. MARTIN:** Thank you, Your Honor.

21 Q. Please answer the question.

22 A. I assume that Mr. Click took those pictures, but I don't
23 know that for a fact.

24 Q. And I believe you admitted or testified, is it correct,
25 that the cracking could be caused by many things, right?

1 A. I did not say that.

2 Q. You didn't say that in your deposition?

3 A. Not that I recall.

4 Q. Okay. And is it true that you didn't talk to any other
5 prior owners of this property other than Mr. Click in forming
6 your opinion?

7 A. I did not.

8 Q. Okay. And isn't it true that you never saw these awnings
9 you say are leaning before the excavation, correct?

10 A. Correct. I saw them in photographs, but not personally.

11 Q. But those are the same photographs you just said you made
12 assumptions, but you don't know who took them, correct?

13 A. No, I assume Mr. Click.

14 Q. Okay. And do you know what kind of foundation was put
15 underneath the concrete ---

16 A. I do not.

17 Q. --- slab? Okay. Do you know the tolerance of the
18 concrete slab as far equipment loading?

19 A. I do not.

20 Q. So you don't know the pounds per square inch that that
21 concrete slab could hold?

22 A. Well, I'm confident that it's 3000 PSI concrete. Whether
23 it contains reenforcement or not, which reduce that, I don't
24 know.

25 Q. And isn't it fair to say that when you reduce the surface

1 area on which loading occurs that you increase the pressure
2 per square inch? Is that a fair statement?

3 A. That's a fair statement.

4 Q. Okay. If you could, please, Mr. Hall, it might help us
5 if you could come down here to this diagram up here and point
6 us to where those borings were taken again, please, for me.

7 **THE COURT:** Why don't you hand him the laser.

8 Q. Yeah, if you could use the laser, that's even better. I
9 don't know how good your aim is.

10 A. Well, my eyes are worse.

11 (Whereupon the witness left the witness stand)

12 A. That is the location of B2. I say that, I don't -- I
13 think B2 is actually on the front. I don't know that those
14 are showing up on there. I'd have to look -- can I look at my
15 copy of this ---

16 Q. Sure.

17 A. --- on the front?

18 Q. Take all the time you need.

19 A. What?

20 Q. Sure.

21 A. Okay.

22 (Pause)

23 A. That's B2 right there.

24 Q. Okay.

25 A. And B1 is right there. So B1's behind the big wall. B2

1 is behind the smaller wall or embankment.

2 Q. So B2 is on Mr. Thomas' property, is ---

3 A. Correct.

4 Q. And B1 is slightly on Mr. Click's property?

5 A. Right. Basically in the middle of the driveway, yes.

6 Q. You said that where B2 was taken, there's no issue with
7 the slope coefficient of safety in that location, is ---

8 A. No.

9 Q. --- that correct? And that's -- is that the one closest
10 to Mr. Click's building, the boring? As far as the distance?

11 A. Yeah, B2 is the closest one to the upper building. B1 is
12 the closest one to the lower building.

13 Q. You can have a seat, please.

14 (Whereupon the witness returned to the witness stand)

15 Q. So I believe you testified that Mr. Click had had issues
16 with his water main of the utilities, is that correct?

17 A. A service line, yes.

18 Q. Did you see that service line damaged?

19 A. No, it was below -- below the ground.

20 Q. Did you see any pictures of the service line damage?

21 A. I did not.

22 Q. Did you see any utility reports of repair or work that
23 was required to fix the service lines that was damaged?

24 A. No.

25 Q. So you didn't rely on anything other than Mr. Click's

1 assertions to you, is that correct?

2 A. By his testimony, that's right.

3 Q. I just want to clarify one more thing. Is it your expert
4 opinion here -- I think you said that this could fail in the
5 future. Has it failed yet?

6 A. It's in the condition of imminent failure, meaning there
7 is evidence that there is failure that is beginning. There's
8 material movement on top of the embankment. There's been a
9 loss of material that Mr. Thomas has had to get his bobcat out
10 and scoop up and move someplace else. I've seen those
11 pictures. So there's a continual loss of material, which is a
12 condition of failure. And I think it's likely that we will
13 have a significant failure.

14 Q. That's -- is that a future prediction or a present state?

15 A. No, it's still standing today. It's deteriorating. But,
16 no, as it stands today, it hasn't failed. But -- so that
17 would be a future prediction, yes.

18 Q. Okay. So that's a future prediction. You said that a
19 retaining wall was not the only option but was an option,
20 correct?

21 A. Correct.

22 Q. And are there other options besides retaining walls to
23 stabilize the slope?

24 A. Yes. That slope could be laid back at a flatter slope
25 condition. I don't think he could get to two to one, which is

1 what you would hope to do without getting on Mr. Click's
2 property, but you could -- you could do that. You'd have to
3 provide some sort of guardrail or something of protection on
4 the upper side of that. And some combination of that and a
5 smaller wall might be sufficient or one big wall.

6 Q. But you said the coefficient of safety was one point five
7 (1.5) not two to one, is that right? There might be ---

8 A. No, those are two different things.

9 Q. Okay.

10 A. A slope is this, you know, the rise over run that goes
11 two feet that way and one foot up. The factor of safety is a
12 prediction of the condition of that slope, stability of slope
13 based on all the factors that we got when we got information.

14 Q. Let me rephrase my question. You said two to one is what
15 you want. Is two to one absolutely required?

16 A. Well, ---

17 Q. Or is that ---

18 A. --- it really depends on where you are. There are places
19 I go and do work and they will specify a county, a city, that
20 all slopes must be three to one or flat or -- then there are
21 other considerations you get like is it easier to maintain
22 when it's three to one, four to one? It is because then you
23 can get on a lawnmower instead of a weed eater.

24 So there are a lot of factors that go into it, but you
25 try to achieve in these -- in this area, given the soil

1 conditions that we have, you try to get to a maximum slope of
2 two to one. That's what you try to get to. Not one to one
3 like that is.

4 Q. That's not required, is it? Is that required?

5 A. Required by -- I mean, it's ---

6 Q. Required ---

7 A. --- required under the safety of the embankment, but it
8 may not be required by the local authorities ---

9 Q. Okay.

10 A. --- if that's what you're saying.

11 Q. That was my question.

12 A. Okay.

13 Q. And you have no independent knowledge of what the slope
14 was before any of this digging took place?

15 A. Well, I have seen photographs. And there was a small
16 little lean-to or some kind of shed on the side of the
17 building. And the slope came down to that little lean-to, but
18 I don't think it came all the way.

19 The photo didn't seem to indicate it came all the way to
20 Mr. Thomas' building. But that's what he cut out, is that
21 slope that came down off Mr. Click's property. He took that
22 out. So I've seen a photograph of what it used to look like.

23 Q. You haven't taken any measurements? You have not taken
24 any measurements, right?

25 A. For what?

1 Q. What that slope was before the digging started?

2 A. No. I can't do that when it's gone, no.

3 Q. Okay.

4 MR. CAMPBELL: Beg the Court's indulgence, Your Honor.

5 (Pause)

6 MR. CAMPBELL: That's all, Your Honor.

7 THE COURT: Redirect.

8 MR. CAMPBELL: Thank you, Mr. Hall.

9 MR. MARTIN: Just a short ...

10 **Redirect Examination by Mr. Martin:**

11 Q. Mr. Hall, you've talked about other solutions other than
12 the retaining wall. And you talked about a laid back wall
13 with a better slope trying to get it to two to one. Is there
14 enough room on the Thomas property where the building is for
15 them to do such a slope?

16 A. Not -- not to get it to two to one.

17 Q. Okay.

18 A. I don't think so. But you could use some flatter slope
19 than exists there now in combination with a retaining wall
20 might be another solution.

21 Q. Okay. But he would lose his driveway if he did that,
22 wouldn't he?

23 A. On the -- yeah, a portion of it at the biggest piece of
24 the wall, that might -- that might be the case.

25 Q. Okay. Now the other thing is this area of safety, the

1 one point five (1.5) and the one point oh six (1.06). In your
2 42 years as a structural, I mean, as a site engineer have you
3 ever allowed a project to have a factor of safety of less than
4 one point five (1.5)?

5 A. Not permanently, but probably temporarily on sites where
6 you have a lot of different things you're trying to achieve.
7 So in the rough grading phase you might have some steep
8 slopes. They're not up against somebody's property line.

9 Q. Okay. I mean when you finish the project ---

10 A. No, ---

11 Q. --- and you turn ---

12 A. --- never.

13 Q. --- it over to the owner ---

14 A. No.

15 Q. Ever in your whole career?

16 A. Never.

17 Q. What -- what is imminent failure if it's under one point
18 five (1.5)? What does that mean in your industry?

19 A. It means the conditions are set for a failure given the
20 soil conditions, the steepness of the slope, the dynamic
21 loading up-top, the driveway, the conditions are such that a
22 failure could occur at any time.

23 Q. And if this failure occurs, if it's mostly one point five
24 (1.5) and it's one point one (1.1), what is your professional
25 opinion as to what will happen to the driveway and the Clicks'