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**Oct 23 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

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

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

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

v.

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

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AMENDED RECORD ON APPEAL  
VOLUME III

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INDEX

**VOLUME I**

Orders

Order Granting Temporary Restraining Order and Denying Defendants' Motion to Dismiss, May 8, 2020 .....1

Order Denying Defendants' Motion to Remove Temporary Injunction and Denying Defendant's Motion to Amend Answer, April 7, 2022 .....6

Order Denying Motion to Reconsider, April 27, 2022 .....11

Jury Verdict, filed June 3, 2022 .....16

Order (Form 4 Order) Regarding the Filing of Post-trial Motions, June 3, 2022.....19

Order (Form 4 Order) Granting Defendants' Summary Judgment Motion, June 6, 2022 .....22

Order Denying Defendants' Motion to Reconsider, June 30, 2022 .....25

Order on Post Trial Motions, September 21, 2022 .....27

Pleadings

Summons and Complaint with Exhibit and Verification, February 27, 2020 .....45

Answer, May 22, 2020 .....58

Motions & Memoranda

Plaintiffs' Motion for Temporary Restraining Order with Exhibit, February 27, 2020 .....64

Plaintiffs' Memorandum for Temporary Restraining Order with Exhibits, February 26, 2020, .....71

Defendants' Motion to Dismiss, March 30, 2020 .....81

Plaintiffs' Objection and Response to Motion to Dismiss, April 27, 2020 .....83

Affidavit of Johnathan Thomas dated April 27, 2020 .....85

Defendants' Memorandum in Opposition to Motion for Temporary Restraining Order and/or Preliminary Injunction, April 27, 2020.....93

Defendant's Memorandum in Support of Motion to Dismiss dated April 27, 2020 .....	100
Plaintiffs' Memorandum in Response to Defendants' Memorandum in Support of Motion to Dismiss, April 28, 2020 .....	109
Supplemental Affidavit of Brent Click dated April 29, 2020 .....	118
Plaintiffs' Reply to Defendants' Response to Motion for Temporary Restraining Order with Exhibits dated April 29, 2020,.....	127
Defendants' Motion to Amend Answer and Proposed Counterclaim, February 23, 2022 .....	132
Defendants' Motion to Remove Temporary Injunction, February 23, 2022.....	136
Affidavit of Jonathan Thomas, March 17, 2022 .....	157
Affidavit of Bradley S. Dobson, March 25, 2022.....	160
Affidavit of Brent Click, March 25, 2022.....	164
Plaintiffs' Response in Opposition to Motion to Remove Temporary Injunction, March 25, 2022, .....	180
Plaintiffs' Response in Opposition to Motion to Amend Answer, March 25, 2022, .....	184
Defendants' Motion to Reconsider, April 14, 2022 .....	187
Defendants' Motion for Summary Judgment, April 29, 2022.....	192
Defendants' Memorandum in Support of Motion for Summary Judgment with Exhibits, April 29, 2022 .....	196
Defendants' Motion in Limine, May 9, 2022 .....	266
Defendants' Memorandum in Support of Motion in Limine with Exhibits, May 9, 2022.....	269
Plaintiffs' Motion in Limine to Exclude Testimony of Certain Witnesses, May 9, 2022.....	334
Defendants' Supplemental Motion for Summary Judgment with Exhibits, May 13, 2022 .....	337
Plaintiffs' Response in Opposition to Motion for Summary Judgment with Exhibits, May 17, 2022 .....	374

**VOLUME II**

Plaintiffs' Response in Opposition to Defendants' Motion in Limine with exhibits,  
May 17, 2022 .....497

Defendants' Post Trial Motions, June 3, 2022 .....558

Plaintiffs' Post Trial Motions and Memorandum with Exhibits, June 6, 2022 .....567

Plaintiffs' Memorandum in Opposition to Defendants' Post Trial Motions,  
July 19, 2022 .....578

**Transcript**

Transcript of Trial held May 23, 2022 - May 26, 2022 .....591

**Monday, May 23, 2022 - Testimony**

Robert Brent Click  
Direct By Mr. Martin .....716

**Tuesday, May 24, 2022 - Testimony**

ROBERT BRENT CLICK  
Direct by Mr. Martin Cont. ....825  
Cross by Mr. Brogdon.....848  
Redirect by Mr. Martin .....865

CHRISTOPHER DANNER  
Direct by Mr. Martin.....875  
Cross by Mr. Brogdon.....888

SHELLY CLICK  
Direct by Mr. Martin.....893  
Cross by Mr. Brogdon.....930  
Redirect by Mr. Martin .....932

WILLIAM DAVID HALL  
Direct by Mr. Martin.....936

PROFFERED TESTIMONY OF WILLIAM DAVID HALL:  
By Mr. Martin .....947

WILLIAM DAVID HALL  
Direct by Mr. Martin Cont. ....955  
Cross by Mr. Campbell.....976

Redirect by Mr. Martin .....985

**VOLUME III**

PROFFERED TESTIMONY OF ROBERT BRENT CLICK:  
By Mr. Martin .....987

BRADLEY DOBSON  
Direct by Mr. Martin.....991  
Cross by Mr. Brogdon.....1007  
Redirect by Mr. Martin .....1011

MARK SMITH  
Direct by Mr. Martin.....1013

JONATHAN THOMAS - DEPOSITION EXCERPTS  
By Mr. Martin .....1029

CHRISTOPHER ELEAZER  
Direct by Mr. Martin.....1045

Wednesday, May 25, 2022 - Testimony

GREGORY PORTER  
Direct by Mr. Glenn.....1086  
Cross by Mr. Martin.....1097

JIMMY WATKINS  
Direct by Mr. Glenn.....1099  
Cross by Mr. Martin.....1105

JONATHAN THOMAS  
Direct by Mr. Campbell .....1111  
Cross by Mr. Martin.....1133

PAUL MILLS  
Direct by Mr. Campbell .....1162  
Cross by Mr. Martin.....1168  
Redirect by Mr. Campbell.....1180

Defendants' Motions.....1182  
Plaintiffs' Motions .....1187

ROBERT BRENT CLICK  
Direct by Mr. Martin.....1197  
Cross by Mr. Campbell.....1207

Thursday, May 26, 2022

Jury Charge .....1264  
Verdict of the Jury .....1290

Trial Exhibits

Exhibit List.....1298

Plaintiffs' Exhibit 1 .....1304  
Plaintiffs' Exhibit 2 .....1305  
Plaintiffs' Exhibit 3 .....1309  
Plaintiffs' Exhibit 4 .....1311  
Plaintiffs' Exhibit 5 .....1315  
Plaintiffs' Exhibit 6 .....1318  
Plaintiffs' Exhibit 7 .....1320  
Plaintiffs' Exhibit 8 .....1323  
Plaintiffs' Exhibit 9 .....1324  
Plaintiffs' Exhibit 11 .....1330  
Plaintiffs' Exhibit 22 .....1332  
Plaintiffs' Exhibit 24 .....1338  
Plaintiffs' Exhibit 25 .....1339  
Plaintiffs' Exhibit 27 .....1343  
Plaintiffs' Exhibit 28 .....1352  
Plaintiffs' Exhibit 29 .....1359  
Plaintiffs' Exhibit 30 .....1365  
Plaintiffs' Exhibit 32 .....1367  
Plaintiffs' Exhibit 41 .....1371  
Plaintiffs' Exhibit 42 .....1372  
Plaintiffs' Exhibit 43 .....1373  
Plaintiffs' Exhibit 44 .....1375

Defendants' Exhibit 1 .....1377  
Defendants' Exhibit 2 .....1378  
Defendants' Exhibit 3 .....1379  
Defendants' Exhibit 4 .....1380  
Defendants' Exhibit 5 .....1381  
Defendants' Exhibit 6 .....1382  
Defendants' Exhibit 7 .....1383  
Defendants' Exhibit 8 .....1384  
Defendants' Exhibit 9 .....1398  
Defendants' Exhibit 10 .....1399  
Defendants' Exhibit 11 .....1402  
Defendants' Exhibit 12 .....1403  
Defendants' Exhibit 13 .....1404  
Defendants' Exhibit 14 .....1405  
Defendants' Exhibit 15 .....1407

Defendants' Exhibit 16 .....	1408
Defendants' Exhibit 17 .....	1423
Defendants' Exhibit 19 .....	1430
Defendants' Exhibit 20 .....	1451
Defendants' Exhibit 21 .....	1460
Defendants' Exhibit 22 .....	1461

**VOLUME IV**

Court's Exhibit 1 .....	1462
Court's Exhibit 2 .....	1463
Court's Exhibit 3 .....	1464
Court's Exhibit 4 .....	1576
Court's Exhibit 5 .....	1745
Court's Exhibit 6 .....	1791
Court's Exhibit 7 .....	1793
Court's Exhibit 8 .....	1815

**Other Documents**

Verdict Form .....	1820
Notice of Appeal .....	1822
Certificate of Counsel .....	1829

1 ability to get to their back building?

2 A. They will -- unless something were done to mitigate that,  
3 they would lose the loss of their driveway -- use the loss of  
4 their driveway [sic].

5 Q. Thank you.

6 **MR. MARTIN:** That's all I have, Your Honor.

7 **THE COURT:** All right. You may step down. All right,  
8 ladies and gentlemen, we've got -- we're going to take an  
9 afternoon break here. And there's a matter that I've got to  
10 take up with the attorneys, so it may be a few minutes before  
11 we bring you back out. So don't discuss the case. All right.

12 (Whereupon the jury exited the courtroom at 2:54 pm)

13 **THE COURT:** All right. Let's take a five minute break,  
14 then I'll let you reply for whatever -- any proffer you want  
15 to.

16 (Whereupon court was in recess at 2:55 pm)

17 (Whereupon court reconvened at 3:06 pm)

18 **THE COURT:** All right. Are you ready to proffer your --  
19 I can't remember what it was you were proffering, but ...

20 **MR. MARTIN:** All right. Yes. Brent, I'm going to call  
21 you first.

22 **THE COURT:** I'll remind you that you're under oath from  
23 yesterday still.

24 **Proffered Testimony by Mr. Martin:**

25 Q. Brent, I want to call your attention to the time in

1 February of 2014 ---

2 **THE COURT:** Hold on just a minute.

3 Q. --- when you found out ...

4 **THE COURT:** Per your agreement y'all agreed to  
5 sequestration of witnesses, I believe.

6 **MR. MARTIN:** Yes.

7 **MRS. MARTIN:** Oh, they're all sitting outside, Your  
8 Honor.

9 **THE COURT:** Oh, I thought this one -- this individual  
10 here ---

11 **MR. MARTIN:** You want him out for ---

12 **THE COURT:** Well, I mean, that's what -- I mean, I just  
13 -- yeah, that was a witness.

14 **MR. MARTIN:** Sorry, Brent. Thank you, Judge.

15 **THE COURT:** All right.

16 **MR. MARTIN:** Good housekeeper there.

17 **THE COURT:** All right.

18 **MR. MARTIN:** All right.

19 **THE COURT:** Okay. Proceed.

20 **MR. MARTIN:** Thank you.

21 **Proffered Testimony by Mr. Martin Continued:**

22 Q. Brent, I want to call your attention to the February 2014  
23 when Greg Grissenger told you that his -- he was retiring and  
24 he was selling his business to his son-in-law, Mr. Thomas.  
25 Would you please tell us what you did, and what happened, and

1 what Mr. Thomas said.

2 A. On the way to work I went and picked up doughnuts, and I  
3 got Shelly a coffee. And I carried the coffee up to her, and  
4 I said, oh, I'm going to go down and introduce myself next  
5 door. Do you want to come with me? And she was doing  
6 something, so she didn't walk down with me. I said, I'll be  
7 back in a minute.

8 So I walked down and I gave Mr. Thomas a box of  
9 doughnuts. I met him in the parking lot about where the  
10 middle of that white van is. There was a car parked in front  
11 of the van. And he took the doughnuts ---

12 Q. And that's exhibit 2?

13 A. Yes.

14 Q. Okay.

15 A. He took the doughnuts, he turned around and he set them  
16 on the trunk of a car. And I was looking at the car, looking  
17 in the shop. I was looking away. And when he turned back  
18 around he grabbed the back of my neck and he held a knife to  
19 the front of my throat and he said -- you know, I already  
20 introduced myself as the guy next door with the shop next  
21 door. He says, you're the little 24 year old. I'm not going  
22 to take any shit from a guy who thinks he's all that because  
23 he's got a shop at a young age. And I'm going to be head dog  
24 around here.

25 Q. Okay. Now I want to call your attention to the time

1 period of the summer of 2017 when you had -- no, excuse me.

2 The time that you were -- yeah, summer of 2017 when you had  
3 the hotdog and hamburger cookout for all your neighbors. Tell  
4 us what interactions you had with Mr. Thomas and what he said.

5 A. I invited the guys from across the street, 81 Automotive,  
6 the guys at the detail shop, the guys down at Osteens and we  
7 included Thomas and his employees as well. We had to cook --  
8 we grilled hotdogs outside the lower shop.

9 And we were all standing inside in the shade because it  
10 was the middle of summer. I was standing over by one of my  
11 machines. And Thomas walked up to me, and I thought he was  
12 going to say thank you. I thought this was going to improve  
13 relationships with him or whatever. And he -- he smiled. And  
14 he goes, you know, I have dreams of cutting your head off with  
15 a small knife.

16 Q. Okay. And was there another time that you had a  
17 situation where he mentioned his dream of cutting your head  
18 off with a knife?

19 A. Yes.

20 Q. When was that?

21 A. Right when the digging started. And I was asking him  
22 about what his plan was.

23 Q. So that would have been August of 2018?

24 A. Yes, sir.

25 Q. Tell us about that.

1 A. He reiterated that he slept great because he had his  
2 favorite dream. And it was better -- the smaller of a knife  
3 he uses to cut my large head off, the better of a dream -- and  
4 the better of a dream it is and the better he sleeps.

5 Q. Okay. Was there any other instances where he threatened  
6 with a knife, or talked about a knife, or had a dream about a  
7 knife?

8 A. Just those three, I believe.

9 Q. Okay. Thank you.

10 **MR. MARTIN:** That's it, Your Honor.

11 **THE COURT:** All right. You may step down.

12 (Pause)

13 **THE COURT:** All right. You ready? The Plaintiff ready?

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

15 **THE COURT:** Defense ready?

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

17 **THE COURT:** All right. Bring the jury.

18 (Whereupon the jury entered the courtroom at 3:12 pm)

19 **THE COURT:** All right, ladies and gentlemen, we will now  
20 -- the Plaintiff will call his next witness. Mr. Martin.

21 **MR. MARTIN:** I'd call Bradley Dobson.

22 **THE COURT:** Mr. Dobson, if you'll come forward and be  
23 sworn.

24 **MADAM CLERK:** If you would, raise your right hand.

25 **Bradley Dobson,** being duly

1 sworn testified as follows;

2 **MADAM CLERK:** All right. State your full name for the  
3 record.

4 **MR. DOBSON:** Bradley Scott Dobson.

5 **MADAM CLERK:** You may be seated.

6 **Direct Examination by Mr. Martin:**

7 Q. Do you mind if I call you Brad?

8 A. Yes.

9 Q. You can call me Brad.

10 A. Yes, sir.

11 Q. Tell -- please tell the jury who you are, where you're  
12 from, and give us a little background so they can know who you  
13 are.

14 A. Okay. My name is Bradley Dobson. I graduated high  
15 school from Liberty High School in 1982. I always had a  
16 passion for being in the woodworking industry. In 1990 my  
17 brother and I, we started a company at 3664 Calhoun Memorial  
18 Highway. And it was called D&D Woodcrafters.

19 We had the shop for around a year. And during that year  
20 ---

21 Q. One second, ---

22 A. Yes, sir.

23 Q. --- Bradley. I've got a -- I think I've got a blow-up of  
24 that to show the jury where 3664 is. I don't have the blow-  
25 up, but there's an exhibit that shows all of the property.

1 Ah, there we go. That's what I was looking for. Thank you,  
2 Gwen. Okay. Here's 3668, which is the Click property. You  
3 were at 3664?

4 A. Yes, sir.

5 Q. Which is what? Two buildings to the east?

6 A. Actually, one building.

7 Q. One building to the east. There was just one building at  
8 that time?

9 A. Yes, sir.

10 Q. Okay. And I'm sorry to interrupt you, but tell us what  
11 happened after -- what happened in 1990 at 3664 ---

12 A. Okay.

13 Q. --- Calhoun Memorial Highway.

14 A. We -- my brother and I started a woodworking shop. And  
15 we rented the building from Mr. Holcraft. And it was located  
16 next to 3668 Calhoun. During that time we had a relationship  
17 with the Rameys that owned the 3668. We would buy countertops  
18 from them, cabinet hardware, et cetera.

19 In 1990 ---

20 Q. What kind of business did the Rameys run?

21 A. They had a cabinet shop and a countertop shop.

22 Q. Okay. And do you know how long they'd been there?

23 A. In the late 70s. I'm not sure of the exact date.

24 Q. Okay. Okay. Continue.

25 A. Okay. And in 1991, when the economy became very slow, we

1 closed our business. We sold all of our equipment to Mr.  
2 Ramey. We had a great relationship with him. He asked if we  
3 could deliver the equipment to the back building up the gravel  
4 driveway where the turnaround is.

5 Q. Okay.

6 A. I said, yes, I could.

7 Q. And was that -- we have exhibit 2 on the Elmo. Is this  
8 the gravel driveway?

9 A. Yes, sir, that is.

10 Q. Okay. Now this picture was taken in '05.

11 A. Yes, sir.

12 Q. You're talking about in the 90s.

13 A. Yes, sir.

14 Q. Early '90, '91, right?

15 A. Yes, sir.

16 Q. And was the gravel driveway and turnaround just the same  
17 then as it is in this picture?

18 A. It looks the same, yes, sir.

19 Q. Okay. And was this sort of a natural divide between this  
20 property and this property ---

21 A. Yes, sir.

22 Q. --- up the hill?

23 A. Yes, sir.

24 Q. Okay. All right. So you say you sold your woodworking  
25 equipment ---

1 A. Yes, sir.

2 Q. --- to ---

3 A. Mr. Ramey.

4 Q. --- Ramey's furniture business?

5 A. Yes.

6 Q. Okay. Ramey Cabinetry? What was it called?

7 A. Ramey's Cabinets.

8 Q. Ramey's Cabinets.

9 A. Yes, sir.

10 Q. Okay. And then I understand you still worked in the  
11 area, another job?

12 A. Yes, sir.

13 Q. Is there a time that you decided that you wanted to get  
14 back into woodworking?

15 A. Yes, sir.

16 Q. Tell us about that.

17 A. Okay. In 1996 I still had a good rapport with Mrs.  
18 Ramey. Her husband had died in 1994. And I went up to her,  
19 since she still owned my old equipment, I went up to her and I  
20 asked her if she would be interested in selling her business  
21 and building. And she said she would. So at that point I  
22 assumed all operations including the building, their employees  
23 and their clientele.

24 **MR. BROGDON:** Your Honor, may we approach briefly?

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 Q. In '96 when you took over the business, ---

5 A. Yes, sir.

6 Q. --- and did you actually purchase it, the lower building  
7 and the back building?

8 A. Yes, sir, I did.

9 Q. Okay. And what was the business that you ran?

10 A. Custom Cabinets.

11 Q. Okay. And did you pay for it at that time?

12 A. Yes, sir, with a personal check.

13 Q. Okay. And where did you get the money from?

14 A. From a 401K ---

15 Q. Okay.

16 A. --- that me and my wife had.

17 Q. Okay. And Betty was a business associate and a friend,  
18 is ---

19 A. Yes, sir.

20 Q. --- that right?

21 A. Absolutely.

22 Q. Okay. So tell us what happened next.

23 A. Okay. In 1997 I became incorporated, and I changed the  
24 name to Dobson Wood Products, ---

25 Q. Okay.

1 A. --- Inc. And in 1998 we decided we needed to get a loan  
2 against our business for tax purposes. At that time the deed  
3 -- the bank -- at BB&T Bank, that we were getting the loan,  
4 they found out that the deed had not been recorded in 1996.  
5 So we had Mrs. Ramey go to Ronnie Smith Attorney in Easley,  
6 fill out all the paperwork to close the deed and record it in  
7 1998.

8 Q. Okay. And I want to show you what's been marked as  
9 exhibit 9. And I think it's already been stipulated to be  
10 introduced into evidence. And is this the deed from Mr.  
11 Ramey's estate to Betty Ramey dated March 21st, '98?

12 A. Yes.

13 Q. Okay.

14 **MR. MARTIN:** Your Honor, I would like ...

15 **THE COURT:** Any objection?

16 **MR. BROGDON:** No objection, Your Honor.

17 **THE COURT:** All right.

18 (Whereupon Plaintiffs' exhibit 9 was admitted into  
19 evidence)

20 Q. So in March of '98 ---

21 **THE COURT:** What's the exhibit number?

22 **MR. MARTIN:** Exhibit 9.

23 **THE COURT:** All right.

24 Q. The cabinet shop property was included in this ---

25 A. Yes, sir.

1 Q. --- deed of distribution?

2 A. Absolutely.

3 Q. Okay. So after that because of the bank loan you needed  
4 to get did you also get a deed from Mrs. Ramey?

5 A. Yes, sir, I did.

6 Q. Okay. And I'd like to show you what's been marked as  
7 Plaintiffs' exhibit 7. And is this the deed that you got for  
8 what you had paid for back in '96?

9 A. Yes, sir.

10 Q. Okay. So what's the date of the deed? It's on page 2.  
11 April 16th, 1998?

12 A. April 16th, 1998.

13 Q. Okay.

14 **THE COURT:** All right. Any objection to this?

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

16 **THE COURT:** All right.

17 (Whereupon Plaintiffs' exhibit 7 was admitted into  
18 evidence)

19 Q. So now you're -- even though you paid for it in '96, you  
20 were running the business, you now finally own the property in  
21 '98?

22 A. Yes, sir.

23 Q. Okay. Now during your use of the property what did you  
24 think you were buying?

25 A. The two buildings, the driveway, the main building with

1 the black roof and the one up on the hill behind.

2 Q. Okay. Now did Betty Ramey have a plat done?

3 A. Yes, sir, she did.

4 Q. Okay. And was that plat done in August of '96?

5 A. Yes, sir.

6 Q. And did you see that plat in '96 or did -- was it not til  
7 '98 that you saw it?

8 A. I seen it in '96.

9 Q. Okay. And did you notice that a portion of the driveway  
10 and the turnaround was actually on the Merck property or the  
11 west property?

12 A. Yes, sir. I did notice that, yes.

13 Q. Did you -- did you consider it a problem?

14 A. No, sir.

15 Q. Why not?

16 A. They had been using the property for years, and years,  
17 and years. We -- everybody that went to the back building  
18 always drove up the driveway. We parked up on the driveway.

19 Q. Did Mr. Merck have a business next door to you?

20 A. Yes, sir, he did.

21 Q. What kind of business?

22 A. Auto repair shop.

23 Q. Okay. Did Mr. Merck ever use the driveway and turnaround  
24 for his business?

25 A. No, sir.

1 Q. Did Mr. Merck ever do anything to prohibit you from using  
2 the driveway and turnaround that was on his property?

3 A. No, sir.

4 Q. Did Mr. Merck do anything that ever gave you the  
5 impression that the driveway and turnaround were his?

6 A. No, sir.

7 Q. Okay. Was there any doubt in your mind that it belonged  
8 to you and it was for you to use?

9 A. No, sir. No doubt.

10 Q. No doubt?

11 A. No, sir.

12 Q. Okay. Who maintained the driveway and turnaround?

13 A. I did.

14 Q. Okay. What was it? Was it gravel?

15 A. It was a gravel driveway. And I had scraped it, and I  
16 put asphalt millings at that time.

17 Q. Okay. And when you bought it from Mrs. Ramey did she  
18 indicate that that was part of the deed?

19 A. Yes, sir.

20 Q. Okay. And I believe the Ramey's upper building was there  
21 at least until -- at least til 1978, that's right?

22 A. Yes, sir.

23 Q. So from 1978 to when you bought it in '96 you didn't know  
24 of any problem with your using it?

25 A. No, sir.

1 Q. Did you ever ask anyone permission to use it?

2 A. No, sir, ---

3 Q. Did anyone ---

4 A. --- absolutely not.

5 Q. --- ever give you permission?

6 A. No, sir.

7 Q. Okay. And do you understand that this lawsuit is about  
8 asking the jury to make a permanent decision that this is a  
9 permanent right to use?

10 A. Yes, sir.

11 Q. Okay. All right. So we've gotten to '98 and you're the  
12 owner. I assume -- tell us how you used that upper  
13 turnaround.

14 A. We would -- some of my employees would drive up the  
15 driveway. They would park their vehicles up there. Whenever  
16 we were running the cabinet shop on the upper building, we had  
17 suppliers that would back their trucks up the driveway, turn  
18 into the roll-up door. We would unload the trucks. I kept a  
19 dump truck parked up on the upper turnaround at all times.

20 Q. Now did Mr. Merck ever keep anything up there?

21 A. No, sir.

22 Q. Okay. And I believe Merck sold it to Greg Porter, is  
23 that right?

24 A. Yes, sir.

25 Q. Did Greg Porter ever use it?

1 A. No, sir.

2 Q. Did Greg Porter ever keep anything up there?

3 A. No, sir.

4 Q. Did Greg Porter ever try to prohibit you from using the  
5 driveway and turnaround?

6 A. No, sir.

7 Q. Okay. And I believe then Greg Porter sold it to Jimmy  
8 Watkins, is that right?

9 A. That is correct.

10 Q. And you were still there ---

11 A. Yes, sir.

12 Q. --- when all this happened?

13 A. Yes, sir.

14 Q. Did Jimmy Watkins ever park any stuff up on that driveway  
15 and ---

16 A. No, sir.

17 Q. --- turnaround? Did Jimmy Watkins ever prohibit you from  
18 using it?

19 A. No, sir.

20 Q. Was there anything ever done by either Mr. Merck, Mr.  
21 Porter, or Mr. Watkins that let you know that you didn't have  
22 the right to use that?

23 A. No, sir.

24 Q. Okay. You said you had a number of employees. How many  
25 employees did you have?

1 A. At one time we had up to 15 employees.

2 Q. Okay. And how many cars would you park up on that  
3 turnaround?

4 A. Several. At least four to five up on the hill, yes.

5 Q. Okay. Was there any other access to your cabinet shop  
6 other than that driveway and turnaround?

7 A. Yes, sir, there was.

8 Q. What was that?

9 A. That was a enclosed breeze-way that connected the upper  
10 building or the -- yeah, the upper building to the lower  
11 building.

12 Q. Okay. And would you -- was that already in place when  
13 you bought it in '96?

14 A. Yes, sir.

15 Q. So you're talking about between these two buildings?  
16 This one here and this one here?

17 A. Yes, sir.

18 Q. Okay. And how did -- how did it work? If you started in  
19 the lower building to go to the back building, how did ---

20 A. There was ---

21 Q. --- you get there?

22 A. There was steps in the lower building on the right back  
23 corner. You went up the steps. You walked through the  
24 breeze-way. The two lines between the buildings was the  
25 breeze-way to the back building.

1 Q. Okay. Well, if you wanted to get a car up or a truck up,  
2 was there any other way to go other than the driveway and  
3 turnaround?

4 A. No, sir.

5 Q. Okay.

6 A. Absolutely not.

7 Q. Did you notice the condition of the floor of the building  
8 when you purchased it in '96?

9 A. Yes, sir.

10 Q. Of the back building?

11 A. Yes, sir.

12 Q. Tell us about that.

13 A. There was little cracking, little spider cracks. There  
14 was no problem with the -- with the floor at all.

15 Q. Was it flat?

16 A. Yes, sir.

17 Q. Okay. Now in your cabinetry business, do you use tables  
18 to ---

19 A. Yes, sir, I do.

20 Q. --- do your business? Is it important to have a flat  
21 surface to do your work on?

22 A. Yes, sir.

23 Q. Was there any trouble on your tables using this back  
24 building for ---

25 A. No, sir.

1 Q. --- your cabinet shop?

2 A. No, sir.

3 Q. I believe that after it was sold to Jimmy Watkins that  
4 there was a fellow named Greg Grissenger that ran the  
5 business, is that right?

6 A. Yes, sir.

7 Q. Were you still there when Greg Grissenger ran All-Tech?

8 A. Yes, sir.

9 Q. Did Greg Grissenger ever use any of the turnaround or  
10 driveway?

11 A. No, sir.

12 Q. Did he ever indicate that you didn't have a right to use  
13 it?

14 A. No, sir.

15 Q. Okay. Have you been to the back building -- oh, by the  
16 way, did you ever sell the back building, in fact, the whole  
17 property, did you ever sell it?

18 A. Yes, sir, I did.

19 Q. When did you do that?

20 A. In 2005.

21 Q. And who did you sell it to?

22 A. Mark Smith.

23 Q. Okay. So since 2005 have you ever been back to the  
24 property?

25 A. Yes, sir, I did.

1 Q. Okay. When was that?

2 A. About a month ago.

3 Q. Okay. And did you go into the back building?

4 A. Yes, sir, I did.

5 Q. And did you observe the condition of the floors?

6 A. Yes, sir, I did.

7 Q. Tell us what they were.

8 A. I was amazed. Large cracks everywhere, shelving [sic] of  
9 the concrete. The floor was very uneven from concrete with  
10 big large cracks, there was -- corner of the building, a  
11 foundation where the concrete was all broken, cracked.

12 Q. And did you notice that the turnaround was a lot smaller?

13 A. Yes, sir, I did.

14 Q. Was it about half of it -- half ---

15 A. Yes.

16 Q. --- smaller than when you were there?

17 A. Yes, sir.

18 Q. Okay. And did you notice that there was a significant  
19 cliff dug in by the Thomas property?

20 A. Yes, sir, I did.

21 Q. And did you notice that it was creating erosion?

22 A. Yes, sir.

23 Q. One final question. Do you know a fellow by the name of  
24 Jessie Lingerfelt?

25 A. Yes, sir, I do.

1 Q. Who is he?

2 A. He -- whenever -- I know him. He was a countertop  
3 installer.

4 Q. Okay. Did you ever lease your property, the back  
5 building, to Jessie Lingerfelt?

6 A. No, sir, I did not.

7 Q. Did you ever lease any of your buildings to Jessie  
8 Lingerfelt?

9 A. No, sir.

10 Q. Do you know if he ever owned it or ever used it?

11 A. He -- I would allow him to use it, but he never owned it.

12 Q. Okay. Thank you. Answer any questions that the other  
13 side might have.

14 **THE COURT:** Cross-examination.

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

16 **Cross-examination by Mr. Brogdon:**

17 Q. Mr. Dobson, ---

18 A. Yes, sir.

19 Q. --- so you purchased the property in 1998, is that  
20 correct?

21 A. No, sir, 1996.

22 Q. 1996. But what we were discussing was the plat from  
23 1996, that's the Betty Ramey plat, ---

24 A. Yes, sir.

25 Q. --- I believe we looked at.

1 A. Yes, sir.

2 Q. And is that it up on the screen right there?

3 A. Yes, sir, it is.

4 Q. I believe you testified earlier that when you purchased  
5 the property you knew and understood that you didn't own that  
6 gravel turnaround area, is that right?

7 A. No, sir.

8 Q. Okay. So you would agree with me you never owned it,  
9 correct?

10 A. I -- I wasn't even thinking about that whenever I  
11 purchased it because everybody used the property.

12 Q. Would you agree with me if you never owned that gravel  
13 turnaround area that you couldn't then sell it to someone  
14 else? Is that right?

15 A. Could you repeat that?

16 Q. Would you agree with me that if you never owned that  
17 gravel turnaround area that then you couldn't sell it to  
18 someone else in the future? Would you agree with me about  
19 that?

20 A. I don't know.

21 Q. I'll rephrase. Would you agree with me you can't sell  
22 something that you don't own?

23 A. Yes, ---

24 Q. Okay.

25 A. --- I agree.

1 Q. So you would agree with me then that you can't then sell  
2 that gravel driveway to Mark Smith, correct?

3 A. Yes.

4 Q. Would you agree with me there's a difference between  
5 ownership and use?

6 A. Yes.

7 Q. Mr. Dobson, I know it's been a long time since the 90s  
8 since you were really in the building. And I understand that.  
9 But did you have some notes up in front of you today when you  
10 were testifying?

11 A. Yes, sir, I did.

12 Q. Okay. And what -- what do those notes say you were  
13 looking at?

14 A. It was just a -- time, dates, graduation days.

15 Q. Got it. Okay. And is that something you prepared to  
16 bring in today to testify?

17 A. Yes, sir, I did.

18 Q. I believe you testified that there were some spider  
19 cracks present in the back building when you purchased it, is  
20 that ---

21 A. Yes, sir, ---

22 Q. --- correct?

23 A. --- that is correct.

24 Q. And did those spider cracks -- were they still present  
25 when you sold it? And was that in 2005?

1 A. Yes, sir, same condition whenever I bought it from the  
2 Rameys.

3 Q. So would you agree with me that there were cracks in the  
4 floor in that back building all the way back to 1998?

5 A. Yes, sir. Not large cracks, spider cracks.

6 Q. Did you perform any preventative maintenance or repairs  
7 on those spider cracks?

8 A. No, sir.

9 Q. Ever hire any foundation companies or any contractors to  
10 come out and take a look at those cracks?

11 A. No, sir.

12 Q. Are you aware of any inspections that were done when you  
13 sold the property that evaluated those cracks?

14 A. No, sir.

15 Q. Mr. Dobson, I believe you stated that you recently  
16 visited the property, is that right?

17 A. I did.

18 Q. And that was about a month ago?

19 A. Yes, sir.

20 Q. Did you visit it from 2005 until a month ago?

21 A. No, sir.

22 Q. So would it be fair to say you couldn't testify as to the  
23 -- those cracks or anything that has to do with the building  
24 from 1990 -- sorry, 2005 until a month ago, is that right?

25 A. I know what I seen in 2005 and I know what I seen in

1 2022.

2 Q. And that's roughly 17 years?

3 A. Yes, sir.

4 Q. And, again, you stated that those cracks were present  
5 even when you purchased the property in 1998?

6 A. Not the large cracks, no, sir.

7 Q. That's all I have for you. Thank you, Mr. Dobson.

8 **THE COURT:** All right. Any redirect?

9 **MR. MARTIN:** Yes, Your Honor, just quickly.

10 **Redirect Examination by Mr. Martin:**

11 Q. Brad, ---

12 A. Yes, sir.

13 Q. --- you were asked about ownership. I believe your  
14 testimony was the Rameys had it for years, and years, and  
15 years and you knew immediately in '96 that a portion of the  
16 turnaround was on the Merck property, is that right?

17 A. That is correct.

18 Q. When the Rameys sold it to you what did they -- did they  
19 ever say that they were prohibited from using that?

20 **MR. BROGDON:** Objection, Your Honor. Hearsay.

21 **THE COURT:** Sustained.

22 Q. As a result of having the purchase with the Rameys and  
23 being on there was there anything that the Rameys ever did  
24 that would indicate that they could not use that property?

25 A. No, sir.

1 Q. Okay. So when you bought it in '96 you thought you had  
2 the absolute right to use it?

3 A. Absolutely.

4 Q. Okay. And that you didn't need to own the whole thing?

5 A. No, sir.

6 Q. Okay. Are you familiar with the concept of prescriptive  
7 easement, which is a law term?

8 A. Yes, sir.

9 Q. Okay. Did you think you had a prescriptive easement to  
10 use it?

11 **MR. BROGDON:** Your Honor, objection. This is a legal ---

12 **THE COURT:** Right. I'm going to sustain that. That's a  
13 legal question and ultimately a question for the jury. So ...

14 **MR. MARTIN:** Okay.

15 Q. Was there anything that indicated to you that it was not  
16 your absolute right to use as you saw fit?

17 A. No, sir.

18 Q. Okay. Now he also asked you about the cracks. You were  
19 there for nine years, right?

20 A. Yes, sir.

21 Q. In those nine years did those cracks change at all?

22 A. Absolutely not.

23 Q. Okay. So when you -- when you went in in 2022 what was  
24 your reaction to those cracks?

25 A. Wow. They were large. And the shelving [sic] was my

1 main -- main thought where the concrete had shifted.

2 Q. Okay. He also asked you in those nine years did you do  
3 anything to treat the cracks, or maintain the cracks, or  
4 anything like that. Was there any need to?

5 A. They were not large enough to treat. They were just  
6 hairline cracks.

7 Q. Okay. Thank you.

8 **THE COURT:** You may step down.

9 A. Yes, sir.

10 **MR. MARTIN:** Your Honor, I would like for this witness to  
11 be excused if that's okay.

12 **THE COURT:** Any objection?

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

14 **THE COURT:** All right.

15 (Pause)

16 **THE COURT:** All right. Mr. Martin, you may call your  
17 next witness.

18 **MR. MARTIN:** I'd like to call Mark Smith to the stand.

19 **THE COURT:** Mr. Smith, if you'll come forward and be  
20 sworn. Right here.

21 **MR. SMITH:** Sorry, I've never done this before.

22 **MADAM CLERK:** If you would, raise your right hand.

23 **Mark Smith,** being duly  
24 sworn testified as follows;

25 **MADAM CLERK:** All right. State your full name for the

1 record.

2 **MR. SMITH:** Mark Mitchell Smith.

3 **MADAM CLERK:** Okay. You may have a seat.

4 **Direct Examination by Mr. Martin:**

5 Q. Good afternoon, Mark. You mind if I call you Mark?

6 A. That's great.

7 Q. Please tell the jury who you are, where you're from, what  
8 you do.

9 A. My name is Mark Smith. I'm from Easley. And I own  
10 Premier Car Restoration. I'm in the auto collision business.

11 Q. How long you been in the auto collision business?

12 A. Twenty-eight years.

13 Q. Okay. And do you know Brent Click?

14 A. Yes.

15 Q. How do you know him?

16 A. Brent worked with me for a couple of years.

17 Q. What did he do?

18 A. He was a body tech.

19 Q. And how -- what was the quality of his work?

20 A. It was good.

21 Q. Okay. Did you ever come to know about 3668 Calhoun  
22 Memorial Highway?

23 A. How did I -- I'm sorry.

24 Q. Did you ever come to know about 3668 Calhoun Memorial  
25 Highway? That -- this land right here.

1 A. Are you asking how did I -- how did I find out about it?

2 Q. Yeah.

3 A. So I was building a house and my cabinet maker called me  
4 one day and he said, I want you to come -- I want you and your  
5 wife to come look at these cabinets we're building for you.

6 And I did the custom cabinets. They were Knotty Alder. So I  
7 went down and met with Brad. And Brad told me, he said, this  
8 is the last set of cabinets I'm going to build.

9 Q. Is that Brad Dobson?

10 A. That's Brad Dobson.

11 Q. Who you just crossed as witnesses?

12 A. That's right.

13 Q. Okay.

14 A. So when I first started in the -- my background, when I  
15 first started in the car business, I did mobile paint repair.  
16 And my business was growing and we had a lot of dealers. I  
17 did a lot of work for dealers. And they were wanting us to do  
18 bigger jobs.

19 So Brad said -- at that time he said, this is the last  
20 set of cabinets I'm going to do. And I'm going to sell my  
21 building. He said, if you know anybody who wants to buy it.  
22 So he told me what he wanted for it.

23 And I went home, I went to bed, I woke up in the middle  
24 of the night, and I woke my wife up and I said, I need to buy  
25 that building. I said, I know we're building the biggest

1 house we've ever built. I know we're going to probably -- my  
2 income to debt ratio's probably out of whack and the banker's  
3 probably going to go crazy.

4 So I called the banker and he said, can you put 20  
5 percent down? And I said, yes, sir. So the rest was history  
6 and I bought it.

7 Q. Okay. I want to show you exhibit 2, which is on the  
8 Elmo. And is that the building you bought or the land you  
9 bought?

10 A. Yes, that is.

11 Q. Okay. Now there are two buildings, aren't there?  
12 There's an upper building -- a back building and a front  
13 building, right?

14 A. Correct.

15 Q. Okay. And I believe this picture was taken in 2005. Do  
16 you know when you bought it?

17 A. 2004 or 2005.

18 Q. Does June 9th, 2005 sound right?

19 A. That's right.

20 **MR. MARTIN:** Your Honor, I'd like to introduce exhibit 6,  
21 which is the ---

22 **THE COURT:** Any objection to that?

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

24 **THE COURT:** All right. In without objection.

25 (Whereupon Plaintiffs' exhibit 6 was admitted into

1 evidence)

2 Q. Okay. So you bought it from Bradley Dobson and Tammy  
3 Dobson on June 9th, 2005, is that right?

4 A. Yes, sir.

5 Q. Did you make any improvements to the land?

6 A. Pretty much immediately I started working on it.

7 Q. Okay. What did you do?

8 A. So I painted it, put new gutters on it, two new roofs,  
9 all new roofs.

10 Q. Now on this picture it looks like it's between the two  
11 roofs, doesn't -- you put the new roof on the front, but not  
12 on the back?

13 A. But I did.

14 Q. But you later did?

15 A. Oh, I did just -- yeah, right. It wasn't too much  
16 longer. I mean, ---

17 Q. This picture ---

18 A. --- I don't know how that picture -- but both of them  
19 ended up with two new roofs.

20 Q. Okay. What else did you do?

21 A. And I added that -- so what happened was was the bottom  
22 building and the top building were connected. And they had  
23 had a tunnel going up through there with stairs. And if  
24 you'll look in between the two buildings, there was a bunch of  
25 trees growing up. It was a, you know, had chances, for me,

1 was that a tree was going to fall on my buildings. So the  
2 first thing I thought was, hey, I need to clean this up.

3 So then I got to looking and we came in and tore the  
4 tunnel from the two buildings -- tore it out and closed the --  
5 both. And I got with a good friend of mine that's a grader,  
6 got his advice because I was worried about the top building or  
7 the -- where they had -- taken all the trees out and all the  
8 -- in between the two buildings and the -- had a real giant  
9 slope.

10 And I was concerned that that top building was eventually  
11 going to erode and it would go forward and may possibly come  
12 into that front building, which I know it's going to be over  
13 time. It takes time for that stuff to erode, but I'm just  
14 one, I don't want -- I want it to be right.

15 Q. Okay. So what did you do?

16 A. So I seeked [sic] out a wall builder and had a couple of  
17 guys come look at it. And one guy couldn't do it because he  
18 said I just -- he said, I don't feel like it's going to be  
19 secure. He said, you need more of a architectural design  
20 wall.

21 So the guy that's a friend of mine that was a grader had  
22 a guy that he knew. And they came in and said we need to  
23 design this architectural wall. We need to make it strong.  
24 So what they did was they dug all the dirt out towards the  
25 back building and put rebar down, came all the way back up

1 towards the front of the building just like a L, just like  
2 this.

3 Then they came in and backfilled dirt -- well, they  
4 poured concrete on the bottom. So they're making a L. This  
5 is the wall. So if the wall falls, it falls towards the front  
6 building.

7 But they packed all the dirt back on here so that that  
8 wall could not move. And that -- and that was the way to do  
9 it to make a strong wall that was going to hold, and I wasn't  
10 going to have any problems.

11 Q. Okay. And is that the picture of the retaining wall that  
12 they built for you?

13 A. That is.

14 Q. And is that a picture of where they put all that dirt and  
15 had a nice flat place right there?

16 A. That is.

17 Q. And were you able to park a car or truck right here with  
18 no problem?

19 A. We did.

20 Q. Okay. Now tell us about this part of the property.

21 What's right here for the front building?

22 A. That's a side easement that was owned by Mr. Porter. Mr.  
23 Porter's property came halfway down that driveway. And  
24 there's a sliding door on the side of that building.

25 Q. On your building?

1 A. Yes, that we used. I actually had rented that building  
2 out to a cabinet guy who was like Mr. Dobson.

3 Q. Okay.

4 A. And he used it.

5 Q. Okay. Was there any problem with Porter, you using that?

6 A. No, there was no problem when I was there.

7 Q. Okay. So I believe that you ran your business until  
8 about 2013, is that right?

9 A. Out of that shop.

10 Q. Okay. And ---

11 A. No, I'm sorry. So I was in -- 2013 I was in my new shop.

12 Q. Your new shop? When did you move from this shop to your  
13 new shop?

14 A. In 2007.

15 Q. Okay. So you were here for two years using the property,  
16 ---

17 A. That's right.

18 Q. --- then you leased it out?

19 A. I did.

20 Q. Okay. And did you then have it for sale in 2013? Or did  
21 you decide to lease it to somebody in 2013?

22 A. Yeah. Just as far as -- I mean, I'm sorry, the years get  
23 ---

24 Q. I know they do.

25 A. --- get mumbled up 'cause I just realized -- let's see,

1 2007 I built my shop. And I put in a brand new paint booth.

2 So I know that, that I was there. But I did lease it to Brent

3 Click.

4 Q. Okay. Now when you were there in 2005, who owned this  
5 property over here? Do you know?

6 A. Well, I was misled. I didn't know Jimmy Watkins owned  
7 it. But Jimmy Watkins supposedly owned it, ---

8 Q. I see.

9 A. --- but Mr. Grissenger told me he owned it.

10 Q. Okay. Now this is the All-Tech property, right?

11 A. It is.

12 Q. And Mr. Grissenger ran All-Tech?

13 A. He did.

14 Q. And he said he owned it?

15 A. Yes.

16 Q. But you later found out it was Watkins?

17 A. That's ---

18 **MR. GLENN:** Objection.

19 A. --- right.

20 **MR. GLENN:** Leading.

21 **THE COURT:** Rephrase.

22 Q. Did you find out that that was correct or incorrect?

23 A. It was incorrect.

24 Q. Okay.

25 A. It was incorrect that ---

1 Q. And did you find out who owned it?

2 A. I did.

3 Q. Who?

4 A. Mr. Watkins.

5 Q. Okay. Now did Mr. Grissenger, when he claimed he owned  
6 it, did he ever do anything to keep you from using the  
7 driveway or turnaround?

8 A. Not at all.

9 Q. Okay. When you found out Watkins owned it, did Mr.  
10 Watkins do anything to keep you from using the driveway and  
11 turnaround?

12 A. No, sir. I never met Mr. Watkins.

13 Q. Did you ever get permission from anyone to use it?

14 A. No, sir.

15 Q. Okay. Was there any doubt in your mind that you had the  
16 right to use the driveway and turnaround?

17 A. Yes. I felt ---

18 Q. No doubt?

19 A. No doubt.

20 Q. Okay. And when you purchased it did you think you were  
21 purchasing the driveway and turnaround?

22 A. When I purchased it I knew where the boundary lines were,  
23 that ---

24 Q. So you knew -- you knew the turnaround was partly on the  
25 Watkins' property?

- 1 A. I did.
- 2 Q. Okay. Did that cause you a problem?
- 3 A. No, because when I bought it from Mr. Dobson, he was  
4 using it. And he said he never had a problem.
- 5 Q. Okay.
- 6 A. And he always -- and I never had a problem.
- 7 Q. Okay. So let's get back to 2013. Did someone want to  
8 rent the property? And if so, was that Brent Click and his  
9 wife, Shelly?
- 10 A. That's right.
- 11 Q. Okay. Tell me how that occurred. Did you encourage him  
12 to get into business to himself?
- 13 A. I did. I mean, I always thought he was smart. And I  
14 always thought he had a lot of talent. But, yeah, he wanted  
15 to -- he wanted to do something. And he came to me, and he  
16 knew I had that building and knew -- and asked me could he  
17 rent it. And I said, sure.
- 18 Q. Okay. And did he rent the back building from you?
- 19 A. Yes.
- 20 Q. Okay. And what did you tell him about the driveway and  
21 turnaround?
- 22 A. Just we use it as normal and to take care of it.
- 23 Q. Okay. And was he supposed to keep gravel when it got a  
24 little less and keep it properly graded and all?
- 25 A. Yes, sir, it would help. It seems like I probably did

1 some of that, too, myself.

2 Q. Okay. And when you owned it did you -- were the one who  
3 maintained the driveway and turnaround yourself?

4 A. I did.

5 Q. And it was gravel?

6 A. Yes.

7 Q. And required additional gravel from time to time?

8 A. Sure.

9 Q. And you purchased it?

10 A. (Affirmative nod).

11 Q. Okay. So in January of 2017 -- I believe Brent rented it  
12 from you from 2017 to -- I mean, 2013 to 2017, is that right?

13 A. Yes, sir.

14 Q. Okay. And what happened in 2017? Why did it go from a  
15 rental to a purchase?

16 A. Well, I wanted to sell it because I had bought my  
17 property in Powdersville. And just was to the point that, you  
18 know, I didn't want to have to worry about the maintenance and  
19 having to worry about keeping the buildings up. So I wanted  
20 to sell it.

21 I knew I was going to be in Powdersville more than I'd be  
22 in -- down in Easley. So I wanted to sell it. And I put it  
23 up for sale. And I told Brent, you know, if he wanted to buy  
24 it, he could buy it.

25 Q. Okay. And did he?

1 A. He did.

2 Q. Okay. And so when he bought it, was that about February  
3 2017? That sound about right?

4 A. Yeah. I'd have to look, but I would say that's probably  
5 about right.

6 Q. That's when -- that's the date of the deed ---

7 A. Yeah, I didn't recall ---

8 Q. Did you go to a lawyer's office and have a -- have a sale  
9 and you signed the deed?

10 A. We did.

11 Q. Okay. And was he now not just renting the back building,  
12 but he was now buying the back building and the front  
13 building, is that right?

14 A. That's correct.

15 Q. Okay. And what was your understanding of the driveway  
16 and turnaround during the sale?

17 A. I never -- 'cause Brent had been using it, we never did  
18 really discuss it. But I just said, hey, you know, my  
19 property line went down into the All-Tech parking lot where  
20 you see that white van is parked ---

21 Q. Um-hum (affirmative).

22 A. --- and those cars. So I just, you know, we all got  
23 along. I mean, I didn't -- I figured they park cars there, we  
24 use that, that driveway, but nobody ever said anything to us.

25 Q. Okay. Did you ever ask permission to use it?

1 A. I did not.

2 Q. Did you ever get permission from anybody?

3 A. I did not.

4 Q. You just thought that it was your right to use?

5 A. Yes, sir.

6 Q. And when you sold it to Brent in February of 2017 you  
7 told him it was his right to use, is that right?

8 A. That's right.

9 Q. Okay. What was the condition of the floor when you were  
10 in the back building in 2005?

11 A. The floor was fine. I mean, it had some cracks in it,  
12 you know, just anything that was surfaced on a concrete. It  
13 wasn't brand new by no means.

14 Q. Was it uneven in any way?

15 A. No, uh-uh (negative). It was ---

16 Q. Did it affect your business that you ran in there at all?

17 A. Not at all.

18 Q. Okay. And when you sold it in 2017 were the cracks just  
19 about the same as when you bought it in 2005?

20 A. Yes.

21 Q. Was there any changes in them that you noticed?

22 A. No.

23 Q. Okay. Was the back building moving, or sinking, or  
24 dropping when you bought it?

25 A. No.

1 Q. So when you put the retaining wall, that had nothing to  
2 do with the actual stability of the back building?

3 A. No, sir. I just did it for ---

4 Q. To make sure it stayed stable?

5 A. Exactly. Doesn't look like a lot, but it's a big hill up  
6 there.

7 Q. Okay. Would you agree that if you were standing on 123,  
8 it's about 50 feet up?

9 A. I would say.

10 Q. Yeah. And if you just looked at how the topography --  
11 would that kind of tell you that the driveway and turnaround  
12 belonged to your building and not the other?

13 **MR. GLENN:** Objection. Leading.

14 **THE COURT:** Sustained.

15 **MR. MARTIN:** Okay.

16 Q. Tell us -- if you looked at it and you're standing on  
17 123, what would it look like to you as to whose property that  
18 driveway and turnaround served?

19 A. It served the upper building.

20 Q. Okay. And was that the one you owned?

21 A. Yes.

22 Q. Answer any questions the other side may have.

23 **THE COURT:** Cross-examination, Mr. Glenn.

24 **MR. GLENN:** No questions, Your Honor.

25 **THE COURT:** All right. You may step down.

1           **MR. MARTIN:** Can we excuse him?

2           **THE COURT:** Yes. Any objection?

3           **MR. BROGDON:** No objection, Your Honor.

4           **MR. GLENN:** No, Your Honor.

5           **MR. MARTIN:** Your Honor, we have some depositions that we  
6 want to publish ---

7           **THE COURT:** Okay.

8           **MR. MARTIN:** --- of Mr. Thomas.

9           **THE COURT:** Ladies and gentlemen, let me tell you a  
10 little bit about depositions. Depositions are testimony that  
11 is taken before court of different witnesses. Sometimes  
12 they're taken of parties, sometimes they're taken of  
13 witnesses. And a party can use them for when they get to  
14 court for any purpose that they feel appropriate. We have  
15 certain rules that govern those.

16           And these deposition transcripts are the same as if a  
17 witness testified live. And sometimes it may be a person that  
18 has testified. But like I said, a party can use it in any  
19 fashion they deem appropriate. But it's the same as if  
20 somebody testifies. They were put under oath with both  
21 lawyers there asking questions. And that's kind of what's  
22 being presented now, are portions of depositions.

23           **MR. MARTIN:** All right. This is going to be deposition  
24 of Jonathan Thomas, which was the 30(b)(6) deposition that  
25 happened on October 22nd, 2020. And Mrs. Martin's going to

1 play the role of Mr. Thomas, and I'm going to ask the  
2 questions.

3 **Deposition Excerpts of Jonathan Thomas:**

4 Q. So turn, please, to page 21. And I want to go through  
5 lines 4 through 11. And the questions -- the first question  
6 is ---

7 **MR. CAMPBELL:** Your Honor, may we have a quick sidebar,  
8 please?

9 **THE COURT:** Yeah.

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. The first question is, okay, when did you  
14 leave Sitton?

15 A. January of -- it was either the end of 2013 or the  
16 beginning of 2014.

17 Q. And why did you leave Sitton?

18 A. To take over my father-in-law's business and purchase the  
19 shop from him.

20 Q. Okay. Who was your father-in-law?

21 A. Greg Grissenger.

22 Q. Okay. Now page 29, line 8 through 13. Now, did it come  
23 about -- how did it come about that you decided to buy the  
24 property from Mr. Watkins? How did that happen?

25 A. I received word that Mr. Click had been visiting Mr.

1     Watkins in an attempt to purchase the property that I was  
2     renting.

3     Q.    Okay.  Now page 3, line 14 through 15.

4     A.    I attempted to get financing to purchase the property.  I  
5     could not get it.

6     Q.    Now page 32, line 22.  Okay.  Let me ask one other  
7     question about the South State Bank.  How much were you trying  
8     to finance with them?  What was the amount of money you were  
9     trying to get from South State Bank?  And it goes to page 35  
10    -- 7.  And is that Mr. Watkins' signature on the deed?

11    A.    Yes, sir.

12    Q.    And this was the 23rd of May, 2018?

13    A.    Yes, sir.

14    Q.    And you purchased it for a hundred and forty thousand  
15    dollars (\$140,000.00), is that correct?

16    A.    Yes, sir.

17    Q.    Okay.  Page 33, line 1.

18    A.    A hundred and forty thousand (140,000).

19    Q.    Okay.  Page 35, line 7 through 12.  And is Mr. Watkins'  
20    signature on the deed?

21    A.    Yes, sir.

22    Q.    And this was the 23rd of May, 2018?

23    A.    Yes, sir.

24    Q.    And you purchased it for a hundred and forty thousand  
25    dollars (\$140,000.00), is that correct?

1 A. Yes, sir.

2 Q. Page 39, line 24. Okay. Now isn't it true that the  
3 building where All-Tech is is a lot lower than the property  
4 behind it? In other words, there's a steep incline. If you  
5 walked out the back door of All-Tech building you would face  
6 this very high hill. Is that fair to say? Back then?

7 A. On one end of the property, yes.

8 Q. Right. And the closest to Mr. Click's property, it would  
9 be very high, right?

10 A. Yes, sir.

11 Q. Okay. Down -- okay. Then -- now if you are on the  
12 extreme right side of the All-Tech building and you went out  
13 the back door, isn't it true that you would be looking up at a  
14 very steep incline of dirt, and shrubs, and stuff? Is that  
15 fair?

16 A. Yes, sir.

17 Q. Okay. Would you agree with me that you could turn some  
18 cars around and then put them into this building that's on the  
19 extreme right corner of the picture?

20 A. Yes, sir.

21 Q. Okay. And would you agree with me that there are two  
22 garage doors just for that purpose on the building in that  
23 picture?

24 A. Yes, sir.

25 Q. Okay. Page 43. Okay. You have had no other training

1 other than your automotive training, is that fair to say?

2 A. Yes, sir.

3 Q. Page 59. My point is -- I'm sorry. That's yours to  
4 read.

5 A. My point is is I don't know if they include projections  
6 on the surveys to where things are actually here or not  
7 actually here. I don't know that. But as far as your  
8 question of whether the gravel driveway was on Click  
9 Properties, or partially, according to this paper, I would say  
10 yes.

11 Q. And this paper was actually recorded in the RMC office  
12 for Pickens County, correct?

13 A. Yes, sir.

14 Q. And it's exhibit 7, right?

15 A. Yes, sir.

16 Q. Okay. So at least since 1996 or I think it was actually  
17 filed in the RMC office on April 21st, 1998, the plat showing  
18 the gravel driveway and the turnaround straddling both  
19 properties has been on record since 1998, is that fair to say?

20 A. Yes, sir. It shows the main portion of the driveway is  
21 on the Click property and that the main portion of the  
22 turnaround area is on Wallace Merck's property at that time.

23 Q. So that's about 22 years' worth, is that right?

24 A. Yes, sir.

25 Q. Okay.

1 A. It shows the driveway. The current state of the building  
2 right now is the awnings that were erected in front of the  
3 building take up the space in front of it ---

4 Q. Okay.

5 A. --- that were added on. I've seen them, I mean, I  
6 watched them do it prior to me purchasing the property. So  
7 the area that you're questioning me about, his awnings are  
8 sitting on his property and go across the property line onto  
9 my property.

10 Q. Okay. So you purchased it on May 23rd, 2018. What did  
11 you do? Tell me what you did to effectuate or put into play  
12 your excavation project. What did you do? What's the first  
13 thing you did, second thing you did? Tell me as if I was a  
14 little bird on your shoulder watching your process of getting  
15 it done.

16 A. I spoke with a couple of different potential people to  
17 complete the excavation.

18 Q. Okay. And who did you speak to?

19 A. I don't remember them, just individuals.

20 Q. Just individuals? Do they have a profession or do they  
21 have a business?

22 A. People that work in that profession. I mean, I spoke to  
23 a couple of people trying to get pricing on what it would cost  
24 to do it.

25 Q. Okay. So in order to do the excavation work, when you

1 talked to that gentleman who gave you the fifty thousand  
2 dollar (\$50,000.00) estimate, it included digging out enough  
3 to have a driveway to get back there, is that fair?

4 A. Our conversations didn't go that far in depth. It was a  
5 bigger project than what he could handle. So we didn't  
6 discuss that.

7 Q. Okay. All right. After you talked with him did you  
8 reach out to someone else to see if they could handle it?

9 A. I didn't find anyone that would -- that would take on the  
10 project or that would give me an estimate on what it would  
11 cost to do it.

12 Q. Okay.

13 A. Apparently there were too many unknown variables that  
14 anybody would even want to do it, I guess. Once I talked to a  
15 couple of people and nobody really wanted to actually get  
16 involved and make a plan on how to do it, I just gave up on  
17 trying to hire someone to do it.

18 Q. Okay. Did you ever try any, what I would call, a  
19 reputable excavation company that's in the business that has  
20 engineers and all that they do -- and all that they could do  
21 for you? Did you ever call any of them? I mean, the name  
22 that everybody in Greenville knows is Strange Brothers. Did  
23 you ever call?

24 A. No. I never ---

25 Q. Strange Brothers?

- 1 A. --- spoke to Strange Brothers or anybody like ---
- 2 Q. Are you familiar with them?
- 3 A. Yes, sir.
- 4 Q. Okay. Is there any reason why you didn't call them?
- 5 A. I knew I couldn't afford them.
- 6 Q. Who did you talk to?
- 7 A. The permit office in Pickens County.
- 8 Q. Do you remember who?
- 9 A. No.
- 10 Q. Okay. Was this also in, let's say, June of 2018?
- 11 A. Sure.
- 12 Q. Okay. When you found out you didn't need a permit, what
- 13 did you do next?
- 14 A. They made recommendations that if I was going to do an
- 15 excavation, that the neighbor next to me -- I should put up a
- 16 silt fence to make sure that no run-off damaged his property.
- 17 They said if I dug all the way over to the property line on
- 18 Mr. Click's side that I would -- they recommended that I slope
- 19 the property in a way that would be safe. And that's all.
- 20 And really there was no requirements that they told me to
- 21 follow other than they told me to -- they recommended to put
- 22 up a silt fence on one side and that if I dug all the way to
- 23 the property line to slope the bank in a safe way.
- 24 Q. Okay. And what did you do next?
- 25 A. I discussed with a friend of mine about possibly using an

1 operator that worked for him and renting equipment to be able  
2 to do the project myself.

3 Q. Who was this friend?

4 A. His name's Oscar.

5 Q. Okay. And what is Oscar's business?

6 A. He does underground pipe boring.

7 Q. Did you ever ask Oscar if he would do the project?

8 A. No. I just asked him if he could get me some guys in  
9 there that knew how to do that kind of work to do the work.

10 Q. Do you know if he's ever done anything like this before?

11 A. Himself?

12 Q. Yes.

13 A. No.

14 Q. Okay. Well, how did you expect him to have guys that  
15 would know how to do it, then, if he had never done it before?

16 A. They come in and out of my shop all the time with  
17 equipment, dropping off trucks to get repaired, in and out.  
18 We just had a conversation. And he told me when they were  
19 slow if I wanted to pay some of his guys to come over and work  
20 to help me clear the property that he would let them work with  
21 me.

22 Q. Okay. So he was basically lending you his workers when  
23 he was slow to clear the property, but he wasn't holding them  
24 out as experts on how to do excavation, is that fair to say?

25 A. Yes, sir.

1 Q. Okay. So you were in charge of that, right?

2 A. Yes.

3 Q. So you're not saying that you were relying upon Oscar's  
4 expertise to do this, right?

5 A. No.

6 Q. Okay. So you didn't use an excavation company?

7 A. No.

8 Q. Did you ask him to do a block retaining wall for you?

9 A. Him and I did discuss doing block retaining walls.

10 Q. Okay. And did you do one?

11 A. No. To follow this general line here or at least I  
12 wanted to at least leave room to where there would be no  
13 change of what I'm doing causing the issues with his building  
14 or anything. I wasn't going to dig to the property line. I  
15 wanted to dig farther than what I did, but reasonably so. I  
16 mean, I'm close to the area.

17 But down on the -- this end over here, like I said, we  
18 didn't quite finish everything the way I wanted it to be.  
19 We're still considering the possibility of whether I wanted to  
20 asphalt it or concrete it, whether I wanted to try to put  
21 another building up there, how I would have to change anything  
22 if I did put a building up there. So, like I said, I don't  
23 consider the project finished.

24 Q. What was the purpose of the retaining wall? The block  
25 retaining wall?

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

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

6 A. Yes, sir.

7 Q. Okay. Is there a steep drop on the side of the Click  
8 property due to the dig?

9 A. Here?

10 Q. Yes.

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

12 Q. Okay. So would the retaining wall also avoid erosion  
13 from that area, too? Would that be the purpose for a  
14 retaining wall?

15 A. Yes, sir.

16 Q. Okay. But you -- you didn't put it in?

17 A. No, not yet.

18 Q. So it's your testimony under oath here -- or there --  
19 hasn't been any erosion from the hill from the Click property  
20 to your property, is that right?

21 A. I'm not saying there's been no erosion. There's  
22 obviously going to be some, but not anything that I can  
23 noticeably say is ---

24 Q. Okay.

25 A. --- bad.

1 Q. Okay. Did you ever have an engineer look at this  
2 excavation project before you began it?

3 A. No.

4 Q. How much did you pay Samuel?

5 A. I didn't pay Samuel directly. I paid Oscar and Javier,  
6 another customer of mine. I guess Samuel may work for both of  
7 them both. I paid them.

8 Q. How much did you pay them?

9 A. I gave Oscar a credit at the shop for, I think, seventy-  
10 five hundred dollars (\$7500.00).

11 Q. How much did you pay Javier?

12 A. I would say the same amount.

13 Q. In credit at the shop?

14 A. No, I paid him.

15 Q. Okay. Did you pay him by check or how? Cash?

16 A. Well, I think I paid him cash.

17 Q. How long did the project take?

18 A. I think about 18 days.

19 Q. All right, now. We're basically talking about your  
20 excavation. Before you actually performed the excavation did  
21 you do anything to check on any underground gas lines, or  
22 sewer pipes, or electrical lines, or water pipes? Did you do  
23 anything with respect to that or just went ahead and did it?

24 A. I cannot honestly tell you. I can't remember. I would  
25 think that I did. I know it's the responsible thing to do.

1 But if I sit and tell you I did for sure, I would be lying  
2 because I can't remember.

3 Q. Okay. So you don't remember doing anything, is that a  
4 fair statement?

5 A. It is a fair statement.

6 Q. Did you do anything to determine the moisture content of  
7 the soil before you began?

8 A. No, sir.

9 Q. Did you do anything to determine the porosity of the  
10 soil? How porous it is ---

11 A. No, sir.

12 Q. --- before you began? Did you do anything to determine  
13 the density of the soil before you began?

14 A. No, sir.

15 Q. So is it fair to say that you didn't perform any analysis  
16 on any aspect of the soils before beginning your excavation?  
17 Is that fair to say?

18 A. I guess I'd have to agree with that.

19 Q. Okay. And you didn't do any type of analysis to  
20 determine the impact of gravity on the erosion on the property  
21 or on the neighboring Click property before you began?

22 A. The impact of gravity?

23 Q. Yes.

24 A. No.

25 Q. Okay. So then if you met your responsibility, do you

1 agree with me that you had a responsibility to the Click  
2 property when you did this excavation?

3 A. Yes.

4 Q. Okay. And you believe you met that responsibility?

5 A. Yes.

6 Q. Okay. Did you feel that you were totally qualified to do  
7 this excavation project? Is that your testimony under oath?

8 A. I feel like that I was -- that I executed it within the  
9 best of my knowledge and the best of my ability.

10 Q. Okay. And do you feel that you are qualified to make  
11 those decisions?

12 A. Yes. It's my property.

13 Q. Because it's your property. All right. If you had to do  
14 it over again what would you have done differently?

15 A. I would have made the driveway straight.

16 Q. What difference would that make?

17 A. I just thought it would be easier, accessible.

18 Q. By straight, you mean going straight back to the Click  
19 property?

20 A. No. I mean straight back onto my property.

21 Q. So it would just follow the line? It would take away the  
22 turnaround area for Brent.

23 A. Very possibly, yes.

24 Q. And that was okay with you?

25 A. You see I didn't do that, right?

1 Q. Yes. But you're saying that if you had to do it over  
2 again you would have, is that right?

3 A. Yes. If I dug a driveway straight up beside his driveway  
4 and left the drop-off on his side, yes, I would have put a  
5 retaining wall in.

6 Q. Okay. Page ---

7 A. If I dug the property out to the property line it would  
8 have been necessary to start the retaining wall in the area of  
9 where Brent's gate is.

10 Q. Okay. And it would ---

11 A. If I dug that area out, that would make sense to where a  
12 retaining wall needed to be.

13 Q. Okay. And you would have had that retaining wall go  
14 straight back to the end of your property, is that right?

15 A. Yes, sir.

16 Q. Okay. How long would that have been approximately feet-  
17 wise? What would you estimate it to be?

18 A. About 150 feet.

19 Q. Okay. And tell -- and how tall -- how tall would that  
20 retaining wall have to be?

21 A. It'd depend on the elevation of the driveway.

22 Q. Okay. What would be the lowest elevation and what would  
23 be the highest in your estimation?

24 A. If the back of the property was at the same level it is  
25 right now and a driveway was going up to it and all the way to

1 the property line, then the rock wall would probably be 10 to  
2 12 feet high at the back of the property and about two to  
3 three feet at the front of the property.

4 Q. Page 110.

5 A. I know that soon after Mr. Click bought this property  
6 that Mr. Porter erected a fence on the property line that cut  
7 off the entrance to the -- from the front to the right side of  
8 Brent's building.

9 Q. Do you know why?

10 A. No, I don't know why. I think there's a good likelihood  
11 that there was some bad blood between Brent and Mr. Porter. I  
12 say that because I've seen them out arguing and seen the  
13 police there.

14 It's hearsay, but I think there may have been an  
15 accusation that Brent stole one of those awnings that he  
16 installed in front of the building from Mr. Porter's property.  
17 I don't know the facts about that situation.

18 I don't think Brent's a thief. It may have been  
19 purchased in a manner that Mr. Porter didn't agree with. I  
20 think it was purchased from Mr. Porter's son. And I do not  
21 know -- and I do know that that caused some bad blood between  
22 the two.

23 It's possible that Mr. Porter decided to put the fence up  
24 after Brent bought the property to create a distinctive  
25 boundary between the two and to keep him from parking on his

1 property.

2 Q. Okay. Was your father-in-law still working with you in  
3 October of 2014?

4 A. I remember calling my father-in-law and telling him that  
5 Brent was intending to pour concrete and put an awning up in  
6 front of his building. Brent told me that he knew it was  
7 going to go across the property line.

8 Q. Now do you know -- do you know -- now, you know of no  
9 time that Mr. Watkins objected to Brent doing that, do you?

10 A. Not to me.

11 Q. So basically what you're saying is that the agreement was  
12 that Mr. Watkins had an easement to use the entrance-way on  
13 Brent's property to get over to his property and the owner of  
14 Brent's property had an easement to use the driveway to get up  
15 to his top building and back building, is that right?

16 A. I don't know that there was any sort of agreement  
17 concerning the driveway going up the hill, but from the way  
18 everything's laid out, it would be very apparent to me that  
19 there was.

20 Q. Okay. You've instructed them not to park on the -- on  
21 Brent's property, and they have ignored that?

22 A. No. When this first started they had ignored that, not  
23 as far as parking on his property, but driving through his  
24 property, basically being somewhat of a nuisance in my  
25 opinion. And I reprimanded them when they would do it because

1 there's no reason to do anything you know is going to upset  
2 your neighbor.

3 Q. Okay.

4 **MR. MARTIN:** That's it, Your Honor.

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

6 **MR. MARTIN:** Next witness?

7 **THE COURT:** Yes.

8 **MR. MARTIN:** Okay.

9 **THE COURT:** Everybody good over here?

10 **THE JURY:** (Affirmative nods).

11 **THE COURT:** If you'll come around and be sworn.

12 **MADAM CLERK:** If you would, raise your right hand.

13 **Christopher Eleazer, being**

14 duly sworn testified as follows;

15 **MADAM CLERK:** All right. State your full name for the  
16 record.

17 **MR. ELEAZER:** Christopher Henry Eleazer.

18 **MADAM CLERK:** All right. You may have a seat.

19 **Direct Examination by Mr. Martin:**

20 Q. Well, I'm glad to hear you pronounce it Eleazer because  
21 I've been wondering how to pronounce it. So thank you for  
22 doing that. Do you mind if I call you Chris?

23 A. No, sir.

24 Q. All right. Please tell the jury your name, your  
25 education, who you are, just some background information,

1 please, sir.

2 A. Okay. Christopher Eleazer, born in Greenville, grew up  
3 in Pickens a good bit of my life, graduated from Pickens '02,  
4 went on to Greenville Tech, Clemson, started engineering  
5 business management, always had a love for cars, so it kind of  
6 led me into the automotive industry and then into logistics,  
7 work for a tier 1 supplier for BMW now, run their logistics  
8 department.

9 Q. Okay. And what -- what does this company do?

10 A. They make the door carrier assemblies for all the SUVs  
11 built over in the plant in Greer.

12 Q. Okay. All the BMW ---

13 A. Yes, sir, all ---

14 Q. --- SUVs?

15 A. --- the BMW SUVs.

16 Q. Okay. When did you first become acquainted with Brent  
17 and Shelly Click and their business, Hyper Formance?

18 A. I met Brent and Shelly mid 2018.

19 Q. Okay.

20 A. Introduced by a friend, and said he had some neat stuff  
21 going on over there. So I went over there and checked him out  
22 and just kind of became friends after that.

23 Q. Do you have an opinion on the quality of their work?

24 A. Top notch. They try to go above and beyond what's  
25 expected of them in everything that they do.

1 Q. Okay. How often would you say you've been present on  
2 their property located at 3668 Calhoun Memorial Highway?

3 A. Starting in 2018 we worked on a project together shortly  
4 after meeting him. We made some Jeep pieces to sell. I was  
5 there a good bit in 2018. And I'd say since then it's  
6 probably been an average of at least -- at least once a month  
7 ---

8 Q. Okay.

9 A. --- I've been over there.

10 Q. Now in the early part of 2018 did you notice the floor in  
11 the inside back building?

12 A. Yes. I don't see a picture.

13 Q. It's not there -- it was there, it's not there now. So  
14 ignore that look of mine.

15 A. Okay. Yes, sir. Yeah, I spent a lot of time at that  
16 property in 2018.

17 Q. Okay. Tell us what the condition of the floor was before  
18 the digging in August of '18.

19 A. There were some hairline cracks in the floor, but the  
20 floor was level. It was -- it was level to the point where  
21 you could put a vehicle on dollies and roll it around with one  
22 person. You could flip a car around in that entire shop and  
23 flip it around.

24 Q. Okay. At that time was there any problem with erosion on  
25 the outside of the building that you noticed?

1 A. No, sir.

2 Q. Okay. Were you present when the Click -- at the Click  
3 property when -- in August of 2008 [sic], the excavation was  
4 done from the Thomas property people?

5 A. I was there.

6 Q. Okay. What did you notice about it?

7 A. Immediately when I pulled up I -- I couldn't believe how  
8 much they were actually taking out, how much dirt was leaving  
9 that property. The amount of dump trucks in and out of that  
10 place was astounding.

11 The depth that they were digging down was astounding and  
12 how vertical the wall was at nearly a 90 degree angle right up  
13 against Mr. Click's property, right up against his driveway,  
14 basically. So it was -- there was no erosion control. I was  
15 -- I was flabbergasted that Pickens County would even allow  
16 somebody to do that.

17 Q. Okay. Was there a retaining wall or anything like that?

18 A. There was no retaining wall. There was nothing to stop  
19 the erosion put in place. No, nothing.

20 Q. Okay. And after that was done did you notice any change  
21 in the topography outside the Click building?

22 A. I did. So the driveway became rough. It became steeper.  
23 And the grassy area between the two buildings, the upper and  
24 the lower building, it started sinking to a point where you  
25 used to be able to park there. And it's become -- become a

1 hazard now that you cannot park there.

2 The concrete pad outside of the top shop, there's a  
3 severe drop-off at the concrete pad now, which has also  
4 settled out front itself. But, yes, the topography has  
5 definitely changed at that place.

6 Q. Okay. Did you notice any changes on the inside of the  
7 building, the back building?

8 A. Yep. So the back building has very pronounced cracks in  
9 the concrete block now to the point where I was there one day  
10 and actually saw light through a crack, which had not  
11 previously been there.

12 Q. Light going to the outside?

13 A. Yep.

14 Q. Okay.

15 A. Yep. The top plate on the structural roof, the wood is  
16 actually separating from the concrete block, which tells me  
17 something has shifted for sure.

18 Q. Okay. Did you notice anything different in the prep  
19 room?

20 A. So the prep room, there is a giant crack in the floor now  
21 that the concrete is actually offset. Actually, I tripped on  
22 it, I think, one of the last times that I was there, not even  
23 understanding what was really going on. But I looked down and  
24 I said, wow, I said, your concrete's really shifted there,  
25 buddy.

1           And then the cabinetry along the back wall, it's very  
2 unlevel now. And then the door to the paint shop does not  
3 open now, which wasn't that way before.

4 Q.   Did you ever notice the behavior of Thomas and his  
5 employees towards Brent and Shelly?

6 A.   I did. So the day that I was there, there was digging  
7 going on. There was -- there was a lot of hostility, a lot of  
8 hostility. There was shouting going on. There was gestures  
9 made, which I don't think I could do that in court, with your  
10 hands. It was -- it was obscene. It was absolutely obscene.

11 Q.   Were there firearms?

12       **MR. BROGDON:** Objection, Your Honor.

13       **MR. GLENN:** Objection, Your Honor. Relevance.

14       **THE COURT:** Sustained.

15       **MR. MARTIN:** Okay.

16 Q.   Did you notice any damage to any of the customer cars  
17 that may have been caused by these people?

18 A.   I don't know that I could specifically say that there was  
19 damage to any customers' cars. Brent's motorhome was parked  
20 outside. The digging was going on just on the other side of  
21 the motorhome. When I say just on the other side, I mean  
22 within 18 inches or two feet of the edge of that motorhome,  
23 which was parked outside of the top shop. I don't know about  
24 customers' vehicles, though.

25 Q.   And since that digging was done have you noticed a

1 difference in the -- a change in the sheer cliff that used to  
2 be -- when they finished?

3 A. It's definitely sloughed off. It's not nearly as  
4 vertical as it once was, but that's gravity. That's going to  
5 happen.

6 Q. Okay.

7 A. The top of that hill definitely is sloughing.

8 Q. Thank you. Answer any questions that the other side may  
9 have.

10 **THE COURT:** Cross-examination.

11 **MR. GLENN:** Nothing, Your Honor.

12 **THE COURT:** All right. You may step down.

13 **MR. MARTIN:** Your Honor, if we could just have a couple  
14 of minutes.

15 **THE COURT:** Okay.

16 **MR. MARTIN:** I think we might be through.

17 **THE COURT:** All right. We'll just take a short break.  
18 Do you need a break?

19 **MR. MARTIN:** That'd be nice.

20 **THE COURT:** All right. Let's take a short break. And  
21 we'll bring you back out in just a few minutes. We'll have  
22 you -- we're good about leaving at five. So y'all -- just  
23 letting you know.

24 (Whereupon the jury exited the courtroom at 4:31 pm)

25 (Whereupon court was in recess at 4:32 pm)

1 (Whereupon court reconvened at 4:35 pm)

2 **THE COURT:** All right. So let's go ahead and bring the  
3 jury out. Tell them to come back. I've got a 9:00 phone  
4 conference that shouldn't last but 10 minutes, five, 10  
5 minutes. So let's shoot for 9:15 coming back. And I'm going  
6 to have the jury come back at 10.

7 **MR. BROGDON:** That sounds great.

8 **THE COURT:** Does that work? Okay. All right. Bring  
9 them in if they're ready.

10 (Whereupon the jury entered the courtroom at 4:36 pm)

11 **THE COURT:** All right.

12 **THE BAILIFF:** Judge, we have a note.

13 **THE COURT:** Okay. All right. I will address that in the  
14 -- when I charge you on that. All right, ladies and  
15 gentlemen, -- and I'll show that to y'all. Mr. Martin.

16 **MR. MARTIN:** The Plaintiff rests, Your Honor.

17 **THE COURT:** All right. So the Plaintiff has put forth  
18 all the evidence that they plan to put in their case in chief.  
19 It's 20 til five. There's things that I have to go over with  
20 the attorneys. So at this point there's some things that we  
21 have to address. So I'm going to go ahead and let you go.

22 I've got another matter that I've got to attend to in the  
23 morning. And so I'm going to have you come in at 10:00  
24 tomorrow. All right? So sleep late or whatever. You can get  
25 a big breakfast.

1           Again, don't discuss the case. Do not do any type of  
2 research. Do not pay attention to any media. If anybody  
3 should contact you other than somebody from the clerk's  
4 office, please let the bailiffs know.

5           Also in addressing your note here, and I'll present that,  
6 you've asked me a question. I just want to make sure that  
7 there's no -- been no discussion about the case. I know you  
8 have a question here, but it's very important that you not  
9 discuss the case.

10          So I think this is just a question about the deposition.  
11 And I'll put it as a -- mark it and let the attorneys look at  
12 it. So at this point if you will head home or wherever and  
13 have a good evening. And I'll see you in the morning.

14          (Whereupon the jury exited the courtroom at 4:39 pm)

15          (Whereupon Court's exhibit 2 was marked)

16          **THE COURT:** All right. The question -- how are disputes  
17 or disagreements about questions settled in a deposition?  
18 I've marked that as Court's exhibit 2.

19          So I will -- I will address that in my charge. Y'all are  
20 welcome to look at it. Any comments, objections, exceptions,  
21 whatever? But I think that's just something that I can  
22 address in my charge. And I just wanted to make sure that  
23 they weren't discussing -- that's not the kind of question  
24 that makes me think they were discussing.

25          Also, just to let y'all know that my little -- I always

1 have my four rules. And I always say -- used to say until  
2 about three weeks ago, I've never had this happen, but if  
3 anybody should contact you other than the clerk's office, then  
4 let the bailiffs know.

5 Well, as of three weeks ago, it did happen. So I can't  
6 say that little part. Yes, the victim contacted somebody on  
7 the jury. So the victim went to jail, but the defendant  
8 didn't. So -- all right.

9 And I know you've got some motions. Jury charges, and I  
10 realize that I've still got to rule on some motions I'll hear  
11 tomorrow. But I'm sure you have proposed charges. I'm sure  
12 y'all have lots with a case like this.

13 And, also, verdict form. Y'all, I mean, we need to be --  
14 that's going to be quite a sticky wicket, I do believe, the  
15 verdict form in this. And, again, I know that depends on how  
16 I rule, but we definitely need some of that.

17 Starting at 10 tomorrow, when do y'all anticipate that  
18 you'll be through? And, again, I'm not holding you -- holding  
19 you to it. I want you to ...

20 **MR. BROGDON:** Your Honor, we have every intention of  
21 being through tomorrow.

22 **THE COURT:** As far as your testimony?

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

24 **THE COURT:** And then probably arguing and charge on  
25 Thursday?

1           **MR. BROGDON:** If it gets to that point, Your Honor. I  
2 guess it just depends on the cross-examinations.

3           **THE COURT:** Right. I mean, general rule, too, is we  
4 don't like to put it to a jury after 4:00. And that's even  
5 more important in Pickens County on a Wednesday. You don't  
6 hold them past five on Wednesday. All right.

7           So any verdict forms, jury charges, if y'all could send  
8 those over tonight, just to be looking at. Send them to my  
9 law clerk.

10          **MR. MARTIN:** Tonight?

11          **THE COURT:** If you could, yeah. And email them so that  
12 we can cut and paste those, in Word.

13          **MR. MARTIN:** Okay.

14          **THE COURT:** All right. Yes. And you had -- you said you  
15 wanted to address -- anything else from the Plaintiff ---

16          **MR. MARTIN:** No.

17          **THE COURT:** --- before we break? Mr. Brogdon.

18          **MR. BROGDON:** Your Honor, just very briefly for the  
19 record. And it disappoints me to have to do this, but at this  
20 point we're just going to have to ask for sanctions if these  
21 types of comments from the Plaintiff continue about the  
22 firearm. This is exactly what the motion in limine was about,  
23 these types of comments.

24          At this point either there needs to be instruction moving  
25 forward, especially tomorrow, not to bring any of that

1 testimony in in cross-examination. It's already been excluded  
2 in the motion in limine. It's already been ruled on. So we  
3 just wanted to put that on the record.

4 **MR. MARTIN:** Before you issue sanctions at the point the  
5 gentleman has just asked for, I don't remember any motion in  
6 limine dealing with firearms with this witness. The only  
7 ruling you made was is that when Mr. Thomas pulled a knife on  
8 my client, I couldn't mention that.

9 **THE COURT:** Well, now I think we talked about general  
10 altercations is the way I recall it. That was their concern  
11 because there were two different incidents. And I said any  
12 altercations other than the digging, I don't want, you know,  
13 ---

14 **MR. MARTIN:** And that was the digging ---

15 **THE COURT:** Well, but I still -- I don't, you know, I --  
16 you know, my motion in limine was to take care of any guns,  
17 knives, anything -- I mean, because, again, that's more  
18 prejudicial than probative. I don't think it goes to any of  
19 your claims. So that was my intent. So I guess you --  
20 everybody understands what that -- my order was. So all  
21 right.

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

23 **THE COURT:** All right. See y'all in the morning.

24 **MR. CAMPBELL:** Thank you, Judge.

25 **THE COURT:** About 9:15. Like I said, be ready to have

1 brilliant arguments and all that good stuff.

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

3 (Whereupon Court's exhibits 3, 4 and 5 were marked)

4 (Whereupon court was in recess at 4:43 pm)

5 **Wednesday, May 25, 2022:**

6 (Whereupon court reconvened at 9:24 am)

7 **THE COURT:** We'll let the clerk get here and then we'll  
8 get started.

9 (Pause)

10 **THE COURT:** All right. I guess we'll get started here.  
11 Any motions for the Plaintiff?

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

13 **THE COURT:** All right. Defendant, be glad to hear from  
14 you, Mr. Brogdon.

15 **MR. BROGDON:** Yes, Your Honor. May it please the Court,  
16 Your Honor? Just as a housekeeping matter, Your Honor. In  
17 the Plaintiffs' complaint they allege general cause of action  
18 for quiet title. Your Honor, to sustain a quiet title action,  
19 Plaintiffs must show an actual controversy over the title to  
20 the property.

21 And in South Carolina, Your Honor, this can be based on  
22 one of two things; one, documents, such as competing deeds, or  
23 adverse possession. Your Honor, both Mr. and Mrs. Click in  
24 this case have testified there are no claims based on  
25 documents, they have nothing in writing granting them any

1 access to -- granting them anything to the turnaround area.

2 So we specifically asked in our motion for summary  
3 judgment about adverse possession to Mr. Click and the  
4 attorney on the other side. Mr. Martin represented on the  
5 record that adverse possession was not one of the claims that  
6 was being asserted.

7 So in reviewing the jury instructions submitted by the  
8 Plaintiffs last night and this morning we saw an instruction  
9 as to adverse possession. Your Honor, that's not appropriate  
10 in any way. It would be prejudicial to the Defendants in this  
11 case. And we're going to ask that that portion of the verdict  
12 form be removed if it's to be used by the Court.

13 **THE COURT:** All right. And we'll, I mean, we haven't  
14 gotten to the verdict form yet. What is your quiet title -- I  
15 mean, is this a quiet title action?

16 **MR. MARTIN:** May I have the podium, please?

17 **MR. BROGDON:** Sure.

18 **MR. MARTIN:** Your Honor, our quiet title cause of action  
19 is for common law acquisition of property, which is different  
20 from the statutory adverse possession. We are not suing for  
21 statutory adverse possession, but we're suing for common law  
22 acquisition of property. In the Terwilliger case, the  
23 Getsinger case, the restatement of (third) of property and the  
24 Simmons case all set out that cause of action.

25 And basically South Carolina recognizes that the

1 acquisition of property under the common law, the party  
2 asserting an acquisition of property under the common law must  
3 show continuous, hostile, open, and actual, notorious, and  
4 exclusive possession for a period of 20 years. And we have  
5 evidence going back to 19 ---

6 **THE COURT:** Well, I guess -- and let me just stop you  
7 there.

8 **MR. MARTIN:** Yes, sir.

9 **THE COURT:** We'll get into the adverse possession. But,  
10 I mean, -- let me pull your complaint out first. But, I  
11 guess, I mean, adverse possession and prescriptive easement,  
12 all those are one type of thing. But is this a quiet title  
13 action?

14 **MR. MARTIN:** It's quiet title in the sense that the  
15 difference between a prescriptive easement and a quiet title  
16 action is we're asking for the right to own the property under  
17 this idea of acquisition of property under the common law.  
18 That's what separates it from prescriptive easement.

19 So the elements are we have to have the open use, which  
20 is -- generally means the use is not made in secret. Then we  
21 also have to -- it has to be visible and apparent. It's  
22 notorious generally means that the use is actually known to  
23 the owners.

24 **THE COURT:** Well, I mean, you did say in your argument  
25 for motion for summary judgment that you weren't going forward

1 on adverse possession.

2 **MR. MARTIN:** Yes. And there is -- there's two kinds of  
3 adverse possession ---

4 **THE COURT:** Well, you sure didn't make that distinction  
5 in your arguments.

6 **MR. MARTIN:** Well, we made it in our complaint, Your  
7 Honor.

8 **THE COURT:** Well, then we were talking about a motion for  
9 summary judgment, and you said, well, no, I'm not going  
10 forward on adverse possession ---

11 **MR. MARTIN:** Which is the statutory adverse possession.

12 **THE COURT:** I don't believe you said that.

13 **MR. MARTIN:** We were going -- there was no motion to  
14 strike the quiet title cause of action. So when the motion  
15 ---

16 **THE COURT:** Well, your quiet title cause of action  
17 doesn't say anything about adverse possession.

18 **MR. MARTIN:** No. What it says, Your Honor, -- I'll read  
19 it to you.

20 **THE COURT:** Well, I'm looking at it. You don't have to  
21 read it to me. Third cause of action, I'm looking at it. It  
22 doesn't say adverse possession.

23 **MR. MARTIN:** Okay. Well, what -- I'm trying to argue my  
24 case.

25 **THE COURT:** Well, I'm trying to ---

1           **MR. MARTIN:** If you'll allow ---

2           **THE COURT:** --- help you.

3           **MR. MARTIN:** --- me to, that's all.

4           **THE COURT:** So ...

5           **MR. MARTIN:** It says -- it says Plaintiffs are informed  
6 to believe that they are entitled to an order of this Court  
7 quieting title to the lands of the parties declaring the  
8 common property line of the parties, subject properties to  
9 include part of the Click property, the entire gravel driveway  
10 and turnaround area shown in the 1996 boundary survey for  
11 Betty Ramey. A copy, which is attached as exhibit A.

12           So that is a cause of action for the common law  
13 acquisition of the property. We are asking the Court to rule  
14 based on the evidence that we have a common law right to  
15 acquire the property, which is different from adverse  
16 possession. The law doesn't call it adverse possession.

17           **THE COURT:** Well, what's your cause of action?

18           **MR. MARTIN:** The cause of action is for common law  
19 acquisition of the property. We're saying we want you, we  
20 want the Judge or the jury to, in this declaratory judgment,  
21 to rule that the actual land, the driveway and turnaround that  
22 has been used since the 70s -- 70s, 80s, 90s, 2000, 2010 and  
23 only became an issue in 2020 when we are going to this Court.  
24 We're saying that that land based on the normal, natural  
25 boundary has been treated by all sides, all owners, by Merck,

1 by Porter, by Watkins, and by Thomas that we had the absolute  
2 right, that the boundary was recognized, it was the natural  
3 boundary that was shown on the plat.

4 So what the cause of action is, Your Honor, is for the  
5 common law acquisition of property, which South Carolina  
6 recognizes. It's different from adverse possession. Adverse  
7 possession is a specific statutory remedy. And this is not a  
8 statutory remedy.

9 And we have pled it. And we have proved it. We have all  
10 the elements that have been presented. We have the evidence  
11 of them not in any way objecting to it. We have the evidence  
12 not in any way did we get permission to do it. And we have  
13 way over 20 years of use. So that's why we think this cause  
14 of action ---

15 **THE COURT:** You say you have some case law? I need to  
16 look at your case law.

17 **MR. MARTIN:** Yeah, the case law, Your Honor, is  
18 Terwilliger versus Daniels. Do you want the cites?

19 **THE COURT:** Yes.

20 **MR. MARTIN:** Okay. That's 222 S.C. 191.

21 **THE COURT:** I'm sorry. What is it?

22 **MR. MARTIN:** 222 S.C. 191.

23 **THE COURT:** All right.

24 **MR. MARTIN:** 72 S.E. 2d 167. Then the Getsinger case,  
25 G-e-t-s-i-n-g-e-r. And that's 327 S.C. 424, 489 S.E. 2d 223.

1 Then we have the restatement (third) of property, section  
2 2.17(h). And the final case, Your Honor, is the Simmons  
3 versus Berkeley Electric case, which is 419 S.C. 223, 797 S.E.  
4 2d 387. I mean, yeah, 387. That's right.

5 **THE COURT:** All right.

6 **MR. MARTIN:** Okay. So for that reason we think it's --  
7 continues.

8 **MR. BROGDON:** Your Honor, just ---

9 **THE COURT:** Mr. Brogdon.

10 **MR. BROGDON:** --- very briefly. And we may just save  
11 this, Your Honor, for motion for directed verdict if we need  
12 to do that.

13 But, Your Honor, we filed the motion for summary  
14 judgment as to that count and as to that claim. And in  
15 response to that summary judgment motion, which is on page 9  
16 of the motion for summary judgment response, this was very  
17 clearly filed in response to all claims, Your Honor.

18 And going into that issue there's been no evidence or  
19 testimony as to exclusivity. There's been no real argument  
20 about that or no evidence presented by the Plaintiffs in this  
21 case as to exclusivity. So by those grounds alone, adverse  
22 possession shouldn't survive whether or not it was pled  
23 properly, whether or not it -- it should survive at this  
24 stage, Your Honor.

25 **THE COURT:** I'm going to have to review those cases. I

1 wasn't familiar with that cause of action nor seen anything  
2 about it. So -- and that's -- doesn't look like it was pled  
3 in that way. So that's why I didn't look it up. But I've got  
4 to look at that before I can make a decision on ---

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

6 **THE COURT:** --- whether it goes forward.

7 **MR. BROGDON:** And I would just state for the record that  
8 it's our understanding that Mr. Martin did waive that in our  
9 summary judgment argument saying that he was not proceeding  
10 with an adverse possession claim and did not intend to do so.  
11 So it's a little perplexing that he's now seeking to do so.

12 But with that said, Your Honor, we do have some motions  
13 for directed verdict. Would you like us to move forward?

14 **MR. MARTIN:** May I ---

15 **THE COURT:** Yes.

16 **MR. MARTIN:** --- respond to that, Your Honor?

17 **THE COURT:** No, let's move on. I've got to look at that  
18 and decide.

19 **MR. MARTIN:** Okay.

20 **MR. BROGDON:** Thank you, Your Honor. May it please the  
21 Court? Your Honor, at this phase the Defendants would like to  
22 move for a directed verdict as to all existing claims  
23 presented by the Plaintiff in their case in chief. Your  
24 Honor, it's our understanding that those claims are nuisance  
25 per se, negligence, prescriptive easement, and acquiescence,

1 and injunctive relief, Your Honor, or injunctive --  
2 injunction.

3 Taking one at a time, Your Honor, nuisance per se, as we  
4 have identified in the testimony presented by the Plaintiff  
5 and documents introduced by the Plaintiff, there's absolutely  
6 no testimony that this -- that any actions caused by the  
7 Defendants were dangerous at all times and all places.  
8 There's been no evidence that has said that either be it  
9 testimony or documentary evidence.

10 Furthermore, Your Honor, the expert identified by the  
11 Plaintiff, Mr. Hall, testified that the back building in which  
12 the Plaintiffs reside by their own testimony is not currently  
13 failing and particularly that back slope due to the  
14 excavation. Your Honor, I believe their expert also testified  
15 that there have been no impact at all on that back building,  
16 again, in which the Plaintiffs reside.

17 There's no digging on any portion of the Plaintiffs'  
18 property. And there's been testimony to that effect,  
19 including the Plaintiffs themselves.

20 Your Honor, Plaintiffs use the driveway. I believe there  
21 was testimony that either daily or weekly. And, Your Honor,  
22 the buildings on -- that are there, they use daily or weekly,  
23 including parking vehicles on that slope.

24 Your Honor, it's just abundantly clear that there was no  
25 testimony or evidence that this cause of action survives

1 directed verdict because there is no evidence showing that it  
2 is dangerous at all times and under all circumstances.

3 **THE COURT:** Mr. Martin.

4 **MR. MARTIN:** Your Honor, first of all, -- I'm going to  
5 need the easel again. Sorry. I just want to point this out  
6 for the Court.

7 The Suddeth case uses the language of all times and all  
8 places, but it then -- the facts of the Suddeth case, which it  
9 says is a jury question, always a jury question, it was a  
10 situation where it rained is when it was a problem. And when  
11 it wasn't raining it wasn't a problem.

12 So even though the words are harsh, the courts have  
13 clearly allowed nuisance to go to a jury not if it's all times  
14 and all places, but if there is a danger that could be a  
15 problem. And the testimony clearly shows that the hill is an  
16 impending danger. The engineer testified that one point five  
17 (1.5) is an area of safety, it's one point one (1.1).

18 **THE COURT:** I mean, I've heard that. I mean, -- and let  
19 me just go back to Mr. Brogdon. I'm going -- because, I mean,  
20 I reviewed this last night. I mean, that Suddeth case, I  
21 mean, quite frankly, if a pond, you know, in the Deason case,  
22 if a pond on a piece of property that draws mosquitos can be a  
23 jury question, I think clearly this can be a jury question,  
24 too.

25 **MR. BROGDON:** Your Honor, may I please briefly respond?

1           **THE COURT:** Yeah, briefly. I mean, I've done -- but I'm  
2 going to let it go to the jury, all right?

3           **MR. MARTIN:** Now, Judge, I just wanted ---

4           **THE COURT:** Well, I've already ruled.

5           **MR. MARTIN:** I know you have, but I just want ---

6           **THE COURT:** Well, then I don't need to hear from you, Mr.  
7 Martin. I have ruled. Okay, that's going to the jury.

8           **MR. MARTIN:** I just wanted to tell you why I put this up  
9 here for you ---

10          **THE COURT:** Well, I mean, I just -- I've already ruled.

11          **MR. MARTIN:** I know you did, but I was going to be kind  
12 and generous and let you see why I did that. That's all.

13          **THE COURT:** Well, ---

14          **MR. MARTIN:** If you don't want to see it, that's fine,  
15 you don't need to see it.

16          **THE COURT:** Okay. Next ---

17          **MR. MARTIN:** Not a problem.

18          **MR. BROGDON:** Thank you, Your Honor. As it pertains to  
19 the negligence cause of action pled by the Plaintiffs, Your  
20 Honor, the Plaintiffs have not proven but for or proximate  
21 causation in this case, Your Honor.

22           Your Honor, there's been the -- no testimony as to a  
23 proximate causation including their own expert testifying that  
24 there was no impact caused by the digging to that back  
25 building. Your Honor, when asked specifically about damages

1 in other areas of the Plaintiffs' property, Plaintiffs' own  
2 expert said none. Although, maybe some gravel moved on their  
3 property, but no damages.

4 Your Honor, there's been no testimony of damage on the  
5 Plaintiffs' property. All of the digging has been on the  
6 Defendants' property. For that reason, Your Honor, they  
7 cannot survive a directed verdict motion because they cannot  
8 prove proximate causation.

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

10 **MR. MARTIN:** All right. I'm going to get my exhibit out  
11 again, Judge. Sorry. And I apologize if I irritated you. It  
12 was not my intent.

13 **THE COURT:** No, I know. I was just -- when I say I don't  
14 want to hear from you, then we'll -- that's fine.

15 **MR. MARTIN:** Thank you. Okay.

16 The first question is was there any evidence of digging  
17 on our property? And the answer is, yes, sir, there is.  
18 There's significant evidence.

19 And our expert, David Hall, who put in without objection  
20 the actual digging. As you can see, it's way over the line in  
21 Brent's and Shelly's property. So the digging literally  
22 started in our property and then went into Thomas' property,  
23 okay?

24 So the first question is did they dig on our property?  
25 Now what's happened is this -- this deed is '96 and probably

1 what's happened since '96 and 2020, when this case was filed,  
2 the driveway probably migrated a little bit, you know. So the  
3 digging would have been in the middle of the driveway back in  
4 '96, but in 2018, when he dug it, it probably was just on this  
5 side of the driveway. But the evidence is undisputed that the  
6 digging literally was on Brent and Shelly's property and then  
7 came over here onto the Thomas property. So that's the first  
8 thing.

9 Now the second thing is negligence. Does he have a duty  
10 to make sure that the property of the neighbor doesn't fall  
11 in? We're not just talking about the back building, but we're  
12 also talking about the driveway. The testimony by Mr. Hall  
13 was -- is that in the first point of the borings, which was  
14 done here, is in a imminently dangerous condition and is  
15 falling. That's what his testimony was.

16 So they don't have just a duty not to affect the back  
17 building, they have a duty to make sure that everything they  
18 do does not adversely and negligently affect the property of  
19 Brent and Shelly.

20 The second thing is Mr. Hall testified as Brent and  
21 Shelly testified and two witnesses, two independent witnesses,  
22 that the floor is going crazy inside the building. There has  
23 been a tremendous shift. There's been testimony that all of  
24 this hill is literally falling down. As Mr. Hall said, he's  
25 never seen a 90 degree cut like this before, never been

1 allowed. You're supposed to do it three to one, two to one.

2 Mr. Thomas in his deposition said, I was told by the  
3 County people I had to do it safely, and I had to make sure  
4 that it was properly sloped. He literally said that in his  
5 deposition.

6 Well, when you cut it at a 90 degree, one to one, and not  
7 three to one or two to one, what's going to happen? You're  
8 going to have tremendous erosion, the hill's going to fall,  
9 the building's going to fall. And we had three times that Mr.  
10 Thomas, himself, said my goal was to have your building fall  
11 in. And he was up there in February of 2020 and he said, I am  
12 going to dig to your building until it falls down.

13 So the question is, is it negligence and is there  
14 evidence when you don't hire an engineer, you don't hire an  
15 excavation company, you just do it yourself, you cut it as  
16 close as you can -- you heard the testimony that Brent  
17 literally parked his RV on the high -- of the driveway to try  
18 to stop him and save some of the turnaround. They dug  
19 literally to the -- right where the wheels were that they  
20 could hardly get that thing off.

21 So there's plenty of evidence of negligence. He admitted  
22 he didn't use any expert. He admitted he had no experience.  
23 He admitted that he just did it and that his intent was for  
24 the building -- for Brent's building, the back building to  
25 fall in and that he was going to put his own building up here

1 once that happened. So we do think there's plenty of evidence  
2 of negligence, Your Honor.

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

4 **MR. BROGDON:** Yes, Your Honor, very briefly. Your Honor,  
5 our argument isn't regarding proximate cause. I think there's  
6 confusion as to what our argument is. There is no proximate  
7 causation in this -- in this case.

8 And, Your Honor, there's been testimony by the  
9 Plaintiffs' own expert that there's no proximate cause to any  
10 resulting damage to any portion of the Plaintiffs' property.  
11 Not just the back building, any portion.

12 I know Mr. Martin wants to talk about the slope and wants  
13 to talk about all these other things. That doesn't go to  
14 proximate causation. And that's an essential element of  
15 negligence. But they just can't ---

16 **THE COURT:** Well, how about the testimony of the  
17 Plaintiff himself?

18 **MR. BROGDON:** In terms of ---

19 **THE COURT:** I mean, he ---

20 **MR. BROGDON:** --- proximate causation?

21 **THE COURT:** I mean, he testified like all day about how  
22 his building is sloped and it was caused by the digging and  
23 all that.

24 **MR. BROGDON:** Yes, Your Honor. And that is true. It is  
25 the Plaintiffs' own expert rendering an opinion.

1           **THE COURT:** Well, but, I mean, he testified to it. And,  
2 I mean, there wasn't any objection that there wasn't proper  
3 foundation. So, I mean, that's evidence of -- that the  
4 actions of Mr. Thomas caused his damage.

5           **MR. BROGDON:** Your Honor, it's the -- it's the reliance  
6 on expert witness testimony saying that there is no resulting  
7 damage. That's the proximate causation link.

8           **THE COURT:** Well, I mean, at most you have kind of a  
9 conflict of their own witnesses. I mean, I think that the --  
10 I mean, the fact that the Plaintiff was allowed to testify  
11 extensively -- I mean, he specifically said, yeah, this was  
12 caused because of this slope, and they didn't do this. And, I  
13 mean, you know, he sounded kind of like an expert up there at  
14 some points. So I think there's sufficient evidence for that  
15 one to go to the jury.

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

17           Your Honor, if I may proceed. With the prescriptive  
18 easement cause of action, Your Honor, which has been pled by  
19 the Plaintiffs in this case, Your Honor, there's been  
20 absolutely no testimony as to hostility. Your Honor, the two  
21 witnesses presented by the Plaintiffs include Brad Dobson and  
22 Mark Smith, who both admitted it was not hostile. And it  
23 being the use of the property. They admitted that the  
24 neighborly use of the property was used between the property  
25 owners and that the other people would use each other's front

1 driveway.

2 Your Honor, furthermore, Dobson, witness Dobson admitted  
3 that he did not own the turnaround area, and he couldn't then  
4 sell it, something that he did not own. I believe Mrs. Click  
5 also testified to the same. He also stated he wasn't trying  
6 to claim something that he did not own.

7 Your Honor, neither Brent or Shelly testified that their  
8 use of the turnaround area was hostile to the true owner.

9 Your Honor, the Morrow v. Dyches case, which is 328 S.C. 522,  
10 states evidence establishing the mere fact of use does not  
11 necessarily equate with evidence establishing the character of  
12 such use.

13 Your Honor, the mere possession of land in and of itself  
14 does not show hostility to the owner thereof. Indeed, there  
15 is a presumption that such an occupancy is in subordination of  
16 a legal title, Your Honor. And that's from American  
17 Jurisprudence of possession. Thank you, Your Honor.

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

19 **MR. MARTIN:** May it please the Court? As far as  
20 prescriptive easement, the Pittman case clearly says what the  
21 three elements are. One is continuous use and enjoyment of  
22 the right for a period of 20 years. We've got 42 years that's  
23 been presented to the jury. Number two, the identity of the  
24 thing enjoyed, it was clearly and unequivocally the driveway  
25 and turnaround. No question about that. And, number three,

1 use or enjoyment, which is either adverse or under a claim of  
2 right.

3 So there is sufficient evidence to show that the  
4 continuous and uninterrupted use by Mr. Ramey, by Mr. Dobson,  
5 by Mr. Smith, and then Mr. Click was done. They clearly say  
6 it was done openly, notoriously, continuously, and  
7 uninterruptedly in derogation of another's rights for a full  
8 period of 20 years.

9 It doesn't require that you have to have a fight. It  
10 just -- what it means by notorious is everybody knew it. So  
11 when that building was built in the 70s and the only way you  
12 could get there for the Ramey cabinet shop was the driveway  
13 and turnaround, that's when it started. It was notorious,  
14 which meant everybody knew.

15 When Mr. Dobson bought it, same situation. The only way  
16 he could get to his cabinet shop was the driveway and  
17 turnaround. And he used it openly, notoriously, and  
18 obviously.

19 When Mr. Dobson sold it -- and they knew that the  
20 property line was over, but because it was the use that  
21 everyone admitted since the 70s, it was legally their right to  
22 use. And that's why we're moving for a prescriptive easement.

23 And, finally, when you got to Mr. Smith, it was exactly  
24 the same testimony, openly, notoriously, obviously. No one  
25 complained about it.

1           The only -- and then when Mr. Click got it, he worked  
2           from 2013 til he bought it in 2017. And then all of a sudden  
3           in 2020 for the first time Mr. Thomas marches up the hill with  
4           his fence-men and says we're going to put a fence up here,  
5           we're going to continue digging, and your building's going to  
6           fall down. That's the first time anyone said stop.

7           This has been this way in the 70s, the 80s, the 90s, the  
8           2000s, the 2010s, and early 2020. That's almost 50 years. So  
9           the question is is there sufficient evidence for a  
10          prescriptive easement? I think there is.

11          **THE COURT:** Mr. Brogdon.

12          **MR. BROGDON:** Your Honor, just very briefly. He didn't  
13          really address the hostility requirement. That's the issue  
14          here, Your Honor. There's no hostility that's been asserted.  
15          Use is different from hostility.

16          And in order to survive a directed verdict motion as to  
17          prescriptive easement, one must show a hostile act towards one  
18          another. Mere silence is not enough. For that reason alone,  
19          Your Honor, the motion for directed verdict should be granted  
20          as to this claim.

21          **THE COURT:** I mean, the case you cited for hostility, was  
22          that Morrow versus Dyches?

23          **MR. BROGDON:** Yes, Your Honor. I believe that holding is  
24          -- or a portion of that case is evidence establishing the mere  
25          fact that the use does not necessarily equate with evidence

1 establishing the character of such use. And that's Court of  
2 Appeals, 1997.

3 **THE COURT:** All right. I've got it.

4 (Pause)

5 **THE COURT:** Mr. Martin, have you looked at Morrow versus  
6 Dyches?

7 **MR. MARTIN:** I have -- I have it, but I haven't looked at  
8 it.

9 **THE COURT:** All right.

10 **MR. MARTIN:** No, sir. I've looked at Pittman ---

11 **THE COURT:** That one -- I'll let you look at that during  
12 the break.

13 **MR. MARTIN:** Okay.

14 **THE COURT:** All right. Let's go to the next one. We'll  
15 ---

16 **MR. MARTIN:** Okay.

17 **MR. BROGDON:** Yes, Your Honor. May it please the Court?  
18 Your Honor, the Defense would also move for a directed verdict  
19 as to the claim for acquiescence pled by the Plaintiffs. Your  
20 Honor, it's abundantly clear that there's been no witness that  
21 has testified that they agreed to any other boundary line  
22 other than the 1996 plat that the Plaintiffs continue to put  
23 up in front of the jury by their own admission as to what the  
24 true boundary lines are.

25 Your Honor, the Croft v. Sanders case, which I have a

1 copy for the Court, if that will help, states that absent  
2 recognition by both parties that a particular line constituted  
3 the true property line, a new boundary could not be  
4 established by acquiescence. And that is a very strict  
5 holding, Your Honor.

6 For that reason the claim for acquiescence just simply  
7 cannot survive a directed verdict motion because there's been  
8 no testimony or no documentary evidence showing there's been  
9 any agreement to anything other than the true boundary line,  
10 also by the Plaintiffs' own admission in their own testimony.  
11 Thank you, Your Honor.

12 **THE COURT:** Did you say you had a copy of that case?

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

14 **MR. MARTIN:** May I have one, too?

15 **MR. BROGDON:** Yes. May I approach?

16 **MR. MARTIN:** May it please the Court?

17 **THE COURT:** Yes.

18 **MR. MARTIN:** Acquiescence, if you look at the Gardener  
19 versus Mazingo case, if adjoining landowners occupy their  
20 respective premises up to a certain line which they usually  
21 recognize and acquiesced for a long period of time, they are  
22 precluded from claiming the boundary line thus recognized and  
23 acquiesced in is not the true one.

24 Since 1970s the line has always been the natural line,  
25 geographically, if you looked at it, is this driveway and

1     turnaround going up this big hill with a big drop-off to the  
2     west side. The Mercks owned it at that time. It was total  
3     acquiescence by the Mercks.

4             There has been testimony that the Rameys used the  
5     driveway and turnaround in the 70s, and the 80s, and the 90s.  
6     There has been testimony that Dobson used it in the 90s and  
7     the 2000s. There's been testimony that Merck owned the west  
8     side, then he sold it to Porter for a short time. And then  
9     Porter sold it to Watkins.

10            And there has been absolutely no evidence that the  
11     adjoining landowners disagreed with the natural separation  
12     between these two properties. Of 42 years the only time it  
13     came an issue is when Mr. Thomas showed up at the top of the  
14     hill in February of 2020 waiting for Brent to leave and then  
15     accosted Shelly and said, I'm going to put a fence here, and  
16     you're not going to be able to get in your building, and I'm  
17     going to finish my digging. That's the only time there's been  
18     any kind of absence of acquiescence. But through the 70s, and  
19     the 80s, and the 90s, and the 2000s, and the 2010s there was  
20     total acquiescence.

21            The natural boundary, if you just went out there and  
22     looked at it with the big fall-off before the digging clearly  
23     and unequivocally was evidence that these people agreed that  
24     the Rameys could use it, and that was the line, that the  
25     Dobsons could use it, and that was the line, that the Smiths

1     could use it, and that was the line, and now we're asking the  
2     Clints -- the Clicks can use it, and that was the line.

3             So there -- and we only need a long period of time. We  
4     don't even need five years. We don't even need four years.  
5     The courts just require for a long period of time. So not  
6     even 10 years. But we have 42 years.

7             **THE COURT:** All right. Any response?

8             **MR. BROGDON:** Your Honor, very briefly. Page 3 of 5 of  
9     the Croft case near the Westlaw heading number 4 it says the  
10    mere existence of a fence between adjoining landowners is not  
11    itself sufficient to establish a boundary by recognition and  
12    acquiescence. It further states, obviously a fence may be  
13    built between adjoining landowners for purposes that have  
14    nothing to do with fixing a boundary line.

15            Your Honor, by the Plaintiffs' own admission, they've  
16    admitted on the record that they understood what the boundary  
17    lines were pursuant to the 1996 plat. And in this case there  
18    was a fence that was built to try to establish a new boundary  
19    line. And that wasn't even enough to establish a claim of  
20    acquiescence. For that reason alone, Your Honor, the  
21    acquiescence claim just simply cannot proceed.

22            **THE COURT:** All right. I'm going to look at that case  
23    before I rule on that. All right. Anything else?

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

25            The final claim here is for injunctive relief. Your

1 Honor, we would make the motion for directed verdict as to  
2 injunctive relief. We understand that it's going to be the  
3 Court's decision after this trial is completed, but, Your  
4 Honor, we do not believe there's any basis for any further  
5 injunctive relief, especially after the ruling from this  
6 Court. So we wanted to bring that to this Court's attention  
7 now. Thank you, Your Honor.

8 **THE COURT:** All right. And, again, I think that's  
9 something that really should be addressed after, depending on  
10 the jury verdict. I mean, I don't know, again, I can -- need  
11 to make any ruling at this point. Do you?

12 **MR. MARTIN:** Well, the only thing is there's been a  
13 temporary injunction granted in March of 2020. The injunction  
14 was reaffirmed in April of 2022. And we are asking for a  
15 permanent injunction.

16 You have the testimony of Mr. Thomas that he plans to dig  
17 literally to our front door to cut off all use. And if  
18 there's not an injunction, that's going to happen. And that's  
19 not related to what the jury's going to do, that's related to  
20 what ---

21 **THE COURT:** Well, but I still have to hear the whole case  
22 before I can ---

23 **MR. MARTIN:** And that's fine.

24 **THE COURT:** Yeah. All right.

25 **MR. MARTIN:** We certainly want you to ---

1           **THE COURT:** Yeah. Anything else?

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

3           **THE COURT:** All right. Anything else from the Plaintiff?

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

5           **THE COURT:** Let's look at these matters, and then I'll  
6 let y'all know what I come up with.

7           **MR. MARTIN:** Sorry? What did you say?

8           **THE COURT:** I said let's take a break, look at the Morrow  
9 versus Dyches ---

10          **MR. MARTIN:** Okay.

11          **THE COURT:** --- case. I'm going to look at some of this  
12 stuff as well. And then I'll let y'all know what I come up  
13 with.

14          (Whereupon court was in recess at 9:58 am)

15          (Whereupon court reconvened at 10:31 am)

16          **THE COURT:** All right. I'm prepared to rule on these. I  
17 feel like I've looked at every case in the ---

18          **MR. MARTIN:** Your Honor, if I may? You asked me if I had  
19 read ---

20          **THE COURT:** Well, no, I've -- no.

21          **MR. MARTIN:** Or ---

22          **THE COURT:** I'm prepared to rule.

23          **MR. MARTIN:** Okay. You don't want to hear from me?

24          **THE COURT:** No.

25          **MR. MARTIN:** Thank you.

1           **THE COURT:** And, I mean, it's -- looking into the cases  
2 on the prescriptive easement -- and the reason is is because  
3 I'm denying his motion. I think that there's a jury issue  
4 here on what is hostile, whether it's permissive or hostile.  
5 I think that -- it boils down to that.

6           So I'm going to deny your motion there. And that's --  
7 I've looked at the Morrow case, I've looked at the Simmons  
8 versus Berkeley Electric, and just believe that there is --  
9 there's a jury question there.

10           The acquiescence, relying on the Mazingo case, if  
11 adjoining landowners occupy the respective premises up to a  
12 certain line which they mutually recognize and acquiesce in  
13 for a long period of time, they're precluded from claiming the  
14 boundary line thus recognized and acquiesced is not the true  
15 one.

16           And I looked at the Croft case, a little bit different  
17 factual pattern there. I mean, that one the fence line was  
18 further in on one of the properties. And they said they did  
19 that for their loan and that there's another issue. So I  
20 think that that one can be distinguished. So I'm going to  
21 deny your motion on the acquiescence.

22           As to the quiet title -- the quiet title is the third  
23 cause of action. The allegations are this cause of action  
24 seeks a declaratory judgment for the purpose of determining  
25 the question of actual controversy between the parties.

1 Paragraph 36, Plaintiffs are informed to believe that they are  
2 entitled to an order of the Court quieting title to the land  
3 of the parties by declaring the common property line of the  
4 parties' subject properties to include as part of -- as part  
5 of in the Click property, the entire gravel driveway and  
6 turnaround area shown on the Ramey plat and recorded property  
7 which is attached hereto.

8 I see no allegation in that cause of action for adverse  
9 possession for anything. In addition, I mean, there was  
10 mention at the summary judgment that adverse possession was  
11 not an issue in this case. And I think that you're covered by  
12 prescriptive easement and acquiescence.

13 So I'm going to grant their motion as to the quiet title.  
14 I'm not sure exactly what the cause of action is, but I'm  
15 going to grant it and say that there's no -- anything to go to  
16 the jury on that one. So -- all right.

17 Anything else? Anybody need to take a minute before we  
18 go to the jury?

19 **MR. MARTIN:** I would like to ---

20 **THE COURT:** Yeah. Okay. All right. We'll just take  
21 five minutes and then we'll bring the jury out.

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

23 (Whereupon court was in recess at 10:34 am)

24 (Whereupon court reconvened at 10:52 am)

25 **MR. CAMPBELL:** Your Honor, may it please the Court?

1 We're here to address housekeeping matters, stipulation of  
2 evidence to be introduced by the Defendant. We have  
3 Defendants' exhibits 1 through 17, which have been stipulated  
4 by the parties. Those will be marked and tendered into  
5 evidence.

6 Exhibit 1 is a Betty Ramey survey, 1996.

7 **THE COURT:** That's fine. We've got 1 through 17 ---

8 **MR. CAMPBELL:** You've got all this -- you have 1 through  
9 17 ---

10 **THE COURT:** You're in -- yeah, that's fine.

11 (Whereupon Defendants' exhibits 1 - 17 were admitted into  
12 evidence)

13 **MR. CAMPBELL:** And then exhibit 19 and 20 have been  
14 marked and provided to the court reporter as entered into  
15 evidence by stipulation.

16 **THE COURT:** Okay.

17 (Whereupon Defendants' exhibits 19 and 20 were admitted  
18 into evidence)

19 **THE COURT:** Do you have a list of those by any chance  
20 that you could give her? It helps ---

21 **MR. CAMPBELL:** Yes, Your Honor.

22 **THE COURT:** --- her when she's ...

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

24 **THE COURT:** She'll mark them down.

25 **MR. CAMPBELL:** Yes, Your Honor.

1 (Pause)

2 **MR. CAMPBELL:** We're also going to stipulate, Your Honor,  
3 to exhibit 21 and exhibit 22.

4 (Whereupon Defendants' exhibits 21 and 22 were marked and  
5 admitted into evidence)

6 **THE COURT:** All right. If the jury's ready, which I'm  
7 sure they are, have them come on in.

8 (Whereupon the jury entered the courtroom at 11:01 am)

9 **THE COURT:** All right. Good morning, ladies and  
10 gentlemen. I know y'all are already mad at me. So -- like to  
11 stick you in a jury room and tell you you can't discuss the  
12 case, and the only thing you have in common is this case. So  
13 I do apologize.

14 My law clerk always tells me I say yes to doing too many  
15 things. Sometimes when you're the only judge in town you end  
16 up doing a bunch of stuff unrelated.

17 Also, we had some matters we had to go over with the  
18 attorneys. Hopefully some of it will streamline some of the  
19 stuff. And I do apologize. I should have timed that better.

20 And by all means, if you're disgruntled about it, please  
21 hold it against me and not the attorneys or the parties  
22 because I do apologize. Sometimes, my timing, I get too  
23 ambitious on things.

24 But, anyway, with that being said, as you will recall  
25 yesterday, the Plaintiff rested their case in chief, which

1 means the evidence that they were going to put in in their,  
2 again, their case in chief, they still have a right to  
3 rebuttal.

4 At this time the Defendants will have the opportunity to  
5 present any evidence they feel's appropriate. So at this  
6 time, Defendants, you may call your first witness.

7 **MR. GLENN:** Thank you, Your Honor. The Defense calls  
8 Greg Porter.

9 **MADAM CLERK:** If you would, raise your right hand.

10 **Gregory Porter,** being duly  
11 sworn testified as follows;

12 **MADAM CLERK:** State your full name for the record.

13 **MR. PORTER:** Gregory A. Porter.

14 **MADAM CLERK:** Okay. You can have a seat.

15 **Direct Examination by Mr. Glenn:**

16 Q. Mr. Porter, did you once own what is now -- what we are  
17 calling the Thomas property, which is located at 3670 Calhoun  
18 Memorial Highway?

19 A. The All-Tech building?

20 Q. Yes, sir.

21 A. I did.

22 Q. When did you own that building or that property?

23 A. Probably late 90s, early 2000. I can't quite remember.  
24 I didn't go back and just check on it.

25 Q. Okay. Does between 2003 and 2004 sound right to you?

1 A. Yeah, that's -- yeah, somewhere around 2000, yeah, 3.

2 Q. And did you sell that property to Jimmy Watkins around  
3 2004?

4 A. I did.

5 Q. And you currently own another property that's in that  
6 area, is that right?

7 A. I do.

8 Q. And where is that property located?

9 A. On Highway 123, 3630. I probably own -- own a good  
10 little bit down through there.

11 Q. Okay.

12 A. I've been there 42 years. I originally started with  
13 three acres. And then I bought everything as it come for sale  
14 as I could afford it.

15 Q. So you -- you would buy up a lot of that property ---

16 A. Yeah, I bought everything around me.

17 Q. Okay. And you're -- one of the properties that you  
18 currently own is 3664 Calhoun Memorial Highway, is that right?

19 A. Correct.

20 Q. And where is that located to what is now or what we now  
21 are calling the Click property?

22 A. Right next door.

23 Q. Okay. And on what side would that be?

24 A. The east side.

25 Q. Okay. And how long have you owned that property?

1 A. I bought it around 2000 and -- somewhere around 2000,  
2 2003.

3 Q. Okay. So at least 20 years ---

4 A. At least, yeah.

5 Q. Is it all right with you if we refer to that property, so  
6 that's 3664 Calhoun Memorial Highway, as the Porter property  
7 that ---

8 A. That's fine.

9 Q. --- we're for trial here today?

10 A. Yeah.

11 Q. Okay.

12 A. That's what it is.

13 Q. Were you ever offered the opportunity to purchase the  
14 Click property?

15 A. Yeah, three or four -- yeah, four or five times. I mean,  
16 it sold for like -- Mr. Ramey originally built it probably in  
17 the 60s, I guess, before I was even around. Had a cabinet  
18 shop there. And then he sold it to Dobson, I'm pretty sure.  
19 And then Dobson sold it to Mark Smith.

20 Q. And ---

21 A. And each time I had an opportunity to buy it.

22 Q. And ---

23 A. And the bank had it at one time -- the bank was getting  
24 it back from Dobson at one time. The bank even offered it to  
25 me.

1 Q. And you never decided to purchase it?

2 A. No. I looked at it.

3 Q. So back in 2005 when you said Bradley Dobson approached  
4 you about purchasing the property?

5 A. Say it again now.

6 Q. Did you say back in 2005 Bradley Dobson approached you  
7 about purchasing the property?

8 A. He did.

9 Q. And ---

10 A. But the bank was fixing to foreclose on him. And then  
11 the bank was -- the bank contacted me.

12 Q. And why did you decide at that time not to purchase that  
13 property?

14 A. Well, it just wasn't a good investment. And I just sold  
15 Watkins the property on the other side of it because it needed  
16 a lot of -- it needed a lot of updating and -- because it had  
17 just been sitting forever.

18 Q. And are you speaking about the Click property now?

19 A. No. I'm talking about the property that I sold Watkins  
20 on the other side. The All-Tech -- where All-Tech is now. I  
21 sold it to Jimmy before I even done anything to it.

22 And then -- because, you know, I'm in the rental -- I  
23 have some -- I got a good bit of rental property on 123 that I  
24 bought over the last 40 years. So I sold that to Watkins.

25 And then to Dobson -- I called -- Brad Dobson was there more

1 than -- or the Ramey property, which is the Click property.

2 It was -- it was built all over the property lines. And  
3 each corner's built right on the property line. It has no  
4 frontage. They used my driveway til this day. The driveway  
5 belongs to me. And out of respect, I've let them all use my  
6 driveway for 20 years.

7 So -- and then the buildings was -- needed so much  
8 repairing. The top building's built on a cliff pretty much.  
9 And they'd dug out right close to it over the last 20 years,  
10 25 years.

11 Q. So at that time in 2005 ---

12 A. This is the Click property I'm talking about.

13 Q. Right. And this was back in 2005 ---

14 A. Right.

15 Q. --- you're talking about?

16 A. Right.

17 Q. Okay.

18 A. And they had a bridgeway built from the lower building up  
19 to the top building. And it was just a total bank there. And  
20 they dug all the way back to the building, the back building.  
21 So it needed a retainer wall because it had foundation issues.  
22 And the floors cracked, walls was cracked. I mean, you know.

23 And the lower building's the same way pretty much out  
24 front there and all. And it is -- and it's off in a hole like  
25 below me. So it wasn't never going to be a issue for me.

1           So I just decided, you know, it wasn't a good investment,  
2           and I just didn't want to deal with all the repairs and  
3           putting up with it. And it has no frontage much. And like I  
4           say, they used my driveway til this day. Mr. Click uses my  
5           driveway every day to get to his property.

6           Q. And so speaking of that -- speaking of owners of the  
7           properties, owners and the users of those two properties, the  
8           Thomas and the Click Properties, but also your current  
9           property, the Porter property, during the majority of your  
10          time owning the Thomas property and the Porter property, how  
11          would you describe the relationships between the owners and  
12          users of all those properties?

13          A. What originally took place was is Ms. Milford, that I  
14          bought the Porter property from, when Dobson was there, he  
15          repaved the front of his place and extended the driveway to  
16          the left. So Ms. Mildred [sic] had actions against Dobson.  
17          There was the same thing going on about the driveway back  
18          then.

19          But then I ended up with the Mildred -- the Porter  
20          property. So then we just -- and I knew All-Tech, Greg that  
21          ran All-Tech before the -- Jonathan bought it, bought him out.  
22          He just bought the business. Well, Mr. Watkins still owned  
23          the property, okay? Well, they was a lawsuit going on about  
24          the driveway then.

25          **MR. MARTIN:** Objection, Your Honor, to any lawsuit

1 testimony. He wasn't asked about that. It's not relevant to  
2 this ---

3 **THE COURT:** I mean, I think -- and this is relating to  
4 Porter -- this is -- I'm going to allow it. I think it  
5 relates to some background. And it's not between -- you're  
6 talking about a lawsuit between your side and Ms. Milford or  
7 Mildred and Mr. Dobson.

8 A. Right.

9 **MR. MARTIN:** No, he's saying -- not his lawsuit, it's  
10 somebody else's lawsuit.

11 **THE COURT:** Oh. I'll let him ---

12 **MR. MARTIN:** It's somebody else.

13 **THE COURT:** I think it's background information, so I'll  
14 let it go.

15 A. Okay. Well, I can change that up. There was just -- Ms.  
16 Milford didn't like it 'cause they put the driveway -- 'cause  
17 it was just a little pig trail getting into the Click property  
18 or Ramey's Cabinet Shop because he was in the cabinet  
19 business. He didn't have a lot of cars sitting around. He  
20 didn't need no frontage much.

21 Well, anyway, they had a little difference on the  
22 driveway. Well, when I bought the Porter property, I just let  
23 everybody start just using it 'cause it didn't really bother  
24 me. It's down on the end of me anyway. They just kind of run  
25 across.

1 Well, then All-Tech and them's got a steep driveway.

2 They had problems with tow trucks getting in and out. So out  
3 of just respect for them, and everybody got along, we just --  
4 they just went through there every day, you know, and used the  
5 driveway. No problems with nobody.

6 Q. So All-Tech, the company using the Thomas property, would  
7 regularly drive through the Click property and use your  
8 driveway because it was less steep?

9 A. Right.

10 Q. Okay.

11 A. Well, Mr. Click's got to come through my driveway to get  
12 to his property, ---

13 Q. Um-hum (affirmative).

14 A. --- you know?

15 Q. Yeah.

16 A. So then it's out of respect everybody could just use it.  
17 And I'm the one that owns the driveway. They don't even own  
18 it.

19 Q. So would it be fair to say that everyone who owned those  
20 properties and operated out of ---

21 **MR. MARTIN:** Objection to leading, Your Honor.

22 **THE COURT:** Rephrase your question.

23 Q. How would you describe the relationship as far as using  
24 different portions of each other's properties between owners?

25 A. Could you repeat that, please?

1 Q. How would you describe the relationship once you, you  
2 know, owned the Porter property, once you purchased the Porter  
3 property, and people, as you said, were using portions of all  
4 those properties, how would you describe the relationships of  
5 the owners and users of those properties at that time?

6 A. We never had no problems. And it was on the very end of  
7 me. And it didn't bother me. And then ...

8 Q. Would it be fair to describe it as ---

9 **MR. MARTIN:** Objection, ---

10 Q. --- a friendly atmosphere?

11 **MR. MARTIN:** Your Honor, again, he's leading and  
12 suggesting the answer he wants when he doesn't get it. That's  
13 -- this is his witness ---

14 **THE COURT:** You make an objection, but ---

15 **MR. MARTIN:** I make an objection ---

16 **THE COURT:** --- let's just refrain from editorial  
17 comments. And rephrase your question.

18 Q. Was everyone friendly?

19 A. Yeah, everybody got along.

20 Q. Was everyone neighborly?

21 **MR. MARTIN:** Same ---

22 A. Right.

23 **MR. MARTIN:** --- objection, Your Honor.

24 **MR. GLENN:** He can answer ---

25 **THE COURT:** Overruled. I think that's -- overruled.

1 Q. And did this neighborly and friendly understanding change  
2 once Brent Click began operating out of the Click property  
3 back in 2013?

4 A. Well, what -- what the problem was is I seen his actions.  
5 He rented the building. He rented the building for -- he's  
6 not owned the building that long. He's not owned it but maybe  
7 five years.

8 I hadn't kept up with it 'cause, like I say, I seen the  
9 problem of the encroachment and the way -- I seen his actions.  
10 So when I heard he was buying -- as soon as I heard he was  
11 buying the property from Mark Smith, I fenced my side off  
12 where he couldn't encroach on me or use my property.

13 Q. You fenced ---

14 A. My side -- the Porter property off.

15 Q. From the Click property ---

16 A. Right.

17 Q. --- as soon as you heard ---

18 A. Soon as I heard that he was buying it, not renting it.  
19 When he was buying it, I immediately fenced my place off.

20 Q. And ---

21 A. 'Cause I seen his actions. I've watched him, you know?

22 Q. Could you explain ---

23 **THE COURT:** All right. For the court reporter's sake,  
24 y'all make sure only one of you talk at a time.

25 **MR. GLENN:** I apologize, Your Honor.

1 Q. Could you explain some of those actions?

2 A. Well, he just took over. I mean, he encroached on both  
3 sides of property. He'd use all -- he'd back into my  
4 property, you know. And I'd asked him, you know, I've told  
5 him, you know, stay off my property. You know, just -- just  
6 -- 'cause I seen how he encroached on everything else, you  
7 know. So I fenced my place off.

8 And then out of respect I left the driveway open. I  
9 could have just fenced it all the way off, but I didn't.  
10 Until this day he still has probably 16 feet that I let him  
11 use. But -- and then he still uses my yard to back up into  
12 and turn around in til this day.

13 Well, then when he come in the picture, then he started  
14 blocking off, doing away with our little agreement with All-  
15 Tech and people using the driveway. Well, he blocks it off.  
16 Well, til this day when he goes out of his driveway, he'll  
17 still go across All-Tech's property to get out. But now All-  
18 Tech can't even get near his property or do absolutely  
19 nothing.

20 But out of respect, I still let them use my driveway.  
21 All-Tech can use it, he can use it. But All-Tech don't use it  
22 now because Mr. Click has blocked everything off for the last  
23 year or two.

24 Q. Thank you. No further questions. Please answer any  
25 questions the Plaintiffs' counsel may have for you.

1           **THE COURT:** Cross-examination.

2           **Cross-examination by Mr. Martin:**

3           Q.    Mr. Porter, you would agree with me that the plats and  
4           the deeds control who owns what between the Porter property  
5           and the Click property, right?

6           A.    Explain that to me now.

7           Q.    You would agree that the deeds on the record in the  
8           courthouse show who owned what, is that right?

9           A.    The property line.

10          Q.    Yes, sir.

11          A.    The survey.

12          Q.    Yes, sir.

13          A.    Yes, sir.

14          Q.    Okay. Would you agree with me that the highway is 123, a  
15          U.S. highway?

16          A.    Yes, sir.

17          Q.    And would you agree that the highway has a right of way  
18          all the way up, including your property? Do you agree with  
19          that?

20          A.    I'll agree with that.

21          Q.    And would you agree that you can't block off on a U.S.  
22          right of way, can you?

23          A.    I couldn't answer that.

24          Q.    Okay. Well, so you don't know? You don't know if you  
25          can block off a U.S. right of way and keep the U.S. highway

1 from using the right of way?

2 A. I do know that if your neighbor can't park in your  
3 driveway and run across your property to get to his property,  
4 even if it is highway right of way. Correct?

5 Q. What I'm asking you about is you agree with me that  
6 Highway 123 is right in front of your property, the Porter  
7 property, and right in front of the Click property, right?  
8 Isn't that right?

9 A. Say it again now.

10 Q. Would you agree with me that Highway 123, a U.S. highway,  
11 goes right in front of your property and the Clicks' property,  
12 running east and west? U.S. ---

13 A. Where your ---

14 Q. --- 123, right?

15 A. Where the property lines is at on 123, on their piece of  
16 property, I own. It goes all the way out to the road. That  
17 doesn't give you the right to be able to cut through my yard  
18 ---

19 Q. I'm not asking ---

20 A. --- to get to ---

21 Q. I am asking you if -- is U.S. Highway 123 in front of  
22 your property and the Click property? Is that true?

23 A. (No response).

24 Q. Is U.S. 23 [sic] in front of your property or not?

25 A. It is.

1 Q. Okay. Does the highway have a 25 foot right of way that  
2 goes right into your property and into the Click property?

3 A. It's 80 feet.

4 Q. Eighty feet. Okay. And would you agree with me ---

5 A. Center of the road.

6 Q. --- you cannot block anything off on a right of way  
7 that's owned by the U.S. Government, right?

8 A. I can't answer that.

9 Q. Eighty feet ---

10 A. I mean, I don't -- I don't know the rules on that.

11 Q. All right.

12 **MR. MARTIN:** I have no further questions.

13 **THE COURT:** Any redirect?

14 **MR. GLENN:** No, Your Honor.

15 **THE COURT:** All right. You may step down.

16 **MR. GLENN:** The Defense calls Jimmy Watkins.

17 **MADAM CLERK:** If you would, raise your right hand.

18 **Jimmy Watkins,** being duly  
19 sworn testified as follows;

20 **MADAM CLERK:** All right. State your full name for the  
21 record.

22 **MR. WATKINS:** Jimmy Watkins.

23 **MADAM CLERK:** Okay. You can have a seat.

24 **MR. WATKINS:** Thank you.

25 **Direct Examination by Mr. Glenn:**

1 Q. Mr. Watkins, did you once own what we're calling for  
2 trial purposes the Thomas property, which is located at 3670  
3 Calhoun Memorial Highway?

4 A. Yes, sir.

5 Q. And when did you own that property?

6 A. Probably five years ago -- four years ago, maybe.

7 Q. And when did you purchase that property?

8 A. Maybe 12 -- 10 or 12 years ago.

9 Q. So would that be around 2004?

10 A. Yeah.

11 Q. Okay. So would you say you've owned that Thomas property  
12 from 2004 until around 2019?

13 A. Yeah.

14 Q. And who did you purchase that Thomas property from?

15 A. From Greg Porter.

16 Q. And in 2005 when you owned the Thomas property did  
17 Bradley Dobson ever approach you offering to sell you what we  
18 are calling the Click property, which is the property just to  
19 the east of the Thomas property?

20 A. Just as a neighbor talking back and forwards. He said he  
21 was going to sell it and wanted to know if I was interested in  
22 it.

23 Q. And were you interested in it?

24 A. Well, not at the time.

25 Q. And why is that?

1 A. Well, the roof was bad on one of the buildings. And that  
2 top building up there had some problems. And I just -- I just  
3 didn't need it.

4 Q. Could you describe some of those problems?

5 A. Well, the bottom building, the roof had to be replaced on  
6 it. The top building up there, it had some structural damage  
7 in the floor. And the way they built it over -- well, they  
8 just built it on a poor foundation, I think.

9 Q. So during the time that you owned the Thomas property how  
10 would you describe the relationship between owners and users  
11 of the Thomas property and owners and users of the Click  
12 property?

13 A. You talking about Mr. Dobson?

14 Q. Sure.

15 A. Yeah, we was good neighbors.

16 Q. Good neighbors?

17 A. Yeah.

18 Q. Would owners and -- would users of the Thomas property  
19 ever use portions of the Click property?

20 A. No.

21 Q. No? Would they never drive through the front or use the  
22 driveway?

23 A. I didn't understand what you asked me.

24 Q. Would owners and users of each of those properties, the  
25 Thomas property and the Click property, would they each use

1 out of a sense of ---

2 A. When the Dobson -- when Mr. Dobson had it, we shared both  
3 roads.

4 Q. All right. Okay. Was there ever a spoken agreement or a  
5 written down agreement about the use of these parts of each  
6 others property?

7 A. No, sir.

8 Q. Just an unspoken understanding that there was permission?

9 A. Yes, sir. You know, being neighborly. Two neighbors  
10 getting along with one another.

11 Q. And did this neighborly, friendly understanding change  
12 once Brent Click moved in in 2013?

13 A. Well, not for me so much, but for my renters.

14 Q. Your renters of the Thomas property?

15 A. Yeah. They just arguing back and forth with one another  
16 and stuff like that. And, you know, when Greg moved -- Greg  
17 got tired of it and Greg moved out. His son-in-law moved --  
18 rented the property from me then. And I think they had, you  
19 know, they had some misunderstandings and stuff.

20 Q. And had there ever been any misunderstandings between the  
21 owners and the users of those two properties before Brent  
22 Click moved in?

23 A. Not to my understanding there wasn't. The Dobsons -- Mr.  
24 Dobson had it -- whenever I bought the property, Mr. Dobson  
25 was there. And we never had no problems.

1           That little piece of property up on top of the hill, that  
2 driveway going up through there, our property line kind of  
3 splits that in half like more or less. And, you know, we just  
4 shared that road.

5           If I needed to go up there for something, it didn't make  
6 no difference, you know. But when this other guy, when he --  
7 when Mr. Click got it, he -- he put a fence up there where you  
8 couldn't get up there. Put a gate up.

9       Q.    And were you just referring to that gravel driveway, ---

10     A.    That gravel ---

11     Q.    --- that turnaround area?

12     A.    That gravel driveway, yes, sir.

13     Q.    Okay.

14     A.    There wasn't no purpose for me ever going up there really  
15 because it was just a -- wasn't nothing up there but just a  
16 bank, you know.

17     Q.    But did you say that people from both properties did go  
18 up there ---

19     A.    Yeah, ---

20     Q.    --- and use it ---

21     A.    --- see that building ---

22     Q.    --- whenever they needed it?

23     A.    At one time they had a body shop up there, some kind of a  
24 business up there.

25     Q.    Okay. In 2018 -- in 2018 did you sell the Thomas

1 property to Jonathan Thomas?

2 A. Yes, I did.

3 Q. And around that time before you effectuated the sale to  
4 Jonathan Thomas did Brent Click ever approach you about  
5 purchasing the property?

6 A. He asked me about it. Yes, he did.

7 Q. And what did you tell him?

8 A. I told him that my renter -- I was obligated to my  
9 renter, that he had the first choice on it. And if he didn't  
10 buy it or didn't want the property that I'd talk to him again  
11 about letting him have it.

12 Q. And that renter at the time, that was Jonathan Thomas, is  
13 that ---

14 A. Jonathan Thomas, yes, sir.

15 Q. Did you ever represent to Brent Click that you would sell  
16 the property to him?

17 A. If this man didn't take it. If he didn't take the  
18 property that I'd be interested in talking to him about  
19 selling it to him.

20 Q. So fair to say that you told Brent Click if Jonathan  
21 Thomas doesn't want the property, then we can talk about  
22 selling ---

23 A. Exactly.

24 **MR. MARTIN:** Objection to hearsay, ---

25 **THE COURT:** Hold on.

1           **MR. MARTIN:** --- Your Honor.

2           **THE COURT:** Yes. Sustained.

3           Q. Why did you decide to sell that property in 2018?

4           A. Well, I just -- I just didn't need it. I got two more  
5 pieces of property up the road, my transmission shop and Clyde  
6 Morgan's place across the road. I just didn't need it. I'm  
7 getting up in the age. And I've got the farm in Oconee County  
8 with 100 head of black Angus cows on it. And I just -- I just  
9 didn't need all of that.

10          Q. Had your hands full?

11          A. You know?

12          Q. Thank you. No further questions. Please answer any  
13 questions the Plaintiffs' counsel may have.

14          A. Thank you.

15           **THE COURT:** Cross-examination.

16           **Cross-examination by Mr. Martin:**

17          Q. Good morning, Mr. Watkins. How are you today?

18          A. Just fine, sir.

19          Q. Isn't it true -- I'm sorry. Isn't it true that you never  
20 kept Bradley Dobson from using that driveway or turnaround?

21          A. Bradley Dobson.

22          Q. The driveway and turnaround to the Bradley Dobson -- he  
23 had a cabinet shop, right?

24          A. Yeah, got a cabinet shop. Yeah.

25          Q. And he was there in 2005. And you bought in 2004. Isn't

1 it true you didn't do anything to keep him from using that  
2 driveway or turnaround?

3 A. No.

4 Q. And the people who owned it before were the Rameys. And  
5 they had a cabinet shop, too, didn't they?

6 A. They did, sir.

7 Q. And they were still there in '04. I think Mr. Ramey died  
8 in '04, is that right?

9 A. He did.

10 Q. Or '94. He died in ---

11 A. Yep, ---

12 Q. --- '94.

13 A. --- '94.

14 Q. But Mrs. Ramey was still there, right, when you bought it  
15 in '04?

16 A. I think so. I believe so.

17 Q. And isn't it true you didn't do anything to keep her from  
18 using the driveway or the turnaround?

19 A. No.

20 Q. Okay. Now do you remember that you and Greg Porter went  
21 up to the Click property when he was renting it in 2015 and in  
22 January to look it over? Remember that?

23 A. Looking for a property pin.

24 Q. Okay. And do you remember going into their property and  
25 seeing that they had awnings and they had poured some concrete

- 1 on the turnaround? Did you see that?
- 2 A. Yeah.
- 3 Q. Okay. Do you remember going in and looking at all the  
4 cars and machines that Brent had up in that back building?
- 5 A. I never did go in that building when he had it.
- 6 Q. Okay. Do you remember going into the lower building  
7 where they had some antique cars?
- 8 A. I've never been in that building.
- 9 Q. Okay. So if -- you don't have a memory of that?
- 10 A. No, sir.
- 11 Q. Okay. Do you remember going up there with Porter in  
12 2015?
- 13 A. I didn't go inside the building.
- 14 Q. Okay. Do you remember going up there with Porter in  
15 2015?
- 16 A. Looking for the property pin.
- 17 Q. Okay. Did they ask you who you were, and did you  
18 identify yourself?
- 19 A. He knew we was going up there.
- 20 Q. How did he know that?
- 21 A. Well, from talking to him.
- 22 Q. Okay. Did you tell him who you were?
- 23 A. He knowed who I was.
- 24 Q. Did you tell him who you were?
- 25 A. No, evidently he just knew who I was like I ---

1 Q. But you ---

2 A. --- know him.

3 Q. --- don't know if he knew who you were? But you think he  
4 did?

5 A. Oh, yeah.

6 Q. Is that fair?

7 A. Yeah.

8 Q. Now did Porter tell him who he was?

9 A. I suspect so.

10 Q. But did you hear Porter say my name ---

11 A. No.

12 Q. --- is Greg Porter?

13 A. No.

14 Q. Okay. You saw ---

15 A. It was my ---

16 Q. --- the ---

17 A. It was my property that we was going onto.

18 Q. Okay. Did you see the awning and the pouring back then  
19 where he had the awning and the ---

20 A. Yeah.

21 Q. --- flat pouring? Okay. Was there anything that you did  
22 in 2015, or 2016, or 2017 to keep Brent from using that  
23 driveway and turnaround?

24 A. No.

25 Q. Okay. Now when you said that Brent approached you about

1 buying the property, that was about 2017, wasn't it?

2 A. I think so. He came to my shop.

3 Q. Okay. And he brought you some doughnuts, didn't he?

4 A. I think -- yeah, I believe he did.

5 Q. And you all kind of had a nice talk, ---

6 A. Yeah.

7 Q. --- didn't you?

8 A. It wasn't no bad when we talked.

9 Q. It was -- it was nice, wasn't it?

10 A. It was nice talk.

11 Q. Okay. And you decided that the property was worth about

12 two hundred and ten thousand dollars (\$210,000.00), ---

13 A. Exactly.

14 Q. --- is that right?

15 A. Exactly.

16 Q. Okay. And Brent went away and decided how he could

17 afford to buy the two hundred and ten thousand dollars

18 (\$210,000.00) ---

19 A. Well, I didn't give him no price to sell it to him.

20 Q. But you agreed that that was the price of what it was

21 worth, right?

22 A. I told him that that's what the property was probably --

23 would sell for.

24 Q. Okay. And did you tell him that you would not personally

25 finance it, that he'd have to get a loan to do it?

1 A. Exactly.

2 Q. Okay. And did you know that he went to the bank, and the  
3 bank told him if he sold his house, that would be enough money  
4 for them to give him a loan? And I think the bank was  
5 Travelers Rest. Is that right?

6 A. I don't know nothing about all that.

7 Q. You don't know nothing about ---

8 A. No, sir.

9 Q. --- that? But you thought the price would be two hundred  
10 and ten thousand (210,000) that it would ---

11 A. Yeah.

12 Q. --- sell for? You told him that you wouldn't personally  
13 finance it, right?

14 A. I wouldn't personally finance it.

15 Q. Okay. So then you decided in 2018 in May is when the  
16 deed's dated, that you would sell it to Mr. Thomas rather than  
17 Mr. Click, is that right?

18 A. No. I'd already -- we'd already talked about that a long  
19 time before we ever talked -- me and Mr. Click talked to one  
20 another.

21 Q. Okay. So you talked to Thomas about that long before?

22 A. Long before then.

23 Q. Okay. And the price you agreed to take from Mr. Thomas  
24 was a hundred and forty thousand dollars (\$140,000.00), right?

25 A. Hundred and forty thousand dollars (\$140,000.00), and I'd

1 finance it for him.

2 Q. And that you would finance it for him?

3 A. Yes, sir.

4 Q. Okay. Now when it was Brent to buy it, it was for two  
5 hundred and ten (210,000), right? And you wouldn't finance  
6 it?

7 A. Right.

8 Q. But when it was for Thomas, it was seventy thousand  
9 (70,000) less, and you would finance it?

10 A. Well, he had -- he had been there and he had spent a lot  
11 of money on that building, too.

12 Q. Okay. Thank you, sir. That's all I have.

13 **THE COURT:** Any redirect?

14 **MR. GLENN:** No, Your Honor.

15 **THE COURT:** All right. You may step down. All right.

16 Mr. Campbell.

17 **MR. CAMPBELL:** Yes, Your Honor. Defense calls Jonathan  
18 Thomas.

19 **THE COURT:** Mr. Thomas, if you'll come around and be  
20 sworn.

21 **MADAM CLERK:** If you would, raise your right hand.

22 **Jonathan Thomas,** being duly  
23 sworn testified as follows;

24 **MADAM CLERK:** All right. State your full name for the  
25 record.

1           **MR. THOMAS:** Jonathan D. Thomas.

2           **MADAM CLERK:** Thank you. You can have a seat.

3           **Direct Examination by Mr. Campbell:**

4           Q. All right, Mr. Thomas, tell us about yourself. Where do  
5           you live, and what do you do?

6           A. I live in Powdersville, South Carolina. I'm 39 years  
7           old. I own an automotive repair shop on 123. This year will  
8           be nine years in February. And I spent 14 years at the  
9           dealership before that and bought the place from my father-in-  
10          law and Jimmy Watkins.

11          Q. Okay. And what's the name of that auto shop on 123 you  
12          just referenced?

13          A. All-Tech Tire and Auto Repair.

14          Q. And you've been in the courtroom throughout this whole  
15          trial this week, is that right?

16          A. Yes, sir.

17          Q. Okay. So for the sake of expedience, you understand what  
18          we're referring to when we talk about the Thomas property, and  
19          the Click property, and the Porter property?

20          A. Yes, sir.

21          Q. Okay. And All-Tech is located on the Thomas property?

22          A. Yes, sir.

23          Q. And Jonathan Thomas is you, ---

24          A. Yes, sir.

25          Q. --- who everybody's been talking about?

1 A. That's right.

2 Q. And when did you start leasing that property or working  
3 at All-Tech?

4 A. February 2014.

5 Q. Did you ever acquire that property?

6 A. Eventually, yes.

7 Q. Do you recall when the date was?

8 A. Around 2018.

9 Q. Okay. What was your relationship with your neighbors on  
10 what is now the Click property when you started working there?

11 A. When I started?

12 Q. Yes, sir.

13 A. We had a good working relationship. And we passed work  
14 back and forth between each other because he did body work, I  
15 did mechanic work. He did a lot of custom stuff, wheel  
16 painting, things like that. He'd bring them over, we'd take  
17 the tires off for him and stuff. He'd call us over if he  
18 needed help pushing cars around, unloading metal off of  
19 trucks, stuff like that.

20 If we had anybody in the parking lot at night or  
21 anything, he would be very quick to check it out, see who it  
22 was, you know, just make sure nobody was going to steal  
23 anything or anything like that 'cause they worked odd hours.  
24 So it was like somebody was there all the time.

25 So it kind of worked out, you know. They'd be there in

1 the evenings or at night. We'd be there in the day. I  
2 thought we had a good working relationship. Things just  
3 degraded over time.

4 Q. Did you use his property in the course of your daily  
5 activities?

6 A. Oh, yeah. Every day.

7 Q. Did he use the Thomas property in the course of his daily  
8 activities?

9 A. Every day.

10 Q. And when we say he, who are we talking about?

11 A. Mr. Click.

12 Q. Okay. And that's Mr. Click sitting here, the Plaintiff  
13 in this action?

14 A. Yes, sir.

15 Q. Okay. Did that relationship ever change when Mr. Click  
16 acquired the property?

17 A. Yes.

18 Q. What happened?

19 A. You can't really name one thing that happened. It's kind  
20 of a weekly thing of a dispute. If someone drove through his  
21 driveway, he'd get upset. He had made it clear to us that he  
22 did not want us parking on his side of the driveway because he  
23 was going to start using that as part of his business. I  
24 instructed my employees to not park over there, to, you know,  
25 if he's going to use it as business, don't park over there.

1           But I explained to him, we still need to be able to use  
2     it for access because that's the only simple way to get a tow  
3     truck in and out without it being dangerous in them backing  
4     into the highway, anything like that. So I'm like -- as far  
5     as I know, on these property boundaries, there's always been a  
6     mutual agreement, mutual respect between each other.

7           The driveways are not very good. So we just use each  
8     other's driveways, use the driveway going up the hill if you  
9     need to get up there. It was never really a problem. He  
10    would get angry if delivery drivers drove through, tow truck  
11    drivers drove through, customers drove through, if we drove  
12    through.

13          Ever so often he'd come up with a new stipulation. Well,  
14    delivery drivers can drive through, but not your employees can  
15    drive through. And then it was no delivery drivers, just your  
16    customers because they don't know. Then he would get angry at  
17    customers when they would come through. So it was just a  
18    constant battle all the time.

19          So frustrating trying to run a business. We have a  
20    pretty busy business right there. And it's just a constant  
21    struggle. I always thought we were going to work it out.  
22    Thought we were going to figure it out eventually, you know.  
23    We were both new. He was new in his place. I was new in my  
24    place. We were trying to build a business, but it just never  
25    worked out.

1 Q. When you bought the property from Jimmy Watkins did you  
2 have any kind of surveys done or investigate the property  
3 line?

4 A. I did.

5 Q. How did you go about that?

6 A. I looked it up on the internet. You know, you got the  
7 County GIS you can look up and kind of see what your property  
8 lines are. Based off the little plat that used to hang in my  
9 office, based off what I seen on the screen, they looked very  
10 different, you know. Wasn't real sure what was going on  
11 there.

12 At some point in time, and I couldn't tell you the dates  
13 of when this happened, I asked Brent to show me the property  
14 pins. And he took me around and showed me the property pins.  
15 Because it was very confusing.

16 When you look on the County map, originally you had the  
17 3670 All-Tech building and property because there are two  
18 different parcels there. One was here and one was over here.  
19 And it didn't make sense about the way the property was laid  
20 out, the neighbor's property beside me, everything.

21 So I done some research on it, checked the property  
22 boundaries, checked the pins, where they were, and realized  
23 that the County recorded it on the GIS wrong. They had  
24 actually -- supposed to slide together to make straight lines.  
25 So I actually went to the County and had them re-do it.

1 They've moved the lines now because of what I came and showed  
2 them.

3 I knew where the property lines were when I bought it. I  
4 did not know when I was renting. I was told that we owned  
5 most of the driveway, but that there's no problem with them  
6 using it because that's the only way they can get up and down  
7 there. I'm like, hey, if it's good for everybody, it's good  
8 for me. As long as we can all do business and keep going, I'm  
9 happy.

10 Q. Did Mr. Click ever alter that gravel driveway?

11 A. Regularly.

12 Q. Did he change the access to that gravel driveway?

13 A. By grading.

14 Q. Did he put a gate up?

15 A. Oh, yes. So I used to park cars up on the hill in the  
16 back whenever we started getting overloaded. He didn't want  
17 us to park cars in the front. So I was like, well, if I can't  
18 park cars up there, I need a little bit more space until, you  
19 know, we can get this figured out.

20 So he would move the car that blocks the driveway. I'd  
21 put a car up on the hill. Then he'd block the driveway again.  
22 Only problem with that was is when I needed to get the car  
23 out, if he wasn't there because he works at night and whenever  
24 -- I don't know what his hours are, but he just works when he  
25 wants to, he has that luxury, I would have to wait for him to

1     come move a car out of the way so I could get up there.

2             So at some point in time, over time, I told Brent, I  
3     said, why don't you just put up a gate and we both have a key?  
4     And that way we can both get up and down easy without you  
5     having to worry about moving cars and without me having to  
6     wait on you to come in.

7             And shortly after that a gate got put up. I didn't get a  
8     key to it. And that was the end of me being able to use that  
9     really at all. I mean, I just -- I rented some land down the  
10    street and started taking cars down there. And like cars that  
11    are just sitting around too long, people keep abandoning cars,  
12    things like that happen, too expensive to fix, so they just  
13    leave them for way too long. So I just started trying to get  
14    them out of there.

15    Q.     So you never got a key to that gate?

16    A.     No. I still don't have a key to the gate.

17    Q.     Has that hurt your business?

18    A.     Not being able to use the front access really hurts my  
19    business. I have to spend time being a parking lot monitor a  
20    lot. If a tow truck comes pulling up in there, you've got to  
21    go out there and move cars around and everything so he can get  
22    turned around, whatnot, you know.

23             It's very frustrating because he's blocking it. He's  
24    knowing that we need to use it, but he's stopping us from  
25    using it. And it doesn't make any sense because he's still

1 using my property.

2 That's the worst part about all this for me is that my  
3 whole understanding is that we were working together to make  
4 things easier on each other. He cut me off and clearly made  
5 it that he did not want me to use that property. Somebody  
6 drove through when it was open, he'd go down there and block  
7 it off, but the whole time he's still using my property.

8 So we would have another talk or another argument,  
9 however you want to put it about, look, man, this is supposed  
10 to work both ways, you know. This only works if it works both  
11 ways. You can't just park on my property, use my property,  
12 put buildings up, do all this stuff, and then not even let me  
13 get in the driveway. That's my opinion on it.

14 Q. When you closed on the property that you bought did you  
15 send any kind of communication to Mr. Click about the property  
16 lines?

17 A. I had the closing attorney draft a letter telling him  
18 that ---

19 **MR. MARTIN:** Objection to ---

20 A. --- he had the option to buy it ---

21 **MR. MARTIN:** --- hearsay, Your Honor.

22 **THE COURT:** Hold on.

23 **MR. MARTIN:** He's talking about a letter from some  
24 lawyer.

25 **THE COURT:** Well, I mean, he's saying what he directed a

1 lawyer to do. I mean, I don't -- that's what he did and what  
2 he said.

3 **MR. MARTIN:** Okay. Well, just as long as he doesn't say  
4 ---

5 **THE COURT:** Right. As long as he ---

6 **MR. MARTIN:** --- the letter was sent or when it was sent.

7 Q. What did you ask your closing attorney to do?

8 A. I asked the closing attorney to send a letter to Brent to  
9 discuss with him about him purchasing a section of that  
10 property or possibly trading, to straighten out the property  
11 line. Brent and I have talked plenty of times about how the  
12 property lines are ridiculous and that at some point it'd be  
13 nice if we could straighten them out.

14 So when I bought it, I went ahead and asked my attorney  
15 to draft a letter and get in touch with him. He personally  
16 told me that he had been in contact with Brent's attorney and  
17 that he knew who he was ---

18 **MR. MARTIN:** Objection to anything that a lawyer said to  
19 him ---

20 **THE COURT:** Right.

21 Q. Did you have any reason to believe that Mr. Click did not  
22 know about an offer to resolve the property line issues?

23 **MR. MARTIN:** May we approach the bench, Your Honor?

24 **THE COURT:** Yes.

25 (Whereupon a bench conference was held off the record in

1 the presence of the jury, but out of their hearing)

2 (Whereupon the bench conference was ended)

3 Q. We'll back up and rephrase that. You directed -- you  
4 just testified that you directed your closing attorney to send  
5 a letter to Mr. Click regarding the property lines, right?

6 A. Yes, sir.

7 Q. Okay.

8 A. When I got no response ---

9 Q. Hold on. Let me just -- let me -- after you sent that  
10 letter was there any doubt in your mind that Mr. Click knew  
11 where the boundaries were?

12 **MR. MARTIN:** Objection. You're leading once again, Your  
13 Honor. It's his witness.

14 **THE COURT:** All right. Yeah, rephrase it so it's not  
15 leading.

16 Q. Within your -- what was your understanding as far as Mr.  
17 Click's knowledge of the property lines?

18 A. He knew a hundred percent where the property lines were.

19 Q. Have you ever given Mr. Click anything in writing that  
20 says he owns the turnaround area?

21 A. Absolutely not.

22 Q. Have you ever agreed that the boundary line is different  
23 than what it currently is, shown on that plat, that famous  
24 plat we've looked at a thousand times?

25 A. Absolutely not.

1 Q. Are you aware of any other right, title, interest, or  
2 agreement conveyed to Mr. Click or Click Properties an  
3 interest in that turnaround area?

4 A. No.

5 Q. Now let's talk about what's already been referred to in  
6 here as grading. Did you decide at some point to do grading  
7 in the rear of your property?

8 A. Yes, sir.

9 Q. In preparation for that, what did you do?

10 A. I first reached out to some contractors from friends that  
11 I knew. Nothing formal, just call a friend up, you know  
12 somebody in the grading business? Yeah, I know so and so.  
13 Spoke to a couple of different people.

14 Had them come out there and just kind of talked to them  
15 about what kind of job it would be to clear that land back  
16 there. I really wanted it level with my building, you know,  
17 not have a driveway going up a hill and deal with all the  
18 stuff you got to deal with with that.

19 But it was very obvious that it was such a long steep  
20 drop that you couldn't dig it all out. By the time you sloped  
21 it back, you wouldn't even have a parking lot at all being on  
22 a hill. So I didn't find anybody that would really give me a  
23 price or even kind of a, yeah, I'm ready to do it, I'm  
24 prepared.

25 The couple of guys I knew that would do it were already

1 so busy that they couldn't do it. So I just chose that I  
2 would do it myself.

3 I spoke to some contractors that come in the shop and  
4 talked to them about, you know, what I wanted to do. And they  
5 said, well, you know, we got guys that run equipment and do  
6 this stuff all the time. You know, if you need to have some  
7 guys come over to help you out, when we're slow it wouldn't be  
8 a problem. You know, just let us know what you need for help.  
9 We'll help you out. So that's what we did. And we, you know,  
10 we -- we did it ourself.

11 I went down to the County office, discussed with them  
12 about any permitting that I would need to be able to do the  
13 excavation. They told me because it's under an acre of land I  
14 don't have to have any permitting.

15 I said, well, is there any guidelines, outlines, anything  
16 you could give me to make sure that I'm doing it in a  
17 responsible way? It's a pretty large slope. I have a  
18 neighbor below me. I have a neighbor above me. I want to try  
19 to do it -- whatever way is needed to where I don't have a  
20 problem in the future.

21 They told me that ---

22 **MR. MARTIN:** Objection to what they told ---

23 **THE COURT:** Right. Again, sustained. And you can't talk  
24 about what other people told you, based on hearsay.

25 **MR. CAMPBELL:** Your Honor, if I may ---

1           **THE COURT:** Yes.

2           **MR. CAMPBELL:** --- add to the record. This goes to his  
3 present state of mind as to whether or not he was exercising  
4 due care.

5           **THE COURT:** Right. I believe he can talk about what he  
6 did and his actions, but not what other people told him.

7 Q. Based on what the County told you and your understanding  
8 once you left that conversation, what did you do next?

9 A. The most responsible thing to do would be to put a silt  
10 fence up on the -- we call that eastern boundary between me  
11 and Mr. Tilley, so that during the excavation, if it rained,  
12 he wouldn't get a bunch of wash, mud in his yard. He's got a  
13 beautiful garage and beautiful home down there he works very  
14 hard on. So I put up a silt fence on that side of the  
15 property.

16           Concerning the excavation side of it, they told me if I  
17 dug to the property line ---

18           **MR. MARTIN:** Objection, Your Honor, ---

19           **THE COURT:** Again, let's -- you got to ---

20 A. Yes, sir.

21           **THE COURT:** You can't tell what other people told you.

22 So ...

23 A. The way I understood it is that I could not dig to the  
24 property line without sloping the property back or without  
25 putting a retaining wall system in, doing something to control

1 the loss of dirt to make sure there's no collapses or any kind  
2 of thing like that, you know. So when I planned the  
3 excavation, I made sure I planned it well inside the property  
4 boundary to where however I did it I wouldn't be affecting the  
5 property next to me. And I made a plan.

6 I told Brent I was going to build a parking lot. The day  
7 before the excavation started, I texted him, told him  
8 machine's going to be here at nine am, just want to give you a  
9 head's up and your wheel is ready is what the text message  
10 said because I was doing a wheel and tire for him, obviously.

11 Next day, equipment showed up. He let us in. And he  
12 immediately started on me, so what are you going to do here?  
13 How are you going to do this, you know? And I'm like, I'm  
14 going to follow the driveway line, you know. I told him that  
15 because I didn't want him to freak out thinking that I was  
16 going to dig the whole place out.

17 But I just said I'm going to follow the driveway line.  
18 He had his little skid-steer out there that he ran around out  
19 on the property while my guy was clearing trees and stuff like  
20 that. Shelly was there. Some of the other guys that were  
21 around were there.

22 So that, you know, first day we just started clearing the  
23 top, just started taking trees off, stuff like that, piling  
24 them up. That's pretty much all we did the first day because  
25 it was a lot of trees out there and for such a small area, you

1 know?

2 And also I wanted to mention before I -- before I done  
3 the excavation I went to my other neighbor, Mr. Tilley, he's a  
4 retired postal worker. I didn't know the man at all. I knew  
5 I was about to do a big dig. And it affects him a ton because  
6 it's right at his back door. I mean, he looks out at it.

7 So I went over and spoke to him and told him I was going  
8 to excavate the property, I was going to build a parking lot.  
9 Those trees that ran down my property line that were facing  
10 his, I asked him did he want me to leave the trees? Did he  
11 want me to take the trees?

12 Based off our conversation, he did not want the trees  
13 there because he spent a lot of time cleaning up leaves and  
14 things like that from them. So he was happy to hear the trees  
15 were going, in my opinion. He had no problem with it.

16 So I thought I was covered on all ends. I talked to the  
17 County and made sure I didn't have a problem with the County.  
18 I talked to this neighbor, made sure he didn't have a problem.  
19 This neighbor I didn't talk to that much about it because he  
20 didn't want me to do anything no matter what, you know?

21 They live in that building. And they had a wooded area  
22 that they could go outside and work and, I guess, you know,  
23 have a nice little private space. And I'm about to dig it up  
24 to build a parking lot. I could understand why somebody  
25 wouldn't want that, you know.

1           But they're both commercial properties, and I can't  
2 control that they chose to live inside the building. And to  
3 each his own, you know? I think I've answered your question.  
4 If you've got another question, I'll stop.

5 Q.    Before the digging started had you ever been inside the  
6 back building that has been referenced to in here?

7 A.    I've been in his buildings, yes.

8 Q.    But did you go inside before the digging started?

9 A.    Oh, yes.

10 Q.    Can you describe the state of that building, the state of  
11 the floor, the state of the walls?

12 A.    He had a really nice paint booth in there. You know,  
13 Brent's a man of many talents. Tons of tools. Lays  
14 everything out, you know. He works on a lot of stuff that  
15 amazes me, you know.

16           But he tried his best to keep a very small confined space  
17 tidy with a lot of stuff going on, you know, cars, jacks,  
18 everything else. The building was old. It's got cracks in  
19 the floor. I mean, -- but it's an old building.

20           I don't spend a lot of time thinking about cracks in the  
21 floor and things like that. I'm sure I've got cracks in my  
22 floor, too.

23           I can't say that the building was unstable or anything  
24 like that because I don't know that. I didn't even think that  
25 far into it. He just liked to show me all his little stuff he

1 was working on up there. But there's definitely cracks in the  
2 floor. And I think everybody's heard that already.

3 Q. What about the exterior of the building? Did you ever  
4 notice any cracks or defects in the cinder blocks?

5 A. I was looking over some pictures that I took during the  
6 excavation. And in the picture you can actually see that  
7 there's a crack running down the blocks of the wall. Very  
8 obvious, you know. It's the same pictures that they were  
9 showing saying that happened after I done the excavation, but  
10 I took these during the excavation.

11 Q. I'll show you what's in evidence as Defense exhibit 22.  
12 Is that the picture you're referring to?

13 A. Yes, sir.

14 Q. And repeat for us one more time what you noticed about  
15 that photograph.

16 A. Starting at the right-hand side, if you're looking at it,  
17 you can call that the front of the building, I guess. On the  
18 right-hand side where the gutter pipe is you can see the crack  
19 start at the top and run across the wall, same as the block.  
20 Just like the picture we saw that the Plaintiff brought in.  
21 And this was, I want to say, day two of my excavation. That  
22 stuff's already there.

23 **MR. CAMPBELL:** Publish to the jury, Your Honor?

24 **THE COURT:** This is one without objection, right?

25 **MR. CAMPBELL:** Yes, sir.

1 A. And that picture is taken from 150 feet away. If you can  
2 see the cracks in the building from 150, they're there.

3 Q. Did you ever tell Brent Click you were going to dig until  
4 the building fell in?

5 **MR. MARTIN:** Objection ---

6 A. That's ridiculous.

7 **MR. MARTIN:** --- to leading, Your Honor.

8 **THE COURT:** I'm going to let it -- it's already been  
9 introduced. So ...

10 A. Absolutely ridiculous. Why would you tell anybody that?

11 Q. So you never said that?

12 A. No, sir, never. With a hundred percent confidence, I've  
13 never said that.

14 Q. Did you ever dig across the property line?

15 A. No, sir.

16 Q. Did you ever have any intention to influence or hurt Mr.  
17 Click's property by the way you -- where you were grading for  
18 your parking lot?

19 A. Absolutely not. Even after his ridiculous things like  
20 parking his motorhome up there after we leave at night so the  
21 next day I come in and there's a motorhome sitting where we're  
22 working. I mean, I'm just not that kind of person.

23 **MR. CAMPBELL:** I beg the Court's indulgence, Your Honor.

24 (Pause)

25 Q. Last few questions, Mr. Thomas. Before you began the

1 excavation did you have to alter any structures on your  
2 property or any part of your building?

3 A. I did.

4 Q. What was that?

5 A. I had built a lean-to on the side of the building. When  
6 I originally got it, the asphalt went around the building and  
7 there was just an open area beside it. And I had my cousin  
8 build out a lean-to out to the side that went out 12 feet.  
9 The bank came up beside it.

10 So the big, steep hill that we're all talking about all  
11 this time has been there since I've been there. It washed  
12 out. The stuff was actually washing into that little lean-to  
13 that I, you know, that I constructed there.

14 Brent had a tow truck fall off that same hill and land on  
15 that lean-to. Barely hurt anything. And they got it out of  
16 there. It wasn't a big deal, but it definitely looked like a  
17 scary, big deal.

18 But that lean-to, I just took it down so we'd be able to  
19 drive past the building. I mean, it wasn't tall enough to be  
20 able to drive under. And you couldn't walk around the  
21 building at all.

22 Whenever I got it, it was -- the hill came all the way up  
23 to the back of it, straight up and around and curved down to  
24 the side. It was -- it was almost level with the other  
25 neighbor's driveway. It just was down the hill, you know.

1 But that lean-to, I just had to remove.

2 Q. Okay. Please answer any questions the Plaintiffs'  
3 counsel has for you.

4 A. Yes, sir.

5 **THE COURT:** Counsel, let's talk about scheduling here.

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:** All right, ladies and gentlemen, this is just  
10 a good break. So I'm going to go ahead and let y'all break  
11 for lunch. Be back in your jury room at 1:30. And then we  
12 will proceed with the case and -- so get back on schedule.  
13 All right.

14 Don't discuss the case. Don't do any type of research.  
15 Don't pay any attention to media coverage. Or if anybody  
16 contacts you other than somebody from the clerk's office,  
17 please let the bailiffs know. Otherwise, y'all have a good  
18 lunch.

19 A. Can I step down, Your Honor?

20 **THE COURT:** Just hang there for right now.

21 (Whereupon the jury exited the courtroom at 12:05 pm)

22 **THE COURT:** All right. Before I let you go I had to  
23 advise you -- you're, what I call, in my witness bubble. That  
24 means you can't discuss anything with your attorneys about  
25 your testimony. You're prohibited from doing that until your

1 testimony's complete. You understand that?

2 A. Yes, sir.

3 **THE COURT:** All right. You can step down. All right.

4 Anything before we break from the Plaintiff?

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

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

7 **MR. CAMPBELL:** No, Your Honor.

8 **THE COURT:** All right. Y'all want to be back about 1:15  
9 or a little bit earlier just so we can discuss any -- because  
10 I know y'all've raised a couple of issues. They may not be  
11 relevant at this point, but they'll be relevant at some point.

12 **MR. CAMPBELL:** Your Honor, for scheduling purposes, we  
13 only have -- I think, unless something changes, we only have  
14 one more witness.

15 **THE COURT:** Your expert?

16 **MR. CAMPBELL:** Yes, sir.

17 **THE COURT:** And it looks like the timing then, what I'm  
18 looking at is that we finish all the testimony. I don't know  
19 if you're going to have a reply or not, but I'd like to get in  
20 all the testimony today.

21 And I -- I'm not having that hearing that I thought was a  
22 conflict. So we can, you know, we can look at the charge. I  
23 definitely -- the nature of this charge, I want to make sure  
24 that I have plenty of time to study it and discuss it with  
25 y'all. So my goal is that we argue and charge in the morning

1 first thing.

2 **MR. CAMPBELL:** All right. Thank you, sir.

3 **THE COURT:** All right. We will see y'all back after  
4 lunch.

5 (Whereupon court was in recess at 12:06 pm)

6 (Whereupon court reconvened at 1:27 pm)

7 **THE COURT:** All right. The jury is in. Plaintiff ready?

8 **MR. MARTIN:** We're ready, Your Honor.

9 **THE COURT:** Defendant ready?

10 **MR. CAMPBELL:** Yes, sir.

11 **THE COURT:** All right. We're within one minute, so  
12 that's good. Go ahead and let them in. They're ready?

13 **THE BAILIFF:** Yes, sir.

14 **THE COURT:** Come on in.

15 (Whereupon the jury entered the courtroom at 1:32 pm)

16 **THE COURT:** All right, ladies and gentlemen, hope  
17 everybody had a good lunch. And I do want to note that I am  
18 closer when I told you than before. So -- to getting y'all  
19 out of here. At this time, Mr. Martin, you may -- oh, I'm  
20 sorry. Mr. Thomas, come on back up. And I would remind you  
21 that you are still under oath.

22 **MR. THOMAS:** Yes, sir.

23 **THE COURT:** And at this time -- I'll let you get  
24 situated. All right. Mr. Martin, cross-examination.

25 **Cross-examination by Mr. Martin:**

1 Q. Mr. Thomas, I believe you agree with me that you do not  
2 have any training in excavation, ---

3 A. Yes, sir.

4 Q. --- is that right? And you do not have any training in  
5 site engineer?

6 A. Agree.

7 Q. And you don't have any training in building 36 foot  
8 cliffs?

9 A. Definitely not.

10 Q. Okay. But you did it anyway?

11 A. I didn't build a 36 foot cliff.

12 Q. Okay. Well, you dug out until you could get your road  
13 backed to your back property, did you not?

14 A. There was already a cliff there.

15 Q. Okay.

16 A. I moved the cliff, my side of it, back.

17 Q. So you didn't dig anything out on the cliff?

18 A. I'm not saying we didn't touch it or that we didn't dig  
19 at it at all, but I didn't have to do that. There was a  
20 building beside my building we removed to be able to get past.

21 Q. Okay. I want to show you -- this is exhibit 42. And I  
22 want you to tell us if you can see -- this is your All-Tech  
23 property here?

24 A. Yes, sir.

25 Q. And is this the Click property here?

1 A. Yes, sir.

2 Q. And is this a -- do you know that this is a rendering of  
3 where the actual digging occurred?

4 A. Yes, ---

5 Q. Do you ---

6 A. --- sir.

7 Q. --- agree with that? Okay.

8 A. I mean, they don't have it perfect, but there is ---

9 Q. Well, did you understand that this was actually drawn by  
10 an engineer perfectly where he surveyed it out and actually  
11 put it on the plat where exactly it is?

12 A. Well, it's showing the slope beside our property. It's  
13 not showing that's where I dug.

14 Q. Okay. Well, this -- these lines right here is showing  
15 where you dug, right? This is the ---

16 A. Yes, sir.

17 Q. --- cliff that now exists, right?

18 A. Not the stuff beside the driveway. I mean, you can look  
19 at the pictures ---

20 Q. Are you saying this is not the stuff by ---

21 **THE COURT:** All right. We can have one person talking at  
22 a time.

23 **MR. MARTIN:** I'm sorry.

24 **THE COURT:** No, wait til he finishes his question, then  
25 you make sure he finishes his answer, just for the ---

1           **MR. MARTIN:** I'm sorry.

2           **THE COURT:** --- so the court reporter ...

3       Q.    Are you denying that this is not the side that you dug on  
4       the side of your property?

5       A.    I'm not denying that I dug ---

6       Q.    Okay.

7       A.    --- on the side of the property.

8       Q.    And wouldn't you agree that where you started the digging  
9       was actually on the Click property?

10      A.    No.

11      Q.    So you would disagree with the engineer who drew that on  
12      there?

13      A.    Absolutely.

14      Q.    Okay. Now where you dug was where the driveway was at  
15      the time? Is that -- was your testimony?

16      A.    Excuse me?

17      Q.    Where you dug was where the driveway, the Click driveway,  
18      was at the time, is that right? You dug up to that driveway?

19      A.    (Negative nod).

20      Q.    I can't hear you. You have to answer. What's your  
21      answer?

22      A.    Based off what your question is?

23      Q.    Yes.

24      A.    I don't understand the question.

25      Q.    Okay. You are denying that you dug on the Click

1 property, is that right?

2 A. Yes, sir.

3 Q. You are denying that the engineer, who put this in  
4 evidence, who did all the surveying, has put it in the  
5 improper place, is that right?

6 A. Correct.

7 Q. Okay. So my next question was where you dug was where  
8 the driveway was at the time? That's where you started, where  
9 Brent Click's driveway was at the time is when you started  
10 your digging, is that ---

11 A. I guess ---

12 Q. --- right?

13 A. --- the reason I'm getting confused is because the  
14 driveway's still where it always has been.

15 Q. I know ---

16 A. So you're saying it was there at the time. Are you  
17 saying it's in a different place now?

18 Q. I'm saying in August -- this plat was done in 1996,  
19 correct?

20 A. Yes, sir.

21 Q. The plat. The plat was done in 1996.

22 A. If that's the plat. I thought that was a drawing that  
23 your engineer did.

24 Q. Well, it's -- it's on top of the plat -- of the Ramey  
25 plat. And if you want to get into that, we can do that. Do

1 you see where it says recorded plat for Betty M. Ramey?

2 A. Yes, sir.

3 Q. And do you see where it says August 28, 1996?

4 A. Yes, sir.

5 Q. Okay. And what the expert did was was he took that plat,  
6 which was 1996, and where the driveway and the lines were in  
7 1996, and then he drew on that plat where the digging was and  
8 where the cliff is. Do you disagree with that?

9 A. He did that four years later?

10 Q. Well, he did that -- not four ---

11 **MR. CAMPBELL:** Objection, Your Honor.

12 Q. --- years later.

13 **THE COURT:** Hold on.

14 Q. If the ---

15 **THE COURT:** Hold on. He's got an objection. Yes.

16 **MR. CAMPBELL:** He can cross-examine, but I'd like him to  
17 not testify.

18 **THE COURT:** Yeah. Rephrase your question. I'm not sure  
19 what your question was.

20 **MR. MARTIN:** Am I allowed to lead the witness, Your  
21 Honor?

22 **THE COURT:** Well, no, that's not ---

23 **MR. MARTIN:** No?

24 **THE COURT:** --- what he was saying. All right. Go ahead  
25 and ask your question.

1           **MR. MARTIN:** Okay.

2       Q.    My question is this plat was done in 1996. And the  
3       expert did his analysis in 2022. '96, 2006, 2016, so that's  
4       some 26 years later, is that right? You understand? Is that  
5       26 ---

6       A.    Yes, sir.

7       Q.    2022 minus 1996, 22 years?

8       A.    If you say so.

9       Q.    Okay. So my point is isn't it true that when the Ramey  
10      plat was done 22 years ago, this is where the turnaround and  
11      the driveway were 22 years ago, right? Would you agree with  
12      that?

13      A.    Yes, sir.

14      Q.    Okay. Now you've dug in August of 2018, right?

15      A.    Yes, sir.

16      Q.    2018 minus '96 is what?

17      A.    I don't know.

18      Q.    It's -- well, if you go ---

19      A.    Twenty-two years?

20      Q.    '96 to 2006 is ten years. 2016 is 20 years, right? Is  
21      that right?

22      A.    It's 22 years.

23      Q.    Okay. So 22 years later is when you did your digging?

24      A.    Yes, sir.

25      Q.    2018, August?

1 A. Yes, sir.

2 Q. So my question to you is isn't it possible that the  
3 driveway would have moved over those 18 years because of just  
4 the natural use and the way things are in the world?

5 **MR. CAMPBELL:** Objection to speculation.

6 **THE COURT:** I mean, if he can answer is.

7 A. There's been erosion on the driveway ever since it's been  
8 there like any dirt. So, yes, there's a possibility things  
9 have ---

10 Q. Okay.

11 A. --- moved.

12 Q. Okay. So when you started digging you were relying upon  
13 where the actual line of the driveway was in 2018. You didn't  
14 go back to the Ramey plat when you decided where to dig, did  
15 you?

16 A. I had the property -- well, I didn't have the property  
17 surveyed then. We found the property pins before I started  
18 digging. And your expert is showing that I ---

19 Q. I'm sorry, ---

20 A. --- dug in ---

21 Q. --- you didn't ---

22 A. --- an area ---

23 Q. --- understand my question. Maybe ---

24 **THE COURT:** Hold on. Let him ---

25 Q. --- answer [sic] it in a way that you can understand it.

1     What I'm asking you is, and please answer that, Mr. Thomas, is  
2     when you started your digging, you didn't go back to the Ramey  
3     plat to determine where to start digging, did you?

4     A.    I used my plat.  I didn't use the Ramey plat.

5     Q.    Okay.  You didn't use this plat?  Right?

6     A.    Actually, I'm not going to testify to that because I  
7     don't remember every plat and every paper that I looked at  
8     before I started doing it.  So ---

9     Q.    So you don't remember whether you went ---

10    A.    I don't ---

11    Q.    --- to the '96 Ramey plat and made sure that you were on  
12    the left side when you started, is ---

13    A.    I don't remember.

14    Q.    --- that fair to say?  You just don't remember?

15    A.    Uh-uh (Negative).

16    Q.    Okay.  That's fair enough.  Now when you decided in 2018  
17    to buy this property from Mr. Watkins, he sold it to you in  
18    May of 2018 for a hundred and forty thousand dollars  
19    (\$140,000.00), is that right?

20    A.    Yes, sir.

21    Q.    And he agreed to personally finance it, correct?

22    A.    Yes, sir.

23    Q.    So he is your mortgage holder, is that right?

24    A.    Yes, sir.

25    Q.    And you make your monthly payments to him?

1 A. Yes, sir.

2 Q. Okay. Now you're aware of the company called Strange  
3 Brothers, aren't you?

4 A. Yes, sir.

5 Q. And they're experts in excavation, aren't you [sic]?

6 A. I would assume so. I've never worked with them or  
7 anything.

8 Q. Well, you've heard about them and you know what they do,  
9 don't you?

10 A. They're a grading company, I think.

11 Q. Okay. And you didn't call them and ask them to give you  
12 an estimate on this, did you?

13 A. No, sir.

14 Q. Why not?

15 A. One, I didn't even know them. But, I mean, I couldn't  
16 afford them anyway.

17 Q. Okay. You say you didn't know them. Do you -- do you  
18 remember having your deposition taken?

19 A. Yes, sir.

20 Q. Do you remember that you were sworn to tell the truth on  
21 that day?

22 A. Yes, sir.

23 Q. And that was on October 22nd, 2020?

24 A. If that's what the paper says.

25 Q. Sorry?

1 A. I would have to see the ---

2 Q. Okay.

3 A. --- date on the paper to know that for sure.

4 Q. I'm trying to get it out of here. And I'm having a very  
5 hard time doing it. Was that taken on October 22nd, 2020?

6 A. Yes, sir.

7 Q. Okay. And you say you never heard of -- you didn't know  
8 anything about Strange Brothers, is that right? Is that your  
9 answer?

10 A. I didn't contact Strange Brothers.

11 Q. I didn't ask you that. Do you know -- did you know about  
12 Strange Brothers in October of 2020?

13 A. Yes, sir.

14 Q. Did you know that they were experts in excavation in  
15 2020?

16 A. If you say so.

17 Q. No. I want to know if you knew that.

18 A. I guess based off of a guess. I've never worked with  
19 them.

20 Q. Okay. Based off of a guess. I want you to turn to page  
21 67 of your deposition. Now you swore to tell the truth on  
22 that day, did you not?

23 A. Yes, sir.

24 Q. And did you?

25 A. Yes, sir.

1 Q. Okay. And on page 67 I want to start with -- well, I'm  
2 not matching it up.

3 (Pause)

4 Q. I'm sorry, page 69. I'm sorry. Sorry about that.

5 A. No problem.

6 Q. Okay. On page 69 I said, on line 6, and please -- I'm  
7 going to read this. And please correct me if I read it  
8 improperly, okay?

9 A. Yes, sir.

10 Q. Question; Okay. Did you ever try what I would call a  
11 reputable excavation company that's in the business that has  
12 engineers and all that could do it for you? Did you ever call  
13 any of them? I mean, the name that everybody in Greenville  
14 knows is Strange Brothers. Did you ever call? And what is  
15 your answer?

16 A. No, I never called.

17 Q. Strange Brothers? And then what's your answer?

18 A. (No response).

19 Q. Spoke to ---

20 A. Spoke to ---

21 Q. --- Strange Brothers ---

22 A. --- Strange Brothers ---

23 Q. --- or anybody like?

24 A. --- or anybody like?

25 Q. Okay. Are you familiar with them?

1 A. Yes, sir.

2 Q. Okay. So does that help you refresh your recollection  
3 that you were familiar with Strange Brothers back in October  
4 of 2020?

5 A. I'm familiar with who they are.

6 Q. Okay. But you didn't ---

7 A. I'm not familiar with their work.

8 Q. You didn't call them?

9 A. No, sir.

10 Q. You knew they were experts in excavation?

11 A. I didn't even think of them. That's your recommendation.

12 Q. Did you call any expert excavation company to make sure  
13 that this was done safely?

14 A. I spoke to some people that do grading, yes.

15 Q. Okay. Is there a difference between grading and what you  
16 did?

17 A. Not in my opinion.

18 Q. Okay. And did you hire them to do the work?

19 A. No.

20 Q. Did you hire them to do the plan?

21 A. No.

22 Q. Did you hire -- did you hire an engineer to make sure  
23 that when you did this digging it would be safe for Brent's  
24 property?

25 A. No.

1 Q. And isn't it true that you told me that you couldn't  
2 afford Strange Brothers on October 2020?

3 A. Yes.

4 Q. Okay. Now you've told the jury that you talked to the  
5 people at Pickens County and they told you that you could dig  
6 it as long as it was safe, is that right?

7 A. Yes, sir.

8 Q. Okay. And you heard the testimony of the engineer who  
9 said it was not safe, right? You were here in the courtroom.

10 A. That area that was already there? Yes, sir.

11 Q. Okay. It has to be a one point five (1.5) and it came up  
12 as a one point one (1.1) in the testing, right?

13 A. (Affirmative nod).

14 Q. So it's unsafe, right?

15 A. Yes, sir.

16 Q. Okay. So you didn't follow the advice of the Pickens  
17 County people, did you?

18 A. Because I didn't dig that slope out.

19 Q. You didn't dig it out? Who did?

20 A. Sir, the slope was already there before I started  
21 digging.

22 Q. Oh, so you're claiming you didn't even dig there?

23 A. I'm not claiming I didn't touch it. I'm saying look at  
24 the photos that you have that you've presented. There was  
25 already a slope there. That driveway goes up the hill beside

1 my parking lot.

2 Q. All right. I would like to show you what's been marked  
3 as Plaintiffs' exhibit 15 and ask you if you can identify what  
4 that is?

5 A. That's the back wall of where the excavation -- where I  
6 went back.

7 Q. Okay. Did you do any digging right in this area?

8 A. No, sir.

9 Q. You -- you did not?

10 A. We talking about digging or we talking about clean-up?

11 Q. I'm talking about digging. I'm talking -- you see how  
12 that hill is very sheer and up and down, 90 degrees?

13 A. So the hill started at the back of my building. And I  
14 brought that hill back.

15 Q. Okay. My question to you is did you do this digging  
16 here?

17 A. Yes, sir.

18 Q. Okay.

19 A. I mean, I'm not trying to deny that I've dug anything.  
20 What I'm trying to tell you is that I followed the natural  
21 line of the driveway that was already there.

22 Q. Now you mentioned something about the RV that Brent  
23 parked up there. Is this a picture of that RV?

24 A. Yes, sir.

25 Q. And isn't it true that he parked that RV up there to get

1 you to stop digging into his turnaround?

2 A. He parked that RV up there -- I mean, you'd have to ask  
3 him why he parked it there.

4 Q. Okay.

5 A. I never told him I was going to dig up there. But it  
6 wasn't his turnaround, it was mine.

7 Q. Okay.

8 A. I mean, I even contacted the police while all this was  
9 going on.

10 Q. You contacted the police?

11 A. Yes, sir. The police came out ---

12 Q. Did they arrest anybody?

13 A. No.

14 Q. All right. I believe you didn't build a block wall or a  
15 retaining wall in any of this area, did you?

16 A. No, sir.

17 Q. And isn't it true that if you had to do it again you  
18 would have done that?

19 A. There? Or anywhere?

20 Q. Or anywhere between your property and the Click property  
21 you would have built a retaining wall if you had to do it  
22 again, wouldn't you?

23 A. If I dug to the property line, I would, yes.

24 Q. Well, at least according to the expert you did dig to the  
25 property line, didn't you?

- 1 A. The expert didn't see it til four years later.
- 2 Q. And it was still on the property line, wasn't it?
- 3 A. No.
- 4 Q. At least that's what it shows on the Ramey plat, right?
- 5 A. Maybe you need to go out and look at it.
- 6 Q. So you didn't build a retaining wall?
- 7 A. No, sir.
- 8 Q. Do you agree that building a retaining wall would cost
- 9 about eighty-two thousand dollars (\$82,000.00)? Do you -- do
- 10 you have any disagreement with that?
- 11 A. A concrete constructed retaining wall ---
- 12 Q. Yes.
- 13 A. --- as he talked about?
- 14 Q. Right.
- 15 A. I'd say that's very possible, yes, sir.
- 16 Q. Okay.
- 17 A. But I also know that's not the only way to change
- 18 anything about that area.
- 19 Q. But you're not an expert in retaining walls, are you?
- 20 A. I'm not claiming to be. But I do know that the expert
- 21 also said that's not the only way to take care of that.
- 22 Q. But didn't he also say that it was because of the way it
- 23 was so close to your building and to Brent's building and the
- 24 only way to do it some other way was to take away Brent's
- 25 driveway? Didn't he say that?

1 A. If I dug back, yes. To put in a concrete retaining wall,  
2 yes. I don't have to dig back anything. I can add dirt to  
3 just as easy as I can dig back.

4 Q. All right. So you say you can add dirt to. Would you  
5 still have a driveway to get back behind your building if you  
6 added dirt to?

7 A. Yes, sir.

8 Q. Okay. Now isn't it true that you didn't do anything to  
9 check with underground gas lines, or electrical lines, or  
10 anything like that before you dug?

11 A. I don't remember that.

12 Q. Okay. Well, let's turn, again, to your deposition.  
13 Maybe I can do a better job this time to find the right page.  
14 Page 97. Do you still have it?

15 A. No, sir.

16 Q. All right. Page 97. This is your same deposition, isn't  
17 it?

18 A. Yes, sir.

19 Q. Okay. And please, again, -- I'm going to read it. And  
20 please correct me if I read it improperly, okay?

21 A. Yes, sir.

22 Q. All right. We were basically talking about your  
23 excavation. Before you actually performed the excavation did  
24 you do anything to check on any underground gas lines, or  
25 sewer pipes, or electrical lines, or water pipes? Did you do

1 anything with respect to that or just -- or just ahead of it  
2 did it?

3 And your answer is; I cannot honestly tell you. I can't  
4 remember. I think I did. I know it's the responsible thing  
5 to do, but if I sit and tell you that I did for sure, I would  
6 be lying because I can't remember. Was that your answer?

7 A. Yes, sir.

8 Q. Okay. You don't remember doing anything. Is that your  
9 -- a fair statement? And your answer was; It is a fair  
10 statement. Did I read that correctly?

11 A. Yes, sir.

12 Q. Okay.

13 A. As far as I know there's never any reports or anything  
14 ever hit in the excavation area.

15 Q. You didn't hear Brent say that the excavation has caused  
16 damage to his water lines, and to his sewer, and to his  
17 electrical? You weren't here ---

18 A. On his property?

19 Q. --- when he testified? Yes, on his property.

20 A. So if I had my property checked for water lines, gas  
21 lines, and all that, would that show up on it?

22 Q. No. I'm asking you did you check to see -- since you  
23 were digging into his ---

24 A. I didn't ---

25 Q. --- up to his property, ---

1 A. --- into his property.

2 Q. --- did you do anything to check where his water lines,  
3 electrical lines were? That was my question. And your answer  
4 is you didn't remember?

5 A. Correct.

6 Q. Okay. Did you do anything to determine the moisture  
7 content of the land before you started digging?

8 A. No, sir.

9 Q. Did you do anything to consider what the porosity of the  
10 land was before you did digging?

11 A. No, sir.

12 Q. Okay. Did you do any analysis about what the impact of  
13 the gravity was after you finished digging?

14 A. No, sir.

15 Q. Okay. Do you agree that if you did dig to the property  
16 line that you were required to install a retaining wall?

17 A. Yes, sir.

18 Q. Okay.

19 A. Well, excuse that. If I dug to the property line?

20 Q. Right.

21 A. I'm supposed to slope it in a safe, natural slope, or put  
22 a retaining wall, or put anything to control the erosion, not  
23 that I have to put in a retaining wall.

24 Q. Okay. Well, turn to page 100 and let's see what you said  
25 under oath in October of 2020, okay? Page 100. All right.

1 Starting on line 9 it says; But since you didn't dig to the  
2 property line, you felt like you didn't have any  
3 responsibility, is that fair? And your answer was; I feel  
4 like I didn't ignore any responsibility.

5 Question; Well, my question is if you did not dig to the  
6 property line did you feel like you had no responsibility to  
7 the Click property? Answer; I guess I don't understand the  
8 question. Question; Well, if you said -- you have said many  
9 times that as long as you were digging inside your property  
10 line you thought you were okay. Am I understanding your  
11 answer correct?

12 Answer; Well, I stayed well within the property line.  
13 Okay. I don't mean if I stayed inside of it by a couple of  
14 inches. It's in the property line by feet. Okay. And in  
15 some areas 20 to 30 feet. Okay.

16 So my question is if in your mind as long as you stayed  
17 within the line that you determined, you didn't have any  
18 responsibility to any damage to the Click property? Is that  
19 fair? No, that's not fair. You're asking me if I think it's  
20 fair. Yes, I don't think it's fair -- fair statement that  
21 you're asking.

22 Maybe I'm not reading in the right place. Oh, it's page  
23 103. I'm just messing up all over here. Okay. So let's  
24 start on page 102. All right. Page 102, line 11.

25 So then if you met your responsibility do you agree with

1 me that you had a responsibility to the Click property when  
2 you did this excavation? Your answer was; Yes. And you  
3 believe that you met that responsibility? Your answer was;  
4 Yes.

5 Okay. Even though you didn't do any studies, you didn't  
6 have an excavator, you think -- I wasn't required is your  
7 answer -- that your responsibility -- it wasn't required. It  
8 wasn't required for me to have an expert come out -- okay --  
9 and look at it. There was no plans required by the County.

10 So in your opinion your duty is based on what the County  
11 requires, and that's it, is that right? If the County would  
12 have required me to get plans and an engineer before I started  
13 the project, that's what I would have done. But it was not  
14 required.

15 And you didn't do it? I felt like I had the situation  
16 under control. Okay. Even though you never done a project  
17 like this magnitude in your life before? Yes, sir. I mean,  
18 you're talking about a less than a half an acre of property.  
19 We're not talking about a stadium.

20 Okay. And do you feel like you are qualified to make  
21 that decision? Yes, it's my property.

22 A. Are you intentionally skipping lines or is this another  
23 error?

24 Q. I'm sorry, you don't get -- I'm sorry, I wish you could  
25 ask me questions, but you can't.

1           **THE COURT:** Well, that was -- he was asking if you were  
2 skipping lines.

3           **MR. MARTIN:** I know. Do I need to answer him, Your  
4 Honor?

5           **THE BAILIFF:** Judge, the jury can't hear the witness. He  
6 needs to ---

7           **THE COURT:** All right. Make sure you speak up.

8 Q. Okay. I want to call your attention to the period of  
9 time where Brent built the awnings and did the pouring in  
10 October of 2014. Are you aware of that?

11 A. Yes, sir.

12 Q. And was that done actually on the turnaround property?

13 A. I'll be honest with you, I'm unclear to what you're  
14 calling the turnaround property.

15 Q. Okay. What I'm calling the turnaround property is what's  
16 on the plat from the Ramey plat. Okay. If you see the Ramey  
17 plat has the property going this way, and the turnaround is  
18 right in this area here. That's where I'm calling the  
19 turnaround property.

20 A. Okay.

21 Q. Okay? So my question to you is this is Brent's back  
22 building, correct?

23 A. Yes, sir.

24 Q. Did he build -- and this is the turnaround area here.  
25 Did he build an awning and pour concrete in that ---

1 A. I feel like ---

2 Q. --- turnaround area?

3 A. --- we need to get more specific because you're pointing  
4 out like this. I mean, the concrete, yes, he poured concrete  
5 in front of his building. Yes, he put an awning up in front  
6 of his building. I think it sticks out from in front of his  
7 building about 20 feet.

8 Q. Onto the turnaround area?

9 A. I would call that the driveway. I mean, if that's what  
10 you're calling the turnaround area ---

11 Q. Okay. Now ---

12 A. --- I understand ---

13 Q. --- whose property do you think ---

14 **THE COURT:** Only one person speak at a time. Let him  
15 finish and then answer his question.

16 **MR. MARTIN:** Okay.

17 **THE COURT:** And make sure you speak up so everybody can  
18 hear you, too, okay?

19 A. Yes, sir.

20 Q. Whose property is that pouring and awning on?

21 A. Partly on his property and partly on my property.

22 Q. Okay. And were you aware that he did it in October of  
23 2014?

24 A. Yes, sir.

25 Q. Did you do anything to stop him?

1 A. I called Greg Grissenger.

2 Q. Did you do anything to stop him?

3 A. I was renting at the time. I don't think I could do  
4 anything to stop it.

5 Q. Okay. 2015 did you do anything?

6 A. I was still renting.

7 Q. 2016?

8 A. I was still renting.

9 Q. 2017?

10 A. I was still renting.

11 Q. Did you call the owner?

12 A. I don't remember. I don't remember.

13 Q. Okay. Do you remember anything being done or Brent being  
14 told that he couldn't do it?

15 A. No.

16 Q. Okay. Now do you remember going up to Brent and Shelly's  
17 property and these awnings and where the pouring was in  
18 February 2020 with some other person?

19 A. February of 2020?

20 Q. Yes. Yes, sir.

21 A. Yes. When I got a fence guy to come out and give me an  
22 estimate to put up a fence.

23 Q. Okay. And did you wait til Brent went off to work before  
24 you went up there with your fence guy?

25 A. I have no idea where Brent was.

1 Q. Okay. And when you were up there did you tell Shelly  
2 Click, who came out and asked you what you were doing, did you  
3 tell her what you were doing?

4 A. Talking about putting up a fence.

5 Q. And where was that fence going to be?

6 A. We never got to finish to talk about where the fence was  
7 going to be.

8 Q. No. I asked you where did you and your fence guy plan to  
9 put that fence?

10 A. That's what we were talking about.

11 Q. My question ---

12 A. We never got a plan.

13 Q. So you just went up -- why did you go up there if you had  
14 no plan?

15 A. To show him the property pins.

16 Q. Okay. Where were you going to put the fence?

17 A. That's what the discussion was for, sir.

18 Q. Okay. Where were you going to put it?

19 A. Shelly came out and made a commotion while I was talking  
20 to the fence man. So then we walked down to the other side of  
21 the property and started looking at the other side to talk  
22 about it. While we were down at the other side of the  
23 property talking about it, I could hear Brent screaming and  
24 hollering from the other side of the building about get JT,  
25 get whoever, I don't know what.

1           We went back over there. Him and the fence guy got in a  
2 confrontation for quite a while. Me and the fence guy talked  
3 about it and said there's -- we're going to end up with having  
4 to get some legal stuff involved before this fence goes up.

5 Q.    So you walked up there to show the fence guy where you  
6 were going to put it, but you don't know where you were going  
7 to put it?

8 A.    We were talking about whether we should run it up the  
9 side of the driveway or whether we should run it up the  
10 property line. I was showing him that if you run it up the  
11 property line, those buildings are in the way. So I don't  
12 know how that would be if he doesn't move his buildings  
13 because he didn't respond to the letters that I'd sent asking  
14 him to move his stuff off the property.

15 Q.    So were you asking him to move his building?

16 A.    Yes.

17 Q.    Okay.

18 A.    His carport, not his building.

19 Q.    And the reason you wanted him to move his carport was so  
20 you could put the fence up?

21 A.    I wanted him to move his carport because it was on my  
22 property.

23 Q.    Okay. And that's where you were going to put the fence,  
24 correct?

25 A.    I could.

1 Q. But that was your plan?

2 A. No, it wasn't my plan.

3 Q. So you had no plan?

4 A. My plan was to discuss where the fence was going to go.

5 I couldn't put the fence up inside his building. So unless he  
6 moved his stuff, I couldn't put a fence there. So it ---

7 Q. Okay. Well, did ---

8 A. --- was a discussion ---

9 Q. --- he move his stuff ---

10 **THE COURT:** Hold on. Let him finish his question [sic]

11 ---

12 **MR. MARTIN:** I'm sorry.

13 **THE COURT:** --- before you answer it -- ask another one.

14 **MR. MARTIN:** Sorry, Judge.

15 A. So this was a discussion about whether we should just put  
16 a fence up now, up the side of the driveway or should I wait  
17 until he moved his stuff out of the way to put up a fence.

18 Q. Okay.

19 A. And the same thing that happens, that always happens  
20 whenever anything that he doesn't like is going on, is he  
21 comes out and makes a scene, which is a big reason I want a  
22 fence put up so I don't have to deal with that kind of stuff  
23 all the time.

24 Q. Now when you bought this property, whose name was the  
25 property put in?

1 A. Thomas SC Properties, LLC.

2 Q. And who is the member of the Thomas SC Property, LLC?

3 A. I am.

4 Q. Is there anybody else?

5 A. No.

6 Q. So is it fair to say that you are Thomas SC Properties,  
7 LLC? It's you, right?

8 A. Sure.

9 Q. Okay. What is All-Tech Tire and Auto, LLC?

10 A. It's my auto repair business.

11 Q. And who is the only partner of that business?

12 A. Me.

13 Q. Okay. So is it fair to say that you're also All-Tech  
14 Tire and Auto?

15 A. Yes, sir.

16 Q. Okay. Thank you very much.

17 **THE COURT:** Redirect?

18 **MR. CAMPBELL:** No, Your Honor.

19 **THE COURT:** All right. You may step down.

20 A. Thank you. Would you like ---

21 **MR. CAMPBELL:** The Plaintiff [sic] calls Paul Mills.

22 **THE COURT:** Well, let him -- let's get rid of one before  
23 we start another one.

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 **THE COURT:** All right. Sorry. Yes, go ahead.

3 **MADAM CLERK:** If you would raise your right hand.

4 **Paul Mills,** being duly  
5 sworn testified as follows;

6 **MADAM CLERK:** All right. State your full name for the  
7 record.

8 **MR. MILLS:** Paul Mills.

9 **MADAM CLERK:** You may have a seat.

10 **Direct Examination by Mr. Campbell:**

11 Q. Good afternoon, Mr. Mills. Please tell the jury where  
12 you live and what you do for a living.

13 A. I live in Travelers Rest. And I'm a civil engineer in  
14 Greenville.

15 Q. How long have you been a civil engineer?

16 A. For 23 years.

17 Q. Where did you go to school?

18 A. UNC Charlotte.

19 Q. What did you study there?

20 A. Civil engineering.

21 Q. Did you obtain any certifications after graduating from  
22 UNC Charlotte?

23 A. Yes. I have my professional engineering license.

24 Q. Where do you have those licenses?

25 A. In South Carolina and North Carolina.

1 Q. Where have you worked since you graduated from college?

2 A. I worked for a couple of construction companies in  
3 Charlotte, two highway contractors. And then worked at a  
4 company in Spartanburg, MB White. And then I worked at Milone  
5 & MacBroom, which is an engineering firm. And I was there for  
6 about 16, 17 years before going to Site Design.

7 Q. How long have you been at Site Design?

8 A. About six years now.

9 Q. What's the nature of your work for Site Design?

10 A. I'm a senior project manager and partner. And so I  
11 handle proposals and managing the employees and also doing  
12 some design still.

13 Q. Over the course of these years of experience have you  
14 done any work regarding excavation or grading?

15 A. Yes.

16 Q. Tell us about that work.

17 A. So when I worked for construction companies I dealt with  
18 our staff that did all of the excavation, and grading, and  
19 pipe installation, and everything else. And as an engineer I  
20 deal with the contractors and working with them and designing  
21 the plans to show that -- show the contractors what to do and  
22 meeting with them on site if there are any concerns or just  
23 following up on making sure they're doing compaction properly  
24 and taking a look at it during -- during construction.

25 Q. Have you ever had to review geotechnical analysis?

1 A. Yes.

2 Q. Sometimes or many times?

3 A. Many times. It is, you know, when -- most projects that  
4 we do have a geotech report. And so we look at it and look at  
5 the information and see if the soils look good, see what the  
6 ground water is, see if there's going to be rock that we need  
7 to bore through or blast, you know, so just a general review  
8 of the materials.

9 Q. Is that part of your day-to-day routine responsibility?

10 A. Yes.

11 Q. Have you ever had to look at slope issues?

12 A. Yes.

13 Q. How many times?

14 A. Many times. I mean, there are a lot of times we have a  
15 slope that we've designed to be a three to one, and the  
16 contractor had -- needs to build it at a two to one due to  
17 something, a field condition that is not reflected on the  
18 plans.

19 We look at that to make sure it's going to be stable and  
20 look at retaining walls. You know, rather than doing a steep  
21 slope, do a retaining wall, instead, whether it was a cast-in-  
22 place or a modular block and looking at just different issues.

23 Q. Okay.

24 **MR. CAMPBELL:** Your Honor, the Defendant would offer Mr.  
25 Mills as an expert in the field of engineering.

1           **THE COURT:** All right. Any objections or voir dire?

2           **MR. MARTIN:** No objections, Your Honor.

3           **THE COURT:** All right. Ladies and gentlemen, so he's  
4 been qualified as an expert in engineering. As I told you  
5 yesterday, you know, as I said, the lay -- a lay witness can't  
6 testify about conclusions or opinions. They can only testify  
7 of what they observed, heard, direct knowledge.

8           The exception to that is when somebody's been qualified  
9 as an expert. And then they can testify about opinions and  
10 conclusions in their field based on their experience,  
11 training, education. And, like all evidence, you're to give  
12 it the weight and value which you feel is appropriate. So you  
13 may proceed.

14           **MR. CAMPBELL:** Thank you, Your Honor.

15           **Direct Examination by Mr. Campbell Continued:**

16           Q. Mr. Mills, were you hired to take a look at the case  
17 we've been talking about here today?

18           A. Yes. Your firm contacted me to look at it.

19           Q. Okay. And did you perform an analysis of any materials?

20           A. Just a visual analysis, going out to the site and looking  
21 at it, and just determining from visual standpoint what we  
22 thought of it.

23           Q. Did you talk to any other engineers?

24           A. Yes.

25           Q. Okay. Did you review any other materials, or surveys, or

1 plot -- plats that were prepared?

2 A. Yes.

3 Q. Did you review any geotechnical analysis that had been  
4 done?

5 A. Yes.

6 Q. Can you tell us what those were?

7 A. We were provided with all the different materials that  
8 your office provided that showed the plats and -- from  
9 different years. And the -- I guess there's one plan that  
10 showed some different things.

11 We also looked at the geotechnical reports. There were  
12 two different things that were provided to us. One was based  
13 on, from what I could tell, just assumptions of their -- the  
14 geotechnical engineer's visual inspection. And then there was  
15 a more detailed geotechnical report actually prepared on  
16 borings that discussed the different properties of materials.

17 Q. Okay. Did you prepare a written report ---

18 A. Yes, we did.

19 Q. --- in this? I'll hand you what's been marked for  
20 identification as Defendants' number 18.

21 A. Yes.

22 Q. Have you seen that document?

23 A. Yes, that is mine.

24 Q. Okay. Is that your written report?

25 A. Yes, it is.

1 Q. Okay. And in this written report did you come to any  
2 conclusions as an expert engineer about the nature of, I think  
3 we've been talking about this a lot, about the nature of the  
4 slope between the two property lines of Mr. Thomas and Mr.  
5 Click?

6 A. Yes. The slope is generally comprised of a hard clay  
7 material and most likely some limestone. And -- from a visual  
8 inspection. And it seems very stable. And the distance that  
9 the slope is from the buildings, it is highly unlikely that it  
10 has caused any damage to the buildings.

11 Q. Okay. Let's zoom in here and talk a little bit more  
12 about the different slopes. I don't have a fancy laser  
13 pointer, but if you look back here on this slope here, near  
14 what's called the back building, did you review the materials  
15 -- the materials in the geotechnical report regarding the  
16 boring areas and do a visual inspection of this area?

17 A. Yes.

18 Q. Did you come to a conclusion to a reasonable degree of  
19 engineering certainty as to whether this slope or any  
20 excavation impacted this back building?

21 A. Yes.

22 Q. What was your opinion?

23 A. It has not impacted that building.

24 Q. Okay. Did you review the slope, the geotechnical  
25 analysis and perform a visual inspection of the driveway area

1 here along the front part of the property line?

2 A. Yes.

3 Q. Did you come to any conclusions as to a reasonable degree  
4 of engineering certainty as to the impact of this slope on the  
5 driveway?

6 A. Yes.

7 Q. What was your opinion?

8 A. It has not impacted the building.

9 Q. Okay. You mentioned earlier a large part of your job  
10 involves looking at different slopes, evaluating the need for  
11 retaining walls. Do you think a retaining wall is the only  
12 necessary way to contain erosion on this site?

13 A. No.

14 Q. Do you think a retaining wall is necessary?

15 A. No.

16 Q. Please answer any questions Plaintiffs' counsel has for  
17 you.

18 **Cross-examination by Mr. Martin:**

19 Q. Mr. Mills, you're being paid to be here today?

20 A. Yes.

21 Q. You were hired by these lawyers?

22 A. Yes.

23 Q. Within a couple of weeks of the trial?

24 A. It was three or four weeks ago, I suppose.

25 Q. You've been there one time?

- 1 A. To the site?
- 2 Q. To the site?
- 3 A. I've been on the site once. I've driven by many times.
- 4 And since then I've driven by many times and have looked --
- 5 and have ---
- 6 Q. So you've driven ---
- 7 A. --- glanced at it ---
- 8 Q. --- by, but you've ---
- 9 A. --- as I go by.
- 10 Q. --- only been there one time?
- 11 A. Yes.
- 12 Q. So when you wrote this report it was based on your one
- 13 time visit, right?
- 14 A. Yes.
- 15 Q. You didn't even go into the back building, did you?
- 16 A. We were told we did not have access to it.
- 17 Q. Who told you that?
- 18 A. One of the other engineers we met with.
- 19 Q. One of the other engineers said ---
- 20 A. Andy Sherard.
- 21 Q. --- you could not go in there?
- 22 A. (Witness shrugged shoulders).
- 23 Q. Did you ask to go in there?
- 24 A. No.
- 25 Q. Wouldn't it be helpful to have gone in there and seen

1 what's happened to that floor?

2 A. We had seen ---

3 Q. To make an opinion?

4 A. We had seen photos of it already.

5 Q. So you don't think you needed to go in the building?

6 A. No.

7 Q. Did you do an inspection of the outside of the building?

8 A. From the front of the building, yes.

9 Q. Did you do -- look at the side of the building?

10 A. Yes.

11 Q. Did you see how the brick -- how the actual wall was

12 separating and not even anymore? Did you see that?

13 A. We witnessed some cracks in the CMU, yes.

14 Q. Okay. And it's your opinion that this digging that

15 happened in August of '18 had no effect on it?

16 A. Correct.

17 Q. What if you were told that it was perfectly flat before

18 August of '18 and that now in less than three years, two

19 years, one and a half years, that wall is now separating like

20 that? Would that change your opinion?

21 A. No.

22 Q. Why not?

23 A. Because there's no evidence of the soil outside of the

24 building having moved. And given the material that is there

25 -- if the building -- if the slope there was the cause of the

1 building, then you should see difference in the grade and  
2 settlement in the roadway.

3 Q. All right. If you were told that in August of '18 the  
4 land that was outside of the back building was basically flush  
5 with the carports and it had dropped 10 to 12 inches in the  
6 year and a half, would that change your opinion?

7 A. Without seeing it, without seeing evidence of that, not  
8 really.

9 Q. Well, what if you were shown photos of that?

10 A. (No response).

11 Q. If you -- if you saw photos showing that in August of '18  
12 or you were told that in August of '18 that the -- in the  
13 turnaround area as you come up to where the awnings are that  
14 it was basically flush and even and in the year and a half it  
15 has dropped about 10 inches, would that affect your opinion?

16 A. If I have photos of it and evidence that it was that way  
17 before the grading and after the grading, then I would  
18 consider that, but ...

19 Q. Would that affect your opinion?

20 A. It may.

21 Q. Okay. Now I understand that you said that the actual  
22 wall of dirt was made out of -- what did you say?

23 A. Appeared to be hard clay and potentially some limestone.

24 Q. Okay. Did you ever go and physically try to break it up  
25 with your fingers?

1 A. Yes.

2 Q. And was it easily broken up in your fingers?

3 A. Define easily. I mean, I could -- I could break it up,  
4 yes, but ---

5 Q. Okay.

6 A. --- there were sections of it that were harder to break  
7 than other sections. So easily is -- is a relative term.

8 Q. So wouldn't you agree with me that even the rocky looking  
9 portion was -- you were able to break it up with your fingers?  
10 Would you agree with that?

11 A. With some work, yes.

12 Q. Okay. Now you said that you reviewed a geotechnical  
13 report by BLE, is that right?

14 A. Yes.

15 Q. Are they a reputable group?

16 A. Yes.

17 Q. Do you know Mr. Mathews?

18 A. No.

19 Q. Do you ever use BLE for your clients in your business ---

20 A. We don't ---

21 Q. --- geotechnical research?

22 A. We do not usually hire the geotechnical engineer.

23 Q. Okay. Have you ever worked with BLE before?

24 A. Yes.

25 Q. Okay. And are they reputable?

1 A. Yes.

2 Q. Dependable?

3 A. Yes.

4 Q. Okay. Do you understand what is meant by a safety  
5 factor?

6 A. Yes.

7 Q. Do you understand that a safety factor of one point five  
8 (1.5) or above is good and anything below creates a problem?

9 A. Yes.

10 Q. Okay. Are you aware that the BLE report showed that the  
11 actual borings that were done in the area near the driveway  
12 was one point one six (1.16)? Were you aware of that?

13 A. Yes.

14 Q. Would you agree with me that one point one six (1.16) is  
15 less than one point five (1.5)?

16 A. Yes.

17 Q. Would you agree with me that that creates a factor of  
18 imminent unsafety?

19 A. Possibly.

20 Q. Based on the borings?

21 A. Possibly.

22 Q. Okay.

23 A. The issue is that if you look at the images in the BLE  
24 report and the distance from where they are showing a  
25 potential failure in slope versus the distance to the

1 building, that slope would have to fail three to four times  
2 before there was ever any danger to the building.

3 Q. Okay. Well, what if the building, since August of 2018  
4 has had cracks on the side on the outside, a drop of ten  
5 inches of the erosion on the -- on the outside, and the floor  
6 itself, instead of being flat, it's become very -- very open  
7 and obvious in creating very large cracks going towards the  
8 digging, would that change your opinion?

9 A. Well, there's a slab outside of the building. And that  
10 slab has not moved that I can tell. So if the dirt outside of  
11 that slab, like the porch part of the building, if the dirt  
12 outside of that has settled by ten inches, then that slab  
13 should have also settled. And so that has not settled and yet  
14 there's cracking inside the building.

15 Q. Okay.

16 A. Therefore, I don't see how the cut there could be the  
17 effect of that.

18 Q. I want to show you what has been marked as exhibit 33 and  
19 ask whether or not you observed this crack in that slab in  
20 your inspection?

21 A. I looked at all the photos that were sent to me. I  
22 don't, you know, recognize an exact photo.

23 Q. Okay. Well, I'm asking when you went there to the site  
24 and you observed the slab and walked around, you did look at  
25 the slab, did you not?

1 A. We did not go onto the slab, but ---

2 Q. Oh, ---

3 A. --- we were five feet from the slab.

4 Q. Okay.

5 A. So if there was -- if there was nothing on top of it at  
6 that time, then we would have seen a crack in the slab. But  
7 if there -- there were parts on most of the slab.

8 Q. Did you see the crack on the slab on the day you were  
9 there?

10 A. Not that I recall. But if they had a vehicle parked on  
11 top of it as most the slab was covered, ---

12 Q. Okay.

13 A. --- I would not have seen it.

14 Q. Now you have no knowledge as to the difference between  
15 the construction of that outer slab and the construction of  
16 the floor in the back building, do you?

17 A. No.

18 Q. So if this is 12 to 16 inches with rebar and then poured  
19 in 2014 compared to the one in the back building that was  
20 poured in the 70s, and it's only four to six inches, that'd be  
21 a significant difference, wouldn't it?

22 A. It could be, yes.

23 Q. So wouldn't you expect there to be a difference in the  
24 effect of the change in the topography from a 16 inch slab  
25 compared to a four to six inch slab?

1 A. If the earth outside of that slab, this outdoor slab, had  
2 settled, this slab would have settled the same amount or a  
3 similar amount. It might have cracked, but it still would  
4 have settled. And ---

5 Q. Okay.

6 A. --- so to build this slab inside the building, cracking  
7 really has nothing to do with the settling of the slab  
8 outside.

9 Q. So you're saying a 16 inch slab will settle the same as a  
10 four inch slab? Is that your testimony?

11 A. It could. It could not. The issue is settlement versus  
12 cracking. A 16 inch slab is not likely to crack as a four  
13 inch slab is going to crack.

14 Q. But would you agree ---

15 A. But ---

16 Q. --- that if this picture is of the outer slab, that is a  
17 crack?

18 A. If that is the outer slab, that is a crack. But, you  
19 know, I also would have to see is that slab actually 16 inches  
20 thick? I know that on the right-hand side of the slab it is  
21 16 -- approximately 16 inches thick.

22 But in construction and engineering we call that a turn-  
23 down slab because frequently you don't put a actual retaining  
24 wall in, you turn the slab down. So you may have a four inch  
25 slab over on the left-hand side of the building, and over here

1 it's four inches until you get to the right-hand side and it  
2 turns down to 16 or 24 inches.

3 Q. But when these lawyers hired you a couple of weeks before  
4 trial -- and what's your hourly rate? Three twenty-five (325)  
5 an hour, is that right?

6 A. I'd have to look at my sheet.

7 Q. I'm looking at it. I have it right here. Are you a  
8 senior principal engineer?

9 A. Yes.

10 Q. Three hundred and twenty-five hours -- three hundred and  
11 twenty-five dollars (\$325.00) an hour, is that right?

12 A. If that's what it says.

13 Q. Okay. So if you were hired a couple of weeks before this  
14 trial and you decided to go there on one day, why didn't you  
15 find out about the slab, whether there was a difference  
16 between the slab on the inside of the building and the slab on  
17 the outside of the building? Why didn't you do that?

18 A. The only way to do that would be to do destructive  
19 testing, which would be boring -- coring into the slab.

20 Q. Well, could you have asked somebody?

21 A. I suppose so, but I was not asked to do that.

22 Q. The only thing you got is what -- from -- these lawyers  
23 gave you, right?

24 A. Yes.

25 Q. And you knew what answer they wanted you to give, don't

1 you?

2 A. No. I'm giving an honest answer of my inspection and my  
3 23 years of engineering and additional years of construction  
4 experience.

5 Q. Okay. But you've agreed with me that anything under one  
6 point five (1.5) is unsafe, correct?

7 A. Yes, but at the same time the distance from that slope to  
8 the building and what the BLE report says is -- would be the  
9 failure. The slope would have to fail three to four times  
10 before that building was in danger.

11 Q. And the BLE report said that it is in imminent danger at  
12 one point one (1.1), correct?

13 A. The slope failure, not the building because, ---

14 Q. Right.

15 A. --- again, it would have to fail three to four times  
16 before that was a problem.

17 Q. And if, indeed, the failure occurred on the driveway,  
18 that would cut off access to the back building, would it not?

19 A. Yes.

20 Q. So would you agree with me that the driveway is in  
21 danger? It is in an unsafe condition as -- as a result of  
22 this testing. Would you agree with that? Not the back  
23 building, but the driveway?

24 A. Right. So ---

25 Q. Would you agree with that?

1 A. --- one of the things that the BLE report talks about is  
2 the condition of the slope, and the surface of the slope, and  
3 rain hitting the slope. So as vegetation continues to grow on  
4 that slope -- part of the slope's covered in grass now. But  
5 the whole BLE report and their factor of safety is relevant to  
6 rain water washing out the slope.

7 Most of the rain water coming down that slope is not  
8 actually going down the earthen slope, it's going down the  
9 driveway. Therefore, yes, on a purely scientific standpoint  
10 of the one point one six (1.16) safety of factor there, that's  
11 one thing, but the reality of failure is different because the  
12 water's not actually running down that slope for the most  
13 part.

14 Q. Well, I don't know if you answered my question. And  
15 maybe I didn't answer [sic] it correctly. And I apologize for  
16 that. But, Mr. Mills, isn't it true that BLE is a certified  
17 and reputable geotechnical group of engineers?

18 A. Yes.

19 Q. And isn't it true, unlike you, they actually did testing  
20 on this hill where the driveway is?

21 A. Yes.

22 Q. And isn't it true that they said that this driveway,  
23 based on our testing, is in imminent failure and is unsafe?

24 Isn't that ---

25 A. Yes.

1 Q. --- their conclusion?

2 A. Yes.

3 Q. Okay. Thank you. I have nothing further.

4 **THE COURT:** Redirect.

5 **MR. CAMPBELL:** Two questions, Your Honor.

6 **Redirect Examination by Mr. Campbell:**

7 Q. Mr. Mills, I'm going to show you Defense exhibit 22. And  
8 this exhibit -- this was a photo that was taken -- the  
9 testimony so far in this case that's been offered is this  
10 photo was taken in 2018, a day or two after the digging began.  
11 And I'll point you -- I'm going to put this up where everybody  
12 can see it, and point your attention to the area right here,  
13 to the right of the building. Is this what you were referring  
14 to as a turn-down area?

15 A. Yes.

16 Q. Okay. Is the ground here level with the slab?

17 A. In the driveway?

18 Q. Yes, sir. This terrain right down ---

19 A. So, no, the driveway slopes from the building down to the  
20 highway. And that's the reason you would usually put in a  
21 turn-down ---

22 **THE BAILIFF:** I've got a juror that can't see.

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

24 **MR. CAMPBELL:** Sorry, I'll get out -- may I borrow --

25 thank you. Not sure if this works, but I'll give it a shot.

1 Q. Okay. So we're talking about this area right here?

2 A. Yeah, or the little area to the left. Right there, yes.  
3 That will be a turn-down slab right there or potentially a  
4 turn-down slab.

5 Q. And is this area right here that runs from the back  
6 building to the front building, behind that car, is that  
7 ground level in this photo?

8 A. No.

9 Q. You notice anything about the cinder blocks in this area?

10 A. They appear to be cracked.

11 **MR. CAMPBELL:** That's all I've got, Your Honor.

12 **THE COURT:** All right. Thank you. You may step down.

13 **MR. CAMPBELL:** I beg the Court's indulgence for a moment.  
14 (Pause)

15 **MR. BROGDON:** Your Honor, the Defense rests at this time.

16 **THE COURT:** All right. Ladies and gentlemen, I'm going  
17 to ask you to go back to -- the Defense has rested. They've  
18 put all the evidence that they felt is appropriate at this  
19 time. So I'm going to ask you to go back to the jury room,  
20 but do not discuss the case. And I'll bring you back out in  
21 just a few minutes with further instructions.

22 (Whereupon the jury exited the courtroom at 2:35 pm)

23 **THE COURT:** All right. Let's take a short break and then  
24 I'll hear anything ...

25 (Whereupon court was in recess at 2:35 pm)

1 (Whereupon court reconvened at 2:51 pm)

2 **THE COURT:** All right. Any motions from the Defendant?

3 **MR. BROGDON:** Yes, Your Honor, very briefly. The Defense  
4 would like to renew all of its previous motions for directed  
5 verdict that we made this morning at the end of the  
6 Plaintiffs' case in chief. Your Honor, those were the  
7 following claims; nuisance per se, negligence, prescriptive  
8 easement, and acquiescence.

9 Your Honor, there's been testimony today -- and starting  
10 at the top with nuisance per se that no reasonable jury could  
11 find that there is a continuing nuisance or any nuisance to  
12 the Plaintiffs' back building. We've had now not one, but two  
13 experts, including the Plaintiffs' own expert saying there's  
14 no damage to that back building. So for that reason, Your  
15 Honor, we believe a directed verdict is appropriate at this  
16 time.

17 **THE COURT:** All right. And I think based on kind of my  
18 analysis before, I'm going to deny your motion.

19 **MR. BROGDON:** Your Honor, moving to the negligence cause  
20 of action, I'm renewing this motion for directed verdict as  
21 well in regard to proximate causation. Again, we now not have  
22 only one, but two experts that have testified including the  
23 Plaintiffs' own expert regarding proximate causation of the  
24 grading and excavation to the damage to any portion of the  
25 Plaintiffs' property.

1           Your Honor, that proximate causation is an essential  
2 element by the preponderance of the evidence. I don't believe  
3 any reasonable jury could find in favor of the Plaintiff as to  
4 that claim. And for that reason, Your Honor, we're going to  
5 renew that motion for a directed verdict.

6           **THE COURT:** All right. And, again, I think my analysis  
7 before covers that and nothing up to this point has changed  
8 that.

9           **MR. BROGDON:** Your Honor, with regard to the prescriptive  
10 easement cause of action the Defendants would renew its motion  
11 for directed verdict as to that cause of action. Your Honor,  
12 there's been testimony now not only from the Plaintiffs but  
13 also from the Defendants regarding use.

14           You've heard from some Defendants' witnesses today  
15 regarding the use of the back turnaround area on the  
16 Defendants' property. You heard from Mr. Watkins, also from  
17 Mr. Porter, who owned the neighboring property, but primarily  
18 Mr. Watkins, and also from Mr. Thomas regarding that use.  
19 Your Honor, that would break the chain in order to have any  
20 tacking that the Plaintiffs attempt to allege. It's been  
21 abundantly clear now that the Plaintiffs didn't own the  
22 property until 2017. They were going to need it for much  
23 longer than that and relied on prior owner's use in order to  
24 succeed under their claim for prescriptive easement.

25           Your Honor, they haven't met that burden. And for this

1 reason the prescriptive easement element cannot pass the  
2 motion for directed verdict.

3 **THE COURT:** I think there was some testimony on the  
4 Plaintiffs' side that kind of gets them over the bar. I  
5 realize that your testimony was contrary to that, but I think  
6 that's what makes it a jury issue. So ...

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

8 And with regards to the final cause of action,  
9 acquiescence, Your Honor, there's now not only been testimony  
10 from the Plaintiffs, but also from the Defendants that there  
11 has been no witnesses who have discussed anything other than  
12 what the boundary lines have been identified in that 1996 plat  
13 we keep referencing.

14 There was no testimony either presented by the Plaintiffs  
15 or by the -- certainly by the Defendants and its witnesses  
16 today showing that there is any mutual agreement or assent to  
17 a different boundary line other than that identified in the  
18 plat. For that reason, Your Honor, we're renewing the motion  
19 for directed verdict, that no reasonable jury could find that  
20 there was any other boundary line other than what has been  
21 identified in the plat of 1996.

22 **THE COURT:** And I think under the Mozingo case and also  
23 there was sufficient information about the use of that  
24 turnaround area for it to be a jury question. And that's kind  
25 of what I was going on.

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

2           **THE COURT:** All right.

3           **MR. BROGDON:** Nothing further from us.

4           **THE COURT:** What -- again, just before -- I assume you  
5 have motions as well, but what defenses are y'all going  
6 forward on?

7           **MR. BROGDON:** Your Honor, if you'd -- beg the Court's  
8 indulgence for ---

9           **THE COURT:** If you need to take a minute on that. I just  
10 ...

11           (Pause)

12           **MR. BROGDON:** Your Honor, Defendants have affirmatively  
13 pled the following defenses we intend to move forward on; the  
14 doctrines of estoppel, consent release, and unclean hands  
15 and/or waiver.

16           Your Honor, we also would identify that the Plaintiffs'  
17 injuries were the result of intervening or superceding causes  
18 or by the acts of omissions for third parties or the  
19 Plaintiffs themselves to which the Defendants had no  
20 responsibility or control. And, therefore, the Defendants  
21 cannot be held liable.

22           Your Honor, I believe there's been a request for  
23 attorneys' fees by the Plaintiffs. There's been no claims  
24 that have been identified by the Plaintiffs that allow for the  
25 recovery of attorneys' fees in any way. And we'll be moving

1 forward with an affirmative defense on that front.

2 Your Honor, we will be also moving forward on the failure  
3 to mitigate damages. It's been abundantly clear there's been  
4 testimony about mitigation of damages as an issue in this  
5 case.

6 Furthermore, Your Honor, the affirmative defense of  
7 contributory or comparative fault, we would also be moving  
8 forward with an affirmative defense as to contributory or  
9 comparative negligence on behalf of the Plaintiff. And,  
10 therefore, the Plaintiffs' recovery should either be barred in  
11 full or reduced by the percentage of fault pursuant to  
12 comparative negligence.

13 Your Honor, the Plaintiffs to the extent have pled any  
14 recovery for pain or emotional distress, pain and suffering,  
15 Your Honor, ---

16 **THE COURT:** I don't think -- well, ---

17 **MR. BROGDON:** --- we're moving for ---

18 **THE COURT:** I don't think ---

19 **MR. BROGDON:** --- as well.

20 **THE COURT:** I don't think ---

21 **MR. BROGDON:** And then, finally, Your Honor, we're moving  
22 on a claim for any punitive damages asserted by the Plaintiff.  
23 We would assert any affirmative defense for punitive damage  
24 being barred in full or in part pursuant to case law held by  
25 the Supreme Court of South Carolina.

1           **THE COURT:** I don't believe there's any claim -- any  
2 personal injury type issues related. So, okay. All right.  
3           Motions from Plaintiff?

4           **MR. MARTIN:** May it please the Court? I would move for a  
5 directed verdict on the affirmative defense number 33, which  
6 says that the Plaintiffs' claims against Defendants are barred  
7 by the doctrines of estoppel, acquiescence, consent, release,  
8 unclean hands, and/or waiver.

9           There's absolutely no evidence presented that a jury  
10 could possibly determine any of those issues. There's no  
11 witness that brought up the issue of estoppel. There's no  
12 witness, other than our witnesses on acquiescence. There's no  
13 issue on consent that Brent agreed that they could do this to  
14 his property. There's no release issue. There's no evidence  
15 of release. There's no evidence of unclean hands. And  
16 there's no evidence of waiver. So we would ask that directed  
17 verdict be granted on that from the Defense.

18           **THE COURT:** Mr. Brogdon.

19           **MR. BROGDON:** Your Honor, to that point, Your Honor,  
20 there's no issues with the acquiescence cause of action, but  
21 also with the doctrines of estoppel, consent, release, or  
22 unclean hands, or waiver. Your Honor, these claims, we would  
23 consent that the affirmative defense does not apply to the  
24 outstanding claims.

25           **THE COURT:** All right. So you're -- you're not going

1 forward on those?

2 **MR. BROGDON:** We'll waive that, Your Honor.

3 **THE COURT:** All right. All of them on 33? I'm making  
4 sure ...

5 **MR. BROGDON:** Your Honor, sorry. I apologize. Not  
6 unclean hands, but just the doctrines of estoppel,  
7 acquiescence, consent, release. And also, I'm sorry, and not  
8 unclean hands or waiver.

9 **THE COURT:** All right. So you still want to pursue  
10 waiver and unclean hands?

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

12 **THE COURT:** All right.

13 **MR. MARTIN:** And my point is there's been absolutely no  
14 evidence in direct or cross that Brent has unclean hands other  
15 than he works on his stuff. That's a joke, Your Honor.

16 But there's -- there's literally no evidence for a jury  
17 to determine that Brent has unclean hands and should not be  
18 allowed to proceed with his case. There's also no evidence  
19 that he's waived anything, he's done anything possible that  
20 there'd be waiver.

21 **THE COURT:** All right.

22 **MR. MARTIN:** Just no evidence.

23 **THE COURT:** What is -- what's your evidence and argument  
24 on unclean hands?

25 **MR. BROGDON:** Yes, Your Honor. I believe there was some

1 testimony about part of the issue with some of these causes of  
2 action being failure to mitigate damages, which I understand  
3 is a separate affirmative ---

4 **THE COURT:** Yeah.

5 **MR. BROGDON:** --- defense. But the unclean hands defense  
6 here would be his inability -- well, the testimony that's been  
7 presented about the equipment and everything that was inside  
8 of this building. Failing to maintain and repair the building  
9 over time, having unclean hands to bring these causes of  
10 action for negligence as well due to his own actions.

11 **THE COURT:** I'm not sure that unclean hands would be --  
12 is a defense to negligence -- more of an equitable.

13 First of all, before -- I'm sorry, I should -- well,  
14 let's get through this and then I'll -- how about waiver?

15 **MR. BROGDON:** Your Honor, with regard to any of the  
16 property claims that are still outstanding, including  
17 prescriptive easement and acquiescence, we would argue, Your  
18 Honor, that waiver would apply. When Mr. Click closed on this  
19 property he should have been aware about all those claims that  
20 could have existed at the time. He waived some of those  
21 claims moving forward because either -- there's been testimony  
22 that all that information was available to him at the time of  
23 the closing.

24 **THE COURT:** Well, I mean, and I guess I'm trying to  
25 figure out how that constitutes a waiver. I don't have a

1 waiver case in front of me, but I'm not really sure that that  
2 would apply. But I want to look at -- look at something on  
3 that. So -- all right. We'll look at -- do you plan on  
4 putting forth any rebuttal?

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

6 **THE COURT:** Okay. The reason -- I was going to say could  
7 we release the jury, but -- all right. Okay. Next.

8 **MR. MARTIN:** Next is number 34, the claims are barred by  
9 accord and satisfaction.

10 **THE COURT:** And I don't believe you were going forward on  
11 that one.

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

13 **THE COURT:** Okay.

14 **MR. MARTIN:** Okay. The next one is 35, injuries were a  
15 result of intervening or superceding cause or the acts or  
16 omissions of third parties over which Defendants have no  
17 responsibility or control of which Defendants may not be  
18 liable. There's been no testimony at all about a third party  
19 or any intervening or superceding causes in this case. They  
20 came in, they did the digging, it's resulted in the fall, it's  
21 resulted in the damage.

22 No one else is being sued unless they're trying to say  
23 that the excavators that he hired, the people that did the  
24 work are third parties that should have done it better. But  
25 he admitted he did it and he was in charge of it. So I don't

1 see any evidence of a third party liability in this case.

2 **THE COURT:** Yeah, who do you -- who are you saying could  
3 be -- or what's the possible intervening negligence?

4 **MR. BROGDON:** Your Honor, the intervening negligence here  
5 -- I believe there's been testimony from the Plaintiffs' own  
6 witnesses about additional third parties coming to the  
7 property, that they'd invited there as well. I understand  
8 that there may be no direct evidence pointing to these third  
9 parties saying that they're causing any damage there, but the  
10 third parties that could have been there could have done work  
11 on the property that could have caused these cracks ---

12 **THE COURT:** Well, I mean, don't you have to have some  
13 kind of evidence of that, though? I mean, -- it's going to be  
14 somebody that said, I mean, okay, somebody else could have  
15 caused it. I mean, that's not a basis for intervening  
16 negligence, is it?

17 **MR. BROGDON:** No, Your Honor. That's correct.

18 **THE COURT:** Okay. I'm going to -- I'm going to grant his  
19 motion on that.

20 **MR. MARTIN:** Okay. The next one, Your Honor, is 38,  
21 Plaintiffs failed to mitigate damages. I don't think there's,  
22 again, any evidence that there's been a mitigation issue in  
23 this case. What's happening is the building is falling, the  
24 floor is cracking, the driveway is unsafe. And we have come  
25 to court asking the Court to fix the problem, and the jury to

1 fix the problem. And there's no issue of mitigation in this  
2 particular case.

3 **MR. BROGDON:** Your Honor, there's been ample testimony by  
4 the Plaintiffs themselves regarding the -- that -- I believe  
5 Mr. Click also testified that he did not repair or fill any of  
6 the cracks. He also testified that he had redirected water  
7 flow down the driveway causing more erosion to his own  
8 property that he's seeking damages for.

9 So for that reason alone, Your Honor, there's been  
10 testimony that's already been presented showing that there's  
11 going to be a mitigation issue. The Plaintiffs have failed to  
12 take sufficient action to mitigate their damages, not only  
13 since they purchased the property, but also since they filed  
14 the lawsuit.

15 **THE COURT:** And wouldn't that be more on your comparative  
16 argument than mitigation?

17 **MR. BROGDON:** No, Your Honor. This is the Plaintiffs'  
18 direct testimony.

19 **THE COURT:** No, I'm just saying, I mean, again, how is  
20 that -- what did they do that didn't mitigate, I guess, is  
21 what I'm saying?

22 **MR. BROGDON:** It's the failure to take any action ---

23 **THE COURT:** Right.

24 **MR. BROGDON:** --- on -- it would go to both, certainly,  
25 Your Honor, but definitely a mitigation issue with them

1 failing to take any action as it pertains to not only cracks,  
2 but the driveway. He also hasn't addressed the alleged  
3 damages with regard to those issues in a mitigation effort,  
4 Your Honor.

5 **MR. MARTIN:** Your Honor, as far as the mitigation is  
6 concerned, his work on the driveway was to mitigate the  
7 damage, to help the actual hill from collapsing. So what he  
8 did was he redirected the water in an attempt to avoid it from  
9 going over as it was going over causing severe erosion and  
10 more and more danger. So the only evidence of mitigation is  
11 that Brent actually did it. There's no evidence that he  
12 failed to do it.

13 **THE COURT:** I mean, don't you have to have some evidence  
14 as to what he did -- that he didn't like, I mean, your expert  
15 saying, well, he should have done this, this and this to help  
16 those damages to be able to get mitigation in there?

17 **MR. BROGDON:** Yes, Your Honor. And I believe that the  
18 jury can consider whether or not the actions that Mr. Click or  
19 anyone on the property took mitigated any of those damages or  
20 made it worse. I think that's a jury question to decide  
21 whether or not he attempted to mitigate it by doing his work  
22 to the driveway or anywhere else or made it worse, in fact.  
23 And it's a ---

24 **MR. MARTIN:** So there's been ---

25 **MR. BROGDON:** --- jury question.

1           **MR. MARTIN:** --- no evidence of anything making it worse,  
2 Your Honor.

3           **THE COURT:** All right.

4           **MR. MARTIN:** There's been no witness that testified that,  
5 oh, what Brent did made it worse.

6           **THE COURT:** All right. I'll look at that one. All  
7 right. Next.

8           **MR. MARTIN:** Next is the contributory negligence and/or  
9 comparative fault. Again, what we have here is negligence  
10 alleged because of their digging. And they've created a --  
11 they took away all of the support on the left side of Brent's  
12 property. And Brent is simply bringing an action saying they  
13 should not be allowed to do that.

14           There's no evidence that he ran the excavators, that he  
15 did the digging, that it was his fault that this problem has  
16 occurred. If they had evidence that there was some  
17 comparative fault, then that would stay in, but there's  
18 literally been no testimony, no evidence of any kind to show  
19 that Brent and Shelly were comparatively negligent in this  
20 situation.

21           **THE COURT:** Yes.

22           **MR. BROGDON:** Your Honor, I believe there's been ample  
23 testimony to that effect. Your Honor, the testimony there is  
24 the negligent and maintained -- that the Clicks were negligent  
25 in maintaining their property, which is what has actually

1 caused the damages to the property, not any action taken by  
2 Mr. Thomas or any of his companies. That's absolutely a jury  
3 question. I think it goes to the weight of the evidence. It  
4 absolutely applies in this case. And there's been ample  
5 testimony to that effect.

6 **MR. MARTIN:** I didn't hear any ample testimony, Your  
7 Honor. I heard no testimony. They had an expert witness. He  
8 didn't say this is because of the hills, the way it existed  
9 back before I was even hired a couple of weeks before the  
10 trial. We didn't hear Mr. Thomas say that. There's been no  
11 evidence whatsoever of it, rather than ample evidence.

12 **THE COURT:** I'm going to think about that one, but I  
13 think probably Porter may have gotten enough in there. Let me  
14 look -- I'm going to look at that and see. All right.

15 **MR. MARTIN:** Okay. The next one is 41, Your Honor, to  
16 the extent the Plaintiffs are asserting claims for punitive  
17 damages. Obviously, that's for the jury to decide.

18 We have the testimony that Mr. Thomas on three occasions  
19 said my goal is to have your building fall in. And I'm going  
20 to dig until your building falls in. That is reckless, wanton  
21 and willful behavior on the part of Mr. Thomas. And that is  
22 something for the jury to decide whether or not punitive  
23 damages are appropriate.

24 **THE COURT:** All right.

25 **MR. BROGDON:** Your Honor, punitive damages are absolutely

1 not appropriate in this case. Although there's been testimony  
2 to that effect, there's also been experts that have testified  
3 that what he did was safe. There is experts who have  
4 identified on both sides that there's been no resulting damage  
5 to the back.

6 There's been no wilful or reckless, wanton conduct that's  
7 been proven thus far, Your Honor, or really bolstered in any  
8 way only other than Mr. Click's own self-serving testimony.  
9 So for that reason I don't believe there's any basis for  
10 punitive damages.

11 **THE COURT:** And I think that that's, I mean, you know,  
12 generally if there's any evidence whatsoever, that's enough  
13 for punitive damages to go to the jury. So I believe that  
14 that's sufficient. So I'm going to let it stand.

15 **MR. MARTIN:** And that also applies to 42, Your Honor.

16 **THE COURT:** Right.

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

18 **THE COURT:** All right. Nothing else from the Plaintiff?

19 **MR. MARTIN:** Nothing else.

20 **THE COURT:** All right. Nothing else from the Defendant?

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

22 **THE COURT:** All right. What do you, I mean, how long do  
23 you expect your ...

24 **MR. MARTIN:** Ten to 15 minutes.

25 **THE COURT:** All right. Are you ready? Do you need a

1 break?

2 **MR. MARTIN:** I'm ready.

3 **THE COURT:** All right. If the jury's ready, have them  
4 come in.

5 (Whereupon the jury entered the courtroom at 3:10 pm)

6 **THE COURT:** All right, ladies and gentlemen, as you will  
7 recall, when I was kind of introducing you to the case I said  
8 the Plaintiff has -- will go first and they'll present all the  
9 evidence they feel like in their case in chief. Then the  
10 Defendants have the right to present all the evidence they  
11 feel appropriate. And then the Plaintiff has the right to put  
12 forth any rebuttal evidence that they feel in response to the  
13 Defendants' case.

14 So at this time, Mr. Martin, I understand you plan on  
15 calling ---

16 **MR. MARTIN:** Yes, ---

17 **THE COURT:** --- an additional witness.

18 **MR. MARTIN:** --- Mr. Brent Click back to the stand.

19 **THE COURT:** All right. Mr. Click, if you'll come forward  
20 and be sworn.

21 **MADAM CLERK:** Raise your right hand.

22 **Robert Brent Click,** being  
23 duly sworn testified as follows;

24 **MADAM CLERK:** State your full name for the record.

25 **MR. CLICK:** Robert Brent Click.

1 Direct Examination by Mr. Martin:

2 Q. Okay. Brent, you were in the courtroom when there was  
3 the testimony of Mr. Thomas, correct?

4 A. Yes, sir.

5 Q. I want to call your attention to the issue of the  
6 blocking cars going up your gravel drive and turnaround.  
7 Would you tell the jury about when you did that and why you  
8 did it?

9 A. I started blocking the driveway when I started renting  
10 the property. I had a lot of ---

11 Q. And when did you start renting the property?

12 A. In 2013, January.

13 Q. Okay. And why did you do that?

14 A. So I had like, you know, my welders and things you  
15 couldn't easily pick up and carry but could be loaded in a  
16 truck. And it was my life savings of tools in a building that  
17 was out of sight, mostly, on 123. So I blocked it so my  
18 equipment would be safe.

19 Q. Okay. And where were you living at the time?

20 A. I was living downtown Greenville.

21 Q. Okay. And was there anyone else who used this gravel  
22 drive and turnaround at that time?

23 A. No, sir.

24 Q. Okay. If someone asked you -- if the All-Tech people  
25 asked you -- if they needed to do something up there would you

1 have moved the stuff and let them in?

2 A. Yes, sir.

3 Q. Okay. Was there any reason not to?

4 A. No, sir.

5 Q. Okay. From the time that you started renting in 2013 to  
6 the time that you bought in 2017 was there anytime ever that  
7 All-Tech used the driveway and turnaround?

8 A. Til when?

9 Q. 2013 to 2017, February 2017 when you bought it?

10 A. No, sir.

11 Q. Okay. How about after you bought it from 2017 to 2020,  
12 was there ever a time that All-Tech ever used that driveway  
13 and turnaround?

14 A. There was one time after I purchased the property where  
15 JT removed my gate and parked three vehicles up in the  
16 turnaround area.

17 Q. Okay. When was this?

18 A. This was late 2017.

19 Q. Okay. So you had purchased it ---

20 A. Or maybe it was after he had purchased it. It was before  
21 the digging, but ---

22 Q. Okay.

23 A. --- by several months.

24 Q. And he put three -- where did he put these cars?

25 A. They were like a dilapidated Nissan SUV, a old -- with

1 the trim falling off, Park Avenue, and then a third vehicle.  
2 And they had taken -- they had been left in the parking lot  
3 for several months down in the All-Tech property. And he  
4 moved them up the hill to create more room for himself, but he  
5 removed my gate to do it.

6 When I came in, I saw the vehicles in the turnaround  
7 area. I said, hey, I use this area. Let's push these back  
8 into the woods 'cause these cars are obviously going to be  
9 here for a while. Those cars were -- had to be -- he'd asked  
10 my permission to open the gate to remove those cars. And the  
11 final car wasn't removed until the excavations began.

12 Q. Okay. But did he move them off of your ---

13 A. He -- we moved ---

14 Q. --- the turnaround?

15 A. --- them off the turnaround area.

16 Q. Okay. Did he ever say, no, that turnaround belongs to  
17 me, I can put my cars there if I want to?

18 A. No, sir.

19 Q. Okay. Now you told us that you put this gate up because  
20 you were worried about stealing. Was there any other reason  
21 that you did it?

22 A. I had a chain up at one point. I had a bar gate up. And  
23 these were up higher up the hill. After I bought the  
24 property, I moved the gate all the way to the bottom so that  
25 way if anyone parked in front of the gate, I'd still be able

1 to get around.

2 I had several All-Tech customers who would park in front  
3 of the gate and leave a vehicle there. And then I couldn't  
4 get to or from my business or -- and so I was trying to  
5 eliminate that. So I put the gate at the bottom. At least it  
6 was on pavement so if the car was left in the way I could drag  
7 it out of the way easier, which we did do several times.

8 Q. Okay. Now why did you ban the use of your front parking  
9 lot by his employees to park there?

10 A. Originally when I purchased the property his employees  
11 would park over there while they were at work. When I  
12 purchased the property I said, hey, I own this, this is my  
13 parking lot, this is my property, you need to park on your  
14 side. I still allowed them to drive to and fro through.

15 And then I stopped them from parking their employee cars  
16 there first -- stopped from the employees using their parking  
17 lot because of the experience we had during our cookout. And  
18 I wanted some distance. And I still allowed delivery vehicles  
19 and tow trucks to go through and customers. I still allow  
20 customers. Customers still to this day park in my parking  
21 lot.

22 Q. When you say customers, what do you mean by customers?

23 A. Customers of All-Tech. They pull in the parking lot,  
24 they'll park their car, they'll drop off their husband or wife  
25 to walk over and pick up a car, they'll sit in my parking lot.

1           My parking lot's the easier parking lot to get in and out  
2 of. And a lot of times when -- and I'm not going to be mean  
3 to them because you never know when -- who they work for, when  
4 I'll interact with them again.

5 Q.    Okay. Did you have any problems with your vehicles that  
6 you had in your own parking lot when the All-Tech employees  
7 were parking there?

8 A.    Yes. And then that's also why I stopped tow trucks and  
9 delivery vehicles because I had a pallet of a lot of sensitive  
10 material I waited on for a long time get delivered. They just  
11 dropped it in the parking lot. It got ran over by a delivery  
12 vehicle for Advance Auto. And they didn't do anything about  
13 it.

14       I had several vehicles -- I had a black Escalade that had  
15 been freshly painted. I only repaired a front rear [sic]  
16 bumper on it, and a tow truck side-swiped it causing a lot  
17 more damage than it was originally there to repair. I paid  
18 for my customer to stay in a rental, and I repaired the side  
19 of their vehicle. And at that point I said no more tow trucks  
20 either.

21 Q.    Okay.

22 A.    And after that the excavation had happened. So I no  
23 longer could park things up the hill. So I filled my parking  
24 lot and the lower parking lot, and now there's not much access  
25 across unless I'm gone in one of my vehicles and there's room.

1 Q. Okay.

2 **MR. MARTIN:** Your Honor, there's one thing that I'd like  
3 to take up with you before ---

4 **THE COURT:** All right.

5 **MR. MARTIN:** --- I finish.

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. All right, Brent, there was a picture shown to the jury.  
10 It was Defendants' exhibit 22. And it basically had to do  
11 with the crack in the building.

12 I want to show you what Plaintiffs' 22 is like and ask  
13 you is that the same crack and can you describe for us,  
14 please, -- in fact, I'm going to use the other exhibit first.  
15 All right.

16 This is the -- tell the jury -- this is Plaintiffs'  
17 exhibit 33. And you heard the testimony of the expert saying  
18 that he saw no evidence of any damage to the outside of your  
19 building, is that right?

20 A. Yes, sir.

21 Q. Okay. Tell the jury what this picture is and what does  
22 it show?

23 A. This is the south side facing wall of the building that  
24 shows ---

25 Q. In fact, let me do this. Let me put it on the Elmo, and

1 you can look on the Elmo, too.

2 A. Yes, sir.

3 Q. Let me get it bigger.

4 A. This is the south side facing of the building in our area  
5 we now call the duck area. It was the area between the  
6 building and the retaining wall Mark Smith had put up so he  
7 could put ---

8 Q. Okay. When ---

9 A. --- the cars there.

10 Q. --- you say south side, is that the side of the building  
11 facing 123?

12 A. Facing 123, yes, sir.

13 Q. Okay. And what does this picture show?

14 A. This is the picture that shows about where the elevation  
15 -- the slope difference from the loss of lateral support has  
16 stopped. And it corresponds with damage we see on the  
17 building. This is where it kind of flattens back out to the  
18 way it used to be. And you see the cracking, and the stepping  
19 and the compressional forces on the building from the movement  
20 of the ground.

21 Q. So if you walked up there in April of 2022, was that  
22 readily ---

23 A. Yes, sir.

24 Q. --- visible?

25 A. Yes, sir.

1 Q. Was there anything hiding it?

2 A. If he had walked around the building, yes, sir.

3 Q. Okay. Now was this building in that condition before the  
4 digging in August of 2018?

5 A. No, sir.

6 Q. Okay. Now I'm going to show you what's been marked as  
7 Defendants' exhibit 22 and ask you if you can tell me what  
8 that shows?

9 A. This is a zoomed in photo of Defendants' number 30.

10 Q. Okay.

11 A. And what we see here is this is the second week of  
12 digging. This is after they had started digging out an area  
13 to make an area for the dump trucks to back in. And what we  
14 see is a lot of dirt in the lines.

15 We had already had an entire week of a bonfire right  
16 outside this building to the left of this photo. We had smoke  
17 stains all inside the building. We had it all under the  
18 carport. If this photo had the carport lights on and you  
19 could see the wall, you would see all of the lines in that  
20 wall, too.

21 We had had rain between the initial burning and the  
22 digging. So what you're seeing is the eave has protected some  
23 of the blocks because the crack that we have in 2022 does not  
24 continue on like the black line does in the photo. In the  
25 photo it looks like a T with an extra Y kind of line coming

1 off of it.

2 And this area has thicker mortar than lower in the wall.

3 So this area's going to collect all that -- all that soot, and  
4 dirt and dust. And we had an immense amount of air pollution  
5 from this excavation and from the burning of all those trees.

6 Q. Okay. In Defendants' 22 is there any evidence that the  
7 actual concrete blocks were uneven?

8 A. No, sir.

9 Q. Okay. And in ---

10 A. It looks very straight ---

11 Q. --- Plaintiffs' ---

12 A. --- even with the zoom ---

13 Q. --- 22, not Defendants', does it have evidence of  
14 unevenness of the blocks?

15 A. Slide it over. Yes. But there's another photo there as  
16 well. I think it's the first one. Slide it over to the left.  
17 Left. You see the step in the wall, it's at least as large as  
18 that crack. And that would have shown up in that zoomed in  
19 photo as well. This crack has gotten larger, too. So ...

20 Q. And what has caused that?

21 A. This is the corner facing the Thomas excavation.

22 Q. Okay.

23 A. And this is the corner that we see all the dirt dropping  
24 away from with the concrete foundation for the carport. And  
25 this is the corner that is -- down this wall is the

1 compression and buckling forces and that wall that we just saw  
2 the other photos of.

3 Q. Okay. Now Mr. Thomas also talked about a lawyer letter  
4 with an offer. Was that before or after the excavation?

5 A. I got an offer to purchase the property after the  
6 excavation was already finished, basically.

7 Q. So he had already dug and took about half of your  
8 turnaround?

9 A. It was the week they were putting asphalt millings down.  
10 The property was unspecified of what he was willing to sell  
11 me. He wanted part of my lower parking lot, which was  
12 unspecified. The only thing specified was the dollar amount.  
13 And it -- nothing was -- if he had specified anything on  
14 purchasing the turnaround area before excavation, I would have  
15 welcomed it.

16 Q. All right. Answer any questions the other lawyer will  
17 have.

18 **THE COURT:** Cross-examination.

19 **Cross-examination by Mr. Campbell:**

20 Q. All right, Mr. Click, you recognize that photo right  
21 there?

22 A. Yes, sir.

23 Q. You said that's on the south side of your building?

24 A. Yes, sir.

25 Q. Facing the retaining wall ---

1 A. Yes, sir.

2 Q. --- for the bottom building? Is it in the middle?

3 A. It's about a third of the way down the wall.

4 Q. That's right where the breeze-way was, right?

5 A. Yes, sir.

6 Q. The one that fell in?

7 A. No, sir, it did not fall in. Mark Smith removed it.

8 Q. Okay.

9 A. He was afraid of trees falling on his building.

10 Q. That's your testimony?

11 A. Yes, sir.

12 Q. In front of all these witnesses under oath that that's  
13 what happened?

14 A. Yes, sir.

15 Q. Okay.

16 A. No one's ever said the breeze-way ---

17 Q. That's fine.

18 A. --- fell in.

19 Q. That's fine.

20 **MR. CAMPBELL:** Nothing further, Your Honor.

21 **THE COURT:** All right. Any redirect?

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

23 **THE COURT:** All right. You may step down.

24 **MR. MARTIN:** That's our rebuttal, Your Honor.

25 **THE COURT:** All right. All right, ladies and gentlemen,

1 that is the extent of all evidence that would be presented to  
2 you for your consideration. It's now 3:28. We kind of have a  
3 rule of thumb that we do not like to put a case to a jury  
4 before -- after 4:00, especially on Wednesdays. So I realize  
5 a lot of people have obligations with their churches on  
6 Wednesday.

7 And let me just kind of tell you a little bit about what  
8 the rest of the case is, and you'll realize why I need to let  
9 y'all go early. One, we've got -- I've got to get with the  
10 attorneys and we've got to go over what the charge is going to  
11 be in kind of the final part of the case.

12 Then at that time we will have closing arguments by the  
13 attorneys. They will both -- it's kind of like the order of  
14 presenting evidence. The Plaintiff will argue, then the  
15 Defense will argue and then the Plaintiff will have a brief  
16 rebuttal.

17 And then after that I will charge you on the law, which  
18 it should be pretty lengthy. So, I mean, it's, you know,  
19 we've still got a good bit left to do before you go to discuss  
20 the case. So that would be, you know, 5:00 or later, easily.  
21 Plus, we've got to -- got to meet with the attorneys.

22 So I'm going to go ahead and let you leave early at this  
23 time and have you come back at 9:30 in the morning. And at  
24 that time we will -- like I said, we'll have argument of the  
25 attorneys, closing arguments. Then I'm going to charge you on

1 the law. And then I'll send you back into your jury room.  
2 And guess what? You can finally start discussing the case.

3 In the meantime, don't discuss the case among yourselves  
4 or anyone. Do not do any type of research, Google research.  
5 Do not pay any attention to any media coverage about this,  
6 including social media. And, finally, if anybody contacts you  
7 other than somebody from the clerk's office, please let the  
8 bailiffs know. All right. Otherwise, I'll see you in the  
9 morning. Have a good evening.

10 (Whereupon the jury exited the courtroom at 3:30 pm)

11 **THE COURT:** All right. Let's take -- oh, any other  
12 motions at this point?

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

14 **THE COURT:** Any additional motions ---

15 **MR. CAMPBELL:** No. We just renew all of our motions.

16 **THE COURT:** Renew all motions. All right. Let's take  
17 about a five minute break and then let's go over the charges  
18 presented by each of you just to get some discussion and input  
19 from y'all. And then, like I said, and then we'll work up a  
20 charge and I'll send it to you. And then we can finalize any  
21 objections or anything in the morning. So take five minutes.  
22 Everybody has everybody's charges? You got theirs? And  
23 they've got yours?

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

25 **MR. CAMPBELL:** Yes, Your Honor.

1 (Whereupon court was in recess at 3:31 pm)

2 (Whereupon court reconvened at 3:44 pm)

3 **THE COURT:** All right. I'm just going to go -- let's  
4 start with the Plaintiffs' charge. The first one they got is  
5 expert witness. That's -- I'll just do my standard one.  
6 That's probably pretty close to that. Credibility of witness,  
7 that's the standard one. Qualification of expert witness,  
8 that will be contained in my regular one.

9 Negligence, any comments on their -- and, again, this is  
10 not saying that you agree this should go to the jury. This is  
11 just -- now that it's going to the jury, do you have any  
12 problems with the charge that they have presented?

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

14 **THE COURT:** You're not being prejudiced by this.

15 **MR. BROGDON:** No, Your Honor. The only thing the Defense  
16 would say is that we generally prefer the Anderson charges ---

17 **THE COURT:** Anderson the person or Anderson the County?

18 **MR. BROGDON:** The person.

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

20 **MR. BROGDON:** I believe that we include some of those  
21 from the standard charges. I think there's also some  
22 negligence ones that are there as well as damages and  
23 recklessness. And we would prefer those, Your Honor, ---

24 **THE COURT:** All right.

25 **MR. BROGDON:** --- as opposed to the one drafted by the

1 Plaintiff.

2 **THE COURT:** Any comment? I mean, do you have yours?  
3 I'll look back at yours. Do you have some negligence charges  
4 as well?

5 **MR. BROGDON:** I believe we did submit some, Your Honor.

6 **THE COURT:** Okay.

7 **MS. O'BRIAN:** Your Honor, we referenced the standard  
8 ones. And we're happy to send the language of those if  
9 needed.

10 **THE COURT:** I mean, I have some -- I have some standard  
11 ones. All right.

12 Actual damages, I mean, that's -- it's actually a little  
13 more succinct than mine. But then, again, this is -- the  
14 actual damages are a little bit different than this type of  
15 case.

16 Punitive damages. Again, any comment on the actual  
17 damages charge?

18 **MR. BROGDON:** No, Your Honor, other than our standard  
19 practice would be the Anderson charges to the extent we  
20 included one of those.

21 **THE COURT:** All right. And punitives?

22 **MR. BROGDON:** Same thing, Your Honor.

23 **THE COURT:** All right. Circumstantial evidence, I have  
24 one on that. Due care, that looks pretty standard. And  
25 here's another one on punitive damages. Any comment on the

1 punitive damages?

2 **MR. BROGDON:** The same -- same comment, Your Honor. Just  
3 the standard included in there. And to the extent any are  
4 duplicatives submitted by the Plaintiffs, we would just  
5 request there's only one.

6 **THE COURT:** All right. Landowner value of property.

7 **MR. BROGDON:** No issue from us, Your Honor.

8 **THE COURT:** Okay. Nuisance.

9 **MR. BROGDON:** Yes, Your Honor. The charge submitted by  
10 the Plaintiff as to nuisance, we would -- we submitted one, I  
11 believe, as well, Your Honor. And for our charge, we would  
12 prefer that charge is used.

13 The reasoning behind that, Your Honor, is that this  
14 charge leaves out what the actual claim is, which is nuisance  
15 per se. It just discusses nuisance. So we would request that  
16 we use the nuisance per se charge considering that's the  
17 proper claim.

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

19 **MR. MARTIN:** First of all, the complaint does not limit  
20 when the evidence shows nuisance. It can be amended at any  
21 time, even before it goes to the jury. The nuisance  
22 definition is clearly from the Strong case, which, I think, is  
23 Judge Sanders, and the LeFurgy case. So we think it's  
24 appropriate. It's a clear, unbiased charge of the law.

25 Their nuisance per se, unlike ours, is a charge on the

1 facts, basically trying to show that South Carolina nuisance  
2 law further elaborates that mere fears of the Plaintiff are  
3 insufficient. So it's trying to emphasize the negativity of  
4 it rather than doing a -- it's just what is the law of  
5 nuisance in South Carolina?

6 **THE COURT:** All right. I'll ---

7 **MR. MARTIN:** So we would object to that as being a  
8 statement, not the charge on the facts.

9 **THE COURT:** I'll come up with something on that one.  
10 Excavating -- excavation is affecting adjoining property.

11 **MR. BROGDON:** Your Honor, we don't believe that this  
12 charge should be submitted at all.

13 **THE COURT:** Yeah, that -- that sounds like more of a  
14 charge on the facts, Mr. Martin.

15 **MR. MARTIN:** Well, the issue for the jury is does a  
16 proprietor on his own premises have a liability if he does  
17 excavating on his property that is negligent or not?

18 **THE COURT:** Or takes ---

19 **MR. MARTIN:** And this is -- this is straight from the  
20 Contos case.

21 **THE COURT:** Well, I mean, that's just because that was a  
22 case about excavating, but I think it needs to be more general  
23 about acts taken by a landowner.

24 **MR. MARTIN:** Well, it's just -- I don't think it's  
25 suggesting to the jury what is -- what their decision should

1 be. It simply just says -- because they might not know that  
2 there is a duty of an adjoining landowner if you're going to  
3 do an excavation, to do it in a way that is not going to  
4 change the conditions of the soil to your neighbor's property.  
5 And that's all that charge is.

6 **THE COURT:** Well, but isn't that what your expert is all  
7 about?

8 **MR. MARTIN:** Yeah. But for the jury to know what they're  
9 supposed to do, this simply says a proprietor excavating on  
10 his own premises is liable for damages done to the adjacent  
11 soil owner if in its natural condition, whether damages  
12 resulted from negligence or not, but when buildings or other  
13 improvements are erected upon the soil, and in its natural  
14 condition is thus altered, no action lies against such  
15 excavator except upon allegations of proven negligence, which  
16 is directly from the Contos case, which is cited -- citing the  
17 Bailey case, which goes back to 1898.

18 **THE COURT:** Well, I'll read that, but I'm -- I'm probably  
19 going to be more general in my charge.

20 **MR. MARTIN:** Okay.

21 **THE COURT:** Acquiescence.

22 **MR. BROGDON:** Yes, Your Honor. Very briefly on that one.  
23 This charge, I believe, -- this is just the Mozingo case that  
24 you've discussed already, Your Honor. I believe this is kind  
25 of a direct quote from that. It gives part of the law, but I

1 think more is needed with regard to what's truly required to  
2 prove an acquiescence including some of the standards that  
3 we've mentioned in the Croft case.

4 And also to the extent any charge -- I know it's a very  
5 bizarre and peculiar claim and not very -- well, not very  
6 often pled. If there is any in the Anderson charge book, that  
7 would be our preference as well.

8 **THE COURT:** All right. Prescriptive easement.

9 **MR. BROGDON:** Yes, Your Honor. This charge the Plaintiff  
10 has -- leaves out that in order to tack on to prior owners,  
11 those prior owners also have -- has satisfied all of the  
12 elements of a prescriptive easement.

13 Your Honor, South Carolina law is well established that  
14 the evidence of permissive use defeats the establishment of  
15 prescriptive easement because use that is permissive cannot  
16 also be adverse under -- or under a claim of right. So we  
17 would recommend that that portion is added into this  
18 prescriptive easement charge to the extent this charge is  
19 going to be used. But we'd also prefer the charge that we've  
20 submitted is used, Your Honor.

21 **THE COURT:** All right. Then the common law acquisition  
22 of property. I think that -- in light of my ruling, that  
23 would not be ---

24 **MR. BROGDON:** That's correct, Your Honor.

25 **THE COURT:** --- appropriate. Then recklessness.

1           **MR. BROGDON:** Your Honor, the same with the Anderson  
2 charges for us.

3           **THE COURT:** What did y'all do? Get a good deal on the  
4 book?

5           **MR. BROGDON:** Yeah.

6           **MR. MARTIN:** He's never been accused of being verbose,  
7 has he?

8           **THE COURT:** All right. I'll come up with something on  
9 recklessness. All right. So that's all the charges on  
10 Plaintiffs' side.

11           Defense, ...

12           (Pause)

13           **MR. MARTIN:** We've already talked about nuisance per se,  
14 Your Honor. Again, the acquiescence charge, again, is very  
15 negative rather than being positive. Acquiescence is a very  
16 particular claim which requires a mutual intent to agree to a  
17 particular line absent recognition of both parties. It cannot  
18 be established.

19           So all it's doing is in the charge in a negative way  
20 saying, hey, you can't find this. And that's not the purpose  
21 of the charge. I think our charge is much more evenhanded and  
22 fair.

23           **THE COURT:** Okay.

24           **MR. MARTIN:** Prescriptive easement, the same thing. That  
25 says, however, the use by the previous owners must also

1 satisfy all the elements of the prescriptive easement. And  
2 then it says -- it actually cites a case.

3 It says, holding that the claimant carries the burden of  
4 proving that the use of the disputed area was adverse for a  
5 period of 20 years in order to establish -- well, you're  
6 charging the law, but now he's wanting to put case holdings in  
7 a charge. And I don't think that's appropriate.

8 **THE COURT:** Mr. Brogdon.

9 **MR. MARTIN:** And then the final one where he says it's  
10 well established. Again, that's a comment on the law rather  
11 than what the law is.

12 **MR. BROGDON:** Your Honor, we can take the case cite out,  
13 but that is the law ---

14 **THE COURT:** Well, I don't -- yeah, definitely don't read  
15 the cites. So -- they're not going to be going back and doing  
16 any research, like, here's a ---

17 **MR. MARTIN:** Those are my objections ---

18 **THE COURT:** --- cite if you want to pull it up. What?

19 **MR. MARTIN:** Those are my objections.

20 **THE COURT:** All right. Any other comments?

21 **MR. BROGDON:** Your Honor, not other than this is the law  
22 of the State. I believe you also ruled earlier that it is a  
23 case that would potentially be applicable to our situation,  
24 but you distinguished it by the Mazingo case.

25 And so for that reason, Your Honor, this case absolutely

1 applies, and to holding. It's good law, including the absent  
2 recognition by both parties that particular line constitutes  
3 the true property line, a new boundary line cannot be  
4 established. And we think that needs to be included in that  
5 charge.

6 **THE COURT:** All right. And as far as the verdict form,  
7 I'll come up with some verdict form, let y'all look at that.  
8 And we can talk about that in the morning. So ...

9 **MR. MARTIN:** Okay.

10 **THE COURT:** All right. Anything else then before we  
11 break?

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

13 **THE COURT:** Anything from the Defense?

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

15 **THE COURT:** All right. We will see y'all in the morning.  
16 Be here -- we've got the jury coming back at 9:30. Can y'all  
17 be here -- be ready to go at 9:00 because I don't want to let  
18 that jury wait too long.

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

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

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

22 (Whereupon court was in recess at 3:56 pm)

23 **Thursday, May 26, 2022:**

24 (Whereupon court reconvened at 9:32 am)

25 (Whereupon Court's exhibit 6 was marked)

1           **THE COURT:** All right. Back on the record. We have in  
2 chambers reviewed the jury charge. And other than -- I had  
3 sent it to both sides late last night.

4           And the only additions which I made were to the  
5 prescriptive easement portion. I defined open and notorious,  
6 and continuous and uninterrupted and added the provision  
7 requested by the Plaintiff that says if the Plaintiff shows  
8 the use was open, notorious, continuous and uninterrupted, the  
9 burden shifts to the title owner to rebut a presumption that  
10 was -- that the use was adverse. I think the only -- so other  
11 than that, is there any issue with the charge from the  
12 Plaintiff?

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

14           **THE COURT:** And, Defendant, I have -- also, just for the  
15 record, I had presented an addendum to the charge with ones  
16 that had been requested by the Defendant with unclean hands,  
17 waiver and comparative negligence. As I discussed in  
18 chambers, I just -- and I'll be glad to hear from you, I just  
19 didn't find that there was any evidence for any of these  
20 defenses and that presenting it to the jury would just allow  
21 for speculation from their part, but I'll be glad to hear from  
22 you. And I have marked as Court's exhibit 6 my addendum,  
23 which has the proposed charge of unclean hands, waiver and  
24 comparative negligence, which, I guess, you want to adopt in  
25 the record.

1           **MR. BROGDON:** Yes, Your Honor. Very briefly, we have no  
2 issues with the unclean hands or waiver of defense. But as to  
3 the comparative negligence, as discussed in chambers, we  
4 believe there has been testimony to that effect and that it  
5 would apply in this case. But, nonetheless, we wanted to  
6 state for the record that it should be a charge going to the  
7 jury.

8           Otherwise, Your Honor, there are no issues with any of  
9 the other proposed charges or the verdict form. The  
10 Defendants would just state at this time that we renew all of  
11 our motions previously made and all of our objections  
12 previously made during this trial.

13           **THE COURT:** All right.

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

15           **THE COURT:** And so noted. And the verdict form, do y'all  
16 have copies of that, by the way?

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

18           **THE COURT:** All right. I've got extra copies if anybody  
19 wants a verdict form, but y'all've got copies. So -- all  
20 right. Anything before we bring the jury in ---

21           **MRS. MARTIN:** We need the Elmo ---

22           **MR. MARTIN:** The Elmo turned on, and I need a little  
23 break.

24           **THE COURT:** Okay.

25           **MR. MARTIN:** At this time, may I leave?

1           **THE COURT:** Yes, you may.

2           **MR. MARTIN:** Thank you.

3           (Whereupon court was in recess at 9:37 am)

4           (Whereupon court reconvened at 9:41 am)

5           **THE COURT:** All right. The Plaintiff ready?

6           **MR. MARTIN:** Yes, Your Honor. Thank you.

7           **THE COURT:** Defense ready?

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

9           **MR. CAMPBELL:** Yes, Your Honor.

10          **THE COURT:** All right. Well, if the jury's ready, I'm  
11 ready.

12          (Whereupon the jury entered the courtroom at 9:42 am)

13          **THE COURT:** All right, ladies and gentlemen, we're kind  
14 of at the final innings of the -- of the case. What we have  
15 left here is the closing arguments by the attorneys.

16          I told you yesterday the Plaintiff will present their  
17 closing statement, then the Defendant will have a closing  
18 statement, and then the Plaintiff will be allowed a rebuttal.  
19 And at that point, then I will charge you on the law. And  
20 then you can go back in your room at that point and discuss  
21 the case and deliberate. So at this time I'd ask that you  
22 give your attention to the attorneys. Mr. Martin.

23          **MR. MARTIN:** May it please the Court?

24          Thank you so much from the bottom of my heart for you  
25 being here today. I want you to know that in my opinion your

1 service this week, Monday, Tuesday, Wednesday and now  
2 Thursday, is even more important as an American citizen than  
3 voting. Because if you think about it, look what happens in  
4 China to people in the streets. Look what happens in Russia.  
5 Look what happens in the Ukraine. It's terrible. But what  
6 happens in Pickens County is you.

7 And I really honestly thank all of you for the time  
8 because you're not going to get paid much for being here.  
9 You'll get paid a little bit, but it's not -- you've taken a  
10 whole -- almost a week of your life out to solve this case.  
11 It's so important. And I really honestly want to thank you  
12 for that. So that's the first thing I wanted to say.

13 The second thing I want to say is is that this case is  
14 about two specific issues. One issue is use of the land, and  
15 the other issue is the excavation or the digging. There are  
16 two separate issues, and I want you to think about them  
17 separately.

18 Now the first issue is the use of the land. Now what --  
19 really what we have in this case is a situation where what the  
20 reality is doesn't match the theory. What the reality is  
21 doesn't match the theory. So what do I mean by that?

22 What I mean by that is is that the reality of this case  
23 is that this land, this driveway and turnaround that was used  
24 all these years tells us several things. The first thing it  
25 tells us is that if you just look at it by topography -- and

1 that's just a big word to mean how nature made it. What is --  
2 how is this designed?

3 And if you see, it's got a big long hill. And the  
4 driveway and the turnaround is the second thing that's been  
5 dug in there that shows that it only serves what we call the  
6 Click property.

7 Now how far back does this topography and use go? Well,  
8 we've had evidence from the expert witness, David Hall, that  
9 they took these topo maps, and there was a 1978 map that  
10 showed that that upper building was already there in 1978. We  
11 had the testimony of Mr. Porter, one of the Thomas witnesses,  
12 who said that the Ramey Cabinet Shop had been there since the  
13 60s.

14 So what you see here is the reality is that this driveway  
15 and turnaround were always used at least in the 60s, or the  
16 70s, and the 80s, and the 90s, the 2000s, the 2010 constantly  
17 by the folks that owned the Click property and the people who  
18 owned the Thomas property acquiesced or agreed.

19 So the law says that if you have a difference in reality  
20 and a difference in theory you can solve them through the  
21 issue of acquiescence. Now the theory is that when you get a  
22 deed and you put the deed in the deed register book, it'll  
23 show the metes and bounds.

24 And that deed, we had an actual testimony that in 1996  
25 Ms. Betty Ramey, who was of the Ramey Cabinet Shop, -- her

1 husband died in '94. So in '96 she planned to sell it to Mr.  
2 Dobson.

3 And what's very -- so she had this deed that was actually  
4 drawn on August 28, 1996. And what's very unusual about the  
5 deed, while it shows the metes and bounds between the Merck  
6 property at the time, which, of course, is the Thomas property  
7 now, and the Click property, which at that time was the Ramey  
8 property, it shows the line clearly.

9 But do you see what else is shown on this plat? You will  
10 notice in the dotted lines you've got the driveway and the  
11 turnaround. Now you normally don't see that on a plat.  
12 Normally all you see is just the metes and bounds. But  
13 because since the 60s, and the 70s, and the 80s and the 90s  
14 everyone knew that the driveway and turnaround served the back  
15 building, the surveyor put it on the plat.

16 And if you remember Mr. Dobson's testimony, he said when  
17 I decided to buy it, I bought it in '96. And I knew that the  
18 deed showed that the actual line was here, but that didn't  
19 matter because it had already been established the reality was  
20 the driveway and the turnaround were mine. And that's how he  
21 used it for his business, which was a cabinet business.

22 Now the other testimony was -- is that after Mr. Dobson  
23 sold it, he sold it to Mr. Smith, Mark Smith. Remember he  
24 came in and testified. And Mark Smith made it clear that he  
25 was buying the driveway and turnaround and the property and

1 that he knew that there was a difference between the actual  
2 theory and the actual reality. But it didn't bother him.

3 And he even said that I would not have bought it because  
4 I couldn't do my car repair business in this back building if  
5 I didn't have access. So it was not a problem to him.

6 So in 2013 he rented it to Brent and Shelly Click. And  
7 if you know that Brent and Shelly Click are now a Hyper  
8 Formance, LLC, and that's who the case is brought in because  
9 that's who actually owns the land. And they, themselves, from  
10 2013 for four years used the driveway and turnaround with no  
11 objections from anybody.

12 You heard the testimony of Mr. Dobson. No objections  
13 from anybody. You heard the testimony of Mr. Smith. No  
14 objections from anybody. And you heard the testimony of Brent  
15 and Shelly. No objections from anybody.

16 You also heard that who was responsible for maintaining  
17 the gravel driveway and turnaround? Well, it was first the  
18 Rameys, then it was the Dobsons, then it was the Smiths and  
19 then it was the Clicks. And you have no testimony in the  
20 record to show that the driveway and turnaround were  
21 maintained by anyone in the property of the Thomas property.

22 If you remember the title went from Mr. Merck to Mr.  
23 Porter for a short time. I think it was about six or eight  
24 months. And then to Mr. Watkins. But then Mr. Grissenger was  
25 the one who actually rented the business, All-Tech, and ran it

1 since 2005. And there was absolutely no evidence that they  
2 took care of this area.

3 So in order to find acquiescence, and the Judge will  
4 charge you this, the first thing you have to find -- and this  
5 is how the law is designed to solve the problem between  
6 reality and theory. If adjoining landowners occupy their  
7 respective premises up to a certain line, which they mutually  
8 recognize, and acquiesced for a long period of time, they are  
9 precluded from claiming the boundary line thus recognized and  
10 acquiesced in is not the true line. So that is the law you  
11 will be read.

12 And now you will have to decide by the preponderance of  
13 the evidence of who to believe. And what does the  
14 preponderance of the evidence mean? That means not beyond a  
15 reasonable doubt, it means you have to take the scales, and if  
16 they weigh ever so slightly in favor of the Plaintiff, you  
17 must find in his favor in the preponderance of the evidence.  
18 And the Judge will charge you that.

19 So when you have a situation where reality is one thing  
20 and theory is another, the law gives you a way to solve it.  
21 And that's what you're here today to do. So you can find has  
22 Brent and Shelly and Hyper Formance met their burden of  
23 proving by the preponderance of the evidence, more likely than  
24 not, that they had the right to use it for a long period of  
25 time?

1           Now a long period of time means just that. It just has  
2 to be long. It doesn't have to be more than five years. It  
3 doesn't have to be more than 10 years. It doesn't have to be  
4 more than 20 years. It just has to be a long period of time.  
5 And, of course, the testimony which we think is undisputed is  
6 is that the gravel driveway and the turnaround were used since  
7 the 60s, 70s, 80s, 90s, 2000 -- and there was nothing ever  
8 done to do anything to stop it.

9           Now the second thing is is if you believe that Brent and  
10 Shelly have proven beyond the preponderance of the evidence  
11 that they actually used this and it was recognized, if they  
12 show that their use was open, notorious, continuous and  
13 uninterrupted, then the burden shifts on the issue of whether  
14 it was adverse use to the Thomas people.

15           So what does that mean about the burden shifting? Well,  
16 Brent and Shelly have the duty and the burden to prove that it  
17 was open, notorious, and continuous and uninterrupted. And we  
18 think the evidence shows by the preponderance of the evidence  
19 that it was open. Everybody knew they were using the driveway  
20 and turnaround all the way back to the Rameys. The Rameys  
21 were using it. The Dobsons were using it. The Smiths were  
22 using it. And the Clicks were using it. Okay.

23           Notorious means the other people who owned the land knew  
24 about it. That's all that notorious means. They knew about  
25 it.

1           You heard the testimony that was not contradicted by Mr.  
2           Watkins that he went up there in January of 2015 and looked  
3           around and he saw that the pour had been made for the awning.  
4           Remember that? January 2015. He didn't say a word. He  
5           didn't say, that's on my property. Get it out of here. You  
6           need to move this. And he has a duty to do that. Silence is  
7           not a defense.

8           So there has been absolutely nothing done to show that  
9           acquiescence wasn't agreed to by everybody. By the folks that  
10          owned the Click property and the folks that owned the Thomas  
11          property. And by the preponderance of the evidence we think  
12          that that's what they show.

13          So if a party stands by and sees another dealing with  
14          their property in a manner which is inconsistent with their  
15          rights, and makes no objection, he cannot afterwards have  
16          relief. His silence permits or encourages others to part with  
17          their money or property, and he cannot complain that he --  
18          that his interests are affected. His silence is acquiescence.  
19          And it keeps him from arguing about it.

20          Now, Brent and Shelly Click rented this property from  
21          January of 2013 all the way up to February 2017. They didn't  
22          know about this issue with the Ramey plat until Brent actually  
23          went to the closing and he saw for the first time that the  
24          actual line, the theory, was not the same thing as reality.  
25          So he raised his hand and he said, what about this?

1           Mark Smith said, absolutely clear your right to use it.  
2           Not a problem. The lawyer agreed. There's been no evidence  
3           at all to dispute any of that. So we think that the law's  
4           first solution to the difference between reality and theory is  
5           this idea of acquiescence.

6           And if you agree that the preponderance of the evidence  
7           has been met, you will be asked to find the jury verdict in  
8           favor of Brent and Shelly and Hyper Formance that, indeed,  
9           they've met their burden of proof, preponderance of the  
10          evidence, that acquiescence gives this -- them the right to  
11          use this land and to have this land.

12          Now the second issue is if you decide -- the law has a  
13          second theory to solve this problem between reality and  
14          theory. And that's called prescriptive easement. And that's  
15          a little harder to prove because the burden of proof on a  
16          prescriptive easement is clear and convincing evidence.

17          And what's the difference between acquiescence and a  
18          prescriptive easement? Well, acquiescence is you have a right  
19          to own it. Prescriptive easement is you have a right use it.  
20          That's what an easement is, right to use it.

21          So if you decide that acquiescence is insufficient, you  
22          have a right to decide whether or not you think a prescriptive  
23          easement has been proved. So the second way the law has to  
24          solve this problem between reality and theory is a  
25          prescriptive easement.

1           And the first thing you need to find is that there was a  
2 continuous use and enjoyment for 20 years, okay? So Brent and  
3 Shelly have been using it since 2020 when this lawsuit was  
4 filed. They're continuing to use it. You go back to 2017,  
5 they bought it. They used it from 2013 to 2017 continuously.

6           If you go back from 2013 to 2005, that's when Mark Smith  
7 bought it. And you heard his testimony that he was using it  
8 openly. And then if you go back from 2005 to 1996 you get to  
9 Bradley Dobson, and he was using it also.

10           So you've got 22 years there, from '96 to 2000 -- it's  
11 actually 24 years. So you've got way over 20 years. And if  
12 you go to the Rameys, they go back either to the 70s or 60s as  
13 Mr. Porter said.

14           So there's plenty of evidence that the 20 year time has  
15 been used. And we would ask you to find it as clear and  
16 convincing because there's been absolutely no evidence to say  
17 they haven't used it for that period of time. There's been  
18 none.

19           Now Mr. Dobson testified that he purchased it, like I  
20 said, in '96 and started using it. He said he kept it up  
21 himself. When Brent and Shelly bought, I've already told you  
22 about that.

23           Now the second thing you must decide to find a  
24 prescriptive easement is that -- the identity of the thing  
25 enjoyed. And that's just fancy legal word is did everybody

1 know what they were doing and using? That's all it means.  
2 Was the identity of the thing enjoyed in dispute? Absolutely  
3 not. Everyone from the start knew that the driveway and  
4 turnaround were what were at issue.

5 And if you look at the Ramey plat you can see that almost  
6 all the driveway itself is on the Click property and only a  
7 small portion of the driveway is actually on the Thomas  
8 property, but a significant part of the turnaround, at least  
9 from here to here, is on the Thomas property. So there was no  
10 question as to the identity of what was being used.

11 Driveway and turnaround were easily seen. There was  
12 gravel put there. Everybody knew where it was. In fact,  
13 there was some evidence to show that when Uncle Greg  
14 Grissenger had it, running All-Tech, he had put some wood in  
15 the middle of the turnaround. He was asked politely to move  
16 it, and he did.

17 And then there was some other testimony that even Mr.  
18 Thomas put three junk cars up there. And he was asked to move  
19 them. And he wasn't as pleasant, but he did move them. So  
20 there is total evidence to show that it was open and obvious  
21 and exactly what everybody knew what it was. Okay.

22 So the third thing is you can combine the use by multiple  
23 owners. To get to the 20 years you don't have to just be the  
24 guy to do it for 20 years, and Mr. Smith has to have it for 20  
25 years, Mr. Dobson has to have it for 20 years. It can be

1 tacked on. And the Judge will charge you that.

2 And as you can see, as you start with the Rameys and you  
3 add on the Dobsons, and you add on the Smiths, and you add on  
4 the Clicks, you get way over 20 years. So the tacking is  
5 allowed. Okay.

6 The law says that the use must be open, notorious,  
7 continuous and uninterrupted. If you think the evidence shows  
8 that, then the burden shifts to the title owner, to the  
9 Thomases, to show that the presumption of adverse use does not  
10 exist. And I've already gone through that with our  
11 acquiescence.

12 If you remember, it's basically the same rule. Is there  
13 anything here that clear and convincing evidence doesn't show  
14 that it was open, obvious, notorious, continuous and  
15 uninterrupted?

16 So in this case the evidence shows that the Rameys, the  
17 Dobsons, the Smiths, the Clicks and Click Properties, LLC made  
18 use of the turnaround and driveway areas. It was open,  
19 notorious, continuous, uninterrupted.

20 And you have heard the testimony of Mr. Smith, who also  
21 had personal knowledge of the long years, the use by the  
22 Rameys, in their use of the driveway and turnaround. So if  
23 you find this type of use occurred, then the burden of proof  
24 shifts -- shifts to the Thomas people to show that it was not  
25 done adversely.

1           Now if you've -- you've heard the testimony of both -- of  
2 all the witnesses, Dobson, Smith and Click, that their use was  
3 not based on permission. Permission's very important.

4           You didn't hear any evidence from Mr. Porter, Mr. Thomas  
5 or Mr. Watkins that they gave permission to anybody. There  
6 was never one word said in the testimony of those three  
7 witnesses that establishes permission.

8           You did hear that Mr. Dobson, Mr. Smith and Mr. Click  
9 said we've never asked for permission because we had a right  
10 to use it. That is critically important, okay? With respect  
11 to permission, both Dobson and Smith testified that they never  
12 sought it or received it. Okay? They said it was their  
13 property for them to use.

14           And if you remember, Mr. Dobson, who bought it in '96,  
15 knew about the problem between reality and theory 'cause he  
16 saw this plat, that Mrs. Ramey had it done in August of '96.  
17 And he was fully aware of it, but it didn't bother him because  
18 he knew he had the absolute right to use, okay?

19           And if you go back when Mr. Dobson bought it in '96, if  
20 you think about it, go back '86, that's 10 years, '76, that's  
21 20 years, that's when the Rameys were using it. And it was  
22 the cabinet shop that everyone in Greenville would go to. And  
23 the only access was the driveway and turnaround. So we think  
24 that the evidence is clear that you have that there.

25           And you didn't hear any testimony from Mr. Porter, or Mr.

1     Watkins or Mr. Thomas that they maintained the driveway or  
2     turnaround. That was all done by the three predecessors in  
3     title and by Brent, himself.

4             So the presumption of this prescriptive easement is not  
5     rebutted merely by the use of the property by others saying  
6     that they just shared their property. I think that was the  
7     testimony. We just shared our property. Everyone just did.

8             You have an absolute duty to say, no, you can't build  
9     your awning and pour your concrete on my property. And Mr.  
10    Watkins never, never raised his hands and said that was  
11    improper.

12            So for those reasons we think that we have the  
13    opportunity for you as the jury to solve the issue between the  
14    reality of what's been going on since the 60s and the theory  
15    of what is on the line. And if you decide that acquiescence  
16    exists, and if you decide a prescriptive easement exists, the  
17    problem is solved.

18            Now what happens if you don't? Mr. Thomas admitted on  
19    February 3rd, 2020 he went up with his fence man, what he's  
20    going to do. He said, well, I wasn't sure where I was going  
21    to put my fence, but why in the world was he right in front of  
22    Brent and Shelly's building, back building, if he wasn't there  
23    to measure putting a fence?

24            And what would happen if he put a fence up there? They  
25    would have no business. They couldn't use the back building.

1 They couldn't do any of their painting. They couldn't run  
2 their business.

3 And he also told Brent on that occasion, which he had  
4 repeated before he even started digging, my plan is to dig  
5 until your building falls. So the issue is do you find  
6 sufficient evidence, a preponderance of the evidence from the  
7 acquiescence and a clear and convincing evidence on the  
8 prescriptive easement to solve the problem between reality and  
9 theory?

10 Now the second part of the case has to do with the  
11 excavation. The excavation is just a fancy word for digging.  
12 Did Mr. Thomas have -- and did he dig this in a proper way?  
13 The law has two theories that apply to the excavation. One is  
14 called nuisance per se. The second is called negligence. I'm  
15 going to talk first about nuisance per se.

16 Now what is nuisance per se? That's a legal term. And  
17 the Judge will instruct you on the law about that. You will  
18 hear that a nuisance per se has to be dangerous at all times,  
19 in all circumstances to life, health or property. So that  
20 means that if it doesn't put Brent and Shelly's life in  
21 danger, and if it doesn't affect their health, but it affects  
22 their property, that will be a nuisance per se.

23 And that's what this case is. This case is a case where  
24 the property has been damaged. And it has created a very  
25 dangerous situation with the property.

1           If you remember David Hall was a site engineer, over 30  
2           or 40 years experience. He testified clearly and  
3           unequivocally that he made five visits to the site, that he  
4           hired a geotechnical engineer who did these boring tests, a  
5           geotechnical company that even Mr. Mills, the expert for the  
6           Defendants, said was reputable and reliable.

7           And what did those tests show? It showed that, number  
8           one, -- I've got to find it. If you remember his testimony,  
9           he actually did actually draw on the Ramey plat. And can  
10          everybody see it? I don't mean to be in your way.

11          But you can see the digging is these lines right here.  
12          And you can see the digging started actually on the Click  
13          property. And then it crossed over into the Thomas property  
14          here and then turned the corner.

15          And his testimony was that the digging shocked him. When  
16          he first showed up and saw the hill that Mr. Thomas had  
17          excavated, he's never seen the one to one or 90 degree hill  
18          before.

19          And he testified that in order to be safe that the slope  
20          of the hill should be three to one. This was not three to  
21          one. It was not two to one. It was one to one. And he --  
22          that really worried him. And he thought that that would be a  
23          huge problem.

24          He then did his examination for five different visits and  
25          he saw on the inside of the building how the floor was just

1     cracking. And we showed you all those pictures.

2             He then went and saw how the water was causing all the  
3     topsoil to just fall off. And then when he hired the expert  
4     witness, the expert witness did the boring tests and said that  
5     a factor of safety has to be one point five (1.5). And if you  
6     remember the testimony of Mr. Mills, the expert for the  
7     Defendant, he said, yes, in order to have a factor of safety,  
8     in order for me to do my work, it has to be a one point five  
9     (1.5).

10            And then when the borings were done the factor of safety  
11    was way under one point five (1.5). It was one point one six  
12    (1.16), which created imminent failure. And what that meant  
13    was -- and there were two places that the diggings were done.  
14    One was sort of down here and one was up here in the  
15    turnaround. And the one up here in the turnaround had not yet  
16    reached imminent failure, but the one right here did.

17            And you heard that Mr. Hall said that imminent failure  
18    means it is totally unsafe and that that driveway's going to  
19    collapse and fall in. And it totally supports Brent's  
20    decision not to take the extra heavy stuff up the hill anymore  
21    that he used to work on, big trucks, limousines, Clemson row  
22    boats.

23            So I also mentioned to you how this actual slope was  
24    about one on one. And if you remember when Mr. Mills, the  
25    expert witness for the Defendant, was testifying, when he was

1 asked about, well, have you had any experience with slopes  
2 before? And he said, yes. And I said, have you had any  
3 experience with retaining walls? And he said, yes.

4 And then he said, well, normally -- he said, we want it  
5 to be three to one, but sometimes the client wants it two to  
6 one, so we have to work with that. Do you remember that?

7 And, again, if my memory is not the same as yours, you go  
8 with your memory, okay? I've been living with this case since  
9 February of 2020, so I know it backwards and forwards. If I  
10 didn't, my mama would spank me. So if I say something that's  
11 inaccurate, I want you to only decide this case by what came  
12 off of that stand. But that's what I heard, that's what I  
13 wrote down.

14 And if Mr. Mills is talking two to one, how in the world  
15 is it safe to have a one to one? You see? That's -- that is  
16 the problem with the nuisance per se.

17 So Mr. Hall testified that the slope, as it exists today,  
18 needs to have a concrete retaining wall installed. He  
19 explained that his calculations were based on where he  
20 actually walked it, measured it out.

21 And he said that the cost of a retaining wall would be  
22 eighty-nine thousand dollars (\$89,000.00). And he said it  
23 would be a concrete retaining wall. And while he said there  
24 were other kinds of remedies that you could do in other  
25 places, but in this place where you have the building of the

1 All-Tech so close to the hill, if you did the three to one it  
2 would cut into Brent's property, and he wouldn't have a  
3 driveway. He couldn't get to the back building.

4 So he said it was totally impractical based on the layout  
5 of this particular property and the only reasonable way to  
6 return what he called was the support that was taken away when  
7 this digging was done, support was taken away, and he said the  
8 only way to fix that problem is to build an eighty-nine  
9 thousand dollar (\$89,000.00) retaining wall.

10 If you remember Mr. Thomas, himself, said in his  
11 deposition that if he had to do it over again, and he dug to  
12 the line of Brent's property, he would have built a retaining  
13 wall. And as you can see, the evidence of where the digging  
14 is is right on this plat showing it right on the edge of  
15 Brent's property and actually in Brent's property.

16 So besides the geological study from the geotechnical  
17 expert that Mr. Hall obtained, he also gave testimony that  
18 formed the basis of his opinion that the condition of the  
19 gravel driveway was unsafe. He observed the dramatic movement  
20 of the silt trees.

21 And if you remember the movement of the silt trees, as  
22 you can see, they are literally going down the hill. The only  
23 testimony of the silt trees was they were planted -- the only  
24 evidence that was presented in the testimony from Mr. Click  
25 was that they were planted with this tree right here. And you

1 can see that they are creeping down the embankment.

2 You also heard that Mr. Thomas denied that he did  
3 anything to the embankment. But as you can see on this  
4 exhibit, which is Plaintiff 15, there's dig marks right here  
5 in the embankment to show that that's exactly what he did.

6 So this is the embankment, and here's a picture of one of  
7 his machines actually digging. As you can see, this is the  
8 embankment here where he's digging. So I don't think there's  
9 any question that's exactly what he did. And, of course, he  
10 said three times to Brent, my plan was to make your building  
11 fall down.

12 So because of the silt trees and the embankment, Mr. Hall  
13 concluded that the driveway is in imminent danger to collapse  
14 and that it was very smart for Brent not to bring heavy trucks  
15 and cars up that driveway anymore because it's just not safe.

16 An interesting thing is, if you're a site engineer and  
17 you design something that is a one to one, and you design  
18 something that is a safety factor of less than one point five  
19 (1.5), you'll lose your license. You've got to do it safely.

20 And a retaining wall will fix the problem. So we're  
21 asking as part of our damages that you require the Thomas  
22 Defendants to pay for the retaining wall to solve the problem  
23 that they've caused. So that's the first theory of what to do  
24 about the excavation.

25 The second theory is called negligence. And negligence

1 is a word that normally you think about in wreck cases.  
2 Someone runs a red light, hit somebody, they were negligent.  
3 They had the duty to care -- a duty of care. They -- they  
4 breached the duty and the duty results in the proximate cause  
5 damages. And that's what we have here.

6 You're going to know that the landowner has the duty not  
7 to do anything to damage the property of their neighbor. And  
8 this excavation and digging was done negligently.

9 We asked Mr. Thomas were you an expert? Were you trained  
10 in excavation? No. Did you hire an engineer to tell you how  
11 to do it safely? No. Did you hire an excavation company?  
12 No. Did you talk to Strange Brothers? No. I couldn't even  
13 afford Strange Brothers, so I just did it myself. And what  
14 did he say to Brent on three occasions? My goal when I dig is  
15 for your building to fall.

16 So we think there was a duty he had. We think he was  
17 negligent in doing the digging. And we think that there's  
18 proximate cause that has shown not only the damage to the silt  
19 trees, the damage to the driveway, the erosion that's  
20 happening outside -- but if you also remember as far as the  
21 erosion, we had Plaintiffs' exhibit 26 where there's so much  
22 dirt coming down that Mr. Thomas himself has to get his bobcat  
23 out to clean it out so he can use his driveway because it's  
24 all coming off that hill.

25 Also, we have damage that has been shown from the

1 pictures of Brent's awnings. Now this picture, you can see  
2 the awning for the carport is here, it's about level. And  
3 this was taken in early 2020. And this is Plaintiffs' 44.  
4 And if you look at it now you can see that it is sloping down  
5 and it's falling down the hill. And nobody builds a carport  
6 like that. So we think there is plenty of evidence to show  
7 that there was negligence, that it was not only negligence but  
8 that it was done in a way to cause Brent significant harm.

9 The Judge will also instruct you on something called  
10 willfulness, recklessness and wantonness. The law says that a  
11 person who acts with willfulness, recklessness and wantonness  
12 when he is not only careless, but he is aware of him being  
13 careless, that this has been proven by Mr. Thomas saying  
14 that's my plan. My plan is to intentionally do this in a  
15 reckless way, without any experts, cut it one to one, to heck  
16 with the three to one, and I'm going to watch your building  
17 fall.

18 So we think that that is willful, reckless and wanton on  
19 his part. And the Judge will tell you that if you find that's  
20 true, that you're allowed to give punitive damages. Now  
21 punitive damages are like -- are not like actual damages.  
22 They're damages designed to punish, to make sure this kind of  
23 behavior doesn't happen again in Pickens County.

24 Now you can take into account the assets of the  
25 Defendant. And we know that he bought the property for a

1 hundred and forty thousand (140,000) back in 2018. We know  
2 that the next door -- next door property is now worth about  
3 two hundred and eighty thousand (280,000). We would expect  
4 it'd be the same kind of increase in value for the Click  
5 property, I mean, the Thomas property. So you can take into  
6 account that he at least has that asset of two hundred and  
7 eighty thousand dollars (\$280,000.00).

8 Now I want to go through with you the actual damages that  
9 have been suffered by Brent and Shelly Click. The first thing  
10 is is the cost of a retaining wall, which I've told you is  
11 eighty-nine thousand dollars (\$89,000.00). And I have done  
12 the arithmetic for you, but this is for you to decide.

13 But the first number is the cost of the retaining wall.  
14 And if you remember, Mr. Thomas, himself, agreed or one of the  
15 witnesses for the Defendant agreed that the cost sounded  
16 perfectly normal and appropriate. So there's not a lot of  
17 dispute about what it would cost to do that.

18 Then you heard Brent say that he lost three weeks of  
19 production due to the fire and the ashes. He lost three weeks  
20 of production. That was at a hundred and twenty dollars  
21 (\$120.00) an hour. So that comes to fourteen forty (1440).

22 Then you talked -- he talked about the loss of business  
23 of his large vehicles and the limousines that he can no longer  
24 get up safely on the hill. And I did the arithmetic. And  
25 that came out to be about eighty thousand dollars

1 (\$80,000.00).

2 Then he talked about the additional maintenance that he  
3 has to do because of the driveway, because when the digging  
4 was done, the water used to go behind Brent's property, but  
5 because the hill has fallen it now goes forward. And Brent in  
6 the mitigation of the damages said, if I just let the water  
7 continue to go over the slope, it's going to erode faster and  
8 faster.

9 So I'm going to divert the water and make it come down my  
10 driveway, but in doing so it would save it from having an  
11 effect on the hill, but it also increased the amount of gravel  
12 and maintenance he had to do. And the cost of that we figured  
13 was about seventeen, two eighty (17,280) for the four years  
14 that this has been happening since August of 2018.

15 And then talked about the septic tank and the sewer line  
16 repair. And we figured out that that was nine hundred and  
17 sixty dollars (\$960.00) by his hourly rate.

18 We talked about the fractured water line, how he -- it's  
19 been, I think, four times that it's happened. And he's had to  
20 do that work himself.

21 And then finally he talked about the loss of value of the  
22 back building. And the Judge will charge you that the owner  
23 of the property has the right to determine what his property  
24 is worth. Brent testified it was worth about two hundred and  
25 eighty thousand (280,000).

1           He said if I'm going to lose the back, it's going to cost  
2 me about one third of the value of my property. And if you  
3 just do the arithmetic, that comes out with ninety-three  
4 thousand, three hundred and twenty-four dollars (\$93,324.00).  
5 If you add that up, based on my arithmetic, it's two hundred  
6 and ninety-six dollars [sic] and seven sixty-four.

7           That's totally your province to determine actual damages.  
8 I'm just here to tell you I did some arithmetic for you last  
9 night, put it all on one piece of paper, but it's for you to  
10 decide.

11           So what we're asking for are two things. When you have  
12 reality, and you have theory, and they don't match, we want  
13 you to fix it for us by finding acquiescence. If not  
14 acquiescence, then prescriptive easement.

15           If you have a neighbor who damages your property by  
16 digging, excavation, you have a nuisance per se and you have  
17 the negligence. And we're asking you to find in favor of  
18 Brent and Shelly Click and their company in the amount that we  
19 put on the board. Thank you very much for listening to me.

20           **THE COURT:** Mr. Campbell.

21           **MR. CAMPBELL:** I told y'all at the beginning of this ---

22           **THE COURT:** Mr. Campbell, you want to move ---

23           **MR. CAMPBELL:** Sir?

24           **THE COURT:** You want to ---

25           **MR. CAMPBELL:** Yeah.

1           **THE COURT:** --- take your Elmo?

2           **MR. CAMPBELL:** I told y'all at the beginning of this  
3 that'd be a great story if it were true, but it ain't. And  
4 all you have to do is look at the photographic evidence and  
5 use your common sense to evaluate the credibility of the  
6 witnesses.

7           The Plaintiffs' counsel spent a lot of time talking about  
8 reality. They have not been living in reality the entire time  
9 of this trial or that the Clicks have been on this property.

10          One way to tell that is everyone knows when you have  
11 property, we have deeds for a reason that are recorded right  
12 here in Pickens County a few blocks down the street. The  
13 reason for that is if there's any confusion about where the  
14 line is, the surveyor can go out and determine where the  
15 property boundary is. And that's the way property boundaries  
16 have been set in this country since its founding almost 300  
17 years ago.

18          One thing I'll call your attention to, the only bad  
19 testimony about my client saying anything mean, or doing  
20 anything bad or talking about I'm going to dig until your  
21 building falls down has come from two people, Brent and Shelly  
22 Click. There was never any testimony from any third party  
23 witness.

24          They talked a lot about the surveillance video that they  
25 had on the property, but we haven't seen one ounce of footage

1 from surveillance video. We've got a few pictures of the  
2 excavation. We've got lots of pictures of the property, lots  
3 of pictures of the cracks. There's no surveillance video of  
4 any of this allegedly bad conduct.

5 There's also no pictures of a broken sewer line. There  
6 are no pictures of a broken water line. There's no pictures  
7 of Mr. Click working his tail off to maintain the driveway.  
8 So it's simply not credible.

9 We know they're capable of taking lots of pictures. And  
10 we all have smart phones and take pictures of everything every  
11 day. And if any of you have kids, you've probably got  
12 thousands of photos. And every time something happens, it's  
13 normal human nature now to just take a picture of them.

14 But these little critical elements add up over time as  
15 you're assessing the credibility of a witness. If he had to  
16 repair the sewer line, if the average, normal person had a  
17 break in the utility line, most of them, you might be able to  
18 take a picture. We didn't have that here.

19 This -- this case really comes back to -- it has all the  
20 elements of a classic shake-down. It ain't about damages. In  
21 fact, they forgot about their damages during the most critical  
22 phase of the case. They forgot about the damages? Why?  
23 Because Mr. Click got mad that he couldn't buy the Thomas  
24 property. So he decided to take it from his neighbor.

25 Once he found out that what he ordered wasn't what he

1 asked for -- if you go to a restaurant and you order a  
2 cheeseburger and you get a chicken sandwich, do you take off  
3 your neighbor's plate because you wanted that cheeseburger?  
4 Or do you send it back to the guy you ordered it from?

5 If you order something on Amazon and it comes in and this  
6 is a box of children's toys, and I really needed some office  
7 supplies, do you go over to your neighbor and take from them  
8 and say I thought this was mine? This is what I wanted  
9 anyway. Or do you send it back to the person you purchased it  
10 from and say, you didn't sell me what I thought I was getting?

11 That's not what's happening. The Clicks decided they  
12 were going to figure out whatever way they could to take this  
13 land from their neighbor to make up for their own poor  
14 decision. He did no due diligence. He had no inspection. He  
15 had no survey. And then he went and showed up to closing with  
16 the title work and says, whoa is me, I now see that this  
17 property line goes straight to this building, and this  
18 turnaround area I don't own.

19 The fact is that wasn't really a problem 'cause you heard  
20 the testimony from Mr. Watkins, from Jonathan Thomas, and the  
21 other landowners, even Mr. Click's own witnesses that everyone  
22 got along. For years they had a friendly, neighborly  
23 agreement. You can turn around up here, and I can come  
24 through your driveway, and everything's fine.

25 But then Mr. Click shows up with a handful of gimme and a

1 mouthful of much obliged and starts trying to take over other  
2 people's property. So what does Mr. Porter have to do? He  
3 has to put up a fence to defend his boundary line. Mr. Thomas  
4 tries to make overtures to resolve the situation, but Mr.  
5 Click says, sorry, nope, can't use the front of my property.

6 Mr. Thomas says, that's fine. If we're not going to  
7 share and share alike, then you can't use the back part of my  
8 property. That's how this works. And that's the problem with  
9 their property claims, with acquiescence and with prescriptive  
10 easement.

11 And this is tricky. There's been a lot of careful  
12 crafting of words here because we don't want to get confused.  
13 With prescriptive easement the burden of proof is clear and  
14 convincing evidence to take someone's land. Clear and  
15 convincing. That's a heavy burden that's borne by the  
16 Plaintiffs.

17 And that means that while they were using that property  
18 it was open, notorious and there are many ways to say it under  
19 the law. But you need to listen to the Judge's charge.  
20 That's the law you have to apply. Not the law as you wish it  
21 was, but the law as he gives it to you. But it has to be a  
22 derogation of someone else's rights.

23 Mr. Thomas, Mr. Watkins or anyone else in the prior chain  
24 of title says you can use this, it doesn't hurt me if you turn  
25 around, that's fine. That's not hostile. It's not in

1     derogation of his rights. They're not trying to prohibit him  
2     from accessing his own property.

3             Now let's go back to acquiescence. This is a tricky one,  
4     too. The burden is not clear and convincing evidence. It  
5     doesn't just mean that you let somebody use your property. It  
6     has to be affirmative assent, an agreement between the two  
7     property owners that a boundary different from the one  
8     recorded here in Pickens County is the true boundary line.

9             You never heard one single bit of testimony from anyone  
10    who ever owned the Thomas property that they said, no, the  
11    boundary line on that plat that we've seen 150,000 times is  
12    wrong. And we think the true boundary line is somewhere else.  
13    That testimony was never in evidence.

14            No one ever acquiesced to a different line than what's  
15    drawn on that plat. In fact, Mr. Click showed Mr. Thomas  
16    where the pin was. He knew exactly where that pin was. He  
17    knew where his boundary line was. There was never any  
18    agreement that there was anything different.

19            So let's think about some of the testimony. You heard  
20    there were no cracks on the foundation of the back building  
21    before the digging. Look at Defendants' exhibit 22. You  
22    heard it was level to walk outside, the slab from the ground.  
23    And then one of Mr. Click's buddies came in here and testified  
24    that he trips now and he falls down. But then look at  
25    Plaintiffs' exhibit 3 and you can see that drop-off was there

1 when the digging started. It was already there.

2 You heard the awnings were straight before the digging,  
3 but look at Plaintiffs' exhibit 3. And no one builds an  
4 awning flat. You build it at an incline so the water runs off  
5 away from your building. That's just common sense. Everyone  
6 knows that.

7 The slope next to the gravel driveway was brand new and  
8 only resulted from the digging. Plaintiffs' exhibit 3 again.  
9 When the excavation work began, Thomas set up a bonfire right  
10 outside the Clicks' building on the turnaround area with  
11 ashes, soot, fire and brimstone. We saw the pictures of the  
12 fire fighters there. They came out, did nothing and left.  
13 You saw a picture of the fire going.

14 And then Mr. Click, by the way, expected everyone in this  
15 courtroom to believe that the cracks you could visibly see in  
16 the building were actually soot. Those weren't cracks, those  
17 were soot from the massive fire. I'll let you make your own  
18 determination.

19 You heard Mr. Click say that Thomas created a 36 foot  
20 sheer drop-off. Look at exhibit 42 on the survey. Their own  
21 expert said it was 12 foot max.

22 The land in the front of the building and the back  
23 building was flat and level with the carport cement until  
24 after the digging. Look at Defense 22 again. It shows the  
25 slope is the same difference as the cement before and during

1 the digging.

2 And let's not forget about that little breeze-way that  
3 went in between the front building and the back building where  
4 it collapsed and fell in, and then they had to put in a big  
5 retaining wall there. This building was already unstable. It  
6 already had foundation problems.

7 Jimmy Watkins and Greg Porter both came in here and  
8 testified to it. And neither one of those have any dog in  
9 this fight. They don't own the land. They're not here as  
10 litigants. They've been in that building and they saw it  
11 clear as day.

12 So as to the grading work, let's talk about some of the  
13 elements of proof. And there's an important distinction you  
14 need to make, digging on the Defendants' property versus  
15 damage to the Plaintiffs' property. There's no digging on the  
16 Plaintiffs' property. Their own expert admitted the boring  
17 samples show there was no damage to that back building.

18 You heard Paul Mills come in here and say this slope at  
19 the front of the driveway where it's very shallow, that's the  
20 only place where he can even claim the slope was unsafe.  
21 Didn't say that it was damaging Mr. Click's property. He just  
22 said that slope on the Defendants' property, on Mr. Thomas'  
23 side of the line was unsafe. And what did Mr. Mills say about  
24 the distinction? That slope would have to fail three, four or  
25 more times before it ever put any risk of danger to

1 Plaintiffs' driveway or to his building, especially.

2 So we're talking about speculation, what could happen in  
3 the future, what might happen. And in the four years since  
4 this excavation began, their driveway is still there, he's  
5 still moving cars up there. And if you look at the pictures  
6 you can see his bobcat parked right on the ledge in the back.  
7 Cars are still up at the top of the building, still going back  
8 and forth. It's simply not credible and it flies against the  
9 greater weight of the evidence.

10 So let's also talk about one other thing Mr. Click  
11 testified to outside of his building. He dug a big ole hole,  
12 put in a lot of concrete that weighed a lot right off of that  
13 back building. You can draw your own conclusions as to what a  
14 big hole, a lot of weight would do when it's poured next to  
15 the building when it's on an already shaky foundation.

16 So as to the property claims, we talked about  
17 acquiescence. We talked about how it's very important that  
18 there be mutual agreement that the boundary line on the plat  
19 is different than what the actual boundary line is. That has  
20 not been offered into evidence by any of these witnesses. And  
21 that's a critical element.

22 He talked about prescriptive easement, the burden of  
23 proving by clear and convincing evidence that there was  
24 continued and uninterrupted use and enjoyment of a right for a  
25 full period of 20 years. We know exactly what we're talking

1 about. There hasn't been a real exact definition of the  
2 turnaround area of how much property Mr. Click thinks he's  
3 able to take from Mr. Thomas by a prescriptive easement.

4 But the last element is the most important, that it was  
5 hostile to the ownership interest of the Defendants, and it  
6 was in derogation of Mr. Thomas' rights, that he was blocked,  
7 barred, prohibited and any of his predecessors never allowed  
8 to go up there on that back piece of property. That didn't  
9 come in at all. That's not what happened.

10 So as we talked about, this is just a classic shake-down.  
11 Mr. Click made a bad business deal. And that's regrettable.  
12 No one likes making a bad deal. But you don't go take your  
13 neighbor's land to make up for it. You don't go asking for  
14 hundreds of thousands of dollars in damages unsupported by  
15 evidence that are clearly in excess of any damage that you  
16 could possibly claim.

17 Recall the testimony in your memory. Think about what  
18 each witness said and each document. And go back and look at  
19 the pictures that are in evidence. When you go back to your  
20 jury room, the Judge will charge you, he'll give you the law,  
21 tell you how you're supposed to apply the facts as you  
22 determine them to that law.

23 But look at the evidence, remember what the witnesses  
24 said and look at the evidence. There are no pictures of  
25 busted waterlines or sewer lines. There's no pictures of Mr.

1 Click doing all this work to repair his driveway. There are  
2 hardly any pictures before 2018.

3 There's no surveillance video of my client doing anything  
4 unreasonable, aggressive, mean to anybody. The only people  
5 who have said he's going to dig until the building falls down  
6 is the self-serving testimony of these two people right here.

7 The grading issue, nuisance claim is simply a pretext.  
8 Cannot say looking at this evidence that this slope that has  
9 stood for four years is dangerous at all times and in all  
10 places.

11 And remember, the slope ain't on the Clicks' property.  
12 It's on Thomas' property. So there hasn't been a nuisance  
13 created on Mr. Click's property. That slope would have to  
14 fail three, four or more times before it gets onto Mr. Click's  
15 property.

16 It all comes down to this. There's three basic rules  
17 that Brent Click broke; Thou shalt not covet, thou shalt not  
18 lie, and you should treat your neighbor and love your neighbor  
19 as yourself. So when you go back there to complete your  
20 deliberations, we're asking you to find a verdict in favor of  
21 the Defendant on all grounds. Thank you.

22 **THE COURT:** Rebuttal.

23 **MR. MARTIN:** This is called rebuttal. This is my last  
24 chance to talk to you before we close this case. And then  
25 it's in your hands for you to decide.

1           Let's talk about the surveillance issue. Brent's  
2 testimony is that when he went down to the bottom of his hill  
3 and he confronted Thomas when he brought his fence man to put  
4 a fence up there in February of 2020 that that's when Thomas  
5 said, I'm going to keep digging until your building falls in.  
6 There's no surveillance video way down in front of the  
7 property. There might be at Brent's property, but not there.

8           So there's -- that's called a red herring. And I don't  
9 know if you all saw this movie, the Wizard of Oz? But if you  
10 remember when -- I used to watch it every Thanksgiving when I  
11 was a little boy. They showed it every year on TV.

12           And when the three people get to the Wizard, there's this  
13 big thing and there's all this smoke, and here's the Wizard of  
14 Oz, the Wizard of Oz. And then the little dog, Toto, pulls  
15 the thing around where the guy is actually operating the  
16 machine. Well, the reality is the Wizard of Oz was this  
17 little man, but he created this theory that this big giant  
18 thing was him.

19           So counsel for the Defendant wants you to believe that if  
20 the deed says one thing, that's it. He wants you to believe  
21 that because Mr. Dobson in 1996, when he purchased it, knew  
22 about the Betty Ramey plat from August of '96, that's it. He  
23 wants to believe that there's no solution for you between the  
24 reality and the theory. The theory is, yeah, deeds are  
25 supposed to be what is actually okay, but the law says if the

1 reality is different, you can decide acquiescence.

2 And my friend over here, when he argued, he said that  
3 prescriptive easement was clear and convincing evidence, which  
4 is true. And then he said but when you try to take your  
5 neighbor's land -- well, prescriptive easement is not taking  
6 the land, it's using the land. It's having the right to use  
7 the land.

8 So he confused those intentionally because acquiescence  
9 is exactly what Brent and Shelly Click are asking and what  
10 Click Properties, LLC is asking. Because what it says is when  
11 this property was originally surveyed in 1996, the Rameys had  
12 used it for years, since the 70s, and the only access to the  
13 upper back building was the driveway and turnaround.

14 So when the Porters -- when the Porters bought the  
15 property from Mark, they knew that. They acquiesced. There  
16 was no testimony, no matter how nice people were that said  
17 anything about, no, you cannot use my property.

18 Then when Watkins bought it, there's undisputed testimony  
19 in 2015 that he walked up there, he wouldn't even tell them  
20 who he was. They didn't know who he was. And Porter was  
21 right with him. And he didn't know -- they didn't know who he  
22 was, and they just walked around.

23 They saw that the pouring was done, that the awnings were  
24 up, that it was in the turnaround, they didn't do a darn  
25 thing. They didn't say get this out of here. Watkins was the

1 owner.

2 The law, as the Judge will charge you, is they had the  
3 absolute duty to do that. They didn't because they had  
4 acquiesced. And the acquiescence went all the way back to the  
5 70s. So you had the Rameys, you have the Dobsons, you have  
6 the Smiths.

7 And Mark Smith said I would never have bought this  
8 property. I knew that the turnaround was on the neighbor's  
9 property, but I knew it was my absolute right to use it  
10 because it had been that way since the 70s. Everyone knew  
11 what the reality was and the theory.

12 Acquiescence, but just by the preponderance of the  
13 evidence, you have the right today to make that decision. You  
14 have the right today to tell Shelly and Brent Click that Mr.  
15 Thomas cannot build a fence right to your house. Mr. Thomas  
16 cannot continue to dig until it falls in. You can say, no,  
17 acquiescence has been proven by the preponderance of the  
18 evidence. You get to decide the credibility of the witnesses.

19 But as far as surveillance, every time Mr. Thomas said  
20 this, he made sure he was not being recorded. So we couldn't  
21 bring in the video to show you. That was his intent, okay?

22 The second thing is the testimony of Mr. Mills, their  
23 witness, their expert witness. If you remember, he was asked  
24 by this lawyer with the fancy suit, who said, now isn't it  
25 true that this thing would not fall down and affect the

1 driveway? And Mr. Mills answered, yes, it's true. It will  
2 not affect the building. You remember that?

3 He asked driveway, he answered building. Now why is  
4 that? That's because it's undisputed that the damage exists  
5 on the property which -- exactly where the driveway will fail.  
6 There's no dispute that it's a one point one six (1.16)  
7 instead of one point five (1.5). It doesn't meet the standard  
8 of safety right here.

9 And it's also undisputed that the digging was literally  
10 starting on Brent and Shelly's property and then went over.  
11 That's -- that's the only evidence as to where the digging is  
12 that you have. You can see it. Because the engineer, who did  
13 the surveying himself, put the lines on the document. And you  
14 will have that document to decide.

15 So the question is where was it unsafe? And is it going  
16 to fall? Mr. Hall said, imminent failure. It is dangerous.  
17 Don't put heavy trucks up there anymore. Don't take your  
18 limousines up there anymore. He said I fully agree with  
19 Brent's decision to lose that part of his business.

20 So we want you to say finally that when you have a  
21 difference between reality and a difference between theory,  
22 acquiescence gives you the solution. The law says there is a  
23 solution. And it's only for you to decide by the greater  
24 weight, just 51 percent over 49 percent, in favor of Brent and  
25 Shelly.

1           Now as far as the damages are concerned, they have been  
2     calculated to two hundred and ninety-six thousand dollars  
3     (\$296,000.00). You haven't heard any testimony of the  
4     Defendants that Brent's property is not worth two hundred and  
5     eighty thousand dollars (\$280,000.00).

6           They didn't bring a real estate appraiser in here and  
7     say, you know what, that's not worth two hundred and eighty  
8     thousand dollars (\$280,000.00), it's really only worth about a  
9     hundred and forty (140). You didn't hear that because they  
10    knew that an appraiser would probably appraise it much higher  
11    than the two eighty (280).

12          Brent said one-third of my square footage is the back  
13    building. If there's nothing done to fix this problem as the  
14    slope continues to grow, and the hill continues to go down,  
15    and the dirt and the dust continue to come, and the cracks  
16    continue to get bigger, I am going to lose ninety-three  
17    thousand (93,000) or one-third of the value of my business if  
18    I try to sell it -- try to sell my land. Ninety-three  
19    thousand, three twenty-four (93,324).

20          The other issues are three weeks of lost production.  
21    There's no question -- Mr. Thomas didn't dispute that it took  
22    three and almost four weeks to do all this work. What do you  
23    think's going to happen if you move tons, and tons, and tons  
24    and tons of dirt and you set up these fires overnight and  
25    leave them? What do you think's going to happen? I mean,

1 common sense tells you that soot and smoke are going to come  
2 in and affect your business.

3 As far as the septic tank and the waterlines, do you  
4 really need a picture in order to believe Brent that that's  
5 what he had to do? You heard that Mr. Hall testified that  
6 that's part of the reason why he said that this is a failure  
7 in his professional opinion.

8 And remember, engineers like to be scientists. And they  
9 like to be certain a hundred percent of the time. They think  
10 that's the scientific method, three percent, two percent  
11 standard deviation.

12 But in the law, as an expert witness, they only have to  
13 testify in their professional engineering experience that it's  
14 51 percent or more probable than not. And he has testified  
15 very clearly and unequivocally that in his opinion that is  
16 what's happening here.

17 This is the last time that Shelly and Brent have. They  
18 tried to be good neighbors. They were good neighbors to Uncle  
19 Greg. If that wasn't true, you would have had Uncle Greg on  
20 the stand saying, heck, no.

21 Uncle Greg was there from 2013 to 2014. It was only when  
22 Mr. Thomas showed up that the problems started. And Brent  
23 went down with a box of doughnuts. And the first thing was a  
24 disturbing response from Mr. Thomas. So right from the start.  
25 Then there was the hotdogs and hamburgers. And he said then

1 once again, your building's going to fall, okay?

2 So Brent and Shelly have done everything they can to be  
3 good neighbors to these people. They had the cookout for all  
4 the people -- they even invited Thomas despite the problems.  
5 And the minute Thomas bought for seventy thousand dollars  
6 (\$70,000.00) less than what Brent offered Mr. Watkins, he  
7 immediately planned to do this digging to have the building  
8 fall, to have exactly what happened happen.

9 And he was up there in February of 2020 with his fence  
10 man to stop the business of Brent and Shelly Click. And we're  
11 here to say, no, that's not appropriate. And we are here to  
12 ask you to award damages, actual and punitive, so this kind of  
13 behavior is just not done in the future. And it's now in your  
14 hands. And I thank you so much for your attention.

15 **THE COURT:** All right. Ladies and gentlemen, since  
16 y'all've been sitting there for about an hour and a half,  
17 before I give you my charge I'm going to let us take a short  
18 break, let you go back into your jury room just for a few  
19 minutes. And then I'll have you come out, and I will give you  
20 the law of the case. But do not discuss the case yet. And  
21 we'll bring you out in just a few minutes.

22 (Whereupon the jury exited the courtroom at 10:51 am)

23 **THE COURT:** Let's take five and then ...

24 (Whereupon court was in recess at 10:51 am)

25 (Whereupon court reconvened at 11:01 am)

1           **THE COURT:** Yes. You'd like to put something on the  
2 record?

3           **MR. CAMPBELL:** Yes, Your Honor. Defense would object to  
4 Mr. Martin's improper shifting the burden to the Defendants  
5 with regard to what was referred to in his closing. So we'd  
6 just request that the Court address that in the jury  
7 instructions. And I just wanted to place that on the record.

8           **THE COURT:** What exactly are you referring to?

9           **MR. CAMPBELL:** He mentioned that we would have had to  
10 bring in other witnesses to prove, for example, that the  
11 relationship wasn't cordial. And also the value of the  
12 property, that we would have had to bring in a real estate  
13 appraiser to prove the value of the property was something  
14 different.

15           **THE COURT:** Well, I mean, I'll address the burden. I  
16 mean, that's more important, I think, in a criminal matter.  
17 But in civil, I'm not, you know, it's ---

18           **MR. CAMPBELL:** Thank you, Your Honor. I just wanted to  
19 put that ---

20           **THE COURT:** Okay.

21           **MR. CAMPBELL:** Thank you.

22           **THE COURT:** All right. If the jury's ready, we'll --  
23 just make sure they're ready.

24           (Whereupon the jury entered the courtroom at 11:02 am)

25           **THE COURT:** All right, ladies and gentlemen. I'm going

1 to step down here. Now I'm going to charge you on the law.  
2 You get to hear from me for a few minutes and then y'all can  
3 go and begin your deliberations.

4 As I told you in the very beginning of this case, you and  
5 I have two separate duties. I have the duty to preside over  
6 the case, to rule on objections and determine what the law is.

7 And if there's anything -- if you came into this  
8 courtroom and you thought you knew what the law was in this  
9 particular -- I know it's a very technical area, and anything  
10 that you may think and if it contradicts what I'm telling you,  
11 you are to accept what I'm telling you as the law today, okay?

12 On the other hand, your duty is to determine what the  
13 facts are. And you're to determine those facts based on the  
14 evidence and the law that I give you. And, again, if I've  
15 said anything or you felt like there was anything that I  
16 inferred about the facts, then you're to disregard that  
17 because it's not my job to determine what the facts are.

18 There are four separate claims that you will be  
19 addressing. And it'll help you a little bit -- and I'll go  
20 through the verdict form. The verdict form has them  
21 separated. So -- and I'm going to go through the verdict form  
22 with you.

23 But they are nuisance per se, negligence, acquiescence  
24 and prescriptive easement. Those are the four causes of  
25 action that the Plaintiffs in this matter have asserted

1 against the Defendant, okay?

2 Now you're to consider each of those claims separately,  
3 okay? You'll consider one and make your determination. And,  
4 again, your determination on every cause of action would be --  
5 has to be unanimous. What you're going to do is you're going  
6 to answer on the verdict form -- you're basically answering a  
7 series of questions. And each of those answers must be  
8 unanimous of all 12 members of the jury.

9 And your decision on one should not necessarily affect  
10 the decision on the other. You can consider each of them  
11 separately. You can consider the evidence, you consider the  
12 elements for those particular charges and make a decision and  
13 then go to the next one. All right.

14 Now, and the fact, you know, like I said, if you rule for  
15 one party and one -- that doesn't mean you have to rule for  
16 the -- another -- that same party on the next one, okay?

17 Now there's several -- I mentioned burden of proof at the  
18 beginning of this trial. But there's actually two burdens of  
19 proof that rely -- that you must consider. And there are  
20 preponderance of the evidence for the nuisance, negligence and  
21 acquiescence claim. And the law of South Carolina says  
22 there's a much higher burden, clear and convincing, for  
23 prescriptive easement and punitive damages, okay?

24 And as I also told you, criminal cases are beyond a  
25 reasonable doubt. That's the highest standard we have. And

1 that is not -- has nothing to do with what you're doing --  
2 you're here to do.

3 But a preponderance of the evidence simply means the  
4 greater weight of the evidence. More likely than not. And  
5 that's the -- that's the burden you're going to apply, again,  
6 to nuisance, negligence and acquiescence.

7 Sometimes you see people kind of that use an analogy of  
8 scales, the scales of justice. And, for instance in this  
9 case, the Plaintiff has the burden of proof in each of the  
10 elements for their causes of action. If they produce evidence  
11 that ever so slightly tilts the scales in their favor, then  
12 they've met that burden because that's more likely than not.  
13 That is what a preponderance of the evidence is.

14 If, though, after the evidence you feel -- you find that  
15 the scales have not been tipped in their favor or have tipped  
16 towards the Defendant, then they've not met that burden. And  
17 they must -- then that would -- that particular issue would be  
18 in favor of the Defendant.

19 Now, clear and convincing, again, this one applies to  
20 prescriptive easement, which our courts have decided that that  
21 is the element there. It's a little bit higher. Clear and  
22 convincing evidence is the degree of proof which will produce  
23 in the fact-finder a firm belief as to the allegations sought  
24 to be established.

25 Such a measure of proof is intermediate. More than a

1 mere preponderance, but less than proof beyond a reasonable  
2 doubt. It does not mean clear and unequivocal. But it means  
3 more than just -- it's one that has you convinced that that's  
4 -- that that's what the facts are.

5 Now let me also talk -- there's two types of evidence.  
6 There's direct and circumstantial evidence. Direct evidence  
7 is when somebody testifies or there's evidence that shows  
8 exactly what the thing is, either by direct knowledge, and  
9 it's direct evidence of a particular fact. And it's usually  
10 based on what somebody heard, saw or using their senses.

11 Circumstantial evidence is a series of facts to prove a  
12 particular fact. Sometimes it may take, you know, several --  
13 a chain of facts to determine the existence of a particular  
14 fact.

15 And whether a party relies on circumstantial or direct,  
16 which a party who has the burden, they can use either direct,  
17 circumstantial, a combination of the two. It's still -- the  
18 burden's the same, preponderance and clear and convincing.  
19 And it's also -- you're to review that and give it the weight  
20 and value that you feel is appropriate.

21 Let's talk about -- one of the things -- the tools that  
22 you can use is to determine what the credibility of the  
23 witness is. Credibility means -- merely means believability.  
24 When a witness is testifying, you can determine whether they  
25 have a particular bias, whether they have a particular

1 prejudice, how they acted on the stand, whether they had an  
2 interest in their -- in the outcome of this matter.

3 You may accept all of a person's testimony or reject all  
4 of a person's testimony. You may accept one witness'  
5 testimony over many or you may accept many over one. You may  
6 accept a part of a testimony and reject the remaining portion.  
7 Again, it's the weight and the value which you feel is  
8 appropriate.

9 Now, also, what are you to consider? Again, you're to  
10 consider only the evidence that was provided in this  
11 courtroom. If there was anything stricken, I don't think  
12 there was, but if there was anything stricken, then it is not  
13 to be considered by you.

14 I also told you there was -- there were two witnesses  
15 that were qualified as expert witnesses. And I said that's an  
16 exception. Normally a person cannot testify about opinions  
17 and conclusions. They can only testify to exactly what they  
18 observed, heard, felt, those kind of things. An exception to  
19 that is an expert witness.

20 An expert witness, if qualified, can testify about their  
21 opinion and their conclusion on a particular topic in their  
22 field. And that's based on their education, experience,  
23 training, work. And you should consider an expert's opinion  
24 the same as everything else. You're to give it the weight and  
25 the value that you feel is appropriate.

1           Now if you decide that an expert witness' opinion is not  
2 based on sufficient evidence, or education, or experience or  
3 if you decide the reasons in support of the opinion are not  
4 sound or that opinion is outweighed by other evidence, then  
5 you may disregard the opinion entirely, even if it's  
6 uncontradicted. So, again, that's to help you. But, again,  
7 you're to give it the weight and value which you feel is  
8 appropriate.

9           There was also portions of depositions presented. Now a  
10 deposition is a particular tool governed by our rules. And  
11 they're particular of how those depositions must be taken.

12           The person's placed under oath. And they have certain  
13 rules that they must follow. And you take the deposition  
14 testimony which was presented the same as if a witness was  
15 presented on the stand. And you consider that deposition and  
16 give it the weight and the value which you feel is  
17 appropriate.

18           Now, also, let me remind you that the evidence is what is  
19 presented on the witness stand, any stipulation, or any  
20 exhibits that may have been introduced. You must not consider  
21 as evidence any statement made by counsel during the trial.  
22 Statements of counsel do not constitute evidence. Rather,  
23 counsel is articulating their position of their client. And  
24 this rule applies to opening statement, closing statements and  
25 any comments during the interim.

1           Attorney -- also, let me talk to you a little bit about  
2 objections. Attorneys are officers of the court. And  
3 attorneys have the absolute right and duty to bring matters to  
4 the attention of the Court by way of objection. And usually  
5 this revolves around specific rules that we have for our  
6 courtroom usually in the field of evidence.

7           Now do not infer or otherwise become upset or disturbed  
8 because counsel may have made certain objections. Our trial  
9 procedure includes the objections process as a means to  
10 control evidence, laying improper evidence and keeping out  
11 improper evidence. Counsel, by objecting, are merely doing  
12 their job.

13           Once the Court makes a ruling on an objection, you are to  
14 accept that ruling. And if an objection is sustained, the  
15 question was improper. And if the question is overruled, the  
16 question was proper. In that regard, you must not consider  
17 under any circumstance, derive any inference from any ruling  
18 made by the Court and accept the evidence as presented to you.

19           Now as the Judge, I don't have an opinion on the  
20 evidence. I'm not entitled to an opinion. I'm just  
21 performing my role as the -- presiding over the trial and  
22 ruling on objections.

23           Now let me specifically talk to you about the elements  
24 required for each cause of action. And I'm going to take them  
25 in the order -- we're going to first start with nuisance.

1           Nuisance is defined as anything which causes hurt,  
2   inconvenience or damages to the lands or tenements of another.  
3   Anything which interferes with the enjoyment of life or  
4   property.

5           To constitute nuisance per se, which is the actual cause  
6   of action asserted, the Plaintiffs must prove by preponderance  
7   of the evidence that the nuisance has become dangerous at all  
8   times and all circumstances. So that will be the elements for  
9   nuisance which you must decide and put on your verdict form.  
10   And then in a minute I will talk to you about damages, and if  
11   you find that the Plaintiffs entitled to damages under the  
12   nuisance cause of action.

13           The next cause of action is negligence. And this is  
14   merely the legal term for saying somebody did something that  
15   they weren't supposed to and it caused damages. That's always  
16   kind of a -- kind of a layman's way of saying it. But here's  
17   the more formal version.

18           The Plaintiffs claim the Defendants were negligent and  
19   should compensate the Plaintiffs for the injuries he suffered  
20   as a result of these actions. In order to prove that a party  
21   was negligent there's four things that must be proven, again,  
22   by preponderance of the evidence.

23           The first, the Plaintiff must prove that the Defendant  
24   owed a duty. Next, the Plaintiff must prove that the  
25   Defendants breached that duty by either a negligent act or

1 omission. And negligence means that a person has done  
2 something that a reasonable person would not have done or  
3 failed to do something that a reasonable person would have  
4 done under the same circumstances.

5 The Plaintiffs -- then the third element, the Plaintiff  
6 must prove that they suffered damages as a result of that  
7 breach of duty. And, finally, the Plaintiffs must prove the  
8 damages were proximately caused by that breach. So the four  
9 is the Defendant owed a duty, the Defendant breached that  
10 duty, the Plaintiffs were damaged and the Defendants' acts  
11 proximately caused those damages.

12 And proximate is -- I'll describe that. That is kind of  
13 the connection. That is because the Defendant did this, it  
14 caused these damages. Proximate cause is something that  
15 produces a natural chain of events which in the end brings  
16 about the injury, is the direct cause of injury.

17 The touchstone of proximate cause is foreseeability. The  
18 Defendants may be held liable for anything which appears to  
19 have been a natural and probable consequence of their actions.

20 To prove that the Defendants' negligence proximately  
21 caused the Plaintiffs' injuries, the Plaintiffs must first  
22 prove causation in fact. This is proven by showing that the  
23 injury would not have occurred except for the Defendants'  
24 negligence.

25 The Plaintiffs must also prove legal cause. Legal cause

1 is proven by showing that the injury was foreseeable. This  
2 means that the injury occurred as a natural and probable  
3 consequence of the Defendants' negligence. The Plaintiffs  
4 must prove that some injury from the Defendants' negligence  
5 was foreseeable, but does not have to prove that the  
6 particular injury that occurred was foreseeable. However, the  
7 Defendants cannot be held responsible for things which could  
8 not be expected to happen.

9 Proximate cause does not mean the only cause. The  
10 Defendants' acts can be a proximate cause of the Plaintiffs'  
11 injury if it was at least one of the direct and concurring  
12 causes of the injury. Proximate cause may be proved by direct  
13 or circumstantial evidence.

14 Negligence is a fact, which like any other, must be  
15 proved. The mere happening of an accident, or the filing of a  
16 complaint or the fact that damages have been sustained raises  
17 no presumption of negligence.

18 A surmise or conjecture that the Defendants were  
19 negligent is not evidence of that. The mere fact that an  
20 innocent party sustained injury or damage does not place any  
21 responsibility on another party unless you find that there was  
22 some act of negligence on the part of the Defendant which  
23 caused the injury or damage.

24 If you find that the Plaintiffs have proven that the  
25 Defendants were negligent and/or reckless, willful, and

1 wanton, then your next inquiry would be whether the Plaintiffs  
2 have proved that such negligence was the proximate cause of  
3 the damages. I'll go over recklessness and damage in just a  
4 minute. Negligence is not actual unless it proximately caused  
5 the Plaintiffs' injuries. The Plaintiff may only recover for  
6 injuries proximately caused by the negligence.

7 Now let me just say a word on due care. While there  
8 generally is no duty to act under common law, a duty to use  
9 due care may arise when an act is voluntarily undertaken.

10 Now under negligence, just general negligence is where  
11 somebody didn't do what a reasonable person would have done.  
12 Okay. There's another standard which you also may consider,  
13 the Plaintiff in this matter is seeking punitive damages. And  
14 I'll discuss that in a minute. But this analysis -- these  
15 kind of definitions of recklessness are things that you can  
16 consider when you're addressing that claim.

17 The words recklessness, wilfulness and wantonness are all  
18 pretty much the same. The terms are used to describe a  
19 conscious failure to exercise and observe reasonable or due  
20 care.

21 Recklessness implies the doing of a negligent act  
22 knowingly. When a person acts negligently and he realizes  
23 that he is acting negligently, the law says he's reckless,  
24 willful and wanton. Whichever terms you prefer, they all mean  
25 the same thing. And it's a conscious failure to exercise due

1 care.

2 And recklessness is distinguished from negligence.

3 Negligence, as I said, is just a failure to use due care. Or  
4 recklessness is a higher degree of culpability and  
5 responsibility. The test will determine whether a tort may be  
6 deemed reckless, willful or wanton is whether it has been  
7 committed in such a manner and under such circumstances that a  
8 person of ordinary reason or prudence would have been  
9 conscious of it as an invasion of the rights of the injured  
10 party.

11 So, again, we've got the duty. We've talked about that.  
12 We've talked about the breach of duty. We've talked about the  
13 proximate cause. And now let's talk about damages. Okay.

14 First we'll talk about actual damages. If you decide the  
15 Plaintiffs are entitled to a verdict under the causes of  
16 action for nuisance per se, negligence, let me explain that a  
17 little bit. A lot to keep up with.

18 The first two -- and it'll help you when you look at the  
19 verdict form. The first two, nuisance per se and negligence  
20 are the only ones where you'll be -- that there's a claim for  
21 damages, okay? So that -- this discussion here about damages  
22 only applies to nuisance and negligence.

23 You will be asked -- you will be asked to answer the  
24 question of acquiescence and prescriptive easements, but they  
25 do not have damages involved in them. So if you decide the

1 Plaintiffs are entitled to a verdict on the causes of action  
2 of nuisance and/or negligence, then your next step is to  
3 determine how much money the Defendants will be required to  
4 pay.

5 Actual damages are to compensate the Plaintiffs for their  
6 injury or for their loss. It's to put them as -- nearly as  
7 possible back to the place that they would have been if the  
8 Defendant had not committed these negligent acts and if you  
9 find that they have committed these acts. In other words,  
10 actual damages would be the actual losses and expenses which  
11 the Plaintiff has suffered because of the Defendants'  
12 negligence.

13 For actual damages you may also consider lost income or  
14 any expenses which you find reasonably relate to the  
15 Defendants' act. Now I'll also tell you when you're  
16 considering damages, the existence or amount of damage cannot  
17 be left to conjecture, guess or speculation. However, proof  
18 of the amount of loss with an absolute amount of mathematical  
19 certainty is not required.

20 Damages must be susceptible of ascertainment with a  
21 reasonable degree of certainty. So if you find that any  
22 damages are speculative, then those are matters that the  
23 Plaintiff would not be entitled to recover.

24 Now damages as to real property, a property owner may  
25 recover compensation for losses which relate to the

1 Defendants' wrongful act. In the absence of evidence of  
2 specific damages, the measure of damages per injury to real  
3 property is the difference between the value of the entire  
4 premises before the actions and after the actions. In other  
5 words, such situations, the measure of value is the diminution  
6 or lessening of the value of the property.

7 The landowner who is familiar with his property and its  
8 value is allowed to give his estimate as to the value of the  
9 land and damages even though he's not an expert. And you're  
10 to give that evidence the same as everything else, the weight  
11 and value which you feel is appropriate. All right.

12 Also, the final analysis that you will be asked to do is  
13 if you find that the Plaintiff is entitled to a verdict for  
14 nuisance and/or negligence, you will have gone through the  
15 process and you will determine actual damages. And that's to  
16 compensate him for a loss.

17 If you find actual damages, then your next step on these  
18 will be punitive damages. If you don't find actual damages,  
19 then you do not make the analysis of punitive damages. If you  
20 award actual damages, you can consider punitive damages.

21 Punitive damages are intended to punish the Defendants for  
22 extraordinary and/or outrageous misconduct and to prevent the  
23 Defendant and others in similar circumstances from such acts  
24 in the future. Punitive damages can only be awarded if the  
25 conduct of the Defendant has been something more than just

1     mere negligence.

2             The evidence must establish the Defendants' acts were  
3 reckless, willful, and wanton, meaning there was a conscious  
4 failure to exercise due care. And I've discussed with you  
5 what reckless means. And that's the part where you need to  
6 use if you get to the analysis of punitive damages.

7             As previously stated, clear and convincing evidence is  
8 required for this, more than just a preponderance. Clear and  
9 convincing evidence establishes in your mind that not only the  
10 fact is probable, but it is highly probable.

11            So before awarding punitive damages you must consider and  
12 weigh four elements. There's four things for you to consider  
13 before making this. First, you must consider the relationship  
14 between any punitive damages or any harm caused.

15            Any penalty imposed should take into account the  
16 reprehensibility of the conduct, the harm caused, the  
17 Defendants' awareness of the conduct's wrongfulness, the  
18 duration of the conduct and any concealment. Thus, any  
19 penalty imposed should bear a relationship to the nature and  
20 extent of the conduct and any harm caused including the  
21 compensatory damages which you award. All right.

22            The second factor which you are to consider in punitive  
23 damages is any penalty imposed should take into account as a  
24 mitigating factor any other penalty that may have been imposed  
25 or which may be imposed for the conduct involved including any

1 criminal or civil penalty or any other punitive damage award  
2 arising out of the same conduct.

3 The next one, you should consider whether to award  
4 punitive damages may deprive the Defendants of any profits  
5 derived from the improper conduct and whether the ill-gotten  
6 profits should be properly awarded to the Plaintiffs.

7 And, finally, any award of punitive damages must be  
8 limited to punishment and thus may not affect economic  
9 bankruptcy. To this end, the Defendants' ability to pay any  
10 punitive damages should be considered. However, the economic  
11 bankruptcy factor is not an absolute bar to an award of  
12 punitive damages.

13 So, therefore, the fourth element you're to determine on  
14 negligence and nuisance per se is the damages portion. If you  
15 find that they're entitled to a verdict, then you would  
16 determine actual damages. If you find actual damages, then  
17 you may consider punitive damages. Again, it's under a little  
18 bit higher standard than the actual damages. So that's --  
19 that's kind of all that applies to negligence and nuisance per  
20 se.

21 A few more things and then we'll be able to send you  
22 back. Acquiescence, the third claim is for acquiescence. If  
23 adjoining landowners occupy their respective premises up to a  
24 certain line which they mutually recognize and acquiesce in  
25 for a long period of time, they are precluded from claiming

1 the boundary line thus recognized and acquiesced in it is not  
2 the true one.

3 If a party stands by and sees another dealing with  
4 property in a manner inconsistent with his rights and makes no  
5 objection, he cannot afterwards have relief. His silence  
6 permits or encourages others to part with their money or  
7 property, and he cannot complain that his interests are  
8 affected. His silence is acquiescence and it stops. All  
9 right?

10 Again, that's what you will need -- if you feel like the  
11 Plaintiff has met its burden by a preponderance of the  
12 evidence as to acquiescence, then you'd find for the  
13 Plaintiff. If you find they didn't meet that, then you would  
14 find for the Defendant.

15 And, finally, is prescriptive -- the final claim for you  
16 to consider is prescriptive easement. And, again, this is one  
17 of those that is a higher burden, clear and convincing. In  
18 order to establish a prescriptive easement the Plaintiffs must  
19 identify the thing enjoyed, show their use has been open,  
20 notorious, continuous, uninterrupted in contrary to the true  
21 property owner's right for a period of 20 years.

22 Now open means that the use is not made in secret or  
23 stealthily and may also mean that it is visible or apparent.  
24 Notorious means that the use is actually known to the owner or  
25 is widely known in the neighborhood. Continuous and

1     uninterrupted means without a gap in its use.

2             And a party can tack or add on to a period of use of the  
3     prior owners to satisfy this 20 years in uninterrupted and  
4     continuous use. However, the use by previous owners must also  
5     satisfy all of the elements of prescriptive easement.

6             Permissive use defeats -- permissive use defeats the  
7     establishment of a prescriptive easement because use that is  
8     permissive cannot be adverse. If the Plaintiffs show the use  
9     was open, notorious, continuous, and uninterrupted, the burden  
10    shifts to the title owner to rebut a presumption that the use  
11    was adverse.

12            Now in this matter the Defendants have also asserted what  
13    we call an affirmative defense. And they have the burden of  
14    proving that in the same standard, preponderance of the  
15    evidence. And this is a duty to mitigate damages.

16            A party who has suffered injury or damage from conduct of  
17    another is under a duty to make all reasonable efforts to  
18    minimize the damage incurred. To the extent that he  
19    reasonably could have so minimized those damages and failed to  
20    do so, he is not entitled to recover from the other party.

21            In other words, one cannot recover any damages that might  
22    have been avoided by the use of reasonable care and diligence.  
23    A plaintiff's failure to mitigate damages allows a defendant  
24    to avoid only those damages that reasonably could have been  
25    avoided by the plaintiff. An injured party is required to do

1     that which an ordinary, prudent person would do under the same  
2     or similar circumstances.

3             However, the injured party is not required to  
4     unreasonably burden himself to incur substantial expense in an  
5     effort to mitigate those damages. The party who claims  
6     damages should have been minimized has the burden of proving  
7     them, that they could have been avoided or reduced. All  
8     right.

9             At this time I'm going to go over the verdict form. All  
10    right. The first part -- all right. The top part of your  
11    verdict form is just the caption that talks -- and then you go  
12    in and it says please answer each of the following questions.  
13    All right. And, again, this will help you, like give you a  
14    roadmap as far as what you need to be doing.

15            The first question here as to the cause of action for  
16    nuisance per se, we, the jury, unanimously find. If you find  
17    that the Plaintiff has met its burden, that he's -- that  
18    they're entitled to a verdict for nuisance per se, then you  
19    would check for the Plaintiffs. If you find the Plaintiff has  
20    not met their burden, then you would check for the Defendant.

21            As you'll see from B here, if you find for the  
22    Plaintiffs, then you must determine the amount of actual  
23    damages first. And you would write that in that blank there.  
24    And if you find actual damages, you may consider punitive  
25    damages.

1           If you find Plaintiffs is entitled to punitive damages by  
2 clear and convincing evidence, then please indicate the amount  
3 below. And that would be right there for punitive damages.  
4 So you'd only get to punitive damages if you find actual  
5 damages. You'd only get to actual damages if you find for the  
6 Plaintiffs.

7           So once you have done that analysis, then you would go to  
8 page 2. All right. And you would first -- you'd have  
9 basically for negligence -- you've got the same kind of claim.  
10 If you find -- I mean, same kind of analysis.

11           If you find that the Plaintiff has met its burden on  
12 negligence, is entitled to a verdict, then you would check for  
13 the Plaintiff. If you find that the Plaintiff did not meet  
14 its burden on this particular cause of action, you'd find for  
15 the Defendants.

16           And, again, the same thing. If you had found for the  
17 Plaintiff, then you will go and make a determination of actual  
18 damages that relates to the negligence. And then the next  
19 step is if you have found actual damages you can consider  
20 punitive damages, again, by clear and convincing evidence.

21           As to the third claim -- as to the third claim, again,  
22 there's no damages analysis here. But if you find that the  
23 Plaintiff has met its burden for acquiescence, and, again,  
24 this is by a preponderance of the evidence, then you would  
25 find for the Plaintiffs. If you find that the Plaintiff has

1 not met its burden on this one, you would check for the  
2 Defendant.

3 Then the final is prescriptive easement. Again,  
4 according to clear and convincing evidence, if you find the  
5 Plaintiffs met its burden, you would check for the Plaintiff.  
6 And if you find they didn't, you'd check for the Defendant.  
7 Once you have completed this, you would date and, Mr. Foreman,  
8 you would sign and let the bailiff know.

9 Now let me give you a couple of final comments. Your  
10 decision must be final, I mean, must be unanimous. That means  
11 all 12 of you must agree on each of the answers that you put  
12 on this piece of paper. Your decision must be based on the  
13 evidence and the law that I've applied. It shouldn't be based  
14 on any compassion, any prejudice, any sympathy, any emotion,  
15 just the evidence presented and the law here.

16 Now when you get back there, if you have any questions,  
17 your job as the Foreman is to write those questions on a piece  
18 of paper, present those to the bailiff, and the bailiff will  
19 present them to me. And I can respond in one of two ways. I  
20 can either write the response on the paper or send you a  
21 written response back or sometimes it requires me to bring all  
22 of you back in here and give you some additional instructions.

23 Now I will tell you, we cannot answer questions of facts.  
24 We cannot refer -- we cannot give you anymore evidence. A lot  
25 of times jurors will come back, oh, they referred to a

1 document, but it wasn't in evidence. Can we see that? Well,  
2 all of the evidence that the parties felt was appropriate,  
3 they have put in. So that's what you have to make your  
4 decision on. So no additional facts.

5 Alternates, let me talk to you for a minute. Y'all have  
6 been very, very important in this trial because if something  
7 had happened to any of those other individuals, they could not  
8 proceed forward, and y'all had to jump in or we couldn't have  
9 completed the trial. But, unfortunately, you're not allowed  
10 to participate in the deliberations.

11 Once, you know, that's -- so you have to leave them.  
12 Let them -- they're on their own after this. So -- I do --  
13 you're very important. I don't want you to think because you  
14 can't deliberate that your role in this was not just as  
15 important as all the remaining 12. Because I can tell you,  
16 during all this COVID time, it was very important for  
17 alternates. Almost every trial an alternate moved, you know,  
18 got -- got promoted. So thank y'all for being here for your  
19 support.

20 The final thing that I will tell you is we have made  
21 arrangements for lunch so that y'all would not -- so that you  
22 can deliberate. And that's up to y'all to decide whether,  
23 okay, do we want to deliberate while we're eating? Or do we  
24 want to just take a break? And you'll have whatever you need,  
25 you know, just let the bailiffs know.

1           Our Clerk of Court generally -- the first day that a  
2       jury's fed, it's usually pizza. So just -- just warning you  
3       there. If you need something other than that, then please let  
4       the bailiffs know.

5           So -- but -- so at this time I'm going to send you back  
6       to your jury room, but guess what? I've got to tell you one  
7       more time, do not discuss the case. And the reason is I've  
8       got to make sure that I didn't mistake -- that I didn't give  
9       you some mistaken part of the law or maybe I skipped  
10      something. So if that's the case, I'll bring you back out,  
11      and I'll just fix whatever I need to, and we won't have to go  
12      through this all over again.

13          But if it turns out that there is not any additional  
14      charge for you, then what the bailiff will do is the bailiff  
15      will bring you the verdict form, the evidence and will ask the  
16      alternates to step out. At that point you can finally discuss  
17      the case. So at this point, you can go back in your jury room  
18      and wait for the signal whether you need to deliberate or come  
19      back out.

20          (Whereupon the jury exited the courtroom at 11:37 am)

21          **THE COURT:** All right. Any objections, exceptions from  
22      the Plaintiff?

23          **MR. MARTIN:** No, Your Honor. Well done.

24          **THE COURT:** From the Defendant?

25          **MR. CAMPBELL:** No, Your Honor. We'd just renew all our

1 -- all our motions.

2 **THE COURT:** All right. And you've already -- yeah,  
3 including the comparative negligence, which is Court's exhibit  
4 6. So ---

5 **MR. CAMPBELL:** Yes, sir.

6 **THE COURT:** All right. And y'all have looked through all  
7 this, I mean, the way y'all've treated exhibits, I wouldn't be  
8 surprised if one's hidden under something.

9 **MR. CAMPBELL:** Judge, we have one thing that should not  
10 go to the jury, but we'd like to make a part of the record ---

11 **THE COURT:** Right. It'll be -- it'll be -- just make  
12 sure anything that was introduced -- and that would be ---

13 **MR. CAMPBELL:** This is the previous proceedings, the  
14 litigation involving this property.

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

16 **MR. CAMPBELL:** It's just the pleadings. We were able to  
17 get them from the Clerk of Court's -- I just think it may be  
18 helpful if it's ever needed in the future. This is what the  
19 filings are. That's the only purpose we would append them to  
20 the record, for nothing -- no other purpose.

21 **THE COURT:** All right. You can, I guess, make it a Court  
22 exhibit.

23 **MR. CAMPBELL:** Yeah, Court exhibit ---

24 **THE COURT:** That'll be fine.

25 (Whereupon Court's exhibit 7 was marked)

1           **THE COURT:** All right. Y'all look through these exhibits  
2 and make sure everything's there.

3           (Whereupon court was in recess at 11:39 am)

4           (Whereupon court reconvened at 11:45 am)

5           **THE COURT:** All right. Both parties have looked at the  
6 exhibits that are going back to the jury. No objection from  
7 the Plaintiff?

8           **MR. MARTIN:** No objection.

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

10          **MR. CAMPBELL:** No, Your Honor.

11          **THE COURT:** These are going back with the verdict form.  
12 Is that notebook ---

13          **MADAM COURT REPORTER:** Yes, sir.

14          **THE COURT:** That notebook is an exhibit, too?

15          **MADAM COURT REPORTER:** Yes, sir.

16          **THE COURT:** So give them that. The verdict form's on  
17 top. Alternates will step out. All right. We'll be at ease.

18          (Whereupon the jury began deliberating at 11:45 am)

19          (Whereupon court was in recess at 11:45 am)

20          (Whereupon Court's exhibit 8 was marked)

21          (Whereupon court reconvened at 12:30 pm)

22          **THE COURT:** All right. We have gotten a question from  
23 the jury. It says legal definition of the charges in writing,  
24 nuisance, negligence, action for acquiescence and prescriptive  
25 easement, signed by the Foreman. We've got it marked as Court

1 exhibit 8.

2 I have provided to both sides a copy of the charge for  
3 each of those, and they've got a chance to review. Any  
4 objection for me just ---

5 **MR. MARTIN:** No objection.

6 **THE COURT:** --- sending this back to the jury from the  
7 Plaintiff?

8 **MR. MARTIN:** No objection.

9 **THE COURT:** And from the Defendant?

10 **MR. CAMPBELL:** No objection.

11 **THE COURT:** All right. Send it back.

12 (Whereupon court was in recess at 12:30 pm)

13 (Whereupon court reconvened at 2:23 pm)

14 **THE COURT:** All right. I understand we have a verdict.  
15 Anything from the Plaintiff before we bring the jury out?

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

17 **THE COURT:** Anything from the Defendants?

18 **MR. CAMPBELL:** No, Your Honor.

19 **THE COURT:** And I know this has been a long ordeal for  
20 all of y'all, but I would just remind everybody to keep their  
21 composure when the verdict is read. All right. If the jury  
22 is ready, bring them in.

23 (Whereupon the jury entered the courtroom at 2:24 pm)

24 **THE COURT:** All right, Mr. Foreman, I understand you've  
25 reached a verdict.

**VERDICT OF THE JURY**

1           **MR. FOREMAN:** Yes, sir, we have.

2           **THE COURT:** All right. If you could hand it to the  
3 bailiff and ...

4           (Pause)

5           **THE COURT:** Mr. Foreman, I think in light of your answer  
6 to the first one, ---

7           **MR. FOREMAN:** Yes.

8           **THE COURT:** --- that you also have to answer any actual  
9 damages. So I'm going to send you back at this time and ask  
10 that you continue deliberating as far as that goes, okay?

11          **MR. FOREMAN:** Yes, sir.

12          (Whereupon the jury exited the courtroom at 2:25 pm)

13          **THE COURT:** All right. And I'll advise y'all -- the  
14 first form, it said they found for the Plaintiff, but said  
15 zero dollars. And I actually just read a case in connection  
16 with this that said that the judge was supposed to send it  
17 back and have them to continue deliberating based on my  
18 charge. And y'all can take -- y'all can take any exception, I  
19 mean, whatever. You know, we'll have post-trial motions. So  
20 that was my instruction. That was the purpose of that. So at  
21 ease until we hear further.

22          **MR. MARTIN:** Can you tell us what's on page 2?

23          **THE COURT:** No.

24          (Whereupon court was in recess at 2:27 pm)

25          (Whereupon court reconvened at 2:32 pm)

1           **THE COURT:** All right. It's my understanding we've got a  
2 verdict again. Is that correct?

3           **THE BAILIFF:** Yes, sir.

4           **THE COURT:** All right. If they're ready, bring them in.  
5 (Whereupon the jury entered the courtroom at 2:33 pm)

6           **THE COURT:** All right, Mr. Foreman, have you reached a  
7 verdict?

8           **MR. FOREMAN:** Yes, sir.

9           **THE COURT:** Okay. And you've made the revisions based  
10 ---

11           **MR. FOREMAN:** Yes, sir.

12           **THE COURT:** Okay. All right. And is this the unanimous  
13 decision of the jury?

14           **MR. FOREMAN:** Yes, sir.

15           **THE COURT:** All right. At this time I will ask that you  
16 publish the verdict.

17           **MADAM CLERK:** As to the cause of action for nuisance per  
18 se, we, the jury, unanimously find for the Plaintiffs, actual  
19 damages, twenty-eight thousand (28,000). Punitive damages,  
20 zero.

21           As to the cause of actions for negligence, we, the jury,  
22 unanimously find for the Plaintiffs, the damages -- actual  
23 damage amount, one hundred and sixty-eight thousand dollars  
24 (\$168,000.00). And as to the punitive damages, zero.

25           As to the cause of action of acquiescence, we, the jury,

1 unanimously find for the Plaintiff. As to the cause of action  
2 for prescriptive easement according to the clear and  
3 convincing evidence, for the Plaintiff.

4 If this was your verdict and still your verdict, please  
5 raise your right hand.

6 (Whereupon all jurors raised their right hand)

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

8 Anything from the jury before I release them from the  
9 Plaintiff?

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

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

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

13 **THE COURT:** All right. Ladies and gentlemen, that will  
14 conclude your jury service. At this time you can go back to  
15 your jury room. And I'll step back there in a minute just to  
16 talk with you. If you need -- you don't have to stay around.  
17 I'll be glad to answer any questions you have or anything like  
18 that. But at this time you're free to go, but I'll step back  
19 there in just a moment.

20 (Whereupon the jury exited the courtroom at 2:36 pm)

21 **THE COURT:** All right. I think in light of all the stuff  
22 that we need to kind of work out here, I think it's only  
23 appropriate to give everybody 10 days to -- 'cause I'm sure  
24 both sides will be filing motions. I mean, I think y'all need  
25 to file some to figure out how to deal with what the jury's

1 found and vice versa over here. So we'll give everybody 10  
2 days to file motions. Will that work?

3 **MR. MARTIN:** That's fine.

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

5 **THE COURT:** And we'll give you a copy of the verdict  
6 form.

7 **MR. CAMPBELL:** Thank you.

8 **THE COURT:** I just -- she was going to make it then, but  
9 I said I wanted y'all to look at it now just ---

10 **MR. MARTIN:** Your Honor, the one thing we do need  
11 probably is the injunction dealt with.

12 **THE COURT:** Well, I mean, I think let's just deal with  
13 that in the -- because -- yeah, let's deal with that in the  
14 motions.

15 **MR. MARTIN:** But we have a temporary injunction. Does it  
16 continue? That's all I'm asking.

17 **THE COURT:** Right. I think the only injunction was --  
18 sought was the block -- a gate and blocking the driveway, I  
19 believe?

20 **MR. MARTIN:** No, it was an injunction to keep them from  
21 using -- from blocking us from using the driveway and  
22 turnaround.

23 **THE COURT:** All right. Putting a fence across and  
24 blocking access to the back building.

25 **MR. MARTIN:** I guess since we won we don't need it

1 anymore, I guess, since it's ours now.

2 **THE COURT:** Well, yeah, let's -- and we can address that  
3 in a motion. I mean, that would still be in place at this  
4 point because it has not been dissolved.

5 **MR. MARTIN:** Okay.

6 **THE COURT:** All right.

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

8 **THE COURT:** And that can be addressed in the motions. So  
9 -- and like I said, she'll give you a copy. Let me step back  
10 here.

11 (Whereupon court was in recess at 2:38 pm)

12 (Whereupon court reconvened at 2:44 pm)

13 **THE COURT:** Anything from the Plaintiff?

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

15 **THE COURT:** All right. Anything from the Defendants?

16 **MR. CAMPBELL:** We have 10 days ---

17 **THE COURT:** You have 10 days. And you know that's a very  
18 solid deadline. I think they found that even when a judge  
19 extended it, it didn't matter. So -- all right. I'm sure  
20 I'll be seeing y'all again soon.

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

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

23 **THE COURT:** It may be -- yeah, just file your motions.  
24 And I'll get together with you when we can hear them. Y'all  
25 -- everybody's in Greenville. I think I'm in Greenville most

1 the time. We'll probably have these heard in Greenville.

2 **MR. MARTIN:** Okay.

3 **THE COURT:** So ---

4 **MR. MARTIN:** Thank you.

5 **THE COURT:** All right.

6 **MR. CAMPBELL:** Thank you, Judge.

7 (Hearing Ended at 2:45 pm)

8 (End of Requested Transcript of Record)

## Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 23rd - 26th day of May 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 4, 2023

s/Susan W. Hudgins

---

Circuit Court Reporter



# Defendant's Exhibits

2020-CP-39-00266

- 1996 Betty M. Ramey Survey \_\_\_\_\_ Exhibit 1 EV
- Pickens County GIS Aerial View of Property \_\_\_\_\_ Exhibit 2 EV
- Aerial Photo of Property \_\_\_\_\_ Exhibit 3 EV
- Photo Of Property Taken 4/14/2022 \_\_\_\_\_ Exhibit 4 EV  
Photo Taken by Elee Diamaduros
- Photo Of Property Taken 11/1/2021 \_\_\_\_\_ Exhibit 5 EV  
Photo Taken by Site Consultants, Inc.
- Photo Of Property Taken 3/6/2020 \_\_\_\_\_ Exhibit 6 EV  
Photo Taken by Emily O'Brian
- Photo Of Property Taken 3/6/2020 \_\_\_\_\_ Exhibit 7 EV  
Photo Taken by Emily O'Brian
- Photos Showing Storage of Equipment \_\_\_\_\_ Exhibit 8 EV  
Photos Taken Between 3/16/2020 and 1/7/2022 by Jonathan Thomas
- Photo of Property Prior to Excavation \_\_\_\_\_ Exhibit 9 EV  
Photo Produced by Plaintiffs
- Photos of Driveway to Parking Lot Taken 11/1/2021 \_\_\_\_\_ Exhibit 10 EV  
Photos Taken by Site Consultants, Inc.
- Photo of Parking Lot Pre-Paving Taken 9/6/2018 \_\_\_\_\_ Exhibit 11 EV  
Photo Taken by Jonathan Thomas
- Photos of Parking Lot Currently Taken 3/6/2020 \_\_\_\_\_ Exhibit 12 EV  
Photo Taken by Emily O'Brian
- Photos of Parking Lot Currently Taken 4/14/2022 \_\_\_\_\_ Exhibit 13 EV  
Photo Taken by George Campbell
- Photo Reviewed by David Hall \_\_\_\_\_ Exhibit 14 EV  
Photo Produced by Plaintiffs
- Hyper Formance YouTube Video from 2014 \_\_\_\_\_ Exhibit 15 EV
- Hyper Formance YouTube Video Screenshots \_\_\_\_\_ Exhibit 16 EV
- Photos of Outside Slab Taken 4/14/2022 \_\_\_\_\_ Exhibit 17 EV  
Photos Taken By George Campbell

page (4) of 6

Michelle Broom  
Deputy Clerk, Civil  
May 26, 2022

Expert Reports \_\_\_\_\_ Exhibit 18

Click Property Deeds \_\_\_\_\_ Exhibit 19 EV

Thomas Property Deeds \_\_\_\_\_ Exhibit 20 EV

Photo \_\_\_\_\_ 21 EV

Photo \_\_\_\_\_ 22 EV

Michelle H. Brown  
Deputy clerk, Civil  
May 26, 2022

page (5) of 6

~~\*Click Prop. V. Thomas Prop.\*~~

2020-CP-39-00266  
5/23/22 - 5/26/22

EX. #

PL EXHIBIT LIST

BATES NO.

EV	1	GIS Aerial map	[No Bates #]	✓
EV	2	Thomas Aerial photo	Th 20	✓
EV	3	Photos	PL 1 PL 5	✓
EV	4	Deed Brent Click to Click Properties, LLC	PL 264-267	✓
EV	5	Deed Mark Smith to Brent Click	PL 260-263	✓
EV	6	Deed Dobsons to Mark Smith	PL 258-259	✓
EV	7	Deed Ramey to Dobsons	PL 254-256	✓
EV	8	Betty M. Ramey Survey	PL 49	✓
EV	9	Betty M. Ramey Deeds: Quit Claim Deed, Deed of Distribution	PL 248-253	✓
EV	10	<sup>SH</sup> <del>[photo of plastic model]</del>	PL 191	✓
EV	11	Photos	PL 105 PL 209	✓
EV	12	Photo	Th 42	
EV	13	Photos	PL 4, PL 110, 112, 113	✓
EV	14	Photos	PL 6, 7, 8, 10, 11	✓
EV	15	Photos	Th 28, 29, 30, 31, 32, 35, 36	✓
EV	16	Photo	PL 12	✓
EV	17	Photos	PL 117 & 118	✓
EV	18	Photos	PL 107-109	✓
EV	19	Photos	PL 91-95	✓
EV	20	Photos	Th 104 & 144	✓
	21	Photos	Th 148-150	

page (1) of 6

Michelle L. Broom  
Deputy Clerk, Civil  
May 26, 2022

**EX. #****PL EXHIBIT LIST****BATES NO.**

EV	22	Photos	PL 15-20	✓
	23	Photos	PL 9 & Th 82	
EV	24	Photos	PL104	✓
EV	25	Photos	PL155, 157, 158, 159	✓
EV	26	Photos	PL 96-99, 103	✓
EV	27	Photos	Th174, Th177, Th180, PL202, Th175, PL203, Th176, Th178, PL204	✓
EV	28	Photos	Th179, PL205, Th182, PL206, Th183, Th184, PL207	✓
EV	29	Photos	PL151, 152, 153, 154, 156, 164	✓
EV	30	Photos	PL 210, 211	✓
EV	31	Photos	PL 216 Th103 PL 13	✓
EV	32	Photos	PL 212, 213, 214, 218	✓
EV	33	Photos	PL208, 215, & 217	✓
	34	Bing and Google aerial views	PL 78, 79	
	35	Drawing/photo	PL 201	
	36	Photo	Th 5	
	37	[Video of Click property and back building]	PL193	
	38	David Hall, P.E. -- CV	PL69	

page (2) of 4

EX. #

## PL EXHIBIT LIST

BATES NO.

EV	39	County topo map - 1978	PL134-135	✓
ID	40A	BLE final report	PL166-188	✓
ID	40B	Diagrams	PL 170, 173-176	
EV	41	David Hall, P.E. S-1 Site Plan	PL195	✓
EV	42	David Hall, P.E. S-1 Site Plans cross-sections	PL 246	✓
EV	43	Deed Watkins to Thomas SC Properties, LLC	[No Bates #] Part of Thomas Exhibit 22	✓
EV	44	Photos	T8, T89	✓

Michelle A Brown  
Deputy Clerk Civil  
May 26, 2022

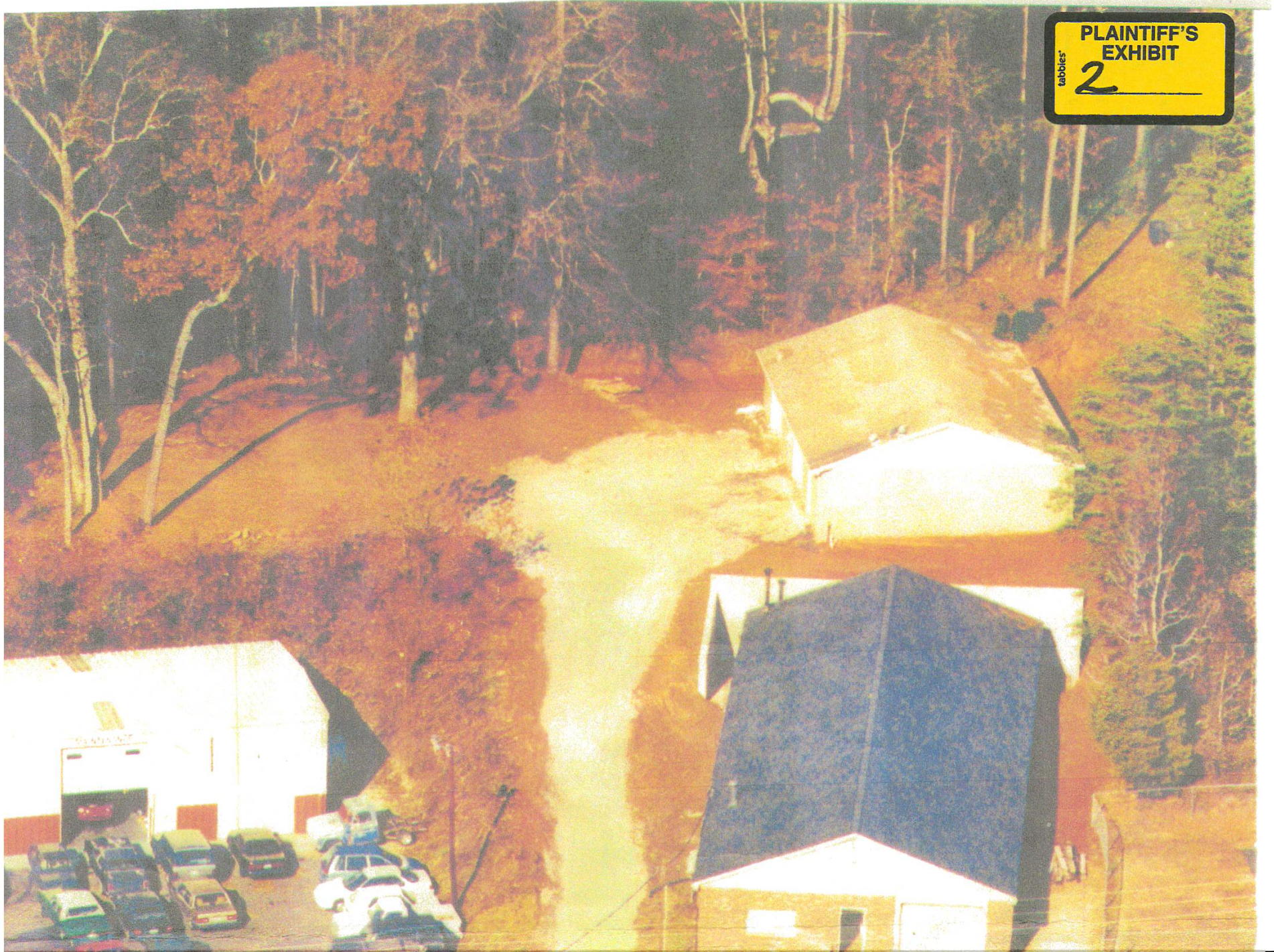
page (3) of 6

PENBAG 800-431-6888  
PLAINTIFF'S EXHIBIT EV  
5/23/22 SH



PICKENS COUNTY  
SOUTH CAROLINA  
CALHOUN MEMORIAL HIGHWAY





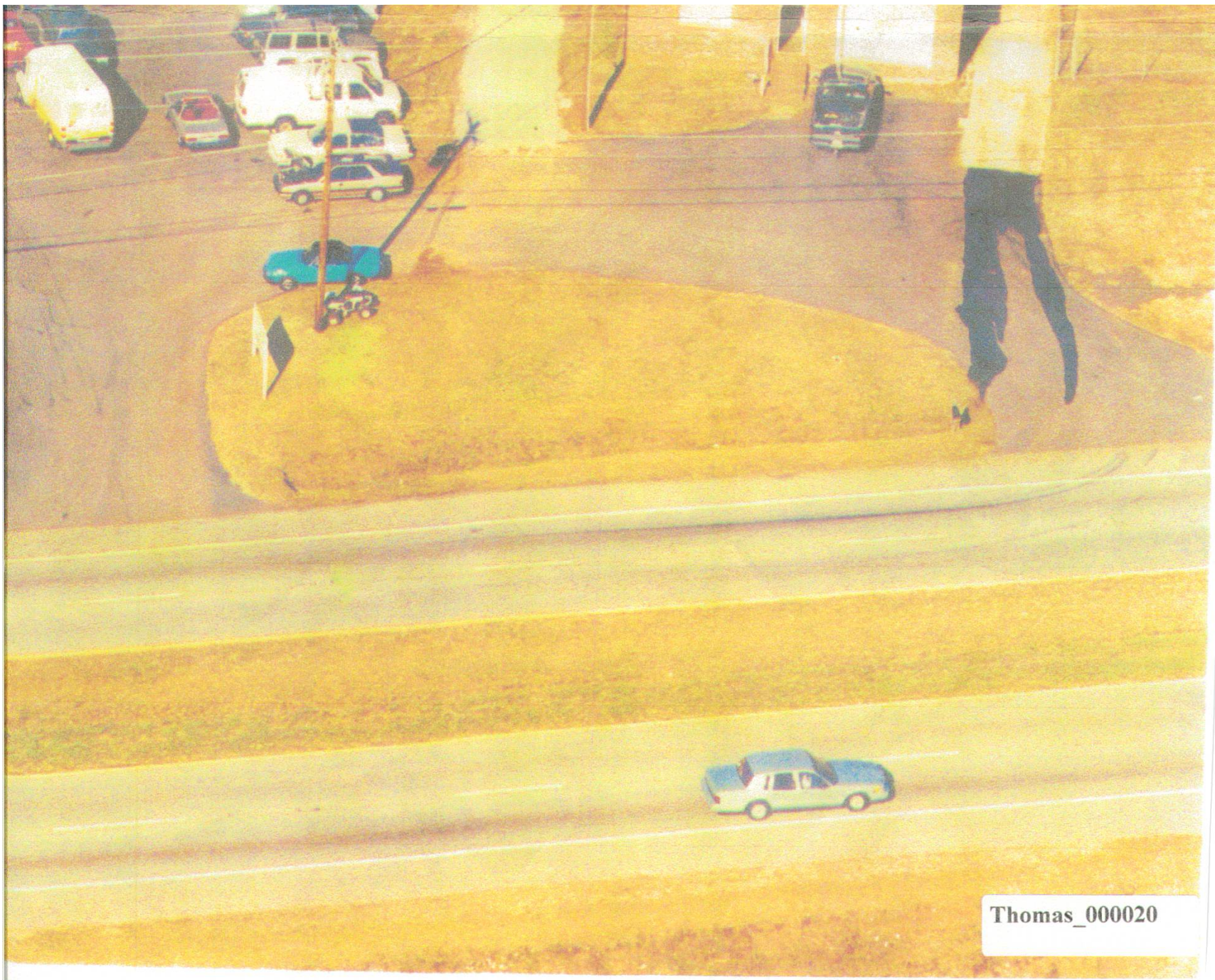
tabbles®  
PLAINTIFF'S  
EXHIBIT  
**2**



1306



1307



Thomas\_000020





PL-5



WITNESS our Hand and Seal this 2<sup>nd</sup> day of March, 2017.

Signed, Sealed and Delivered  
in the Presence of:

Grantor:

[Signature]

[Signature]  
Brent Click

Rebecca Jones

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

ACKNOWLEDGMENT

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County by the Grantor(s) and was executed and acknowledged to be the free act and voluntary deed of the Grantor(s).

WITNESS my signature this 2<sup>nd</sup> day of March, 2017.

[Signature]  
S. Allan Hill  
Notary Public for: South Carolina  
My Commission expires: 2/5/2018



Deed Prepared by S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North St., Greenville, SC 29601

**EXHIBIT "A"**

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, being shown as containing 0.428 acres, according to "Boundary Survey for Betty M. Ramey" prepared by J.C. Smith & Associates dated 8/28/96 and recorded in Plat Book 56 at Page 334 in the Pickens County ROD Office, SC, reference to said plat being hereby made for a more complete metes and bounds description thereof.

This being the same property conveyed to the Grantor herein by Mark M. Smith, recorded in the Pickens County ROD Office on February 17, 2017, in Deed Book 1839 at Page 166.

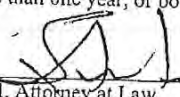
TMS#: 5059-13-14-5361

Grantor Name: **Brent Click**



STATE OF SOUTH CAROLINA )  
 ) AFFIDAVIT FOR EXEMPT TRANSFERS  
COUNTY OF PICKENS )

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred bearing County Tax Map Number 5059-13-14-5361 was transferred by Brent Click to CLICK PROPERTIES, LLC on March 2, 2017.
3. The deed is exempt from the deed recording fee because (See information section of affidavit):  
  
(8) transferring realty to a partnership as partner of the entity provided no consideration is paid for the transfer other than interest in the partnership
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Grantee
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

  
\_\_\_\_\_  
S. Allan Hill, Attorney at Law  
819 E. North Street  
Greenville, SC 29601  
(864) 242-4995

SWORN to before me this 2<sup>nd</sup> day of March, 2017.

  
Notary Public for South Carolina  
My Commission Expires: 

Deed Prepared by S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North St., Greenville, SC 29601



STATE OF SOUTH CAROLINA)  
COUNTY OF PICKENS )

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 3668 Calhoun Memorial Hwy  
bearing Pickens County Tax Map Number 3059-13-14-5361  
by Mark M. Smith, was transferred  
to Brent Click on 2/10/17

3. Check one of the following: The deed is

- (a)  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b)  subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c)  exempt from the deed recording fee because (See information section of affidavit): \_\_\_\_\_

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes  or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See information section of this affidavit):

- (a)  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of 140,000.00
- (b)  The fee is computed on the fair market value of the realty which is \_\_\_\_\_
- (c)  The fee is computed on the fair market value of the realty as established for property tax purposes which is \_\_\_\_\_

5. Check Yes  or No  to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, @ the amount of the outstanding balance of this lien or encumbrance is: \_\_\_\_\_

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: 140,000.00
- (b) Place the amount listed in item 5 above here:  
(If no amount is listed, place zero here.) \_\_\_\_\_
- (c) Subtract Line 6(b) from Line 6(a) and place result here: 140,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \_\_\_\_\_

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

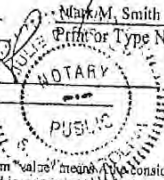
9. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

*[Signature]*  
Responsible Person Connected with the Transaction

SWORN to before me this 10<sup>th</sup> day of Feb 2017

Mark M. Smith  
Print or Type Name Here

Notary Public for SC  
My Commission Expires: 6/4/2017



**INFORMATION**

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, a value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

**Exempted from the fee are deeds:**

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership is a partnership whose partners are all members of the same family. A family trust is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to, the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(s)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS ) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS THAT, **BRADLEY S. DOBSON AND TAMMY M. DOBSON**, herein referred to as Grantors, for and in consideration of the sum of **ONE HUNDRED FIVE THOUSAND AND 00/100 (\$105,000.00)** Dollars paid by **MARK M. SMITH**, hereinafter referred to as Grantee, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto:

**MARK M. SMITH,**  
his heirs, successors, and assigns forever:

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, being shown and designated as Lot of Subdivision, according to "Boundary Survey for Betty M. Ramey" prepared by J.C. Smith & Associates, dated 08/28/96 and recorded in Plat Book 56 at Page 334 in the Register of Deeds Office for Pickens County, South Carolina, reference to said plat being hereby made for a more complete metes and bounds description thereof.

This is the same property conveyed unto the Grantors herein by deed from Betty M. Ramey dated April 16, 1998 and recorded in the Office of the Pickens County Register of Deeds in Deed Book 422 at Page 202.

The above described property is subject to any and all easements and/or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions, covenants or zoning ordinances affecting such property as may appear of record. The above described property is specifically subject to restrictions governing said property as appear in the Register of Deeds Office for Pickens County, South Carolina in Book 12-C, Page 91.

Grantee's Address: **PO Box 74**  
**Piedmont, SC 29611**

Tax/Map No. 5059-13-14-5361

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining. TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever. AND THE GRANTORS do hereby bind the Grantor(s) and the Grantors' heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantors and Grantors' heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS our Hand and Seal this 9th day of June, 2005.

Signed, Sealed and Delivered  
in the Presence of:

\_\_\_\_\_  
Jeannette Stone

\_\_\_\_\_  
Bradley S. Dobson  
  
\_\_\_\_\_  
Tammy M. Dobson

000010695  
RECORDED 06/13/2005 11:57:17AM  
Fee:10.00 State:273.00  
County:115.50 Exempt:\_\_\_\_\_  
Pickens County, SC  
Register of Deeds

PICKENS COUNTY REGISTER OF DEEDS  
1000 MARKET STREET, SUITE 200  
PICKENS, SC 29626

PICKENS COUNTY REGISTER OF DEEDS  
1000 MARKET STREET, SUITE 200  
PICKENS, SC 29626




Date: 5/10/22 TRUE CERTIFIED COPY  
**Paul A. McGuffin** SR  
PAUL A. MCGUFFIN, REGISTRAR  
PICKENS COUNTY REGISTER OF DEEDS

COUNTY OF PICKENS

} PROBATE  
}

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named Grantors sign, seal and as their act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this  
9th day of June, 2005.



Notary Public for South Carolina  
My Commission Expires: October 14, 2009

Prepared By:

OLSON, SMITH, JORDAN & COX, P.A.  
P.O. BOX 1207  
EASLEY, SC 29641

PL 259

REMITT

MAILING BOX 1026  
Easley, South Carolina 29641

422/202

TITLE TO REAL ESTATE  
STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

KNOW ALL MEN BY THESE PRESENTS:

That I, BETTY M. RAMEY, in the State aforesaid, in consideration of the sum of SEVENTY-FIVE THOUSAND AND NO/100THS (\$75,000.00) DOLLARS to the grantor in hand paid at and before the sealing of these presents by the grantees, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said BRADLEY S. DOBSON AND TAMMY M. DOBSON, their heirs and assigns forever:

ALL that certain piece, parcel or tract of land situated lying and being in the State of South Carolina, County of Pickens, containing 0.428 acres as shown on plat for Betty M. Ramey, prepared by J. C. Smith & Associates Surveyors, dated August 28, 1996, and, with reference to said plat, being more particularly described as having the following measurements and boundaries, to-wit:

BEGINNING on a point on the Northern side of US Highway No. 123, at the common corner of the herein described Tract and other property of Wallace G. Merck, thence running along the common line of said Tracts N. 19-23-44 E. 224.31 feet to a point; thence running along the common line of the herein described Tract and property now or formerly of the Frank R. Garrison Estate N. 58-43-38 E. 112.43 feet to a point; thence running along the common line of the herein described Tract and property now or formerly of Holcraft, Inc., S. 18-40-00 W. 283.07 feet to a point on the Northern side of US Highway No. 123; thence running along the Northern side of said US Highway No. 123 S. 88-44-28 W. 80.00 feet to the point of beginning.

PICKENS CO.  
REGISTER OF DEEDS  
98 APR 21 PM 3:15



Date: 5/10/21 TRUE CERTIFIED COPY  
Paul A. McGuffin SR  
PAUL A. MCGUFFIN, REGISTRAR

PICKENS COUNTY REGISTER OF DEEDS

PL 254

The above described property is subject to any and all easements and/or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions covenants or zoning ordinances affecting such property as may appear of record. The above described property is specifically subject to those certain restrictions recorded in Deed Book 12-C, at Page 91 in the R/D Office for Pickens County, South Carolina.

This being the same property conveyed to Betty M. Ramey by Deed of Distribution from the Estate of Major Redmond Ramey, dated 3/21/95 and recorded in Deed Book 296, at Page 103, in the R/D Office for Pickens County, South Carolina. Also see Quitclaim Deed from Wallace G. Merok, et.al. to Betty M. Ramey, dated 3/19/98 and recorded in Deed Book 422, at Page 198 in the R/D Office for Pickens County, South Carolina.

TOGETHER with all and singular the Rights, Members, Hereditments and Appurtenances to the said premises, belonging, or in anywise incident or appertaining.

... TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantees hereinabove named, and their heirs and assigns forever.

And the grantor does hereby bind the grantor and the grantor's Heirs and Personal Representatives to warrant and forever defend all and singular the said premises unto the grantees hereinabove named, and the grantee's Heirs and Assigns against the grantor and the grantor's Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the grantor's hand and seal this 16th day of April in the year of our Lord One Thousand Nine Hundred and Ninety Eight.

Signed, Sealed And Delivered  
in the Presence of

William J. Spillim

Betty M. Ramey L.S.  
Betty M. Ramey

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named grantor sign, seal and as the grantor's act and deed deliver the within written deed, and that (s)he, with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 16th day of April, 1998.

*Shirley J. Griffin*

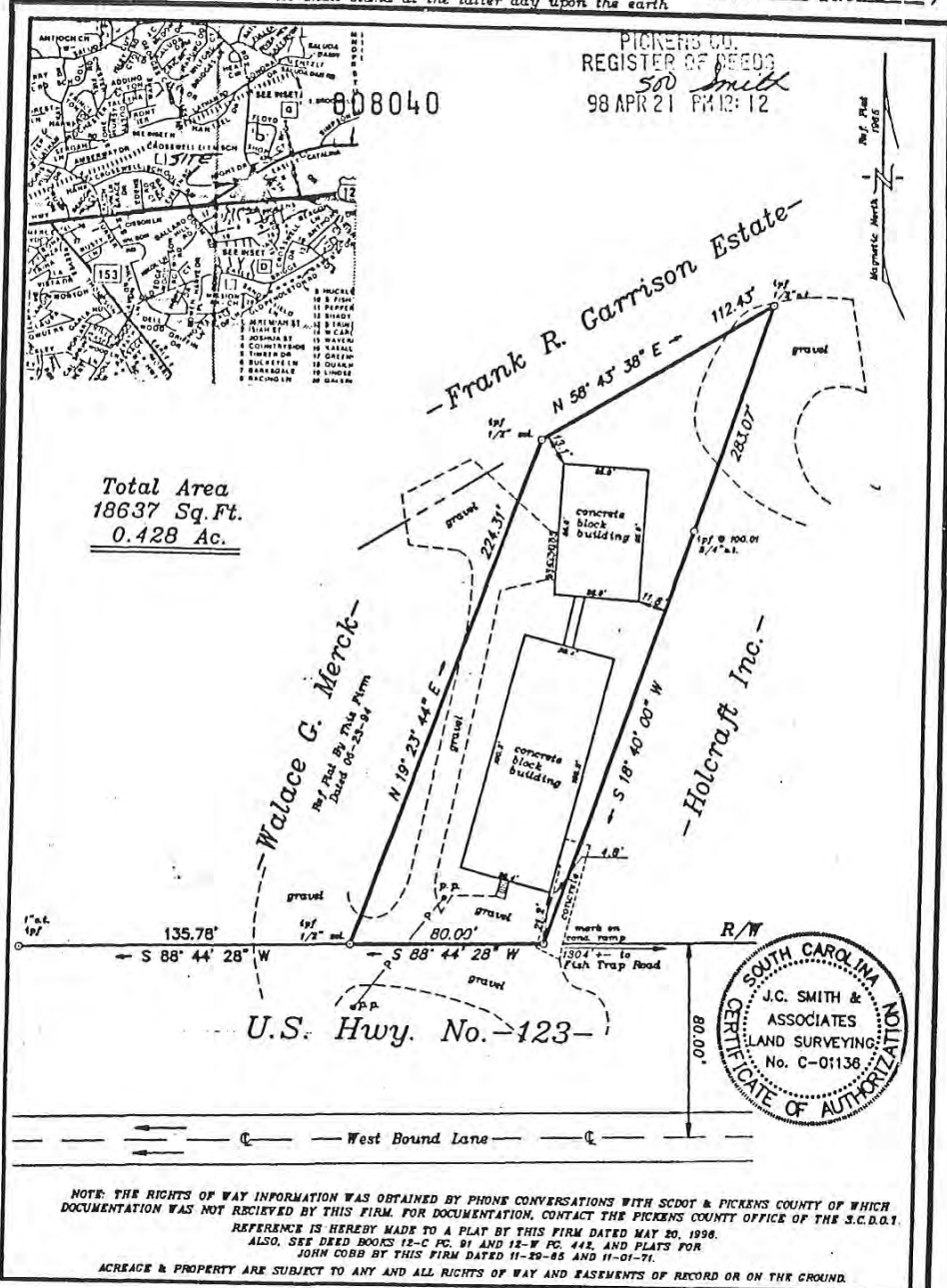
Notary Public for South Carolina  
My Commission Expires: 10/24/99

Grantor Address: 3608 Calhoun Memorial Hwy.  
Greenville, SC 29611

TMB No.: L13-00-108A

JIMMY ROCKWELL, Tax Assessor  
222 MADAMING AVE., B-8  
PICKENS, SC 29671

He shall stand at the latter day upon the earth. BOOK 54 PAGE 334



**Boundary Survey for Betty M. Ramey**

**SINCE 1909 SMITH**  
 J.C. Smith & Associates  
 R.L.S. #7882  
 P.O. Box 1090 Easley, SC  
 29641/864-859-5729  
 Fax 855-8022

**County Pickens South Carolina**

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREOF WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.

*Thomas E. Belcher*  
 J. C. Smith PLS# 7882  
 Thomas E. Belcher PLS# 16126

Date August 20, 1996  
 Job 08289620

25' 0 25' 50'  
 1" = 50'

STATE OF SOUTH CAROLINA  
 COUNTY OF PICKENS  
 IN THE MATTER OF Major Richard Ramey, Deceased  
 CASE NUMBER 94E13900537

Book 296 Page 103  
 S. Allen Hill  
 Van Riper Law Firm  
 305 E. Board St.  
 Greenville, SC 29601  
 PICKENS CO. REC 10/09  
 95 OCT -2 AM 11:54

DEED OF DISTRIBUTION

WHEREAS, the decedent died on October 21, 1994; and,  
 WHEREAS, the estate of the decedent is being administered in the Probate Court for Pickens County, South Carolina in File # 94E13900537; and,  
 WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,  
 WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,  
 NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Betty H. Ramey, 2216 Satula Oak Road, Easley, South Carolina 29640  
 the following described property:

See Schedule A

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Betty H. Ramey, her heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, have executed this Deed, this 31 day of March, 1995.

Estate of Major Richard Ramey  
 by Signature: Betty H. Ramey  
 Betty H. Ramey, Personal Representative

SIGNED, SEALED AND DELIVERED  
 IN THE PRESENCE OF  
 Witness: [Signature]  
 Witness: Kathleen A. Collins

STATE OF SOUTH CAROLINA  
 COUNTY OF PICKENS

PROBATE

PERSONALLY appeared before me Kathleen A. Collins and made oath that he/she saw the within named Personal Representative sign, seal, and on their not and deed, deliver the within written Deed, and that he/she with S. Andrew Black witnessed the execution thereof.

Sworn to before me this 31<sup>st</sup>  
 day of March 1995  
[Signature]  
 Notary Public for South Carolina  
 My Commission Expires 12/31/99

Kathleen A. Collins  
 The within document was filed  
 for record on the 2 day of  
Oct. 1995 and recorded

JIMMY MCCOLLUM, Tax Assessor  
 228 MADANILLE AVE., B-8  
 PICKENS, SC 29671

In book 296 page 103  
Marsha R. Reeves  
 R.M.C.  
 Pickens County, S. C.

Date: 5/10/22 TRUE CERTIFIED COPY



Paul A. McGuffin  
 PAUL A. MCGUFFIN, REGISTRAR

SR

Deed of Distribution - Major R. Ramey to Betty M. Ramey, Schedule A

1 of 3

Turner Hill Road Property - TMS - K13-00-0821

ALL that certain piece, parcel or lot of land lying, situate and being in the State of South Carolina, County of Pickens, located five (5) miles southeast of Easley on the northeasterly side of Turner Hill Road (S.C. Road No. 144) and shown as 5.5 ACRE, more or less, on a survey for ROBIN BROOME by C.E. Shehan, RLS #8810 dated September 19, 1988 and having such courses, distances, metes and bounds as will be shown by reference to said plat recorded in the Office of the Clerk of Court for Pickens County in Plat Book 35 at page 228A.

This conveyance is made subject to any and all easements, rights-of-way or restrictions of record or in existence on the premises.

This being the identical property heretofore conveyed unto M.R. Ramey by deed of Phyllis B. Owen and Robin P. Broome dated October 17, 1988 and recorded in the office of the Clerk for Pickens County, South Carolina on October 20, 1988 in Deed Book 48 at page 179.

and, also;

Raw Land for House Construction - TMS - K12-00-017F

ALL that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Pickens, being shown and designated as Tract No. 5, containing 18.48 ACRES, more or less, according to plat prepared by John C. Smith & Son dated April, 1983, reference to which is hereby made for a more complete and accurate description, and according to said plat, being thereon more fully described as follows, to-wit:

BEGINNING at a point in Saluda Dam Road, common corner with property of Hughey; thence along said road as follows: N63-41E 234.62 feet; N63-48E 202.85 feet; N71-18E 187.38 feet; N89-40E 248.2 feet; S87-31E 162.3 feet to corner with property of Georges Creek Park Association; thence leaving road and running along line of Georges Creek Park Association: S18-11W 875 feet; S00-35W 210.87 feet; thence N83-24W 837.46 feet; thence along line of property of Hughey N10-19E 709.25 feet to the point of BEGINNING, and being bounded on the north by center of Saluda Dam Road; bounded on the east by property of Georges Creek Park Association; and bounded on the west by property of Hughey. Less, however, those lots previously deeded out on four prior occasions.

This is a portion of the C.A. Davls Estate. See Apartment 244, File 4 in the office of the Probate Court for Pickens County, SC. Also for derivation purposes see Apartment 347, File 55; Apartment 358, File 45; Apartment 388, File 79; and Deed Book 10-E, page 262 and Deed Book 4-0, page 1.

Deed of Distribution - Major R. Ramey to Betty M. Ramey, Schedule A

2 of 3

This being the identical property heretofore conveyed unto M.R. Ramey by deed of Dorothy Davenport, June Stewart, Charles N. Tinman and Alice R. Davis and James C. Tinman dated October 21, 1983, recorded in the office of the Clerk for Pickens County, South Carolina on November 18, 1983 in Deed Book 14-H at page 663.

and, also;

Cabinet Shop Property - TMS - 113-00-108A (2 pieces)

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Pickens, East of the City of Easley and on the North side of U.S. Highway 123 and according to a plat by John C. Smith, Surveyor, dated November 29, 1965, of property of John C. Cobb, said lot is more particularly described as follows, to-wit: BEGINNING at an iron pin on the North side of Highway right-of-way and at the Southeast corner of the lot herein conveyed, running thence along the highway right of way South 88-27 West 50 feet to a point; thence North 18-40 West 248 feet to a point; thence North 58-42 East 70 feet, more or less, to an iron pin; thence South 18-40 West 281.6 feet to an iron pin on the highway, the point of BEGINNING.

This being the identical property heretofore conveyed unto Major R. Ramey by deed of Cobb Sales Company dated January 31, 1970 and recorded in the office of the Clerk for Pickens County, South Carolina on February 11, 1970 in Deed Book 12-C, page 91.

and, also;

ALL that piece, parcel or lot of land in Pickens County, State of South Carolina being a 15-foot strip lying on the Western side of a tract containing 0.359 ACRES already owned by Grantee on the S.C. Highway 123 and the 15-foot strip is more fully described as follows:

The above-described tract begins at a point on S.C. Highway 123 at the joint front corner of other tracts owned by Grantee and running along S.C. Highway 123 for a distance of 15 feet; the Western lot line is parallel to lot line of other property of Grantee which lot line runs N. 18-40 E.; the rear lot line is a continuation of the rear lot line of other property owned by Grantee and which runs S. 58-42 W. until it intersects with the Western lot line. It is the intention of this deed to convey a 15-foot strip which fronts for 15 feet on S.C. Highway 123, however, since a new survey has not been made the above tract cannot be described by a metes and bounds description. A reference is hereby made to plat of other property owned by M.R. Ramey which shows a tract showing 0.359 Acres and was made by J.C. Smith, Surveyor, on November 1, 1971.

The property above described is subject to all easements and rights-of-way of record.

This being the same property heretofore conveyed unto M.R. Ramey by deed of John C. Cobb dated October 8, 1974 and recorded in the office of the Clerk for Pickens County, South Carolina on November 7, 1974 in Deed Book 12-W, page 442.

Deed of Distribution -- Major R. Ramey to Betty M. Ramey, Schedule A

3 of 3

and, also;

Reunion School -- TMS - H14-09-0070

The Decedent's one-half interest in; ALL that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, and containing 3.21 acres, more or less, as shown on plat of Robert R. Spearman, Registered Surveyor, dated November 25, 1980, and being more fully described according to said plat as follows, to-wit:

BEGINNING at a point on edge of S.C. Highway No. 23, which point is common corner of Tract herein conveyed and property of Una E. Hughes, running thence along edge of S.C. Highway 93, N. 68-13 E. 472.85 feet to a point; thence leaving S.C. Highway No. 93 and running S. 20-44 W. 201.8 feet to a point; thence S. 17-46 W. 436.54 feet to a point; thence 88-12 W. 274.53 feet to a point; thence N. 05-26 E. 422.21 feet to the point of BEGINNING. Being bounded on the North by S.C. Highway No. 93, on the East by Orchard Lake Subdivision, on the West and South by property of Una E. Hughes.

This being the same property heretofore conveyed unto M.R. Ramey by deed of Pickens County School District dated April 9, 1981, recorded in the office of the Clerk for Pickens County, South Carolina on April 24, 1981 in Deed Book 13-X, page 814.

OLSON, SMITH, JORDAN & COX, P.A.  
ATTORNEYS AT LAW  
P.O. BOX 1026  
EASLEY, SOUTH CAROLINA 29641

STATE TAX \_\_\_\_\_  
COUNTY TAX \_\_\_\_\_  
EXEMPT

TITLE TO REAL ESTATE  
QUIT CLAIM DEED

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

KNOW ALL MEN BY THESE PRESENTS

That WALLACE G. MERCK, JOHN C. COBB, AND JOHN C. COBB d/b/a COBB SALES COMPANY, AND COBB SALES COMPANY, INC., in the State and County aforesaid, in consideration of the sum of ONE AND NO/100THS (\$1.00) DOLLAR AND QUIT CLAIM TO THE PREMISES, to the Grantors in hand paid at and before the sealing of these presents by the Grantee, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said BETTY M. RAMEY, her heirs and assigns, forever, all right, title and interest we may have, if any, in and to:

ALL that certain place, parcel or tract of land situate, lying and being in the State of South Carolina, County of Pickens, containing 0.429 acres as shown on plat for Betty M. Ramey prepared by J.C. Smith and Associates, Surveyors, dated August 28, 1996, and, with reference to said plat, being more particularly described as having the following measurements and boundaries, to-wit:

BEGINNING on a point on the Northern side of US Highway No. 123, at the common corner of the herein described Tract and other property of Wallace G. Merck, thence running along the common line of said Tracts N. 19-23-44 E. 224.31 feet to a point; thence running along the common line of the herein described Tract and property now or formerly of the Frank R. Garrison Estate N. 58-43-38 E. 112.43 feet to a point; thence running along the common line of the herein described Tract and property now or formerly of Holcraft, Inc., S. 18-40-00 W. 283.07 feet to a point on the Northern side of US Highway No. 123; thence running along the Northern side of said US Highway No. 123 S. 88-44-28 W. 80.00 feet to the point of beginning.

The above described property is subject to any and all easements and or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions covenants or zoning ordinances affecting such property as may appear of record.

The purpose and intent of this Quit Claim Deed is for the Grantors John C. Cobb, John C. Cobb d/b/a Cobb Sales Company, and Cobb Sales Company, Inc. to quit claim any right, title and interest they may have in and to the above described property by virtue of conveyance to Cobb Sales Company from R.C. McCall, Jr., et. al., dated May 1, 1969, and recorded in Deed Book 11-V at Page 389 in the RMC Office for Pickens County, South Carolina, or otherwise acquired by said Grantors. Likewise, Wallace G. Merck hereby quit claims any right, title or interest he may have in and to the above described property by virtue of a conveyance unto him from Cobb Sales Company, Inc. recorded December 31, 1985, in Deed Book 14-S at Page 997 in the R/D Office for Pickens County, South Carolina, or otherwise acquired thereby.

Date: 5/10/77

TRUE CERTIFIED COPY



Paul A. McGuffin SR  
PAUL A. MCGUFFIN, REGISTRAR

TOGETHER with all and Singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the Grantee hereinabove named, the Grantee's Heirs and Assigns forever.

WITNESS the Grantors' hands and seals this 19<sup>th</sup> day of March in the year of our Lord One Thousand Nine Hundred Ninety Eight.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Howard K Green  
Patricia Patterson  
Howard K Green  
Patricia Patterson  
Howard K Green  
Patricia Patterson  
Howard K Green  
Patricia Patterson

Wallace G. Merck L.S.  
WALLACE G. MERCK  
John C. Cobb L.S.  
JOHN C. COBB  
John C. Cobb L.S.  
JOHN C. COBB d/b/a  
COBB SALES COMPANY  
COBB SALES COMPANY, INC  
By: John C. Cobb  
Ms: John C. Cobb

STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

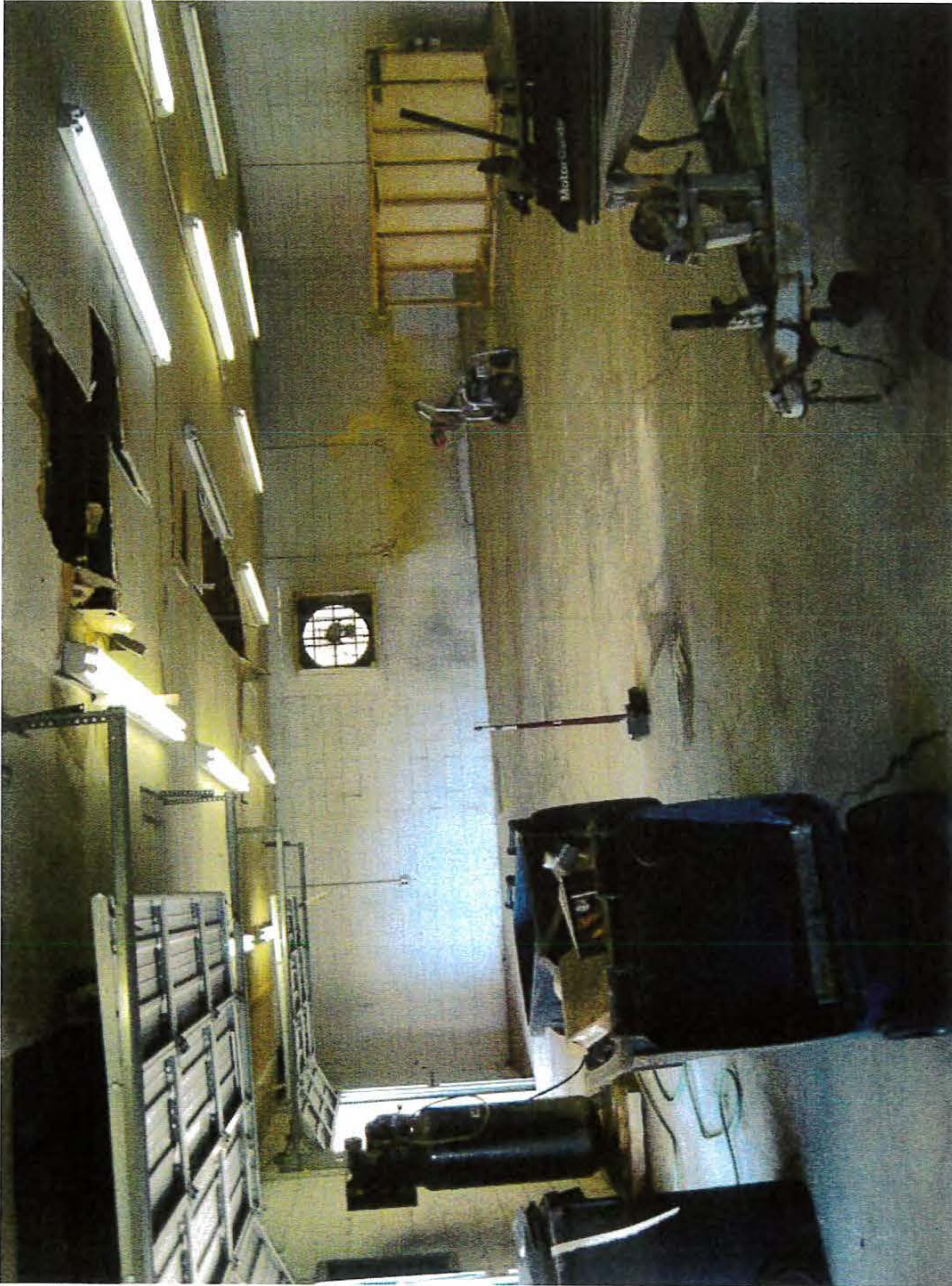
PROBATE

PERSONALLY appeared before me the undersigned witness who upon oath depose and states that (s)he saw the within named JOHN C. COBB, sign and as his act and deed deliver the within written instrument for the purposes herein stated, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN TO BEFORE ME THIS 19<sup>th</sup> day of March 1998.

W. C. ...  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission expires: My Commission Expires May 20, 2006

Howard K Green

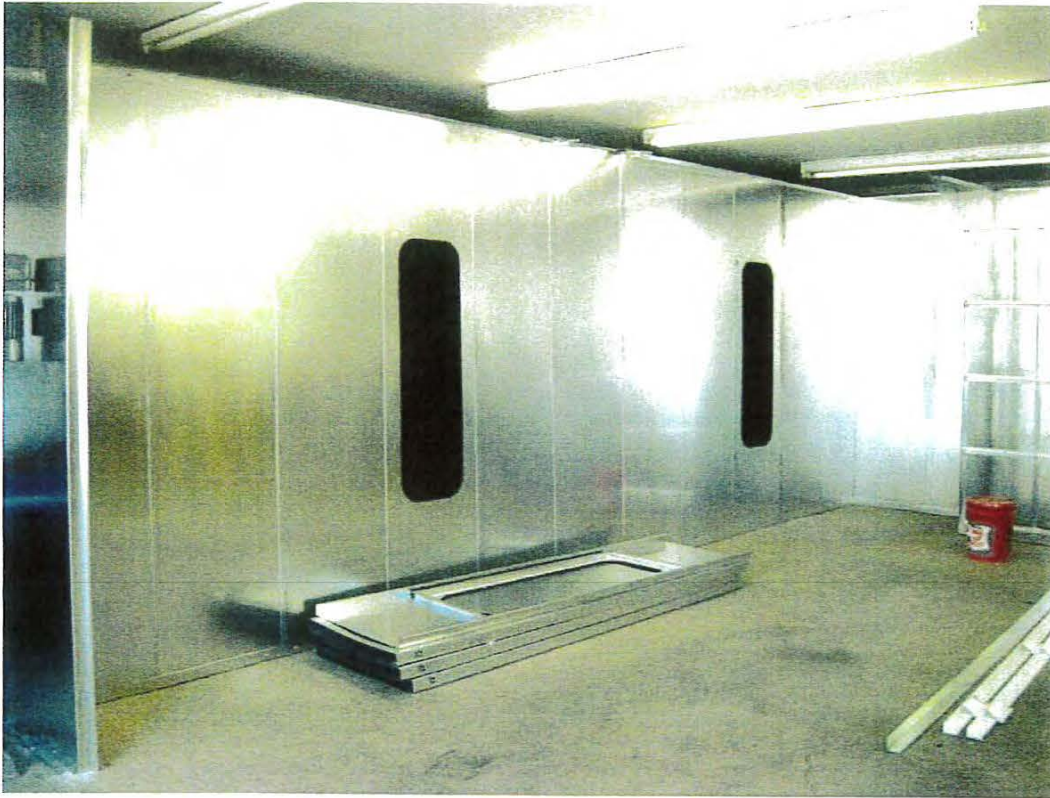


tabbies  
**PLAINTIFF'S  
EXHIBIT**

PL 105

P-11

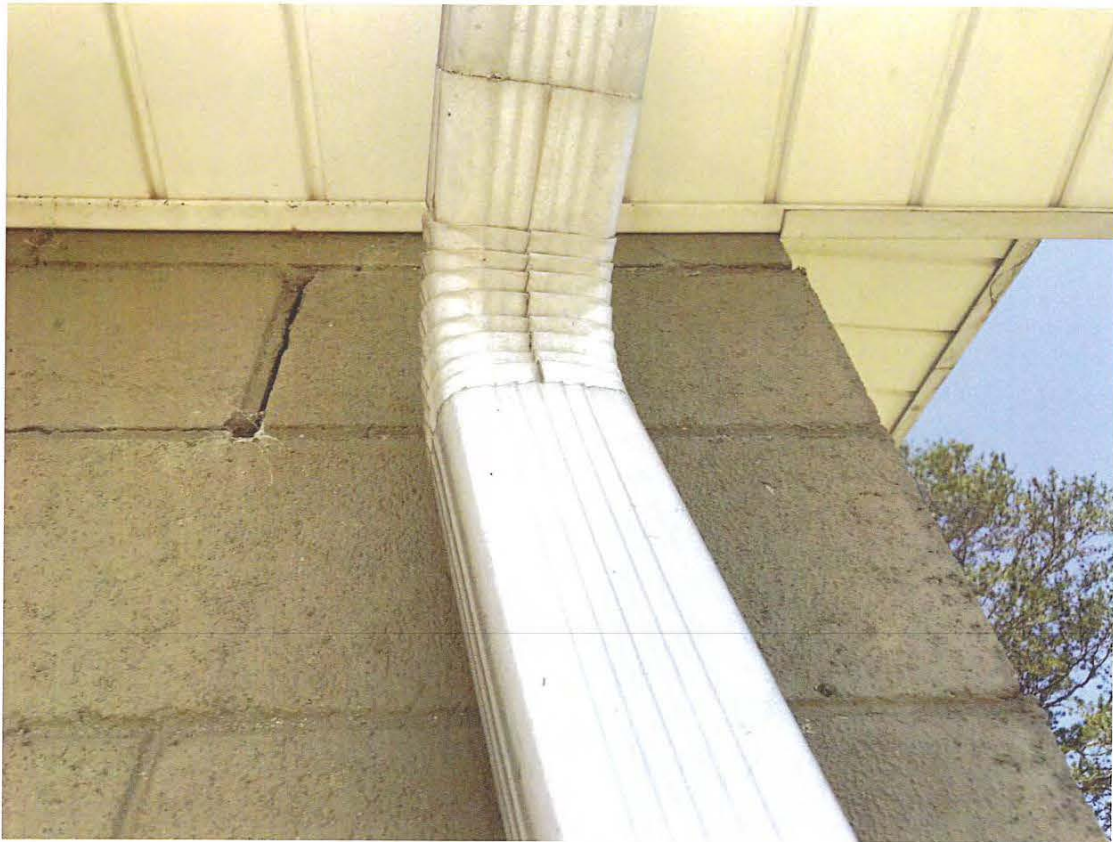
PL PHOTO C



ELECTRONICALLY FILED - 2022 Mar 25 10:18 AM - PICKENS - COMMON PLEAS - CASE#2020CP3900266

PL 209

tabbies®  
**PLAINTIFF'S  
EXHIBIT**  
**22** ✓

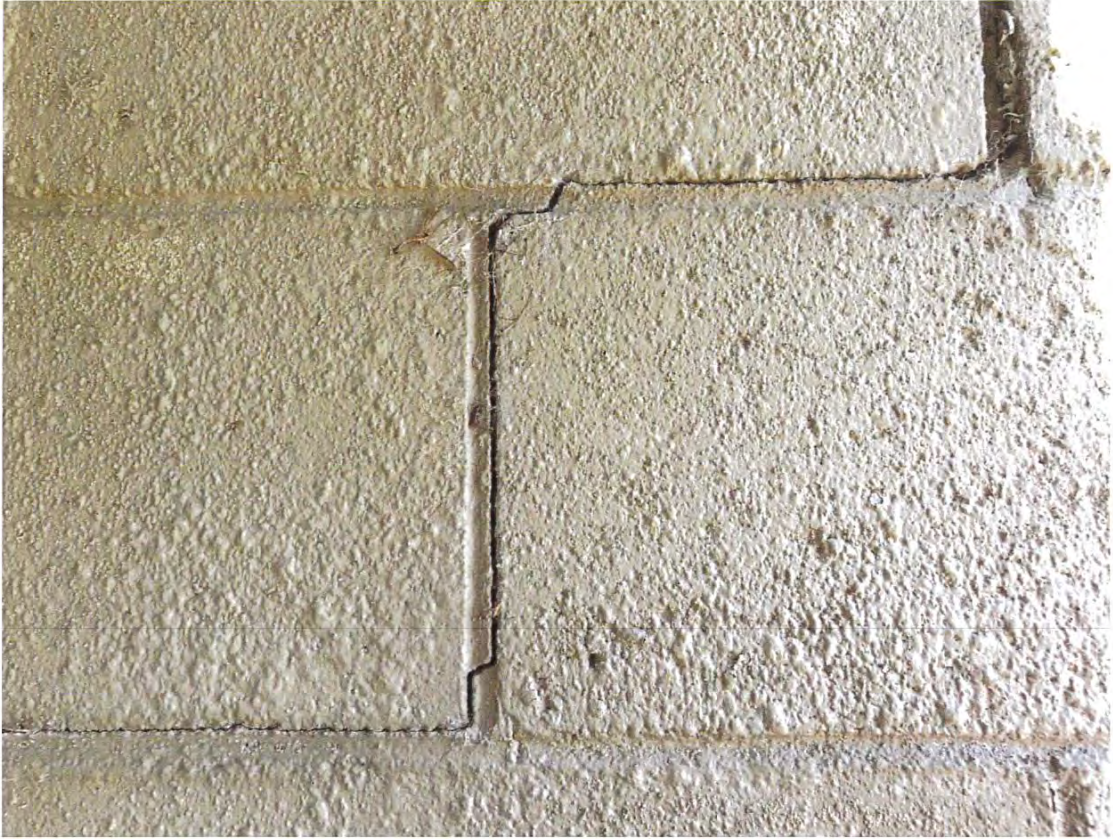


PL 15







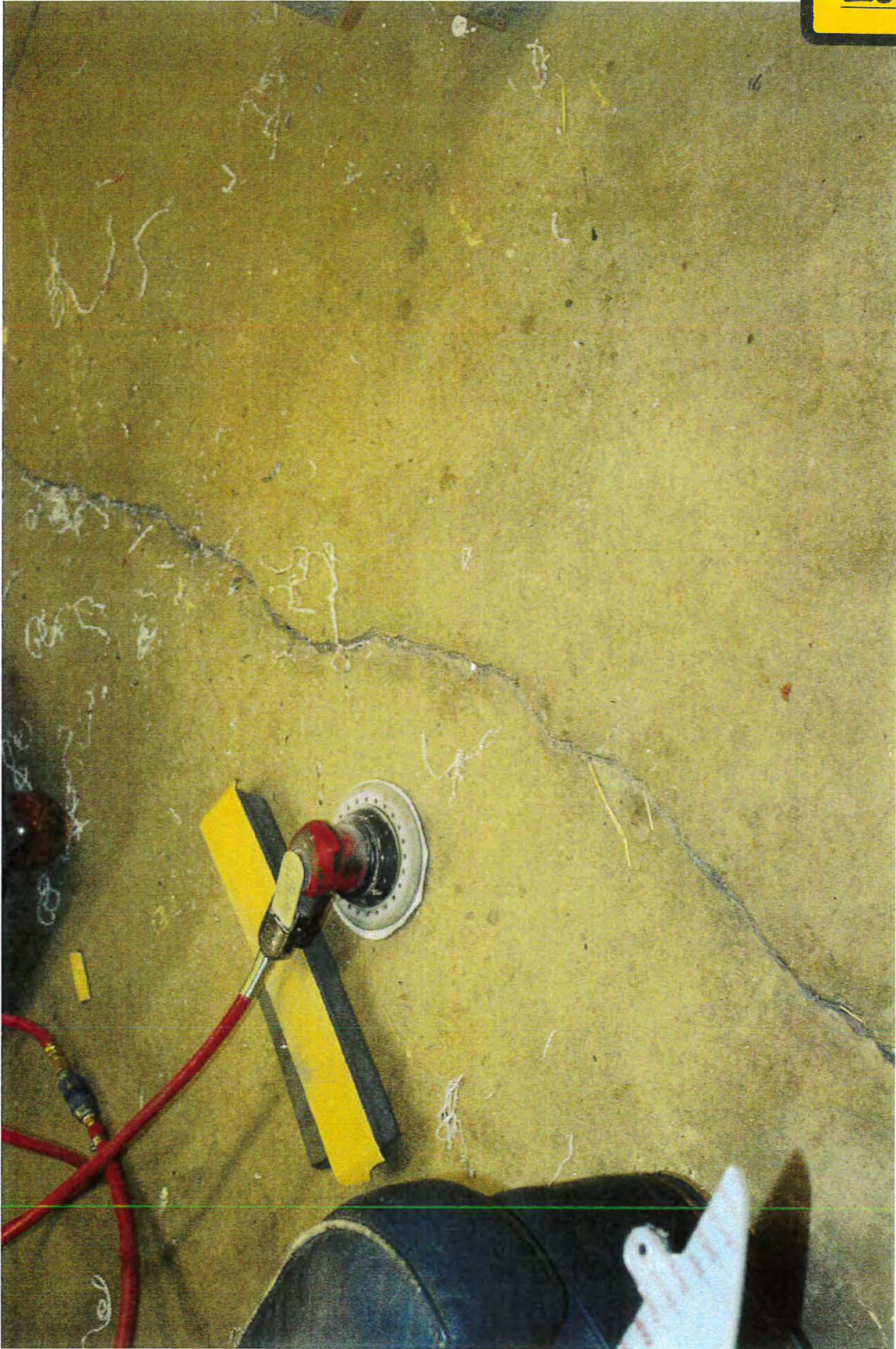




tabbies  
**PLAINTIFF'S  
EXHIBIT**  
**24** ✓



PL 104

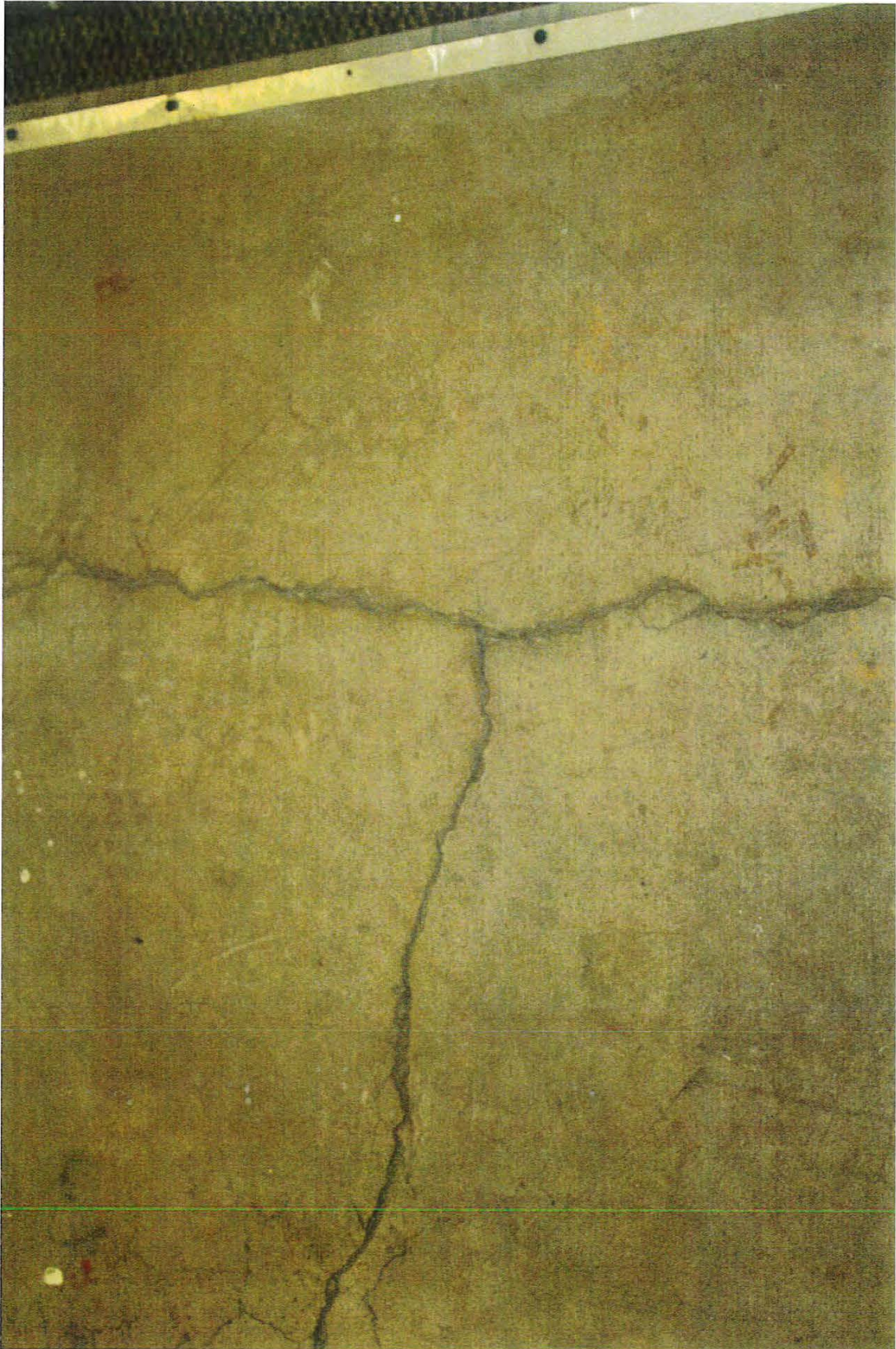


PL 155



PL 157

1340

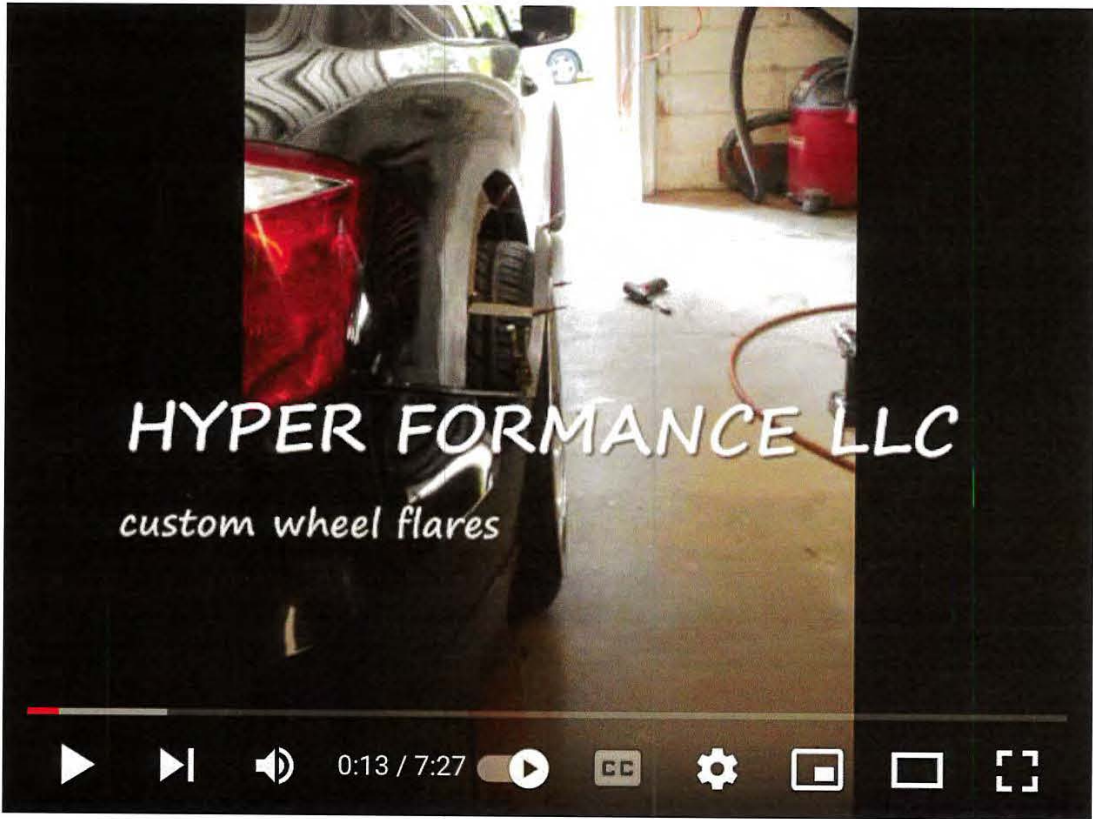


PL 158



PL 159

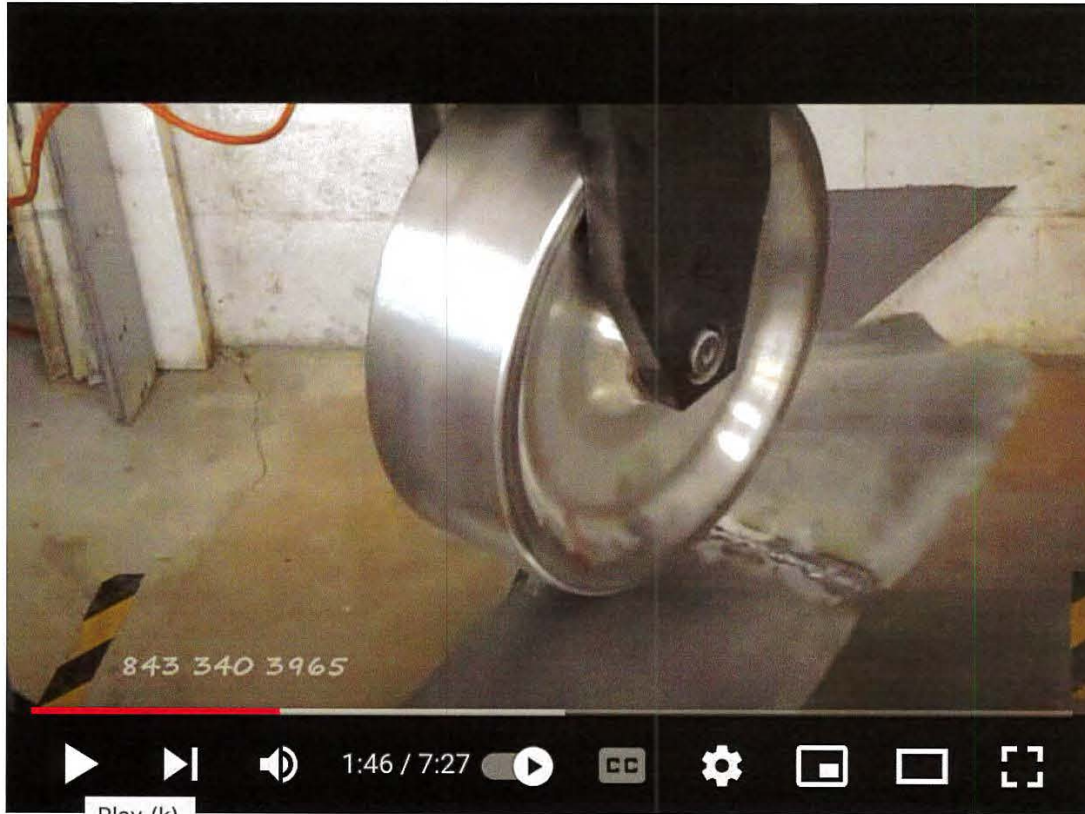
PLAINTIFF'S  
EXHIBIT *EV*  
tabbles®  
27



Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

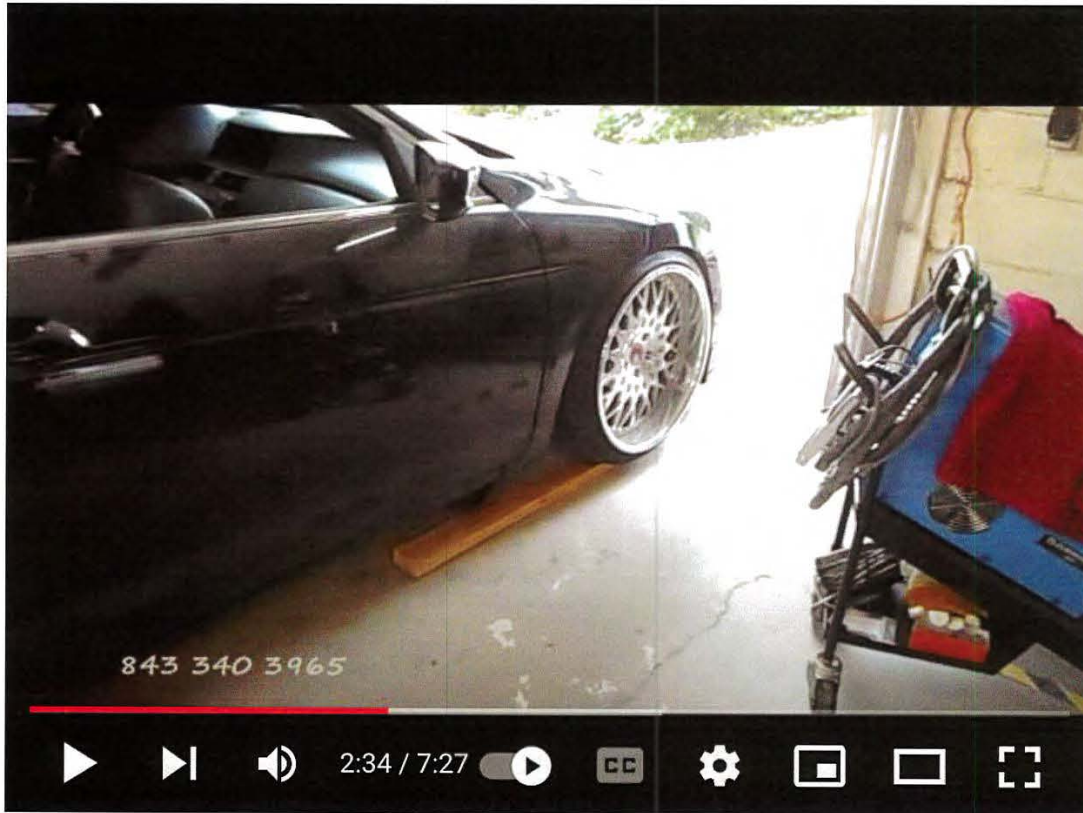
Thomas\_000174



## Hyper Formance fender flares

136,17  521  DISLIKE  SHARE  CLIP  SAVE ...

Thomas\_000177



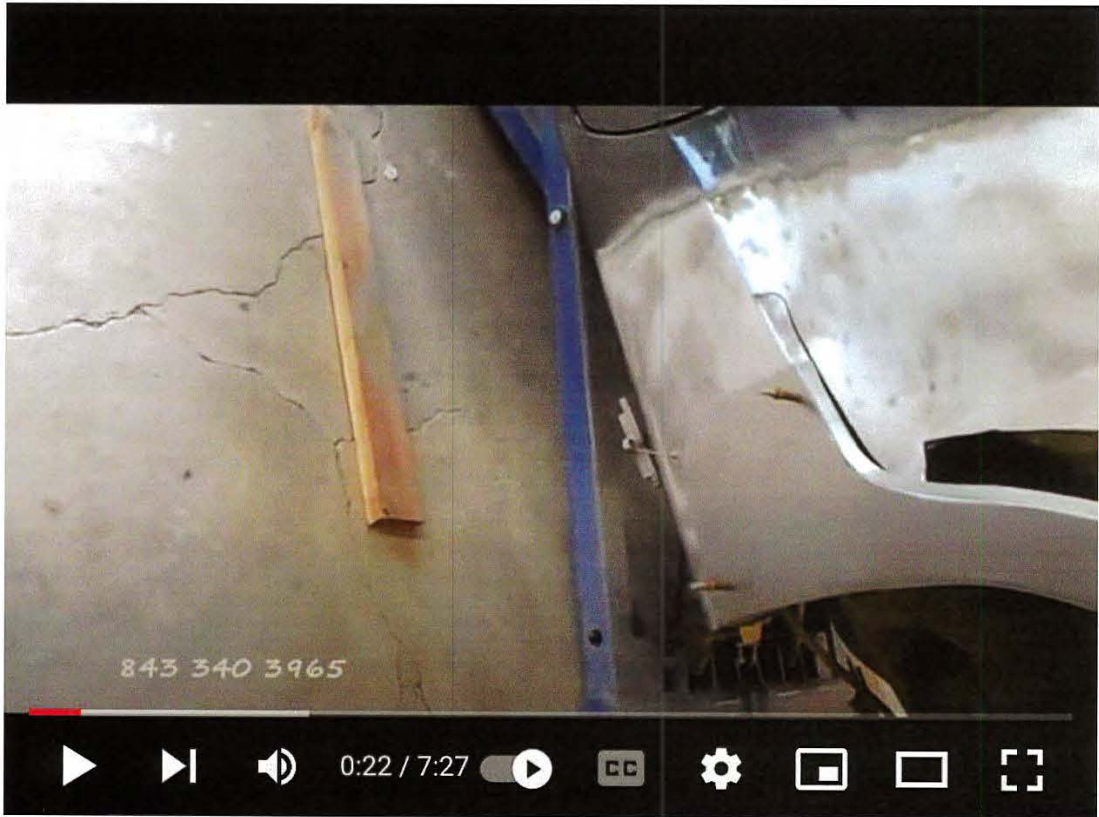
### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000180



PL 202



Play (k)

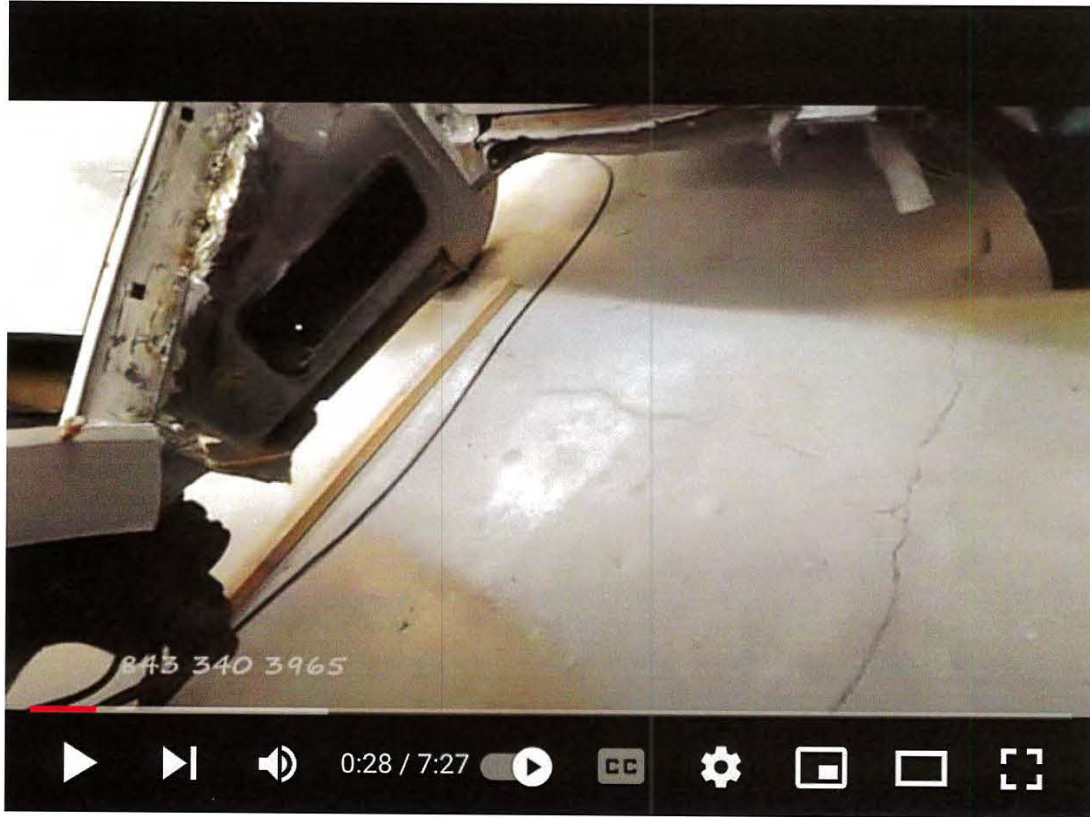
### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000175



PL 203



### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000176



### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000178



PL 204

1351



### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000179





PL 205

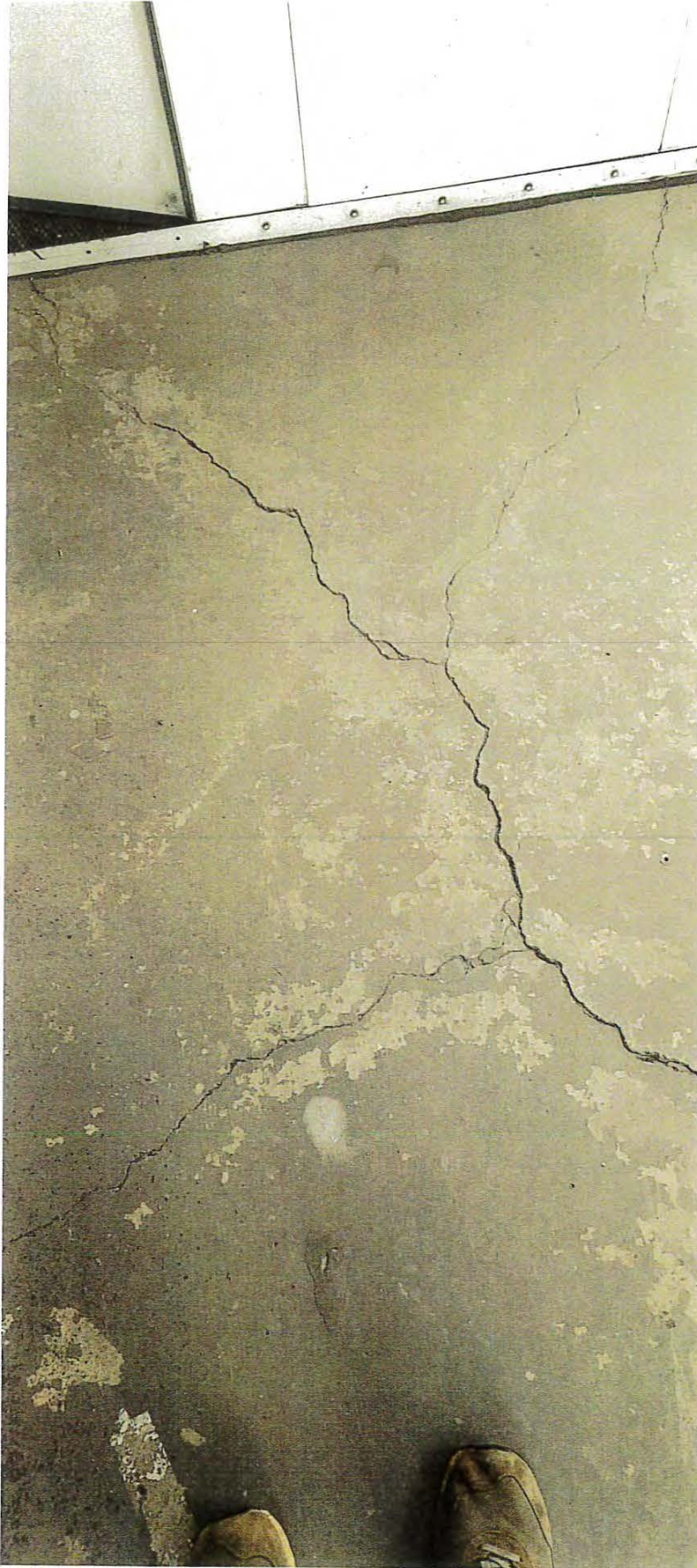
1353



## Hyper Formance fender flares

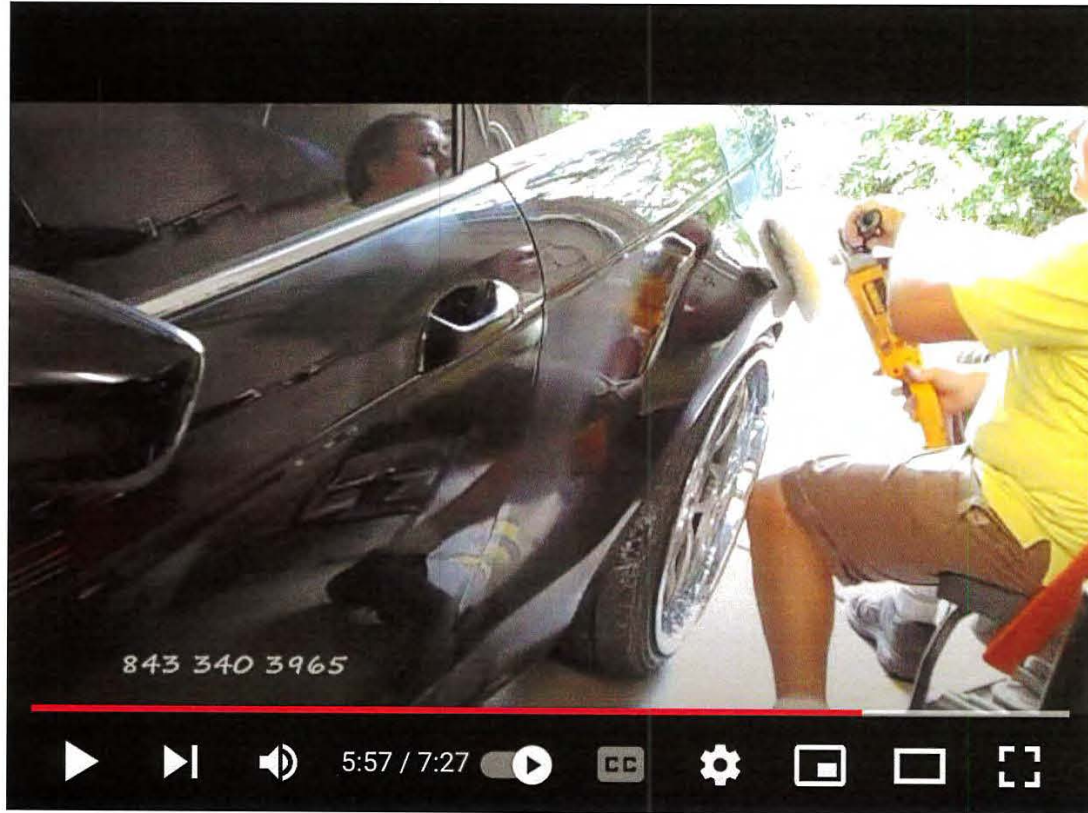
136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000182



PL 206

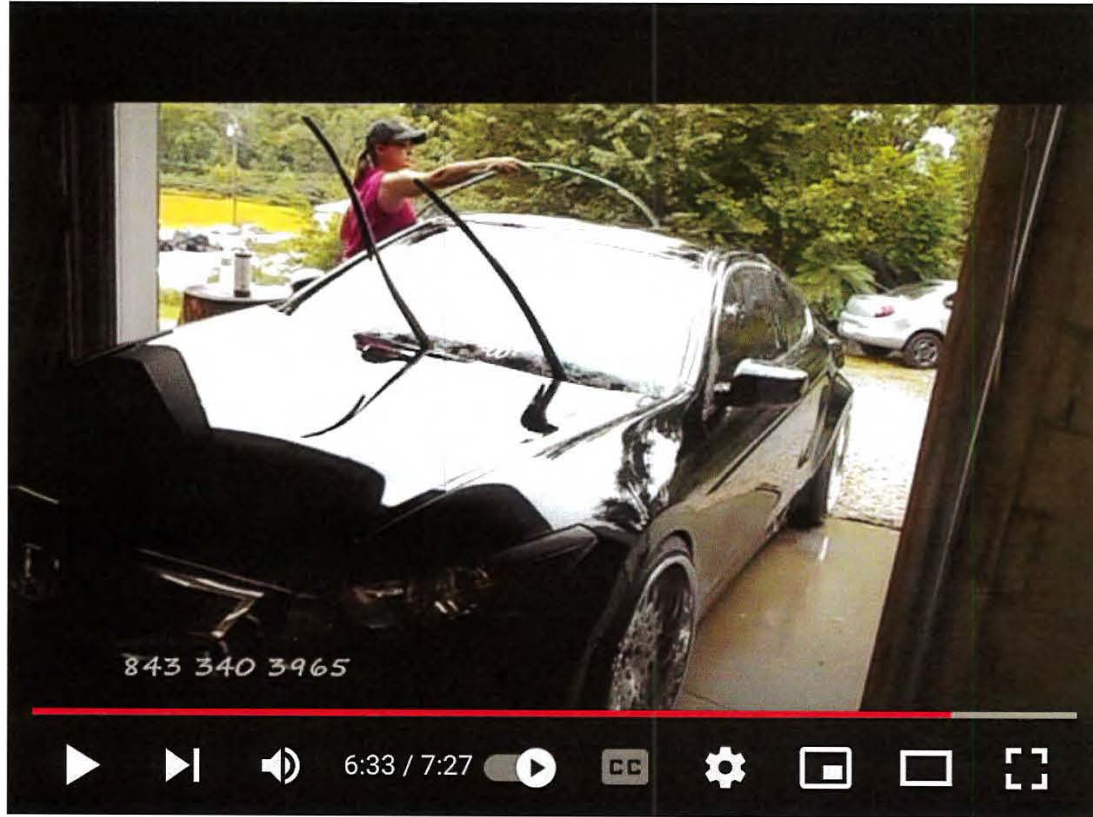
1355



## Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000183



### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000184



PL 207

tabbies  
**PLAINTIFF'S  
EXHIBIT**  
**29** EV



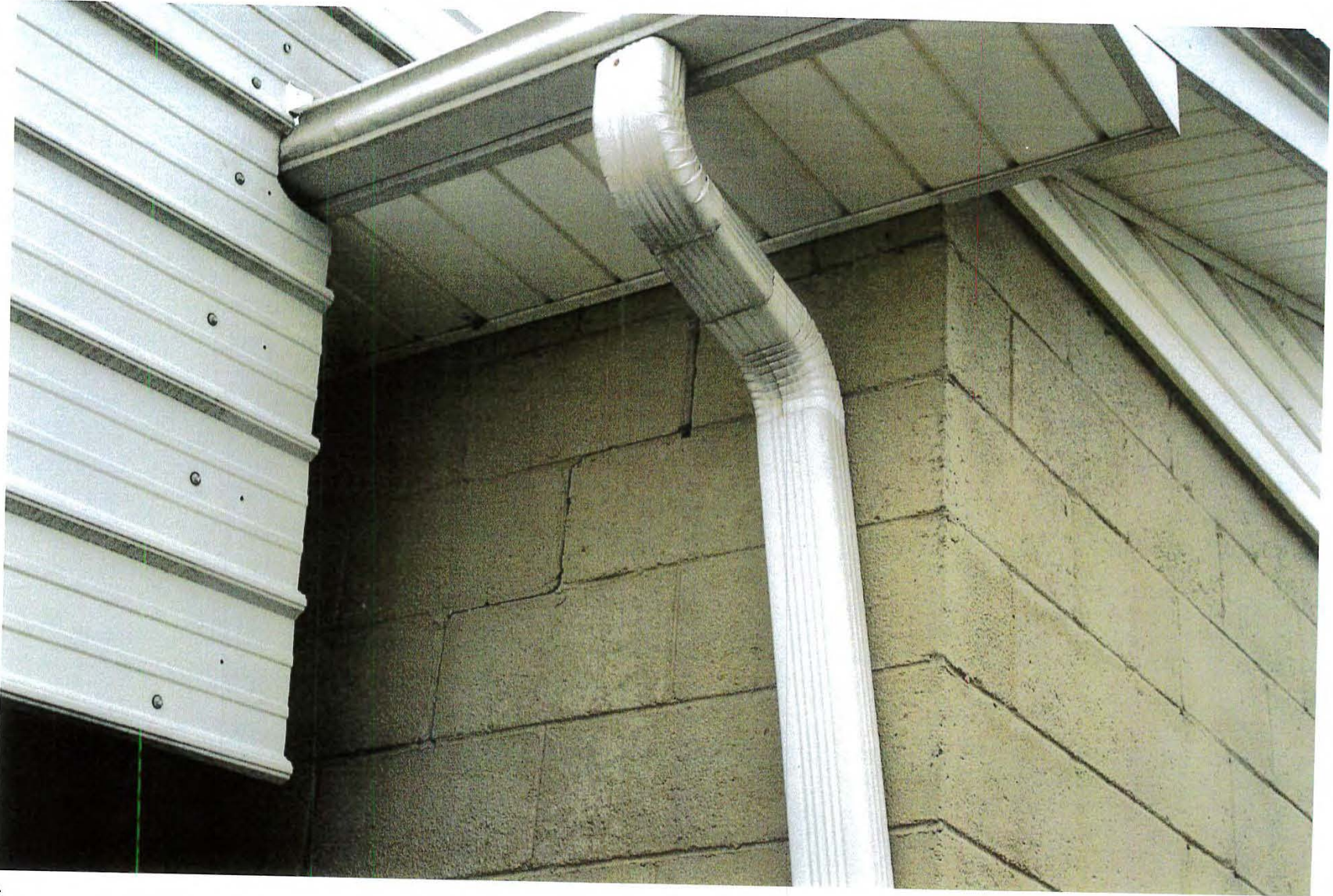
PL 151



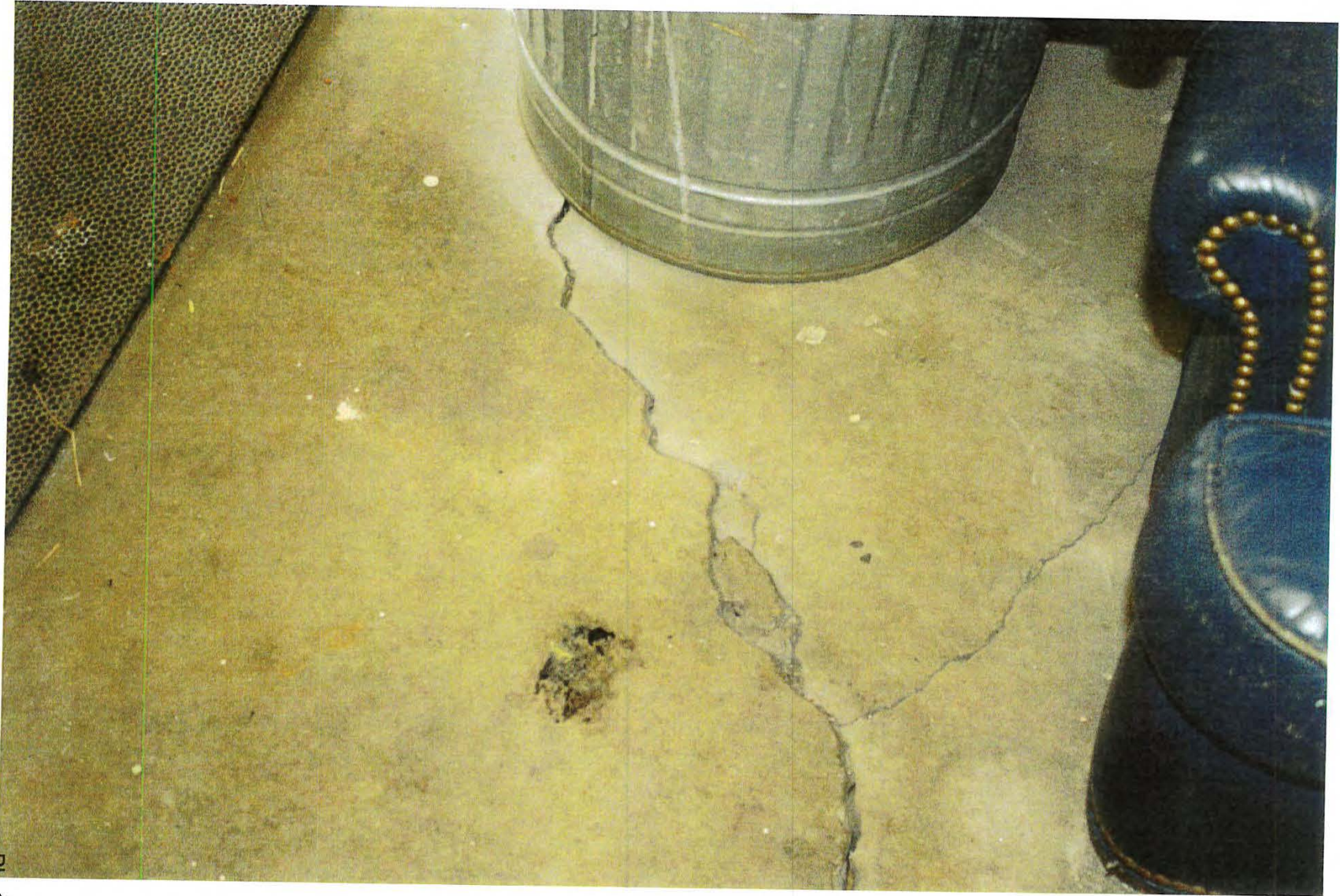
PE 152



PL 153



PL 154



PL 156

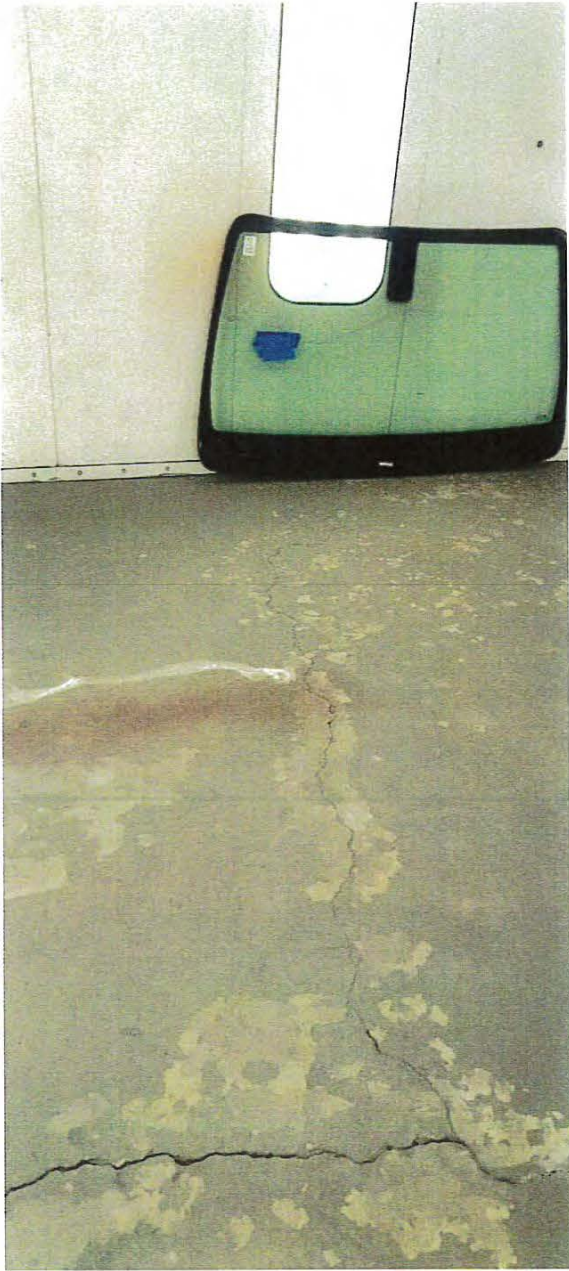


PL 164

PLAINTIFF'S  
EXHIBIT  
30 *EV*



PL 210



PL 211



PL 212

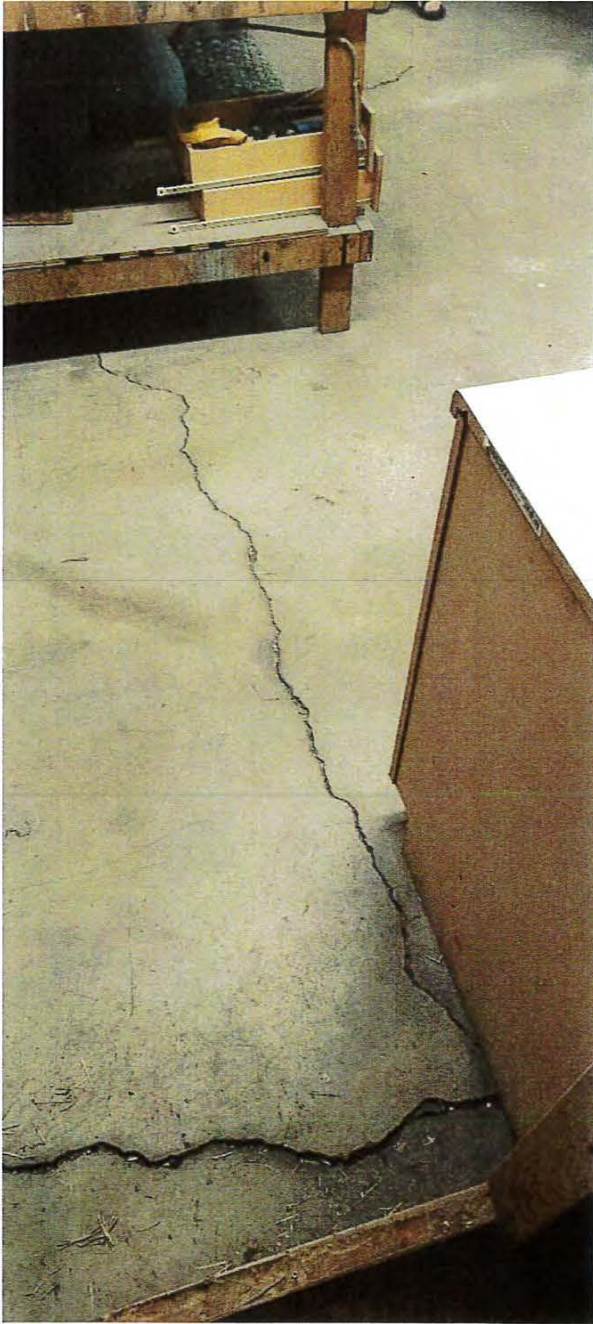




PL 213



PL 214



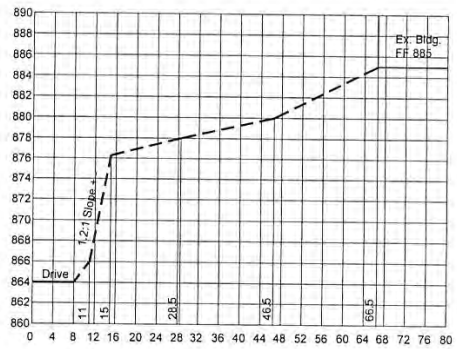
PL 218

1370

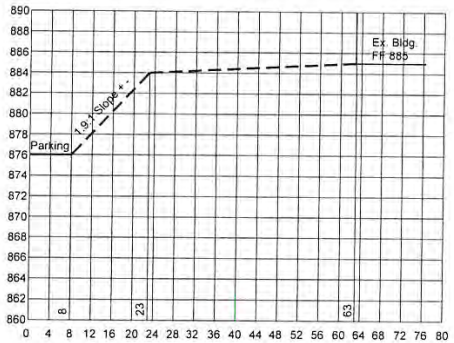
PLAINTIFF'S EXHIBIT  
41

PL 195

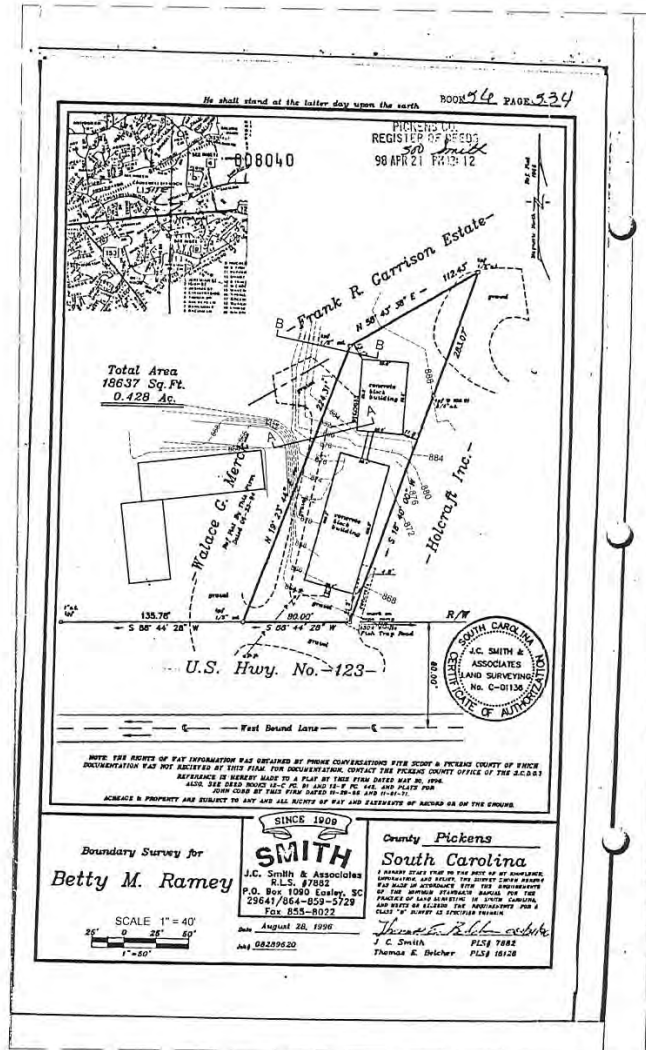
PL195



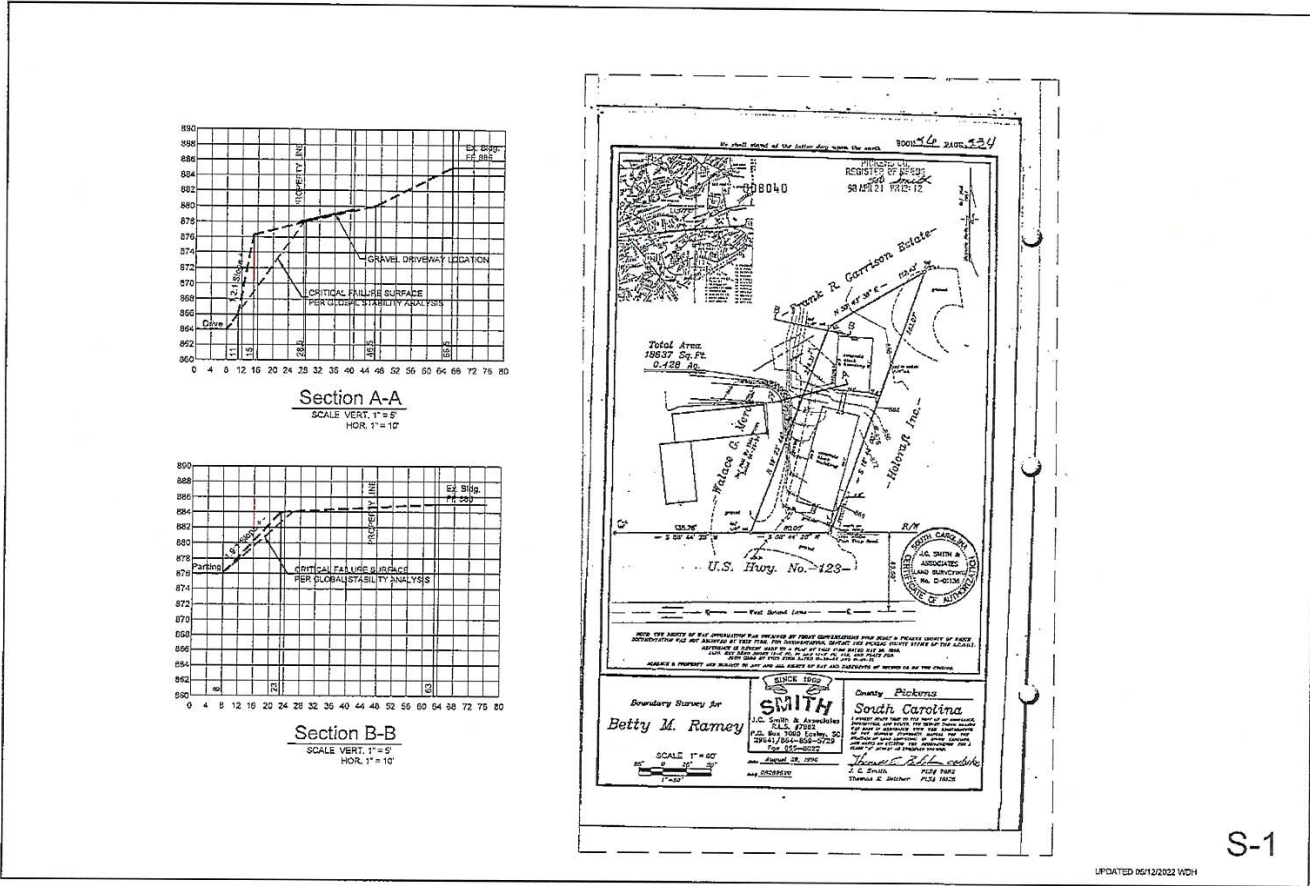
Section A-A  
SCALE VERT. 1" = 5'  
HOR. 1" = 10'



Section B-B  
SCALE VERT. 1" = 5'  
HOR. 1" = 10'



S-1



S-1

UPDATED 06/12/2022 WCH



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS ) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that JIMMY A. WATKINS and DIANE T. WATKINS, in consideration of One Hundred Forty Thousand and No/100 Dollars (\$140,000.00), the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto THOMAS SC PROPERTIES, LLC, its successors and assigns forever:

THE PROPERTY DESCRIBED ON EXHIBIT 'A'  
ATTACHED HERETO AND MADE A PART HEREOF.

PICKENS COUNTY TAX MAP NUMBERS: 5059-13-14-4247 & 5059-13-14-3378

GRANTEE'S ADDRESS: 3670 Calhoun Memorial Highway, Greenville, SC 29611

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee, and to the Grantee's heirs or successors and assigns, forever. And, the Grantors do hereby bind the Grantors and the Grantors' heirs or successors, executors and administrators, to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantors' hands and seals this 23rd day of May, 2018.

SIGNED, sealed and delivered in the presence of:

Diana D. White (Diana D. White)      Jimmy A. Watkins (Jimmy A. Watkins)  
Timothy H. Farr (Timothy H. Farr)      Diane T. Watkins (Diane T. Watkins)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE ) ACKNOWLEDGEMENT

Personally appeared before me, Jimmy A. Watkins and Diane T. Watkins, who acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 23rd day of May, 2018.

Timothy H. Farr  
Timothy H. Farr  
Notary Public for South Carolina  
My commission expires: 1/20/26

## EXHIBIT A

ALL that certain piece, parcel, or lot of land situate, lying, and being in the State of South Carolina, County of Pickens, on the north side of U.S. Highway 123, and according a plat of Property of Wallace G. Merck, prepared by Smith Surveyors, Inc., and dated March 3, 2003, said lot contains 0.958 acres and is more particularly described as follows, to-wit:

BEGINNING at an iron pin on U.S. Highway 123, which point is 1,384 feet, more or less, to Fish Trap Road; thence along said Highway S 87-51-38 W 135.00 feet to an iron pin; thence leaving said Highway and running N 07-17-00 W 81.71 feet to an iron pin; thence N 61-05-00 E 66.50 feet to an iron pin; thence N 3-28-11 W 222.70 feet to an iron pin; thence S 55-45-05 E 209.98 feet to an iron pin; thence S 18-59-06 W 224.50 feet to an iron pin on U.S. Highway 123, the point of Beginning.

This conveyance is made subject to all restrictions, reservations, setback lines, roadways, zoning ordinances, easements, and rights-of-way, if any, that may appear of record or on the premises.

DERIVATION: This being the same property conveyed to Grantors by Deed of Gregory A. Porter, as recorded in the Register of Deeds Office for Pickens County, South Carolina, on June 17, 2004, in Deed Book 822, Page 298.

PLAINTIFF'S  
EXHIBIT  
44 EV



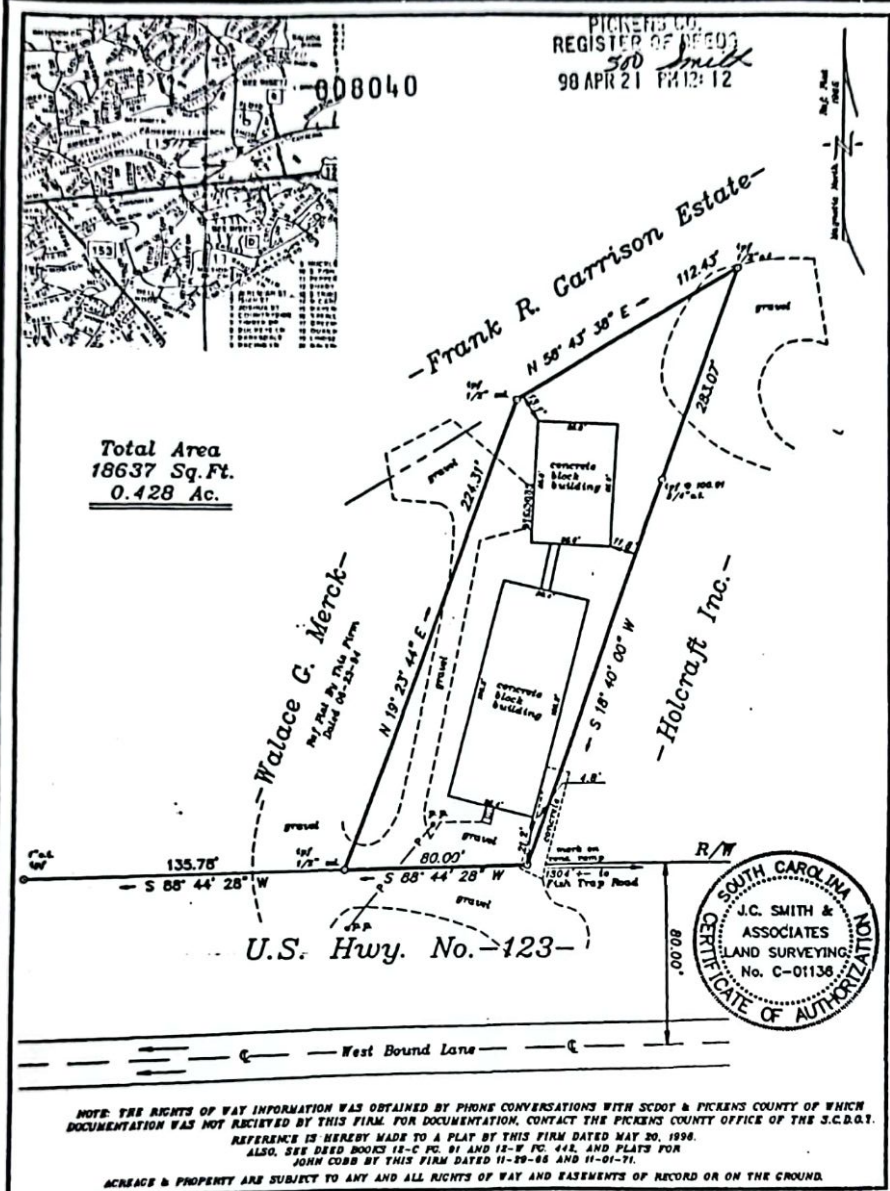
Thomas\_00008



Thomas xxx039

He shall stand at the latter day upon the earth

PICKENS CO.  
REGISTER OF DEEDS  
580 *Smith*  
90 APR 21 PM 12:12



Total Area  
18637 Sq. Ft.  
0.428 Ac.



NOTE: THE RIGHTS OF WAY INFORMATION WAS OBTAINED BY PHONE CONVERSATIONS WITH SCOT & PICKENS COUNTY OF WHICH DOCUMENTATION WAS NOT RECEIVED BY THIS FIRM. FOR DOCUMENTATION, CONTACT THE PICKENS COUNTY OFFICE OF THE S.C.D.O.T. REFERENCE IS HEREBY MADE TO A PLAT BY THIS FIRM DATED MAY 20, 1998. ALSO, SEE DEED BOOKS 15-C PG. 91 AND 12-W PG. 44, AND PLATS FOR JOHN COBB BY THIS FIRM DATED 11-29-88 AND 11-01-91.

ACRESSES & PROPERTY ARE SUBJECT TO ANY AND ALL RIGHTS OF WAY AND EASEMENTS OF RECORD OR ON THE GROUND.

Boundary Survey for  
**Betty M. Ramey**

SINCE 1909

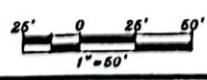
**SMITH**

J.C. Smith & Associates  
R.L.S. #7882  
P.O. Box 1090 Easley, SC  
29641/864-859-5729  
Fax 855-8022

County Pickens  
South Carolina

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HERETO WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "B" SURVEY AS SPECIFIED THEREIN.

*Thomas E. Belcher*  
J. C. Smith PLS# 7882  
Thomas E. Belcher PLS# 16126



Date August 28, 1998  
Map # 08289820

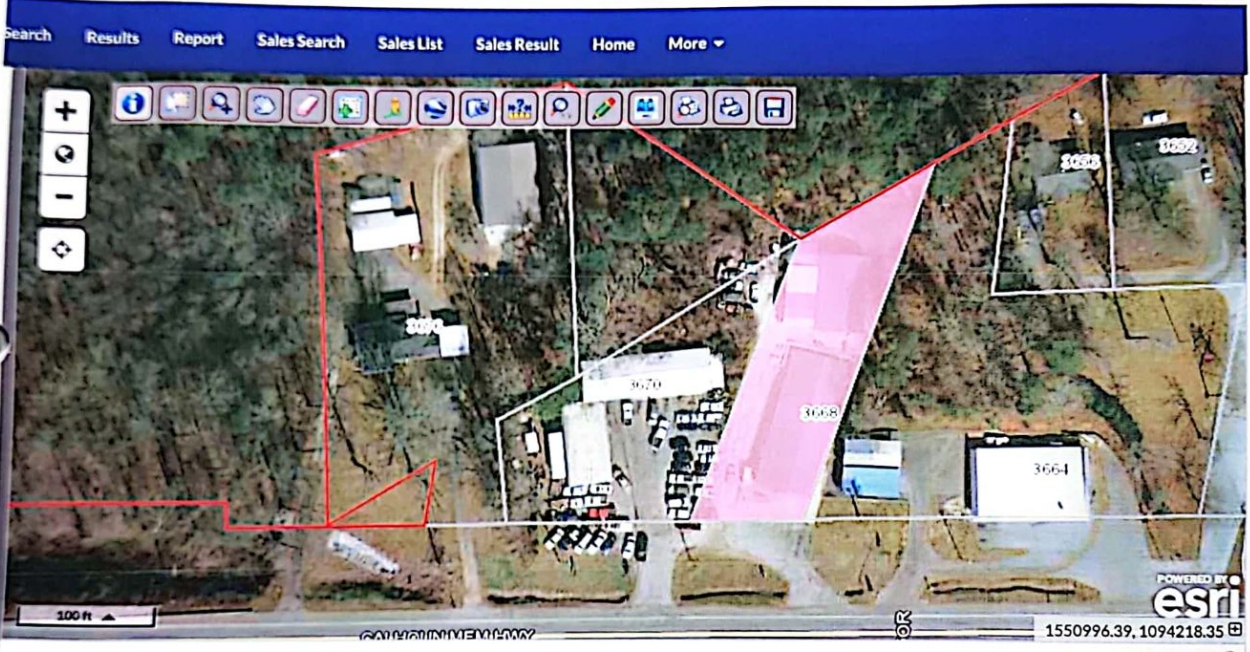
ELECTRONICALLY FILED - 2020 Feb 2 3:13 PM - PICKENS - COMMON PLEAS - CASE#2020CP390026

DEFENDANT'S EXHIBIT

tabbles

FICKENS COUNTY, SC

Log in

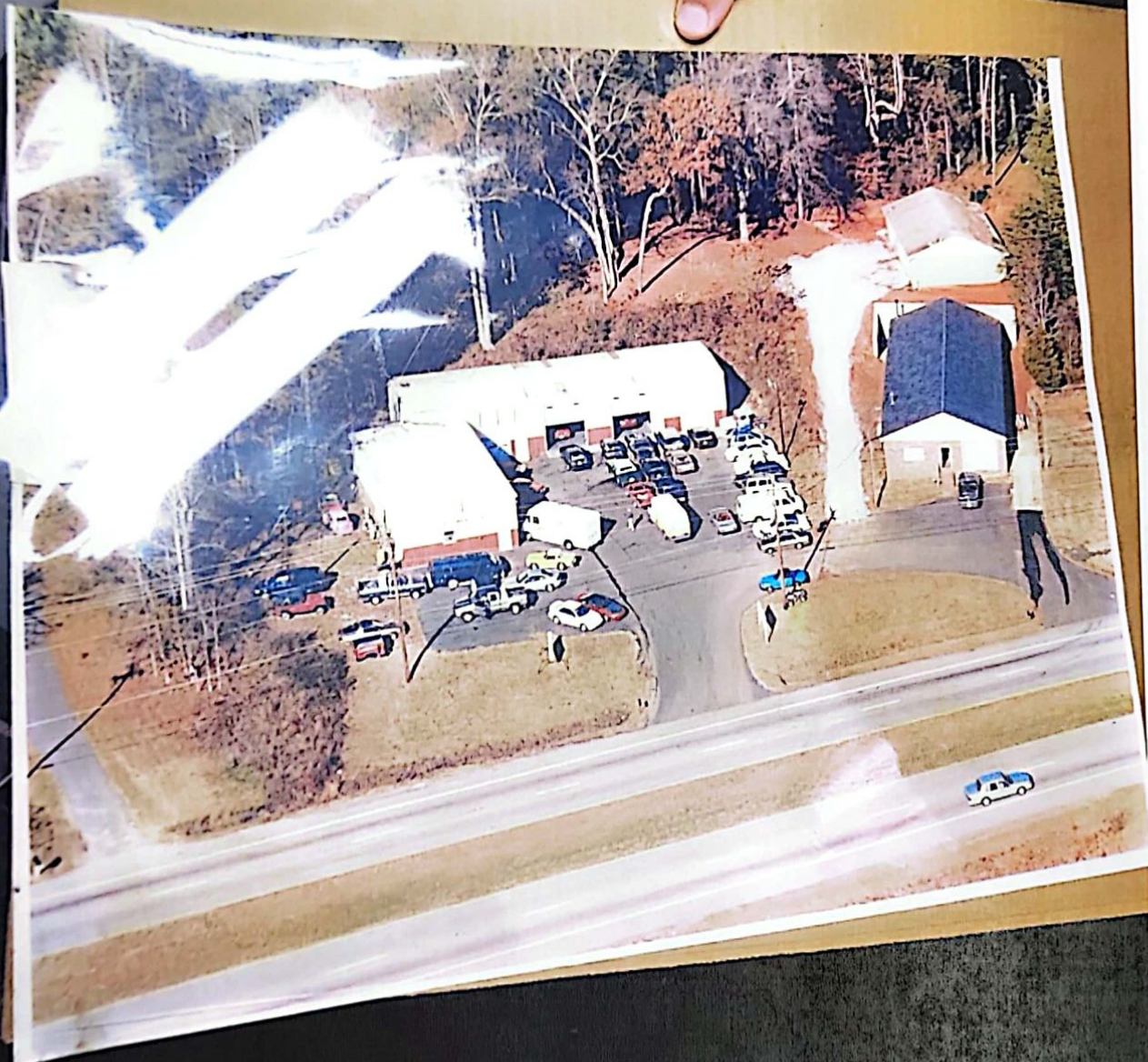


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- 4
- 15

tabbles  
**DEFENDANT'S EXHIBIT**  
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Thomas\_000039

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tabbler  
**DEFENDANT'S  
EXHIBIT**  
**3**

Thomas\_000020





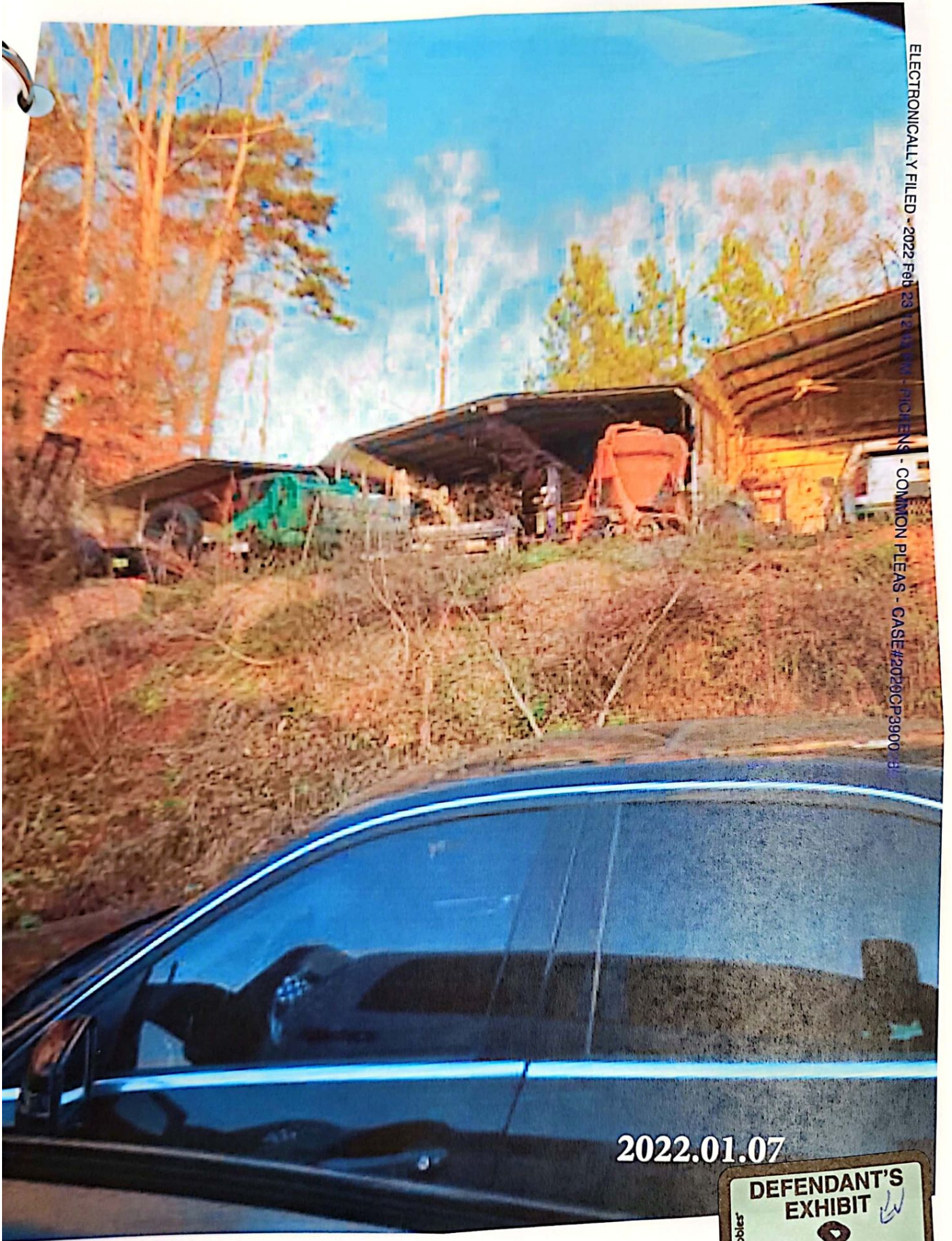


DEFENDANT'S  
EXHIBIT  
6 EV

Thomas\_000008



ELECTRONICALLY FILED - 2022 Feb 23 12:43 PM - PICILENS - COMMON PLEAS - CASE#2020CP3900 B



2022.01.07

DEFENDANT'S  
EXHIBIT *W*  
tabbles 8

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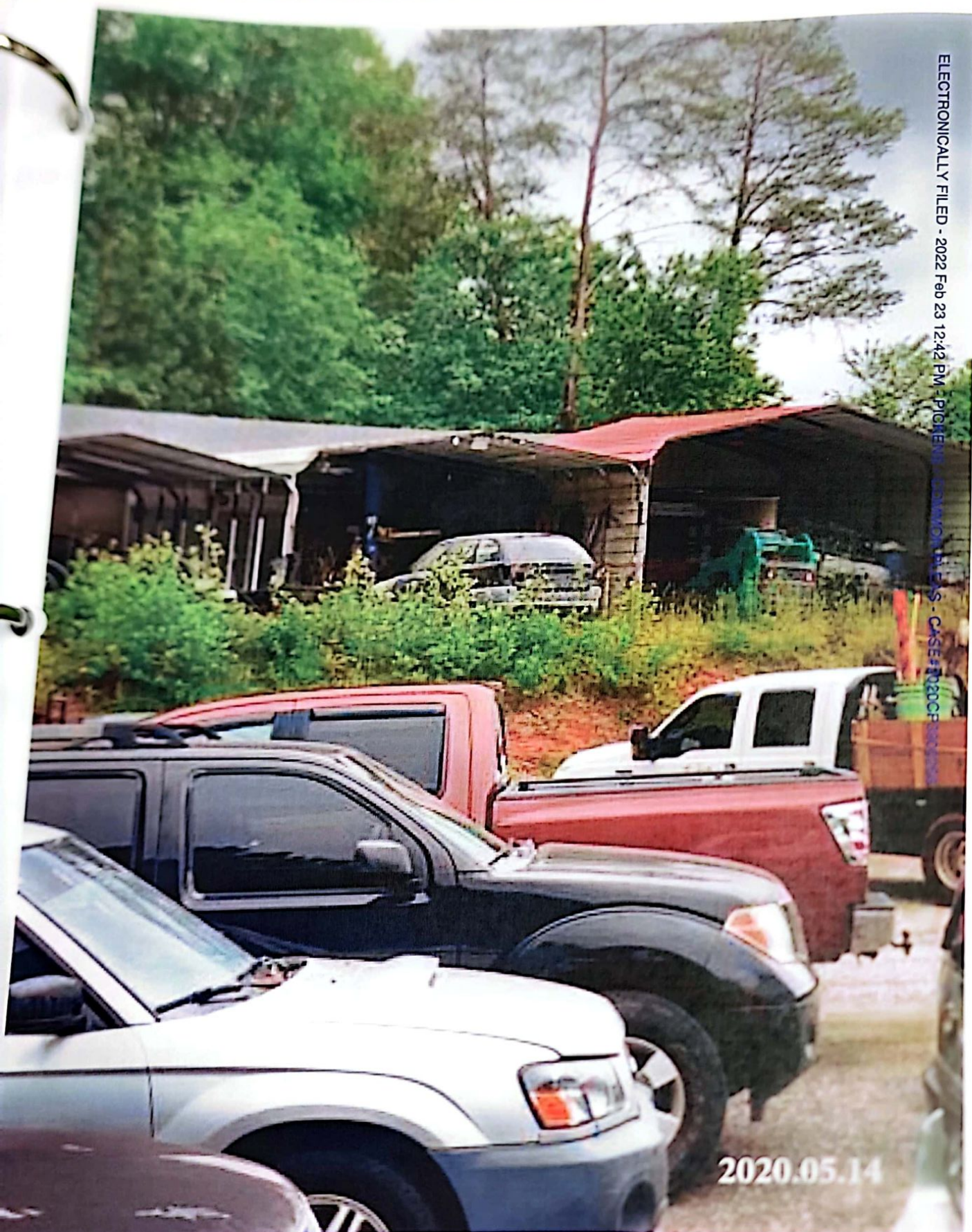
2022.01.07



ELECTRONICALLY FILED - 2022 Feb 23 12:42 PM - PICKENS COUNTY COMMON PLEAS - CASE#202000093900266

2020.03.16

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ELECTRONICALLY FILED - 2022 Feb 23 12:42 PM - PIGEON HOLLOW, TENN. - CASE# 1020CF

2020.05.14





ELECTRONICALLY FILED - 2022 Feb 23 12:48 PM - PICKENS COUNTY COMMON PLEAS - CASE#20

2022.01.06

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2022.01.06

ELECTRONICALLY FILED  
U.S. COURTS - COMMON PLEAS  
CASE# 2020CP010026

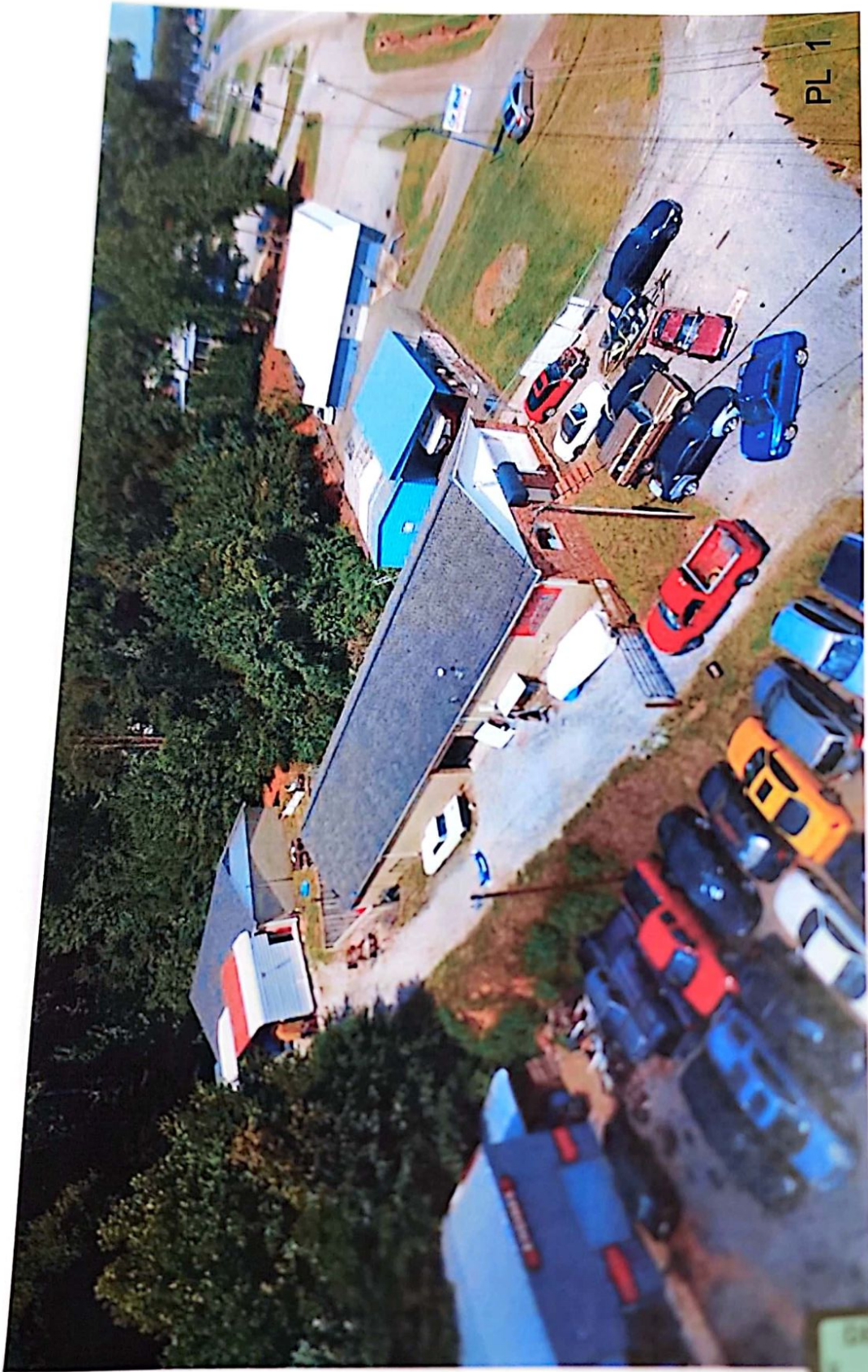
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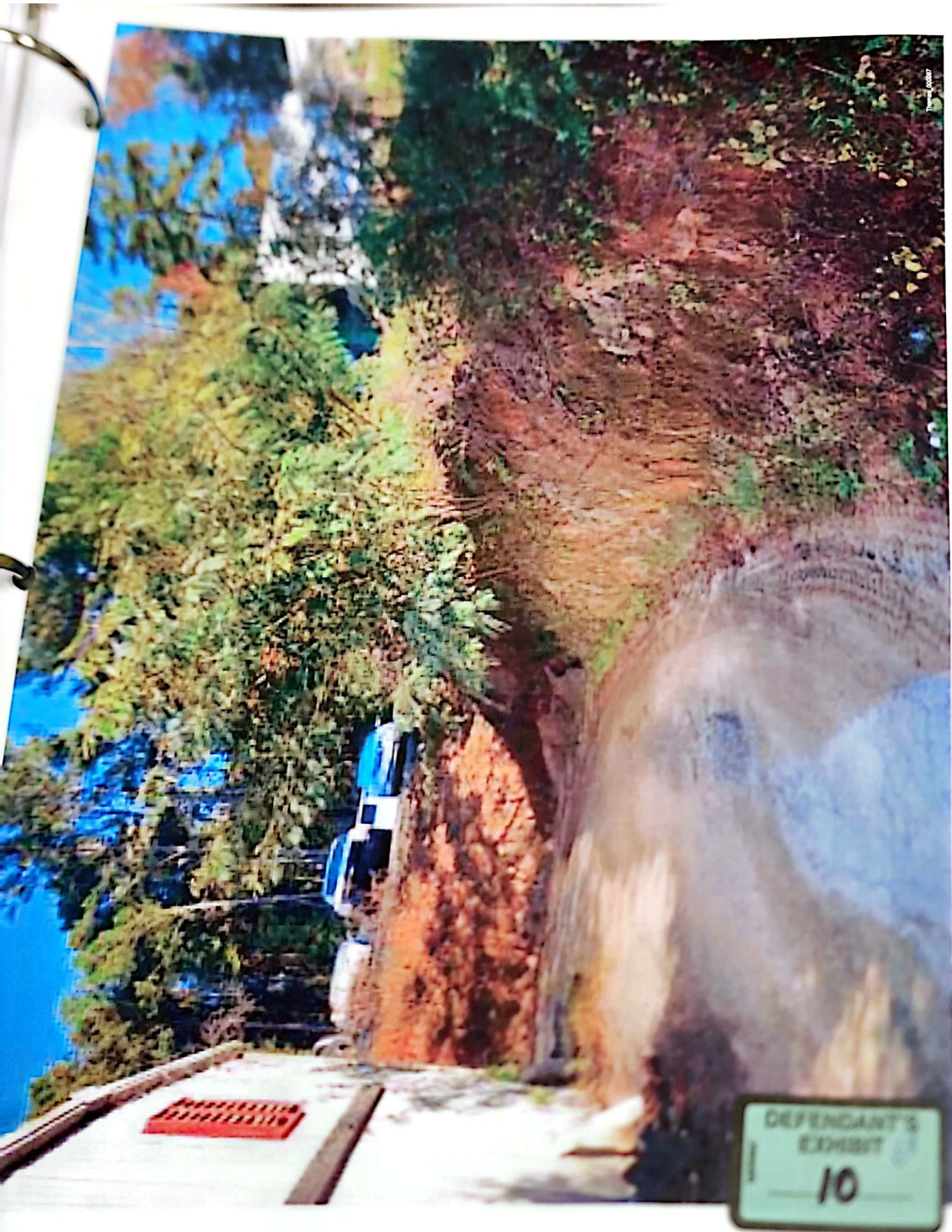








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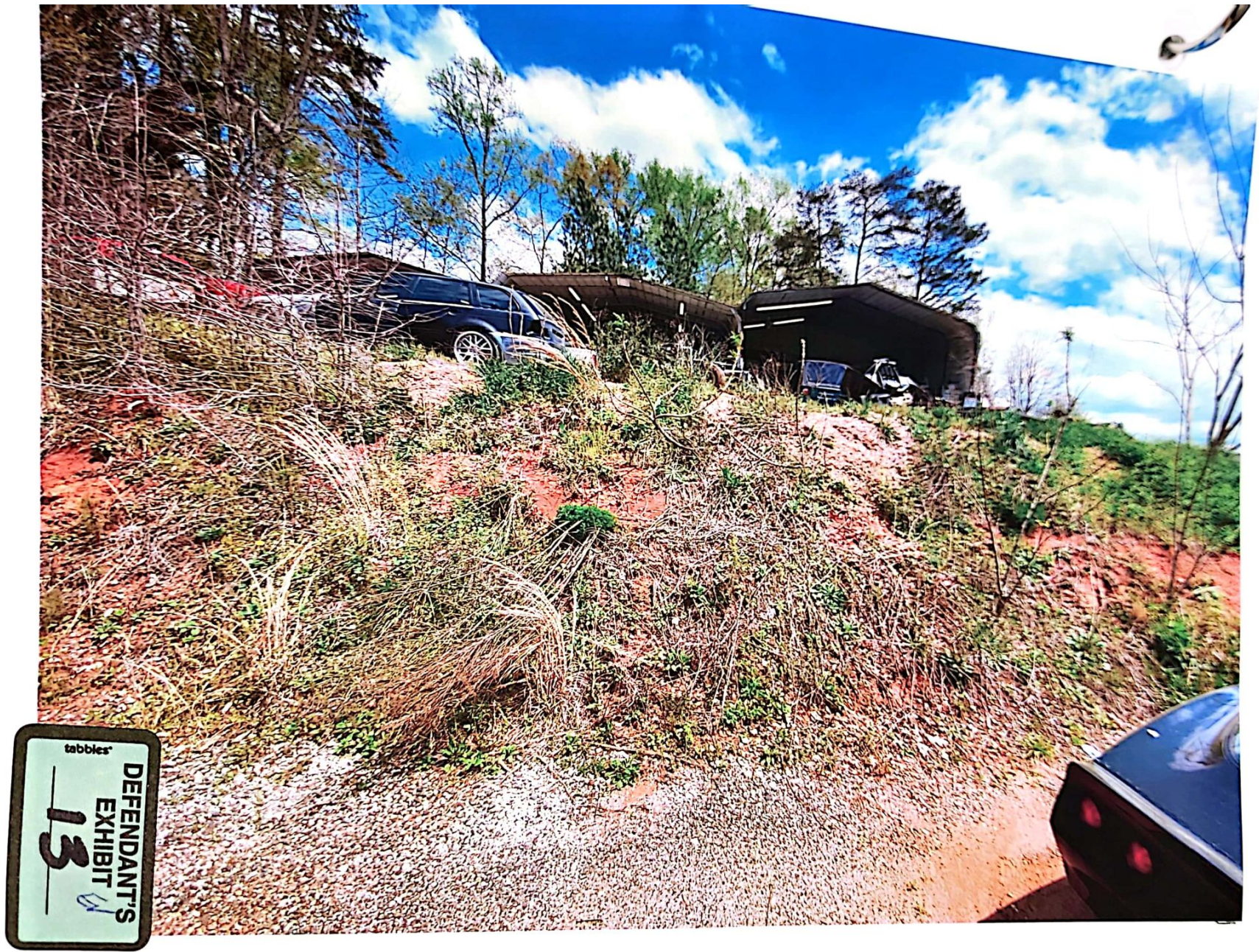




1402



1403







<https://www.youtube.com/watch?v=o1xCPYmONLU&lc=Ugzev1v4hCRs3Woi8mF4AaAB>

16  
17  
3

tabbles®  
DEFENDANT'S  
EXHIBIT  
15 *EW*



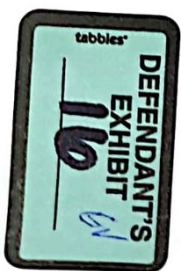
### Hyper Formance fender flares

136K views · 8 years ago

 HYPER FORMANCE LLC

made a short vid of making a set of rear flares for one of our good customers. Located in greenville sc. Song is by Darude "music"

Thomas\_000173



19 17

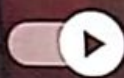


# HYPER FORMANCE LLC

*custom wheel flares*




0:13 / 7:27



Play (k)

## Hyper Formance fender flares

136,17  521  DISLIKE  SHARE  CLIP  SAVE ...

Thomas\_000175



## Hyper Formance fender flares

136,17  521  DISLIKE  SHARE  CLIP  SAVE ...

Thomas\_000176



843 340 3965



1:46 / 7:27



Play (k)

## Hyper Formance fender flares

36,17



521



DISLIKE



SHARE



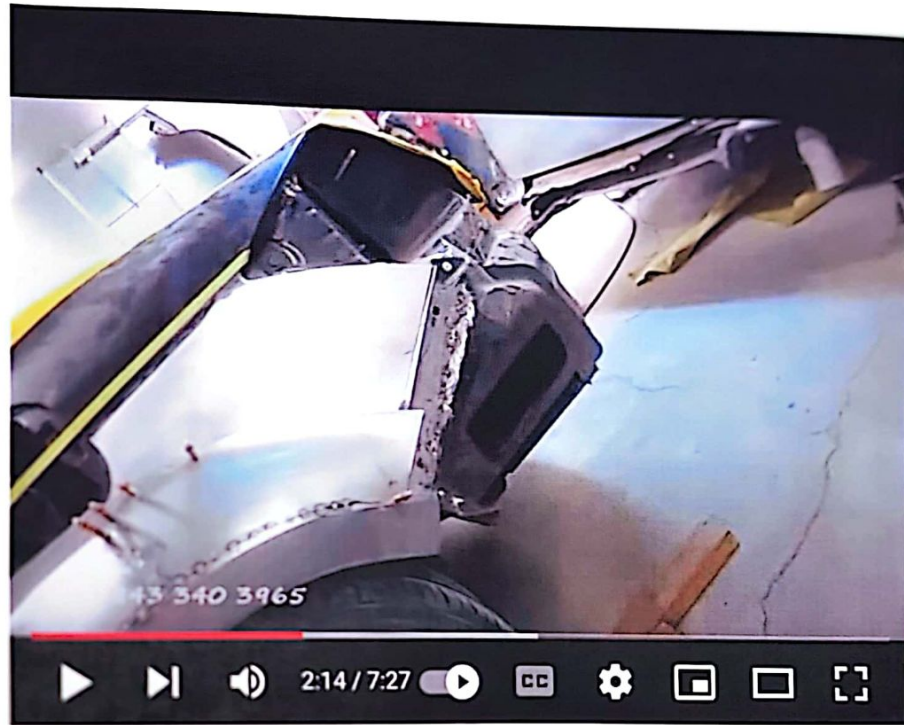
CLIP



SAVE



Thomas\_000177



### Hyper Formance fender flares

136,177 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000178







### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000181

17  
19  
0



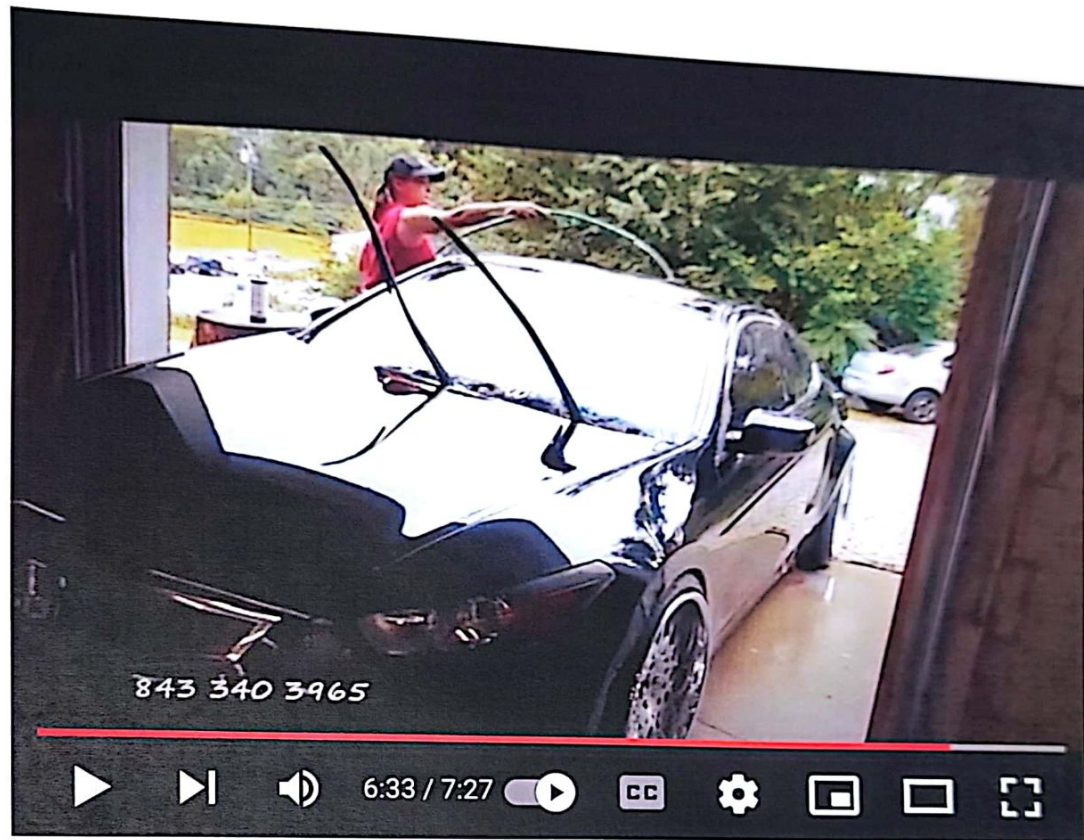
### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000182

0 14 17

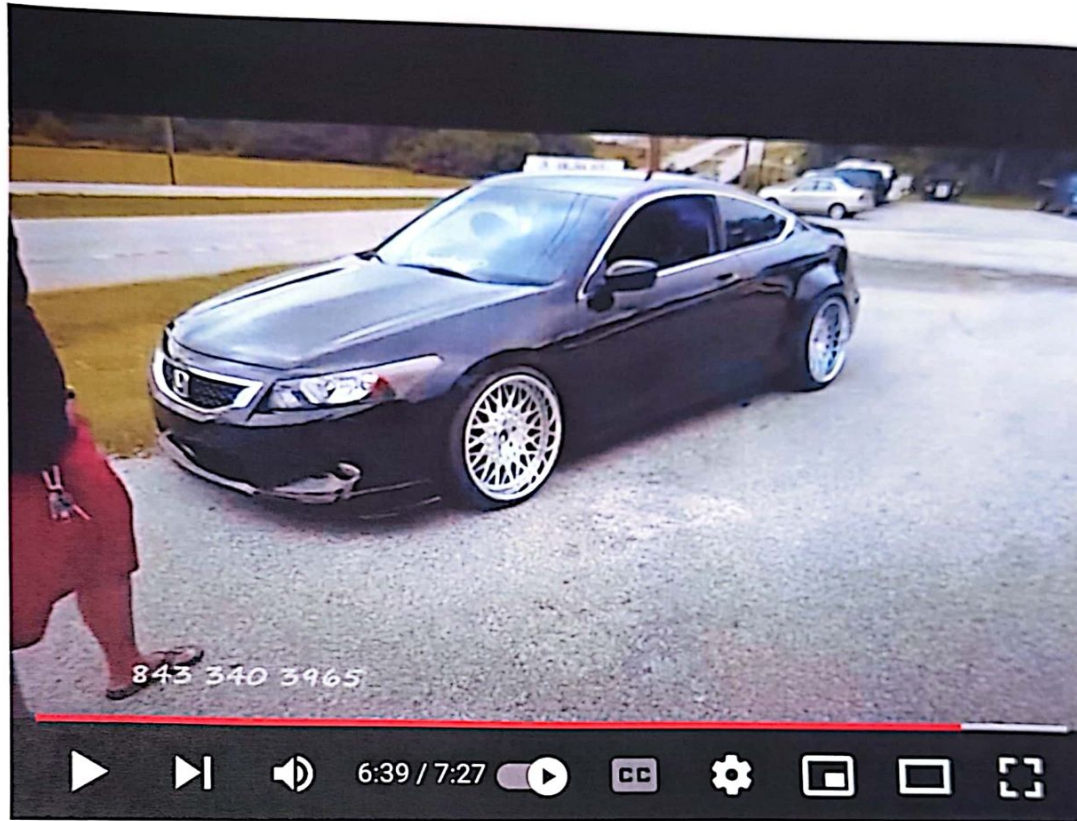




### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

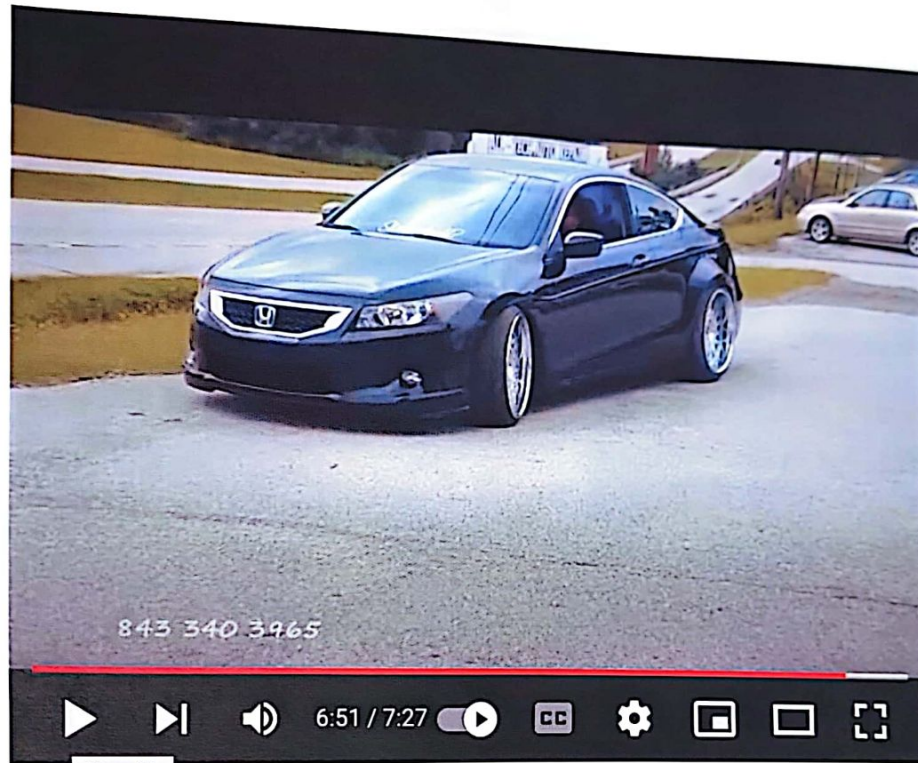
Thomas\_000184



### Hyper Formance fender flares

136,17 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000185



843 340 3965

Play (k)

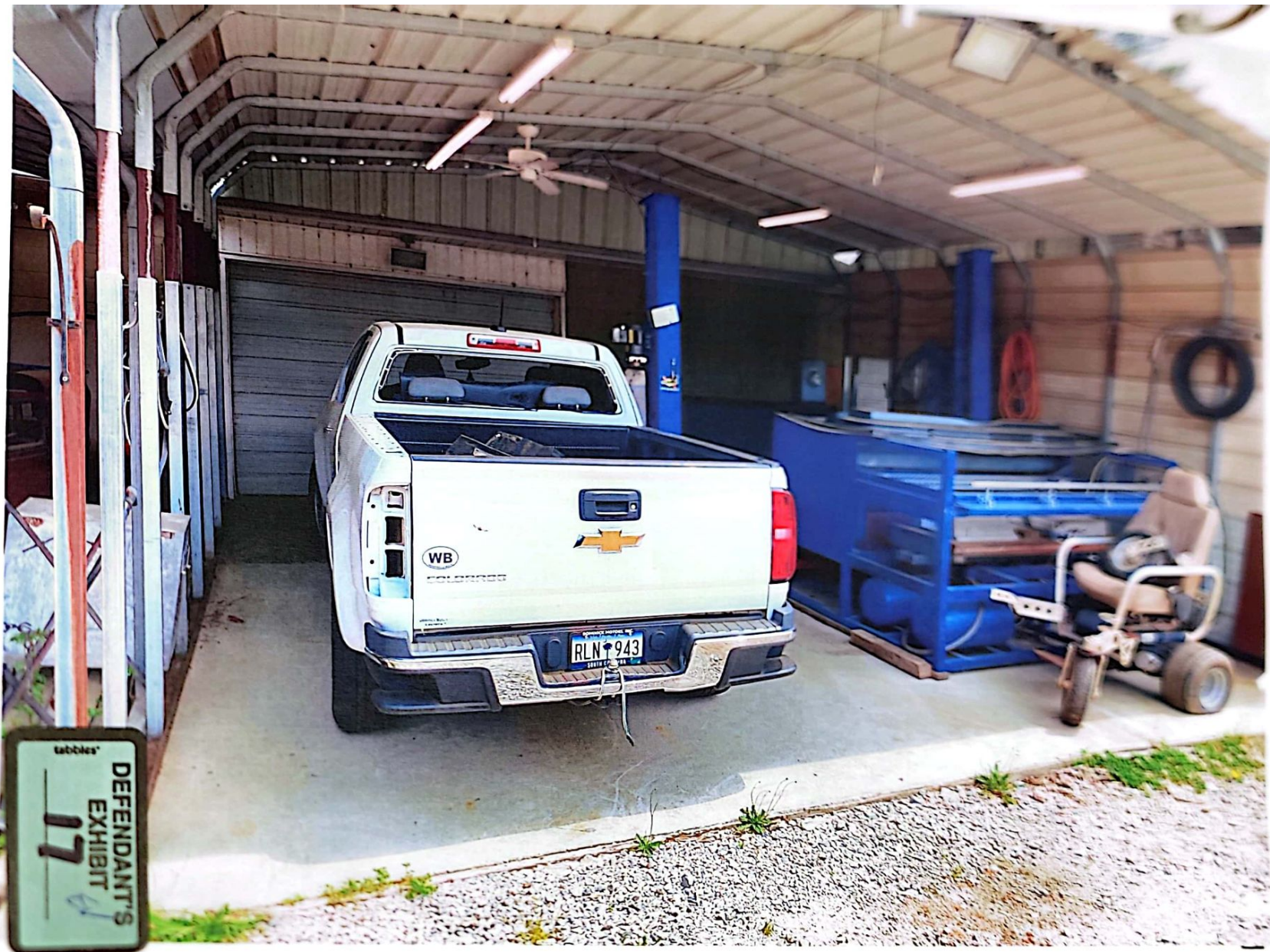
### Hyper Formance fender flares

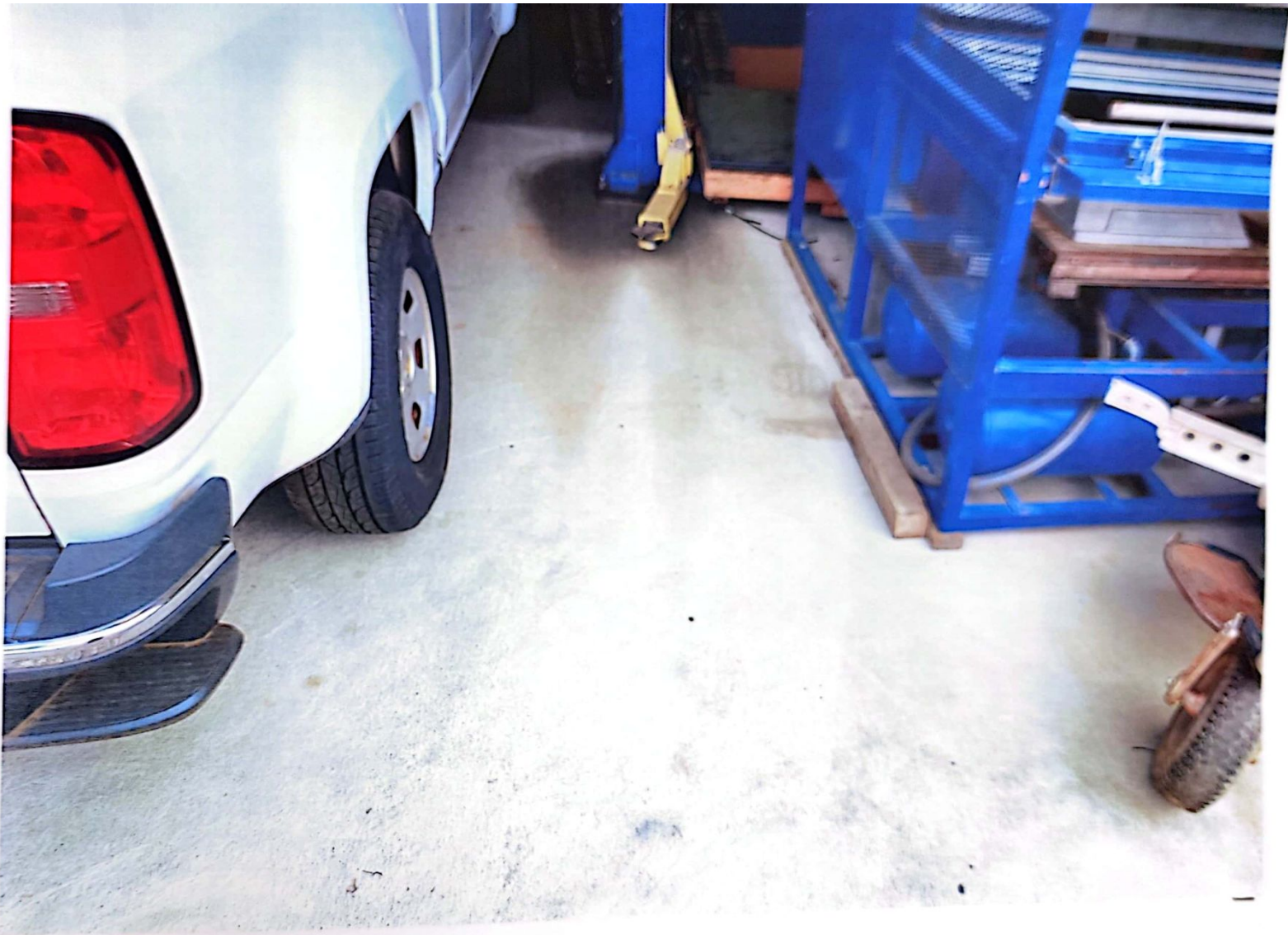
136,170 521 DISLIKE SHARE CLIP SAVE ...

Thomas\_000186

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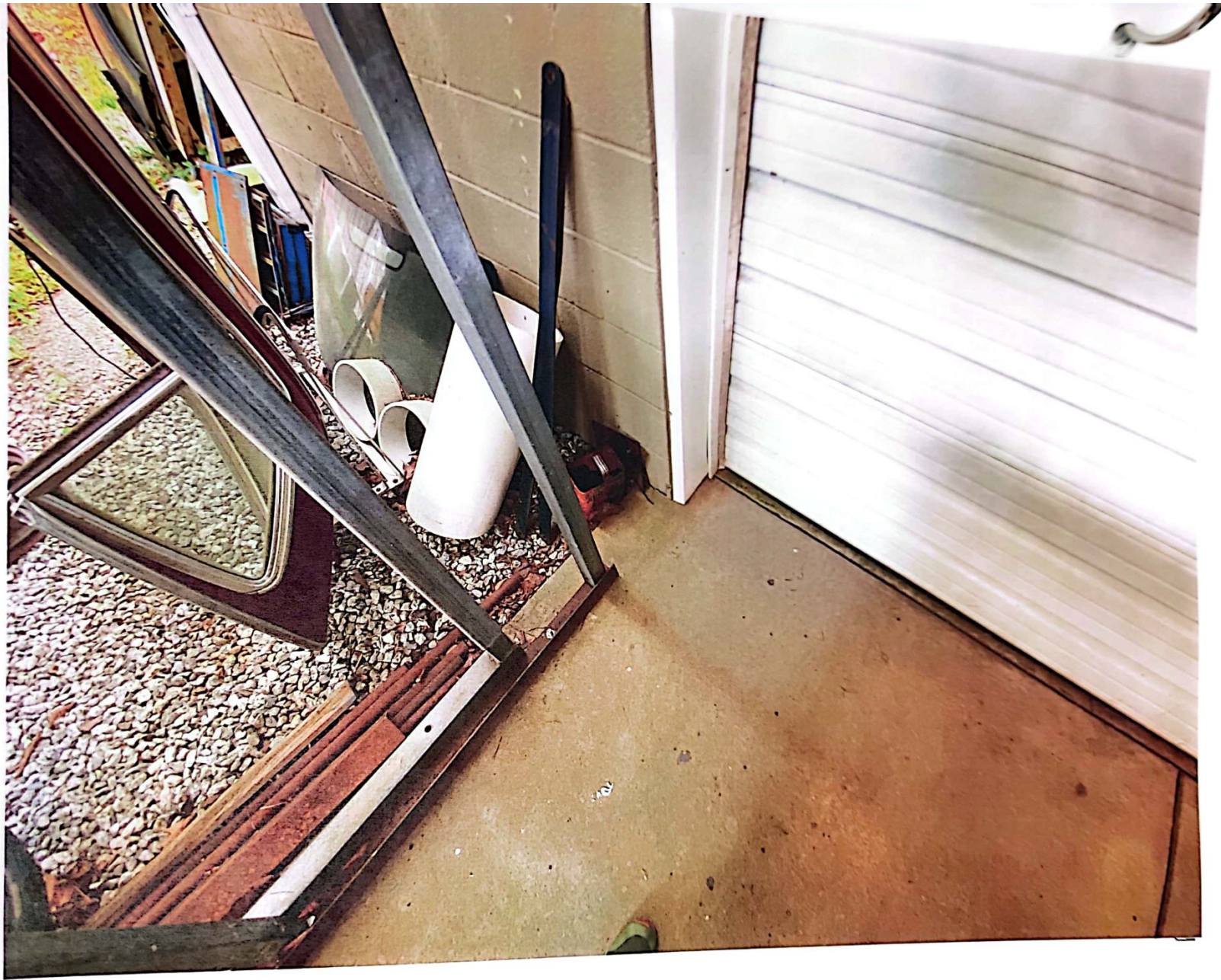




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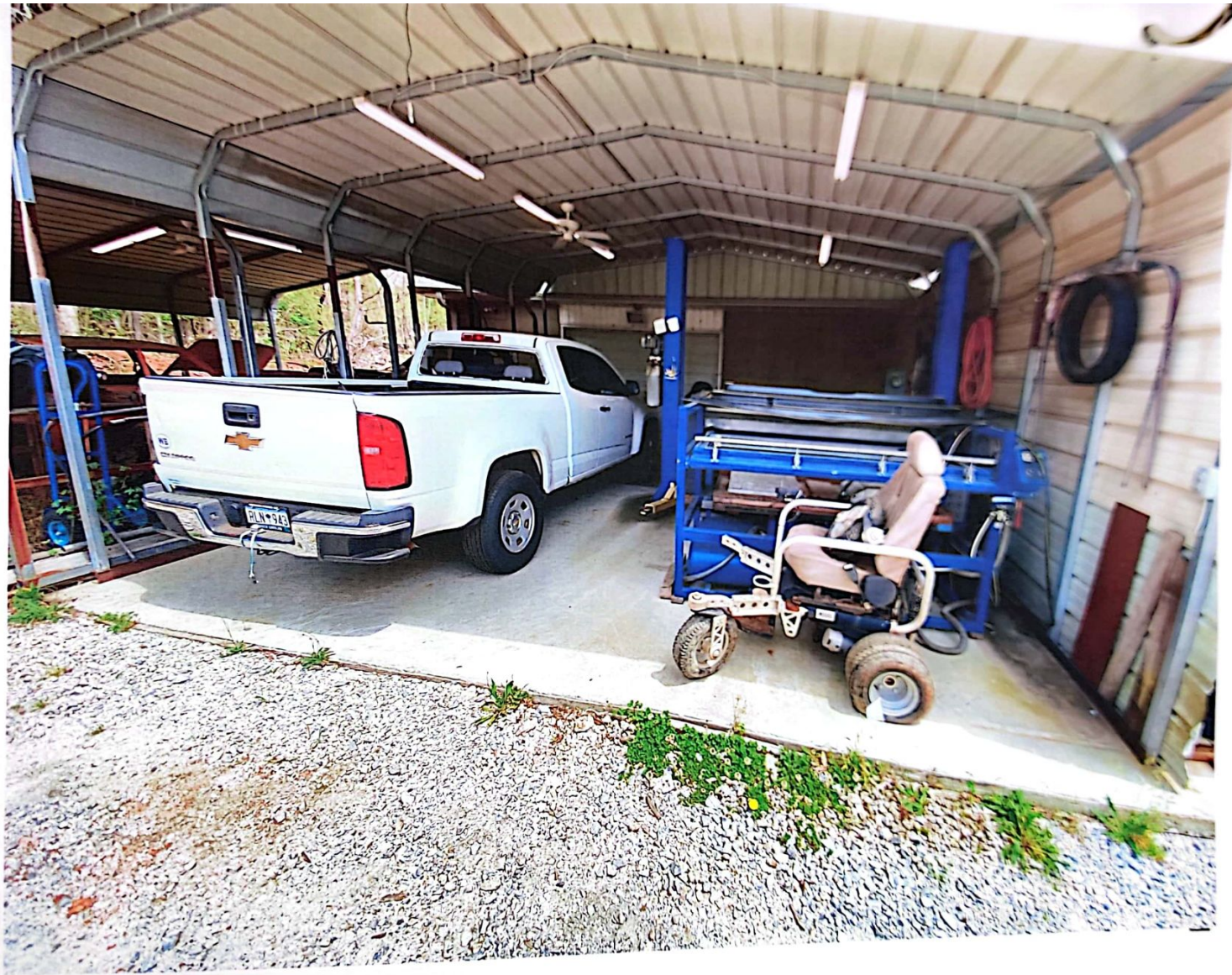
Model  
No.







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TITLE TO REAL ESTATE—LIFE, THURGOOD, KENNEDY & THOMPSON, 416 E. WASHINGTON ST., GREENVILLE, S. C.

STATE OF SOUTH CAROLINA }  
COUNTY OF GREENVILLE

Co. Tax \$ 1.10

KNOW ALL MEN BY THESE PRESENTS, That John C. Cobb

In consideration of Five Hundred Fifty-five (\$555.00) ----- Dollars,

the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto M. R. Ramey, his heirs and assigns forever,

All that piece, parcel or lot of land in Pickens County, State of South Carolina being a 15-foot strip lying on the Western side of a tract containing 0.359 Acres already owned by Grantee on the S. C. Highway 123 and the 15-foot strip is more fully described as follows:

The above-described tract begins at a point on S. C. Highway 123 at the joint front corner of other tracts owned by Grantee and running along S. C. Highway 123 for a distance of 15 feet; the Western lot line is parallel to lot line of other property of Grantee which lot line runs N. 18-40 E.; the rear lot line is a continuation of the rear lot line of other property owned by Grantee and which runs S. 58-42 W. until it intersects with the Western lot line. It is the intention of this deed to convey a 15-foot strip which fronts for 15 feet on S. C. Highway 123, however, since a new survey has not been made the above tract cannot be described by a metes and bounds description. A reference is hereby made to plat of other property owned by M. R. Ramey which shows a tract showing 0.359 Acres and was made by J. C. Smith, Surveyor, on November 1, 1971.

The property above described is subject to all easements and rights-of-way of record.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs, successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs, successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs, successors and assigns against the grantor(s) and the grantor's(s') heirs, successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 8th day of October 1974 .

SIGNED, sealed and delivered in the presence of:

*E. Eldon Chapman*  
*Chryllo Chapman*

*John C. Cobb* (SEAL)

(SEAL) (SEAL) (SEAL)

STATE OF SOUTH CAROLINA }  
COUNTY OF GREENVILLE

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named (grantor(s) sign, seal and as the grantor's(s') act and deed deliver the within deed and that (s)he, with other witness subscribed above witnessed the execution thereof.

SWORN to before me this 8th day of October 1974 .

*E. Eldon Chapman* (SEAL)

*E. Eldon Chapman*

Notary Public for South Carolina  
My commission expires: 30 Apr 79

STATE OF SOUTH CAROLINA }  
COUNTY OF GREENVILLE

RENUNCIATION OF DOWER

I, the undersigned Notary Public, do hereby certify unto all whom it may concern, that the undersigned wife (wives) of the above named grantor(s) respectively, did this day appear before me, and each, upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person whomsoever, renounce, release and forever relinquish unto the grantee(s) and the grantee's(s') heirs, successors and assigns, all her interest and estate, and all her right and claim of dower of, in and to all and singular the premises within mentioned and released.

GIVEN under my hand and seal this

8th day of October 1974 .

*E. Eldon Chapman* (SEAL)

*John C. Cobb*

Notary Public for South Carolina  
My commission expires: 30 Apr 79

RECORDED this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ M., No. \_\_\_\_\_



~~MORTGAGE~~  
DEED

BOOK 12-W PAGE 442

RECORDED Nov 7 19 74

TIME 11 AM

CARD \_\_\_\_\_ OF \_\_\_\_\_ CARDS

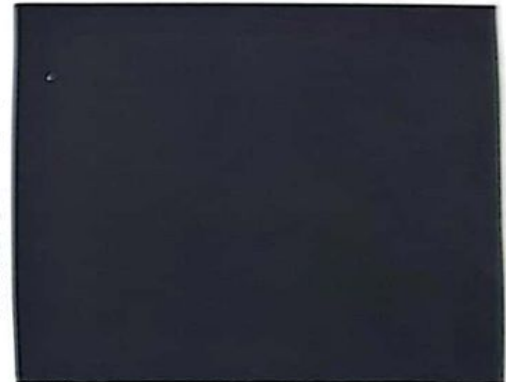
GRANTOR  
~~MORTGAGE~~ John C. Cobb

GRANTEE  
~~MORTGAGE~~ M. R. Ramey

DESCRIPTION 0.359 Acres

SATISFACTION

J. F. GRIFFIN  
CLERK OF COURT  
PICKENS COUNTY  
PICKENS, S.C.



NOTICE: THIS FILM AND CARD MAY NOT BE  
ALTERED NOR DAMAGED IN ANY MANNER NOR  
REMOVED FROM THE CLERK'S OFFICE UNDER  
PENALTY OF LAW.

**DO NOT REFILE THIS FILM CARD**

RETURN TO CLERK OR DEPUTY OR  
PLACE IN REFILE TRAY.

DD-T 17239

MMM 7650 FILMSORT® Brand Apertures & Camera Cards and DUPLICARD® Brand Copy Cards - Product of 3M Company, St. Paul, Minn.

Book 296 Page 103

S. Allen Hill  
New Hope Home Jim  
205 E. Broad St.  
016316 Greenville  
RICKENS CO.  
REC 1099  
95 OCT -2 AM 11:54

NOTICE TO CREDITORS  
NOTICE TO DEBTS  
BY THE ESTATE OF REJOR ROBERT RAMEY, DECEASED  
AND MARY ANN RAMEY

NOTICE OF DISTRIBUTION

WHEREAS, the decedent died on October 27, 1995, and,  
WHEREAS, the assets of the decedent to being administered in the Probate Court for Pickens County, South Carolina  
to fill a vacancy, and,  
WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,  
WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,  
NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative have  
granted, bargained, sold and released, and by these presents does grant, bargain, sell and release to:

Betty N. Ramey, 2216 Estelle Ave Road, Santee, South Carolina 29640  
the following described property:

The Schedule B

TOGETHER with all and singular, the Rights, Powers, Reversions and Appurtenances to the said Premises/Property  
belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Betty N. Ramey, her heirs and assigns  
forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, have executed this  
Deed, this 21 day of March, 1995.

Estate of: Rejor Robert Ramey  
by Signature: Betty N. Ramey  
Betty N. Ramey, Personal Representative

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF  
Witness: Jill W  
Witness: Kathleen A. Collins

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS ) PROBATE

PERSONALLY appeared before me Kathleen A. Collins and made oath that he/she saw the within named  
Personal Representative sign, seal, and on their set and deed, deliver the within written Deed, and that he/she with  
J. Bruce Hill witnessed the execution thereof.

Kathleen A. Collins

Deed to be filed on this 21st  
day of March 1995  
Jill W  
Notary Public for South Carolina  
My Commission Expires: 12/7/98

The within document was filed  
for record on the 2 day of  
Oct. 1995 and recorded  
In book 296 page 103  
Marsha P. Reeves  
R.M.C.  
Pickens County, S. C.

JIMMY McCOLLUM, Tax Assessor  
222 McDANIEL AVE., B-8  
PICKENS, SC 29671

Deed of Distribution - Major R. Ramsey to Betty M. Ramsey, Schedule A 1 of 3

Turner Hill Road Property - TMS - K13-00-0821

ALL that certain piece, parcel or lot of land lying, situate and being in the State of South Carolina, County of Pickens, located five (5) miles southeast of Easley on the northeasterly side of Turner Hill Road (S.C. Road No. 144) and shown as 5.1 ACRE, more or less, on a survey for ROBIN BROOME by C.R. Shehan, RLS #8810 dated September 19, 1988 and having such courses, distances, metes and bounds as will be shown by reference to said plat recorded in the Office of the Clerk of Court for Pickens County in Plat Book 35 at page 228A.

This conveyance is made subject to any and all easements, rights-of-way or restrictions of record or in existence on the premises.

This being the identical property heretofore conveyed unto M.R. Ramey by deed of Phyllis B. Owen and Robin P. Broome dated October 17, 1988 and recorded in the office of the Clerk for Pickens County, South Carolina on October 20, 1988 in Deed Book 48 at page 179.

and, also;

Raw Land for House Construction - TMS - K12-00-017E

ALL that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Pickens, being shown and designated as Tract No. 5, containing 18.48 ACRES, more or less, according to plat prepared by John C. Smith & Son dated April, 1983, reference to which is hereby made for a more complete and accurate description, and according to said plat, being thereon more fully described as follows, to-wit:

BEGINNING at a point in Saluda Dam Road, common corner with property of Hughey; thence along said road as follows: N63-41E 234.62 feet; N63-48E 202.85 feet; N71-18E 187.38 feet; N89-40E 248.2 feet; S87-31E 162.3 feet to corner with property of Georges Creek Park Association; thence leaving road and running along line of Georges Creek Park Association: S18-11W 875 feet; S00-35W 210.87 feet; thence N83-24W 837.46 feet; thence along line of property of Hughey N10-19E 709.25 feet to the point of BEGINNING, and being bounded on the north by center of Saluda Dam Road; bounded on the east by property of Georges Creek Park Association; and bounded on the west by property of Hughey. Less, however, those lots previously deeded out on four prior occasions.

This is a portion of the C.A. Davis Estate. See Apartment 244, File 4 in the office of the Probate Court for Pickens County, SC. Also for derivation purposes see Apartment 347, File 55; Apartment 358, File 45; Apartment 388, File 79; and Deed Book 10-E, page 262 and Deed Book 4-0, page 1.

Deed of Distribution - Major R. Ramey to Betty M. Ramey, Schedule A

2 of 3

This being the identical property heretofore conveyed unto M.R. Ramey by deed of Dorothy Deavenport, June Stewart, Charles N. Tinman and Alice R. Davis and James C. Tinman dated October 21, 1983, recorded in the office of the Clerk for Pickens County, South Carolina on November 18, 1983 in Deed Book 14-H at page 663.

and, also;

Cabinet Shop Property - TMS - L13-00-108A (2 pieces)

ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Pickens, East of the City of Easley and on the North side of U.S. Highway 123 and according to a plat by John C. Smith, Surveyor, dated November 29, 1965, of property of John C. Cobb, said lot is more particularly described as follows, to-wit: BEGINNING at an iron pin on the North side of Highway right-of-way and at the Southeast corner of the lot herein conveyed, running thence along the highway right of way South 88-27 West 50 feet to a point; thence North 18-40 West 248 feet to a point; thence North 58-42 East 70 feet, more or less, to an iron pin; thence South 18-40 West 281.6 feet to an iron pin on the highway, the point of BEGINNING.

This being the identical property heretofore conveyed unto Major R. Ramey by deed of Cobb Sales Company dated January 31, 1970 and recorded in the office of the Clerk for Pickens County, South Carolina on February 11, 1970 in Deed Book 12-C, page 91.

and, also;

ALL that piece, parcel or lot of land in Pickens County, State of South Carolina being a 15-foot strip lying on the Western side of a tract containing 0.359 ACRES already owned by Grantee on the S.C. Highway 123 and the 15-foot strip is more fully described as follows:

The above-described tract begins at a point on S.C. Highway 123 at the joint front corner of other tracts owned by Grantee and running along S.C. Highway 123 for a distance of 15 feet; the Western lot line is parallel to lot line of other property of Grantee which lot line runs N. 18-40 E.; the rear lot line is a continuation of the rear lot line of other property owned by Grantee and which runs S. 58-42 W. until it intersects with the Western lot line. It is the intention of this deed to convey a 15-foot strip which fronts for 15 feet on S.C. Highway 123, however, since a new survey has not been made the above tract cannot be described by a metes and bounds description. A reference is hereby made to plat of other property owned by M.R. Ramey which shows a tract showing 0.359 Acres and was made by J.C. Smith, Surveyor, on November 1, 1971.

The property above described is subject to all easements and rights-of-way of record.

This being the same property heretofore conveyed unto M.R. Ramey by deed of John C. Cobb dated October 8, 1974 and recorded in the office of the Clerk for Pickens County, South Carolina on November 7, 1974 in Deed Book 12-W, page 442.

Deed of Distribution - Major R. Ramey to Betty M. Ramey, Schedule A 3 of 3

and, also;

Reunion School - TMS - H14-09-0070

The Decedent's one-half interest in: ALL that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Pickens, and containing 3.91 acres, more or less, as shown on plat of Robert R. Spearman, Registered Surveyor, dated November 25, 1980, and being more fully described according to said plat as follows, to-wit:

BEGINNING at a point on edge of S.C. Highway No. 93, which point is common corner of Tract herein conveyed and property of Una E. Hughes, running thence along edge of S.C. Highway 93, N. 68-13 E. 472.85 feet to a point; thence leaving S.C. Highway No. 93 and running S. 20-44 W. 201.8 feet to a point; thence S. 17-46 W. 436.54 feet to a point; thence 88-12 W. 274.53 feet to a point; thence N. 05-26 E. 422.21 feet to the point of BEGINNING. Being bounded on the North by S.C. Highway No. 93, on the East by Orchard Lake Subdivision, on the West and South by property of Una E. Hughes.

This being the same property heretofore conveyed unto M.R. Ramey by deed of Pickens County School District dated April 9, 1981, recorded in the office of the Clerk for Pickens County, South Carolina on April 24, 1981 in Deed Book 13-X, page 814.

STATE TAX 195.00  
COUNTY TAX 22.50  
EXEMPT \_\_\_\_\_

BOOK 111 PAGE 202

OLSON, SMITH, JORDAN & COX, P.A.  
Post Office Box 1828  
Easley, South Carolina 29641

TITLE TO REAL ESTATE  
STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS

KNOW ALL MEN BY THESE PRESENTS:

That I, BETTY M. RAMEY, in the State aforesaid, in consideration of the sum of SEVENTY-FIVE THOUSAND AND NO/100THS (\$75,000.00) DOLLARS to the grantor in hand paid at and before the sealing of these presents by the grantees, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said BRADLEY S. DOBSON AND TANYI M. DOBSON, their heirs and assigns forever:

ALL that certain piece, parcel or tract of land situate lying and being in the State of South Carolina, County of Pickens, containing 0.428 acres as shown on plat for Betty M. Ramey, prepared by J. C. Smith & Associates Surveyors, dated August 28, 1996, and, with reference to said plat, being more particularly described as having the following measurements and boundaries, to-wit:

BEGINNING on a point on the Northern side of US Highway No. 123 at the common corner of the herein described Tract and other property of Wallace G. Merck, thence running along the common line of said Tracts N. 19-23-44 E. 224.31 feet to a point; thence running along the common line of the herein described Tract and property now or formerly of the Frank R. Garrison Estate N. 58-43-38 E. 112.43 feet to a point; thence running along the common line of the herein described Tract and property now or formerly of Holcraft, Inc., S. 18-40-00 W. 283.07 feet to a point on the Northern side of US Highway No. 123; thence running along the Northern side of said US Highway No. 123 S. 88-44-28 W. 80.00 feet to the point of beginning.

008042  
REGISTERED  
PICKENS CO.  
RECORDS



400 ~~198~~ 203

The above described property is subject to any and all easements and/or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions covenants or zoning ordinances affecting such property as may appear of record. The above described property is specifically subject to those certain restrictions recorded in Deed Book 12-C, at Page 91 in the R/D Office for Pickens County, South Carolina.

This being the same property conveyed to Betty M. Ramey by Deed of Distribution from the Estate of Major Redmond Ramey, dated 3/21/95 and recorded in Deed Book 296, at Page 103, in the R/D Office for Pickens County, South Carolina. Also see Quitclaim Deed from Wallace G. Merok, et.al. to Betty M. Ramey, dated 3/19/98 and recorded in Deed Book 42A, at Page 198 in the R/D Office for Pickens County, South Carolina.

TOGETHER with all and singular the Rights, Members, Hereditments and Appurtenances to the said premises, belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the grantees hereinabove named, and their heirs and assigns forever.

And the grantor does hereby bind the grantor and the grantor's Heirs and Personal Representatives to warrant and forever defend all and singular the said premises unto the grantees hereinabove named, and the grantee's Heirs and Assigns against the grantor and the grantor's Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the grantor's hand and seal this 16th day of April in the year of our Lord One Thousand Nine Hundred and Ninety Eight.

Signed, Sealed And Delivered in the Presence of

[Signature]  
Victoria L. Griffin

Betty M. Ramey L.S.  
Betty M. Ramey

488 PAGE 204

STATE OF SOUTH CAROLINA )  
COUNTY OF PICKENS ) AFFIDAVIT OF PROBATE

PERSONALITY appeared before me the undersigned witness and made oath that he is the within named grantor sign, seal and as the grantor's son and heir follows the within written deed, and that he, with the other witness subscribed above witnessed the execution thereof.

DEED is before me this 16th day of April, 1968.

Vertha L. Griffin

Notary Public for South Carolina  
My Commission Expires: 10/28/69

Wentworth Address: 3608 Calhoun Memorial Hwy.  
Greenville, SC 29611

VEN No. 1 L13-00-108A

JIMMY MAXLIM, Tax Assessor  
222 MADAME AVE., B-8  
PICKENS, SC 29671



Space above this line for recording information

STATE OF SOUTH CAROLINA )  
 ) TITLE TO REAL ESTATE  
COUNTY OF PICKENS )

KNOW ALL MEN BY THESE PRESENTS THAT, **BRADLEY S. DOBSON AND TAMMY M. DOBSON**, herein referred to as Grantors, for and in consideration of the sum of **ONE HUNDRED FIVE THOUSAND AND 00/100 (\$105,000.00)** Dollars paid by **MARK M. SMITH**, hereinafter referred to as Grantee, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto

**MARK M. SMITH,**  
his heirs, successors, and assigns forever:

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, being shown and designated as Lot of Subdivision, according to "Boundary Survey for Betty M. Ramey" prepared by J.C. Smith & Associates, dated 08/28/96 and recorded in Plat Book 56 at Page 334 in the Register of Deeds Office for Pickens County, South Carolina, reference to said plat being hereby made for a more complete metes and bounds description thereof.

This is the same property conveyed unto the Grantors herein by deed from Betty M. Ramey dated April 16, 1998 and recorded in the Office of the Pickens County Register of Deeds in Deed Book 422 at Page 202.

The above described property is subject to any and all easements and/or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions, covenants or zoning ordinances affecting such property as may appear of record. The above described property is specifically subject to restrictions governing said property as appear in the Register of Deeds Office for Pickens County, South Carolina in Book 12-C, Page 91.

Grantee's Address: PO Box 74  
Piedmont, SC 29611


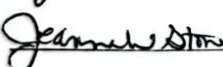
Tax/Map No. 5059-13-14-5361

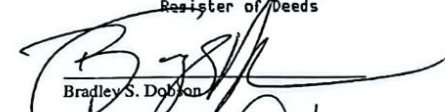

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining. TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever. AND THE GRANTORS do hereby bind the Grantor(s) and the Grantors' heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantors and Grantors' heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS our Hand and Seal this 9th day of June, 2005.

000010695  
RECORDED 06/13/2005 11:57:17AM  
Fee:10.00 State:273.00  
County:115.50 Exempt:-----  
Pickens County, SC  
Register of Deeds

Signed, Sealed and Delivered  
in the Presence of

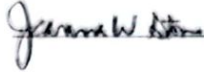
  
\_\_\_\_\_  


  
Bradley S. Dobson  
  
Tammy M. Dobson

STATE OF SOUTH CAROLINA )  
 ) PROBATE  
COUNTY OF PICKENS )

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named Grantor sign, seal and as their act and deed, before the within written Deed for the uses and purposes therein mentioned, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this  
9th day of July, 2009

 \_\_\_\_\_

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires October 14, 2009

Prepared By

OLSON, SMITH, JORDAN & COX, P.A.  
P.O. BOX 1287  
EASLEY, SC 29641

Space above this line for recording information

STATE OF SOUTH CAROLINA )  
 ) CORRECTIVE  
 ) TITLE TO REAL ESTATE  
COUNTY OF PICKENS )

KNOW ALL MEN BY THESE PRESENTS THAT, BRADLEY S. DOBSON AND TAMMY M. DOBSON, herein referred to as Grantors, for and in consideration of the sum of ONE AND 00/100 (\$1.00) Dollar, and correction of prior deed, paid by MARK M. SMITH, hereinafter referred to as Grantee, in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto:

MARK M. SMITH,  
his heirs, successors, and assigns forever

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, being shown as containing 0.428 acres, according to "Boundary Survey for Betty M. Ramey" prepared by J.C. Smith & Associates, dated 08/28/96 and recorded in First Book 56 at Page 334 in the Register of Deeds Office for Pickens County, South Carolina, reference to said plat being hereby made for a more complete metes and bounds description thereof

This is the same property conveyed unto the Grantors herein by deed from Betty M. Ramey dated April 16, 1998 and recorded in the Office of the Pickens County Register of Deeds in Deed Book 422 at Page 202.

The above described property is subject to any and all easements and/or rights of way for roads, utilities, drainage, etc. as may appear of record and/or on the premises and to any and all restrictions, covenants or zoning ordinances affecting such property as may appear of record. The above described property is specifically subject to restrictions governing said property as appear in the Register of Deeds Office for Pickens County, South Carolina in Book 12-C, Page 91.

This Corrective Title to Real Estate, is being executed in order to correct the legal description in that certain prior deed between the parties dated 06/09/05 and recorded on 06/13/05 in the Register of Deeds Office for Pickens County, South Carolina in Deed Book 912 at Page 1.

Grantee's Address: PO Box 74  
Piedmont, SC 29611

000017046  
RECORDED 09/09/2005 03:51:38PM  
Fee:10.00 State:10.00  
County:10.00 Exempt:-----  
Pickens County, SC  
Register of Deeds

Tax/Map No. 5059-13-14-5361

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining. TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever. AND THE GRANTORS do hereby bind the Grantor(s) and the Grantors' heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantors and Grantors' heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS our Hand and Seal this 09 day of September, 2005.

Signed, Sealed and Delivered  
in the Presence of:

James H. Stone  
Paula Jamison

Bradley S. Dobson  
Tammy M. Dobson

COUNTY REGISTER  
AND REGISTRAR  
PICKENS, SC 29671  
  
COUNTY CLERK  
AND REGISTRAR  
PICKENS, SC 29671









CLICKT17-023/CLICK

WITNESS my Hand and Seal this 10th day of February, in the year of our Lord 2017.

Signed, Sealed and Delivered  
in the Presence of:

  
Thomas B. Peerman

  
MARK M. SMITH

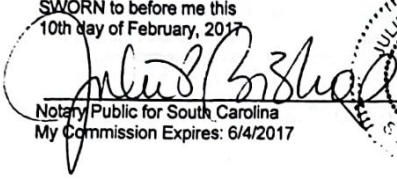
  
Julie P. Bishop

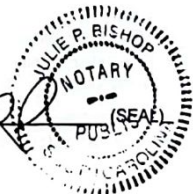
STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, the undersigned Notary Public, do certify that the within named Grantor personally appeared before me and having satisfactorily proven to be the person whose name is subscribed above, has acknowledged the due execution of the within Deed.

SWORN to before me this  
10th day of February, 2017

  
Notary Public for South Carolina  
My Commission Expires: 6/4/2017



STATE OF SOUTH CAROLINA  
COUNTY OF PICKENS )

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1 I have read the information on this affidavit and I understand such information.

2 The property being transferred is located at 3668 Calhoun Memorial Hwy  
bearing Pickens County Tax Map Number 3659-13-14-3361, was transferred  
by Mark M. Smith to  
Brent Click on 2/10/17

3. Check one of the following: The deed is

- (a)  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b)  subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c)  exempt from the deed recording fee because (See Information section of affidavit): \_\_\_\_\_

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes  or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a)  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of 140,000.00
- (b)  The fee is computed on the fair market value of the realty which is \_\_\_\_\_
- (c)  The fee is computed on the fair market value of the realty as established for property tax purposes which is \_\_\_\_\_

5. Check Yes  or No  to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If A Yes, @ the amount of the outstanding balance of this lien or encumbrance is: \_\_\_\_\_

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: 140,000.00
- (b) Place the amount listed in item 5 above here: \_\_\_\_\_  
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: 140,000.00

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \_\_\_\_\_

8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, may be fined not more than one thousand dollars or imprisoned not more than one year or both.

Responsible Parties Connected with the Transaction

SWORN to before me this 11th day of 11/17/2017 at [unclear] County Public for SE. My Commission Expires 6/2/2017. [Signature]

EXEMPTIONS

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interests, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or member of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-4-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A family partnership is a partnership whose partners are all members of the same family. A family trust is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. A family means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A charitable entity means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quit claim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quit claim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed-pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

Space above this line for recording information

STATE OF SOUTH CAROLINA )  
 ) TITLE TO REAL ESTATE  
COUNTY OF PICKENS ) (No Title Examination)

**KNOW ALL MEN BY THESE PRESENTS**, that Brent Click, hereinafter called Grantor, in consideration of the sum of One and No/100 (\$1.00) Dollars, and no other consideration to Grantor duly paid at and before the sealing of these presents by **CLICK PROPERTIES, LLC**, hereinafter, whether one or more, called Grantee (the receipt of which is hereby acknowledged), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, and Grantee's Successors and Assigns, forever:

SEE EXHIBIT "A" ATTACHED

TMS#: 5059-13-14-5361

This conveyance is made subject to any and all existing reservations, easements, rights of way, zoning ordinances, setback lines, and restrictions or protective covenants that may appear of record, on the recorded plat(s), or on the premises.

Grantee's Address: 3668 Calhoun Memorial Highway, Greenville, SC 29611

**TOGETHER** with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging or in anywise incident or appertaining.

**TO HAVE AND TO HOLD** all and singular the premises before mentioned unto the said Grantee, its successors and assigns forever.

**AND THE GRANTOR** does hereby bind the Grantor, and the Grantor's Heirs, or Successors, and Personal Representatives to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's Successors and Assigns, against Grantor and Grantor's Heirs, Successors, Personal Representatives and Assigns and against every person whomsoever lawfully claiming or to claim the same or any part hereof.

WITNESS my Hand and Seal this 2<sup>nd</sup> day of March, 2017.

Signed, Sealed and Delivered  
to the Presence of

Grantor:

[Signature]

[Signature]  
**Brent Click**

Rebecca James

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

ACKNOWLEDGMENT

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County by the Grantor(s) and was executed and acknowledged to be the free act and voluntary deed of the Grantor(s).

WITNESS my signature this 2<sup>nd</sup> day of March, 2017.

[Signature]  
S. Allan Hill  
Notary Public for: South Carolina  
My Commission expires: 2/5/2018



Deed Prepared by S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North St., Greenville, SC 29601

**EXHIBIT "A"**

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, being shown as containing 0.428 acres, according to "Boundary Survey for Betty M. Ramey" prepared by J.C. Smith & Associates dated 8/28/96 and recorded in Plat Book 56 at Page 334 in the Pickens County ROD Office, SC, reference to said plat being hereby made for a more complete metes and bounds description thereof.

This being the same property conveyed to the Grantor herein by Mark M. Smith, recorded in the Pickens County ROD Office on February 17, 2017, in Deed Book 1839 at Page 166.

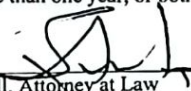
TMS#: 5059-13-14-5361

Grantor Name: **Brent Click**



STATE OF SOUTH CAROLINA )  
 ) AFFIDAVIT FOR EXEMPT TRANSFERS  
COUNTY OF PICKENS )

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred bearing County Tax Map Number 5059-13-14-5361 was transferred by Brent Click to CLICK PROPERTIES, LLC on March 2, 2017.
3. The deed is exempt from the deed recording fee because (See information section of affidavit):  
  
(8) transferring realty to a partnership as partner of the entity provided no consideration is paid for the transfer other than interest in the partnership
4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for the Grantee
5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

  
\_\_\_\_\_  
S. Allan Hill, Attorney at Law  
819 E. North Street  
Greenville, SC 29601  
(864) 242-4995

SWORN to before me this 2nd day of March, 2017.

  
Notary Public for South Carolina  
My Commission Expires: 

Deed Prepared by S. Allan Hill, a Professional Corporation, Attorney/CPA, 819 E. North St., Greenville, SC 29601

110.00

The State of South Carolina,

Book 14-S Page 997

Co. Tax \$ 100.50

*KNOIV ALL MEN BY THESE PRESENTS, That*

Cobb Sales Company, Inc.

*in the State aforesaid,* *in consideration of the sum of*  
Fifty Five Thousand and No/100 (\$55,000.00)----- Dollars  
*to it in hand paid at and before the sealing of these presents, by* Wallace G. Merck  
*in the State aforesaid,* *(the receipt whereof is hereby acknowledged)*  
*has granted, bargained, sold and released, and by these Presents docs grant, bargain, sell and release, unto the said*  
✓ Wallace G. Merck, his heirs and assigns, forever:  
Route 11, Riverview Drive  
Greenville, SC 29611

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, East of the City of Easley, on the Northside of U. S. Highway 123; lot being between Georges Creek and Saluda River and according to a plat by John C. Smith, Surveyor, dated November 29, 1965, said lot is more particularly described as follows, to-wit:

BEGINNING at an iron pin on the highway right of way, at the southwest corner, running thence North 7-17 West 81.6 feet to an iron pin; thence North 58-41 East 284.9 feet to a point; thence South 20-30 West 282.9 feet to an iron pin on the highway right of way; thence along the highway right of way South 88-27 West 149.8 feet to the point of BEGINNING.

This is the identical property conveyed unto Cobb Sales Company, Inc. by deed of R. C. McCall, Jr., Gilbert B. McCall, and Jo Ann M. Cobb dated May 1, 1969 and recorded in Deed Book 11-V, at Page 389 in the Office of the Clerk of Court for Pickens County, South Carolina.



Dec 31 4 29 PM '05  
OLIVER A. REALY  
FILED  
CLERK OF COURT  
PICKENS, S.C.

095825



TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said

Wallace G. Merck, his

Heirs and Assigns forever.

And the said Cobb Sales Company, Inc. does hereby bind itself

and its successors, to warrant and forever defend all and singular the said premises

unto the said Wallace G. Merck

Heirs and Assigns, against itself and its successors

and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF

Cobb Sales Company, Inc.  
(Insert name of Corporation)

has caused

these presents to be executed in its name by

John C. Cobb  
(Insert name of President or Vice-President)

its

President, and by

(Insert name of Secretary or Treasurer)

its

and its corporate seal to be hereto affixed this 31st

day of December

two

in the year of our Lord, one thousand nine hundred and

eighty five

, and in the ~~XX~~

hundred and Tenth

year of the Sovereignty and Independence of the United

States of America.

Signed, Sealed and Delivered  
in Presence of

Cobb Sales Company, Inc. (Seal)

By

*M. Elizabeth Robinson*  
Witness

*[Signature]*  
President.

*Bridget M. Kille*  
Witness

Secretary or Treasurer.

The State of South Carolina,

COUNTY OF PICKENS

PERSONALLY appeared before me M. Elizabeth Robinson  
(Insert name of Witness)  
who, in oath, says that he saw the within-named Cobb Sales Company, Inc.  
(Insert name of Corporation)

by John C. Cobb its  
(Insert name of President or Vice-President)  
President and its  
(Insert name of Secretary or Treasurer)

sign the within Deed, and the said Corporation, by said officers, seal said Deed, and, as its act and deed, deliver the same, and that he with Bridget P. Klebe witnessed the  
(Insert name of other Witness)  
execution thereof.

*M. Elizabeth Robinson*  
(Witness)

SWORN to before me, this 31st day of December, A. D. 1985

*Bridget P. Klebe* (Seal)  
My Commission expires: ~~6/8/92~~ 8/8/92

~~PROPERTY~~  
DEED

BOOK 14-S PAGE 997 RECORDED Dec. 31 19 85

TIME 4:29

CARD \_\_\_\_\_ OF \_\_\_\_\_ CARDS

GRANTOR Cobb Sales Company, Inc.

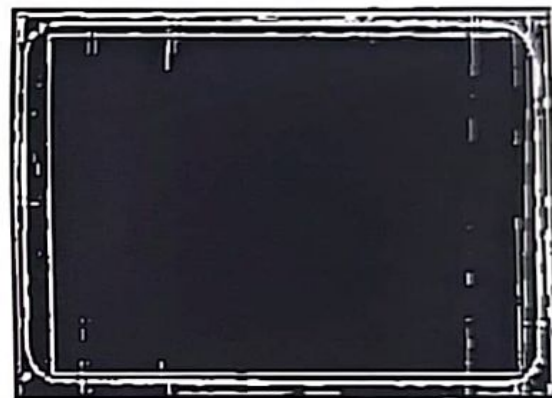
~~PROPERTY~~

GRANTEE Wallace G. Merck

~~PROPERTY~~

DESCRIPTION US Hwy. 123, E/Easley

SATISFACTION



CLERK OF COURT  
PICKENS, S.C.

**DO NOT REFILE THIS FILM CARD**  
RETURN TO CLERK OR DEPUTY OR  
PLACE IN REFILE TRAY.

NOTICE: THIS FILM AND CARD MAY NOT BE  
ALTERED NOR DAMAGED IN ANY MANNER NOR  
REMOVED FROM THE CLERKS OFFICE UNDER  
PENALTY OF LAW.

STATE OF SOUTH CAROLINA )  
 ) TITLE TO REAL ESTATE  
COUNTY OF PICKENS )

KNOW ALL MEN BY THESE PRESENTS THAT I, WALLACE G. MERCK a/k/a WALLACE MERCK

In consideration of ONE HUNDRED SIXTY THOUSAND AND NO/100 (\$160,000.00) .....DOLLARS

the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant bargain sell and release unto:

GREGORY A. PORTER, his heirs and assigns, for  
3030 Calhoun Memorial Hwy  
Greenville SC 29611  
090020366  
RECORDED 08/29/2003 03:09:50PM  
Fees: \$110.00 State: \$416.00  
County: \$176.00 Exam: \$.....  
Pickens County, SC  
Register of Deeds

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, on the North side of U. S. Highway 123 and according to a plat by Smith Surveyors, Inc., dated March 3, 2003 of Property of Wallace G. Merck, said lot contains 0.958 acres, and is more particularly described as follows, to-wit:

BEGINNING at an iron pin on U. S. Highway 123, which point is 1384 feet, more or less, to Fish Trap Road, thence along the highway South 87-51-38 West 135.00 feet to an iron pin; thence leaving the highway and running North 07-17-00 West 81.71 feet to an iron pin; thence North 61-05-00 East 66.50 feet to an iron pin; thence North 3-28-11 West 222.70 feet to an iron pin; thence South 55-45-05 East 209.98 feet to an iron pin; thence South 18-59-06 West 224.50 feet to an iron pin on U. S. Highway 123, the point of BEGINNING.

For derivation see deed from Cobb Sales Co., Inc. to Wallace G. Merck dated 12-31-85 and recorded in Deed Book 14-S, at Page 997, and deed from James Cely Garrison, et al. to Wallace Merck dated 10-14-94 and recorded 12-8-94 in Deed Book 263, at Page 62, in the Register of Deeds Office for Pickens County, South Carolina.

Tax Map No.: 5059-13-14-4247 and 5059-13-14-3378

together, with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s) heirs or successors and assigns, forever: And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s) heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s) heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof

WITNESS, the grantor's(s) hand(s) and seal(s) this 28<sup>th</sup> day of August, 2003.

SIGNED, sealed and delivered in the presence of:

*James B. Chisler* (SEAL)  
*Wallace G. Merck* (SEAL)  
*W.G. Robinson* (SEAL)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign, seal and as the grantor's(s) act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 28<sup>th</sup> day of August, 2003.

*W.G. Robinson*  
Notary Public for State of South Carolina  
My Commission expires: \_\_\_\_\_  
*James B. Chisler*

ROBINSON LAW FIRM, P.A. - P. O. BOX 738 - EASLEY, SC 29641-0738  
COUNTY ASSESSOR  
222 McDANIEL AVE., B-9  
PICKENS, SC 29971  
COUNTY AUDITOR  
222 McDANIEL AVE., B-7  
PICKENS, SC 29671

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

11620 BK00822 PG298  
NO TYPE SEARCH

KNOW ALL MEN BY THESE PRESENTS, that GREGORY A. PORTER in consideration of One Hundred Sixty Thousand and no/100ths Dollars (\$166,000.00), the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto JUDITH A. WATKINS and THANE T. WATKINS, as joint tenants with right of survivorship, and not as tenants in common, their heirs and assigns forever

THE PROPERTY AS DESCRIBED ON 'EXHIBIT A'  
ATTACHED HERETO AND MADE A PART HEREOF.

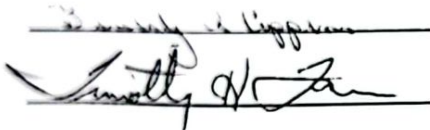

TAX MAP NO: 4059-13-14-4247 and 5059-13-14-3378

GRANTEE'S ADDRESS: PO Box 8, Westminster, SC 29693

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or to any wise incident or appertaining, to have and to hold all and singular the premises before mentioned unto the Grantee(s), and to the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) do(es) hereby bind the Grantor(s) and the Grantor's(s') heirs or successors, executors and administrators, to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee's (s') heirs or successors against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantor's(s') hand(s) and seal(s) this 15<sup>th</sup> day of June, 2004.

SIGNED, sealed and delivered in the presence of:

  
\_\_\_\_\_  
  
\_\_\_\_\_

  
\_\_\_\_\_  
(Gregory A. Porter)

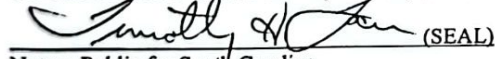
000011620  
RECORDED 06/17/2004 11:05:13AM  
Fee:10.00 State:416.00  
County:176.00 Exempt:-----  
Pickens County, SC  
Register of Deeds

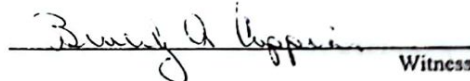
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named Grantor(s) sign, seal and as the Grantor's(s') act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 15<sup>th</sup> day of June, 2004.

  
\_\_\_\_\_  
Notary Public for South Carolina (SEAL)  
My commission expires: 6/27/06

  
\_\_\_\_\_  
Witness

**EXHIBIT A**

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Pickens, on the north side of U.S. Highway 123 and according to a plat by Smith Surveyors, Inc., dated March 3, 2003, of Property of Wallace G. Merck, said lot contains 0.958 acres, and is more particularly described as follows, to-wit:

**BEGINNING** at an iron pin on U.S. Highway 123, which point is 1384 feet, more or less, to Fish Trap Road; thence along the highway S 87-51-38 W 135.00 feet to an iron pin; thence leaving the highway and running N 07-17-00 W 81.71 feet to an iron pin; thence N 61-05-00 E 66.50 feet to an iron pin; thence N 3-28-11 W 222.70 feet to an iron pin; thence S 55-45-05 E 209.98 feet to an iron pin; thence S 18-59-06 W 224.50 feet to an iron pin on U.S. Highway 123, the point of beginning.

**DERIVATION:** This being the same property conveyed to Grantor herein by deed of Wallace G. Merck as recorded in the ROD Office for Pickens County, South Carolina in Deed Book 759, Page 274, on August 29, 2003.

**COUNTY AUDITOR  
222 McDANIEL AVE., B-7  
PICKENS, SC 29671**

**COUNTY ASSESSOR  
222 McDANIEL AVE., B-8  
PICKENS, SC 29671**

STATE OF SOUTH CAROLINA )  
 ) TITLE TO REAL ESTATE  
COUNTY OF PICKENS )

KNOW ALL MEN BY THESE PRESENTS, that JIMMY A. WATKINS and DIANE T. WATKINS, in consideration of One Hundred Forty Thousand and No/100 Dollars (\$140,000.00), the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto THOMAS SC PROPERTIES, LLC, its successors and assigns forever:

THE PROPERTY DESCRIBED ON EXHIBIT 'A'  
ATTACHED HERETO AND MADE A PART HEREOF.

PICKENS COUNTY TAX MAP NUMBERS: 5059-13-14-4247 & 5059-13-14-3378

GRANTEE'S ADDRESS: 3670 Calhoun Memorial Highway, Greenville, SC 29611

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee, and to the Grantee's heirs or successors and assigns, forever. And, the Grantors do hereby bind the Grantors and the Grantors' heirs or successors, executors and administrators, to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantors' hands and seals this 23rd day of May, 2018.

SIGNED, sealed and delivered in the presence of:

Diana D. White (Diana D. White)      Jimmy A. Watkins (Jimmy A. Watkins)  
Timothy H. Farr (Timothy H. Farr)      Diane T. Watkins (Diane T. Watkins)

STATE OF SOUTH CAROLINA )  
 ) ACKNOWLEDGEMENT  
COUNTY OF GREENVILLE )

Personally appeared before me, Jimmy A. Watkins and Diane T. Watkins, who acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 23rd day of May, 2018.

Timothy H. Farr  
Timothy H. Farr  
Notary Public for South Carolina  
My commission expires: 1/20/26

## EXHIBIT A

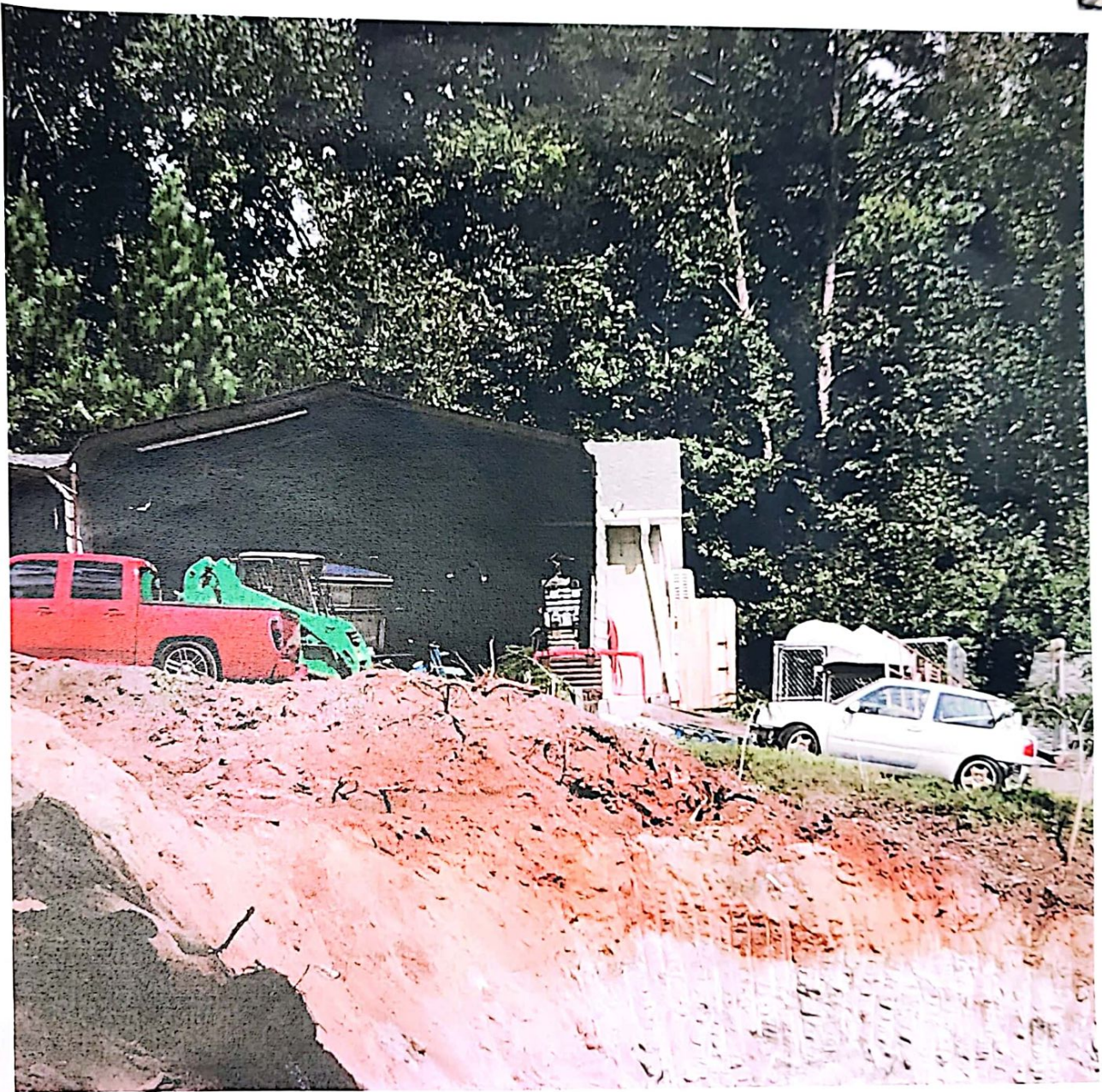
ALL that certain piece, parcel, or lot of land situate, lying, and being in the State of South Carolina, County of Pickens, on the north side of U.S. Highway 123, and according a plat of Property of Wallace G. Merck, prepared by Smith Surveyors, Inc., and dated March 3, 2003, said lot contains 0.958 acres and is more particularly described as follows, to-wit:

BEGINNING at an iron pin on U.S. Highway 123, which point is 1,384 feet, more or less, to Fish Trap Road; thence along said Highway S 87-51-38 W 135.00 feet to an iron pin; thence leaving said Highway and running N 07-17-00 W 81.71 feet to an iron pin; thence N 61-05-00 E 66.50 feet to an iron pin; thence N 3-28-11 W 222.70 feet to an iron pin; thence S 55-45-05 E 209.98 feet to an iron pin; thence S 18-59-06 W 224.50 feet to an iron pin on U.S. Highway 123, the point of Beginning.

This conveyance is made subject to all restrictions, reservations, setback lines, roadways, zoning ordinances, easements, and rights-of-way, if any, that may appear of record or on the premises.

DERIVATION: This being the same property conveyed to Grantors by Deed of Gregory A. Porter, as recorded in the Register of Deeds Office for Pickens County, South Carolina, on June 17, 2004, in Deed Book 822, Page 298.





tabbles  
DEFENDANT'S  
EXHIBIT  
22